Approved _____
Date

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS.

The meeting was called to order by Representative Sebelius at
Chairperson

1:30 a.m./p.m. on Wednesday, February 19, 1992 in room 519-S of the Capitol.

All members were present except:
Representative Joan Hamilton - Excused
Representative Betty Jo Charlton - Excused
Representative James Cates - Excused
Representative Joan Wagnon - Excused

Committee staff present:
Lynne Holt, Kansas Legislative Research Department
Connie Craig, Secretary to the Committee

Conferees appearing before the committee:

PROPONENTS - SB 234

Senator Wint Winter, Second District, Lawrence, Kansas
Bob Timmons, Retired Head Track & Field Coach, University of Kansas
Clifford A. Wiley, Kansas City, Missouri
Michael Maddox, Student, University of Kansas
Jo Miller, Organization For Understanding & Reform, Illinois
Burton F. Brody, Professor of Law, University of Colorado

Chair Sebelius called the meeting to order, and explained that SB 234 would have two days of hearings. The proponents would be heard today, and opponents will be heard tomorrow.

Senator Wint Winter appeared before the Committee to urge the Committee to pass favorably SB 234, Attachment #1. He also submitted a draft of the bill and balloon amendments, Attachment #2.

Questions from the Committee:
- How does NCAA impose penalties without impacting the institution?
- Why wasn't this balloon amendment first considered in the Senate Committee?
- What will happen if the balloon goes to Conference Committee?
- Old Section 8 of the bill and new Section 4 is obviously aimed at the NCAA when it speaks of tax exempt status, but in the case of associations that are not located in Kansas, what is our jurisdiction over those out-of-state associations.
- Is this bill with its amendments good public policy?
- There is a threat the NCAA will move out of this state, what happens then?
- On page 3 of Attachment #2, how do you define a responsible university administrator?
- What if they violate rules unknowingly?
- Do you think the state can regulate NCAA all over the country?
- Why wouldn't you change line 36 and 37 of Section 3 to say any institution that is a member of the association?

Bob Timmons testified to the Committee, Attachment #3, in support of favorable passage of SB 234.

Clifford Wiley gave testimony, Attachment #4, urging the Committee to pass favorably SB 234.

Michael Maddox appeared before the Committee as a proponent of SB 234, and read his testimony in support of that legislation, Attachment #5.

Jo Miller, a proponent of SB 234, and urged the Committee to pass this legislation favorably, Attachment #6.

Burton Brody testified in favor of SB 234, Attachment #7.

Questions from Committee members to conferees:

- What is our jurisdiction or authority to impose regulations on what is a private organization?
- Other states have passed similar legislation, what is their rationale for doing this?
- Can a school principal be liable for an agent's actions?
- How far down the line does this liability go?
- How do you punish an institution without punishing innocent athletes?
- To Burton Brody, one Committee member asked on the last page 5, subsection B, Attachment #2 - if the University of Kansas is a member of NCAA, is its membership continuous in nature or is it renewed yearly? Does that yearly contract become a new contract each year?
- If the university or its athletic department is in a contract with NCAA, which is continuous in nature, how can we vary by legislation the terms of the contract when it is not renewed? This is a distinct constitutional question.
- If, in the event, that particular clause cannot become active, how then can we make this legislation apply to the University of Kansas and its relationship with the NCAA?
- Is it good public policy to allow those institutions to be a member of an organization such as the NCAA under these circumstances?
- Are you familiar with legislation in other states: Nevada, Nebraska, Illinois, Mississippi, California and Florida? Which of these states has the longest standing legislation on the books, or is this all within a year?
- Is their legislation similar to SB 234 or the balloon handed out today, Attachment #2. Mr. Brody stated that the Nevada and Illinois legislation is similar to SB 234.
- Have any of these states come head to head with the NCAA since their legislation has been on the books?

- Is the NCAA case against Nevada still in Federal District Court?
- To Clifford Wiley, one Committee member asked what is there in the present system, according to you as a student athlete, to convince you to report violators?

Chair Sebelius adjourned the meeting.

GUEST LIST

FEDERAL & STATE AFFAIRS COMMITTEE

DATE 2-19-92

(PLEASE PRINT) NAME	ADDRESS	WHO YOU REPRESENT
Bill Hatcher	12905 W. 118th Terr	Pro - Due Process
Kent McDonald	1124 Emery Rd, Lawrence	Pro - Due Process
Dan Seay	1502 E. 88th St, KCMO	Pro - Due Process
Mike Maddox	Sol Colorado #C-2	Pro - Due Process
Cheryl Dale	603 S. Mahomet Rd, Mahomet IL	Pro - Due Process (our Group)
Carole Miller	2960 Stationa, Champaign IL	Pro - Due Process (our group)
Kyja (via) E.A Miller	RR1 #37 Sullivan IL 61951	Pro - Due Process (our group)
Cathy E. H. Miller	RR#1 #37 Sullivan IL 61951	Pro - Due Process (our Group)
Jo Miller	R.R. #1 Sullivan Illinois, 61951	Pro - Due Process (our group)
Bob Timmons	Lawrence 2006 Kasold	Student Athletes
Jon Callen	7700 E 13th #23 Wichita, Ks	Student Athletes
Robin Lehman	Rm 120-S	Sen. Winter; Intern
Patrick Hurley	Topeka	NCAA
John Overstreet	1301 Connecticut - DC -	NCAA
Richard Hilliard	6201 College Blvd	NCAA
Scott Morgan	1618 Inverness Lawrence	NCAA
Pete McGill	Topeka	NCAA
Jim Reardon	Topeka	observer
Randall J. Forbes	Topeka	KSHSAA
Sarah Hull	K.C. MO	Fleishman-Hillard
Dave Schnase	1410 W. 24th St. Lawrence KS. 66046	observer student athletes
Chris Strobel	12505 W. 97th Terr. #301 Lenexa, Ks. 66215	observer

STATE OF KANSAS

WINT WINTER, JR.
SENATOR, SECOND DISTRICT
DOUGLAS COUNTY
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TOPEKA

SENATE CHAMBER

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

TESTIMONY OF SENATOR WINT WINTER, JR.
BEFORE THE SUBCOMMITTEE ON COMMERCE, CONSUMER PROTECTION AND COMPETITIVENESS
OF THE U.S. HOUSE OF REPRESENTATIVES

Madam Chair, members of the Subcommittee, thank you for the opportunity to present this testimony. My name is Wint Winter, Jr., I am a state senator and lawyer from Kansas. I appear today to urge you to conduct more extensive hearings and ultimately to enact legislation which will reform the governance of intercollegiate athletics and ensure integrity in our higher education system.

I. BACKGROUND

I have long been interested in reform in the National Collegiate Athletic Association (NCAA). In 1971, I attended the University of Kansas on a football scholarship. I have always remembered my first meeting of the KU football team as a freshman when the head coach - his eyes moist and voice cracking - announced that he had just been informed that the football program had been placed on "probation" by the NCAA and that our team was prohibited from competing on TV or in post-season bowl games. He explained that the people who were supposed to have been guilty (assistant coaches) were gone from the University but the remaining innocent coaches, my teammates and I had to suffer

House Federal & State Affairs
February 19, 1992
Attachment #1

the punishment. I had come to the University to be educated and to learn about the world but no one could explain to me then or now how that result was just or equitable.

Later in my college career, a gifted track athlete was prohibited from competing because he had accepted a federal Pell grant for which he was entirely eligible as a low-income student. It did not seem fair or equitable to me that the NCAA could prohibit a low-income student-athlete such as Cliff Wiley from receiving the assistance for which he was eligible simply because he had accepted an athletic scholarship. It was not fair that I had some money to cover living costs not paid for by an athletic scholarship because my parents could afford to help me out while the NCAA denied Cliff Wiley and my low-income football teammates similar aid.

My interest in this subject continued during my law school studies while, as an Editor of the University of Kansas Law Review, I researched and wrote an article which took the position that the NCAA denied student-athletes the basic rights guaranteed by the United States Constitution and further argued that the NCAA constituted "state action" and was thus subject to the due process requirements of the Constitution. (Fortunately, my constitutional law grade was not changed after the U.S. Supreme Court rejected the position I had taken on a 5-4 vote in the recent Tarkanian case!) While I was convinced at that time - both morally and legally - that the NCAA was unfair, inequitable and violative of fundamental constitutional rights, I did not propose legislative action to correct the problem. It was then

my belief and hope that the NCAA would recognize the need to change and that reform would come from within. (Unfortunately, I was wrong again).

My personal experience as a student-athlete, my law school study and my obligation to my constituents as a legislator establish what I believe is a genuine good faith basis for expression of concern regarding the NCAA and for the introduction in the Kansas State Senate of corrective legislation. Senate Bill 234, the "Athletic Association Procedures Act" requires that the NCAA and other similar organizations provide basic fundamental protections such as due process for student-athletes and others. Unfortunately, the NCAA's apparent attitude of indifference and arrogance on this subject was displayed when, shortly after this legislation was introduced, a representative of the NCAA suggested that those of us in state legislatures and Congress who express an interest in NCAA reform might be motivated more by some preserved need to seek publicity than by public service. This attitude expresses a continuing indifference and insensitivity on the part of the NCAA to the need for reform in intercollegiate athletics.

II. REFORM IN THE NCAA IS REQUIRED FOR PROTECTION OF THE STUDENT-ATHLETE AND PUBLIC

The authors of the United States Constitution understood the need to protect the individual rights of due process and equal protection which ensure government cannot violate the civil liberties of its citizens. These principles stand today as the most important pillars of our legal system.

But the Constitution only protects against government action, not the action of certain private, voluntary organizations. Even if the organization is closely tied to the state, a majority of its members are state institutions and those institutions generate the bulk of its revenue from taxpayer supported facilities, a private organization can ignore due process. The organization can investigate, prosecute, convict and penalize its members according to its own capricious measure.

The NCAA is just such a group. Individuals and institutions under review by the NCAA have limited access to evidence used against them, have no real means to appeal decisions and, most importantly, are subject to an incredible penalty system which punishes the innocent student-athlete, often lets free the guilty and flip-flops on high profile cases. Voluntary membership or not, the NCAA has too much power and controls the destiny of too many lives without affording its members and the public basic rights. With so much at stake, should the NCAA be allowed to enforce its rules without providing either alleged offenders due process or the "guilty" equal punishment?

I say no. Along with six other senators, I introduced SB 234 in the Kansas Senate to protect students, coaches and the public from this intrusive and unfair practice by the NCAA. Our bill would do nothing to interfere with the NCAA's charter to make and enforce rules for intercollegiate athletics; it would merely hold the NCAA to the same rules required by the U.S. Constitution.

The NCAA is disturbed with our bill and opposed it. After hearing compelling testimony from proponents, however, the

Kansas Senate passed the bill unanimously and it now awaits hearings in the Kansas House. The bill as written requires the NCAA to follow constitutional protections including due process in its relations with its members and others not only in Kansas but in all 50 states. We believe that the state of Kansas has the legal authority to require the NCAA to comply with constitutional rules in all states due to the fact that the NCAA is headquartered in the state of Kansas and because it requested and received an exemption from state tax as an "educational institution".

It is revealing to note that, at the same time the NCAA was arguing before the United States Supreme Court that it was not required to follow due process procedures because it is not an "educational institution", (or a "state actor" for other reasons), it was at the very same time arguing just the opposite before the Kansas Supreme Court when it applied for an exemption from Kansas tax because it argued (successfully) that it was an "educational institution". It is ironic that the NCAA enjoys the tax exemption rights of an "educational institution" in Kansas while it ignores the constitutional duties required of all other "educational institutions" to afford student-athletes and the public constitutional safeguards.

Others will provide much more detail than I regarding the specific violations of constitutional rights by the NCAA. I must mention, however, that when the NCAA denies an educational institution the hundreds of thousands of dollars of revenue to which it is entitled absent an NCAA funding of "guilt",

educational quality is strained elsewhere in the institution and taxpayers indirectly suffer from the loss of funds to the institution as a whole. The most fundamental of all abuses by the NCAA is the unconscionable fact that its punishment procedures allow the guilty to go free while the entirely innocent student-athlete is punished. For instance, when the NCAA announced that the University of Nevada-Los Vegas basketball program was on probation, many properly argued that the players (who suffered the most severe punishment) were only three years old at the time of the alleged violation. The answer to that criticism by the NCAA was simply to delay the punishment for one year so that those punished were not three but two years old at the time of the alleged transgressions! This and other fundamental inequities continue not withstanding the fact that the NCAA rule book now has grown to 479 pages, complete with such detail as a prohibition against university athletic departments using color stationery letterhead!

III. THE NCCA WILL NOT CHANGE FROM WITHIN BUT MUST BE REQUIRED TO FOLLOW CONSTITUTIONAL PROTECTIONS

It is certainly correct that all of us in government have much more pressing problems to deal with then the NCAA. Likewise, it is important that government not unnecessarily interfere in the workings of private organizations. Following similar hearings by Congress in 1978, it was the hope that the NCAA would change from within. That remained my hope as well after my study of the situation and even following the NCAA enforcement action at the University of Kansas. I did not at that time introduce legislation such as SB 234 which would

mandate change.

Unfortunately, the evidence is now overwhelming that the NCAA will not change from within without government mandate. Even the former Executive Director of the NCAA, Walter Byers, argues that the NCAA must be "drastically revised" and that it lacks the respect required to perform credible enforcement following the much publicized "flip-flop" in the UNLV case. (Exhibit "A").

The NCAA's revulsion to reform and its attitude that it is "above the law" and more powerful than state governments was revealed when it recently threatened to kick out schools located in states that passed laws such as SB 234 on the basis that it would create an "uneven playing field" (even though SB 234 on its face requires the NCAA to play by the same rules for all its member institutions). If, as they suggest, the NCAA is not opposed to "due process" and they do now in fact properly protect member institutions, coaches and student-athletes, it is difficult to understand why the NCAA would be threatened by the requirement that it comply with our Nation's Constitution. Why is the NCAA so disturbed with the need to provide student-athletes, coaches and the public the same rights as are provided to all persons in our courts when action is taken by the government if they do now in fact provide "due process"? How can asking the NCAA to make fair decisions open to public scrutiny possibly harm or offend it?

This arrogant attitude of the NCAA reveals its dark and dictatorial side. The time has long since come for serious reform of this organization which sees itself as above the law of

the land. Legislation such as SB 234 and that to be considered by this subcommittee is hardly radical - only to follow the fundamental protections of the U.S. Constitution. It is hard to believe why the NCAA would continue to spend hundreds of thousands of dollars to prevent it from complying with the basic and fundamental law of the land.

In conclusion, it is my opinion that the reform of the NCAA which would best come from within can only result if it is imposed by the states or better yet by Congress in order to avoid the "uneven playing field argument". By its recent threats to take action against institutions from states which pass such laws, the NCAA suggests that it is above the authority not only of state legislatures, but of Congress and even the U.S. Constitution. Without the credible interest of the states and the mandate from Congress, the NCAA will continue to stall reform while innocent student-athletes, educational quality and taxpayers continue to be punished by the NCAA's double standard of justice and continuing violations of constitutional rights.

Madam Chair, thank you for the opportunity to appear and present my views. I appreciate the time and attention of the subcommittee.

EXHIBIT "4"

HFSA 2-6-92 4-1#

NCAA needs to be 'drastically revised,' Walter Byers says

The Associated Press

Former NCAA Executive Director Walter Byers said Nevada-Las Vegas basketball Coach Jerry Tarkanian "beat the system" in his 13-year battle with the governing body of college sports.

"He's a man who worked the ·m and beat the system," said s, who retired in 1987. ·ere is a legal bromide about justice delayed is justice denied. The story of this case proves that."

Byers also said it's time to "drastically revise" the organization he headed for 36 years.

"Time and circumstance have passed the entire system of intercollegiate athletics by," he said. "The management structure has become bureaucratic and unresponsive. I include the NCAA in that."

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— Walter Byers
former NCAA executive director

During his years with the NCAA, Byers never publicly called for an overhaul of the system. However, he said he privately pressed for major changes after the NCAA lost its monopoly on football television contracts.

The NCAA ordered a two-year suspension of Tarkanian in 1977 following an investigation of the UNLV program, but Tarkanian obtained an injunction preventing any action against him. The injunction was overturned by the U.S. Supreme Court in 1988, but the NCAA still hasn't decided whether to take further action against Tarkanian or the school.

The decision might be complicated by the fact Tarkanian's team recently won the NCAA championship. No national basketball champion has ever been stripped of its title.

UNLV's victory persuaded Byers to rewrite a chapter in his coming autobiography that deals with the Tarkanian affair.

"When UNLV got rolling this year and won the NCAA basketball tournament, we thought we might want to review a chapter entitled 'Beating the System,' " he said.

Asked whether the book will reveal anything new about the much-publicized case, Byers said: "It will provide a perspective of the problems faced by NCAA investigators. It will give the sports fan a true picture of the unpleasant side of an NCAA investigator's work."

After the breakup of television football rights, Byers said he asked top NCAA officials "how resistant they would be to the idea of overhauling the entire system, putting it in step with the times, economically and socially."

"But I saw immediately that change, the kind of change I was talking about, would be impossible," Byers said. "I spent my last five years as executive director trying to preserve the good things we had done."

One change Byers favors is an increase in the value of athletic scholarships, an amount that varies from school to school.

"The present scholarship compensation cap is no longer fair to the athlete and is legally indefensible," he said.

Byers said he began to question the current system around 1982 when several college football powers challenged the NCAA's authority to negotiate a single television contract for all schools. The U.S. Supreme Court eventually ruled against the NCAA, freeing all schools to make their own football TV deals.

"I remember sitting in a courtroom in Oklahoma City listening to the presidents of the universities of Oklahoma and Georgia testify that they were in a money-making business and the NCAA was costing them millions," Byers said. "Their athletic budgets were over $10 million, and they were in need of more money. That's when I realized how much I was out of step with the times."

USA TODAY Sports

OPINIONS ACROSS THE USA IN SPORTS

NCAA's actions affect too many to let it operate above the law

Editor's note: Dick Schultz, executive director of the National Collegiate Athletic Association, has said people who ask state legislatures to protect their [illegible] from the NCAA might [illegible] disqualifying those colleges from NCAA membership.

By Sen. Wint Winter Jr.

The authors of the U.S. Constitution understood the need to protect the individual rights of due process and equal protection, which ensure government cannot violate the civil liberties of its citizens. These principles stand today as the most important pillars of our legal system.

COMMENTARY

By WINT WINTER, JR

But the Constitution only protects against government action, not the action of certain private, voluntary organizations. Even if the organization is closely tied to the state, a majority of its members are state institutions and those institutions generate the bulk of its revenue, a private organization can ignore due process. The organization can investigate, prosecute, convict and penalize its members according to its own capricious measures.

The National Collegiate Athletic Association is such a group. Individuals and institutions under review by the NCAA have limited access to evidence used against them, have no real means to appeal decisions, and, most important, are subject to an incredible penalty system that punishes the innocent student-athlete, often lets free the guilty and flip-flops on high-profile cases. Voluntary membership or not, the NCAA has too much power and controls the destiny of too many lives without affording members basic rights. With so much at stake, should the NCAA be allowed to enforce its rules without providing either alleged offenders due process or the "guilty" equal punishment?

I say no. We recently introduced in the Kansas Senate a bill to protect students, coaches and the public from this intrusive and unfair practice by the NCAA. Our bill would do nothing to interfere with the NCAA's charter to make and enforce rules for intercollegiate athletics; it would merely hold the NCAA to the same rules required by the U.S. Constitution.

The NCAA is disturbed with our bill and will no doubt oppose it. Indeed, the NCAA recently threatened to kick out schools in states that had such a law on the books.

This arrogant action reveals the dark and dictatorial side of the NCAA. The time has come for serious reform of this organization, which puts itself as above the law of the land. The reform, which would best come from within, will be imposed by states and/or Congress if the NCAA continues to stall while the innocent are punished. Thirteen years ago, Congress urged the NCAA to make changes that still have not been made.

By its threat, the NCAA suggests it is above the authority of state legislatures and Congress and can continue to subvert the Constitution. Without the credible interest of the states and Congress, the NCAA will apparently continue to stall reform while innocent athletes, schools and the public will continue to be punished by its double standard of justice.

Kansas Sen. Wint Winter Jr. (R-Lawrence) is chairman of the Judiciary Committee and primary sponsor of Senate Bill 234, which would establish the Athletic Association Procedures Act.

Athletic aid to help compensate for cuts

Sugar Bowl a boon to UF summer session

By JACK WHEAT
Herald Staff Writer

TALLAHASSEE — One of the winners of today's Sugar Bowl has already been determined: the summer session at the University of Florida.

The university is looking to its sports program to replace money lost in state budget cuts. The university hopes that the Gators will return from New Orleans with $500,000 left after expenses from its $1.3 million payment for playing Notre Dame.

With other money raised from the sports, the athletic program has pledged $800,000 for academics this fall after the state's midyear funding cut wiped out most of the summer school budget.

Florida State University is also transferring $800,000 from athletics to academics this year, half to shore up FSU's summer school after the budget cuts and half to the library.

Little, if any, of FSU athletics' contribution to academics will come from FSU's Cotton Bowl appearance against Texas A&M. The cost of flying the team, band and supporters to Dallas will eat up most of FSU's $1 million take from the bowl.

UF delegation small

UF kept its official Sugar Bowl delegation to New Orleans relatively small to save money, university president John Lombardi said. About 60 UF officials and guests flew to New Orleans for four days as the official party.

UF's band also traveled to the bowl. And 107 coaches, support staff and family members accompanied the team to New Orleans, said Jeremy Foley, senior associate athletic director.

The Southeastern Conference allows UF to keep $1.3 million of the $3.7 million the champion gets for playing in the Sugar Bowl, Foley said. He expects expenses to total less than $800,000, allowing the University Athletic Association Inc. to fulfill its pledge to academics with $500,000 from the Sugar Bowl and $300,000 from its reserve fund.

Last spring, the athletic association contributed about $600,000 to help support the university libraries. It recently offered another $30,000 in Sugar Bowl revenue to help UF establish a university-wide AIDS institute.

UF's athletic association annually contributes about $200,000 for band operations and also donates about $325,000 a year from royalties generated by authorized reproductions of its logo.

The SEC's share of the $2.4 million from the Sugar Bowl will be distributed among other SEC schools.

Last year, FSU's athletic department provided $400,000 for the library. It has contributed bowl money to academic programs in recent years.

The Cotton Bowl will yield a smaller payoff, about $1 million. FSU took more people to Dallas, athletic department records showed. FSU's official party numbered about 114, and about 155 coaches, support staff and family members also went to Dallas.

Those numbers are down from last year's group, when FSU paid for 378 to go to the Blockbuster Bowl. This year's Cotton Bowl trip will cost $925,000, estimated Assistant Athletic Director Charles Hurst, leaving FSU only $75,000 for other uses. This year's bowl cost is nearly double the $495,133 tab last year. Because the Blockbuster Bowl was in Florida, travel costs were much lower.

Good attendance at FSU football games this year is helping the Seminole athletic program's contribution to academics, Hurst said.

Lombardi said UF has not heard many complaints for limiting the number of staff, officials and supporters given trips to the Sugar Bowl. "Everybody recognizes we're trying to be careful."

UF's most recent bowl appearance was the Freedom Bowl in California in 1989. UF took only 20 people and still had to be careful not to exceed the $500,000 the school got for its appearance, Foley said. UF's last big bowl was the Sugar Bowl in 1974, he said.

This is FSU's ninth consecutive bowl. FSU did not formally decide to reduce its bowl party this year, Lick said. "We've naturally been cutting down on everything," he said, so a smaller FSU entourage was natural.

'What is appropriate'

"I think we're going to take a look at the whole thing and see what is appropriate," Lick said. "We don't want to have our people do less" than what is normal. "We don't want to overdo a good thing, either."

In the past, FSU has kept all of the proceeds its bowl appearances generated. Last year, FSU joined the Atlantic Coast Conference. FSU will get $1 million from the Cotton Bowl, and the ACC will get an estimated $2 million to distribute among the member schools of the conference, Hurst said.

Lick said that FSU will more than make up for the bowl money by going to the ACC. FSU will share in the distribution of ACC basketball money. The conference includes a number of big basketball schools such as Duke.

BOWL MONEY

FLORIDA STATE

Florida State University gets $1 million to go to the Cotton Bowl. The university flew about 114 administrators, staff and fans to Dallas as the official party. President Dale Lick and various other staff and family members were joined by student, faculty, alumni and community leaders. About 155 coaches, support staff and family members were on the list of people traveling with the athletic department at school expense. Estimated cost for team, band, staff and guests: $925,000.

UNIVERSITY OF FLORIDA

The University of Florida gets $1.3 million to go to the Sugar Bowl. The university flew 62 VIPs not involved in the production of the game to New Orleans as the official party. Besides President John Lombardi, other administrators and family members, the group included the student, faculty and alumni leaders and Gator supporters. One hundred seven coaches, support staff and family members also accompanied the team at school expense. Estimated cost for team, band, staff and guests: $800,000.

NCAA needs to be 'drastically revised,' Walter Byers says

The Associated Press

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"He's a man who worked the system and beat the system," said Byers, who retired in 1987. "There is a legal bromide about justice delayed is justice denied. The story of this case proves that."

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Girls basketball job is filled at Raytown

By DAVID BOYCE
Staff Writer

Roger Lower will be Raytown's girls basketball coach next season, taking over for Davis Aldridge. Lower coached freshman football and boys sophomore basketball last season.

The Blue Jays finished 12-13 last season, and Lower expects help next season from several returners. Two of them are sophomores Kris Banning and Amy Pitcher.

"I'm very excited," he said. "I wish the season started tomorrow. We have some quality players coming back.

HIGH SCHOOL NOTEBOOK

for us," Henderson said. "We had good pitching. The staff only allowed four earned runs in the tournament."

Henderson said he went into the tournament expecting to do well, but he said he thought all the coaches in the tournament had the same outlook because the teams were fairly even.

"Raymore-Peculiar could've beaten us in the first game, and then they don't win a game in the tournament, so that tells you how competitive it was," he said.

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Tell us your comments, gripes or observations about sports issues. You will be asked your name and for a telephone number for verification. You'll have one minute to share your views. A selection of calls will appear each week. Lines are open today, 6 a.m. – midnight EST. Hearing-impaired readers with TDD equipment can call 1-800-331-1706.

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We reserve the right to edit letters for length. All letters must be signed and include writer's full name, address and phone number for verification. A selection will appear each week.

WHAT DO YOU THINK ABOUT . . .

If you were voting for this year's Heisman Trophy winner, who would you vote for and why? Or choose a topic.

CHATTER

. . . REDUCE BASEBALL SEASON

"The suggestion that baseball squeeze more games into a shorter season leads one to believe that change and compromise are on baseball's horizon. The NL will see the AL's DH rule abolished, and the AL will get the limited interleague play it has wanted. The owners and players will swap bigger rosters for the shorter season, so both can reap the benefits of an extra tier of playoff games."

— Joseph Gennarelli, Springfield, Mass.

"The baseball schedule should be reduced to 154 games. Furthermore, baseball should avoid the idiotic bush league playoff system that other sports have."

— Jack Crawford, Austin, Texas

"Rather than shortening the baseball schedule, I think there should be more doubleheaders. Five, six, seven hours at the ballpark on a sunny afternoon used to be a great way to spend a summer day."

— Stan Chapman, San Jose, Calif.

"It's ridiculous to shorten the season. A long season gives injured players a chance to get well and lets teams that are behind catch up."

— Kevin Cult, Kansas City, Kan.

"With the regular season as long as it is now, there is only one thing worse than watching a baseball game — and that's a doubleheader. Yes, shorten the season."

— Jay Thornton, Troy, Ohio

"Keep those games going! Don't shut down the baseball season early. If you want to help, get rid of football."

— Steve Reynolds, Miami

"Shorten the season, reorganize baseball into three divisions and add a wild-card team to the playoffs."

— Dan Decker, Oregon, Ill.

. . . MINORITY HIRING

"Concerns about minorities in sports are grossly hypocritical. It is possible, yes, even common, to watch an NBA or college baseball game on television and not see a single white on the floor. Also, in college scholarships for football and basketball, one can see statistical discrimination against blacks. These sports need an affirmative action program for non-blacks. The NBA has 75% black players. Why were so many blacks chosen for the Olympic basketball team? A white kid watching TV gets the idea that whites have little opportunity. This is not to say that whites can't

Topic: NCAA enforcement reforms

Member schools must bear self-regulation responsibility

COMMENTARY
Rex E. Lee

PROVO, Utah — Reactions to last week's proposals for NCAA enhancement of its investigation, enforcement, and hearing procedures have been largely positive.

The only negative comments have come from lawyers representing particular clients who would like to have a guaranteed right of cross-examination in those few cases that under the new procedures would reach the adversarial stage.

As a non-governmental entity with subpoena power, the NCAA cannot guarantee cross-examination, though it will surely afford it in those instances where the witnesses voluntarily appear. The subpoena power is a power of government. The question arises, therefore, should the job of making and enforcing the rules for intercollegiate athletic competition be taken over by government, either state or federal? Or should it remain with the colleges and universities themselves, through the NCAA?

The worst result would be disparate, splintered regulations by different states. Intercollegiate athletics by definition involves competition between schools located in different states. The rules by which the game is played must be the same for all competitors in all parts of the USA. So must the procedures for enforcement and hearing.

The only governmental entity capable of providing the essential uniformity would be the federal government. But our massive national government is not the appropriate body to be making rules for intercollegiate athletic competition. Its very size leads to inefficiency and inflexibility. With the savings and loan crisis, and a national debt requiring more than $300 billion in interest payments every year, the United States does not need to take on the enforcement of intercollegiate athletics violations.

It seems obvious that the controlling question ought to be: Who has the greatest stake in assuring the rules for intercollegiate athletic competition are both fair and effective? And the answer is quite obvious. It is the colleges and universities, including their coaches and players who are involved in that competition.

If enforcement is less than effective, the detriment will be borne by our nation's colleges and universities, and those responsible for their athletic programs. They are the same people who will bear the brunt of any inadequacies in the hearing procedures.

Accordingly, they are the people who should make and enforce the rules. And those people are already organized. Their organization is called the National Collegiate Athletic Association.

Rex E. Lee is president of Brigham Young University and chairman of the Special NCAA Committee on Review Enforcement & Infractions Process, which last week announced recommended changes to the process.

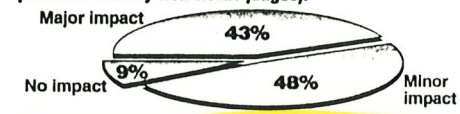
Team: Leave enforcement to NCAA

USA SPORTS TEAM TODAY

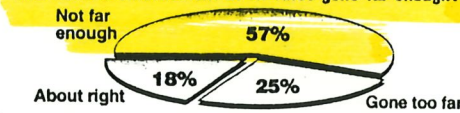
A majority of the USA TODAY Sports Team — 59% — thinks corruption in college athletics has reached crisis proportions. How team members view college cheating:

Should Congress get involved in trying to fix the problems, or should NCAA handle them?

Expected impact of proposed changes by NCAA (including open hearing on charges against schools, presided over by non-NCAA judges):



Has NCAA's enforcement of its rules gone far enough?



Source: Call-in survey of 201 USA TODAY Sports Team members, all of whom volunteered to serve one month.

By Marcy E. Mullins, USA TODAY

Changes are a good first step, but more is needed

COMMENTARY
Wint Winter

LAWRENCE, Kan. — Hooray! At last, the NCAA has admitted the unfairness of its present system and started on the path of reform.

Like an addict denying the need for treatment, the NCAA has piously refused to acknowledge that its system was unfair while fighting reform legislation in Congress, Kansas and other states.

Now the accused shall have an open hearing, tape recordings shall be shared and limited rights of appeal allowed. Have the NCAA's Dick Schultz and David Berst seen the light, or are these positive but very limited changes a ploy designed only to maintain the NCAA's dependence on power and total dominance over a billion-dollar industry?

The legislation, passed or pending in Congress and many states, seeks merely to hold the NCAA to the same rules of fair play and justice required by the U.S. Constitution. The laws would merely allow such basic rights as a speedy trial, the right to confront witnesses and the assurance of a right to appeal to an impartial panel. Most important, the laws would require the NCAA to end its wholesale use of "institutional penalties," which punish innocent student-athletes and the public while letting off administrators and coaches who might be truly guilty.

Though the opening of enforcement hearings to the press and public will indeed do much to end the dictatorial and demeaning procedures of the past, the changes fall short.

A review of the fine print reveals the NCAA is still demanding dominance of the system. For instance, their "rent-a-judge" proposal gives them the sole ability to pick the model they want and allows them to reject the decision entirely if it's not to their liking. The "appeal" is not to an independent court of law but still allows the NCAA to ultimately act as "judge, jury and executioner."

Most critically, it is a travesty the announced changes do absolutely nothing to install a punishment system that really gets tough with the guilty and takes the burden off the innocent athlete and public.

A careful review of the Special Committee's report reveals the sad truth of the admission by Chair Rex E. Lee that the Committee "approached (its work) from the standpoint of what is in the best interest of the NCAA." In the candid words of former NCAA head Walter Byers, the organization needs to be "drastically revised," not just fine-tuned.

The NCAA's open meetings change and a few other limited reforms are indeed positive. They are but the first steps of a much longer journey. The public and legislators must not at this stage be content with a premature and hollow victory, but must stay vigilant to guide the NCAA's path to complete reform and justice.

Kansas Sen. Wint Winter Jr., R-Lawrence, is chairman of the Judiciary Comm[illegible] and primary sponsor of Senate Bill 234, which would establish the Athletic Association Procedures Act.

Proposals tackle fairness issue

Major recommendations for changes in NCAA enforcement process:

- **First contact:** Schools now get a letter telling them they are under investigation, but the letter doesn't say what the suspected violations are, or even always what sport they are in. Because one of the main goals of the changes is to foster cooperation between the school and the NCAA, recommendation is that an NCAA representative hand-deliver the notice, and meet with the chief executive officer of the school.
- **Tape interviews:** With few exceptions, any interview to be used as evidence must be taped, and persons interested in the outcome may listen to a copy of the tapes.
- **Negotiations:** After their investigations are complete, the school and the NCAA can get together, decide on a statement of facts and a penalty and avoid a hearing. If they can agree, the process would be faster and avoid publicity and uncertainty the current time lag causes.
- **Impartial judge:** The goal is to avoid the perception that the NCAA acts as both prosecutor and judge. The officer, probably a retired judge, would be appointed, and probably paid, to hear cases involving major penalties and to recommend a penalty to the Committee on Infractions.
- **Open hearings:** Currently all infractions hearings are closed. They would be opened to the public but allow the hearing officer to close them if a witness shows a good reason why some information should remain confidential — like fear for safety, or confidentiality issues like medical records or drug test results.
- **Appeals:** Decisions could be appealed only if the Committee of Infractions gave a stiffer penalty than was recommended.

