

Approved: April 24, 1991  
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Chairperson Senator Wint Winter Jr. at  
10:05 a.m. on March 19, 1991 in room 514-S of the Capitol.

All members were present except: Senator Gaines who was excused.

Committee staff present:

Mike Heim, Legislative Research Department  
Jerry Donaldson, Legislative Research Department  
Gordon Self, Office of Revisor of Statutes  
Judy Crapser, Secretary to the Committee

Conferees appearing before the committee:

Brad Smoot, Federation for Intercollegiate Fairness and Equity  
Bob Timmons, Lawrence  
Don Yaeger, Tallahassee, Florida  
Congressman Tom McMillen, Maryland  
Mark Goldenberg, Granite City, Illinois  
Burton Brody, Denver, Colorado  
Stephen R. Morgan, National Collegiate Athletic Association (NCAA)  
Richard Johanningmeier, Washburn University of Topeka  
Pentice Gautt, Big Eight Conference

The Chairman called the meeting to order by opening the hearing for SB 234

SB 234 - enacting the Athletic Association Procedures Act.

Brad Smoot, Federation for Intercollegiate Fairness and Equity, testified in support of SB 234.  
(ATTACHMENT 1)

Bob Timmons, retired high school and college athletic coach, testified in support of SB 234.  
(ATTACHMENT 2)

Don Yaeger, sports author from Tallahassee, Florida testified in support of SB 234.  
(ATTACHMENT 3)

Tom McMillen, United States Congressman from Maryland, submitted written testimony in support of SB 234. (ATTACHMENT 4)

Mark Goldenberg, attorney from Granite City, Illinois testified on behalf of himself and Mr. J. Steven Beckett in support of SB 234. (ATTACHMENT 5)

Burton F. Brody, law professor at the University of Denver in Denver, Colorado testified in support of SB 234. (ATTACHMENT 6)

Stephen R. Morgan, Associate Executive Director of the National Collegiate Athletic Association, testified in opposition to SB 234. (ATTACHMENT 7) Mr. Morgan also presented the Committee with a packet of information giving an overview of the NCAA. (ATTACHMENT 8)

Mr. Morgan was questioned about the NCAA intent suggested by Mr. Schultz's printed comments regarding dismissal from membership in the organization of schools in states that pass due process legislation. Mr. Morgan responded that it was not the intention of the Executive Director to threaten anyone, only as a method to maintain a "level playing field" for all institution members of the NCAA.

Richard Johanningmeier, Director of Athletics at Washburn University of Topeka, testified on behalf of the athletic administrations of Emporia State University, Fort Hays State University, Pittsburg State University, Wichita State University and Washburn University in opposition to SB 234. (ATTACHMENT 9)

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,  
room 514-S, Statehouse, at 10:05 a.m. on March 19, 1991.

Prentice Gantt, Associate Commissioner of the Big Eight Conference, testified in opposition to SB 234. (ATTACHMENT 10)

This concluded the hearing for SB 234.

The meeting was adjourned.

Date 19 March 1991

VISITOR SHEET  
Senate Judiciary Committee

(Please sign)

Name/Company	Name/Company
Michelle Lister	John Peterson & Associates
Sue Bond	
Ron Beckman	Cloe-us ks
RG Fry	KTHA -
Pierce Fante	Big 8 Conference
Richard Hilliard	NCAA
Richard Johannmeier	Washburn University
Janet Degginger	Washburn University
David Monard	Washburn Univ
Adam Teicher	Kansas City Star
Paul Shelton	OTA
Bob Trimmer	Lawrence, K
Ma & Goldaby	Granite City, IL.
Tom Jaeger	Tallahassee, FL
Gustav Rody	University of Delaware
Brad Swoot	FIFE

# BRAD SMOOT

Attorney at Law

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March 19, 1991

The Honorable Wint Winter  
Chairman  
Senate Judiciary Committee  
State Capitol  
Topeka, KS 66612

Re: 1991 S-234

Dear Mr. Chairman and Members:

Attached, please find copies of the formal written remarks presented in support of 1991 Senate Bill No. 234 by former Kansas University Track Coach, Bob Timmons; Florida journalist and author, Don Yeager; Illinois attorney, Mark Goldenberg and University of Denver Law Professor, Burton Brody. These knowledgeable and notable gentlemen appear on their own behalf and at the request of the Federation for Intercollegiate Fairness and Equity, a Washington, D.C.-based association of well-known athletes and coaches organized for the improvement of college sports. A listing of the Federation's National Committee Members is attached.

I also appear today as the registered lobbyist for the Federation to express support for the enactment of statutory due process in the management of intercollegiate athletics by the NCAA.

Included with each set of remarks is a biography of the conferees, however, allow me to introduce them briefly:

Coach Timmons hardly needs introduction to Kansans. He was the Coach of the highly successful University of Kansas Men's Track Team for 24 years. Coach Timmons retired in 1988 and resides in Lawrence.

Don Yeager is a journalist and author of the widely acclaimed book, UNDUE PROCESS: THE NCAA'S INJUSTICE FOR ALL. A copy of his book is provided as an attachment to his remarks. Mr. Yeager has written for various newspapers, sporting magazines and covered the Florida legislature for the Florida Times-Union.

*Senate Judiciary*  
*Attachment 1*  
*3-19-91*

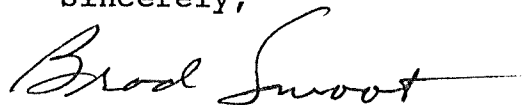
*1-1/3*

Mark Goldenberg is a practicing attorney in Granite City, Illinois, where he recently represented the University of Illinois' basketball coaches during an NCAA investigation of that institution's athletic program.

Burton Brody is a professor of law at the University of Denver and has been a faculty representative to the NCAA for that institution. He has also been actively involved in the Western Collegiate Hockey Conference and served as its chairman for two years.

All of these busy gentlemen generously contribute their time, experience and professional expertise because they believe current NCAA practices are unfair and in need of reform. They take these proceedings very seriously and I trust you will find their input helpful in your deliberations on Senate Bill No. 234.

Sincerely,

A handwritten signature in cursive script that reads "Brad Smoot". The signature is written in dark ink and has a long, horizontal flourish extending to the right.

Brad Smoot  
Federation for  
Intercollegiate  
Fairness & Equity

Enclosures

FEDERATION FOR INTERCOLLEGIATE FAIRNESS & EQUITY

NATIONAL COMMITTEE MEMBERS

<u>Name</u>	<u>Position</u>
Lefty Driesell	Coach, James Madison
Walter Payton	Former Football Player with Chicago Bears
Bill Walton	Former Basketball Player
Jerry West	General Manager, L.A. Lakers
Pete Newell	Former Coach Berkley University
Jerry Tarkanian	Basketball Coach, UNLV
Ernie Chambers	Nebraska State Senator
Norm Stewart	Head Coach, Missouri
James King	Florida State Representative
Don Chaney	Basketball Coach Temple University
Willie Brown	Speaker of House California Legislature
Harry Edwards	Professor, Berkley University
Dale Brown	Basketball Coach, LSU
George Perles	Football Coach Michigan State University

SENATE BILL 234  
Athletic Association Procedures Act  
Senate Hearings  
Judiciary Committee

BOB TIMMONS  
University of Kansas Graduate

Coaching High School 1950-1964

Caldwell, Kansas - 2 years  
Emporia, Kansas - 1 year  
Wichita, Kansas - 11 years

Football  
Cross Country  
Basketball  
Swimming  
Track and Field  
Tennis

Coaching University of Kansas 1964-1988

Cross Country  
Track and Field

United States Olympic Track and Field Committee 1965-1971

NCAA Division I Track and Field Committee, Executive Board

NCAA Division I Track and Field Coaches Association  
Chairman, Student-Athlete Rights Committee

*Senate Judiciary Committee*  
*Attachment 2*  
*3-19-91*

*2-1/13*

SENATE BILL 234  
Athletic Association Procedures Act  
Senate Hearings  
Judiciary Committee

Testimony of Bob Timmons

March 19, 1991

The Judiciary Committee of the Kansas Senate is gathered here today to listen to testimony about the positive and negative aspects of the "Athletic Associations Procedures Act."

You might be interested to know that those of us who will speak in favor of adopting this bill would much prefer that the NCAA adopt the objectives the bill presents. For none of us really want state or national legislation to take over any phase of organized athletics in our country.

None of the NCAA members institutions in the 7 states where Due Process legislation was or is being considered (California, Florida, Illinois, Kansas, Kentucky, Nebraska, South Carolina) were or are outwardly in favor of state or national legislation.

1. Those who govern member institutions within those states rightfully feel these changes should be developed within the framework of the NCAA.
2. Yet there are legislators and college administrators who feel the only way to change enforcement policies is with strong outside pressure generated by state or federal legislation.
3. But no member institution that will favor such legislation for fear their institution would not be allowed to continue to compete in the NCAA.

Unfair Rules

During the 14 years I coached in Kansas high schools and the 24 years of coaching at the University of Kansas I became aware of rules that were sometimes unfair to athletes. The following are several examples of problems encountered because of those rules:

High School

Several Wichita East High athletes lost their eligibility to compete due to playing an unorganized game of pick up baseball on a Sunday afternoon.



### Athletic Associations at War

During the early years of my coaching career at KU the various national athletic associations that were involved in the sport of track and field had horrendous battles with one another. The NCAA and the Amateur Athletic Union (AAU) and the United States Olympic Committee (USOC) were always in conflict with one another. Later the United States Track and Field Federation (USTFF) was established by the NCAA to offset the monopolistic power of the AAU.

Each association established policies that were unfair to athletes in an effort to counter vindictive practices of opponent organizations. Athletes were the biggest losers in this unfortunate war of athletic associations.

### Political Pressure Needed for World Record

Jim Ryun broke the World Record in the 880 yard run in the USTFF National Outdoor Championship held in Terre Haute, Ind. on June 10, 1966. The following problems were encountered:

1. Since this was the USTFF's National Championship Meet it's officers didn't feel it needed to ask the AAU for permission (sanction) to hold the meet.
2. But the AAU felt that any and all meets need to be sanctioned by it since it was the official U.S. representative of The International Amateur Athletic Federation (IAAF).
3. The AAU threaten all participating athletes with the loss of eligibility to compete in AAU and/or international meets if they competed in the USTFF nationals at Terre Haute.
4. To my knowledge no athletes withdrew from the meet because of those threats.
5. The meet was held and no athletes lost their eligibility as threatened.
6. The AAU was responsible for submitting Ryun's World Record to the IAAF since it was established in the United States.
7. Because the USTFF meet was not sanctioned by the AAU it refused to submit Ryun's record for consideration.
8. It took much persuasion and pressure by coaches, congress, and meet officials to finally force the AAU to submit the record. All of this took several years for the record to be officially accepted as a World Record.

2-3/13

Institutional Sanctions Punish the Innocent

During my eighth year in Lawrence KU was put on probation with sanctions in football, basketball and track.

1. Our entire 1972 track squad of 57 innocent athletes was punished with restrictions which disqualified them from competing in the NCAA National Indoor Track and Field Championships as well as the National Outdoor Track and Field Championships.
  - a) The ban was placed on Kansas Track solely because of the testimony of one disgruntled athlete who had been dismissed from our squad for failure to comply with team rules and policies.
  - b) We were not permitted to cross examine that student athlete.
  - c) At no time was anyone from the track department allowed to personally testify concerning those accusations prior to the sanction of our team by the NCAA.
  - d) None of our athletes were charged with any infractions.
  - e) Our freshmen of that year were in the 9th grade at the time the infractions by others took place which resulted in our students' loss of eligibility.
  - f) The Infractions Committee of the NCAA turned down a personal request by one of our team captains to appear before the Committee to register an appeal.
  - g) We were told that "these were institutional penalties and were not the concern of the student-athlete."
  - h) The only penalties placed on our program were those which took away participation rights for our innocent student-athletes.
  - i) A formal appeal was requested by our director of athletics to the 18 man NCAA Governing Council of which he was a member. He was turned down because it did not represent "new evidence".

2-4/13

- j) Later when the Council's regular meeting came to an official end one of its members asked our director to tell the Council about our 3 infractions.
- k) After hearing what he had to say the Council completely lifted the ban on our team.
- l) This entire scenario as well as our penalties plus the loss of time and money could have been avoided if we could have cross examined the disgruntled athlete in the presence of infractions committee.

Voluntary Association

The NCAA is classified as a voluntary association, but there are no criteria which define a voluntary association. The following is an interesting comparison of two private associations.

NCAA - MEMBER SCHOOLS

KIWANIS CLUB

- |   |   |
|---|---|
| <ul style="list-style-type: none"> <li>a. Voluntary members for universities and colleges that agree to accept its rules, policies and obligations</li> <li>b. Each school is allowed one vote</li> <li>c. Presidents, Faculty Representatives and Athletic Directors combine to establish that vote</li> <li>d. These rules and policies are determined at the annual meeting of the NCAA</li> <li>e. Coaches and athletes do not attend this meeting</li> <li>f. Coaches             <ul style="list-style-type: none"> <li>1. Have no direct representation in decision making process</li> <li>2. Input is related to technical rules for their sport not Assoc. policy or eligibility rules</li> </ul> </li> </ul> | <ul style="list-style-type: none"> <li>a. Voluntary membership for all individuals</li> <li>b. All members have equal rights and voting privileges</li> <li>c. Rules and policies apply equally to each member</li> <li>d. Club members do not and cannot control punishment of non members</li> </ul>      |
|   | <ul style="list-style-type: none"> <li>g. Student Athletes             <ul style="list-style-type: none"> <li>1. Are not members of the NCAA</li> <li>2. Have no voting rights</li> <li>3. Have no choice of governing athletic association whose rules they are obligated to follow</li> </ul> </li> </ul> |

Byers Claims Full Protection for Student-Athletes

Those who govern the NCAA, member institution and headquarters staff, don't seem to recognize that there are major problems in its enforcement policies.

In a 1974 letter Walter Byers, Executive Director of the NCAA, wrote:

"The rights of eligible student-athletes to compete in NCAA recognized competition are fully protected under existing legislation."

I assume the present director, Richard Schultz would agree with that statement with respect to present day policies of the NCAA.

Our Student Athletes Rights Committee did not agree with Mr. Byers' statement in 1974 and would not agree with these thoughts in 1991. The following rule points out our reasons:

Proposition 48

Personally, I feel this is basically a very fine rule, but one of its policies is not fair to the student-athlete. To prevent non-qualifiers from practicing with their team and to hold them out of school related competition during that first year is justifiable for those students who need to establish a solid academic base.

But there is one aspects of this rule that needs to be considered:

- a. It is not fair to take away a year's eligibility from a student-athlete who has above average grades in high school but scores low on the SAT/ACT test; especially if he or she continues to make above average grades in college courses.

Why should that athlete be punished with the loss of a years eligibility?

- b. What is the purpose of such punishment?
- c. Prior to the adoption of Proposition 48 every loss of eligibility was caused by some type of infraction on the part of a coach, athlete, staff member, alum, etc.

What rule does a good student with an insufficient test score break?

- d. Do the ACT and SAT evaluate such character attributes as determination, perseverance and/or dedication?

Does a high test score predict anything about these important character traits? Is a high score on the ACT a better prediction of academic success than a high grade point average?

- e. Shouldn't there be certain conditions by which student-athletes could be allowed to make an academic recovery into the good graces of the NCAA.

There needs to be a way deserving student-athletes can regain their 4th year of eligibility.

- f. NCAA rules state that the athletes should not be allowed "extra benefits not available to the student body in general."

1. Conversely, why should other students be allowed benefits not available to the student-athlete?
2. Why should the athlete be subjected to discriminatory academic rules when other members of the student body are not required to meet such rules?
3. To put it another way, if athletics is truly an extra curricular activity such as music, debate, drama, cheerleading, intramural sports, etc., shouldn't each activity be governed by the same academic rules.

The United States Track Coaches Association, one of the NCAA representative sports groups, submitted a letter to the Executive Committee requesting consideration of student-athletes rights. The return letter worded as follows:

The Executive Committee did not take any action on the recommendations as it informed the Track and Field Committee that governing sports committees should be involved only in the administration of championships and formulation of the playing rules were appropriate and not in questions of Association policy and eligibility rules.

The Executive Committee is the only direct, face to face, avenue available to the NCAA administration for concerns of non-sport issues importance to NCAA track and field coaches. The letter indicated that our proposals were not open for discussion.

#### THE ENFORCEMENT POLICIES AND PUNISHMENT

The following section was presented to the NCAA Council for consideration by the Student Athletes Rights Committee of Division I Track and Field Coaches Association more than fifteen years ago:

There is a need to seek a resolution to the complex NCAA enforcement rules that lead to the punishment of the innocent student-athlete and to other NCAA rules that unfairly infringe on rights of students who participate in intercollegiate athletics. To that end, the following are suggestions that should be considered:

- A. Develop a penalty system that will do the following:
  1. Punish the guilty to the extent of the infraction; that is, make the penalty fit the crime and strive for consistency in area of punishment.
  2. Eliminate the "mass punishment" of institutional sanctions that place penalties on every athlete in a specific sport, even though the offending student-athletes may be few in number, or are no longer associated with that sport or that institution.
  3. Establish procedures that are consistent with minimum due process requirements provided for by the United States Constitution.
- B. Pass legislation that will protect the rights of student-athletes to participate in any sport sponsored by the Association. Such legislation should insure that student-athletes will be allowed to compete so long as they:
  1. Follow reasonable rules and regulations.
  2. Are in good standing with the school and team.
  3. Have the talent to compete at the level desired for that team.
  4. Are otherwise eligible and qualified to compete.
- C. Review NCAA regulations with respect to fairness and legality regarding the rights of the student-athlete, and eliminate those that would be held unfair or illegal if subject to review under constitutional standards.

### NCAA RULES AND ENFORCEMENT POLICIES

The NCAA can and should make rules as tough as it desires as long as the following are considered:

- a. Rules are fair and understandable.
- b. Interpretation of the rules by NCAA headquarters are the same and consistent for all member institutions.
- c. Investigations are properly conducted.
- d. Guilty parties and/their institutions are penalized for rules infractions.
- e. The punishment is designed for those who are actually charged with and found guilty of NCAA rules infractions.
- f. Those charged with infractions are given the right of due process.
- g. The final decisions are fair for all and consistent with previous decisions.
- h. Rights of innocent student-athletes are protected.

### DEATH PENALTY

Also in the area of enforcement, the President's Commission initiated new and much needed penalties, including the "Death Penalty" through which more severe punishment can be charged against a school found to be guilty of repeated offenses of rules infractions. There is a very definite need for stringent rules and penalties to deter continuous violations by a member institution, unfortunately, innocent student-athletes are now the victims of even broader and more severe penalties than before the President's Commission became an active entity in the NCAA.

### FEDERAL COURT ORDERS

Coaches need expert legal advice to help solve the deplorable situation which exists between the NCAA and the Federal Court system. NCAA policies can create situations that cause a need for schools to defy following court orders in order to avoid additional sanctions by the NCAA. Coaches and athletic administrators need to know how to resolve this problem and still comply with court orders without being charged with contempt of court.

Should not the "Law of the Land" have a higher authority than that of the NCAA? If that premise is so, then it should be the NCAA responsibility to adjust its policies in such a way that coaches can follow court orders laws without fear of NCAA retribution.

2-9/13

Court Orders vs. NCAA Threats

In 1980 Clifford Wiley, a KU sprinter, was declared ineligible for accepting a BEOG Grant in addition to a full athletic scholarship.

1. He took his case to the Federal District Court in Topeka.
2. Judge Rogers decided in his favor and ordered KU to put Clifford back into meet competition.
3. Immediately following that decision area newspapers printed threatening statements by Bill Hunt, assistant executive director in charge of enforcement.
4. I called the NCAA office and talked to Mr. Hunt, and asked him if the NCAA followed court orders.
5. He informed me that it did, but that KU would still be held accountable to the enforcement rules of the NCAA.
6. Following the order of the court we put Clifford back into competition and won two conference team titles with Clifford competing in both meets.
7. The NCAA appealed the decision made by the Federal District Court to the 10th Circuit Court of Appeals in Denver.
8. Three years later the case was dismissed. The Circuit Court of Appeals and the U.S. Supreme Court concluded that "---it did not present a substantial federal question."
9. The Big 8 Conference then took the two conference titles away from Kansas.
10. Thus the NCAA followed up on its threats.
11. KU was punished for following the court order
12. All this makes one wonder if the NCAA threats are more powerful than the federal court orders KU was obligated to follow.

Consistent Punishment

Another area of concern is the lack of consistency with which the enforcement program handles penalties. A greater effort needs to be made to punish the guilty individual or member institution with similar infractions in the same way. The following is an interesting comparison of two institutions with similar infractions without considering the severity of the specific infractions in either institution.



KU AND UNLV

An example of two penalties which are difficult to understand concerns the University of Kansas and the University of Nevada at Las Vegas.

<u>University of Kansas</u>	<u>Univ. of Nevada at Las Vegas</u>
1. Defending Nat'l champs	1. Defending National champions
2. No student athletes charged with infractions	2. No student athletes charged with infractions
3. Super star graduated	Athletes were in 4th grade at the time infractions were committed
4. Sanctions prevented defense of title	
5. Returning team of unknown quality	3. Two super stars plus two other starters returning
6. Infractions happened two years before the title was won	4. Original sanctions prevented defense of title
7. An appeal would have resulted in reopening the investigation	5. Returning team odds on favorite to win in NCAA title this year
8. Infractions happened during previous coaches tenure	6. Several penalty options were submitted by UNLV
	7. Next year their innocent athletes will be punished for 14 year old infractions

Questions on Issue

1. Why weren't the penalties changed for Kansas as they were for UNLV ?
2. If Danny Manning had been a junior would the NCAA have changed the penalties for Kansas?
3. If UNLV had graduated all of its starters would they have been allowed to defend their title?
4. Why were the original penalties changed for UNLV and not for KU?
5. In the future will institutions charged with infractions be allowed to have a choice of options with respect to penalties?
6. How many of the Infractions Committee took part in the decisions regarding the penalties for both institutions?

