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**THE ONCE AND FUTURE NCAA AND COLLEGIATE SPORTS**

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**INTRODUCTION**

Whenever I consider predicting the future, I think of two things. I first think of Casey Stengel, the longtime, garrulous manager of the New York Yankees at a time when “[r]ooting for the Yankees [was] like rooting for U.S. Steel.”<sup>1</sup> Casey advised to “never make predictions, especially about the future.”<sup>2</sup> Sage advice, that. I also think about the Star Trek TV series, and other Sci-Fi productions, where alternative universes existed at the same time. Unfortunately, Casey was right; predictions about the future are perilous. Equally unfortunate, we live in a world bound by finites, not one where alternative universes co-exist and we get to see how all the paths not chosen would play out.

No doubt, past is prologue. To predict where collegiate sports may be headed, it is helpful to consider where they have been. To discuss the future, therefore, I begin with the past.

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<sup>1</sup> PINSTRIPE QUOTES: THE WIT AND WISDOM OF THE NEW YORK YANKEES (Henry Clougherty ed., Skyhorse Publishing 2013) (ebook) (quoting Joe E. Lewis).

<sup>2</sup> *Casey Stengel Quotes*, BRAINYQUOTE, [http://www.brainyquote.com/quotes/authors/c/casey\\_stengel.html](http://www.brainyquote.com/quotes/authors/c/casey_stengel.html) (last visited Nov. 5, 2016).

## I. THE NCAA AND MEMBER DIVERSITY

There has always been diversity amongst NCAA colleges and universities. The NCAA is made up of small private colleges, colleges with special missions to serve the disadvantaged, historically black colleges, religious affiliated colleges, and large public land grant universities.<sup>3</sup> From 1906 to 1955, there was one big NCAA – there were no divisions or subdivisions.<sup>4</sup> Amicable co-existence was reasonably possible. Not coincidentally, broadcast TV was not a major player. Also, not coincidentally, there was not much money generated by college athletics.

For the most part, in those first 50 years, athletic departments were not a separate satellite enterprise on campus.<sup>5</sup> Coaches' salaries matched those of faculty and administrators.<sup>6</sup> Scholarships were not awarded by coaches.<sup>7</sup> There were no special academic services for athletes.<sup>8</sup> Even for elite athletes in football and basketball, there was an expectation that they were in college to get a degree and not just to compete.<sup>9</sup>

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<sup>3</sup> See Jake New, *No Rooney Rule for Colleges*, INSIDE HIGHER ED (Sep. 22, 2016), <https://www.insidehighered.com/news/2016/09/22/ncaa-urges-institutions-sign-diversity-pledge>.

<sup>4</sup> For a full description of NCAA divisional history and weighted voting, see Josephine (Jo) R. Potuto, Connie Dillon & David Clough, *What's at Our Core? NCAA Division I Voting Patterns vs. Student-Athlete Well-Being, Academic Standards, and the Amateur (Collegiate) Model*, KNIGHT COMMISSION ON INTERCOLLEGIATE ATHLETICS, NCAA Divisional History (2012), [http://www.knightcommission.org/images/pdfs/2012research/2012\\_kciareports\\_potuto\\_dillon\\_clough\\_report.pdf](http://www.knightcommission.org/images/pdfs/2012research/2012_kciareports_potuto_dillon_clough_report.pdf) [hereinafter Potuto, *What's at Our Core?*].

<sup>5</sup> See Rodney K. Smith, *The National Collegiate Athletic Association's Death Penalty: How Educators Punish Themselves and Others*, 62 IND. L.J. 985, 989–91 (1987) [hereinafter Smith, *Death Penalty*].

<sup>6</sup> Dr. Carol Barr, *History of Faculty Involvement in Collegiate Athletics*, NCAA 42–44 (1999), [http://www.ncaa.org/sites/default/files/History+of+Faculty+Involvement\\_final.pdf](http://www.ncaa.org/sites/default/files/History+of+Faculty+Involvement_final.pdf).

<sup>7</sup> *Id.*

<sup>8</sup> Smith, *Death Penalty*, *supra* note 5, at 990.

<sup>9</sup> See generally ANDREW S. ZIMBALIST, UNPAID PROFESSIONALS: COMMERCIALISM AND CONFLICT IN BIG-TIME C. SPORTS 38–40 (Princeton University Press, 1999) [hereinafter Zimbalist].

By 1956, the differences among NCAA institutions led to NCAA divisions – the University and College Divisions.<sup>10</sup> In 1973, they gave way to Divisions I, II, III.<sup>11</sup> Within Division I, votes were by athletic conference – no longer by individual institutions – and the major conferences’ votes received more weight.<sup>12</sup>

In 1984 the revenue floodgates burst wide open courtesy of the United States Supreme Court’s ruling in *National Collegiate Athletic Ass’n v. Board of Regents of University of Oklahoma*.<sup>13</sup> Up until then, the NCAA limited the number of times that a particular football team’s games could be televised annually, and also required that schools other than the traditional football powerhouses have the opportunity to televise their games.<sup>14</sup> In *Board of Regents*, the Supreme Court declared the NCAA’s limitations on individual schools’ TV broadcast appearances a violation of antitrust laws.<sup>15</sup> College sports have never been the same.

As the athletics enterprise began to grow, university presidents asked athletic departments to find ways to fund the bloat on their own – a classic example of “be careful what you ask for.” So Nike, Adidas, and later, Under Armour, arrived with full force. Athletic programs began operating their own development departments and maintaining their own donor lists in search of revenue streams. They began charging license fees for name and logo use, and selling photos of iconic plays and videotapes of games.<sup>16</sup> Athletic departments made their own exclusive marketing deals.<sup>17</sup> They outsourced their marketing to International Management Group or other agencies, taking

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<sup>10</sup> See Smith, *Death Penalty*, *supra* note 5, at 992–94.

<sup>11</sup> *Id.* at 993.

<sup>12</sup> See Potuto, *What’s at Our Core?*, *supra* note 4, at 2–3.

<sup>13</sup> *Nat’l Collegiate Athletic Ass’n v. Bd. of Regents of Univ. of Oklahoma*, 468 U.S. 85 (1984).

<sup>14</sup> *See id.* at 90.

<sup>15</sup> *See id.* at 120.

<sup>16</sup> See Robert Lattinville, *Logo Cops: The Law and Business of Collegiate Licensing*, 5 KAN. J.L. & PUB. POL’Y 81, 81 (1996).

