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## ESSAY

# A COMPREHENSIVE BLUEPRINT FOR THE REFORM OF INTERCOLLEGIATE ATHLETICS

RAY YASSER\*

### I. INTRODUCTION

Recent world events, like the tearing down of the Berlin Wall and the rapid disintegration of the "Evil Empire," provide solace and hope to architects of social change. While the problems connected with what was previously regarded as the Communist bloc are no doubt on a wholly different plane than those connected to "big-time" intercollegiate athletics in this country, the similarity resides with the solution. A point is reached when an existing system is so seriously flawed that a consensus begins to emerge among thoughtful people that something like "perestroika" is necessary. It is my contention that "big-time" intercollegiate athletics in this country is at that point. What I will attempt to do in the pages that follow is to offer a working draft of a blueprint for this restructuring.

Any blueprint for reform of an extant system must of course take full account of the existing structure. This is a blueprint for restructuring, not a call for demolition. The format for discussion, then, is to look at the structure, piece by piece, and to describe it "fairly." The next step is to suggest how each piece of the structure can be changed into something stronger and more beautiful. I begin with a descriptive overview of the National Collegiate Athletic Association (hereinafter, the NCAA). In order to understand intercollegiate sports in this country, it is essential to appreciate how the NCAA is structured and how it works. While it is true that other organizations also govern intercollegiate sports, the NCAA is the dominant governing body as far as "big time" intercollegiate sports is concerned. This descriptive overview is followed by somewhat more critical and normative observations about the various components of the intercollegiate sports scene. In this more critical vein, I start at the portal by discussing the re-

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cruitment and admission of “student-athletes” who receive “athletic scholarships.” The campus life of athletes once they are enrolled is examined — from where they live to how they spend their day to what happens when they leave the university. The role of coaches, faculty, boosters, and university presidents is of course a big part of the picture. Each group is looked at in turn. In the course of the discussion, I will attempt to articulate what the reality is and what the problems are and to offer what I consider to be radical but sensible solutions. I say “radical” because oftentimes the solutions I will propose are not within the established contours of the current debate — a debate which has come to be dominated by specially interested, well-entrenched and powerful proponents. However, I do believe that many of the solutions I propose reflect the views of a growing body of sports-intellectuals (no, the term is not oxymoronic) who care deeply about sports and wish for it to occupy a more appropriate role in the life of the university. The solutions offered are, I believe, “sensible.”

The world’s political restructuring has made it clear to all that it is no longer simply naive, pie-in-the-sky utopianism to suggest that existing systems can be rapidly transformed into something starkly different and hopefully better. So, I do believe that a workable blueprint can be developed for an intercollegiate sports system in this country which mirrors our best values, not our worst traits. This paper, however, is designed as a starting point. The blueprint itself will no doubt be revised over and over again before the building is completed. I consider this a “working draft”; I welcome input from all those putative sports architects out there.

A few final observations are in order before the blueprint is presented. The “fair” description of the reality of the current sports structure referred to earlier is, of course, my own. Undoubtedly, the reader will find some aspect of it “unfair.” I invite and welcome scrutiny of my descriptions. For what it’s worth, my own descriptions are based on the observations of a 42 year old white male law professor who lives in what is reputed to be the most typical American city (Tulsa) and who has spent a lifetime deeply immersed in sports—playing, watching, reading about, writing about and just pondering. I regard it as a “fairly” healthy obsession. (Others who know me well would quarrel with the categorization “healthy.”) In any event, I acknowledge that my own view of the existing reality is skewed by my experience, and so my recommendations for restructuring are also subjective.

I should also note that I have struggled to make this piece readable for lawyers and non-lawyers alike. I say “struggled” because “readability” appears not to have a high value in traditional legal writing. I have, for example, written a footnote-free manuscript. I have always believed that

footnotes separate from the text are an evil to be avoided. I must admit I have never understood why lawyers are so committed to their use. An extensive "additional notes and sources" section appears in the Appendix, in lieu of footnotes. When helpful, citations, quotes, and references to other works are included in the text. Afterthoughts which are often the grist of extended footnotes are either woven into the text, included in the additional notes and sources section, or omitted entirely because of their inherent unworthiness in the final analysis.

## II. THE NCAA—AN OVERVIEW

### CONSTITUTION OF THE NATIONAL COLLEGIATE ATHLETIC ASSOCIATION ARTICLE TWO, SECTION 2.

Fundamental Policy (a) The competitive athletic programs of the colleges are designed to be a critical part of the educational system. A basic purpose of this Association is to maintain intercollegiate athletics as an integral part of the educational program and the athlete as an integral part of the student body, and, by so doing, retain a clear line of demarcation between college athletics and professional sports.

The NCAA is an unincorporated, voluntary association, made up of some one thousand member schools, both public and private. Public universities constitute approximately 55 percent of the membership. All member schools and member conferences are required to pay dues, the amounts varying depending upon the division in which membership is held. The association is divided essentially into three divisions: Division I, Division II, and Division III. Within one sport, football, Division I is itself divided into Division I-A and Division I-AA. The organization has a permanent professional staff, with individual departments for administration, business, championships, communications, compliance services, enforcement, legislative services, and publishing. The Association is headquartered in Overland Park, Kansas, a suburb of Kansas City.

The membership governs the organization and holds annual conventions to accomplish this. In the interim periods, the NCAA operates through the Council, the Executive Committee, and the President's Commission. The authority and make-up of these bodies is noted below, along with a discussion of selected aspects of the NCAA Constitutions and By-laws. The NCAA regulates athletic competition among its member schools, sets rules for eligibility to participate, establishes restrictions and guidelines for recruitment of prospective student athletes, conducts several dozen championship events in the various sports sanctioned by the Associa-

tion, and enters into television and promotional contracts relating to these championship events.

The NCAA openly states that one of its primary purposes is to promote the concept of amateurism. Related to this is the idea that athletics are an integral part of the educational experience at the intercollegiate level. The NCAA, of course, is big business. It administers a multi-million dollar budget, which includes among other things a huge television contract for collegiate basketball and smaller contracts for other sports. In short, the Association is the governing body and, to a great extent, the business agent for intercollegiate sports.

In order to understand the more difficult issues faced by the NCAA and its individual member schools it is necessary to have an understanding of the critical portions of the NCAA Constitution and Bylaws. The following is a summary of these sections.

A basic purpose of the Association is to ensure that intercollegiate athletics are maintained as "an integral part of the educational program and that the athlete [is] an integral part of the student body." (NCAA Constitution, Section 1.3.1.) Theoretically, this would promote a clear delineation between amateur sports and professional sports. Another linchpin of the Association is the concept of institutional control of intercollegiate athletics. (NCAA Constitution, Section 2.1.) The chief executive officer of the institution is ultimately responsible for the program at a given member school. The athletes who make up the program at a school are to be amateurs. Amateur is defined as one whose participation is "motivated primarily by education and by the physical, mental and social benefits to be derived." (NCAA Constitution, Section 2.6.)

As noted above, three separate bodies are actively involved in operating the Association. The Council consists of 46 members, including 22 from Division I schools and 11 each from Division II and III schools. The president and secretary-treasurer are *ex officio* members. At least 12 of the members must be women and at least 6 must be chief executive officers of institutions. (NCAA Constitution, Section 4.1.) The Council has the authority to:

- (a) Establish and direct the general policy of the Association in the interim between Conventions;
- (b) Appoint such committees as may be necessary for executing the provisions of this constitution or the bylaws;
- (c) Report its proceedings to the general business session of the annual Convention;
- (d) Make interpretations of the constitution and bylaws in the interim between Conventions;

- (e) Review and approve policies and procedures governing the administration of the enforcement program in the interim between Conventions;
- (f) Adopt administrative regulations for the efficient implementation of the Association's general legislative policies; and
- (g) Fill vacancies that occur among the officers of the Association or on the Council, the Executive Committee or other committees of the Association. The Council shall fill such vacancies by majority vote and only for the unexpired term, except that a person so elected to the Council shall serve until the next annual Convention. (NCAA Constitution, Section 4.1.3.)

The Executive Committee consists of 14 members, including at least three women and the president and secretary-treasurer. The Executive Committee has the authority to:

- (a) Transact the business and administer the affairs of the Association in accordance with the policies of the Association and the Council;
- (b) Employ an executive director, with the approval of the Council and the President's Commission, who shall be administratively responsible to the Executive Committee and who shall be authorized to employ such other persons as may be necessary to conduct efficiently the business of the Association;
- (c) Require all income from membership dues, from activities of the Association and from other sources (except as may be provided in the constitution and bylaws) to be deposited in the general fund;
- (d) Adopt a budget for the ensuing fiscal year prior to the end of any current fiscal year;
- (e) Adopt regulations providing for the expenditure of Association funds, administration of NCAA championships and distribution of the income of the Association;
- (f) Arrange for the bonding of the officers and employees of the Association charged with the handling of funds;
- (g) Provide for the various accounts and arrange for the auditing of them;
- (h) Report its proceedings to the Council and to the business session of the annual Convention;
- (i) Prescribe, through the executive regulations and general policies, requirements, standards and conditions governing the conduct of all NCAA championships; and
- (j) Adopt executive regulations not inconsistent with the provisions of the constitution or other bylaws. Criteria for the establishment and continuation of NCAA championships may be revised

only at an annual Convention according to procedures specified in Bylaw 18.

