

The NCAA and Colleges Presidents Admit Inability to Reform; The Need for Federal Intervention

In sum, presidents would like serious change but don't see themselves as the force for the changes needed, nor have they identified an alternative force they believe could be effective. – The Knight Commission's 2009 Report

While higher education officials and athletics administrators have worked to keep a lid on Pandora's Box, the past twelve months in college sport have been record breaking in terms of an ever lengthening list of cases that raise questions about the integrity of the system and the ability of those running college sport to control it.

In the immediate aftermath of the Miami scandal, some argued that President Donna Shalala should lose her job for failure to provide the necessary oversight to avert a problem of this magnitude. According to Board of Trustees chair Leonard Abess, Shalala will ride out this storm and lead the university through the process of its own internal investigation and inevitable NCAA infractions review. While her position seems secure, at least as of this writing, whether she or any college president can exert the type of leadership necessary to ensure that such an incident will not happen on his or her watch is very much open for consideration. Is it realistic to expect Shalala, or any other college president, to prevent a booster from giving a player a \$100 handshake ten miles from campus?

In October of 2009, the Knight Commission on Intercollegiate Athletics released a report based on interviews with 95 of 119 FBS presidents seeking their thoughts and perspectives on college sport reform, the probability of creating a more sustainable financial model for college athletics, and how they saw their role in reform efforts (Art & Science Group). As reported by the Knight Commission,

While the quantitative research revealed strong presidential support for studies of policy changes regarding a number of concerns, such as the number of coaches and athletic contests, the qualitative research revealed a sense of powerlessness to effect the kind of change that is needed at the conference and national levels to contain the athletics arms race and address critical issues regarding sustainability, such as rapidly escalating coaches' salaries. The quantitative research also shows that a high percentage of presidents who believe that sustainability is problematic for their own institution or for their conference or the FBS as a whole believe that sweeping change is necessary across the FBS (p. 7).

The problems with college sports oversight on individual campuses seem to have manifested in the broader regulatory systems within the NCAA. The contradictions that the entire college sport regulatory system have encountered of late have become so great that the work of the NCAA's Committee on Athletic Certification (CAC), the central purpose of which is "...to validate the fundamental integrity of member institutions' athletics programs through a verified and evaluated institutional self-study" (NCAA Staff, 2010, p. 371), was abruptly put on hold by the NCAA Board of Directors in April of 2011. In calling for a moratorium on program certification, the Board justified its action on the basis of cost-saving and reducing the administrative burden associated with the self-study process. The Board charged the CAC with devising a new program review that has the capability of establishing benchmark data on academics, student-athlete experience, financial and diversity/inclusion.

What the Board failed to comment about may illuminate the import of the decision to cease the certification process mid-stream when schools were already going through the cycle. While the Board offered some plausible explanations on the value of revising the program review process, it did not explain the sudden necessity to do so nor the fact that they narrowed the standards of review, leaving off the standards that address “institutional control, presidential authority and shared responsibilities” and “commitment to rules compliance” (NCAA Board of Directors, 2011). This is a significant omission in light of the timing of the decision. In the months immediately preceding the Board’s decision, allegations of NCAA amateur code violations surfaced at schools that had all been certified by the NCAA and had been touted as winning while being in compliance with NCAA rules, specifically the University of Connecticut, University of Southern California, the Ohio State University, George Institute of Technology, and the University of Oregon. For a process that purportedly cost \$300,000 per institution to execute and required an average of 400 hours of employee time to complete, a more powerful justification for pulling the plug on the certification process may have been the questions to be raised about a process that found routine rule violators to have sufficient presidential control and commitment to rules compliance when that was clearly not the case. In effect, the very checks and balances system put in place to ensure program integrity has been found to be fundamentally ineffective and/or corrupt.

Thus, calling a halt to the process before outside investigators probed too deeply into this problem probably seemed to be the only prudent thing to do, allowing time for those who might be implicated at their respective institutions to quietly move on perhaps and gain some distance from whatever scandal may be brewing on their own campus. Evidence of NCAA members’ hesitation of looking too deeply into this problem came to light during a recent California Senate hearing held at the Los Angeles Coliseum on May 12, 2011. David Roberts, USC’s vice president of athletic compliance admitted that universities are hesitant to go after unscrupulous agents because it may open Pandora’s Box and reveal many other violations within their programs (Klein, 2011).

While college presidents have admitted their inability to bring forth comprehensive reform, one may inquire about the ability of the NCAA and/or conference commissioners to solve the problems plaguing college sports. Unfortunately, both groups are controlled by college presidents who lack both the strength and direction to do so. Every NCAA rule that exists was installed by the collective will of the college presidents, and every conference commissioner is hired through a collective action of the universities that are led by college presidents.

In all college sports matters, the buck stops with college presidents. Current NCAA President Mark Emmert highlighted this fact when responding to a US Department of Justice Inquiry related to the antitrust implications of the BCS system. Emmert (2011) stated that change “would not happen unless the leaders of the institutions with teams in the Football Bowl Subdivision want to make such a change.” College presidents have clearly failed in their roles as stewards of NCAA sports and the protectors of college athletes.

With this key revelation, the only other entity powerful enough to bring forth comprehensive reform is the federal government. Former NCAA President Walter Byers acknowledges this in his book published almost 15 years before the Knight Commission’s report,

The presidential reform movement took hold in the mid-1980s and squandered an opportunity to transform the industry. Significant change will not come from that source...I believe the record now clearly shows the major hope for reform lies outside the

collegiate structure. What the colleges will not do voluntarily should be done for them...Congress should enact and the president should sign a comprehensive College Athletes' Bill of Rights.... the federal government should require deregulation of a monopoly business operated by not-for-profit institutions contracting together to achieve maximum financial returns. The Justice Department has chosen not to act. The Congress should (Byers, 1997).

At the time Byers wrote this, the US Department of Justice (DOJ) chose not to address the numerous antitrust violations that many have accused the NCAA of committing. Today, the DOJ has made inquiries about potential antitrust violations associated with the BCS post-season arrangement that prevents a playoff in big time college football, and is currently investigating the NCAA for antitrust implications associated with its one-year cap on athletic scholarships. These are important steps for the DOJ but, to date, it has not addressed some of the most glaring examples of NCAA monopoly practices that are addressed in this study. It has a clear role to play in reforming NCAA sports, but it has not yet accepted the full responsibility of bringing justice for college athletes.

While the DOJ should clearly become heavily involved in addressing NCAA antitrust violations, the United States Congress is a vehicle that can bring forth comprehensive reform. It has jurisdiction over both higher education and interstate commerce and can implement uniform legislation nationwide. States cannot implement reforms such as multiple year scholarships and athletic grant-in-aid scholarships that equal the cost of attendance without risking the exclusion of their athletic programs from NCAA competition. The NCAA threatened pro-reform states such as California and Nebraska of the loss of NCAA membership and revenue that would accompany the implementation of these types of changes (Ryan, 2003; Nebraska legislature..., 2003). Ultimately, the NCAA's monopoly power renders state governments impotent in their quest for reform. In addition, college athletes lack the leverage to negotiate directly with the NCAA since the NCAA strategically used its "amateurism" and "student-athlete" propoganda to prevent them from acquiring the employee rights that would allow them to organize and negotiate. Without an act of Congress and support from the DOJ, universities, athletic programs, coaches, and players will continue to spiral embarrassingly into the abyss that has been on full display over the past 12 months and beyond. College athletes will also continue to drift as a group of Americans harmed by the NCAA's unAmerican, monopolistic arrangements.