

2014

## Is It Ethical to Sell and Lower Tier College Sports Team to Play Another Team of Far Greater Competitive Skill

Gregory M. Huckabee  
*false*

Aaron Fox

Follow this and additional works at: <https://digitalcommons.du.edu/sej>

---

### Recommended Citation

Gregory M. Huckabee & Aaron Fox, Is It Ethical to Sell and Lower Tier College Sports Team to Play Another Team of Far Greater Competitive Skill, 16 U. Denv. Sports & Ent. L.J. 89 (2014).

This Article is brought to you for free and open access by Digital Commons @ DU. It has been accepted for inclusion in Denver Sports & Entertainment Law Journal by an authorized editor of Digital Commons @ DU. For more information, please contact [jennifer.cox@du.edu](mailto:jennifer.cox@du.edu), [dig-commons@du.edu](mailto:dig-commons@du.edu).

---

## Is It Ethical to Sell and Lower Tier College Sports Team to Play Another Team of Far Greater Competitive Skill

**IS IT ETHICAL TO SELL A LOWER TIER COLLEGE  
SPORTS TEAM TO PLAY ANOTHER TEAM OF FAR  
GREATER COMPETITIVE SKILL?**

GREGORY M. HUCKABEE AND AARON FOX<sup>1</sup>

“Upon the fields of friendly strife are sown the seeds that,  
on other fields, on other days, will bear the fruits of victory.”<sup>2</sup>

I. INTRODUCTION.

Intercollegiate sport and the NCAA have faced many controversies since its inception in 1910. One controversy which is gaining attention involves Football Bowl Subdivision (FBS) (formerly Division 1-A) higher competitive tier teams that pay Football Championship Subdivision (FCS) (formerly Division I-AA) lesser tier teams for games. The topic has been gaining attention because these games are considered noncompetitive. Some argue, however, competitiveness does not matter because these games are played by college athletes, and other economic values take precedence over considerations of competitiveness. This study will

---

<sup>1</sup> † † Associate Professor of Business Law, University of South Dakota. Prior to assuming his teaching duties, he served 27 years as a Regular Army Judge Advocate. He received his A.B., M.B.A., and J.D. from Gonzaga University in Spokane, WA; an LL.M. from The Judge Advocate General’s School in Charlottesville, VA; an M.S. in Education from Jacksonville State University in Jacksonville, AL; and M.A. in Congressional Studies from The Catholic University of America in Washington, D.C.; and an LL.M. from The George Washington University National Law Center in Washington, D.C. He served on the faculty at the U.S. Military Academy at West Point, N.Y. 1980-83, and as a Distinguished Visiting Professor at the U.S. Air Force Academy in Colorado Springs, CO. 2012-13. Aaron Fox performed Graduate Assistance for Professor Gregory Huckabee at the University of South Dakota in Vermillion, S.D in 2013-14. He received his B.B.A., M.B.A., and J.D. from the University of South Dakota.

<sup>2</sup> PAUL HOCH, RIP OFF THE BIG GAME: THE EXPLANATION OF SPORTS BY THE POWER ELITE 70 (1972) (quoting Gen. Douglas MacArthur).

*University of Denver Sports and Entertainment Law Journal*

---

show that over 90% of games played between FBS v. FCS teams are statistically noncompetitive. This study will discuss the underlying question, in view of such data, whether scheduling such FBS v. FCS games is ethical.

This is a two part study. Part I involves identifying and addressing the ethics of scheduling FBS v. FCS games, and an analysis of intercollegiate sport and its purpose. Part I of the study will discuss factors that affect intercollegiate sport and its true educational purpose, but also the purported ethics that surround it. The study will discuss the factors affecting why these games are non-competitive, and why such competition may be unethical in FBS v. FCS games. Finally, the study provides solutions how future FBS v. FCS football games can be ethically competitive when scheduled.

Part II of the study provides qualitative data, acquired through candid face-to-face interviews with 10 university presidents. The interviews provide insight as to why these university presidents believe intercollegiate sport exists, the ethics that apply to this subject in higher education, what they have learned from unethical conduct in the college sport arena, and whether they believe FBS v. FCS scheduling as currently practiced is ethical. In order to gain access and candor in the interview process, the responses are anonymous.

## II. DEFINITIONS.

### A. Ethics.

While reasonable minds may sometimes differ, French philosopher François-Marie Arouet, also known as Voltaire, set down a helpful first step for intellectual inquiry. He once stated, “Before you address me, define your terms.”<sup>3</sup> Educator Socrates, 2500 years ago, gave us a starting point by observing “Ethics consists of

---

<sup>3</sup> Darrell Anderson, *Define Your Terms*, SIMPLE LIBERTY (last visited Mar. 8, 2014), [http://www.simpleliberty.org/main/define\\_your\\_terms.htm](http://www.simpleliberty.org/main/define_your_terms.htm).

knowing what we ought to do.”<sup>4</sup> Socrates’ fellow Greeks responded to his wisdom by sentencing him to drink poison hemlock. Another philosopher Robert Solomon traces the word ethics to the Greek word *ethos* which means character or custom. His historical research suggests that ethics “...[B]egins with a concern for the individual—including what we blandly call “being a good person”—but it is also the effort to understand the social rules which govern and limit our behavior, especially those ultimate rules—the rules concerning good and evil—which we call morality.”<sup>5</sup>

Yet another Greek elucidated ethics further. Aristotle’s consideration of ethics observes “It is thought that every activity, artistic or scientific, in fact every deliberate action or pursuit, has for its object the attainment of some good. We may therefore assent to the view which has been expressed that ‘the good’ is ‘that at which all things aim.’”<sup>6</sup> Pursuit of the “good” involves values. Thomas Davitt in his *Ethics in the Situation* argues “Ethics can be taken to mean philosophical value-judging and deciding within a context which is philosophical only.”<sup>7</sup> Richard T. De George in his epic *Business Ethics* observes:

Ethics studies morality. *Morality is a term used to cover those practices and activities that are considered importantly right and wrong; the rules that govern those activities; and the values that are embedded, fostered, or pursued by those activities and practices...*Hence, ethics presupposes the existence of morality, as well as the existence of moral people who judge right from wrong and generally act in accordance with norms they accept and to which they and the rest of society hold others.<sup>8</sup>

---

<sup>4</sup> Claire Andre & Manuel Velasquez, *Can Ethics be Taught?*, SANTA CLARA UNIV. (Mar. 8, 2014),

<http://www.scu.edu/ethics/publications/iie/v1n1/taught.html>.

<sup>5</sup> ROBERT C. SOLOMON, *MORALITY AND THE GOOD LIFE* 3 (1984).

<sup>6</sup> *THE ETHICS OF ARISTOTLE* 25 (J.A.K. Thompson trans. 1953).

<sup>7</sup> THOMAS DAVITT, *ETHICS IN THE SITUATION* 20 (1970).

<sup>8</sup> RICHARD T. DE GEORGE, *BUSINESS ETHICS* 19 (2006).

*University of Denver Sports and Entertainment Law Journal*

---

When considering ethics as a form of inquiry, Paul W. Taylor defines ethics as “[I]nquiry into the nature and grounds of morality where the term morality is taken to mean moral judgments, standards and rules of conduct.”<sup>9</sup> When considering ethics in terms of simple rectitude, “Ethics has also been called the study and philosophy of human conduct, with an emphasis on determining right and wrong.”<sup>10</sup> These sources would lead us to believe ethics is not only about doing good, it is also about doing right. This leads us to our next definition inquiry.

### B. Sport.

What is meant by sport? Sports enthusiasts and amateur participants likely agree that professional sports and amateur sports are not the same thing. One historiographer offers: “In summary it can be said that sport, as a culturally valued practice, can be thought of as: A competitive rule-bound physically demanding activity in which its internal goals and standards are pursued in a moral way for their own sake.”<sup>11</sup> But to what ends?

Like every other instrument that man has invented, sport can be used for good or evil purposes. Used well, it can teach endurance and encourages a sense of fair play and a respect for rules, coordinated effort and subordination of personal interest to those of the group. Used badly it can encourage personal vanity and group vanity, greedy desire for victory and hatred for rivals, an intolerant esprit de corps and contempt for people who are beyond a certain selected pale.<sup>12</sup>

---

<sup>9</sup> PAUL W. TAYLOR, PRINCIPLES OF ETHICS: AN INTRODUCTION TO ETHICS 1 (1975).

<sup>10</sup> O.C. FERRELL, JOHN FRAEDRICH & LINDA FERRELL, BUSINESS ETHICS: ETHICAL DECISION MAKING AND CASES 5 (6th ed., 2005).

<sup>11</sup> PETER J. ARNOLD, SPORTS, ETHICS, AND EDUCATION 16 (1997) [hereinafter Arnold].

<sup>12</sup> *Id.* at 8-9.

*University of Denver Sports and Entertainment Law Journal*

---

Good or evil purposes, sense of fair play, respect for rules, greedy desire for victory, all seem to implicate values. Peter Arnold argues "...[T]he historical normative framework associated with sport is essentially an ethical one."<sup>13</sup> If true, what are sports' intrinsic ethical values?

C. Moral Values.

While culture affects moral values, historically there are a number of identifiable values that are viewed as intrinsic to sport. "Respect, leadership, generosity, courage, compassion, teamwork, self-reliance, self-discipline, perseverance, fair play, sportsmanship, magnanimity, concern for others. The concept of the practice of sport, it has been suggested, is intrinsically concerned with moral value."<sup>14</sup> So if ethics involves moral values such as those listed above, and moral values are inextricably a component of sport, is this important and who should care?

If sport is viewed as a transformative part of the overall collegiate educational experience, the moral values previously listed can be characterized as intrinsic values of the sport—important in learning and character development in and of themselves. Like all intrinsic moral values and ethics, they are subject to being overwhelmed by external ones. When reviewing the present Division I football financial arms race, schools are increasingly finding themselves in the external moral value and ethics education business, rather than the intrinsic one. Therein lies the pitfall. "Their collective message is that the intrinsic values of sport are replaced by those that are external to it, there is the distinct possibility that it will be manipulated or worse irredeemably undermined and corrupted."<sup>15</sup>

---

<sup>13</sup> *Id.* at 39.