<sup>17</sup> *See id.*

marketing decisions yet another step away from the campus environment and ethos. License fees for stadium seats are now the norm, and many schools now permit beer sales at games.<sup>18</sup>

The result is that athletic departments have become separate entities on campus in ways that a law college or business college are not. They raise their own money, and they spend that money in ways that would not be tolerated on the rest of the campus. Coach and top administrator salaries are only one example. Athletic department building projects are another. On most campuses, athletic department building projects would not make the top 100 campus construction needs.

At the same time, athletic spending – unrestrained by campus protocols, limits, and priorities – far exceeds athletic revenues. Athletic departments at all but seven Division I institutions are subsidized by their universities.<sup>19</sup> The University of Oregon athletic department, which generated more than \$196 million in 2014 revenues, still received over \$2 million in campus subsidies.<sup>20</sup> Athletic departments have a very cozy favored nation status. They are subsidized by the campus but not subject to campus rules.

Today there are more than 350 schools in Division I, the NCAA division that has all the major, traditional football powers – those schools that reaped the *Board of Regents* windfall.<sup>21</sup> Division I schools include Ohio State, a land-grant, PhD-awarding public university with 52,000 students, and Wofford College which has only 1,400 students.<sup>22</sup> They include Texas,

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<sup>18</sup> See Dennis Dodd, *Alcohol: Coming Soon to a College Football Stadium Near You*, CBS SPORTS (June 27, 2016), <http://www.cbssports.com/college-football/news/alcohol-coming-soon-to-your-college-football-stadium-if-its-not-there-already>.

<sup>19</sup> See Erik Brady et al., *College Athletics Finance Report: Non-Power 5 Schools Face Huge Money Pressure*, USA TODAY (May 26, 2015, 7:49 PM), <http://www.usatoday.com/story/college/2015/05/26/ncaa-athletic-finances-revenue-expense-division-i/27971457>.

<sup>20</sup> *Id.*

<sup>21</sup> See *Division I Members*, NCAA, <http://web1.ncaa.org/onlineDir/exec2/divisionListing?sortOrder=0&division=1> (last visited Oct. 5, 2016). The author focuses on Division I because it is what people think of when they think of the NCAA and, more importantly, because it is the focus of the major problems that beset intercollegiate athletics.

<sup>22</sup> See *2015 Enrollment Report*, THE OHIO STATE UNIVERSITY (2015), <https://web.archive.org/web/20160403224315/http://>

with an athletics budget somewhere around \$175 million and its own TV network; Michigan, with a stadium that seats over 100,000; and Presbyterian College, with no varsity football and an entire campus operating budget of maybe \$50 million.

Most of the differences among NCAA institutions relate to revenues produced and spent. We now have big media rights contracts, with the bulk of the money going to the major football powers and their conferences. We have powerful athletic conferences to handle the money. We have conferences (and even a university) with their own broadcast networks.

As the athletics budgets of institutions increased, and the disparity among athletic revenues grew, so too the pressure on the NCAA to continue dividing. Division I now is the locus of NCAA subdividing. In 1978 the NCAA established Division IA, now called the Football Bowl Subdivision (FBS); Division IAA, now called the Football Championship Subdivision (FCS); and all the Division I institutions that do not sponsor football.<sup>23</sup> Two years ago came the Autonomy Sub-division of the FBS (A5).<sup>24</sup> The A5 includes the schools from the ACC, Big Ten, Big 12, SEC, and Pac-12 conferences.<sup>25</sup>

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enrollmentservices.osu.edu/report.pdf; ASS'N OF PUB. AND LAND-GRANT UNIVS., *THE LAND-GRANT TRADITION* 31 (2012); *About Wofford*, WOFFORD C., <http://www.wofford.edu/about/fastfacts/> (last visited Oct. 5, 2016).

<sup>23</sup> See Brad R. Humphreys et al., *Financing Intercollegiate Athletics: The Role of Monitoring and Enforcing NCAA Recruiting Regulations*, 1 INT'L J. OF SPORT FIN. 151 (2006) (discussing the structural breakdown of the NCAA); Steve Wieberg, *NCAA to Rename College Football Subdivisions*, USA TODAY (Aug. 3, 2006, 9:59 PM), [http://usatoday30.usatoday.com/sports/college/football/2006-08-03-ncaa-subdivisions\\_x.htm](http://usatoday30.usatoday.com/sports/college/football/2006-08-03-ncaa-subdivisions_x.htm).

<sup>24</sup> Michelle Brutlag Hosick, *Board Adopts New Division I Structure*, NCAA (Aug. 7, 2014, 11:49 AM), <http://www.ncaa.org/about/resources/media-center/news/board-adopts-new-division-i-structure>; Jake New, *Autonomy Gained*, INSIDE HIGHER ED (Aug. 8, 2014), <https://www.insidehighered.com/news/2014/08/08/ncaa-adopts-structure-giving-autonomy-richest-division-i-leagues-votes-college>.

<sup>25</sup> New, *supra* note 24.

In one sense, this subdividing is benign, a natural evolution. It is even advisable, as it permits like-situated universities and colleges to decide their own fates. It permits like-resourced universities and colleges to spend their money on student-athletes unrestrained by the resource limits of those less endowed. It permits the colleges and universities facing external threats to the collegiate model of athletics to spend their money to ameliorate concerns and respond to all those threats. Such threats and concerns include athlete unions, pay for play, athlete marketing and endorsements, involvement of agents, high visibility of football and basketball programs and the claims that student-athletes in those sports are not really students and are being exploited, donor intrusion in decision-making, and athlete behavioral issues.

In another sense, however, NCAA subdivisions remove constraints that a broader, more inclusive NCAA voting body was able to maintain. Admittedly, these constraints may have been driven in substantial part by financial concerns, but they also reflected a closer embodiment of collegiate sports as different from professional sports.

Today, we have conferences (and the University of Texas) with their own broadcast networks. Midweek games are common. Games start as late as 9 p.m. Student-athletes then have to travel home, sometimes halfway across the country after playing a 9 p.m. weekday game. We have conference realignment to achieve better TV market shares.<sup>26</sup> The drive to increase revenues to support all the expenses is ever-increasing. Spending is neither constrained by market forces nor common sense, and we also have the external pressures from big donors and a noisy fan base.

Most everyone agrees that collegiate sports, at least in the A5 of the FBS, are out of whack with the values that should underlie athletics on our campuses.<sup>27</sup> Finding a way to re-achieve a balance, particularly in the A5, so far has proved elusive.

