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Symposium Introduction: The New Normal in College Sports: Realigned and Reckoning

Maureen A. Weston*

FOREWORD

On Friday, April 5, 2013, Pepperdine University School of Law in Malibu, California convened the Pepperdine Law Review Symposium on *The New Normal in College Sports: Realigned and Reckoning*.¹ In conjunction with the Straus Institute for Dispute Resolution's Entertainment, Media, and Sports Dispute Resolution Project,² the Law Review brought together top university administrators, conference commissioners, athletic directors, National Collegiate Athletic Association (NCAA) representatives, preeminent sports law scholars, lawyers, and practitioners, as well as broadcasting and media experts to discuss the myriad issues facing the intercollegiate community in the new era of, for some, big-time intercollegiate sports programs.³ Panelists included Ken Starr, President of Baylor University; Jeffrey Standen, Dean of Chase College of Law at Northern Kentucky University; Britton Banowsky, Conference USA Commissioner; Steve Potts, Director of Athletics at Pepperdine University; Dave Roberts, Vice President of Athletic Compliance at the University of Southern California; Brian Halloran, Public Member of the NCAA Division I Committee on Infractions; Andrew Brandt, ESPN NFL Business Analyst

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1. PEPPERDINE UNIV. SCH. OF LAW, *THE NEW NORMAL IN COLLEGE SPORTS: REALIGNED AND RECKONING* (2013), available at <http://law.pepperdine.edu/news-events/events/sports-law/brochure.pdf> (last visited Nov. 14, 2013) [hereinafter *THE NEW NORMAL*].

2. *Straus Institute for Dispute Resolution: Entertainment, Media and Sports Dispute Resolution*, PEPP. UNIV. SCH. OF L., <http://law.pepperdine.edu/straus/news/entertainment-media-sports-project.htm> (last visited Nov. 15, 2013).

3. See *THE NEW NORMAL*, *supra* note 1.

and Director of Moorad Center for Sports Law at Villanova Law School; Brian Marler, Director of Houlihan Lokey; Babette E. Boliek, Associate Professor, Pepperdine University School of Law; and Mark Fainaru-Wada, ESPN Investigative Reporter.⁴ Our distinguished panel of sports law scholars included professors Daniel E. Lazaroff, Director of the Loyola Sports Law Institute at Loyola Law School, Los Angeles; Gabe Feldman, Director of the Tulane Sports Law Program at Tulane University Law School; Michael McCann, Director of the Sports and Entertainment Law Institute at the University of New Hampshire School of Law; Matt Mitten, Director of the National Sports Law Institute at Marquette University; and Rod Smith, Director of the Center for Sports Law and Policy at Thomas Jefferson School of Law.⁵ Pepperdine Law Distinguished Visiting Professor and ESPN Legal Analyst Roger Cossack and Pepperdine Law professors Ed Larson and myself served as moderators of four vibrant panels.⁶ Jeffrey Moorad, Founder of Moorad Sports Management, former agent for Major League Baseball players, CEO of the Arizona Diamondbacks and San Diego Padres, and philanthropist, presented the Symposium's Keynote Lecture.⁷ This symposium issue of the forty-first volume of the Pepperdine Law Review presents scholarly writings by Professors Lazaroff, Feldman, Standen, Mitten, and Smith on important and emerging legal issues in college sports.

Opening the Symposium on *The New Normal in College Sports*, Pepperdine Law School Dean Deanell Tacha observed "Athletics in the finest sense of the Olympic ideal must be a reflection of the higher ideals of mankind"⁸—an apt frame through which to view the overarching objective for competitive sports in higher education programs.

But the ideal that college sports is "an integral part of the educational experience" and loyal to principles of amateurism and student-athlete health

4. *See id.*

5. *See id.*

6. *See News and Events: The New Normal in College Sports, Schedule*, PEPP. UNIV. SCH. OF L., [hereinafter *Symposium Schedule*], available at <http://law.pepperdine.edu/news-events/events/sports-law/schedule.htm> (last visited Nov. 15, 2013).

7. *See Jeff Moorad*, USC MARSHALL SCH. OF BUS., <http://www.marshall.usc.edu/faculty/centers/board/jeff-moorad> (last visited Nov. 15, 2013).

8. Deannell Tacha, Dean, Pepperdine Univ. Sch. of Law, Remarks at the Pepperdine University School of Law Symposium: The New Normal in College Sports: Realigned and Reckoning (Apr. 5, 2013) (transcript available in the Pepperdine Law School Library), available at <http://www.youtube.com/watch?v=SJKnrZeSP1E>.

and welfare⁹ is increasingly suspect and appropriately under scrutiny.¹⁰ The public has witnessed much of collegiate sports undergo a stark realignment of geographic and traditional rivalries driven by monetary priorities,¹¹ scandal and horrific events connected to university athletic programs and personnel,¹² and skyrocketing coaching salaries and expenditures on athletic programs and facilities.¹³ The chasm between the haves and the have-nots in university athletics is increasingly pronounced.¹⁴ Certain aspects of college sports—specifically Division I football and men’s basketball—propel a

9. NCAA, NCAA DIVISION I MANUAL xiv (2013–14) [hereinafter NCAA DIVISION I MANUAL], available at <http://www.ncaapublications.com/productdownloads/D114.pdf>.

10. See, e.g., Bill N, *College Football 2011: With NCAA Amateurism a Joke, Here's How to Fix the Mess*, BLEACHER REP. (June 20, 2011), <https://bleacherreport.com/articles/741984-ncaa-and-amateurism-are-a-joke-how-to-fix-the-college-football-mess> (“The NCAA is ruining college football by pretending that its amateur-based rules are still relevant.”).

11. See, e.g., Benjamin I. Leibovitz, *Avoiding the Sack: How Nebraska’s Departure from the Big 12 Changed College Football and What Athletic Conferences Must Do to Prevent Defection in the Future*, 22 MARQ. SPORTS L. REV. 675, 675–76 (2012) (“There is no doubt that college football has become a huge business. In fact, the conferences that had teams participate in the five most important college football games—the Bowl Championship Series (BCS) games—received a share of almost \$170 million for the 2010–2011 post-season. Colleges spend enormous amounts of money on recruiting high school players, team travel, coaches’ salaries, scholarships for athletes, academic and other types of support for the athletes, and their athletic programs in general. In return, these institutions earn revenues that some publicly traded companies cannot dream of matching. College football is also organized like a business, where almost every Football Bowl Subdivision (FBS) school is part of a voluntary association, known as a college athletic conference. Since . . . 2010 . . . , the college football landscape has changed drastically. Twenty-two different schools with FBS football programs have joined, or agreed to join, a new conference.” (footnotes omitted)).