HFSSA 2-19-92 #1-13

Byers says NCAA was hurt by settlement with UNLV

By DOUG TUCKER
AP sports writer

NORMAN, Okla. — The NCAA weakened its enforcement ability by "caving in to the threat of a lawsuit" and negotiating a penalty to end its 13-year case with UNLV and basketball coach Jerry Tarkanian, former NCAA boss Walter Byers said Thursday.

"I really think the settlement of the case that the present committee on infractions worked out has seriously damaged the NCAA," Byers said at a news conference announcing the publication of his memoirs. "I don't say it's fatal at all. But it really has hurt."

UNLV was told in July that, as the culmination of a case that had dragged through the court since 1977, it would be barred from defending the national championship the Runnin' Rebels won last year. But after meeting again with UNLV officials, the infractions committee took the unprecedented action of offering the school two alternative penalties.

UNLV, with four returning starters, immediately agreed to give up its television and tournament appearances for the 1991-92 season in order to be eligible for this season's tourney.

The decision, unparalleled in NCAA affairs, set off a furor in many quarters, particularly in Kansas. The Jayhawks were barred from defending their 1988 championship after being found guilty of lesser violations.

Byers said the infractions committee feared a lawsuit would be filed "in the friendly state courts" of Nevada, and a temporary restraining order would keep the team eligible through the tournament.

WALTER BYERS
... won't forgive Tarkanian

"Because of the threat of a lawsuit, either by the coach or players or both, they negotiated a penalty of special treatment for one university," Byers said. "They simply admitted that they are not going to risk a lawsuit. By special treatment, they endanger their standing with the member colleges."

Byers said his book, to be published by the University of Oklahoma press, deals extensively in one chapter with the NCAA's long battle against Tarkanian.

"I must tip my hat to coach Tarkanian in that he beat the system, and really came out with everything he wanted, including a championship, a percentage on his team's tournament winnings and a national championship.

"By tipping my hat to him, I do not in any way agree with him. He did violate the rules. And I will never forgive him as long as I live for the vilification he directed toward our investigators."

In a separate case, the NCAA delivered a list of 29 allegations against the UNLV basketball program on Wednesday. Ten of the allegations center on the recruitment of Lloyd Daniels, the former New York prep star who never actually played for UNLV.

"I don't have any comment on that case," Byers said. "I'm just not involved in it."

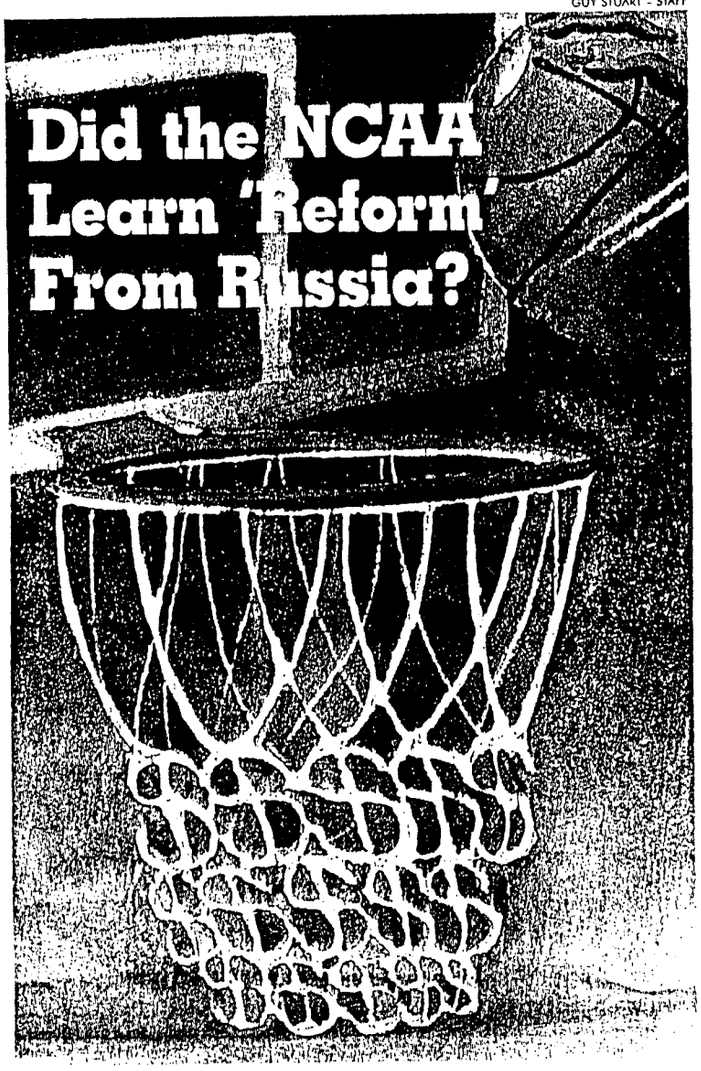
Byers, who retired in 1987 after 36 years as NCAA executive director, also said he disagreed with his successor, Dick Schultz, over the importance of next month's NCAA convention. Schultz, and many other NCAA observers, feels the many reform proposals schools will vote on are crucial to solving the ills of college sports.

"I do not believe this convention is one of the most important in the last 20 or 30 years, as a lot of people say," Byers said later in an interview. "The reform proposals by the Presidents Commission and those that are supposedly going to come from the Knight Foundation are miniature in form and really won't change much of anything."

Byers said his book, entitled "The Games Behind The Game," will be published late next summer and deal with "hypocrisy and exploitation" in college athletics.

"I'm not trying to absolve myself. I've been a part of all that," he said. "I was as much a part as anybody else in developing big-dollar college athletics. I'm not holding myself blameless at all."

GUY STUART - STAFF



Did the NCAA Learn 'Reform' From Russia?

By Francis X. Dealy Jr.

IN the week before Desert Shield became Desert Storm, there was one headline among all the foreboding news that struck a hopeful note. It announced "the avalanche of reform measures" adopted at the National Collegiate Athletic Association's annual convention held in Nashville, Jan. 7-10.

At last, a reader thought, the watchdog of college athletics, the NCAA, was going to do something about steroids, drug trafficking, point shaving, alcohol abuse, academic fraud, recruiting bribes, coed rape, and the exploitation of black athletes.

But, when the reader progressed to the story's fourth paragraph, he learned that the new reform measures had little to do with the offenses listed above. How in the world would reducing the number of assistant football coaches from nine to eight prevent a coach from offering a $100,000 recruiting bonus to a high school star? Or how would eliminating team breakfasts and lunches improve the pitiful 17 percent graduation rate of black basketball players? Even the one new measure that seemed to make sense, abolishing athletic dormitories, would not go into effect until 1996, plenty of time for the NCAA to change its mind.

Changing its mind and reforming itself are two things the NCAA does frequently. In the last decade alone, the NCAA has had two other "reform" conventions.

In June 1985, the Presidents Commission, an NCAA organization comprised of college CEOs, adopted the so-called "death penalty" for recruiting violations. Yet it has been invoked only once – against Southern Methodist University – despite a long list of candidates.

Puffed up by the victory, the Presidents Commission convened the entire NCAA in June 1987 to reduce the ever-increasing costs of big-time college athletics.

If 1985 was the NCAA convention of triumph for the Presidents Commission, the 1987 Convention was its humiliation. All eight proposed reform measures were defeated by embarrassing margins, and several that were passed in 1985 were rescinded before they ever went into effect. Robert Atwell, president of the American Council on Education, said at the time, "It was the end of the so-called reform of college athletics."

Had sportswriters included this recent history in their convention coverage, the public would have seen that Nashville hardly rivaled the cathedral doors of Wittenberg.

For the much-needed reform of college athletics to take place, sportswriters must disclose what everyone now suspects anyway: Money is the root of all evil in college athletics. Sportswriters must also show how the NCAA exacerbates, rather than deters, this evil with its yearly men's basketball championships.

CBS will pay the NCAA $143 million to televise the men's basketball championship this March, an increase of $88.7 million from last year. But will this huge windfall be used to correct some of the offenses listed above? No.

Shrewdly, the NCAA leadership precluded college presidents and the NCAA's smaller schools from answering this question by diverting them with reform pretexts in Nashville. While the convention-at-large reduced the number of football scholarships from 95 to 90 by 1996, the NCAA executive committee met behind closed doors to adopt a formula for distributing CBS's money. Not surprisingly, the formula rewards those NCAA schools with the most tournament wins and the biggest athletic departments.

While big-time athletic departments stand to gain several million dollars annually from the CBS money, needy big-time student athletes will not fare as well. A special fund will be established that will dispense, on average, a trifling $25 per athlete per year for those who qualify.

A mere $25,000 per Division I school will be spent on what the NCAA refers to as academic enhancement. The NCAA's Division II will receive $1 million to be divided among 209 institutions. Division III schools, 323 institutions, will receive nothing.

With all the new CBS money swamping the NCAA system, there still are only 18 NCAA investigators to monitor over 800 NCAA schools and 200,000 athletes. But when questioned, Judith Sweet, the new NCAA president, said, "With respect to enforcement, we want fair competition throughout the NCAA system. We feel that we have that now. There's always room for improvement, of course, and I am more than glad to improve what is already in place, but I don't think more money is necessarily the answer."

To restore its credibility, the NCAA must divide opposing functions of promotion and enforcement into two distinct and equal bodies. And, like major league baseball, the enforcement body must be headed by a commissioner with sweeping powers.

As a nation, we deserve more from the NCAA. College athletics reflect the character of our higher education system. When hooliganism tarnishes the World Cup, although regrettable, it reflects only the baseness of a few. But when an athletic scandal taints a university, it corrupts everyone's symbol of integrity.

■ *Francis X. Dealy Jr. is the former publisher of Tennis Book Digest and World Tennis magazines and is the author of "Win at Any Cost: The Sellout of College Athletics."*

Want Writer

HESA 2-19-92 #1-15

As Amended by Senate Committee

Session of 1991

SENATE BILL No. 234

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

2-13

AN ACT concerning athletics; enacting the athletic association ~~procedures~~ act.

Be it enacted by the Legislature of the State of Kansas:

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

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

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

Sec. 3. ~~In any proceeding which may result in the imposition of a sanction or penalty for violation of a rule of an athletic association,~~ no such sanction or penalty may be imposed by an athletic association on any educational institution located in the state of Kansas or located outside the state of Kansas, nor shall such athletic association require or cause such educational institution to impose a sanction or penalty on any student or employee, unless the ~~findings or rules and regulations of the athletic association upon which the~~ sanctions or penalties are based ~~are made as provided in this act and comply with the provisions of this act and the~~ *standards of* due process of law

Proposed Amendments to Senate Bill No. 234

and education protection

and education protection

on

House Federal & State Affairs
February 19, 1991
Attachment #2

and equal protection under the law and ***the standards of*** all other rights and privileges ~~as~~ guaranteed by the ~~constitutions~~ of the United States of America ~~and the state of Kansas and the laws of Kansas~~. Such compliance by such athletic association shall include ~~without limitation,~~ ***but not be limited to,*** 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 misconduct 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 ***confront and*** 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 affiliated, 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 indirectly 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 commenced 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 investigated, whether or not for good cause. Any individual charged

constitution

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#2-2

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

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

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

Sec. ~~4~~ 2. (a) Any penalty imposed upon an institution by an athletic association or any penalty required by the athletic association to be imposed on a student or employee must bear a reasonable relationship to the violation committed.

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

(e) ~~(c)~~ Any penalty imposed on an institution or, because of an athletic association directive, on an individual shall be subject to review in district court in accordance with the act for judicial review and civil enforcement of agency actions.

Sec. 5. (a) In any interrogation of any person suspected of a violation of athletic association rules, at the point at which the athletic association should reasonably believe the person might have violated athletic association rules, it shall inform the person that it is investigating such person for misconduct which might result in the imposition of a penalty on such individual or such individual's institution.

(b) At such point, the person interrogated is entitled to have counsel present at ***such interrogation and at*** any further interrogation and need not respond further until provided with reasonable time to obtain counsel. The person interrogated is entitled to a complete recording of ~~any subsequent~~ ***such interrogation and any further*** interrogation and a transcript of the full interrogation made at the expense of the athletic association. The transcript shall be made by a certified court reporter.

The athletic association or its agent shall inform the person to be interrogated of these rights before proceeding and shall obtain written acknowledgement of such provision.

No athletic association subject to this act may impose any penalty or sanction which affects the educational activities of any institution or which impairs the ability of such institution to finance its educational activities with public funds or by private fund raising, unless there is a specific finding made by the association that the chief executive officer or responsible university administrator of the institution knowingly violated the rules of the institution.

(b) No athletic association subject to this act may impose any penalty or sanction on a student or employee or an institution which directly or indirectly penalizes or punishes any student or employee or any institution that did not violate the rules of the athletic association.

(c)

or sanction

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

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

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HFSA 2-19-92 #2-4

~~(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

(2) ~~section 6~~ shall apply only to interrogations occurring on or ~~after~~ the effective date of this act.

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

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

Sec. ~~11.~~ If any provision of this act is held to be invalid or unconstitutional, it shall be conclusively presumed that the legislature would have enacted the remainder of the act without such invalid or unconstitutional provision.

Sec. ~~11~~ ~~12~~. This act shall take effect and be in force from and after its publication in the statute book.

EXHIBIT A
2/19/22
#2-5

21992ot

Senate Bill 234
The Athletic Associations Procedures Act

Oral Testimony

Before the
Federal and State Affairs Committee
Kansas State House of Representatives

BOB TIMMONS

University of Kansas Graduate

Coaching - High School 1950-1964

Caldwell, Kansas - 2 years

Emporia, Kansas - 1 year

Wichita, Kansas - 11 years

Sports Coached

Basketball
Cross Country
Football
Swimming and Diving
Tennis
Track and Field

Coaching - University of Kansas 1964-1988 (Retired)

Lawrence, Kansas - 24 years

Cross Country
Track and Field

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

United States Olympic Track and Field Committee 1964-1972

NCAA Division I Track and Field Committee, Executive Board

House Federal & State Affairs
February 19, 1992
Attachment #3

Senate Bill 234
The Athletic Associations Procedures Act

Oral Testimony

Before the
Federal and State Affairs Committee
Kansas State House of Representatives

Disclaimer

The following oral testimony expresses my feelings and does not necessarily reflect the thoughts, opinions or position of the athletic department of the University of Kansas concerning these matters.

Introduction

Thank you for the opportunity to present the following testimony. My name is Bob Timmons. I am a retired head track and field coach from the University of Kansas. I'm here today because of a strong concern about the rules and policies of the NCAA with respect to its penalty system.

I think it is a shame that we gathered here to argue about athletic policies procedures. Proponents of Senate Bill 234 feel the flaws in those procedures should have been talked about and solved long ago from within the confines of the NCAA without interference from state or federal legislation.

At the Kansas Senate hearings last year, I closed my testimony with the following comments:

1. I was told the Kansas House of Representatives would not be able to present SB 234 for vote until next year.

2. That would give the NCAA a year to solve the problems related to the punishment of innocent student-athletes because of rules infractions by others.

3. At that time, I had hoped that the Kansas Senate would pass the bill to send a message to the NCAA that it needed to correct the injustices prior to action by the House. (It did 36-0 in favor of the Bill.)

4. If the NCAA changed its rules and policies to the satisfaction of the Kansas Senate, in that time frame, SB 234 would be allowed to die.

An in-depth study of enforcement and infraction process by the NCAA was made this past year. Its objective was "to examine the enforcement procedure to insure that this important function of the Association is fair, effective, timely, and consistent."

This 2-1/2 page summary report published in its official news publication, NCAA News, never mentions institutional punishment or the punishment of student-athletes not charged with violations, but uses the word, "fairness" or its equivalent 14 times in the summary.

The Kansas legislative body needs to keep in mind that the majority of the voting membership of the NCAA does not believe there are major problems in its Enforcement Program or that other NCAA policies are at times unfair to the student-athlete.

That being the case, it is doubtful if the requests made in this testimony will ever come about without state or federal legislation.

The following examples of sanctions reveal why legislation by the Kansas Senate and House of Representatives is so important.

University of Kansas Sanctioned

In 1972, KU was placed on probation with sanctions in football, basketball and track.

Our entire track squad of 57 innocent student-athletes was punished with restrictions that disqualified them from possible participation in both the NCAA National Indoor and Outdoor Track and Field Championships.

1. The ban was placed on Kansas Track solely because of the testimony of two disgruntled athletes. Both had been dismissed from our squad for failure to comply with team rules and policies.

2. We were not permitted the opportunity to cross examine either of those student-athletes nor was our coaching staff ever questioned by the NCAA about the infractions that led to our sanction.

3. 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. We were told that "these were institutional penalties and were not the concern of the student-athlete."

4. Yet the only penalties placed on our program were those that took away participation rights from our entire track and field team.

5. None of our athletes were charged with any infractions.

6. A formal appeal was requested by Wade Stinson, our director of athletics, to the 18 man NCAA Governing Council of which

he was a member. Our written request was turned down because the appeal did not represent "new evidence."

7. Even so, Wade was allowed to separate the Kansas infractions sport by sport, and then made an appeal for track & field.

8. After hearing what he had to say about the infractions charged to our sport, the Council immediately lifted the sanction on our team.

Cross-examination of the two disgruntled athletes in the presence of the Council would have prevented the penalties, the loss of time and money, and the mental anguish that existed on our team for two years.

At the time our team was placed on probation, I promised our athletes I would never stop trying to cause the NCAA to discontinue punishing innocent student-athletes.

1960 - Indiana was charged with major infractions related to football.

Penalty - All of the 215 innocent varsity athletes in its 10 sport programs were prevented from competing in the National Championships in their sport for four years.

1970 - Yale was placed on probation for allowing a Jewish basketball player to return to play for Yale after having gone to Israel to compete in the Maccabean Games. (Jewish World Games)

1. The athlete's home was in Tel-Aviv. He had received permission from Yale to compete in the Games before leaving school for Israel.

2. The NCAA requested that Yale disqualify the athlete but Yale refused to declare him ineligible because of having giving him permission to attend the Games.

Penalty - 300 innocent athletes in its 20 sport programs were not allowed to participate in any NCAA Championship for 2 years.

In 1974, the University of Kansas initiated two amendments to NCAA rules that were sent to its Governing Council. Both would have eliminated the mass punishment of innocent student-athletes through institutional penalties. They were set aside even before they could be considered by its membership at the National Convention. To my knowledge, this issue has never been voted on by the NCAA.

The injustices described in similar cases as those above caused me to study other aspects of NCAA rules. I soon came to the conclusion that what was really needed was a Student-Athletes Bill of Rights. This need has been explored by me both inside and outside of the NCAA for many years. (See page 10.)

Since this hearing is only concerned with and confined to enforcement and penalty systems of athletes associations, let me bring you up to date with the present penalties that have been imposed by the NCAA.

On the date of May 1, 1991, the publication of the NCCA's Enforcement Summary, 28 collegiate sports programs were being restricted from post-season competition. Those penalties varied from 1 to 3 years duration. By my calculations, 1,177 students lost 1,751 opportunities to qualify for those competitions.

In a feature article published in the Kansas City Star, Sunday, February 9, 1992, the NCAA indicated that 29 schools currently have a sports program serving probationary sentences for rules violations.

Thoughts about "Institutional Penalties"

The NCAA penalty system came into existence in 1952, and as of May 1, 1991, 219 member institutions have been penalized at least once according to the Enforcement Summary.

On 389 occasions, sanctions have been placed on its member institutions. Of these, 40 schools lost participation rights for their entire men's programs in every sport for as many as four years duration. During that period, mass penalties also took opportunities away from every member of 192 single sports teams.

By my estimates, more than 15,000 innocent student-athletes lost more than 20,000 individual eligibility opportunities to compete in the NCAA championships or in post-season football bowl games. (See pages 8 and 9.)

The exact number of innocent student-athletes punished by the NCAA between 1952 and 1991 can be argued but accepted rules that knowingly and intentionally punish even one innocent student-athlete for violations by others is wrong.

Please keep in mind that the national championships are the most prestigious contests offered by the NCAA and the most important to the student-athlete. Nothing means more to them than winning a national individual title or a national team championship.

SUMMARY

Presently, there is much concern about the lack of Due Process in the NCAA Enforcement Procedures. Most of this interest is devoted to the treatment of those charged with violations, but the protection of persons who are not charged with any violation is even more important since 90% of those punished are innocent athletes in the case of Institutional Penalties.

I feel the NCAA could and should make its penalties more severe, but it should realize that protecting the rights of the innocent is just as important as punishing the guilty.

As you vote on this issue, please remember that neither coaches nor athletes are given an opportunity to vote on any issues that govern the NCAA.

The United States is presently celebrating the 200th Anniversary of its Bill of Rights. In a country that treasures freedom, fairness, and a concern for the rights of its citizenry, there is no place for a penalty system that intentionally punishes the innocent in its educational institutions of higher learning.

Just last month, the NCAA News publication made the following official statement. "The NCAA membership believes that the current infractions procedures are fair to all parties. . .It firmly believes that its enforcement procedures provide significant administrative due process protections."

Assuming that the NCAA complies with every procedure and policy called for by Kansas Law and the United States Constitution, penalties intentionally placed on the innocent make a complete mockery of the fairness and justice called for by those very procedures.

I am concerned about several of the Due Process requirements Senate Bill 234 is seeking, because the NCAA will surely challenge them and might cause the entire Athletic Associations Procedures Act to be declared void by Court action on some insignificant point.

Even if the Kansas bill only calls for the protection of the participation rights of innocent student-athletes, thousands of future student-athletes will benefit from your legislation.

It will cause the NCAA to completely revamp its policies related to Institutional Punishment.

And it will be the greatest victory for fairness since the NCAA Enforcement Program was initiated 40 years ago.

Your vote for this bill would put the NCAA in a real dilemma for the only ones left for the NCAA to punish would be the guilty.

HE&SA
2/19/92
#36

I hope your committee members will ask two questions of Judith Sweet and Dick Schultz:

1. Do you believe that it is fair to punish innocent student-athletes for the misdeeds of others?

   Yes _____ or No _____

2. If you say yes to the above, what do you plan to do about it?

The NCAA published the Enforcement Summary, which was made available to its member schools in the summer of 1991. The following charts were developed from the information in that publication.

CHART I

Number Times Men's Individual Teams Declared
Ineligible for Post-Season Competition
1952-1991

Sport	Number Times Punished	Estimated Number Athletes On a Team*	Total Number Disqualifications
Basketball	94	15	1,410
Football	72	91	6,552
Track & Field			
Indoor	7	32	224
Outdoor	7	32	224
Baseball	4	29	116
Ice Hockey	3	30	90
Cross Country	2	13	26
Soccer	2	24	48
Wrestling	1	24	24
	192		8,714

*Source NCAA News, May 1, 1991. Shown squad size is for the 1989-1990 school year. These figures were used since I felt they would approximate squad sizes for the time frame of 1952-1991.

CHART II

Institutional Penalties
1952-1991
Loss of Eligibility to Compete In Post-Season Competition

Every Athlete in Every Sport

Number of Schools	Duration of Penalty
10	Indefinite
3	4 years
1	3-1/2 years
1	3 years
7	2 years
17	1 year
1	9 months
40	1.72 Average

Chart III

Number of Student-Athletes Participating in an
NCAA Member Institution
In Its 8 Most Sponsored Sports

Sport	Institutional Sponsorship	Participants	Squad Size*
Basketball	768	12,135	15
Tennis	675	7,410	10
Cross Country	674	9,342	13
Baseball	672	19,566	29
Golf	569	6,407	11
Track - Outdoor	554	17,850	32
Soccer	547	13,369	24
Football	524	47,828	91
TOTALS		155,908	225

*Source NCAA News, May 1, 1991, rounded down to the next smaller number.

225 student-athletes x 40 disqualified schools x 1.72 average penalty duration = 15,480 institutional disqualifications
8,714 single sport disqualifications
TOTAL 24,194 student-athletes disqualified

HF SA
2/19/92
#3-9

Partial List of People or Organizations Contacted One or More Occasions Concerning Student-Athletes Rights

University of Kansas

- Chancellor
- Faculty Representatives to the NCAA
- Directors of Athletics
- Coaches of each sport

Big 8 Conference

- Conference Commissioner
- Faculty Representatives
- Directors of Athletics
- Track and Field Coaches

NCAA

- President
- Executive Directors Walter Byers and Richard Schultz
- Governing Council of NCAA
- Executive Committee of U.S. Track & Field Coaches Association
- Track and Field Rules Committee
- U.S. Track and Field Coaches Association
- Selected college presidents
- NCAA administrative staff members
- Membership at national convention, amendments to constitution and enforcement procedures
- Student-Athletic Advisory Committee

Other Organizations

- U.S. Supreme Court: Every judge
- U.S. Congress: all Senators and selected Representatives
- Senate Commerce Committee
- AAU Congressional Hearings
- Amateur Athletic Union
- The Athletic Congress
- National Organization of State Universities and Land Grant Colleges
- Association of American Universities
- American Council on Education
- U.S. Olympic Committee
- Track and Field News
- Sports Illustrated
- "60 Minutes" television program
- Knight Commission
- Kansas State Senate
- Illinois State House of Representatives
- National Wire Services

Individuals

- President of the United States
- Howard K. Smith,Presidential Appointee to the NCAA-AAU-Olympic Investigating Committee
- Presidents of colleges & universities placed on probation and having innocent student-athletes punished with the loss of eligibility
- White House staff members
- Attorneys who expressed interest in the issues of the innocent student-athlete
- Division I NCAA track & field coaches - National Questionnaires sent member schools
- Influential sports writers

The University of Kansas

HOME OF THE JAYHAWKS

BOB TIMMONS, Head Track Coach
THAD TALLEY, Assistant Track Coach
GARY PEPIN, Assistant Track Coach
ED ELBEL, Relays Manager

ROOM 4, ALLEN FIELD HOUSE
THE UNIVERSITY OF KANSAS
Lawrence, Kansas 66044
913-864-3486

February 12, 1973

To: NCAA Governing Council & Infractions Committee:

Since Track & Field at the University of Kansas was placed on probation last August, we have been working continuously in an attempt to develop a Penalty System that would penalize only those persons guilty of infractions and not punish innocent athletes. The views expressed herein are strictly those of the Track Department and do not incorporate the ideas of other persons at the University of Kansas.

This has been done because of the realization that infractions by track coaches caused our athletes, all innocent, to temporarily lose their right to compete in the Indoor and Outdoor NCAA Track & Field Championships during the 1973 season. I know our actions were wrong and feel I should have been punished to the extent of the infractions for which we were charged.

Even so, it is our sincere feeling that the NCAA should consider changing its present Penalty System to one which is fair and equitable especially for those persons the NCAA owes its very existence -- the participating athletes. Guilty parties whether employees of the Athletic Department, faculty, alumni, or athletes, should be held responsible for their actions if properly informed beforehand of NCAA rules and regulations.

Enclosed is the sixth revision of ideas we hope you will review. These suggestions are not in any way polished or complete but they represent an attempt to present our thoughts and those of 83 NCAA track and field coaches who returned a questionnaire sent to all NCAA institutions this past Fall. A complete composite of the questionnaire was compiled and the answers of the NCAA track coaches to two questions are enclosed. I think these answers accurately express the true feelings of most coaches relative to the matter of penalties as they relate to athletes and coaches.

After making several attempts to get these ideas considered by the Big 8 Conference and to sell our thoughts to the United States Track Coaches Association which met in Chicago on January 13th, we came to the conclusion that although most people agree with our thoughts about the present NCAA Penalty System, few are concerned enough to get personally involved.

As one would expect, coaches who follow NCAA rules aren't concerned about penalties placed on other schools and coaches who have had their teams placed on probation want to stay completely away from involvement when the probation is lifted from their teams. The only persons disturbed enough about these policies to act are those presently on probation and they are in no position to create changes in philosophy.

We came to the conclusion that by going through the prescribed chain of command, it would take at least a year and possibly many years to bring about policy changes on matters of infractions. We originally planned to attempt to achieve our goals strictly through the regular channels of the NCAA but this approach has been discarded because of the penalties placed on Centenary, New Mexico State, Western Kentucky, and Howard University during this past January. It is our understanding that in each school there were athletes who lost their eligibility for NCAA Championship competition through no fault of their own.

In all likelihood some of the athletes representing these institutions are guilty as charged but penalties placed on other athletes made us realize we can't wait any longer to press for change. Presently, there are many athletes in our Nation unfairly paying for the violations of others so we felt we must act immediately if we are to help get relief for them. We are doing so.

The green enclosure contains several ideas which we feel would do much to prevent future rules infractions. The present NCAA Manual which is 219 pages in length, does not take up preventive measures. This aspect of the NCAA system needs to be given much more attention.

We believe in most of the philosophies and majority of the principles of the NCAA. However, we also feel it is our responsibility to strive to right what we think is wrong. At this time, we have not completely decided on plans which would help bring about a revision in the present NCAA Penalty System, but we are certain we shall continue our efforts until this has been achieved.

We look forward to hearing from you following your April meetings.

Sincerely yours,

Bob Timmons
Track Coach

BT:sp
Enc.

cc: Walter Byers, Executive Director, NCAA
Charles Neinas, Commissioner, Big 8 Conference
Raymond Nichols, Chancellor, Kansas University
Charles Oldfather, Faculty Representative, Kansas University
A. C. Lonborg, Interim Athletic Director, Kansas University

ANSWERS TO TWO QUESTIONS BY NCAA TRACK COACHES

37. What are your feelings about the NCAA penalizing innocent athletes for infractions someone else committed?

Answers: No answer - 3
Can't answer - 1

Bad deal.
I am completely against.
I suppose it is inevitable with the system we have. Faster enforcement would be the answer and penalize those athletes involved plus obvious rule violations by coaches which are flagrant and thoroughly committed.
How can you penalize outsiders?
No good.
Shows lack of true understanding.
Against it - 5.
Unfair but what else?
Poor practice.
Law says a person is not guilty unless proven so. This should be the same for our athletes.
This is wrong.
Punish the guilty - 3
Punish the coach and institution - 1
I am unalterably opposed to this practice and further feel that the NCAA has violated the Civil rights of athletes in the imposition of penalties.
Noble but misdirected effort to police itself.
I would rather see a guilty person go free than an innocent person get penalized.
Don't agree.
The practice is ridiculous.
Definitely opposed.
It is absurd.
Unconstitutional.
This is wrong.
I think the institution and coaches of these athletes are to blame.
If you go with "bandits", solve it.
If a school is placed on probation some innocent athletes will be involved.
Not justified.
I don't endorse it, but have no good alternatives.
Should not happen.
Lousy practice on part of NCAA.
The innocent should not suffer at the expense of the guilty.
It is completely incompativle with my philosophy of athletic competition.
Naturally unfair.
I feel it is unfair to coaches, athletes, and students.
The institution receives the penalty. If the athlete attends an institution that violates the rule it is his responsibility.
Should not be done.
Negative.
Not good - 3.
Not fair, coaches and institutions should be penalized.
Unfair and unjust.

It is extremely unfair.
Of course it is unfair but if you are going to play the game you must know the rules.
I do not see how this can be avoided as long as the institution is penalized.
Am opposed.
Certainly unfair.
Definitely unfair.
I would have to see what proposals for a better system than present.
Absolutely ridiculous.
I'm against - 2.
It hurts the very people, we as educators, want to help.
Penalize the offenders, but leave the innocents alone. Don't destroy an entire athletic program because of an infraction by one coach or athlete.
Unfair and probably illegal if someone wanted to test it in the courts.
It is the only penalty that will force coaches to follow rules.
Should not be done.
Team - OK (the coach should be aware of his actions at all times concerning the team). The team shouldn't be severely punished -- only the guilty athletes - unless the infractionoccurs a second time - then set the whole team down.
Very unfair.
I disagree.
Sad, but the ICAA schools showed us a way to handle - they ignored the NCAA on 2 occasions and finally won their point.
I feel that this is a shame and should not be tolerated.
Ridiculous.
I don't like to see this but there is a fine line between the athlete and coach involved. I would like to see the athlete be allowed to transfer - out of conference and not lose eligibility if he was innocent.
Do not agree.
It is not good but perhaps necessary under the circumstances. Else one may get involved with tenure right to a livelihood, etc.
Allow them to transfer without loss of eligibility.
Not right.
Not good.
A great injustice.

38. What can be done to penalize coaches for personally breaking NCAA Rules?

Answers: No answer - 7
Don't know - 2

I don't have a solution to the problem and I think that probably results in the fact that the NCAA winds up penalizing innocent individuals and innocent athletes because they can't answer the question either.
Salary cut - 3.
Loss of job for severe violations.
Loss of job for flagrant violations.
Set it up much like they do driver's permits, so many points off for each infraction when a certain total is reached they are suspended.
Dismissal - 4.
Suspension - 4.

Depends on how severe the infraction.
Probation.
Reprimand - 2.
Suspend from recruiting.
Suspend from speaking.
The institution must take responsibility in the case of coaches violating rules - 2.
The institution should reprimand the coaches involved.
Have the college censure, suspend, or penalize the guilty - 2.
Suspend - 2.
Dismiss - 3.
Fire them - 8.
Reduce their salary.
Cut their number of scholarships.
Censure to mandatory firing depending upon the severity of the penalty.
Fine, chastise, or require the institution to fire frequent violators.
Fine - 4.
Follow the letter of the rules set by the NCAA.
Although my stand is admittedly on the idealistic side, I think the whole scope of "penalties" ought to be reviewed. And to do that in order to eliminate cheating, we must review the competitive structure within which we operate, i.e. National Championships among teams could be done away with, football polls forgotten about, etc. Thereby reducing the pressure under which the coach must work to produce optional results. The scholarship situation could be evened out too, in order to help the imbalance of competitiveness that currently exists.
All should be penalized to a varying degree for number of infractions, etc.
Should be spelled out.
Place on recruiting probation.
Publicly reprimanded.
Bar from employment for a period.
Expel from coaching duties for a certain time.
Disqualify from national championship coaching one year/each violation.
Anything from verbal or written reprimand to forced resignation or firing if violation is severe enough.
Professional censoring, preferably by one's peer coaches not by an insensitive uninformed body prone to political hatchet work.
Don't hire them.
This would have to be a policy set up by each institution or conference.
Prohibit from recruiting.
Suspend from coaching but allow to assume other duties in the department
Limit new signees for a period of time.
Fire. Don't permit to coach in NCAA schools for a period of time.
Better policing by conference.
1. Loss of coaching duties for 1 year.
2. Loss of participation in track, related events (meetings, clinics, etc.)
3. Fine.
Replace them.
Reprimand school and let school take action.
I believe that fines, suspensions, and, or, expulsions are the only answers: The institution's administration should penalize the people who break rules, and if they will not the NCAA will set up way.