<sup>14</sup> *Id.* at 5.

<sup>15</sup> *Id.*

*University of Denver Sports and Entertainment Law Journal*

---

What external values might be connected to the intercollegiate sport of football that can undermine internal ones? Would the reader be surprised to see power, status, prestige, and money as external values that could corrode or corrupt football's internal ones?<sup>16</sup> "Put differently institutions are likely to corrupt practices when they demonstrate an undue interest in the promotion and extension of external goods at the expense of the preservation and cultivation of internal ones."<sup>17</sup> Before proceeding further, it is enlightening to review what ethical standards apply to college athletics.

### III. THE ROLE OF THE NCAA IN SETTING ETHICAL STANDARDS.

The basic ethical standard for NCAA member schools is found in the NCAA Handbook, under **Commitments to the Division I Collegiate Model** that states: "**Commitment to Integrity and Sportsmanship**...All individuals associated with intercollegiate athletics programs and events should adhere to such fundamental values as respect, *fairness*, civility, honesty, responsibility, academic integrity and *ethical conduct* (emphasis added). These values should be manifest not only in athletics participation, but also in the broad spectrum of activities affecting the athletics programs."<sup>18</sup> This ethical standard is reiterated in rules **2.4 The**

---

<sup>16</sup> *Id.* at 17. "Whereas a practice is concerned with its own internal good, standards of achievement and conduct, institutions, although expressing concern with these same things, are characteristically concerned as much, if not more, with the control and distribution of external goods in the form of power, status, prestige and money. When a practice like sport becomes institutional, its organization and administration become bureaucratized. Officials are expected to fulfill a number of particular functions concerned with such matters as its promotion, sponsorship, and ritualization." *Id.*

<sup>17</sup> *Id.* at 19.

<sup>18</sup> NCAA ACADEMIC AND MEMBERSHIP AFFAIRS, NCAA DIVISION I MANUAL XIV (2013), available at [http://grfx.cstv.com/photos/schools/loyc/genrel/auto\\_pdf/2013-14/misc\\_non\\_event/NCAAManual.pdf](http://grfx.cstv.com/photos/schools/loyc/genrel/auto_pdf/2013-14/misc_non_event/NCAAManual.pdf).



**Principle of Sportsmanship and Ethical Conduct, and 20.9.1.4 The Commitment to Integrity and Sportsmanship.**<sup>19</sup> This would appear to unequivocally affirm the NCAA is committed to ethical behavior—good and correct moral conduct applying the earlier definitions in context.

The NCAA further requires in another rule a **The Commitment to Student-Athlete Well-Being**. Intercollegiate athletics programs shall be conducted in a manner designed to enhance the well-being of student-athletes who choose to participate and to prevent undue commercial or other influences that may interfere with their scholastic, athletics, or related interests.<sup>20</sup> Reasonable minds might agree that power, status, prestige, and money are external values that could corrupt these ethics. But how serious a threat are these external values to the NCAA ethical standards with respect to Division I football?

#### IV. THE THREAT OF EXTERNAL VALUES AND COMPETITION.

There are at least two views about the moral value of competition. The first is the positivist view “that holds that competition is a precondition of personal development and social progress and that it provides a framework from which benefits and burdens can be distributed fairly and freely. Such a framework it is argued is necessary if such qualities as initiative resource and independence are to be fostered and preserved.”<sup>21</sup> This is a time honored foundational purpose for sport at the intercollegiate level. But, when infected by the corrosion of external values, can the positivist value of competition be discredited?

The second view of competition’s value holds “The negativist view, on the other hand, maintains that competitive situations

---

<sup>19</sup> *Id.* at 4, 344-45.

<sup>20</sup> *Id.* at 345.

<sup>21</sup> Arnold, *supra* note 11, at 32.

*University of Denver Sports and Entertainment Law Journal*

---

threaten cooperative ventures and help undermine worthwhile personal and social relationships and form a vicious distinction between winners and losers. Competition, it is said, is often the source of envy, despair, selfishness, pride and callousness.”<sup>22</sup> When external values such as power, status, prestige, and money are sought and rewarded within the model of Division I football competition, might internal values be corrupted? If so, why would an educational system that promotes this be deemed ethical?

A. The Cartel.

The NCAA is admittedly something of a cartel. The worst kept secret is that the NCAA profits from the commercialism of collegiate sports. Perhaps Harvard’s president Charles Eliot characterized the ethical dilemma best during his college’s early experience with football observing, “Deaths and injuries are not the strongest argument against football. That cheating and brutality are profitable is the main evil.”<sup>23</sup>

When it comes to the emotionally charged popular sport of football, especially at the Division I level, it is difficult to get a truly unbiased review of the ethical climate and challenges in play—enter The John S. Knight Foundation. This is a nonprofit organization supporting transformational ideas that promote quality journalism, advance media innovation, engage communities, and foster the arts. The Foundation established a commission (The Knight Commission on Intercollegiate Athletics) to explore college athletics and its alleged runaway commercialism. What follows, should be a wake-up call for even the most ardent intercollegiate Division I football supporter.

Conducting a closed hearing in 2001 in Washington, D.C. at the Willard Hotel, the Commission invited

---

<sup>22</sup> *Id.*

<sup>23</sup> Taylor Branch, *The Shame of College Sports*, THE ATLANTIC, Oct. 2011, at 83 (quoting Charles Elliot) [hereinafter Branch].

*University of Denver Sports and Entertainment Law Journal*

---

Sonny Vacaro to appear before it. He is known for building sponsorship empires at Nike, Adidas, and Reebok. Representing his commercial interests Vacaro candidly testified “We want to put our materials on the bodies of your athletes, and the best way to do that is to buy your school. Or buy your coach.” Commission member and president emeritus of Penn State Bryce Jordan asked, “Why should a university be an advertising medium for your industry?” Without hesitation Vacaro replied, “They shouldn’t, sir. You sold your souls, and you’re going to continue selling them. You can be very moral and righteous in asking me that question, sir, but there’s not one of you in this room that’s going to turn down any of our money. You’re going to take it. I can only offer it.”<sup>24</sup>

Is this what external value corrosion might look like that impacts ethical decision-making of intercollegiate Division I football? As author, historian, former Georgia Tech football player, and Pulitzer Prize winner Taylor Branch reported in his 2011 article, *The Shame of College Sports*,

...[U]niversities grab it. In 2010, despite the faltering economy, a single college athletic league, the football-crazed Southeastern Conference (SEC) became the first to crack the billion-dollar barrier in athletic receipts. The Big Ten pursued closely at \$905 million. That money comes from a combination of ticket sales, concession sales, merchandise, licensing fees, and other sources—but the great bulk of it comes from television contracts.<sup>25</sup>

“So what,” many fans may ask. Fielding 88 players and a like number of coaches, trainers, and support staff takes money.

---

<sup>24</sup> *Id.* at 81.

<sup>25</sup> *Id.*, at 82.

*University of Denver Sports and Entertainment Law Journal*

---

Money is not by itself inherently bad or evil. But it is an external value that can corrupt internal values. If that could be true, what might it look like at the Division I football level? To start with, what role does winning play as an external value? W.J. Morgan argues "...[T]he mania for winning, the widespread cheating, the economic and political trivialization of sport, the thirst for crude sensationalizing and eccentric spectacle, stars and celebrity, and the mindless bureaucratization are just some of the ominous signs."<sup>26</sup>

Everyone in intercollegiate athletics wants "to win." But at what border can that desire cross over into the terrain of corrosive external values that lead to unethical conduct? In arguing that "winning" and what it takes to sustain that advantage can breed corrupting external values, Peter J. Arnold asserts:

It is not a part of my present task to bring corroborative empirical evidence to substantiate such tendencies, though I am sure there would no great difficulty in doing this; rather it is to show at a conceptual level that when competition in sport is too heavily involved with the pursuit of external goals and and/or places too much emphasis on winning, the idea of sport as a culturally valued practice is more likely to become corrupted.<sup>27</sup>

Intrinsic values or goals such as respect, leadership, generosity, courage, compassion, teamwork, self-reliance, self-discipline, perseverance, fair play, sportsmanship, magnanimity, concern for others, can be adversely affected by external goals of power, status, prestige, and money. Historiographer Arnold connects the conceptual dots between internal and external values or goals concluding:

---

<sup>26</sup> WILLIAM MORGAN, *LEFTIST THEORIES OF SPORT: A CRITIQUE AND RECONSTRUCTION* 1 (1994).

<sup>27</sup> Arnold, *supra* note 11, at 22.

*University of Denver Sports and Entertainment Law Journal*

---

This is so because when the pursuit of external goals is seen to be more important than the pursuit of internal goals, the former take priority over the latter; that is to say the key characteristics of sport as a practice—the pursuit of its own skills, standards, and excellences for their own sake—get usurped. The ends in effect become reduced to means, means in the service of an extrinsic goal. The transformation of the intrinsic goals in sport as a practice into an instrumental means for the achievement of extrinsic goals or purposes, be they political, social or economic, is to corrupt and undermine it.<sup>28</sup>

B. The Knight Commission and the NCAA.

As far back as 1991 the Knight Commission studied college athletics and its growing conflict between internal and external values. Titling its first report “Keeping Faith With the Student-Athlete,” the Commission recognized the ethical tension observing “the commission’s “bedrock conviction” was that university presidents must seize control of the NCAA from athletic directors in order to restore the preeminence of academic values over athletic or commercial ones.” Ten years later, unsatisfied that its clarion call had been sufficiently heard, the Knight Commission issued a second report with an even stronger title “A Call to Action: Reconnecting College Sports and Higher Education.” The Commission reported “that problems of corruption and commercialism had “grown rather than diminished.”<sup>29</sup> Is the external value of “money” corrupting the internal values of intercollegiate sport?