12. See, e.g., Matthew J. Mitten, *The Penn State “Consent Decree”: The NCAA’s Coercive Means Don’t Justify Its Laudable Ends, but Is There a Legal Remedy?*, 41 PEPP. L. REV. 321, 323–25 (2014) (discussing Jerry Sandusky and Pennsylvania State University); Maureen A. Weston, *NCAA Sanctions: Assigning Blame Where It Belongs*, 52 B.C. L. REV. 551 (2011).

13. See, e.g., Jon Solomon, *Conference Realignment: Follow the Money in College Sports over the Past Decade*, ALA. MEDIA GROUP, (Dec. 27, 2012, 2:17 PM), http://www.al.com/sports/index.ssf/2012/12/conference_realignment_follow.html (detailing the correlation between financial considerations and conference instability); *UC Davis Struggles with Division I Costs*, KQED (Apr. 3, 2013, 11:00 PM), http://www.kqed.org/news/story/2013/04/03/118846/uc_davis_struggles_with_division_i_costs (describing the financial strain experienced by UC Davis after joining Division I athletics).

14. See, e.g., ART & SCIENCE GROUP LLC, KNIGHT COMMISSION ON INTERCOLLEGIATE ATHLETICS: QUANTITATIVE AND QUALITATIVE RESEARCH WITH FOOTBALL BOWL SUBDIVISION UNIVERSITY PRESIDENTS ON THE COSTS AND FINANCING OF INTERCOLLEGIATE ATHLETICS 27–29 (2009), available at http://www.knightcommissionmedia.org/images/President_Survey_FINAL.pdf; *UC Davis Struggles*, *supra* note 13; Solomon, *supra* note 13.

multi-billion dollar commercial enterprise and industry.¹⁵ Yet many athletic programs continue to operate “in the red” in a quest for success in intercollegiate athletic competition.¹⁶ Meanwhile, litigation and questions concerning student-athletes’ rights to compensation, the ownership of their likenesses and intellectual property, and their safety is at a precipice.¹⁷ The foregoing concerns, to cite a few, demonstrate the need to examine the viability of the amateurism model and the foundation and future of college sports.¹⁸ Thus, a distinguished group of panelists and experts convened at the Pepperdine University School of Law to discuss and consider the legal and ethical dimensions of college sports.

The Symposium consisted of four panel discussions and a keynote address featuring leading academics, university administrators, and practitioners in a variety of areas.¹⁹ Highlights included a conversation with institutional leaders of major intercollegiate athletic programs; a consideration of the possibility of an antitrust exemption for the NCAA; the impact of conference realignment, digital media, broadcasting, and commercialization; and other emerging hot topics in college sports.²⁰

15. See, e.g., KNIGHT COMMISSION, *supra* note 14, at 29; Chris Isidore, *Louisville Tops NCAA Dollar Rankings Too*, CNN MONEY (Mar. 21, 2013, 10:13 AM), <http://money.cnn.com/2013/03/21/news/ncaa-basketball-dollars/index.html> (placing NCAA Division I men’s basketball revenue at \$1.3 billion).

16. See, e.g., NCAA, REVENUES & EXPENSES 2004–2012: NCAA DIVISION I INTERCOLLEGIATE ATHLETICS PROGRAMS REPORT 12–15 (2013), available at <http://www.ncaapublications.com/productdownloads/2012RevExp.pdf>; Jodi Upton & Steve Berkowitz, *Budget Disparity Growing Among NCAA Division I Schools*, USA TODAY, <http://usatoday30.usatoday.com/sports/story/2012-05-15/budget-disparity-increase-college-athletics/54960688/1> (last updated May 14, 2012, 5:29 PM) (“[O]nly 22 out of 227 public schools in NCAA Division I generate enough money to pay for athletics Among the top 100 schools, the 22 that had a surplus in 2011 nearly quadrupled their excess since 2005. The remaining schools did not generate enough to cover their operating expenses, and their median deficit was 67% higher than in 2005.”); *UC Davis Struggles*, *supra* note 13.

17. See, e.g., *In re NCAA Student-Athlete Name & Likeness Licensing Litig.*, 724 F.3d 1268 (9th Cir. 2013); *In re NCAA Student-Athlete Name and Likeness Licensing Litigation, Third Consolidated Amended Complaint (3CAC)*, No. C 09-1967 CW, 2011 WL 2198788 (July 19, 2013). Christian Dennie, *Changing the Game: The Litigation That May be the Catalyst for Change in Intercollegiate Athletics*, 62 SYRACUSE L. REV. 15, 22–37 (2012).

18. See, e.g., CHARLES T. CLOTFELTER, *BIG-TIME SPORTS IN AMERICAN UNIVERSITIES* (2011); Taylor Branch, *The Shame of College Sports*, ATLANTIC (Sept. 7, 2011, 11:28 AM), <http://www.theatlantic.com/magazine/archive/2011/10/the-shame-of-college-sports/308643/>.

19. See *Symposium Schedule*, *supra* note 6.

20. See *id.*

Institutional Control: A View from the Top

The NCAA operates as the primary governing body for intercollegiate sports, regulating conditions for amateurism, eligibility, competition, and sanction.²¹ The NCAA itself is a private, voluntary association of over 1,200 member colleges, universities, and conferences.²² A stated mission of the NCAA is to ensure that intercollegiate sports are a fundamental part of the educational experience.²³ NCAA bylaws, rules, and regulations for Division I athletic programs are detailed in over 400 pages of the NCAA Manual, and numerous individuals within and outside athletic departments are subject to such rules.²⁴ While a collegiate athletic program relies on the direction, supervision, and cooperation of numerous individuals, the obligation of institutional control is central to the operation of NCAA intercollegiate athletics.²⁵

In Panel One on *Institutional Control: A View from the Top*, Professor Cossack, with top university leaders,²⁶ explored the concept of institutional control amid a climate of collegiate athletics dominated by money and enormous pressures to win.²⁷ Professor Cossack opened by asking the panelists how they saw the future of college athletics, offering four options: (a) “The future is so bright you have to put on sunglasses”; (b) “The future I view with concern”; (c) “Head for the lifeboats.”; or (d) “All of the above.”²⁸

At the helm of an institution boasting a recent Heisman Trophy winner²⁹

21. See generally NCAA DIVISION I MANUAL, *supra* note 9.

22. *About the NCAA*, NCAA, <http://www.ncaa.org/wps/wcm/connect/public/ncaa/about+the+ncaa/membership+new> (last visited Nov. 15, 2013).

23. See NCAA DIVISION I MANUAL, *supra* note 9, at 1.

24. See generally *id.*

25. See *id.* at 3.

26. The Panel One speakers were Baylor University President Kenneth Starr, USA Conference Commissioner and NCAA Infractions Committee Member Britton Banowsky, Athletic Directors Steven Potts from Pepperdine University and Dave Roberts from the University of Southern California. See *Symposium Schedule*, *supra* note 6.

