THE NATIONAL COLLEGIATE ATHLETIC ASSOCIATION AND THE COURTS: A SUMMARY OF LITIGATION INVOLVING THE CONSTITUTIONAL LAWS OF THE UNITED STATES AND THE RULES OF THE NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, 1970 - 1974

by

Milton E. Reece

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Approved by

Gail M. Hennis
Dissertation Adviser

APPROVAL PAGE

This dissertation has been approved by the following committee of the Faculty of the Graduate School at the University of North Carolina at Greensboro.

Dissertation Adviser Gail M. Dennis

Committee Members

Rosemary McGee

Elizabeth C. Hirschl

Wayne M. Ladd

Joseph E Bryson

September 4, 1975
Date of Acceptance by Committee

ABSTRACT

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This study critically evaluates thirty-four litigations that were tried in the County, State and Federal Courts involving the rules of the National Collegiate Athletic Association.

The evaluation of the litigation is based on the decisions of the courts. It is the judge's decision to uphold the constitutionality of the rules of the Association or to find these rules in violations of the Federal laws of the United States.

The litigation revealed eleven specific rules of the Association contested in the courts. The rules were categorized as: 1.600 and 2.000 grade point average, amateurism, transfer, all-star contests, extra events certification, hardship, foreign student, five year, procedural rights for appeal to the Enforcement Committee, television plan and miscellaneous.

The litigation was brought to the courts under the jurisdiction of twelve Federal laws. These laws were categorized as the First, Fourth, Fifth, Sixth, Eighth, Ninth, Eleventh and Fourteenth Amendments of the Constitution of the United States. Also Article III

of the Constitution and the Sherman Clayton Antitrust Acts were cited. In addition, many of the lawsuits were litigated under the Civil Rights Act.

The rulings of the courts upheld the National Collegiate Athletic Association in all but three of the cases that have been decided. Five cases are pending. The judges decreed the constitutionality of the rules of the Association in rendering these decisions.

The Federal Courts require the presence of a Federal violation in order to hear the litigation. Each plaintiff requesting relief under the Civil Rights Act and the Fourteenth Amendment proclaimed the action of the Association to be State Action as is required by Federal law. In nine of the fourteen cases pleading State Action, the courts held the volunteer membership of the Association to represent State Action.

The National Collegiate Athletic Association is responsible for investigating and disciplining its own members. Each year for the past four years, over one hundred infractions have occurred within the membership. While the total number of law suits brought into the court for judgment is increasing alarmingly, the Association's enforcement procedures have maintained discipline among the members.

The Association does not declare ineligibility for any student-athlete; only the separate institutions may do so.

The rules of the Association are voted on by the membership and they attempt to control amateur intercollegiate athletics among the colleges and universities. The rules are designed to maintain a uniformity of student-athletes and prevent professionals from participating in the amateur intercollegiate athletic program.

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The writer wishes to thank each member of his examining committee for the time and effort devoted to this project and especially Dr. Gail Hennis. Her precious time was given to advise, guide and suggest throughout the years.

Special thanks are given to David, Cynthia Jane, Stacey Ann and Valerie, who have settled for a part-time father during these years, and to my wife, Jane, whose inspiration, understanding, urging and valuable assistance made possible the start and successful completion of this study.

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Chapter I

INTRODUCTION

An examination of the National Collegiate Athletic Association as it now exists readily reveals that enormous changes are taking place. The intercollegiate athletic program of today involves the activities of vast numbers of people: boards of trustees, presidents, faculty representatives, coaches, students, alumni and players, as well as the general public. Many of these persons have vested interests in the program.

This increased popularity and attention have inevitably generated conflicts of interest. Heretofore unknown litigation has compelled the National Collegiate Athletic Association to defend its constitution and by-laws against internal and external forces which are demanding the right to become involved in policy-making decisions. Both Federal and State legislation have been cited in response to charges of violations of the laws pertaining to civil rights, equal protection, state action, due process and antitrust laws.

As a result of improved operating codes, more faculty involvement and greater participation by the membership of the Association, progress has been made

in the administration of the intercollegiate program; however a seemingly unending number of conflicts lie ahead.

Sources of contention and testing have been discovered in various areas. The organizational structure of the Association has received criticism by member institutions and individuals. The constitution and by-laws, statements by the membership and supposedly held in compliance by all members, have been questioned. In order to preserve and protect the conformity of the member institutions, it has been necessary at times to investigate and reprimand violators of the sanctions of the National Collegiate Athletic Association. Initially, the problems were internal; recently, the confrontations have become external. Judicial litigation is becoming increasingly commonplace as the Association continues to enforce its own structure. Previously accepted solutions no longer satisfy the injured parties, and court litigation involving the volunteer organization and its constituents has created an atmosphere of questionable legality surrounding the administration of intercollegiate athletics by the National Collegiate Athletic Association.

STATEMENT OF THE PROBLEM

In the last decade, colleges and universities (both private and public), students, athletes, private groups, school boards, booster clubs and allied conferences have considered the possibilities of unlawful jurisdiction by the controlling National Collegiate Athletic Association. Hoy reported in 1966 that the committee on infractions had dealt with 401 cases in the past twelve years.[1] Current reports reveal the number is accruing annually.[2]

Since 1970, because of the varied educational objectives and the intense competition among and between the special interest groups involved in athletics in higher education, the committee on infractions has been unable to thoroughly arbitrate all infringements involving members of the Association. The resulting actions have caused an increase in judicial opinions and orders as interested parties sought relief from disciplinary measures.

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[1]Joseph Thomas Hoy, "Current Practices in the Control of Intercollegiate Athletics in Selected Conferences" (unpublished P E D dissertation, Indiana University, 1966), p. 137.

[2]Statement by Philip B. Brown, NCAA Legal Counsel, in a personal interview, 1975 NCAA Convention, Washington, D. C., January 1975.

The bases for the judicial litigations supply the context of this study. In 1906, the National Collegiate Athletic Association was recognized as one of the governing bodies of intercollegiate athletics. In the last five years, the Association has had its leadership challenged in the courts of law (Table 1). These challenges have concentrated on only a few areas of the diversified and complex constitution and bylaws of the Association.

Table 1

Court Litigations Involving the NCAA, 1970-1974

	1970	1971	1972	1973	1974
Number of Cases	1	2	6	12	13

It is necessary to examine these areas in an effort to justify the organization of the National Collegiate Athletic Association or, that failing, to institute change in its procedures. The judicial decisions of the courts are currently providing the guidance and direction for the diversified interests of the competing members. Thus, the internal struggle for relief from disciplinary action is borne by the courts. In the final analysis, the courts will decide the legal stature of the Association.

PURPOSE OF THE STUDY

It is the purpose of the study to examine the litigation from the State, District and Federal courts, as well as the statements of the constitution, bylaws, policies, rules and regulations of the Association which govern the member institutions, conferences and student-athletes.

State courts traditionally have been reluctant to substitute their judgement for that of the officials of the Association in cases where intercollegiate athletic policies have been challenged. Judges, with only a few exceptions, have continued to rule against student-athletes seeking to overturn these regulations. This constant refusal to avoid intervention in the privacy of the Association, is rather surprising in view of the judicially supported revolution that has spotlighted the legal rights of students during the last few years. However, judges have found it necessary to rule on the constitutionality of the Association's regulations with a frequency that makes it advisable for educational administrators to consider the possibility that a new judicial attitude might have implications for the future of intercollegiate athletics.

The study is designed to determine if the reasonableness, the fairness and the equality of the regulations

of the Constitution and Bylaws of the National Collegiate Athletic Association do in fact exist in the opinion of the courts. Additionally, the study will seek to ascertain if these regulations are beneficial to the member institutions and the student-athletes.

In summation, the study purports to establish the constitutionality of the controls of the National Collegiate Athletic Association.

NEED FOR THE STUDY

A review of available material has convinced the writer that no other studies have involved judicial litigation and the National Collegiate Athletic Association. This research covers the period from 1970 to December 1974 and involves judicial decisions only as they apply to the regulations of the Association and member institutions.

One book,[3] six articles,[4] and a newspaper[5] have dealt briefly with law suits and college athletics.

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[3]Andrew Grieve, The Legal Aspects of Athletics (New Jersey, A. S. Barnes, 1969).

[4]Harry M. Cross, "The College Athlete and the Institution," Law and Contemporary Problems, (Winter-Spring 1973), 38-1:151-171; E. H. Hammond, "Student Athlete and the Law," National Association of Student Personnel Administrators Journal, (April 1972), 9:53-62; James V. Kock, "A Troubled Cartel: The NCAA," Law

SCOPE OF THE STUDY

In recent years, the Constitution of the United States has been tested for validity in the areas of liability, freedom of speech, and students' rights. In the last five years, the regulations of the National Collegiate Athletic Association have attracted the attention of the courts. As a result, many questions have arisen which this study will attempt to answer:

A. Do the Constitution and Bylaws of the National Collegiate Athletic Association comply with the civil rights doctrines?

1. Does the National Collegiate Athletic Association comply with the Fourteenth Amendment

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and Contemporary Problems, (Winter-Spring 1973), 38-1:135-150; Emil Leonard Larson, "How NCAA Policies Affect College Sports," Journal of Health, Physical Education and Recreation, (December 1951), 22:20-22; Kenneth J. Philpot and John R. Mackall, "Judicial Review of Disputes Between Athletes and the National Collegiate Athletic Association," Stanford Law Review, (May 1972), 24:903-929; and D. Parker Young and Donald D. Gehring, "The College Student and the Courts," College Administration Publications, (April 1974 Supplement), 16:8-11, 124-126.

[5]"Court Actions Keep NCAA Attorneys on Their Toes," NCAA News, (August 1, 1974), 11-10:5.

This article and a report to the membership attending the 1975 Convention at Washington, D. C. in January summarizes the court cases litigated against the NCAA. The article contains nineteen cases, their violations and the court action. The report to the Convention by Mr. Philip B. Brown indicated that five more cases had been litigated in the preceding five months. This report is in the Proceedings of the 69th Annual Convention Report of the NCAA, pp. 67-68.

of the Constitution for providing due process?

2. Do the Association regulations fulfill the reasonableness of Constitutional laws?

B. Is uniformity maintained in intercollegiate athletic eligibility rules, under the regulations of the National Collegiate Athletic Association?

1. Is the 1.600 rule constitutionally sound?
2. Has the 2.000 rule been justified by the courts in defining the term student-athlete?
3. Do the regulations on foreign students apply without discrimination?
4. Do the regulations of amateurism affect the student-athlete?
5. Does a student-athlete lose eligibility by transferring from one institution to another?
6. Does a student-athlete lose his eligibility during his freshman year as a result of actions by him?
7. Does the National Collegiate Athletic Association allow member student-athletes to participate in unsanctioned events?

C. Are the regulations of the National Collegiate Athletic Association constitutionally sound

under the State Action Statute and the Volunteer Private Association Doctrine?

D. Does the Association provide procedural methods for recourse in the investigations of the membership?

LIMITATIONS OF THE STUDY

This study is limited to the court litigation involving the National Collegiate Athletic Association, its member institutions, allied conferences, student-athletes and interested private parties.

There are six additional athletic associations governing various aspects of sports within the United States. These organizations include the National Association of Intercollegiate Athletics, Amateur Athletic Union, International Olympic Committee, National Junior College Athletic Association and the Association for Intercollegiate Athletics for Women. None of these is included in this study since research indicates that none has, to date, been involved in court action (Appendix C).

Most of the violations which have occurred among the National Collegiate Athletic Association member institutions have been settled without court litigation. These infractions and resultant disciplinary actions are not included in this study.

METHODOLOGY

The writer's study is based upon the Documentary Content Analysis. This method classifies cases in the Federal Courts, and the Association regulations which have been held in violation and the quantity in each of these two categories. In addition, the content of the documents from the court will be analyzed for the purpose of either giving verification or suggesting reversal of the National Collegiate Athletic Association regulations.

DEFINITION OF TERMS

Amateur Athlete. An amateur athlete is one who engages in a particular sport for the educational, physical, mental and social benefits he derives therefrom, and to whom participation in that sport is an avocation (Appendix A, Article 3, Section 1).

Doctrine of Private Associations. This term refers to any group of individuals who have joined together in some type of formalized structure for the attainment of common purposes.[6] Courts have been reluctant to supervise duties within private groups where an individual claims to have been injured by actions of the Association.

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[6]Philpot and Mackall, op. cit., p. 909.

Due Process. The concept of "due process" applies to the governmental powers that protect individual rights. These rights may include (1) timely and adequate notice detailing the charges facing the individual; (2) an opportunity to confront and cross-examine adverse witnesses; (3) the right to be represented by counsel; (4) a decision, based on the evidence at the hearing; and (5) an impartial decision maker who sets forth the reasons for his decision.[7]

Fourteenth Amendment. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States: nor shall any State deprive any person of life, liberty, or property, without due process of law: nor deny to any person within its jurisdiction the equal protection of the laws.[8]

Grade Point Average. The G. P. A. is the Grade Point Average of a prospective student-athlete based upon school grades and classes or hours undertaken.

Individual Eligibility. Any participant in a National Collegiate Athletic Association championship must be

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[7]Ibid., at 922, citing Goldberg v. Kelly, 397 U. S. 254, 267-271 (1970).

[8]Owen J. Roberts and William O. Douglass, "United States Constitution," The World Book Encyclopedia, (1966), U-V, p. 143.

certified by his institution as satisfying all of the requirements for eligibility.

Institutional Eligibility. Colleges and universities which accept and observe the principles set forth in the Constitution and Bylaws of the National Collegiate Athletic Association are eligible for membership in the Association.