1991 - NCAA Div. I. Operating Manual

By Law, Article 10

Ethical Conduct

10.01 GENERAL PRINCIPLE

10.01.1 Honesty and Sportsmanship.

Individuals employed by (or associated with) a member institution to administer, conduct or coach intercollegiate athletics and all participating student-athletes as a whole, their institutions and they, as individuals, shall represent the honor and dignity of fair play and the generally recognized high standards associated with wholesome competitive sports.

This philosophical statement of the NCAA concerning ethical conduct is inconsistent with rules that punish the innocent or prevent qualified student-athletes from participating in intercollegiate competition. There is no way to relate words like sportsmanship and fair play to those aspects of collegiate athletics.

#### Summary

To summarize my feelings, I would agree that those things asked for in SB-234 would be better served if they could be resolved within the NCAA and incorporated into NCAA policy and procedures.

Senate Bill 234 calls for greater fairness and consistency in enforcement policies. Those that govern the NCAA don't seem to be aware of the unfairness of its enforcement program and to its related infringement on the participation rights of the student-athlete.

Since the NCAA seemingly does not recognize these problems it is important that state and national legislatures create the outside force necessary to cause the NCAA to change some of its rules with relationship to these vital aspects of athletic administration.

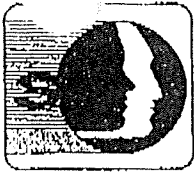
That the NCAA has been in operation for 85 years without solving these important problems related to punishment policies and to the protection of participation rights of the student-athlete, the Athletic Association Procedures Act should be passed at the earliest possible date.

#### Additional Thoughts

I've been told that the Kansas House of Representatives will not be able to present a bill on this subject until next year.

Should the National Athletic Associations pass rules of a positive nature to the satisfaction of the Kansas Senate, there would be no need for House Action on this bill and it would be allowed to die.

In the mean time by passing this bill in the Senate you would be making a strong statement about your desire for fairness and consistency in the athletic administration of interscholastic and intercollegiate athletics.



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### DON YAEGER --- BIOGRAPHY

Don Yaeger is a Tallahassee, Florida writer who previously has worked for the *San Antonio Light*, *Dallas Morning News* and the *Florida Times-Union* in Jacksonville. His work has appeared in newspapers and magazines across the country, including *USA Today*, *The National Sports Daily*, *The Sporting News* and *Basketball Times*. Most recently he was capital bureau chief for the *Times-Union*, covering the Governor and Legislature.

His reporting career, which included assignments ranging from travelling with the mujahadeen in Afghanistan to candidates from both parties during the 1988 presidential campaign, has produced national awards in areas as diverse as politics, education, sports and international affairs. He is a graduate of Ball State University in Muncie, Indiana.

Yaeger recently joined Chiles Communications, a Tallahassee-based government and public affairs company. As vice president for media relations, he serves as a media consultant for several Fortune 500 companies as well as several not-for-profit groups.

*Senate Judiciary Committee*  
*Attachment 3*  
*3-19-91* *3-1/4*

STATEMENT OF DON YEAGER

Before the Kansas Senate Judiciary Committee

March 19, 1991

Re: Senate Bill No. 234

Ladies and Gentlemen:

The National Collegiate Athletic Association claims to have a "fair" enforcement process in which member institutions, student athletes and university employees are accorded "due process" under NCAA enforcement regulations. Yet the NCAA spends literally millions of dollars annually in seeking sanctity from courts and legislatures, lobbying and litigating to remain immune from the very fundamental fairness requirements that it claims to already give. Why would an institution spend millions of dollars to remain exempt from a fairness standard that it claims to already meet?

In reality, NCAA enforcement procedures pay lip service to fairness but are designed for prosecutorial efficiency. The imposition of a fundamental fairness requirement upon NCAA enforcement procedures would force the NCAA to make its actions conform with its claims.

Unreliable "evidence". Witnesses are not allowed to appear at NCAA enforcement hearings, even if institutions or individuals pay the expense. There is no right to face your accuser. Infractions cases are built primarily, if not exclusively, upon statements purportedly given by individuals to NCAA investigators. Notwithstanding the fact that serious questions have been raised about the accuracy of investigators' "recollections" of those statements, the NCAA refuses to allow investigator interviews to be recorded. Tape recording interviews or any other kind of verbatim transcript is strictly forbidden. Multiple levels of hearsay, rather than accurate transcripts, represent the centerpiece of an enforcement case. Although a written statement is presented to an interviewed individual to sign, the statement contains only the information which the NCAA investigator chooses to include; is framed in a way that the investigator chooses to frame it; and has been known in some cases to include "information" which was never discussed and statements never made by the interviewed individual. Interviewees are often denied the right to change statements summarized incorrectly and are told that their statements as summarized would be used anyway. NCAA investigation and interview procedures are not designed to accurately and objectively determine information, but are an integral part of a process which emphasizes prosecution efficiency at the expense of accuracy. Prosecution efficiency is 100% with the NCAA. Once official charges have been made a violation has been found in every case.

Lack of Evidentiary Standards. Although the NCAA claims that the "burden" is upon the NCAA staff to prove the occurrence of an infraction, a review of Infractions Committee findings shows a total lack of application of any burden of proof concept or evidentiary standard. Second and third level hearsay statements propounded by staff investigators take precedence over sworn affidavits and other documentation, and the lack of meaningful

appeal or review by an objective authority shows NCAA claims of evidentiary standards to be nothing more than window dressing.

Statutes of Limitations. Although the NCAA enforcement supposedly has a four-year statute of limitations, the statute is tolled once the NCAA begins an investigative inquiry--a process that can last three to four years. By the time the investigative staff has completed its lengthy investigation (and given the responding university an extremely short period of time within which to conduct its own inquiry) hearings are held on incidents which may be seven and eight years old.

One-Sided Discovery Process. Although universities are expected to provide copies of every scrap of paper which they intend to produce before an Infractions Committee hearing well in advance of the hearing, a university is left in the dark as to the structure and content of the enforcement staff case until a week or two before the hearing. The staff disclosure procedure is designed to limit the time that an institution has to accumulate information which might contradict the staff's case. David Berst, NCAA Enforcement Director, stated that the prehearing conference (where the University first becomes aware of the contents of the Staff's case) is purposely set for just days before the infractions hearing so as to limit the time an institution has to rebut NCAA information. In addition, ~~schools are never allowed to obtain copies of the statements which the staff intends to utilize at hearings.~~

Intimidation. Intimidation is an integral part of the NCAA's enforcement procedures. Investigators have threatened student athletes, stating that if they did not provide the investigator with information they may not participate in NCAA events in the future. Investigators have even made statements that they were going to run certain coaches out of coaching. Universities are not immune from this tactic. During the Congressional Hearings in 1977, universities expressed apprehension about testifying before the Subcommittee. As Mississippi State's attorney stated "those that stand up against the NCAA do so with trembling and continuing fears of retaliatory retribution that can be dispensed without warning by a powerful arm of arbitrary force." After hearing testimony on this matter, the House Subcommittee came to the conclusion that vindictiveness is candidly admitted.

Lack of Meaningful Appeal Process. The only administrative appeal available to an institution is to the NCAA Council--a governing body which is not structured to provide a meaningful review of infractions cases. ~~No major penalty has ever been reversed by the Council.~~ There is evidence that some Council members do not even read some appeal petitions. Infractions Committee findings are simply rubber stamped in an "appeal" process that does not even permit the institution to have a transcript of the Infractions Committee hearings.

The fact is that the NCAA does not really give substantial

priority to the enforcement process. The NCAA annually spends less on enforcement than it does on public relations and promotions, and the NCAA spends nearly as much on committee member entertainment as it does for enforcement. In 1990 the NCAA budgeted 70% more for its Visitors Center than it did for its entire enforcement process.

The NCAA chooses to ignore the reality of its adversary process, claiming the enforcement procedures to be "cooperative" in nature. The House Subcommittee found that "the cooperative principle as articulated in NCAA rhetoric simply does not exist in any practical senses, the current NCAA enforcement process, in its investigative phase is truly adversarial, and is one sided in the extreme. The cooperative principle is apparently not binding on the people who conduct NCAA investigations, the enforcement staff". The failure of the NCAA bureaucracy to recognize that reality results in a distorted enforcement process.

Congress was much disturbed by the close relationship between staff investigators and the Infractions Committee. Although the NCAA purports to have disassociated the two entities, there is hardly a better indication of the close nature of the relationship than the fact that one staff investigator actually married a member of the Infractions Committee.

? { The NCAA enforcement process impacts the lives and careers of individuals but is subject to no outside objective review. The NCAA wishes to keep the process insulated, without any objective standard of fair dealing. Absent legislation, their objectives will continue to be realized. One need only look at the outrageous penalty imposed on the University of Nevada, Las Vegas this summer. University athletes have been precluded from playing in post-season play because of alleged infractions which purportedly occurred when the students were in first grade--all because the University obeyed a court order to refrain from imposing a penalty meted out by the NCAA.

The imposition of objective and fair standards on the NCAA enforcement process would do nothing more than subject this powerful organization to a small degree of objective scrutiny. If fairness is truly built into the system, as the NCAA claims, there is little justification for the many millions of dollars which are spent by the NCAA in opposing what would simply be a redundant requirement. The fact that the millions are being spent clearly indicates that fundamental fairness would be a new and needed addition to the system.

TO: ILLEN  
4TH DISTRICT MARYLAND

COMMITTEES:  
ENERGY AND COMMERCE  
SCIENCE, SPACE, AND  
TECHNOLOGY



Congress of the United States  
House of Representatives

March 18, 1991

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The Honorable Wint Winter  
Chairman  
Senate Judiciary Committee  
Kansas State Senate  
Capitol Building - Room 120 South  
Topeka, Kansas 66611

Dear Senator Winter:

Thank you for the opportunity to submit this testimony to your committee. It appears as if we are both working towards the same goal of passing "due process" legislation for student-athletes, coaches, and institutions. I read with great interest your USA Today op-ed piece on the subject and believe it went a long way in advancing our goals.

I am also working on other projects and legislation at the Federal level that would affect intercollegiate athletics and higher education. If you or your staff would like more information on these matters, please feel free to give me a call.

I look forward to working with you in the future on our mutual goals. Please be sure to contact me if I can be of any assistance. With best wishes,

Sincerely,

Tom McMillen  
Member of Congress

TM/bf  
Enclosure

*Senate Judiciary Committee  
Attachment 4*

*3-19-91 4-1/4*

PLEASE REPLY TO WASHINGTON UNLESS INDICATED:

GLEN BURNIE

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TO: MILLEN  
4TH DISTRICT MARYLAND

COMMITTEES:  
ENERGY AND COMMERCE  
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## Congress of the United States House of Representatives

Testimony of Congressman Tom McMillen (4th-Md.)

Before the Judiciary Committee

Of The

Kansas State Senate

Thank you, Mr. Chairman, for the opportunity to present this testimony to your committee and for holding these important hearings. I have been very interested in student-athlete reform issues for many years, including those years when I played college basketball. As a student-athlete it was difficult for me to see the "forest for the trees," as it were. However, as a legislator charged with ensuring the credibility of our higher education system, it is clear that there are a great many problems with college athletics and that the National Collegiate Athletic Association (N.C.A.A.) is only making small steps towards reform.

One of the areas begging for reform is the process by which the N.C.A.A. enforces its own rules. I will not belabor the problems associated with this process, as there are many other witnesses who will testify as the outrageous abuses within the system. The best source I have found for these abuses is Don Yaeger's book, Undue Process: The N.C.A.A.'s Injustice For All. While I have been aware of the problems in the system, Mr. Yaeger's research clearly documents the extent of these problems.

My own alma mater, the University of Maryland, had to endure the N.C.A.A.'s wrath last year and attempted to appeal the judgement against them. The number of transgressions of justice would boggle the mind if I were to outline them today. For example, during the University's first meeting with the N.C.A.A., university officials were not informed of the most serious charge they faced, that of a lack of institutional control of its athletic department. In addition, the appeals process the university had to traverse was rife with inconsistencies and unfairness. The university had received a reply from the N.C.A.A. to its original brief and was preparing another brief, but was then told it was against the rules to rebut the N.C.A.A.'s arguments. And when the University finally had their chance to appeal, they had only a few days to prepare.

Page 1

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4-2/4

All of these stories, and those of others who have had unfortunate experiences with the N.C.A.A., point to a need for governmental intervention to address this problem.

My primary purpose today is to urge this committee and your colleagues in the legislature to enact effective legislation to protect the rights of coaches, athletes and institutions accused of violations. You are all probably aware that similar legislation was introduced in the 101st Congress by Rep. James Bilbray of Nevada in the U.S. House of Representatives and Senator Harry Reid in the U.S. Senate. This bill would require the N.C.A.A. to afford "due process" rights to those individuals and groups accused of rule violations. The simple rights we've come accustomed to should not be ignored simply because one is not before a court of law. The right to face one's accused, the right to a fair and impartial hearing, the right to appeal -- all rights effectively denied by the N.C.A.A.

The penalties that the N.C.A.A. levies on schools are often severe and have collateral effects on institutions. I know that the leaders of the University of Maryland and our state legislature are trying to work out how they will replace the \$2 million to \$3 million they will lose because of the N.C.A.A. penalties. This non-profit organization, in essence, has the power to increase taxes or cut services at any member institution, based on the severity of the penalties. This might be acceptable, if there was some rhyme or reason to the punishment that the N.C.A.A. doles out. However, there is not. It is both arbitrary and capricious. The universities that try to evade investigation, get off the hook. Those schools that cooperate with investigators are punished far beyond reasonable boundaries. This is precisely what N.C.A.A. Executive Director Dick Schultz said in an astonishing interview with The Washington Post on December 9, 1990, and I quote: "If you want to stonewall the N.C.A.A., it's no problem. If a school really wants to fight us, there isn't any way we can probably come down with a tough penalty."

Some may question whether this legislature should pass a law that could affect schools in other states. However, you should be aware that if you do not act, it is possible that no action will be taken at all. The N.C.A.A. is not without influence in Congress and it will be an uphill battle to pass national legislation. Three years ago I introduced a measure, with Congressman Ed Towns of New York and Senator Bill Bradley of New Jersey, which simply required colleges and universities to disclose their graduation rates of student-athletes as compared to the student body as a whole. The three of us were shocked that the N.C.A.A. objected to this bill, testified against it before Congressional committees, and lobbied to have it whittled down. To be frank, it frustrates me that an organization like the N.C.A.A., which can evade U.S. taxes through its non-profit status, can then take that money it saves and spend it to defeat legislation which would benefit every young person seeking a college education.

4-3/4

The N.C.A.A. will argue that due process requirements are intrusive and unnecessary. Intrusive: yes, constitutional guarantees of basic rights are often intrusive and are meant to be. They are designed to be a check on the steamroller of prosecutions of innocent victims. Unnecessary: absolutely not -- this bill is vital to giving accused individuals and institutions the same basic right of anyone accused of wrong-doing in this society.

I realize that some members of this legislature may be hesitant to pass laws dealing with college athletics. But, consider the consequences of not passing this legislation. Every year more schools, coaches and athletes will be brought up on charges -- some guilty, some not. Without this legislation, those people will not have the basic rights to properly defend themselves, to face their accused, and to get a fair hearing. I urge this committee to pass this legislation and encourage its adoption by the Kansas House and Senate. Thank you very much for this opportunity to present this view.

4-4/4

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E. St. Louis Senior High School - Graduated 1966  
University of Illinois - B.S. in Accounting 1970  
University of Illinois Law School - Graduated 1973

Professional Certification:

Certified Public Accountant, Licensed in Illinois & Missouri  
Lawyer, Licensed in Illinois & Missouri

Career:

- Represented University of Illinois Assistant Basketball Coaches, Jimmy Collins and Dick Nagy, in Illinois NCAA Infractions Case
- Chief Corporate Counsel for the City of Granite City, Illinois, 1985-Present
- Past President of Tri-City Bar Association
- Past Treasurer of Madison County Bar Association
- Commissioner, Tri-City Regional Port Authority
- Nominated and selected as a participant in Leadership St. Louis (Danforth Foundation)
- Member of the Advisory Group for the United States District Court for the Southern District of Illinois-- Civil Justice Reform Act of 1990
- Special Assistant Attorney General to the Illinois Board of Elections

*Senate Judiciary Committee*  
*Attachment 5*  
*3-19-91*

*5-1/15*

SUMMARY STATEMENT ON NCAA DUE PROCESS LEGISLATION  
J. STEVEN BECKETT AND MARK C. GOLDENBERG  
MARCH 19, 1991

Section 1. INTRODUCTION.

NCAA due process is an oxymoron. Governmental due process concepts protect individual rights of property, liberty and other basic freedoms when governmental power effecting those rights is exercised. Even in the case of private action, there should and must be an implied duty of good faith and fair dealing to afford a comparable "due process" when affecting rights of property, liberty and other basic freedoms.

Due process may be nothing more than a concept of fundamental fairness. The University of Illinois and its mens' basketball program was investigated by the NCAA enforcement staff for a period of 16 months. The University of Illinois appeared before the NCAA Committee on Infractions on August 12 & 13, 1990, and again on September 30, 1990. The University of Illinois NCAA enforcement process illustrates the break-down of the system into one of arbitrary abuse of power. There was no real "due process of law" given to the University of Illinois, nor the coaches, nor the student athletes tainted by the NCAA enforcement action.

I represented University of Illinois Mens' Assistant Basketball Coach Jimmy Collins, and Steven Beckett represented University of Illinois student athlete, Deon Thomas, through this process. None of the major infractions alleged against either of our clients was found. For these individuals, the results were a success. Nevertheless, Mr. Beckett and I recognize the fundamental flaws and lack of good faith and fair dealing in the NCAA

enforcement process. For those reasons and for the best interests of intercollegiate athletics, we advocate substantial reform to the NCAA enforcement process as it exists today.

Section 2. COMPONENTS OF DUE PROCESS - THE ILLINOIS STORY.

While there is no overall model system of required procedures, certain tenets basic to the concept of due process of law have been developed over the years. In lay terms, these basics of good faith and fundamental fairness include the following:

1. Notice of an investigation and/or allegations.
2. Disclosure of the charges -- What rules are alleged to have been violated?
3. What is the evidence to support the allegations?
4. What investigation and response is allowed the accused?
5. What are the procedures for the sharing of information and evidence?
6. When and where can the accused confront and cross-examine the accusers?
7. What are the accused's rights to an attorney and when can this attorney be consulted and be present?
8. Is the accused presumed innocent?
9. What kinds of evidence can be used to substantiate the allegations or refute the allegations?
10. What is the burden of proof and whose burden is it?
11. Who is the decision-maker to ensure a fair and impartial hearing?
12. What are the rights to appeal the findings of the initial decision-makers and what is the standard of review?

As mentioned above, the NCAA enforcement system, as currently structured, is incapable of providing these fundamental principles

of good faith and fairness. A lengthy and critical examination of the University of Illinois' NCAA enforcement experience would prove that the elements the average person would deem consistent with fundamental fairness were not present. Unfortunately, a complete examination of the University of Illinois' experience with the NCAA enforcement process is not possible within the length of this document. Therefore, only certain examples will be highlighted for this presentation with the remaining examples necessary for a complete review being available on request.

On June 23, 1989, NCAA Assistant Executive Director of Enforcement, S. David Berst, sent a letter of preliminary inquiry to the University of Illinois. The letter advised of a "preliminary inquiry into the athletic policies and practices of the mens' basketball program; specifically, but not limited to, the recruitment of prospective student athlete Deon Thomas, Chicago, Illinois." No other detail was provided.

The NCAA investigation had commenced with the actions of Iowa Assistant Basketball Coach Bruce Pearl, who contacted a college acquaintance, Rich Hilliard, an NCAA Director of Enforcement, first by telephone on May 3, 1989 and then in person in early June, 1989. Pearl made numerous specific and detailed allegations of improprieties by the University of Illinois Men's Basketball Program and its Assistant Coach, Jimmy Collins, in the recruitment of prospective student athlete, Deon Thomas. Thereafter, NCAA enforcement representatives descended upon the City of Chicago on June 16, 1989 and again on June 19, 1989 to act upon the

information provided by Pearl. In this light, the timing and the vagueness of the letter of preliminary inquiry was extraordinary. The letter was not timely and it lacked any parameters or details.

The most serious finding of an infraction by the NCAA Committee on Infractions in the Illinois report was that the University of Illinois was in violation of the NCAA Principles of Institutional Control and Responsibility. The NCAA sent an official letter of inquiry to the University of Illinois on February 16, 1990 and sent a subsequent notice in early September, 1990, requesting the University to reappear before the Committee on Infractions. Never was there any suggestion or allegation that the University of Illinois was not in control of its athletic programs. Despite the fact that the NCAA alleged numerous infractions which could not be substantiated and were eventually dropped before ever being presented to the Committee on Infractions, there was never an allegation that the University of Illinois was in violation of the Principles of Institutional Control and Responsibility.

These are just two of the examples of how the system fails to meet the test of fair notice of an investigation and fair notice of allegations.

Much has been said about the evidentiary standards in NCAA infractions hearings. Most of the investigation conducted by the NCAA enforcement staff consists of witness interviews. No tape recordings or accurate transcripts are made of these interviews. Sometimes the NCAA enforcement representatives make notes during the interview and sometimes they do not. Sometimes the NCAA



enforcement representative prepares the witness memorandum within days of the interview and sometimes the NCAA enforcement representative waits weeks or months before preparing the witness memorandums. Sometimes the witnesses are allowed to review, change and sign the memorandum of their interview and sometimes the witnesses are not accorded this privilege. The witnesses are never entitled to retain a copy of their witness statement.

Regardless, an NCAA enforcement representative's summary of the witness statement is the principle evidence presented to the NCAA Committee on Infractions to substantiate allegations. There are no standards or guidelines that give more credibility to a signed witness statement or a witness affidavit than to an unsigned witness memorandum prepared by an enforcement representative weeks after the interview. Much has already been said about the basic flaws with this portion of the system.

What is more alarming is that there are no evidence standards or guidelines for participants in the system. There are two prime examples of this in the University of Illinois case. First, Steve Beckett, the attorney for student athlete Deon Thomas, had his client submit to a polygraph examination. Deon Thomas had been interrogated by attorneys for the NCAA enforcement staff and the University of Illinois prior to being advised of his right to be represented by an attorney, and in that environment, Thomas had given some inconsistent testimony. To clarify this, Beckett ordered the polygraph and submitted it to the NCAA to substantiate Thomas' statements as made in a fair environment. The NCAA

Committee on Infractions accepted the polygraph but refused to rule on its admissibility, credibility or weight as evidence, thus failing to give guidance to future participants in the system.