27. See *id.*

28. Roger Cossack, Distinguished Professor of Law, Pepperdine Univ. Sch. of Law, Comments as Moderator of Panel One at the Pepperdine Law Review Symposium: The New Normal in College Sports 13–14 (Apr. 5, 2013) (transcript available in the Pepperdine Law School Library), available at <http://www.youtube.com/watch?v=SJKnrZeSP1E>.

29. Baylor football player Robert Griffin III, better known as RG3, was awarded the Heisman Trophy in 2011. See Mark Viera, *Baylor's Griffin Wins Heisman*, N.Y. TIMES (Dec. 10, 2011), http://www.nytimes.com/2011/12/11/sports/ncaafotball/baylors-griffin-wins-heisman.html?_r=0.

and various sports teams advancing well into NCAA championship contests,³⁰ Baylor President Ken Starr recognized that “the return on investment of a successful athletics program with integrity is incalculably high.”³¹ Starr reminded us of the brightness of college sports—that a high percentage of student-athletes graduate and experience tremendous character formation through competitive team sports.³² He also noted how American college sports have provided life-changing opportunities to international students and, under Title IX,³³ significantly advanced equal opportunities for women.³⁴ While optimistic about the future for most college athletics, Starr recognized the high-visibility problem areas and the “darker” side of Division I athletics, noting as one example the “one-and-done” situation in Division I men’s basketball where a student-athlete may quit college for professional play in the NBA after one year of collegiate play.³⁵ To restore the ideal of the student-athlete, Starr proposed that student-athletes should be required to play out their eligibility as a condition for professional draft

30. See, e.g., S.L. Price, *Baylor Rising*, SPORTS ILLUSTRATED (Feb. 27, 2012), <http://sportsillustrated.cnn.com/vault/article/magazine/MAG1195167/1/index.htm> (noting Baylor’s recent Heisman Trophy winner, two nationally ranked basketball teams, and a 40–0 winning streak across three major sports).

31. Kenneth W. Starr, President, Baylor Univ., Pepperdine Univ. Sch. of Law, Comments as Panelist on Panel One at the Pepperdine Law Review Symposium: The New Normal in College Sports 43 (Apr. 5, 2013) [hereinafter Starr comments] (transcript available in the Pepperdine Law School Library), available at <http://www.youtube.com/watch?v=SJKnrZeSP1E>.

32. See *id.* at 15; see also, e.g., *About the NCAA: The Value of College Sports, Advancing Academics*, NCAA, <http://www.ncaa.org/wps/wcm/connect/public/ncaa/about+the+ncaa#sthash.jHX2grsa.dpbs> (last visited Nov. 19, 2013) (noting that graduation rates for student-athletes are higher as a group compared to the general student body with eight-out-of-ten student-athletes earning their bachelor’s degree and more than thirty-five percent earning graduate degrees).

33. Title IX states in part that “[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.” 20 U.S.C. § 1681 (2012).

34. See Starr comments, *supra* note 31, at 15–16. See also, e.g., Ron Knabenbauer, *The Rise of the International College Athlete*, BLEACHER REP. (Oct. 3, 2008), <http://bleacherreport.com/articles/68505-the-rise-of-the-international-college-athlete> (noting that many coaches now actively recruit athletes abroad); *Before and After Title IX: Women in Sports*, N.Y. TIMES (June 16, 2012), <http://www.nytimes.com/interactive/2012/06/17/opinion/sunday/sundayreview-titleix-timeline.html>.

35. See Starr comments, *supra* note 31, at 16–17. See also, e.g., Curtis Eichelberger, *NCAA Freshman One-and-Done Dazzle Does Long-Term Basketball Harm*, BLOOMBERG (Mar. 28, 2013, 9:50 AM), <http://www.bloomberg.com/news/2013-03-28/ncaa-freshmen-one-and-done-dazzle-does-long-term-basketball-harm.html>; see also *Eligibility: Remaining Eligible—Professional Draft Inquiries*, NCAA, <http://www.ncaa.org/wps/wcm/connect/public/ncaa/eligibility/remaining+eligible/professional+draft+inquiries> (last visited Nov. 19, 2013).

eligibility.³⁶ He viewed compensating student-athletes beyond academic scholarship awards as antithetical to the underlying principle of college sports, even with the rise of the commercialization of higher education, and noted that college athletes *are* indirectly “being compensated.”³⁷

USA Commissioner Banowsky, wearing “sunglasses” “from time to time,”³⁸ still pointed out the not-so-bright tensions in collegiate sports, mentioning the powerhouse programs that gain tremendous economic benefit from media agreements and other sources of revenue,³⁹ head coaches with double-digit salary growth amid one of the country’s worst economic times, and conference realignment situations that undermine public and membership confidence and change expectations for college athletics.⁴⁰ He cited the need for leadership and new national structures to be able to manage these issues.⁴¹

USC Vice President of Compliance Dave Roberts agreed that college sports mostly work for the overwhelming majority of student-athletes and that the problem areas are most pronounced in the high-profile, big-money market sports.⁴² He suggested a renewed focus in the areas of academics and eligibility standards.⁴³ Such a focus could improve the quality of student-athletes’ academic development and better enable the collegiate community to work with the professional leagues to address the problem of agents who lure students-athletes into the professional leagues before they finish school.⁴⁴

Pepperdine Athletic Director Steve Potts oversees a strong Division I

36. See Starr comments, *supra* note 31, at 17.

37. *Id.* at 52–54.

38. Britton Banowsky, Conference USA Comm’r, Comments as Panelist on Panel One at the Pepperdine Law Review Symposium: The New Normal in College Sports 19 (Apr. 5, 2013) [hereinafter Banowsky comments] (transcript available in the Pepperdine Law School Library), available at <http://www.youtube.com/watch?v=SJKnrZeSP1E>.

39. See *id.* at 18 (noting, as an example, growth in the University of Texas’s budget from less than \$20 million to \$180 million in roughly the past twenty years).

40. See *id.* at 17–20.

41. See *id.* at 20.

42. See David Roberts, Vice President of Athletic Compliance, Univ. S. Cal., Comments as Panelist on Panel One at the Pepperdine Law Review Symposium: The New Normal in College Sports 21 (Apr. 5, 2013) [hereinafter Roberts comments] (transcript available in the Pepperdine Law School Library), available at <http://www.youtube.com/watch?v=SJKnrZeSP1E>.