National Collegiate Athletic Association. The National Collegiate Athletic Association (known as the NCAA) is an unincorporated association of many of the colleges and universities of the United States, both private and state-supported, who engage in intercollegiate athletics. Founded in 1906, active membership consists of 697 four-year colleges and universities. With allied conferences, associated institutions and affiliated organizations, the Association has a total membership of 815.[9]

The policies and practices of the Association are established and enforced by its membership. The decision to join the Association is a voluntary one made by the individual institution. Once it becomes a member, an institution agrees to uphold and abide by the rules and regulations of the Association.

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[9]"NCAA Membership," NCAA News, (May 15, 1975), 12-6:3.

The National Collegiate Athletic Association is governed by a Constitution, Bylaws, Regulations, Official Interpretations and other rules all developed and approved by the membership over the years. These rules govern the amateur status of student athletics, control financial aid to student-athletes, and establish eligibility standards for intercollegiate competition and other related matters (Appendix A).

Reasonableness. Agreeable to reason: not excessive, capricious or arbitrary.

State Action. By virtue of the Fourteenth Amendment certain constitutional rights of individuals are protected in actions arising between the individual and the state. Thus any actions by a governmental body (i.e., a tax-supported institution of higher education) is state action and individual constitutional rights are protected. The actions of private institutions must be evaluated individually to determine if the state action concept is involved. Generally, state action is not involved in controversies arising from private actions unless it can be shown that the private institution is so entwined in the public purpose that the state action concept would apply.[10]

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[10]Young and Gehring, op. cit., p. 8.

Student-Athlete. A student-athlete is one whose matriculation was solicited by a member of the athletic staff or other representative of athletic interests with a view toward the student's ultimate participation in the varsity intercollegiate athletic program. Any other student becomes a student-athlete only when he reports for a freshman or varsity squad which is under the jurisdiction of the Department of Intercollegiate Athletics. A student is not deemed a student-athlete solely because of his prior participation in high school athletics (Appendix A, Bylaw Article 1, Section 1, O.I. 100).

Transfer Student. A student shall be considered a transfer from a collegiate institution when its registrar or admissions officer certifies that the student attended a class or classes in any semester or quarter, or was officially registered and enrolled at said institution on the opening day of classes in any quarter or semester, or the Athletic Director certifies that the student reported on call for uniformed squad practice prior to the beginning of any quarter or semester (Appendix A, Bylaw 4, Section 1-h, O.I. 401).

Chapter II

METHODS AND PROCEDURES

The role of college athletics in American society has undergone a radical transformation since its beginning in the second half of the nineteenth century as a student-initiated, student-managed extracurricular activity. As athletic programs have grown in importance, college athletics have developed into a complex institution under the control of educational administrators, and in the process, students have lost their powers of management and control. Recent controversies suggest that the present structure of collegiate athletics fails to provide adequate protection for the interests of the student-athlete.

BACKGROUND OF THE STUDY

Athletics in U. S. colleges and universities had their beginnings in 1761 when "playing at ball" was frowned upon by the Princeton faculty.[1] Since this early evidence of faculty censure, many limitations and

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[1]Melvin Michael Crawford, "Critical Incidents in Intercollegiate Athletics and Derived Standards of Professional Ethics" (unpublished EdD dissertation, University of Texas, 1957), p. 21.

definitions of control have been devised in an effort to govern the intercollegiate program of athletics.

The problems of athletics, particularly football, in the late 1800's and early 1900's were recognized as many and are still with us.

Shea and Wieman stated that the National Collegiate Athletic Association was formulated as a result of a "disastrous season of injury and fatality in football," and that the situation was so serious that "various state legislatures presented bills to abolish the game." The two authors compiled a list which forms a basis of comparison of the problems of control of athletics then and now. They discussed such topics as:

> 1. The intense rivalry and competition as the primary motive for the games,
> 2. The increase in quality and quantity of equipment to gain mechanical advantage over opponents,
> 3. The employment of experts and professionals,
> 4. The increase in the amount of time for practice,
> 5. The recruitment of good playing material,
> 6. The offers of pecuniary inducements to enter certain schools,
> 7. The provision of the opportunity to take special courses,
> 8. The offering of regular pay for playing,
> 9. The playing on professional teams during the summer vacation in order to secure additional practice and training,
> 10. The collection and disbursement of funds,
> 11. The conduct of contests on a business basis (in order to make the program self-supporting),

12. The need for money and the difficulty in gaining it were strong inducements to struggle for supremacy.[2]

In 1906 the Intercollegiate Athletic Association of the United States was formed, primarily to prevent the abolition of intercollegiate football. Five years later the name of the organization was changed to the National Collegiate Athletic Association. The purpose of the organization was to regulate and supervise all college athletics in the United States.

During the next thirty-five years, the expansion of educational philosophies of athletics, the rapid increase in facilities and the growth and influence of conferences and associations caused many revisions in administrative methods of faculty control.[3]

Twenty-four years after the initial organization of the National Collegiate Athletic Association, the Carnegie report was published. This well-known study by Savage was the culmination of three years of intense research on the growth of athletics, the development of modern day amateur standing and administrative control

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[2]Edward J. Shea and Elton E. Wieman, Administrative Policies for Intercollegiate Athletics, (Springfield, Charles C. Thomas, 1967), p. 12.

[3]Howard J. Savage, "American College Athletics," The Carnegie Foundation for the Advancement of Teaching, (New York, 1929), Bulletin Number 23, p. 13.

of intercollegiate athletics. The study by Savage in 1929 and the complete review of literature in athletics by Ryan[4] in 1930 provide the impetus for controls of athletics for the next two decades. Savage described three types of athletic controls prevalent during the years 1887-1906:

> First . . . the highly centralized tripartite type in which faculty, alumni and undergraduates cooperated, ... Second . . . a dual plan was common under which the faculties and undergraduates shared the burden. Finally, . . . the management of athletics was in the hands of students. . . .[5]

Foster, in 1915, studied the problems of intercollegiate athletics and questioned the controls.[6] Luehring commented on the organization of the National Collegiate Athletic Association in 1906:

> Beginning in a small way, intercollegiate contests had gradually grown unchecked by faculty control, until they had assumed undue importance in the educational world. The tail was beginning to wag the dog. The time had come for an organization of college officers, professors and experts in the management of athletics to conserve the educational good of athletics, the work which faculties, who had

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[4]Ibid., pp. 95-211; see also Carson W. Ryan, Jr., "The Literature of American School and College Athletics," The Carnegie Foundation for the Advancement of Teaching, (New York, 1930), Bulletin Number 24.

[5]Savage, op. cit., pp. 110-111.

[6]William T. Foster, "An Incident of Intercollegiate Athletics," Atlantic Monthly, (November, 1915), 116:557-588.

> come to regard student sports as beneath their notice, had for so many years neglected.[7]

In 1938, the National Collegiate Athletic Association addressed itself formally and officially to the problems of institutional conduct and activity in intercollegiate athletics. Ten years later the Sanity Code was drawn up at the National Convention of 1948. This document spelled out definitive limitations for intercollegiate athletics.

> 1. Definite restriction upon, or elimination of, out of season practice in all sports, particularly spring practice in football and basketball;
> 2. Curtailment of sports schedules to limit the number of games and to avoid overlapping in the various major sports;
> 3. The preservation of institutional control of athletics, free from the interference of outside pressures, including those of alumni or other groups;
> 4. The encouragement of recognition by the public and by the alumni and other supporters of the athletic program, that the continued existence of college athletics depends upon the maintenance of a sane and sound balance in the life of the student athlete, under which he must be a student primarily and an athlete incidentally.[8]

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[7]Frederick W. Luehring, "The National Collegiate Association," Journal of Health, Physical Education and Recreation, (December, 1947), 18-10:707.

[8]Larson, Journal of Health, Physical Education and Recreation, (December, 1951), 22:20-22, citing National Association of Collegiate Commissioners Tenth Proceedings, 1951.

It was to be three years before the Sanity Code would be passed by a two-thirds majority, and only then did the National Collegiate Athletic Association become an official accrediting body capable of enforcing its policies and regulations.

In 1953, the membership voted to place one university on probation and ruled its athletic programs ineligible for championship play for a period of one year; another was reprimanded, and still another was reprimanded and censured. This action was the means of enforcement at that time.[9]

While Shea and Wieman reported 449 cases acted upon by the Enforcement Committee from 1952 to 1965, none of the violations or infractions was taken into the courts.[10] However, thirty-six per cent of these cases required disciplinary action by the enforcement committee.[11]

COLLECTION OF DATA

The control of intercollegiate athletics has been empirical in nature, i. e., "learned by doing." Recognizing the importance of competitive athletics as a part of education, college and university administrators have

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[9]Shea and Weiman, op. cit., p. 16. [10]Ibid., p. 17.

[11]Hoy, op. cit., pp. 137-138.

selected faculty groups or combined faculty, student and alumni committees to direct athletic programs.[12]

Presently the membership of the National Collegiate Athletic Association consists of institutions interested in regulating and controlling intercollegiate athletics.[13] These institutions are represented in the Association by faculty members and the Director of Athletics.

Since 1952, ten doctoral dissertations or masters theses have been written on the topic of administration

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[12]Robert W. Batchelder and James Ross Hall, "Principles for the Administration of Athletics for Member Institutions of the NCAA," Research Study No. 1, Vol. I, (unpublished EdD dissertation, Colorado State College, 1966), p. 17.

[13]Edward J. Shea, "A Critical Evaluation of the Policies Governing American Intercollegiate Athletics: With the Establishment of Principles to Guide the Formation of Policies for Intercollegiate Athletics" (unpublished PhD dissertation, New York University, 1954), pp. 21-22.

Citing the American Council on Education, Report of the Special Committee on Athletic Policy, February 16, 1952. "The Report proposed remedies based upon four chief objectives. These were: (1) to relieve external pressures, (2) to insure institutional control, (3) to suggest general standards of acceptable practices, and (4) to invoke measures of enforcement that will guide the great majority of institutions desirous of upholding proper standards. . . . This report which was accepted and approved by the Executive Committee of the American Council on Education was recommended to the NCAA, the regional accrediting association, and the various athletic conferences and may well be hailed as the model and guiding beacon toward which all organizations and institutions concerned with the proper place and conduct of intercollegiate athletics may look for guidance and direction."

or control of intercollegiate athletics, however, none has analyzed court documents involving the regulation of intercollegiate athletics.

A study by Batchelder and Hall noted that principles pertaining to academic achievement, proper progress toward a degree plan, conference eligibility and academic consideration of athletic participants were the main concerns for athletic academic eligibility.

The two authors stated:

> Eligibility should be maintained in accordance to conference affiliation and that students, athletes, coaches and administrators should realize that participants in intercollegiate programs represent their institutions before the public and therefore, must adhere to standards established for that privilege.[14]

Crawford listed eligibility as a major concern in deriving standards and maintaining professional ethics in intercollegiate athletics.[15]

Hoy stated:

> If the athletic program is to continue to improve, an attempt to remove the so-called bad practices must be made through continuous study and examination of the current problems.[16]

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[14]Batchelder and Hall, op. cit., p. 552.

[15]Crawford, op. cit., p. 80.

[16]Hoy, op. cit., p. 2.

Kimbal, Powell, and Hoy have done doctoral dissertations on the controls of the intercollegiate athletic program.[17] Hoy limited his study to a few conferences, Kimbal focused on the practices of the athletic programs, and Powell developed a total concept of faculty representatives in the control of intercollegiate athletics since 1895.

Shea wrote an in-depth study on the relationship of intercollegiate athletics to the purposes of higher education. His study proposed to:

> Establish basic principles which serve to guide the formation of intercollegiate athletic policies whose purposes are compatible with the purposes of higher education.[18]

More pertinent data were located in law libraries and court briefs. The results of early litigation were published in the case books while most recent decisions have been filed in the district, state or appellate courts. Some of the findings have not yet been reported and were obtained through attorneys associated with the litigation.

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[17]Edwin R. Kimbal, "Current Practices in the Control of Intercollegiate Athletics" (unpublished EdD dissertation, University of Oregon, 1955); John Talbot Powell, "The Development and Influence of Faculty Representation in the Control of Intercollegiate Sports Within the Intercollegiate Conference of Faculty Representatives from its Inception in January 1895 to July 1963" (unpublished PhD dissertation, University of Illinois, 1964); and Hoy, loc. cit.

[18]Shea, op. cit., p. 1.

The first confrontation settled in the courts involved the National Collegiate Athletic Association's rule on amateurism. These proceedings[19] occurred during the Professional Football wars and the initiation of the American Football League. The cases were litigated between 1960 and 1966. Professional athletics have been prominent in several of the cases since that time.

As the new league was being formed, the best football players in the college ranks were in demand as gate attractions. Each of the four cases involved a player and a professional football team, and each dealt with breach of contract, a practice favored by some players in order to receive the highest salary bid possible. These well-known players signed professional contracts prior to termination of their college careers and, therefore, violated their amateur standing as defined by the National Collegiate Athletic Association (Appendix A).

The next series of infractions of the Association's controls occurred four years later. In 1970, the All-Star Contest certification was tested in Minnesota.[20]

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[19]Detroit Football Co. v. Robinson, 186 F. Supp. 933 (1960); Houston Oilers, Inc. v. Neely, 361 F. 2d. 36 (1966); Los Angeles Rams Football Club v. Cannon, 185 F. Supp. 717 (1960); and New York Football Giants v. Los Angeles Chargers Football Club, Inc., 291 F. 2d. 471 (1961).

[20]Caperson v. Board of Regents, University of Minnesota; NCAA, File No. 586023, (Fourth Judicial District, Minn., Unreported, Filed February 1, 1972).