The President's Commission consists of 44 members, 22 from Division I schools and 11 each from Division II and III schools. At least three women are to be members of the President's Commission. The group is empowered to:

- (a) Review any activity of the Association;
- (b) Place any matter of concern on the agenda for any meeting of the Council or for any NCAA Convention;
- (c) Commission studies of intercollegiate athletics issues and urge certain courses of action;
- (d) Propose legislation directly to any Convention;
- (e) Establish the final sequence of legislative proposals in any Convention agenda, within the provisions of 5.1.4.3.1;
- (f) Call for a special meeting of the Association under the provisions of 5.1.1.2;
- (g) Designate, prior to the printing of the notice of any Convention, specific proposals for which a roll-call vote of the eligible voters will be mandatory; and
- (h) Approve the appointment of an executive director of the Association. (NCAA Constitution, Section 4.5.3.)

The NCAA also has an extensive enforcement arm. The Association has a full time enforcement staff which handles investigations. Matters which proceed to a hearing come before the Committee on Infractions. Any cases which are appealed by an institution under scrutiny go to the NCAA Council for this final stage of the enforcement process.

An investigation may begin either as a result of information being given to the enforcement staff by some outside source or on the initiation of the enforcement staff itself. All investigations are treated as confidential until announcements are made according to prescribed procedures. (NCAA Administrative Bylaw, Section 32.1, 32.2.) The first step in the process is the forwarding of a preliminary inquiry letter to the institution. If, following further investigation, the enforcement staff finds a violation and it appears to be a major infraction, an official inquiry is sent to the chief executive officer of the institution. (NCAA Administrative Bylaw, Section 32.5.) This letter fully informs the school of the allegations against it and requests full cooperation from the school. The institution will then conduct its own investigation in order to provide a written response to the charges and to prepare for any hearing which might be held before the Committee on Infractions. If a hearing is conducted, the institution will be allowed to present its case and the enforcement staff will represent the Association. In addition to the institution itself, anyone who could be penalized will also be

allowed to appear. The Committee then reaches a decision, makes findings, and proposes penalties. The potential penalties range from limitations on recruiting visits to bans on television appearances to suspension of an entire program. (NCAA Bylaw, Section 19.4.) If the institution is not content with the decision of the Committee on Infractions it may appeal to the NCAA Council. (NCAA Administrative Bylaw, Section 32.8.)

The NCAA governs athletics at its member institutions through regulations affecting the coaches, athletes, and representatives (boosters) of the schools. For example, all contracts between a coach and a school must include a stipulation that a coach found in violation of NCAA rules will be subject to disciplinary action, including termination of the contract. (NCAA Bylaw, Section 11.2.2.) Coaches are also required to report income or benefits from sources outside the institution, including that from annuities, camps, housing arrangements, club memberships, complimentary tickets, television and radio programs, and endorsement or consultation contracts with shoe, apparel, or equipment manufacturers. (NCAA Bylaw, Section 11.2.2.)

The primary focal points of the regulations regarding athletes are aspects of amateurism, education status and progress. As noted, only an amateur student-athlete is eligible for participation in a particular sport. (NCAA Bylaw, Section 12.01.1.) An athlete may be a professional in one sport and still retain eligibility in other sports, however. An athlete will be deemed a professional, and thus lose his or her eligibility if the individual:

- (a) Uses his or her athletics skill (directly or indirectly) for pay in any form in that sport;
- (b) Accepts a promise of pay even if such pay is to be received following completion of intercollegiate athletics participation;
- (c) Signs a contract or commitment of any kind to play professional athletics, regardless of its legal enforceability or any consideration received;
- (d) Receives, directly or indirectly, a salary, reimbursement of expenses or any other form of financial assistance from a professional sports organization based upon athletic skill or participation, except as permitted by NCAA rules and regulations;
- (e) Competes on any professional athletic team and knows (or has reason to know) that the team is a professional athletic team, even if no pay or remuneration for expenses was received; or
- (f) Enters into a professional draft or an agreement with an agent or other entity to negotiate a professional contract. (NCAA Bylaw, Section 12.1.1.)

The NCAA defines "pay" to include the following:



- (a) Educational expenses not permitted by the governing legislation of this Association;
- (b) Any direct or indirect salary, gratuity or comparable compensation;
- (c) Any division or split of surplus (bonuses, game receipts, etc.);
- (d) Excessive or improper expenses, awards and benefits;
- (e) Expenses received from an outside amateur sports team or organization in excess of actual and necessary travel, room and board expenses for practice and game competition;
- (f) Actual and necessary expenses or any other form of compensation to participate in athletic competition (while not representing an educational institution) from a sponsor other than an individual upon whom the athlete is naturally or legally dependent or the nonprofessional organization that is sponsoring the competition;
- (g) Payment to individual team members or individual competitors for unspecified or unitemized expenses beyond actual and necessary travel, room and board expenses for practice and competition;
- (h) Expenses incurred or awards received by an individual that are prohibited by the rules governing an amateur, noncollegiate event in which the individual participates;
- (i) Any payment, including actual and necessary expenses, conditioned on the individual's or team's place, finish or performance or given on an incentive basis, or receipt of expenses in excess of the same reasonable amount for permissible expenses given to all individuals or team members involved in the competition;
- (j) Education expenses provided to an individual by an outside sports team or organization that are based in any degree upon the recipient's athletic ability, even if the funds are given to the institution to administer to the recipient;
- (k) Cash, or the equivalent thereof (e.g., trust fund), as an award for participation in competition at any time, even if such an award is permitted under the rules governing an amateur, noncollegiate event in which the individual is participating. An award or a cash prize that an individual could not receive under NCAA legislation may not be forwarded in the individual's name to a different individual or agency.
- (l) Preferential treatment, benefits or services (e.g., loans with deferred pay-back) because of the individual's athletic reputation or skill or pay-back potential as a professional athlete, unless such treatment, benefits or services are specifically permitted under NCAA legislation;
- (m) Receipt of a prize for participation (involving the utilization of athletic ability) in a member institution's promotional activity

that is inconsistent with the provisions of 12.5 or official interpretations approved by the NCAA Council. (NCAA Bylaw, Section 12.1.2.)

An individual becomes a professional in a sport if he or she signs a professional contract, regardless of its enforceability. Participation on a professional sports team makes an athlete a professional. (NCAA Bylaw, Section 12.1.3.) As noted, an athlete may be a professional in one sport and retain eligibility in other NCAA sports. That individual, however, may not accept institutional financial aid while involved in professional sports or receiving remuneration from a professional sports organization. (NCAA Bylaw, Section 12.1.4.) An athlete becomes ineligible if he asks to have his name placed on a draft list for a professional sport prior to the actual draft, regardless of whether the athlete is drafted, or ultimately reaches a contractual agreement. (NCAA Bylaw, Section 12.2.4.1.) This rule would have no relevance to baseball since baseball conducts its draft in a manner which does not require affirmative actions in order for underclass athletes to be included in the draft. The athlete will also lose eligibility if the athlete reaches any kind of an agreement with an agent for representation, either written or verbal, regardless of whether that agreement is for present or future services. (NCAA Bylaw, Section 12.3.1.) An athlete may, however, secure advice from an attorney concerning a proposed contract, so long as the attorney does not become involved in negotiating the contract.

The NCAA has also been concerned about athletes becoming involved in promotional activities which benefit them solely because of their athletic abilities. Perhaps the most absurd example of previously stringent policies occurred when University of Indiana basketball player Steve Alford was suspended for one game because he appeared on a sorority calendar, the proceeds from which went to charity. This rule has been relaxed somewhat. Athletes may now appear or have their picture used for charitable or educational purposes if written permission is secured, no class time is missed, and there is not co-sponsorship by a commercial entity. (NCAA Bylaw, Section 12.5.)

The Association regulations also govern the educational status and progress of student-athletes. This area has recently been extremely controversial as related to eligibility for entering freshmen athletes. An athlete at an NCAA member institution generally has four years of eligibility for competition. The four years must be completed within five years of the time the athlete first registers for a minimum full time program of studies in a collegiate institution. (NCAA Bylaw, Section 14.2.) "To be eligible to represent an institution in intercollegiate athletics competition, a student-athlete shall be enrolled in at least a minimum full-time program of studies, be in

good academic standing and maintain satisfactory progress toward a baccalaureate degree." (NCAA Bylaw, section 14.01.1.)

The most controversial aspect of the NCAA academic eligibility rules is that dealing with freshman eligibility. In 1983, the NCAA enacted legislation which became effective in 1986 and was intended to regulate eligibility of incoming freshmen athletes. As modified, an entering freshman, in order to be eligible for competition, must be a high school graduate and have a minimum cumulative grade point average of 2.000 based on a maximum of 4.000 in a core curriculum specified by the rule. (NCAA Bylaw, Section 14.3.1.1.) The athlete must also have scored either a minimum score of 700 on the SAT or a minimum score of 15 on the ACT. Any freshman not meeting these criteria is ineligible for financial aid, practice, and competition during the first academic year in residence. This rule has been controversial due to its alleged adverse racial impact. Statistics show that most of the athletes affected by the rule are black.