43. See *id.* at 21.

44. See *id.* at 21–22.

athletic program at Pepperdine that, despite not including football, also faces formidable challenges.⁴⁵ Potts answered “D” (“All of the above”) noting that: “Sometimes you experience all those things . . . before noon.”⁴⁶ Potts cited a few specific challenges, including increases in budgetary needs for student-athlete travel and the quagmire of NCAA regulations that burden students and smaller athletic programs.⁴⁷ He also pointed out that the NCAA Division I rules are focused on questions largely unique to football programs but many schools—at least one hundred Division I members, including Pepperdine—do not have such programs, and such regulations impose additional unnecessary costs on those programs.⁴⁸

The panelists agreed that institutional control is a shared responsibility; one that starts with the university president appointing capable and ethical leaders—including an athletic director who will, through a compliance program, educate all constituents.⁴⁹ The responsibility then rests on the

45. See Steve Potts, Dir. of Athletics, Pepperdine Univ., Comments as Panelist on Panel One at the Pepperdine Law Review Symposium: The New Normal in College Sports 25–27 (Apr. 5, 2013) [hereinafter Potts comments] (transcript available in the Pepperdine Law School Library), available at <http://www.youtube.com/watch?v=SJKnrZeSPIE>.

46. *Id.* at 26.

47. *See id.* at 25–27.

48. *See id.* at 27.

49. See, e.g., Starr comments, *supra* note 31, at 16 (“I think [the] responsibility of college administrators, really beginning with coaches, but then the athletic director, then the central administration, and ultimately the Board of Regions, is to really try to foster the ideal of the student athlete”); *id.* at 73–74 (“I do think it starts . . . at the Board of Trustees or Board of Regents level. . . . [I]t’s very important . . . that [a] mechanism is in place so that we’re educating everyone in the community, including the faculty, with respect to here are the rules . . . [and] [a]lso having . . . a very vigilant athletic director, and then a director of compliance who are just all in, in this culture of compliance. And that, of course, means . . . they’ve got to be with the coaches [and] [with] the president.”); Roberts comments, *supra* note 42, at 36 (“The way we look at it is it’s shared responsibility. I mean what we need to do in our school, we [have] a very large compliance office with outstanding compliance people, but with the size of that program and the pressure, we need head coaches to be involved . . .”); *id.* at 69 (“We have to establish a culture of compliance. The new President, the new AD and I, when we all got started said that’s what we’re going to do.”); *id.* at 66–67 (noting that head coaches and athletes have to be aware of the rules and not only “talk the talk” but “walk the walk” when it comes to compliance); Potts comments, *supra* note 45, at 65 (responding to a question about complying with NCAA regulations and noting that “it starts with our President”); *id.* at 66 (“[Y]ou have to start with a culture. And if the culture of compliance isn’t—doesn’t exist within your program, you have to build it. And you have to build it with the kind of people that you hire.”); Banowsky comments, *supra* note 38, at 70–71 (“[I]f you don’t commit resources to compliance, then you’re going to pay for it, and you’re going to pay for it in a lot of ways. And so we have programming at the conference level, as every conference does. And we send dispatch people to campus, they review and check to make sure that there’s share responsibility

shoulders of administrators, coaches, student-athletes, boosters, alumni, and even fans to know and honor the rules and to implement a monitoring system that results in compliance with those rules.⁵⁰ The head coach in particular has a special relationship with, and influence on, student-athletes.⁵¹ Accordingly, effective institutional control requires head coaches with integrity and commitment to the mission of promoting academics and rules compliance.⁵² As noted by President Starr:

[W]hat we want [] the head coach to be is a person, obviously, of ability and excellence in the sport, but [also] a person who is really setting by his or her actions a great example; . . . a fine person who really cares about the student athletes, cares about their wellbeing, and who's going to be . . . a great encourager . . . [and] inspirational.⁵³

NCAA, Legal Exemptions, and Liability

The second and third panels addressed emerging legal issues in college sports, notably the debate regarding whether the NCAA should be afforded an exemption from antitrust laws and the impact of commercialism on

in all of the systems that need to be in place, engaged and functioning systems.”); *id.* at 72 (“[U]ltimately, [compliance] starts at the top. . . . [I]f it’s not at the top, then you’ve got problems up and down the line. The tone and the culture really hasn’t been set.”).

50. See, e.g., Roberts comments, *supra* note 42, at 84 (“It starts at the President’s office to make sure that the individual and the Board has hired a good athletic director, a good compliance director, and that they’re going to put a compliance program in place that going to, A, educate . . . all the appropriate constituents . . . about the rules, and that’s the student athletes, the coaches, the administrators, the boosters, the alumni, and the fans, to the extent that you can. That’s what the rules are. And then they’re going to put in place a system of monitoring compliance with those rules.”); *id.* at 72 (“[Y]ou basically have to convince everybody in the shop, student athletes, coaches, your boosters, that we’re going to do this ethically.”); Starr comments, *supra* note 31, at 76–77 (“[T]ruly the final thing, it is self-reporting You call the flag on yourself [T]he compliance infrastructure [should be] strong and supported.”).

51. See, e.g., Starr comments, *supra* note 31, at 31 (noting that the responsibility for the proper balance between the academic and athletic culture at colleges lies with “the coaches, the entire coaching staff, beginning, obviously, with the head coaches of all the programs”); Potts comments, *supra* note 45, at 92–93 (“I think that there’s no strong voice for a student athlete than the head coach. You have to have head coaches that fit your philosophy, that fit the institution, that fit the mission of your institution. . . . Everything starts with the head coach, in terms of your relationship with student athletes. You’ve got to have that head coach that has bought into compliance.”).

52. See, e.g., Potts comments, *supra* note 45, at 93.

53. Starr comments, *supra* note 31, at 97.

college sports.⁵⁴ Elite sports programs produce significant commercial revenue, particularly with multi-million dollar broadcasting and merchandising contracts.⁵⁵ Yet most athletic programs lose money or are primarily financed by revenue from football and men's basketball programs.⁵⁶ The divide between colleges with the top football and basketball programs and other Division I schools continues to grow, and the NCAA's ability to restrict costs and level the playing field are limited.⁵⁷ In 1984, the U.S. Supreme Court in *NCAA v. Board of Regents of the University of Oklahoma* held that the NCAA was subject to federal antitrust laws and struck down an NCAA television plan.⁵⁸ The television plan was designed to regulate college football broadcasting contracts to ensure competitive balance and protect the economic interests of all member institutions against the powerhouse football institutions that could single-handedly command lucrative deals.⁵⁹ In the wake of a widening disparity among intercollegiate sports programs and an increase in litigation

54. See, e.g., ANDREW ZIMBALIST, UNPAID PROFESSIONALS: COMMERCIALISM AND CONFLICT IN BIG-TIME COLLEGE SPORTS (2001); Brad Wolverton, *Watchdog Group's Proposal Calls for Antitrust Exemption for NCAA*, CHRON. OF HIGHER EDUC. (Oct. 11, 2013, 5:04 AM), <http://chronicle.com/blogs/players/watchdog-groups-proposal-calls-for-antitrust-exemption-for-ncaa/33711> (noting that a college-sports watchdog group lobbied Congress to pass a "limited antitrust exemption" to "help [the NCAA] contain runaway spending in big-time sports while better aligning commercial interests with education."); Jon Solomon, *Ex-NCAA Leader Myles Brand's Frustrations with Commercialism: Presidents "Want It Both Ways,"* ALA. MEDIA GROUP (June 20, 2013, 3:54 PM), http://www.al.com/sports/index.ssf/2013/06/ex-ncaa_leader_myles_brands_fr.html; Marc Edelman, *Pennsylvania Governor to File Antitrust Lawsuit Against NCAA*, FORBES (Jan. 02, 2013, 4:05 PM), <http://www.forbes.com/sites/marcedelman/2013/01/02/pennsylvania-to-file-antitrust-lawsuit-against-ncaa/>.