1. Gold.

Commerce has set the mark of selfishness,  
The signet of its all-enslaving power,  
Upon a shining ore, and called it gold;

---

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at 87

*University of Denver Sports and Entertainment Law Journal*

---

Before whose image bow the vulgar great,  
The vainly rich, the miserable proud,  
The mob of peasants, nobles, priests, and kings,  
And with blind feelings reverence the power  
That grinds them to the dust of misery.  
But in the temple of their hireling hearts  
Gold is a living god, and rules in scorn  
All earthly things but virtue.<sup>30</sup>

What did English poet Percy Shelley have in mind when he penned these words? Did he recognize an inherent fatal attraction of money? Why is intercollegiate sport immune from this external value? The NCAA confesses that it is not. The first executive director of the NCAA Walter Byers, who served from 1951-1987, wrote in his 1997 memoir *Unsportsmanlike Conduct: Exploiting College Athletes*: “The college player cannot sell his own feet (the coach does that) nor can he sell his own name (the college will do that). This is the plantation mentality resurrected and blessed by today’s campus executives.”<sup>31</sup> This observation would appear to connect money and Division I football at some level.

So how popular is football in intercollegiate athletics when considering the external value of money in its operation? The NCAA reports “In the 1988-1989 academic year, 524 schools were sponsoring collegiate varsity football teams. By 2003-2004, the number of varsity teams had increased 18% to 621, involving 59,980 participants.”<sup>32</sup> Clearly football has a greater participation

---

<sup>30</sup> Percy Bysshe Shelley, *QUEEN MAB*, (The Complete Poetical Works of Shelley, Percy Bysshe Shelley, Thomas Hutchinson ed., Oxford University Press, London, 1961. p.762) (1813).

<sup>31</sup> WALTER BYERS & CHARLES HAMMER, *UNSPORTSMANLIKE CONDUCT: EXPLOITING COLLEGE ATHLETES* 390-91 (1997).

<sup>32</sup> Randall Dick et al., *Descriptive Epidemiology of Collegiate Men’s Football Injuries: National Collegiate Athletic Association Injury Surveillance System, 1988-1989 through 2003-2004*, *J. ATHL TRAIN.*, Apr.-June 2007, at 221 available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1941296/> [hereinafter Dick et al.].

*University of Denver Sports and Entertainment Law Journal*

---

rate than swimming, volleyball, or baseball. What are the economics of such an intercollegiate program? Former NCAA leader (2003-2009) Myles Brand argues the economics of college sports is the result of a smoothly functioning free market system.<sup>33</sup> Assuming he is correct, where might the external value line be between amateurism and commercialism? On one hand, the NCAA sanctioning of Georgia football wide receiver A.J. Green for selling his own jersey from the Independence Bowl to raise funds for his spring vacation would appear to support amateurism. While Green received a four game suspension for profiting from his amateurism, however, the University of Georgia continued to sell replicas of Green's famous "No. 8 jersey for \$39.95 and up."<sup>34</sup>

Amateurism implies non-paid volunteers while commercialism normally involves payment of some form in exchange for a product or service.

Last year [2010], CBS Sports and Turner Broadcasting paid \$771 million to the NCAA for television rights to the 2011 men's basketball tournament alone. That's three-quarters of a billion dollars built on the backs of amateurs—on unpaid labor. The whole edifice depends on the players' willingness to perform what is effectively volunteer work.<sup>35</sup>

Reflecting back on NCAA founding executive director Byers' observation about schools selling their players' for money, how should the NCAA's licensing of football and players likenesses to video-game manufacturers be viewed—in support of amateurism or commercialism?

One such NCAA deal in 2008 through IMG College to Electronic Arts reportedly sold 2.5 million copies. Recog-

---

<sup>33</sup> Branch, *supra* note 23, at 94.

<sup>34</sup> *Id.* at 94.

<sup>35</sup> *Id.* at 93.

*University of Denver Sports and Entertainment Law Journal*

---

nizing the ethical implications of profiteering from amateur athletes, former Ohio State president and current chancellor of the Maryland University system Brit Kirwan confessed “there were “terrible fights” between the Knight Commission and the NCAA over the ethics of generating this revenue.”<sup>36</sup>

Why should the Knight Commission studying the ethics of intercollegiate football be concerned over the ethics of generating this revenue? Could it be that the external value of money might corrode the internal values of sport? The road to hell is said to sometimes be paved with good intentions. Nevertheless, corruption scandals keep the NCAA’s investigations division in a full employment mode. What is the one common denominator in these corruption scandals? Might it be the external value of money?

The University of Southern California was sanctioned by the NCAA after finding star running back Reggie Bush and his family received improper benefits while playing for USC. Bush even had to return his Heisman Trophy received in 2005. Then there was Auburn’s quarterback—Cam Newton’s allegations that his father had used a recruiter to solicit up to \$180,000 from Mississippi State in exchange for his son’s matriculation from there after junior college. How about Ohio State’s highly successful football coach Jim Tressel who resigned after the NCAA alleged he had “feigned ignorance of rules violations by players on his team? At least 28 players over the previous nine seasons, according to *Sports Illustrated*, had traded autographs, jerseys, and other team memorabilia in exchange for tattoos or cash at a tattoo parlor in Columbus in violation of NCAA rules.” Then of course, there is the celebrated NCAA investigation of the University of Miami booster who gave millions in cash and services to more than 70 football players over eight years.<sup>37</sup> The list of similar corruption can go on for far more pages than space permits, but the point is—

---

<sup>36</sup> *Id.* at 93.

<sup>37</sup> *Id.* at 82.



*University of Denver Sports and Entertainment Law Journal*

---

this is what corruption in sport looks like. At its basis, corruption has everything to do with money, especially lots of it. Is this what exploitation of the skills and fame of young athletes looks like? Do the ends of meeting ever burgeoning athletic program costs justify the means of exploiting the unpaid labor of young alleged amateur student-athletes?

2. The Necessity of More.

So what does the coaching part of the economic playing field look like? Duke economist Charles Clotfelter conducted a research study of college coaches discovering the average compensation for head coaches at public universities is now more than \$2 million—growing 750 percent (adjusted for inflation) since 1984 while being 20 times the cumulative 32 percent raise for college professors. The question naturally arises—which has a more lasting impact on the intellectual growth of the student-athlete?<sup>38</sup>

Pulitzer Prize columnist George Will is an athletics aficionado. He writes in the *Washington Post*:

Gregg Easterbrook, an intelligent journalist who nevertheless loves football, has a new book (“*The King of Sports: Football’s Impact on America*”) that is hardly a love letter. “At many big college sports programs,” he writes, “the athletic department is structured as an independent organization that leases campus space and school logos, then operates a tax-exempt business over which the school’s president and board of trustees have little control.”<sup>39</sup>

---

<sup>38</sup> *Id.* at 93.

<sup>39</sup> George Will, *Out of Bounds*, WASH. POST, Sept. 19, 2013 available at [http://www.washingtonpost.com/opinions/george-f-will-college-football-is-out-of-bounds/2013/09/18/0cb37c38-1fb9-11e3-8459-657e0c72fec8\\_story.html](http://www.washingtonpost.com/opinions/george-f-will-college-football-is-out-of-bounds/2013/09/18/0cb37c38-1fb9-11e3-8459-657e0c72fec8_story.html).

*University of Denver Sports and Entertainment Law Journal*

---

Is this a problem? What role does money play with this athletic business leadership? Both Will and Easterbrook note “Auburn’s head coach, Gene Chizik, was paid \$3.5 million that year [when it won the 2010 championship and had \$37 million in football revenue] (in most states, the highest paid person on the public payroll is a university coach), a sum justified because, said Auburn’s \$600,000 athletic director, “Coach Chizik is a great mentor to our student-athletes.” If this is true, then why, two years later, did Chizik’s mentoring greatness count for less than his 3-9 win-loss record? Despite the alleged mentoring greatness, he was fired, the blow cushioned by a \$7.5 million buyout, more than the approximately \$5 million Auburn had paid to buy out Chizik’s predecessor. Then in 2012, the University of Tennessee fired its losing coach with a \$5 million severance—and the athletic department (annual revenue, more than \$70 million) was given a three-year exemption from its annual \$6 million contribution to the university’s academic side...In 2011, Texas Tech gave its head coach a \$500,000 raise while freezing faculty salaries.<sup>40</sup> Easy come, easy go. But what impact might this external value have on student-athletes?

George Will notes that “the NCAA has approximately 70 pages of stern rules about dealing with recruits:

“An institution may provide fruit, nuts and bagels to a student-athlete at any time.” Cookies? See the relevant regulation. In 2008, book author “Easterbrook notes, the Raleigh News & Observer “reported that the University of North Carolina football and men’s basketball players were enrolled in email Swahili ‘courses’ that had no instructors and never met and always led to A’s.” There was, however, no evidence of cookie corruption.<sup>41</sup>

---

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

*University of Denver Sports and Entertainment Law Journal*

---

Is this what external value corrosion of internal values looks like? Why is this ethical? Is this a pandemic, or limited to a few miscreant schools mesmerized by gold?

Rachel Bachman, in her Wall Street Journal article “*Colorado State University Bets on a Stadium to Fill Its Coffers*”, reported:

Faced with declining state funding, CSU is raising money to build a \$246 million, 40,000-seat football stadium on its Fort Collins campus. University President Tony Frank says the new facility will help build a winning football team while advancing one of the school’s highest priorities: attracting more out-of-state students paying higher tuition. Skeptics, including some alumni and faculty, see the project as a boondoggle—especially for a team that plays in a relatively low-profile athletic conference and doesn’t sell out its current 32,500-seat stadium off campus. ...To secure the project, the school said it must raise half the stadium’s cost, \$125 million, in private donations and pledges by October 2014. It will sell bonds to cover the rest...No academic research exists to support the notion that a new stadium helps a college football team win, experts say. Nor will it necessarily attract more fans.<sup>42</sup>

By comparison, the “universities of Akron and Minnesota both moved from off-campus to new on-campus stadiums in 2009. Both saw initial attendance bumps before attendance dropped below pre-new-stadium levels. Both teams have worse records since the stadium opened...Akron’s athletic department is generating less from annual ticket sales and other direct sources

---

<sup>42</sup> Rachel Bachman, *Colorado State University Bets on a Stadium to Fill its Coffers*, WALL ST. J., Sept. 27, 2013, available at <http://online.wsj.com/news/articles/SB10001424052702303983904579093432304563144>.