### III. ATHLETES AT THE PORTAL OF THE UNIVERSITY

#### A. *Recruiting and Compensation of Athletes*

"I think it would be a wonderful thing if a coach would just forget all about the high school and prep school wonders of the world and develop a team from among the students of his institution who came to his school because they liked it best and not because of any attractive offers made for athletic ability."

Knute Rockne, Notre Dame Football Coach,  
bemoaning recruiting in 1929.

"If you're going to the Final Four, you have to recruit athletes, not Christians."

Luke Kelley, former Oral Roberts University  
Basketball Coach, on contemporary recruiting.

In the current recruiting milieu, colleges and universities participating in "big-time" intercollegiate athletics spend considerable resources ferreting out athletic talent and luring the talented to their respective campuses. Well-paid head coaches designate full-time assistants to have special responsibilities for recruitment. This search-and-bring-back mission takes place in the context of "amateurism." While the recruiters are paid professionals, the recruited are expected to maintain the facade of amateurism. A complex web of NCAA rules makes it illegal for the recruits to receive any "illegal" benefits — low, or no-interest loans for cars, money for travel, cash for game tickets, and favors from boosters are all forbidden by NCAA rules. The receipt by a recruit of any excessive or improper expenses, bene-

fits, or awards jeopardizes both the athletic eligibility of the recruit, and the status of the athletic program in the eyes of the NCAA.

From the perspective of most coaches, academic and athletic administrators, and boosters and fans, the recruiting arrangement is viewed as a competition among schools for the best talent. Occasionally, a coach decries the recruiting violations of competitors. Digger Phelps, former basketball coach at Notre Dame, once had the temerity to suggest that many universities maintained slush funds to channel illegal money to athletes. The news media regularly reports about suspected abuses. The NCAA tries to enforce the rules by investigating reports of illegal recruiting and punishing transgressors. One of the more common reasons for an institution to be sanctioned in some way is for providing improper benefits to players. Every once in a while, an outspoken coach (one usually noted for being a "players' coach") points out that it would make sense to allow athletes to receive some additional benefits, like a small allowance — something along the lines of the "laundry money" that at one time was allowed. Even some NCAA cognoscenti have indicated that they are not entirely averse to this idea. But the overriding sentiment among coaches, academic and athletic administrators, and boosters and fans, is that the overall scheme of benefit limitations is basically fair. It needs to be enforced more evenhandedly, perhaps, and maybe athletes ought to get a little more. However, very few people from these groups seriously question the efficacy of limiting the benefits of athletes to the athletic scholarship — tuition, fees, books, room and board—and maybe, sometime down the road, a little allowance, a modicum of travel and expense money.

The perspective of those upon whom the restraints operate, however, is startlingly different. Professor Allen Sack (a Professor of Sociology at the University of New Haven and a former defensive end on Notre Dame's 1966 National Championship team) has extensively surveyed college basketball players concerning their attitudes towards "illegal benefits." Sack has found that many athletes believe it is unfair to so severely limit their benefits. In short, many athletes do not accept the legitimacy of the NCAA rules. In particular, athletes from lower socio-economic backgrounds are more likely to see nothing wrong with accepting money "under the table." Unsurprisingly, black athletes — who are disproportionately poor — are the most likely to view "amateurism" as exploitative. A substantial majority of the black basketball players playing at the most competitive level (NCAA Division I) see nothing wrong with accepting money and other benefits under the table, and believe that they deserve a share of the television revenue generated by the sport. Additionally, many college athletes (and it appears that most black college athletes) believe that they should

receive other benefits like workers' compensation and disability insurance. The dominant self-perception is that they are university employees — compensated to play their sport. In short, the athletes' point of view contrasts sharply with the perspective of most coaches, administrators, and fans. Many athletes simply find it difficult to accept that so many others are making so much money watching them perform and they are not able to afford bus fare home. The prevailing view among athletes is that the myth of amateurism is an ideology which functions to suppress their ability to support themselves.

One way of dealing with the so-called corruption in intercollegiate sports is to recognize that what the NCAA has defined as corruption (excessive benefits to athletes) is really not corruption at all. Efforts to prevent athletes from receiving additional benefits are doomed to fail because such artificial constraints are viewed by those upon whom they are imposed as inherently unfair. Moreover, the restraints are imposed by an organization (the NCAA) in which the athlete has no representative voice. The disempowered athlete therefore feels little compunction about violating rules imposed by an organization which does not represent the athlete's real interests. As a result, these kinds of rule violations are as American as apple pie. (Remember, Jim Thorpe was stripped of his Olympic medal for having received benefits inconsistent with his amateur status). It would make sense to redefine corruption so as to simply legalize additional benefits in fairness to athletes.

The starting point is to provide expense money for athletes above, rather than under, the table. A percentage of the television revenue generated by big-time intercollegiate sports ought to be earmarked as a special fund for the benefit of athletes. This fund could be used to provide this additional stipend. Moreover, this fund should be used to provide additional scholarship assistance to athletes who have completed their athletic eligibility but who have not completed their education. In fact, the NCAA already administers such a fund for athletes who return to school. This fund should be vastly expanded to guarantee additional support for athletes. (NCAA member schools might also consider joining an already existing consortium administered by the Center for the Study of Sport in Society at Northeastern University which allows athletes without degrees to further their education at member schools).

More fundamentally, serious consideration should be given to allowing and even encouraging supporters and boosters to provide assistance to athletes. Why is it that in the context of intercollegiate sports, willing donors are precluded from providing financial and other assistance to needy recipients? The tradition of both free market forces and patronage, which exist to

support budding artists, musicians and writers, is a noble one. Why is it that in the sports setting that free market forces and patronage are viewed as corrupt? There is, I think, no adequate justification for making it illegal for athletes to receive assistance benefits well beyond those currently permitted by the NCAA. If we truly believe in free and open markets, athletes should not be forbidden from participating in them. Patrons of athletes should be encouraged to provide additional benefits to athletes in much the same way as patrons of the arts are encouraged to support and nurture artists. There is nothing inherently wrong or corrupt about a sports booster providing an athlete with a summer job or with cash for tickets. In fact, I believe that no other group in our society, engaged in otherwise legal and socially desirable activities, is singled-out to be excluded from participation in what is supposed to be a free and open economy. (Imagine Princeton declaring Brooke Shields ineligible to participate in the school play because of her earlier acceptance of improper benefits). Simply put, there is nothing "corrupt" about athletes sharing in the fruits of the marketplace.

### *B. Admissions*

"I never graduated from Iowa. I was only there for two terms—Truman's and Eisenhower's."

Alex Karras,  
Detroit Lions defensive lineman.

Under the prevailing system, recruited "student-athletes" ordinarily do not gain admission to the university through anything remotely resembling the regular admission process. Although details may vary from one institution to the next and some schools may take extra care to make the decision to admit look like it has been accomplished through regular channels, the reality is that the highly sought-after athlete is usually admitted *de facto* by the university athletic interests. "Student-athletes" are admitted with credentials that would not get a non-athlete in the door. Occasionally, scuffles break out between the athletic powers-that-be and the regular admissions personnel of the university, but perhaps the most revealing thing about these scuffles is that both sides seem to agree that athletes may be "specially admitted." The argument, then, becomes a kind of admissions limbo dance about just how low the admissions people are willing to go. Even the most persnickety of the admissions officers has apparently caved-in on the most significant presumption that recruited student-athletes do not have to meet the same academic requirements of other regularly admitted students. And, in what must at best be regarded as a remarkable and perverse irony, the NCAA has regularly entered the picture, articulating eligibility floors in the guise of "academic standards."

The entry of the NCAA upon the college admission scene is not new. Over 20 years ago, the NCAA adopted a "1.6 predictor" rule which limited admission to student athletes who were regarded as statistically likely to achieve at least a 1.6 g.p.a. in their freshman year of college. More recently, the NCAA adopted Proposition 48, which in one of its formulations required incoming athletes to have maintained a 2.0 g.p.a. in 11 college preparatory classes and a minimum of 700 combined SAT or 18 ACT score to be eligible to play sports as a freshman. (The NCAA regularly fiddles with the requirements, more recently adopting a sliding scale approach.) The significance of these plans is not in the details. It is in the fact that individual schools have allowed the NCAA to meddle in the process. These "stringent academic standards" in reality represent the floor beneath which no school is to be permitted to sink. These standards do have the practical effect of cutting down on the admission of many students who are not prepared to do college level work. But the mere articulation of the standard bespeaks the problem. Individual schools are in essence saying, "stop me before I admit again." Indeed, it should be pointed out that some schools even admit "non-qualifiers," and attempt to make them eligible for sports by their second year by nursing them through a specially prepared year of course work.