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<sup>26</sup> See Matt Tait, *TV Sets, as Much Football Programs, Fueling Big 12 Expansion Talk*, KU SPORTS: STAFF BLOG (May 12, 2016, 12:17 PM), <http://www2.kusports.com/weblogs/tait-tait/2016/may/12/tv-sets-as-much-football-programs-fuelin/>.

<sup>27</sup> See Jake New, *Left Behind*, INSIDE HIGHER ED (Aug. 5, 2014), <https://www.insidehighered.com/news/2014/08/05/growing-stratification-ncaa-conferences-concerns-less-wealthy-division-i-colleges>; Jon Solomon, *Power Five Passes on Tackling Big NCAA*

## II. CURRENT STRESSES

The world is changing. A quick glance at Facebook and Twitter underscores that millennials have very different views of what constitutes private information. We have less person-to-person, face-to-face interaction. Even during social interactions, people are on their cellphones, or surreptitiously glancing at them. The changes to media – reporting, entertainment, marketing – are mind boggling. Print journalism is moribund. Now social media and all the alternative ways to “share” information are attacking broadcast. Professional journalists are giving way to bloggers and tweeters. The pressure to compete is leading to a departure from journalism’s professional standards.<sup>28</sup> The old two source rule seems to be going the way of the dinosaur.

The traditional media “establishment” are competing with new entries such as Rolling Stone. Consider its coverage of the alleged group rape perpetrated by Duke lacrosse players at a fraternity house at the University of Virginia, and how the stalwart traditional media accepted the prevailing narrative.

It used to be said that broadcast revenues were safe and could be counted on to increase because sports contests are the one thing viewers want to see live, and, therefore, sports will always be attractive to advertisers. But viewers increasingly object to the cost of large cable packages that include content in which they have no interest.<sup>29</sup> Skinny bundles are becoming

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*Issues to Help Athletes*, CBSSPORTS.COM (Jan. 15, 2016), <http://www.cbssports.com/college-football/news/power-five-passes-on-tackling-big-ncaa-issues-to-help-athletes>.

<sup>28</sup> Jayeon Lee, *The Double-Edged Sword: The Effects of Journalists' Social Media Activities on Audience Perceptions of Journalists and Their News Products*, 20 J. OF COMPUTER-MEDIATED COMM. 312, 314–16 (2015).

<sup>29</sup> Richard Siklos, *Why Can't I Have Just the Cable Channels I Want?*, N.Y. TIMES (Apr. 16, 2006), <http://www.nytimes.com/2006/04/16/business/yourmoney/why-cant-i-have-just-the-cable-channels-i-want.html>.

more popular.<sup>30</sup> New technology has made a serious dent on broadcasting margins.<sup>31</sup> Streaming is all the rage. During the 2016-17 season, Twitter began streaming NFL games.<sup>32</sup> ESPN and Fox Sports have downsized.<sup>33</sup> Cable and Direct TV are resisting the fees charged by premium channels for fear that more subscribers will bolt or opt for a skinny bundle.<sup>34</sup> Even the New York Yankees network, YES, faced push back from distributors as it sought increased rights fees.<sup>35</sup>

The game day environment also is changing. Watching at home is so very convenient. It avoids ticket and parking costs, traffic jams, and bathroom lines. Flat screen HD TV gives great sight lines and views of the action. Virtual technology will only accelerate the watch-from-home trend.

The result is lost revenues from game day attendance. Ticket sales are not a huge revenue stream, at least as compared to what media rights deals bring in, but it is a revenue stream

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<sup>30</sup> See Meg James, *Consumers Want Fewer TV Channels and Lower Monthly Bills - Will 'Skinny' Packages Work?*, L.A. TIMES (Aug. 14, 2015, 11:35 AM), <http://www.latimes.com/entertainment/envelope/cotown/la-et-ct-skinny-bundles-verizon-dish-20150816-story.html>.

<sup>31</sup> Shannon Bond & Matthew Garrahan, *Broadcasters Fear Falling Revenues as Viewers Switch to On-Demand TV*, FIN. TIMES (Feb. 22, 2015), <https://www.ft.com/content/e46dc7a4-b843-11e4-86bb-00144feab7de>.

<sup>32</sup> *Nat'l Football League and Twitter Announce Streaming P'ship for Thursday Night Football*, NFL (Apr. 5, 2016), <https://nflcommunications.com/Pages/National-Football-League-and-Twitter-Announce-Streaming-Partnership-for-Thursday-Night-Football.aspx>.

<sup>33</sup> Michael McCarthy, *Layoffs at Fox Sports; More than 20 Online Writers Let Go*, SPORTING NEWS (Mar. 9, 2016), <http://www.sportingnews.com/other-sports/news/fox-sports-fox-digital-layoffs-jimmy-traina-online-media/3uimxyeamj19joiu836n9eu>.

<sup>34</sup> See Shalini Ramachandran & Christopher Stewart, *No Sign of Progress in CBS/Time Warner Cable Dispute; Two Sides Can't Even Agree on Whether Talks are Under Way*, WALL ST. J. (Aug. 4, 2013, 5:59 PM), <http://www.wsj.com/articles/SB10001424127887324136204578646243072251584>.

<sup>35</sup> Meg James, *Yankees Fans Strike Out as YES Network-Comcast Battle Heats up*, L.A. TIMES (Mar. 6, 2016, 4:00AM), <http://www.latimes.com/entertainment/envelope/cotown/la-et-ct-fox-yankees-network-comcast-battle-sports-costs-20160308-story.html>.



schools do not want to lose.<sup>36</sup> Concessions and game day attire sales are a small part of the revenue pie, but still a revenue stream, and one that will decrease as in-stadium audiences do.

There are also collateral revenue consequences. Businesses in cities like Lincoln, Nebraska, whose economy relies heavily on sports tourism,<sup>37</sup> will lose substantial revenues if fans stay home. These include not only hotels and restaurants but also department store sales. Those who come to town on game days do not all have game tickets. Others go shopping (and that includes sports bars). Lost commercial revenues mean lost tax revenues for the city.

To keep fans in the seats, athletic departments have spent money to make the game day experience more comfortable and fun.<sup>38</sup> In particular, they are upgrading stadium internet capability.<sup>39</sup>

An imponderable is the effect that watching from home will have on a fan base in football and men's basketball where, at least for the A5 traditional powers, large crowds have been the norm.<sup>40</sup> Will fans, particularly younger fans, stay at home and, in

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<sup>36</sup> See Travis Sawchik, *Is TV Keeping Fans Away?*, THE POST AND COURIER (Dec. 22, 2012), [http://www.postandcourier.com/sports/is-tv-keeping-fans-away/article\\_a312cab5-ae74-56c3-bcef-e304bf721fa1.html](http://www.postandcourier.com/sports/is-tv-keeping-fans-away/article_a312cab5-ae74-56c3-bcef-e304bf721fa1.html).

