

**A Commentary on NCAA President Myles Brand's November 13, 2006,  
Reply to the Honorable William Thomas's Letter of October 2, 2006**

To the Attention of:

The Honorable Max Baucus, Chair  
Senate Finance Committee

and

The Honorable Charles Rangel, Chair  
House Committee on Ways and Means

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## INTRODUCTION:

Those of us in higher education, alarmed and disheartened by academic corruption in college sport, must focus on what we can actually influence: protecting academic integrity.

While this commentary is not a legal discussion of tax law or the Internal Revenue Service Code, it is intended to serve as a truth-telling response to National Collegiate Athletic Association (NCAA) President Myles Brand's November 13, 2006 letter to the Honorable William Thomas, the past Chairman of the House Committee on Ways and Means.

The authors represent a variety of experiences in higher education - teaching, scholarship, coaching, sport management and athletic administration, and this paper reflects the collective knowledge of independent scholars on the subjects discussed. This paper's authors have been guided by experience, data collection, and analysis.

We all agree college sport can be compatible with higher education's mission. Nevertheless, we are all convinced the present NCAA-endorsed model of big-time college sport must be radically changed. In order to move from dialogue to action, we believe a careful examination of the NCAA's tax exempt status by the Congress is crucial.

In examining his letter to Congress, we find that Dr. Brand's responses often do not address the issues in a candid and substantive manner. To the contrary, some of his responses merely summarize his "personal" belief that the NCAA deserves its current non-profit status. Most often, his letter presents little or no data to support his opinions, but instead refers to long-standing mythology and public-relations rhetoric apparently to deflect the questions posed in the Thomas letter. In this commentary we challenge the myths and rationalizations underlying many of Dr. Brand's core arguments. Our fundamental theme can be succinctly summarized: the NCAA has strayed so far from its stated educational mission that it is no longer entitled to its tax-exempt status.

Although the NCAA defines its major purpose as maintaining athletes as an integral part of the student body, the unprecedented commercialism promoted by the NCAA has left many athletes isolated from mainstream academic life. When universities sell their athletic programs to television networks and corporate sponsors for billions of dollars, TV ratings trump academic values, and winning becomes the only measure of a successful coach. Invariably, the pressure on coaches rains down on the athletes, diminishing their role as students.

A variety of reform groups, including the Knight Foundation Commission on Intercollegiate Athletics, have concluded that at many schools, commercialism has swamped academic values, and that the system for too many universities and too many

athletes is broken (Knight Foundation, 2001). Critics of big-time college sport have compiled laundry lists of strategies for reform. We contend, however, that academic integrity can only be assured by means of disclosure (with related academic transparency), accountability and oversight. These means must be the operating principles that guide any proposed systemic solutions.

We will argue throughout this commentary that an examination of the NCAA's and university athletic departments' tax exempt status is clearly related to protecting academic integrity through disclosure. Without congressional inquiry, the NCAA will not substantially reform itself. Without pressure from the Congress, the NCAA will continue to use its highly effective public-relations apparatus to avert attention away from the academic fraud likely to be unearthed by a congressional hearing. This fraud, we contend, inflicts a heavy cost on American taxpayers.

To restore and defend academic integrity, we call on the Congress to move forward with a comprehensive examination of the NCAA's and major college athletic departments' tax-exempt status. In addition, as part of its inquiry, we urge the Congress to exert pressure on the NCAA and its member institutions to develop and implement a meaningful program of academic disclosure that insures college athletes are bona fide college students.

We contend that to begin curing the ills plaguing college sport we must address academic integrity. Public service announcements broadcast by the NCAA and universities are not "proof" of the fulfillment of their educational missions. Without transparency (with related academic disclosure), accountability, and faculty and administrative oversight, no other college-sport "problem" can be addressed. We believe that once this fundamental problem is addressed, the likelihood that other college-sport issues can be remedied is greatly enhanced.

We respectfully call on the Senate Finance Committee and/or the House Committee on Ways and Means to establish an independent research commission to systematically and thoroughly seek substantive answers to Mr. Thomas' questions.

In conclusion, it is crucial that as representatives of all taxpayers, members of the Congress are at the forefront of efforts to critically examine the NCAA and university athletic departments, and if necessary begin the process of bringing them back in line with their tax-exempt higher education missions. This will require asking tough questions and holding university and NCAA administrators accountable. It will require strong leadership and bipartisan action, but given the money-driven state of big-time college athletics, the Congress may very well be the last, best hope for such action.

This commentary's authors are prepared to assist in this important endeavor as best we can.

The following are responses to the questions posed by Chairman Thomas and Brand's responses. The questions and answers are included for greater clarity:

## **I. Questions Relating to the NCAA's Educational Mission**

### **A. Question 1**

#### **Thomas**

**1. The annual return filed by the NCAA with the Internal Revenue Service states that the primary tax-exempt purpose of the NCAA is to "maintain intercollegiate athletics as an integral part of the educational program and the athlete as an integral part of the student body." How does the NCAA accomplish its purpose of maintaining "the athlete as an integral part of the student body"?**

#### **Brand**

The purpose of higher education is to develop the knowledge and skills in students so that they become productive members of society and good citizens. Much of that is done in the classroom, lecture hall and library; but not all of it. Higher education also imparts knowledge and skills in various others ways. Participation in a symphony orchestra, working on student newspapers and participation in theater productions are all examples of ways in which students go beyond the classroom to develop educational skills that will serve them throughout their lives in the same way as traditional classroom learning. Development of these skills is integral to the educational experience students take with them from the campus.

Participation in varsity athletics programs is another key way in which young men and women enrich their educational experience beyond the classroom. What they learn on the playing field or court is integral to their educational experience as well. Lessons on leadership and how to follow, on self-discipline and self-sacrifice, on teamwork and hard work, and learning to pursue excellence are all values imparted through participation in athletics.

Although the vast majority of the more than 380,000 student-athletes who compete in college sport each year go "pro" in something other than sports, the words of Indianapolis Colts quarterback Peyton Manning are particularly appropriate. The former University of Tennessee, Knoxville, football Academic All-America was honored in 1998, at the NCAA Convention as one of Today's Top VIII student-athletes, and in his response to the assembled delegates, he talked about being a student-athlete:

*"It is popular today to ask if big-time college sports are even compatible with higher education.*

*"The critics ask if athletics are consistent with the educational missions of colleges and universities. Frankly, those people see the walls that limit us without seeing the spaces that allow us to expand. The reality is that collegiate sports have a lot more to do with*

*learning than they do with winning.*

*“As student-athletes, we learn more than most people...the blessings of ...camaraderie and shared sacrifice, collective responsibility and commitment to excellence, and time management and life management. It would have been easy to have been a football player and not a student, and conversely, it would be much easier to have been just a student and left football for some other day in time. But it wouldn’t have been as joyous, as rich or, quite candidly, as humbling to have been one without the other. I would bet you that each and every one of tonight’s honorees would say without hesitation that he or she is a better man or woman and a better leader because of those experiences.”*

Mr. Manning’s comments on his and other student-athletes’ experiences as participants in intercollegiate athletics – as candid and unrehearsed as they were within their context – are consistent with the tax law in this area that recognizes the educational value of athletics competition at the college and university level.<sup>3</sup>

Peter Likins, president emeritus of the University of Arizona, a former professor of engineering, and a Fellow of the American Institute of Aeronautics and Astronautics, is more succinct, but no less eloquent or to the point, in his comments about the educational value of being a collegiate wrestler at Stanford University: “As a university president and former professor of engineering, I have often said that I learned how to be a professor in the classroom, but I learned how to be a university president on the wrestling mat.”

### **The Authors**

While we agree with Dr. Brand’s premise that higher education’s primary purpose is to develop students’ knowledge and skills so they can become productive members of society, it should be noted that Dr. Brand fails to address or answer the question posed. Dr. Brand provides only tangential references to experiential-learning or non-athletic extracurricular activities that occur outside of traditional classrooms. In addition, his response fails to address intercollegiate-athletic situations that are neither consistent with nor integral to universities’ educational missions (e.g., excessive cross-country travel junkets for “prime-time” athletic contests, housing players and coaches in 5-star hotels prior to home games, and special on-campus services available only to athletes). Such situations, contrary to Dr. Brand’s protestations, are not anomalies, as numerous sources and examples appended to this paper attest, but indications of a system rife with misplaced priorities. These situations serve to segregate, not integrate, athletes. Their main purposes seem to be either generating or spending athletic department funds.

It should also be noted that the other extracurricular activities alluded to by Brand do not generate revenue and wide-spread public exposure that occupy so much of the university president’s time and energy. Athletic department and NCAA policies tend to create an “academic jock culture,” designed to insure their best athletes remain eligible while sacrificing academic integrity, and where athletes are treated differently than “nonathletes.” Too often, college athletes’ “educational” experiences are controlled in a

manner unrecognizable to ordinary students. With transfer and employment restrictions that circumvent protections afforded other students, college athletes are treated much more as “employee-athletes” than students.

Not only does Dr. Brand fail to answer the question posed, but in his answer he refers to the NCAA’s method of calculating graduation rates as the Graduation Success Rate (GSR), evidently unaware that reporting graduation rate is just one superficial measure of educational success. Without additional information regarding majors and post-attendance employment, any method of calculating graduation rates is suspect. Simply stated academic integrity can only be assured by means of transparency (with related academic disclosure), accountability, and oversight.

In the same manner, Dr. Brand ascribes positive attributes to college athletics, without referring to any method by which one might judge athletics' integration within the university's educational mission. As well-known sport sociologist Jay Coakley has noted, it is an error to assume that athletics:

...automatically produce positive results regardless of how they are organized and the contexts in which they are played. This subverts the necessary process of critically examining sports in student culture as a whole....The possibility that sport participation interferes with the education of athletes is greatest in big-time intercollegiate programs. The status and identity of athletes in big-time intercollegiate sports is so highly publicized and glorified that it can distract students from academic work. In some cases, it can make coursework nearly irrelevant in the lives of impressionable young people, especially young men who see their destinies being shaped by sport achievements, not academic achievements....Intercollegiate programs are counterproductive to the reputation and mission of higher education when they (1) are overly commercialized, (2) contain no institutionalized mechanisms to protect athletes' rights, (3) have not achieved gender equity, and (4) are organized around distorted priorities related to race and ethnicity. (Coakley, 2007, p. 525-526)

Shulman and Bowen (2001) also question the assumption that college athletics automatically produces positive educational results. They report that while some college athletes may demonstrate high levels of teamwork and the ability to cooperate with others, such traits exist within these athletes prior to their participation in college athletics. In other words, college athletics may not be the cause of such attributes, but simply the beneficiary. To this point, functionalist theorist Talcott Parsons argued that family is the primary agent of socialization, with education a secondary agent. These two agents - family and education, not athletic programs, are primarily responsible for developing the moral code, ethical standards and values that mold young people into contributing societal members. Therefore, these pre-existing character traits “account for athletic success, not the opposite” (Simon, 2004, p. 22). Edwards (1973) found that competitive sport does not build character in a vacuum. Instead, athletic participation reinforces and encourages the development of preexisting character traits.

Peyton Manning undoubtedly benefited from college athletics. However, the authors and others who research intercollegiate athletics too often see college athletes (male and female, from ‘revenue’ and ‘non-revenue’ sports alike) who maintain “progress towards a degree” through suspect correspondence courses or transfer credits and other forms of questionable “eligibility maintenance.” Mr. Manning’s own university has been guilty of sacrificing its academic integrity to protect its commercial athletic enterprise.

While Dr. Brand shows no data to support his position, there has been ongoing systematic research that supports our conclusions. While new studies may yield varying results, it is imperative that independent investigation (based on complete disclosure and transparency) is conducted in order to either confirm or deny whether the NCAA achieves its stated mission of maintaining “...the athlete as an integral part of the student body.”