One by-product of this "special admit" system is the creation of what might be called a "sub-college-level-curriculum." In order to accommodate the special needs of the specially admitted, special offerings have flourished. Many student-athletes have found it possible to remain athletically eligible while making little or no real progress towards a degree. Horror stories are legion. Athletes are able to work the system to remain eligible while making no real progress towards a degree by taking courses which do not lead to a degree. The existence of this substandard curriculum functions to compromise the academic integrity of the institution that offers it. Unsurprisingly, though, there is little organized opposition to it. Real students make an occasional foray into it to relieve the rigors and tedium connected with real college courses, and many of the athletes enrolled in these courses are focused more on eligibility than on graduation.

The answer to these problems is surprisingly simple. The all-important admission decision should be turned over to the admissions office of the school, where it belongs. Being an athlete should count about as much as being an outstanding pianist or an accomplished artist. It should be a factor to be considered in the admissions calculus. It should not be outcome-determinative. Individual schools have to muster the courage to dismantle substandard curriculum. No student should be admitted who does not have a legitimate chance to attain a meaningful education. And no student prop-

erly admitted should be permitted to take anything less than a college-level curriculum. The answer to the problem of the academically unqualified athlete is for individual institutions to take control of their admissions process to ensure that only academically qualified college students are admitted. This is not unrealistic reform. It only requires that colleges and universities act with integrity in the process of admitting students. The NCAA could pass a rule which, rather than mandating uniform academic "standards," mandates institutional control of the admission process—no school shall admit any student who does not have a reasonable chance of attaining a degree in a reasonable amount of time.

### C. *Athletic Scholarships*

Shelby Metcalf, basketball coach at Texas A&M, giving advice to a player who received four F's and one D:

"Son, looks to me like you're spending too much time on one subject."

In the world of big-time intercollegiate sports, the highly recruited athlete receives an athletic scholarship. To be sure, in the vast majority of cases the award has nothing whatsoever to do with "scholarship," and everything to do with athletic ability. (Indeed, the term "athletic scholarship" is an oxymoron.) Many recipients of athletic scholarships are marginal students at the university they attend. The receipt of free tuition, fees, room and board, and books, is an award for athletic prowess, given with the understanding that the recipient will make a good faith effort to "play ball." The modern scholarship is a one year deal, renewable at the discretion of the university. Athletes who are able to compete on the playing field and remain eligible by staying above the school's academic floor typically will have their scholarship renewed for an additional year. Real progress toward a degree is not ordinarily a condition precedent to the renewal of the award.

The NCAA dictates to individual member schools the maximum number of athletic scholarships which are permitted for each sport in the various divisions. Year to year the numbers vary as the partisan interests of particular divisions and sports jostle for position at the annual convention. For example, the 1992 NCAA convention revised the limit on the number of awards permitted in a variety of Division I sports. Baseball, which had been limited to 13 awards, was dropped to 11.7. Soccer dropped from 11 to 9.9, while tennis went from 5 to 4.5. This was a cost-cutting convention. For the most part, schools may carve up the awards to provide assistance to a greater number of people. For example, a school limited by the NCAA to 6 scholarships might be able to provide 12 half scholarships to what the



NCAA calls "counters." In the lexicon of the NCAA, a "counter" is one who receives a full or partial athletic scholarship. Thus, the NCAA limits both the number of awards and the number of recipients. The number of "counters," like the number of awards, is a regular subject of controversy.

The most lively and recent source of controversy has to do with the limits on football scholarships. Alarmed by recent cost reduction moves, coaches are lobbying to have the overall grant limit set at 90 grants-in-aid. The current rule will reduce the overall total to 85 beginning in the Fall of 1994. The concern of coaches is apparently that they can not administer effective programs with only 85 scholarships. The lament of coaches in other sports is similar; coaches invariably lobby for more scholarships. And the NCAA steps in to resolve it all, setting the limits.

As with the academic standards, perhaps the most startling fact about this is that individual schools have even felt the need for the NCAA to limit them in this way. It's as though the schools are saying, "stop me before I give still another athletic scholarship to a marginally qualified athlete." Again, the answer, I think, is institutional autonomy and control with a national mandate for what I call "athletic scholarship disarmament." I would start with a proposal for a national across-the-board cut of 50% in the number of athletic scholarships available for men. This disarmament mandate must be accompanied by a commitment from each university to allocate the 50% saved to academic scholarships for disadvantaged, academically motivated applicants. What this means is that we would have a cost-free reallocation of scholarship resources. The new recipients of the old "athletic scholarships" would simply be composed of students rather than athletes. The lament of the coaches notwithstanding, the scholarship limits (which in reality operate as the actual number awarded, particularly in football and basketball) are unconscionably high. Consider the salubrious effects of athletic scholarship disarmament.

### 1. The Message to the Community

This type of cut will send an important message to the national community about the proper role of athletics in the life of a university. It will also send an important message to people in disadvantaged communities. The prevalent message in disadvantaged communities today is that athletic prowess provides the most readily available ticket to the university. Athletic achievement is more highly valued than academic achievement. Universities must take responsibility for communicating this flawed message. They must also take responsible action to communicate a new and more sensible message. The most readily available ticket to the university must be provided to those people in the community who have shown a commit-

ment to academic excellence. Clearly, scholarship reallocation in the form of athletic scholarship disarmament sends the most sensible message.

## 2. The Effect on Competition and Marketability

Powerful athletic interests will, of course, blanch at the mere mention of such a proposal. But athletic scholarship disarmament does not mean the destruction of highly competitive and marketable intercollegiate athletics. In fact, such a move will, I believe, reinvigorate intercollegiate competition, because more schools will be able to compete at the highest levels. Athletic talent will be spread about more broadly. Traditional collegiate powerhouses will not be able to “warehouse” athletic talent. New fans, many of whom are now turned off by the hypocrisy of intercollegiate athletics, will be drawn to the more pure intercollegiate system. Old fans are unlikely to turn away from intercollegiate sports just because more of the athletes are now really students, too.

The powerful and well-entrenched athletic interests will claim that this kind of “radical” step will destroy intercollegiate competition. But think about this claim. Why is it that Oklahoma, for example, cannot field a highly competitive football team with “just” 45 athletic scholarships? Or that Duke could not field a highly competitive basketball team with “just” 6 athletic scholarships? Remember too that the disarmament is across-the-board. It is possible that the overall performance level would drop, but isn’t it clear that the drop, if there is one, would be imperceptible to the fan? Moreover, the fan would see fewer “entrenched” sports powers and more broad-based competition for national prominence. The better argument is that this “radical” step—what I have called athletic scholarship disarmament—will prevent big-time intercollegiate sports from destroying itself.

## 3. The Effect on Campus Diversity

### *Blacks*

“People see me and immediately assume I’m on the track team. . . . [T]hey ask, ‘What sport do you play?’ My response is, ‘I’m on the art team’.”

Ziddi Msangi, a black fine arts major  
at Boise State University.

It is extremely important that this disarmament not be viewed by the black community as an attempt to “whiten” intercollegiate sports. Rather, it must be both implemented and viewed as a profound national commitment to increase the number of black lawyers, doctors, engineers, and other professionals. This, after all, is what the disarmament program is all about. That is why the disarmament plan must be accompanied by detailed and

verifiable plans to allocate those scholarship resources that are no longer going to be spent on athletic scholarships to academic scholarships for disadvantaged minority applicants. If this is done honestly, the number of black and minority students on each campus will be increased because scholarships previously given to white athletes will now go to academically promising disadvantaged students. In fact, the disarmament plan should serve to increase the number of black and minority students on the campus.

While the number of black students on campus will increase as a result of the disarmament plan, another very important change will be taking place. Where before disarmament a disproportionate number of black students were athletes, disarmament will significantly reduce this disproportion. It will also decrease the perceptions which lead to the damaging stereotypes which in turn contribute to our racial problems. And as a very practical matter, it simply makes more sense for a "university" to recruit and enroll academically talented black students than it does to recruit and enroll athletically talented but often academically marginal black athletes. As I once heard Dean Marilyn Yarbrough (Law Dean at the University of Tennessee and a black woman) put it, "in our current system, we just have the wrong black students on our campuses."

### *Women*

In 1972, Congress enacted a law which prohibited educational programs from discrimination on the basis of sex. As a result of recent case law and amendments by Congress, there is now no doubt that this important law, commonly referred to as Title IX, applies to the administration of intercollegiate sports programs. In fact, current regulations designed to implement the mandate of Title IX spell out with specificity the responsibility of athletic departments to provide equal opportunity for women who participate in intercollegiate sports. One particular regulation has been interpreted to require that schools provide athletic scholarships on a "substantially proportional basis to the number of male and female participants in the institution's athletic program." Schools have been told that the government will measure compliance with Title IX by simply "dividing the amounts of aid available for the members of each sex by the numbers of male or female participants in the athletic program and comparing the results."

The reality is that the vast majority of schools in Division I are in violation of the scholarship-to-participant ratio rule. Another reality is that the Reagan and Bush administrations have done very little to enforce this Title IX mandate. The result is that college and universities have placed themselves in the unenviable position of ignoring the mandate of a beneficent civil rights law.

