

THE BCS AND BIG-TIME INTERCOLLEGIATE FOOTBALL RECEIVE AN “F”: REFORMING A FAILED SYSTEM

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INTRODUCTION

Sadly, many major universities have shed their academic regalia in what has become a highly commercialized and, for some institutions, an exceedingly lucrative entertainment endeavor—an oddly conceived championship bowl system that does not even achieve its goal of crowning a true national champion in big-time intercollegiate football. This bowl system deserves a failing grade, particularly for the things that should matter most to educators, such as keeping an institution’s implied academic promises to its student-athletes, caring for the physical welfare of its student-athletes, and avoiding inequity in serving its athletes of color.

In 2011, the so-called national championship game involved two generally respected universities that were sadly among the worst offenders: Auburn University and the University of Oregon.¹ If academic values and student welfare and equity issues had been weighed in the balance, then the true national champion would have been Texas Christian University (“TCU”).²

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1. See Steve Yanda, *Auburn Defeats Oregon, 22-19, to Win BCS National Championship*, WASH. POST (Jan. 11, 2011, 12:37 AM), <http://www.washingtonpost.com/wp-dyn/content/article/2011/01/11/AR2011011100162.html> (identifying the Auburn Tigers and the Oregon Ducks as the 2011 BCS Championship contenders).

2. See Armen Keteyian, *Out of Bounds: College Athletes and Crime*, CBS NEWS (Mar. 2, 2011, 6:25 PM), <http://www.cbsnews.com/stories/2011/03/02/eveningnews/main20038>

Auburn University and the University of Oregon had some of the poorest graduation rates in college football, particularly for players of color.³ Auburn actually had the largest racial disparity in graduation rates for its football team of any of the schools participating in the Bowl Championship Series (“BCS”).⁴ Oregon had less of a disparity between graduation rates for athletes of color and other athletes, but its overall graduation rate for athletes generally and athletes of color was near the bottom of all BCS participants.⁵

To compound these academic failings, serious injuries also abound in big-time intercollegiate football and raise questions regarding student welfare. Too many student-athletes leave their playing days with latent and present injuries that will incapacitate them later in life.⁶ The fact that these student-athletes—so many of whom are student-athletes of color—leave college with serious, lasting infirmities and academic promises unfulfilled must be viewed as a failure on the part of the institutions they trusted, creating both a crisis of values and performance in higher education.

It is time for significant reform in order to reclaim academic integrity and address student welfare and equity issues. This Article examines those problems and offers solutions that will help institutions and the National Collegiate Athletic Association (“NCAA”) better serve their student-athletes and thereby reclaim their academic integrity. A series of reforms should be

475.shtml (identifying Texas Christian University as one of the few universities that conducts deep background checks when recruiting student-athletes).

3. See RICHARD E. LAPCHICK ET AL., THE INST. FOR DIVERSITY AND ETHICS IN SPORT, KEEPING SCORE WHEN IT COUNTS: ASSESSING THE 2010–11 BOWL-BOUND COLLEGE FOOTBALL TEAMS—ACADEMIC PERFORMANCE IMPROVES BUT RACE STILL MATTERS 4–5 (2010), http://www.tidesport.org/Grad%20Rates/2010-11_APR-GSR_BowlStudy.pdf (showing graduation rates for teams in the 2010–2011 NCAA Division I Bowl Games, including Auburn and Oregon).

4. See *id.* at 4 (noting that Auburn had the highest disparity of graduation rates between black players—40 percent—and white players—100 percent—of all the 2010–2011 season bowl games).

5. See *id.* (noting that the overall graduation rate of Oregon’s football team was 54 percent, with 76 percent of white players graduating, compared to 41 percent of black players).

6. See, e.g., FREDERICK O. MUELLER & BOB COLGATE, NAT’L CTR. FOR CATASTROPHIC SPORT INJURY RESEARCH, ANNUAL SURVEY OF FOOTBALL INJURY RESEARCH 18–21 (2010), <http://www.unc.edu/depts/nccsi/2010FBAnnual.pdf> (reporting a sum of 202 college football-related fatalities from 1931 to 2010).

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implemented immediately: stronger disclosure requirements for student-athletes and student-athletes of color regarding graduation rates and injuries, a series of incentives and disincentives designed to increase graduation rates and decrease injuries, a ranking system that takes into consideration graduation rates, shortened seasons and practice rules designed to reduce injuries, and a true national championship in football that will provide a revenue source to help fund and facilitate these efforts by taking the middleman out of the bowl system.

Fraud cannot be tolerated when implementing these changes. If a coach, athletic director, university president, trustee, booster, or individual involved in the process knew or should have known that fraud was being committed or had been committed, severe penalties, including the possibility of the "death penalty"⁷ for the program or ending the career of the coach or administrator should be imposed. With these reforms, universities can reclaim their academic integrity, with student-athletes being the ultimate beneficiaries.

I. BACKGROUND

Many colleges and universities across the country are not living up to their end of the bargain with African American football players. When these big-time college football programs recruit, or perhaps more accurately, entice, these students to attend their schools, they do so promising a college education, experience, and sometimes the dream of playing at the next level as a professional athlete.⁸ The track record of schools is wanting in

7. *Glossary of Terms*, NCAA.ORG, <http://www.ncaa.org/wps/wcm/connect/public/NCAA/Issues/Enforcement/Rules+Enforcement+glossary+of+terms#committee> (last visited Aug. 31, 2011) ("The 'death penalty' is a phrase used by media to describe the most serious NCAA penalties possible. It is not a formal NCAA term. It applies only to repeat violators and can include eliminating the involved sport for at least one year, the elimination of athletics aid in that sport for two years[,] and the school relinquishing its Association voting privileges for a four-year period. A school is a repeat violator if a second major violation occurs within five years of the start date of the penalty from the first case. The cases do not have to be in the same sport.")