## **B. Question 2**

### **Thomas**

**2. The annual return also states that one of the NCAA’s purposes is to “retain a clear line of demarcation between intercollegiate athletics and professional sports.” Corporate sponsorships, multi-million dollar television deals, highly paid coaches with no academic duties, and the dedication of inordinate amounts of time by athletes to training lead many to believe that major college football and men’s basketball more closely resemble professional sports than amateur sports. The NCAA has no control over two of the differences between professional and amateur sports: the level of play and the tax exemption for college athletics revenue.**

**Beyond rules prohibiting compensation for college athletes, what actions has the NCAA taken to “retain a clear line of demarcation” between major college sports and professional sports?**

### **Brand**

There are clear distinctions between the collegiate and professional models of athletics. Professional sports’ sole purposes are to entertain the public and make a profit for team owners. The purpose of the collegiate model is to enhance the educational development of student-athletes. Those who participate in professional athletics are employees, a commodity to be traded from team to team, often with little or no input from the participant. Those who participate in college sports are students and are not employed to play sports, nor are they traded from school to school. The teams in professional sports are aligned with a community only so long as the community provides facilities and support to keep the teams with them. The teams in collegiate sports are embedded within the college or university that sponsors the teams and cannot leave if they are not satisfied with the facilities or levels of support.

These points of difference are critical to the demarcation between college and professional sports beyond the amateur status of student-athletes. While intercollegiate athletics is very entertaining, entertainment is not the primary purpose of the enterprise. While football and men's basketball at the Division I levels are enormously popular with the public and attractive to the entertainment media, they are as distinct from their professional counterparts as student musical groups are from professional symphonies. They are demarcated by their purpose and motivation rather than their scale of public or media fiscal support.

It is also incorrect to assume that the popularity of Division I football and men's basketball sets them apart from other sports on campus in terms of time and commitment for the student-athletes or from other divisions. Student-athletes and their coaches are extremely committed individuals regardless of their sport or the division in which they play. Coaches, themselves, are as committed to teaching the development skills learned through sports participation as faculty members are to importing academic knowledge. There are no differences in the expectations for practice or competition among the sports.

Indeed football student-athletes generally have less missed class time than any others on campus because they have only one game each week, at least half of which are at home. The most important point, again, is that all of the participants are students. In addition, there are a series of rules designed by the member schools themselves that are intended to provide limits that support the mission of educating student-athletes. These rules include grant-in-aid limits, season limits, in-season and out-of-season practice limits, safety requirements, and academic-eligibility requirements for initial and continuing participation.

### **The Authors**

Walter Byers, who served as NCAA executive director from 1951 to 1987, conceived the term "student-athlete" in the 1950's to counter the threat that its newly implemented play-for-pay, grant-in-aid athletic scholarship policy could result in NCAA athletes being considered paid employees by Workers Compensation Boards and the courts (Byers, 1995). The term was immediately embedded in all NCAA rules and interpretations as a mandated substitute for words such as players and athletes.

Subsequently, NCAA marketing and communications departments have effectively employed the term "student-athlete" to serve the NCAA's public relations and advertising needs. The campaign's success is readily apparent. Not only is "student-athlete" repeated mantra-like by NCAA officials in speeches, interviews, press releases and other official communications as a brand-extension strategy, it has become part of our nation's lexicon (e.g., The term appeared 65 times in NCAA President Myles Brand's November 13, 2006 letter to House Committee on Ways & Means Chairman Bill Thomas.) The term's use is so ingrained in our collective sport-psyche that the media, NCAA athletes, faculty, the general public and even government officials invariably use the term.

In a 2006 *Washington Law Review* article, Robert and Amy McCormick (Michigan State University College of Law) argued grant-in-aid athletes in revenue-generating sports at NCAA Division I institutions are not “student-athletes” as the NCAA asserts, but are, instead, “employees” under the National Labor Relations Act (McCormick & McCormick, 2006). With none of the rights and protections afforded employees, college athletes are subject to demands that compromise their ability to take advantage of educational opportunities - their only form of compensation - so often extolled as the purpose of college athletics. In essence, these “employees” (unlike their coaches and other university administrators) are denied access to “free market” compensation for their athletic talents. The NCAA’s “student-athlete” gambit has successfully imprinted the message that college athletes are not employees, but merely students for whom college athletics is nothing but an “avocation.”

As if ignoring the extreme power imbalances in college sport, Dr. Brand lauds the educational development of college athletes while lamenting the plight of professional athletes, stating that “...those who participate in professional athletics are employees, a commodity to be traded from team to team, often with little or no input from the participant.”

Brand sympathizes with “professional athletes” who can collectively bargain, make use of free-agency and enter into negotiated contracts to the highest bidder, evidently forgetting that all such privileges and rights are denied college athletes. When he refers to professional athletes’ lack of input into player movement, Dr. Brand misrepresents today’s professional sport model, in which athletes are permitted legal counsel, have the right to negotiate contracts, and often must approve any trade. Mr. Brand both misrepresents collective-bargaining facts and obliquely plays on many college fans’ fears that “their” beloved team would leave in the middle of the night if it were not “imbedded within the college or university.”

In practice, Dr. Brand’s convoluted argument should afford his *non-commodified* college athletes a great deal of input into their collegiate educational and athletic existence. However, both popular-press exposes and independent scholarly research have consistently disproved his assertion. To an unbiased observer, it seems apparent that if education is the paramount concern of college athletics, any athlete would have the ability to transfer from one educational institution to another without loss of eligibility. Dr. Brand would surely not suggest a coach be prohibited from negotiating a release from a contract when a better offer presents itself. Why then is it NCAA policy that some college athletes in non-revenue sports can freely transfer, while Division I football and basketball players (both men and women), if they wish to change schools, must face various impediments, including having to “sit out” a year?

Dr. Brand, in *The Role and Value of Intercollegiate Athletics in Universities* (2006) stated: “When the educational experience of student-athletes is compared with those studying the performing arts such as music, dance and theatre...it is difficult to find substantive differences” (p. 10). He goes on to argue that these two groups are similar in areas such as: admissions exceptions, admission fees charged for student performances,

total number of class days missed, practice time, early registration privileges and amount of public praise and/or media exposure each group receives.

Interestingly, some of the NCAA's own research (Growth, Opportunities, Aspirations, and Learning of Students in College - GOALS) disputes Dr. Brand's claim that "...there are no differences in the expectations for practice or competition among the sports." In fact, the NCAA reports that in general baseball players have an imbalance in time devoted to athletics versus academics. Such a finding is not surprising since Division-I baseball teams play, on average, 57 games in 106 days, with a single road-trip often resulting in players missing up to four consecutive class days (Otto, personal communication, March 26, 2007).

The NCAA bases its entire athletic philosophy around the concept of amateurism. However, we find it indefensible that the NCAA simultaneously adopts a purely professional corporate-sport model in matters pertaining to coaches' compensation, corporate partnerships, maximization of revenue streams, stadium-naming rights, television-broadcast contracts, and the bowl championship series.

When an organization's culture ("The way we do things around here.") is at odds with its publicly-stated mission, dysfunction is sure to arise. The NCAA's stated mission is, "...to maintain intercollegiate athletics as an integral part of the educational program and the athlete as an integral part of the student body, and by doing so, retain a clear line of demarcation between intercollegiate athletics and professional sports" (National Collegiate Athletic Association, 2006, Bylaw 1.3.1, p. 1). Clearly, as numerous researchers have found over the past 50 years, in big-time college athletics, the NCAA's mission is not being fulfilled. While the NCAA and its member institutions reap the financial benefits of a \$6 billion contract with CBS to air the NCAA Division I men's basketball tournament, college basketball players have absolutely no voice in any discussions related to this revenue or the manner in which it is distributed. In fact, the broadcasts, upon which the NCAA's largess is based, are themselves no longer educational messengers. Very recent research reveals that - on average - an NCAA Division I men's basketball tournament broadcast contained fewer than 7 seconds of "educational messages," but over 45 minutes of *nonprogram* commercial content (Southall, Nagel, Amis, & Southall, in press).

It is worth noting the NCAA typically fails to share data with independent scholars or research consortiums not allied with the organization. Would not a truly educational organization make every effort to support independent academic research? Instead, the NCAA closely guards its "proprietary" information, refusing to share it with academics independently researching college sport. If the NCAA sincerely wishes to assist with unbiased, peer-reviewed research, it should actively share such data. Instead of engaging in cooperative disclosure and transparency, Dr. Brand and other NCAA representatives speak in vague generalities and refer to non-verifiable, in-house research to support their claims.

### Question 3

#### Thomas

**3. Some representatives from college athletic organizations have justified the tax-exempt status of college sports based on claims that high-visibility programs help sustain a large pool of student applicants and generous financial contributions. Neither of these arguments is valid from a Federal standpoint. Federal taxpayers have no interest in increasing applicant pools at one school opposed to another. Furthermore, if financial contributions to universities increase based on athletic success, contributions to other worthy charities may decline.**

#### Brand

Before responding to your specific questions, we would like to point out the far-reaching implications of the statements made in the introduction to these questions. First, while federal taxpayers, in the abstract, may have no interest in increasing applicant pools at one school as opposed to another, individual taxpayers surely do. Presumably, this is one of the reasons that taxpayers, including many Members of Congress, support and contribute to their alma maters and to their local schools – to help the schools improve the quality and, in some cases, the quantity of their student bodies; to improve their physical plants; and for other purposes.

Further, schools attempt to increase their visibility in many ways – by building new classrooms, libraries and performing arts centers; by recruiting renowned academicians and researchers; by adding timely subjects to their curriculums; and even by advertising. Of course, this activity is not limited to schools. Many nonprofits engage in activities designed to increase membership, visitors and revenues. Symphony orchestras schedule “old warhorses” that attract more patrons, visibility and contributions than less-“accessible” works. Similarly, art museums schedule “blockbuster” shows of popular artists or artistic movements designed to draw crowds, raise visibility and, again, to encourage membership and contributions. Many charitable organizations advertise in one form or another – on television, on radio, in the print media and by direct mail.

#### The Authors

Dr. Brand fails to address the fundamental question posed: whether college athletics should be subsidized by federal taxpayers. Neither of Dr. Brand's claims addresses the so-called “Flutie Factor,” which has been just as often found to be not only transitory, but also illusory. Two reports, one commissioned by the NCAA (commonly called “The Orzag Report”) and one by the Knight Commission on Intercollegiate Athletics (often referred to as “The Frank Report”), refute claims that athletics increases either tangible or intangible institutional values. Both reports state that any appreciation resulting from increased athletic department revenue is almost exclusively funneled back into the

athletic enterprise in the form of capital improvements (stadiums/arenas and academic support buildings used exclusively by athletes) and coaches' salaries.

### **Thomas**

**a. From the standpoint of a Federal taxpayer, what benefits does the NCAA provide taxpayers in exchange for its exemption?**

### **Brand**

Those who represent the federal taxpayer, Members of Congress, have long recognized the educational value of athletics competition at the college or university level, and that income derived from intercollegiate athletics competition is substantially related to the educational functions of colleges and universities. In the Revenue Act of 1950, both the House and Senate agreed on this point. The Senate Report noted, "Athletic activities of schools are substantially related to their educational functions. For example, a university would not be taxable on income derived from a basketball tournament sponsored by it, even where the teams were composed of students of other schools." The House Report states, "Of course, income of an educational organization from charges for admissions to football games would not be deemed to be income from an unrelated business, since its athletic activities are substantially related to its educational program."<sup>4</sup>

More recently, the U.S. Supreme Court recognized the importance of the regulatory role of the NCAA in preserving amateurism in college sports. In *NCAA v. Board of Regents of the University of Oklahoma* 468 U.S. 85 (1984), the Supreme Court said:

*"The NCAA plays a critical role in the maintenance of a revered tradition of amateurism in college sports. There can be no question but that it needs ample latitude to play that role, or that the preservation of the student-athlete in higher education adds richness and diversity to intercollegiate athletics and is entirely consistent with the goals of the Sherman Act."*

Specifically, federal taxpayers through their representatives have recognized the educational value of athletics as a benefit to them and the regulatory role of the NCAA as important to the maintenance of that benefit.