The second example revolves around tape-recorded conversations. Bruce Pearl made covert, nonconsensual tape recordings of Deon Thomas and his family and friends. From the physical evidence, it was apparent that this tape had been doctored and lacked credibility. Despite requests that the tape be submitted for technical analysis by the F.B.I., no technical analysis was performed. The NCAA enforcement staff nevertheless presented this tape to the Committee on Infractions over objections of the University of Illinois and Thomas' attorney.

A second tape was also presented to the Committee on Infractions. This was a non-covert consensual tape recording of the mother of Notre Dame student athlete LaPhonso Ellis and refuted the allegations that her son had made against the University of Illinois and Jimmy Collins. This tape was presented to the Committee on Infractions over the objections of the NCAA enforcement staff.

After deliberation, the NCAA Committee on Infractions elected to hear the covert nonconsensual tape recordings made by Pearl but refused to hear the noncovert consensual tape recording of Ellis' mother. There was no explanation for their decision or the distinction drawn between the two tapes of recorded conversations. Thus, there is no guidance or standard for future participants in the NCAA enforcement process. These are just two additional

examples of flaws within the system relating to standards of evidence as the system exists and as it is administered.

The foundation of the NCAA's allegations against the University of Illinois, Deon Thomas and Jimmy Collins were statements made by Bruce Pearl and LaPhonso Ellis. Jimmy Collins stood to lose his job at the University of Illinois and his opportunity to earn a livelihood in his chosen profession, intercollegiate athletics. Deon Thomas stood to lose his eligibility to participate at an NCAA member institution, which would greatly jeopardize his opportunities to obtain an education at the college of his choice and to develop his talents to pursue a career in professional sports. Nevertheless, the NCAA was prepared to proceed and condemn these two individuals without ever granting them the right to confront and cross-examine Pearl and Ellis.

In addition, many of the obvious questions which would challenge the integrity and credibility of Ellis and Pearl were never asked. Pearl, for example, was never asked why he telephoned Deon Thomas ten times the weekend of the taped conversation, but only taped one conversation. Pearl was never asked about the obvious gaps in the tape-recorded conversations or challenged on his methodology for taping. Ellis, for example, was never challenged on his numerous inconsistent statements. Ellis was never confronted by the fact that his mother refuted his allegations and challenged his credibility.

The NCAA bylaws require all representatives of member

institutions to cooperate fully to further the objectives of the association and its enforcement program. The NCAA clearly had the power to require Pearl and Ellis to submit to interviews and examination by the representatives of Collins and Thomas. Despite the basic tenet of fairness that would allow Collins and Thomas to examine their accusers, the NCAA refused to utilize the power it had to ensure this fundamental fairness.

Other principles of fundamental fairness that must be addressed are the concepts of presumption of innocence and burden of proof. The evidence available and presented in the University of Illinois' infractions hearing was heavily in conflict. Were the institution and the individuals presumed innocent and did the NCAA enforcement staff have to overcome this presumption? What were the standards? The NCAA burden of proof is both a vague and curious one. Findings by the Committee must be based "on information presented to it that it determines to be credible, persuasive and of a kind on which reasonable prudent persons rely in the conduct of serious affairs".

What did this "reasonable prudent person" rule mean? What are "serious affairs"? The Illinois infractions report nor any infraction reports prior to it defined these terms or determined any standards. There is a tremendous lack of fundamental fairness in a system that doesn't provide guidelines and standards in this area to individuals and institutions who are threatened with the loss of their rights of property, liberty and other basic freedoms.

Perhaps the most fatal flaw in the NCAA enforcement system is

the decision maker, the Committee on Infractions, and their relationship with the prosecutors, the NCAA enforcement staff. This relationship preempts the opportunity for a fair hearing. While testifying before the post-secondary education planning committee of the Florida legislature, Mr. David Berst, Assistant Executive Director for enforcement of the National Collegiate Athletic Association, while responding to some of the committee concerns, acknowledged a perception problem among certain member institutions, whereby it is perceived that the NCAA enforcement staff may unduly influence infraction committee members. Mr. Berst's response was limited to his statement that due to the "dual investigative process in which the accused institution conducts its own investigation simultaneously, there is seldom a dispute in regard to inaccurate information gained during investigations". Certainly, the precept of a fair trial is not necessary where an accused guilty party confesses to a crime or where a defendant to a complaint confesses liability. It is where the charges, allegations and complaints are contested that fair dealing requires a fair hearing.

The Committee on Infractions has a relationship with the NCAA enforcement staff. The Committee and the staff are together at least six times each year, and the enforcement staff services the administrative needs of the Committee on Infraction. Institutions or individuals wishing to communicate with the Committee deal through Mr. Berst and the Committee on Infractions submits proposed infractions reports to Mr. Berst for his review and approval prior

to release. The University of Illinois' infractions report was delivered to Mr. Berst ten days prior to its release to the University.

In addition, the members of the Committee on Infractions are not experienced finders of fact and are not qualified or trained to evaluate and make decisions on conflicting evidence. The member's service on the Committee on Infractions is only a part-time responsibility for which they receive no training.

For these reasons, there is an appearance of impropriety that infects the credibility of the system. This perception is magnified by the NCAA enforcement staff's 100% conviction rate. There is a fatal flaw in an enforcement system when an accused, when there is conflicting evidence, does not and cannot receive a fair and impartial trial.

Finally, the rights to appeal a finding by the Committee on Infractions are meaningless. The committee of the NCAA counsel that hears the appeal is less qualified and less prepared to hear an appeal than the Committee on Infractions was to decide the case. This meaningless appeal has been documented on numerous occasions in Don Yaeger's book, Undue Process, and elsewhere, and no appeal to a Committee on Infractions finding has ever been successful. Due to the individual rights of property, liberty and other basic freedoms that are at stake and due to the problems with the Committee on Infractions as decision-makers, the right to appeal the findings of the Committee on Infractions is fundamental to fairness in the process. As the NCAA appeal procedure exists

today, this fundamental fairness does not exist.

Section 3. THE NCAA STORY.

Richard R. Hilliard, Director of Enforcement for the National Collegiate Athletic Association, addressed the Committee on Rules for the California Senate in opposition to a resolution urging the United States Congress to pass legislation requiring the NCAA to adopt procedures to guarantee due process to its member schools and their students and coaches. The stated reason for the NCAA's opposition to the resolution and to the proposed federal legislation was the fact that the resolution indicated or implied that NCAA member institutions and enrolled student athletes and institutional employees are not accorded due process under NCAA enforcement regulations. Mr. Hilliard stated that "This conclusion is simply without foundation and bespeaks a regrettable lack of knowledge of NCAA procedures".

Steve Beckett and I spent 16 months dealing with NCAA enforcement procedures. There is no lack of knowledge of NCAA enforcement procedures on our part. Mr. Hilliard's statements that "The NCAA's enforcement procedures are replete with due process protections. . ." and "that any objective review would indicate that our (NCAA) due process protections are as comprehensive as those found in the rules of any private organization in this country" are simply not true and cannot withstand challenge.

Mr. Hilliard went on to list 13 alleged examples of "due process" features of the NCAA enforcement procedures. An analysis of these alleged features against the University of Illinois

investigation and hearing would prove that these features do not exist or are not utilized. There is inadequate time or space to challenge each of these alleged features, but I would suggest that if Mr. Hilliard or Mr. Berst would be willing to meet in open forum and discussion with Mr. Beckett, Mr. Yeager, me, or several other knowledgeable individuals who are familiar with the NCAA enforcement process, these features allegedly illustrative of NCAA due process could not be substantiated. Mr. Beckett, I, and others have offered this open forum and discussion on numerous occasions, but no representative of the NCAA or its enforcement process has ever been willing to accept our invitation.

Finally, Mr. Hilliard concluded his presentation to the Florida Senate Committee by stating that "We (the NCAA) are only too aware that on some occasions, when an institution is dissatisfied with the result of a particular proceeding, its first claim will be that the proceeding was somehow unfair. We do not believe it is appropriate, however, to equate an adverse result with unfairness of the process. . ." Well, as mentioned above, none of the major infractions alleged against Jimmy Collins or Deon Thomas were substantiated or found. Under any standards, Jimmy Collins and Deon Thomas and their representatives cannot be dissatisfied with the results of their particular proceedings. Certainly, under any standards, Jimmy Collins and Deon Thomas did not receive an adverse result in their proceeding. Therefore, Steve Beckett and I, our statements challenging the NCAA enforcement process and our advocacy of implementation of



fundamental principles of "due process" of law in the NCAA enforcement process cannot be challenged with this weak argument.

Section 4. CONCLUSION.

There are two principle ways to reform the NCAA enforcement process and implement precepts of "fundamental fairness" and "due process". The first means is for reform within the NCAA system, on a voluntary basis, by the association's members. The other means is by governmental legislation to require certain standards of fairness and due process in the NCAA enforcement process.

The NCAA representatives will advocate that they should reform their own system. They will direct your attention to the special committee announced by NCAA Executive Director Richard D. Schultz to conduct a study of its enforcement process during 1991. The NCAA representatives will tell you that as the association will be reviewing the process internally, the NCAA is opposed to initiatives by legislative bodies that mandate reform.

Although reform by the NCAA association may be preferable, there can be no reliance placed on this process. In 1977 and 1978, a subcommittee of the United States House of Representatives investigated the NCAA's enforcement policies and procedures. In December, 1978, this subcommittee issued its report, which concluded the following, with respect to the NCAA's enforcement practices: "The picture is that of a sanctioning body with incredible power . . . This power is exercised by the NCAA without observance to what we all assume are the minimal standards of fairness." The subcommittee went further to state: ". . . the

recommendations included in this report call for self-corrective action by the NCAA." The subcommittee report concluded that should the association fail to accept this challenge (to take self-corrective action), then legislation would be required to provide adequate procedural safeguards.

I urge you to review the complaints and recommendations that surfaced before the U.S. House Subcommittee some 13 years ago. Attached to this memo is a Summary Of Comments And Observations Of NCAA Enforcement Program By Members Of The 1978 Congressional Subcommittee And Individuals Testifying Before The Committee. Compare these problems and recommendations with the problems and recommendations that exist today with the current NCAA enforcement process. It will be obvious that the NCAA process cannot be trusted to take the self-corrective action and implement the reform necessary to achieve the precepts of good faith and fair dealing.

Your action is required to commence the only process which can be trusted to guarantee individuals and institutions the basic protections of their rights of property, liberty and other freedoms. Your action is the only one that can be relied on to require the implementation of the basic principles of fundamental fairness in the NCAA enforcement process. Your action on this issue is urged. Thank you.

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Master of Laws, Northwestern University, Chicago, Illinois.

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Bachelor of Science, Accounting, DePaul University, Chicago, Illinois.

PROFESSIONAL EXPERIENCE:

Academic:

1970-Present: University of Denver, College of Law, Denver, Colorado.

1966-1970: Illinois Institute of Technology, Chicago-Kent College of Law, Chicago, Illinois.

Currently Teaching:

Contracts I and II  
Remedies  
Summer Preparatory Program  
Introduction To Jurisprudence

Other Courses Taught:

Agency  
Government Contracts  
Restitution  
Sports Law  
Labor Law  
Basic Property  
Conveyancing  
Legal Writing  
Evidence

Practice:

Admitted: Illinois

Arbitrator for Expedited Arbitration Matters, USWA and Rockwell International (Rocky Flats). "Q" Access Authorization.

1961-1966: Federal Trade Commission, Chicago, Illinois.

*Senate Judiciary Committee  
Attachment 6*

*3-19-91*

*6-1/8*

Burton F. Brody

Page 2

1984-1987: President and lecturer SMH Colorado Bar Review Inc.

1972: Lecturer and Director BAR/BRI of Colorado

**Sports Professional Activities:**

Faculty Representative to the National Collegiate Athletic Association and the Western Collegiate Hockey Association 1977-1981.

Chairman, Western Collegiate Hockey Association (1979-81).

Executive Committee WCHA (1978-81).

Legal Counsel to Chancellor Maurice Mitchell on problems with the National Collegiate Athletic Association. In this capacity I represented the University before the National Collegiate Athletic Association Council, Executive Committee, Committee on Infractions and Committee on Eligibility Appeals.

Also appeared as counsel on behalf of the University and its litigation in the Federal courts against the NCAA.

Testimony before Subcommittee on Oversight and Investigations, Committee on Interstate and Foreign Commerce of the United States House of Representatives in re NCAA Enforcement Program, April 18, 1978.

January 1985, Panelist at AALS Section on Sports Law. Topic: Teaching Sports Law - need for Coverage of amateur sports.

January 1984, panelist and organizer for AALS Section on Sports Law program at 1984 AALS Annual Meeting. Topic: Intercollegiate Athletics as Administered by the NCAA.

March 1983, panelist and organizer for Symposium on Sports Law for the North Dakota Bar.

February 1983, attended National Conference of Center for Law and Amateur Sports.

November 1981, speaker Arapahoe County Bar, Sports Law.

August 1981, Panelist and invited scholar, Law and Amateur Sports: Issues for the 80's. Sponsored by the Center for Law and Sports of the University of Indiana, Bloomington.

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Fall 1979, Continuing Legal Education in Colorado, Inc., Sports Law Program. Spoke on An Analysis of the Standard Players Contract in the NFL, NBA and major league baseball.

Spring 1979, Metropolitan State College, Center for Education project on Sports and Society (2 programs). Discussion of the Antitrust Laws and Professional Sports. Discussion of Intercollegiate Sports.

June 23, 1978, Keynote speaker to the annual joint conference of National Association of Physical Education for College Women and National College Physical Education Association for Men. "Rights, Regulations and Responsibilities in Physical Education and Competitive Sport in College and Universities."

January 26 and 27, 1978, University of Oklahoma College of Law, organized, chaired and participated in a program on legal representation of professional athletes for the Student Enrichment Program.

Organized and participated in a panel discussion of the problems of intercollegiate athletics for the Education Law Section of the Association of American Law Schools at the Association's 1974 convention. Other panelists were Ms. Gwendolyn Gregory of the Department of Health, Education and Welfare; Mr. Dan Jaffe, Assistant to U.S. Senator John V. Tunney; and Professor David Swank, University of Oklahoma College of Law.

Organized and participated in a continuing legal education seminar on Legal Representation of Professional Athletes in May 1974. Other panelists were Justice Arthur Goldberg and Messrs. Robert Wolfe, Jack Mills, Jerome Torshen, Daniel Hoffman, and Professor Thomas Brightwell. This was one of the first, if not the first, seminars on Sports Law held in an academic setting.

#### **Sports Publications:**

NCAA Rules and Their Enforcement; Not Spare the Rod and Spoil the Child, But Switch The Values and Save The Sport, 1982 Ariz. St. L.J. 109.

"No. 61 Enforcement Procedures: A Proposal to Revise the NCAA's Enforcement Program by Replacing the Existing Program with New Rules and Procedures." National Collegiate Athletic Association 1979 Convention Program (January 1979).

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"Toward Meaningful Due Process for NCAA Student-Athletes,"  
Arena Magazine (September, 1979).

"NFL Free Agency: A Modest Proposal," 67 Den. L.R. 155  
(1990).

"The Impact of Litigation on Professional Sports," Trial  
Magazine (June 1978).

"Struggle and Strife, and Everything Nice (for Lawyers) That's  
What Professional Sports Are Made Of," The Brief Times, April  
1976.

"The Sports Lawyer," Legal Eyed Magazine, October 1974.

**Sports  
Research in Progress:**

Ethics and The Educational Mission of Division I  
Intercollegiate Athletic as Administered by The NCAA.

MARCH 19, 1991

STATEMENT OF BURTON F. BRODY TO THE KANSAS STATE SENATE  
IN SUPPORT OF "THE ATHLETIC ASSOCIATION PROCEDURES ACT"  
SENATE BILL NO. 234.

I favor the enactment Senate Bill No. 234 because it will assure college athletes the justice and fair treatment they deserve and will thus improve the conduct of intercollegiate athletics throughout the country.

The State of Kansas, as home to two associations governing intercollegiate athletics, is in a unique position to come to the aid of those involved in intercollegiate athletics. I, as one who has had firsthand experience and extensive professional involvement with NCAA enforcement practices, believe that improvement is necessary and appropriate. I further believe that Senate Bill No. 234, if enacted, will force the NCAA to make correct and proper changes in its practices. Therefore, I laud the effort that Senate Bill 234 makes and urge its enactment.

History demonstrates that the NCAA will not reform itself without outside pressure to do so. On March 12, 1991 on page 10C of USA TODAY, in a column entitled, "Legislative actions only complicate NCAA's task", NCAA President Ms. Judy Sweet wrote:

In 1978, a committee of the U.S. House of Representatives conducted hearings into the fairness of NCAA enforcement procedures. Responding to that committee's subsequent report, the NCAA made a host of changes in procedures, after which the committee chairman said that the committee's inquiry had "accomplished its reasonable purposes."

Thus, President Sweet would have USA TODAY readers believe that the current NCAA procedures have Congressional approval and satisfy everyone's desire for due process and fairness. Yet thirteen years later, there remain serious questions about NCAA enforcement procedures. As one with an avid interest in the area, I cannot recall reading or hearing about a single instance where an institution or individual ensnared in NCAA enforcement procedures expressed satisfaction with the experience. Yet I can recall many expressions of discontent with the fairness and objectivity of such hearings. And of greatest concern are the continuing complaints of the inability to prepare and conduct any meaningful defense to an NCAA Official Inquiry.

What President Sweet's article does make very clear, and what I hope will encourage you to take action, is that the NCAA does and will respond to legislative prodding. Senate Bill No. 234 prods them in the right direction.

Senate Bill 234 should be enacted because it is needed. NCAA law is literally Draconian. Draco, a 7th Century B.C. Athenian lawgiver, would post his law atop high poles beyond the reach of all. And thus he could justify any act or decision as having been taken in the name of the law.

Similarly, NCAA "law" is contained in a 366 page Manual (1989-90 ed.), divided into 32 Articles, containing the Constitution, Operating Bylaws and Administrative Bylaws. The index to the Manual is 26 pages long! The Draconian nature of NCAA "law" is clearly understood when one realizes that the Manual is intended to be used by athletic department administrators, typically untrained in the law. It is also worth noting that the Manual was prepared by the Special NCAA Committee on Deregulation and Rules Simplification!!

The point is that the NCAA legal system fails at what must be the foundation of any system of laws and upon which due process within that system must be built, promulgation. Without adequate promulgation of the rules to be followed, no process for their enforcement can be due and no proceedings under them perceived as fair. The NCAA needs more basic reform than is called for in Senate Bill No. 234, but Senate Bill No. 234 will at least make procedures to enforce present NCAA legislation more just and provide incentive to make the basic changes needed.

There is another essential flaw in NCAA enforcement. It punishes students for the transgressions of others. NCAA Manual, Bylaw, Article 14.13.2 Ineligibility Resulting From Recruiting Violation (1989-90 Manual, 131) states:

An institution shall not enter a student-athlete (as an individual or as a member of a team) in any intercollegiate competition if it is acknowledged by the institution or established through the Association's enforcement procedures that the institution or representative(s) of its athletic interests violated the Association's legislation in the recruiting of the student-athlete....

Thus the student is denied the opportunity to compete, punished, because someone else violated the Association's rules. That is inherently unjust. Senate Bill No. 234 does not seek to change this, but it does give the student the opportunity to defend him or herself so that the the



transgressions of others can be clearly seen and the injustice of punishing the student will also be seen by all.

Section 3(g) of Senate Bill No. 234 requiring association enforcement hearings to be open to the public unless one of the individuals or the institution objects, is particularly potent. I believe that the NCAA has long hidden behind its confidentiality rules. If the higher education community and the public were aware of the manner in which enforcement proceedings are conducted, change would be rapid. It is no coincidence that individuals who have been through a proceeding have a completely different view of NCAA enforcement than those who have not. Opening the hearings to public scrutiny not only will open the eyes of those who have not participated, but will create an incentive for change from within the ranks of the Association.

The specific requirements set forth in Sections 3 through 7 of Senate Bill No. 234 seem to be appropriate. They permit institutions to defend their reputations. More importantly, they enable the individuals involved to protect their continued participation in intercollegiate athletics, their reputations and their careers.

My experience with NCAA enforcement precedes the report of the U.S. House Committee and is therefore somewhat dated. I have no firsthand experience with the reforms that resulted. However, I have not seen or heard anything since that leads me to believe that anyone other than the NCAA staff is satisfied with the current procedures.

I found that NCAA enforcement procedure was lacking in the areas of notice, discovery, adherence to the rules of evidence, confrontation of accusers, cross examination, separation of powers, standards of punishment, procedures for the application of rules governing potentially mitigating factors and review and appeal. Senate Bill No. 234 addresses all these questions and creates just procedures fair to all. Enacting the bill will serve the individuals and institutions involved in intercollegiate athletics and further the goals of higher education in a just society.

The NCAA takes the position that its present enforcement procedures provide all the due process it, as a private voluntary association, is required to grant. That may well be technically correct, but that is not the issue. Rather, the question is, "How much due process ought an association of educational institutions give its students and other members of the higher education community?"

Above all, the NCAA is an association of educational institutions and its goals include contributing to the

educational mission of its members and providing for the welfare of students. It thus seems to me that its enforcement program should educate those involved with it and the NCAA community at large in concepts of justice and fairness. The enforcement program should, in my judgment, foster respect rather than contempt for the rule of law. After all, those most immediately affected by it are our students.

As Professor Charles Allen Wright of the University of Texas, longtime NCAA Infractions Committee Member and distinguished Constitutional Scholar has said, "A wise university may well make a prudential judgment that it ought to give its students greater freedom and more procedural protections, than the Constitution demands of it."<sup>1</sup> I would assume that an equally wise association of universities would do the same.

That, however, has not been the case and the NCAA needs Senate Bill No. 234 to lead it to that prudent wisdom. The NCAA has not made that prudent decision and thus needs to be led because, as its President, wrote in USA TODAY, "Legislative actions (requiring due process) only complicate the NCAA's Task".