<sup>37</sup> See Eric Thompson & Shannon McClure, *The 2013-2014 Economic Impact of the University of Nebraska Department of Athletics* 2–7, THE UNIV. OF NEB. DEP'T OF ATHLETICS (Nov. 24 2014), [http://www.huskers.com/pdf9/3003724.pdf?DB\\_OEM\\_ID=100](http://www.huskers.com/pdf9/3003724.pdf?DB_OEM_ID=100).

<sup>38</sup> Jake New, *Empty Seats Now, Fewer Donors Later?*, INSIDE HIGHER ED (Sept. 11, 2014), <https://www.insidehighered.com/news/2014/09/11/colleges-worry-about-future-football-fans-student-attendance-declines>.

<sup>39</sup> Jake Trotter, *Schools Aiming to Improve Fan Amenities*, ESPN (June 25, 2014), [http://www.espn.com/blog/bigten/post/\\_id/102758/schools-aiming-to-improve-fan-amenities](http://www.espn.com/blog/bigten/post/_id/102758/schools-aiming-to-improve-fan-amenities).

<sup>40</sup> *Men's Basketball Attendance Tops 32 Million for 10th Straight Year*, NCAA (last updated June 9, 2016, 2:00 PM), <http://www.ncaa.com/news/basketball-men/article/2016-06-07/mens-basketball-attendance-tops-32-million-10th-straight-year>; see also 2015

turn, switch allegiance from local teams to more national teams? And what will game day be like for fans who do attend the games (and for the players who compete) if there are very few there?

How will schools replace revenues if media contracts (the big enchilada), ticket sales, and concessions disappear? Will they break precedent and spend less? Or will they attempt to find more revenues, and, in turn, will this lead to even more commercialism, and even less clarity, in what separates college and professional sports?

Litigation threats loom large in current discussions regarding college athletics. At some point, the spate of litigation will lessen. Either lawyers will be discouraged because the lawsuits are unsuccessful or the lawsuits will be successful and there will be little left to litigate.<sup>41</sup>

Student-athlete empowerment is a mixed bag in terms of what the future holds for college athletics. If we mean unions, and other organized attempts, I am doubtful such efforts will be successful—in part because of the enhanced student-athlete benefits and treatment recently adopted (multiyear scholarships, full cost of attendance), and in part because more will likely be coming.<sup>42</sup> Kain Colter, the Northwestern football player behind the 2014 Northwestern union effort, bemoaned the absence of current student-athletes at a conference on the unionization of athletes.<sup>43</sup> If student-athlete empowerment focuses on the

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*National College Football Attendance*, NCAA, [http://fs.ncaa.org/Docs/stats/football\\_records/Attendance/2015.pdf](http://fs.ncaa.org/Docs/stats/football_records/Attendance/2015.pdf) (last visited Nov. 5, 2016).

<sup>41</sup> See Helen Christophi, *Judge Leans Toward NCAA in Antitrust Case*, COURTHOUSE NEWS SERVICE (Aug. 3, 2016, 6:56 AM), <http://www.courthousenews.com/2016/08/03/judge-leans-toward-ncaa-in-antitrust-case.htm> (discussing litigation regarding caps to funds provided student-athletes may be coming to an end).

<sup>42</sup> See Poseur, *The NLRB Says No to Student-Athlete Unions... For Now*, SBNATION: AND THE VALLEY SHOOK! (Aug. 18, 2015, 10:00 AM), <http://www.andthevalleyshook.com/2015/8/18/9172031/the-nlrb-says-no-to-student-athlete-unions-for-now> (discussing whether student-athletes ultimately will be seen as employees by the National Labor Relations Board (NLRB) remains to be seen).

<sup>43</sup> Jon Solomon, *College Athletes' Rights Movement has Stalled: How it Can Pick up Again*, CBS SPORTS (Apr. 2, 2016), <http://www.cbssports.com/collegefootball/writer/jon-solomon/25539604/JonSolomonCBS> (describing one outside possibility to

pressures imposed by millennial students, then yes, I believe millennials will affect more change.<sup>44</sup> Their pressure, and that of changing standards generally, is already influencing coach behaviors.

There will also be integration of athletic operations with external standards imposed on universities – sexual harassment, discrimination, and criminal conduct. Those athletic departments that were on their own little islands in managing these issues no longer will be able to do so. Happily.

The spanner in the works is what the research on concussions will show, as well as research on other head traumas and health issues generally. Right now all the attention is on football. The number of boys playing youth football has decreased annually.<sup>45</sup> But there are more concussions being suffered by players of other sports.<sup>46</sup> Recent research suggests the main source of the problem is the frequency of hits and number of total hits over a career, not the location or even severity of a particular hit.<sup>47</sup>

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energize student-athlete involves current efforts to locate and enlist elite high school students to come to college ready to take on the fight).

<sup>44</sup> Consider the impact wrought by the threatened game boycott by Missouri football players to protest race relations on the Missouri campus. *E.g.*, Rick Maese & Kent Babb, *Missouri Football Players Threaten to Boycott Season Amid Racial Tension*, WASH. POST (Nov. 8, 2015), [https://www.washingtonpost.com/sports/missouri-football-players-threaten-to-boycott-season-amid-racial-tension/2015/11/08/5c11c456-8641-11e5-9a07-453018f9a0ec\\_story.html?utm\\_term=.8927c926e27c](https://www.washingtonpost.com/sports/missouri-football-players-threaten-to-boycott-season-amid-racial-tension/2015/11/08/5c11c456-8641-11e5-9a07-453018f9a0ec_story.html?utm_term=.8927c926e27c).

<sup>45</sup> Jack Moore, *Youth Football Participation is Plummeting*, VOCATIV (Mar. 16, 2016, 1:17 PM), <http://www.vocativ.com/298019/youth-football-participation-is-plummeting>.

<sup>46</sup> Marie-France Wilson, *Young Athletes at Risk: Preventing and Managing Consequences of Sports Concussions in Young Athletes and Related Legal Issues*, 21 MARQ. SPORTS L. REV. 241, 246–247 (2010) (discussing how athletes in soccer and hockey are also prone to concussions).