### **The Authors**

For anyone familiar with *NCAA v. Board of Regents of the University of Oklahoma* 468 U.S. 85 (1984), the idea the NCAA would use an antitrust case that it lost in an attempt to justify educational benefits that accrue to federal taxpayers seems a bit ironic. At various levels, the courts' view of the NCAA was often less than flattering. Specifically, in *Board of Regents*, 707 F.2d 1147 (1983) the court described the NCAA as a "...cartel [that] imposes production limits on its members, and maintains mechanisms for punishing

cartel members who seek to stray from these production quotas.”

In addition, while not discounting the NCAA’s possible good intentions, the court noted: “While as the guardian of an important American tradition, the NCAA’s motives must be accorded a respectful presumption of validity, it is nevertheless well settled that good motives will not validate an otherwise anticompetitive practice.”

It should also be remembered that *Board of Regents* had little if anything to do with higher education. It was primarily a battle between NCAA member universities that belonged to the College Football Association (CFA) and non CFA schools for control of television and ticket revenue associated with the big-time college football games. The Court’s opinion rarely, if ever, discusses the subject of education. After all, the Court did hold the NCAA violated section 2 of the Sherman Act and “...has restricted rather than enhanced the place of intercollegiate athletics in the Nation’s life.”

Significantly, in a memorandum opinion the U.S. District Court for The Western District of Oklahoma had previously admonished the NCAA for its attitude toward the court and its seeming intent “...to test this Court’s resolve.”

The Court further noted its concern with:

...the lengths to which the NCAA has apparently gone in its zeal to impress upon its membership that somehow the NCAA prevailed in this action. Indeed, in reviewing defendant's counsel's explanation to the NCAA membership of the effect of the appellate court decisions, this Court wondered whether the membership was being given a report of a case different from the one this Court heard.

And while, as Dr. Brand noted, the Court did recognize the NCAA’s historic role in preserving amateurism, in the next sentence it declared, “...rules that restrict output are hardly consistent with this role.” In examining Dr. Brand’s response it should not be forgotten that as far back as 1984 the Court recognized the NCAA as a cartel (e.g., *Board of Regents*, 1983; *Law v. NCAA*, 1998). Consistent with the Court’s analysis, for over 20 years the NCAA has functioned as a trade association for colleges and universities. Clearly any benefits the NCAA accrues to federal taxpayers have been minimal at best.

Dr. Brand also identifies the “1950 Revenue Act” as support for the continued tax-exempt status of the NCAA and its member institutions. It cannot be denied that in the past the Congress and the courts have supported intercollegiate athletics’ tax exempt status. However, the House Committee on Ways and Means appears to be asking the NCAA: What benefits does the NCAA “presently” provide taxpayers in exchange for the continuation of this status? Dr. Brand does not argue that college athletics has remained unchanged since 1950. In fact, in his 2006 President’s message Brand noted that today’s NCAA’s governance structure, and college athletics in general, bear little resemblance to their 1950 counterparts. “Intercollegiate athletics looks different now than it did in 1906 or 1956...The NCAA is obligated to protect - and enhance - those opportunities by

conducting the business of college sports well.” (para’s. 16, 17). Dr. Brand’s comments clearly demonstrate his belief that the NCAA and big-time college athletics have morphed into primarily revenue-generating pursuits. But, as might be expected, he attempts to perpetuate the fallacy that how a business generates revenue is irrelevant, as long as some portion, no matter how small, of its expenditures are deemed worthy. Denying the underlying cause of the college-sport “arms race” Dr. Brand contends “College sports exhibits business aspects *only* [emphasis in original] when it comes to revenues - the enterprise is nonprofit on the expenditure side” (Brand, 2006, para. 10).

### **Thomas**

**b. From the standpoint of a Federal taxpayer, why should the Federal government subsidize the athletic activities of educational institutions when that subsidy is being used to help pay for escalating coaches’ salaries, costly chartered travel, and state-of-the-art athletic facilities?**

### **Brand**

It should be pointed out that colleges and universities apply the “tax subsidy” to offer a broad range of athletics participation opportunities for hundreds of thousands of young men and women at more than a thousand institutions.

Without trying to address every instance, coaches’ compensation packages, especially those with seven-figure packages, include institutional salaries commensurate with other highly paid and highly recruited faculty and staff. The salaries are negotiated at arm’s length and are within the range of reasonable compensation as defined for federal tax purposes. Coaches also earn outside income from television programs, shoe and apparel endorsements, speaking engagements, and teaching camps. The majority of the total income of these highly compensated coaches does not come from an institution’s tax-exempt dollars. This is exactly the same method that colleges and universities use to compete for top academicians in selected disciplines. The majority of their compensation packages, which in some cases exceeds seven figures, is derived from income outside of the institution. In all cases, the institutions strive to maintain compensation at a level that is reasonable as that term is used for federal income tax purposes.

Travel for athletics teams is a relatively modest portion of athletics’ operational budgets, on average around seven percent. Travel for teams is often made less expensive by chartering rather than using commercial flights and typically gets student-athletes back to the campus and in class sooner. Additionally, the size of the squad and staff makes the use of commercial air travel often impractical and frequently impossible.

Athletics facilities, state-of-the-art or otherwise, are necessary for the support of the activity for which there is a tax exemption. These facilities, often paid for through bonds or charitable contributions, also generate revenue that offsets the operational cost of athletics that might otherwise be provided through institutional funds.

## The Authors

Dr. Brand's rationalization for increased coaching salaries, travel costs, and capital improvements is based upon an economic model which, in effect, artificially restricts monetary compensation to only certain participants. Stated simply: The NCAA makes money, Universities make money, Coaches make money, but the players whom fans pay to watch - many of them gifted enough to play in free-market-based professional leagues - are systematically denied the same rights afforded every other person in the system.

In addition, Brand's argument never addresses the *opportunity costs* associated with cross-country trips for athletic contests involving only a few athletes (i.e. men's basketball team). Such junkets are not only of limited educational benefit, but do not directly contribute to the quality of "education" for Brand's full-tuition paying "nonathletes."

Dr. Brand's claim that "the majority of the total income of these highly compensated coaches does not come from an institution's tax-exempt dollars," is symptomatic of college sport's disconnect from any academic mission. A faculty grant (such as National Institute of Health (NIH) funding for cancer research) whose final product is clearly educational in nature is in no way comparable to a coach's shoe contract. In addition, it should be clearly understood that "outside" coaching income is not subject to university control and oversight through such mechanisms as an Institutional Review Board (IRB) or research development office.

In addition, Brand writes: "Athletics facilities, state-of-the-art or otherwise, are necessary for the support of the activity for which there is a tax exemption." In fact, state-of-the-art athletics facilities are not a necessity; rather, they are a luxury. The NCAA and college athletic administrators have never shown how a 100,000 seat football stadium contributes to the NCAA's or a university's educational mission. Coaches have been quoted as saying: "My practice court/field is my classroom." The NCAA would surely not argue that the educational value of BCS football games or the D-I men's NCAA basketball tournament games played in mega-sized football stadiums is directly related to the number of fans in attendance. If a Division III football game played before 300 fans can generate the same "amount" of educational benefits, then increased expenses associated with big-time college athletic contests CANNOT be justified on educational grounds. Increased costs associated with such spectacles (e.g. BCS national championship football game and The Final Four™) are primarily related to increasing their entertainment value and a desire to maximize incremental revenues.

A subtext to Dr. Brand's comments is the lack of academic oversight and control of Division I athletic departments, as well as burgeoning athletic department budgets that force athletic directors and marketing partners to explore alternative revenue streams, should cause members of the Congress to seek the answer to one simple question: "Who's really in charge of big-time athletics? Is it university presidents or a triumvirate of NCAA Corporate Champions, Corporate Partners, and media conglomerates?"

### C. Question 4

#### Thomas

**4. Officials from the NCAA, athletic conferences, and universities have explained that college football and basketball should be tax-exempt because some universities generate a profit from these sports that is used for other university-sponsored sports. To be tax-exempt, however, the activity itself must contribute to the accomplishment of the university's educational purpose (other than through the production of income). How does playing major college football or men's basketball in a highly commercialized, profit-seeking, entertainment environment further the educational purpose of your member institutions?**

#### Brand

The fact that some intercollegiate athletics programs at some schools generate revenues in excess of expenses is not inconsistent with the fact that such programs contribute to the schools' overall educational programs. The modern comprehensive university and, indeed, American higher education would not exist without the ability of some disciplines and activities to generate income that helps pay for other disciplines and activities. Not all disciplines and activities are in equal demand or enjoy the same appeal. Athletics and a few other activities are more interesting – and entertaining – to the general public and media than others. The ability of some to generate revenue is not insignificant to the rest of the campus.

Higher education takes in revenue from all its sources and then redistributes those resources to meet its mission. For example, revenue from Psychology 101 classes (because of their number and size) typically generates more revenue and, in effect, subsidizes philosophy classes, which cannot draw enough students to pay for themselves. This is the business model for higher education (and for other types of tax-exempt organizations), and intercollegiate athletics works the same way. Revenue from football and men's basketball is redistributed to pay for sports that generate little or no revenue.

Nonetheless, all of these activities have educational value. The scale of their popularity and the revenues they generate do not diminish the importance of their educational value. The lessons learned on the football field or men's basketball court are no less in value or importance to those student-athletes than the ones learned on the hockey rink or softball diamond – nor, for that matter, than those learned in theater, dance, music, journalism or other nonclassroom environments. Indeed, if institutions could generate new revenue streams from the televising of large lectures or small seminar discussions and use the revenues to offset the cost of other classroom programs, they would be permitted and should do so.

The fundamental purpose of intercollegiate athletics is the education of student-athletes in both the classroom and on the field or court. The scale of the sport does not

alter the fundamental purpose. And the most successful programs in terms of generating revenue share the same educational goals with the least successful. Unlike other campus activities of educational value, the visibility of athletics models developmental characteristics of sports to nonathletes, as well.

### **The Authors**

Interestingly, Brand's comments only briefly and tangentially touch on anything to do with education. However they still warrant a response. Dr. Brand appears to be saying that the scale of a sport does not alter its purpose. If so, we question whether it logically follows that big-time sport produces additional educational value. Dr. Brand's comparison of Psychology 101's revenue generating capacity to that of a big-time football team fails to address the real issue. Psychology 101 is clearly "educational" in nature. Football's ability to generate revenue "comparable" to Psych 101 is not proof of football's educational nature. In fact, money generated by big-time football detracts from education because of the academic compromises often required to satisfy external stakeholders, such as television networks and corporate sponsors. Too often, both Psychology 101 and a philosophy course are competing with a weeknight college-sporting event for students' attention.

A philosophy course is not inherently "more educational" than Psychology 101 because it does not generate large revenue streams for the university. It is important to recognize that Dr. Brand's argument that "revenue sports" must maximize their revenue opportunities to provide athletic opportunities for other "non-revenue" sports is not an educational explanation, but simply an economic justification for the scope of big-time college sport. This economic justification certainly has ramifications for taxpayers throughout the United States. The NCAA must continue to extol the virtues of big-time college sport as an educational activity because Congress has specifically established the Unrelated Business Income Tax (UBIT) as a means to prevent non-profit entities from engaging in for-profit activities ancillary to their non-profit purpose. The NCAA supplies no specific information beyond its comments that generating revenue serves an educational purpose. This is akin to a university operating a print-shop, accounting office, movie production studio, or any other business that unfairly competes with local for-profit enterprises. The Congress would certainly not simply take the "word" of such a university that such activities were "educational" when the facts clearly indicated such activities only purpose was to generate revenue for the university's activities that were clearly educational in nature. Unfortunately, the NCAA provides no data to support the notion that its athletics' activities are educational in nature.