Most schools, in fact, agree that providing equal opportunity for women in sports is a desirable social goal. The justifications for flouting the federal mandate vary. Some schools appear to think that very gradual progress is all that is required. Others cling to the idea that revenue-producing sports are not to be included in the scholarship-to-participant ratio formula. (This idea has been rejected by the governmental agency empowered to enforce the Title IX mandate.) The reality here is that the powerful athletic interests have, for the most part, simply chosen not to comply and the federal government has done very little about it.

The scholarship disarmament plan discussed earlier, if implemented, will have the very positive side-effect of bringing many schools into compliance with Title IX. The scholarship disarmament plan as it applies to men's sports should also be accompanied by a genuine commitment to upgrade women's sport to bring schools into meaningful compliance with Title IX. As required by the regulations which implement the Title IX mandate, schools should commit to providing additional support to women's sports in the areas of equipment and supplies, travel, practice site availability, publicity, and salaries for coaches. As a practical matter, this may result in a certain de-emphasis of men's sports. Athletic administrators must be willing to come to grips with the fact that the strictures of Title IX reflect both existing law and sound policy.

#### IV. CAMPUS LIFE

"If I make a set of rules, then a guy goes out and steals an airplane. He comes back and says, 'It wasn't on the list of rules.'"

Abe Lemons, former Texas basketball coach.

The life of the big-time college athlete is regulated to a far greater degree than the life of the average college student. Athletes are engulfed by a complex regulatory scheme from the moment they arrive on campus. The athlete's life is managed and controlled in what can perhaps best be described as a militaristic fashion. Regulations which would be viewed as entirely inappropriate for "civilians" are commonplace for athletes. The sections that follow deal critically with the various regulations which effect the lives of the athletes.

##### *A. Housing*

A large majority of Division I schools still maintain athletic dormitories. Often, these "jock dorms" are located close to the athletic facilities, and separate from regular student residential communities. Additionally, student-athletes often eat their meals in a separate cafeteria.

The rationales for establishing and maintaining these separate facilities reflect the power of coaches to influence university housing policies. Coaches have succeeded in convincing university administrators that these dorms will help the school to compete at the highest level. First, coaches point out that they will use the jock dorms to recruit. The jock dorms are usually somehow nicer (bigger and/or better equipped) than the regular dorms. And the food service is enhanced (more "feed" for the jocks). So the coaches use these special features to lure their prospects to the university, and without them, the coaches say, they would be at a disadvantage. Once the recruit is landed, coaches argue that they need the dorm to control and regulate the lives of the athletes. Coaches can call important meetings on short notice without having to scurry all around looking for team members. Bed-checks are made more simple. Coaches can find out just who is doing what and when and this is important to avoid embarrassing situations. Jock dorms give coaches the ability to be on top of things — heading off problems before they occur. These spurious rationales don't work to support the continued maintenance of these housing projects. First of all, the ABSENCE of jock dorms is the proper recruiting tool if coaches really want to attract "student-athletes." And in a university setting, coaches simply should not exert the kind of control over the lives of young people that they currently exercise. For it is this type of separateness and control that gives athletes the message that they are not really "student-athletes"—rather, the view is reinforced that they are athletes first and foremost and only second-class students.

Even the NCAA has come to realize that separate facilities for athletes is really not defensible. At the 1991 Convention, the NCAA adopted a proposal which made it impermissible to devote floors, wings or residence halls exclusively to athletes. This proposal is to be implemented over a 5 year period. A companion proposal prohibited Division I schools from providing more than one training-table meal per day if other university dining facilities are open. As is usually the case with NCAA "reform" proposals, these proposals do not go far enough.

The maintenance of segregated housing facilities for athletes stigmatizes athletes as non-students, as athletic mercenaries. This kind of isolation and separation is segregation in its most pernicious form. The solution here is to integrate athletes into the university by allowing them to live and dine with students, as students.

### *B. Practices, Games, and Classes*

It is common knowledge that inordinate time demands are placed on student-athletes, who must expertly juggle the myriad responsibilities asso-

ciated with being both a student and a big-time intercollegiate athlete in order to succeed. It is not at all surprising to most observers that, under the circumstances, few are really able to pull it off. While the NCAA regularly holds up some latter-day Bill Bradley as the model of the student-athlete, the truth is that there aren't too many out there who even remotely resemble Bill Bradley. Even the NCAA has come to appreciate that it is extremely difficult to play big-time intercollegiate sports and to be a bona fide student at the same time. In an effort to deal with this problem, the NCAA has enacted an extensive body of regulations concerning practice times and game scheduling. The NCAA manual has taken on the prolixity of a collective bargaining agreement detailing permissible conditions of employment.

In regard to practice times, the NCAA regulatory scheme covers the waterfront. The NCAA says when seasons begin and end. With a few exceptions for physical fitness activities, supervised practice sessions are only permitted in-season. The NCAA now requires that institutions limit the number of hours during the day and week that can be spent on activities connected with sports participation — in other words, schools must establish limits on working hours. Athletes must be given one day off per week during the season. Institutions must now keep records and develop a methodology for computing hourly limitations. Schools must also prescribe the number of class hours that can be missed because of athletic activities. One specification here is that class time may not be missed for practices but permits the missing of a limited number of classes to participate in away games.

As far as games are concerned, the NCAA limits the number of games that can be played in each sport in each division. (The NCAA recently reduced the permissible number of Division I basketball contests from 28 to 27 in partial response to the problem of athletes missing class to participate in games.) An NCAA bylaw dealing with games requires that teams leave no earlier than 48 hours prior to game time and depart from the game site within 36 hours of completion of the game. (Limited exceptions apply to games played off the mainland.)

These kinds of proposals will do little to solve the very difficult problem of fairly accommodating the competing demands of school work and athletic development. The NCAA proposals are significant in that their very existence is evidence that even athletic administrators realize that this is a most delicate problem. If we are to maintain a system where our athletes are really students too, a system which regulates practices and games must be devised. But it must be a system which takes full account of the fact that many athletes are especially vulnerable to academic pressures. While there

are no easy formulae here, rethinking some basic assumptions will provide some relief.

The limiting of practice times to an artificially defined season is counter-productive. First of all, athletes and coaches at the intercollegiate level really know no season. The limitation of practice to the season creates tremendous pressure to over-practice during the season, because practices are illegal out of season. In my view, it would make more sense to simply jettison the assumption that limiting practices to the season reduces the pressures on athletes. Allowing athletes to practice all year, and particularly in the summer, will alleviate the pressure to overpractice during the season, when the academic pressures are also present. If practices were permitted all year, coaches would be provided with the opportunity to sensibly train athletes without having to "pack it all in" to the season. Coaches would also be relieved of the hopelessly artificial constraint of the current system, where they have to be careful to not even be present when their players are practicing on their own. This expansion of the season, accompanied by reasonable practice time limits, would help to provide an environment where athletes have a legitimate chance to succeed as students.

The problem of game scheduling is an intractable one. If anything like the current system is to be maintained, athletes are going to miss class in order to participate in games. But there now exists a somewhat cavalier attitude toward missed classes that seriously undermines the academic mission. Steps must be taken to directly confront this problem. Of course, athletic administrators must take real care to schedule games in such a way as to minimize lost class time. Meaningful guidelines should be articulated to ensure that this is in fact done with a serious purpose. The NCAA rules in regard to departure to and from games, previously alluded to, make sense. But isn't it clear that a system needs to be devised which provides athletes with some facsimile of the class missed? Surely with available technology athletes could be provided with either an audio or video tape of missed class. After returning from a road trip, it is commonplace for athletes and coaches to go over the "game films." Doesn't it make even better sense to set aside a time to go over the tape of the class missed? And if some professors object to the taping (as no doubt some will be wont to do), shouldn't the athlete meet with a dependable student who was present to go over what was missed as a matter of course. Isn't this what good students do? Is it stretching things too far to ask that athletes should behave as good students do? Shouldn't the athletic department expend as much time and energy providing athletes with an opportunity to review missed classes as it currently does in regard to game films?

### *C. Drug Testing*

Many intercollegiate athletes are required to submit to drug testing as a condition of participation. In many cases, the individual school administers the testing. In other instances, the NCAA itself requires that athletes be tested for drugs as a condition precedent to participation in certain championship events. Typically, the athlete is asked to sign a waiver or consent form which allows for the collection of a urine sample. Refusal to consent renders an athlete ineligible to participate. At some schools, all athletes are tested at one time or another. For example, the mandatory physical exam might include a drug test. At other schools, the athletes to be tested are supposedly randomly selected. Still others permit the testing of an individual athlete based on something akin to probable cause to believe the athlete is using illegal drugs. Myriad variations are in place as one moves from school to school. Following the collection of what is usually a urine sample, chemical tests are performed to detect the presence of illegal substances, including marijuana, cocaine, amphetamines, and steroids. Positive test results are verified with follow-up tests. Procedures and punishments at individual schools also vary. One common methodology would be to suspend a first time offender pending the completion of a drug education course. A second or third failed test might result in either lengthier suspensions or expulsion. But the one outstanding aspect of all the various drug testing schemes is that athletes are separated out from the rest of the student body for special treatment in regard to drugs.