In conclusion, I can only observe that protection of individual rights invariably complicates matters for the tyrannical despot. Senate Bill No. 234 should be passed for that reason alone.

1. Wright, The Constitution on Campus, 22 Vanderbilt Law Review, 1027, 1035 (1969).

STATEMENT OF THE  
NATIONAL COLLEGIATE ATHLETIC ASSOCIATION

before the

JUDICIARY COMMITTEE  
KANSAS SENATE

March 19, 1991

Mr. Chairman, my name is Stephen R. Morgan. I am an Associate Executive Director of the National Collegiate Athletic Association, an unincorporated association of approximately 800 four-year colleges and universities and 200 related organizations, located in Overland Park, Kansas. The NCAA is engaged in the promotion and regulation of intercollegiate athletics.

The purpose of my appearance here today is to express the NCAA's opposition to Senate Bill No. 234.

The reason for the Association's opposition to this Bill, is the fact that the Bill indicates or implies that NCAA member institutions, and enrolled student-athletes and institutional employees, are not now accorded due process under NCAA enforcement regulations. This conclusion is simply without foundation, and bespeaks a regrettable lack of knowledge of NCAA procedures.

For the committee's information, I have provided a packet of information including an overview of the NCAA and the NCAA enforcement policies and procedures, a copy of NCAA Bylaws 19 and

*Senate Judiciary Committee  
Attachment 7  
3-19-91*

7-1/6

32 which set forth the Association's enforcement policies and procedures, and lastly an article from The NCAA News relating to the review of enforcement policies and procedures by the membership during this year. The enforcement policies and procedures are approved by the membership-elected NCAA governing Council, and must be consistent with the provisions of the Constitution and Bylaws of the NCAA, as approved by the membership. As with all other NCAA rules they may be amended by vote of the NCAA members at an annual or special convention.

The NCAA's enforcement procedures are replete with due process protections for member institutions, student-athletes and institutional employees. I believe that any objective review would indicate that our due process protections are as comprehensive as those found in the rules of any private organization in this country. As an aside, I should point out that the United States Supreme Court recently determined that the NCAA was not the "state" for constitutional purposes, but I also suggest that the NCAA due process protections are as comprehensive as those found in most non-criminal governmental proceedings.

To be more specific, I direct your attention to the following illustrative "due process" features of the NCAA enforcement procedures:

- The institution is formally advised of any preliminary inquiry into its athletics policies and practices.

- The institution's representative may be present at all interviews of enrolled student-athletes or athletics department staff members.
  
- Throughout the entire enforcement procedure, individuals and institutions are entitled to be represented by legal counsel.
  
- If after preliminary investigation the NCAA enforcement staff determines that an allegation or complaint warrants an official inquiry, the institutional chief executive is formally advised of such inquiry, including the details of each allegation, in order to provide an opportunity for a complete response to all allegations prior to a hearing before the NCAA Committee on Infractions.
  
- There is in general a four-year statute of limitation on the bringing of official inquiries.
  
- The institution is advised of all individual witnesses and information upon which the staff intends to rely at a hearing on the matter.
  
- The primary NCAA investigator is made available to the institution on request to discuss the development of its response.

- Institutions are required to advise potentially-affected student-athletes or institutional staff members of allegations related to them, and to provide such individuals with the opportunity to submit information, to be represented by personal legal counsel, and to appear before the Committee on Infractions. [The NCAA staff informs individuals no longer at the involved institution.]
- Information from confidential sources may not be considered by the Committee on Infractions.
- The proceedings of the Committee on Infractions are tape recorded.
- Actions of the Committee on Infractions are by majority vote.
- The Committee on Infractions causes a formal report to be prepared of its findings and any determined penalties, and forwards it to the institution in question and to individuals receiving the official inquiry.
- The institution and affected staff members are authorized to appeal any adverse finding or penalty to the NCAA Council.

The membership of the NCAA Committee on Infractions traditionally predominantly consists of individuals who have no direct relationship with institutional athletics policies and practices. Current members of the committee include two law professors, a history professor, a professor of physical education, a lawyer, and the commissioner of one of the institutional conferences having membership in the NCAA.

In 1978, a committee of the United States House of Representatives conducted extensive hearings into the fairness of NCAA enforcement procedures. In part, as a result of those hearings and the resulting committee report, the NCAA made a number of changes in its procedures responsive to recommendations by the committee. At the conclusion of the proceedings, the committee chairman expressed his agreement with the then NCAA president that the committee's inquiry had "accomplished its reasonable purposes."

In short, the NCAA believes that its procedures fully comport with the basic principles of fairness required by law and equitable concepts in non-criminal proceedings. The Association is only too aware that on some occasions, when an institution is dissatisfied with the result of a particular proceeding, its first claim will be that the proceeding was somehow unfair. It is not appropriate, however, to equate an unfavorable result with unfairness of the process, particularly when the process has been approved by the membership itself.

The NCAA has been charged by its members, and indeed the public, vigorously to deal with violations of rules adopted by the membership for the conduct of intercollegiate athletics. That is being done, but, at the same time, the NCAA is fully aware of its responsibility to its membership, to enrolled student-athletes and employed staff to conduct its enforcement proceedings in a fair and even-handed manner.

For the foregoing reasons, we believe that Senate Bill No. 234, however well intended, is simply misplaced, and we urge that this committee not act favorably thereon.

I will be happy to provide any further information you may require. Thank you for your attention.

SRM:lss



STATEMENT OF THE  
NATIONAL COLLEGIATE ATHLETIC ASSOCIATION

before the

JUDICIARY COMMITTEE  
KANSAS SENATE

March 19, 1991

*Senate Judiciary Committee*  
*Attachment 8*  
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*8-1/35*

The National Collegiate Athletic Association (NCAA) is a voluntary, unincorporated association of 1,017 members consisting of college and university, conference and associations, and other educational institutions. An active member of the Association is a four-year college or university (or in a few cases, a two-year upper-level collegiate institution accredited by the appropriate regional accrediting agency). Active members have the right to compete in NCAA championships, and to vote on legislation and other issues before the Association. Active members of the Association are located in every state of the United States. The active members are divided, for purposes of bylaw legislation and competition in intercollegiate championship events, into Divisions I, II and III, with further classification of Division I members into Division I-A football and Division I-AA football.

All legislation of the Association that governs the conduct of the intercollegiate athletics programs of its member institutions must be adopted by the membership during the Association's annual Convention and must be consistent with the purposes and fundamental policy set forth in the NCAA Constitution. Among the purposes of the Association found in its Constitution are:

- a. To initiate, stimulate and improve intercollegiate athletics programs for student-athletes, and to promote and develop educational leadership, physical fitness, athletics excellence and athletics participation as a recreational pursuit;
- b. To uphold the principle of institutional control of, and responsibility for, all intercollegiate sports in conformity with the Constitution and bylaws of this Association;
- c. To encourage its members to adopt eligibility rules to comply with satisfactory standards of scholarship, sportsmanship and amateurism;
- d. To legislate, through bylaws or by resolutions of a Convention, upon any subject of general concern to the members related to the administration of intercollegiate athletics, and
- e. To study in general all phases of competitive intercollegiate athletics and establish standards whereby the colleges and universities of the United States can maintain their athletics programs on a high level.

Also, the fundamental policy of the Association provides:

- a. The competitive athletics programs of member institutions are designed to be a vital part of the educational system. A basic purpose of this Association is to maintain intercollegiate athletics as an integral part of the educational program and the athlete as an integral part of the student body, and by doing so, retain a clear line of demarcation between intercollegiate athletics and professional sports.
- b. Legislation governing the conduct of intercollegiate athletics programs of member institutions shall apply to basic athletics issues, such as admissions, financial aid, eligibility and recruiting. Member institutions shall be obligated to apply and enforce this legislation, and the

enforcement procedures of the Association shall be applied to an institution when it fails to fulfill this obligation.

While the members themselves enact the legislation dealing with recruiting, eligibility, financial aid, admissions and other legislation, they agree also to self-administer all such legislation. Thus, if the member finds that a student-athlete is ineligible under the Constitution, bylaws or other legislation of the Association, the member institution is obligated immediately to apply the applicable rule and withhold the student-athlete from all intercollegiate competition. Thereafter, there are provisions for the institution to appeal to the Eligibility Committee for restoration of the student's eligibility.

It should be noted at this point that the membership of all committees of the NCAA are made up only of those individuals who are full-time, regular staff members (as defined in the Association's bylaws) of a member institution or member conference. No NCAA staff person is a voting member of any committee. The same is true of the Association's 46-member Council, which directs the general policies of the Association between Conventions. The Council members are elected by the members at the annual Convention, and there are further provisions requiring that membership on the Council be selected as representative of the various divisions, the various regions, and that each divisional representative consist of a specified number of chief executive officers and women members from the various member institutions.

As in all organizations with rules of conduct governing the activities of its members, there also are provisions enacted by the membership to enforce the membership's national uniform regulations. Such provisions are included in the bylaws and require that individuals employed by (or associated with) a member institution to administer, conduct or coach intercollegiate athletics and all participating student-athletes shall deport themselves with honesty and sportsmanship at all times so that intercollegiate athletics, as a whole, their institutions and they, as individuals, represent the honor and dignity of fair play and the high standards associated with wholesome competitive sports. Contractual agreements or appointments between a coach and an institution are to have a stipulation that a coach who is found in violation of NCAA regulations will be subject to disciplinary or corrective action, as provided in the NCAA enforcement procedures. Likewise, there are a number of bylaw provisions dealing with amateurism, recruiting, eligibility, financial aid and improper awards, benefits and expenses of student-athletes, the alleged violation of which also is subject of the NCAA's enforcement procedures.

Although the vast majority of the members apply and follow the rules they have elected to place upon themselves, unfortunately there are instances where some conduct alleged to be in violation of the rules is brought to the attention of the NCAA. The handling of such is under the NCAA enforcement program. All allegations and complaints relative to a member's failure to maintain the academic or athletics standards required for membership, the member's alleged violation of the Association's legislation or regulations, or the member's

failure otherwise to meet the conditions and obligations of membership are channeled to the NCAA enforcement staff.

The NCAA Constitution provides that the Committee on Infractions is empowered to adopt or amend the procedures for the conduct of the enforcement program, subject to the approval by the Council and subject further to amendment by the membership at the annual Convention. All such policies and procedures must be consistent with the provisions of the NCAA Constitution and bylaws. It is this committee that is responsible for the administration of the enforcement program.

The Committee on Infractions ("committee") is composed of six members (who are on the staffs of member institutions or conferences) appointed by the Council for a three-year term. A member may be reappointed but may not serve more than nine years on the committee. The duties of that committee are to consider complaints concerning any member institution; formulate and revise operating policies and procedures in regard to issues other than those concerning institutional penalties, restitution and committee duties (all of which are adopted only by the membership); determine facts related to alleged violations, and impose an appropriate penalty or show-cause requirement on a member found to be involved in a major violation.<sup>1</sup> The disciplinary measures that may be adopted by the committee and imposed against the institution for major violations have been adopted by the membership and are contained in the bylaws.

Under the investigative guidelines of the committee, the enforcement staff of the NCAA initially is responsible for gathering and evaluating information to determine whether the alleged charges are received from responsible sources and whether charges are substantial. This may include contacting individuals to solicit information. If reliable information gathered indicates that there may be some substance to the charges, the enforcement staff then conducts a preliminary inquiry to determine whether there is adequate information to warrant an official inquiry. It is at the commencement of this preliminary inquiry that the staff submits letters to the institutions notifying them that a preliminary inquiry into their athletics policies and practices is being made, and that an enforcement representative is being assigned to the investigation. The letter also states that in the event allegations appear to be of a substantial nature, an official inquiry may be filed, or conversely, the institution will be notified that the matter has been closed. During the preliminary inquiry, the staff must inform the institution of the general status of the inquiry every six months after the initial notice. If the inquiry has not been concluded within one year, the staff reviews the status of the case with the committee, and the committee must determine whether further investigation is warranted. If so, its decision as to continuing the investigation is communicated to the institution in writing.

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<sup>1</sup>There are two types of violations -- a secondary violation, which is one that is found to provide only a limited recruiting or competitive advantage to an institution and is found to be isolated or inadvertent, and a major violation, which is all other violations. The assistant executive director for enforcement is charged with identifying the alleged charges as major or secondary. Corrective actions relating to a secondary violation may be affected by the assistant executive director for enforcement. All actions of the said assistant executive director are subject to approval by the committee. A member may appeal the assistant executive director's action to the committee. Hereafter, the discussion will deal only with the handling of major violations.

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The investigation procedures that must be followed by the staff are those established by the committee, and approved by the Council and the membership. These include such requirements as scheduling all interviews of student-athletes or coaching staff members who are involved in possible violations on campus through the institution's director of athletics. An institutional representative designated by the institution (frequently a lawyer) is permitted to be present during the interview.

When an enforcement representative requests information that could be detrimental to the interests of the student-athlete or institutional employee being interviewed, that individual must be so advised that the purpose of the interview is to determine whether he or she has been involved directly or indirectly in any violation of NCAA legislation. Further, prior to the staff alleging that an individual has violated NCAA ethical-conduct legislation, the individual also must be advised that such an allegation may be forthcoming based upon the individual's involvement in violations, refusal to furnish information relevant to the investigation of possible violations, or providing false or misleading information to the NCAA, the conference or the institution concerning the individual's knowledge of or involvement in a violation. When an enforcement staff member conducts an interview that may develop information detrimental to the interests of the individual being questioned, that individual may be represented by personal legal counsel throughout the interview. Individuals who have given information to the enforcement staff that will be used in an infractions case are given the opportunity to review the investigator's report, and to make additions and corrections. Throughout the preliminary investigation, the staff is to develop any information that would refute or corroborate the alleged violations.

The enforcement staff shall terminate the investigation if the information does not appear to be of sufficient substance or reliability to warrant an official inquiry. If the staff determines that an allegation or complaint warrants an official inquiry, it directs such to the chief executive officer of the institution. Such official inquiry must include a statement of the regulations alleged to have been violated, the details of each separate allegation which, in view of the staff, can be supported sufficiently to reasonably expect that the committee would find a violation and the identification of the principals involved in the allegations. The institution is requested to itself interview the principals identified in the allegations, indicate whether the allegations are substantially correct and submit evidence to support its response, as well as any other related or additional information it feels appropriate. The institution also is required to advise any involved present or former institutional staff member and any prospective, present or former student-athlete whose eligibility could be affected by the charges, and to further advise all such individuals that they have the opportunity to submit any information they desire in response to the charges. These individuals also must be advised that they and their personal legal counsel may appear before the committee. Finally, the staff gives the institution the names, addresses and telephone numbers of individuals previously contacted by the staff with respect to any allegations in the case. The staff also must separately

notify athletics department staff members and student-athletes at institutions other than the one under inquiry of the official inquiry.

Subsequent to the receipt of the responses to the official inquiry by all parties, and prior to any hearing before the committee, prehearing conferences are held with the institution and all affected institutional staff members and student-athletes with their legal counsel. During these meetings, the staff will provide all information it intends to use to support the allegations in the official inquiry before the committee, and at these meetings, all involved parties review all applicable memorandums and documents. Throughout the period of time before the committee hearing, the enforcement staff is available to meet with institutional representatives and affected individuals to clarify issues and to discuss additional investigations or interviews that are necessary to supplement the institution's and the individuals' responses. Before the hearing, the staff also must prepare a summary statement of the case that identifies the individuals upon whom and the information upon which the staff will rely in presenting the case to the committee. This summary must be given to the committee members, and to representatives of the institution and the involved individuals. No other specific information and evidence developed by the staff is presented to the committee prior to the actual hearing.

Only after the investigations are completed by the institution, the institutional employees, the student-athletes and the enforcement staff, and after the various prehearing procedures mentioned above are concluded is the Committee on Infractions' hearing held. By this time, the committee and all parties have available to them for the hearing the official inquiry, the responses to the official inquiry submitted by the institution and by all other involved individuals, and the summary statement of the case. Likewise, institutional staff members and student-athletes and/or their personal legal counsel present their information and arguments. The enforcement staff of the NCAA cannot present any information to the committee that can be attributed to individuals who are unwilling to be identified as to the source of the information. The institution and all involved individuals also present information concerning mitigating or other factors that should be considered by the committee in arriving at any appropriate penalties. The committee members may question all persons appearing at the hearing, and questions and information may be exchanged between and among all parties participating in the hearing.

After the conclusion of the hearing, the committee makes its determinations of fact and violation privately. It then issues its written report, setting forth its findings and penalty to be imposed, if any, which report goes to the chief executive officer of the member institution (with copies also to all individuals receiving copies of the official inquiry). That report also is released to the public with names deleted. The committee must base its findings on the information presented to it that it determines to be credible, persuasive and of a kind on which reasonably prudent persons rely in the conduct of serious affairs. The findings of violation or questionable practices must be by majority vote of the committee members present and voting. The imposition of a penalty or recommended action requires the favorable vote of at least four members of the committee when all six are present and participating, and

the favorable vote of at least three members when fewer than six members are present.

An institution may appeal the findings, the penalty or both to the division steering committee of the Council representing the same division as the institution. Any current or former institutional staff member who is involved in a finding of violation resulting in proposed disciplinary action toward such individual or in an ethical conduct finding may appeal to the same Council committee.

If an appeal is taken, the committee must submit to the Council an expanded infractions report containing the violations found, a statement of the committee's proposed penalties, a statement of the origin of the case, related factors appropriate for consideration in judgment of the case and the corrective actions taken by the institution or conference involved in the incident. A copy of such expanded report is given to the appealing party prior to any appearance before the Council. The appealing parties submit a written appeal and may contest both the findings and proposed penalties, and may set out additional or new facts and arguments, as well as arguing that the committee's determination based on the facts presented to it was erroneous. While an appealing party must submit a written appeal to the Council, it has the option of a personal appearance before the Council. If the appealing party elects to be represented in person, it or the individuals designate the representatives who will appear before the Council, and included in such may be the institution's legal counsel and the personal legal counsel of the individual.

After the decision of the Council on appeal and a penalty is publicly announced, the penalty may be reviewed upon a showing of newly discovered evidence directly related to the findings or that there was a prejudicial error in the procedure followed in the processing of the case.

The enforcement procedures have been adopted by the membership. In adopting such, the members have adhered to the basic principle of institutional control of, and responsibility for, their own employees and student bodies. Thus, the procedures are directed against the member institutions. The NCAA does not take action against student-athletes or an institution's employees, but only against the member institutions. However, by the legislation, the members are required to apply the agreed-upon rules in their dealings with their own students and employees.

One of the enforcement procedures' basic premises is that it is designed to be a cooperative venture wherein the Committee on Infractions, the NCAA staff and the member institutions work together to ascertain the facts relating to the observance of the NCAA rules. Furthermore, every member institution has agreed to demonstrate the same interest as the Committee on Infractions in ascertaining if individuals charged with administering intercollegiate athletics observe the agreed-upon rules. It is this spirit of a cooperative endeavor, as distinguished from an adversary proceeding, that runs throughout the enforcement proceedings. Yet the procedures do provide that an institution, institutional staff members and the student-athletes be given detailed, factual

allegations in writing; names of all individuals the NCAA has contacted so that they can directly contact such individuals; an opportunity to examine all information ahead of time that the NCAA staff will present to the committee; an opportunity to reply in writing to the allegations; an opportunity to appear at a hearing with counsel before the committee; a written decision of the committee's findings and proposed penalties, if any; an opportunity to appeal the findings of violation and/or penalties; a further opportunity to submit in writing its or their positions to the appellate body, the Council; a copy of the committee's expanded infractions report outlining the reasons for its decision; still another hearing in person before the governing Council subcommittee, and finally, the Council's written decision.

These procedures do more than merely provide "notice of the charges" and "opportunity to present the institution's or student's version of the facts," the basic elements of due process. These procedures are in place even though courts which have addressed the issue have held that participation in intercollegiate athletics is not such an interest or property right that requires the protection of a due-process hearing, and even though the Supreme Court of the United States has held that the NCAA is not a "state actor" subject to attack by individuals or entities claiming a violation of Constitutional rights.

It should be emphasized that both the institutions and the individuals involved have, prior to the hearing, not only had the opportunity to interview and obtain written statements from the principals named in the official inquiry, and whose addresses and identity are furnished to them by the NCAA staff, but that they are encouraged to contact such principals or any other individuals who may have information pertaining to the matter in order to make sure all available facts are learned. The institution then may incorporate the statements it so obtains in its written responses presented to the committee. In addition, of course, the institution knows what the principals have told the staff investigators. By following these procedures, there is very little material, if any, presented to the committee at the hearing that has not been the subject of extensive prehearing investigation by the institution. Additionally, the institution and involved individuals are given the opportunity to examine the facts and memorandums gathered by the NCAA prior to the committee's hearing. In short, in the vast majority of cases, there is very little dispute as to the facts by the time the committee actually hears the case. It further should be noted that the NCAA appeal process provides much broader rights to institutions and individuals than normally is thought to be the case. Institutions are not limited to an appeal "on the record" as in a court of law. Rather, they may appeal any of the findings, and in doing so, they may present new evidence or arguments to the Council in the appeal hearing.

It has been said that the NCAA should utilize a procedure wherein live witnesses testify before the committee and that the institutions be allowed to cross-examine the witness as in a criminal case. Under the enforcement procedures, however, the institutions have, in fact, already interrogated the witnesses themselves, and obtained statements and affidavits from such witnesses; they have responded to the detailed official inquiry, and they have had the



opportunity to submit statements and materials from any other source. Again, it must be remembered that in the investigation, there is an identity of interest among the members in this regard rather than an attitude of adverse, conflicting objectives. The member institutions operate on the basic premise that eligibility rules be adopted and enforced to comply with satisfactory standards of scholarship, sportsmanship and amateurism. The committee's process is neither a criminal prosecution nor an adversary proceeding in the usual sense. The primary issue before it is whether a member, a member's employee or a student-athlete violated a rule enacted by the membership. Secondly, there is no process whereby the NCAA can force individuals to appear before the committee for purposes of cross-examination, as there is no means for the committee to issue subpoenas. Even if a particular jurisdiction somehow would be able to cloak the private Association with such authority within its boundaries, this would not solve the witness problem. More often than not, the principals and witnesses in these matters are located in many jurisdictions throughout the United States.