In 1971, two civil suits were filed against the Association. One involved bribery of a ticket seller at a championship play-off game, and the other charged negligence in the injury of a football player seeking ten million dollars in damages.[21] In 1972, two precedent-setting legal actions tested the 1.600 Grade Point Average rule of the National Collegiate Athletic Association. Curtis v. NCAA[22] has been cited numerous times in subsequent cases. Golden Bear Athletic Fund v. NCAA was a companion suit to Curtis attempting to prove unconstitutionality and discrimination against minority student-athletes.[23]

Since 1972, twenty-five additional suits have been initiated as tabulated in Table 1. These cases involve eleven of the regulations of the National Collegiate Athletic Association.

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[21]Dattillo v. NCAA, Civil No. 6477, (W. D. Kentucky, Unreported, Filed January 13, 1970); also see New v. NCAA, Civil No. 8077, (S. D. Ohio, Unreported, Filed August 9, 1971).

[22]Curtis v. NCAA, Civil No. C-71-2088 ACW, (N. D. Calif., Unreported, Filed October 29, 1971).

[23]Golden Bear Athletic Fund v. NCAA, Civil No. C-71-1930 ACW, (N. D. Calif., Unreported, Filed October 6, 1971).

Philpot and Mackall, Appenzeller, Greive, Cross, Kock, Lumley, Havel, and Larson have expressed opinions for or against the athletic controls of the National Collegiate Association.[24] Appenzeller and Greive cited the difficulties arising from the athletic programs, while Cross, Kock, and Philpot and Mackall reported trends and summaries of the court rulings. Philpot and Mackall were in favor of changes in the policies of the Association to obtain more rights and freedoms for the student-athlete; while Cross took the position that reaffirmation of the educational purposes of the Association would strengthen the atmosphere of the controls.

Kock stated:

> The recent court actions and legal maneuvers by certain individual University firms in the National Collegiate Athletic Association against itself is further visible evidence of the unsatisfactory operation and the heterogeneity of membership in the National Collegiate Athletic Association.[25]

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[24]Philpot and Mackall, Stanford Law Review, (1972); Herb Appenzeller, Athletics and the Law, (Charlottesville, Va., Michie Company, 1975); Greive, The Legal Aspects of Athletics, (1969); Cross, Law and Contemporary Problems, (1973); Kock, Law and Contemporary Problems, (1973); Albert E. Lumley, "Intercollegiate Athletic Scandals," American Scholar, (April 1952), 20-2:193-198; Richard C. Havel, "Intercollegiate Athletics: An Educational Dilemma," The College Physical Education Association, 66th Proceedings, National Collegiate Physical Education Association, (1963), pp. 92-93; and Larson, op. cit., p. 21.

[25]Kock, op. cit., p. 135.

In 1951, Larson said:

> When any activity is in violation of the . . . regulations, such violations should be reported. The National Collegiate Association must assume the responsibility for correcting abuses.[26]

Larson also stated:

> Institutional control and orderly procedure . . . are the basic items to consider in any good program of intercollegiate athletics.[27]

Lumley deplored the corruption and subsidization that was taking place in college athletics.

> Perhaps the time may come when the horses will be led off the playing fields, and their places taken by schoolboys playing for the fun of the game. Most coaches would welcome that. I think most other interested persons, excepting gamblers, would welcome it too.[28]

Havel, speaking at the 66th meeting of the National College Physical Education Association, summed up the controls of intercollegiate athletics by saying:

> The control of college sports takes many forms, and a vast number of rules enforced in each institution, each conference, and each regional or national association. Though the responsibility for athletics rest initially with each college or university, outside agencies have gradually come to assume a more prominent influence over both programs and participants. The National Collegiate Athletic Association and the National Association of Intercollegiate Athletics are representative organizations which have contributed to the

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[26]Larson, loc. cit. [27]Ibid., p. 22.

[28]Lumley, op. cit., p. 198.

> development of detailed rules for athletic competition by which members are governed. Even though an extensive network of regulatory measures has evolved, problems of evasion persist. Consequently, some institutions are wary of accepting as desirable some of the conditions permitted under national regulations. The dilemma remains, the development of a program freed from those forces and influences which undermine the achievement of wholesome results.[29]

Recent articles and reports have noted the rapid growth of court cases. Scandals and bribery have been subjects of sports writers since 1951.[30] Private citizens have become involved in litigation when the Association's rulings have taken action against the general public. Four suits have appeared in the courts in an effort to keep the National Collegiate Athletic Association from blacking out televised football games and from barring a team playing before a national audience.[31] Table 2

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[29]Havel, loc. cit.

[30]Stephen M. Bresett, "Is Amateurism Dying?" Journal of Health, Physical Education and Recreation, (June 1973), 44-6:21; T. P. Johnson, "Courts and Eligibility Rules: Is a New Attitude Emerging?" Journal of Health, Physical Education and Recreation, (February 1973), 44:34-36; Kock, op. cit., p. 142; "NCAA, Big 8 Sued," Greensboro [North Carolina] Daily News, July 16, 1974, p. B3; and "Scandal at W. M.," Newsweek, September 24, 1951, p. 76.

[31]Dr. Olivet v. Regents of University of California, Civil No. 66727, (S. Ct. Calif., Unreported, Filed September 20, 1973); Dr. Olivet v. NCAA, Civil No. 000076, (S. Ct., Calif., Unreported, Filed March 4, 1974); Highley v. Big Eight Conference, Civil No. 73-630-D, (W. D. Oklahoma, Unreported, Filed December 4, 1973); Joslyn v. Byers, Civil No. 74-1010-C, (W. D. Oklahoma, Unreported, Filed November 27, 1974); and Scott v. NCAA, Civil No. C-71-2518, (Tulsa County, Oklahoma, Unreported, Filed October 5, 1971).

illustrates the activities in which plaintiff or defendant participated.

To verify or to suggest changes in the Association, it was necessary to examine the cases for constitutional interpretations. The twelve areas of reference in the litigation involved the First, Fourth, Fifth, Sixth, Eighth, Ninth and Eleventh Amendments and Article III of the United States Constitution. In addition, the Fourteenth Amendment was divided into four sections: State Action, Due Process, Equal Protection, and Private Associations. These references were supported by the Civil Rights Act and the Sherman Clayton antitrust laws. Each of these required the courts to render an opinion on the constitutionality of the National Collegiate Athletic Association regulations. The precedents set in the decisions were used to interpret the legality of the Association. The study was based upon these actions. All decisions revolved around the rulings of the court.

ORGANIZATION OF THE DATA

The organization of the study developed in four sequences. Because of the nature of the topic and the important recent developments, most of the information, pleadings, rulings and decisions have not been published. Therefore, the first step was the collection of the information from the National Collegiate Athletic Association,

Table 2

Sports and Activities Engaged in by Plaintiff or Defendant

Case	Basketball	Football	Track	Tennis	Hockey	TV	Other
Achampong v. NCAA	X		X	X			
Associated Student, Inc. v. NCAA		X	X				
Begley v. Mercer U.	X						
Behagen v. Inter. Conf. of Faculty Reps.	X						
Bounds v. ECAC	X						
Buckton v. NCAA					X		
Calif. State U.-Hayward v. NCAA			X				X[a]
CAPS v. NCAA							X[b]
Caperson v. Bd. of Regents of U. Minn.		X					
Curtis v. NCAA		X	X				
Datillo v. NCAA							X[c]
Dr. Olivett v. NCAA						X	
Fisk v. NCAA	X						
Golden Bear Ath. Fund v. NCAA		X	X				
Grant and Williamson v. NCAA	X						

[a]Minor or less popular sports.

[b]Baseball.

[c]Ticket scalping.

Table 2 (continued)

Case	Basketball	Football	Track	Tennis	Hockey	TV	Other
Highley v. NCAA						X	
Howard U. v. NCAA							X[d]
Ibarra v. NCAA							X[e]
Jones v. NCAA					X		
Joslyn v. Byers						X	
Kanter v. NCAA				X			
Larson v. NCAA					X		
McDonald v. NCAA	X						
NCAA v. Porter	X						
NCAA v. McDaniels, ABA	X						
New v. NCAA		X					
Parish v. NCAA	X						
Samara v. NCAA			X				
Saulny v. NCAA	X						
Schubert v. NCAA			X				
Scott v. NCAA						X	
Smith v. NCAA		X					
State Bd. of Ed. v. NCAA	X						
Taylor v. Wake Forest U.		X					

[d]Soccer.

[e]Liability suit, drowning.

its lawyers, state and district courts, dissertations, periodicals and books. The primary source was the law firms who represented the Association (Appendix C) in an effort to uphold the Association's regulations.[32]

The second step itemized the Federal laws that were pertinent to the litigation. Lawyers must include in their client's case an imposition placed upon the plaintiffs by the Association. The nature of these constitutional rights fell into a pattern, and cases that are tried in the Federal courts must relate to the Constitution or the court has no jurisdiction in that case.

Some of the plaintiffs pleaded equal protection or due process. Others pleaded that the Association was subject to State Action; while other litigation employed "cruel and unusual punishment." Several cases in the courts claimed immunity from interference by virtue of the Doctrine of Private Associations. Still others filed complaints under the First, Fourth, Fifth, Sixth, and Ninth Amendments, the Sherman Clayton antitrust laws and civil rights violations.

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[32]Philip B. Brown, Cox, Langford and Brown, Law Firm, 21 Dupont Circle, N. W., Washington, D. C. 20036. Personal correspondence and requests for unreported litigation. Mr. Brown was legal counsel for the NCAA; and George H. Gangware, Swanson, Midgley, Eager, Gangware and Thurlo, Law Firm, 1500 Commerce Bank Building, Kansas City, Missouri 64106. Personal correspondence with Mr. Gangware. Unreported litigation was supplied to the writer by Mr. Gangware as Counsel for the Defense.

These twelve areas of Federal involvement were examined for categorization of the litigation. Upon completion of this procedure, the trends and implications were applied to the Association. The rulings of the judges and the decisions of the courts assisted the investigator in the development of the conclusions of the study.

The third step categorized the various cases according to the specific rules of the Association that are being tried in the courts. These were tabulated in Table 3 and indicated that the 1.600 rule was litigated nine times in the past five years.

Lastly, the procedure was to examine the actions of the courts in reference to affirmation of the Association's regulations or reversal of the regulations. The conclusive evaluation of the regulations of the Association was based solely on the decisions of the courts. These are noted in Table 4. In seven of the 34 cases, plaintiffs received an injunction against the Association. Two cases, Buckton and California State, were appealed and are pending. Associated Students, Inc. was appealed and the order reversed while Curtis is now moot. Only Behagen and Howard U. allowed the plaintiff to seek relief from their grievances and each applied extenuating circumstances.

Table 3

NCAA Rules Involved in Litigation

Case	1.600	Amateur	Foreign Student	Television	Transfer	Due Process	Other
Achampong v. NCAA	X						
Associated Students, Inc. v. NCAA	X						
Begley v. Mercer	X						
Behagen v. Inter. Conf. of Faculty Reps.						X	
Bounds v. ECAC					X		
Buckton v. NCAA		X	X				
Calif. State U.-Hayward v. NCAA	X						
Caperson v. Bd. of Regents of U. Minn.							X[a]
CAPS v. NCAA		X					
Curtis v. NCAA	X						
Dr. Olivett v. Regents of U. of Calif.				X			
Fisk U. v. NCAA					X		
Golden Bear Ath. Fund v. NCAA	X						
Grant and Williamson v. NCAA		X					
Highley v. NCAA				X			
Howard U. v. NCAA	X		X				X[b]
Jones v. NCAA		X					
Joslyn v. Byers				X			
Kanter v. NCAA		X					
Larson v. NCAA		X					

[a]All-Star Certification.

[b]Five Year Rule.

Table 3 (continued)

Case	1.600	Amateur	Foreign Student	Television	Transfer	Due Process	Other
McDonald v. NCAA	X						
NCAA v. McDaniels, ABA		X					
NCAA v. Porter		X					
Parish v. NCAA	X						
Samara v. NCAA							X[c]
Saulny v. NCAA							X[d]
Schubert v. NCAA							X[e]
Scott v. NCAA				X			
Smith v. NCAA		X					
State Bd. of Ed. v. NCAA						X	
Taylor v. Wake Forest							X[f]

[c]Extra Event Certification.

[d]Hardship Rule.

[e]2.000 Grade Point Average.

[f]Financial Aid.

Table 4

Judicial Decisions of the Litigation

Case	Injunction	Injunction Denied	Moot	Dismissed	Pending
Achampong v. NCAA		X			
Associated Students, Inc. v. NCAA	X	X			
Begley v. Mercer U.		X			
Behagen v. Inter. Conf. of Faculty Reps.	X				
Bounds v. ECAC		X			
Buckton v. NCAA	X				X
Calif. State U.-Hayward v. NCAA	X				X
Casperson v. Bd. of Regents of U. of Minn.		X			
CAPS v. NCAA		X			
Curtis v. NCAA	X		X		
Datillo v. NCAA				X	
Dr. Olivett v. NCAA				X	
Fisk U. v. NCAA		X			
Golden Bear Ath. Fund v. NCAA		X			
Grant and Williamson v. NCAA		X	X	X	
Highley v. NCAA				X	
Howard U. v. NCAA	X				
Ibarra v. NCAA					X
Jones v. NCAA		X			

Table 4 (continued)

Case	Injunction	Injunction Denied	Moot	Dismissed	Pending
Joslyn v. Byers		X			
Kanter v. NCAA			X		
Larson v. NCAA	X				X
McDonald v. NCAA			X	X	
NCAA v. McDaniels, ABA					X
NCAA v. Porter					X
New v. NCAA				X	
Parish v. NCAA		X			
Samara v. NCAA				X	
Saulny v. NCAA		X			
Schubert v. NCAA		X			
Scott v. NCAA			X		
Smith v. NCAA		X			
State Bd. of Ed. v. NCAA		X			
Taylor v. Wake Forest		X			

ANALYSIS OF THE DATA

The legality of the regulations of the Association was based upon the decisions of the courts. The validity of the organization was tested under the Federal laws of the Constitution. Each of the cases investigated supported or defied the complex structure of the Association. The final analysis determined whether membership in the organization required total compliance and adherence to the regulations or whether a member institution could initiate separate controls. Basically, a member must conform to all aspects of the National Collegiate Athletic Association, but each is recognized as an entity in itself and must adhere to more than one set of policies, specifically, those of its own board of trustees. Therefore, the institution may sometimes find itself engaged in "conflict of interest" litigation. The courts are the final authority.