In order to wage a meaningful war on drugs it is important that we begin to draw some distinctions. One distinction that is not drawn by most of the drug testing schemes is the distinction that should be drawn between performance enhancing drugs (like steroids and the human growth hormone) and recreational drugs (like alcohol, marijuana and cocaine). If the distinction is drawn and examined, it makes good sense to test athletes for performance enhancers. And it doesn't make sense to single out athletes to be tested for recreational drugs.

#### 1. Performance Enhancers

The athlete who takes performance-enhancing drugs is a cheater. This kind of cheating cuts at the soul of competitive sport. It is sound policy to institute a fair and effective drug screening program to protect the integrity of sport and to protect athletes who are under pressure to cheat in order to compete. In a very real sense, the problem of performance-enhancing drugs is a sports problem. Somewhat ironically, sports organizations like the NCAA are typically ineffective when it comes to testing for performance-enhancers, but efficacious when it comes to detecting recreational drug use.



But it is screening for performance-enhancers to detect cheating that is essential to the preservation of the competitive environment. In short, it makes sense to single out athletes to test them for performance-enhancing drugs.

## 2. Recreational Drugs

The athlete who takes recreational drugs is a different kind of cheater. It makes little sense, however, to single out athletes for special treatment when it comes to the use of recreational drugs. Think about it: Is there any justification for testing the football team for marijuana and not the debate team? When it comes to the use of recreational drugs, athletes simply are no differently situated than non-athletes. The problem is not particularly related to participation in athletics. If we deem it sound policy to test for recreational drug use, fairness dictates that we test the population more broadly - all students should be tested, not just athletes. The point is, an effective war against recreational drug use cannot be fought with only athletes on the front lines. We cheat ourselves and athletes when we force athletes to fight what is everyone's war.

## 3. Toward Sound Policy

It may well be that it is entirely appropriate to draw other distinctions as well. The distinction I offer here is merely a starting point. But it seems to me that the "war on drugs" can not be fought in a meaningful way until rational distinctions are drawn. The "war on drugs" cannot be won if athletes are the primary foot-soldiers. The athletes' contribution to the war is to get policy makers to think critically about how best to fight it fairly—without cheating.

### *D. Freedom Issues: The Right to Transfer and The Right to Test the Professional Sports Market*

The NCAA has a set of regulations designed to serve a governing principle—athletes are to be discouraged from transferring from one school to another. One rule which helps to effectuate the basic principle declares that an athlete who does choose to transfer must sit out a year before regaining eligibility. (Since another rule requires that an athlete complete his eligibility in 5 years, the requirement that an athlete sit out one year is especially coercive.) A concomitant regulation is that such an athlete can not receive financial assistance at the school transferred to unless the school transferred from agrees to "release" the athlete. To make absolutely sure that transferring is effectively prevented, the NCAA has adopted a web of by-laws. For example, one recently passed bylaw requires an NCAA mem-

ber to obtain a written release from another member school before any contact is made with a student-athlete regarding the possibility of the student-athlete transferring schools. In short, the regulatory framework serves to severely limit an athlete's ability to move to another school. Even if the coach leaves, these anti-transfer rules don't loosen.

A related set of regulations prevents many athletes from effectively testing the professional sports market. One rule renders a student-athlete ineligible to participate as soon as the athlete agrees to be represented by an agent. Another rule makes an athlete ineligible the moment the athlete requests to be included in the professional draft. (With the exception of baseball, professional leagues typically will draft only those players who have either exhausted their eligibility or renounced their remaining eligibility by petitioning for inclusion in the draft.) The effect of these rules, combined with the predominant practices of the professional sports industry, is to preclude an athlete from testing the professional sports market without sacrificing eligibility. In short, an athlete with eligibility remaining has no opportunity to determine whether market forces warrant relinquishing of remaining eligibility without first giving up the remaining eligibility.

Imagine a theater major being told that if she transferred to another school, the rules of the National Collegiate Theatrical Association mandated that she would be ineligible to participate in any theatrical productions at her new school for a full year. Imagine a music major being told that if he wanted to audition for a spot as a percussionist with a popular group that he would first have to agree to relinquish his right to play with the school's well-regarded ensemble. Imagine both being told that if they hired an agent or received advice from an attorney who subsequently represented them in connection with securing employment, they would be barred from participating in school-sponsored presentations. Imagine being told that you couldn't find out whether you would receive the job you sought, or even what the job would pay, unless you first unequivocally quit your old job. Eligibility rules in any other context but sports make little sense. I would contend that such rules make little more sense in the sports milieu.

The myriad limitations on an athlete's freedom to change schools or to test the professional sports market exist to serve the interests of the athletic powers-that-be. The NCAA and its member schools are primarily concerned with the maintenance of high quality, low-cost athletic programs. Transfers and attempts to test the professional sports market create administrative problems for coaches and athletic administrators. In fact, the vast array of NCAA regulations restricting the freedom of athletes to make decisions which other students make in the regular course of their lives are designed not with the athlete's interest in mind, but with an eye on protect-

ing the economic interests of the NCAA and its member schools. These rules have the purpose and effect of forcing talented athletes to remain at the school where they first enrolled in order to minimize disruption and inconvenience for athletic administrators. The rationales proposed by the NCAA—that the rules are designed to promote amateurism and to further educational goals—are both chimerical and disingenuous.

An athlete ought to be able to make a decision to transfer in much the same way as any other student does. An athlete ought to be able to contract with a lawyer or agent to get information concerning his potential as a professional without jettisoning his college career. An athlete ought to be able to find out if he has market value by requesting inclusion in the draft without sacrificing eligibility. In short, what is required here is a move toward the drastic deregulation of the lives of athletes. At the very least, the rules that limit transfers, the so-called “no agent” rules, and the rules which require athletes to give up eligibility in order to be considered for the draft, ought to be repealed. In fairness to athletes, the NCAA has to get out of the way. But whether the NCAA has the political wherewithal to get out of the way is an entirely different matter. I think that if the NCAA doesn’t start legislating with the interests of athletes in mind, it will be eventually pushed out of the way by lawsuits and legislation.

#### V. COACHES

“I thought I had a lifetime contract. Then I found out the other day that if I have a losing season, they’re going to declare me legally dead.”

Hayden Fry, Iowa Football coach.

“What the hell’s the matter with a society that offers a football coach a million dollars?”

Joe Paterno, Penn State Football Coach,  
after receiving an offer to coach the  
New England Patriots.

“. . . I’ll accept them limiting what I earn if they will grant me tenure.”

Former University of Kansas  
head basketball coach Larry Brown.

Big-time college coaches work under incredible pressure to win. They also make an awful lot of money, much of which is often derived from sources outside the university. To bring perspective back to intercollegiate sports, the pressure to win must be reduced along with the money from outside sources. Coaches should be provided with an opportunity to attain the special kind of security enjoyed by those in the academic community.

At the same time, it must be made clear that coaches work for the university and they are not independent, roving entrepreneurs.

#### *A. Job Security for Coaches*

Perhaps the one thing that marks the university as a distinctively different employer is that faculty can earn and enjoy tenure. We all know what this means. An employee with academic tenure has a lifetime contract, terminable only in the event of specific, well-proven financial exigency at the university, gross incompetence or neglect of duties, or egregious crimes of moral turpitude. In short, tenure provides a unique kind of job security in American life. Coaches should be brought more fully into the university community by being offered an opportunity to earn tenure. Once earned, tenure would not mean that a coach had to be retained as coach. It would simply mean that a coach with tenure, once relieved of coaching responsibilities, still had a job to do at the university.

Under this type of arrangement, a coach under consideration for tenure would be evaluated with reference to more than a win-loss record. This is not to suggest that success on the playing field is irrelevant—only that it is far less relevant than prevailing wisdom holds. A good coach is a good teacher and it follows that there is a connection between winning and effective teaching. (Most coaches know, however, that winning and losing is primarily a function of athletic talent. Some coaches who are very effective at teaching the game may not have the glittering records of the more effective recruiters. Universities must be willing to look beyond the win-loss record in evaluating the performance of coaches.) But a successful coach is one who teaches in areas that go well beyond the playing of the game. A coach should be evaluated for tenure with reference to the seriousness with which players are offered a truly meaningful opportunity to attain a college education. Graduate rates are relevant criteria. The extent to which players are truly integrated into the university community is a relevant consideration in the evaluation of the coach. Coaches should, in short, be evaluated as teachers in the university community, and the successful ones should be provided with something akin to academic tenure.

#### *B. Shoe Contracts, Camps, Television and Radio Shows, and Other Perks*

As a trade-off for increased job security, the rampant entrepreneurialism of coaches must be curtailed. University administrators have acquiesced in giving peculiar and unwarranted permission to coaches to exploit their connection with the university in ways that are not permissible for any other members of the academic community. Tenure carries with it special responsibility to the university. While tenured faculty enjoy the special free-

dom associated with a lifetime appointment, they also understand that they are tethered to the university in a distinct and special fiduciary relationship. Guidelines concerning outside work are taken seriously by most, who understand that their primary allegiance is to the university which has tenured them. Universities must be zealous in reclaiming university assets that have been ceded to coaches. The goodwill and the value of the university name belong not to the coach but to the university. Money from shoe contracts, camps, and television and radio shows more properly belongs to the university than the coach.