*University of Denver Sports and Entertainment Law Journal*

---

that its \$2.2 million in annual debt service on the \$65 million stadium...<sup>43</sup>

Bachman concludes with a poignant analysis:

In a 2004 study of the University of Oregon, researchers Jeffrey Stinson and Dennis Howard found that significant increases in private donations to athletics were associated with decreases in giving to academics. A 2007 study by researchers Brad Humphreys and Michael Mondello that examined nationwide data over 20 years concluded that when athletic success spurred increases in private donations, the increases usually lasted only as long as the success, and tended to be concentrated in athletics.<sup>44</sup>

Admittedly, college football as a sport has evolved over time into a very big business. Football teams at Texas, Florida, Georgia, Michigan, and Penn state---to illustrate, earn between \$40 million and \$80 million in profit annually. What does so much money in college sports beget? As Pulitzer Prize winning author Taylor Branch observes, “When you combine so much money with such high, almost tribal, stakes—football boosters are famously rabid in their zeal to have their alma mater win—corruption is likely to follow.”<sup>45</sup> Might not this be a significant reason why non-American colleges and universities have avoided this path? Would the reader be surprised to learn that “[T]he United States is the only country in the world that hosts big-time sports at institutions of higher learning”?<sup>46</sup> Why is that, do you suppose? Perhaps, because we can, but other nation-states can do this too, but elect not to. Why is that? What might they see that we culturally ignore?

---

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> Branch, *supra* note 23, at 82

<sup>46</sup> *Id.* at 82.

*University of Denver Sports and Entertainment Law Journal*

---

Perhaps the worst kept secret in collegiate athletics is that the financial pressures create incentives “to disregard obvious academic shortcomings and shortcuts....” among other things.<sup>47</sup> Is this how corrosive corruption of internal values or goals by external ones manifests itself? Addressing this specific connection, Glenn Harlan Reynolds writes in an expose in USA TODAY:

More than 50 classes offered by the African Studies department [at the University of North Carolina at Chapel Hill] and very popular with athletes, appear to not have actually existed. Some of these courses listed instructors who had not “supervised the course and graded the work,” and others “were taught irregularly,” a university review said. UNC’s chancellor and football coach lost their jobs. The African Studies department chair, professor Julius Nyang’oro, is under indictment for fraud.” In addition, it is asserted that “many UNC athletes can’t read or write....”<sup>48</sup>

Reynolds turns a floodlight on the salient problem of money in Division I football observing: “But “students” who are functionally illiterate strike at the very point of college—to educate.” Following up, Kevin Carey, director of the Education Policy Program at the new America Foundation writes that “UNC-Chapel Hill is not a coherent undergraduate institution. It’s a holding company...it’s the only possible explanation other than a huge, organization-wide conspiracy in which the university administration, department, and football team colluded to hand out fake grades to hundreds of athletes.” How pandemic is this money external value issue? “After the Chapel Hill scandals broke, CNN conducted an investigation of athletic programs, finding that at public universities, many football and basketball players are read-

---

<sup>47</sup> *Id.* at 100.

<sup>48</sup> Glenn Harlan Reynolds, *Higher Ed Sports Lower Standards*, USA TODAY, Jan. 15, 2014, at A.10, available at <http://www.usatoday.com/story/opinion/2014/01/13/higher-education-college-university-column/4440369/>.

ing at the eighth-grade level, making it doubtful that they're passing college classes."<sup>49</sup>

### 3. Saying "No" is Not an Option.

How intense is the "money" making external goal in Division I football? Another USA TODAY investigative report reveals: "The average compensation package for major-college coaches is \$1.81 million, a rise of about \$170,000, or 10%, since last season—and more than 90% since 2006."<sup>50</sup> If trajectory means something, the calculus says coaches' compensation will more than double in less than a decade. Does this present an ethical conflict of interest between coaches and players? If data-mining means something, the Delta Cost Project at the American Institutes for Research that was based on data from the U.S. Department of Education and data collected by USA TODAY Sports, provides fascinating reading. Their research reveals "Among FBS schools, median athletic spending per student-athlete increased by 51% from 2005 through 2010...while median academic spending per student rose by 23% in the same period." Perhaps Colorado physics professor Jerry Peterson, a member of the Coalition on Intercollegiate Athletics, an alliance of faculty senates from major football schools, captured it best when he said "I don't know how to slow this down. It's an arms race."<sup>51</sup>

Is greed an ethical issue, and if so, how do you distinguish unethical corruption from ethical and fair compensation? The Southeastern Conference (SEC) has the dubious honor of having the highest average compensation for its football head coaches. According to USA TODAY Sports' annual analysis of major-college football coaches' compensation, the SEC's 14 coaches receive

---

<sup>49</sup> *Id.*

<sup>50</sup> Erick Brady, Christopher Schnaars & Steve Berkowitz, *Colorado Banks on Football, and Coach Cashes in—Seeking Payoff, Colorado All-in on Football*, USA TODAY, Nov. 7, 2013, at A.1, A.9.

<sup>51</sup> *Id.*

more than \$3.3 million each. Not surprisingly this represents an average increase of nearly \$560,000 from the prior year [2012]. The Big Ten since 2011 has only increased its coaches' compensation a mere 36%. Reviewing the spectrum of coaches' compensation tipping the monetary scales, USA TODAY's report reveals the Big 12's 10 coaches receive an average of \$3,072,835, the Big Ten's 12 coaches get \$2,638,213, the Atlantic Coast's 11 coaches command \$2,277,210, the PAC 12's 11 coaches garner \$2,237,687, the Mountain West's 12 coaches collect \$874,954, while the Sun Belt's 8 coaches have to settle for \$552,536, and the players they coach—receive a free education.<sup>52</sup>

#### 4. Greed Gives Birth to the Ethical Dilemma.

The level of compensation paid to football coaches across the nation, especially at Division I, compared to what is provided players presents an ethical dilemma. When considering the possibility of corruption and ethical conflict of interest presented by these numbers, it brings to mind U.S. Supreme Court Justice Potter Stewart's famous aphorism. "I shall not today attempt further to define the kinds of material I understand to be embraced within that shorthand description ["hard-core pornography"]; and perhaps I could never succeed in intelligibly doing so. But **I know it when I see it....**[*Emphasis added.*]<sup>53</sup> Are these "arms race" coaching salaries indicative of corruption?

An ethics umpire might question whether these athletic directors and coaches might be seen to have a financial conflict of interest. After all, they do get paid far more than their academic faculty counterparts. Conflicts of interest are endemic in every

---

<sup>52</sup> Steve Berkowitz, *SEC Tops in Coaches' Compensation, too*, USA TODAY, Nov. 8, 2013, at C.11, available at <http://www.usatoday.com/story/sports/ncaaf/2013/11/07/college-football-coaches-average-conference-salaries/3469293/>.

<sup>53</sup> *Jacobellis v. Ohio*, 378 U.S. 184 (1964) (Stewart, J., concurring) (regarding possible obscenity in *THE LOVERS*).

*University of Denver Sports and Entertainment Law Journal*

---

profession. Football, with its staggering sums, is no exception. Peter Arnold deduces the dichotomy observing: “What seems clear, as some recent critiques of sport have shown, is that the more the practice view of sport is used and abused by the pursuit of external goals and interests, the more perverted and corrupted it is likely to become. Instead of being personally ennobling and socially enriching there is danger of it becoming a vehicle of degradation and alienation.”<sup>54</sup> Corruption—unethical decision-making, unsurprisingly, results. “Put differently institutions are likely to corrupt practices when they demonstrate an undue interest in the promotion and extension of external goods at the expense of the preservation and cultivation of internal ones. What is needed in the use of sport management in society is working out an acceptable arrangement between the twin concerns of internal and external goods.”<sup>55</sup>

### C. THE BRIDGE OVER VERY TROUBLED WATERS.

Sport is about internal values we can characterize as good ethical ones— Respect, leadership, generosity, courage, compassion, teamwork, self-reliance, self-discipline, perseverance, fair play, sportsmanship, magnanimity, concern for others. External values— power, status, prestige, and money can corrupt internal ones. Money like power corrupts, lots of money like absolute power, corrupts absolutely. Ethical decision-making—ennobling, the good, the correct, is sacrificed on the altar of unethical practices brought about by the insatiable need and greed for money. In order to gain the type of financial resources needed to support the ever growing football kingdom, new opportunities must be sought to feed the pig, or in this case pigskin. One opportunity of choice is football game scheduling between Division I FBS (Football Bowl Subdivision) schools and FCS (Football Championship Subdivision) schools. FBS schools were formerly Division I A,

---

<sup>54</sup> Arnold, *supra* note 11, at 19.

<sup>55</sup> *Id.*



*University of Denver Sports and Entertainment Law Journal*

---

while FCS schools were a lower competitive division labeled Division I AA.

What is the financial incentive for an FBS school to schedule a football game with a lesser competitive FCS school? It is all about “the money.”

1. The Tennessee Tech Story.

Tom Oates sums up the money story best reporting:

[University of Wisconsin] UW will pay Tennessee Tech a flat fee of \$500,000 to show up in Madison, take a loss and go home. It’s a mutually beneficial financial arrangement: UW gets a home gate at a bargain rate and Tennessee Tech gets a paycheck that goes a long way in a small athletic department. There were fewer than 60 FBS-FCS matchups in 2005, when FBS schools, tired of paying \$750,000 to \$1 million for non-conference opponents from mid-major conferences, went looking for a cheaper alternative. FCS teams were happy to fill the void—at half the price. This year [2013], there are 110 such games. Of the 125 FBS teams, 106 will play FCS opponents.<sup>56</sup>

While this sounds inviting, the ethical question of competitive equity is in play. Is it ethical for an FBS school to schedule a game with a lesser competitive FCS school, with both knowing the competitive outcome before the game is played? “...FBS schools have won more than 90 percent of such matchups every year since 2007 and many of last week’s upsets were sprung by perennial

---

<sup>56</sup> Tom Oates, *Hopefully, FCS Foes off the Schedule Soon*, WIS. ST. J., Sept. 7, 2013 at B.1 available at [http://host.madison.com/sports/college/football/tom-oates-hopefully-for-uw-fans-fcs-opponents-are-on/article\\_a147fa0c-c6cb-519b-be30-d2f119d51341.html](http://host.madison.com/sports/college/football/tom-oates-hopefully-for-uw-fans-fcs-opponents-are-on/article_a147fa0c-c6cb-519b-be30-d2f119d51341.html).

