



## POSITION STATEMENT

### THE DRAKE GROUP CALLS UPON NCAA, ITS MEMBER INSTITUTIONS AND HIGHER EDUCATION REGIONAL ACCREDITATION AGENCIES TO FULFILL ATHLETE ACADEMIC PROTECTION RESPONSIBILITIES<sup>1</sup>

April 16, 2015

#### EXECUTIVE SUMMARY

There is a current debate concerning the responsibility of the NCAA to afford college athletes protections against academic fraud and misconduct, as has occurred recently at the University of North Carolina, Syracuse University and other institutions of higher education. The NCAA reports that it has 20 academic misconduct cases currently under investigation, compared to just one last year. Yet, the NCAA and several prominent institutional leaders, faced with the first college athlete lawsuit alleging NCAA and institutional academic fraud, contend the NCAA should not be held accountable in these academic misconduct matters

The Drake Group<sup>2</sup> contends that the NCAA plays a primary role in maintaining academic quality and standards for college athletes because it establishes initial and progress toward degree rules for individual athlete athletic participation and academic progress standards that impact access of teams to post season championship play. These academic performance-related rules create academic integrity pressures on the institution and set qualitative and quantitative standards for the educational experience of college athletes that are not applied to

<sup>1</sup> Preferred citation: Gurney, G , Lopiano, D., Porto, B., Ridpath, D.B., Sack, A., Willingham, M., Zimbalist, A. (2015) The Drake Group Calls Upon the NCAA, Its Member Institutions and Higher Education Regional Accreditation Agencies to Fulfill Athlete Academic Protection Responsibilities. (April 16, 2015). Retrieve at: <http://thedrakegroup.org/>

<sup>2</sup> The Drake Group is a national organization of faculty and others whose mission is to defend academic integrity in higher education from the corrosive aspects of commercialized college sports. The Drake Group goals include: (1) ensure that universities provide accountability of trustees, administrators, and faculty by publicly disclosing information about the quality of educations college athletes receive; (2) advance proposals that ensure quality education for students who participate in intercollegiate athletics, (3) support faculty and staff whose job security and professional standing are threatened when they defend academic standards in intercollegiate sports; (4) influence public discourse on current issues and controversies in sports and higher education; and (5) coordinate local and national reform efforts with other groups that share its mission and goals. The Drake Group is "In residence" at the University of New Haven. For further information see: <http://thedrakegroup.org> or contact Gerald S. Gurney, *President at* [geraldgurney@gmail.com](mailto:geraldgurney@gmail.com)

other students. Once these rules are adopted, the NCAA is obligated to enforce them to ensure that member institutions don't academically exploit college athletes in order to maintain their athletic eligibility, just as they are required to enforce all other NCAA rules.

All parties recognize that the pursuit of gate receipts, media rights, sponsorship, licensing, and individual giving revenues produces pressure for winning teams that is the underlying cause of academic integrity failures. This pressure to win and generate revenues is the impetus for institutions of higher education to admit underprepared athletic talents and to steer them into the least demanding majors and courses that will ensure their eligibility to compete. It is this conflict of interests that prevent NCAA member institutions from effectively policing themselves. Suggestions that the institution alone can be responsible for academic integrity under these circumstances are unrealistic. Neither is it reasonable to suggest that the NCAA can ensure academic integrity acting alone or from afar. In addition to its enforcement responsibility, it also has the rule-making power and obligation to engage on-campus institutional faculty representatives and faculty senates to share responsibility to prevent failures of academic integrity. The NCAA, all those with oversight responsibilities at the institutional level and higher education regional accreditation agencies represent the check and balance system that protects athletes from academic exploitation.

The Drake Group believes that the NCAA has not constructed or implemented an effective program that (1) helps prevent academic integrity failures, (2) results in early detection of such failures, (3) fully acknowledges its own enforcement responsibilities and (4) implements appropriate enforcement mechanisms. The Drake Group proposes consideration of fifteen specific recommendations to fix the currently dysfunctional system of shared responsibility for academic integrity. Neither the NCAA's enforcement responsibilities, its rules governing athletics eligibility nor the recommendations proposed by The Drake Group in this statement infringe upon the academic freedom of the professor in the classroom.