Coaches who sign lucrative shoe contracts have been permitted to exploit a university resource by overly-permissive athletic administrators. University presidents have looked the other way. If a contract is to be signed for athletes to wear a certain shoe, it should be signed by the university, not the coach. If shoe companies are willing to pay this money, it is money that belongs to the university, not the coach. (Imagine a professor being paid by a book publisher for requiring students to use a certain book.) Summer camps which operate as cash cows for coaches should be producing revenue for the university. (Imagine a professor being allowed to use university facilities at little or no cost to run a summer camp, and to keep the money generated from the camp.) Coaches can be employed at these camps in the same manner that faculty are employed to teach over the summer. Public relations is part of the job of the coach. A weekly television or radio show is an aspect of the public relations component of the job. A coaches' contract ought to contemplate that the money paid for this part of the job belongs to the university, not the coach.

The receipt of other "perks" by coaches (like cars, country club memberships, and the like) serve to further separate coaches from the university community. University presidents should discourage, if not prohibit, these perks, and should take pains to steer the donors in the direction of providing "perks" that benefit the wider university community.

This fairly radical restructuring of the relationship between coach and university is attainable. In fact, the current mood of the coaches, revealed most clearly in pronouncements from their national associations (for example, the National Association of Basketball Coaches), indicates that coaches are deeply concerned with lifestyle issues and very committed to the prospect of making academic style tenure available to its members. These kinds of changes can be made by university presidents as they hire new coaches. Moreover, the changes are cost effective because the university will be claiming significant assets that had previously been relinquished to coaches. These additional assets ought to more than offset the costs connected to providing job security to coaches.

## VI. FACULTY (AND STUDENTS)—THE FANS AND THE DISAFFECTED

When it comes to big-time intercollegiate sports, faculty members tend to fall into one or the other of two distinct camps. The same is probably true of students. A significant number can simply be described as “fans.” Relatively uncritical of the rampant hypocrisy endemic to their athletic programs, these faculty and students are willing to look the other way or explain away problems in the athletic program in exchange for the mostly psychic joys of being a part of a sports program. This observation is not intended as a pejorative put-down of fans. The fact of the matter is that being a fan does provide significant pleasures to many. (The size and scope of the sports industry in this country is proof of the phenomenon.) To cheer for the home team—to forcefully identify with a community beyond self and family—is uniquely fulfilling for many. Savvy administrators know who the fans are. When it comes time to designate students or faculty to the various university-wide committees that have some oversight over the program, or to name the faculty representative to the NCAA, one can be quite sure that the designees came from among the fans and not the disaffected. Occasional miscalculations result in the appointment of a disaffected faculty member or student, but these mistakes are usually short-lived. Those who serve on these various committees or as institutional representatives are then often further co-opted by little perks that mean a lot to a fan—better seats, an opportunity to travel with the team or to attend a convention, access to the players and coaches, and a general feeling of being part of the team.

A significant number of faculty and students, however, are alienated from and somewhat hostile to the sports program. This disaffected group falls into two categories. The “entirely disaffected” have little interest in or appreciation of sports and believe that intercollegiate athletic competition is almost entirely unconnected to the educational mission. They would favor elimination of the sports program. There is no way these people will ever become fans. But a significant number of the disaffected are only partially disaffected. Concerned by the hypocrisy in the program, particularly by the fact that many of the players are really not students, the partially disaffected meander in and out of the program. Their love of sports and the joy that comes with being a fan occasionally pull them into the fan camp. Their awareness of abuses in the program alienate them. While their ambivalence is apparent, potential exists to transform the partially disaffected into fans. An honest effort to reduce the hypocrisy would make fans of many of the partially disaffected. And it goes without saying that those who are already fans will remain fans should some of the hypocrisy be removed.

It would serve the interests of the university to undertake honest efforts to eliminate some of the abuses. The disaffected must be brought into the process of governing intercollegiate sport to act as agents for change. While at first glance this appears to be a counter-intuitive proposition, the truly savvy administrator would utilize the disaffected as catalysts for changes. The changes are not particularly controversial—there exists a shared consensus in the university community in favor of them. Admit only students who have a bona fide chance of attaining a degree. Require real progress towards a degree as a condition of continued attendance. Eliminate the sub-standard jock curriculum. With these changes, the disaffected become part of the athletic program and the athletic program becomes a real part of the university. Without them, the disaffection worsens, and the prospects for the university athletic program are, in the long run, bleak.

In the current milieu, can these changes be accomplished? The answer, I think, is that it depends largely on the presence of academic leadership from university presidents, who have the power but perhaps not the stomach to effectuate meaningful reform.

#### VII. UNIVERSITY PRESIDENTS

“[College Presidents] are far too politic a class of men to take any really effective steps against an enterprise that brings in such large sums of money. . . .”

Journalist and social critic H. L. Mencken,  
commenting about intercollegiate athletics.

“I know this is going to sound facetious, but it really isn’t: if any person is interested in becoming president or chancellor of a Division I-A institution and he or she doesn’t like football, then that person better look for a job somewhere else; because you’ve just got to spend an awful lot of time at it. The intercollegiate athletic program is not something you can leave for someone else to take care of.”

An anonymous university president.

If there is one group that bears major responsibility for allowing intercollegiate sports to spin wildly out of control, it is university presidents. Even the NCAA acknowledges, in its Constitution, that the president “has ultimate responsibility and final authority for the conduct of the intercollegiate sports program.” For the most part, university presidents have failed miserably in administering intercollegiate sports programs — allowing the athletic tail to wag the university dog.

*A. Failure to Insist on the Admission of Qualified Students*

One of the most serious failures of university presidents is the failure to ensure that only students who have some reasonable likelihood of academic success are admitted. Leadership from the top in connection with the all-important decision to admit is sorely lacking. This failing is not a difficult one to cure. All that is really required is resolve and commitment, along with a willingness to face the powerful athletic lobby both within and without the university.

*B. Failure to Control the Athletic Lobby*

The “athletic lobby” at the university consists of university athletic administrators, fans, the media, and boosters. In many instances, members of the athletic lobby serve on the university’s board of trustees or governing board.

As big-time sports programs have grown, presidents have increasingly turned to professional sports administrators to run the university’s sports business. A typical big-time athletic program employs a highly paid athletic director along with a professional staff ranging from influential public relations staff to surprisingly powerful ticket dispensers. Coaches are of course part of the athletic lobby. Some schools even have autonomous legal corporations to assist in the administration of the athletic program. Other schools utilize advisory athletic boards which lobby on behalf of the already powerful and entrenched athletic interests. Often, a fawning local press contributes to an environment which lionizes the athletic program. To a certain extent, university presidents have contracted out the running of the athletic program. So long as the school does not run up deep red ink or run afoul of NCAA rules in such a way as to embarrass the school, the President looks the other way. This laissez-faire attitude gives carte blanche to athletic interests to consolidate their independent power base at the university. The dissidents and the disaffected in the university community are viewed with suspicion and hostility. The athletic lobbyists within the academic community—the athletic administrators, the faculty who teach jock courses or serve on athletic oversight committees, the hard-core supporters, and the wealthy boosters—are for the most part treated like the valued customers that they are. Although already committed to the program, key lobbyists are further co-opted by the perks that come along with being associated with the program (complimentary tickets, preferential seating, and subsidized travel, to name a few.) Presidents often are both kept at a distance and keep themselves at a distance in order to avoid being sullied by the muck.



The athletic lobby works to create the perception that big money pours in to support athletics and that much of this money would not be forthcoming were it not for athletics. In *College Sports Inc.*, Professor Sperber very persuasively describes the false economies of big-time intercollegiate sport. In essence, Sperber convincingly demonstrates that the data supports the view that the great bulk of big-time sports programs in this country do not turn a profit. Sperber points out that a fair accounting system reveals that big-time sports is subsidized in a big-time way at most universities. While many chase the holy grail of big pay-offs, very few come into possession of it.

Many universities play accounting shell games to avoid disclosure of just how serious the budgetary deficits really are. For example, while an academic unit might budget academic scholarships, the athletic departments might be permitted to treat athletic scholarships as unbudgeted tuition waivers. Funds raised by the athletic lobby might be considered revenue by the athletic department even though the evidence exists that this money would be contributed to the university's general fund anyway. The range of all this economic abracadabra is wide. The common theme is that university presidents have both failed to control the costs associated with the running of the athletic program, and do not even have accurate financial data upon which to base decisions concerning the administration of the program.

### *C. The Failure to Resist Their own "CEO-ification"*

At the same time, the presidency itself has been "CEO-ified." The modern university president is no longer primarily an academic leader with a commitment to "the vision thing." Rather, presidents are more like corporate CEOs, enjoying salaries and benefits which clearly place them separate and apart from the rest of the academic community. Even though most are provided with the soft landing of a university professorship should the presidency be lost, few are willing to jeopardize their position by risking principled action with regard to athletics. Very few are willing to confront their Boards about the issue of putting sports in perspective. As one president put it,

The ideal situation is to not have your board mucking around in athletics. The only way that you are going to stop that from happening is to be willing to put your job on the line.