As stated previously, few facts are in dispute by the time the matter comes before the committee. Many of the matters at that hearing involve the question of mitigating and presentation of factors explaining why or how the violations occurred, or an interpretation as to whether the admitted facts constitute a violation. Cross-examination and confrontation of witnesses at this point gains nothing. If the institution or individuals feel the committee did erroneously decide a disputed fact, they have the full opportunity of presenting additional or new facts relating to such during the appeal process to the Council. Likewise, if they feel that the NCAA staff presentation to the committee contained errors or misstatements, they are free to contact the sources again and present further information developed by them to the Council during the appeal. The appeal process is not limited to an argument based "on the record." Rather, new or additional facts may be presented.

Certainly, the members of the Association have adopted principles governing the conduct of their own intercollegiate athletics programs. These principles place the responsibility on each member institution to control its program in compliance with the rules and regulations enacted by the members. This responsibility includes being responsible for the actions of the individuals employed by or associated with the institution, including the student-athletes, the coaches, the faculty athletics representatives and any others associated with the institution's athletics interests. In carrying out these responsibilities, the institutions place upon themselves the responsibility to monitor their programs in order to assure compliance with the rules. Ordinarily, such responsibility includes the institution itself identifying and reporting instances in which compliance has not been achieved. Yet, as in any organization, the members recognize that there may be instances where non-compliance occurs. Thus, the institutions have so enacted the enforcement program as to make it an essential part of their own intercollegiate athletics programs. The foundation of such a program requires full disclosure and cooperation with the Committee on Infractions and Council during the course of an investigation. The fact that a violation has been alleged and is being investigated does not mean the institution abandons its responsibility to ascertain

the facts. To the contrary, the institution is obligated to proceed to ascertain the facts and circumstances surrounding the alleged violation. The procedures adopted to investigate noncompliance may be modified by the members as any other legislation they enact. While there may be a delicate balance of all the principles and objectives, the procedural fairness is not left to chance. The enforcement procedures have been considered carefully, reviewed and modified from time to time when circumstances have required such. There is a genuine identity of purpose in the desire of the membership and the Committee on Infractions to determine facts rather than an attitude of conflicting objectives one may find in a criminal, adversary proceeding.

/aj/lss

SENATE BILL No. 234

By Senators Winter, Anderson, Brady, Burke, Gaines, D. Kerr  
and Oleen

2-13

9 AN ACT concerning athletics; enacting the athletic association pro-  
10 cedures act.

11  
12 *Be it enacted by the Legislature of the State of Kansas:*

13 Section 1. This act shall be known and may be cited as the  
14 athletic association procedures act.

15 Sec. 2. As used in this act: (a) "Athletic association" means any  
16 association, corporation or entity which has its principal place of  
17 business located within the state of Kansas and ownership of real  
18 property and improvements thereon in the state of Kansas either by  
19 such athletic association or its parent holding company; whose real  
20 property, all buildings located on such property and all personal  
21 property located thereon, owned by such athletic association or its  
22 parent holding company is exempt from all property or ad valorem  
23 taxes levied under the laws of the state of Kansas; and whose principal  
24 function is the promotion, regulation and control of collegiate or high  
25 school athletics; and

26 (b) "educational institution" or "institution" means any member  
27 or affiliate of an athletic association, whether such member or affiliate  
28 is located in the state of Kansas or located outside the state of Kansas,  
29 including, but not limited to, any college, university or other in-  
30 stitution of higher learning or any high school or other postsecondary  
31 educational institution.

32 Sec. 3. In any proceeding which may result in the imposition of  
33 a sanction or penalty for violation of a rule of an athletic association,  
34 no such sanction or penalty may be imposed by an athletic association  
35 on any educational institution located in the state of Kansas or located  
36 outside the state of Kansas, nor shall such athletic association require  
37 or cause such educational institution to impose a sanction or penalty  
38 on any student or employee, unless the findings or rules and reg-  
39 ulations of the athletic association upon which the sanctions or pen-  
40 alties are based are made as provided in this act and comply with  
41 due process of law and equal protection under the law and all other  
42 rights and privileges as guaranteed by the constitutions of the United  
43 States of America and the state of Kansas and the laws of Kansas.

5 compliance by such athletic association shall include without  
 6 limitation compliance with the following specific requirements:

(a) Any finding must be made in writing and supported by clear  
 and convincing evidence;

(b) any individual employee or student who is charged with mis-  
 conduct must be notified, in writing at least two months prior to  
 the hearing, of the specific charges against that individual, that a  
 hearing will be held at a specific date and time to determine the  
 truth of the charges, and that a finding that the misconduct occurred  
 may result in sanctions or penalties imposed on the institution or  
 imposed by the institution on the individual. The institution shall  
 also be notified in writing of the hearing on the charges;

(c) any such person or institution has a right to have counsel  
 present, to interrogate and cross-examine witnesses, and to present  
 a complete defense;

(d) the rules of evidence under the code of civil procedure of  
 the state of Kansas shall apply at such hearings;

(e) any individual charged with misconduct which might result  
 in a penalty, and the institution with which such individual is affil-  
 iated, shall be entitled to full disclosure of all facts and matters  
 relevant to the same degree as a defendant in a criminal case and  
 shall have the same right to discovery as applies in criminal and  
 civil cases;

(f) any individual or institution may suppress at the hearing any  
 evidence garnered from any interrogation of any party if the evidence  
 was not procured in accordance with section 5 or if obtained indi-  
 rectly because of interrogations not in conformity with section 5;

(g) any hearing shall be open to the public unless any party  
 charged with misconduct or the institution involved objects;

(h) no hearing may be held on any given charge unless com-  
 menced within six months of the date on which the institution first  
 receives notice of any kind from the athletic association that it is  
 investigating a possible violation of its rules or, in a situation in  
 which the institution itself brings the possibility of a violation to the  
 attention of the athletic association, unless commenced within nine  
 months of the date such notice is provided to the athletic association.  
 The running of the six- or nine-month period shall be tolled because  
 of any delay occasioned by the institution or individual being in-  
 vestigated, whether or not for good cause. Any individual charged  
 with a violation or the institution with which such individual is  
 affiliated may petition the district court of the state of Kansas for a  
 determination of whether the provisions of this subsection have been  
 violated prior to proceeding with the hearing. The filing of any such

1 petition tolls the running of the six or nine-month period;

2 (i) the athletic association conducting the hearing shall cause a  
 3 complete transcript of any hearing to be made at its expense by a  
 4 certified court reporter. If an individual charged with a violation or  
 5 the institution with which such individual is affiliated requests, a  
 6 copy of the transcript shall be provided to the requesting party within  
 7 21 days of the request and the cost of providing the transcript shall  
 8 be assumed by the athletic association; and

9 (j) any findings made pursuant to the hearing under this section  
 10 are subject to review in the district court in accordance with the  
 11 act for judicial review and civil enforcement of agency actions.

12 Sec. 4. (a) Any penalty imposed upon an institution by an athletic  
 13 association or any penalty required by the athletic association to be  
 14 imposed on a student or employee must bear a reasonable relation-  
 15 ship to the violation committed.

16 (b) Any penalty must be commensurate with those applied in  
 17 similar situations for similar violations.

18 (c) Any penalty imposed on an institution or, because of an ath-  
 19 letic association directive, on an individual shall be subject to review  
 20 in district court in accordance with the act for judicial review and  
 21 civil enforcement of agency actions.

22 Sec. 5. (a) In any interrogation of any person suspected of a  
 23 violation of athletic association rules, at the point at which the athletic  
 24 association should reasonably believe the person might have violated  
 25 athletic association rules, it shall inform the person that it is inves-  
 26 tigating such person for misconduct which might result in the im-  
 27 position of a penalty on such individual or such individual's  
 28 institution.

29 (b) At such point, the person interrogated is entitled to have  
 30 counsel present at any further interrogation and need not respond  
 31 further until provided with reasonable time to obtain counsel. The  
 32 person interrogated is entitled to a complete recording of any sub-  
 33 sequent interrogation and a transcript of the full interrogation made  
 34 at the expense of the athletic association. The transcript shall be  
 35 made by a certified court reporter.

36 The athletic association or its agent shall inform the person to be  
 37 interrogated of these rights before proceeding and shall obtain writ-  
 38 ten acknowledgement of such provision.

39 (c) In any proceeding or hearing held to determine whether a  
 40 violation has occurred under section 3, any party who has been  
 41 subject to an interrogation, or the institution with which such party  
 42 is affiliated, may seek to suppress evidence obtained during or as a  
 43 result of the interrogation if the interrogation was not conducted in

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ance with this section.

Sec. 6. Nothing in this act limits the right of any individual or institution to claim the abridgement of any other due process or equal protection or other constitutional or statutory right not enumerated in this act.

Sec. 7. (a) No athletic association shall impose a penalty on any institution for a violation of the athletic association's rules or legislation unless the findings which are the basis for the penalty are made, and the penalty itself is imposed, in accordance with this act.

(b) No athletic association shall impose a penalty on any institution for failure to take disciplinary action against any employee or student for the violation of athletic association rules or legislation unless the findings which are the basis for the penalty are made, and the penalty itself is imposed, in accordance with this act.

(c) No athletic association may terminate the membership of any institution because of the enactment or application of this act, nor shall any athletic association impose a penalty upon any institution seeking redress under this act.

(d) An athletic association may not impose a penalty against any member institution because of any student or employee seeking redress under this act.

Sec. 8. (a) An athletic association that violates this act is liable for damages to an aggrieved institution or individual incurring injury as a result of the violation of this act. Damages shall include, but are not limited to, all financial loss incurred due to the imposition of a penalty in violation of this act. Any athletic association found guilty of violating this act is also liable for the costs, litigation expenses and attorney fees of any party prevailing against it and such athletic association shall be subject to revocation and rescission of ad valorem tax exemption on any property owned by such athletic association or its parent holding company including exemptions granted from the date of violation to and including the tax which would have been due commencing in calendar year 1989.

(b) Any institution or individual aggrieved as a result of this act shall also be entitled to appropriate equitable relief.

Sec. 9. (a) Except as otherwise provided in this subsection, any rights created under this act shall apply to any matter or investigation begun prior to but not concluded as of the effective date of this act:

(1) As to matters not concluded prior to the effective date of this act, the six- and nine-month time periods provided for in subsection (i) of section 4 shall commence running from the effective date of this act; and

section 6 shall apply only to interrogations occurring on or

1 after the effective date of this act.

2 (b) The provisions of this act apply notwithstanding any contract  
3 or agreement entered into before, on, or after the effective date of  
4 this act. Any contractual provision to the contrary is invalid and  
5 unenforceable. No provision of this act may be waived by any mem-  
6 ber institution as a condition of continued membership in the athletic  
7 association or otherwise.

8 Sec. 10. The remedies provided in this act are cumulative and  
9 in addition to any other remedies provided by law.

10 Sec. 11. This act shall take effect and be in force from and after  
11 its publication in the statute book.

13/  
8-35

is having to listen to that loudmouth, irritating Dick Vitale during college basketball games. Sweet is watching no-hitters and not having to listen to Dick Vitale. Vitale is the real put mute buttons on your remote control. I guess if a wild and crazy 18-year-old college student, Vitale's crazy... of PTPers and diaper dandies would impress me. But I'm 33 years old — and it just doesn't."

Tim Morgan, Sequim, Wash.

Hall's Marco Lokar. A native of Italy, Lokar declined to adorn his uniform with a U.S. flag to signify support for U.S. troops in the Middle East. That declination was protected by the First Amend-

By Bruce Fein

essential to mental growth and peaceful social change. Sen. Joseph McCarthy, R-Wis., and his political cousins damaged free speech enormously by encouraging society

to evoke a thoughtful response, to exchange ideas; or to incite racial animosities that block the deliberative processes and lead to a climate of social nitroglycerin? Fighting words or expres-

speech should be made the deliberate triumph over animosities. Exhibit 4 is Duroid basketball f... type rs.

# Legislative actions only complicate NCAA's task

The National Collegiate Athletic Association, as in all organizations with rules governing activities of its members, has provisions enacted by the membership to enforce uniform regulations.



COMMENTARY  
By Judy Sweet

My intent is to express opposition to proposed legislation in jurisdictions that would result in isolating, protecting or providing an unfair competitive advantage for institutions in states where this legislation is passed. These proposed laws involve financial aid and due process.

First, I want to point out the inaccuracy of recent claims by some individuals that the NCAA "threatened to kick out member institutions" whose states passed such legislation. That statement was never made by anyone who is in any way connected with the NCAA.

The NCAA's position is very clear. If states pass laws that result in different rules applications for some NCAA institutions, either the membership must alter its rules, or it must decide how those state laws af-

fect the membership of the institutions in those states.

Specifically, the reason for our opposition to due-process legislation is the implication that our institutions, student-athletes and employees are not now accorded due process under NCAA en-

forcement regulations. This conclusion is without foundation and shows a regrettable lack of knowledge of NCAA procedures.

The enforcement policies and procedures, voted on by the entire voting membership, are replete with due-process protections.

The enforcement procedures are not formal legal proceedings, such as in criminal courts, but rather administrative hearing procedures. They have been written over time by nationally recognized legal scholars who have served on the NCAA Committee on Infractions. These procedures are constantly scrutinized by the legal community and recognized as being consistent

with standards required of organizations holding administrative hearings.

The following are due-process features of NCAA enforcement procedures:

- ▶ An institution is formally advised and provided notice of any preliminary inquiry into its athletics policies and practices.

- ▶ A representative may be present at all interviews of student-athletes or athletics department staff members.

- ▶ Individuals and institutions are entitled to be represented by legal counsel.

- ▶ If a preliminary investigation determines that an allegation or complaint warrants an official inquiry, the institutional chief executive is formally advised, including details of each allegation.

- ▶ Involved parties are advised of all witnesses and information upon which the staff intends to rely; access to this information is provided well in advance of the infractions hearing.

- ▶ The NCAA enforcement staff and involved institutions are required to advise potentially affected student-athletes or staff members of allegations related to them, and to provide the chance to submit information, to be represented by legal

counsel and to appear before the infractions committee.

- ▶ Information from unidentified sources may not be considered by the Committee on Infractions, which tape-records its proceedings.

- ▶ Infractions committee actions are by majority vote.

- ▶ The institutions and affected staff members are authorized to appeal any adverse finding or penalty to the NCAA Council, which consists of college administrators.

The Committee on Infractions, which determines whether an institution is placed on probation, consists of individuals who have no direct relationship with institutional athletics policies and practices.

In 1978, a committee of the U.S. House of Representatives conducted hearings into the fairness of NCAA enforcement procedures. Responding to that committee's subsequent report, the NCAA made a host of changes in procedures, after which the committee chairman said that the committee's inquiry had "accomplished its reasonable purposes."

During the NCAA Convention in January, the NCAA Council approved executive director Richard D. Schultz's request to appoint a special com-

mittee to review the enforcement process.

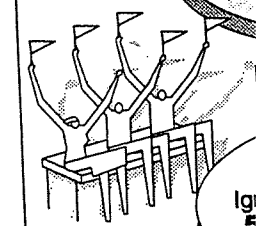
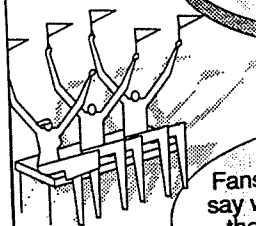
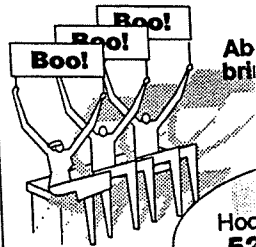
It should be emphasized that the study represents an ongoing attempt to refine and improve NCAA procedures and does not reflect unhappiness with current procedures. The purposes of the review are to make sure that: We are doing things in the most effective way; due process can be guaranteed; penalties are consistent; penalties are fair or should be tougher or more moderate; time needed to complete an investigation is appropriate; a more positive image regarding the enforcement process is projected.

The NCAA is not opposed to elements of due-process protection, but is opposed to individual state legislatures fragmenting what is currently a uniform set of procedures adopted by all NCAA member institutions.

Judy Sweet is president of the NCAA and athletic director at Cal-San Diego. Her commentary is a response to an article that appeared in the March 5 SportsViews by Kansas Sen. Wint Winter Jr., R-Lawrence, primary sponsor of Senate Bill 234, which would establish the Athletic Association Procedures Act.

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WINT WINTER, JR.  
 SENATOR, SECOND DISTRICT  
 DOUGLAS COUNTY  
 737 INDIANA  
 BOX 189  
 LAWRENCE, KANSAS 66044



TOPEKA

SENATE CHAMBER

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## COMMITTEE ASSIGNMENTS

CHAIRMAN: JUDICIARY  
 VICE-CHAIRMAN: WAYS AND MEANS  
 MEMBER: JOINT COMMITTEE ON ECONOMIC  
 DEVELOPMENT  
 JOINT COMMITTEE ON SPECIAL CLAIMS  
 AGAINST THE STATE  
 ECONOMIC DEVELOPMENT  
 KANSAS JUDICIAL COUNCIL

LEGISLATIVE HOTLINE:  
 1-800-432-3924

AGENDA  
 REVISED (1)  
 SENATE JUDICIARY COMMITTEE  
 Judy Crapser, Sec -- 6817

10:05 a.m.

Room 514-S

Monday, March 18, 1991

Hearings on:

**HB 2003** - prohibiting cities and counties from owning or operating certain prisons.**SB 373** - access to records by developmental disabilities protection and advocacy agency.**SB 287** - unlawful acts of individuals infected with human immunodeficiency virus.Tuesday, March 19, 1991

Hearings on:

**SB 234** - enacting the athletic association procedures act.Wednesday, March 20, 1991

Hearings on:

**SB 272** - natural death act; pre-hospital do not resuscitate order.**SB 350** - enacting the Uniform Rights of the Terminally Ill Act.Thursday, March 21, 1991

Staff briefing, hearing and committee discussion and action on:

**SB 358** - amendments to Kansas criminal code; and**Kansas Sentencing Commission Recommendations** (bill to be introduced).Friday, March 22, 1991

Staff briefing, hearing and committee discussion and action on:

**SB 358** - amendments to Kansas criminal code; and**Kansas Sentencing Commission Recommendations** (bill to be introduced).

This agenda is subject to change without notice.

Anyone wishing to appear before the Committee or either Subcommittee is requested to contact the Committee secretary. Testimony may be handwritten or typewritten (20 copies requested). If unavailable at the time of the meeting, such testimony must be submitted within three (3) days in order to become part of the permanent record of Committee and Subcommittee minutes.

SENATOR WINT WINTER, JR., CHAIRMAN

8-15/35

# Enforcement

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## 19.01 GENERAL PRINCIPLES

**19.01.1 Exemplary Conduct.** Individuals employed by or associated with member institutions for the administration, the conduct or the coaching of intercollegiate athletics are, in the final analysis, teachers of young people. Their responsibility is an affirmative one, and they must do more than avoid improper conduct or questionable acts. Their own moral values must be so certain and positive that those younger and more pliable will be influenced by a fine example. Much more is expected of them than of the less critically placed citizen.

**19.01.2 Responsibility to Cooperate.** All representatives of member institutions shall cooperate fully with the NCAA enforcement staff, Committee on Infractions and Council to further the objectives of the Association and its enforcement program. The enforcement policies and procedures are an essential part of the intercollegiate athletics program of each member institution and require full and complete disclosure by all institutional representatives of any relevant information requested by the NCAA enforcement staff, Committee on Infractions or Council during the course of an inquiry.

**19.01.3 Violations by Institutional Staff Members.** Institutional staff members found in violation of NCAA regulations shall be subject to disciplinary or corrective action as set forth in the provisions of the NCAA enforcement procedures, whether such violations occurred at the certifying institution or during the individual's previous employment at another member institution.

**19.01.4 Nature of Penalty Structure.** As a guiding principle, a penalty imposed under NCAA enforcement policies and procedures should be broad and severe if the violation or violations reflect a general disregard for the governing rules; in those instances in which the violation or violations are isolated and of relative insignificance, then the NCAA penalty shall be specific and limited. Previous violations of NCAA legislation shall be a contributing factor in determining the degree of penalty.

## 19.02 DEFINITIONS AND APPLICATIONS

**19.02.1 Show-Cause Order.** A show-cause order is one that requires a member institution to demonstrate to the satisfaction of the Committee on Infractions (or Council subcommittee, in the case of an appeal) why it should not be subject to a penalty (or additional penalty) for not taking appropriate disciplinary or corrective action against an institutional staff member or representative of the institution's athletics interests identified by the committee as having been involved in a violation of NCAA regulations that has been found by the committee.

### 19.02.2 Types of Violations

**19.02.2.1 Violation, Secondary.** A secondary violation is one that provides only a limited

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recruiting or competitive advantage and that is isolated or inadvertent in nature.

**19.02.2.2 Violation, Major.** All violations other than secondary violations are major violations, specifically including those that provide an extensive recruiting or competitive advantage. Repeated secondary violations by a member institution also may be identified by the assistant executive director for enforcement as major violations.

## 19.1 COMMITTEE ON INFRACTIONS

The Council shall appoint a Committee on Infractions, which shall be responsible for administration of the NCAA enforcement program.

**19.1.1 Composition of Committee.** The committee shall be composed of six members, at present or previously on the staff of an active member or member conference of the Association, one of whom shall serve as chair. Two positions shall be allocated for men, two allocated for women and two unallocated.

**19.1.1.1 Quorum.** Three members present and voting shall constitute a quorum for conduct of committee business, it being understood that the chair shall make a special effort to have full committee attendance when major infractions cases involving violations are to be considered.

**19.1.1.2 Temporary Substitutes.** If it appears that one or more members of the committee will be unable to participate in the hearing of a case, the chair may request the Administrative Committee of the Association to designate a former member or members of the committee to rejoin the committee for purposes of the consideration and disposition of that case.

**19.1.1.3 Term of Office.** A member shall serve a three-year term, which shall commence on the first day of September following the member's election. A member may be reappointed but shall not serve more than nine years on the committee.

**19.1.2 Authority of Committee.** Disciplinary or corrective actions other than suspension or termination of membership may be effected during the period between annual Conventions by members of the Committee on Infractions present and voting at any duly called meeting thereof, provided the call of such a meeting shall have contained notice of the situation presenting the disciplinary problem. Actions of the committee in cases involving major violations, however, shall be subject to review by the Council on appeal.