55. See Maureen Weston, Professor, Pepperdine Univ. Sch. of Law, Comments as Moderator for Panel Two at the Pepperdine Law Review Symposium: The New Normal in College Sports 106 (Apr. 5, 2013) (transcript available in the Pepperdine Law School Library), available at <http://www.youtube.com/watch?v=SMcjSxfmXnA>.

56. See *id.* at 105–06; A. Barton Hinkle, *Stop Funding College Sports*, REASON (Oct. 14, 2011), <http://reason.com/archives/2011/10/14/stop-funding-college-sports> ("Depending on the year, one to two dozen athletic departments around the country turn a profit. Those are the ones such as Virginia Tech with huge football programs (or, occasionally, great basketball). At those schools, the football and men's basketball teams end up subsidizing all the rest—from women's basketball to men's tennis.").

57. See *id.* at 106–07; see e.g., *infra* notes 59–60 and accompanying text.

58. *NCAA v. Bd. of Regents of the Univ. of Okla.*, 468 U.S. 85 (1984). See also *Law v. NCAA*, 134 F.3d 1010, 1024 (10th Cir. 1998) (holding that NCAA's plan to restrict salary of entry-level coaches violated antitrust laws).

59. *Id.* at 89–94.

challenging the NCAA's ability to use student-athlete likenesses in commercial ventures,⁶⁰ would an antitrust exemption be a "fix all" that would allow the NCAA to require student-athletes to play out their eligibility, impose limits on exorbitant coach compensation, and implement measures to level the playing field for the overall health of intercollegiate athletics?

Professor Lazaroff⁶¹ takes on this question in his article submitted for the Symposium, *An Antitrust Exemption for the NCAA: Sound Policy or Letting the Fox Loose in the Henhouse?*⁶² The NCAA has traditionally had success defending antitrust challenges to its rules that promote amateurism and the governing of student-athletes.⁶³ In arguing against an antitrust exemption for the NCAA at the Symposium, Lazaroff pointed out that the overwhelming majority of NCAA sports are non-revenue producing, and thus the athletes participating in non-revenue producing sports will not likely earn money as professional athletes.⁶⁴ Nevertheless, men's Division I basketball and Football Bowl Subdivision (FBS) top-level football involve significant commercial markets to which the amateurism model does not align.⁶⁵ He examines antitrust challenges against the NCAA, noting antitrust application in cases involving coaching salaries and broadcasting deals, but he also reports emerging case law that is recognizing a commercial relationship between student-athletes and their institutions, thus perhaps opening the door for student-athlete antitrust claims that challenge NCAA rules as illegal restraints of trade.⁶⁶ In particular, the court in *In re NCAA Student-Athlete Name and Likeness Litigation*⁶⁷ recently granted class

60. See, e.g., *In re Student-Athlete Name & Likeness Litig.*, 724 F.3d 1268 (9th Cir. 2013).

61. Daniel E. Lazaroff, Professor of Law at Loyola Law School and Director of the Loyola Sports Law Institute, was a panelist on Panel Two: *NCAA, Legal Exemptions, and Liability*. See *Symposium Schedule*, *supra* note 6.

62. Daniel E. Lazaroff, *An Antitrust Exemption for the NCAA: Sound Policy or Letting the Fox Loose in the Henhouse?*, 41 PEPP. L. REV. 229 (2014).

63. See *id.* at 230–31.

64. See Daniel E. Lazaroff, Professor of Law at Loyola Law Sch. & Dir. of the Loyola Sports Law Inst., Comments as Panelist on Panel Two at the Pepperdine Law Review Symposium: The New Normal in College Sports 109 (Apr. 5, 2013) [hereinafter Lazaroff comments] (transcript available in the Pepperdine Law School Library), available at <http://www.youtube.com/watch?v=SMcjSxfmXnA>.

65. See *id.*

66. See Lazaroff, *supra* note 62, at 230–31.

67. *In re NCAA Student-Athlete Name & Likeness Licensing Litig.*, No. 4:09-cv-01967, C 09-1967 CW, 2013 WL 5979327 (N.D. Cal. Nov. 8, 2013); see Greg Bishop, *N.C.A.A. Dodges a Bullet*,

certification to a plaintiff class challenging the NCAA's practice of using student-athlete likenesses in video games—a suit that threatens the NCAA with billions of dollars in damages.⁶⁸

Lazaroff argues that traditional “rule of reason” antitrust analysis, which considers pro-competitive benefits and anticompetitive impacts, is adequate to determine the appropriateness of NCAA-imposed restraints.⁶⁹ He further contends that an antitrust exemption would not, as others have argued, restore pure amateurism in college sports and would involve costly federal oversight.⁷⁰

In his article submitted for the Symposium, *A Modest Proposal for Taming the NCAA Antitrust Beast*, Professor Feldman agrees with Professor Lazaroff that the NCAA should not be entitled to an antitrust exemption.⁷¹

but Change Is on the Way, N.Y. TIMES (Nov. 10, 2013), <http://www.nytimes.com/2013/11/11/sports/ncaabasketball/ncaa-dodges-a-bullet-but-change-is-on-the-way.html>. The case is under multiple names and in different courts on different issues. See, e.g., *In re NCAA Student-Athlete Name & Likeness Licensing Litig.*, 724 F.3d 1268 (9th Cir. 2013), *petition for cert. filed*, Elec. Arts, Inc. v. Keller, No. 13-377 (U.S. Sept. 23, 2013); see also *NCAA v. Keller*, No. 13M54 (U.S. Oct. 25, 2013).

68. See, e.g., Bishop, *supra* note 67; Michael McCann, *Ed O'Bannon v. NCAA Class Certification Hearing Primer*, SPORTS ILLUSTRATED (July 19, 2013, 3:33 PM), <http://sportsillustrated.cnn.com/college-football/news/2013/06/19/ncaa-ed-obannon-hearing-primer/#ixzz2h5SASa9O>. See also Maureen A. Weston, *Suppose They Win? In Re Student-Athlete Litigation's Impact on NCAA and the Future of College Sports*, MISS. SPORTS L. REV. (forthcoming).