In addition, Dr. Brand's comments offer proof that the NCAA has moved beyond the ubiquitous use of the NCAA-mandated "student-athlete" to a new level of sophistry. College students have become "nonathletes!" While this may seem a trivial point, Dr. Brand's word choice is revealing. As is often the case, language provides a pathway to a person's view of reality. As the personification of the NCAA, Dr. Brand carefully crafts his statements – or his statements are crafted for him – for maximum effect. Therefore, it is important to analyze his statements fully.

To an observer unfamiliar with college athletics, Dr. Brand's remark indicates students should now be referred to as "nonathletes." This offers proof that Dr. Brand may believe athletes are inherently superior to "nonathletes." If this is the case, then the university's proverbial "front porch" has become the collegial living room, dining room and master bedroom. We wonder how an enterprise that constitutes – by the NCAA's own estimate – no more than 3-5% of a university's operational budget can exert such a hold on a former college president's mind that he would refer to 95%+ of a university's students in the negative – as if these "nonathletes" exist only in reference to a hyphenated few.

#### **D. Question 5**

##### **Thomas**

**5. Educational institutions in other NCAA divisions spend a fraction of the amount Division IA schools spend on their football and men's basketball programs. These higher expenditures are ostensibly for educational purposes. What additional educational value is received by participation in Division I-A athletics beyond that which is received by participation in other division or intramural athletics? If additional educational value is derived from participation in Division I-A athletics, does the additional educational value justify the higher expenditures?**

##### **Brand**

Generally speaking, educational institutions in other NCAA divisions spend a fraction of the amount Division I-A schools spend on any of their other educational programs. For example, the budget for the mathematics department, as well as the athletics department, at The Ohio State University is larger than the budget for the mathematics department, or athletics, at Defiance College in Ohio. Even though each institution has invested to a considerably different level, both are providing a quality educational experience and meeting the expectations of their students. In fact, because of higher amounts of outside revenue to support athletics at Ohio State, the athletics budget at Defiance – or any other Division II or III institution – is considerably higher as a percentage of institutional resources than at Division I schools.

Is the difference in the educational experience of students at a large public university quantitatively better than at a small private college? It may or may not be, but we generally don't try to make that quantitative differentiation. We understand that there are different approaches for a variety of reasons and to accommodate a diversity of circumstances. A more robust athletics program is often identified as one of the advantages of attending a larger school.

The range and cost of programs – in athletics as well as in academics – are largely responsive to expectations of students, parents, alumni and others, as well as the financial circumstances of each institution and are difficult to quantify. Nonetheless, all NCAA

member institutions conduct their athletics programs consistent with the academic missions of their respective campuses.

### **The Authors**

Once again Dr. Brand's analogy avoids the fundamental question by ignoring the fact that Ohio State's mathematic department has exponentially more students than Defiance College. As expected, Ohio State's math department budget will be larger. The larger number of students taking classes in the department is the critical factor in such a budgetary analysis.

However, if we compare Ohio State's men's basketball team's budget to Defiance College's, the number of players on the team seems to be largely irrelevant to any such analysis. Dr. Brand would surely agree with the "fact" that Ohio State's men's basketball budget's is vastly larger than Defiance College's. However, the number of men's basketball players is roughly equal. Does Dr. Brand's analogy help us find out why there is such a large budgetary disparity? Are the greater expenses associated with the Ohio State men's basketball team educational in nature? Perhaps Ohio State's larger budget is not educational in nature, but based on a greater recruiting budget, more cross-country travel, increased support staff salaries, and other entertainment-related expenses.

Fundamentally, the only added value associated with big-time college sport is additional revenue production. This fact begs three questions:

1. If the only added value to "big-time" sport is additional revenue production, why should federal taxpayers subsidize such activities?
2. If the only such added value is revenue production, why are the athlete-entertainers who produce this revenue not paid?
3. If the extent of revenue-sport athletes "collegiate" experience is an opportunity to be on a college campus and "rub elbows" with "nonathlete" fans, while perfecting their athletic skills in anticipation of "going pro" the following season, why shouldn't professional sport leagues foot the bill for their future-players' development?

### **E. Question 6**

#### **Thomas**

**6. According to studies, incoming athletes at many universities have lower average SAT scores and high school grades than those of the general student body. Do the minimum initial eligibility standards currently in place adequately ensure that high school athletes can succeed academically at universities?**

## **Brand**

As noted earlier, the NCAA has collected and analyzed data for the last 20 years to observe the behavior of hundreds of thousands of successful student-athletes and modeled our standards on that behavior. Any studies that assume student-athletes enter Division I colleges and universities less well prepared than non-student-athletes are either out of date or erroneous. Data from 2004 entering freshmen, the latest available information, show that Division I scholarship student-athletes averaged a score of 1096 on the SAT. This is higher than the national average of 1026 for all college-bound test takers. Similarly, the athletes averaged a core grade point average (GPA) of 3.400, which exceeds the national average GPA of 3.280 reported by the College Board for all students.

## **The Authors**

Data from several universities, including University of California-Berkeley and University of California-Los Angeles, challenge the accuracy of Dr. Brand's claims that "student-athletes" entering Division I colleges are as academically prepared as "nonathletes." A recent *Bloomberg.com* article reported that "...more than 90 percent of freshman athletes admitted during the 2005-2006 academic year were accepted on the basis of 'unique athletic skills' because their test scores were not competitive with other applicants" (Eichelberger, 2007, para. 7). In addition, data obtained through open records laws revealed 158 of 243 athletes would not have been admitted to the university if they were not athletes, and 79 other athletes needed approval from a special admissions committee because they did not meet the school's minimum requirements (Eichelberger).

Such policies, according to Larry Faulkner, president emeritus at the University of Texas at Austin, go to "...the heart of what is the intercollegiate model and what business we are in" (Eichelberger, 2007, para. 12) and risk eroding the reputations of the nation's top universities.

These special-admission data question the validity of the NCAA's latest APR graduation-rate variable, suggesting that an indeterminate number of universities engage in systemic special admission of under-qualified athletes and then attempt to graduate these players by creating specious academic programs. Unfortunately, Dr. Brand will likely contest these "special-admission" reports, just as he continues to claim that clustering or bogus majors are not major academic issues.

Too often when presented with credible reports or data regarding academic improprieties Dr. Brand or other NCAA representatives follow the same script. First, deny the problem or minimize the extent of the problem. Second, claim the investigators or critics "Have their facts wrong." Next, offer few, if any, facts (but at least a few numbers and percentages) to rebuke the claim, while reframing the discussion through oblique references to Title IX, the "collegiate experience," or "low-income" athletes who might otherwise not be able to attend college. The final talking point involves both reassuring everyone that the NCAA is committed to reform and reminding the questioner that there

is no need to investigate the situation further, since NCAA “research” indicates things are “trending upward.”

It is important for members of the Congress to realize that any discussion of graduation rates without full disclosure of the majors, the courses’ status within the university, and the cumulative grade point averages in these courses serves little purpose but protecting the present commercial-sport enterprise. Since athletic departments and institutions themselves have a vested interest in reporting increased graduation rates, two things are likely to occur: 1) The NCAA will develop a new matrix or measurement of graduation success rates that arbitrarily increases the graduation rates (This has, in fact, occurred.). 2) Athletes will be directed into courses of study that are less rigorous and designed to keep them eligible and allow the athletic department to meet the APR requirements. In addition to preliminary evidence that “clustering” of athletes is occurring in men's Division I basketball programs that participated in the 2006 version of March Madness, research suggests the NCAA and its broadcast partner (CBS) has systematically under-reported Division I men’s basketball players’ majors, by listing or discussing only 11 athletes’ majors during 31 randomly-sampled broadcasts (i.e., approximately 0.3 majors per game) (Southall, et. al, in press).

The authors not only look forward to the NCAA’s allowing independent review of its graduation rate data, but also support full disclosure as outlined above as a corollary to this data. However, for this paper’s purpose, it should be noted that Dr. Brand fails to discuss the graduation rates of football and men's basketball (5% of the sample) in his response. Graduation rates of such a small number of athletes - who incidentally also generate 95% of NCAA and big-time universities’ athletic department revenue - are easily lost in his generalized descriptive and superficial data analysis. Instead of providing substantive information and performing additional inferential statistical analyses, Dr. Brand’s answer glosses over the issue and avoids the question. As any statistician knows, if an organization wants to, it can easily hide a small sample within a larger population. It is no coincidence that Dr. Brand lumps all athletes, in all divisions, in all sports together in his responses to this question. Doing so paints a rosy and distorted picture of college sport. The NCAA continually laments critics who focus on football and men’s basketball. However, since the revenue production is highly concentrated in those two sports, the likelihood of academic integrity being compromised in the search for revenue streams is increased in these sports that generate so much of the revenue.

## F. Question 7

### Thomas

**7. In order for a high school student to become eligible to compete in intercollegiate athletics, the NCAA requires high school athletes to take a core curriculum of academic courses and earn a minimum grade-point average while in high school. Why does the NCAA not have similar requirements for athletes during their collegiate careers?**

## **Brand**

The NCAA does have minimum academic performance requirements for student-athletes during their college careers. Enrolled student-athletes must meet progress-toward-degree requirements on a term-by-term basis in order to maintain academic eligibility to compete in athletics. Under these requirements, each student-athlete must make specific, measurable progress (at least 20 percent per year) toward a declared degree at the institution in which he or she is enrolled. In addition, each student-athlete must annually acquire a predetermined percentage of the cumulative GPA toward graduation. These standards serve as a proxy for the “core curriculum” approach used for high school athletes.

## **The Authors**

Too often a fruitless search for the dual mirage of winning and revenue generation that 95% of NCAA institutions will never reach results in athletes taking “watered-down” courses. Being coddled and shepherded through such curriculum is not in a true students’ long-term best interest. Maintaining a non-student’s eligibility and insuring progress toward a devalued degree may serve to insure athletic eligibility, but such preferential treatment is an empty promise that too often leaves athletes not prepared to go “...pro in something other than sports.”

Elden Campbell, former men’s basketball player at Clemson, while one of the few college athletes who has had a viable professional sport career, spoke candidly about his college experience and the value of his degree:

Interviewer: “Elden, did you earn a college degree while at Clemson?”

Campbell: “No, but they gave me one anyway.”

Without disclosure there is no way to determine if the NCAA’s “magical core curriculum” does anything but keep students moving on an “eligibility” track. Clustering under-prepared athletes in easier courses may allow them to make progress toward a concocted degree, but it postpones dealing with a student’s educational needs in order to keep him eligible to compete. In our opinion, the NCAA’s “core curriculum” distorts the validity of its APR and GSR system.

The new Academic Progress Rate (APR) allows athletes “in good academic standing” who have exhausted their eligibility and are dropped from a program’s roster to avoid detection. In reality the NCAA has created a system that results in academic fraud, easy majors, and “eligibility mills.” The authors are skeptical of any program that does not have complete disclosure built into the system.

## G. Question 8

### Thomas

**8. In recent years, there have been many reports of athletes taking college courses that lack academic rigor. Several schools have reportedly steered athletes toward professors and academic majors that are less challenging.**

**a. What actions has the NCAA taken to assess the substance of the courses athletes are taking and, more generally, the quality of the education athletes receive?**

### Brand

The NCAA is in the process of collecting survey data in two projects with both recently graduated student-athletes and those who have graduated over the last decade about what degrees they selected, why those degrees were selected and whether they were steered toward specific degree programs. Those data have not been fully compiled and will not be available until the spring of 2007. It is important, however, to understand that the faculty of each college or university, rather than the NCAA, determines the courses that will be taught, the standards for instruction and the requirements for degrees. They are also responsible for monitoring against academic abuse or fraud, and they take these responsibilities seriously. It is unlikely that any intrusion by the NCAA into this realm would be either practical, successful or welcomed.