**19.1.2.1 Authority of Assistant Executive Director for Enforcement.** Upon review of information developed by the enforcement staff or self-reported by the member institution, the assistant executive director for enforcement shall identify the charges as involving alleged major or secondary violations, or repeated secondary violations that should be viewed as a major violation, subject to approval by the chair or another member of the Committee on Infractions designated by the chair. Disciplinary or corrective actions in the case of secondary violations may be effected by the assistant executive director for enforcement, subject to approval by the chair or another member of the Committee on Infractions designated by the chair. Said actions shall be taken in accordance with the provisions of the enforcement policies and procedures and shall be subject to review by the committee upon appeal.

**19.1.2.2 Authority of Committee Chair.** In the interim between meetings of the committee, the chair shall be empowered to act on behalf of the committee, subject to committee approval at its next meeting. If at any time, at a meeting or between meetings, the chair is unavailable to act as such, the member of the committee longest in service who is available is empowered to exercise the functions of the chair.

**19.1.2.3 Authority of Council.** The division steering committee of the Council representing the same division as an institution appealing the committee's findings of major violations shall hear and act upon such appeal.

**19.1.3 Duties of Committee.** The duties of the Committee on Infractions shall be as follows:

- (a) Consider complaints that may be filed with the Association charging the failure of any member to maintain the academic or athletics standards required for membership or the failure of any member to meet the conditions and obligations of membership in the Association;
- (b) Formulate and revise, in accordance with the requirements of 19.2, a statement of its established operating policies and procedures, including investigative guidelines (see Bylaw 32);

- (c) Determine facts related to alleged violations and find violations of NCAA rules and requirements;
- (d) Impose an appropriate penalty or show-cause requirement on a member found to be involved in a major violation (or, upon appeal, on a member found to be involved in a secondary violation), or recommend to the Council suspension or termination of membership, and
- (e) Carry out any other duties directly related to the administration of the Association's enforcement program.

## 19.2 ESTABLISHMENT AND REVISION OF ENFORCEMENT POLICIES AND PROCEDURES

**19.2.1 Amendment by Committee and Approval by Council.** The Committee on Infractions may establish or amend the policies and procedures in regard to issues other than those concerning institutional penalties, restitution, and committee duties and structure. A member institution shall be provided notice of alleged NCAA rules violations for which it is charged before any penalty is imposed, as well as the opportunity to appear before the committee and the opportunity to appeal the committee's findings of major violations or penalties (see 19.3 and 19.4). The policies and procedures governing the administration of the Association's enforcement program, as set forth in Bylaw 32, are subject to review and approval by the Council at its next regularly scheduled meeting.

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**19.2.1.1 Notification to Membership.** To the extent that the enforcement policies and procedures are revised, any member institution involved in the processing of an infractions case shall be notified immediately of the change and the general membership shall be advised through The NCAA News.

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**19.2.1.2 Review by Convention.** Policies and procedures established by the Committee on Infractions, per 19.2.1, are subject to review and approval by the membership at the next annual Convention (see 5.2.3.3).

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**19.2.2 Amendment by Convention.** The enforcement policies and procedures set forth in Bylaw 32 may be amended at any annual or special Convention in accordance with the procedures set forth in 5.3 for general provisions.

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## 19.3 NOTICE OF CHARGES AND OPPORTUNITY TO APPEAR

**19.3.1 For Major Violations.** A member under investigation for major violations shall be given the following:

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- (a) Notice of any specific charges against it and the facts upon which such charges are based, and
- (b) An opportunity to appear before the Committee on Infractions (or respective division steering committee of the Council upon appeal) to answer such charges by the production of evidence (see 19.5).

**19.3.2 For Secondary Violations.** A member under investigation for secondary violations shall be given the following:

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- (a) Notice of any specific charges against it and the facts upon which such charges are based, and
- (b) An opportunity to provide a written response to the assistant executive director for enforcement (or to appear before the Committee on Infractions upon appeal) to answer such charges by the production of evidence (see 19.5).

**19.3.3 New Findings.** If a member appears before the committee to discuss its response to the official inquiry, the hearing shall be directed toward the general scope of the official inquiry but shall not preclude the committee from finding any violation resulting from information developed or discussed during the hearing.

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## 19.4 PENALTIES

**19.4.1 Penalties for Secondary Violations.** The assistant executive director for enforcement, upon approval by the chair or another member of the Committee on Infractions designated by the chair, or the committee may determine that no penalty is warranted in a secondary case or, if appropriate, require one or more of the following alternatives:

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- (a) Termination of the recruitment of a prospect by the institution or, if the prospect enrolls (or has enrolled) in the institution, permanent ineligibility to represent the institution in

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- + intercollegiate competition (unless eligibility is restored by the Eligibility Committee upon appeal);
- + (b) Forfeiture of contests in which an ineligible student-athlete participated;
- + (c) Prohibition of the head coach or other staff members in the involved sport from participating in any off-campus recruiting activities for one year;
- + (d) An institutional fine for each violation, with the monetary penalty ranging in total from \$500 to \$5,000;
- + (e) A limited reduction in the number of financial aid awards that may be awarded during a specified period in the sport involved to the maximum extent of 20 percent of the maximum number of awards normally permissible in that sport, and
- + (f) Institutional recertification that its current athletics policies and practices conform to all requirements of NCAA regulations.

**19.4.2 Penalties for Major Violations**

\* **19.4.2.1 Disciplinary Measures.** Among the disciplinary measures, singly or in combination, that may be adopted by the committee (or the appropriate division steering committee of the Council on appeal) and imposed against an institution for major violations are:

- + (a) Reprimand and censure;
- + (b) Probation for one year;
- + (c) Probation for more than one year;
- + (d) Ineligibility for one or more NCAA championship events;
- + (e) Ineligibility for invitational and postseason meets and tournaments;
- + (f) Ineligibility for any television programs involving live coverage of the institution's intercollegiate athletics team or teams in the sport or sports in which the violations occurred;
- + (g) Ineligibility of the member to vote or its personnel to serve on committees of the Association, or both;
- + (h) Prohibition against an intercollegiate sports team or teams participating against outside competition for a specified period;
- + (i) Prohibition against the recruitment of prospective student-athletes for a sport or sports for a specified period;
- + (j) A reduction in the number of financial aid awards (as defined in 15.02.3.1) that may be awarded during a specified period;
- + (k) All or any combination of the following penalties:
  - + (1) Requirement that an institution that has been represented in an NCAA championship by a student-athlete who was recruited or who received improper benefits (which would not necessarily render the student-athlete ineligible) in violation of NCAA legislation shall return 90 percent of its share of net receipts from such competition in excess of the regular expense reimbursement. If such funds have not been distributed, they shall be withheld by the NCAA executive director; or
  - + (2) Individual or team records and performances shall be vacated or stricken, or
  - + (3) Individual or team awards shall be returned to the Association;
- + (l) Requirement that a member institution that has been found in violation, or that has an athletics department staff member who has been found in violation of the provisions of NCAA legislation while representing another institution, show cause why:
  - + (1) A penalty or an additional penalty should not be imposed if, in the opinion of the committee (or respective division steering committee), it does not take appropriate disciplinary or corrective action against athletics department personnel involved in the infractions case, any other institutional employee if the circumstances warrant or representatives of the institution's athletics interests, or
  - + (2) A recommendation should not be made to the membership that the institution's membership in the Association be suspended or terminated if, in the opinion of the committee (or respective division steering committee), it does not take appropriate disciplinary or corrective action against the head coach of the sport involved, any other institutional employee if the circumstances warrant or representatives of the

institution's athletics interests.

- (3) "Appropriate disciplinary or corrective action" as specified in subparagraphs (1) and (2) above may include, for example, termination of the coaching contract of the head coach and any assistants involved; suspension or termination of the employment status of any other institutional employee who may be involved; severance of relations with any representative of the institution's athletics interests who may be involved; the debarment of the head or assistant coach from any coaching, recruiting or speaking engagements for a specified period, and the prohibition of all recruiting in a specified sport for a specified period. +
- (4) The nature and extent of such action shall be the determination of the institution after due notice and hearing to the individuals concerned, but the determination of whether or not the action is appropriate in the fulfillment of NCAA policies and principles, and its resulting effect on any institutional penalty, shall be solely that of the committee (or respective division steering committee). +
- (5) Where this requirement is made, the institution shall show cause or, in the alternative, shall show the appropriate disciplinary or corrective action taken, in writing, to the committee (or respective division steering committee) within 15 days thereafter. The committee (or respective division steering committee) may, without further hearing, determine on the basis of such writing whether or not in its opinion appropriate disciplinary or corrective action has been taken and may impose a penalty or additional penalty; take no further action, or, by notice to the institution, conduct a further hearing at a later date before making a final determination. +

**19.4.2.1.1 Opportunity to Appear.** In the event the committee considers additional penalties to be imposed upon an institution in accordance with 19.4.2.1-(1) above, the involved institution shall be provided the opportunity to appear before the committee; further, the institution shall be provided the opportunity to appeal (per 19.5.2) any additional penalty imposed by the committee. \*

**19.4.2.2 Minimum Penalty.** The minimum penalty for a major violation, subject to exceptions authorized by the Committee on Infractions in unique cases on the basis of specifically stated reasons, shall include all of the following: +

- (a) A two-year probationary period (including a periodic in-person monitoring system and written institutional reports);
- (b) The elimination of all expense-paid recruiting visits to the institution in the involved sport for one recruiting year;
- (c) A requirement that all coaching staff members in the sport be prohibited from engaging in any off-campus recruiting activities for one recruiting year;
- (d) A requirement that all institutional staff members determined by the committee knowingly to have engaged in or condoned a major violation be subject to termination of employment, to suspension without pay for at least one year, or to reassignment of duties within the institution to a position that does not include contact with prospective or enrolled student-athletes or representatives of the institution's athletics interests for at least one year;
- (e) One year of sanctions precluding postseason competition in the sport;
- (f) One year of television sanctions in the sport, and
- (g) Institutional recertification that the current athletics policies and practices conform to all requirements of NCAA regulations.

**19.4.2.3 Repeat Violators.** An institution shall be considered a "repeat" violator if any major violation is found within the five-year period following the starting date of a major penalty. The minimum penalty for a repeat violator, subject to exceptions authorized by the Committee on Infractions in unique cases on the basis of specifically stated reasons, shall include all of the following: +

- (a) The prohibition of some or all outside competition in the sport involved in the latest major violation for one or two sports seasons and the prohibition of all coaching staff members in that sport from involvement directly or indirectly in any coaching activities at the institution during that period;
- (b) The elimination of all initial grants-in-aid and all recruiting activities in the sport involved in the latest major violation in question for a two-year period;
- (c) The requirement that all institutional staff members serving on the Presidents

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Commission, Council, Executive Committee or other committees of the Association resign those positions, it being understood that all institutional representatives shall be ineligible to serve on any NCAA committee for a period of four years, and

- (d) The requirement that the institution relinquish its voting privilege in the Association for a four-year period.

**19.4.2.4 Probationary Periods**

**19.4.2.4.1 Conditions of Probation.** The committee (or appropriate division steering committee in the case of an appeal) may identify possible conditions that an institution must satisfy during a probationary period. Such conditions shall be designed on a case-by-case basis to focus on the institution's administrative weaknesses detected in the case and shall include, but not be limited to, written reports from the institution pertaining to areas of concern to the committee (or appropriate division steering committee), in-person reviews of the institution's athletics policies and practices by the NCAA enforcement staff, implementation of educational or deterrent programs, and audits for specific programs or teams. If the institution fails to satisfy such conditions, the committee (or appropriate division steering committee) may reconsider the penalties in the case and may extend the probationary period and/or impose additional sanctions.

**19.4.2.4.2 Review Prior to Restoration of Membership Rights and Privileges.** In the event the committee imposes a penalty involving a probationary period, the institution shall be notified that after the penalty becomes effective, the NCAA enforcement staff will review the athletics policies and practices of the institution prior to action by the committee to restore the institution to full rights and privileges of membership in the Association.

**19.4.2.5 Television Appearance Limitations.** In some instances, an institution is rendered ineligible to appear on "live" television programs. When an institution is banned from such television programs, the penalty shall specify that the institution may not enter into any contracts or agreements for such appearances until the institution's probationary status has been terminated and it has been restored to full rights and privileges of membership.

**19.4.2.5.1 Closed-Circuit Telecast Exception.** The NCAA Communications Committee is authorized to permit a closed-circuit telecast, limited to the campus of the opponent of the ineligible institution, it being understood that no rights fee is to be paid to the ineligible institution.

**19.4.2.5.2 Live Telecast.** For purposes of implementing television sanctions, a telecast shall be considered live coverage unless the telecast is presented at least 30 minutes after the actual beginning of the athletics contest in question and begins no earlier than 10:30 p.m. at the site of the reception.

**19.4.2.6 Disassociation of Representatives of Athletics Interests.** The disassociation of relations with a representative of an institution's athletics interests may be imposed on a permanent basis, for the duration of the applicable probationary period or for another specified period of time. When an institution is required to show cause why a representative of the institution's athletics interests should not be disassociated from its athletics program, such disassociation shall require that the institution:

- (a) Refrain from accepting any assistance from the individual that would aid in the recruitment of prospective student-athletes or the support of enrolled student-athletes;
- (b) Not accept financial assistance for the institution's athletics program from the individual;
- (c) Ensure that no athletics benefit or privilege be provided to the individual that is not generally available to the public at large, and
- (d) Take such other actions against the individual that the institution determines to be within its authority to eliminate the involvement of the individual in the institution's athletics program.

**19.4.2.7 Notification to Regional Accrediting Agency.** When an institution has been found to be in violation of NCAA requirements, and the report reflects academic violations or questionable academic procedures, the executive director shall be authorized to forward a copy of the report to the appropriate regional accrediting agency.

**19.4.2.8 Review of Penalty**

**19.4.2.8.1 Newly Discovered Evidence or Prejudicial Error.** When a penalty has been imposed and publicly announced and the appeal opportunity has been exhausted, there

shall be no review of the penalty except upon a showing of newly discovered evidence that is directly related to the findings in the case or that there was a prejudicial error in the procedure that was followed in the processing of the case by the committee.

**19.4.2.8.1.1 Review Process.** Any institution that initiates such a review shall be required to submit a brief of its appeal to the committee and to furnish sufficient copies of the brief for distribution to all members of the committee; thereupon, the committee shall review the brief and decide by majority vote whether it shall grant a hearing of the appeal.

**19.4.2.8.1.2 Institution or Conference Discipline as New Evidence.** Disciplinary measures imposed by the institution or its conference, subsequent to the NCAA's action, may be considered to be "newly discovered evidence" for the purposes of this section.

**19.4.2.8.1.3 No Imposition of New Penalty.** If a hearing of the appeal is granted, the committee may reduce or eliminate any penalty but may not impose any new penalty. The committee's decision with respect to the penalty shall be final and conclusive for all purposes.

**19.4.2.8.2 Reconsideration of Penalty.** The institution shall be notified that should any portion of the penalty in the case be set aside for any reason other than by appropriate action of the Association, the penalty shall be reconsidered by the NCAA. In such cases, any extension or adjustment of a penalty shall be proposed by the Committee on Infractions after notice to the institution and hearing; and any such action by the committee shall be subject to appeal.

**19.4.3 Discipline of Affiliated or Corresponding Member**

**19.4.3.1 Termination or Suspension.** The membership of any affiliated or corresponding member failing to meet the conditions and obligations of membership or failing to support and adhere to the purposes and policies set forth in Constitution 1 may be terminated or suspended or the member otherwise may be disciplined through the following procedure:

- (a) The Council, by a two-thirds majority of its members present and voting, may take such action on its own initiative; or (*Adopted: 1/11/89*)
- (b) The Committee on Infractions, by majority vote, may recommend such action to the Council, which may adopt the recommendation by a two-thirds vote of its members present and voting, and
- (c) The affiliated or corresponding member shall be advised of the proposed action at least 30 days prior to any Committee on Infractions or Council meeting in which such action is considered and shall be provided the opportunity to appear at any such meeting.

**19.5 RIGHTS OF MEMBER TO APPEAL**

**19.5.1 Appeal of Secondary Violations.** A member shall have the right to give written notice of appeal of actions taken by the assistant executive director for enforcement in reference to secondary violations to the Committee on Infractions.

**19.5.2 Appeal of Major Violations.** A member shall have the right to give written notice of appeal of the committee's findings of major violations (subject to 32.8.2), the penalty, or both to the division steering committee of the Council representing the same division as the institution making the appeal.

**19.5.3 Appeal by an Institutional Staff Member.** If any current or former institutional staff member participates in a hearing before the Committee on Infractions and is involved in a finding of a violation of ethical conduct or in other findings by the committee resulting in proposed disciplinary action against that individual, the individual shall be given the opportunity by the institution involved in the proceeding to appeal through that institution any of the findings in question (subject to the conditions of 32.8.2) to the division steering committee of the Council representing the institution's division. Under such circumstances, the individual and personal legal counsel may appear before the division steering committee at the time it considers the pertinent findings.

**19.5.4 Student-Athlete Appeal.** If an institution concludes that continued application of the rule(s) would work an injustice on any student-athlete, an appeal shall be submitted to the Council and promptly acted upon by the body or a subcommittee designated by it.

**19.5.4.1 Obligation of Institution to Take Appropriate Action.** When the committee (or appropriate division steering committee) finds that there has been a violation of the constitution or bylaws affecting the eligibility of an individual student-athlete or student-

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athletes, the institution involved and its conference(s), if any, shall be notified of the violation and the name(s) of the student-athlete(s) involved, it being understood that if the institution fails to take appropriate action, the involved institution shall be cited to show cause under the Association's regular enforcement procedures why it should not be disciplined for failure to do so.

## 19.6 RESTITUTION

If a student-athlete who is ineligible under the terms of the constitution, bylaws or other legislation of the Association is permitted to participate in intercollegiate competition contrary to such NCAA legislation but in accordance with the terms of a court restraining order or injunction operative against the institution attended by such student-athlete or against the Association, or both, and said injunction is subsequently voluntarily vacated, stayed or reversed or it is finally determined by the courts that injunctive relief is not or was not justified, the Council may take any one or more of the following actions against such institution in the interest of restitution and fairness to competing institutions:

- (a) Require that individual records and performances achieved during participation by such ineligible student-athlete shall be vacated or stricken;
- (b) Require that team records and performances achieved during participation by such ineligible student-athlete shall be vacated or stricken;
- (c) Require that team victories achieved during participation by such ineligible student-athlete shall be abrogated and the games or events forfeited to the opposing institutions;
- (d) Require that individual awards earned during participation by such ineligible student-athlete shall be returned to the Association, the sponsor or the competing institution supplying same;
- (e) Require that team awards earned during participation by such ineligible student-athlete shall be returned to the Association, the sponsor or the competing institution supplying same;
- (f) Determine that the institution is ineligible for one or more NCAA championships in the sports and in the seasons in which such ineligible student-athlete participated;
- (g) Determine that the institution is ineligible for invitational and postseason meets and tournaments in the sports and in the seasons in which such ineligible student-athlete participated;
- (h) Require that the institution shall remit to the NCAA the institution's share of television receipts (other than the portion thereof shared with other conference members) for appearing on any live television series or program if such ineligible student-athlete participates in the contest(s) selected for such telecast, or if the Council concludes that the institution would not have been selected for such telecast but for the participation of such ineligible student-athlete during the season of the telecast; any such funds thus remitted shall be devoted to the NCAA postgraduate scholarship program, and
- (i) Require that the institution that has been represented in an NCAA championship by such a student-athlete shall return 90 percent of its share of the net receipts from such competition in excess of the regular expense reimbursement, or if said funds have not been distributed, require that they be withheld by the executive director.

## Preliminary Review of Information/32.2.2.1 — Investigative Procedures/32.3.3

violation should be handled by correspondence with the involved institution or its conference, or whether the enforcement staff should conduct its own in-person inquiries.

**32.2.2.1.1 Basic Information Gathering.** The enforcement staff has a responsibility to engage in basic information gathering and, in doing so, may contact individuals to solicit information concerning possible violations.

**32.2.2.1.2 Matters Handled by Correspondence.** Matters that clearly are isolated and of relative insignificance should be handled promptly by correspondence with the involved institution.

**32.2.2.1.3 Investigation Decision.** When reasonably reliable information has been obtained indicating that a violation has occurred and that the violation appears to indicate intentional wrongdoing, a significant competitive advantage, or that false or misleading information has been reported to the involved institution or to the NCAA, the matter should be assigned to an enforcement representative for investigation.

**32.2.2.1.4 Timely Process.** The enforcement staff shall make reasonable efforts to process infractions matters in a timely manner.

**32.2.2.1.5 Consultation With Committee.** If questions arise concerning investigative procedures during the course of an investigation, the chair (or the full committee, if necessary) may be consulted by the enforcement staff.

**32.2.2.2 Identification of Major/Secondary Violation.** Upon review of information developed by the enforcement staff or self-reported by the member institution, the assistant executive director for enforcement shall identify the charges as involving alleged major or secondary violations (as defined in 19.02.2), subject to approval by the chair or another member of the Committee on Infractions designated by the chair.

**32.2.2.3 Preliminary Inquiry.** The enforcement staff, so far as practicable, shall make a thorough investigation of all charges that are received from responsible sources and that are reasonably substantial. The enforcement staff may conduct a preliminary inquiry for a reasonable period of time to determine whether there is adequate evidence to warrant an official inquiry; and in conducting this inquiry, the services of an enforcement representative may be used.

**32.2.2.4 Notice to Institution.** The enforcement staff shall submit letters to notify member institutions of preliminary inquiries into their athletics policies and practices when information has been developed to indicate that violations of the Association's governing legislation may have occurred that will require further in-person investigation. Such a letter shall advise the institution that the preliminary inquiry will entail the use of an enforcement representative. The letter shall state that in the event the allegations appear to be of a substantial nature, an official inquiry may be filed in accordance with the provisions of 32.5 or, in the alternative, the institution will be notified that the matter has been closed.

**32.2.2.4.1 Status Notification Within Six Months.** During the period of the preliminary inquiry, the enforcement staff shall inform the involved institution of the general status of the inquiry not later than six months after the initial notice.