<sup>47</sup> Benedict Carey, *Study Focuses on Repeated Hits, Not Concussions*, N.Y. TIMES (Apr. 1, 2016), <http://www.nytimes.com/2016/04/01/health/study-focuses-on-repeated-hits-not-concussions.html>

What if a direct causal relation is shown between concussions and chronic traumatic encephalopathy, and there are no adequate ameliorative measures available? If football increasingly becomes a sport played by the economically disadvantaged and minorities, and concern about injuries increases, then football may go the way of the gladiators in the Coliseum. And will other sports suffer the same fate? Here, I assume that the American appetite for competition, American ingenuity, and the money that will be poured in to finding solutions, means that football, and all sports, will continue to hold an important place in American life.

### III. WHAT THE FUTURE HOLDS

Some impediments to reform are not unique to college sports. Perfection as a policy objective is fine; perfection as an absolute requirement to policy adoption means no policy can be adopted.

Winston Churchill said that “Democracy is the worst form of government, except for all those other forms that have been tried . . . .”<sup>48</sup> Large entities that move forward with full stakeholder participation and process move at glacier speed. They engage only when crisis is upon them.

Meet the NCAA.

#### A. AUTONOMY

The A5 has independent authority to adopt bylaws that cover A5 institutions and conferences over several areas.<sup>49</sup> These bylaws pertain to recruiting restrictions, pre-enrollment support, financial aid, awards and benefits, academic support, student-athlete health and wellness, meals and nutrition, time demands, student-athlete career transition, and athletics personnel.<sup>50</sup> There is no necessary rhyme or reason to why some of the items are on the list, and why others are not. Except for two areas purposefully left to the full Division I for determination –

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(discussing a Boston University study that suggested that the number of hits a person sustains in football over their lifetime could sustain more long-term injury to players).

<sup>48</sup> JAMES C. HUMES, *THE WIT & WISDOM OF WINSTON CHURCHILL* 28 (Harper Perennial 1995).

<sup>49</sup> *2015-2016 NCAA Division I Manual* 33, NCAA (July 2015), <http://www.ncaapublications.com/productdownloads/D116.pdf>.

<sup>50</sup> *Id.* at 33–34.

academic standards and championships – most of the subjects ascribed to the A5 or retained by Division I were the result of compromise.<sup>51</sup> Academic standards are retained by Division I in fear that they might be diluted.<sup>52</sup> Championship determinations are also retained by Division I partly to protect the Men’s basketball Championship and partly to assure there were enough teams for A5 teams to compete against.<sup>53</sup>

There was also concern in the Division I Board (made up of presidents and chancellors who represent all Division I institutions) and the NCAA hierarchy that an autonomous structure might lay the framework for A5 schools and conferences to depart from the NCAA and create their own athletic association. As a result, there are certain limits imposed on how the A5 operates:<sup>54</sup>

- a. A5 proposals must be approved by an NCAA presidential review group that includes presidents and chancellors from conferences in addition to the A5.
- b. The A5 did not decide the voting plurality needed to adopt an A5 proposal. Instead, the full Division I imposed the relevant requirements, including the fact that adoption of A5 proposals requires more than a simple majority.

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<sup>51</sup> See Hosick, *supra* note 24.

<sup>52</sup> *Division I Steering Committee on Governance: Recommended Governance Model 17*, NCAA (July 18, 2014), <http://www.ncaa.org/sites/default/files/DI%20Steering%20Committee%20on%20Gov%20Proposed%20Model%2007%2018%2014%204.pdf> [hereinafter *Division I Steering Committee on Governance*] (showing the text that constituted the “updated Division I model” that was recently adopted); see also Hosick, *supra* note 24.

<sup>53</sup> Compare *Big East Response to NCAA Board of Directors Steering Committee Proposal on Governance Redesign 3*, NCAA (June 27, 2014), <http://www.ncaa.org/sites/default/files/NEW%20FEEDBACK%20DOCUMENT.pdf>, with *Division I Steering Committee on Governance*, *supra* note 52, at 17.

<sup>54</sup> *2015-2016 NCAA Division I Manual*, *supra* note 49, at 33–35.

- c. There is a date after which amendments to A5 proposals may not be made and new proposals may not be introduced. This stems from a similar rule employed by Division I.
- d. Interpretations of A5 bylaws and requests for waivers from them go to the full Division I interpretations committee and to the full Division I committee that handles the particular waiver, not to a committee of the A5.<sup>55</sup>
- e. Institutions in the rest of the FBS may adopt a proposal adopted by the A5, but these institutions may not adopt a proposal that covers the same subject but differently from how the A5 does it. This limitation offers the NCAA the most protection from A5 independence (or exodus from the NCAA).<sup>56</sup> It assures that the A5 and the rest of Division I do not have a host of different subject-specific Division I bylaws.

#### B. A5 CONVENTION, 2015 DALLAS ORGANIZATIONAL MEETING, AND THEREAFTER

At its first convention in 2014, the A5 adopted athletic scholarships to fund the full cost of university attendance.<sup>57</sup> Division I had already adopted multiyear scholarships.<sup>58</sup> For many years, the NCAA had another priority – to reduce student-athlete time demands.<sup>59</sup> Both the first convention and the 2015 A5 convention failed to reform time demands. Instead, the A5

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<sup>55</sup> At the full committee, only A5 members vote.

<sup>56</sup> See *2015-2016 NCAA Division I Manual*, *supra* note 49, at 33–35; Hosick, *supra* note 24.

<sup>57</sup> See Steve Berkowitz, *NCAA Increases Value of Scholarships in Historic Vote*, USA TODAY (Jan. 17, 2015, 11:05 PM), <http://www.usatoday.com/story/sports/college/2015/01/17/ncaa-convention-cost-of-attendance-student-athletes-scholarships/21921073>.

<sup>58</sup> Michelle Brutlag Hosick, *Multiyear Scholarships to be Allowed: Vote to Override Legislation Falls Just Short of Required Mark*, NCAA (Feb. 17, 2012, 11:01 PM), <http://www.ncaa.com/news/ncaa/article/2012-02-17/multiyear-scholarships-be-allowed>.

<sup>59</sup> See Tom Yelich, *Division I SAAC to Take Next Step in Addressing Time Demands: The Committee is Preparing a Survey that Will Be Sent to College Athletes This Fall*, NCAA (Oct. 7, 2015, 8:16 AM), <http://www.ncaa.org/about/resources/media-center/news/division-i-saac-take-next-step-addressing-time-demands>.

adopted a resolution calling for action regarding time demands by 2016.<sup>60</sup>

A major impediment to time demand reforms is that there is no governing structure for the A5, and thus no structure for even introducing a discussion on the topic.<sup>61</sup> The five commissioners, and now conference staffs, have tried to organize.<sup>62</sup> But process-by-committee is a disaster. The A5 held an organizational meeting in April 2015 for the purpose of adopting an A5 governing structure and to begin tackling time demands.<sup>63</sup> At the meeting, no interest existed for creating a formal structure to handle A5 matters.<sup>64</sup> Instead, conference offices continue to manage the A5 agenda.<sup>65</sup> It appears that an annual A5 meeting will likely occur and operate to set the next year's legislative agenda.