### The Authors

Brand and university athletic directors typically point out that faculty, not the NCAA, are responsible for the curriculum. Mr. Brand is, of course, dead-on correct. After reading Dr. Brand's response, it is not difficult to imagine big-time athletic directors returning to their offices, leaning back in their chairs and feeling both pleased with themselves and confident that his answer has allowed them to once again dodge the academic-fraud bullet. Why not? Their confidence is grounded in the almost unbroken track record of faculty not publicly defending academic integrity. Given such faculty inaction, the truism that faculty are responsible for the curriculum becomes a key tactic in the strategy of avoidance and evasion to any questions, charges, or examples of academic impropriety in college sport by athletic department administrators or the NCAA.

If the NCAA truly believes that faculty control on-campus, academic activities of NCAA athletes, why did the NCAA institute its *Clearinghouse* program? If faculty members truly control the athletic enterprise, why does the NCAA and athletic departments have compliance and enforcement staffs? Dr. Brand, a former university president, points the finger of responsibility at largely powerless and disengaged faculty, knowing full well that such a tactic will deflect meaningful investigation into the true nature of big-time college sport.

Brand correctly points out that indifferent faculty must actively defend academic

integrity: “They are also responsible for monitoring against academic abuse or fraud, and they take these responsibilities seriously.” However, research suggests that big-time athletic departments are at least accessories, if not the primary culprits. Research suggests a correlation between athletic success and academic improprieties. Indicative of this relationship, the SEC tops all conferences in two areas - major violations (42 since 1953) and national championships (72 in the last decade). “Being a big-time football program...does not deter subjects from committing major violations” (Otto, 2005, p. 53). In fact, Otto reported that big-time football programs are charged with the greatest number of major violations. NCAA sanctions against programs that commit major violations evidently do not deter them from committing more violations. For such athletic departments, sanctions are simply part of the cost of doing business. Simply put, the benefits of being a big-time football program (revenue generation) outweigh the cost (sanctions) of being found guilty of a major violation (Otto).

### Thomas

**[b.] Does the NCAA collect information from its member institutions to determine whether athletes are disproportionately taking certain professors, courses, or academic majors at individual schools?**

### Brand

Although the results are not available at the time of this writing, the NCAA is collecting data on the majors of student-athletes through our Academic Performance Program.

### The Authors

Again, Dr. Brand avoids the question, which was about professors and courses, not simply academic majors. Disclosing academic majors provides limited information; disclosing courses and names of professors provides detailed information. Even collecting data on all majors of all athletes and then categorizing these majors by sport is inadequate, unless one makes use of inferential statistical analyses and formulates an adequate number of independent variables. Unfortunately, the NCAA fails to perform such rudimentary data collection or provide basic demographic data to independent researchers. Such tactics result in little or no information to assist in substantive policy development.

### Thomas

**c. Would requiring the public disclosure of the professors, courses, and academic majors of athletes help ensure that they receive a quality education?**

### Brand

Privacy provisions of the Family Education Right to Privacy Act (FERPA)<sup>2</sup>

would prohibit such public disclosure, and it is not clear that such public disclosure would, in fact, ensure a better quality education. Likewise, if more student-athletes major in a specific discipline, it does not follow that such students receive an education of less quality or are subject to less rigorous academic standards, much less that there is academic fraud. As noted earlier in this letter, the standards for instruction and the integrity of academic offerings are the purview of the faculty and their responsibility, rather than the NCAA. Moreover, it would be contrary to the freedom of choice accorded all students to require that student-athletes take certain majors and not others.

### **The Authors**

First, as surely Dr. Brand knows, FERPA does not prohibit disclosure as outlined above. Second, disclosure would more clearly, specifically, descriptively, and completely meet the goal of the NCAA academic reform initiatives [such as the APR] “. . . to change behavior and improve academic performance.” Third, disclosure would provide information from which to draw conclusions about the rigor of academic programs selected by athletes. Fourth, what avenue other than review of an academic record is available to determine whether academic fraud exists? Dr. Brand suggests that anyone who advocates disclosure wants to deny a student “freedom of choice” in selecting an academic major. Dr. Brand is “dead wrong.” The reality is that many college athletes are denied freedom of choice and coerced into majors that benefit the athletic enterprise rather than providing them with a real opportunity for an education.

There is no shortage of examples where disclosure has changed behavior. When an Auburn University professor blew the whistle on excessive directed independent study credits given by a colleague, Mr. Brand turned to the “playbook” [see above] and called “the Auburn situation” an “institutional problem . . . not an athletics problem.” What Dr. Brand fails to address is the logical outcome of his statement. An institutional problem calls for an institutional solution. In other words, rather than being directed at athletics, disclosure is directed at revealing an institution’s commitment to academic integrity. Disclosure is not about student behavior; it is about institutional behavior. Fear of disclosure is not, as Mr. Brand tries to suggest, a concern for a student’s privacy. Fear of disclosure is rooted in the concern that unethical behavior (or at least the ignoring of such behavior) by academically disingenuous faculty, university/athletic administrators, and presidents will be exposed.

As efforts by whistleblowers have demonstrated, there is no reward for individual faculty members who take seriously their role of guardian of the curriculum. As Theodore White pointed out, “To go against the dominant thinking of your friends, of most of the people you see every day, is perhaps the most difficult act of heroism you can have.” People become professors to be teachers and scholars, not heroes. The result is that an overwhelming number of faculty become members of a “silent majority” afraid to speak out against academic fraud or neglect. For such faculty, disclosure is their friend. Disclosure is the friend of faculty who want the academic corruption to end. Without disclosure, faculty members who want to end the corruption - and its concomitant poison, cynicism - have to fight the system, have to be an adversary, have to be a whistleblower

(i.e., “disloyal,” “not a team player,” “hurting the university,” “must have a grudge against athletics”). For faculty tired of the corruption, who are embarrassed by the few who allow themselves - and thus the university - to be a part of the exploitation, who see the cynicism that such corruption produces, disclosure is an ally. Graduation rates and the APR - requiring thousands of staff hours and hundreds of thousands of dollars to compile - give the appearance of facing the problem. However, such activities provide only “pretend accountability.”

Unfortunately, notwithstanding the efforts of the Coalition on Intercollegiate Athletics (COIA), The Drake Group, and other well-intentioned organizations most college faculty are attending to their own vested interests and non-provocative business, giving scant, if any, attention to their duties as guardians of the curriculum and academic integrity as it applies to their school’s athletes. Some faculty members are indeed intimidated by their university’s administration, athletic director, and coaches; some are rabid sports fans who enjoy the entertainment and excitement of the games and want to help athletes maintain their eligibility; some just don’t care. This situation actually empowers the NCAA’s avoidance-and-evasion strategy, which is aimed at countering questions, charges, or examples of academic impropriety in college sport.

Without external oversight and a requirement for disclosure, there will be no serious reform, only a veil of secrecy shrouding a continuing national scandal characterized by exploitation of college athletes, academic corruption, and distortion of the mission of our institutions of higher education ... institutions that are now beholden to the out-of-control college sport-entertainment business.

Any call for complete disclosure is not a call for decreasing athletes’ academic freedom. Disclosure will serve to verify, once and for all, whether or not all college athletes are in fact also students. Disclosure will confirm or deny the existence of “clustering” and increase college athletes’ academic freedom of choice.

### **Thomas**

**9. At Division I-A schools, only 55 percent of football players and 38 percent of basketball players graduate - compared to 64 percent of the general student body. These figures understate the gap between the graduation rates of the general student body and athletes, since many regular students fail to graduate for financial reasons, which is not an issue for athletes on full scholarships.**

**a. Are the NCAA’s member institutions accepting athletes who would not otherwise be admitted but for their athletic prowess?**

### **Brand**

It must be emphasized that “special admissions” are not limited to student-athletes. Most colleges and universities offer special admissions opportunities to a variety

of students who have not met the academic standards generally applied to the student body. These special admissions are used to admit a small number of students, often low income nonathlete students with promise from disadvantaged educational environments. Special admission standards are also applied to admit some students with talents that offset their academic shortcomings; e.g., musicians, artists, dance and drama majors, and athletes.

We do not know the exact numbers nor how many institutions offer such special admissions opportunities.

### **The Authors**

Dr. Brand again ignores reliable reports of questionable special-admission policies, even when such reports have resulted in the NCAA launching its own review. Moreover, he avoids comparing the graduation rates of such athletic “special admits” to their music, mathematics, philosophy, or engineering cohorts.

While we await data regarding how many institutions offer such special admission opportunities, we also hope to obtain information on the extent to which individual institutions make use of such special admissions. Additionally, we await details on money spent (per capita) for identifying, recruiting, and supplying academic support services for specially-admitted athletic non-qualifiers and a comparison of such expenditures to those for specially-admitted nonathletes.

Only through a thorough analysis of the data can any conclusions be made. Public service announcements highlighting one or two of the 360,000 - or more recently 380,000 “student-athletes” should not deflect substantive, intensive, independent inquiry into this issue.

### **Thomas**

**b. For twenty years, the Federal graduation rate for male basketball players has remained basically unchanged at about 40 percent. Why has the NCAA made no progress in ensuring that athletes who play on the court also graduate from the schools for which they are playing?**

### **Brand**

Male basketball student-athletes in Division I who entered universities in 1984 – the first year the Department of Education began requiring the collection of graduation data – graduated at a rate of 38 percent. The most recent data (for the cohort entering in 1999) show male basketball student-athletes in Division I graduating at a rate of 46 percent.

Over the last two years, the NCAA has also collected data on transfer student-athletes who are not included in the federal rate (nearly 30,000 annually). Based on those

data, the more accurate graduation rate for Division I male basketball student-athletes is 59 percent. The NCAA believes that when male basketball student-athletes who entered under the current and more rigorous academic standards graduate, the rates will be significantly higher. Nonetheless, graduation rates for male basketball and football student athletes continue to be of concern and the focus of NCAA-led academic reform efforts.

### **Thomas**

**c. The defending Division I-A national champion in football graduated 29 percent of its players compared to 74 percent of the university's student body for the class entering in 1998. Similar large differences in graduation rates exist at other colleges and universities. Considering this gap, how well is the NCAA accomplishing its tax-exempt purpose of maintaining "the athlete as an integral part of the student body"?**

### **Brand**

On average, Division I-A football student-athletes graduate at a federal rate of 55 percent, compared to 62 percent for the male student body. The more accurate Graduation Success Rate that includes transfers is 66 percent. Over the next few years as the new standards and sanctions take place, teams in any sport must have a projected graduation rate of 60 percent or better or will not be permitted to compete in postseason championships. It is frustrating that there continue to be instances of low graduation rates for any teams, but progress on average is clearly being made and more will be.

### **The Authors**

Here Dr. Brand and the NCAA gloss over what is really happening. Even if the NCAA's newly crafted APR and GSR are "more accurate" measurements of athletes' graduation rates, they still remain merely arbitrary quantitative measures that cannot reveal if athletes are being placed in or are taking specious course to allow athletic departments to achieve these "new and improved" rates. The underlying motivation behind developing and reporting these little-understood numbers appears to be semantic; an effort to convince the public that real progress has been made.

Such rates will, of course, indicate some sort of progress. Their real intent, however, appears to be insuring athletic departments have their athletes available for competition. Driven by their desire to generate revenue and conduct "the business of college sport well," NCAA-member athletic departments simply will not allow themselves significant penalties that could severely impact these economic goals. The NCAA's fierce resistance to independent analysis and verification of APR and GSR data is an example of why disclosure is needed and why graduation rates are not an accurate barometer of the quality of an athlete's education.

Even respected college coaches have questioned the validity and reliability of the APR and GSR. When the new Academic Progress Rate Standards and associated penalties were unveiled, legendary Penn State football coach Joe Paterno said, “If you tell Whatsamatta U that they have to graduate 50% of their football players to retain all of their scholarships, then Whatsamatta U. is going to make sure they graduate 50% of their players” (PennLive.com, 2006). Paterno recognized the obvious: institutions will use whatever means they need to meet the NCAA’s “new” standards. The economic and cultural stakes are too high and will, unfortunately, cause many athletic departments to sacrifice their universities’ academic integrity.