**32.2.2.4.2 Review After One Year.** If the inquiry has not been processed to conclusion within one year of the date of the initial notice, the enforcement staff shall review the status of the case with the Committee on Infractions. The committee shall determine whether further investigation is warranted, and its decision shall be forwarded to the involved institution in writing. If the investigation is continued, additional status reports shall be provided to the institution in writing at least every six months thereafter, until the matter is concluded.

## 32.3 INVESTIGATIVE PROCEDURES

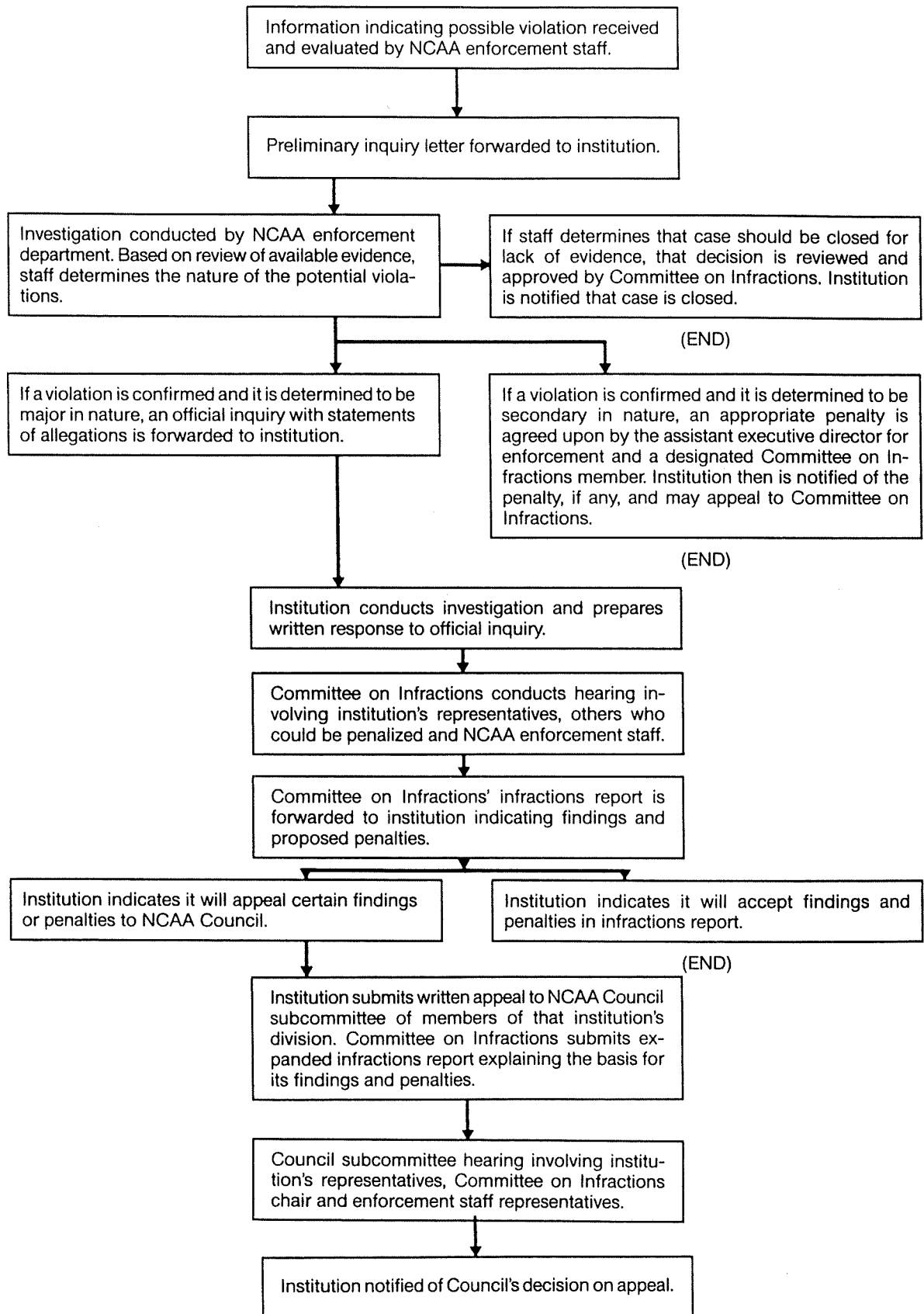
**32.3.1 Conformance With Procedures.** Investigations by the enforcement staff shall be conducted in accordance with the operating policies, procedures and investigative guidelines established by the Committee on Infractions, Council and membership in accordance with Bylaw 19.

**32.3.2 Coordination With Member Conference.** The enforcement staff shall attempt to coordinate the processing of infractions cases with the involved member conference unless it would hinder the development of the NCAA investigation to do so.

**32.3.3 Interviews With Member Institution.** The athletics director or other appropriate official of an institution shall be contacted by the enforcement staff in order to schedule interviews on the institution's campus with enrolled student-athletes or with coaching staff



**FIGURE 32-1**  
**Processing of a Typical NCAA Infractions Case**



members who are involved in possible violations at the institution.

**32.3.3.1 Presence of Institutional Representative During Interview.** If an interview with an enrolled student-athlete or athletics department staff member is conducted on the campus of a member institution, an institutional representative (as designated by the institution) will be permitted to be present during the interview, provided the subject matter to be discussed in the interview relates directly to the individual's institution or could affect the individual's eligibility or employment at the institution. If the investigator wishes to discuss information with a student-athlete that is related solely to institutions other than the one in which the student-athlete is enrolled and that would not affect the student's eligibility, the institutional representative shall not be present during that portion of the interview; further, in such a situation (after the institutional representative has departed), any information inadvertently reported by the student-athlete that is related to his or her own institution shall not be utilized against the student-athlete or that institution.

**32.3.3.2 Conflict With Academic Schedule.** If possible, such interviews should be conducted without disrupting the normally scheduled academic activities of the student-athlete.

**32.3.4 Proper Identification of NCAA Staff Member.** In no case shall an enforcement staff member misrepresent the staff member's identity or title.

**32.3.5 Representation by Legal Counsel.** When an enforcement staff member conducts an interview that may develop information detrimental to the interests of the individual being questioned, that individual may be represented by personal legal counsel throughout the interview.

**32.3.6 Disclosure of Purpose of Interview.** When an enforcement representative requests information that could be detrimental to the interests of the student-athlete or institutional employee being interviewed, that individual shall be advised that the purpose of the interview is to determine whether the individual has been involved directly or indirectly in any violation of NCAA legislation. Prior to alleging that a student-athlete or staff member has violated NCAA ethical-conduct legislation, the individual shall be advised that such an allegation may be forthcoming based upon the individual's:

- (a) Involvement in violations;
- (b) Refusal to furnish information relevant to investigation of a possible violation when requested by the NCAA or by the institution, or
- (c) Provision of false or misleading information to the NCAA, conference or institution concerning the individual's knowledge of or involvement in a violation.

**32.3.7 Limited Immunity.** At the request of the enforcement staff, the committee may grant limited immunity to a student-athlete who provides information when such individual otherwise might be declared ineligible for intercollegiate competition based on the information that he or she reports. Such immunity shall not apply to the individual's involvement in violations of NCAA regulations not reported or to future involvement in violations of NCAA legislation by the individual. In any case, such immunity shall not be granted unless the individual voluntarily provides information not otherwise available to the enforcement staff when no previous information has been developed to jeopardize the individual's eligibility under NCAA rules.

**32.3.8 Recording of Interview Proceedings.** It shall not be permissible for any individuals involved in interviews conducted by the enforcement staff to record such interviews through the use of a court reporter or other individuals or the use of any mechanical device. However, it shall be permissible for all individuals involved in such interviews to take handwritten notes of the proceedings. At the request of the enforcement staff, the committee may grant permission to record an interview when information will not be provided unless it is recorded and the information is not otherwise available to the enforcement staff.

**32.3.9 Verification of and Access to Reports.** Whenever possible, individuals who have reported to the enforcement staff information that will be used in an infractions case should be given the opportunity to review the information set forth in the investigator's report of the interview and be provided the opportunity to make additions or corrections. Copies of these reports are confidential and shall not be provided to individuals (or their institutions) who may be involved in reporting information during the processing of an infractions case. The reports and all other pertinent information shall be retained on file in the NCAA national office. Such information that will be used in the presentation of the case may be reviewed in the national office in accordance with 32.5.10.

**32.3.10 Corroboration or Refutation of Information.** The enforcement staff shall attempt to develop any information that would corroborate or refute alleged violations of NCAA

legislation reported in previous interviews.

**32.3.11 Failure to Cooperate.** In the event that a representative of a member institution refuses to submit relevant information to the committee or the enforcement staff upon request, an official inquiry may be filed with the institution alleging a violation of the cooperative principles of the NCAA bylaws and enforcement procedures. Institutional representatives may be requested to appear before the committee at the time the allegation is considered.

**32.3.12 Termination of Investigation.** The enforcement staff shall terminate the investigation related to any preliminary inquiry in which information is developed that does not appear to be of sufficient substance or reliability to warrant an official inquiry, it being understood that the committee shall review each such decision.

**32.3.13 Authorization of Meeting With Chief Executive Officer.** The committee may authorize an enforcement staff member to meet personally with the chief executive officer or a designated representative of the involved institution to discuss the allegations investigated and information developed by the NCAA in a case that has been terminated.

## 32.4 PROCESSING INFORMATION

**32.4.1 Self-Disclosure.** Self-disclosure shall be considered in establishing penalties, and, if an institution uncovers a violation prior to its being reported to the NCAA and/or its conference, such disclosure shall be considered as a mitigating factor in determining the penalty.

**32.4.2 Review of Institutional or Conference Actions or Penalties.** If the Committee on Infractions or the assistant executive director for enforcement, after review of institutional or conference action taken in connection with a rules infraction, concludes that the corrective or punitive action taken by the institution or conference is representative of and consistent with NCAA policies and principles, the committee or the assistant executive director for enforcement, subject to approval by the chair or another member of the Committee on Infractions designated by the chair, may exercise the discretion to take no further action.

**32.4.2.1 Sufficient Actions.** Institutional or conference actions that are accepted by the NCAA as sufficient in secondary cases will be announced in The NCAA News in summary fashion only. If the NCAA adopts (rather than accepts) a penalty and reserves jurisdiction to ensure that the actions are implemented fully, such adopted penalties will be publicly announced.

**32.4.2.2 Insufficient Actions.** If the institutional or conference actions appear to be insufficient, the enforcement staff shall notify the institution of the proposed additional penalties in a secondary case (after review with a committee member) or shall file an official inquiry or schedule a hearing regarding possible additional penalties in a major case.

**32.4.3 Action Taken by Assistant Executive Director (Not Institution or Conference).** If the assistant executive director for enforcement, after consideration of the information that has been developed and after consulting with the member institution involved, determines that a secondary violation has occurred, the assistant executive director for enforcement, upon approval by the chair or another member of the Committee on Infractions designated by the chair, may determine that no penalty is warranted or, if appropriate, require one or more of the alternatives set forth in 19.4.1.

**32.4.3.1 Report to Committee.** Any action taken by the assistant executive director for enforcement, upon approval by the chair or another member of the Committee on Infractions designated by the chair, either not to impose a penalty when a violation has occurred or to take disciplinary action that is not appealed by the institution, will be reported to the Committee on Infractions.

**32.4.3.2 Publication in The NCAA News.** Such disciplinary or corrective actions taken by the assistant executive director for enforcement or by the Committee on Infractions in cases involving secondary violations shall be published in The NCAA News.

**32.4.4 Action Taken by the Committee on Infractions.** If the Committee on Infractions, after consideration of the information that has been developed and after consultation with the enforcement staff, determines that there has been a violation not of a serious nature, it may privately reprimand and censure without a hearing. (Note: This paragraph applies only to pre-September 1, 1985, violations and is deleted after September 1, 1989, in light of the four-year statute of limitations.)

## **32.5 OFFICIAL INQUIRY**

**32.5.1 Letter to Chief Executive Officer.** If the enforcement staff determines that an allegation or complaint warrants an official inquiry, the staff shall determine its scope and thrust and direct a letter to the chief executive officer of the member involved (with copies to the faculty athletics representative and the athletics director of the member and to the executive officer of the conference of which the institution is a member), fully informing the chief executive of the matter under inquiry and requesting cooperation to the end that the facts may be discovered.

**32.5.1.1 Request for Disclosure/Appearance.** By this letter, the chief executive officer of the member involved shall be requested to disclose all relevant information, and the letter may require the appearance of the chief executive or a designated representative before the committee at a time and place that are mutually convenient, if such appearance is deemed necessary. If a member declines to meet with the committee after having been requested to do so, the member shall not have the right to appeal either the committee's findings of facts and violations or the resultant penalty.

**32.5.1.2 Identification of Allegations.** An official inquiry shall include a statement of the NCAA regulations alleged to have been violated, as well as the details of each allegation that in the judgment of the enforcement staff can be supported by sufficient information to reasonably expect that the Committee on Infractions will find the violation to have occurred.

**32.5.1.3 Identification of Individuals/Regulations.** The enforcement staff shall provide to the institution the identity of all individuals upon whom the staff intends to rely in presenting the case. Additional individuals or additional regulations that are identified subsequent to the submission of an official inquiry also shall be reported to the institution promptly and, in all cases, prior to the institution's appearance before the committee in accordance with 32.5.10.

**32.5.2 Statute of Limitations.** Allegations included in a letter of official inquiry shall be limited to possible violations occurring not earlier than four years before the date the notice of preliminary inquiry is forwarded to the institution. However, the following shall not be subject to the four-year limitation:

- (a) Allegations involving violations affecting the eligibility of a current student-athlete;
- (b) Allegations in a case in which information is developed to indicate a pattern of willful violations on the part of the institution or individual involved, which began before but continued into the four-year period, and
- (c) Allegations that indicate a blatant disregard for the Association's fundamental recruiting, extra-benefit, academic or ethical-conduct regulations or that involve an effort to conceal the occurrence of the violation. In such cases, the enforcement staff shall have a one-year period after the date information concerning the matter becomes available to the NCAA to investigate and submit to the institution an official inquiry concerning the matter.

**32.5.3 Availability of Primary Investigator.** Subsequent to the filing of an official inquiry in an infractions case, the primary investigator in the case shall be available to assist the involved institution for purposes such as meeting with the institution to discuss the development of its response and assisting in locating various principals in the case.

**32.5.4 Determination of Meeting Date.** At the time an official inquiry is filed, the enforcement staff shall suggest a date and time for the involved institution's representatives to meet with the committee.

**32.5.4.1 Institutional Objection.** If an objection to this suggestion is expressed by the institution, the chair (or the full committee, when necessary) shall be contacted to resolve the matter.

**32.5.4.2 Committee's Authority.** Although every effort will be made to schedule a meeting at a mutually convenient time and place, the committee reserves the right to determine the actual date and site.

**32.5.5 Contents of Official Inquiry Cover Letter.** The cover letter accompanying each official inquiry shall contain notification that the institution is requested to:

- (a) Read each allegation involving a present or former institutional staff member, or a prospective, present or former student-athlete whose eligibility could be affected based on involvement in the alleged violation, to the identified individual;
- (b) Provide that individual the opportunity to submit in writing and orally any information the individual desires that is relevant to the allegation in question, and

- (c) Notify the individual in person, as well as in writing, that the individual and personal legal counsel (if any) may appear before the committee at the time it considers each allegation in which the individual is involved.

**32.5.6 Notification of Others in Potential Jeopardy.** The enforcement staff shall notify athletics department staff members and student-athletes at institutions other than the one under inquiry, whose employment or eligibility could be affected, of the allegations in which they are named. A copy of such notification shall be forwarded to the chief executive officer of the institution that employs the staff member or in which the student is enrolled. All such individuals may submit responses to the Committee on Infractions, and the institution under inquiry shall provide a copy of pertinent portions of its response to each individual who will attend the committee's hearing in the case.

**32.5.7 Notice of Hearing Procedures.** The cover letter accompanying each official inquiry shall contain a specific reference to 32.6 (which describes the general procedures to be followed during a hearing), as well as notice in extensive cases that the primary NCAA investigator in the case is available to assist the institution in its investigation of the allegations in the official inquiry.

**32.5.8 Obligation to Provide Full Information.** A member that is subject to official inquiry shall collect all information available to it concerning the allegations set forth in the inquiry. At any appearance before the committee, the member and the enforcement staff shall have the obligation of providing full information concerning each allegation (i.e., information that would corroborate or refute each allegation).

**32.5.9 Deadline for Institutional Response.** The institution's response to the official inquiry shall be on file with members of the committee and the enforcement department at least two weeks prior to the institution's appearance before the committee, unless the committee grants an extension. An institution may not submit additional documentary evidence (in addition to its initial response) at that meeting without prior authorization from the committee.)

**32.5.10 NCAA Summary Case Statement.** Subsequent to an institution's submission of its written response to an official inquiry, in a case involving an alleged major violation:

- (a) The enforcement staff shall prepare a summary statement of the case that indicates the status of each allegation and identifies the individuals upon whom and the information upon which the staff will rely in presenting the case. This summary shall be provided to the members of the Committee on Infractions and to representatives of the institution and involved individuals prior to the hearing; *(Revised: 10/18/89)*
- (b) Representatives of the involved individuals and institution may review in the NCAA national office those memorandums and documents upon which the enforcement staff will rely in presenting the case to the committee, and
- (c) The enforcement staff may meet with institutional representatives in order to clarify the issues to be discussed in the case during the hearing, make suggestions regarding additional investigation or interviews that should be conducted by the institution to supplement its response and identify allegations that the staff intends to withdraw.

## 32.6 COMMITTEE ON INFRACTIONS HEARINGS

**32.6.1 Limitations on Presentation of Staff Evidence.** In major cases requiring an institutional hearing before the committee, specific information and evidence developed by the staff related to alleged violations of NCAA regulations shall not be presented to the committee prior to the institution's appearance, except as provided in these procedures.

**32.6.2 Opportunity to Appear Before the Committee.** A member that is subject to official inquiry shall be given, upon its request, the opportunity to have representatives appear before the committee. Also, an institution may request the opportunity to appear before the committee to appeal findings and penalties that have been proposed by the enforcement staff in secondary cases.

**32.6.2.1 Review Based on Written Record.** When the enforcement staff does not request that an institution be represented in person before the committee, the institution may choose to have the matter in question reviewed on the basis of the written record before the committee.

**32.6.3 Notification of Hearing Procedures.** An institution shall be advised in writing prior to its appearance before the committee of the general procedures to be followed during the hearing. Such notification shall contain a specific reference to 32.6 and shall indicate that, as a general rule, the discussion during the hearing will follow the numbering of the allegations in the official inquiry.

**32.6.4 Appearance of Individuals at Hearings**

**32.6.4.1 Request for Specific Individuals.** Institutional officials, staff members or enrolled student-athletes who are specifically requested to appear before the committee at an institutional hearing are expected to appear in person and may be accompanied by personal legal counsel. The committee also may request that former institutional staff members appear at a hearing. Such individuals also are expected to appear in person and may be accompanied by personal legal counsel.

**32.6.4.2 Attendance at Hearings.** At the time the institution appears before the committee, its representatives may include officials of the institution, the institution's legal counsel, the individuals identified in 32.5.5 and 32.5.6, and other enrolled student-athletes whose eligibility could be affected by information developed by the institution in conjunction with preparation of its response to an official inquiry. In any major case, such representatives should include the institution's chief executive officer or a designated representative outside the athletics department, as well as the head coach of the sport in question. An individual who appears before the committee may appear with personal legal counsel, and no additional individuals may be included among the institution's representatives during an institutional hearing unless specifically requested to be present by the committee. In accordance with 32.6.4.1, the committee may request that other individuals be present during the hearing.

**32.6.4.3 Exclusion of Individuals From Hearing**

**32.6.4.3.1 Exclusions Requested by the Institution.** The institution may request that an individual be excluded from certain portions of the hearing, subject to approval by the committee. When an individual is excluded from the hearing room for a period of time, it shall be with the understanding that matters discussed in the hearing during that time will not relate to that individual.

**32.6.4.3.2 Limited Attendance of Student-Athletes.** Any student-athlete (and personal legal counsel) included among the institution's representatives may attend the hearing only during the discussion of the allegations in which the student-athlete is involved.

**32.6.4.4 Representation of Member Conference.** The executive officer or other representative of a member conference's executive office may attend an institutional hearing involving a conference member, subject to approval of the involved institution.

**32.6.4.5 Prohibited Attendee.** A member of the committee or the Council who is prohibited under the provisions of 32.1.3 from participating in any NCAA proceedings may not attend a Committee on Infractions hearing involving the member's institution unless specifically requested by the committee to be present as a witness.

**32.6.4.6 Designation of Presentation Coordinators.** The chair shall request each institution appearing before the committee to select one person to coordinate institutional responses during the hearing. In addition, one individual from the enforcement department will be responsible for coordinating the presentation of the enforcement staff.

**32.6.5 Hearing Procedures.** The exact procedure to be followed in the conduct of the hearing will be determined by the committee.

**32.6.5.1 Case Summary.** The summary case statement required by 32.5.10-(a) shall be distributed to individuals in attendance as an aid in following the discussion of each allegation during the hearing. Individuals who attend only a portion of the hearing will receive only those parts of the case summary that are relevant to their participation in the hearing. (Revised: 10/18/89)

**32.6.5.2 Opening and Closing Statements.** At the outset of the hearing, a representative of the institution shall make an opening statement, followed by an opening statement by a representative of the enforcement staff. The contents of such a statement should not relate to the substance of the specific items contained in the official inquiry. Statements concerning the nature or theory of the case are encouraged. An institutional representative also may make a closing statement at the conclusion of the hearing, followed by a closing statement by a representative of the enforcement staff.

**32.6.5.3 Staff Presentation.** During the hearing, the enforcement staff first shall present the information that its investigation has developed.

**32.6.5.4 Institutional Presentation.** The member institution then will present its explanation of the alleged violations and questionable practices and any other arguments or information that it deems appropriate in the committee's consideration of the case.

**32.6.5.5 Type of Information.** Any oral or documentary information may be received, but the committee may exclude information that it determines to be irrelevant, immaterial

or unduly repetitious.