Fine up to expulsion.
Make the rules meaningful to today's life situation.
Bar him from NCAA events, positions, benefits.
Suspension from NCAA.
Strongest would be suspension for 1 year for flagrant or serious violations.
Fine him for violations - set his illegal recruits down for a season, but allow rest of teamto compete.
Public reprimand.
Institutional responsibility.
Salary cut - no increment.
Institution should bar from coaching for one year.
1. 1st time - warning.
2. 2nd time - disallow him to do any recruiting for aperiod of time - say 1 or 2 years.
3. 3rd time - put whole teamon probation as is done now.
Noted on their record - might penalize team but I'm not for it.
Restrict recruiting.
Limit recruiting - remove from national, league, committee, coaching assignments for international and post season competition.
Bar them from coaching.
Cancellation of grants.
Only individual schools can discipline its coaches, recruiters, etc.
Stiff warning, if infractions are continued then fire coach.

NCAA PENALTY SYSTEM

Penalize guilty parties for infractions of NCAA Rules and Regulations.

The guiding concepts of American justice have been: first, to punish only those responsible for their acts, and secondly, to make such punishment correspond as near as is humanly possible with the violations.

The penalty system presently sanctioned by the NCAA usually fails to punish those directly responsible for violations of NCAA rules; more important, the existing system oftentimes penalizes totally innocent parties, usually college athletes. In an attempt to make the NCAA penalty system more in keeping with fundamental standards of fairness the following recommendations are made.

RECOMMENDED CHANGES IN THE PHILOSOPHY AND POLICIES RELATED TO THE PRESENT NCAA PENALTY SYSTEM.

A. Athletic Department

1. Those presently employed by the institution

a. Possible penalties

(1) Private letter of reprimand sent by the NCAA to the offender, the President of the University, the Conference Commissioner, the Faculty Representative, and the Athletic Director.

(2) Public letter of reprimand released to national wire services.

(3) Probation for one or more years.

(4) Bar the offender from NCAA events, All Star competition, special international coaching assignments, etc.

(5) Fine

(a) Deduction from salary.

(b) Withhold salary increment.

(6) Restrict recruiting privileges.

(7) Suspend recruiting rights.

(8) Suspend from active participation in activities of the Athletic Department with or without pay.

(9) If the violation is flagrant or a second major violation:

(a) Loss of job in that NCAA institution.

(b) Loss of job and not permitted to be employed by any NCAA institution for a specific period of time.

(c) Loss of job and permanent disbarment from employment in any NCAA institution.

2. Former employees who have moved to and are presently employed in another NCAA institution.

a. Possible penalties

(1) Private letter of reprimand sent from the NCAA to the offender and copies to the present and past president of his university, the present and past conference commissioner, the present and past faculty representative, and the present and past athletic director.

(2) Public letter of reprimand released to national wire services.

(3) Probation for one or more years.

(4) Bar from NCAA events, All Star competitions, special international coaching assignments, etc.

(5) Fine.

(a) Deduction from salary.

(b) Withhold salary increment.

(6) Restrict recruiting privileges.

(7) Suspend recruiting rights.

(8) Suspend from active participation in activities of the Athletic Department with or without pay.

(9) If the violation is flagrant or a second major violation:

(a) Loss of job in that NCAA institution.

(b) Loss of job and not permitted to be employed by any NCAA institution for a specific period of time.

(c) Loss of job and permanent disbarment from employment in any NCAA institution.

3. Past members no longer coaching.

a. Possible penalties

(1) Private letter of reprimand sent by the NCAA to the offender, the President of the University, the Conference Commissioner, the Faculty Representative, and the Athletic Director.

(2) Public letter of reprimand released to national wire services.

(3) Restricted from any activities related to athletics in any NCAA member institution.

(4) Effective if and when he is hired by another NCAA institution:

(a) Probation for one or more years.

(b) Bar from NCAA events, All Star competitions, special international coaching assignments, etc.

(c) Fine

1) Deduction from salary.

2) Withhold salary increment.

(d) Restrict recruiting rights.

(e) Suspend recruiting rights.

(5) If the violation is flagrant or a second major violation:

(a) Prevent from returning to employment at another NCAA institution for a specified period of time.

(b) Permanent disbarment from employment at any NCAA institution.

B. University Administration and Faculty

1. Possible penalties

a. Private letter of reprimand sent by the NCAA to the offender, the President of the University, the Conference Commissioner, the Faculty Representative, and the Athletic Director.

b. Public letter of reprimand released to the national wire services.

c. Probation for one or more years.

d. Prevent recruiting or participation in activities of Athletic Department for a specified period of time.

e. Prevent participation in activities of Athletic Department permanently.

f. NCAA recommendation that the person be denied faculty rights and privileges as determined by the institution's President or appropriate committee.

(1) Remove from faculty committees.

(2) Prevent from attending school activities not related to actual departmental responsibilities.

(3) Fine

(a) Deduction from salary.

(b) Withhold salary increments.

(4) Loss of job if it was a flagrant or second major offense.

C. Alumni or Representatives of Athletic Interests

1. Possible penalties

a. Private letter of reprimand sent by the NCAA to the offender, the President of the University, the Conference Commissioner, the Faculty Representative, and the Athletic Director.

b. Public letter of reprimand released to the national wire services.

c. Temporary disbarment from recruiting for a specified period of time.

d. Permanent disbarment from recruiting if it is a second major offense.

e. Permanent disbarment from any active association with any activities related to athletics at that institution.

D. Athletes

1. Prospective Student-Athletes

a. High School and Junior College

(1) Possible penalties

(a) Private letter of reprimand sent by the NCAA to the offender, the President of the University, the Conference Commissioner, the Faculty Representative, and the Athletic Director.

(b) Public letter of reprimand released to national wire services.

(c) If violation is willful:

1) Partial or complete prohibition of athletic participation at his intended institution.

2) Probation for one or more years.

3) Partial loss of financial aid at any NCAA institution.

4) Full loss of financial aid for certain period of time at any NCAA institution.

5) Full loss of financial aid for duration of college career at any NCAA institution.

6) Partial loss of competition at any NCAA institution.

7) Partial or permanent disbarment from NCAA sponsored events.

8) Full and permanent loss of competition at any NCAA institution if violation is flagrant or a second major violation.

2. Athlete Presently Participating in College Sports

a. Possible penalties

(1) Private letter of reprimand sent by the NCAA to the offender, the President of the University, the Conference Commissioner, the Faculty Representative, and the Athletic Director.

(2) Public letter of reprimand released to national wire services.

(3) If violation is willful:

(a) Probation for one or more years.

(b) Partial loss of financial aid at any NCAA institution.

(c) Full loss of financial aid for a certain period of time at any NCAA institution.

(d) Full loss of financial aid for duration of college career at any NCAA institution.

(e) Partial loss of competition at any NCAA institution.

(f) Partial or permanent disbarment from NCAA sponsored events.

(g) Full and permanent loss of competition at any NCAA institution if violation is flagrant or a second major violation.

3. Athlete Enrolled and Attending Class but Not Presently Participating in College Sports

a. Possible penalties

(1) Private letter of reprimand sent by the NCAA to the offender, the President of the University, the Conference Commissioner, the Faculty Representative, and the Athletic Director.

(2) Public letter of reprimand released to national wire services.

(3) If violation is willful:

(a) Probation for one or more years.

(b) Partial loss of financial aid at any NCAA institution.

(c) Full loss of financial aid for a certain period of time at any NCAA institution.

(d) Full loss of financial aid for duration of college career at any NCAA institution.

(e) Partial loss of competition at any NCAA institution.

E. Institution

1. Possible penalties

a. Private letter of reprimand sent by the NCAA to the President of the University, the Chairman of the Board of Regents, the Conference Commissioner, the Faculty Representative, and the Athletic Director.

b. Public letter of reprimand released to national wire services.

c. Reduce number of scholarships or reduce the amount of money earmarked for scholarship in that sport for a certain period of time.

d. In the case of individual sports permit the athlete to compete but not score points for his institution in NCAA Championship events.

e. Denial of the institution's team from being ranked in one or more NCAA Championship events or in invitational and postseason meets and tournaments.

f. Denial of the institution's receiving net monetary return from one or more NCAA Championship events or invitational postseason meets and tournaments.

g. Denial of the institution's receiving net monetary return from one or more television programs subject to the Association's control or administration.

h. Denial of the institution's sharing of television revenue from conference sources.

i. Fine the institution.

(1) If a fine is assessed against an institution the financial loss should be imposed upon the sport(s) that caused the penalty in the first place. In other words only the sport responsible for the violation should suffer from the penalty. It would be wrong to reduce the budgets in those sports that had nothing to do with the infraction. By using the budget and expenditures incurred from the previous year, these figures can easily be determined.

j. Suspend or terminate the institution's NCAA membership if in the opinion of the Council, it does not take appropriate disciplinary action against any person associated with that institution who is found guilty of NCAA violations.

METHODS THAT MIGHT HELP
PREVENT NCAA RULES INFRACTIONS

If one of the major goals of the NCAA Governing Council is to prevent infraction of NCAA rules then a much more comprehensive system than is now in use must be instituted. Items similar to recommendations 1 through 4 which follow will do much to help prevent infractions of rules.

Recommendations to the NCAA Concerning Methods It Might Consider Using To Prevent Infractions of Its Rules

1. Require that each NCAA member institution furnish the latest edition of the NCAA Manual to each member of the coaching staff every year.

   A. Request that it be studied.

   B. Each coach should sign a master card furnished by the NCAA which will include the signature of every member of the Athletic Department of that institution. The card should state that he has received a copy and has read the latest NCAA Manual.

      (1) This procedure will cause most coaches to become familiar with the rules. No coach can blame someone else for not being aware of the rules.

   C. Athletic directors should be responsible for collecting the signatures of each employee and filing a form card supplied by and filed in the NCAA office.

2. Encourage the Alumni Association of each member institution to dispense rules compiled by the NCAA relating to recruiting and financial aid to each of its members. If these rules are brief and clearly written so they are easily understood most Alumni will try to conform to them. It might be of benefit to indicate possible institutional penalties that could befall an institution because of rules infractions caused by Alumni.

   I feel a persuasive letter sent to the Alumni Association Offices by the NCAA and/or a personal contact made by the faculty representative would find its Alumni Association receptive to placing the NCAA recruiting policy form and accompanying letter in one of its annual mailings to alumni members.

3. Require recruits or prospective student-athletes be furnished with a form published by the NCAA which clearly states all rules that apply to recruiting, eligibility, and financial aid plus possible penalties for rules infractions. This should be done when the prospective student becomes a prospective student-athlete. (See NCAA Manual, Page 30, O.I. 100 (a) 1972-73. stated below.)

   "A prospective student becomes a prospective "student-athlete" (i.e., matriculation is considered to have been solicited) if a member of the athletic staff or other representatives of athletic interests: (1) provides transportation to the prospective student to visit its campus; (2) entertains the prospective student in any way on the campus except the institution may make available to the prospect a complimentary admission to an athletic contest; (3) initiates or arranges a telephone contact with the prospective student or member of his family (or guardian) or a prospective student on its campus."

A. Return card.

(1) States that the rules have been read by prospective student-athlete and his parents or guardian. Athlete and parents sign card.

(2) File in that institution's Department of Athletics.

B. The NCAA should encourage each State High School Activities Association to publish recruiting and eligibility rules in one of its annual publications. Also send this information directly to the principal of each high school and to the Director of Athletics of each junior college in the nation. Suggest that each coach read the rules and then post the rules on a bulletin board so that the athletes can become familiar with the rules.

4. Require each NCAA member institution to provide each participating student-athlete with a copy of the NCAA rules that apply to the athlete and his sport.

A. Areas of Concern

(1) Eligibility
(2) Financial Aid
(3) Penalties

B. Request that the rules be read and studied.

C. Require that each athlete sign a form card and file it in the office of the Director of Athletics in September of each year.

(1) Card states the athlete has read the rules.

(2) Athlete signs the card.

(3) Athletic Director responsible to keep the cards on every athlete on file each year.

Committee releases enforcement-review report

The report of the Special Committee to Review the NCAA Enforcement and Infractions Process:

The Special Committee to Review the NCAA Enforcement and Infractions Process was appointed in April 1991 to examine the enforcement procedures to ensure that this important function of the Association is fair, effective, timely and consistent. Its establishment was initiated by NCAA Executive Director Richard D. Schultz a year earlier in a document outlining his goals for 1990-91, which were accepted by the NCAA Executive Committee in its August 1990 meeting.

Specifically, the special committee's charge, as extended by the executive director, was as follows: "Conduct a thorough review of the enforcement and infractions process, including (a) the investigative process by the enforcement staff; (b) the function of the Committee on Infractions, including the hearing process and the method used to determine penalties if guilty, and (c) the release of information to the public regarding sanctions and the conduct of press conferences at institutions announcing sanctions. The purpose of the review is to make sure that the process is being handled in the most effective way, that fair procedures are guaranteed, that penalties are appropriate and consistent; to determine ways to reduce the time needed to conclude the investigation and the infractions process, and to determine if there can be innovative changes that will make the process more positive and understandable to those involved and the general public."

The special committee attempted to accomplish two important objectives in its resultant study and recommendations: maximizing fairness to institutions and individuals accused of wrongdoing, while preserving the effectiveness of the Association's ability to investigate and take corrective measures expeditiously in infractions cases.

The special committee

The special committee comprised the following individuals: Rex E. Lee, president of Brigham Young University and former U.S. solicitor general, chair; Warren E. Burger, former Chief Justice of the United States; Reuben V. Anderson of Jackson, Mississippi, a former state supreme court judge; Paul R. Verkuil, president of the College of William and Mary and former dean of the Tulane University law school; Charles W. Ehrhardt, professor of law and faculty athletics representative at Florida State University; Becky R. French, university counsel at North Carolina State University; Benjamin R. Civiletti of Baltimore, Maryland, former attorney general of the United States; Charles Renfrew of San Francisco, California, vice-president, legal, for Chevron Corporation, a former Federal district judge and a former deputy U.S. attorney general; Philip W. Tone of Chicago, Illinois, a former Federal district judge and former Federal appeals court judge, and two current members of the NCAA Council, Charles Cavagnaro, director of athletics at Memphis State University, and William M. Sangster, director of international programs and faculty athletics representative at Georgia Institute of Technology.

The work of the special committee

The special committee conducted five meetings during the course of its work — May 29, June 30-July 1, July 26-27, September 5 and October 16.

In certain of its meetings, the special committee consulted in person with invited individuals to obtain their views of the issues being considered by the special committee. Included in this category were Thomas C. MacDonald Jr., a Tampa, Florida, attorney who has served as counsel for the University of Florida; Jerry Tarkanian, head men's basketball coach at the University of Nevada, Las Vegas; D. Alan Williams, University of Virginia, current chair of the NCAA Committee on Infractions; Frank E. Remington, University of Wisconsin, Madison, a former chair of the infractions committee; Beverly E. Ledbetter, Brown University, and Milton R. Schroeder, Arizona State University, current members of the infractions committee, and S. David Berst, NCAA assistant executive director for enforcement.

In early summer, invitations were extended to the general public and a cross section of the constituencies in college athletics to participate in a public hearing and to express their views regarding the NCAA's enforcement and infractions process. The hearing was held in conjunction with the special committee's July 26-27 meeting in Washington, D.C.

At that meeting, the special committee heard from the following individuals: Britton B. Banowsky, assistant commissioner and legal counsel, Southland Conference; J. Steven Beckett, attorney, Champaign, Illinois; William C. Carr III, vice-president, GNI Sports, Inc., Charlotte, North Carolina (former athletics director, University of Florida); Collegiate Commissioners Association officers Thomas C. Hansen, commissioner, Pacific-10 Conference, and Thomas E. Yeager, commissioner, Colonial Athletic Conference; Bill Curry, head football coach, University of Kentucky; James E. Delany, commissioner, Big Ten Conference; Vincent J. Dooley, director of athletics, University of Georgia; George H. Raveling, head men's basketball coach, University of Southern California, and member of the board of directors of the National Association of Basketball Coaches, and Michael L. Slive, commissioner, Great Midwest Conference.

The special committee also received a number of written submissions during its work, including specific suggestions from Stanley O. Ikenberry, president of the University of Illinois System; Morton W. Weir, chancellor of the University of Illinois, Champaign; Congressman Tom McMillen (D-Maryland), and George H. Gangwere, now retired after years as the NCAA's general counsel.

Findings

During the course of its study, the special committee made certain findings that formed the basis for its recommendations (detailed later in this report). Among them:

- The conduct of the NCAA's enforcement and infractions process has been, since its inception 40 years ago, a serious effort to achieve, fairly and equitably, compliance with NCAA principles and regulations. The Association, its membership and its Committee on Infractions through the years are entitled to appreciation and for having the willingness to e[stab]lish a system by which the member institutions can police themselves in their intercollegiate athletics activities. That continued self-enforcement is essential to successful compliance. Similarly, the special committee wishes to acknowledge the quality and credibility of the efforts of both the Committee on Infractions and the enforcement staff. The Association has a consistent history of willingness to review and adjust its enforcement and infractions procedures in an effort to improve those procedures. In this spirit, the special committee believes that the process can be improved further and enhanced in the areas reflected by the recommendations of this report.
- The process must be procedurally fair, as expeditious as possible, and effective in uncovering and correcting wrongdoing while affording adequate protection to institutions and individuals. In this respect, the existing distinction between major and secondary violations is appropriate and useful in processing and resolving infractions cases.
- The U.S. Supreme Court has determined that the NCAA is not a state actor for purposes of the Fourteenth Amendment to the U.S. Constitution. Nevertheless, the special committee is of the view that the NCAA, in the interest of its members and in its own interest, should afford procedural fairness protections. These protections should be provided and administered by the NCAA itself, in order to assure uniformity across all member institutions and all parts of the nation. Also, it is essential, in the special committee's view, the identification and correcti[on] NCAA rules infractions remain a cooperative, joint effort, involving both the Association and also the affected member institutions.

(With this report is a statement regarding the NCAA enforcement procedures vis-a-vis components of due process. See page 13.)

Recommendations

Effectively improving the sy[stem] will require both structural procedural changes. The special committee's specific recommendations, which will be reviewed by the NCAA membership and then submitted to the NCAA Council and the NCAA Presidents Commission for approval and any necessary membership action, are as follows.

- **Enhance the adequacy of the initial notice of an impending investigation and assure a personal visit by the enforcement staff with the institution's chief executive officer.**

Among the problems the special committee identified are the inadequacy of the initial notice of an impending investigation and the desirability of affirming a spirit of joint investigation by the NCAA and by the institution. The most effective investigations are those characterized by cooperation, rather than adversarial positioning, and the initial steps in the investigative process are pivotal in establishing the appropriate relationship.

The special committee is convinced that in the vast majority of instances, the institutions affected are as vigilant in their attempts to determine the truth as is the NCAA enforcement staff. Joint investigative efforts, involving the cooperation of both the Association and the institution, benefit all parties and speed the process. In those cases

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Proposed infractions process changes

Recommendation	Current
INITIAL NOTICE	
11/4-1-91 ● The committee recommends that a member of the NCAA enforcement staff personally visit the institution's chief executive officer with a letter of preliminary inquiry in hand.	● Upon receiving or uncovering information about possible rules violations, the NCAA merely sends a letter of preliminary inquiry to the school suspected of a violation. This letter does not describe the nature of the possible violation and often does not identify the sports program that is involved.
TAPE RECORDINGS	
● All interviews must be tape-recorded and tapes will be provided to involved parties.	● Interviews are tape-recorded, but the tapes are available for review only by involved parties.
SUMMARY DISPOSITION	
● The committee recommends joint investigation by the institution and NCAA staff of possible major violations. If the institution and/or individuals affected and NCAA enforcement staff stipulate to findings and penalties, the Committee on Infractions may approve the agreement without a hearing.	● The NCAA enforcement staff conducts an independent investigation of the alleged wrongdoing and the institution often initiates a separate investigation of its own. A hearing then is conducted before the Committee on Infractions, usually several months after the NCAA initiated its investigation.
HEARING OFFICER	
● The committee recommends that in cases involving major violations not resolved by the summary disposition process, a hearing officer, probably a Federal or state court judge or other eminent legal authority, would make findings of violations and would recommend penalties for consideration by the Committee on Infractions.	● The Committee on Infractions makes findings and imposes penalties, subject to appeal to an NCAA Council subcommittee. To be voted on next January (1993)
OPEN HEARING	
● The committee recommends that hearings be open to the public (with the exception of deliberations), except for good cause shown in the interests of privacy, fact-finding or justice.	● Hearings are closed.
TRANSCRIPTS	
● The committee recommends that transcripts of hearings be provided to all involved parties and be made available to the extent possible to the public.	● Transcripts are not made available to any party or the public. Tape recordings are maintained by the NCAA for review by affected parties.
APPEAL PROCESS	
● The Committee on Infractions considers appeals of findings and determines penalties; if the committee increases the penalty recommended by the hearing officer, a special appellate committee will consider appeals of such actions.	● The infractions committee's findings and penalties are subject to appeal to the appropriate steering committee of the NCAA Council.
PUBLIC REPORT	
● The committee recommends that the hearing officer or the committee acting on an appeal make a public announcement of infractions cases that includes a more ample statement of reasons for actions taken.	● Infractions reports are prepared by the Committee on Infractions.

In addition to these recommendations, the special committee suggested the following change in responsibility for the NCAA Committee on Infractions:

The committee believes the duties of the Committee on Infractions should include:

1. Supervise summary disposition process and review penalty agreements;
2. Consider appeals of findings; institution, viduals or enforcement staff can appeal;
3. Assess penalty after receiving recommendation from hearing officer, and
4. Monitor entire enforcement procedure.

LEGISLATIVE REQUIREMENTS

Procedures requiring an open hearing and a hearing officer would require NCAA Convention action. Most of the remaining recommendations may be implemented by the NCAA Committee on Infractions or NCAA Council to supplement or replace current procedures.

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that do not fit this pattern, however, the enforcement staff should retain the option of abandoning a joint investigation and proceeding on its own to the extent required by the needs of the case. In light of the greatly increased cooperation currently being exhibited by institutions in the enforcement process, however, it is desirable to pursue the benefits of joint investigation whenever possible.

Toward that end, the special committee recommends that instead of simply sending a preliminary letter of inquiry to an institution, the enforcement staff personally should visit the institution's chief executive officer with the preliminary notice in hand in each major case as defined in NCAA legislation. Further, the letter should provide some indication of the nature of the potential violation and the portion of the athletics program where the potential violation occurred. The staff thus would advise the chief executive officer of its intention to work with the institution in a joint investigation unless the staff did not believe that a joint investigation would be appropriate in that instance, in which case it would so inform the institution and state its reasons for that position. This in-person visit also would provide an opportunity for discussion of procedural matters, alternatives for disposing of the case and a time frame.

Using in-person delivery of the preliminary letter as the occasion to discuss the matter with the NCAA's representatives also should assure that the institution receives a more informed view of the inquiry than it now receives in a brief written notice.

● Establish a "summary disposition" procedure for treating major violations at a reasonably early stage in the investigation.

One of the most serious problems identified by the special committee is the period of time that frequently elapses from the beginning of an investigation of a major violation by both institution and the NCAA enforcement staff, to the hearing before the infractions committee and the subsequent imposition of sanctions. The special committee believes there is a need to speed the process and assist institutions in resolving matters without an extended period of adverse publicity and a considerable commitment of institutional time, attention and resources.

Frequently, all parties are in agreement at a fairly early stage of the investigation as to the facts. When this is the situation in the case of secondary violations, there is no reason to hold a hearing, and the case is quickly resolved by the enforcement staff in accordance with established guidelines and procedures.

Agreement as to the facts and an opportunity for an expeditious resolution also should be available in the case of major violations. The special committee recommends that a "summary disposition" procedure be established for treating major violations. This, in essence, would be a negotiated agreement by which the enforcement staff's preliminary findings would be provided directly to the involved institution's chief executive officer, who could agree at that point to negotiate mutually acceptable findings and remedies. In these cases, the assistant executive director for enforcement would be empowered to enter into a summary disposition with any or all parties involved in the case at any time after the preliminary inquiry has begun, subject to general guidelines established by the infractions committee.

Specifically, the staff would share with the chief executive officer its information regarding rules violations. If the chief executive officer concurred, an agreement would be reached regarding the statement of facts and a proposed penalty (the latter to be approved by the infractions committee), and the agreed-upon summary disposition would end the matter. In most cases, it is anticipated that the time necessary to conclude this procedure would not extend beyond three or four months. When the circumstances of the case and the agreed-upon disposition of the matter are beyond the authority granted by the infractions committee to the enforcement staff, the case would move into the regular infractions process. In cases in which all involved parties do not agree to the summary disposition of the case, the regular infractions process would be available to those who are not in agreement (it being understood that the agreed-upon disposition would be available for those parties who are in agreement).

In order to provide appropriate oversight of the summary disposition procedure, the agreed-upon sanction(s) would be subject to expeditious review by the infractions committee for the purpose of determining whether the penalty is consistent with guidelines.

● Liberalize the use of tape recordings and the availability of such recordings to involved parties.

A persistent problem is the lack of access to evidence held by the opposing side in an infractions case. The special committee is encouraged by the fact that the infractions committee has recommended a liberalization of the tape-recording procedure for action at the 1992 Convention, but in the interest of openness, it believes that additional steps should be taken in this regard.

The special committee recommends that as a condition of using a pre-hearing statement from any witness, any interview with that witness must be tape-recorded, and the enforcement staff must disclose the existence of the tape recordings on or before the date on which the official letter of inquiry is issued that states the basis upon which the allegations are made. Upon a showing that a tape-recorded statement could not be obtained (e.g., witness refusal) other "best evidence available" statements (e.g., signed statements, interview memos) would be admissible in a hearing. Under any circumstance, a witness would be permitted to appear in person at any hearing at which the witness' statements are to be used.

The tapes and other evidence would be "discoverable" by any person or institution having an actual stake in the outcome of the case; however, the enforcement staff would be permitted to request a protective order (from the hearing officer, as identified in a subsequent recommendation) in appropriate cases in which disclosure may be detrimental to the institution or may jeopardize the investigation. Finally, institutions or individuals also would be permitted to submit affidavits in support of their positions.

The special committee believes that the liberalized use of tape recordings and the emphasis on discovery would benefit both the staff and those subject to inquiry by enhancing the reliability of the evidence and by allowing expeditious sharing of the facts of the case.

Statement on due process

In the last 20 years, the concept of due process in the administrative setting has undergone substantial change. With Goldberg v. Kelly, in 1970, the Supreme Court set detailed standards for determining when there were sufficient procedural ingredients to satisfy due process. Many informal government functions and programs never provided the full panoply of Goldberg ingredients, and with Mathews v. Eldridge, in 1976, the Court recognized that it must balance government and private interests before deciding whether a particular government program satisfied due process standards.

The NCAA, which, as a private association, is not even required by the Constitution to provide due process, has been responsible in its enforcement and infractions process to the standards of fair hearings established by the Supreme Court. Of the 10 procedural ingredients identified in Goldberg, the NCAA traditionally has provided at least seven. One of the three remaining ingredients (cross-examination of adverse witnesses) is simply beyond the NCAA's power to ensure since, as a private association, it lacks subpoena power. Thus, even under Goldberg's demanding standards, the NCAA hearing process arguably failed only to meet two ingredients (adequacy of notice and statement of reasons). This comes closer to satisfying Goldberg than did the informal administrative process of many Federal agencies in the 1970s. Certainly, the NCAA process would meet the standards implicit in the Mathews balancing test.

Under the new process recommended by this special committee, the NCAA enforcement and infractions program should satisfy whatever procedural challenges might be posed under any reasonable set of due process standards applicable to the world of administrative decision-making, whether emanating from Goldberg v. Kelly, Mathews v. Eldridge or state constitutional law.

Current NCAA due process protections

Although the United States Supreme Court determined in the Tarkanian case that the NCAA is not a "state actor" and therefore is not subject to the due process clause of the Federal Constitution, NCAA enforcement regulations contain a multitude of traditional due process protections. Some of the most important are the following:

- The institution is formally advised of any preliminary inquiry into its athletics policies and practices.
- The institution's representative may be present at all on-campus 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.
- There is in general a four-year statute of limitations concerning alleged violations that may be processed.
- If after preliminary investigation the NCAA enforcement staff determines that an allegation or complaint warrants an official inquiry, the institution's chief executive is formally advised of such inquiry, including the details of each allegation.
- The institution is advised of all individual witnesses and information upon which the staff intends to rely and has the right to interview those witnesses.
- 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.
- Information from confidential sources may not be considered by the Committee on Infractions.
- The proceedings of the Committee on Infractions are tape-recorded.
- The burden of proving allegations rests with the NCAA enforcement staff.
- Actions of the Committee on Infractions are by majority vote.

● Use former judges or other eminent legal authorities as hearing officers in cases involving major violations and not resolved in the "summary disposition" process.

The special committee believes there is a widely held perception of inadequate separation of the functions between the enforcement staff and the ultimate decisional authority (i.e., the perception is that the infractions committee serves as the prosecutor and judge under the current system). The use of an independent jurist would enhance the public's perception of fairness and confidence in the system.

The special committee recommends, therefore, that in cases involving charges of major violations not resolved by the summary disposition procedure, a hearing officer be used to review stipulated facts, resolve factual issues that are in dispute and recommend an appropriate disposition to the infractions committee. The recommended disposition would be based on information discussed in the hearing and an independent review of past cases. The hearing officer preferably would be a former Federal judge, state court judge, or other eminent legal authority or person of stature whose integrity and impartiality are beyond question.

It is not intended that the use of an independent hearing officer would make the process more adversarial; indeed, the special committee believes that hearings essentially would be conducted as in the past, except that an experienced legal expert who is not connected with the NCAA in any way would determine the facts in a case and make findings. Such individuals are trained in weighing conflicting evidence, judging credibility and determining whether the burden of proof has been satisfied. A pool of such individuals, trained to make certain that they have sufficient background in NCAA regulations, would be necessary to assure the availability of a sufficient number of hearing officers. The special committee recommends that the NCAA Administrative Committee, consisting of the five elected NCAA officers and the executive director, be responsible for selecting and maintaining the pool of hearing officers.

● Hearings should be open to the greatest extent possible.

In general, the special committee prefers that all hearings in the NCAA infractions process be open, with the exception of deliberations. It should be emphasized that the committee is closely divided on this issue, but the majority holds a general preference for open hearings unless the hearing officer determines that a portion or portions of the proceedings, in the interest of privacy, fact-finding and justice, should be kept confidential for good cause shown (e.g., information pertaining to test scores, drug use, medical records).

Another factor supporting open hearings is the committee's position regarding the availability of transcripts of hearings, set forth in a subsequent recommendation in this report.

Any interested party could be represented by legal counsel before the hearing officer and at all relevant stages of the proceedings, as is the case now.

● Provide transcripts of [illegible] fractions hearings to appropriate involved parties.

The special committee recommends that tapes or transcripts of open infractions hearings be sent upon request to parties named in the case and to the involved institutions under circumstances providing protection of confidentiality of appropriate information. In addition, anyone interested would be permitted to purchase a tape or transcript of the open hearings when the case has been concluded.

The committee believes that the sharing of tapes, transcripts or other records of enforcement proceedings would enhance the spirit of cooperation that is growing in the membership. Concerns regarding such tapes or transcripts becoming available to others (e.g., the news media) are, in the special committee's opinion, outweighed by the benefits that can accrue in a more cooperative procedure.

● Refine and enhance the role of the Committee on Infractions and establish a limited appellate process beyond that committee.

The present appellate process, in which the infractions committee decision is subject to appeal to the appropriate steering committee of the NCAA Council, is largely ineffective.

Therefore, the special committee recommends that a special review body of three to five members, the majority of whom would be representatives of NCAA members institutions and conferences, be appointed to serve as the appellate group to consider appeals of increased penalties only. The appellate process would be available only in instances in which the Committee on Infractions has increased a proposed penalty. The facts in the case

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Enforcement review

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would be frozen, and the appellate body would have the option of affirming the Committee on Infractions' penalty or decreasing it.

Thus, the infractions committee no longer would serve as the hearing panel to determine the facts in a case. That would be the role of the hearing officer as noted above. The committee could set aside a factual finding by the hearing officer only on a "clearly erroneous" standard. The committee's role would be redefined as that of supervising the summary disposition process (i.e., it would review the penalty agreement and approve it, unless it found the proffered penalty to be demonstrably inconsistent with NCAA rules and/or contrary to the interests of the Association); it would consider appeals of findings made by, and assess penalties after receiving the disposition recommendation of, the hearing officer, and it would monitor the entire enforcement system. The committee's role would be refined and enhanced because the committee would remain responsible for all portions of the enforcement and infractions process, and it would do so without the burden of also filling the role of fact-finder.

• Adopt a formal conflict-of-interest policy.

The special committee recommends that a conflict-of-interest policy be adopted formally. This would require simply an identification of the circumstances in which a member of the enforcement staff would not be permitted to be involved in a given case.

• Expand the public reporting of infractions cases.

The special committee recognizes that the perception of the infractions process is a major problem. It believes that the Association should do everything possible to enhance the reporting of information to the public and the news media regarding the reasons for actions taken in infractions cases. The committee's recommendation regarding open hearings would assist in this regard.

The NCAA also should do more to inform the public and the media of the fact that the enforcement and infractions process is established, maintained and strongly supported by the member institutions themselves.

Accordingly, the special committee recommends that public announcements of infractions cases include a more ample, but clear and concise, statement of the reasons for the actions taken. It believes that many of the steps recommended earlier will further enhance the nature and completeness of the information.

• Make available a compilation of previous committee decisions.

One important feature of the enforcement and infractions system should be the availability of complete and comprehensive information as to past infractions cases and actions of the infractions committee.

The special committee recommends that a publication or other type of document be developed that compiles such information and that it be made available as a reference for institutions and individuals involved in infractions cases.

• Study the structure and procedures of the enforcement staff.

The NCAA enforcement staff should be responsible directly to the NCAA executive director and, through the executive director, to the NCAA Executive Committee, as prescribed in existing NCAA legislation. The NCAA administration should study carefully the enforcement staff structure, qualifications and procedures in light of the recommended changes in the process. It also should study the allocation of resources to the enforcement effort.

• Implementation

The NCAA approval mechanism is such that certain of the special committee's recommendations can be effected upon approval by the NCAA Council, while others will have to await a membership vote at the appropriate NCAA Convention. That is inevitable in the Association's procedures, all of which are designed to protect the legislative interests of the member institutions.