*University of Denver Sports and Entertainment Law Journal*

---

FCS powers. ... Since 2007, however, the [Tennessee Tech] Golden Eagles are 0-9 against FBS teams, with the closest loss a 27-point setback at Iowa in 2011.”<sup>57</sup>

2. The Old Dominion Story.

“Maryland 47, Old Dominion University (ODU) 10.” Is this what a competitive football game looks like? “[ODU coach] Bobby Wilder knew what was coming. If he thought his team had a chance to beat East Carolina last week, he entertained no such thoughts going into the game against Maryland... Wilder’s post-game demeanor after the 47-10 Terps’ rout reflected a quiet resignation that the [ODU] Monarchs were in over their heads.”<sup>58</sup> From a football coach’s perspective, what does this actually mean? “They outplayed us,” he said simply, leaving it for others to add, “in every phase of the game.” “Outcoached us, too,” he volunteered.” “After a total team loss like this, Wilder couldn’t bring himself to pretend that anything other than Maryland’s clear advantage in size, talent and experience – including coaching experience – had something to do with ODU’s worst loss.”<sup>59</sup> So why would a coach schedule a game against such a superior opponent sporting a 90+<sup>0</sup>% chance of defeat?

Sports writer Bob Molinaro captures it observing: “While growing pains are one thing, the [ODU] Monarchs’ dreary afternoon brings into question the wisdom of scheduling three ACC teams this year [2013]. More than ever – with Pittsburgh and North Carolina still to come – it seems to be an overly ambitious undertaking.”<sup>60</sup> Enter the external goal. Why would an athletic

---

<sup>57</sup> *Id.*

<sup>58</sup> Bob Molinaro, *ODU Players Paying Price of an Ambitious Schedule*, VIRGINIAN - PILOT, Sept. 8, 2013, at C.7.

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

*University of Denver Sports and Entertainment Law Journal*

---

director and coach do this? “[T]he money is good – ODU will collect nearly \$1.2 million from the three games – but the payoffs can come at a price to the fragile young psyches in the locker room.”<sup>61</sup> Do the players matter ethically when the external goal of \$1.2 million outweighs all others?

3. The Oklahoma State Story.

Why the preoccupation with money? “Oklahoma State Football Coach Mike Gundy says, “Football pays the bills, so games are played for financial reasons... We are trying to build everything,” Gundy said, rattling off facility upgrades that are on the [Athletic Director] Holder’s to-do list.” “So football has to put that on their shoulders. We have to carry the load.”<sup>62</sup> Without remorse, athletic directors and coaches own up to the fiscal reality that “...[T]hese decisions may not always be correct, or popular, but they will be made for what we think are the right reasons.” The worst kept scheduling secret is “Schools outside the “power” leagues (and at the FCS level) schedule road games against heavyweight competition in exchange for big paychecks that keep their athletic departments running.”<sup>63</sup>

4. The UT-Martin Story.

Money buys stuff. Coaches, projects, programs, equipment all require acquisition power, as money hawkers/fundraisers claim. In University of Tennessee at Martin country, “coach Jason Simpson, whose Skyhawks open their season at UTC (Univ. of Tenn. at Chattanooga), on Aug. 29, are playing two FBS teams this season

---

<sup>61</sup> *Id.*

<sup>62</sup> Jimmie Tramel, *The Art of College Football Schedule-making: Marquee Foes, Bowl Eligibility are All Factors*, MCCLATCHY-TRIB. BUS. NEWS, Dec. 19, 2012 available at [http://www.tulsaworld.com/sportsextra/osu/the-art-of-college-football-schedule-making-marquee-foes-bowl/article\\_4177a07c-0461-5cfd-9bc2-e12ee7b8b6c9.html](http://www.tulsaworld.com/sportsextra/osu/the-art-of-college-football-schedule-making-marquee-foes-bowl/article_4177a07c-0461-5cfd-9bc2-e12ee7b8b6c9.html).

<sup>63</sup> *Id.*

and two next season. UT-Martin is working on redoing part of its stadium, and the guarantee games are helping finance the renovations.”<sup>64</sup> Without any reservation this might have a negative effect on his student-athletes, the football coach explains “I can’t go and raise the money that those guarantee games can pay, said Simpson, a former UTC offensive coordinator. “You’ve got to play one to pay the bills and you play the second one if you’ve got some projects in mind.”<sup>65</sup>

#### 5. The Towson State Story.

“When Towson athletic director Mike Waddell broached the idea with [Coach] Rob Ambrose of taking his football team down to play LSU in Baton Rouge for the fourth game of the 2012 season, the [Towson] Tigers’ coach was decidedly lukewarm. ...At the time, Towson was coming off a 1-10 season in 2010 after going 2-9 in Ambrose’s first year at his alma ter.”<sup>66</sup> Why would an athletic director and football coach knowingly, intelligently, willingly schedule a game with an opponent with whom they know in advance they cannot compete because of size, weight, talent, experience, and much more? “...The hefty payday--\$510,000, according to [Towson athletic director] Waddell—certainly factored into the decision to play the highest profile opponent in the history of Towson football.”<sup>67</sup>

While Towson athletic elders sold their team to a contest in which they knew they were not competitive, it was not the first or probably the last time. “...Towson played its first game against an FBS school when it faced Navy in the 2008 season opener, losing 41-13. The Tigers also lost at Northwestern (47-14) in Ambrose’s

---

<sup>64</sup> John Frierson, *Football Championship Subdivision Watchful About Departures, Money Games*, CHATTANOOGA TIMES FREE PRESS, July 10, 2013.

<sup>65</sup> *Id.*

<sup>66</sup> Don Markus, *At LSU, Towson Challenges—and seeks—greatness*, BALTIMORE SUN, Sept. 29, 2013, at D.6

<sup>67</sup> *Id.*

first game in 2009, at Indiana (51-17) to open its 2010 season and at Maryland (28-3) last year. Towson opened this season [2012] with a mistake filled 41-21 loss at Kent State.<sup>68</sup> Nevertheless they see no shame in using and abusing their student-athletes in this manner—for money. “...I know when I took the job, the best we could get around here was the local Comcast affiliate. We weren’t very good, and it’s all about the money,” Ambrose said. “What’s at stake: The biggest upset in college football history? Pipe dream aside, Towson will be entering one of the most intimidating venues to play one of the most dominant programs over the past few years.”<sup>69</sup>

What did Towson’s athletic leaders sell their team to face? “LSU is undefeated in its past 40 games against nonconference opponents, an NCAA record. The program has not lost at Tiger Stadium since the 2009-10 season. Towson, on the other hand, is looking for its first win against an FBS opponent, with a 0-6 all-time record.”<sup>70</sup> Is this what ethical behavior looks like in Division I football? It will be argued that the external goal of money makes the scheduling decision ethical. But let’s test that theorem further.

#### 6. The Whole Story.

John Feinstein fired a literary salvo in his indicting Washington Post article *College Football: FBS vs. FCS Games Need to be Limited*:

The following scores from college football games played Saturday [Sep. 21, 2013] may not be suitable for family viewing. Please be certain small children are not allowed to see them: Ohio State 76, Florida A&M 0; Louisville 72, Florida International 0; Washington 56, Idaho State 0; Miami [Hurricanes] 77, Savannah State 7. Games

---

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

*University of Denver Sports and Entertainment Law Journal*

---

like this have to stop. They have to stop because they are unfair—first and foremost—to the overmatched players who are publicly humiliated and beaten up against opponents who are much bigger, much stronger and much faster at every position. Florida A&M and Florida International combined for 100 *yards* of offense on Saturday against teams that totaled 148 *points*. This is competition? Savannah State has played three Football Bowl Subdivision opponents in the past two seasons to pad the athletic department's coffers. The Tigers have lost 84-0 to Oklahoma State, 55-0 to Florida State—in a game that was called off with nearly nine minutes left in the third quarter because God decided he had seen enough and started a thunderstorm—and now 77-7 to Miami. That's 216-7, and it could have been worse.<sup>71</sup>

Unashamedly, Feinstein reports “The excuse given by athletic officials at places like Savannah State is that the payout for allowing their “student-athletes” to get pummeled this way helps sustain the athletic department financially.”<sup>72</sup> But does this truly matter because “money” is the undisputed primary reason why such teams are “sold” to the giants for practice? Why is this ethical? Feinstein charges moral and ethical corruption at the highest level maintaining “...[T]here are games that shouldn't be played and should not be allowed... Old Dominion, also a very good FCS program, opened its season by giving up 99 points to East Carolina and Maryland. It is sickening to hear fraud presidents and NCAA executives talk about wanting what is best for the “student-athlete.”<sup>73</sup>

#### D. PLAYING THE ODDS.

---

<sup>71</sup> John Feinstein, *College Football: FBS vs. FCS Games Need to be Limited*, WASH. POST, Sept. 23, 2013 [hereinafter Feinstein].

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

*University of Denver Sports and Entertainment Law Journal*

---

While there are always upsets in football as in all sports, norms can be determined. A study by Caroline E. Faure and Cody Cranor of smaller FCS (Football Champion Subdivision) teams playing larger FBS (Football Bowl Subdivision) schools noted in 2007 that 22 NCAA Division I-AA (FCS level) schools played Division I-A (FBS level) teams. What outcome? 21 of the 22 FBS schools defeated their weaker FCS level opponents. But were they competitive? “In the I-AA [FCS] teams’ losses, no team came closer than two touchdowns and the *average* margin of loss was 32.8 points. (emphasis added).<sup>74</sup>

Is this competitive and does it matter? In 2009, 91 FCS ‘David’ teams braved ‘Goliath’ FBS juggernauts. Outcome? Five, that is 5.4%, of the FCS schools emerged victorious. For the five heroic FCS schools, the margin of victory proved only 6 points. Among the five losing FBS schools, only one came away with a season winning record, so the meager five FCS victories may be somewhat hollow in fact.<sup>75</sup>

Also in 2009, seven FCS teams played FBS teams ranked in the Top 25—the chance of a lifetime. The chance proved elusive with none of the FCS teams prevailing/winning their games. The “chance of a lifetime” saw the Goliath FBS teams outscoring their David FCS opponents 335-40 with an average margin of victory at 42 points.<sup>76</sup> Is competitiveness an ethical issue in the Division I sport of football, and does it matter? Some argue competitiveness does not matter. They are all athletes, so while top tier FBS schools are better athletes, FCS athletes are inferior athletes, but who cares. One plays the other principally for money. Ethics plays no role. Or does it?