The 2015 meeting recommended only modest modifications of time demands to be adopted at the 2016 A5 legislative session.<sup>66</sup> There was general agreement to employ a

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<sup>60</sup> See Michelle Brutlag Hosick, *D1 Continues Talks on Time Demands: Council, Five Autonomy Conferences to Work Together on Proposals*, NCAA (Feb. 18, 2016, 2:08 PM), <http://www.ncaa.org/about/resources/media-center/news/d1-continues-talks-time-demands>.

<sup>61</sup> See Jon Solomon, *Power Five Autonomy Has Created a Small Subset of NCAA Dysfunction*, CBS SPORTS (Apr. 24, 2016), <http://www.cbssports.com/college-football/news/power-five-autonomy-has-created-a-small-subset-of-ncaa-dysfunction>.

<sup>62</sup> See *id.*

<sup>63</sup> See *Report of the NCAA Board of Governors*, NCAA (Apr. 30, 2015), [https://www.ncaa.org/sites/default/files/April2015\\_BOG\\_report\\_20151008.pdf](https://www.ncaa.org/sites/default/files/April2015_BOG_report_20151008.pdf).

<sup>64</sup> See *id.*

<sup>65</sup> See Dan Wolken, *Small, Positive Steps, But No Fireworks at NCAA Convention*, USA TODAY (Jan. 17, 2016, 12:31 PM), <http://www.usatoday.com/story/sports/ncaaf/2016/01/15/ncaa-convention-autonomy-time-demands-athletes/78857778>.

<sup>66</sup> See Michelle Brutlag Hosick, *D1 Council Starts Discussion About Time Demands: Student-Athletes Expected to Contribute to Conversation next Month*, NCAA (Oct. 1, 2015, 9:48 AM), <http://www.ncaa.org/about/resources/media-center/news/d1-council-starts-discussion-about-time-demands>.

framework for time management that avoids black letter bylaws. Instead, the framework provides the required elements that institutions must meet, but allows institutions to develop their own method for meeting them. Annual institutional monitoring would assure that requirements are met.<sup>67</sup> The other time demand proposals generated by the Dallas 2015 meeting: (1) a team travel day could not count as an off day in NCAA athletic activities, (2) there needs to be a set number of days off during the academic year, and (3) there had to be a mandatory seven days off at the end of a championship season.<sup>68</sup> Arriving at these requirements took a fair amount of negotiation. A reasonable prediction is that consensus will be much harder to achieve with the next round of time management proposals.

#### IV. ALTERNATIVE FUTURES

So, now, ignoring Casey, a few words about what the future of college athletics, and the NCAA, may bring. These universes concentrate only on the A5.

**Universe I.** In Universe I, everything remains status quo with the exception of an antitrust exemption for coach salaries and amateurism issues generally. In this universe, the NCAA would continue to administer athletic competition for all the colleges and universities that make up the NCAA, and proceed as usual to administer college athletics. Budget issues prevail over student-athlete well-being initiatives. Current efforts to slow commercialization come to a halt. Minor perceived competitive issues continue to capture undue attention. Change is very slow, and material change awaits the next crisis. The antitrust exemption limits the number of crises and permits

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<sup>67</sup> See Tom Yelich, *Nearly 50,000 Weigh in on D1 Time Demands: Council-Sponsored Survey Includes Input from Stakeholders Across Division*, NCAA (May 9, 2016, 3:02 PM), <http://www.ncaa.org/about/resources/media-center/news/nearly-50000-weigh-di-time-demands> (explaining the general framework is to establish time management plans by sport, with student-athlete participation on the front end and president/FAR annual review on the back end).

<sup>68</sup> *2016-17 NCAA Division I Autonomy Publication of Proposed Legislation*, NCAA, <http://www.ncaa.org/governance/2016-17-ncaa-division-i-autonomy-publication-proposed-legislation> (last visited Dec. 16, 2016). See Kyle Goon, *College sports: Time demand Proposals May Not Add up to Substantial Change*, THE SALT LAKE TRIBUNE (July 20, 2016, 3:41 PM), <http://www.sltrib.com/home/4126304-155/college-sports-time-demand-proposals-may>.



group action to limit coach salaries; competitive interests make it unclear the extent to which limits will be imposed.

**Universe II.** Universe II also embodies the status quo. No antitrust exemption is needed because court decisions uphold the status quo (except for movement already achieved through the *O'Bannon* litigation). Escalating coach and administrator salaries is the main difference between this universe and Universe I, because there will be no incentive or regulation to limit them. This universe likely will lead to a reduction in the number of sports sponsored.<sup>69</sup>

**Universe III.** Universe III is the professional model of sports visited in full force on college sports, at least in the A5. Here we see the future through professional sports: Unions, agents, and pay for play. Maybe strikes. Reduction in the number of sponsored sports is more likely here than in Universe II. We may end with football, men's basketball, and perhaps one other men's sport, and enough women's sports to meet Title IX requirements, and that will be it.

**Universe IV.** In this universe, A5 universities and conferences depart the NCAA and create their own athletic association for the five conferences and 65 schools. This alternative has been gaining momentum over the years. The main impetus is the opportunity for A5 institutions to be in charge of their own fates and issues. The chief obstacles: The NCAA Men's basketball tournament and the impact a departure by 65 schools would have on it;<sup>70</sup> the need for enough teams

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<sup>69</sup> In 2016 FBS institutions were required to sponsor at least 16 sports. *Frequently Asked Questions*, NCAA (Dec. 8, 2007), <http://fs.ncaa.org/Docs/AMA/Division%20I%20Forms/2010-11%20FBS%20Forms/Football%20Bowl%20Subqa%2012%208%2010.pdf>. In 2016 Ohio State sponsored 35 sports while Texas sponsors 18 or 20. OHIO STATE BUCKEYES, [www.ohiostatebuckeyes.com](http://www.ohiostatebuckeyes.com) (last visited Nov. 8, 2016); THE OFFICIAL WEBSITE OF THE UNIVERSITY OF TEXAS ATHLETICS, [www.texassports.com](http://www.texassports.com) (last visited Oct. 30, 2016).