8. See *Football Recruiting*, NCAA.ORG, <http://www.ncaa.org/wps/wcm/connect/public/NCAA/Issues/Recruiting/Football+Recruiting> (last visited Aug. 26, 2011) (stating that Division I Football Bowl and Football Championship Subdivision teams are allowed a combined sum of 148 student-athletes on full scholarships, far exceeding that of any other sport); Roundtable on Intercollegiate Athletics and Higher Educ., Athletics Recruiting and Academic Values: Enhancing Transparency, Spreading Risk, and Improving Practice

all respects.

On the educational side, student-athletes are purportedly provided with an opportunity to obtain an education and a degree in exchange for their willingness to participate in what is for many institutions a highly profitable endeavor. The NCAA emphasizes that the athletes are students first, hence *student-athletes*.⁹ Being a student seemingly includes regularly attending and studying for classes and having the social life of a student. However, these student-athletes are often too busy practicing, working out, studying film, or traveling to games to have any time for a normal college experience.¹⁰ Practice hours are ostensibly limited, but oftentimes the expectations of coaches are not.¹¹ Aside from being deprived of an education and a normal college experience, the health and welfare of student-athletes playing big-time intercollegiate football is often disregarded.

The two National Championship contenders in 2011, Auburn University and the University of Oregon, are major

2 (Oct. 20–21, 2006) (unpublished essay), <http://www.uga.edu/ihe/research/toma/recruitingessayfinal.pdf> (“[T]here is an arms race to construct extravagant and costly athletic facilities in the interest of attracting recruits, for instance, institutions are building luxurious dining commons, student residences, fitness centers, and even shopping districts in the interest of recruiting students.”); *id.* at 5 (“But low-achieving students from marginal, under-resourced high schools rarely matriculate at flagship universities unless they happen to be athletes. Many blue-chip athletes come from white-chip backgrounds, from low-income areas and inner city high schools that continue to struggle to prepare students for postsecondary education.”).

9. *Why Student-Athletes Are Not Paid to Play*, NCAA.ORG, <http://www.ncaa.org/wps/wcm/connect/public/NCAA/Issues/Why+student-athletes+are+not+paid+to+play> (last visited Aug. 27, 2011) (“Student-athletes are students first and athletes second. They are not university employees who are paid for their labor.”).

10. Todd Peter, Tom Paskus & Michael Miranda, Presentation Slides from Address at the NCAA Convention 2011 San Antonio, *Examining the Student-Athlete Experience Through the NCAA GOALS and SCORE Studies* 17, 19 (2011), <http://www.ncaa.org/wps/wcm/connect/public/NCAA/Resources/Research/> (follow “Student-Athlete Experience Research” hyperlink; then follow “Examining the Student-Athlete Experience Through the NCAA GOALS and SCORE Studies” hyperlink) (indicating that, during their in-season, NCAA football players spend between 33.1 to 43.3 hours per week on athletic activities and miss, on average, at least one class a week).

11. *Life Balance: Balancing Time Demands*, NCAA.ORG, <http://www.ncaa.org/wps/wcm/connect/public/NCAA/Student-Athlete+Experience/Student-athlete+Well+Being/Life+balance> (last visited Aug. 30, 2011) (“NCAA legislation in each division specifies the length of the playing and practice seasons of all 88 championship sports. Legislation also limits the number of hours student-athletes may devote to practice and competition each week. Even so, many student-athletes not only see themselves more as athletes than as students, they also tend to spend about the same amount of time on their sport in and out of season.”).

offenders.¹² While these two programs clearly sported two of the best teams, they had some of the worst graduation rates in all of college football, particularly for African American players.¹³ Auburn University actually had the largest racial disparity in graduation rates for its team out of all college football teams.¹⁴

Many things can be done to help solve these problems. Certain reforms, however, must be implemented immediately to help combat what might well be called an epidemic of lapsed integrity. Season length needs to be shortened, including both the number of games and practices with contact. This will not only decrease the risks of injury to these football players, but it will also allow them more time for classes and the other experiences that college is supposed to provide. Revenues may be lost as a result. Some revenues can be regained by reining in expenses and savings in the ever-growing rate of expenditures to fund the “arms war”—the pressure to continually expand and beautify facilities and related amenities in big-time intercollegiate football and to pay coaching and other personnel at levels far exceeding the salaries of the highest paid administrators and faculty on any given campus.¹⁵

Immediate steps should also be taken to ensure that these student-athletes get a proper education. An end to the exploitation of athletes of color, who graduate at much lower rates than athletes who are not of color,¹⁶ must occur. To accomplish this, the NCAA ought to require more complete disclosures to student-athletes in Letters of Intent. The Letter of Intent should include statistics about the institution, such as graduation rates and the percentage of student-athletes who ultimately transition to professional careers in the National Football League (“NFL”). These disclosures will help student-athletes and their families understand that very few athletes, even in the most elite programs,

12. See LAPCHICK ET AL., *supra* note 3, at 3–5 and accompanying text.

13. *Id.* at 4–5.

14. See *id.* at 4.

15. RICHARD VEDDER ET AL., CTR. FOR COLL. AFFORDABILITY AND PRODUCTIVITY, 25 WAYS TO REDUCE THE COST OF COLLEGE 70, 72–74 (2010), http://centerforcollegeaffordability.org/uploads/25Ways_to_Reduce_the_Cost_of_College.pdf.

16. RICHARD E. LAPCHICK ET AL., THE INST. FOR DIVERSITY AND ETHICS IN SPORT, NEW STUDY REVEALS MARKED IMPROVEMENT FOR GRADUATION RATES FOR AFRICAN-AMERICAN STUDENT-ATHLETES 3 (2009), http://www.tidesport.org/Grad%20Rates/2009_NSAD_Study_of_Grad_Rates.pdf.

end up playing in the NFL.¹⁷ This will have the added benefit of emphasizing the need for student-athletes to take full advantage of the opportunity to obtain an education and a degree, with all the economic and other benefits that come with such achievement. If the student-athlete is a minor, then a parent or legal guardian must also be required to sign the Letter of Intent to ensure that they too have seen and understood the disclosures.