## **Introduction**

There is a current debate concerning the responsibility of the NCAA to afford college athletes protections against academic fraud and misconduct, as has occurred at the University of North Carolina, Syracuse University and other institutions of higher education. The NCAA reports that it has 20 academic misconduct cases under investigation, compared to just one last year.<sup>3</sup> Further, a group of 20 college presidents led by Ohio University President Rod McDavis, the chairman of the NCAA's committee on academics, is planning to submit a proposal by the end of June "to better define when the NCAA should investigate cases of academic cheating by student-athletes."<sup>4</sup> Kansas State University President Kirk Schulz defended the institution's role in policing academics and says there's no need for NCAA involvement.<sup>5</sup>

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<sup>3</sup> Associated Press. (2015) New NCAA Legislation in the Works. ESPN.com (April 3, 2015). Retrieve at: [http://espn.go.com/college-sports/story/\\_/id/12413981/new-ncaa-legislation-academic-misconduct-works](http://espn.go.com/college-sports/story/_/id/12413981/new-ncaa-legislation-academic-misconduct-works)

<sup>4</sup> Ibid.

<sup>5</sup> Associated Press. (2015) K-State President Defends NCAA Involvement in Athletics. FoxSports.com (April 2, 2015) Retrieve at <http://www.foxsports.com/college-basketball/story/k-state-president-defends-ncaa-involvement-in-academics-040215>

Both the University of North Carolina and the NCAA are facing a lawsuit on this issue.<sup>6</sup> Former University of North Carolina athletes are alleging that UNC and NCAA have not done enough to ensure that college athletes are getting a quality education. The NCAA responded to the lawsuit contending it has no responsibility to ensure the quality of education student-athletes received at member institution and that what happens in the classroom is the institution's responsibility. On the one hand, the NCAA denies that it has responsibility for academic fraud or misconduct, but, on the other hand, its governing documents confirm that it regulates academic eligibility of athletes and is responsible for enforcing such rules when the institution fails its academic obligations.

There is little doubt that the NCAA and the member institution must work hand in hand to ensure that athletes are not exploited academically and receive the same quality education as other students. A basic principle of the NCAA as stated in Regulation 2.5 is as follows: "Intercollegiate athletics programs shall be maintained as a vital component of the educational program, and student-athletes shall be an integral part of the student body. The admission, academic standing and academic progress of student-athletes shall be consistent with the policies and standards adopted by the institution for the student body in general."<sup>7</sup> Further, Bylaw 2.8.1 specifies the responsibility of the institution as "Each institution shall comply with all applicable rules and regulations of the Association in the conduct of its intercollegiate athletics programs. It shall monitor its programs to assure compliance and to identify and report to the Association instances in which compliance has not been achieved. In any such instance, the institution shall cooperate fully with the Association and shall take appropriate corrective actions. Members of an institution's staff, student-athletes, and other individuals and groups representing the institution's athletics interests shall comply with the applicable Association rules, and the member institution shall be responsible for such compliance."<sup>8</sup> In addition, Bylaw 14 specifies rules on academic eligibility and frames such rules in the context of institutional responsibility to comply with such rules.<sup>9</sup> Bylaw 19 defines the NCAA enforcement responsibilities.<sup>10</sup> Thus, the NCAA has direct responsibility for ensuring that academic integrity exists.

This NCAA's primary role in maintaining academic quality and standards for college athletes is derived from its responsibility to establish initial and continuing eligibility rules for individual athlete sport participation and academic progress standards that impact access of teams to post season championship play. These academic performance-related rules create academic integrity pressures on the institution and set quality standards for the educational experience of college athletes that are not applied to general students. Once these rules are

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<sup>6</sup> Rashanda McCants and Devon Ramsay et al v. The National Collegiate Athletic Association and the University of North Carolina at Chapel Hill

<sup>7</sup> National Collegiate Athletic Association. (2014) 2014–15 NCAA DIVISION I MANUAL art. 2.5), at p. 4. Retrieve at <http://www.ncaapublications.com/productdownloads/D115.pdf>

<sup>8</sup> Ibid.

<sup>9</sup> Id., p. 147-181.

<sup>10</sup> Id., pp. 313-339.

adopted, the NCAA is obligated to enforce them to ensure that member institutions don't academically exploit college athletes, just as they are required to enforce all other NCAA rules. The NCAA is composed of the institutions they regulate and the NCAA and its member institutions share this responsibility.