Chapter III

RULES OF THE NATIONAL COLLEGIATE ATHLETIC ASSOCIATION

The Manual of the National Collegiate Athletic Association is divided into nine areas of control. Only four chapters are discussed here because they are cited as partial contributors to the litigation under study. The following actions in response to violations of the Association rules are duly reported in the 1974-75 Manual and have been selected, by individuals, institutions and conferences, as pertinent to the various decisions of the courts.

PURPOSES AND FUNDAMENTAL POLICY

The Constitution of the Association outlines in detail its raison d'etre. The basic philosophy was formulated to improve the intercollegiate programs for institutions and student-athletes. The stimulation of the program must be educationally sound and the athletic activities should maintain a high level of performance. All members must adhere to the principle of institutional control of and responsibility for conformity with the Constitution and Bylaws of the Association.

The fundamental policy further defines the athlete as a part of the student body, and the athletic program as a part of the educational system with a distinct withdrawal from professional sports. In addition the Association directs its endeavors to the basic issues of the total athletic program, and each member institution must comply to these regulations or be held accountable to the enforcement program.

MEMBERSHIP

Eligibility for membership is reserved for colleges and universities, both private and public, and athletic conferences that have acceptable academic standards and who observe the Constitution and Bylaws of the Association.

Furthermore, each member must compete in at least four sports, one in each season, maintain fair play and eligibility, compete against only accredited institutions and conduct an intercollegiate program in accordance with the regulations of the Association.

Membership may be terminated when an institution or conference fails to maintain academic standards. Disciplinary measures may require termination. When termination is requested, an official notice stating the reason will be sent to the president of the member institution. If a member institution is found ineligible by

the Committee on Infractions, that institution has the right to appeal to the Council. If the appeal fails, all rights and privileges will cease.

ELIGIBILITY

The following eligibility requirements are subjects of the majority of the litigation involving the member institutions. It is within this context that the conflict of interest created by the educational philosophies of the individual instituion clash with the National Collegiate Athletic Association. Within the framework of each institution's admissions policies, as designated by each Board of Governors or Board of Trustees, rests the possibility of conflicts with the Association's regulations.

Under the guise of a private association with volunteer members, each institution must proclaim allegiance to the Association and re-evaluate institutional policies or terminate membership. The judicial system has sought relief for the conflicting governing bodies on this point.

Five Year Rule

A student-athlete must complete his four seasons of eligibility in five calendar years from the date of first enrollment at an institution of higher education. Exceptions are made for time spent in church work, armed forces

and United States foreign aid services. A student-athlete may request exception to compete in another sport after four years if competition in one sport has been completed.

All-Star Contests

If a student-athlete engages in an all-star contest after high school graduation and prior to enrollment in college that has not been sanctioned by the National Federation of State High School Athletic Associations, he will be ineligible to compete his freshman year in college, and further, the student-athlete shall be ineligible in all sports if he engages in a college all-star football or basketball game not certified by the Association's Extra Event Committee.

In track and field, the student-athlete will be declared ineligible if he competes in a meet that has not been certified by the Extra Events Committee.

Each student-athlete must meet all eligibility requirements in order to compete in championship meets or tournaments.

Individual Eligibility

Any participant must be certified by his institution; he must have fulfilled all of the eligibility requirements.

He must be eligible both at his institution and in his conference, and be registered for a minimum full-time program which shall be no less than twelve semester or quarter hours. If between terms, he must have been registered in the last term.

Junior College Transfer Rule

A student-athlete, after transfer from a junior college, must remain inactive one year, two semesters or three quarters at the four-year institution unless he graduated from the junior college. He may transfer after one year of junior college work if he has at least a 2.000 grade point average and twenty-four semester hours or thirty-six quarter hours and had a 2.000 grade point average in high school. Additionally, if he did not have a 2.000 grade point average in high school, he can transfer after one year with twenty-four semester hours or thirty-six quarter hours with a 2.500 grade point average or, after three semesters, thirty-six semester hours or forty-eight quarter hours with a 2.250 grade point average, or after two years, forty-eight semester hours or seventy-two quarter hours with a 2.000 grade point average.

Foreign Student Rule

Any student-athlete who is an alien and has participated on any team in a foreign country shall lose one year

of eligibility for participation in each twelve-month period after his nineteenth birthday. This rule is based on the student-athlete concept that each player is an amateur interested in an education. No advantage can be gained by any program that recruits older experienced players from foreign countries in any sport.

Hardship Rule

A student-athlete who is injured or ill at the beginning of the season and who has not participated in more than one football game or three contests in other sports may be granted another season of competition by his conference or institution.

Amateur Rule

> An amateur student-athlete is one who engages in a particular sport for the educational, physical, mental and social benefits he derives therefrom, and to whom participation in that sport is an avocation (Appendix A, Article 3, Section 1).

Any student-athlete may disqualify himself as an amateur or become ineligible for intercollegiate competition if he plays for pay, signs a professional contract or uses his athletic name for personal gain. He is in violation if he hires an agent to represent his marketable skills; if he allows his picture or name to be used for selling a product; if he appears on radio and/or television for personal profit; if he receives financial assistance

from sources outside the accepted grant-in-aid programs administered by the college.

Other more detailed interpretations of the amateur rule are included in the Manual and each addresses itself to the problems inherent in the acceptance of awards, monetary or otherwise, as compensation for an athletic skill.

PRINCIPLE OF INSTITUTIONAL CONTROL AND RESPONSIBILITIES

The National Collegiate Athletic Association indicates that the control and responsibility of the intercollegiate program are in the hands of the institution and conference, and that, the administration or faculty must constitute at least a majority of the athletic advisory board.

The responsibility of the athletic committee shall include the activities of an agency, organization or individual who attempts to promote the athletic program outside the institution.

Ethical Conduct

The member institution shall be responsible for applying the regulations pertaining to ethics of conduct and for insisting that coaches and athletes represent the institution with honesty, good sportsmanship and fair play by continuously maintaining high standards.

Television Plan

The immense responsibility of communications, both radio and television, has required the National Collegiate Athletic Association to initiate a television committee. The committee was established in 1950, and this year the membership realized over 15 million dollars in profits. The enormity of this commitment makes it imperative that controls be placed on the program. Three of the provisions of the television plan have been litigated in the courts. The first explains that "the Association shall control the televising of all intercollegiate members' football games in 1974, from September 7 through December 14; and in 1975, from September 6 through December 13."[1]

The second provision, in conjunction with the approval of the enforcement committee, may eliminate any college games from television as a disciplinary measure. The proceeds from a televised football game are substantial, hence the effectiveness of the action against any institution placed on probation.

Thirdly, no football game that has not already been scheduled for viewing can be televised unless forty-eight hours prior to kick-off time a complete "sell out" has

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[1]NCAA Television Committee Report, NCAA 69th Annual Convention, 1974, p. 10.

has occurred. The televising is only then permitted if no appreciable monetary damage will be incurred by the participating institutions or if no conflicting college or high school games are being played in the immediate viewing area. Only three stations may carry the game if it is a "sell out," the two who are telecasting from the areas where the competing institutions are located and a third area if the game is at a neutral site.

ENFORCEMENT PROCEDURES

Any complaints by one institution against another must be filed with the Executive Director of the National Collegiate Athletic Association or the Committee on Infractions or with both. Either may start an investigation. The member under investigation will be notified of the charges and will have the opportunity to appear before the Committee. The Committee on Infractions has the prerogative to impose disciplinary measures or recommend that the Council, or next annual convention, impose the penalties.

In the conduct of an investigation, each institution is requested to cooperate with the Association. The enforcement program is a vital part of the Association's control, and it does require complete disclosure of information requested by the Committee or Council. It is also

imperative that the member institutions employ coaches and administrators whose moral values are a positive influence on young people.

Committee on Infractions

This Committee, composed of five members elected for three-year terms, is designated by the Council to administer the National Collegiate Athletic Association Enforcement Program. The Committee is charged with two essential tasks, investigation and discipline.

The investigative procedures consist of considering complaints, determining facts, writing summaries, notifying members involved and conducting a hearing for the purpose of explaining the charges. The decisions of the Committee must be submitted in writing to the institution involved. Any appeal must be initiated within fifteen days. The Committee shall make no public announcement until a conclusion of the case is final.

Disciplinary measures available to the Committee are varied and numerous. The Manual stipulates that the penalty should be severe enough to discourage further violations by that institution or other members. The Committee may impose one or more of the following penalties: reprimand and censure; probation for one year or more; ineligibility for championship events; denial of television benefits or of voting privileges in the Association.

Further disciplinary measures might include curtailment of scheduling and recruiting, a reduction in grant-in-aid awards and the repayment of financial awards and return of trophies received from championship events.

The Committee may request that a member institution terminate the employment of the head coach, or any assistants or other employees, involved in violations. It may request that a student-athlete be declared ineligible for a specific period of time. Speaking engagements and recruiting efforts by the head coach may be prohibited and any coach may be barred from his profession.

Self-disclosure by an institution shall be a factor in determining the penalty.

After the Committee on Infractions has imposed a penalty and made a public announcement, no review or appeal can be made unless new evidence is discovered or an error is found in the proceedings.

Any action taken by an institution or a conference shall not prevent the Committee from imposing penalties for the violation.

The Association asserts that the institution or the conference, and not the Association, is the body which declares a student-athlete ineligible. If the institution fails to take the appropriate action, the Committee must impose the penalties. If the action taken results in

an injustice to the student-athlete, an appeal may be submitted to the Council.

Executive Regulations

The eligibility of a student-athlete must be established prior to his participation in a championship meet or event. All regular season games should be conducted under the auspices of championship eligibility requirements. No student-athlete who has been certified eligible by his institution can be withheld from participation if a protest is filed twenty-four hours or less prior to competition.

Summary

Other concepts of eligibility, enforcement procedures, television regulations, amateur interpretations and membership requirements are enumerated in Appendix A, along with the definition of administration of the intercollegiate program. Only those controls that have been litigated in the courts have been reviewed. It is important to note that the guidelines for the conduct of the intercollegiate program are instigated and approved by the voting member; it is a self-governing body and all membership is on a voluntary basis.

Chapter IV

CONSTITUTIONAL LAWS INVOLVED IN THE LITIGATION OF NATIONAL COLLEGIATE ATHLETIC ASSOCIATION

Court actions are a result of individuals or groups who believe that an injustice has been committed against them. The United States Constitution was written as a basis for arbitrating these disputes. Lawyers and courts must define and interpret the meaning of the Constitution. There are individuals and groups who are convinced that their membership in the National Collegiate Athletic Association implies the denial of individual opportunities in intercollegiate athletics. Therefore, the legal structure of the United States is based on the Constitution and its interpretations.

These cases are based on the premise that constitutional denial has been applied to individuals or groups under the auspices of the regulation of the Association. An examination of the litigation is imperative in order to properly categorize the actions. The categories of Federal jurisdiction are two in number; i.e., Constitutional Amendments and their interpretations.

The plaintiffs' appeals in the Federal courts, for relief of the rulings of the National Collegiate Association, cite the First, Fourth, Fifth, Sixth, Eighth, Ninth,

Eleventh and Fourteenth Amendments and Article III of the Constitution of the United States as basis for the action. In addition, the interpretations of these amendments are cited under the labels of the Sherman Act, the Clayton Act and the Civil Rights Act. Table 5 shows litigation under the jurisdiction of the pertinent amendments and Table 6 reveals the three interpretations found in the Fourteenth Amendment.

A brief summary of each amendment cited will clarify later discussions of litigations.

The Supreme Court has stated that the first eight amendments apply to the Federal Government and not to the states, and has handed down decisions that directly relate the Fourteenth Amendment to the First Amendment. The decision that no state shall deprive any person of life, liberty, or property, without due process of law, demands the First Amendment be applicable to the states, and if not, forbids state action. These Supreme Court decisions have allowed the plaintiffs' lawyers to include the First Amendment with the Fourteenth when filing litigations against the National Collegiate Athletic Association for jurisdiction in the Federal courts.

The Fourth Amendment is also called the "Search and Seizure Act." Its presence in the litigation is not prominent but has been cited as denial of constitutional rights in litigation involving the Association.

Table 5

Litigation Involving Constitutional Amendments

Case	First	Fourth	Fifth	Sixth	Eighth	Ninth	Eleventh	Private Associations	Article III, Section 2
Achampong v. NCAA			X						
Associated Students, Inc. v. NCAA	X								
Datillo v. NCAA		X	X		X				
Golden Bear Ath. Fund v. NCAA	X		X						
Grant and Williamson v. NCAA			X	X					
Highley v. NCAA					X				
Howard U. v. NCAA			X						
New v. NCAA							X		
Parrish v. NCAA	X								
Samara v. NCAA	X		X						
Saulny v. NCAA	X							X	
Schubert v. NCAA	X					X			
State Bd. of Ed. v. NCAA									X

Table 6

Litigation Involving the Fourteenth Amendment

Case	State Action	Equal Protection	Due Process
Achampong v. NCAA	X	X	X
Associated Students, Inc. v. NCAA	X	X	
Buckton v. NCAA	X	X	
Calif. State U.-Hayward v. NCAA		X	
Casperson v. Bd. of Regents of U. of Minn. and NCAA		X	X
Curtis v. NCAA	X	X	
Datillo v. NCAA	X	X	X
Golden Bear Ath. Fund v. NCAA			X
Grant and Williamson v. NCAA			X
Highley v. NCAA	X	X	
Howard U. v. NCAA	X	X	X
Jones v. NCAA	X	X	X
Kanter v. NCAA		X	X
Larson v. NCAA		X	
McDonald v. NCAA	X	X	X
Parish v. NCAA	X	X	
Samara v. NCAA	X		
Saulny v. NCAA	X	X	X
Schubert v. NCAA	X	X	
Smith v. NCAA	X	X	X
State Bd. of Ed. v. NCAA			X

The statement in the Fifth Amendment that no person shall be deprived of life, liberty, or property without due process of law expresses one of the most important provisions of the Constitution. The same words are found in the Fourteenth Amendment expressed as restrictions on the powers of the states.