Along with disclosure, any ranking system used to determine playoff or bowl games should begin having graduation rates account for at least a tithe (i.e., 10 percent) of the rankings. This approach would re-emphasize that this is “college athletics” and these are “student-athletes.” It is not farfetched to say that academics should be a factor in ranking student athletic teams. Indeed, in one sense they already are, as a factor in determining player eligibility.¹⁸ The same principle should apply to the process of selecting a national champion. Institutions with better graduation rates, and that are therefore doing a better job of keeping promises to student-athletes, should benefit in some measure in the selection process. Had graduation rates been a factor in the 2010–2011 year the BCS National Championship would likely have included TCU¹⁹ and possibly even Stanford.²⁰ Incentives of this sort will reward the best programs.

Fraud cannot be tolerated when implementing such changes to the big-time college football programs. If a coach, athletic director, university president, trustee, or booster is involved in fraud in any way, or should have known that such fraud was occurring, the death penalty must be available to punish participants in such instances of fraud so that they will never be involved in college athletics again. The possibility of this grave punishment should also be available for entire programs involved

17. Clint Newlin, *Estimated Probability of Competing in Athletics Beyond the High School Interscholastic Level*, NCAA.ORG (Nov. 5, 2010), http://www.ncaa.org/wps/portal/ncaa_home?WCM_GLOBAL_CONTEXT=/ncaa/NCAA/Academics+and+Athletes/Education+and+Research/Probability+of+Competing/Methodology++Prob+of+Competing.

18. Jill Lieber Steeg et al., *Athletes Guided Toward “Beating the System”*; *New NCAA Rules Lead to Clusters in Certain Majors*, USA TODAY, Nov. 19, 2008, at 1A, http://www.usatoday.com/sports/college/2008-11-18-majors-cover_N.htm (This article was re-titled online to *College Athletes Guided Toward “Major in Eligibility.”*).

19. Maggie Severns, *Fourth Annual Academic Bowl Championship Series Rankings*, HIGHER ED WATCH (Dec. 14, 2010), <http://higheredwatch.newamerica.net/node/41517>.

20. *Id.*

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in such fraudulent activity. Disincentives of this sort will punish the worst programs.

II. ANALYSIS

A. *The Epidemic Infecting Big-Time College Football*

To achieve academic integrity colleges and universities involved in highly-commercialized athletics, particularly big-time football, must ensure that three academic values are maintained. The first is a college degree. Earning a degree is the primary measure of student-athletes' academic achievement. Graduation rates provide evidence that institutions are fulfilling the promise of a college education in exchange for athletic performance. It also evidences that institutions are recruiting students who are likely to succeed and not just athletes. The second value is student welfare, which encompasses providing a safe environment, a proper college experience, and vigilant concern for the physical welfare of student-athletes. The third value is racial equity. Integrity also requires that the first two values be achieved in a racially equitable manner.

The current BCS bowl system receives a failing grade in each of these three values categories and stands in need of serious reforms. The deficiency in academics for student-athletes participating in big-time intercollegiate athletics begins with the recruiting process, since that is the time when promises are made. In many cases, recruits visit universities on game day instead of a Monday or Tuesday, when they could attend classes and experience the academic side of the "educational institution."²¹ These athletes often do not have to fill out an application and rarely have contact with admissions personnel.²² This prevents athletes from truly learning what will be demanded of them academically and prevents admissions personnel from fulfilling their professional responsibility to determine, as they do with other applicants, whether these recruits will be able to handle the academic rigors of that particular school.²³ Many universities

21. R. Gerald Turner & Clifton R. Wharton, Jr., Editorial, *Make Academic Integrity Part of Recruiting*, MIAMI HERALD, Feb. 4, 2007, at 5L.

22. *Id.*

23. *Id.*

simply let the NCAA's eligibility standards guide the admissions decision rather than applying the institution's own standards for admissions. This results in the admission of academically deficient student-athletes attending what are often selective institutions²⁴—students who are less likely to graduate, particularly given the additional demands placed on them to perform outside the classroom. The athletic departments often mask these deficiencies by having academic advisors find the least rigorous and reading-intensive courses for its most academically at-risk athletes to take.²⁵ Many of these athletes will choose easier majors or instructors, providing a ruse to suggest they are studying when, in fact, they are doing as little as possible to stay academically eligible.²⁶ In addition to their already slack course loads, at some institutions the athletes are aided by tutors who are very familiar with the content of these less rigorous classes and can therefore cram course-specific factoids into overstressed athletes' heads so that the athletes know just enough key words and concepts to make it appear as if they are learning the course materials.²⁷ Thus, tutors help the student-athlete achieve what for many athletic departments is a higher goal—eligibility. These so-called student-athletes end up putting on a front of being students while actually focusing on athletics, to the delight of their coaches, but to their own long-term detriment.

The intense rigors of practice, preparation for practice and games prevent many student-athletes who participate in big-time intercollegiate football from having time to prepare for their classes, let alone enjoy college. A recent study released by Growth, Opportunities, Aspirations and Learning of Students in College ("GOALS") revealed that the average Division I Football Championship Series ("FCS") football player reported missing more classes during the season last year than five years ago.²⁸ The average FCS football player missed 1.7 classes per week last year,

24. Gerald S. Gurney, *Toughen NCAA Standards for Freshmen*, INSIDE HIGHER ED (Feb. 7, 2011), http://www.insidehighered.com/views/2011/02/07/gurney_toughen_ncaa_eligibility_standards_for_freshman_athletes.