It is important to note that neither the NCAA's enforcement responsibilities and its rules governing athletics eligibility, nor the recommendations proposed by The Drake Group in this statement infringe upon the academic freedom of the professor in the classroom. As stated in the AAUP "Statement on Government of Colleges and Universities," "The faculty has primary responsibility for such fundamental areas as curriculum, subject matter and methods of instruction, research, faculty status, and those aspects of student life which relate to the educational process."<sup>11</sup> Faculty who treat athletes differently than non-athlete students with regard to grades, independent studies or other matters do not represent issues of academic freedom but of academic fraud. Institutions found to have engaged in academic fraud that affects athlete eligibility are subject to NCAA institutional or athletic program penalties.

### **Why the Institution Alone Cannot be Held Accountable**

There are good reasons why the shared responsibility system (institutional faculty and non-faculty employees, the institution as represented by its leadership, the national governance association and the accreditation agency) should be held accountable rather than any individual faculty member delivering course content or the institution alone:

1. First and foremost, it is important to recognize that the institution has competing responsibilities that may interfere with its primary function of delivering an education to students that is above reproach with regard to academic integrity. Institutional admissions standards are routinely waived for academically underprepared athletes whose performances can deliver millions in gate and television revenues. As protector of the institutional brand, administrative leaders have commonly been complicit in hiding professor misconduct, from inappropriate relationships with students to sexual assault and criminal behavior, fearful that public exposure would damage student recruitment and alumni donations. Similarly, administrative leaders may look the other way and refrain from instituting oversight systems that could detect changing grades, "ghost courses", awarding unearned grades, disproportional enrollment of athletes in independent studies, online courses or less demanding courses and majors. Commonly, many institutions allow the athletic department to conduct academic support programs or advising for athletes, again looking the other way at practices that advance the athletic program's self-interest in eligibility rather than the academic well-being of athletes. Administrative leaders may also fail to discipline or delay disciplinary proceedings for athlete misconduct when such discipline involves the probability of ineligibility to play, dismissal from the institution or media embarrassment. Even when institutions have appointed faculty members to participate in oversight responsibilities,

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<sup>11</sup> American Association of University Professors. Statement on Government of Colleges and Universities. Retrieve at: <http://www.aaup.org/report/statement-government-colleges-and-universities>

selection of such faculty is often a presidential or institutional administrative appointment rather than that of the faculty senate, with such appointments resulting in the selection of faculty “friendly” or acceptable to the athletic department. Thus, there is a need for internal and external watchdog mechanisms that are designed to protect academic integrity.

2. The traditional focus of the institution on periodic evaluation of teaching pedagogy and competence of individual faculty members does not typically reveal differences in the faculty member’s treatment of college athletes versus non-athlete students. A competent teacher of content can engage in misconduct with regard to expecting less from or giving higher grades to athletes. Revealing such misconduct does not require “policing the classroom” or interference with the academic freedom of professors. However, it does require institutional oversight committees, the national governance organization and the regional accreditation agency to exercise regularized auditing roles that examine comparative athlete vs. non-athlete data over time for indicators of differences in treatment.
3. The most vivid example of academic fraud – classes without academic rigor with few if any assignments and no testing resulting in no assessment of learning – are most likely in the minority of instances of academic misconduct. These cases may be uncovered by “whistle blower” reports from individual students or employees. However, they are unlikely to be reported because sufficient protections do not exist for whistle blowers. Cases of egregious academic fraud may be uncovered by examining aggregate comparative athlete and non-athlete data over time. Responsibility is often placed on the offending faculty members, administrators or other employees involved in the use of such system., Blame must also be placed on the institution, national governance organization or regional accreditation agency for failure to grant whistle-blower protection, fully investigate allegations and reports, or require the examination of comparative athlete vs. non-athlete data over time for indicators of differences in treatment.
4. The most common form of academic exploitation is the practice of advising and course registration that direct athletes to enroll in courses or majors that historically have not been as challenging as other courses and majors. Many institutions also allow the athletic department to run its own orientation program for athletes rather than requiring athletes to attend orientation programs conducted for new students. Academic advisers paid for by the athletic department or institutional academic advisers pressured by the athletic department often use knowledge of less strenuous courses and majors to give college athletes a better statistical chance to meet athletic eligibility standards without regard to the college athlete exercising freedom of choice. This practice may occur with no misconduct by faculty teaching in these courses or inappropriate construction of special majors of study. Again, discovery of such practices requires examination of comparative athlete vs. non-athlete data over time. Prevention of such practices requires close supervision of the athlete academic advising process.