69. Lazaroff, *supra* note 62, at 247–48. The Rule of Reason is a structured methodology with shifting burdens of proof. *Id.*; see also HOLMES & MANGIARACINA, *ANTITRUST LAW HANDBOOK* § 2:10 (2012). The plaintiff initially has the burden to define the market and prove anti-competitive effects within the market; the defendant then must offer pro-competitive justifications, and the plaintiff can then rebut those justifications by showing that significantly less restrictive means exist. See Lazaroff, *supra* note 62, at 247–48; HOLMES & MANGIARACINA, *supra* note 69, § 2:10.

70. Lazaroff, *supra* note 62, at 245; *id.* at 247–48 & n.110; see also Lazaroff comments, *supra* note 64, at 117–19 (“[O]ne might say the rationale is to preserve the clear line of demarcation between amateur sports and professional sports, which the NCAA handbook talks about. But I think that ship has sailed. I think that at the highest levels of men’s football and basketball, the commercialization of the sport is evident in abundance, and it’s not going to go back the other way.”); *id.* at 119–20 (“[I]f Congress were to reject the idea of doing nothing, and wants to provide some sort of exemption [to antitrust laws], what do we do to counterbalance that reinforcement of market power that the NCAA has, both as a seller of their college athletic product, and as a buyer in the input market of the raw materials; the labor, if you will, the players. And that, to me, would seem to involve some sort of oversight. . . . I would rather see the NCAA have to defend itself in court.”).

71. See Gabe Feldman, *A Modest Proposal for Taming the NCAA Antitrust Beast*, 41 PEPP. L. REV. 249, 250–51 (2014); Gabe Feldman, Assoc. Professor, Tulane Law Sch., Dir of the Tulane Sports Law Program, & Assoc. Provost for NCAA Compliance, Comments as Panelist on Panel Two at the Pepperdine Law Review Symposium: The New Normal in College Sports 122 (Apr. 5,

Although noting that critiques of the NCAA and the spurious claims of amateurism date back to a 1929 Carnegie Foundation report,⁷² he argues that the NCAA's amateurism and competitive balance justification is certainly less credible in the current era of big-time college football and basketball.⁷³ These athletes put themselves at risk and provide the labor and means for a multi-billion dollar industry with no reciprocal compensation.⁷⁴ Feldman asserts that the rule of reason standard is not effective and proposes a new test that would provide "a coherent mechanism for setting limits on the ability of NCAA to restrict competition for student-athletes" to ensure they are not exploited but which would still allow the NCAA to fulfill its mission.⁷⁵

Professors Smith and Mitten also offer thoughts on NCAA antitrust immunity through their respective analyses of some of the most pressing problems and scandals involving college sports. In *Head Injuries, Student-Welfare, and Saving College Football: A Game Plan for the NCAA*,⁷⁶ Smith brings attention to a crisis that threatens student health and safety and even

2013) [hereinafter Feldman comments] (transcript available in the Pepperdine Law School Library), available at <http://www.youtube.com/watch?v=SMcjSxmfXnA>.

72. HOWARD J. SAVAGE ET AL., AMERICAN COLLEGE ATHLETICS (1929); see Feldman comments, *supra* note 71, at 124–25 ("Let me give you a quote from the Carnegie [Report]: 'College athletics under the spur of commercialism has become a monstrous cancer which is rapidly eating out the moral and intellectual life of our educational institutions.' That sounds like something Joe Nocera might have written last week in the New York Times; criticizing the NCAA. That was said . . . in 1929 . . .").

73. See Feldman, *supra* note 71, at 249, 252–53; Feldman comments, *supra* note 71, at 123–27.

74. See Feldman comments, *supra* note 71, at 123–24 ("If you think about the exploitation of college athletes, what they're required to do, the risks they put themselves [in], how much they give and how little they get[;] . . . when players go out there and play sports, they put themselves at risk with no promise of compensation." . . . "[C]ompare the sacrifices they make versus the billion-dollar television deals, the million-dollar coaching salaries, the chase for the money."). FOX, a small network in 1994, wanted to become a major sports network and outbid CBS for the rights to National Football League (NFL) games, paying \$1.5 billion for a four-year deal. See *NBC Gets Final N.F.L. Contract While CBS Gets Its Sundays Off*, N.Y. TIMES (Dec. 21, 1993), <http://www.nytimes.com/1993/12/21/sports/nbc-gets-final-nfl-contract-while-cbs-gets-its-sundays-off.html>. CBS responded in kind by paying \$85 million over five years for the rights to televise Southeastern Conference (SEC) college football games. See *SEC Games Replace NFL on CBS*, CHI. TRIB. (Feb. 13, 1994), http://articles.chicagotribune.com/1994-02-13/sports/9402140010_1_commissioner-roy-kramer-football-and-basketball-television-sec.

75. Feldman, *supra* note 71, at 249.

76. Rodney K. Smith, *Head Injuries, Student-Welfare, and Saving College Football: A Game Plan for the NCAA*, 41 PEPP. L. REV. 267 (2014).

the future of college football itself.⁷⁷ At the Symposium, he reported that as many as one-in-five college football players may suffer a head injury, a concussion, or Chronic Traumatic Encephalopathy (CTE) due to trauma or blows while playing football, and that these injuries can lead to dementia and brain impairment at any stage in a player's life.⁷⁸ Smith offers a "game plan" for the NCAA to address head injury issues through the enforcement of concussion management plans and protocols that hold institutions, coaches, athletics personnel, and medical professionals responsible for player safety.⁷⁹ In addition to advocating for shorter seasons and practices, Smith argues in favor of a form of worker's compensation for eligible student-athletes, such as through an NCAA-funded trust fund for players with long-term concussion-related injuries.⁸⁰ Given the severity of the concussion issue in college sports, Professor Smith acknowledged at the Symposium that Congress may need to hold hearings to "spur the NCAA along," but "if the NCAA would come forward with an enforcement package, a safety package, and a compensation package," the NCAA "should, then, be given a waiver for antitrust purposes."⁸¹

In *The Penn State "Consent Decree": The NCAA's Coercive Means Don't Justify Its Laudable Ends, but Is There a Legal Remedy?*, Professor Mitten explores the NCAA's action to summarily discipline Penn State's athletic program for lack of institutional control in connection with the horrific acts of serial child sexual abuse perpetrated by former football coach, Jerry Sandusky.⁸² Mitten describes the NCAA Executive Committee's decision to bypass its enforcement and infraction hearing

77. Smith, *supra* note 76, at 271.

78. See Rodney K. Smith, Professor of Law & Dir. of Sports Law, Thomas Jefferson Sch. of Law, Comments as Panelist on Panel Three at the Pepperdine Law Review Symposium: The New Normal in College Sports 198 (Apr. 5, 2013) [hereinafter Smith comments] (transcript available in the Pepperdine Law School Library), available at <http://www.youtube.com/watch?v=QA7n-qAxy3g>.