25. *Id.*

26. *Id.*

27. *Id.*

28. David Moltz, *How Athletes Spend Their Time*, INSIDE HIGHER ED (Feb. 14, 2011), http://www.insidehighered.com/news/2011/02/14/ncaa_survey_details_athletes_missed_class_time.

which was an increase of 0.5 classes per week compared to 2006.²⁹ In as little as five years the average number of classes missed by these football players has increased by almost 50 percent and is indicative of the growing over-emphasis on athletic performance.³⁰ The study found that 14 percent of these FCS football players were missing three or more classes each week.³¹ The amount of time spent preparing for football significantly trumped the amount of time spent on academics. The study found that the average FCS football player spent 41.6 hours per week on football and only 38.2 hours per week on academics in 2009–2010.³² Favoring athletics over academics by only 3.4 hours per week may not appear alarming on its face, but it should be noted that the disparity has increased nearly 150 percent from 1.4 hours in 2006 to its current level.³³ The distortion of priorities in athletics over academics is getting worse as institutions yield to the allure of the dollars that can be generated by successful (i.e., winning) football teams. Many student-athletes do not desire this growing emphasis on athletics and its attendant economic benefits to the institution because it undercuts the academic promises made to them. Indeed, 23 percent of Division I football players (FBS and FCS) said they would rather spend less time on sports, compared to 15 percent in other men's college sports.³⁴

The prioritization of football over academics is affecting university presidents as well as athletes. University presidents often feel powerless to do anything about the growing emphasis on athletics and the arms race to keep up with the top programs.³⁵ These presidents feel that political solutions and antitrust exemptions may have some utility, but in reality they are political impossibilities for many FBS university presidents.³⁶ The presidents are less well known on most campuses, and certainly

29. *Id.*

30. *Id.*

31. *Id.*

32. *Id.*

33. *Id.*

34. *Id.*

35. ART & SCI. GROUP, LLC, KNIGHT COMM'N ON INTERCOLLEGIATE ATHLETICS, QUANTITATIVE AND QUALITATIVE RESEARCH WITH FOOTBALL BOWL SUBDIVISION UNIVERSITY PRESIDENTS ON THE COSTS AND FINANCING OF INTERCOLLEGIATE ATHLETICS 7 (2009), http://www.knightcommissionmedia.org/images/President_Survey_FINAL.pdf.

36. *Id.*

within the broader community, than are prominent coaches (who primarily emphasize winning and receive ever-escalating salaries as a result).³⁷ Additionally, many university presidents lack the authority to change the emphasis from athletics to academics because their power has been trumped by outside forces, such as income from lucrative television contracts and a public that clamors for victories on the field instead of success in the classroom.³⁸

Deficiencies in academics as applied to college football players are preventing those athletes from graduating at acceptable rates at many institutions. These institutions are, as a result, failing to keep their academic promises made during recruiting. This was particularly true in 2010–2011, with Auburn University and the University of Oregon, the two institutions that played for the national championship and the big dollars associated with that coveted achievement. The University of Oregon football team's graduation rate was 54 percent last year, but only 41 percent of its African American football players graduated. Meanwhile, 67 percent of its white players graduated.³⁹ Auburn University's graduation rate was 54 percent, with only 49 percent of its African American football players graduating and 100 percent of its white players graduating.⁴⁰ All the more disturbing is the fact that the University of Oregon had the sixth-lowest African American graduation rate and Auburn University had the largest racial disparity in graduation rates of all seventy bowl teams this season.⁴¹ What makes these statistics even more shocking is that of the 114 players on the Auburn football team in 2010–2011, eighty were African American. Of the 105 football players on the University of Oregon's football team, fifty-seven were African American.⁴² Texas Christian University, which ended

37. *Id.*

38. *Id.* at 8.

39. LAPCHICK ET AL., *supra* note 3, at 4.

40. *Id.*

41. Derrick Jackson, Op-Ed, *Racial Graduation Gap Mars Bowl Games*, J. SENTINEL (Milwaukee, Wis.), Dec. 14, 2010, <http://www.jsonline.com/news/opinion/111866834.html>.

42. See AUBURN MEDIA RELATIONS OFFICE, 2010 AUBURN FOOTBALL MEDIA GUIDE (Matt Crouch et al. eds., 2010), <http://auburntigers.cstv.com/sports/m-footbl/spec-rel/10-media-guide.html>; OREGON MEDIA SERVICES, 2010 FOOTBALL ALMANAC (2010), http://www.goducks.com/fls/500/pages/2010-11/MediaGuide/2010-OregonFootball.pdf?DB_OEM_ID=500.

the year undefeated on the field, also had a respectable graduation rate of 71 percent, graduating 63 percent of their African American players and 85 percent of their white players,⁴³ making a strong case for it being the best *college* football program in the country. While Auburn ended the year ranked number one in all of college football, they were eighty-fifth among all bowl eligible teams in the ranking that should matter most to participating institutions and their student-athletes—the graduation rates of its players.⁴⁴

Priorities have historically been so distorted on the campus of this year's BCS Champion, Auburn University, that some professors were recently reported as doing whatever they could to keep players eligible. The Chair of Auburn University's Department of Sociology oversaw ninety-seven independent study courses for eighteen football players between 2004–2005, which is staggering considering that many college professors consider overseeing ten independent study courses in one year to be ambitious.⁴⁵ These eighteen players received an average GPA of 3.31 in these classes, but had an overall GPA of 2.14 in all other classes.⁴⁶ It is not clear that eligibility-sustaining efforts of this sort have continued, but they are indicative of a long-standing imbalance between academic and athletic values on the campus of an otherwise great university.

In order for changes to be made, those running the BCS and NCAA must recognize that they have a crisis of academic integrity (and potentially a public relations disaster) on their hands. They must acknowledge the need for change and cease to be not-so-innocent onlookers viewing a travesty in the making. Sadly, the leadership of the NCAA, major conferences, and academic institutions are largely silent on these issues and the BCS remains wholly complicit. Bill Hancock, Executive Director of the BCS, has defended the status quo:

43. LAPCHICK ET AL., *supra* note 3, at 4.

44. Pete Thamel, *Auburn Is First in One Ranking, 85th in Another*, N.Y. TIMES, Jan. 5, 2011, at A1, available at <http://www.nytimes.com/2011/01/06/sports/ncaafotball/06auburn.html?pagewanted=all>.

45. *Id.* at A3.

46. Pete Thamel, *Top Grades and No Class Time for Auburn Players*, N.Y. TIMES, July 14, 2006, at D3, available at <http://www.nytimes.com/2006/07/14/sports/ncaafotball/14auburn.html>.