5. The institution is both itself and the national governance organization. The NCAA is not an independent non-profit organization run by an independent board of directors. The NCAA is run by its member institutions and staff members behold to the wishes of those members. Institutional representatives are involved in judging peer institutions and may choose to penalize competitors to gain advantage on the playing field for themselves, or may “go easy” wishing for the same treatment if they are caught in similar circumstances. Institutional members may act as a collective to protect their public reputations or advance revenue and winning self-interests such as:
  - a. Keeping initial and progress toward degree eligibility standards low to allow underperforming athletes to continue to participate;
  - b. Hiding the low academic graduation and academic performance of college football and men’s basketball players by displaying only the aggregated data for the entire athlete population or creating new non-comparable standards like the NCAA Graduation Success Rate in order to suggest that athletes perform better in the classroom than non-athletes which protects both the brand of the institutions themselves and the NCAA;
  - c. Failing to require academic audits or oversight at the institutional level conducted by tenured faculty independent of the athletic department or higher administration;
  - d. Failing to give tenured faculty and faculty senates (the higher education entity ultimately responsible for maintaining academic integrity) control over rules related to academic matters in order to avoid conflict with athletics interests;
  - e. Failing to appoint independent investigators or adjudicators to enforce academic or other alleged violations rules and regulations in order to prevent conflict of interest present when representatives from competing institutions are involved in enforcement proceedings; and/or
  - f. Failing to investigate reports of academic transgressions by hiding behind an ill-disguised excuse of protection of the academic freedom of professors in the classroom and the supposed autonomy of institutions to police themselves on academic matters.
- g. The regional accreditation process with its three to ten year peer review system is inadequate alone to effectively police academic misconduct in athletics. Oversight systems must be annual and ongoing. Further, the standards established by regional accreditation agencies to review the operation of athletic programs need to be strengthened.

In summary, institutions facing the political reality that demands winning teams and maximization of revenue generation cannot be expected to police or govern themselves. In all cases of NCAA rules violations, institutions are required to first investigate themselves and impose their own sanctions and solutions before being reviewed or investigated by the NCAA. Suggesting that the NCAA has no role enforcing academic or other rules that improperly keep athletes eligible to compete is irrational. Institutional faculty senates, expert external agencies

like the national athletic governance association and the higher education regional accreditation agency must all share responsibility for acting as the check and balance system that protects athletes from academic exploitation.

### **Shared Responsibility**

With regard to protecting college athletes from academic fraud or misconduct related to maintaining a college student's eligibility to compete for athletics, there are multiple faculty, institutional, and governance organization responsibilities that together produce a climate of academic integrity in the operation of intercollegiate athletic programs. It is this "check and balance system" that is responsible for protecting the student from academic exploitation. The following elements generally define this system. The next section describes how the NCAA currently falls short in the implementation of these responsibilities.

#### Faculty, Tutor, Advisor and Administrator Responsibilities

Individual employees of the institution should have the following responsibilities:

- a. Faculty members teaching classes are responsible for actually conducting the class, transmitting appropriate educational content and experiences and ensuring regular class meetings and fairly grading assignments and tests that produces a quality educational experience for the student – treating athletes like any other student.
- b. Faculty, professional and peer advisors are responsible for guiding college athletes in the selection of courses and majors congruent with their respective interests and abilities as opposed to ensuring convenience in athletic participation.
- c. The Registrar or other comparably titled (Chief Certifying Officer) administrator and the NCAA Faculty Athletics Representative are responsible for certifying that continuing NCAA academic eligibility rules are met.
- d. Academic support personnel such as tutors or learning specialists are responsible for providing learning assistance but not writing papers for or preparing other work that is the responsibility of the student;
- e. Faculty are responsible for making efforts to detect and enforcing rules the prohibit student cheating or plagiarism.
- f. Coaches should not make extraordinary demands on the time of athletes that interfere with their academic responsibilities.