**32.6.5.5.1 Information From Confidential Sources.** In presenting information and evidence for consideration by the committee during an institutional hearing, the enforcement staff shall present only information that can be attributed to individuals who are willing to be identified. Information obtained from individuals not wishing to be identified shall not be relied upon by the committee in making findings of violations. Such confidential sources shall not be identified to either the Committee on Infractions or the institution.

**32.6.5.5.2 Information Concerning Mitigating Factors.** Institutional, conference and enforcement staff representatives are encouraged to present all relevant information concerning mitigating or other factors that should be considered in arriving at appropriate penalties.

**32.6.5.6 Scope of Inquiry.** If a member institution appears before the committee to discuss its response to the official inquiry, the hearing shall be directed toward the general scope of the official inquiry but shall not preclude the committee from finding any violation resulting from information developed or discussed during the hearing.

**32.6.5.7 Committee Questioning.** The committee, at the discretion of any of its members, shall question representatives of the member institution or the enforcement staff, as well as any other persons appearing before it, in order to determine the facts of the case. Further, under the direction of the committee, questions and information may be exchanged between and among all parties participating in the hearing.

**32.6.5.8 Recording of Proceedings.** The proceedings of institutional hearings shall be tape-recorded by the committee. No additional verbatim recording of these proceedings will be permitted by the committee. An institution shall not be provided the committee's recording or a copy of the transcript of the hearing. However, subject to approval of the committee, members of the enforcement staff and authorized representatives of the institution may be permitted to review the tape recording, it being understood that a verbatim transcript of the recording shall not be taken during such a review. Individuals who were eligible to attend a hearing per 32.6.4.1 and who were involved in findings of violations may be authorized by the committee to review that portion of the tape recording involving them, it being understood that a verbatim transcript of the recording shall not be taken during such a review.

**32.6.6 Posthearing Committee Deliberations.** After all presentations have been made and the hearing has been concluded, the committee shall excuse all others from the hearing and the committee shall make its determinations of fact and violation in private.

**32.6.6.1 Request for New Information.** In arriving at its determinations, the committee may request additional information from any appropriate source, including the member institution or the enforcement staff. In the event that new information is requested from either the institution or the enforcement staff to assist the committee in arriving at findings of violations, both parties will be afforded an opportunity to be represented at the time such information is provided to the committee.

**32.6.6.2 Basis of Findings.** The committee shall base its findings on information presented to it that it determines to be credible, persuasive and of a kind on which reasonably prudent persons rely in the conduct of serious affairs.

**32.6.6.3 Imposition of Penalty.** If the committee determines that there has been a violation or questionable practice, it shall impose an appropriate penalty (see 19.4); or it may recommend to the Council suspension or termination of membership in an appropriate case.

**32.6.6.4 Voting Requirements.** The finding of a violation or questionable practice shall be by majority vote of the members of the committee present and voting. The imposition of a penalty or recommended action shall require the favorable vote of at least four members of the committee when all six members are present and participating in the hearing and shall require the favorable vote of at least three members of the committee when fewer than six members of the committee are present and participating in the hearing.

## **32.7 NOTIFICATION OF COMMITTEE ACTION**

**32.7.1 Infractions Report.** The committee, without prior public announcement, shall be obligated to submit promptly an infractions report, which sets forth its findings and penalty to be imposed, to the chief executive officer of the member institution (with copies to those individuals receiving copies of the official inquiry) that has been subject to the official inquiry. The following procedures shall apply to the infractions report:

## Notification of Committee Action/32.7.1—Appeal Procedure/32.8.5

- (a) Subsequent to an institutional hearing, the enforcement staff shall place in writing, under the direction of the chair, the findings of violations and penalties determined by the committee. The staff may be authorized to draft the committee's report required by the enforcement procedures. The infractions report to an institution shall be subject to the approval of the chair (and, if necessary, the full committee). An expanded infractions report (per 32.8.5) upon appeal shall report the committee's actions and the reasons therefor and shall be subject to the committee's approval;
- (b) The infractions report(s) of the Committee on Infractions and Council shall contain a consolidated statement of all penalties, corrective actions, requirements, and other conditions and obligations of membership imposed upon a member institution found in violation of NCAA legislation. The statement of such actions shall include, but not be limited to, the penalties imposed upon the institution, eligibility rules to be applied, applicable executive regulations, the adjustment of individual and team standings in NCAA championship events, and the request for the return of any awards and net receipts received for participation in an NCAA championship; and
- (c) The committee's infractions report shall be forwarded to the involved institution under the chair's signature or under the signature of a committee member selected to act for the chair. The report shall be sent by overnight mail service, and the enforcement staff shall confirm receipt by the institution in order that the 15-day appeal period applicable to this report may be established.

**32.7.2 Release to Media.** Once the infractions report has been received by the institution, the report, with names of individuals deleted, shall be made available to the national wire services and other media outlets.

**32.7.2.1 Public Comment Prior to Release.** The committee's public announcement related to an infractions case shall be made available to the national wire services and other media outlets. In this regard, the involved institution shall be advised of the text of the announcement prior to its release and shall be requested not to comment publicly concerning the case prior to the time the NCAA's public announcement is released.

## 32.8 APPEAL PROCEDURE

**32.8.1 Written Notice of Appeal.** To be considered by the appropriate division steering committee of the Council, the member institution's written notice of appeal of the committee's findings (subject to the conditions of 32.8.2) or the penalty, or both, shall be received by the NCAA executive director not later than 15 calendar days from the date the member institution received the committee's report. The member's notice of appeal shall contain a statement of the date the committee's report was received by the chief executive officer and a statement indicating whether the institution desires to submit its appeal in writing only or whether the institution will be represented before the appropriate division steering committee of the Council at the time the appeal is considered.

**32.8.2 Bases for Granting an Appeal.** Determinations of fact and violations arrived at by the Committee on Infractions shall not be set aside on appeal, except upon a showing that:

- (a) The committee's finding clearly is contrary to the evidence presented to the committee,
- (b) The facts found by the committee do not constitute a violation of the Association's rules or
- (c) A procedural error affected the reliability of the information that was utilized to support the committee's finding.

**32.8.3 Appeal by an Individual Staff Member.** Any current or former institutional staff member who is involved in a finding of a violation of ethical conduct or in other findings by the committee resulting in proposed disciplinary action against that individual and who exercises the opportunity to appeal any of the findings in question (subject to the conditions of 32.8.2) must submit a written notice of appeal through the member institution to the NCAA executive director not later than 15 calendar days from the date the member institution received the committee's report. The individual and personal legal counsel may appear before the respective division steering committee of the Council at the time it considers the pertinent findings. The institution shall be requested to notify its current staff members, and the enforcement staff will notify all other individuals directly, of the appeal opportunity.

**32.8.4 Report to Council.** The committee shall forward a report of the case to the Council at the time of public announcement.

**32.8.5 Expanded Infractions Report on Occasion of an Appeal.** The committee shall be obligated to submit an expanded infractions report to the Council on each case that has been appealed, and it shall include:



- (a) Violations of NCAA requirements or questionable practices in light of NCAA requirements, as determined by the committee;
- (b) A statement of the committee's proposed penalties;
- (c) A statement of the origin of the case;
- (d) Related factors appropriate for consideration in judgment of the case, and
- (e) Disciplinary or corrective actions taken by the institution or conference or any other agency involved in the particular incident.

**32.8.6 Expanded Infractions Report to Institution and Media.** A copy of the committee's expanded infractions report to the Council (as described in 32.8.5) shall be provided to the institution prior to the time of its appearance before the Council. Once the Council decision regarding the appeal is announced, the report, with names of individuals deleted, shall be made available to the national wire services and other media outlets. Any press release regarding the expanded report shall meet the requirements of 32.7.2. (Revised: 10/18/89)

## 32.9 APPEAL HEARINGS

**32.9.1 Hearing Procedures.** In its appeal to the appropriate division steering committee of the Council, the member institution may challenge the committee's findings of fact or penalties, or both, according to the following hearing procedures:

- (a) If the institution elects to be represented in person before the appropriate division steering committee, the institution shall be permitted a reasonable time to make its oral presentation to supplement the institution's written appeal. The chair or another member of the committee then shall be permitted a reasonable time to present orally the committee's report. The period of time for the presentation by the institution and the committee shall be left to the discretion of the chair of the appeal board;
- (b) If the member institution elects to appeal in writing only, the committee's written report shall be considered without an appearance by a committee representative, and
- (c) The appropriate division steering committee then shall act upon the member's appeal, by majority vote of the members of the appeal board present and voting, and may accept the committee's findings and penalty, alter either one or both, or make its own findings and impose a penalty that it believes appropriate.

**32.9.2 Consideration by Council.** The appropriate division steering committee of the Council shall consider the statements and evidence presented and, at the discretion of any of its members, may question representatives of the member institution or the Committee on Infractions, as well as any other persons appearing before it, in order to determine the facts related to the appeal. Further, under the direction of such steering committee, questions and information may be exchanged between and among all parties participating in the hearing.

**32.9.3 Council Determination of Hearing Procedures.** The procedure to be followed in the conduct of the hearing will be determined by the Council; however, the operating policies and procedures governing the determination of the individuals who may participate in the hearing, as well as the policies and procedures defining the Council's standards for consideration of information and determination of findings and penalties, shall be consistent with the established policies and procedures related to these matters that apply to hearings conducted by the Committee on Infractions.

**32.9.4 Decision Final.** Any division steering committee decision in an infractions case shall be considered final upon adjournment of the Council meeting during which the appeal was acted upon, except for the January pre-Convention Council meeting, in which case the decision shall be considered final at the end of the Council session prior to the opening business session of the Convention.

**32.9.5 No Further Review.** Determinations of fact and violations arrived at in the foregoing manner by the committee, or by a division steering committee of the Council on appeal, shall be final, binding and conclusive and shall not be subject to further review by the Council or any other authority.

# The NCAA News



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## Schultz urges delegates to continue reform efforts

By Jack L. Copeland  
Assistant Editor  
The NCAA News

As delegates to the 85th annual Convention prepared to consider several proposals intended to help usher in a "new model for intercollegiate athletics," NCAA Executive Director Richard D. Schultz used his annual "State of the Association" address at the Nashville gathering to urge the writing of a "second chapter" of reform.

Schultz, speaking during the Convention's opening session January 7, said he was pleased that many of the reform issues he raised a year ago are being considered as legislation this year.

But even as those proposals awaited action in Nashville, Schultz asked the delegates who were registered at the Convention as of the end of the day January 7 to look ahead to next year. He proposed further reform of the Association's legislative process, leading eventually to rules deregulation; a review of the enforcement process, and greater institutional financial control of athletics programs.

"During the past year, much has been said and written about reform in intercollegiate athletics," Schultz said. "We are addressing a serious agenda of reform proposals at this Convention, but reform is more than these issues; it is multifaceted and complex.

"In addition to what we will be considering this week, it includes the legislative process, the interpretation and administration of rules, the role of the 'corporate' NCAA, the resolution of a deepening conflict between the Association and some of its members over the application of the current rules in the enforcement and infractions process, proper financing of athletics departments, and a need to convincingly emphasize who's in charge, and that our

No. 1 priority is the integrity of our programs, and the health, welfare, safety and education of the student-athlete."

### Legislative reform

Calling the new legislative calendar a first step toward reform of the legislative process, Schultz urged the Association to "consider voting on policy and intent first at our annual Conventions, then delegate the writing of the rules details to others, with input from the affected segments of the membership." In the process described by Schultz, the group that writes the rule then would bring it back to the next

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*Executive director says current legislation is the beginning of what should be an extended period of reform in athletics*

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Convention for final approval.

Schultz also asked the Association to become serious about rules deregulation.

"We have talked a lot about this in the past, but we really have not been serious or taken the proper steps to bring this about," he said. To begin the process, Schultz hopes to convene a gathering of coaches representing all Division I sports this spring in Kansas City "to see if we can get agreement from coaches to reduce and simplify the recruiting rules."

At that meeting, the coaches will be asked to help eliminate "discriminatory and unneeded rules" and recommend to the Council a "concise set of rules that are easy to understand and can easily be fol-

lowed," but also to agree to automatic penalties for violations of those simplified rules. "If we can simplify the recruiting rules, we should be able to use the same method to simplify the rest of our rule book," Schultz said.

Schultz also asked for legislation designed to give the Council and the national office staff more flexibility in dealing with "valid exceptions" to rules.

### Enforcement review

Turning to enforcement and infractions issues, the executive director reported that he hopes to begin a review of the enforcement process this year, although he emphasized that effort does not signal any special concerns he has about the process. "The purposes of the review are to make sure that we are doing things in the most effective way, that due process can be guaranteed and that penalties are consistent, and to determine if penalties should be tougher or more moderate, to reduce the time needed to complete the investigation and to project a more positive image regarding the enforcement process."

Schultz noted that the Council has agreed to appoint a special committee to review those questions and said he has suggested that its membership should include representatives of member institutions who have been involved in enforcement proceedings and individuals from outside the membership who can provide "special expertise."

The continuing reform movement also must address the financing of athletics programs, Schultz told the Convention.

"Athletics departments should be funded like any other university department or auxiliary enterprise," he said. Budgets should be developed and administered in athletics as they are in any other area of the university. "Only then can athletics

See Schultz, page 3

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# Schultz

*Continued from page 1*

hold its proper place in higher education," he said, prompting applause from the gathering.

## **Fine-tuning**

Although Schultz emphasized future reforms in his address, he urged delegates not to overlook the importance of this year's Convention in moving toward major change in college athletics.

Specifically addressing proposed limitations on playing and practice seasons but referring to the entire package of reform proposals, Schultz urged the Convention to adopt the measures and then "fine-tune" as needed, rather than delay or defeat them.

He also warned that the general public's perception of college athletics is not improving and that there is significant public support for Federal intervention in NCAA affairs.

"It is now time for all of us to refocus, and guarantee by our actions effective control of our intercollegiate programs," Schultz said.

"The proper place of intercollegiate athletics within higher education is the issue at this Convention, not what may or may not be desired by a particular sport, a particular institution, or by any specialized or elite group of individuals. The challenge is obvious. Are we going to control our own destiny or be controlled by others?"

## Schultz empowered to call enforcement-process study

The NCAA Council has authorized Executive Director Richard D. Schultz to launch a study of the NCAA enforcement process in 1991.

Acting in its pre-Convention meeting January 5-6 in Nashville, the Council approved Schultz's request for that authorization and directed the Administrative Committee to appoint such a special committee.

Schultz emphasized that the study represents an ongoing attempt to refine and improve all NCAA procedures and does not reflect unhappiness with the current procedures. He referred to the study in his "State of the Association" address January 7 in Nashville (see story on page 1).

The Council also committed itself to a review of the major legislative proposals in the "reform agenda" for the Nashville Convention.

"There will be a review of all legislation passed in the reform agenda, and there will be fine-tuning of that legislation as needed," Schultz said. It is likely that the review assignment will fall to one or more

Council subcommittees.

## **Other actions**

In other pre-Convention actions, the Council:

- Voted to support the concept of a one-day membership workshop to deal with implementation of the graduation-rate-disclosure requirements adopted at last year's Convention. The Administrative Committee, acting for the Executive Committee, will discuss necessary funding for such a workshop.

- Approved a recommendation by the Student-Athlete Advisory Committee that there be two special sections directed at student-athletes in 1991 issues of The NCAA News. The first such section developed by that committee appeared in the September 17, 1990, issue of the News.

Most of the Council's pre-Convention meeting was devoted to a review of legislation and interpretations for the 1991 Convention. An abridged version of the minutes of the Council's pre- and post-Convention meetings will appear in a February issue of the News.

## Court's ruling on due process belies

**Richard D. Schultz, executive director  
NCAA**

*USA Today*

"In some respects, I've always felt the (U.S.) Supreme Court decision, which basically made a simple statement that the NCAA didn't have to provide due process (in its rules infractions investigations), has hurt the NCAA more than it's helped it, because the perception is that there isn't any due process in the NCAA.

"In fact, there's a lot of due process, especially if you keep in mind this is a private association, that they're administrative hearings and not judicial hearings. And if you compare them to administrative hearings that take place for most private associations, I think you'll find the NCAA provides as much and, in most cases, more due process."

## NCAA's procedure

8-35/35

March 19, 1991

TO: Mr. Chairman and  
Members of the Judiciary Committee

FROM: Mr. William Quayle, Director of Athletics  
Emporia State University  
Mr. Tom Spicer, Director of Athletics  
Fort Hays State University  
Mr. William Samuels, Director of Athletics  
Pittsburg State University  
Mr. Richard Johannigmeier, Director of Athletics  
Washburn University of Topeka  
Mr. Tom Shupe, Director of Athletics  
Wichita State University

RE: Kansas Senate Bill No. 234 - NCAA Regulations

This is to advise that the athletics administration of Emporia State University, Fort Hays State University, Pittsburg State University, Washburn University, and Wichita State University are opposed to Senate Bill No. 234.

Emporia State University, Fort Hays State University, Pittsburg State University, Washburn University, and Wichita State University applied for membership in the National Collegiate Athletic Association well aware of our obligations of membership. As members of the Association, our institutions accept full responsibility for the conduct of the athletics programs and accept that the enforcement procedures of the Association shall be applied when an institution fails to fulfill this obligation.

Please note that as members of the Association, we have elected to place upon ourselves, legislation regarding the enforcement procedures, as well as all other NCAA legislation. Any member of the Association can propose legislation. Thus, if member institutions are not satisfied with the enforcement procedures, the appropriate changes can be enacted by the membership.

Senate Bill No. 234 is legislation that is not needed. This legislation would not be beneficial to the institutions in the state of Kansas. Senate Bill No. 234 would not enhance the principles in which we believe intercollegiate athletics programs should be conducted.

Therefore, Emporia State University, Fort Hays State University, Pittsburg State University, Washburn University, and Wichita State University oppose enactment of Senate Bill No. 234 or any related legislation.

*Senate Judiciary Committee*  
*Attachment 9*

3-19-91

9-11

March 19, 1991

Senate Judiciary Committee

Mr. Chairman, honorable committee members, friends of the Big Eight, and guests of this judiciary body. I am grateful for the opportunity to share some of my thoughts regarding this legislation. It is my wish that these words might assist in clarifying the open window of progress in the National Collegiate Athletic Association's (hereinafter called the "Association's") enforcement procedures.

As a representative of at least one of the Big Eight institutions since 1968, I have, in one capacity or another, been involved with the Association for almost a quarter of a century. During the last half of that period, I have begun to be more familiar with the process and administrative hearings linked to the enforcement department in the Association.

I worked at the University of Missouri for almost 12 (twelve) years. That was after my undergraduate days at Oklahoma. For the past 12 (twelve) years, I have handled the three E's for the Big Eight Conference. The three E's stand for Eligibility, Education, and Enforcement.

Auditing our eligibility forms (which are submitted to the Conference office by Big Eight schools) is a matter of checking the eligibility for athletically related financial assistance, practice, and competition. The educational phase (which includes campus, educational seminars for coaches and administrative staff and tests on recruiting) attempts to ensure that coaches are apprised of rules and regulations. This is a significant part of my responsibilities. Lastly, if the coaches are not apprised of rules, it is more likely that a violation will occur. Any report of violation triggers the enforcement phases of my job.

The Conference duly promulgates the Association's rules. It is within this context of understanding the membership's responsibility for institutional control and its commitment to compliance that I have come to realize the changes that are occurring within the Association.

*Senate Judiciary Committee*  
*Attachment 10*  
*3-19-91*

10-1/4

When my counterpart at many of the Association's member conferences and I get together, we share issues and aberrations we have experienced over the period of years while sitting in with representatives of our conference institutions during their NCAA administrative hearings. [These administrative hearings are held to permit our schools to respond to the O.I. (i.e., Official Inquiry) of the Association's enforcement program.]

My counterparts tell me that I should be well-versed with these procedures because I have had more opportunities than any of them to witness the interactions between the Association's Committee on Infractions and Big Eight schools.

As I have observed these hearings over the years, I have seen changes --- changes for the better. I would be remiss, however, if I did not say that these and other changes must continue to occur. The Association is currently under a radicalization phase of reform which has been stimulated by the NCAA Presidents Commission, the NCAA Council, and the executive director of the Association. The last convention was called the "Presidents' Reform of Intercollegiate Athletics."

Many of these non-incremental changes that in the past would have been considered totally beyond the pale now seem to be within the realm. What is happening in the NCAA's infrastructure would indeed have been beyond the pale just a few years ago. There are many windows of opportunity within the membership's grasp. The opportunity of sorely needed, federated legislation involving financial aid, which would permit needy student-athletes to get more financial assistance, is possible. A review of the institution's compliance program is perceived by member schools as the Association's assisting the membership in getting its program in tip-top shape. Our schools are encouraged to participate in this

"check-up." The women's and minorities' involvement in intercollegiate athletics at every level is getting stronger. The president of the NCAA is Judith Sweet, athletic director at California-San Diego. The membership and executive director have requested that the Association's enforcement program be studied from top to bottom by a committee comprised of internal and external experts and legal scholars.

Ladies and gentlemen, in short, I am saying it's coming. The Association, however, needs time to allow these reforms to take place. If reforms are done through external efforts, in my humble opinion the fragmentations would create, at best, laborious problems for the Association.

Let me be more specific toward 234. As I sit with our institutions during their Administrative Hearings, I see and hear the Committee on Infractions checking to see if, for example, the Iowa State's, Kansas State's, Oklahoma State's, the Colorado's, the Kansases, the Missouri's, Nebraska's, and Oklahoma's:

- 1) Have been formally advised and provided notice of any preliminary inquiry into their athletic policy and practices;
- 2) Have been told that representation by legal counsel at the hearing, or in any interview, is an entitlement of the student-athlete, the institution, and the staff member;
- 3) Chief executive officers are sent the Official Inquiries, with all details of the allegations;
- 4) Are told that only information from identified sources upon which the enforcement staff will rely, will be considered during the hearing (how many times have I seen the unidentified sources dismissed from the inquiry, not only by the committee, but by the enforcement staff, also);

- 5) In the case of several decisions resulting in adverse findings, the affected staff members and student-athletes of these institutions have been able to appeal the findings.

Please, I employ you to give us time. Please allow the Association's members, under this open atmosphere of change, to do what they know they should within the infrastructure of the organization. The membership constitutes the entity that knows how to change these matters. Please allow us to do this internally. I thank you for your time.