College football's postseason guarantees that the top two teams meet in the championship game, while ensuring that America's great holiday bowl tradition—and the bowl experience for the student-athletes—carries on. Equally important is protecting college football's regular season, which is the most dynamic and exciting in all of sports. A playoff would greatly diminish the regular season's great roller-coaster ride. Playoff advocates always praise the NCAA tournament, but they fail to mention that according to USA TODAY, regular-season attendance . . . fell to a 23-year low last year. The Bowl Championship Series has delivered the top two teams playing for the college football championship, while protecting the regular season and the college bowl tradition.⁴⁷

This statement clearly evidences that priorities are focused more on preserving the profitable BCS market share and less on furthering academic values, lowering injuries to meet student welfare needs, or combating racial inequity in the current system.

Aside from the woeful graduation rates and weak educational opportunities being provided for these football players, particularly the African American ones, the current system exposes these athletes to the risk of serious and debilitating injuries. The Cleveland Clinic has said that a college football player has a 16 percent chance of tearing his anterior cruciate

47. Bill Hancock, Letter to the Editor, *Postseason in College Already Thrilling*, USA TODAY, Apr. 8, 2011, at 10A (responding to Editorial, *College Hoops' Lesson for Football*, USA TODAY, Apr. 1, 2011, at 12A), available at <http://msn.foxsports.com/collegefootball/story/Postseason-in-college-football-already-thrilling-54404100>. Bill Hancock's position as Executive Director of the BCS has been described as fairly narrow in scope and his own comments confirm this notion. Steve Yanda of the Washington Post interviewed Hancock shortly after he took over as Executive Director in 2009 and described Hancock's role as follows: "[The conference commissioners] wanted someone who knew the BCS well, who could tell the event's story aggressively from the side of those who believe in its virtues, who could defend the most highly controversial postseason in all of sports against a tidal wave of vociferous critics." Steve Yanda, *Bill Hancock Has to Defend the BCS—and Doesn't Mind a Bit*, WASH. POST, Dec. 22, 2009, at D04, available at <http://www.washingtonpost.com/wp-dyn/content/article/2009/12/21/AR2009122103146.html?referrer=email> article. In that interview, Hancock stated that "the BCS exists because of a consensus of votes of the 120 [Division I-A] universities" and that he views his job primarily as being a spokesperson for the BCS system and "a voice to represent the consensus." *Id.*

ligament ("ACL") during a four-year career.⁴⁸ George F. Hewson Jr., MD, noted in an article for the *American Journal of Sports Medicine* that a college football player's likelihood of suffering an ACL injury is increased one hundred-fold in comparison to someone in the general population.⁴⁹ Knee injuries can maim a football player for the rest of his life and often have serious latent consequences.⁵⁰

Another recent study found that 278 cervical cord injuries arose from playing football between 1997 and 2007 and that 38 percent of football players injure themselves simply by tackling another player.⁵¹ The tackling statistic is particularly noteworthy because these football players practice so often that they put themselves at risk of a serious injury almost every day of the week for many months of the year.⁵²

Head injuries in football at all levels are a cause for grave concern.⁵³ In a recent posting on Harvard Medical School's *Harvard Health Blog*, Michael Craig Miller, MD, noted that:

[There is a] growing awareness that repeated blows to the head, not just those that are severe enough to cause concussion, increase the risk for a variety of symptoms later in life, such as depression, poor motivation and concentration, and problems with learning and memory.

Consider what happens to a brain on impact. It accelerates very quickly, then decelerates just as quickly as it bangs into the skull. Nerve cells get stretched, connections between nerve cells get disrupted or sheared. Neurologists dispute the definition of concussion, but terminology aside, all

48. Jeb Williamson, *Give and Let Give: Curbing the Rise of ACL Injuries in College Football*, BLEACHER REPORT (Apr. 5, 2010), <http://bleacherreport.com/articles/373615-give-and-let-give-curbing-the-rise-of-acl-injuries-in-college-football>.

49. *Id.*

50. *Id.*

51. Roland Liwag, *Graphic of the Day: Catastrophic Football Injuries Part of the Game*, CBSSPORTS.COM (Sept. 23, 2008), <http://www.cbssports.com/collegefootball/story/10991975>.

52. Peter, Paskus & Miranda, *supra* note 10, at 17.

53. *Head Injuries in Football*, N.Y. TIMES (Oct. 21, 2010), http://topics.nytimes.com/top/reference/timestopics/subjects/f/football/head_injuries/index.html.

of this causes a short-term disturbance in brain function. . . .

. . . .

In recent years, researchers have focused attention on the effect of repetitive impacts, which are common in football. One concern is that of “second-impact syndrome.” If two head injuries occur in relatively rapid succession, such as within the course of one game [or one practice], the outcome can be catastrophic, with brain swelling and death. So players are at risk if they return to the field too soon.

But perhaps just as worrisome as serial concussions (however they are defined) is the sum of smaller impacts over time. The typical football player—over the course of a high school, college, and pro career—will encounter thousands, if not tens of thousands, of hits to the head. Many experts now believe this increases the risk of CTE [chronic traumatic encephalopathy, which is sometimes called dementia pugilistica, after its incidence among boxers who incur many hits to the head during a boxing career and end their lives suffering from serious head injuries].⁵⁴

It is clear that repeated blows to the head resulting from practicing with helmets and playing in games compound over time, often resulting in immediate or latent head injuries. This is a high price to pay for a few extra games and the practices that accompany a prolonged season, especially at institutions that purport to care about the welfare of their students.

54. Michael Craig Miller, MD, *Concussions in Football*, HARV. HEALTH BLOG (Aug. 14, 2010, 9:44 PM), <http://www.health.harvard.edu/blog/concussions-in-football-20100814260>.