### **Thomas**

**d. To improve the graduation rates of athletes, has the NCAA considered adopting a rule tying the number of grants-in-aid that can be awarded to a member institution’s graduation rates?**

### **Brand**

Rather than tying grants-in-aid only to graduation rates that measure the academic success of student-athletes who enrolled six years earlier and are gone by the time we know the rates, the sanctions in fact in place tie grants-in-aid to year-by-year academic (not athletics) success of student-athletes. This standard is designed to achieve, at a minimum, a 60 percent graduation rate for all students in a specific sport.

### **Thomas**

**10. The NCAA recently created the Academic Progress Rate to measure the cumulative progress made by athletic teams towards a degree. Based on the new measure, the NCAA will take away scholarships from teams that do not meet a threshold that is equivalent to a 50-percent graduation rate, which is an extremely low standard.**

**a. Why is a team penalized only when more than half of its players fail to graduate?**

### **Brand**

There are two very important points to consider: (1) Penalties (and rewards) are tied to the performance of currently enrolled student-athletes – Academic Progress Rate (APR) – rather than those who did or did not graduate; and (2) the more accurate Graduation Success Rate (GSR), which includes transfer student-athletes, is 60 percent where penalties are applied. The goal of the NCAA academic reform initiatives is to change behavior and improve academic performance, with a target of 80 percent GSR on average for all Division I student-athletes. We are clearly making progress overall (77 percent is the current rate) and with each individual sport.

**Thomas**

**b. Should athletes who are not advancing toward a degree be eligible to participate in college sports?**

**Brand**

No, and they are not. Here are the specific requirements to remain eligible for athletics participation: (1) Student-athletes must successfully complete 24 hours of course work in their first year to remain eligible; (2) student-athletes must achieve 40 percent of a specific degree requirement by the end of their second year, 60 percent by the end of their third year and 80 percent by the end of their fourth year (the average time required to earn a degree in higher education for all students currently is nearly five years); (3) student-athletes must achieve 90 percent of the cumulative grade point average required for graduation by the end of the first year, 95 percent by the end of the second year and 100 percent by the end of the third and fourth years; and (4) student-athletes must earn 18 semester or 27 quarter hours during the regular academic year, not including summer. If student-athletes do not meet these standards that move them toward a specific degree, they cannot compete.

These standards are based on data that show that student-athletes who satisfy these requirements are likely to graduate.

**The Authors**

Several of us have worked in college athletics and witnessed first hand the manipulation and subterfuge to which athletic departments resort to keep athletes eligible. Sometimes the process is subtle; sometimes it is blatant. Too often these tactics are utilized instead of simply requiring athletes go to class and perform to a required standard. Typically, a vast array of tutors, advisors, support staff, and, sadly, faculty (see: Auburn University) capitulate and massage the system to keep athletes eligible. For various reasons we believe many university athletic departments and the NCAA choose to effectively ignore the facts and perpetuate the façade that the NCAA is succeeding in its academic tax exempt mission. However, within the present system, there is no effective method for examining the situation. In light of this, we respectfully ask this committee to utilize legal academic disclosure, as outlined by Salzwedel and Ericson (2004), as a means to determine if the NCAA and intercollegiate athletics is indeed worthy of a tax exemption.

**Thomas**

**11. During the last few decades the NCAA has increased the maximum number of football and men's basketball games that each member institution can play. This year, the NCAA changed the rules to allow schools to play an additional, twelfth football game. Also this year, the NCAA approved an increase in the maximum number of basketball games teams can play in a season and lengthened the season by one week. Including preseason and**

**postseason tournaments, basketball teams can now play more than forty games in a season.**

- a. Why did the NCAA make these rule changes?**
- b. How do these rule changes further the educational mission of the NCAA and your member institutions?**
- c. How do these proposals help athletes improve academic performance?**
- d. At what point does playing additional games have a detrimental impact on academic performance?**

### **Brand**

These are all fair and important questions to ask, and they are the same questions the NCAA membership must ask itself as it addresses issues around playing and practice seasons.

It may be helpful to respond to these questions as a group rather than individually.

NCAA member colleges and universities clearly believe there is educational value to having athletics as part of the comprehensive campus experience. Previous responses address this belief specifically. As discussed in Appendix A, the Congress, the courts and the Internal Revenue Service also share this belief. Athletics contests are the laboratory for lessons taught in practice in the same way theatrical or musical performances provide practical application of the lessons taught in rehearsals. Since graduation rates and academic performance have continued to make steady progress over the last two decades, there is little reason to believe that the current length of practice and playing seasons is detrimental to academic performance. In fact, graduation rates for both football and male basketball student-athletes have steadily risen over the last five years as the number of contests increased.

It is also true that the increase in the number of contests in football and men's basketball will grow revenue that helps support a broad range of sports that might not otherwise exist. Athletics, like every other department on campus, cannot operate without sufficient revenues to meet expectations. Increasing revenue, however, is not the only reason. Some but not all teams were already playing 12 games in football. Permitting a 12<sup>th</sup> game for all teams was more fair. The stabilization of games in basketball eliminated similar unfair practices in that sport.

### **The Authors**

Dr. Brand claims “[p]ermitting a 12th game for all teams was more fair (sic).” Who can argue against “fairness?” If some schools play 12 games and most schools play 11 games, “fairness” dictates the season **must** be extended to 12 games. Evidently, any and all stabilization and control of the college-sport product is “fair.” How can college-football market stabilization be achieved? Lengthen the season.

However, lengthening of the Division I-A college football season in the name of “fairness” avoids a discussion regarding what facts support Brand’s statement that there is “...little reason to believe that the current length of practice and playing seasons is detrimental to academic performance.” We are unaware of any empirical data that supports Brand’s statement. The 1996 Graduation-Rates Report for Duke University revealed that the SAT average for all students was 1,392. For the men’s basketball team: 887. Would Dr. Brand have us believe a Duke professor can take a student with an 887 SAT, who has a 20-30 hour per week job that causes him to miss numerous classes and come dead tired to others, and still provide him with a university education?

To most educators, it would seem “more fair” (sic) to give priority to a student’s academic “stabilization,” to do anything to decrease his non-academic distractions. However, as Brand notes, such educational stabilization, while surely in the student’s educational best interest, would inevitably negatively impact the football and men’s basketball programs’ ability to generate “...sufficient revenues to meet expectations.”

### **Thomas**

**12. In 1973, the NCAA adopted a rule prohibiting financial aid from being awarded to an athlete for more than one academic year. This rule allows schools and coaches to withdraw financial assistance from athletes who do not perform well on the field, which may overemphasize athletics at the expense of academics.**

**a. Why did the NCAA adopt this rule?**

### **Brand**

The change was made to bring grants-in-aid for athletics in line with the way in which other financial aid is awarded or renewed. Most merit-based financial aid on campus – as well as many government-approved financial aid awards – have criteria for renewal and is awarded on a year-by-year basis. As is the case with other forms of institutional aid, the renewal is made by the financial aid office, rather than coaches. However, in the case of athletics when renewal is not approved, student-athletes are notified of their right to a hearing by an impartial committee independent of the athletics department. This committee has no choice but to support the AD because of how the rule is written.

### **The Authors**

Dr. Brand simply has his facts wrong. Contrary to Dr. Brand’s explanation, athletic grant-in-aids were not changed to bring them in line with the way other financial aid is awarded or renewed. Athletic grant-in-aids were in fact changed to allow coaches a method for getting rid of players with substandard athletic skills (Sack and Staurowsky, 1998). Dr. Brand’s response is both factually and logically flawed, and an example of the NCAA attempting to rewrite intercollegiate-athletic history.

Prior to this change, players retained their scholarship if they continued to make satisfactory academic progress toward completion of their degree. Students who succeeded academically, but failed to develop their athletic skills to a level a coach had projected, were permitted to keep their “scholarships.”

The current rule offers clear evidence the NCAA does not merit its educational tax exempt status. Recruited players are rewarded with athletic “grant-in-aids” to a “program” based upon their athletic abilities. If at any point an athlete does not meet the head coach’s athletic expectations, this aid can be revoked and provided to another athlete who demonstrates greater physical potential. As Dr. Brand noted, there is no “real” appeal of a coach’s decision because the “contract language” specifically grants the coach the right to terminate the “scholarship” after any academic year. If college athletics was truly education, coaches and administrators would never revoke a student’s “scholarship” based upon substandard athletic performance. However, athletes in good academic standing who have lost their athletic “scholarships” cannot even present their academic credentials as a rationale for their retention in school.

Such “termination after one year” is particularly appalling in light of the athletes’ options if either their athletic or educational experiences on campus are not satisfactory. NCAA athletic scholarship rules require a Division I basketball or football player receiving an athletic grant-in-aid to seek permission from the head coach to transfer to another institution. In most cases, if the coach does not “release” the player, he or she must sit out two years of athletic competition at the new Division I institution. Even if the release is granted, the athlete must still sit out a year of competition at a Division I school. Interestingly, earlier in his response to Representative Thomas’ questions, Dr. Brand noted his view of the differences between professional and college sports. The scholarship inequities clearly demonstrate why the NCAA prevents athletes from seeking individual legal representation or the ability to collectively bargain. If college athletes enjoyed these basic rights, they would have equal bargaining position. In fact, the NCAA surely recognizes that no legal counsel would allow a client to sign such a contract.

Dr. Brand’s answer is historically inaccurate and logically flawed. There are numerous examples where financial aid is tied to yearly **classroom** performance. Most “scholarships” require a student to maintain a specific grade point average or make satisfactory progress toward a degree. The NCAA’s grant-in-aid rule merely requires athletes to satisfy their head coach’s athletic expectations. Unfortunately, Dr. Brand’s response that the NCAA’s rule change was based upon a desire to model campus and government financial aide programs reveals either a forgivable lack of knowledge on his part, or an attempt to mislead the Congress regarding the facts.

**Thomas****b. How does this rule further the educational mission of the NCAA and your member institutions?****Brand**

The term of athletically related financial aid continues to be a subject for discussion by various committees and at numerous levels within the Association's governance structure. The awarding of financial aid for athletics exactly mirrors the objective of financial aid awarded for other purposes within higher education, namely, to support the academic pursuits of student-athletes. Criteria for annual awarding of financial aid in other disciplines, from physics and philosophy to music and theater, are similarly merit based. This is another instance in which intercollegiate athletics is fully integrated into the practices of higher education as a whole.

**The Authors**

Not all financial aid is governed on a year to year basis, as Mr. Brand seems to infer. Many types of aid, such as a ROTC scholarship, are guaranteed for a certain number of years. Still, intercollegiate athletics is unique in that coaches and other athletic administrators have the ability, by NCAA rules, to cancel or not renew an athletic scholarship - for any reason - at the end of the period of the award. This effectively forces grant-in-aid athletes to give priority to their means of economic support: their sport.

As long as coaches and athletics directors can use factors related to athletics to determine whether financial aid will be renewed, athletes are under considerable pressure to make sports their main priority. This highlights the inherent hypocrisy of the term "athletic scholarship." To ensure that education is a grant-in-aid athlete's priority, renewal of such aid should be unrelated to athletic performance. Failing this, "athletic scholarships" should be replaced with educational grants awarded on the basis of financial need.

In any case, universities should be truly committed to all athletes (revenue or non-revenue alike) as students whose value to the university exceeds their role in athletics. It should be noted that *The Big Ten Conference* and the *Knight Commission on Intercollegiate Athletics* have both listed the creation of multi-year scholarships among possible reform measures they could support.

### **III. Questions Relating to NCAA Finances**

[Note: The source of financial data provided below is from institutional data provided to the NCAA by its member institutions. The institutional data have been reviewed by an independent third party in accordance with NCAA requirements.]

#### **The Authors**

Instead of replying separately to each of the NCAA's responses under the heading: **III. Questions Relating to NCAA Finances**, the authors will offer one sustained response found on page 45 of this commentary. In addition, the authors encourage the committee to call on recognized tax-law scholars and sport economists to provide them with independent analyses of the NCAA and big-time college sport. Such a request would be welcomed by the numerous researchers who investigate college sport.