The "CEO-ified" president is typically unwilling to put his or her job on the line over anything, let alone athletics. As one *former* president put it,

Some chief executive officers are just going to have to lose their jobs. That's the bottom line of this whole enterprise. It's easy for

me to say because I'm not going to be one of them at this point; but I've been recruited during this past year by two major Division I institutions and it was clear to me that athletic problems were going to be an issue right off the bat. . . . I believe that these things can't be handled diplomatically. In the end the chief officer has to say, "Look, friends, there's a way we're not going to run this place. I'm not looking for trouble, but I'm telling you I want to meet my responsibilities and I can't meet them in the way you guys are operating. Now you can either have me as your president or you can get somebody else." Now that's tough, but what other remedy is there to a basic structural question of who's in charge of the program? You say, "What happens to people like that?" Well, — lost his job at —, came to —. Where is he now? He's chancellor at —. He took a punch in the course of all that, but no one in higher education thinks any less of him for it. . . . Why some presidents seem reluctant to lose their jobs over athletics, I don't know. It's a badge of honor these days.

A new generation of presidential leadership is essential to the reform of intercollegiate athletics. The President's Commission of the NCAA, which thus far has failed miserably in effectuating meaningful reform, at least provides an institutional structure within the NCAA to effectuate reform. But so far, the Commission has been unwilling to fully subscribe to basic reform principles to restore perspective to athletics. Presidents are, to a large degree, captivated by and held captive to the entrenched athletic interest. It is not entirely unforeseeable however, that as it becomes apparent that fewer and fewer schools are really sharing in the largesse produced by big-time intercollegiate sport, a new generation of leadership, spurred first by economic imperatives and empowered by an academic vision, will emerge to initiate real reform. The existing intercollegiate sports structure is very seriously flawed. With the leadership of just a few far-looking presidents, the structure can be renovated.

### VIII. THE NCAA REVISITED

Any blueprint for the reform of intercollegiate athletics must at least address the possibility that the NCAA is not capable of governing intercollegiate athletics in a principled way. Much of what has been observed thus far indicates that the NCAA, the most visible and powerful of our amateur sports governing bodies, has perhaps lost the ability to govern intercollegiate sports in a principled way. This inability can be attributed to its inherently faulty structure, its fundamental hypocrisy, and its pattern of arbitrary and selective enforcement of its rules.

One damning fault in the structure of the organization is that athletes are not represented in the organization. Admittedly, the ideals of representative democracy are shared values in our culture. The NCAA is inherently undemocratic. Although the NCAA governs intercollegiate athletics, intercollegiate athletes—those people whose lives are most directly affected by what the NCAA does—have no direct representation. The result is a not-so-surprising amalgam of complex rules which protect the interests of member schools represented by member administrators with little regard for the real interests of athletes. Thus the NCAA clings to a myth of “amateurism,” reigning over a big-time intercollegiate sports system in which all the actors except the athletes are permitted and encouraged to be profiteers, while the athletes are held to the out-dated myth of playing for fun.

While clinging to this out-dated myth of amateurism in so far as athletes are concerned, the NCAA operates as a business entity for most other purposes. It recently sold the television rights to the Division I intercollegiate basketball championship tournament for approximately 1 billion dollars. It maintains an elaborate formula for disbursing money to member schools which takes into full account the relative degree of athletic success of the school's athletic program, while minimizing the academic achievements of its members. The NCAA markets products through various licensing schemes, while vigorously “selling” the myth of the student-athlete to the consuming public. To the slightly sophisticated observer, the hypocrisy is appalling.

The NCAA's record of unfair and haphazard enforcement of the rules governing college athletic programs is equally appalling. In *Undue Process: The NCAA's Injustice for All*, Don Yeager offers a compelling and persuasive indictment of the NCAA's enforcement arm. Selective and arbitrary initiation of proceedings, secrecy, delay, and distortion of testimony (the NCAA doesn't usually tape record testimony; it allows its own investigators to write summaries of testimony) are but a few of the hallmarks of the existing regime. While it is true that the Supreme Court has said that the NCAA is not technically a “state actor”, and therefore doesn't have to provide constitutional safeguards in the course of its proceedings, the current framework contributes to the malaise; member schools feel vulnerable and view the organization with suspicion and distrust. The process is so obviously flawed that many state legislatures have introduced bills that would require that the NCAA provide rudimentary due process protections to those caught up in the NCAA's byzantine enforcement mechanisms.

Whether the organization is capable of reforming itself is problematical. Its own record indicates it probably can not. The most obvious catalyst for reform is the President's Commission. But unless this Commission under-

takes a serious commitment to change, internal reform of the NCAA is unlikely.

It might well be that meaningful reform will come about not as a result of internal reform of the NCAA, but as a consequence of secession of some powerful member schools from the NCAA. These renegade schools would then form their own organization to administer big-time intercollegiate sport in a more principled, less hypocritical way. This is not a wholly unlikely possibility.

Attempting to construct a blueprint for the fundamental reform of big time intercollegiate sports, it must be admitted, is an act of incredible hubris. I offer the preceding with humility, and the hope that it will contribute something towards the creation of a system which places sports in a better perspective for all of us.

## APPENDIX

## ADDITIONAL NOTES AND SOURCES

There is a vast and constantly growing body of what might aptly be called "sports reform" literature. The genre first flourished, I think, with the breakthrough book *Ball Four*, written by Jim Bouton in 1970. Bouton's book was one of the first to de-mystify athletes by detailing what life as a professional baseball player really was like. Football's analogue to Bouton's book appeared shortly thereafter. *Out Of Their League*, by Dave Meggry, is a scathing and brilliant expose of both college and professional football. These two books laid the groundwork for a more rigorous examination of sports in American society and the now existing body of realistic sports non-fiction is vast. I have been deeply influenced by this body of literature. Among the more recent important contributions to the field are "*Blackboards and Backboards*, by Patti and Pete Adler; *Personal Fouls*, by Peter Golenbrock; Murray Sperber's *College Sports Inc.: The Athletic Department v. The University*; *Raw Recruits*, by Alexander Wolff and Armen Keteyian; and Don Yeager's *Undue Process: The NCAA's Injustice for All*. While I am sure there are many other very worthwhile works, the ones listed above are the books that have most deeply influenced my thinking.

I have also read and been influenced by what might be regarded as a more moderate set of works. Among these very thoughtful and helpful works, I would include *Athletes and Academe*, by Wilford S. Bailey and Taylor D. Littleton; *The Character of American Higher Education & Intercollegiate Sport*, by Donald Chu; *Unsportsmanlike Conduct*, by Paul Lawrence; and *The Rules of the Game*, edited by Richard E. Lapchick and John Brooks Slaughter. Allen Sack's, "Are Improper Benefits Really Improper?" appears as one of the edited pieces in Slaughter and Lapchick and my own views are influenced by Professor Sack's work.

Intercollegiate sports reform issues have also found their way into the law reviews. In this regard, I found the *Capital University Law Review 1991 Symposium on the Reform of Big-Time Athletics* particularly helpful. Most noteworthy here were the very insightful articles of Robert N. Davis and Ethan Lock. The fledgling *Marquette Sports Law Journal* promises to make some lasting contributions to the field. Martin Greenberg's, "College Coaching Contracts: A Practical Perspective" provided me with the background I needed to critically examine the relationship of the big-time coach to the university.

For what I would call "deep background" on the structure of sports in this country, and on the myriad legal issues that arise in connection with

sport, one must make mention of *The Law of Sports*, by John C. Weistart and Cym Lowell. This 1,000 page treatise introduced me to the world of sports law and I may well be the only person in America who has read it cover-to-cover twice (such was my youthful zeal). An outgrowth of the Weistart and Lowell hornbook is my own casebook, with coauthors Jim McCurdy and Pete Goplerud, *Sports Law: Cases and Materials*, which is now the most widely used sports law casebook in the country. The NCAA overview is drawn largely from our casebook. I might also point out that the NCAA manual, revised annually, is must skimming.

To stay current on sports issues, I regularly read my local paper (*The Tulsa World*), the *New York Times*, *Sports Illustrated*, and the weekly periodical, *Sports Industry News*, which focuses on the business and financial aspects of the sports industry. *The Chronicle of Higher Education* offers interesting and provocative coverage of intercollegiate sports.

Unless otherwise noted below, the quotes used to set out the topics in my blueprint are from *Sportswit*, by Lee Green. The quote from Ziddi Msangi, the black fine arts major at Boise State, was reported in *The Chronicle of Higher Education* on June 17, 1992. The quote from Larry Brown is reported in Greenberg's coaching contracts piece alluded to earlier at page 263. The Mencken quote appears at page 185 of Slaughter and Lapchick, and the quotes from the anonymous university presidents appear at page 66-72 of Bailey and Littleton.