#### Institutional Responsibilities

The institution should have the following responsibilities:

- g. Periodically evaluating the performance of faculty members as teachers delivering the promised educational product to students.
- h. Educating all college athletes and employees about their respective responsibilities related to academic fraud and misconduct and applicable NCAA academic rules.
- i. Adopting policies affording whistle-blower protection to college athletes and employees who become aware of possible academic integrity violations.

- j. Adopting policies that enhance the ability of athletes to complete their academic responsibilities such as restrictions on maximum numbers of classes missed due to athletics participation, prohibitions of athletics competition during final examinations, determination of conference affiliations which provide for reasonable team travel schedules, etc.
- k. Providing sufficient release time to their respective NCAA Faculty Athletic Representatives and faculty athletics committees to exercise their oversight and certification responsibilities.
- l. Determine whether a transcript is valid for purposes of applying appropriate NCAA legislation to the eligibility of a student-athlete when the institution receives notification, or otherwise has cause to believe, that a student-athlete's high school, preparatory school or two-year college transcript is not valid.

#### National Athletic Governance Organization Responsibilities

The national governance organization should have the following responsibilities:

- m. The NCAA Eligibility Center shares responsibility with the institution for certifying that initial NCAA academic eligibility rules are met.
- n. Promulgation of academic eligibility and rules related to time spent in athletics-related activities (limitations on numbers of scheduled contests, length of season, etc.);
- o. Promulgation of reporting rules that require auditing and transparency of data that makes it possible to discover institutionalized academic fraud or misconduct;
- p. Promulgation of rules that require institutions to afford whistleblower protection to college athletes and institutional employees;
- q. Promulgation of rules that require external third party review of athletic operating and rules compliance practices and college athlete academic success (certification programs, annual academic audits, etc.);
- r. Promulgation of rules that prohibit conflict of interest (involvement of the athletic department) in academic affairs (academic support programs, academic advising, determination of eligibility, etc.);
- s. Execution of an enforcement process that promptly investigates and adjudicates credible reports of academic impropriety; and
- t. Recognizing that the faculty is ultimately responsible for the academic integrity of the institution, mandating that NCAA Faculty Representatives and institutional oversight committees consist of tenured members of the faculty appointed by the faculty senate rather than the athletic department or general administration of the institution (whose primary concerns revolve around athletic performance excellence, revenue production and institutional reputation which have the potential to conflict with academic integrity).

#### Higher Education Regional Accreditation Agency

- u. The institutions regional accreditation agency is responsible for conducting a regular comprehensive review of the operation of the athletic program as part of the Council of



Higher Education accreditation process; both threshold quality review and periodic assessment of quality improvement every three to ten years by external peer review, based on judgments of whether standards are met.

**RECOMMENDATIONS: Closing the Academic Integrity Gaps within the Current System of Shared Responsibility**

The Drake Group believes that the following actions are required to fix the currently dysfunctional system of shared responsibility for academic integrity and should be adopted as required standards for regional accreditation agencies, rules and regulations of national athletic governance associations and institutional policy:

1. Annual or periodic performance reviews of faculty members at the institutional level should include an examination of athlete versus non-athlete enrollment and grading patterns.
2. Athletes should be advised by the same faculty or specialist employees who advise all students. Employees of the athletic department should not be involved in this process.
3. All NCAA member institutions should be required to adopt a policy that prohibits selection of courses and majors intended merely to ensure continued athletics eligibility or athlete attendance at practice and require that academic advisors be specifically educated about such institutional policy.
4. All NCAA member institutions and the NCAA should be required to adopt “whistle blower” protection policies. No institutional whistle-blower should be removed from his or her position or experience a hostile work environment at the institution.
5. The NCAA Faculty Athletics Representative representing the institution as the institutional voting member and engaging in institutional certification of eligibility should be a tenured member of the faculty elected by the Faculty Senate or the faculty at large of the institution. In matters related to academically related rules and regulations, such representative should operate independent of the athletic department or institutional administration. By specifying “tenured” faculty members, there is added protection for the individual faculty member who may fear retaliation such as termination of employment if they report violations.
6. Academic support programs serving athletes should be funded and administered by regular academic authorities and not the athletic department.
7. Employment agreements with all athletics personnel should include a provision prohibiting interference with teaching faculty or instructors, regular academic advising, course and major selection, scheduling of classes or tutoring and other academic support services.