The special committee urges that its recommendations be implemented as soon as is praticable under NCAA procedures. In pending infractions cases, involved parties should be permitted to avail themselves of the proposed changes in procedures to the extent possible under NCAA legislation. Otherwise, it is the special committee's belief that the current process, modified as appropriate by the Council under its existing authority, should apply to those cases currently in process. This should not cause undue concern on the part of an involved member institution. Such institution should not be permitted to use the pendency of new procedures as a means of delaying the effective conduct of the process during this interim period. The new procedures should apply to cases that are commenced after each such procedure is put into effect.

Enforcement panel

Continued from page 1

Other recommendations include:

• Initial notice: A member of the NCAA enforcement staff would meet personally with the institution's chief executive officer to give notice of a preliminary investigation. "This reflects the view that there should be continuing dialogue between the NCAA and the institution," Lee said.

• Tape recordings: Interviews with witnesses would have to be tape-recorded, and the recordings would be provided to involved parties.

• Transcripts: Transcripts of hearings would be provided to all involved parties.

• Appeal process: The NCAA Committee on Infractions would consider appeals of findings, would continue to determine penalties and would oversee the entire process. A special appeals committee would be created to consider appeals in cases in which the Committee on Infractions increases a recommended penalty.

• Public reports: Announcements of infractions cases would include a more detailed statement of reasons for the actions taken.

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NCAA Executive Director Richard D. Schultz discusses the special committee's recommendations

"The NCAA approval mechanism is such that certain of the special committee's recommendations, such as those concerning investigative procedures, tape recordings and transcripts, can be effected by the NCAA Committee on Infractions or the Council in advance of any NCAA Convention actions," Schultz said.

Other changes, such as those involving open hearings and the use of hearing officers, may require legislation, he said.

Lee said the proposed changes could only strengthen the Association's position on due process challenges. He said the existing structure already satisfies Federal due process criteria, even though the NCAA, as a private organization, is not required to meet those criteria. The committee's report includes as an appendix a statement on due process considerations.

February 19, 1992

STATEMENT OF CLIFFORD A. WILEY
TO THE FEDERAL AND STATE AFFAIRS COMMITTEE OF THE
KANSAS HOUSE OF REPRESENTATIVES

Good afternoon ladies and gentelman, members of the Committee, my name is Clifford A. Wiley, and I am here to speak on behalf of Senete Bill 234.

I believe the time has come for the enactment of legislation of this kind. One of the most cherished concepts in our society is that of fundamental fairness, and I can think of few avenues to protect that concept than the right to due process. This right is not available to student athletes who participate in sports at schools that belong to the National Collegiate Athletic Association and other college sports governing bodies, except in those states that have passed due process laws such as the one proposed here.

My attachment to this issue is not simply as a bystander. After a successful high school track career, I was offered and accepted an athletic scholarship to the University of Kansas. When I left Baltimore, Maryland to enroll at the University in the fall of 1974, my goals were simple, to become the first member of my family to attend college and earn a degree, and to fulfill my athletic potential.

I considered my freshmen year a successful one; I was a Big Eight champion indoors and an N.C.A.A. All American outdoors. While my first year was a difficult one academically, I was progressing towards graduation.

My second year was not so nice. As in my freshmen year, I received a sum of money from a federal financial aid program, then known as the Basic Education Opportunity Grant (B.E.O.G.), and now commonly known as the Pell Grant. The application process required no involvement from any university official. The university merely verifies enrollment and dispenses the funds when they arrive from the government. By the terms of the program the grant was to supplement other forms of financial aid to meet the cost of attending college. The amount of money a student received was based on the student's family income. I came from a family of nine with an income below the poverty line.

House Fed. & State Affairs
February 19, 1992
Attachment #4

Midway into the fall semester an official from the athletic department indicated that the N.C.A.A. had concerns about student-athletes receiving the grant money. In the spring I received a letter from the University stating that I would have to pay a sum of money to cover my tuition or I would be dropped from all classes. I refused to pay for a scholarship I had earned, and I was never dropped from classes.

Instead I was informed that a committee of the N.C.A.A. had reviewed my case and declared me ineligible to compete for the University of Kansas. At no time was I given an opportunity to meet with this committee, or to formally object to their declaration of ineligibilty.

Understanding that I could not attend college without both my athletic scholarship and the Grant, I filed a lawsuit in federal court against the N.C.A.A., the Big Eight Conference, the University, and the Kansas Endowment Association. I received a T.R.O., which was followed by both temporay and permanent injunctions. Under the court order I was able to receive both my athletic sholarship and the Grant until I completed my education at the University in 1978. The court order also enjoined the University from enforcing the N.C.A.A.'s order to kick me off the team.

In 1980 the 10th Circuit Court of Appeals dismissed my case without reaching the merits of my claim. The Court's decision had no real effect on me because I had graduated; looking at the decision as an attorney I am sure this fact was not lost on the Court of Appeals.

It is my understanding that the N.C.A.A. has changed its rules and now allows a student athlete to receive both the grant and an athletic scholarship without fear of reprisal. But I have no doubt that if I had been allowed a hearing to argue the merits of my case, before the N.C.A.A. declared me ineligible, it would not have taken them over a decade to see that their position was wrong.

In many ways it is not the rules of the N.C.A.A. that are the problem. The problem is there is no opportunity for the student athlete to say this rule is wrong, I have been wronged, or to face those who accuse them of having done wrong.

Members of the committee thank you for your time and attention.

Respectfully submitted,

Clifford A. Wiley
8151 Holmes, Unit 201
Kansas City, Missouri 64131

HF 35A
2/19/92
#4-3

Michael J. Maddox

Academic Experience:

University of Kansas School of Law, Lawrence, KS
JD to be conferred May 1994.
University of Kansas, Lawrence, KS
BS in Business Administration, 1991.

Athletics & Activities:

Varsity Basketball, 4 years

- Captain, 1 year.
- 1988 NCAA National Champions.
- 1991 NCAA Runner-up.
- Academic All Big-Eight, 1991.
- Ken Koenigs Academic Award, 1990, 1991.

Phi Delta Theta Fraternity, 4 years

- National All Phi Basketball team.
- Kansas Phi Delt Athlete of the Year.
- National Phi Delt Athlete of the Year, Runner-up.

Student Senator, 1988

Special Olympics Volunteer, 4 years

Governors Conference - Guest Speaker, Summer 1991

Basketball Camp Director

- Director of, and lectured at various camps across the state of Kansas.

House Federal & State Affairs
February 19, 1992
Attachment #5

Enforcement by the NCAA

Punishment of Innocent Student-Athletes

The basis for writing this paper is to show how the NCAA affects the athletes. There must be some fair way to punish all schools that are found guilty of NCAA violations. I am not here to suggest a solution to the problem, but just to tell my story of how I was affected by playing basketball for a University that was not allowed to defend its national championship.

The NCAA is a great organization that offers tremendous opportunities to many athletes. Without the NCAA the spectacle of the NCAA basketball tournament would not be possible. I was allowed to participate in the tournament three times during my four years at the University of Kansas. My sophomore season we were forbidden to participate in the tournament due to rules violations that were committed by coaches that were no longer at the University of Kansas, and with players that were no longer at the University. The main violation was involving a player that never attended the University of Kansas.

As a nineteen year old this was very difficult to understand. I am now twenty-two and it is just as hard to swallow. Eleven players and four coaches were punished for violations they did not commit. A majority of us were apart of the National Championship team the previous year. It would have meant a great deal to us to have had an opportunity to defend our National Championship. I am not saying that we would have succeeded in our defense, but it would have meant a great deal to at least have had that opportunity.

The NCAA claims that it is a voluntary organization, but what other options does a division I university really have. They do not have any other choice but to participate in the NCAA. Thus the NCAA should be reflect the interests of the majority rather than what a

few schools desire. The NCAA's basic principles are positive, but it is the way they enforce these principles that is inadequate.

A basketball player spends his whole life working toward a goal of playing for a National Championship. I spent sixteen years working for that very opportunity. In 1988 I was lucky enough to win a National Championship. In 1991 we made it back to the Final Four and lost in the final game. Those are memories that I will carry with me for the rest of my life. I do not want other athletes to have to go through what my teammates went through in 1989.

Probation is an extremely destructive penalty that is usually placed on people who did not commit the violations. When a school is placed on probation it hurts the athlete, the school, and the whole state in which that school sits. I guess my question is should a person or a group of people be allowed to be the prosecutor and the judge. Then go ahead and make a decision that affects such a great number of people. You do not have to be a law student to know that this is extremely unjust.

Other than the death penalty, we were given as stiff a penalty as possible. I watched our coach hold back the tears as he had to tell us that we would not be able to participate in post season play. The reason was not due to anything any of us had done. I believe that was the hardest thing coach Williams ever had to tell us. We accepted our penalty with a bitter resentment of how we were treated, knowing there was nothing we could do. This punishment took away something all of us had dreamed about. An opportunity to go back to the post season tournament.

Most of us would have another opportunity to participate in the tournament. There were four seniors however that would be denied there opportunity to be the star of the show. I started in the championship game my senior year. I can't explain what that feels like. When you are a senior you feel as if it is your team. Success or failure will most likely be determined by your effort. It is a crime to

take away that opportunity from someone for a violation committed by another.

There is no consistency in the way the NCAA operates its organization. The punishments given by the NCAA are not in proportion to the crimes committed by the schools. All I am interested in is the NCAA being fair in their punishment. There must be some standard in which they can base there actions. They must also follow some sort of legal means of investigation. I have heard the NCAA is now taping interviews with witnesses now. This is a step in the right direction, but more must be done. By requiring the NCAA to follow due process maybe future athletes can avoid being punished for crimes they did not commit.

PROPONENT
SB-234

O.U.R GROUP
ORGANIZATION FOR UNDERSTANDING & REFORM

February 19, 1992

The Honorable Kathleen Sebelius
Kansas House of Representatives

Dear Representative Sebelius,

Please let me introduce myself. My name is Ms. Jo Miller, I received my B.A. in Psychology and my M.S.W. degrees from the University of Illinois. For the past 20 years, I have spent most of my life in research and work in higher education. Even though I feel that both my education and experience qualifies me to address a basic issue in Senate Bill 234 sponsored by Senator Went Winter, it is rather out of human compassion and civic duty that I offer my comments.

I am currently volunteering my service as National Coordinator for the Organization for Understanding and Reform. Finding the practices of the enforcement and infractions division of the NCAA appalling and VERY INEFFECTIVE, we began requesting NCAA reform. However, after repeated attempts, we have found the NCAA stolidly opposed to any REAL change. The Organization for Understanding and Reform, Inc., known as O.U.R. Group, is comprised of volunteers from all over the nation who have become concerned about the magnitude of effect the NCAA has on the lives of our young people. Coming from various educational backgrounds, we in no way condone cheating; nor do we wish to create a haven for cheaters. But psychology 101 teaches that if the reward/punishment does not correlate with the perpetrator then it is virtually ineffective. The current NCAA punishes INNOCENT individuals and lets the guilty go free. Surely, the NCAA, in their quest for justice, could devise a fairer mechanism for governing college athletics.

After careful review and research, we have found that many of the rules and regulations of the NCAA are virtually impossible to follow. We have also found that these rules are INTERPRETED DIFFERENTLY FOR DIFFERENT SCHOOLS. The NCAA interpretation of these rules and the resulting sanctions vary significantly from school to school. Yet, when we (the moms, dads, aunts, uncles and friends of athletes) request accountability from the NCAA, we have been either been ignored or reprimanded. We have never been given a satisfactory answer to any of our questions. Perhaps the billion dollar industry generated and possessed solely by the NCAA affects the objectivity of the regulators?! The NCAA possesses unprecedented and unregulated power over our young people.

What part of SB-234 is so cumbersome to the NCAA that they should oppose this it? Whether 'private' or 'public' shouldn't we all be afforded the provisions outlined in SB-234?

Please help us protect our young people. We are asking not only for your support of SB-234 but also your assistance in obtaining passage of this bill by your colleagues.

Sincerely,

Jo Miller

House Federal & State Affairs
February 19, 1992
Attachment #6

ORGANIZATION FOR UNDERSTANDING AND REFORM / P.O. BOX 2179 STATION A / CHAMPAIGN, ILLINOIS 61825 / (217) 398-6717

WHY THE CLAMOR?!
by Jo Miller

Legislation requiring the NCAA to afford due process is sweeping the country. Some people question why such legislation should be necessary. Many others of us wonder how due process could even be considered a controversial issue in the United States of America. After careful review and research, many of us feel that governmental intervention is now necessary. Congressman Tom McMillen, as recorded on page 30 of the March 1991 report *Keeping Faith with the Student-Athlete* by the Knight Commission on Intercollegiate Athletics, put it this way:

> "It behooves forces outside of athletic circles, including government entities, to ensure that the NCAA and other intercollegiate athletics associations do not haphazardly enforce their own concept of justice without appropriate consideration of the due process rights of individuals and institutions. The NCAA has immense power to damage the reputation of institutions and devalue the American taxpayer's investment in higher education. This power must be monitored and, if necessary, curtailed to conform with the larger imperative for fairness in a democratic society."

Alums and fans who have closely followed the NCAA investigation and resulting sanctions of their schools have seen firsthand this need for monitoring. But concern about the NCAA's powers is not limited to these people alone.

The Organization for Understanding and Reform, Inc., known as O.U.R. Group, is comprised of volunteers from all over the nation who have become concerned about the magnitude of effect the NCAA has on the lives of our young people. Coming from various educational backgrounds, we in no way condone cheating; nor do we wish to create a haven for cheaters. (Ironically, reports of "cheating" seem to be on the increase under the current NCAA system.) We just feel that the NCAA, in their quest for justice, should also provide a mechanism for declaring innocence. O.U.R. Group's mission is to educate the general public about the far-reaching effects of the NCAA's use of unprecedented and unregulated power. The real issue, that of due process, has been buried in the "sports" sections of our newspapers far too long.

The arguments used against legislation requiring the provision of due process by the NCAA have been deceptive and superficial. In each state, as legislation regarding NCAA practices has been introduced, the opposition strategy has been to get the support of top university administrators and professional lobbyists (paid highly by the NCAA), and to place well-publicized and strategically timed newspaper editorials.

Why would anyone take the indefensible position of opposing due process? Who benefits by keeping the present NCAA system? Why after 85 years of broken promises should we believe that change will come from within? Where is the NCAA's motivation to change since innocent individuals often suffer while the "guilty" go free?!

HF 35A
2/19/92
#6-2

The NCAA's unregulated and unprecedented power continues to grow. Even after the 1977 Congressional review and subsequent hearings, in which Congress requested several major structural changes, the NCAA virtually ignored these requests until public sentiment began demanding it. Since NCAA activities affect our young people at a time when they are first learning to work in society, do we really have time to wait another 85 years, or 15 years, or even another year or two for change from within?

Currently, we as a general public are expected by the NCAA to supply the young people (the hard currency in a big money game), pay to watch them play, and then pay taxes to support the public institutions who are members of this "private" organization. But, when the general public requests accountability from the NCAA through legislation, we have been told that **IT IS NONE OF OUR BUSINESS.** The O.U.R. Group, Inc. believes that these young people are our business -- our pressing business.

Individuals and institutions labeled by the NCAA as "cheaters" (whether justified or not) must carry this label for much too long. O.U.R. Group seeks to expose the flaws in processes and procedures used by the NCAA in regulating and enforcing the rules that affect many of our young people from the high school years well into their adult lives. Both arbitrary enforcement and loose interpretation of NCAA rules have had immeasurable impact on our tax dollars.

It has been suggested that member institutions voluntarily withdraw if there are objections to the way things are. Is this a realistic option, since most of us have no voice within the leadership of our "member institutions"? If a member institution were to withdraw from the NCAA, what viable alternative is available? It has also been suggested that if "we" don't like it, "we" can keep our children out of sports or boycott the games. Aren't these rather drastic measures just to avoid the recognition and practice of the unalienable right of due process by the NCAA?

Obviously, the educational mission of the O.U.R. Group has a long way to go. After all, the NCAA Annual Report and their marathon "rule book" will never make the bestseller list. But the exorbitant expenditures and the many ambiguous and often incomprehensible rules have had an enormous impact on the lives of too many people. The ugly, destructive competition that currently exists in college sports must stop. Idealistically, we would love for sports to be the "fun and games" that they used to be; but realistically, due to the large amount of money involved, we're not sure we can ever regain that innocence. Many still are unaware of the travesties perpetuated by the NCAA. Citizens groups such as ours are actively trying to bring these issues to public awareness. We have found that as the knowledge grows, so does the support for reform -- that is why there is a national clamor for change.

Members of the Organization for Understanding and Reform feel it is imperative that this quest continue until the fundamental right to due process is recognized and respected nationally by the NCAA. For more information call (217)398-6717 or write:

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Champaign, IL 61825-2179

Regency Report

Regency Universities System
Illinois State University
Northern Illinois University
Sangamon State University

Volume 10, Number 6 July, 1991

Budget delivers mixed message

The Illinois General Assembly continued its overtime legislative session into mid-July with the deadlock extending 18 days past the usual adjournment date of June 30. But the budget finally agreed upon by the legislature provides preferred treatment for education and higher education in general, with the state's 12 public universities receiving slightly over $13 million more than last year. However, lawmakers reduced by 1.3 percent the amount of General Revenue Funding from Governor's Edgar's FY1992 proposed budget for public universities. That represents an approximate $2.3 million decrease for the Regency System.

Total FY92 appropriations–General Revenue Fund, Education Assistance Fund and Income Fund–for the Regency System are $242,851.8, a $1,607,900 increase, or 7/10ths of a percent, over FY91. All of the increase is attributable to the five percent hike in tuition charges approved in April.

Chancellor Rod Groves called the System's present circumstances gratifying "only in relative terms" and said the budget provided "a mixed message...it's a relief to have it over with and we made good progress in a couple of regards, in making the income tax surcharge permanent and in getting recognition that education should be priority one."

However, he said the darker side of the picture was that "we are going to be dealing with less in state resources this year than we did last year, a situation which will require reallocation and belt-tightening because we will have no money to deal with inflationary cost increases."

Chancellor Comments

Congress and sports reform

As a matter of preference I'd rather see higher education address its own problems than rely on the solutions of others. However, there's always the exception. My sense is that intercollegiate athletics is one of these. Personally, I welcome the legislation recently introduced by Congressman Tom McMillen (D-Md.) to help us clean up our act in that regard.

Obviously this is a personal opinion and may be controversial. Last week the Chicago Tribune took just the opposite tack, arguing that "there's not the slightest evidence that legislation, federal or state, is the only way to set things aright, or even the best way." The difference of opinion, I think, lies in how much importance one places on the money factor.

Everyone knows that television has greatly increased the revenue take in college sports. Previously unimaginable quantities of money are now available to top collegiate teams for their efforts in front of the cameras. And that in turn has upped the ante. It costs a lot to run a college sports program and infinitely more to run a highly successful big-time program. The "haves" don't want to give up the money (they have the most to lose) and many of the "have-nots" want a piece of the action. Even those who don't share such aspirations have to scramble to stay competitive.

Everyone ends up on a spending treadmill. We all know that money can corrupt. It has a way of prompting the well-meaning to ignore unethical behavior and, even more insidious, to acquiesce in distorted purposes and priorities.

McMillen's bill is directed squarely at this aspect of the problem. It would discourage (by taxation) individual universities and conferences from negotiating broadcast agreements on their own and would instead encourage the NCAA to exercise that responsibility through a five-year antitrust exemption. It would also mandate the NCAA to develop a revenue distribution formula which would reward institutions which decrease athletic expenditures and encourage high academic performance by student athletes. A council of NCAA university presidents would have this decision-making responsibility and could be overruled only by a two-thirds vote of all institutional representatives.

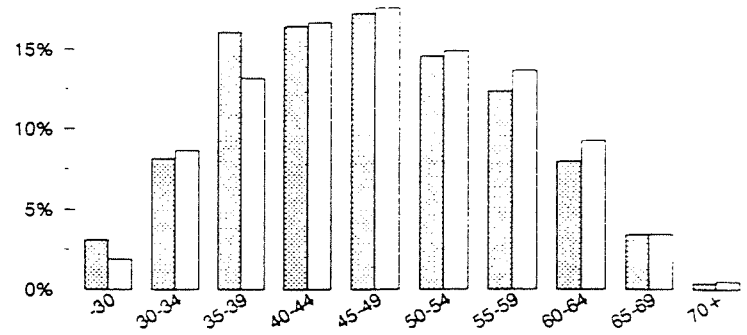
The bill also contains a number of other provisions including a requirement that scholarships not be withdrawn until students have a reasonable opportunity to graduate (up to five years) and which extend "due process" rights to students, coaches and institutions accused of NCAA rules violations.

Refinements in some of the bill's provisions might be in order, but the overall concept is a good one. I would give three reasons why higher education should support it. First, I would argue that the money factor, while not the only aspect, is far and away the most important cause of the excess and abuse in college athletics today. It is also a factor which can be expected to grow. The public's appetite for televised

(continued on page 2)

Fact File

Age Distribution of Full-time Faculty
Public Universities
☐ *BOR* ☐ Nation



Source: The American College Teacher, Univ of California and Faculty Profile, May 1991 BOR Rank and Tenure Report.

Chancellor comments

(continued from page 1)

competition seems unlikely to diminish in the future and the money generated will grow apace.

Second, I would contend that the institutional stakes have become so high that effective self regulation is all but beyond reach. Self interest is not the only culprit -- escalating costs, increasingly tight public funding, cumbersome decision-making structures, and most importantly, the anti-trust rulings of the courts have all played a part. How intractable the issue has become can be seen in the recently completed report of the Knight Commission. This well-funded body was composed of some of the most respected figures in American higher education. It produced a strong report and many well-considered reform proposals. Yet it steered a wide path around the money issue.

Finally, I would suggest that it is in our best interest to work with Congress on this matter because a fundamental concern is at stake -- credibility. To achieve its purposes education must have the trust and confidence of the public. If we lose that we will certainly lose our claim to the public's financial support. While there is much evidence that the belief in education remains strong, particularly among students and their parents, there is also evidence of a good many doubts about our purposes, priorities and needs by the public's representatives. Overall, I sense a weakening of the commitment to public education in this country and our troubles with athletics have played a part.

The bulk of the public, I believe, think that we should get this situation under control and they have some reason to be skeptical about our progress to date. If I don't miss my guess, they will also regard the efforts of Congress as well called-for. They don't need to convince me -- the money juggernaut has already done that.

By addressing the root cause of the problem, the McMillen legislation will enable us to take effective steps to restore public confidence in higher education and intercollegiate athletics. As such, it deserves our support. There's a time to fight your critics and a time to join them and this is the latter.

Rod Groves

Regency Report is a report of the Illinois Board of Regents. The newsletter is published following each monthly Board of Regents meeting. For questions or comments please contact the editor at:

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JULY BOARD NOTES

ISU hangs up old system

ISU President Tom Wallace told the Board that the University's telephone system will be revolutionized on Saturday, July 27, when the switchover to a new system takes place. Four-party telephone lines will be replaced with private lines for every phone. Other new features include a centralized voice mail system, conference call capability, message systems, electronic secretary, call waiting, speed dialing and redialing. More than 9,000 new outlets have been installed in more than 100 University buildings.

SSU appointment approved

The Board of Regents approved the appointment of Donna Dagnall as Assistant to the President of SSU and University Legal Counsel, effective August 1. She is a graduate of the SIU Law School and was formerly in private practice and worked for the State's Attorney's Appellate Prosecutors office.

Construction of center OK'd

NIU's proposal to construct a 46,000 square foot off-campus adult education center at Hoffman Estates was approved by the Board. The University plans to consolidate existing off-campus offerings currently provided to more than 2,500 placebound students in the northwest suburban quadrant of the Chicago collar counties. A presentation of the design, layout, usage, financing and related matters connected with development of the center was made at the Finance and Facilities Committee meeting.

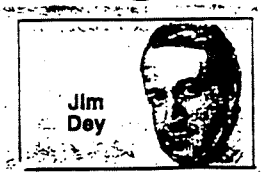
NIU requests Dance Emphasis

Also approved by the Board was NIU's request to establish a Dance Performance Emphasis within the B.F.A. in Theatre Arts. This change will allow students of dance the opportunity to acquire a performance-oriented credential. Following recognition by the IBHE staff, the Emphasis will replace the current dance unit within the Theatre Arts B.A. program.

The News-Gazette

182 Champaign-Urbana — January 27, 1992

Boxer's autograph part of auction



In April 1945, Bill Stevenson was one of about 7,000 American and British military officers held in a prisoner of war camp in the German town of Barth.

It was a monotonous existence, lightened only by the realization that Germany was rapidly losing the war. Still, when anything remotely interesting happened in camp, the prisoners were interested.

That's why Stevenson, who's now a 74-year-old retired businessman living in Danville, was curious when former heavyweight boxing champion Max Schmeling, who was serving in the German army, showed up one day at the prison camp and mingled with the prisoners.

"We didn't see anything worth seeing all the time we were there," said Stevenson, an Air Force lieutenant who was held prisoner for 16 months after his plane went down. "It was just something different, something from the outside world ... Schmeling and another soldier came to the camp in a jeeplike car, and I just went over and asked him for his autograph."

By any standard of the time, Schmeling was an international celebrity whose 1938 boxing match with Joe Louis attracted world attention. He lost that fight in a one-round knockout.

Schmeling's defeat helped puncture the notion of a Germanic super race and was a major embarrassment to German dictator Adolf Hitler. But by 1945, the fight was ancient history, and Schmeling was one of thousands of Germans looking to the future.

STEVENSON SPECULATED that German soldiers knew the war was coming to an end and had decided it was time to make amends with the victors.

"I think they were on a little good will trip, and they were sort of watching out for themselves," he said.

The Germans were right to be concerned. By the end of the month, the camp guards, fearful of the oncoming Russian army, fled. The next day, the camp was formally liberated by the Russians. Three months later Stevenson was back in the United States.

Stevenson kept the Schmeling autograph as a memento of the war, placing it in a log book where he recorded some events of the time. But now he's decided to donate the autograph to a local charity auction sponsored by the Organization for Understanding and Reform, a Champaign-based group that has become a watchdog and opponent of the National Collegiate Athletic Association.

The Schmeling autograph probably is one of the most unusual items to be auctioned. But it's just one of many the OUR group is collecting from celebrities ranging from retired Gen. Norman Schwarzkopf to local merchants and prominent athletes and coaches.

"We have a whole list of items that have been donated from the community and we're still gathering more," said OUR group coordinator Jo Miller. "We're shooting for at least 200."

The auction will be held Sunday, Feb. 23, at the Round Barn Banquet Center in Champaign. It's scheduled to begin about 5:30 p.m., shortly after the Illinois-Iowa basketball game at the Assembly Hall.

THE TIMING IS no coincidence. It was Iowa assistant basketball coach Bruce Pearl whose allegations of impropriety led to an NCAA investigation of the Illinois basketball program.

The NCAA investigation, in turn, led to the formation of the OUR group, which has expressed concerns over NCAA rules, the lack of procedural safeguards for players and coaches and the conduct of NCAA investigators.

Miller said she's hoping the auction will net about $20,000 and that the money will be used to print literature that will be distributed at the Final Four in Minneapolis.

The OUR group has been in existence for about a year. It played a key role in persuading Illinois legislators to pass a so-called "due process" bill requiring NCAA investigators to follow procedural safeguards. The group has expanded to about 2,500 members nationwide.

"That number seems to grow every time we get some press nationally," Miller said.

The OUR group continues to be active in other state legislatures, maintains contacts with congressional representatives working for a national "due process" bill and is pressuring the NCAA for internal reform.

Miller said the results have been mixed. "I think we've made a great deal of progress with the public," she said. "I think we've made very little progress with the NCAA."

Jim Dey is a member of The News-Gazette staff. His column appears on Saturday and Monday.

Chicago Tribune, Thursday, October 31, 1991

NCAA in the clutches of due-process laws

On colleges

By Ed Sherman

It's happening in Nevada, and it'll probably occur in Illinois.

A Nevada state law dictating regulations for the NCAA enforcement staff has the NCAA's current case against the UNLV basketball team at a standstill.

"We're having a lot of trouble going forward," said David Berst, the NCAA's director of enforcement.

Trouble and UNLV hardly are strangers. The NCAA accused UNLV of 28 rules violations last December.

The Nevada Legislature enacted a law calling for certain due-process rights for the accused in NCAA cases. A similar law went into effect in Illinois last summer. Nebraska and Florida also have due-process laws for NCAA enforcement.

Berst has maintained that the laws would make it impossible for the NCAA to process a case. The UNLV situation has reinforced that prediction.

Berst said he could go on and on about the regulations hamstringing the NCAA.

"There's some question about whether the infractions committee could hear the case," Berst said. "In order to use investigative interviews, the state requires that they be notarized, even those which took place before the law went into effect. There's a different standard of evidence that has to met, a standard we don't have. We can't even have an informal conversation with an individual's lawyer. All the parties have to be present. Essentially, we've been told we can't talk to each other."

Berst then added, "It's a fairly remarkable law."

Berst imagines the same thing would have happened had the Illinois law been in effect during the NCAA's probe of the Illinois basketball team. One of the stipulations of the Illinois law is a regulation allowing the accused to confront the accuser.

However, since the NCAA doesn't have subpoena power, it cannot guarantee the right to confrontation. That frustrated attorney Steve Beckett, who represented Deon Thomas, because he never was able to question Iowa assistant coach Bruce Pearl.

"[If the law had been in effect] I would have sought an injunction to stop the process if Pearl wouldn't meet with me," Beckett said. "Or I might have waited until the entire thing was played out and then sought an injunction to blunt the effectiveness of the ruling."

There's also a requirement in the Illinois law calling for the investigation to be wrapped up in six months; the Illinois case took nearly 18 months.

"I would have tried to implement the law as soon as possible," Beckett said.

It seems the courts will settle this issue one way or another. Berst, though, said the NCAA wasn't sure what direction it would take concerning the UNLV case. One option is dropping the case, although that would seem to be unthinkable from the NCAA's perspective.

The NCAA has talked of going to court to test the constitutionality of the state laws. The NCAA is a private organization. In the Supreme Court case involving UNLV coach Jerry Tarkanian, the court ruled the NCAA as a private organization didn't have to meet the same due-process standards as a governmental entity.

The issue, the NCAA argues, is its ability to maintain an effective enforcement process. At a press conference Monday to announce major reforms in NCAA enforcement, Brigham Young President Rex Lee, who headed the special committee, said he received many calls from member schools telling him that changes shouldn't be made at the expense of not being able to catch all the cheaters.

"We will be ineffective in those states which have the [enforcement] laws," Berst said. "Those institutions will be in a position where they can cheat with impunity. They won't get caught. It'll be a sanctuary for them."

Critics counter that Berst is spewing so much rhetoric. Jo Miller of the Champaign-based O.U.R. Group (Organization for Understanding and Reform) lobbied hard for passage of the Illinois bill. She believes a more equitable enforcement system still can be effective.

"I don't think the present system has been effective," Miller said. "Cheating has gone unchecked for a long time. It's not getting better."

Miller said the current system lacks fundamental rights to the accused, because an accuser should be required to step forward. However, the confrontation issue seems to be impossible to resolve since the NCAA doesn't have subpoena power.

The NCAA probably could compel testimony from current athletes and coaches by threatening ineligibility or suspension. But what of former players and coaches?

For instance, former Auburn football player Eric Ramsey says he has tapes documenting how boosters and coaches provided him with money. Now if the tapes are legitimate, and Ramsey declines to be questioned by the accused, does this mean the NCAA throws out the case?

"It's a tough question," Miller said. "I would rather protect the innocent. The few guilty already are slipping through the cracks. The laws are for our protection. Our legal system still is the best I've ever seen, and sometimes it happens there, too."

There are no easy answers. Then again, when politicians, the NCAA and cheaters are involved, turmoil seems to be the only sure thing.

Mr. Rex Lee, President of BYU and Chairman of the Committee to review NCAA reform, was quoted in the USA TODAY,:

"We just approached it (the task to review the need for NCAA reform) from the standpoint of what's in the best interest of the NCAA."

AT THE FINAL FOUR

Speculation on Tarkanian's Future; a Less Lucrative Visit; an Attack on the NCAA

By DOUGLAS LEDERMAN

INDIANAPOLIS

Has Jerry Tarkanian coached his last basketball game at the University of Nevada at Las Vegas?

That question was asked here often last week in the aftermath of U.N.L.V.'s surprising loss to Duke University in the semifinal game of the National Collegiate Athletic Association's Division I men's basketball championship.

Some published reports suggested that Mr. Tarkanian's days at Nevada-Las Vegas were numbered, especially since university officials expect the N.C.A.A. to conclude that U.N.L.V.'s basketball program violated several major recruiting rules. The association's enforcement staff has charged the university with 28 rules violations, and U.N.L.V. is expected to appear before the N.C.A.A. Committee on Infractions sometime this summer.

University officials publicly insisted that they had no plans to force the coach out, and said they would support Mr. Tarkanian as long as he remained the Runnin' Rebel coach. Robert C. Maxson, U.N.L.V.'s president, offered a straightforward, if somewhat mild, defense of Mr. Tarkanian on a national television broadcast last month.

For his part, Mr. Tarkanian said he planned to return to Nevada-Las Vegas, although he said he would consider becoming coach of a professional team if such an offer were forthcoming.

"I have no intention of leaving," he said. "However, if I have an outstanding offer from the right professional team, I'd have to consider it."

■

The trip to the basketball tournament this year was much less successful for U.N.L.V. and Mr. Tarkanian than their journey last year, and not just on the court.

By being one of the Final Four teams in last year's N.C.A.A. tournament, the university earned about $1-million, and a performance clause in the coach's contract earned him 10 per cent of U.N.L.V.'s tournament revenues, or about $100,000. Such clauses are not unusual, although most bonuses come in the form of an extra month's salary.

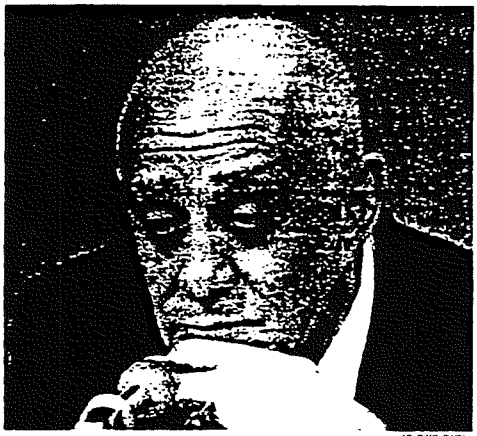
This year, however, the N.C.A.A. implemented the new revenue-sharing policy that it adopted in the wake of its seven-year, $1-billion contract with CBS. Under that policy, colleges are no longer rewarded for their performance in the basketball tournament each year. Instead, about $32-million in television revenues will be awarded to leagues, based on their members' success in the tournament over six years.

As a result, U.N.L.V. will receive just $85,000—its share of the Big West Conference's portion of the $32-million pool.