79. See generally Smith, *supra* note 76.

80. Smith, *supra* note 76, at 282–83, 306–07. Known as the Student Athlete Bill of Rights, Senate Bill 1525 was passed in 2012, and requires four-year universities that receive an average of \$10 million in annual revenue from media rights for intercollegiate athletics to provide equivalent scholarships to student-athletes who suffer incapacitating injuries and to pay insurance premiums for student-athletes in case of injury resulting from participation in an athletic program. See Student Athlete Bill of Rights, CAL. EDUC. CODE §§ 67450–54 (West, Westlaw through 2013 Reg. Sess.).

81. Smith Comments, *supra* note 78, at 204–05.

82. See generally Mitten, *supra* note 12.

process and instead rely on findings in an investigative report by Louis Freeh, commissioned by Penn State while criminal justice proceedings were pending.⁸³ Within days of Sandusky's criminal conviction, and while criminal proceedings involving Penn State leaders were pending, the NCAA announced extensive sanctions in the form of a Consent Decree holding Penn State responsible to pay a \$60 million fine to unnamed (or vetted) children's charities, as well as committing Penn State to a four-year postseason football ban, significant reductions in scholarships, and vacatur of 112 football wins under legendary head coach Joe Paterno.⁸⁴ Penn State was required to waive its rights to a determination of any violations by the Infractions Committee, any appeal under the NCAA rules, and any judicial process.⁸⁵ While acknowledging the NCAA's desire to make a statement in light of such abhorrent news, Mitten is critical of the NCAA's decision not to comply with its own rules and procedures; not to afford fair notice of violations or ensure due process in disciplinary proceedings; and to enter the fray when criminal and civil justice systems were already in motion.⁸⁶ Brian Halloran, public member of the NCAA Division I Committee on Infractions and co-panelist with Professor Mitten on the session considering *NCAA: Enforcement, Sanctions, and Relationship with Universities*, agreed that the NCAA enforcement process should have been followed despite the extraordinary situation, noting that it was important for Penn State to be heard and that "sometimes the process is just as important as the substantive result."⁸⁷ At the Symposium, Mitten advocated for a form of qualified antitrust immunity for the NCAA subject to certain conditions being met, such as giving student-athletes the opportunity to complete their education; compliance with Title IX; and treating health and safety and compensation for injuries as costs of doing business.⁸⁸

83. See Mitten, *supra* note 12, at 321–25.

84. See Mitten, *supra* note 12, at 327–28.

85. See Mitten, *supra* note 12, at 327–28.

86. See generally Mitten, *supra* note 12.

87. See Brian Halloran, Former Coordinator of Appeals, NCAA Div. I Comm. on Infractions, Comments as Panelist on Panel Three at the Pepperdine Law Review Symposium: The New Normal in College Sports 227–28 (Apr. 5, 2013) [hereinafter Halloran comments] (transcript available at the Pepperdine Law School Library), available at <http://www.youtube.com/watch?v=tvglcOBJO5Q>.

88. See Matthew J. Mitten, Dir. of the Nat'l Sports Law Inst., Marquette Univ., Comments as Panelist on Panel Three at the Pepperdine Law Review Symposium: The New Normal in College Sports 242–43 (Apr. 5, 2013) [hereinafter Mitten comments] (transcript available at the Pepperdine Law School Library), available at <http://www.youtube.com/watch?v=tvglcOBJO5Q>.

Dean Standen's *Foot Faults in Crunch Time: Temporal Variance in Sports Law and Antitrust Regulation* analogizes the flexible and contextual "rule of reason" analysis applied to resolve antitrust questions to temporal variance in officiating sports contests, and Standen contends that the variability of such a malleable approach results in uncertainty and ineffective regulation.⁸⁹ He argues that the rule of reason empowers the judge and jury to assess and to predict, on a large and economic scale, the competitive market effects, pro and con, of a proposed course of business, and that this analysis can vary based on the time, circumstances, and contexts in which the antitrust question operates.⁹⁰ Was it right to call a "foot fault" against Serena Williams in the final set of the U.S. Open tennis championships?⁹¹ Dean Standen cites the old baseball saying, "rules is rules," illustrating that every decision in a game "count[s] one way or the other" and can change the dynamics of a game.⁹² Likewise, he regards

illustrated the feasibility of implementing these conditions, particularly the health, safety, and welfare benefits, by using Nebraska's administrative system as an example. *Id.* Nebraska's system requires these benefits without characterizing student-athletes as employees. *Id.*

89. See generally Jeffrey Standen, *Foot Faults in Crunch Time: Temporal Variance in Sports Law and Antitrust Regulation*, 41 PEPP. L. REV. 349 (2014).

90. See *id.* at 351–52; see also Jeffrey Standen, Dean, Chase Coll. of Law at N. Ky. Univ., Comments as Panelist on Panel Two at the Pepperdine Law Review Symposium: The New Normal in College Sports 135–36 (Apr. 5, 2013) [hereinafter Standen comments] (transcript available at the Pepperdine Law School Library), available at http://www.youtube.com/watch?v=0TpHsnc_xTo ("[A]ntitrust is, itself, a terrible regulator. It's a terrible statute, and causes huge problems for people who are subject to its provisions, and that's why they want out. . . . And the reason it's a bad rule of law is because . . . of the rule of reason. That the rule of reason basically tells . . . the jury . . . to vary the rule of law, and to vary it temporally, varied by the time, the circumstances, [and] the context in which the antitrust question is in operation. . . . [T]his broad standard, this rule of reason, . . . empowers the jury and the judge to simply assess [on] . . . [a] large . . . economic scale, the competitive benefits and welfare detriments of a proposed change in business.").

91. See Standen comments, *supra* note 90, at 137 ("I'm referring to the event a few years ago where Serena Williams was in the final match of the U.S. Open, and at a clutch point toward the end of the match[,] the lines person . . . called a foot fault on Serena But as I watched . . . , the commentators were saying, 'Oh, you don't make that call at this time. You don't call a foot fault in crunch time.' . . . And it troubled me a little Why should the rule of law, which antitrust totally embraces, vary according to the circumstances in which it's applied, and does sports give us an answer?"); see also *Clijsters Wins After Controversial Ending*, ESPN, <http://sports.espn.go.com/sports/tennis/usopen09/news/story?id=4468762> (last updated Sept. 13, 2009, 1:21 PM) ("With Williams serving at 5-6, 15-30 in the second set, she faulted on her first serve. On the second serve, a line judge called a foot fault, making it a double-fault—a call rarely, if ever, seen at that stage of any match, let alone the semifinals of a Grand Slam tournament.").