8. Each institution should be required to establish an athlete academic oversight committee, consisting of tenured faculty appointed by the institution's faculty senate that produces an annual audit submitted to the faculty senate that includes an analysis of the following data, overall and by sport:
  - a. academic progress qualifications of players;
  - b. athlete admissions;
  - c. average SAT and ACT scores and Federal Graduation Rates by sport compared with average rates for the student body;
  - d. NCAA Graduation Success Rates;
    - a. institutional NCAA APR reports and waivers submitted to NCAA;
    - b. initial eligibility waivers submitted to NCAA
  - f. independent studies taken compared with the student body;
  - g. professors offering independent studies and their average grade assigned, comparing athletes to non-athletes;
  - h. admissions profiles of athletes compared to their respective (or previous year) entering classes;
  - i. athletes' progress toward a degree summaries;
  - j. trends in selected majors by sport;
  - k. average athlete vs. non-athlete grade distributions of faculty by major;
  - l. incomplete grades athletes vs. non-athletes;
  - m. grade changes by professor and sport; and
  - n. separately reviewed GPA, graduation rates and academic progress rates of any subgroup of athletes admitted without regard to the normal admissions standards of the institution or whose combined high school GPA and SAT scores are more than one standard deviation below the academic profile of the previous year's incoming class;

The Drake Group believes that such transparency is essential to achieve academic integrity. In addition, this faculty oversight group should be responsible for reviewing and approving sport team schedules at the beginning of each semester for compliance with missed class policies established by the faculty senate and required by the NCAA.

9. The institution's NCAA Faculty Representative, Registrar, the Director of Admissions or others responsible for certifying that initial and continuing NCAA academic eligibility rules are met should be required to participate in an NCAA training program related to those responsibilities.
10. Employment agreements for academic support personnel such as tutors or learning specialists hired to provide learning assistance to college athletes should include a strict prohibition against writing papers for or preparing other work that is the responsibility of the student.

11. NCAA member institutions should be responsible for annually educating all college athletes and employees about their respective responsibilities related to academic fraud and misconduct and applicable NCAA academic rules.
12. NCAA member institutions should be responsible for providing sufficient release time to their respective NCAA Faculty Athletic Representatives and faculty athletics committees to exercise their oversight and certification responsibilities.
13. The NCAA should promulgate more restrictive maximum contest limitations and enforce a 20-hour per week rule that eliminates current loopholes.
14. The NCAA should institute an enforcement process that does not rely on the participation of institutional representatives or NCAA employees who have conflicts of interest. Investigation or adjudication by member who could competitively or financially benefit from an athlete or another institution being restricted from competition should not occur. Similarly, NCAA employees who work on a daily basis with member institution committee members may be conflicted. A 2015 comparative content analysis of documented NCAA D-I football and men's basketball academic fraud cases since 1990 indicated that inconsistencies exist regarding academic fraud sanctions. Analysis of the data inferred that the NCAA may use Fletchers Theory of Situational Ethics in its decision-making given the lack of consistency between and among academic fraud cases and unreported allegations in other cases.<sup>12</sup> See The Drake Group position paper, "Fixing the Dysfunctional NCAA Enforcement System" for additional recommendations regarding the NCAA enforcement structure.<sup>13</sup>
15. The institutions regional accreditation agency responsible for conducting a regular comprehensive review of the operation of the athletic program as part of the Council of Higher Education accreditation process required of the institution should reexamine its standards to consider the adoption of recommendations made in this document.

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<sup>12</sup> Ridpath, D., Gurney, G., and Snyder, E. (2015) NCAA Academic Fraud Cases and Historical Consistency: A Comparative Content Analysis. Manuscript submitted for publication *Journal of Legal Aspects of Sport*. Note: In 'situation ethics', each case is considered to be unique and deserving of a unique solution. Right and wrong are dependent upon the situation rather than universally applied rules.

<sup>13</sup> Porto, B., Gurney, G., Lopiano, D., Ridpath, D.B., Sack, A., Willingham, M., Zimbalist, A. (2015) The Drake Group Position Statement: Fixing the Dysfunctional NCAA Enforcement System. (April 7, 2015). Retrieve at: <http://thedrakegroup.org/>