Mr. Tarkanian still gets 10 per cent of U.N.L.V.'s tournament bounty. This year that amounts to about $8,500.

■

Despite the overall festiveness of the Final Four atmosphere, not everybody was in a celebratory mood. A group named the Organization for Understanding and Reform (or "OUR Group") passed out a slick, eight-page pamphlet entitled "Justice Denied: The N.C.A.A.'s Stranglehold on College Athletics."



Jerry Tarkanian of Nevada–Las Vegas: He does not intend to leave but would consider "an outstanding offer" from a pro team.

The group, which is based in Champaign, Ill., and is made up primarily of friends and employees of the University of Illinois, believes the N.C.A.A.'s investigative process abuses colleges, their employees, and especially athletes. The group plans a grass-roots campaign, including publication of a monthly newsletter, to educate the public about what it sees as the unfairness of the N.C.A.A.'s enforcement policies.

Jo Miller, a rehabilitation counselor at Illinois's Urbana-Champaign campus who directed the group's campaign at the Final Four, said the group had evolved out of the N.C.A.A.'s investigation into the Illini men's basketball program. Illinois officials, and some of its supporters, have vigorously complained that the investigative system denied the university due process.

"When I saw how it unfolded, I was amazed," Ms. Miller said of the Illinois investigation. She said her disgust grew when she read *Unjust Process: The N.C.A.A.'s Injustice for All*, a 1990 book that critiqued the N.C.A.A.'s enforcement policies. "I thought, it can't be true. I've been in America a long time, how could this happen," Ms. Miller said.

A grass-roots campaign is necessary, Ms. Miller said, because college officials who object to the N.C.A.A.'s policies cannot afford to speak out. "It has to be citizens over whom the N.C.A.A. has no control," she said. "They can't tell *us* we can't talk."

The budding movement to protest the N.C.A.A.'s enforcement policies seems to be spreading. Legislatures in California and Kansas are the latest to consider bills that would require the association's investigators to provide due process to colleges in their states. In both states, a group called the Federation for Intercollegiate Fairness and Equity has hired lobbyists to push for passage. A similar bill was sent to Nevada's Governor last week.

Defenders of the N.C.A.A. have noted with some irony that most of the states now considering due-process legislation—including Florida and Missouri, in addition to Nevada—have seen state colleges get in trouble with the N.C.A.A. in recent years.

Ms. Miller reacted angrily to the suggestion that criticism of the N.C.A.A.'s enforcement process is thinly veiled sour grapes.

"I'm a burn victim, burned all over my body," said Ms. Miller. "This is the first time in my life anybody's ever called me a crybaby. Have them come here and tell me that to my face." ■

HF 8.3A
2-19-92
6-7

The Columbus Dispatch
Sunday
JANUARY 20, 1991 ■■■

Angry Illini fans want to take on the NCAA

DICK FENLON

In her own words, Jo Miller was "a human torch." When it happened 10 years ago, when the drunken driver slammed his car into hers, she was burned over 70 percent of her body.

Merely to stay alive became a crusade. So when people tell her what she's doing now is silly, she suppresses her anger. She merely tells them how wrong she thinks they are.

"When people say we're just being crybabies. I can say, 'No, that's not it,' " she says.

"We're sending guys and women over to Saudi Arabia to die for freedom. I can't see why we can't stand up for it here.

"I do volunteer work for hospitals, and when people see the obvious scars I have, they say of themselves, 'My pain is nothing.' But when a person is suffering, no matter how small, it's still a very significant pain to them.

"I live by this: You start where you are and do what you can do. I couldn't go over there and pick up a gun because of my disability. But the freedoms that are here, I think we can stand up for."

When not engaged as a coordinator of occupational health under a visiting appointment at the University of Illinois, Jo Miller, 40, tilts at one of the mightiest of windmills going: The National Collegiate Athletic Association.

"I'm just a regular citizen," she says. "I was unaware what power the enforcement staff has. We're just trying to find out how something like this could happen in the United States."

Miller heads OUR — Organization for Understanding and Reform. The object of reform being, of course, the NCAA. She was back home in Champaign, Ill., when Illinois, the team with a past and without a present, played Ohio State last night in St. John Arena.

The only place Illinois is going at the end of the regular season — no matter its record — is out. On Nov. 7, the NCAA put Illinois basketball on three years probation, locked it out of the 1991 postseason and severely restricted recruiting for two years for, well, looking guilty.

Which was a little bit too much for Jo Miller.

The NCAA couldn't prove Illinois assistant coach Jimmy Collins offered Chicago-area recruit Deon Thomas $80,000 and a Chevrolet Blazer to sign. Or that Illinois waved money and cars at LaPhonso Ellis of East St. Louis, Ill., who would go to Notre Dame and render himself scholastically ineligible.

But it couldn't be certain it didn't happen, either. And with all the rumors going around, and considering Illinois' less than spotless past in football and athletic administration, that was enough.

Then, three weeks after Illinois got the word, the NCAA, in an unprecedented reprieve, gentlemen lowered Nevada-Las Vegas off the hook, reaching a compromise with Jerry Tarkanian that cleared UNLV to defend its NCAA title this season. So while the Illini will be out no matter what, the baddest of the bad boys will be in. No wonder the idea that NCAA justice is colored green is mildly rampant.

Just our luck that Perry Mason is out to lunch when we need him. Not only is this the first time Illinois has shown up on the NCAA blotter in coach Lou Henson's 19 seasons, it is the first time it has been investigated since he arrived. Yet Illinois has long since been a suspect, particularly in the eyes of Indiana coach Bob Knight, the Big Ten's self-appointed watchdog.

Down deep in his heart, Loren Tate, sports editor of the *Champaign-Urbana News Gazette*, "I know he believed that (former assistant coach) Tony Yates cheated. The first guy he went head-to-head with Lou Henson on and didn't get was Lowell Hamilton, and he turned in Illinois, and complained bitterly, and refused to go to meetings if Henson was there. That has not ceased. Knight has never let up on him."

To be suspected by Knight is, in many minds, to be guilty. Yet Henson has his believers.

"If you go out for the next 100 years you're not going to find 10 coaches more honest than Lou Henson," Tate says. "That's my opinion. He's susceptible to making mistakes. There's no question he's human. But the idea that [illegible] has been spreading a lot of money around is ridiculous. I've seen how they live. These guys are just scratching."

If nothing else, the NCAA could have nailed Illinois for making a nuisance of itself. The amoral football regime of former coach Mike White twice put the school in the NCAA doghouse. "Illinois is paying in basketball for the sins of Mike White in football," Tate argues.

Tate is not quite sure what OUR hopes to accomplish.

"They're just mad," he says. No doubt about that.

"I've got to admit," says Jo Miller, "that my blood just boils over this.

Dick Fenlon is sports columnist for The Dispatch.

Legislators across nation bucking NCAA

The message keeps pouring into Overland Park, Kan., in landslide numbers.

The Florida Senate voted 30-0 and the Florida House of Representatives voted 111-5 for HB 845, the state's NCAA due process bill, and put it on Gov. Lawton Chiles' desk.

The Kansas Senate passed bill No. 234, requiring NCAA due process, by a 36-0 vote. It will be held over for the January session of the Kansas House.

And Tuesday the Illinois House registered a 101-3 vote for State Rep. Tim Johnson's due process bill, sending it to the Senate judiciary committee for further consideration.

In voting thus far by legislators in the states of Illinois, Kansas and Florida, the margin is 272-8 on a controversial issue that (1) meets automatic resistance from top university administrators in those states, (2) has caused the University and Collegiate Commissioners Associations to make a strong statement supporting the NCAA process and the Committee on Infractions, (3) is drawing thousands of dollars in lobbying fees from the resistant NCAA headquarters and (4) should not, as pointed out by critical Chicago Sun-Times and Tribune editorials, come under legislative consideration.

Furthermore, there was an early threat from NCAA executive director Dick Schultz that schools seeking legislative protection from NCAA investigations might be disqualified from membership. The university perception remains — indicating their fear of persecution — that to support the bill, even if they believe in it, would place these schools in jeopardy.

Schultz and his aides have rapidly backtracked from that threatening position, and the truth is that expulsion was never a real consideration. It's outgrowing them. With nine states either adopting or are moving forward with due process legislation, the number of universities covered by this legislation will soon be in the hundreds.

The News-Gazette
Sports
Thursday
May 9, 1991

The amazing aspect is *not* that states are moving forward with due process, but that they're doing it with such top-heavy numbers. You wouldn't think 30 Florida senators or 36 Kansas senators would agree on anything, particularly after Schultz lobbied lawmakers in the NCAA's home state to wait while his association works on improving an obviously flawed process.

Trouble is, legislators across the land have concluded that the NCAA is a monopoly with unfair rules, and feel the NCAA has had plenty of time to correct these problems in the past.

"The organization can investigate, prosecute, convict and penalize its members according to its own capricious measures," wrote Wint Winter, main sponsor of the Kansas bill.

"Individuals and institutions under review have limited access to evidence used against them, have no real means to appeal decisions and are subject to an incredible penalty system that punishes the innocent student-athlete, often lets free the guilty, and flip-flops on high-profile cases. Voluntary membership or not, the NCAA has too much power and controls the destiny of too many lives without affording members basic rights."

Reminded of NCAA threats against schools in states that pass such laws, Winter added:

"The NCAA suggests that it is above the authority of state legislatures and Congress, and can continue to subvert the Constitution. This arrogant action reveals the dark and dictatorial side of the NCAA. The time has come for serious reform of this organization, which puts itself above the law of the land.

"Reform, which would best come from within, will be imposed by state and/or Congress if the NCAA continues to stall while the innocent are punished."

Lawmakers like Winter, Johnson and Ernie Chambers of Nebraska have been accused of being "grand-standers," but these huge voting margins indicate that a wide variety of legislators, after serious review, agree with them.

Loren Tate is executive sports editor of The News-Gazette.

HF & SA
2/19/92
6-8

O.U.R. Problem

This past year, I, with a group of volunteers comprised mainly of professionals, formed the Organization for Understanding and Reform ("O.U.R.") calling for NCAA reform. We are concerned with the unreasonable restrictions placed on student athletes and with the NCAA enforcement process which continues to have an enormous impact on higher education. The magnitude of this impact behooves the NCAA, whose national membership includes public institutions, to recognize and respect the basic rights of individuals, such as "innocent until proven guilty." The NCAA's arbitrary investigative and enforcement practices are unfair to student athletes, to fans, to colleges and universities and to the communities that support these institutions.

While endeavoring to influence constructive change with the current NCAA system, all O.U.R. group activities are conducted throughout the nation in positive and professional ways through educational forums and informational exchanges. Any questions or comments regarding these goals and activities are welcome and should be directed to me at P.O. Box 2179, Station A, Champaign, IL 61825.

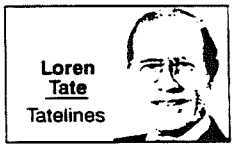
Jo Miller '72, M.S.W. '85
Champaign

SECTION B
Friday
December 6, 1991

Pearl cleared by NCAA in Illini case

Bruce Pearl, assistant basketball coach at the University of Iowa, has been officially cleared of NCAA rules violations in the Fighting Illini basketball case.

This comes as no surprise to Illinoisans who see evidence that Pearl had friends in the NCAA home office who worked along with him in a lengthy effort to demonstrate recruiting violations within Lou Henson's program.



Assistant executive director David Berst, after a long delay, responded this week to a list of allegations posed by two Illinois attorneys in the case, J. Steven Beckett and Mark C. Goldenberg.

The attorneys filed a list of some 14 NCAA-style allegations after Beckett represented Illini center Deon Thomas, and Goldenberg worked in behalf of Illini assistant coach Jimmy Collins in the 18-month case.

Beckett is now representing Thomas in civil litigation against Pearl, charging him with improperly revealing illegally taped telephone conversations. That case, moved to federal court in Danville, is now in the discovery phase.

As for NCAA violations, Berst said some of the Beckett-Goldenberg charges "are without merit and seem to advance an agenda that is unrelated to concern that a level playing (field) be maintained."

Berst told the attorneys that he entered into the review "with some skepticism regarding your motives ... and I find myself surprised that you have advanced some of these notions because I would think you are far more erudite than I concerning the available information."

Berst's attitude with regard to Pearl appears diametrically opposed to the NCAA enforcement staff's approach in the Illinois case, in which investigators seemed bent on finding the UI guilty of charges made by Pearl and Notre Dame center LaPhonso Ellis. When the UI replaced Mike Slive, and UI investigators began interrogating witnesses, it became clear that the NCAA case didn't hold water.

But rather than drop it and back off, NCAA staffers dug vigorously into new areas — mostly those reported by the UI — and came up with new and sometimes frivolous allegations. Then the NCAA rose out of the blue with one serious and unanswerable charge, "lack of institutional control."

Whereas the NCAA staff rebuffed UI President Stan Ikenberry and his administrative truth-seekers, Berst puts full faith in Pearl's statements while saying of Thomas:

"He was not considered to be a credible source of information by the enforcement staff in the infractions case. It must be remembered that Thomas has acknowledged that he provided false information to the NCAA on other subjects."

The NCAA put little stock in the fact that Thomas submitted to a polygraph (lie detector) test that indicated the only thing he received from Collins was a late-night $10 loan to buy a pizza. The $10 was subsequently repaid.

But just as the NCAA cited "conflicting testimony" in throwing out all the allegations in the original NCAA inquiry related to Thomas, as well as all allegations brought by Ellis, Berst frequently mentioned "conflicting testimony" in rejecting the claims by Beckett and Goldenberg.

In summary, the attorneys made the following charges:

- Pearl violated accepted standards of conduct with his covert telephone tapes in the spring of 1989.
- Pearl gave Thomas $100 cash, a McDonald's meal, improper transportation and a "fantasy" videotape of Iowa basketball on an overseas trip to Amsterdam.
- Pearl used Simeon student Renaldo Kyles, whose brother attended Iowa, as a representative of Iowa athletic interests, and asked Kyles to provide daily transportation for Thomas and report Thomas

See TATE B 5

Decatur, Illinois, Thursday, April 25, 1991

Mark Tupper
Commentary

Committee hits hard at NCAA

SPRINGFIELD — There was polite discussion, some orderly conversation and a businesslike exchange of views. People wore coats and ties.

But by the time the House Judiciary Committee was done with the NCAA Wednesday, they might as well have turned out the lights and worked them over with brass knuckles and blackjacks.

By a 10-1 margin, the committee endorsed the "Collegiate Athletic Association Compliance Enforcement Procedures Act," a bill seeking to make the NCAA follow due process requirements when operating within Illinois.

EVEN THE ONE "nay" vote, cast by committee chairman, John Dunn of Decatur, came while slapping the NCAA around a few times. "I hate to vote for the NCAA because I certainly condemn your practices," he said while casting his vote.

There are still more legislative hurdles to clear before this bill would become law. But this rousing sendoff gave supporters reason for hope.

"We feel good," said J.E. Miller of Allenville, a member of the O.U.R. (Organization for Understanding and Reform) Group that has worked for NCAA reform here in Central Illinois. "I didn't expect the force of their comments."

Not only did committee members like Rep. Louis Lang of Skokie and Rep. Thomas J. Homer of Canton show a knowledge of the issue, they spoke with a genuine passion. Lang hammered the NCAA spokesman, Director of Enforcement Rich Hilliard

AFTER HILLIARD pleaded with the committee to be patient, allowing the NCAA to study reform on its own, Lang shot back. "Why has it taken so long?" he asked. "The NCAA has not addressed the problem. It is not about to address the problem until it is hit over the head."

Lang and Homer took turns lashing the NCAA, scolding the association for fearing "modest" levels of due process.

Curious, however, were Dunn's comments. They could most kindly be described as rambling and summarizing them now in English seems more difficult than rewriting House Bill 642 in pig Hindu.

If I understand him right, Rep. Dunn said reform should ideally come from within, would be better at the federal level than the state level and is not the kind of issue that should be taking up his time.

HE ALSO said underprivileged athletes should be given money for pizza and, if the NCAA had the foresight to address that issue, "80 to 90 percent of these problems would not exist."

J. Steven Beckett, the Champaign attorney who spoke on behalf of the bill, was dumbfounded by Dunn's comments. "It's like he said, 'I ought to be against it, but I'm not going to be against it because I ought to be against it. And everybody thinks I ought to be against it so I won't be against it.' "

Getting more to the heart of the issue was Rep. Homer, who asked Hilliard the bulls-eye question: "I'm just wondering what it is about these specific provisions in the bill that you feel would be too cumbersome?" Hillard's answer: The NCAA wants identical rules in every state.

And therein lies the real answer. The NCAA should be affording these due process provisions in every state rather than fighting them from coast to coast as they are now.

Mark Tupper is sports editor at the Herald & Review.

ORGANIZATION FOR UNDERSTANDING & REFORM

P.O. BOX 2179 STATION A
CHAMPAIGN, ILLINOIS 61825

House Judicial & State Affairs 2-19-92 6-9

...ffect, the impact of these policies plaintiffs are winning. The courts have *Americas column.*

6-21-91

The Real NCAA Scandal

By Doug Bandow

The athletic program at the University of Nevada at Las Vegas (UNLV) is again under attack. The latest charge, that some of basketball coach Jerry Tarkanian's players consorted with a convicted sports fixer, has forced the coach to agree to quit after next year. Sports purists, along with the NCAA officials who've laid siege to Mr. Tarkanian for years, must be pleased.

But Mr. Tarkanian's departure will do nothing to end the scandals that periodically mar college sports. New violations, investigations and punishment will continue because of the very structure of the NCAA, or National Collegiate Athletic Association, the 800-plus member body that regulates 21 different college sports. Although membership is formally voluntary, no school could easily quit, since all major intercollegiate competition takes place within the NCAA's framework. Mr. Tarkanian, in testimony Wednesday before a House subcommittee looking into intercollegiate athletics, called the NCAA "the biggest problem in college sports." He couldn't be more right.

The fundamental problem is that universities, in collusion with professional teams, have created a monopoly. Put bluntly, colleges have conspired with one another to stifle competition for labor by setting players' salaries at roughly zero (a "scholarship" for many kids who would prefer not to be in school).

Moreover, by acting as de facto farm clubs for the pros, universities have forced most young men, irrespective of their mental abilities, to attend college in order to play pro basketball and football. An inner-city kid with significant baseball talent can sign with a club when he leaves high school. A similar youth whose sport is basketball or football has to get accepted by and attend a college.

Thus, scandal is inevitable. Universities, like members of any cartel, have an incentive to cheat; they hope to attract top athletes and keep in school kids who have neither an aptitude nor an interest in higher education. There's nothing unethical involved: The kind of financial benefits offered under the table to lure a top basketball or football player are precisely the sort provided openly to a stand-out baseball or hockey player. It is an unfair cartel agreement, not morality, that is violated.

Of course, NCAA officials cite the importance of maintaining the purity of college sports to justify their activities. But their concern about potential corruption is curiously one-sided. The member schools luxuriate in the $1 billion generated annually by big college sports, offer lucrative contracts to coaches, and allow coaches to collect cash for dictating the shoes worn by their teams. The players, in contrast, get essentially nothing.

Indeed, the NCAA doesn't even bother to discriminate between corrupt and innocent practices involving students. It simply seeks to keep players from gaining any benefit at all for their services, barring schools from giving away T-shirts, for instance, or lending kids, many from poor families, money to pay bills or visit sick relatives. The NCAA even blocks players from earning money on their own: UNLV's Greg Anthony was forced to drop a T-shirt business that he had created.

True, in the name of the players the NCAA continues to attempt to raise academic standards. Noble as that may sound in theory, in practice it means denying many inner-city kids a shot at the pros. Consider one of the criticisms of Mr. Tarkanian: that in 1986 he recruited New Yorker Lloyd Daniels, who attended four different high schools but never graduated. So what? Most universities with major sports programs stretch their admissions requirements for players, giving the lie to the notion of the student-athlete. More important, why should a gifted basketball player be denied an opportunity to play professionally because he isn't a good student? And why should fans be denied the opportunity to see him play because he can't keep up in school?

This wretched system is supported by the pros because, though it denies them access to some potential stars, it provides them with a cheap farm system. Colleges locate, train and exhibit the top players, saving pro teams much time and money. Minor league teams are costly; better to have the University of Nebraska and Notre Dame fulfill that function for free.

Yet with every scandal come proposals for stricter enforcement and tougher punishment. The latest idea, from the Southern Association of Colleges and Schools, is to tie the "integrity" of a school's athletic program to its academic accreditation. Naturally, the NCAA likes the idea. Says Executive Director Richard Schultz: "I think it is good and can have a salutary effect. A loss of accreditation is a devastating blow to a university."

The relevance of an athletic "scandal" to a school's academic credentials is not obvious. Moreover, the SACS proposal would reinforce the very cartel that is the problem, a system that denies gifted athletes any compensation for long hours of hard work, shortens their total employable playing time, denies any shot at professional play to many disadvantaged kids, and teaches athletes that rules exist to be broken. We should therefore move in the opposite direction, applying the baseball model to basketball and football.

Pro farm clubs would hire athletes not interested in school; universities would recruit players who could meet their admissions requirements. Should major sports schools want to own a farm club—say, the UNLV Rebels—they could hire the players. The other colleges could join the Ivy League in putting academics first.

The sentimental idea of the student-athlete is a powerful one, but the NCAA is about money, not student athletics. Thus, true reform will come only when colleges have to choose between acting as semi-pro franchises and acting as schools.

Mr. Bandow is a fellow at the Cato Institute.

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2/19/92
6-10

Chicago Tribune
Sports
Wednesday, November 13, 1991

NCAA sues over state laws hindering probes

By Ed Sherman

The NCAA filed suit Tuesday aimed at overturning a Nevada state law in a case that could have far-reaching ramifications in Illinois and throughout the country.

The suit, filed against the governor of Nevada, UNLV coach Jerry Tarkanian and three others, alleges the state legislation, setting down regulations for the NCAA's enforcement procedures, is unconstitutional. The action was taken because the law has all but stopped the NCAA from completing its most recent infractions case against Tarkanian and his basketball program.

The same scenario could happen in Illinois, which passed a similar law last summer. The states of Florida and Nebraska also have enacted enforcement regulations.

If the NCAA's suit fails, it probably will open the door to a flood of states passing their own laws. That's the NCAA's biggest fear: 50 different states, 50 different enforcement laws.

"We'll cross that bridge when we come to it," said NCAA Executive Director Dick Schultz.

Schultz said the NCAA reluctantly took action in Nevad because "We find ourselves de in the water [with UNLV]. UNLV is accused of rules viol tions in the recruitment of Llo Daniels.

The suit initially seeks a pr

See NCAA, pg.

NCAA

Continued from page 1

liminary injunction, allowing the NCAA to continue its investigation. Ultimately, the NCAA is seeking a declaratory judgment, which would wipe out the law in Nevada. That process could take up to a year, the NCAA said.

If the NCAA wins its case, Schultz said he hopes the precedent will apply when the association attacks enforcement laws in other states.

The NCAA only will take action in a state if the law is getting in the way of one of its probes, according to Schultz. There are no cases pending in Illinois, although the NCAA reportedly has launched a preliminary investigation of the Chicago State basketball program.

"This suit only challenges the Nevada law," Schultz said. "[If the NCAA wins], we hope other legislatures see this and decide to re-evaluate their laws."

The NCAA filed its case in Reno's Federal District Court. The association maintains the Nevada law is unconstitutional because it violates interstate commerce regulations. Because the NCAA is a national organization, the law could dictate how it should conduct its business in the other 49 states, said NCAA Associate Executive Director Steve Morgan.

Morgan also said the Nevada law is "ambiguous," making it almost impossible to follow.

Lawyers for Tarkanian, three assistant coaches and a former academic adviser have cited clauses in the law that have slowed the case. The attorneys recently met with the NCAA but couldn't come to an agreement on how to complete the infractions process.

"The NCAA's current enforcement procedures are not at issue," Schultz said. "The issue is whether we have to follow criminal procedures for an administrative hearing."

Like the Illinois law, Nevada requires the accused the right to confront the accusor. Because the NCAA doesn't have subpoena power, however, the association can't guarantee that measure.

The Illinois law mandates the NCAA complete its case within six months. NCAA probes typically last more than a year and sometimes as long as two years.

Schultz stressed this action wasn't being taken against UNLV. In fact, he said the school has been anxious to put this case behind it.

USA TODAY Sports

10C • TUESDAY, MARCH 5, 1991 • USA TODAY

OPINIONS ACROSS THE USA IN SPORTS

NCAA's actions affect too many to let it operate above the law

Editor's note: Dick Schultz, executive director of the National Collegiate Athletic Association, has said people who ask state legislatures to protect their schools from the NCAA might wind up disqualifying those colleges from NCAA membership.

COMMENTARY

By WINT WINTER, JR

By Sen. Wint Winter Jr.

The authors of the U.S. Constitution understood the need to protect the individual rights of due process and equal protection, which ensure government cannot violate the civil liberties of its citizens. These principles stand today as the most important pillars of our legal system.

But the Constitution only protects against government action, not the action of certain private, voluntary organizations. Even if the organization is closely tied to the state, a majority of its members are state institutions and those institutions generate the bulk of its revenue, a private organization can ignore due process. The organization can investigate, prosecute, convict and penalize its members according to its own capricious measures.

The National Collegiate Athletic Association is such a group. Individuals and institutions under review by the NCAA have limited access to evidence used against them, have no real means to appeal decisions, and, most important, are subject to an incredible penalty system that punishes the innocent student-athlete, often lets free the guilty and flip-flops on high-profile cases. Voluntary membership or not, the NCAA has too much power and controls the destiny of too many lives without affording members basic rights. With so much at stake, should the NCAA be allowed to enforce its rules without providing either alleged offenders due process or the "guilty" equal punishment?

I say no. We recently introduced in the Kansas Senate a bill to protect students, coaches and the public from this intrusive and unfair practice by the NCAA. Our bill would do nothing to interfere with the NCAA's charter to make and enforce rules for intercollegiate athletics; it would merely hold the NCAA to the same rules required by the U.S. Constitution.

The NCAA is disturbed with our bill and will no doubt oppose it. Indeed, the NCAA recently threatened to kick out schools in states that had such a law on the books.

This arrogant action reveals the dark and dictatorial side of the NCAA. The time has come for serious reform of this organization, which puts itself as above the law of the land. The reform, which would best come from within, will be imposed by states and/or Congress if the NCAA continues to stall while the innocent are punished. Thirteen years ago, Congress urged the NCAA to make changes that still have not been made.

By its threat, the NCAA suggests it is above the authority of state legislatures and Congress and can continue to subvert the Constitution. Without the credible interest of the states and Congress, the NCAA will apparently continue to stall reform while innocent athletes, schools and the public will continue to be punished by its double standard of justice.

Kansas Sen. Wint Winter Jr. (R-Lawrence) is chairman of the Judiciary Committee and primary sponsor of Senate Bill 234, which would establish the Athletic Association Procedures Act.

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The NCAA News
Jan. 15, 1992
p. 23

Enforcement-process

Continued from page 1

scheduling and conducting hearings, writing reports, and handling the public announcement of those reports under guidelines developed by the infractions committee.

- The committee will adopt a conflict-of-interest policy for itself, its staff and the enforcement staff.
- Public announcements of the decisions of the Committee on Infractions will be handled by the chair of that committee.

The changes came as a result of a study by the Special Committee to Review the NCAA Enforcement and Infractions Process, chaired by former U.S. Solicitor General Rex E. Lee. Lee is currently president of Brigham Young University.

"I am extremely pleased that the NCAA Council has endorsed the special committee's recommendations," said NCAA Executive Director Richard D. Schultz. "I think it reiterates the membership's and the Committee on Infractions' sincere commitment to the concept of due process by providing the fairest possible enforcement procedures."

The Council will continue to review two of the special committee's recommendations that require action by the NCAA membership at a Convention—the use of an independent hearing officer to rule in cases not decided by summary disposition, and the initiation of open hearings. In addition, the Council determined that because changes in the appeal process may require a Convention vote, it will discuss that issue at its April meeting.

Delegates to the 1992 Convention considered three proposals involving enforcement. They approved No. 143, which extends television sanctions to include delayed telecasts, and No. 144, which permits the committee to withhold all or a portion of a member's broad-based revenue distribution money as a penalty in a major infractions case.

However, they defeated No. 142, which stipulated that failure to appear at an infractions hearing when requested to do so would constitute unethical conduct (the proposal needed two-thirds approval and fell short at 64.1 percent, 378-209-18).

Proposal Nos. 142, 143 and 144 originated with the Committee on Infractions and were not part of the enforcement-review committee's package of recommendations.

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"The NCAA approval mechanism is such that certain of the special committee's recommendations, such as those concerning investigative procedures, tape recordings and transcripts, can be effected by the NCAA Committee on Infractions or the Council in advance of any NCAA Convention actions. Other changes probably will require action at an NCAA Convention," Schultz said.

The Special Committee to Review the NCAA Enforcement and Infractions Process was appointed by the NCAA Council in April 1991 and comprises distinguished members of the legal, athletics and education communities.

During its review process, the committee was charged with conducting a thorough review of the enforcement and infractions process, including the investigative process of the enforcement staff; the function of the Committee on Infractions, including the hearing process and the method used to determine penalties, and the release of information to the public regarding sanctions.

-30-

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2/19/92
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SENTENCED ANYWAY!

(THAT'S NCAA JUSTICE)

OUR GROUP
ORGANIZATION FOR UNDERSTANDING & REFORM

P.O. BOX 2179 STATION A
CHAMPAIGN, ILLINOIS 61825

FOUND INNOCENT!

HF 3SA
2/19/92
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DID YOU KNOW?

1. That a former NCAA investigator said "Give me six weeks, and I can get any college in the nation on probation. . . . Everyone is guilty — There are only varying degrees of guilt."
2. That the NCAA ruled LSU players visiting a dying friend would be considered entertainment off campus.
3. That the NCAA have sent their investigators to a spy school outside of Washington, DC. They were trained by interrogators from the Israeli army and the FBI on "art of questioning."
4. NCAA investigators engaged in unprofessional conduct by harassing and verbally abusing Deon Thomas in a gym at the I.M.P.E. Building.
5. That Deon Thomas, as a high school student and without legal representation, was asked to answer questions before NCAA investigators in a downtown Chicago office building. This interrogation was supposed to take approximately an hour, but in fact it lasted over 5 hours and became part of Deon's official testimony.
6. NCAA investigators' misrepresented Ervin Small's testimony, refusing to have his testimony transcribed or tape recorded.
7. NCAA investigators refused to allow Ervin Small's corrected testimony.
8. NCAA investigators insisted that if Small did not sign the incorrect version of his testimony as penned by the investigators, it would be treated as a failure to cooperate.
9. After the announced sanctions, Smrt and Williams (representatives of the NCAA) fueled false and unfair publicity, damaging Jimmy Collins and the University of Illinois.
10. That D. Alan Williams, chair of the NCAA Infractions Committee, was quoted as saying "That doesn't mean it didn't happen; that doesn't mean it did happen. We don't have a category that says 'he's innocent.'"
11. A recent Harris poll says 75% of the American people think continued NCAA reform is necessary.

O.U.R. FACTS

After a lengthy self-investigation, the University of Illinois did not find cause to admit guilt to any of the original allegations. The alleged violation of Lack of Institutional Control, for which sanctions were applied, was not one of the original allegations and was never addressed in the hearing process. Therefore Illinois did not have the just opportunity to answer this allegation before the infractions committee.

FOUND INNOCENT BUT SANCTIONED ANYWAY just one week before national lettersigning day, the announcement came the day after a major national election. The fact that the NCAA could find no guilt was overlooked by national media outlets.

The NCAA rejected a sincere plea from the University to delay the sanctions one year to allow the fulfillment of promised scholarship offers. Yet it turned around days later and allowed UNLV to play in the 1991 NCAA Tournament in the NAME OF FAIRNESS. Consistency is not the watchword of the NCAA.

O.U.R. REFORM

At the recent NCAA Convention in Nashville, the mode of operation of the enforcement committee was brought to the forefront. They were to establish a blue ribbon committee to evaluate enforcement and infractions activity.

O.U.R. Group joins with representatives from Congress and State Houses across the nation in saying that the NCAA, without pressure, will not work toward major reform. It is necessary that individuals and groups across the nation urge the acceptance of basic human rights for the young men and women that participate in Intercollegiate Sports. Coaches, who make their livelihood from this chosen career, must be afforded the same opportunity of due process that the ordinary citizens of this country enjoy.

Many of the statements in the section "Did You Know" were documented and reported by Don Yaeger in "UNDUE PROCESS: The NCAA's Injustice for All" published by Sagamore Publishing

O.U.R. NEWS

If you have not read the book UNDUE PR[illegible]S by Don Yaeger, request your copy from O.U.R. Group now! This investigative report on the NCAA will motivate you to act now! Sagamore Publishing has agreed to continue contributing a percentage of the books purchased through O.U.R. Group to O.U.R. Group.

O.U.R. Full Court Press — This mobilization is scheduled for March 30, 1991 at the Final Four in Indianapolis. Two buses have reserved. Help us take the message of O.U.R. Group to the interested individuals attending and media covering the Final Four. To reserve your place in this caravan, contact O.U.R. Group — (217) 398-6717.

We need your help! In taking the message to people across the nation, we are incurring substantial expenses. Your contribution of money or service may make the difference in getting the message out. If you need more information regarding specific expenses and how you can help, please contact Jo Miller, O.U.R. Group Coordinator, 2179 Station A, Champaign, IL 61825-2179 or call (217) 398-6717.