Due process involves a very vague standard but has been given more concrete meaning by court decisions. The Supreme Court has allowed the lower courts the power of interpretation of this amendment. These interpretations have become vital to the decision of the court in the rulings on these litigations.

Amendment Six guarantees the right to confront witnesses and makes provisions for a speedy trial. The importance of the Sixth Amendment insures the plaintiff due process of the law and procedural rights in legal actions.

The Eighth Amendment contains the "Cruel and Unusual Punishment" clause. It applies to persons held for Federal offenses. The lower courts must define the term "cruel and unusual" in relation to the actions of the defendant against the plaintiff. Because of the various definitions, appeal may be made to the higher courts for additional interpretations. In the litigation against the National Collegiate Athletic Association the Eighth Amendment to date has not applied since only criminal matters and not civil come under its jurisdiction.

All of the specific rights recognized as belonging to the people have not been listed in the Constitution. The Ninth Amendment considers such claims on the merits of the litigation and allows decisions to be based upon

rights that have not been clarified or made specific within the Constitution.

Twenty-one cases have involved the filing of claims in the Federal courts under the jurisdiction of the Fourteenth Amendment. Lawmakers, in order to arrive at a definition, have interpreted this amendment to the Constitution as containing three separate areas. The State Action clause is most important since it must be proven viable before any recourse can occur. Due process and equal protection are the other two areas defined. The Fifth Amendment additionally makes reference to the latter two doctrines.

In the Stanford Law Review, Philpot and Mackall concluded that litigation involving the National Collegiate Athletic Association may be tried and restricted under the State Action clause.

> As an unincorporated association, the acts of the NCAA may be viewed as acts of its members in their capacity as participants in the Association. The State University, as an arm of state government, is subject to all the substantive and procedural restrictions that generally circumscribe other forms of governmental action. If the Association were composed only of state colleges and universities, it would clearly function as an agent of the state. The Association, however, is composed of both private and state universities.[1]

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[1]Philpot and Mackall, op. cit., pp. 917-918.

Young and Gehring maintain that each case in court must be decided on its own merit. State action can be applied if an institution is completely involved in the public purpose.

> By virtue of the Fourteenth Amendment certain Constitutional rights of individuals are protected in actions arising between the individuals and the state. Thus any actions by a governmental body (i.e., tax supported institution of higher education) is state action and individual constitutional rights are protected. The actions of private institutions must be evaluated individually to determine if the state action concept is involved. Generally, state action is not involved in controversies arising from private actions unless it can be shown that the private institution is so entwined in the public purpose that the state action concept would apply. . . . It must be remembered, however, that what constitutes state action is most elusive and must be determined from facts in each individual case.[2]

The second area that is a basis for Federal court action under the Fourteenth Amendment is that known as "due process." This statement has been tested in the courts as a method of relief for student-athletes in their litigation against the Association. The plaintiffs argue that they have been denied this right as a result of their membership in the National Collegiate Athletic Association.

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[2]Young and Gehring, op. cit., p. 8

The Annual Survey of American Law, 1972-73, noted that:

> The due process rights of students, particularly their procedural rights, have been recognized increasingly by the courts during the past decade. This growth, however, has not extended equally to all educational institutions. A crucial public/private distinction has developed from the Fourteenth Amendment's state action requirement.[3]

The equal protection clause is valid if it includes all classifications of persons who are similarly situated with respect to the purpose of the law. Two standards are used in the interpretation of the clause. The first is the traditional equal protection standard where a reasonable relationship between the purpose of the classification and the classification is proven. The second is the new equal protection interpretation. This pertains to the fundamental interests of the student-athlete (i.e., professional sports). The equal protection clause has not benefited student-athletes who have a fundamental interest in seeking a professional career through college athletics.

Common law developments that may be termed "Doctrine of Private Associations" partially restrict the actions of the National Collegiate Athletic Association.

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[3]Arthur B. Culvahouse, ed., 1972-1973 Annual Survey of American Law, (Dobbs Ferry, New York, 1973), p. 525.

Courts have been guided by the principle that private associations require a certain degree of freedom from external intervention in order to achieve their purposes. However, the courts have not hesitated to intervene when the action of the Association clearly violates its own rules such as in perpetuation of fraud, bad faith or malicious intent, or when the Association's actions are arbitrary or unreasonable. Table 5 shows Saulny v. NCAA citing this jurisdiction.

Philpot and Mackall dealt specifically with college athletic associations and their role in the courts. They contended that:

> Even if one assumes that such associations are not affected with public interest and that athletes do not suffer substantial injury as a result of being declared ineligible, the historical justifications for non-intervention do not apply in the case of athletic associations. The athletes have not voluntarily submitted to the authority of the athletic association; the associations have well developed sets of rules; and courts can grant relief in the form of declaration of eligibility.[4]

The Sherman Act states that any contract or restraint of trade or monopoly against another person shall be illegal. This act, passed in 1914, has been cited in litigation. Individuals and groups argue that the Association is in violation of this statute and have brought suit against it to retain their rights.

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[4]Philpot and Mackall, op. cit., p. 916.

The Clayton Act defines the procedure that is used in prosecuting defendants found in violation of the Sherman Antitrust Act. Any injured party may sue in the District Court for the recovery of damages three times the amount sustained. The plaintiff may recover damages if he can prove irreparable harm may occur. Violations of the Sherman Act must be determined before damages can be awarded. Table 7 cites litigation involving the Sherman and Clayton Antitrust Acts.

Table 7

Litigation Involving Antitrust Laws

Case	Sherman Act, Title 15 Section 1	Sherman Act, Title 15 Section 2	Clayton Act, Title 15 Section 15	Clayton Act, Title 15 Section 26
Buckton v. NCAA	X	X	X	
CAPS v. NCAA	X	X	X	X
Highley v. NCAA	X	X	X	X
Jones v. NCAA	X	X	X	X
Samara v. NCAA	X			

INTERPRETATIONS OF CONSTITUTIONAL AMENDMENTS

The interpretations of the Constitution of the United States and its Amendments have been cited in the Code of Laws of the United States of America. This United States Code Service interprets notes and decisions

that have been rendered in cases involving constitutional jurisdiction.[5]

Most of the cases in this study solicited interpretations under Title 42 of the United States Code Service and Title 28 of the Federal Code Annotated.[6] Titles 28 and 42 define civil rights actions and judicial procedure in the Federal courts. Table 8 illustrates the litigation citing the jurisdiction of these titles.

The following sections of Title 28 summarize the interpretations of the Federal jurisdiction in the litigation. Section 1254 explains the method of appeal to the Supreme Court before or after rendition of judgment in the lower courts. Section 1331 declares that the District Court has jurisdiction when the amount of damages is over $10,000. Section 1337 indicates that the District Courts have original jurisdiction over antitrust suits.

Title 28, Section 1343(3),(4), is the most used interpretation in the litigation. Table 8 shows thirteen

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[5]United States Code Service, Lawyers Edition, Judicial Procedure Title 28 and Public Health and Welfare Title 42 (Rochester: The Lawyers Cooperative Publishing Company, 1973).

[6]Ibid.; also see Federal Code Annotated, The Code of Law of the United States of America (Indianapolis: Bobbs-Merrill Company, 1969).

Table 8

Litigation Involving Civil Rights and Judicial Procedures

Case	Title 28 Section												Title 42 Section			
	1254(1)	1331	1332	1337	1343(3)(4)	1391(b)	1406(a)	1441(a)	1446(e)	1450	2201	2202	1981	1983	1985	1988
Achampong v. NCAA					X						X	X		X		
Buckton v. NCAA					X								X	X		
Datillo v. NCAA					X									X		
Golden Bear Ath. Fund v. NCAA		X			X								X	X	X	
Grant and Williamson v. NCAA					X			X	X	X				X		
Highley v. NCAA					X						X				X	
Howard U. v. NCAA		X														
Jones v. NCAA				X	X						X	X		X		
Kanter v. NCAA					X									X		X
Larson v. NCAA					X						X	X				
McDonald v. NCAA														X		
New v. NCAA			X				X						X	X		
Parish v. NCAA					X						X	X		X		
Samara v. NCAA		X			X									X		
Saulny v. NCAA					X	X					X	X				
Schubert v. NCAA	X				X									X		
Smith v. NCAA					X								X	X		

cases citing the Civil Rights Act as the Federal jurisdiction involved. This Section declares that:

> The District Courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person: . . .
> (3) to redress the deprivation, under color of any State Law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;
> (4) to recover damages from such action.[7]

Section 1391 declares that District Courts have jurisdiction only where all defendants or all plaintiffs reside within its boundaries where claim was filed. Section 1441 gives jurisdiction to a District Court over the State Court in a civil action. Section 1446(e) explains that a petition for removal from a State Court to a District Court causes action to cease in the State Court. Section 1450, applied in only one case, Grant and Williamson. The interpretation of this declares that when civil action is removed from State to District Court, all goods, bonds securities, by either party, and all injunctions, orders or opinions shall remain with the State Court until dissolved by the District Court.

Sections 2201 and 2202 explain the procedure of the Federal courts in each case. Section 2201 provides for

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[7]Ibid., p. 474.

the Federal court to issue a final declaration in any action except cases involving Federal Taxes. Section 2202 grants the adverse party the opportunity to file for a rehearing after the final decree has been issued. Table 8 cites three cases applying this Section for additional recourse.

Title 42 contains the definitions of the several civil rights acts as interpreted by the notes and decisions of the United States Code Service.[8] It is not for the courts to engage in policy making but to define the statutory laws contained in civil rights legislation. Section 1981 declares equal rights under the law to all persons in the United States and in every state and gives full and equal benefit of all laws.

Section 1983 is cited in thirteen cases in this study as jurisdiction under which the National Collegiate Athletic Association has violated the rights of an individual (Table 8). This section explains that a person who deprives another person of his rights or privileges under the Constitution shall be liable for redress or damages.

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[8]United States Code Service, op. cit., pp. 196, 219, 292-294.

Section 1985 declares that an injured party may recover damages if another person has attempted to deny him equal protection or if the right of any person is deprived by the actions of another.

Section 1988 of Title 42, clarifies the common law statutes. It states that these statutes shall be in effect in the District Courts where civil and criminal matters are deficient under the remedies of the Constitution.

Each of these Amendments to the Constitution and definitions and interpretations of the Amendments have been cited in the litigation. Some cases refer to only one, others cite as many as eight of the Federal laws. If the litigation does not involve the jurisdiction of the Constitution of the United States, the case cannot be solved in the Federal courts. Twenty-five cases in the study were tried in the Federal courts. Six were referred to the Court of Appeals and, as shown in Table 9, one to the United States Supreme Court.

Table 9

Jurisdiction of the Litigation

Case	State Court	Federal Court	Court of Appeals	Supreme Court
Achampong v. NCAA		X		
Associated Students, Inc. v. NCAA		X	X	
Begley v. Mercer U.		X		
Behagen v. Inter. Conf. of Faculty Reps.		X		
Bounds v. ECAC	X			
Buckton v. NCAA		X		
Calif. State U.-Hayward v. NCAA	X			
Casperson v. Bd. of Regents of U. of Minn.	X			
CAPS v. NCAA		X	X	
Curtis v. NCAA		X		
Datillo v. NCAA		X		
Dr. Olivett v. NCAA	X			
Fisk U. v. NCAA	X			
Golden Bear Ath. Fund v. NCAA		X		
Grant and Williamson v. NCAA	X	X		
Highley v. NCAA		X		
Howard U. v. NCAA		X	X	
Ibarra v. NCAA	X			
Jones v. NCAA		X		
Joslyn v. Byers		X		
Kanter v. NCAA		X		
Larson v. NCAA		X		
McDonald v. NCAA		X		
NCAA v. McDaniels, ABA		X		
NCAA v. Porter	X			
New v. NCAA		X		
Parish v. NCAA		X	X	
Samara v. NCAA		X		
Saulny v. NCAA		X		
Schubert v. NCAA		X	X	X
Scott v. NCAA		X		
Smith v. NCAA	X	X	X	
State Bd. of Ed. v. NCAA	X	X	X	
Taylor v. Wake Forest U.	X			

Chapter V

LITIGATION AND THE NATIONAL COLLEGIATE ATHLETIC ASSOCIATION

The business of maintaining an amateur athletic program is confronted with many problems. The Association is based on self actualization and perpetuation. It establishes its own policies and is required to function effectively by them. Yet, in the contests of keen and often heated competition among the 815 members,[1] violations do occur.

It has been established that when a charge is initiated by an institution, a three-member Committee on Infractions representing the Association will investigate and submit a report. This report is subsequently submitted to the eighteen-member Council. In consultation with the institution involved, the Council will request cooperation in the investigation. If the violation is resolved, no further action is taken; however, if it justifies termination or suspension of membership, the Association body will be asked to vote on the issue at the National Convention.

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[1]NCAA News, (May 15, 1975), 12-6:3.