92. See Standen, *supra* note 89, at 353, 356; see also Standen comments, *supra* note 90, at 139 ("Something in sports is always gained or lost. And, therefore, all decisions by the umpires, the

temporal variance, in competition or antitrust regulation, as tantamount to no rule of law at all.⁹³

Professor McCann's article, *Do You Believe He Can Fly?*, explores an area of competitive sport not often considered—the role of disability law for players with mental health conditions.⁹⁴ McCann describes the case of Royce White, a star college player and top NBA draft pick who, as a consequence of general anxiety disorder, has a fear of flying.⁹⁵ Playing in the NBA requires extensive cross-country travel, averaging sixty flights a season.⁹⁶ McCann's article explores the potential legal claims White may have against his team and the NBA and considers constructive solutions to address such difficult situations.⁹⁷

The New Normal? Superconferences, Broadcasting, and Money Grabs

What is the “new normal” for college sports? According to panelists discussing *The Money: Broadcasting, Digital Media, & What Drives the Machine*, the impact of conference realignment, digital media, and broadcasting will allow schools with major sports programs to capitalize on lucrative commercial opportunities.⁹⁸ They predict a trend toward “super

judges, the referees, to call a foul or not call a foul, to impose a penalty, or not impose a penalty, has repercussions. In other words, . . . a decision to not enforce the rules is, in fact, never costless.”); *id.* at 143–44 (“[T]he last point I want to make here is quoting Casey Stengel, ‘Rules is rules.’ . . . We never excuse the imposition of penalties even where there are potentially devastating effects on the offender.”).

93. See Standen comments, *supra* note 90, at 136 (“Everyone wants out of antitrust law because it’s a bad rule of law. And the reason it’s a bad rule of law is because . . . of the rule of reason.”); *id.* at 143 (“[W]hen the courts and the juries are asked to predict the market effect, pro and con, of a hypothetical change in business practice, they’re making a guess as to the future. They could be in the second inning for all they know, they could be in the end game. They have no idea where they are. . . . [A]ntitrust [law] asks a jury to make a prediction about these [national and international economic] forces . . . that I don’t think anyone can make. Even a trained and highly[skilled] economist couldn’t make those [predictions], at least not too convincingly. How can legality change if the law doesn’t? Antitrust laws are written; they don’t change. How can legality change temporally? What’s a foul[] is a foul; second inning or ninth.”); Standen, *supra* note 89, at 372–73, 395.

94. See generally Michael A. McCann, *So You Believe He Can Fly?: Royce White and Reasonable Accommodations Under the Americans with Disabilities Act for NBA Players with Anxiety Disorder and Fear of Flying*, 41 PEPP.L. REV. 397 (2014).

95. *Id.* at 398–405.

96. *Id.* at 405.

97. See generally *id.*

98. See generally Panel Four at the Pepperdine Law Review Symposium: The New Normal in

conferences,” leaving on the sidelines, and excluding from the shared conference revenue, schools with less established programs.⁹⁹ The pressure and expense, at all levels, for other schools and coaches to win and thus aim for superconference participation will continue to mount.¹⁰⁰ Thus, questions about the propriety of college sports as an enterprise with an unpaid labor force, the costs to student health, safety, and welfare, and the system’s loyalty to its academic mission will remain under scrutiny.¹⁰¹

Although the NCAA is frequently criticized as monopolizing the profits of college sports, panelist and NCAA Assistant Director of Enforcement Katherine Sulentnic reminded us that we are the NCAA.¹⁰² The NCAA is comprised of its member institutions, athletic departments, and conference offices and all must work together to effect positive change.¹⁰³

College sports and its governing bodies and structures will change dramatically and will be affected by critical lawsuits involving player safety and rights over the next few years.¹⁰⁴ Still, the future of college sports is exciting and bright. Remember to wear shades (and safety goggles).

It has been a pleasure to work with the outstanding students of the Pepperdine Law Review. A special thank you to Editor in Chief Margot

College Sports 259–312 (Apr. 5, 2013) [hereinafter Panel Four] (transcript available at the Pepperdine Law Library), available at http://www.youtube.com/watch?v=1SC_6AADb5E.

99. *Id.* at 299–302.

100. *Id.* at 280–81, 301–02.

101. *See generally id.* Questions remain regarding whether paying players is even a viable option under Title IX. *See, e.g.,* Mechelle Voepel, *Title IX a Pay-for-Play Roadblock*, ESPN (July 15, 2011), http://espn.go.com/college-sports/story/_/id/6769337/title-ix-seen-substantial-roadblock-pay-play-college-athletics. As a federal statute, it requires resources to be distributed equally among genders, but it is unclear how Title IX impacts distribution of revenues when money comes from an outside source. *See* 20 U.S.C. § 1681 (2012); Voepel, *supra* note 101; *see also* Babette E. Boliek, Associate Professor of Law, Pepperdine Univ. Sch. Of Law, Comments as Panelist on Panel Four at the Pepperdine Law Review Symposium: The New Normal in College Sports 277 (Apr. 5, 2013) (transcript available at the Pepperdine Law School Library), available at http://www.youtube.com/watch?v=1SC_6AADb5E.

102. Katherine Sulentnic, Assistant Dir. of Enforcement, NCAA, Comments as Panelist on Panel Three at the Pepperdine Law Review Symposium: The New Normal in College Sports 231 (Apr. 5, 2013) (transcript available at the Pepperdine Law School Library), available at <http://www.youtube.com/watch?v=tvglcOBJO5Q>. Sulentnic reminded audience members that the \$400 million in football revenue is not controlled by the NCAA, but rather goes to the select conferences as part of the BCS. *See id.* at 239–41.

103. *See id.* at 231–32; *id.* at 232 (“[W]hen it comes to enforcement and compliance, and all of the things that we have been discussing today, it’s the responsibility of the institution itself, the athletic department, conference offices, and the NCAA.”).

104. *See, e.g.,* Panel Four, *supra* note 98, 298–305.

Parmenter, and Symposium Editor Michael Wood for hosting this Symposium. Enjoy the enclosed readings. A webcast of the Symposium is available online.¹⁰⁵

105. The video recordings are available at the following links:
Panel One: <http://www.youtube.com/watch?v=eD4ciE7nbEQ>
Panel Two: http://www.youtube.com/watch?v=0TpHsnc_xTo
Keynote Address by Jeff Moorad: <http://www.youtube.com/watch?v=ZPw9bCzwGTI>
Panel Three: <http://www.youtube.com/watch?v=BMfyAYKgpgs>
Panel Four: http://www.youtube.com/watch?v=1SC_6AAdB5E

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