Contrary to the NCAA's and Dr. Brand's public assertions that there is little available research related to college sport, we would point out that not only is there a rich and substantive history of such research, but there are numerous reputable scholars actively involved in ongoing examination of the NCAA's economic, political, cultural, public-policy, and legal intricacies. While the NCAA may not support critical examination of issues in intercollegiate athletics, there are several reputable journals, conferences and research institutes that sustain such academic investigation.

#### **Thomas**

**1. How much total revenue does college sports generate each year? How much do your member institutions spend each year on college sports?**

#### **Brand**

Total annual operating revenues for all NCAA divisions are approximately \$7.8 billion. Of this amount, \$4.2 billion is generated from athletics sources such as ticket revenues, contributions and the like. The remaining \$3.6 billion are funds allocated by the institution, state or other governmental entities for the benefit of student-athletes.

Total annual operating expenses for all three divisions are approximately \$7.75 billion.

Approximately \$1.5 billion of these dollars provide athletically related financial aid for Divisions I and II student-athletes. The average annual cost per student-athlete for the 380,000 who compete in all three divisions is approximately \$20,000. Without the support of institutionally allocated funds to close the gap between athletics generated revenue and total expenses, intercollegiate sports operates at an annual shortfall of approximately \$3.6 billion.

**Thomas**

**2. For Division I-A football programs, please provide the following information for the most recent year for which you have statistics:**

**a. Total annual revenue;**

**Brand**

For the 2004-05 academic year, the total operating revenue for the 117 Division I-A football programs was approximately \$1.6 billion, an average of \$14.1 million per institution. This includes monies generated by the athletics program as well as monies allocated by the university or other entities for athletics purposes.

**Thomas**

**b. Largest amount of revenue generated by one school;**

**Brand**

The largest amount of operating revenue reported by a Division I-A football program is \$53 million. The median operating revenue for Division I-A football programs is \$10 million.

**Thomas**

**c. Total annual expenditures; and,**

**Brand**

Total annual operating expenditures for 2004-05 by Division I-A football programs were approximately \$1 billion, an average of \$8.7 million per institution. Largest annual expenditure by one school. The largest amount of annual operating expenditure by a Division I-A football program is \$26 million. The median operating expense amount for Division I-A programs is \$7.6 million.

Approximately 53 percent of Division I-A institutions reported operating revenues in excess of operating expenditures for football when allocated university funds are removed.

These excess revenues are redistributed to support other sports programs that do not generate revenues sufficient to cover expenses in the same way revenues from some academic disciplines and services are redistributed to subsidize other academic programs and services that have insufficient revenues to meet expenses.

**Thomas**

- 3. For Division I basketball programs, please provide the following information for the most recent year for which you have statistics:**
- a. Total annual revenue;**

**Brand**

In the 2004-05 academic year, the 326 Division I men's basketball programs reported total operating revenues of approximately \$789 million, an average of \$2.42 million per institution. As in the case of football, this includes monies generated by the athletics program, as well as allocated funds from the university or other entities.

**Thomas**

- b. Largest amount of revenue generated by one school;**

**Brand**

The largest reported amount of operating revenue reported by one school was \$18.5 million per institution. The median amount of operating revenue for Division I programs is \$1.1 million.

**Thomas**

- c. Total annual expenditures; and,**

**Brand**

Total annual operating expenditures for the same reporting period were \$571 million, an average of \$1.75 million.

**Thomas**

- d. Largest annual expenditure by one school.**

**Brand**

The single highest reported basketball program operating expenditure was \$9 million. The median amount of operating expenses for Division I programs is \$1.2 million. Like football, only about 28 percent of all Division I basketball programs reported revenues in excess of expenses when university allocated funds are removed. Excess revenue from basketball is used to assist other, non-revenue sports including financial aid.

**Thomas**

**4. How many of your member institutions generate a net profit on the operations of their athletic departments (excluding university subsidies such as student fees or general school funds and services)? Of the institutions that generate a net profit, how many use the profit for purposes unrelated to the athletic department?**

**Brand**

Intercollegiate athletics is not offered to generate a profit. That is the fundamental difference in purpose between intercollegiate athletics and professional sports. If profitability were the standard for college sports, only 23 Division I institutions (based on data reported for the 2004-05 academic year) would conduct athletics programs.

Furthermore, if profit were the motive, even those 23 (of more than 1,000 member institutions) would likely only conduct football and men's basketball programs.

The data that identify these two dozen institutions with positive net revenues do so without accounting for depreciation. Under generally accepted accounting principles, however, depreciation of athletics facilities should be deducted to determine a true profit. While we do not have data to know the exact number that would still report net revenues if depreciation were included, we estimate it would be fewer than 10 institutions of more than 1,000 member colleges and universities.

**Thomas**

**5. At Division I-A schools, what is the average annual expense (including the cost of grants-in-aid):**

- a. Per athlete?**
- b. Per football player?**
- c. Per men's basketball player?**
- d. Per women's basketball player?**

**Brand**

The cost of education for a student-athlete vary from sport to sport and institution to institution much in the same way they do for students in general. For example, the costs for educating engineering or nursing students are substantially more than for educating students majoring in English or history. The costs associated with an athletics program are dependent on the specific sport and its related costs for equipment, facility needs or staffing, for example.

With that as background, the average expense for a Division I student-athlete is approximately \$39,000. Expenses for Division I-A football participation amount to approximately \$74,000 per student-athlete, while Division I (there is no Division I-A

category) men's and women's basketball amount to approximately \$158,000 and \$75,000, respectively.

### **Thomas**

**6. According to NCAA expenditure reports, public universities spent as much as \$600,000 per men's basketball player during the 2004-05 school year.**

**a. How does spending hundreds of thousands of dollars on each men's basketball player further the educational mission of universities?**

**b. How much money must be spent by athletic departments to ensure that athletes receive an educational benefit from the activity?**

### **Brand**

There is no unit-cost standard for providing a quality educational experience in higher education. The methodology used in the question to calculate the cost per student is significantly misleading because there is a failure to distinguish between fixed and variable costs. Institutions assume these fixed costs as a part of running any of their various programs, including intercollegiate athletics. To use such expenses in calculating a unit cost as exaggerated as the one cited in the question, it must be noted, distorts the facts. For example, according to data reported by the U.S. Department of Education for 2003-04, the average cost per student for education at the top five expensive schools in the country in 2003 was \$462,000. This figure, however, includes a number of variables that balloon the unit cost.

The same is true in athletics. The average cost per male basketball player in Division I is \$158,000; and, like in the case of academic departments, there are fixed and variable expenses that distort the unit cost. Are the figures in either academic or athletics appropriate amounts to spend to further the educational mission of either? Could these institutions meet their mission for less? The answer to both questions might be 'yes.'

Each institution, however, will determine the level of excellence it will pursue in accordance with the expectations of those who choose their programs, taking into account the institution's available resources. The scale of cost per student in academics is not the best determinant for whether educational mission is being met.

### **Thomas**

**7. According to NCAA data, athletic department budgets are growing several times faster than the university budgets of your member institutions. In addition, athletic department expenses are increasing at a higher rate than athletic department revenues.**

**a. Why are athletic department budgets increasing faster than university**

**budgets?**

- b. Why are athletic departments spending money at an increasing rate?**
- c. How does spending even more money on Division I-A football and men's basketball further the educational mission of universities?**
- d. What actions can the NCAA take to control rising spending?**

### **Brand**

Although it is true that total athletics spending has outpaced the rate of increases in university spending over the last four years, athletics spending has not exceeded athletics revenues. Over the last two decades, revenues have dramatically increased as a result of rising ticket revenues, demand for radio and television broadcasts (partly due to changes in technology; e.g., cable and satellite television) and related income streams. Costs have also risen significantly and have been led by increases in scholarship costs, additional personnel for compliance purposes, increased interest among students for participation opportunities, new training personnel to ensure better health and safety of student-athletes, rising travel and insurance costs and increased salaries. Many, but not all, of these factors are outside the control of the athletics department.

The ability of the NCAA to influence spending is limited. One court has found that the NCAA's attempt to cap certain costs (compensation of assistant coaches) violates the antitrust laws. At the end of October, the NCAA unveiled a report from the NCAA Presidential Task Force on the Future of Division I Intercollegiate Athletics, entitled *The Second-Century Imperatives: Presidential Leadership-Institutional Accountability*. The focus of the 18-month task force initiative was the need to address fiscal responsibility in intercollegiate athletics on a campus-by-campus basis. To assist in this effort, the NCAA, with the help of the National Association of College and University Business Officers, has developed more consistent and clear definitions for reporting of financial data and requires an independent, third-party review of the data prior to submission.

These data will be made available to presidents, along with aggregate peer group data, to assist universities in examining their spending behaviors and to improve campus decision-making. Also included in the reports will be new metrics that will alert presidents to areas in which their spending history may indicate abnormalities or risk. Moreover, these aggregate data, by category, will be made transparent to the public.

### **Thomas**

**8. The NCAA has entered into an agreement with CBS to televise the men's basketball tournament. According to the terms of the agreement, CBS will pay the NCAA an average of \$545 million per year in tax-free money. The president of CBS Sports was quoted as saying, "There is no more important event at CBS, not just CBS Sports, than the men's basketball championship."**

- a. How does the transformation of the NCAA men's basketball championship into commercialized entertainment further the educational purpose of the**

**NCAA and its member institutions?**

**b. The NCAA receives 85 percent of its revenues from the sale of television rights. What is the influence of television networks on the NCAA's decisions? Please include a description of the influence television networks have on the scheduling of games and on the maximum number of games allowed to be played in a season.**

**Brand**

The fact that television networks are interested in purchasing the rights to telecast college events is the result of the popularity of these events to American taxpayers. Television networks purchase the rights to meet a demand, and pay for the purchase with their own sale of advertising time on the telecasts to commercial entities. None of these circumstances makes the purpose of intercollegiate athletics anything other than educational in nature for those who participate. If the educational purpose of college basketball could only be preserved by denying the right to telecast the events, students, university faculty and staff, alumni, the institutions of higher education themselves, and even the American taxpayer would ultimately lose.

Furthermore, if the American public also had the same popular interest in French lectures or accounting classes as they do in athletics, television would be just as eager to telecast those events and to sell commercial time to pay the rights fees. Transforming those academic offerings into commercialized events would not undermine the educational purpose for which the offerings are made.

CBS and ESPN also purchased the right to telecast or otherwise distribute all of the NCAA's 88 championships – not just men's and women's basketball – and they sell commercial time to pay for their purchase. We assume it is not being suggested that the educational purpose and value of these sports and championships would be similarly jeopardized by their popularity to the public. The scale of popularity and the media attention given to football and men's basketball do not forfeit for those two sports the educational purpose for which they exist.

The sale of broadcast rights to CBS and ESPN brings with it no influence by those companies on NCAA decisions. Indeed, many decisions by the NCAA are contrary to the best interests of these networks, including limitations on the number and type of advertising, the number of television timeouts, and on game times for championship events. There are no data on the degree of influence television has on the scheduling of games, but television networks have had no impact on the number of games allowed in a season.

**Thomas**

**9. Each year, the NCAA distributes more than \$100 million from its Basketball Fund to Division I institutions. These monies are distributed based on performance in the NCAA tournament; each tournament victory**

**earns more money for the winning team’s athletic conference. Rewarding athletic instead of academic performance seems to be contradictory to the NCAA’s tax-exempt mission, and sends a message to member institutions and athletes that athletics is more important than academics. Why does the NCAA distribute more than \$100 million each year based on athletic rather than academic performance?**

**Brand**

The NCAA’s tax-exempt mission is, in part, to promote intercollegiate athletics competition, and it is entirely consistent with that mission for the NCAA to award funds to institutions on the basis of athletics performance. As discussed elsewhere, including in Appendix A, promoting athletics competition furthers tax-exempt purposes in section 501(c)(3). In furtherance of its tax-exempt mission, the NCAA sponsors 88 championships in 24 sports. It is in no way improper for the NCAA to distribute funds based on appearances in these championships.