*B. What Is To Be Done: Solutions to the Problem**i. Immediate Solutions*

While many of the reforms needed to combat these very serious problems will take considerable time to implement, some solutions can be enacted fairly quickly. The NCAA could demand more disclosure from its athletic programs to recruits, especially big-time football programs, and this disclosure should be included in the Letters of Intent sent to student-athletes. To effectively satisfy student welfare needs, this mandatory disclosure must include a statement indicating the number of games and contact practices that are to be held in the next four years, with a disclosure that repeated blows to the head can result in serious head injuries. The program's Letter of Intent should also disclose the number of serious injuries suffered by players on the team's roster in each of the prior four years and what those injuries were. To address academic needs and the promise, whether express or implied, that the student-athlete will receive an education in exchange for his participation as an athlete, the Letter of Intent must include graduation rates for football players at that institution as well as a breakdown of graduation rates by race. In addition, the Letter of Intent should include the percentage of players during the past four seasons that went on to actually play in the NFL. This disclosure will help student-athletes and their families realize that the odds of becoming a professional athlete are minimal, and many student-athletes will therefore be more inclined to take the opportunity to get an education seriously. If the student-athlete is a minor, a parent or legal guardian must sign the Letter of Intent so that the he or she too is aware of the information disclosed in the Letter of Intent.

In addition to these disclosure requirements, a threshold graduation rate needs to be established by the NCAA for all student-athletes and athletes of color participating at a given institution. Failure to meet this threshold graduation rate should result in the school not being eligible to play for the national championship. This rule could be analogous to eligibility rules for individual student-athletes. For example, to be eligible to play in any postseason game, an institution must have kept its academic or graduation promise to its student-athletes.

The BCS and other rankings must take graduation rates into consideration when determining which institutions play in certain bowl games and, when applicable, for seeding purposes. These universities are, after all, academic institutions, not athletic institutions. Factoring graduation rates into the rankings will allow for truly deserving programs—programs that run reputable academic and athletic programs and keep their promises to student-athletes—to compete for national titles. Had this policy been in effect this year, TCU would have played in the national championship and had the chance to win it, a goal that has become elusive for their winning program by a system that disfavors institutions that are not from what decision makers consider major conferences.⁵⁵ Stanford, too, might well have competed in the national championship game, against TCU.⁵⁶

Changes also need to be made that will reduce the risk of injuries to players and provide them with more time to study and do other things that will give them a collegiate experience more like that of other students, as opposed to having an athletic experience that happens to occur at a collegiate institution. Football programs must be required to track injuries in practices and games and must limit practices with contact. These results need to be certified by a medical professional who will be professionally and legally liable for failure to track and deal with injuries as they occur. The NCAA must also limit the hours of practice, both generally and in terms of contact, and the number of games student-athletes can participate in. Limiting season length, as well as the number of games played and contact practices will result in a concomitant reduction in injuries. Together with these restrictions, the NCAA should examine additional rule changes that can help reduce injuries. There have been calls from many sources urging a reduction in the number and nature of violent hits that occur in football. The NFL has implemented various changes in the past few years to help reduce

55. Amanda Bronstad, *Sports Law Expert To Lead New Center at Thomas Jefferson*, NAT'L L.J. (May 13, 2011), <http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202493986617&slreturn=1&hblogin=1>.

56. *Id.* This rule should also apply in big-time, highly commercialized Division I men's basketball. In fact, it may make sense for the NCAA to begin with basketball, given their control over "March Madness," the NCAA sponsored tournament that culminates in a national championship game in men's intercollegiate basketball at the most competitive and commercial level.

injuries, including the banning of initial contact to the head of a defenseless receiver.⁵⁷ The initial force of blindside blocks can no longer be delivered by a helmet, forearm, or shoulder to an opponent's head or neck.⁵⁸ No more than two players are allowed to be used in a wedge block during a kickoff and defenders who are knocked to the ground can no longer lunge into the quarterback if a play is still ongoing.⁵⁹ The NFL's changes prompted the NCAA to implement similar or related rule changes to increase safety, such as banning wedge blocking on kickoffs.⁶⁰ College football has also banned such tactics as using three or more players to overpower one offensive lineman.⁶¹ These changes constitute a praiseworthy first step in the direction of meeting the health and welfare needs of football players. Sadly, however, rather than leading in this effort, which would naturally be a part of meeting the health and welfare needs of its students, the NCAA has largely followed the NFL and refuses to take the lead in these areas of great concern in terms of student welfare. The NCAA needs to become more proactive in implementing safety changes in football, particularly including having the integrity and moral courage necessary to limit the length of seasons and the number of contact practices.

Some will argue that it is easier for the NFL to enforce safety changes because they have the ability to fine players. However, the NCAA has other measures it can use to enforce safety. For example, the NCAA can start imposing suspensions ranging in severity from as little as a quarter of a game to a full game for violating rules meant to prevent debilitating injuries, much like soccer uses yellow and red cards. This would serve as a

57. *Owners Pass Four Rules in an Attempt to Make the Game Safer*, NFL.COM (2009), <http://www.nfl.com/news/story?id=09000d5d80f6c090&template=with-video-with-comments&confirm=true>.

58. *Id.* ("The initial force of a blindside block can't be delivered by a helmet, forearm or shoulder to an opponent's head or neck. An illegal blindside block will bring a 15-yard penalty.")

59. *Id.* ("On kickoffs, no blocking wedge of more than two players will be allowed. A 15-yard penalty will go to a violating team.")

60. Jonathan Chait, *College Football Bans Wedge Blocking on Kickoffs*, NEW REPUBLIC, Apr. 16, 2010, available at <http://www.tnr.com/blog/jonathan-chait/college-football-bans-wedge-blocking-kickoffs>.

61. *New Rules May Give College Football an NFL Look*, NOLA.COM (Feb. 10, 2011, 5:06 PM), http://www.nola.com/lsu/index.ssf/2011/02/new_rules_may_give_college_foo.html.

huge deterrent to institutions and players alike. Any resulting loss of exposure, however, could compromise a player's position in the NFL draft, resulting in a lower rookie contract amount.