Violators have the opportunity to appeal the decision upon the discovery of new evidence. Penalties imposed upon an institution may derive from the Council, the Committee on Infractions or the conference of the infringing member. Within this framework, the Association attempts to maintain balance among its members. The National Collegiate Athletic Association investigates over 150 complaints each year and its expenditure in legal fees has been nearly one-half million dollars in the last four years.[2]

The previous chapters have categorized the constitutional laws and National Collegiate Association rules that apply to the litigation. The individual cases cited here are listed in Appendix B. These cases are categorized according to the rules of the Association in the order of their prominence.

The thirty-four cases in this chapter illustrate the extent of the authority of the Association. The Association is the plaintiff in two cases in which alleged improper and illegal actions were committed in contravention of its rules. The Association is the defendant in twenty-seven other cases and is implied in the five related cases only as its rules pertain to the case.

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[2]National Collegiate Athletic Association, Proceedings of the 69th Annual Convention, p. 65.

The violations have involved eleven separate categories of the regulations of the Association. Two of the regulations have been litigated in the courts eighteen times: the academic eligibility rule nine times, and the amateur rule nine times.

The categories of regulations are as follows:

1. 1.600 and 2.000 Grade Point Average
2. Amateur rule
3. Transfer students
4. Foreign students
5. Certification of all-star contests
6. Extra event certification
7. Television regulations
8. Procedural rights for appeal to the Enforcement Committee
9. Five-year rule
10. Hardship rule
11. Other

1.600 AND 2.000 GRADE POINT AVERAGE RULE

This rule constitutes one of the two most important areas in maintaining eligibility and conformity among the participating members of the Association. All of the cases have been tried since 1972. The plaintiffs have have attacked the reasonableness and validity of the 1.600 and 2.000 grade point average rule. The courts have not

upheld the ruling of the Association in all of the litigation. This fact has necessitated a review of the rule by the Council. The 1.600 rule emerged in 1966 and was the subject of many official interpretations by the Association until a change in January 1973. At that time the new 2.000 rule was adopted and only one court action has tested its validity.

The development of the term "Student-Athlete" is not complete. The Association is still seeking a viable method of obtaining a high level correlation between students and athletes in order to be assured of the success of the individual prior to matriculation at a given institution. It is on this premise that the Council has worked. Article Two, Section 2(a) of the Constitution, 1974-1975 states:

> The competitive athletic programs of the colleges are designed to be a vital part of the educational system. A basic purpose of this Association is to maintain intercollegiate athletics as an integral part of the student body, and by so doing, retain a clear line of demarcation between college athletics and professional sports.[3]

It was to help meet this purpose that the 1.600 rule was created. The intent is still visible in the new 2.000 rule. It is a determined effort on the part of the majority

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[3]NCAA Manual 1974-1975, p. 5.

of the member institutions of the Association to regulate the classification of student-athletes on an equal basis. Time will be primarily the determining factor in the testing of the new rule, as it affects conflicts in classroom and field activities whose resolutions ultimately will pass to the courts. The member institutions of the National Collegiate Athletic Association are attempting to insure the student-athlete the opportunity to compete during his college residence and four years of eligibility; and to obtain concurrently the academic degree awarded by that institution.

Through an examination of the cases before the bar, it is possible to note the trends of the rule interpretations and the reasons for the changes. The orders of the courts are based on many laws, rights and statutes. They represent years of interpretations and findings. The Constitutional Laws and statutes, as determined by the courts, have been previously reported here. A summarization of the regulations of the National Collegiate Athletic Association and the Constitutional Laws for promotion of amateur athletics in the United States follow. Each case is introduced by its title, the sport or activity involved, the Association's Rule that was allegedly violated, the Federal jurisdiction under which the case was heard and the decision of the court.

Curtis v. National Collegiate Athletic Association

Track, Football

1.600 Rule

Fourteenth Amendment

Preliminary Injunction granted, Moot

This is probably the most famous case involving the 1.600 rule. It has been referred to as a "landmark" case and cited in many of the other similar cases before the bar. It was the first of its kind and was decreed against the National Collegiate Athletic Association in February 1972.

The case involved Isaac Curtis and Larry Brumsey. Curtis was a part of the football and track programs and Brumsey a member of the football team at the University of California at Berkeley. Both entered the University as freshmen in September of 1969.

Their entrance came under the "four-percent rule." This rule allows 4% of the incoming freshmen to be admitted to the University without the standardized test scores, the grade point average or the attainment of a high rank in the high school class. It is a program encompassing all of the state-supported institutions in California, and is designed to assist those of minority groups who show potential to succeed but do not measure up to the classification standards for regular admission

requirements. However, in order to be classified as a student-athlete, it is necessary that one successfully complete a scholastic aptitude test either before or after admission to the university on a designated national testing date. The plaintiffs received financial aid based, at least in part, on their athletic ability, and it was not until one full year following their admission that the discovery was made that no test scores were on file. Therefore, the Association investigated the eligibility of the plaintiffs. They were declared to be in direct violation of Bylaw 4-6-(b).

Under the procedure followed by the Association in regulating athletics, it is the institution which declares individual athletes ineligible. Any sanctions imposed by the National Collegiate Athletic Association are against the school and not the individual. The University refused to declare the players ineligible.

In granting the preliminary injunction, Judge Albert C. Wollenberg stated the following:

> It is not disputed that some NCAA member institutions do not follow the 1.600 rule, and continue as members in good standing. Their athletic teams are barred, however, from NCAA-sponsored championship events . . . and certain other benefits controlled by the NCAA. The University of California at Berkeley has elected to be governed by the 1.600 rule

> and was, therefore, subject to its terms at all relevant times.[4]

In August of 1971, the Council adopted a formal resolution finding the University of California guilty of allowing ineligible individuals to compete and of giving them financial aid. The Council imposed several penalties on the University, including a probationary status for a period of one year after all requirements of the 1.600 rule had been met.

Judge Wollenberg, no doubt, took into consideration the fact that both plaintiffs had achieved a good academic standing at the time of the litigation. One of the plaintiffs had accumulated a 3.0 and the other a 2.5 grade point average, thereby surpassing the required 1.600 necessary for admissions.

In spite of the Association's rules, Judge Wollenberg declared a preliminary injunction against the National Collegiate Athletic Association and stated:

> . . . pending the trial in this matter, the defendant Association, its officers, agents, and their assigns and successors, and all those acting in concert with them, and/or acting under their direction or subject to their control should be and are hereby enjoined and restrained from,
>
> a)applying to and/or enforcing against the named plaintiffs or either of them that certain provision of the NCAA Bylaws commonly known as the 1.600 rule (Bylaw 4-6-[b]) insofar as the

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[4]Curtis v. NCAA, Civil No. C-71 2088 ACW, (N. D. Calif., Preliminary Injunction and order, Unreported, 1972), p. 4.

> rule has been construed and interpreted to render a student in good academic standing ineligible to compete in intercollegiate athletics if;
> 1)he failed to predict a 1.600 grade point average prior to his entrance to the college or university, and
> 2)he received financial aid based in part upon his athletic ability while in his first year at the institution: . . .[5]

No final action was taken by the court against the Association. The case became moot when the plaintiffs left the University.

Parish v. National Collegiate Athletic Association

Basketball

First and Fourteenth Amendments, 28 U. S. C. Section 1343(3), 2201, 2202, 42 U. S. C. Section 1981, 1983

1.600 Rule

Restraining order issued, Injunction denied

In January of 1973, Centenary College, a private college in Louisiana, was placed on probation for alleged infractions of twenty-two of the National Collegiate Association Regulations.

Robert L. Parish and four other basketball players had been admitted and declared eligible for participation by the College. Parish, a 7' 1" high school All-American, was sought by many colleges. He did not meet the 1.600 requirement and was turned down by all other institutions.

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[5]Ibid., pp. 8-9.

Centenary College attempted to convert his American College Test scores to 1.600, which was in direct violation of the regulations. Even the conversion table did not predict a 1.600, but Centenary signed Parish to a four year athletic scholarship and declared that it was drawn up "in accordance with the provisions of the Constitution of the NCAA, pertaining to the principles of amateurism, sound economic standards and financial aid to student-athletes."[6]

Thus, when the Association placed Centenary on probation, Parish and the other four initiated the suit for temporary and ~~permanent injunctive relief against~~ the Association.

Any case qualifying for Federal jurisdiction must challenge the Constitutional Laws. Parish filed the suit under violation of the equal protection clause of the Fourteenth Amendment and the right of association under the First Amendment of the United States Constitution.

The Court, under Judge Benjamin C. Dawkins originally granted a temporary restraining order against the Association and then extended that order. The original order was allowed to expire when Centenary was not invited to a post season basketball tournament.

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[6]Parish v. NCAA, 361 F. Supp. 1224 (1973).

During investigations of the infractions, the Association found that all plaintiffs had achieved a higher scholastic grade point average than the 1.600 rule required and that Centenary had not declared the athletes ineligible to participate in basketball. Under the sanctions of the Association, it is the school and not the Association who declares ineligibility.

Judge Dawkins later denied the injunction against the Association because of the lack of substantial constitutional question. In the District Court, Judge Dawkins answered the plaintiff's arguments as they pertained to constitutional violations by stating:

> The 1.600 rule in no way deprives any plaintiff of his right to associate . . . with those persons competing in interscholastic athletic events . . . and . . . none of the plaintiffs already have acquired a security interest in specific benefits that can be defined as property interests.[7]

Neither the First nor Fourteenth Amendments was violated by the Association.

Two other statements of interest in this litigation involve the State Action controversy and the irreparable injury claim by the plaintiffs. Judge Dawkins is in agreement with Judge Wollenberg in the Curtis case on the regulation of schools and universities by the National Collegiate Athletic Association. He asserts, "There is

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[7]Ibid., p. 1229.

definitely State Action in the Constitutional sense."[8] Judge Dawkins also quotes Judge Thomas J. MacBride in Associated Students, Inc.:

> The opportunity to participate in intercollegiate athletics is a fleeting one. A student can compete for a maximum of only four years and then his college athletic career is ended. During those four brief years, the athlete is afforded the opportunity to compete and work with others, to gain confidence in himself, and to mature emotionally and physically. Also, it cannot be overlooked that many college athletes lay the foundation for a rewarding professional athletic career during their four years of intercollegiate competition. In this day and age of professional sports, Olympic games, and the like, it cannot be denied that college athletics can be of the utmost importance to many student athletes.[9]

One of the requirements for the issuance of an injunction is that of probable success at trial. Judge Dawkins felt that such cause was definitely lacking and denied the preliminary injunction.

Judge Homer Thornberry, Circuit Judge, Court of Appeals, reaffirmed the denial stating:

> Whatever the status of the alleged right to participate in interscholastic athletics, in the present circumstances we discern no "property" or "liberty" interest of which appellants have been deprived because of the NCAA's enforcement of its 1.600 rule against Centenary. . . . Accordingly, the due process clause affords them no protection.[10]

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[9]Parish v. NCAA, 361 F. Supp. 1220 at 1229 (1973).

[10]Parish v. NCAA, 506 F. 2d 1034 (1975).

Associated Students of California State University, Sacramento v. National Collegiate Athletic Association

Track and Football

First and Fourteenth Amendment

1.600 Rule

Preliminary Injunction granted, Reversed in Court of Appeals

This case upheld the 1.600 rule. The plaintiffs sought and won a preliminary injunction in the District Court and lost in the Court of Appeals.

Eleven student-athletes were admitted to California State University at Sacramento under the 4% rule and were not required to take standardized tests nor predict a 1.600. Only one of the plaintiffs took the American College Test, and did not predict a 1.600 grade point average. All eleven were certified as eligible by the institution. Each one did obtain the 1.600 average by the end of the first year at the institution.

When California State University at Sacramento became aware of the violations, they reported the matter to the Association. Invoking its usual dicta, the Association asked the University to declare the eleven student-athletes ineligible for one year or to declare the entire athletic program under probation.

The Associated Students, Incorporated, is an organization which includes all officially enrolled full and part-time students of the University. The eleven plaintiffs were student-athletes and members of the organization.

The plaintiffs argued that the 1.600 rule is an unreasonable classification in violation of the equal protection clause of the Fourteenth Amendment and the actions of the Association constitute State Action. Both the District Court and the Ninth Circuit Court of Appeals concluded that: "The actions of the NCAA did constitute 'State Action,' as found in Parish and Curtis."[11]

Judge Thomas J. MacBride of the District Court, in rendering a decision in this case, granted a preliminary injunction against the Association. He ruled that two of the student-athletes, Lopez and Martinez, might suffer irreparable injury if not allowed to compete. He observed that the other nine athletes had already completed one year of ineligibility, and that Lopez and Martinez had completed their first year at the University and received grades higher than the 1.600 grade point average required.

In reversing the decision in the Courts of Appeals for the Ninth Circuit, Circuit Judges James R. Browning

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[11]Associated Students, Inc. v. NCAA, 493 F. 2d 1251 at 1254 (1974).

and Walter Ely, and District Judge Fred M. Taylor dealt at some length with two vital points substantiating the regulations of the Association. The first point defined the student-athlete, and the second outlined the necessity of enforcing the rules.