---

<sup>74</sup> Caroline E. Faure & Cody Cranor, *Pay for Slay*, J. ISSUES IN INTERCOLLEGIATE ATHLETICS, 2010, at 194.

<sup>75</sup> *Id.* at 195.

<sup>76</sup> *Id.* at 205.

*University of Denver Sports and Entertainment Law Journal*

---

Would an FCS school play an athletically superior FBS school for free or next to it? Most sports commentators would probably say “no”. Why? The primary purpose of the game is the external goal of playing for money—lots of it, and the secondary goal is athletic improvement. Comparing a different, but yet almost equally violent sport, can the issue be illuminated? While a boxing coach should be ethically reluctant to match a boxer who has had one match against a competitor who has had far more experience, weighs more, possesses more athletic skill and experience, and is used to competing at a higher boxing level, why would it be ethical to do it in football or any other sport? The ethical point is how should such things be judged? We should all agree “it matters.”

Do stronger and bigger opponents present a greater risk of injury (a subject we will turn to later)? With FBS teams having 85 scholarships to 63 for FCS schools, does this have consequences? As confirmed by athletic directors interviewed for Faure and Cranor’s study, “FBS players are traditionally bigger and stronger. Typically, FCS schools cannot attract the best football players in the country, so the FCS school goes in as the “decided underdog.”<sup>77</sup>

While hope springs eternal from the human breast that an FCS team can compete its way to be among the 5.4% victors in a 2009 type season, reality should ethically play a role. Is it foreseeable that Goliath might hurt David in a *mano on mano* matchup? On the one hand, athletic directors argue “Obviously with 85 scholarships to 63 scholarships and then the quality of the players they have, they probably have a few more playmakers than we do. But we feel that our kids can hang in there. You know, we can play a game like that, at least one or two of them a year. I don’t

---

<sup>77</sup> *Id.* at 201-02.



think we can play eight to ten or twelve games a year like that...but we can play with once or twice.”<sup>78</sup>

Then reality or the worst kept secret in football looms. Athletic directors interviewed for the Faure and Cranor study conceded “Because of the physical differences among the players, several FCS athletic directors acknowledged having *significant* fear of their players getting hurt while playing FBS teams... [Other interviewed AD’s] also felt the threat of injury to their players was significant.”<sup>79</sup> Does this remind you of one of WWII General George Patton’s soldiers who observed after one of the General’s pre-battle pep talks—“yeah, with our blood and his guts.”

#### E. ROUND UP THE USUAL SUSPECTS.

Athletic directors are fundamentally business managers for their collegiate athletic programs. They focus and salivate like a Pavlovian greyhound when currency flows. They are mesmerized with how much money is actually flowing into the growing Division I football entertainment market.

The commissioners of the 10 conferences that play Division I football have signed television contracts that will push the value of the college football postseason to \$5.5 billion over 12 years, with the five major conferences — the SEC, Big 12, ACC, Big Ten and Pac-12 — expected to receive the bulk of TV revenue... According to USA Today, there is even more money to be had on top of the \$5.5 billion. The Rose, Sugar and Orange bowls will spread an additional \$187.5 million among the five power conferences. How many zeros will be on these checks written to member schools? No one is quite sure, because the conferences are closely guarding the details of the contract. The SEC, which paid its 14 member schools \$20.7 million each in August,

---

<sup>78</sup> *Id.* at 202.

<sup>79</sup> *Id.* at 203.

*University of Denver Sports and Entertainment Law Journal*

---

could have another \$12 million to \$15 million to give them because of the new format. And the SEC will start its own TV network in 2014, which could mean a further \$1 million for each of its schools. This means the 14 SEC schools could each be receiving \$35 million or more from the conference by 2015, on top of the revenue they generate themselves with licensing, concessions and ticket sales.<sup>80</sup>

But do university presidents also respond to cash flow opportunities? "... Alabama's athletic department gave \$6.8 million back to the school's academic side for 2011-12, according to a university spokesperson. Len Elmore, an attorney, a basketball analyst and a member of the Knight Commission, scoffed at that number. "What did Alabama generate in revenue with football — \$60 million, \$70 million, \$80 million?" he asked. "So they gave back less than 10 percent?"<sup>81</sup>

This leads to the question how much money is spent on the student non-athlete vs. the athlete?

... A new tool released by the Knight Commission on Wednesday compares the amount of money spent on football players with spending on the typical student, school by school. The differences are staggering, especially among schools with Division I football programs. For instance, according to 2011 data, the average spending at the 12 SEC schools per student was \$13,229, while the average amount spent per SEC scholarship or nonscholarship football player was \$180,626, taking into account total football operating expenses and the cost of the athletic scholarship....<sup>82</sup>

---

<sup>80</sup> Ray Glier, *Academics Left out of College Football's Multi-billion Dollar Bonanza*, ALJAZEERA AM. (Dec. 4, 2013, 9:01 AM), <http://america.aljazeera.com/articles/2013/12/4/academics-left-outofcollegefootballs multibilliondollarbonanza.html>

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

*University of Denver Sports and Entertainment Law Journal*

---

1. All the King's men.

A fascinating study conducted by Caroline Faure and Cody Cranor interviewed six athletic directors (AD) inquiring why lesser competitive FCS schools take the bait of playing superior FBS schools. All six AD's owned up to the external goal as being the driving force for their scheduling. "Without question, money was the primary reason FCS athletic directors decided to schedule FBS opponents."<sup>83</sup> The insatiable need to continually upgrade athletic facilities and meet Title IX compliance for women's sports drove them like cattle to make these games.

"Our holdback was roughly \$630,000 from the state appropriated funds and one of those game guarantees was \$510,000. [If we didn't play the game] I was going to lose \$510,000 from our budget and I just didn't know how we were going to do it. We could have easily picked up another school for \$350,000 or \$400,000 that was a lesser school and we would have competed a little bit better, but still would have had to make up that other number. \$500,000 is the budget of a small sport at our school and we couldn't afford to drop another sport. We're at our minimums for NCAA sports for Division I already. If we dropped another sport we'd have to drop to Division II. Playing the game was one of our only options."<sup>84</sup>

How seductive is scheduling these games once a school has tasted the revenue? "Five of the six AD's contended the payouts are addicting and they need "to count on at least one guarantee game each year to fuel their athletic budgets amidst continuing fiscal crises at their universities."<sup>85</sup> Without remorse or ethical

---

<sup>83</sup> Faure, *supra* note 74, at 197.

<sup>84</sup> *Id.* at 199.

<sup>85</sup> *Id.*

*University of Denver Sports and Entertainment Law Journal*

---

concern, one AD said “he would also continue to schedule big guarantee games in future years and that with more budget cuts looming, he might even look for more FBS opponents to fill his three-game non-conference schedule.”<sup>86</sup> Some argue this is not about ethics. This is about money. The need to support always increasing athletic budgets transforms the ethical issue into an economic one which, as an external goal, corrupts or decimates the internal ones.

## 2. No Conflict of Interest.

Aside from the data above, are there any apparent reasons why football has such an insatiable appetite for the external goal of money? Why does football need so much money if the players are not getting paid at all? The USA TODAY reports a few reasons, which may give life to a possible conflict of interest allegation:

The coaches’ salaries:

Troy Calhoun (more than his CINC)	Air Force Academy	\$882,000
Nick Saban	Alabama	5,316,667
Rich Rodriguez	Arizona	1,500,000
Todd Graham	Arizona State	3,000,000
Gene Chizik	Auburn	3,500,000
Art Briles	Baylor	2,232,807 <sup>87</sup>

### a. The players:

What about the players? What do they actually cost a Division I school to field a team? But they are getting paid, in a manner of accounting-speak. The NCAA’s Knight Commission maintains a database tracking what member schools report student-

---

<sup>86</sup> *Id.*

<sup>87</sup> Steve Berkowitz, et al., “College,” USA TODAY, Nov. 7, 2013, available at <http://usatoday30.usatoday.com/sports/graphics/datatables/2012/NCAAFB-Coach-Salaries/coaches-salaries>.

*University of Denver Sports and Entertainment Law Journal*

---

athletes actually cost them. For example, “The University of Minnesota spent \$199,826 annually for each scholarship football player, according to the most recent data from 2011, up from \$107,636 in 2005.”<sup>88</sup>

As football aficionados know, Minnesota does not stand at the higher end of big time pigskin spending. “Alabama, which has won three of the past four national championships, spent \$342,020 per scholarship player in 2011, nearly double the \$175,010 the university spent six years before. Ohio State spent even more---\$456,023 per scholarship football player in 2011.”<sup>89</sup>

As the Knight Commission report reveals, the Minnesota Gophers’ eye popping football player cost does not even compete at the median of the Big Ten Conference. Would you be surprised to learn that its median was \$210,251 in 2011 while the bigger powerhouse Southeastern Conference came in with a median of \$259,251?<sup>90</sup> Mike Kazuba’s investigative report reveals: what did Minnesota spend on its full-time equivalent academic student? Compared to the footballer’s \$199,826, Minnesota “invested \$20,688 in 2011 in academic spending per full-time equivalent student” reports the Knight Commission.