As previously noted, perhaps the most effective way to reduce injuries would be to shorten seasons and limit the amount of allowable practice hours, particularly where contact is involved.⁶² Major conferences and collegiate institutions, as well as NFL teams, seem ever-bent on expanding season lengths, given the commercial value of additional games. This results in increased practices.⁶³ Frankly, this is just another way of exploiting the student-athlete. Dollars lost can be made up in two ways. Institutions and conferences can limit the arms war and, thus, save money spent funding the increasing costs related to today's highly commercialized version of college football.⁶⁴ They could also eliminate bowl games, with their ethically questionable middlemen,⁶⁵ and develop a national championship system where funds could flow directly through the NCAA to institutions and their student-athletes. This might also create more parity by sharing funds across institutions, as has been the case in big-time men's basketball.⁶⁶ Limiting season length would also benefit student-athletes because they would have more time to study and might even have the opportunity to enjoy being a student. The Division II Presidents Council has recently set an admirable example in this regard by approving a later start to the season and fewer games for all Division II sports.⁶⁷ Division I must follow

62. See Ken Belson, *Ivy League to Limit Full-Contact Football Practices*, N.Y. TIMES, July 19, 2011, at B14, available at <http://www.nytimes.com/2011/07/20/sports/ncaaf-football/college-football-to-protect-players-ivy-league-to-reduce-contact.html>.

63. See Thomas O'Toole, *\$17M BCS Payouts Sound Great, but . . .*, USA TODAY, Dec. 6, 2011, at 1C, http://www.usatoday.com/sports/college/football/2006-12-06-bowl-payouts_x.htm.

64. Cost containment has been discussed for a number of decades. Limiting season length would add a real incentive at the institutional, conference and associational levels to actually do something to contain costs.

65. See Austin Murphy & Michael McKnight, *Fiesta Bowl Probe Results in Junker Dismissal, Casts Pall over BCS*, SI.COM (Mar. 29, 2011, 7:40 PM; updated Mar. 30, 2011, 12:59 PM), <http://sportsillustrated.cnn.com/2011/football/ncaa/03/29/fiesta-bowl-junker/index.html> (relating details of scandal involving employees of the Fiesta Bowl being regularly reimbursed for making contributions to state and local politicians).

66. *Pros, Cons of a College Football Playoff*, USA TODAY (Sept. 9, 2004, 8:34 PM), http://www.usatoday.com/sports/2004-09-09-ten-changes-playoff-pros-cons_x.htm.

67. David Moltz, *Sports Seasons to Start Later*, INSIDE HIGHER ED (Jan. 17, 2011), http://www.insidehighered.com/news/2011/01/17/review_of_legislation_and_research_at_ncaa_convention.

Division II's lead and implement a later start to the season as well as shorter seasons for all of its sports.

In combating these problems, the NCAA needs to penalize those institutions that "cheat" in the most significant ways by failing their student-athletes academically, exposing them to undue injuries related to ever-expanding seasons, and exploiting all student-athletes, with a particularly adverse impact on student-athletes of color. Just as the NCAA penalizes recruiting violations,⁶⁸ penalties in this context should entail heavy sanctions and major infractions imposed on programs that fail to graduate student-athletes at certain levels, permit injuries to rise above certain levels, or impose too many hours of contact practice upon student-athletes. Accumulating two major infractions should equal the death penalty for the program and its administrators, including the coach, athletic director, and even the president (who is ultimately in charge of ensuring that academic values are maintained). If such consequences are imposed, then presidents and athletic directors will no longer be able to rely on the excuse that they feel powerless to stand up to boosters, fans, and high profile coaches.

Incentives also need to be put in place to achieve these goals. To create incentives for compliance with these rules changes, more revenues generated from games needs to be put towards supporting student-athletes and institutions that serve them well, academically and in terms of student welfare needs. This support could be generated from a national championship game or a series of bowl games and could be awarded in the form of extra scholarship positions, increased scholarship funding, and monetary contributions to successful institutions (institutions that graduate their students and provide for their welfare). Other student-athlete-centered benefits could also be considered, such as classes that teach student-athletes valuable skills such as financial health, interviewing, and time-management. Bowl-generated revenue should go directly to the schools instead of the organizations running the bowls. This would help avert scandals like those recently linked to the Fiesta Bowl, which included

68. NCAA ACADEMIC AND MEMBERSHIP AFFAIRS, NCAA, 2011-2011 NCAA DIVISION I MANUAL 79, art. 13.01 (2011), http://grfx.cstv.com/photos/schools/aub/genrel/auto_pdf/2011-12/misc_non_event/1112ncaa-compliance-manual.pdf.

misappropriation of bowl funds for ethically questionable and possibly illegal purposes.⁶⁹

ii. Long-Term Solutions

Many long-term reforms must also be implemented to improve the academic integrity of collegiate institutions. To begin with, athletic and institutional eligibility for postseason play should continue to depend upon meaningful progress towards graduation. Graduation should become a measure that is taken seriously at every institution.

Many student-athletes do not have the proper educational foundation in place or lack the time necessary to develop skills in areas of deficiency and are therefore left unprepared to handle the rigors of a college curriculum.⁷⁰ In addition to utilizing existing academic support programs during the school year, one way to deal with this problem is to implement and fund summer school programs for academically deficient pre-freshmen. In these programs they could attain proficiency in basic core courses like math and English as well as take a study skills course. These classes should not necessarily be for credit, particularly if they are of questionable rigor, but they should prepare student-athletes prior to freshman year for more rigorous degree programs and the immediate and sometimes overwhelming athletic and academic demands to come. These programs should be supported by coaches and administrators but run independently by professionally trained academic support personnel. In establishing such programs, the NCAA and athletic conferences might consider offering institutions grants to test the success of such

69. Murphy & McKnight, *supra* note 65 (referencing a Fiesta Bowl "Special Committee Report" which identified "many instances . . . of brazen, scandalous behavior by [Bowl CEO John] Junker and others on the Fiesta Bowl payroll that included, but was not limited to: funneling money to politicians through bowl employees; coaching witnesses, and altering documents during the investigation that followed; taking junkets to college football games with politicians and their families[—]all on the bowl's dime," as well as spending \$1,241 at a high-end Phoenix strip club on September 12, 2008, and "a charge that the bowl footed the \$33,188 bill for Junker's 50th birthday party, a four-day bacchanal in Pebble Beach that had, according to one attendee, 'absolutely no business purpose.'").