> 1. The evidence of the NCAA reveals that the NCAA adopted the 1.600 rule in order to reduce the possibility of exploiting young athletes by recruiting those who would not be representative of an institution's student body and probably would be unable to meet the necessary academic requirements for a degree; and also to foster and preserve the concept of college athletics as a sport engaged in by athletes who were first and primarily college students, and to recognize the probability that any student who could not meet the requirements of the Rule should not engage in athletics during his freshman year, but should devote his full time to study.
>
> We believe that the 1.600 Rule's classification is reasonably related to the purposes of the Rule for which it was enacted. All persons in a similar class or in similar circumstances are intended to be treated alike. It may be that in the application of the Rule unreasonable results may be produced in certain situations, which is not unusual in the application of a generalized rule such as the one here. We further believe that the Rule, . . . is reasonably related to the purposes for which the Rule was enacted.
>
> 2. Needless to say, a rule must be enforced. Without some form of penalty, the Rule would be meaningless, leaving member schools free to do as they pleased in recruiting high school athletes. Like the Rule, the penalty must be reasonably related to the Rule's purposes, but no more is required; we need not be convinced that the penalty is the best that might have been provided. . . . According to plaintiffs' theory and the decision of the lower court, all member schools could recruit athletes without giving any examination to them, or those athletes whose examinations did not predict successful graduation, and then if they did obtain a higher grade point average than 1.600 after the

> first year in school, they would be entitled to participate in NCAA sponsored athletics thereafter. Such a situation would prevent effective enforcement of the 1.600 Rule which we believe to be rational in order to achieve NCAA's objective. In order to meet that objective, determination of the eligibility of a student-athlete must be made at the time of the student's application and certification. If determination of eligibility is made at a later date, the classification would be destroyed. . . . It would also permit ineligible students to engage in first year athletics along with those who proved to be eligible during the first year which, in effect, would destroy the purpose of the 1.600 Rule. In our opinion, NCAA's official interpretation of its 1.600 Rule does not create a classification which violates the Equal Protection Clause of the Constitution.[12]

In issuing a decision against the plaintiffs in the Court of Appeals, per curiam, the opinion stated:

> In our opinion, there is no clear showing of probable success by plaintiffs in this action and that possible irreparable injury will occur to any of them.
>
> The order granting the preliminary injunction is reversed.[13]

California State University-Hayward v. National Collegiate Athletic Association

Track and Baseball

1.600 Rule

Fourteenth Amendment

Injunction granted, Pending

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[12]Associated Students, Inc. v. NCAA, 493 F. 2d 1251 at 1254 (1974).

[13]Ibid., at 1257.

In the fall of 1969, Ronald McFadden entered California State University at Hayward, California, under a special program called the Eqı al Opportunity Program. A year later, Melvin Yearby was admitted under the same program. McFadden participated in track and Yearby in baseball, each completed twelve or more hours in the first semester, with grade point averages of 2.24 and 3.0 respectively. Both proceeded to participate in the second semester but not post-season competition.

In November of 1972, the Association declared that both athletes had failed to comply with the 1.600 rule and that California State University should declare them ineligible for a one-year period, 1972-1973.

In the proceedings of the preliminary hearings, the plaintiffs' lawyers made three important observations:

> In 1969, a letter was sent to the Far Western Conference explaining the difference between in-season conference and post-season championship eligibility requirements. This distinction would permit a conference to apply its own eligibility rules for in-season conference activity as long as athletes who were not in strict compliance with the Association's eligibility requirements were not eligibile for post-conference championship competition.
>
> Imposing a one year ineligibility penalty upon McFadden and Yearby would violate the NCAA's own Bylaws, "to lose eligibility for one year," as they had already sat out one full term upon entrance to the institution.
>
> The NCAA's action would force California State to violate the constitutional rights of its students. To penalize Yearby and McFadden would be to deprive them of the right to participate in activities for which they are eligible in violation of their rights guaranteed them by the

> Fourteenth Amendment to the United States Constitution. Also, totally deserving athletes would be incapable of competing in post-season competition without reason or justification.[14]

The preliminary injunction against the Association was granted on the basis that Yearby and McFadden would be declared ineligible prior to their appeal and without a final decision on their case being rendered and that penalty would exceed the one year prescribed by the Association.

The case is pending. The Association based its defense on the fact that California State is in violation of its condition of membership.

Golden Bear Athletic Fund
v. National Collegiate
Athletic Association

Track and Football

1.600 Rule

First, Fifth and Fourteenth Amendment, 28 U. S. C. Section 1331, 1343(3)(4), 42 U. S. C. Section 1981, 1983, 1985

Injunction dismissed with prejudice

This is a companion case to Curtis v. NCAA, and is considered a landmark case because of its possible ramifications. The complaint cites the First, Fifth and Fourteenth Amendments as legal jurisdiction for the Federal

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[14]California State University-Hayward v. NCAA, Civil No. 447076, (Sup. Ct. Calif., Complaint, Filed March 13, 1974, Unreported), pp. 7-9.

Court, and is a continuation of the attack upon the Association's 1.600 rule.

The Golden Bear Athletic Fund, administered by W. Leonard Renick, is a charitable trust fund established for the benefit of students engaged in intercollegiate athletics at the University of California at Berkeley. This fund is available to the academically unqualified as well as minority or underprivileged groups. The plaintiffs allege that the purpose of their organization is impaired by the Association because some trust beneficiaries (Curtis and Brumsey) may not receive benefits because of the improper and unauthorized acts of the defendants.

The plaintiffs contend that a controversy exists as to the rights and duties of the Association and the Academic Institution. They interpret the principle of institutional control and responsibility as that being exercised by the institution as well as its adherence to sound academic standards as they are stated in the Manual, Constitution Article 3, Sections 2 and 3, in Appendix A. This article provides for the individual institution to control its own intercollegiate athletic program and instigate its own admissions and progress standards which are applied to all students. If this is a correct interpretation, then the 1.600 rule is in violation of the Association's own Constitution.

The plaintiffs contend that the resolution declaring the University of California at Berkeley ineligible for championship play is arbitrary and capricious and is in violation of Bylaw 4, Section 5, which states ". . . one forfeits his eligibility for one season for all NCAA championship events."[15]

Curtis had already forfeited one season of eligibility and Brumsey had not participated in a championship event, therefore this interpretation would not apply.

Furthermore, the 1.600 rule is discriminatory against students who are athletes and students from minority or underprivileged groups referred to as "4%" under admissions standards of the institution. It is acknowledged that students other than athletes are not required to predict a 1.600 grade point average prior to admission to the institution.

The defense answered the complaint by stating that the University had not exhausted all remedies available to correct any alleged errors and therefore the suit for injunction was premature.

Judge Albert C. Wollenberg dismissed the suit with prejudice, declaring "The . . . action having been fully

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[15]NCAA Manual, 1947-1975, p. 54.

resolved and compromised, the complaint is hereby dismissed. . ."[16]

It was understood that had the plaintiffs been in a position to win the case, on its merits, it would not have been dismissed.

McDonald v. National Collegiate Athletic Association

Basketball

1.600 Rule

Fourteenth Amendment, 42 U. S. C. Section 1983

Temporary restraining order granted, Association dismissed

McDonald and Pondexter, two basketball players at California State University, Long Beach, California, filed a complaint for injunction and declaratory relief against the Association in 1974. They based their claim on the unconstitutionality of the 1.600 rule, violation of the Fourteenth Amendment as well as the Association's failure to afford them a hearing according to their procedural rights.

The penalties imposed for twenty-six infractions were leveled against Long Beach State University by the Association, and not personally against the plaintiffs. These infractions included practice, participation

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[16]Golden Bear Athletic Fund v. NCAA, Civil No. C-71-1930 ACW (N. D. Calif., Dismissal order, Unreported, 1972).

and financial assistance while ineligible under the 1.600 rule, as well as the use of fraudulent test scores to certify the eligibility of the plaintiffs.

This case dealt to a great extent with the State Action concept. Judge Manuel L. Real had at his disposal three other cases which had already confronted this issue.[17] His statements have paved the way for future litigation that may place a restraint on the authority of the Association.

Judge Real stated:

> The plaintiffs must be supported by a finding that the Association is--(1) state action as required to sustain a claim arising under 42 U. S. C. 1983; and (2) is violative of the guarantees of Fourteenth Amendment due process.[18]

The Memorandum, Opinion and Order filed by Judge Real held that the Association's actions did not involve State Action and the athletes had no due process right to a hearing. He based his opinion on the premise that the Association has an existence separate and apart from the educational system of any State.

Judge Real further noted:

> The individual athlete has no interest, constitutionally protected or otherwise, in the institution's membership and participation

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[17]Curtis, Parish, Associated Students, Inc., op. cit.

[18]McDonald v. NCAA, 370 F. Supp. 625 at 629 (1974).

> in the activities of the Association. . . . With the determination that the NCAA action complained of herein does not amount to state action, the plaintiffs . . . have no standing to claim invasion of any protectible interest under the United States Constitution as to the NCAA. Their complaint, therefore, as to the NCAA, must be dismissed.[19]

Achampong v. National Collegiate Athletic Association

Track and Tennis

1.600 Rule

Fifth and Fourteenth Amendment, 28 U. S. C. Section 1343, 2201, 2202, 42 U. S. C. Section 1983

Preliminary Injunction denied

In the spring of 1973, an investigation of Pan American University of Edinburg, Texas, discovered eight athletes to be in violation of the Association's regulations. The Association recommended that all eight be declared ineligible on the basis that they had not taken the American College Test as required on a national test date and that they did not predict a 1.600 grade point average from the Scholastic Aptitude Test scores before receiving financial aid or practicing with a varsity team. The plaintiffs were involved in track and tennis.

Achampong and seven other varsity athletes were declared certified as eligible by the University on

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[19]Ibid., at 631-632.

April 30, 1973. The plaintiffs chose to file a civil suit for an injunction against the Association's barring their participation in intercollegiate athletics. Pan American University was not made a party to the suit.

The plaintiffs pleaded state action, irreparable injury, denial of equal protection and due process of law. Their lawyers contended that failure to provide a hearing was denial of due process, and that the 1.600 rule was discriminatory to blacks, Mexican Americans and other minorities and was additionally a denial of equal protection.

The plaintiffs failed to show probable success on the merits of their case at trial and application for preliminary injunction was denied.

Judge Reynaldo G. Garza agreed with the defendant by stating that: "The Constitution does not guarantee the right of a student to participate in intercollegiate athletic competition."[20]

Judge Garza also wrote that since the member institutions participate voluntarily, the Association cannot force them to take any action. It was not the National Collegiate Athletic Association, but Pan American University, acting on its own initiative, that declared the plaintiffs ineligible.

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[20]Achampong v. NCAA, Civil No. 74-B-9 (S. D. Texas, Memorandum, Unreported, 1974), p. 7.

In issuing the denial of the preliminary injunction, Judge Garza stated:

> Although constitutional protections cannot be extended to the plaintiffs in this case, the plaintiffs have succeeded in piercing the image of control and influence the Association has attempted to project. . . . The plaintiffs are completely without fault in this matter and can be offered no relief by this Court, due to the circumstances of this case. The NCAA was only applying the rules, which were drafted by the member-institutions, and Pan American was not made a party to the suit, and, therefore, this Court has no control over their action.[21]

Schubert v. National Collegiate Athletic Association

Tennis

2.000 Rule

First, Ninth and Fourteenth Amendments, 28 U. S. C. Section 1254(1), 1343(3)(4), 42 U. S. C. Section 1983

Preliminary Injunction denied

This was the first litigation to test the new 2.000 rule. The rule was passed by the membership of the Association in January 1973 and was a replacement of the controversial 1.600 rule. The new rule states that a student-athlete who did not achieve a minimum grade point average of 2.000, based on a maximum of 4.000 for all work taken in high school, shall be ineligible for athletic grant-in-aid and for participation in athletics or in

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[21]Ibid., p. 8.

organized athletic practice sessions during his first year in residence at the college or university.

Paul Schubert enrolled in the fall term and compiled a 3.2 grade point average for that quarter. He completed his second term with a 1.8 for an overall average of 2.5. His goal was to be eligible to compete in the spring semester on the basis of his college academic average which was higher than that accrued during his high school attendance.

Judge S. Hugh Dillin denied the preliminary injunction on the grounds that the Federal courts had no jurisdiction on the constitutional arguments of the case and that no probable success nor irreparable injury would occur if the court did not grant the injunction.

The arguments by the defendants denied Schubert's claim under the First, Ninth and Fourteenth Amendments. They claimed that no state action was involved in the case.

> The record further shows that each member institution of the NCAA has the right voluntarily to adopt or not adopt the 2.000 rule, and that neither its NCAA membership nor the maintaining of such membership in good standing is or ever has been contingent upon a member's adoption and enforcement of the 2.000 rule or the 1.600 rule.
>
> The NCAA acknowledges that the courts in the Associated Students and Parish cases, found state action by the NCAA, but urges that the reasoning of the court in the McDonald case is correct. This Court should adopt the reasoning in McDonald and hold that the federal courts

> lack of jurisdiction to consider Schubert's claim against the NCAA.[22]

Thus, the State Action controversy continues in the courts only to determine whether they have jurisdiction over the litigation presented to them. While the National Collegiate Athletic Association is a private, voluntary organization and private organizations, under some circumstances, may become agencies or instrumentalities of the state so as to subject them to constitutional limitations on state action, there is no evidence of such a relationship in the present case.

The plaintiff filed a petition for a writ of certiorari (permission to move a case from a lower court to a higher court) from the Court of Appeals to the Supreme Court. In defense of the petition, lawyers for the Association argued:

> . . . or that petition's right to play intercollegiate tennis his freshman year in college is a "fundamental right" . . . that any contention would be fruitless in light of the holding in San Antonio Independent School District v. Rodriquez, 411 U. S. 1, 33-36 (1973), that education is not a right explicitly nor implicitly guaranteed by the constitution.[23]

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[22]Schubert v. NCAA, Civil No. 74-1282, (Brief for Defendant, Unreported, 1974), pp. 19-20.

[23]Schubert v. NCAA, Civil No. 74-1067, (Brief for respondents in opposition to writ of certiorari, Unreported, 1974), p. 5.