FUTURE EVENTS

O.U.R. Full Court Press – The Final Four
Indianapolis, IN
Saturday, March 30, 1991

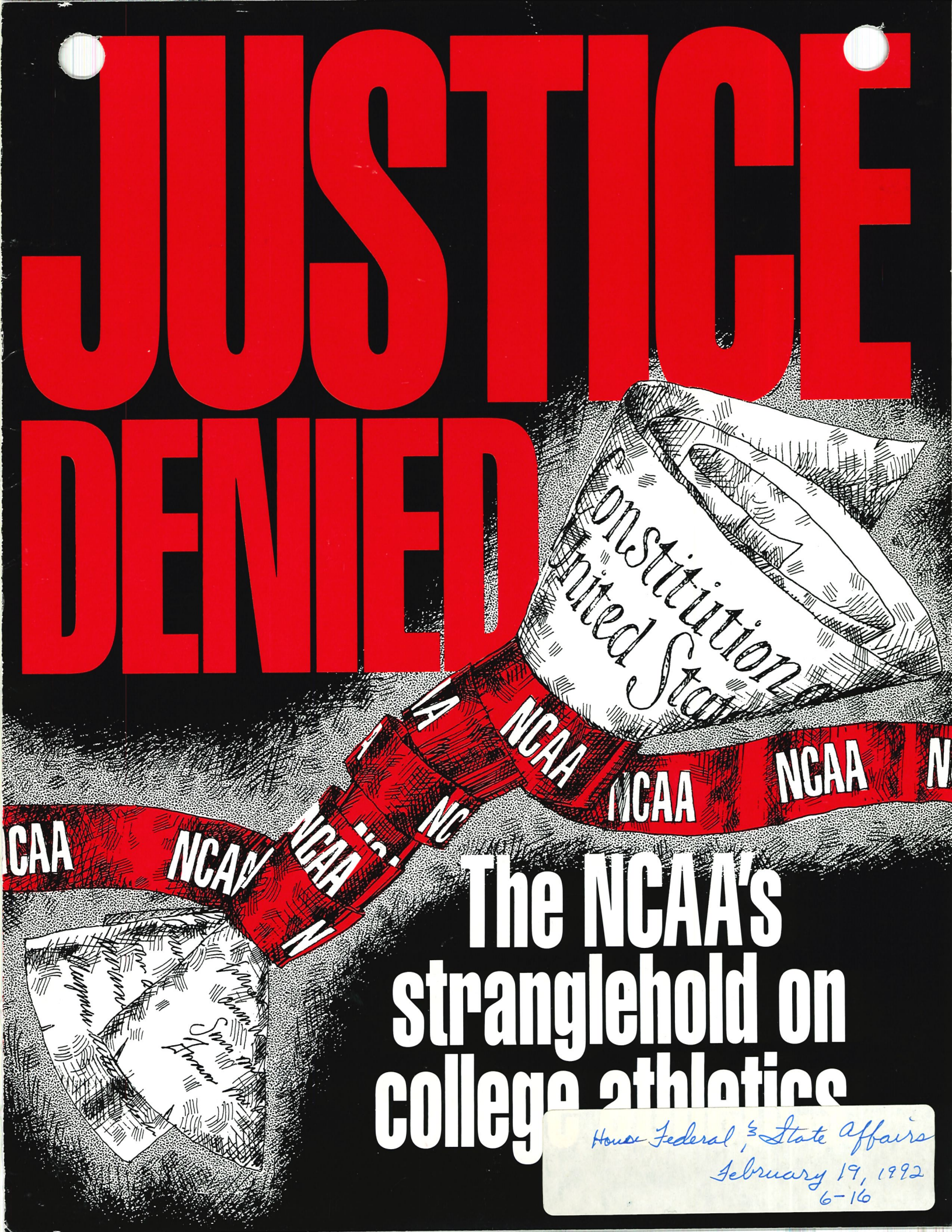
National Convention
will be announced at a later date

For more information about these and other events write to:

O.U.R. GROUP
2179 Station A
Champaign, IL 61825-2179
(217) 398-6717

O.U.R. Group, the Organization for Understanding and Reform, is a not-for-profit organization dedicat[illegible] to creating an understanding for the issues and per[illegible] involved in denial of due process by the NCAA, and[illegible] influence reform of the enforcement and infractions activities within the NCAA.

JUSTICE DENIED



The NCAA's stranglehold on college athletics

House Federal & State Affairs
Feb. 19, 192
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If Joe McCarthy were alive today, he'd be working for the NCAA.

In the college sports section of any American newspaper on any given day, there will be a story about allegations made by the National Collegiate Athletic Association.

The accused college will almost always proclaim their innocence. Rival colleges will almost always declare them guilty. And somewhere in between lies the truth.

But truth has little bearing in an NCAA investigation. What it's really about is money—the millions of dollars generated by collegiate athletics.

And the very source of all that money, the student-athletes, are used as pawns in a struggle in which they are powerless to defend themselves.

Judge, jury and executioner.

While no one believes that abuses do not occur, the NCAA rule book is open to interpretation—their own. They prefer to operate on the assumption that a college, and thus its athletes, are "guilty until proven innocent". In fact D. Alan Williams, chair of the NCAA Infractions Committee, has stated that his organization has no category for innocence. A clear violation of the very foundation of our democracy, and a national disgrace.

Athletes are especially vulnerable. They, not the schools they play for, ultimately pay the price. Colleges have huge financial resources to weather the blows inflicted by the NCAA. They also profit enormously from the talents of their athletes.

Players, however, have no such resources.

"It is true that the NCAA does punish guilty parties, but by far the greatest number of persons punished are student-athletes who are absolutely innocent of any misdeed and have had no charges brought against them."

Bob Timmons,
Retired Chairman Student-Athletes Rights Committee NCAA Division I Track Coaches Association & Former NCAA Champion Track Coach

Only approximately two percent of all college athletes go on to play professional sports. When an unfair ruling by the NCAA deprives players of the opportunity to participate on the college level, it may also deprive them of their only opportunity to play the game they love on a competitive basis.

Abuses within the system stem from the competition for players—teenagers—who are the hard currency in a big money game. And student-athletes are denied the right to a fair and impartial hearing of the facts.

FACT: The NCAA does not allow its investigators to tape-record interviews, or to have a stenographer present. Testimony is presented in editorialized memo form created from the investigator's hand-written notes.

FACT: The Bill of Rights provides that no person shall "be deprived of life, liberty or property, without due process of law".

Nice work, if you can get it.

The NCAA is a law unto itself. Originally formed in the first half of this century to make sports safer for athletes and to separate amateur from professional sports, it has grown into a self-appointed, self-governing, and self-regulating organization with a $98-million annual budget in 1989-90. And the new NCAA television contract will enrich this gravy train to $1 billion over seven years.

So in whose interest is it to keep colleges captive to this unfair system? Who benefits from the threats and intimidation that have become trademarks of an NCAA investigation?

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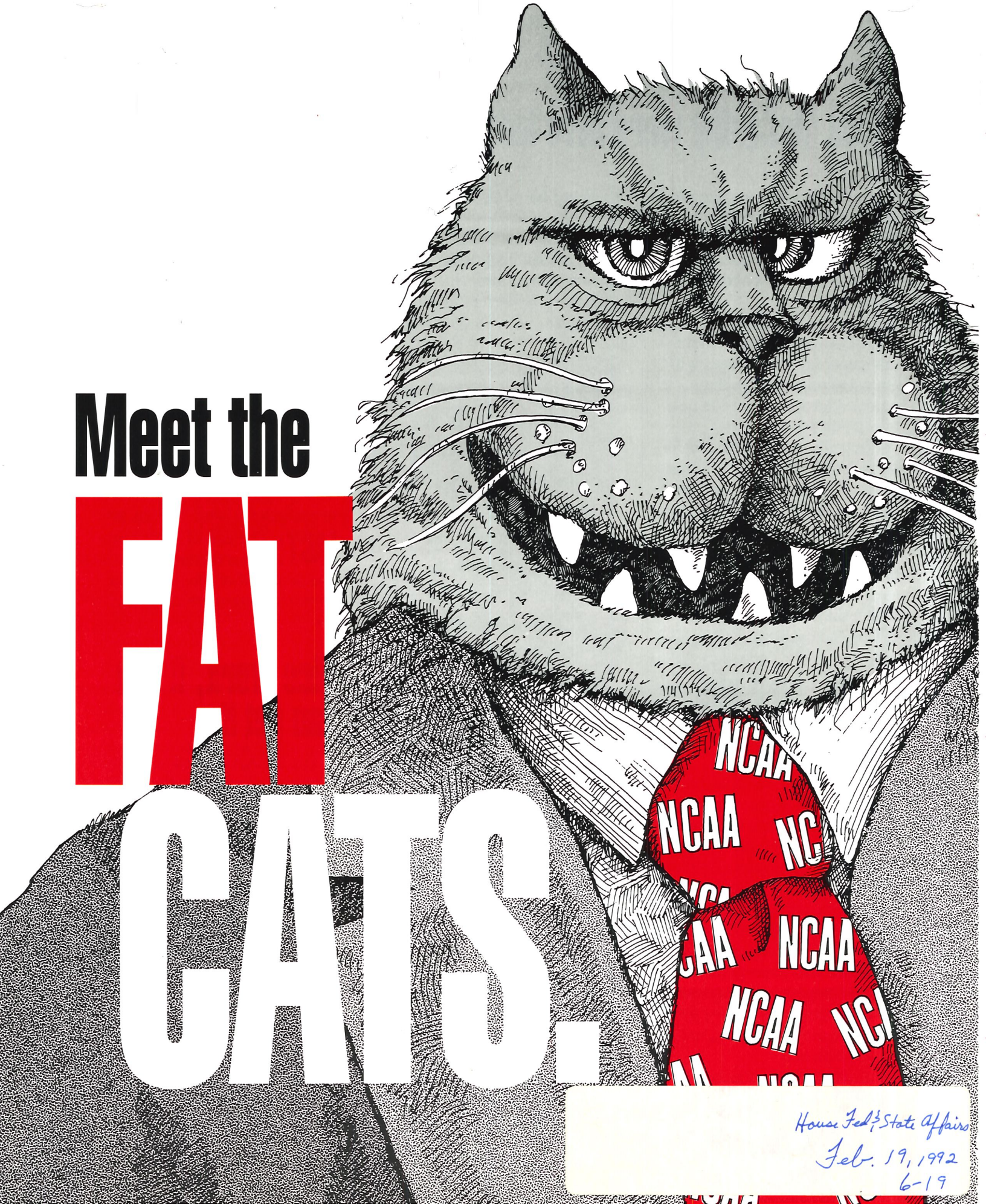

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The same self-righteous individuals who decry the abuses of college sports use funds earned from the sweat of our children to enrich themselves. And in their hypocrisy, they punish athletes for the "violations" that are an affront to basic human dignity.

Incredibly, LSU players who wished to see a dying friend were told they would be violating the NCAA's rule against "entertainment off campus".

FACT: In 1985, the *Washington Post* reported that in the seven previous years, the NCAA had arranged more than $600,000 in extremely low- or no-interest mortgage loans to favored staff members, with the largest amount—$118,000—going to the man who made the NCAA what it is today, former Executive Director **WALTER BYERS**.

FACT: It's against NCAA rules for a coach to invite players to his home for dinner.

FACT: Dick Schultz, also a pilot, requested and had approved the purchase by the NCAA of a private airplane costing $1.7 million.

[1]"The NCAA is looking out after the interests of athletic departments and their budgets. There's not one single rule that the NCAA has which is designed to benefit the athletes."

Nebraska Senator
Ernie Chambers

FACT: It's against the NCAA rules for a college to provide a player with a ride to the airport even to attend the funeral of a family member.

Getting at the truth, NCAA-style.

So who are the people who determine whether a player has violated NCAA rules? NCAA Investigators are not the power, they are the fist. They are paid little, especially by the standards of their high-living bosses. Their job is to interview coaches and athletes and report their findings. The advantage, however, is overwhelmingly in their favor.

FACT: The NCAA has sent their investigators to a "spy school" near Washington, DC, for training in interrogation by agents from the Israeli army and the FBI.

FACT: In 1990, an Illinois high school player was interrogated for five hours by NCAA investigators without his attorney (or parents) present.

Schools that have undergone the harrowing experience of an NCAA investigation are caught in a Catch-22. They are denied due process, and their claims of innocence are derided as "whining" by rival schools who stand to benefit from sanctions imposed. As one former NCAA investigator stated, "Give me six weeks, and, I can get any college in the nation on probation . . . Everyone is guilty—There are only varying degrees of guilt."

But *is* everyone guilty? And is the harsh "justice" imposed by the NCAA applied consistently, without regard to personal friendships or a team's standing in the polls? A great many schools say no. But as many of them have discovered, any criticism of the NCAA is an open invitation to an NCAA investigation.

[1]Don Yaeger, *UNDUE PROCESS, the NCAA's Injustice For All* (Champaign, Illinois: Sagamore Publishing Inc., 1991), p.108.

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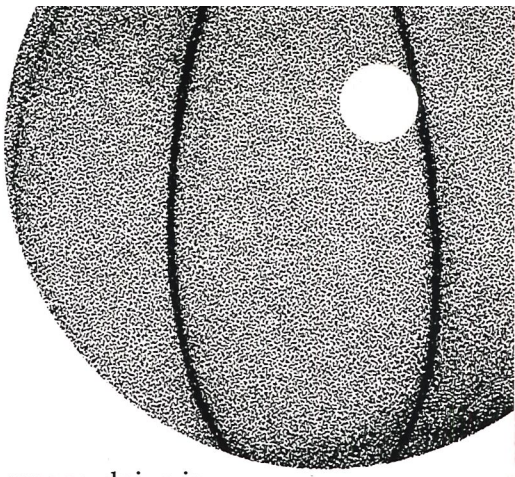
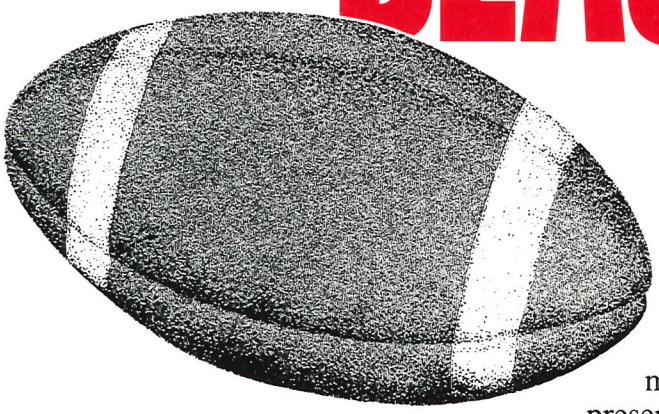
Join us in TAMING THE BEAST.





If you believe that athletes should be protected from exploitation, and that players and colleges accused of violating the rules should be punished only when *proven* guilty, you can help build a better system.

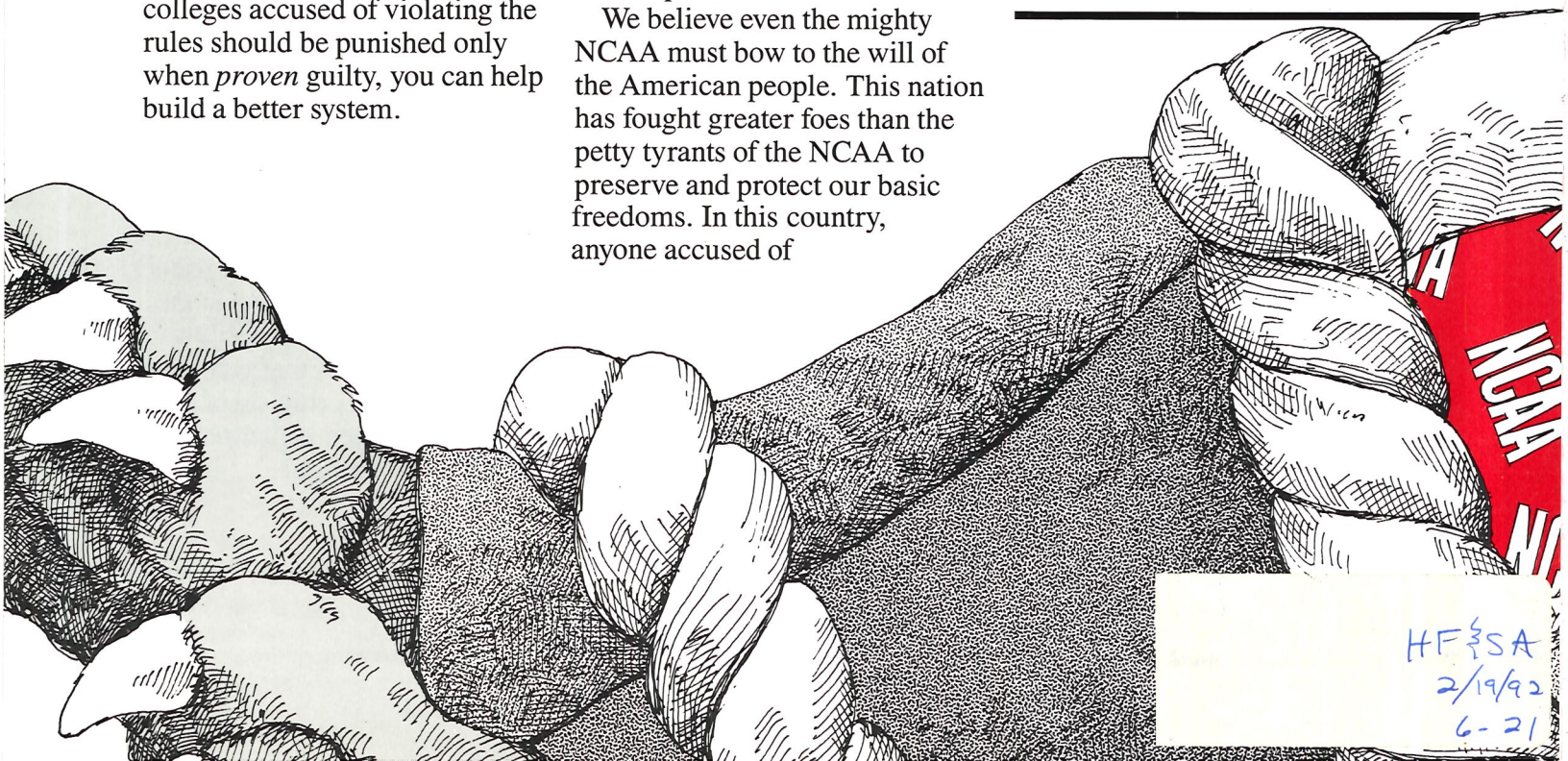
Lawmakers across the country are currently considering legislation to ensure that schools and athletes are given due process. There is little individual schools can do to support this movement because of the ever-present threat of NCAA investigation. So it's up to ordinary citizens to force the NCAA to clean up their act.

We believe even the mighty NCAA must bow to the will of the American people. This nation has fought greater foes than the petty tyrants of the NCAA to preserve and protect our basic freedoms. In this country, anyone accused of wrong-doing is supposed to be entitled to equal protection under the law.

The current NCAA enforcement system is rife with abuse, committed not by colleges, but by

"The State of California respectfully requests the President and Congress of the United States to pass legislation which would require the National Collegiate Athletic Association to adopt procedures to guarantee due process to member schools and their students and coaches."

—Resolution passed by the California Legislature August 30, 1990.



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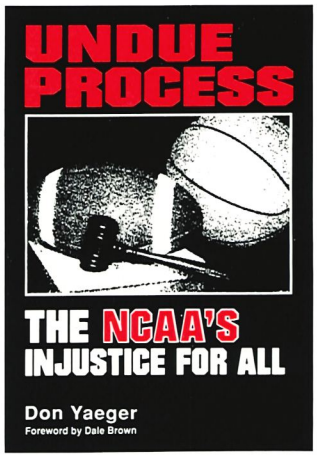
the very group who claim to be the watchdogs. And with so much money at stake, the NCAA continues to fight all efforts to bring about reform.

"The picture is that of a sanctioning body with incredible power that may affect the careers and ambitions of coaches and student athletes, as well as the stature of virtually every institution of higher learning in the country. This power is exercised by the NCAA without observance to what we all assume are the minimal standards of fairness."

John E. Moss, *Former Chairman*
House Subcommittee of Oversight and Foreign Commerce
U.S. House of Representatives

O.U.R. Group, the Organization for Understanding and Reform, is a not-for-profit organization dedicated to creating an understanding for the issues and persons involved in the denial of due process by the NCAA, and to influence reform of the enforcement and infractions activities within the NCAA.



Begun in Illinois, O.U.R. Group has taken the case against the NCAA to concerned parents and fans across the nation. Individuals who believe they have been unjustly accused have broken ground by fighting the NCAA in court. But until individual states and members of Congress enact meaningful legislation, the NCAA will continue to enjoy its position as the dictator of college athletics.

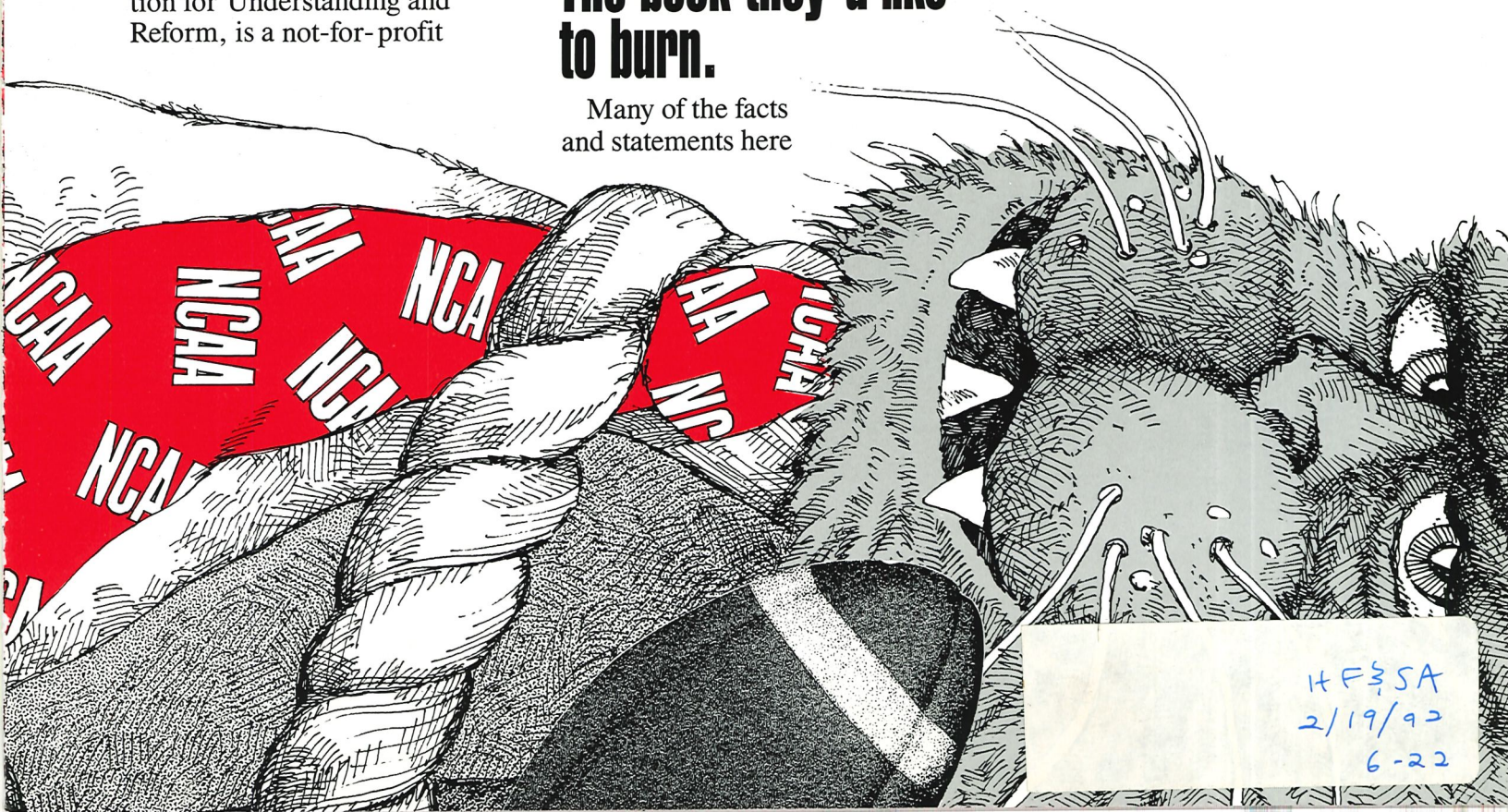
The book they'd like to burn.

Many of the facts and statements here were first documented and reported by Don Yaeger in *UNDUE PROCESS The NCAA's Injustice For All*, Sagamore Publishing Inc., 302 West Hill, Champaign, Illinois, 61824-0673. Copies are available by ordering directly from the publisher. For faster service, mention O.U.R. Group. For phone orders, call 1-800-327-5557, FAX: 217-359-5975.

We urge anyone wanting to know more to read Mr. Yaeger's no-holds-barred exposé.

You can also organize an O.U.R. Group chapter in your own community. There is no cost to join and membership entitles you to receive our monthly newsletter.

For more information write to O.U.R. Group, P.O. Box 2179 Station A, Champaign, IL 61825 or call 217-398-6717.



ORGANIZATION FOR UNDERSTANDING & REFORM

P.O. Box 2179 Station A
Champaign, Ilinois 61825

February 19, 1992

STATEMENT OF BURTON F. BRODY
TO THE FEDERAL AND STATE AFFAIRS COMMITTEE OF THE
KANSAS HOUSE OF REPRESENTATIVES

My name is Burton F. Brody. I am a Professor of Law at the University of Denver. I have been an interested observer of the administration of intercollegiate athletics for the past twenty years and an active participant in such administration for ten of those years. (A more detailed statement of those activities accompanies this statement). I would like to note that this statement and the views expressed herein are my own and in no way represent either the views of my University or its athletic department.

I appear here today for two reasons. First, out of the firm conviction and belief that the current National Collegiate Athletic Association (NCAA) enforcement practices are unjust, unfair and provide none of the safeguards Americans consider appropriate when rights and privileges are threatened by official action. However, I also come before you out of respect and admiration for Coach Timmons. He is an educator and man for whom I have the highest regard. His commitment to his students is something all educators should emulate; and his determination that all students be treated fairly and justly by the organizations that control campus activity is a goal all should share. Kansas is fortunate to have had the services of such an educator and is still fortunate to have him serving its citizens in seeking justness and fairness for its student-athletes. I am honored to join him in this cause.

NCAA enforcement practices are so poor that they serve neither the goals of the Association itself nor the ends of justice. One of the clear goals of NCAA regulation is to maintain athletic competitiveness (i.e. "a level playing field"), yet those who follow college sports know that a few schools dominate in each of the sports. And further, those who follow college sports suspect, with some justification, that consistent athletic success too often results from ignoring NCAA rules. At the same time, the NCAA's enforcement practices have been consistently found lacking in fundamental fairness and procedural safeguards.

Moreover, it should be kept in mind that 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 teach concepts of justice and fairness to those involved in intercollegiate athletics. The enforcement program of an association of institutions of higher education should foster respect for the rule of law.

Sadly however, just the opposite is true. NCAA regulation and its enforcement fosters contempt for the rule of law. In 1989,

House Federal & State Affairs
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Attachment # 7

Professor Allen Sack of the University of New Haven studied under-the-table payments to college football players in the major conferences. He stated that 83% of the players in Southeast Conference since the mid-60's said they knew that players at their schools received improper benefits. Further he reported that 67% of the same Southeast Conference athletes admitted that they themselves had accepted illegal benefits.[1] Thus it is clear that current NCAA enforcement practices are not teaching Southeast Conference athletes respect for the rule of law. And further it makes clear that any claim by the NCAA that effective enforcement of its rules justifies bypassing certain procedural safeguards in order to preserve the integrity of intercollegiate athletics is hollow at best. It would seem that all NCAA enforcement has accomplished is to create a large number of well-built, athletically gifted scofflaws and a still larger number of cynics.

The sad reality is that is that NCAA enforcement is so misguided that rampant cheating has brought the entire higher education community into disrepute. Yet at the same time, NCAA enforcement procedures are so oppressive and contrary to concepts of fair play that the cheaters, more often than not, are pitied rather than condemned. Could there be a greater reason to change?

This statement will outline the major recent attempts to reform NCAA enforcement practices. The strikingly similar conclusions reached by each of those reform efforts are proof that flaws exist and are well known. The fact that the defects have been known for years makes it painfully clear that the NCAA, despite protestations to the contrary, will not reform itself. It has had ample time and opportunity to do so and has done little.

In 1978, The Subcommittee on Oversight and Investigations of the Committee on Interstate and Foreign Commerce of the United States House of Representatives asked the NCAA to amend its enforcement program to bring elements of due process to NCAA proceedings. The Subcommittee refrained from proposing federal legislation because of the NCAA's promise to do so without federal intervention.

The Association had an opportunity to do so. At its 1979 Convention, Proposition 61 (a copy of which is attached hereto as Appendix II) was presented. Proposition 61 proposed the changes that the Congressional Hearings made clear were necessary if fundamental fairness was to become part of NCAA enforcement. It was overwhelmingly rejected.

In the years since, several states have adopted legislation requiring that their institutions and individuals ensnared in NCAA enforcement be granted due process. The NCAA is currently involved in litigation attempting to have one of those state statutes (Nevada's) declared unconstitutional. (I will not comment on the irony of an association of institutions of higher education spending thousands of dollars contesting granting procedural safeguards to its members and their students; I will satisfy myself

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by merely pointing it out.) But so little change has occurred and the fundamental unfairness of NCAA enforcement persists that new federal legislation is being considered. Currently, The United States House of Representatives Subcommittee On Commerce, Consumer Protection and Competitiveness is revisiting the questions.

In response to this spate of legislative interest, including your own, -- and I believe in an effort to blunt it -- the NCAA formed a SPECIAL COMMITTEE TO REVIEW THE NCAA ENFORCEMENT AND INFRACTIONS PROCESS. The SPECIAL COMMITTEE, headed by a former Solicitor General of the United States currently serving as a university president, and consisting of distinguished members of the Bar, the judiciary and higher education, including a former Chief Justice of the United States and a former Attorney General of the United States, conducted hearings during 1991 and issued a report (a copy of which is attached hereto as Appendix I). On October 28, 1991, the SPECIAL COMMITTEE made eleven recommendations for improvement in the NCAA's enforcement and infractions process. And if what one reads in the press is accurate, the Association is raising doubts about at least some of those recommendations.

If past practice is as reliable guide to future conduct as intelligent people believe it to be, the SPECIAL COMMITTEE'S recommendations will be ignored. They will be ignored because they are the same ones made by The U.S. House of Representatives in 1978, the same ones contained in the Nevada and other state acts and the same ones addressed by Proposition 61 at the 1979 NCAA Convention. (The SPECIAL COMMITTEE RECOMMENDATIONS (Appendix I) and Proposition 61 (Appendix II) are crossed referenced with each other by marginal notes for your convenience.)

The points are clear. NCAA enforcement process is seriously flawed. Everyone and every legislative body that has investigated them in the last thirteen years has so determined. And despite protestations that change was forthcoming because the Association was capable of and committed to keeping its own house in order, its own SPECIAL COMMITTEE, within the last six months, made the same recommendations for change that have been made for thirteen years.

A basic reason that NCAA enforcement is so unjust flows from the nature of the organization and its philosophy of institutional penalties. The Association is an association of institutions and organizations. Its penalties are therefore directed at institutions. But those who suffer the sanctions are individuals; and those individuals have no place in the organization, play only a limited role in its enforcement process and have limited ability to defend themselves against charges that can have serious effect on their futures. Yet when it comes to students, NCAA rules punish them for the transgressions of others in the name of institutional penalties.

NCAA rule 14.13.2 (p. 154, 91-92 NCAA Manual) 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 it is clear that the student is punished (denied the eligibility to compete) for the transgressions of others. This in the name of "institutional penalties"; the institutional penalty being that the student cannot "represent" it in the contest. Nonsense!!! It is the student who cannot compete and is thereby punished, and punished for a violation of others. It is the greatest of injustices to seek to control the conduct of one group by imposing sanctions on another group. It reminds me of the cultures that seek to control libidinous males by placing restrictions on the freedom of females. It is seeking to raise one's child by kicking the dog every time the child does wrong. It is no wonder the athletes of the Southeast Conference have no respect for such a rule of law.

Further, a system of regulation that punishes someone other than those who are truly responsible for violations is doomed to failure. The growth of cheating in intercollegiate athletics is testimony to the failure of the NCAA's philosophy of institutional penalties. It must create a system of truly effective institutional penalties and incorporate within it a system of punishing the individuals truly responsible for transgressions.

Proposition 61 presented to the 1979 NCAA Convention (Appendix II) addressed these very questions. In its Section 615 Principles Guiding Corrective Action, it stated:

(2) Justice; the committee should attempt to correct only the wrongs actually found. Sins of coaches, assistant coaches, recruiters and athletic administrators ought not be visited on student-athletes. Specifically, student-athletes ought not be required to suffer periods of athletic ineligibility unless they personally engaged in affirmative conduct violating Association legislation.

****

(4) To whatever extent possible, corrective action should be directed against the member institution, athletic department personnel, other university employees and representatives of the athletic interests of the member institution rather than against student-athletes. This is because corrective action is most effective when it is directed against persons in positions of responsibility and authority. However, no corrective action may be imposed on any individual not given an appropriate opportunity to present his side of the controversy. Responsible educators ought not be permitted to evade the consequences of their failure to meet their

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responsibilities by imposing sanctions on their students.

These principles are as true today as they were in 1979 when the NCAA in association assembled rejected them. The Association continues to reject them and will continue to do so until some greater authority requires it to do differently. Until the members of the Association take responsibility for their actions and structure themselves and their enforcement program in such a way as to provide justice, fairness, fair play and common decency to the individuals and institutions involved in intercollegiate athletics, cheating will continue to grow, distrust of the "system" will continue to grow, growing numbers of students will be taught disrespect for law and higher education will continue to be embarrassed.

Therefore, I respectfully urge you to take the opportunity presented to you and enact the legislation pending before you that will require athletic associations enjoying Kansas residence to provide due process to those whom they sanction and thereby to punish only those deserving punishment rather than their innocent successors and colleagues.

Respectfully submitted,

Burton F. Brody
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1. THE UNDERGROUND ECONOMY OF COLLEGE SPORT; a paper presented at the Joint Meetings of the North American Society for the Sociology of Sport and the Philosophic Society for the Study of Sport, Washington D.C., November 10, 1989.

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APPENDIX I

REPORT AND RECOMMENDATIONS

OF THE

SPECIAL COMMITTEE TO REVIEW THE

NCAA ENFORCEMENT AND INFRACTIONS PROCESS

The Special Committee to Review the NCAA Enforcement and Infractions Process was appointed in April 1991 to examine the enforcement procedures to ensure that this important function of the Association is fair, effective, timely and consistent. Its establishment was initiated by NCAA Executive Director Richard D. Schultz a year earlier in a document outlining his goals for 1990-91, which were accepted by the NCAA Executive Committee in its August 1990 meeting.

Specifically, the special committee's charge, as extended by the executive director, was as follows: "Conduct a thorough review of the enforcement and infractions process, including (a) the investigative process by the enforcement staff; (b) the function of the Committee on Infractions, including the hearing process and the method used to determine penalties if guilty, and (c) the release of information to the public regarding sanctions and the conduct of press conferences at institutions announcing sanctions. The purpose of the review is to make sure that the process is being handled in the most effective way, that fair procedures are guaranteed, that penalties are appropriate and consistent; to determine ways to reduce the time needed to conclude the investigation and the infractions process, and to determine if there can be innovative changes that will make the process more positive and understandable to those involved and to the general public."

The special committee attempted to accomplish two important objectives in its resultant study and recommendations: maximizing fairness to institutions and individuals accused of wrongdoing, while preserving the effectiveness of the Association's ability to investigate and take corrective measures expeditiously in infractions cases.