What does the bigger picture look like? “While football operating expenses totaled \$16.9 million in 2011, total football revenue was \$30.5 million. It was even more lucrative in 2012---the Gophers’ expenses were \$16.2 million, and revenue was twice as much at just under \$33 million.” If players cannot receive monetary compensation from their schools by NCAA rules, how does Minnesota account for this six figure expenditure? “There was \$8,393 for the lodging and meals associated with team

---

<sup>88</sup> Mike Kaszuba, *Mike Henry: The U’s \$199, 826 Man*, STAR TRIB. (Dec. 27, 2013, 9:45 AM), <http://www.startribune.com/sports/gophers/237259601.html>.

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

*University of Denver Sports and Entertainment Law Journal*

---

travel; \$6,510 for equipment, which includes Henry's maroon helmet; and \$12,402 to pay the wages, benefits and bonuses for the football program's support staff, including its secretaries and trainers." Not to be left out of the expense tabulation, \$22,556 was listed as compensation for the team's head coaches that fiscal year, even though coach Tim Brewster was fired.<sup>91</sup>

Other poor step children Big Ten Conference schools, besides impoverished Minnesota, came in with player medians of \$189,118 (Indiana), \$132,802 (Purdue), and \$128,607 (Illinois). Minnesota's neighboring schools outspent them as well with Wisconsin at \$278,387, Iowa at \$234,782, and Nebraska at \$207,704.<sup>92</sup>

If this matters, what does the future portend? "The pattern that clearly emerges is that athletic spending is rising rapidly, while academic spending is stagnating," said Amy Perko, the executive director of the Knight Commission.<sup>93</sup> And the players received no direct compensation. Does any of this matter? Is this what ethical behavior looks like? Is this what a Division I arms race in football looks like?

### 3. A Means to an End.

Big Ten Commissioner Jim Delaney has waded into the argument that FBS Big Ten members need to stop scheduling FCS schools, but for reasons related to the external goal, not the internal ones. "They're not attractive television matchups," he says, and the results are usually lopsided. (See Nebraska 73, Idaho State 7)... 106 of 125 FBS teams have at least one FCS opponent on their schedules this season. Clemson and Georgia Tech have two. FCS teams are cheaper to schedule—Nebraska last season paid Idaho

---

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

*University of Denver Sports and Entertainment Law Journal*

---

state \$600,000, for instance, compared with \$1 million to Arkansas State, a lower level FBS program....”<sup>94</sup>

Do scholarships in football matter? FCS has a cap of 63 where FBS schools have 85. Does that matter in college football? If one concedes athletic scholarships are a form of compensation, the Knight Commission has argued that “scholarship athletes are already paid in the most meaningful way possible: with a free education.”<sup>95</sup> If it is observed that the norm is for better football athletes to seek scholarships at FBS as opposed to FCS schools, and those superior teams have 22 additional scholarships than inferior FCS schools, what implication is there for increased risk of injury?

Athletic directors (AD) and coaches argue their FCS players do not mind getting beat up, injured, publicly humiliated, or outscored on TV by a zillion points. “Most top programs preyed on lesser competition (see Oklahoma 84, Savannah State 0).<sup>96</sup> “They crave the opportunity to play the Goliaths,” say the Davids.<sup>97</sup> “Fact is, FBS schools dominate FCS teams in 90+ percent of all cases. They are bigger, they are better and they win most of the games against FCS teams. That cannot be disputed.”<sup>98</sup> Referring back to the NCAA **Commitment to Integrity and Sportsmanship** standard, how does the above relate to “...All individuals

---

<sup>94</sup> Brian Rosenthal, *FCS Teams Making Their Mark Against the Big Boys*, LINCOLN J. STAR, (Sep. 19, 2013, 7:00 PM), [http://journalstar.com/sports/huskers/football/2013/south-dakota-state/fcs-teams-making-their-mark-against-the-big-boys/article\\_da777e63-f5ce-51d2-b79e-1497ff362af2.html](http://journalstar.com/sports/huskers/football/2013/south-dakota-state/fcs-teams-making-their-mark-against-the-big-boys/article_da777e63-f5ce-51d2-b79e-1497ff362af2.html).

<sup>95</sup> Branch, *supra* note 23, at 110.

<sup>96</sup> Andy Staples, *Cupcake Wars*, SPORTS ILLUSTRATED, Sep. 10, 2012, at 117, available at

<http://sportsillustrated.cnn.com/vault/cover/featured/11834/index.htm>.

<sup>97</sup> Faure, *supra* note 74, at 199-200.

<sup>98</sup> Mike McFeely, *Given His Own Conference, Big Ten Commissioner’s Shot at FCS Is Cheap*, KFGO, (Sep. 5, 2013), <http://kfgo.com/blogs/so-many-opinions-so-little-time/953/given-his-own-conference-big-ten-commissioners-shot-at-fcs-is-cheap/>

*University of Denver Sports and Entertainment Law Journal*

---

associated with intercollegiate athletics programs and events should adhere to such fundamental values as respect, *fairness*, civility, honesty, responsibility, academic integrity and *ethical conduct* (emphasis added). These values should be manifest not only in athletics participation, but also in the broad spectrum of activities affecting the athletics programs.” In particular, is this what “fairness, honesty, responsibility, and ethical conduct” look like? Furthermore how is this behavior consistent with the professed NCAA standard that “Intercollegiate athletics programs shall be conducted in a manner designed to enhance the well-being of student-athletes who choose to participate and to prevent undue commercial or other influences that may interfere with their scholastic, athletics, or related interests.”?

#### 4. The Cost of Doing Gladiatorial Business.

While injuries are endemic to all sports, there are norms of coaching and athletic behavior. Player safety should be first and foremost the quintessential ethical duty of everyone connected with intercollegiate sport. Nevertheless, do commercialism and its economic benefits corrupt this duty? What might that look like? “In 2011 allegations were heard accusing the University of Iowa of “informal” football workouts after its bowl game. The workouts were characterized as so grueling that 41 of the 56 amateur student-athletes collapsed. 13 were subsequently hospitalized with rhabdomyolysis—a life threatening kidney condition often caused by excessive exercise.”<sup>99</sup> Recalling that “From a beginning where 25 football college players were killed during a single football season, it is without question anything but a gentleman’s game.”<sup>100</sup> While assumption of risk of injury is a precondition for playing any sport, the assumption is based on the reasonable foreseeability

---

<sup>99</sup> Branch, *supra* note 23, at 109-10.

<sup>100</sup> *Id.* at 83.



*University of Denver Sports and Entertainment Law Journal*

---

of consequences.<sup>101</sup> Anyone familiar with the sport would verify that it is violent, brutal, and injury prone.

In a highly injurious sport, the NCAA assumes some degree of responsibility for its play and regulation. “From 1988-1989 through 2003-2004, the NCAA reviewed 16 years of injury surveillance data for men’s football to identify potential areas for injury prevention initiatives. Approximately 16% of the schools in Division I, II, and III NCAA institutions sponsoring football participated in the study. Surprisingly the results of the study show little variation in the injury rates over time.”<sup>102</sup> Note this is an NCAA study. The data reveal evidence of risk and injury occurrence. Fall game, fall practice, and spring football practice injury rates were reviewed. The NCAA’s confidence intervals are 95%.<sup>103</sup> Not unsurprisingly, injury in football games was 9 times higher than the practice injury rate (35.90 versus 3.80 injuries per 1000 athlete-exposures).<sup>104</sup>

---

<sup>101</sup> See *Avila v. Citrus Cmty. Coll. Dist.*, 131 P.3 383 (Cal. 2006) (arguing that a college baseball player struck in the head by an intentionally thrown “beanball” by the opposing pitcher assumed not only the risks inherent in the sport but also some risks created by the other participants’ active negligence); see also *Hacking v. Town of Belmont*, 736 A.2d 1229 (N.H. 1999) (“While one participating in a sport might ‘consent to those commonly appreciated risks which are inherent in and arise out of the nature of the sport and generally flow from such participation,’ one does not ordinarily assume an ‘unreasonably increased or concealed’ risk.”).

<sup>102</sup> *Dick ET AL.*, *supra* note 32, at 221.

<sup>103</sup> *Id.* at 222-23

<sup>104</sup> *Id.* at 221. The body parts most frequently injured playing football involved knee internal derangements, ankle ligament sprains, and concussions. *Id.* So what is the nature of assumed risk of battle wounds on the playing field? In fall games, knee internal derangements accounted for 17.8%, ankle ligament sprains 15.6%, and concussions were 6.8%. *Id.* In fall practices injuries were less with knee internal derangements being 12.0%, ankle ligament sprains were 11.8%, and concussions totaled 5.5%. *Id.* Spring practice numbers were higher coming in at 16.4%, 13.9%, and 5.6% respectively. *Id.* In the game itself when compared to fall practice, a player was 18 times more likely to sustain upper leg contusion (1.27 per 1000 athlete-exposures (A-E)), 14 times as likely to sustain

*University of Denver Sports and Entertainment Law Journal*

---

What do the numbers reveal? The study revealed that player contact was, not unsurprisingly, the primary source of player injury (game 78%, fall practice 57%, and spring practice 69%). Severe injuries were characterized as those resulting in a total loss of participation of 10+ days. The study indicated 25% of severe injuries came in games, 25% in fall practice, and 34% in spring practice.<sup>105</sup> Not surprising, “Knee and ankle injuries accounted for the most frequent type, while concussions represented 3% in both fall and spring practice, but 4% in games.<sup>106</sup> Which positions in football are more likely than others to suffer injury?

“The offensive players with the highest number of injuries (by weighted position) were the quarterback (18%) and the running back (20%)... The offensive players with the highest number of concussions (by weighted position) were the running back (17%) and the quarterback (28%). The defensive player with the highest number of concussions was the defensive back (14%). Offensive players appeared to receive a higher number of concussions than defensive players.<sup>107</sup>

The NCAA study revealed data not found in any other NCAA sport.<sup>108</sup> “The study concludes, based on its statistical

---

an acromioclavicular joint sprain (.98 per 1000 A-E), 13 times as likely to sustain knee internal derangement (6.17 per 1000 A-E), 12 times more likely to sustain an ankle ligament sprain (5.39 per 1000 A-E), and 11 times as likely to sustain a concussion (2.34 per 1000 A-E). *Id.*

<sup>105</sup> *Id.* at 224.