<sup>70</sup> Mark Alesia, *NCAA Approaching \$1 Billion Per Year Amid Challenges By Players*, INDYSTAR (Mar. 27, 2014, 11:06 PM), <http://www.indystar.com/story/news/2014/03/27/ncaa-approaching-billion-per-year-amid-challenges-players/6973767/> (reporting 2013

against which A5 teams may compete; the optics of departing the NCAA (perceived as revenue-seeking and not to maintain a collegiate model or to uphold academics); reluctance to rebuild a structure the NCAA already has in place; a worry among some institutions that this model will unleash the genie; and, finally, the difficulty of getting all major football institutions and conferences to decide to bolt.<sup>71</sup>

**Universe V.** In Universe V we return to the collegiate model full throttle, even in the A5. We roll back commercialization; we stop the search for revenues – or at least line up any such search with what the rest of the campus is doing. We find ways to limit the admission of the “one-and-dones.”<sup>72</sup> We require that athletic departments follow campus protocols. We limit the number of competitions and limit all sports to one semester of competition. I wish I thought this Universe had a realistic chance. The whole issue of time demands is a good example of the difficulties.<sup>73</sup>

### V. THE A5 CZAR

It may be that any change, even incremental, will need an A5 czar. Process related impediments suggest that this is true. Because of the extreme diversity among institutions, there is unlikely to be support for a czar for all of the NCAA or even for

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NCAA revenues as more than \$912 billion, with 84 percent of those revenues derived from the men’s basketball tournament).

<sup>71</sup> Jason Kersey, *Exploring the History of College Football Media Rights*, NEWSOK (Aug. 25, 2013, 12:00 AM), <http://newsok.com/article/3875459> (describing effort of traditional football powers in the College Football Association to break from NCAA, an effort thwarted when Notre Dame signed its own broadcast deal).

<sup>72</sup> Eric Pincus, *NBA AM: Adam Silver on One-And-Done, Labor Relations*, BASKETBALL INSIDERS (Mar. 23, 2016), <http://www.basketballinsiders.com/nba-am-adam-silver-on-one-and-done-labor-relations/> (explaining that one and done issue phenomenon is creation of NBA and NBAPA); Jon Solomon, *Fitting NCAA Tournament Final: Team Penalized for Poor Academics vs. Team Built Not to Graduate*, AL.COM (Apr. 7, 2014, 5:00 AM), [http://www.al.com/sports/index.ssf/2014/04/fitting\\_ncaa\\_tournament\\_final.html](http://www.al.com/sports/index.ssf/2014/04/fitting_ncaa_tournament_final.html) (suggesting that one and done departures contribute to poor APR, and resultant penalties).

<sup>73</sup> See *infra* Section V The A5 Czar.

the full Division I. There might be a czar for the A5 or for A5 institutions in a separate association.

But how do you move the needle when there is so much opposition to any change?

## VI. TIME DEMANDS, UP CLOSE AND PERSONAL

In preparation for an A5 meeting to create a governance structure, and also to work on time demands, NCAA staff prepared a survey completed by Division I administrators, faculty athletic representatives (FARs), senior woman administrators (SWAs), student-athletes, and head coaches.<sup>74</sup> The head coaches supported very few changes.<sup>75</sup> Except for FARs, there was no support to reduce midweek games.<sup>76</sup> Except for student-athletes in most sports and FARs, there was no support for providing a midseason multiday athletic break.<sup>77</sup> Except for student-athletes and FARs, there was no support for including travel, compliance meetings, and team promotions in the tally at required athletic activities.<sup>78</sup> Evidence supporting a reduction in overall competitions was difficult to read,<sup>79</sup> and no questions even arose regarding one-semester sports.<sup>80</sup>

Not an auspicious beginning to make real change in time demands.

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<sup>74</sup> *Results of Division I Time Demands Survey 2, 4, NCAA* (Apr. 22, 2016), [http://www.ncaa.org/sites/default/files/2016RES\\_DI-Time-Demands-Full\\_20160506.PDF](http://www.ncaa.org/sites/default/files/2016RES_DI-Time-Demands-Full_20160506.PDF) [hereinafter *Time Demands Survey*] (resulting in the following responses: 55 percent of ADs – 77 percent in the A5; 63 percent of SWAs – 68 percent in the A5; 52 percent of FARs responded – 66 percent in the A5; 31 percent of Division I student-athletes responded; and 52 percent of Division I head coaches).

<sup>75</sup> *Id.* at 7–13, 29, 53 and 77.

<sup>76</sup> *Id.* at 36–38.

<sup>77</sup> *Id.* at 40–44.

<sup>78</sup> *See id.* at 8 (describing majority of student athletes for these items but opposition by most head coaches and administrators).

<sup>79</sup> *See id.* at 9 (noting what appeared to be little support from student-athletes, administrators, and coaches for reduction of competition opportunities).

<sup>80</sup> *Id.*

A reduction on time demands has been a popular battle cry for years. Medical concerns are part of the reason. So too are claims that student-athletes are not “real” students, an argument which surfaced in litigation and the Northwestern union movement.<sup>81</sup> Certainly, student-athletes have little opportunity to participate in study abroad programs, student teaching, and other opportunities available to non-student-athletes. So why the lack of support in the survey responses? In part, the lack of support may be traced to respondents with different balancing of priorities. There are those, especially faculty members, who believe that class time and the time to fully participate in campus life should prevail over at least some athletic considerations. There are those who believe that universities should offer elite athletes the opportunity to reach their full potential as athletes and as students. Finally, there are those who believe that students who do well academically should not have limits placed on their athletic time. The varied responses may partly relate to lack of clarity in the questions asked. They certainly relate to the ‘perfect is enemy to the good’ phenomenon.

- **One-Semester Seasons.** Implementing one-semester seasons may strain campus facilities and require more games played at odd times. Some respondents may have voted assuming that the same number of games would be played. This certainly would strain facility access and scheduling. Moreover, under this assumption, there would be more midweek travel. It is also unclear what medical research will say regarding the correlation between rest times and incidence of injuries. In some sports, this will reduce broadcast revenues. That might most clearly be true for men’s basketball. In addition, the men’s basketball tournament seems to fall into an otherwise reasonably dead period regarding sports broadcasts, and moving it to another time frame might affect the value of the tournament.

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<sup>81</sup> See *Northwestern Univ.*, 362 N.L.R.B. No. 167 (Aug. 17, 2015); see also Ben Strauss, *N.L.R.B. Rejects Northwestern Football Players’ Union Bid*, N.Y. TIMES (Aug. 17, 2015), <http://www.nytimes.com/2015/08/18/sports/ncaafootball/nlrbsays-northwestern-football-players-cannot-unionize.html> describing effort by Northwestern football players to gain recognition as university employees and form unions).