The Special Committee

The special committee comprised the following individuals: Rex E. Lee, president of Brigham Young University and former U.S. solicitor general, chair; Warren E. Burger, former Chief Justice of the United States; Reuben V. Anderson of Jackson, Mississippi, a former state supreme court judge; Paul R. Verkuil, president of the College of William and Mary and former dean of the Tulane University law school; Charles W. Ehrhardt, professor of law and faculty athletics representative at Florida State University; Becky R. French, university counsel at North Carolina State University; Benjamin R. Civiletti of Baltimore, Maryland, former attorney general of the United States; Charles Renfrew of San Francisco, California, vice-president, legal, for Chevron Corporation, a former Federal district judge and a former deputy U.S. attorney general; Philip W. Tone of Chicago, Illinois, a former Federal district judge and former Federal appeals court judge, and two current members of the NCAA Council, Charles Cavagnaro, director of athletics at Memphis State University, and William M. Sangster, director of international programs and faculty athletics representative at Georgia Institute of Technology.

The Work of the Special Committee

The special committee conducted five meetings during the course of its work -- May 29, June 30-July 1, July 26-27, September 5 and October 16.

In certain of its meetings, the special committee consulted in person with invited individuals to obtain their views of the issues being considered by the special committee. Included in this category were Thomas C. MacDonald Jr., a Tampa, Florida, attorney who has served as counsel for the University of Florida; Jerry Tarkanian, head men's basketball coach at the University of Nevada, Las Vegas; D. Alan Williams, University of Virginia, current chair of the NCAA Committee on Infractions; Frank E. Remington, University of Wisconsin, Madison, a former chair of the infractions committee; Beverly E. Ledbetter, Brown University, and Milton R. Schroeder, Arizona State University, current members of the infractions committee, and S. David Berst, NCAA assistant executive director for enforcement.

In early summer, invitations were extended to the general public and a cross section of the constituencies in college athletics to participate in a public hearing and to express their views regarding the NCAA's enforcement and infractions process. The hearing was held in conjunction with the special committee's July 26-27 meeting in Washington, D.C.

At that meeting, the special committee heard from the following individuals: Britton B. Banowsky, assistant commissioner and legal counsel, Southland Conference; J. Steven Beckett, attorney, Champaign, Illinois; William C. Carr III, vice-president, GNI Sports, Inc., Charlotte, North Carolina (former athletics director, University of Florida); Collegiate Commissioners Association officers Thomas C. Hansen, commissioner, Pacific-10 Conference, and Thomas E. Yeager, commissioner, Colonial Athletic Conference; Bill Curry, head football coach, University of Kentucky; James E. Delany, commissioner, Big Ten Conference; Vincent J. Dooley, director of athletics, University of Georgia; George H. Raveling, head men's basketball coach, University of Southern California, and member of the board of directors of the National Association of Basketball Coaches, and Michael L. Slive, commissioner, Great Midwest Conference.

The special committee also received a number of written submissions during its work, including specific suggestions from Stanley O. Ikenberry, president of the University of Illinois System; Morton W. Weir, chancellor of the University of Illinois, Champaign; Congressman Tom McMillen (D-Maryland), and George H. Gangwere, now retired after years as the NCAA's longtime general counsel.

Findings

During the course of its study, the special committee made certain findings that formed the basis for its recommendations (detailed later in this report). Among them:

* The conduct of the NCAA's enforcement and infractions process has been, since its inception 40 years ago, a serious effort to achieve, fairly and

equitably, compliance with NCAA principles and regulations. The Association, its membership and its Committee on Infractions through the years are entitled to appreciation and credit for having the willingness to establish a system by which the member institutions can police themselves in their intercollegiate athletics activities. That continued self-enforcement is essential to successful compliance. Similarly, the special committee wishes to acknowledge the quality and credibility of the efforts of both the Committee on Infractions and the enforcement staff. The Association has a consistent history of willingness to review and adjust its enforcement and infractions procedures in an effort to improve those procedures. In this spirit, the special committee believes that the process can be improved further and enhanced in the areas reflected by the recommendations of this report.

* The process must be procedurally fair, as expeditious as possible, and effective in uncovering and correcting wrongdoing while affording adequate protection to institutions and individuals. In this respect, the existing distinction between major and secondary violations is appropriate and useful in processing and resolving infractions cases.

* The U.S. Supreme Court has determined that the NCAA is not a state actor for purposes of the Fourteenth Amendment to the U.S. Constitution. Nevertheless, the special committee is of the view that the NCAA, in the interest of its members and in its own interest, should afford procedural fairness protections. These protections should be provided and administered by the NCAA itself, in order to assure uniformity across all member institutions and all parts of the nation. Also, it is essential, in the special committee's view, that the identification and correction of NCAA rules infractions remain a cooperative, joint effort, involving both the Association and also the affected member institutions.

[Attached as Appendix A is a statement regarding the NCAA enforcement procedures vis-á-vis components of due process.]

Recommendations

Effectively improving the system will require both structural and procedural changes. The special committee's specific recommendations, which will be reviewed by the NCAA membership and then submitted to the NCAA Council and the NCAA Presidents Commission for approval and any necessary membership action, are as follows:

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1. Enhance the adequacy of the initial notice of an impending investigation and assure a personal visit by the enforcement staff with the institution's chief executive officer.

   Among the problems the special committee identified are the inadequacy of the initial notice of an impending investigation and the desirability of affirming a spirit of joint investigation by the NCAA and by the institution. The most effective investigations are those characterized by cooperation, rather than adversarial positioning, and the initial steps in the investigative process are pivotal in establishing the appropriate relationship.

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The special committee is convinced that in the vast majority of instances, the institutions affected are as vigilant in their attempts to determine the truth as is the NCAA enforcement staff. Joint investigative efforts, involving the cooperation of both the Association and the institution, benefit all parties and speed the process. In those cases that do not fit this pattern, however, the enforcement staff should retain the option of abandoning a joint investigation and proceeding on its own to the extent required by the needs of the case. In light of the greatly increased cooperation currently being exhibited by institutions in the enforcement process, however, it is desirable to pursue the benefits of joint investigation whenever possible.

Toward that end, the special committee recommends that instead of simply sending a preliminary letter of inquiry to an institution, the enforcement staff personally should visit the institution's chief executive officer with the preliminary notice in hand in each major case as defined in NCAA legislation. Further, the letter should provide some indication of the nature of the potential violation and the portion of the athletics program where the potential violation occurred. The staff thus would advise the chief executive officer of its intention to work with the institution in a joint investigation unless the staff did not believe that a joint investigation would be appropriate in that instance, in which case it would so inform the institution and state its reasons for that position. This in-person visit also would provide an opportunity for discussion of procedural matters, alternatives for disposing of the case and a time frame.

Using in-person delivery of the preliminary letter as the occasion to discuss the matter with the institution's representatives also should assure that the institution receives a more informed view of the inquiry than it now receives in a brief written notice.

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2. Establish a "summary disposition" procedure for treating major violations at a reasonably early stage in the investigation.

One of the most serious problems identified by the special committee is the period of time that frequently elapses from the beginning of an investigation of a major violation by both the institution and the NCAA enforcement staff, to the hearing before the infractions committee and the subsequent imposition of sanctions. The special committee believes there is a need to speed the process and assist institutions in resolving matters without an extended period of adverse publicity and a considerable commitment of institutional time, attention and resources.

Frequently, all parties are in agreement at a fairly early stage of the investigation as to the facts. When this is the situation in the case of secondary violations, there is no reason to hold a hearing, and the case is quickly resolved by the enforcement staff in accordance with established guidelines and procedures.

Agreement as to the facts and an opportunity for an expeditious resolution also should be available in the case of major violations. The special committee recommends that a "summary disposition" procedure be established for treating major violations. This, in essence, would be a

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negotiated agreement by which the enforcement staff's preliminary findings would be provided directly to the involved institution's chief executive officer, who could agree at that point to negotiate mutually acceptable findings and remedies. In these cases, the assistant executive director for enforcement would be empowered to enter into a summary disposition with any or all parties involved in the case at any time after the preliminary inquiry has begun, subject to general guidelines established by the infractions committee.

Specifically, the staff would share with the chief executive officer its information regarding rules violations. If the chief executive officer concurred, an agreement would be reached regarding the statement of facts and a proposed penalty (the latter to be approved by the infractions committee), and the agreed-upon summary disposition would end the matter. In most cases, it is anticipated that the time necessary to conclude this procedure would not extend beyond three or four months. When the circumstances of the case and the agreed-upon disposition of the matter are beyond the authority granted by the infractions committee to the enforcement staff, the case would move into the regular infractions process. In cases where all involved parties do not agree to the summary disposition of the case, the regular infractions process would be available to those who are not in agreement (it being understood that the agreed-upon disposition would be available for those parties who are in agreement).

In order to provide appropriate oversight of the summary disposition procedure, the agreed-upon sanction(s) would be subject to expeditious review by the infractions committee for the purpose of determining whether the penalty is consistent with the guidelines.

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3. Liberalize the use of tape recordings and the availability of such recordings to involved parties.

A persistent problem is the lack of access to evidence held by the opposing side in an infractions case. The special committee is encouraged by the fact that the infractions committee has recommended a liberalization of the tape-recording procedure for action at the 1992 Convention, but in the interest of openness, it believes that additional steps should be taken in this regard.

The special committee recommends that as a condition of using a prehearing statement from any witness, any interview with that witness must be tape-recorded, and the enforcement staff must disclose the existence of the tape recordings on or before the date on which the official letter of inquiry is issued that states the basis upon which the allegations are made. Upon a showing that a tape-recorded statement could not be obtained (e.g., witness refusal) other "best evidence available" statements (e.g., signed statements, interview memos) would be admissible in a hearing. Under any circumstance, a witness would be permitted to appear in person at any hearing at which the witness' statements are to be used.

The tapes and other evidence would be "discoverable" by any person or institution having an actual stake in the outcome of the case; however, the enforcement staff would be permitted to request a protective order

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(from the hearing officer, as identified in a subsequent recommendation) in appropriate cases in which disclosure may be detrimental to the institution or may jeopardize the investigation. Finally, institutions or individuals also would be permitted to submit affidavits in support of their positions.

The special committee believes that the liberalized use of tape recordings and the emphasis on discovery would benefit both the staff and those subject to inquiry by enhancing the reliability of the evidence and by allowing expeditious sharing of the facts of the case.

4. Use former judges or other eminent legal authorities as hearing officers in cases involving major violations and not resolved in the "summary disposition" process.

79/61 Art. 6 §601-616

The special committee believes there is a widely held perception of inadequate separation of the functions between the enforcement staff and the ultimate decisional authority (i.e., the perception is that the infractions committee serves as the prosecutor and judge under the current system). The use of an independent jurist would enhance the public's perception of fairness and confidence in the system.

Also see: §802 on eligibility hearings and: §301 "Two committees"

The special committee recommends, therefore, that in cases involving charges of major violations not resolved by the summary disposition procedure, a hearing officer be used to review stipulated facts, resolve factual issues that are in dispute and recommend an appropriate disposition to the infractions committee. The recommended disposition would be based on information discussed in the hearing and an independent review of past cases. The hearing officer preferably would be a former Federal judge, state court judge, or other eminent legal authority or person of stature whose integrity and impartiality are beyond question.

It is not intended that the use of an independent hearing officer would make the process more adversarial; indeed, the special committee believes that hearings essentially would be conducted as in the past, except that an experienced legal expert who is not connected with the NCAA in any way would determine the facts in a case and make findings. Such individuals are trained in weighing conflicting evidence, judging credibility and determining whether the burden of proof has been satisfied. A pool of such individuals, trained to make certain that they have sufficient background in NCAA regulations, would be necessary to assure the availability of a sufficient number of hearing officers. The special committee recommends that the NCAA Administrative Committee, consisting of the five elected NCAA officers and the executive director, be responsible for selecting and maintaining the pool of hearing officers.

79/61 §103 §901

5. Hearings should be open to the greatest extent possible.

In general, the special committee prefers that all hearings in the NCAA infractions process be open, with the exception of deliberations. It should be emphasized that the committee is closely divided on this issue, but the majority holds a general preference for open hearings unless the hearing officer determines that a portion or portions of the proceedings,

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in the interest of privacy, fact-finding and justice, should be kept confidential for good cause shown (e.g., information pertaining to test scores, drug use, medical records).

Another factor supporting open hearings is the committee's position regarding the availability of transcripts of hearings, set forth in a subsequent recommendation in this report.

Any interested party could be represented by legal counsel before the hearing officer and at all relevant stages of the proceedings, as is the case now.

6. Provide transcripts of all infractions hearings to appropriate involved parties.

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The special committee recommends that tapes or transcripts of open infractions hearings be sent upon request to parties named in the case and to the involved institutions under circumstances providing protection of confidentiality of appropriate information. In addition, anyone interested would be permitted to purchase a tape or transcript of the open hearings when the case has been concluded.

The committee believes that the sharing of tapes, transcripts or other records of enforcement proceedings would enhance the spirit of cooperation that is growing in the membership. Concerns regarding such tapes or transcripts becoming available to others (e.g., the news media) are, in the special committee's opinion, outweighed by the benefits that can accrue in a more cooperative procedure.

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7. Refine and enhance the role of the Committee on Infractions and establish a limited appellate process beyond that committee.

The present appellate process, in which the infractions committee decision is subject to appeal to the appropriate steering committee of the NCAA Council, is largely ineffective.

Therefore, the special committee recommends that a special review body of three to five members, the majority of whom would be representatives of NCAA member institutions and conferences, be appointed to serve as the appellate group to consider appeals of increased penalties only. The appellate process would be available only in instances in which the Committee on Infractions has increased a proposed penalty. The facts in the case would be frozen, and the appellate body would have the option of affirming the Committee on Infractions' penalty or decreasing it.

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§ 301

Thus, the infractions committee no longer would serve as the hearing panel to determine the facts in a case. That would be the role of the hearing officer as noted above. The committee could set aside a factual finding by the hearing officer only on a "clearly erroneous" standard. The committee's role would be redefined as that of supervising the summary disposition process (i.e., it would review the penalty agreement and approve it, unless it found the proffered penalty to be demonstrably inconsistent with NCAA rules and/or contrary to the interests of the Association); it would consider appeals of findings made by, and assess

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penalties after receiving the disposition recommendation of, the hearing officer, and it would monitor the entire enforcement system. The committee's role would be refined and enhanced because the committee would remain responsible for all portions of the enforcement and infractions process, and it would do so without the burden of also filling the role of fact-finder.

8. Adopt a formal conflict-of-interest policy.

The special committee recommends that a conflict-of-interest policy be adopted formally. This would require simply an identification of the circumstances in which a member of the enforcement staff would not be permitted to be involved in a given case.

79/61 §103

9. Expand the public reporting of infractions cases.

The special committee recognizes that the perception of the infractions process is a major problem. It believes that the Association should do everything possible to enhance the reporting of information to the public and the news media regarding the reasons for actions taken in infractions cases. The committee's recommendation regarding open hearings would assist in this regard.

The NCAA also should do more to inform the public and the media of the fact that the enforcement and infractions process is established, maintained and strongly supported by the member institutions themselves.

Accordingly, the special committee recommends that public announcements of infractions cases include a more ample, but clear and concise, statement of the reasons for the actions taken. It believes that many of the steps recommended earlier will further enhance the nature and completeness of the information.

10. Make available a compilation of previous committee decisions.

One important feature of the enforcement and infractions system should be the availability of complete and comprehensive information as to past infractions cases and actions of the infractions committee.

The special committee recommends that a publication or other type of document be developed that compiles such information and that it be made available as a reference for institutions and individuals involved in infractions cases.

79/61 §304

11. Study the structure and procedures of the enforcement staff.

The NCAA enforcement staff should be responsible directly to the NCAA executive director and, through the executive director, to the NCAA Executive Committee, as prescribed in existing NCAA legislation. The NCAA administration should study carefully the enforcement staff structure, qualifications and procedures in light of the recommended changes in the process. It also should study the allocation of resources to the enforcement effort.

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Implementation

The NCAA approval mechanism is such that certain of the special committee's recommendations can be effected upon approval by the NCAA Council, while others will have to await a membership vote at the appropriate NCAA Convention. That is inevitable in the Association's procedures, all of which are designed to protect the legislative interests of the member institutions.

The special committee urges that its recommendations be implemented as soon as is practicable under NCAA procedures. In pending infractions cases, involved parties should be permitted to avail themselves of the proposed changes in procedures to the extent possible under NCAA legislation. Otherwise, it is the special committee's belief that the current process, modified as appropriate by the Council under its existing authority, should apply to those cases currently in process. This should not cause undue concern on the part of an involved member institution. Such institution should not be permitted to use the pendency of new procedures as a means of delaying the effective conduct of the process during this interim period. The new procedures should apply to cases that are commenced after each such procedure is put into effect.

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Statement on Due Process

In the last 20 years, the concept of due process in the administrative setting has undergone substantial change. With Goldberg v. Kelly, in 1970, the Supreme Court set detailed standards for determining when there were sufficient procedural ingredients to satisfy due process. Many informal government functions and programs never provided the full panoply of Goldberg ingredients, and with Mathews v. Eldridge, in 1976, the Court recognized that it must balance government and private interests before deciding whether a particular government program satisfied due process standards.

The NCAA, which, as a private association, is not even required by the Constitution to provide due process, has been responsive in its enforcement and infractions process to the standards of fair hearings established by the Supreme Court. Of the 10 procedural ingredients identified in Goldberg, the NCAA traditionally has provided at least seven. One of the three remaining ingredients (cross-examination of adverse witnesses) is simply beyond the NCAA's power to ensure since, as a private association, it lacks subpoena power. Thus, even under Goldberg's demanding standards, the NCAA hearing process arguably only failed to meet two ingredients (adequacy of notice and statement of reasons). This comes closer to satisfying Goldberg than did the informal administrative process of many Federal agencies in the 1970s. Certainly, the NCAA process would meet the standards implicit in the Mathews balancing test.

Under the new process recommended by this special committee, the NCAA enforcement and infractions program should satisfy whatever procedural challenges might be posed under any reasonable set of due process standards applicable to the world of administrative decision-making, whether emanating from Goldberg v. Kelly, Mathews v. Eldridge or state constitutional law.

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National Collegiate Athletic Association

1979 Convention

Program

APPENDIX II

73rd Annual Convention
January 8-10, 1979
San Francisco, California

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Enforcement and Compliance

NO. 61 ENFORCEMENT PROCEDURE

Enforcement Procedure: Amend the Official Procedure Governing the NCAA Enforcement Program, pages 133-146, by deleting the present language and substituting the following:

[All divisions, common vote]

Article One
Philosophy, Goals, Purpose and Spirit

"Section 101 Standards of Conduct.

"The existence of intercollegiate athletics is justified only by the extent to which such activity contributes to the education of students. Thus, 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. Therefore, their responsibility is an affirmative one, and they must do more than avoid improper conduct or questionable acts. Their own conduct should be an example for their students.

"Section 102 Educational Goals.

"This enforcement program is to be conducted as part of the educational process. Its administration, conduct and decisions should be lessons in justice and fairness.

"(1) The goal of this enforcement program is to maintain competitive balance amongst the athletic teams competing under the Association's sanction by assuring that everyone is 'playing by the same rules.'

"(2) This program is to be conducted in such a way as to promote the highest degree of voluntary compliance with Association legislation. Its implementation should be characterized by candor, cooperation, courtesy and respect as the most efficient means to voluntary compliance.

"(a) It is intended to provide a means to correct transgressions and bring institutions which violate Association legislation into compliance with such legislation.

"(b) Punishment, as distinct from correction, under this enforcement program is reserved for intentional or repeat violators; and in such cases, the purpose of punishment shall be to demonstrate that compliance with Association legislation is in the best interests of everyone.

"(c) Action under this enforcement program should be taken in such a way as will to the greatest extent possible preserve the reputations of institutions and individuals that may be affected by such activity.

"Section 103 Policy on Confidentiality.

"Investigations, adjudications and corrective actions resulting from the operation of this program shall remain confidential. This confidentiality is the privilege of individuals and institutions whose conduct comes under the scrutiny of this enforcement program. It is not the privilege of the Association, its committees or employees. Individuals and institutions enjoying this privilege of confidentiality are free to waive the benefits of it, but in so doing are cautioned that it is their continuing obligation to respect the identical privilege of other institutions and individuals who may be involved.

"Section 104 Cooperative Nature.

"All representatives of educational institutions are expected to cooperate fully with the NCAA enforcement staff, Committee on Infractions, Adjudication Committee and Council in carrying out this enforcement program. The goals of this enforcement program can best be achieved through full disclosure and complete candor by all institutional representatives and employees in regard to any matter pertaining to conduct under scrutiny. Therefore, such disclosure by institutional representatives and employees is required. Likewise, the highest degree of voluntary compliance will be achieved in those instances where institutions and individuals fully comprehend the exact nature of their activity; and therefore, persons performing the duties on behalf of this enforcement program are required to fully and completely explain Association legislation and the facts which indicate that an institution or individual may not be in compliance therewith to the institutions and individuals involved.

Article Two

Definitions

"Section 201 Representative of the Athletic Interests.

"'Representation of the athletic interests' of a member institution is an individual or organization which promotes the member institution's intercollegiate athletic program with the knowledge of any current member of the member institution's administration, athletic department or coaching staff.

"Section 202 Meetings.

"'Meetings' as contained in the enforcement program shall include meetings conducted by telephone conference calls.

Article Three

Organization

"Section 301 Two Committees.

"This enforcement program shall be administered by two committees. One committee shall be called the Committee on Infractions, and the other committee shall be called the Adjudication Committee. No person may serve on both of

these committees at the same time. It is to be understood that these committees are independent of each other and are to be operated as autonomously as possible.

"These committees and their members shall work with the enforcement staff of the Association as set forth throughout this enforcement program.

"Section 302 Infractions Committee.

"The Council shall designate a Committee on Infractions which shall be composed of 10 members, one of whom shall serve as chairman. The committee shall have the responsibility and authority to carry out the tasks assigned to it by the various provisions of this enforcement program.

"Section 303 Adjudication Committee.

"The Council shall designate an Adjudication Committee which shall be composed of five members, one of whom shall serve as chairman. This committee shall have the responsibility and authority to carry out the tasks assigned to it by the various provisions of this enforcement program.

"Section 304 Enforcement Staff Assignments.

"Part of the enforcement staff shall be assigned to work for the Committee on Infractions and part for the Adjudication Committee. The allocation of the work load of the enforcement staff and the assignment of specific members of that staff to matters pending before the Committee on Infractions and the Adjudication Committee shall be in keeping with the requirements of the enforcement program and the work loads of the two committees. Such allocations and assignments shall be as determined by the assistant executive director for enforcement in consultation with the chairmen of the two committees. No member of the enforcement staff may be assigned to work for both committees at the same time.

Article Four

Conduct of Infractions Investigations and the Operation of the Committee on Infractions

"Section 401 Infractions Committee Responsibility/Quorum.

"The Committee on Infractions appointed by the Council under the authority of Section 302 shall be responsible for the conduct of investigations carried out under this enforcement program. Six members present and voting shall constitute a quorum for the conduct of committee business. However, it shall be understood that the chairman shall make a special effort to have full committee attendance in the following two instances:

"(1) When the Committee is attempting to decide, under Section 405, to pursue a formal investigation against a member institution.

"(2) When the Committee is attempting to decide, under Section 415, to issue a formal charge against a member institution.

"Section 402 Allegations and Complaints.

"All allegations and complaints relative to a member's failure to maintain the academic or athletic standards required for membership or of a member's violation of legislation or regulations of the Association shall be received by the Committee on Infractions to be investigated in accordance with this enforcement program.

"Section 403 Screening of Allegations.

"The assistant executive director for enforcement shall be initially responsible for assessing the validity of complaints and allegations concerning the conduct of member institutions, their representatives and employees. If the executive director determines the complaint has substance, in that it comes from a credible source, is timely and is supported by some evidence, it shall be immediately referred to the Committee on Infractions.

"Section 404 Supervision by Committee Member/Preliminary Investigation.

"The chairman of the Committee on Infractions shall assign the complaint to a member of the committee who will be responsible for supervising the investigation. The committee member shall be assisted by a member of the enforcement staff who shall be designated the 'principal investigator' of the matter.

"(1) The principal investigator, under the direct supervision of the committee member, shall conduct a preliminary inquiry to determine whether there is probable cause to warrant a formal investigation.

"(2) If this preliminary investigation requires contacting anyone outside the member institution, the member institution shall be given written notice that such preliminary investigation is underway. Such a letter shall advise the institution that the preliminary inquiry will entail the use of a field investigator; that the preliminary investigation may lead to a formal investigation and eventually to a hearing before the Adjudication Committee which could result in corrective action being required of the institution, and that the matter is governed by this enforcement program specifically, pointing out the institution's right to legal counsel (as stated in Section 410 of this enforcement program) during all phases of the investigation.

"Section 405 Committee Shall Assess.

"After the supervising committee member determines that there has been an adequate preliminary investigation, the Committee on Infractions shall decide either to pursue a formal investigation or to close the matter. The supervising committee member shall not participate in the vote of the committee. Any decision to pursue a formal investigation shall require the affirmative vote of at least five of the

remaining nine members of the committee; any other decision of the committee shall require the affirmative vote of the majority of the committee members present and voting.

"Section 406 No Investigation.

"If the preliminary investigation results in a decision by the Committee on Infractions that no further investigation is warranted, the member institution shall be notified of the complaint made (if no earlier notice of the complaint was required), the decision by the committee not to initiate a formal investigation of the charge and whether the Committee has any intention to reopen the charges at some time in the future should pertinent evidence become available.

"Section 407 Reprimand.

"If the Committee on Infractions determines that a minor violation has occurred, it may issue a private reprimand to the member institution, with copies to any individuals involved, which states the exact nature of the violation found and cautions that a repetition of the violation can result in a formal charge being issued against the member institution. This section authorizes only private reprimands; if any additional corrective action is deemed appropriate, the matter must be referred to the Adjudication Committee.

"Section 408 Formal Investigation/Notice.

"If the Committee on Infractions determines that a formal investigation is appropriate, immediate written notice of that decision shall be given to the member or members to be investigated. Said written notice shall contain:

"(1) A specific description of the nature of the charges under investigation including, if possible, citations of the sections of Association legislation the committee believes may be being violated.

"(2) The names of individuals whose conduct is also the subject of investigation and a request that the member inform these individuals in writing that they are subjects of investigation and may be contacted by an investigator on behalf of the Association. Such individuals also should be informed that they are entitled to the advice of counsel during the course of such investigation.

"(3) The name of the Committee on Infractions member assigned by the committee to supervise the investigation.

"(4) The name of the enforcement staff member who has been assigned as principal investigator and who will present the Committee on Infractions' position at any hearing which may take place in regard to the matters under investigation.

"Section 409 Cooperation/Discovery.

"It is understood that the full investigation is to be

conducted in keeping with the policies on confidentiality (Section 103) and cooperation (Section 104). The institution shall make available to the principal investigator any and all relevant records of the institution the investigator may request consistent with the institution's statutory and/or contractual duties in regard to confidentiality owed to students and faculty. Further, the institution shall make available, consistent with said individuals' educational responsibilities, to the principal investigator such individuals working for or enrolled at the institution as the supervising committee member shall inform the institution need to be interrogated in order to complete the investigation. Further, the institution shall make space available on its campus for the principal investigator's work. The institution should take great care in fulfilling its obligations of cooperation that it not breach its duty of confidentiality. Whenever possible, the institution should obtain permission from individuals to release information pertaining to them.

Sc 1.

"Section 410 Cooperation/Discovery, Infractions Committee.

"The Committee on Infractions, its members, the principal investigator and the employees of the Association are similarly bound to cooperation and confidentiality. The principal investigator is responsible for reporting periodically to the member institution on the progress of the investigation. In fulfilling this responsibility, the principal investigator shall make as complete and full a disclosure of what his work has uncovered as is consistent with the policy on confidentiality. The cooperative nature of this enforcement program and its educational goals require that effort be made to discover and develop evidence of innocence as well as violation. Further, the spirit of this enforcement program makes deceptive and devious investigation techniques unnecessary and inappropriate; and therefore such practices are specifically prohibited.

"Section 411 Institution Right to Counsel.

"A member institution has the right to advice of legal counsel during any investigation. This right to counsel includes the right to review all documentary evidence required to be submitted by the institution; the right to be present during any investigatory interviews of employees and students of the institution, unless the student or employee specifically requests that the institution's counsel be excluded from the interview, and the right to be present during any investigatory interviews of persons alleged to be 'representatives of the athletic interests of the institution,' unless such person specifically requests that the institution's counsel be excluded from the interview.

"Section 412 Individual Independent Right to Counsel.

"Institutional employees, representatives of an institution's athletic interests and student-athletes who may be

affected by investigations by the Committee on Infractions and corrective action ordered by the Adjudication Committee also shall have the right to counsel during investigation. This right to counsel includes the right to have counsel present during any and all meetings with members of the Committee on Infractions or the principal investigator and the right to be represented by counsel in dealings with the Committee on Infractions and the Adjudication Committee.

"Section 413 Immunity.

"The Committee on Infractions may grant immunity to student-athletes providing information in infractions cases in instances where such individuals otherwise might be declared ineligible for intercollegiate competition based on the information they report. The student-athlete who provides such information in good faith and in the spirit of sportsmanship shall be granted immunity from ineligibility for any violation of Association legislation which can be charged against him as a result of the information he discloses.

"(1) Once a student-athlete gives information under a grant of immunity from the committee, that student-athlete may suffer athletic ineligibility only for violations of Association legislation about which he did not give information.

"(2) A student-athlete who accepts such a grant of immunity from ineligibility from the committee shall be informed that he is now considered to come within the policy of cooperation and is expected to give full, complete and truthful information to the committee. If a student-athlete intentionally provides untruthful information under such a grant of immunity, the committee is authorized to seek separate and distinct sanctions against the student-athlete and shall so inform the student-athlete at the time the immunity is granted.

Sc 3.

"Section 414 Interview of Witnesses.

"The principle of confidentiality prevents the principal investigator, the witness or any other observer of the interview from making a record of such interview through the use of a court reporter, scribes or any mechanical device. However, it shall be permissible for all individuals involved in such interviews to make handwritten notes of the proceedings. The principal investigator shall encourage witnesses or their representatives to make such handwritten notes.

"The principal investigator shall make such notes and shall make a written memorandum of the interview for the Committee on Infractions' file on the investigation. A copy of the memorandum prepared for the committee's file shall be provided the witness within 10 days after it is written.

The witness shall be given the right to correct the accuracy of the statements attributed to him.

"Section 415 Formal Investigation Conclusion.

"At such time as the supervising committee member and principal investigator determine is appropriate, but no later than one year from the date the formal investigation was initiated by the committee, they shall present the results of the formal investigation to the Committee on Infractions. The supervising committee member should participate in the meeting of the committee during which the case is discussed but specifically is disqualified from voting on matters pertaining to the case.

"The Committee on Infractions may determine to:

"(a) Close the case. In such instance, every person who received notice that an investigation was in progress must receive notice that the case is closed and no charges against a member have resulted from the investigation.

"(b) To continue the case for further investigation to determine specific questions of fact the committee deems necessary to resolve before formal charges can issue. If an investigation is continued under this section, a decision to close the case or issue formal charges must be made by the committee at its next meeting at which such decisions are made.

"(c) Issue a formal charge against the member institution.

"Section 416 Vote Necessary for Formal Charge.

"For a formal charge to be issued against a member institution, an affirmative vote of five of the members of the Committee on Infractions (the supervising committee member shall not participate in the count in such vote) shall be necessary.

"Section 417 Setting of Hearing.

"After the Committee on Infractions has voted to issue a formal charge against the member institution, the chairman of the committee shall consult with the chairman of the Adjudication Committee in order to obtain a date and site for the Adjudication Committee's hearing on the matter.

"Section 418 Notice of Hearing.

"After the date and site for such hearings are determined, written notice of the charges prepared by the Committee on Infractions and the date and site of the hearing shall be given to the institution and each individual charged with conduct which may be found violative of Association legislation. This notice shall set forth the policy on confidentiality and describe the extent to which matters covered by the formal charges already have been made public. The requirements for this written notice are:

"(1) It be received by those named no later than 120 days prior to the date set for the hearing.

"(2) It state each specific section of Association legislation the Committee on Infractions believes the institution and each individual named in the formal charges have violated.

"(3) It contain a summary of all evidence (including names of witnesses which can be revealed consistent with the policies on confidentiality) the Committee on Infractions has gathered, along with the committee's interpretation of the facts and Association legislation. That is, a statement by the committee setting forth the specific Association legislation each fact is alleged to violate and setting forth the reasons the committee believes such conduct is thought to violate said legislation.

"(4) It contain a list of persons the Committee on Infractions believes should be present at the hearing. Persons on this list who are employed by member institutions violate the cooperation spirit of the enforcement program if they fail to attend.

"(5) It contain a list of individuals whose conduct forms the basis of the member institution's alleged violation and who, therefore, the Committee on Infractions believes should be permitted to attend the hearing, if they so desire.

"Section 419 Enforcement Staff Assistance.

"A member of the enforcement staff, other than the principal investigator, shall be assigned to assist the institution in preparation of its written response, should the institution so desire. It is understood that the cooperative nature of this enforcement program shall require the Committee on Infractions and enforcement staff to make as full a disclosure of the evidence contained in the committee's investigatory file or files as is possible consistent with the policy of confidentiality.

"Section 420 Member Institution's Written Response.

"A member institution formally charged by the Committee on Infractions must file a written response to that formal charge with the Adjudication Committee no later than 60 days prior to the date set for the hearing. One copy of the member's written response shall be sent to each member of the Adjudication Committee, and one copy shall be sent to the principal investigator.

"Section 421 Default Adjudication.

"If a member institution fails to file a timely written response to a formal charge, the Adjudication Committee shall have the discretion to cancel the hearings and invoke corrective action based on the formal charges as drafted by the Committee on Infractions.

"Section 422 Institution's Written Response, Contents.

"The institution's written response shall contain the following:

"(1) Any admissions of fact the member institution is willing to make.
"(2) Denials of fact.
"(3) Excuses, justifications and any affirmative defenses the member institution wishes to present.
"(4) Any facts in mitigation.
"(5) Corrective actions already taken. If any such corrective action taken involved an individual, then the institution's written response must contain either of the following:
"(a) a description of the hearing granted that individual, including its results; or
"(b) a written waiver of such a hearing signed by the individual involved.
"(6) A list of persons who will attend the hearing on behalf of the institution.
"(7) Violations of Association legislation known to it which were not contained in the Committee on Infractions' formal charge.

Article Five
Negotiated Corrective Action

"Section 501 Authority.