70. James Satterfield et al., *Whose Responsibility Is It Anyway: The Student-Athlete?*, ACAD. LEADERSHIP LIVE (Sept. 7, 2010, 4:14 PM), http://www.academicleadership.org/article/Whose_Responsibility_Is_It_Anyway_The_Student-Athlete.

summer programs. Using a grant system would provide a means of measuring and assessing such efforts, particularly if acceptance of grant proposals required institutions to implement meaningful measurement systems.

Such a program could serve as an “academic boot camp” that could properly prepare student-athletes to be students first and might help enable them to earn the degrees that they were told they would have the opportunity to attain. The Division I Legislative Council recently voted down such a proposal, which would have required schools to send academically-deficient men’s basketball players to summer school prior to their first semester of college to help the players acclimate to college life.⁷¹ The Legislative Council was not opposed to the academic aspect of the proposal, but it was fearful that coaches would have too much access to the players and would use the program to gain more practice and training time for these student-athletes.⁷² There are ways to address this legitimate concern. A rule could be put in place forbidding the coaching staff from having contact with players or allowing coaches to have limited contact and limited training during these summer school programs. Properly orchestrated by professionals in the academic support area and with little interference from coaches, these programs could serve as a significant asset in preparing student-athletes for college life. The NCAA should implement this program for football because the season, and all its demands, is upon the student-athlete the day he enters the institution, where he will be playing and—hopefully—studying.

In addition to these solutions, attention should be given to other curriculum-related matters. Former head of the NCAA Walter Byers suggested that all higher-education students, including student-athletes, should take a multitude of core classes in subjects such as English, math, and science, regardless of their majors.⁷³ This would avoid efforts to place student-athletes in less rigorous majors that emphasize eligibility, but prepare them

71. David Moltz, *NCAA President Answers Critics*, INSIDE HIGHER ED (Jan. 14, 2011), http://www.insidehighered.com/news/2011/01/14/ncaa_president_s_speech_and_updates_from_convention.

72. *Id.*

73. WALTER BYERS, UNSPORTSMANLIKE CONDUCT: EXPLOITING COLLEGE ATHLETES 326–27 (1995).

poorly for their futures off the field.

Schools also need to consider offering courses that will actually entice these student-athletes to want to learn and will meet their needs and interests. It is no secret that many football players have a sense of apathy towards their education.⁷⁴ One way to combat this would be to create courses that will attract their attention while also benefiting them academically. Schools with big-time college football programs should consider using funds generated from those programs to create courses in sports management and related areas that could prepare interested student-athletes for work in the ever-growing sports industry. Such programs would provide student-athletes with the skills and education that could help them in many areas after their college careers have ended. It might even convince student-athletes who genuinely have a chance at a professional athletic career to take their education more seriously, since the education would address matters quite relevant to their futures. Done well, such programs would include courses and instruction in skills such as personal finance, basic accounting, sports marketing, sports management, public speaking, broadcast and sports journalism, real estate investment, management, entrepreneurship, public relations, and exercise and sports science. If a curriculum of this sort is designed to use case studies and teach students how to think critically and solve problems, it would serve them well in any profession. While it may be a bit ambitious to urge every institution to create an entire sports or related management major, all schools with Division I football programs should at least consider providing financial planning and related classes, which encompass many of the benefits of such a program. Such classes, however, would have to be open to the rest of the school so that no issues arise with the NCAA and extra benefits.⁷⁵

74. See Steve Wieberg, *One, Done Concerns New NCAA President*, USA TODAY, Apr. 29, 2010, at 6C, http://www.usatoday.com/sports/college/2010-04-28-one-and-done_N.htm (re-titled online as "One-and-Done Players Concern New NCAA President").

75. NCAA ACADEMIC AND MEMBERSHIP AFFAIRS, *supra* note 68, at 211, art. 16.02.3 ("An extra benefit is any special arrangement by an institutional employee or a representative of the institution's athletics interests to provide a student-athlete or the student-athlete's relative or friend a benefit not expressly authorized by NCAA legislation. Receipt of a benefit by student-athletes or their relatives or friends is not a violation of NCAA legislation if it is demonstrated that the same benefit is generally available to the institution's students or their relatives or friends or to a particular segment of the student

CONCLUSION

Schools with big-time football programs are not keeping their promises to student-athletes, particularly those of color. These schools are essentially writing and then bouncing checks for lack of academic value to student-athletes. Administrators of collegiate sports must redirect their energies from the current “edifice complex”—the desire to build new stadiums and workout facilities—and accept that the first priority must be the education and welfare of student-athletes. It is also evident that institutions, conferences, and the NCAA are refusing to acknowledge the current system’s exploitation of student-athletes and the heightened exploitation of athletes of color at many institutions. Such recognition, followed by equitable reforms, should provide all collegiate football players with a meaningful opportunity to obtain an education and a degree, and punish those programs that do not live up to their end of the bargain. It is also time for universities to be more proactive in improving the quality of life for these student-athletes. This includes taking steps to reduce injuries and providing students more study time and greater opportunities to enjoy the experience of being a college student. An important aspect of any good education is that it is well-rounded. Doing nothing but playing football and occasionally attending classes is hardly an education in the traditional sense.

It is time to shake up the status-quo and implement change. To do this, the NCAA, university presidents, athletic directors, and coaches must recognize that they are failing and often exploiting student-athletes, academically, racially, and in terms of student welfare needs. This Article is an unabashed call to arms, meant to remind and, sadly in some instances, to shame institutional, conference, and NCAA personnel into doing the right thing. It would be a travesty to continue to fail—as the current BCS system clearly does—to keep the promises that are being made to a rising generation of young men who ultimately may have little more than a few trophies and broken bodies, broken futures, and broken dreams to show for their efforts on

body (e.g., international students, minority students) determined on a basis unrelated to athletics ability.”).

the football field. The BCS appears to be more intent on building a burgeoning commercial enterprise centered on independently run and occasionally unethical bowls that are designed to gratify and compensate bowl personnel and the spectator at the expense of the gladiator: the student-athlete.⁷⁶ While administrators and coaches who have been involved in this kind of decision making over the years may have been acting with sincerity, or even good faith, the results of their efforts are suspect, and the system begs for reform.

76. O'Toole, *supra* note 63.