<sup>106</sup> *Id.* at 224.

<sup>107</sup> *Id.* 226-227.

<sup>108</sup> *Id.* at 227. “The NCAA football injury study also found that approximately 85% of the knee internal derangements were classified as new injuries. In particular, the research disclosed there were three major types of knee injuries experienced during games and practices: ACL, posterior cruciate ligament (PCL), and menisci. These injuries occurred more frequently in games than practices. Are such injuries serious? Using the 10 days of time loss criterion, less than 45% of knee derangements resulted in such loss. But for those with

*University of Denver Sports and Entertainment Law Journal*

---

analysis, that not only is football a high-impact collision sport, but players' characteristics (e.g., age, height, weight) vary widely, both within a team and among NCAA divisions. It also points out that "[T]he intensity level and speed are generally considered higher in games than in practices, increasing the magnitude of collisions and thus, increasing the risk of injury."<sup>109</sup> What impact have improvements in football equipment had on safety of the game? "Despite changes in equipment (e.g., helmets, increased padding, mouthguards), there was little variation in injury rates for games, or fall and spring practices over the 16-year study. The study observes that these results are most likely because the basic characteristics of the game have not changed drastically over the years."<sup>110</sup>

Have improvements in strength and conditioning programs had an impact on injuries? Unfortunately, for the worse. The study argues that its injury rate data remains "largely unchanged" over the 16 year period. A poignant fact known to most football coaches is that "stronger, faster athletes increase the speed and collision forces, causing more injuries."<sup>111</sup>

Does size, weight, height, strength, talent, speed, or experience matter among football players engaged in a sport where speed and collision cause increased injuries? George Orwell's *Animal Farm* quote that "all animals are created equal, but some animals are more equal than others," would seem to frame the ethical argument of smaller, slower, less talented, more inexperienced 'David' schools playing stronger, faster, heavier, more athletically gifted 'Goliath' teams. But "so what"---they are all football players and if you play the game, you take your chances regardless of competitiveness factors. Injuries are just a cost of doing business. But with the recent attempted NFL settlement with players for

---

more than 10 days of loss, in the case of ACL injuries 78% were operative; 39% of PCL injuries underwent surgical procedure." *Id.*

<sup>109</sup> *Id.* at 228.

<sup>110</sup> *Id.* at 228.

<sup>111</sup> *Id.* at 232.

*University of Denver Sports and Entertainment Law Journal*

---

concussion and related injuries, why might the reasons underpinning such player claims, and NFL attempted settlement of them, apply in the NCAA arena?

Concussions, nevertheless, are becoming a subject of increasing concern at both the amateur and professional football levels of play.

The NCAA's injury study discloses its data reflects the concussion percentage was 5.5% (0.21 per 1000 A-Es), 6% for games (2.34 per 1000 A-Es), and 0.05 for spring practices (0.05 per 1000 A-Es). "The fall game rate was 11 times higher than the fall practice rate... Clearly, the greatest risk of concussion is in games, which have the greatest risk of high-speed collisions." Not surprising, the quarterback and running back received the greatest frequency of game related concussions.<sup>112</sup>

The NCAA study also reports "Games tend to reduce the influence of the coaches over the quantity and nature of body contact, as the game is played at high speed and high intensity and players expect to be involved in contacts."<sup>113</sup> Lest this NCAA report be seen as an orphan, other researchers such as K.M. Guskiewicz, M. McCrea, and S.W. Marshall have reached similar data driven conclusions.<sup>114</sup>

##### 5. Collateral Damage.

If it is all about the external goal of money, what can be collateral costs that damage a student-athlete and violate the purported NCAA standards? Investigative reporter Brent

---

<sup>112</sup> *Id.* at 231.

<sup>113</sup> *Id.* at 229.

<sup>114</sup> See generally Kevin M. Guskiewicz, Michael McCrea, Stephen W. Marshall, ET AL., *Cumulative Effects Associated with Recurrent Concussion in Collegiate Football Players: The NCAA Concussion Study*, 290 JAMA 2549 (2003).

*University of Denver Sports and Entertainment Law Journal*

---

Schrotenboer writes in USA TODAY about the vaunted Division I Miami Hurricanes and USC Trojans:

In the Miami case, there were 18 allegations with 79 sub-issues involving several student-athletes and spanning more than a decade. Multiple football coaches were found to be aware of the cheating but failed to report it. Some coaches also provided the NCAA with false information. In the end, the NCAA's infractions report on Miami was 102 pages, much of it focused on money and gifts to players from booster Nevin Shapiro. The NCAA's infractions report on USC was 67 pages.<sup>115</sup>

The Penn State story not only brought down the legendary coach Joe Paterno, but an entire University leadership—its president, athletic director, members of the board of trustees, and many more.

Penn State will pay \$59.7 million to 26 sexual abuse victims of former assistant football coach Jerry Sandusky, the school said Monday.... Harrisburg lawyer Ben Andreozzi, who represents nine of the victims, said he was pleased with the settlements. "Obviously no amount of money can compensate for what these young men have gone through, but Penn State has given them the resources—financially and counseling—they need to help them recover... Penn State has spent more than \$50 million on other costs related to the Sandusky scandal, including lawyers' fees, public relations expenses and adoption of new policies..."<sup>116</sup>

---

<sup>115</sup> Brent Schrotenboer, *Haden: NCAA Decision on Miami 'Bolsters' USC's Gripe*, USA TODAY, Oct. 23, 2013, at 12C, available at <http://www.usatoday.com/story/sports/ncaaf/2013/10/22/miami-hurricanes-usc-trojans-pat-haden/3151145>.

<sup>116</sup> John Bacon, *Penn State to Pay \$59.7M to 26 Sandusky Victims*, USA TODAY, Oct. 29, 2013, at 3A.

*University of Denver Sports and Entertainment Law Journal*

---

What is the impact to the 88 players who are affected by this? Charles Huckabee [no relation] writes in *The Chronicle of Higher Education*:

“We obviously needed to do something to help bridge this difficult period while the sanctions are going on,” Joseph J. Doncsecz, the university’s associate vice president for finance and corporate controller, said on Thursday during his presentation to the board’s Committee on Finance, Business, and Capital Planning. “This borrowing program will help bridge the difficult period for athletics for the next five years.” Penn State said last week that as of June 30 its expenses associated with the scandal had reached \$49.4-million....”<sup>117</sup>

Imagine what these expenses are now.

F. The Fix.

The case has been made that sport originally and presently is supposed to be about internal values such as respect, leadership, generosity, courage, compassion, teamwork, self-reliance, self-discipline, perseverance, fair play, sportsmanship, magnanimity, concern for others, yet external goals of power, status, prestige, and money have been corroding and corrupting them. The elephant in the room that few want to have a conversation about is “how this is affected by ethical considerations.” The University of Chicago model of eliminating intercollegiate athletics in favor of a vibrant collegiate intramural program, involving certainly more participants at far lower cost, is one option.

---

<sup>117</sup> Charles Huckabee, *Penn State May Borrow \$30-Million to Tide Over Its Athletic Department*, *THE CHRON. OF HIGHER EDUC.* (Sep. 20, 2013), <http://chronicle.com/blogs/ticker/penn-state-may-borrow-30-million-to-tide-over-its-beleaguered-athletics-department/66289>.

*University of Denver Sports and Entertainment Law Journal*

---

Another option posed by sports writer John Feinstein specifically addressing the FBS-FCS scheduling addiction is:

The fix, suggested by the author is “The question then becomes how do you tell North Dakota State or other quality FCS programs they *can* schedule FBS teams but tell Savannah State, Florida A & M and eastern Kentucky they cannot schedule them....The answer is easy: Pass a rule that allows any FCS school that qualifies for the 20-team [FCS] NCAA tournament to schedule one future game against an FBS school. Each time you make the tournament, you get the right to schedule another game....If you aren’t good enough to make the FCS tournament, you aren’t good enough to schedule an FBS school.”<sup>118</sup>

This certainly addresses the competitiveness ethical issue. But it leaves unaddressed the “money” question. How do FCS schools, not in the top 20 FCS tier, compensate for the loss of revenue received for “being sold to the giants for beating service?” Perhaps that is precisely the discussion faculty senates, student governments, and provost councils should be having to decide how do you ethically justify Division I athletic student-athlete expenditures in comparison to academic student ones. It pits the external value of entertainment vs. athletic core internal values.

Part II of this study will address questions posed to 10 Division I university presidents. In order to obtain access and receive candid response, the answers will be anonymous. Several of the questions are:

1. How do you define ethics?
2. What is meant by sport?

---

<sup>118</sup> Feinstein, *supra* note 71.

*University of Denver Sports and Entertainment Law Journal*

---

3. What are sports' intrinsic values?
4. The concept of the practice of sport, it has been suggested, is intrinsically concerned with moral value." Is that true? If so, what moral value?
5. Is winning the primary or central criterion of a sport team's success?
6. Rank order your top three criteria for determining success in sport.
7. What have you learned about the Penn state scandal involving football, coaches, and university presidents?
8. With the trajectory of athletics' costs accelerating, like football, where do you see the destiny of this intercollegiate program?
9. How do you justify in your own mind the trajectory of spending more on student-athletes (when factoring in the entire athletic budget) than spent on academic students?
10. Why do you believe the Univ. of Chicago model of investing resources in intramural athletics as opposed to intercollegiate athletics might be misplaced?
11. What is the Univ. of Chicago missing that you value more highly?
12. Do you believe it is ethical for an FCS (formerly Div I-AA) school to schedule a game with a BCS (formerly Div I-A) when it knows, or should know based on data, that it is not competitive?



*University of Denver Sports and Entertainment Law Journal*

---

13. Why is it ethical for an FCS school to schedule a game with a much larger BCS school primarily for money, when they would not play the game without the large payday?

14. In view that football is the most injurious sport in the NCAA, concussions in the NFL resulted in an initial proposed \$ 760 million settlement, how do injuries ethically affect the primary consideration of money when scheduling games, especially when there is over a 90% competitive advantage by FBS teams?

Part II is currently undergoing investigation and will be released accordingly.

*University of Denver Sports and Entertainment Law Journal*

---