"In its discretion, the Adjudication Committee, through its chairman, shall have the authority to negotiate corrective action with member institutions and with individuals whose conduct is alleged to constitute a violation of Association legislation.

SC 2.

"Section 502

"Within 15 days after receiving a written response to formal charges from a member institution, the Adjudication Committee may indicate in writing to the member institution what corrective action the committee believes necessary to bring the member institution into compliance with the Association legislation. In determining what corrective action it believes will be necessary, the Adjudication Committee may rely only on the written formal charges by the Committee on Infractions and the written response from the member institution.

SC 2.

"Section 503

"If within 10 days of receiving the Adjudication Committee's proposed corrective action, the member institution agrees to the proposed corrective action, the hearing scheduled by the Adjudication Committee to resolve the issues raised by the formal charges will be canceled. The Adjudication Committee then shall draft a statement of the corrective action agreed to be taken, and that statement of corrective action shall be signed by the committee and the institution.

SC 2.

"If a member institution agrees to a proposed corrective action and subsequently recants that agreement, a hearing before the Adjudication Committee to resolve the violations

of Association legislation as stated in the formal charge by the Committee on Infractions shall be scheduled to take place at the earliest possible date. At such a hearing, the Adjudication Committtee shall have the discretion to impose an additional corrective action or a penalty for abuse of this procedure.

"Section 504

"If a negotiated corrective action between the Adjudication Committee and a member institution will require corrective action which affects individuals employed by the member institution, enrolled at the member institution or who are representatives of the athletic interests of the institution, the negotiated corrective action shall not be effective unless:

SC 2.

"(1) The individuals affected by the negotiated corrective action consent to it and indicate their consent by signing it; or
"(2) The member institution grants the affected individual an opportunity to be heard in regard to the conduct on the part of the individual which comprises the alleged violation of Association legislation and determines at that hearing that the individual actually engaged in that conduct. In situations where the member institution conducts a hearing under this section, a report of that hearing stating its time, place, the individuals in attendance, the hearing officer and the decision shall be submitted to the Adjudication Committee along with the negotiated corrective action statement signed by the institution.
"(3) In situations under this section, where the consent of or a hearing for an individual affected by negotiated corrective action is called for and said individual refuses to consent to the negotiated corrective action and refuses to participate in any hearing regarding his conduct, the Adjudication Committee shall have the discretion to:
"(a) Enter into the negotiated corrective action agreement with the member institution and any other individuals complying with the procedures; or
"(b) Withdraw from the proposed negotiated corrective action and reschedule the hearing by the Adjudication Committee to resolve the charges against the member institution contained in the formal charges; or
"(c) Enter into the negotiated corrective action with the member institution and individuals complying with the above procedures, but reschedule a hearing of the Adjudication Committee to permit the individual contesting the

negotiated corrective action to appear before the Adjudication Committee in regard to the alleged conduct on his part which is alleged to constitute a violation of Association legislation.

"Section 505 Effective Date.

"A negotiated corrective action shall become effective when signed by the Adjudication Committee, the member institution and all individuals affected by it, but no later than the date of the hearing which was canceled.

Article Six

Adjudication Committee

"Section 601 Adjudication Committee Responsibility/Quorum.

"The Adjudication Committee appointed by the Council under the authority of Section 303 shall be responsible for conducting hearings and determining corrective action, where appropriate, on formal charges of violations of Association legislation issued by the Committee on Infractions. The committee shall be composed of five members, one of whom shall serve as chairman. Three members present and voting shall constitute a quorum for conduct of committee business, it being understood that the chairman shall make a special effort to have full committee attendance during hearings of formal charges against member institutions. The committee shall have the authority to make rules of procedure for the conduct of its business, provided such rules of procedure comply with the provisions of this enforcement program.

"Section 602 Transcript.

"All hearings before the Adjudication Committee are to be recorded by a court reporter. The committee shall keep, as part of its record of the case, the original transcript of the hearing as prepared by the court reporter. The committee shall furnish, at Association expense, one copy of the transcript of the hearing to the member institution. Individuals whose conduct formed a part of the violations alleged against the member institution and who participated in the hearings shall be entitled to review the transcript. Individuals employed by or enrolled at the institution are to have access to the institution's copy of the transcript. Representatives of the athletic interests of the member institution who are not employed by the institution shall be permitted to purchase, at cost, from the Association those pages of the transcript of the hearing wherein their conduct was discussed.

"Section 603 Attendance at Hearings.

"All individuals employed by the member institution who are requested to attend the hearings by the Committee on Infractions and/or the Adjudication Committee are required to be present at the hearing. The chief executive

officer (or someone selected by him to represent his office), the faculty athletic representative and the director of athletics of the member institution may attend the hearing even if not requested to do so by the Committee on Infractions or the Adjudication Committee. The member institution also may be represented at the hearing by legal counsel authorized in writing by the chief executive officer of the member institution prior to the commencement of the hearing.

"Section 604 Individuals at Hearings.

"Individuals cited by the Committee on Infractions' formal charges as involved in conduct constituting a part of the member institution's alleged violations have the right to appear at the hearing before the Adjudication Committee. Such individuals also shall have the right to be represented by legal counsel at the hearing. However, the right of such individuals to attend the hearing and be represented at the hearing by counsel is limited to those portions of the hearing where the individual's conduct is discussed.

"Section 605 The Hearing.

"The chairman of the Adjudication Committee shall preside at the hearing. The hearing shall proceed as follows:

"(1) The chairman shall call the hearing to order and introduce the members of the Adjudication Committee.

"(2) The chairman shall ask the representatives of the Committee on Infractions to introduce themselves.

"(3) The chairman shall ask the representatives of the member institution to introduce themselves.

"(4) The chairman shall ask any other individuals in attendance to introduce themselves.

"(a) The chairman then shall ascertain if such individuals have a right to be present. If the chairman determines they have no such right, they shall be asked to leave; and the hearings cannot proceed until they do so.

"(b) If the chairman determines that such individuals are entitled to attend the hearings or any portion thereof, he shall state and explain that such individuals and their counsel will be permitted to attend only those portions of the hearings wherein those individuals' personal conduct is discussed; and they will be asked to leave during any other portions of the hearing.

"(5) The chairman then shall cite these rules dealing with the conduct of hearings before the Adjudications Committee and ask if there are any questions concerning the procedures. The chairman shall resolve any such questions before proceeding with the hearing.

"(6) The representatives of the Committee on Infrac-

tions shall present a brief summary of the alleged violations contained in the formal charges.

"(7) The person responsible for presenting the position of the member institution then shall make a brief statement of the member institution's position.

"(8) The representatives of individuals charged with conduct constituting a portion of the institution's violations may make a statement summarizing the position of such individuals.

"(9) The efficient operation of the Adjudication Committee and this enforcement program is based on the cooperative nature of the enforcement program. One facet of cooperation is to stipulate to the greatest extent possible to an agreed statement of facts. Therefore, the chairman shall state for the record all the facts the committee believes are not in dispute. Each party attending the hearing shall be given the opportunity to participate in the stipulations of facts as they pertain to them. To the extent all the required parties agree that any particular fact is not in dispute, it shall be taken as proved.

"(10) The representatives of the Committee on Infractions shall present, in the forms set forth in Sections 606 and 607, the committee's evidence on the facts in dispute.

"(11) The representatives of the member institution shall present, in the forms set forth in Sections 606 and 608, the institution's evidence on the facts in dispute. The member institution also may include, as part of its case in chief, facts in mitigation of the conduct it was charged with in the formal charges issued by the Committee on Infractions.

"(12) Individuals cited in the formal charges as engaging in conduct which formed the basis of charges against the member institution shall present, in the forms set forth in Sections 606 and 609, evidence pertaining to their conduct on the facts of their conduct which are in dispute. Such individuals also may present, as part of their case in chief, evidence of mitigating circumstances pertaining to their conduct.

"(13) After all the parties entitled to present evidence on facts in dispute conclude presenting such evidence, each then may present, in turn, additional evidence which seeks to rebut any evidence presented by any other party to the hearing.

"(14) Each party presenting evidence at the hearing shall be given an opportunity to make closing argument.

"(15) The chairman then shall ask everybody, including

the court reporter, to leave the hearing room. The Adjudication Committee shall deliberate in private to reach its decision.

"Section 606 Documentary Evidence.

"All parties entitled to present evidence at an Adjudication Committee hearing may present documentary evidence. To the extent possible, all documentary evidence should be submitted prior to the commencement of the hearing. All documentary evidence shall become part of the committee's record of the hearing.

"Section 607 Testimonial Evidence/Infractions Committee.

"The Committee on Infractions may present testimonial evidence as follows:

"(1) Individuals may volunteer to describe events constituting alleged violations of Association regulations.

"(a) Such witnesses first must waive any right they may have to confidentiality and anonymity.

"(b) Such witnesses shall testify only as to those facts of which they have personal knowledge. Their testimony shall take a narrative form as directed by the questioning by the principal investigator.

"(c) Such testimony shall be under oath and subject to cross-examination.

"(2) Signed affidavits from persons unable to attend the hearing pertaining to facts of the alleged violations. The affidavit must contain a statement waiving any right the affiant may have to confidentiality and anonymity. It also must contain an explanation of the affiant's inability to attend the hearing, and the committee first shall satisfy itself that the inability is real before admitting the affidavit in evidence. The committee may consider the affiant's nonattendance in assessing the credibility of the evidence.

"(3) Anonymous affidavits pertaining to facts of the alleged violations, corroborated by documentary evidence or at least one nonanonymous witness. Such anonymous affidavits must contain a statement justifying the claim to anonymity.

"(a) Such anonymous affidavits must be accompanied by an affidavit of the principal investigator for the Committee on Infractions which states:

"(i) That the anonymous affiant is known to the principal investigator.

"(ii) That the principal investigator has interviewed the anonymous affiant.

"(iii) That the principal investigator believes

the anonymous affiant's claim to anonymity is justified.

"(iv) An assessment by the principal investigator of the anonymous affiant's credibility, along with a statement of the criteria used by the principal investigator to assess that credibility.

"(b) It is noted that the use of anonymous affidavits is an unusual, albeit necessary, and dangerous form of evidence. Therefore, great caution is necessary in its use. If it should turn out that testimony submitted in an anonymous affidavit is false, that falsity shall be grounds to discharge the principal investigator from the employ of the Association.

"(c) The committee also may consider the anonymity and nonattendance of such witnesses in assessing the credibility of their testimony.

"Section 608 Testimonial Evidence/Member Institution.

"The member institution may present testimonial evidence as follows:

"(1) Individuals may volunteer to describe events constituting alleged violations of Association regulations.

"(a) Such witnesses first must waive any right they may have to confidentiality and anonymity.

"(b) Such witnesses shall testify only as to those facts of which they have personal knowledge. Their testimony shall take a narrative form as directed by the questioning by the person designated to coordinate the institution's presentation.

"(c) Such testimony shall be under oath and subject to cross-examination.

"(2) Signed affidavits from persons unable to attend the hearing pertaining to facts of the alleged violations. The affidavit must contain a statement waiving any right the affiant may have to confidentiality and anonymity. It also must contain an explanation of the affiant's inability to attend the hearing, and the committee first shall satisfy itself that the inability is real before admitting the affidavit in evidence. The committee may consider the affiant's nonattendance in assessing the credibility of the evidence.

"(3) Anonymous affidavits pertaining to facts of the alleged violations, corroborated by documentary evidence or at least one nonanonymous witness. Such anonymous affidavits must contain a statement justifying the claim to anonymity.

"(a) Such anonymous affidavits must be accompanied by an affidavit of the faculty representative for the Committee on Infractions which states:

"(i) That the anonymous affiant is known to the faculty representative.

"(ii) That the faculty representative has interviewed the anonymous affiant.

"(iii) That the faculty representative believes the anonymous affiant's claim to anonymity is justified.

"(iv) An assessment by the faculty representative of the anonymous affiant's credibility, along with a statement of the criteria used by the faculty representative to assess that credibility.

"(b) It is noted that the use of anonymous affidavits is an unusual, albeit necessary, and dangerous form of evidence. Therefore, great caution is necessary in its use. If it should turn out that testimony submitted in an anonymous affidavit is false, that falsity shall be grounds to bar the faculty representative from participating in any activities of the Association.

"(c) The committee also may consider the anonymity and nonattendance of such witnesses in assessing the credibility of their testimony.

"Section 609 Testimonial Evidence/Individuals.

"Individuals cited for conduct which forms the basis of violations by the member institution may testify in their own behalf. Their testimony during the hearing shall constitute a waiver of their right to confidentiality. They shall swear or affirm that their testimony is truthful and shall be subject to cross-examination by the other parties appearing at the hearing.

"(1) Such individuals also may submit signed affidavits from others which corroborate the testimony they have given at the hearing. The affidavit must contain a statement waiving any right the affiant may have to confidentiality and anonymity. It also must contain an explanation of the affiant's inability to attend the hearing, and the committee first shall satisfy itself that the inability is real before admitting the affidavit in evidence. The committee is free to consider the affiant's nonattendance in assessing the credibility of the evidence.

"(2) Such individuals also may submit, at least 10 days prior to the date of the hearing, a list of persons willing to attend the hearing to corroborate the testimony given by the individual.

"(a) The Adjudication Committee shall have the discretion of calling persons on such list to

testify at the hearing at the expense of the Association.

"(b) If such persons are called by the Adjudication Committee, the direct examination of them shall be by the party who submitted their name.

"(c) Such witnesses shall be subject to cross-examination by the representatives of the Committee on Infractions, member institution and any other individual affected by the facts testified to by the witness.

"Section 610 Closing Argument.

"Each party appearing at the hearing shall have the right to review the evidence, comment on it and advocate what corrective action, if any, it believes the Adjudication Committee should order.

"Section 611 Deliberations.

"The Adjudication Committee shall deliberate in private. During its deliberations, it shall make specific findings as to any facts in dispute. Such findings shall be conclusive if there is any evidence in the record to support them.

"Section 612 No Violation.

"If the Adjudication Committee determines that there has been no violation as alleged by the formal charges issued by the Committee on Infractions, it shall notify each party appearing at the hearing of this 'no violation' finding. A 'no violation' finding by the Adjudication Committee is conclusive, and the facts which formed the basis of the allegations contained in the formal charges issued by the Committee on Infractions may not form the basis of another formal charge.

"Section 613 Finding A Violation, Corrective Action.

"The finding of a violation shall be by majority vote of the members of the Adjudication Committee present and voting at the hearing. The order of a corrective action shall require the affirmative vote of at least three members of the committee.

"Section 614 Possible Corrective Actions.

"The Adjudication Committee may select from among the following corrective actions the corrective action or actions it believes will best bring the member institution into full compliance with Association legislation. Additionally, the Adjudication Committee may order corrective action not included on this list in situations where it determines that the corrective actions herein listed are not sufficient. Corrective actions which may be considered by the Committee are:

"(1) Reprimand and censure;

"(2) Probation for one or more years;

"(3) Ineligibility for one or more national collegiate championship events;

"(4) Ineligibility for invitational and postseason meets and tournaments;

"(5) Ineligibility for any television programs subject to the Association's control or administration:

"(a) The committee is advised that the Association itself benefits from television programs. Therefore, if in the committee's judgment it seems appropriate, an institution may be barred from receiving the television fee normally awarded an institution which appears on a television broadcast but not barred from the appearance itself.

"(b) In such cases, the appearance fee which would have been awarded the barred institution shall be added to the funds used for the postgraduate scholarship and enforcement programs of the Association.

"(6) Ineligibility of the member to vote or its personnel to serve on committees of the Association, or both;

"(7) Prohibition against an intercollegiate sport team or teams participating against outside competition for a specified period;

"(8) Prohibition against the recruitment of prospective student-athletes for a sport or sports for a specified period;

"(9) A reduction in the number of either initial or total financial aid awards (as defined by O.I. 500) which may be awarded during a specified period;

"(10) A requirement that an institution which has been represented in an NCAA championship by a student-athlete who was recruited or received improper benefits (which would not necessarily render him ineligible) in violation of NCAA legislation shall return its share of net receipts from such competition in excess of the regular expense reimbursement; or if said funds have not been distributed, they shall be withheld by the NCAA executive director if it is found that an institution knew or should have known that the student-athlete had received improper benefits;

"(11) An order that individual or team records and performances shall be vacated or stricken, or individual or team awards shall be returned to the Association, in cases where it is found that a member institution knew or should have known that it was represented in an NCAA championship by a student-athlete who was recruited or received improper benefits.

"(12) A requirement that a member institution which has been found in violation take appropriate corrective action against athletic department personnel who were involved in the violations of Association legislation or against any other institutional employee involved in the violations, or against

representatives of the institution's athletic interests, or against student-athletes whose conduct formed the basis of the institution's violations.

"(a) 'Appropriate corrective action' that may be required under paragraph 12 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 athletic interests who may be involved; the debarment of any representative of the institution's athletic interests from the purchase of tickets for any intercollegiate athletic event participated in by the institution; the debarment of the head or assistant coach from any coaching, recruiting or speaking engagements for a specified period of time, and the prohibition of all recruiting in a specified sport for a specified period. The Adjudication Committee shall indicate, in the corrective action section of its final report, what it believes to be the appropriate corrective action that the institution shall impose on the named individuals.

"(b) In all cases where the adjudication requires the institution to take corrective action against an individual, the institution further is required, before taking that corrective action against the individual, to grant to that individual a hearing consistent with the institution's campus policies in regard to campus discipline.

"(i) If that individual availed himself of the opportunity to appear at the Adjudication Committee hearing wherein that individual's conduct was discussed, the hearing requirement of this section shall be considered fulfilled.

"(ii) If an appropriate campus hearing is held to fulfill the requirement of this section, and facts not presented to the Adjudication Committee are uncovered and these new facts might alter the Adjudication Committee's requirement of corrective action as to the individual involved, the member institution may petition the Adjudication Committee for withdrawal of the requirement.

"Section 615 Principles Guiding Corrective Action.

"The following principles shall guide the Adjudication

Committee in its selection of the appropriate corrective action required to bring a member institution into full compliance with Association legislation:

"(1) Fairness; similar cases should be accorded similar corrective treatment.

"(2) Justice; the committee should attempt to correct only the wrongs actually found. Sins of coaches, assistant coaches, recruiters and athletic administrators ought not be visited on student-athletes. Specifically, student-athletes ought not be required to suffer periods of athletic ineligibility unless they personally engaged in affirmative conduct violating Association legislation.

"(3) The committee should seek to eliminate competitive advantages obtained through violations of Association legislation. For example, where an institution has awarded excessive grants-in-aid, the appropriate corrective action is to reduce the number of grants-in-aid the member institution may award in subsequent years and also require the institution to renew every grant-in-aid awarded during the year in which excessive awards were made; in a case where an assistant coach participated in falsifying the academic records of a recruited athlete and the athlete entered school and achieved such grades as would maintain his academic eligibility for athletic competition, the appropriate corrective action is to require the member institution to take action against the guilty coach and any university employees aware of what took place, but not to impose any period of ineligibility on the recruited student-athlete; in a situation where the student-athlete has borrowed money or taken cash advances from a 'sports agent,' the appropriate corrective action is to declare the student-athlete ineligible for NCAA competition because he has professionalized himself.

"(4) To whatever extent possible, corrective action should be directed against the member institution, athletic department personnel, other university employees and representatives of the athletic interests of the member institution rather than against student-athletes. This is because corrective action is most effective when it is directed against persons in positions of responsibility and authority. However, no corrective action may be imposed on any individual not given an appropriate opportunity to present his side of the controversy. Responsible educators ought not be permitted to evade the consequences of their failure to meet their responsibilities by imposing sanctions on their students.

"(5) The Adjudication Committee should avoid imposing punishment, as distinct from corrective action. The committee should punish a member institution only if there appears to be a purposeful pattern of conduct, repeated violations or a conscious, knowing effort to evade Association legislation and the Adjudication Committee makes a specific finding based on some evidence to that effect.

"Section 616 Report of Decision.

"The Adjudication Committee shall prepare a written report of its decision. Copies of the report must be sent to the member institution and each individual participating in the hearing of the Adjudication Committee within 20 days of the hearing. The report must contain the Adjudication Committee's findings of fact, the corrective action determined by the committee to be appropriate and notice of and the procedures for appealing the committee's decision to the Council.

Article Seven

Appeal to Council

"Section 701 Right to Appeal.

"A member institution or any individual subject to a corrective action ordered by the Adjudication Committee may appeal the Adjudication Committee's findings and order of corrective action to the Council of the Association. If a party with this right to appeal fails to properly avail itself of the right to appeal, the decision of the Adjudication Committee shall be final.

SC 7.

"Section 702 Notice of Appeal.

"A party having the right to appeal the findings and corrective action order of the Adjudication Committee must file notice with the Council of the intent to appeal those findings and corrective order to the Council within 10 days after receiving its copy of the Adjudication Committee's report.

"Section 703 Effect of Appeal.

"An appeal to the Council shall toll any corrective action ordered by the Adjudication Committee. However, in the event the committee denies the appeal, in whole or in part, any period of probation or disqualification from Association activities, programs or championships shall run from the date of the Adjudication Committee's report, unless by exercise of the right to appeal the member institution has gained participation in such Association activities, programs or championships; in such a case, the period of probation or disqualification shall run from the effective date of the Council's decision on the appeal.

"Section 704 Date and Place of Appeal.

"Upon receipt of the notice of appeal, the Council will set the place and time for its hearing on the appeal. The time for the hearing shall be at least 45 days from the day the Council acts on the notice of appeal.

"Section 705 Appellant's Written Statement.

"At least 15 days prior to the date set for the Council's hearing on the appeal, the appellants shall file a written statement with the Council setting forth the basis of their appeal. A copy of this written statement of appeal simultaneously shall be supplied to each member of the Council, the principal investigator and the Committee on Infractions.

"Section 706 Appellee's Written Statement.

"At least 15 days prior to the date set for the Council's hearing on the appeal, the principal investigator, on behalf of the Committee on Infractions, shall file a written statement with the Council in support of the decision by the Adjudication Committee. A copy of this written statement shall be supplied to each member of the Council, the member institution and any other individual exercising the right to appeal under Section 701.

"Section 707 Appearances.

"The following persons may participate and appear at the appeal before the Council:

"(1) The Committee on Infractions, represented by the chairman and principal investigator, shall appear in support of the Adjudication Committee decision.

"(2) The member institution shall be represented by persons designated by its chief executive.

"(3) Individuals affected by the Adjudication Committee decision may appear and may be represented at the hearing by counsel.

"Section 708 Council Hearing.

"The following rules shall control the conduct during the oral argument to the Council:

"(1) Each party shall be given a reasonable time, no less than 30 minutes, which may be divided amongst speakers, in order to develop the various theories of appeal.

"(2) A transcript of the hearing shall be prepared by a court reporter. The Council shall keep, as part of its record of the case, the original transcript of the hearing as prepared by the court reporter. The Council shall furnish, at Association expense, one copy of the transcript of the hearing to the member institution. Individuals whose conduct formed a part of the violations alleged against the member institution and who participated in the hearings shall be entitled to review the transcript. Individuals employed by or enrolled at the institution are to have access to the institution's copy of the transcript. Representatives of the athletic interests of the member institution who are not employed by the institution shall be permitted to purchase, at cost, from the Association those pages of the transcript of the hearing wherein their conduct was discussed.

"(3) The hearing shall commence by the chairman requiring all parties making an appearance to introduce themselves so that their right to be present can be verified.

"(4) The representatives of the Committee on Infractions then shall give a brief statement of the case and the decision of the Adjudication Committee and shall make a statement in support of the decision of the Adjudication Committee.

"(5) The representatives of the member institution then shall state the basis for the member institution's appeal and the reasons the member institution believes the decision of the Adjudication Committee should be reversed, altered or modified.

"(6) The individuals affected by the Adjudication Committee decision shall state the basis for their appeal as to matters pertaining to them and give the reasons they believe the Adjudication Committee decision ought to be reversed, altered or modified as to them.

"(7) The representatives of the Committee on Infractions then shall be permitted to rebut the arguments made by the appellants.

"Section 709 Council Deliberation.

"At the conclusion of the oral presentations, the Council shall dismiss everybody except Council members from the hearing room. The Council shall deliberate its decision in private.

"Section 710 Findings of Fact.

"The findings of fact by the Adjudication Committee shall be binding on the Council if the Adjudication Committee was not arbitrary in making its findings and if there is any evidence in the record to support those findings.

"Section 711 Corrective Actions.

"The corrective actions ordered by the Adjudication Committee shall be conclusive and final unless:

"(1) The Council finds that the corrective actions or action ordered are based on a finding of fact which is not supported by the record.

"(2) The Council determines that a corrective action ordered by the Adjudication Committee violates one or more of the principles governing the selection of corrective action.

"(3) The Council finds that a corrective action ordered by the Adjudication Committee is arbitrary or unreasonable.

"Section 712

"The Council shall report its decision in writing to all parties participating in the appeal within 30 days of the hearing.

"Section 713 Effective Date.

"The Council decision shall be effective as of the date the

institution receives a copy of the Council's decision. The member institution immediately shall undertake the implementation of the required corrective action. However, a reasonable time will be permitted for certain kinds of corrective action. For example, if discharge of an institutional employee is required, enough time for the normal institutional severance procedures to be carried out shall be permitted; or if the corrective action requires that an individual be relieved of coaching responsibilities, the situation may necessitate that the institution wait until the end of a current competitive season to change coaches.

"Section 714 Council Decision Final.

"There shall be no appeal from the decision of the Council. A member found to be in violation of Association legislation through the procedures of this enforcement program may propose, of course, to eliminate or alter the applicable Association legislation by proposing such changes to the Association in Convention assembled. However, even if such a change were to be adopted by the Association, it would be legislative in nature and therefore would have prospective application only.

Article Eight

Rules Pertaining to the Conduct of Campus Hearings on the Eligibility of Student-Athletes

"Section 801 Hearing.

"In the administration of the athletic programs in accordance with NCAA regulations, member institutions may find it necessary, from time to time, to terminate or suspend the eligibility of student-athletes for participation in intercollegiate competition and organized athletic practice sessions because the student-athlete has violated Association legislation in regard to matters of other than minimum academic achievement. In any such case, the member institution shall notify the student-athlete concerned and afford him a hearing before the faculty athletic representative. The notice to the student-athlete shall set forth the specific sections of Association legislation the student-athlete is alleged to have violated, the facts the institution believes constitute the violation and the time and place on campus the hearing is to be held. The student-athlete shall have the right to be represented by independent legal counsel at the hearing.

"Section 802 Independent Arbitrator.

"In the event the student-athlete believes an impartial eligibility hearing is not available from the faculty athletic representative, the student-athlete may request in writing that such hearing be conducted by an independent arbitrator.

SC4.

"Section 803 Timing.

"(A) If a question concerning the eligibility of a student-athlete to participate arises outside the practice and compe-

tition season of the student-athlete's sport, the hearing shall be scheduled in such a way as to permit a full development of the facts and resolution of the question prior to the next competitive season in the sport.

"(B) In the event a question concerning a student-athlete's eligibility arises during the practice or competition season of the student-athlete's sport, the hearing must be held within one week of the time the question arises. During the one-week period, the student-athlete shall remain eligible for competition. In the event the student-athlete requests additional time to prepare for the hearing, the student-athlete shall be withheld from competition during the additional time granted.

"Section 804 Scope.

"The hearing on ineligibility shall attempt to develop accurate, credible facts pertaining to the student-athlete's compliance with the eligibility requirements of the Association.

"Section 805 Rulings.

"(A) Where the facts developed at an eligibility hearing indicate that persons employed by or representing the member institution gave 'extra benefits' to the student-athlete, the member institution shall institute appropriate disciplinary action against the institutional employees and representatives. The student-athlete need be declared ineligible only if it is demonstrated that the student-athlete knowingly received 'extra benefits.'

"(B) Where facts developed at the eligibility hearing indicate that the student-athlete has engaged in 'off-campus' conduct violative of the Association's legislation, the athlete need be declared ineligible for competition only to the extent that the athlete has obtained a competitive advantage over student-athletes representing other institutions.

"Section 806 Appeal for Restoration.

"In those cases where a campus hearing results in a declaration of ineligibility, the member institution may appeal to the Subcommittee on Eligibility Appeals if the member institution believes that circumstances exist which warrant the restoration of the student-athlete's eligibility.

"Section 807 Report to Association.

"Within 72 hours of the conclusion of its eligibility hearing, a member institution shall report in writing to the assistant executive director for enforcement the result of each such eligibility hearing conducted by the member institution.

"Section 808 Student-Athlete Ineligible.

"If the campus hearing results in the student-athlete being declared ineligible for competition, the report to the assistant executive director for enforcement shall state the rule or rules found to have been violated, the facts forming the basis of the violation, the duration (either in time or

number of contests) the institution intends to withhold the athlete from competition and whether the member institution intends to file an appeal for restoration of the student-athlete's eligibility or file for a reduction in the period of ineligibility.

"a. If the assistant executive director for enforcement finds the determination of ineligibility and the duration thereof consistent with the policies of the Association, he shall so indicate to the member institution by written notice.

"b. If the assistant executive director for enforcement finds that the determination or duration of ineligibility is not in conformity with the practices of the Association, he shall so inform the institution and at the same time schedule a meeting of the Subcommittee on Eligibility Appeals for the purpose of reviewing the campus decision. The member institution shall be bound by the decision of the Subcommittee on Eligibility Appeals.

"Section 809 Student-Athlete Found Eligible.

"If the campus hearing results in a finding that the student-athlete is eligible for athletic competition (e.g., the facts as disclosed at the hearing indicate no basis for a finding of ineligibility), the facts supporting the finding of eligibility must be reported to the assistant executive director for enforcement.

"1. If the assistant executive director for enforcement concurs with the findings of the campus hearing, the matter shall be closed and the student-athlete shall remain eligible for competition.

"2. If the assistant executive director for enforcement disagrees with the conclusion of the campus hearing, he immediately shall notify the member institution in writing, setting forth the specific reasons for the disagreement. At the same time, the assistant executive director for enforcement shall schedule a meeting of the Subcommittee on Eligibility Appeals at the earliest possible time to review the case. The member institution may permit the student-athlete to continue to participate in athletic competition until the Subcommittee on Eligibility Appeals orders the student-athlete be withheld from competition. The member institution and the student-athlete may participate in the hearing of the Subcommittee on Eligibility Appeals and may be represented by legal counsel in those proceedings. The member institution shall be bound by the decision of the Eligibility Appeals Committee.

"Section 810 Compliance with Procedures.

"A member complying with the procedures outlined in this article may not be charged with a failure to fulfill the

obligations of membership in the National Collegiate Athletic Association.

Article Nine
Miscellaneous Provisions

"Section 901 Publicity.

"The principle of confidentiality requires that no public announcement of actions taken under this enforcement program should be made until such time as those actions result in a final adjudication. Further, unless necessary or obvious, the names of individuals involved or affected by actions taken under this enforcement program should not be revealed. However, if any individual or institution benefitting from the policy on confidentiality waives the benefits of that policy by making public that they are involved in a matter under this enforcement program, the principle of confidentiality is waived as to those individuals and institutions.

"Section 902 New Evidence.

"When a decision has been made and corrective action ordered under Article Five, Six or Seven of this enforcement program and publicly announced, there shall be no review of the corrective action ordered except upon a showing of newly discovered evidence which is directly related to the findings in the case. A member institution seeking a review under this section shall be required to submit six copies of its appeal to the Adjudication Committee. Within 45 days of the receipt of this appeal, the Adjudication Committee shall decide whether it shall grant a hearing on the appeal. If the Adjudication Committee decides to grant such an appeal, it shall set a time and place for the hearing and give such notice of the hearing to the parties concerned with it as will best serve the interests of justice. The hearing on this new evidence shall be conducted in accordance with the procedures set forth in Article Six pertaining to the conduct of hearings by the Adjudication Committee.

"Section 903 Conference Action in Regard to Enforcement of Association Legislation.

"Member institutions which are also members of conferences are also subject to the enforcement programs of those conferences. A conference is free to enforce its own rules which are different from or in addition to the legislation of this Association. This Association shall respect the enforcement programs in decisions of conferences.

"As to the legislation of this Association, the enforcement program of this Association shall have primary and exclusive jurisdiction and responsibility. If a conference discovers facts which constitute a violation of this Association's legislation, the conference shall bring the alleged violation to the attention of the Committee on Infractions for processing in accordance with this enforcement program. The conference, if it so chooses, may impose corrective action through its own procedures additional to any corrective action ordered under this enforcement program; but corrective action imposed by a conference shall have no effect on the operation of this enforcement program.

"Section 904 Court Orders.

"If a student-athlete who is ineligible under Association legislation is permitted to participate in intercollegiate competition contrary to such Association legislation but in compliance with the terms of a court restraining order or injunction against the institution attended by such student-athlete or the Association, or both, and the litigation resulting in such restraining order or injunction is not financed by the member institution, and said injunction is subsequently voluntarily vacated, stayed, reversed or finally determined by the courts that injunctive relief is not or was not justified, no action under this enforcement program may be taken against the member institution for permitting the ineligible student-athlete to compete in accordance with the terms of the court order or injunction."

Source: University of Arkansas, Fayetteville; Colorado School of Mines; Creighton University; University of Denver; Indiana State University, Terre Haute; New Mexico State University; University of Oklahoma; Wichita State University.

Intent: To revise the Association's enforcement program by replacing the existing program with the new rules and procedures set forth in this proposal, including, among other things, separation of the investigation of violations from the adjudication of those violations and granting individuals affected by Association decisions the right to participate in the procedures by which those decisions are reached. [Note: Bylaw 10-3 would be revised editorially to adjust the composition of the Committee on Infractions and to establish the Adjudication Committee in accordance with this proposal.]

Effective Date: Immediately.

NO. 62 ENFORCEMENT POLICIES

A. Enforcement Procedure: Amend Section 1-(a), page 133, by deleting subparagraph (3), renumbering remaining paragraphs, as follows:

[All divisions, common vote]

"(3) Provide general guidance to the NCAA investigative staff in the development of information related to alleged violations;"

B. Enforcement Procedure: Amend Section 2-(b) and (c) and add new paragraph (d), page 134, as follows:

[All divisions, common vote]

"(b) The investigative staff, so far as practicable, *and under the general guidance of the committee,* shall make a thorough investigation of all such charges which are received from responsible sources and are reasonably substantial. The investigative staff may conduct a preliminary inquiry to determine whether there is adequate evi-

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R E S U M E S Y N O P S I S

EDUCATION:

Master of Laws, Northwestern University, Chicago, Illinois.

Juris Doctor, DePaul University, Chicago, Illinois.

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.

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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 The United States House of Representatives Subcommittee on Commerce, Consumer Protection and Competitiveness, June 19, 1991.

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.

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).

"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.