- **Fewer games.** Most student-athletes, particularly elite athletes, do not want to reduce the number of competitions. A reduction in the number of games may have an impact on the number of Olympic athletes who attend college. It also may persuade more baseball student-athletes to forego college for the minor leagues. Another concern is the potential impact on women's sports if broadcast dictates what games get prime times based on viewer numbers. Most of the potential considerations for one-semester sports also might have impact here.
- **Three-week break from sports.** This proposal was tabled at the 2016 A5 convention. Among the reasons for tabling the proposal was that time demand proposals should be evaluated as an integrated whole.<sup>82</sup> Specific to this proposal were concerns about how it would apply to track and field, whose indoor and outdoor seasons cover both semesters.<sup>83</sup> Stresses on facilities were also raised.
- **More Days Off Between Competitions.** This one gives rise to a host of concerns. It was a modest proposal advanced and tabled by the Big Ten Conference at the 2016 A5 Convention, specifying that a team travel day could not count as a day off.<sup>84</sup> Some of the concerns raised included: what to do if travel delays result in a

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<sup>82</sup> See Jake New, *Too Much Time on Sports?*, INSIDE HIGHER ED (Jan. 15, 2016), <https://www.insidehighered.com/news/2016/01/15/time-demands-focus-ncaa-convention-policy-changes-may-have-wait> (describing calls for research before voting on time demand proposals).

<sup>83</sup> See Steve Berkowitz, *Power Conferences Announce Plan to Reduce Time Demands on Athletes*, USA TODAY (July 7, 2016, 10:40 PM), <http://www.usatoday.com/story/sports/college/2016/07/07/power-five-autonomy-conferences-time-demands-student-athletes/86803134>.

<sup>84</sup> Amy Wimmer Schwarb, *SAAC Reveals Time Demands Survey Results at Division I Issues Forum*, NCAA (Jan. 15, 2016, 11:54 PM), <http://www.ncaa.org/about/resources/media-center/news/saac-reveals-time-demands-survey-results-division-i-issues-forum>.

team returning home after midnight; what a coach might do to compensate for not being able to use a travel day as a day off; and what constitutes a day off (trainer appointments? Film review? Etc.).<sup>85</sup>

## VII. EXTERNAL PRESSURE

No part of a university is as public as athletics. No other part of a university has external constituents (and some with the biggest checkbooks) who have little interest in the overall interests of higher education, who see athletics decisions as independent of general university policy and the university mission, or who see any reason to evaluate policy except as it seems geared to assuring football success.

Media stories typically follow the same line. I am a big fan of journalists and journalism. I majored in journalism. I think it is a noble calling. I say what I say as a fellow traveler.

Sports stories often read as if the only interest a university should have is to make the football team successful. I am not sure sports journalists feel that way. It is more like it never even occurs to them that there is a larger side to the story.

Want to win? Just pay the coach more. Alabama does it.<sup>86</sup> Why wouldn't [here insert the A5 football program]?

The head coach wants something. Why would anyone get in his way?

A school fires a coach for off-the-court behavior. How come?

In the midst of infraction investigations at Ohio State, Gordon Gee, then its president, responded to a question about firing his successful head coach by saying, "it's more likely he

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<sup>85</sup> See *Time Demands Survey*, *supra* note 74, at 11, 85.

<sup>86</sup> See Matt Slovin, *How Much Do SEC Coaches Make?* THE TENNESSEAN (Oct. 8, 2015, 3:44 PM), <http://www.tennessean.com/story/sports/2015/10/08/how-much-do-sec-coaches-make/73561936/> (listing Alabama's head coach Nick Saban as receiving the highest compensation of all SEC head coaches); *see also* Teddy Mitrosilis, *Alabama Coaches Made a Stupid Amount in Bonuses for Winning the Title*, FOX SPORTS (Jan. 12, 2016, 12:35 PM), <http://www.foxsports.com/college-football/story/alabama-crimson-tide-national-title-nick-saban-coach-bonuses-011216> (stating that Alabama coaching staff earned roughly \$1.6 million for winning both SEC and national championships).

will fire me.”<sup>87</sup> He was rightly castigated for suggesting, even jokingly, that Ohio State football wasn’t just the tail that wagged the dog, but it was, in fact, the dog.<sup>88</sup> Sports journalists joined in the ridicule.<sup>89</sup> But then other stories arrived, and they reverted to form.

Sports stories also regularly fail to follow professional journalism rules, even to the extent that news journalists still do. They have a penchant for writing stories when hearing only one side. They don’t always look for the right sources. A big name trumps someone who actually can provide information and context. They almost never talk to faculty when doing a sports story, with the possible exception when the story relates directly and exclusively to academic rules on a campus.

I am not sanguine about the future of collegiate sports. I hope I am wrong, and there is a real appetite for change. I hope we are willing and able to be the ants in the fable about the ant and grasshopper and provide for winter long before the snow starts to fall.

I am sure there are many who believe that college sports need to reflect their situs on university campuses and be administered to reflect that it is students who compete.

The media is organized, and it talks. Big donors are heard. Where is the organized group of higher education fans that can help achieve fundamental change?

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<sup>87</sup> George Schroeder, *College Football Proved to Be Gordon Gee’s Undoing*, USA TODAY (June 4, 2013, 8:39 PM), <http://www.usatoday.com/story/sports/ncaaf/bigten/2013/06/04/college-football-ohio-state-president-gordon-gee-retires/2390019>.

<sup>88</sup> See Laura Pappano, *How Big-Time Sports Ate College Life*, N.Y. TIMES (Jan. 20, 2012), <http://www.nytimes.com/2012/01/22/education/edlife/how-big-time-sports-ate-college-life.html> (detailing the importance to universities of college athletics).

<sup>89</sup> See Phillip Morris, *Ohio State President E. Gordon Gee’s Joke Reveals that Bad Sportsmanship Isn’t Confined to the Athletic Department*, CLEVELAND.COM (Mar. 11, 2011, 5:05 AM), [http://www.cleveland.com/morris/index.ssf/2011/03/osu\\_president\\_gee\\_s\\_joke\\_reveal.html](http://www.cleveland.com/morris/index.ssf/2011/03/osu_president_gee_s_joke_reveal.html) (analyzing Gordon Gee’s comment and The Ohio State University’s lack of sportsmanship as a whole).

I said we need a czar. With all the problems, and with all my doubts about success, certainly I volunteer!

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