Less than half of the funds from the Division I Men’s Basketball Championship is distributed based on appearances in the tournament. Most of the funds are distributed based on the number of sports sponsored and the number of athletics scholarships awarded to all student-athletes on an institutional basis. More than three-quarters of a billion dollars will be distributed over the term of the CBS contract for direct support, including academic support, of student-athletes. A large portion of the three-quarters of a billion dollars to student athletes is need-based, with some of the remainder distributed for academic support. Further, the dollars that are distributed through the conferences and based on appearances in the championship are distributed to all institutions, including those that do not appear in the tournament, and are used in various ways, including the academic support of student-athletes.

**Thomas**

**10. What percentage of NCAA revenue is spent by your member institutions on solely academic matters?**

**Brand**

We do not collect data on expenditures for academic support by member schools in sufficient detail to respond to this question. However, we know that Division I institutions provide \$1.2 billion annually in scholarships to student-athletes to pay for their education. Additionally, over the life of the CBS contract, the NCAA will distribute \$750 million (Special Assistance Fund, Student-Athlete Opportunity Fund, Academic Enhancement Fund) to its member institutions that can be spent only on student-athletes.

**Thomas**

**11. Coaches’ salaries account for one of the biggest expenses of Division I-A**

**athletic departments. According to reports, more than 35 college coaches receive salaries of at least one million dollars per year. Sources of revenue to pay these rising salaries include student fees, corporate sponsorships, and television deals. Paying coaches excessive compensation also makes less revenue available for other sports, causes many athletic departments to operate at a net loss, and may call into question the priorities of educational institutions.**

### **Brand**

Compensation packages are negotiated at arm's length in a very competitive environment and should not be considered "excessive compensation" under tax law principles.

Further, it is incorrect to assume that the compensation packages of the three or four dozen football and men's basketball coaches that exceed a million dollars are the major contributors to their institutions' athletics budgets. Indeed, the average athletics budgets for the institutions with "million dollar coaches" is approximately \$50 million, in which the compensation package represents 3.1 percent of the budgets. In most cases, only a small percentage of the coaches' overall compensation packages are being paid by the institution. In addition to salaries, coaches earn income from television appearances, shoe and apparel contracts, endorsements, speaking engagements, and sports camps. This approach parallels the way in which many of the top faculty at these same institutions are compensated. There are likely to be as many as two dozen "million dollar faculty" members on each of these campuses who earn a relatively small salary from the institution with the balance coming in the form of clinical and private practices, patent royalties, consulting contracts, books, speaking engagements and other sources. It should be noted, however, that faculty members have the protection of tenure while coaches are employed at will and can be dismissed for lack luster win-loss records or the inappropriate behavior of 18- to 22-year olds.

### **Thomas**

**a. Several Division I-A schools pay their men's basketball coaches four to five times more than their women's basketball coaches. What additional educational benefit do men's basketball coaches provide beyond that which is provided by women's basketball coaches?**

### **Brand**

Coaches' compensation packages, like others within an institution's faculty, are driven by market forces. The competition for the top men's basketball coaches is intense. Similarly, the competition for top faculty in medicine, engineering, law and some other disciplines is also intense. Because of market demand, these faculty will be compensated considerably higher than faculty in the humanities. None of these salaries are quantified by the educational benefit they bring, but rather by the competitive market from which they are hired.

**Thomas**

**b. What actions has the NCAA taken to encourage its member institutions to curb excessive compensation for college coaches?**

**Brand**

Through speeches, articles and most recently through the work of the Presidential Task Force on the Future of Division I Intercollegiate Athletics, we have urged moderation in the growth rate of athletics budgets. However, the NCAA's ability to influence them is limited. One court found a cap on the compensation of assistant coaches to violate the antitrust laws.

**Thomas**

**c. In 2000, the NCAA repealed a rule requiring all athletics-related coaches' income to be reviewed and approved by the university. Why did the NCAA repeal this rule?**

**Brand**

On the contrary, there was little change in the implementation of the requirement.

Coaches and staff still must provide written detailed accounts annually of all outside income, and approval must be consistent with the institution's policy related to outside income and benefits applicable to all full-time or part-time employees. There is no change in the need for approval, but approval should conform to the policy already in place on each campus for other faculty or staff.

The rule was modified to better conform to common practice at member institutions for all employees.

**Thomas**

**12. Current law allows donors to deduct charitable contributions to educational institutions, including contributions to university athletic departments. If the donor receives the right to purchase tickets in exchange for a charitable contribution, current law allows the donor to deduct 80 percent of the amount of contribution.**

**a. What percentage of athletic department revenue at Division I-A institutions comes from charitable donations, including donations given for the right to purchase tickets?**

**Donations and contributions represent 21 percent of total operating revenue for Division I-A athletics departments, as reported for 2004-05.**

**d. How much money was donated to Division I-A athletic departments in 2005, including donations given for the right to purchase tickets?**

**Brand**

The total donations and contributions to Division I-A athletics departments for 2004-05 were approximately \$845 million.

**Thomas**

**13. In 1997, Congress passed a law exempting from taxes qualified corporate sponsorship payments received by tax-exempt organizations.**

**a. How has this law affected the use of corporate sponsorships by the NCAA and your member institutions? Have corporate sponsorships become more prevalent? Corporations have demonstrated over time an affinity for aligning with higher education, including intercollegiate athletics. The major impact of the 1997 tax law change was to discontinue, for those few institutions doing so, the use of sponsorships for promoting sponsors' products and services. A large majority of corporate sponsorships and contributions for colleges and universities are dedicated to programs other than athletics (business and bio-medicine, for example).**

**b. How much revenue do corporate sponsorships generate annually for your member institutions?**

**Brand**

Corporate sponsorships in 2005 generated 275 million dollars for member institutions.

**The Authors**

At the outset, it should be noted that Dr. Brand frequently chose not to answer Representative Thomas's questions. Rather than continually noting this in our response, the authors have chosen to limit our response to Dr. Brand's actual remarks, highlighting his answers' deficiencies or his not answering questions only when we deemed it crucial to our commentary. We will, however, be glad to supply the Congress with additional information relevant to Dr. Brand's "non-answer" responses.

The discussion of the finances and revenue generation of intercollegiate athletics must, to be candid, start with America's love affair with big-time college-sport. In truth, there are enormous sums of money generated, albeit by a few institutions, but that money primarily fuels an athletic "arms race" focused on building better and larger athletic facilities with the most modern amenities, not to improving educational programs. The public's desire for entertainment in combination with excessive cynicism, apathy (if not

purposeful ignorance), and gambling, has been a recipe for growing commercialization at America's institutions of higher learning.

In response to Dr. Brand's contention that "The sale of broadcast rights to CBS and ESPN brings with it no influence by those companies on NCAA decisions," the authors simply state, "Dr. Brand has his facts wrong." The authors will readily provide the NCAA and members of this committee with recent relevant research (Southall, et. al, in press) that contradicts Dr. Brand's statement.

Since 2004, NCAA policy changes regarding the length of television commercials during the Division I men's basketball tournaments have resulted in "full television time outs," increasing from one minute and thirty seconds to two minutes and thirty seconds in length (Southall, et. al, in press). In addition, the number of nonprogram visual graphics has also increased. These examples demonstrate the institutional pressures that affect the broadcast of NCAA and other college sporting events. The only way Dr. Brand's statement regarding the level of CBS and ESPN influence on NCAA decisions may be "true" is if the NCAA no longer retains control over the decisions of its broadcast partners. If that is the case, then all such broadcast decisions are "technically" no longer NCAA decisions. If so, the authors apologize to Dr. Brand, but wonder why the NCAA has abdicated input regarding decisions involving television's most lucrative televised sporting event to CBS.

Given the enormous broadcasting revenues at stake, the NCAA faces a conflict between its sometimes-contradictory roles as promoter and governor of intercollegiate athletics. Consequently, we contend the NCAA cartel is incapable of reforming itself to stem the growth of commercialism. Worse yet, meaningful reform is not only impeded by the NCAA, but by corporate greed, fanatic sports fans, a mostly apathetic public and inconsistent government tax policies that benefit not only the NCAA, but also sports-crazed donors, many of whom are influential trustees using their school's athletic programs as ego-boosting playthings.

Tax breaks help fund "stadium wars" and have allowed the commercially-driven college-sport enterprise to grow unabated. This has occurred because the federal government weakly enforces Unrelated Business Income Tax legislation. Strong enforcement requires standing up to the powerful forces. It is difficult for anyone to stem the tide of the huge amounts of money at the command of the NCAA and its affiliates. A sense of the magnitude and ubiquitous nature of this financial power was analyzed in Sack and Staurowsky's (1998) chronicle of the NCAA's suppression of the 1977 UBIT case brought against Texas Christian University by the Dallas office of the Internal Revenue Service (IRS). IRS rulings have allowed boosters to deduct most of the millions of dollars in "donations" they make to lease skyboxes. Such regulations and rulings all but guarantee that university administrators are tempted to look the other way as the academic missions of their campuses are hijacked.

While college sports fanatics cheer on their teams, America's higher education system (as Peter Drucker predicted in 1997) is rapidly becoming untenable, unable to survive. It

would be cruel irony indeed if governmental subsidy of college sport via favorable tax policies has helped undermine one of our nation's most precious resources: higher education.

How could America ever lose its leadership position in higher education? Sperber (2000) tells in painstaking detail how big-time college sport cripples undergraduate education. America's love affair with sports, its high tolerance for misbehavior by its heroes, inconsistent government policies, and money, has resulted in a commercialized, college-sport entertainment business characterized by unrestrained growth in spending with a corresponding desperate, death-spiral-like need for additional revenues.

Inadvertently or willingly, college and university presidents, chancellors, regents and board-of-trustee members have conspired with the NCAA and the media to tap into the ocean of money associated with the big-time college sport entertainment industry. All the schools need do is manage and promote government subsidized minor league teams for the NFL and the NBA. An objective observer would expect that the statement, "There is nothing that's more positive for our alums and our long-term friends than a good football team. Everyone cares about the Buckeyes" (Fain, 2006) would come from a "tail-gating" fan, not a Big-Ten university president attempting to rationalize continued tax subsidies.

How revealing to compare this remark with Duderstadt's (2000) observation: "...competitive athletics were [at one time] viewed as an extracurricular activity, justified by the university as part of its ideal objective of educating the whole person" (p. 70). Fans ourselves, we understand that public interest in college sport is enormously widespread. However, blind devotion to college sport is not in our nation's economic, social, educational, or moral best interest.

We are first and foremost teachers and researchers, knowledgeable regarding college sports' history. We appreciate and acknowledge that most who work in college athletics are - in all likelihood - good, decent people. We are not uninformed faculty with an animus toward college sport. Simply put, as educators and scholars, we simply desire an open and honest examination of "big-time" college sport to determine the extent to which it is entitled to its tax-exempt status.

There are cynics who suggest big-time college sport is too far down its present, corrupt path to change. Others say everyone might as well just enjoy the games and forget about academic integrity and the educational well-being of college athletes, since they're nothing but athlete-entertainers masquerading as students.

As educators, we cannot, in good conscience, stand idly by and allow our students - including college athletes who truly wish to pursue an education - to be further sullied by the residue of commercialized college sport. Our students' education is too important.

We believe college sport and its fans have an alternative course. We also believe that the Congress is the best, and perhaps, last hope for college-sport reform.

It is crucial that the Congress, as representatives of all taxpayers, lead college-sport reform efforts to critically examining the NCAA and university athletic departments. After such examination the Congress can either bring them back in line with their higher education missions or, failing that, rescind their tax-exemptions. Such efforts will require asking tough questions and holding university and NCAA administrators accountable.

We will assist in any way we can.

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