The Supreme Court affirmed the lower court's decision.[24]

Howard University v.
National Collegiate
Athletic Association

Soccer

1.600 Rule, Foreign Student Rule, Five-Year Rule

Fifth and Fourteenth Amendment

Foreign Student Rule permanently enjoined from being enforced

Howard University and Mori Diane, a soccer player, sought relief from the Association's eligibility rules governing foreign players, the Five-Year Rule and the 1.600 Rule.

Howard University placed Third in 1970 and First in 1971 in the Association's soccer championships. Upon investigation, the records showed that one ineligible player in the first tournament and four in the second helped win these honors. The trophies were returned and Howard University was excluded from the 1973 soccer championships as penalty for the infractions.

The 1.600 Rule applies only to championship events. It is fundamental that the grade point average must be predicted prior to entrance into college in order to

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[24]Schubert v. NCAA, 506 F. 2d 1412 (1975).

maintain the high standards of the student-athlete. In this instance it was inconceivable that a student from a non-English speaking country could predict a 1.600 on an American aptitude test or that he would have access to taking such tests.

The Association had written said rule in order to prevent institutions from soliciting established foreign student-athletes for the purpose of improving team quality without maintaining academic proficiency.

The Five-Year Rule was claimed to be discriminatory and constitutionally prejudiced against foreign players. The Manual states:

> An institution shall not permit a student-athlete to represent it in intercollegiate athletic competition unless he meets the following requirements of eligibility:
> He must complete his seasons of participation within five calendar years from the beginning of the semester or quarter in which he first registered at a collegiate institution . . .[25]

Judge Gerhard A. Gesell ruled on this regulation in writing his decision in this prominent case. He stated that:

> The five-year rule is designed to compel the regular progression of athletes through a four-year college curriculum without unnecessary or material delay. The rule

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[25]NCAA Manual, 1974-1975, p. 15.

> prevents a student athlete from exhausting his eligibility at one institution and then simply repeating the process by enrollment in another institution for an additional four years, or from otherwise artificially prolonging his education for the purpose of extending his athletic career. This rule is applicable to foreign students and American citizen students alike. It is reasonable and fundamental to the Association's objectives and in no way discriminates against aliens.[26]

The Foreign Student Rule, on the other hand, contains an explicit classification according to alienage and is unjustified. Under its terms, foreign students lose a year of eligibility for every year after their nineteenth birthday in which they have participated in athletic competition. No such limitation is placed on American citizens. Plaintiffs argue that this rule is arbitrary, unreasonable, excessively vague, and designed to favor American citizen students over aliens.

Judge Gesell felt strongly about this regulation and stated:

> While the NCAA is properly concerned with preventing older players coming from abroad on the pretext of educational objectives and dominating championship competition because of age and prior sports activity, it was not demonstrated to the Court's satisfaction that there are not other less restrictive means available for accomplishing these objectives. The flat age restriction, stated in the vague terms of the rule's reference to any team or individual participation in athletic competition,

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[26]Howard U. v. NCAA, 367 F. Supp. 926 at 929, (1973)

> results in arbitrary discrimination against aliens. To meet a felt need, the Association has, in effect, "thrown the baby out with the bath."[27]

In the monumental decision, the Foreign Student Rule was declared to constitute a denial of equal protection under the Fourteenth Amendment and the Association was permanently enjoined from any future enforcement of the rule. All other aspects of the complaint were dismissed.

Both plaintiff and defendant have appealed the decision.

Chief Judge Edward A. Tamm rendered his decision in the Court of Appeals and wrote:

> In sum, we conclude that state action is present, that the five-year and 1.600 rules, but not the foreign-student rule, pass constitutional scrutiny, and that no due process violation has occurred. The judgment, therefore, is affirmed.[28]

AMATEURISM

One of the main thrusts of the National Collegiate Athletic Association is to keep professionalism out of intercollegiate athletics. Article 3-1 of the Constitution contains definitions and interpretations that have

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[27]Ibid. at 930.

[28]Howard U. v. NCAA, 510 F. 2d 213 at 222 (1975).

been accepted by the membership, to regulate the amateur status of the student-athlete. Most notable of the stipulations are the ice hockey player regulations, receipt of excessive monies by athletes and the use of agents who peddle the athletic skills of college athletes.

Nine court cases are included in this category. Two of the cases were instigated by the Association and the others constitute court action against the Association as infringement of constitutional rights.

Buckton v. National Collegiate Athletic Association

Ice Hockey

Amateurism, Foreign Student Rule

Fourteenth Amendment, 28 U. S. C. Section 1343(3)(4), 42 U. S. C. Section 1981, 1983, Sherman Act 15 U. S. C. Section 1, 2, Clayton Act 15 U. S. C. Section 15

Preliminary Injunction granted, Appeal pending

This is a precedent setting case under the State Action and Equal Protection clauses of the Fourteenth Amendment. The Association's Constitution was tested for validity of the amateur clause, alien clause and its jurisdiction over ice hockey players.

The action originated when two Boston University ice hockey players filed suit against the Eastern College

Athletic Conference and the National Collegiate Athletic Association to keep the organizations from declaring the players ineligible or imposing any penalties against Boston University.

The regulation, as stated in Appendix A, declares:

> Any student-athlete who has participated as a member of the Canadian amateur hockey association's Major Junior A hockey classification shall not be eligible for intercollegiate athletics.

While attending different schools in Canada, Buckton and Marzo played for Major Junior A teams and both received remuneration for room, board, travel and incurred expenses. This infraction resulted in loss of eligibility.

The Court did find that State Action was present and therefore the Association was subject to constitutional limitations. Judge Joseph L. Tauro decreed that:

> These regulations constitute and impose disparate eligibility standards, one for student-athletes who have played hockey in the U. S. and another for those who have played in Canada. Because the regulations in effect classify plaintiffs, who are resident aliens, differently than their American counterparts, they are inherently suspect and this court is required to subject such classification to strict scrutiny.[29]

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[29]Buckton v. NCAA, 366 F. Supp. 1152 at 1157 (1973).

The Judge further clarified his position:

> A Canadian boy who wants to play hockey at a pace more challenging than at a pick-up level must join one of these (civic groups) teams . . . this requires a boy to transfer his residence and schooling to the Metropolitan area where the team is located. When he does, it is customary for him to receive room, board and limited educational expenses from his team, as did the plaintiffs in this case.
>
> An American boy, on the other hand, can leave his home town to attend a prep school for the same dual purpose of playing hockey while receiving an education. When he does, he may receive financial aid from his school to meet his room, board and educational expenses. Such aid may have even greater dollar value than the aid received by plaintiffs in this case, and yet the American boy need not fear any sanction by the defendant Association.
>
> As stated, the aid received by the American and Canadian student-athletes may be precisely the same, both as to character and dollar value, but the defendant Association would brand the Canadian a professional while accepting his American counterpart as an amateur. This clearly amounts to a disparity in treatment, a classic example of classification which is subject to judicial review.[30]

In summarizing his decision the Judge implied that the damages suffered by the two hockey players would be much more than those suffered by the Association. Implications of professionalism are far worse than being academically insufficient.

This litigation was monumental as it provided the basis for the Association to re-evaluate the guidelines for amateurism in the sport of hockey. The Court findings

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[30]Ibid. at 1160.

were instrumental in the revising of the interpretations of the rules governing ice hockey players in the United States during the 1975 Convention.

Because of the different philosophies of amateurism as sanctioned by the United States and other countries, the Association has been more detailed and descriptive in its interpretations. The Convention accepted a revised version of the amateur rule as it pertains to ice hockey players. In essence, if the player receives pay from a professional, organized team or is sponsored by a professional team, the player is ineligible to participate in the intercollegiate program.

In granting a preliminary injunction against the Association, the court ordered a restraint against Boston University's declaring the plaintiffs ineligible for participation in intercollegiate athletics, and the Association was restrained from imposing any sanctions on Boston University. Appeal is still pending.

Jones v. National Collegiate Athletic Association

Ice Hockey

Amateur Rule

Fourteenth Amendment, 28 U. S. C. Section 1343(3)(4), 1337, 2201, 2202, 42 U. S. C. Section 1983, Sherman Act 15 U. S. C. Section 1, 2, Clayton Act 15 U. S. C. Section 15, 26

Injunction denied

Stephen A. Jones, a freshman at Northeastern University in Boston, Massachusetts, played hockey in Canada during his high school career and two years prior to his matriculation at the University. His talent allowed him to participate at the Major Junior A level in Canada. This case is similar to Buckton and was referred to the Buckton case by Judge Joseph L. Tauro who tried both litigations under the "related case" concept.

The case was litigated under two counts. The first involved the Constitutional Rights, Due Process, Equal Portection, and Civil Rights Act. The second claimed restraint of trade and a conspiracy to monopolize the control of intercollegiate athletics by enforcing the Amateur Rules of the Association.

In April 1974, the plaintiff enrolled in Northeastern University. He asked to try out for the hockey team and proceeded to fill out the Intercollegiate Ice Hockey Affidavit from the Eastern College Athletic Conference and the Ice Hockey Questionnaire from the National Collegiate Athletic Association. Jones had played for the last three years since graduation on Canadian and American amateur hockey teams. His participation included signing of contracts and receiving compensation of room,

board and expenses. Therefore, it was necessary to fill out these required forms.

On November 18, 1974, the Eastern College Athletic Conference granted a waiver to allow Jones to participate in intercollegiate competition on the basis of findings in the Buckton litigation. These findings sought changes in the organization of the regulations pertaining to the Ice Hockey Championships. Most notable of the changes were the Official Interpretations 4, 5 and 6 as noted in the National Collegiate Athletic Association Manual 1974-1975, under Constitution, Article 3-1-(a)-(1) and (3) and (d) and also found in Appendix A.

On October 25, 1974, the Association's Council issued a letter to the Faculty Athletic Representatives and Directors of Athletics of the member institutions indicating a revision of official interpretations concerning the rules of amateurism. These recommendations had been adopted by the Council as official interpretations and were considered to be of sufficient significance to warrant immediate circulation to the membership. It was felt that they applied directly to the eligibility of student-athletes presently enrolled in the member institutions.

The letter stated:

> An amateur team or playing league which receives financial support from a national amateur

> sport administrative organization or an administrative equivalent, which receives developmental funds from a professional team or professional sports organization, shall not be considered a professional team or league.
>
> An athlete who participates on a team considered amateur under the rules of the appropriate amateur sports governing body in his nation and who does not otherwise become professional under NCAA legislation, shall not be considered professional by virtue of such participation.[31]

On October 26, 1974, a letter was sent to the Directors of Athletics at the hockey playing institutions. It stated that if the rules, as revised, could not be upheld, then the Ice Hockey Championships would be suspended. The letter continued:

> The Council does not believe the membership desires its amateur rules, which are applicable to all sports, modified so as to conform to the Canadian definition of amateurism in order to permit a few highly skilled ice hockey players to compete in member institutions which conduct intercollegiate ice hockey programs. Before accepting such a result, the Council believes intercollegiate ice hockey should be suspended until such time as the Association's amateur rules may be applied to that sport.[32]

The plaintiff's complaint had stated that the Association was involved in "big business" in the control and promotion of college athletics and, too, that the Association was organized to regulate television and radio

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[31]Jones v. NCAA, Civil Action No. 74-5519-T (D. Mass., Complaint, Letter from NCAA Council, October 25, 1974, Unreported, Filed December 2, 1974).

[32]Ibid., p. 3.

networks for broadcasting football games. The complaint stated that the rules and regulations regarding hockey players and intercollegiate hockey were also a restraint of trade and commerce on intercollegiate athletics.

The plaintiff's complaint demanded judgment as follows:

> That the acts of the defendants hereinbefore described in denying plaintiff eligibility to participate in intercollegiate hockey constitute a combination and conspiracy in restraint of interstate trade and commerce in violation of the Sherman Act;
>
> That the acts of the defendants hereinbefore described constitute a monopolization of a part of interstate trade and commerce, an attempt to monopolize the same and a combination and conspiracy to monopolize the same in violation of said Sherman Act.[33]

On December 9, 1974, Judge Tauro issued an opinion and order which stated:

> Alleging that the action of the NCAA has injured the plaintiff "in his business and property as an undergraduate college student, as a student-athlete and as a hockey player," plaintiff seeks an injunction and treble damages pursuant to the remedial provisions of the Clayton Act.
>
> Accordingly, the instant case is particularly inappropriate for application of the Sherman Act. The plaintiff is currently a student, not a businessman in the traditional sense, and certainly not a "competitor" within the contemplation of the antitrust laws. The "competition" which the plaintiff seeks to protect does not originate in the marketplace or as a sector of the economy but in the hockey rink as a part

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[33]Ibid., p. 14.

> of the educational program of a major university. And, of equal significance, plaintiff has so far not shown how the action of the NCAA in setting eligibility guidelines has any nexus to commercial or business activities in which the defendant might engage.[34]

The temporary restraining order of December 9, 1974, was vacated and the plaintiff's request for a preliminary injunction was denied.

Grant and Williamson v. National Collegiate Athletic Association

Basketball

Amateurism

First, Sixth and Fourteenth Amendments, 28 U. S. C. Section 1343, 1441, 42 U. S. C. Section 1446(e), 1450, 1983.

Injunction denied, Dismissed, Moot

Ronald Louis Grant and John Lee Williamson, basketball players at New Mexico State University, instituted legal action against the Association on February 2, 1973.

The Complaint alleged that the plaintiffs had been employed by the Merchants and Farmers bank in Las Cruces, New Mexico, and received excess monies in the form of wages for their work. From August 1970 to June 1971, Grant and Williamson worked in order to pay college expenses since neither was eligible to receive scholarship

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[34]Ibid. (Opinion and Order, March 21, 1975) pp. 15-16.

aid under the 1.600 predictability rule. In September of 1971, both student-athletes had achieved higher than the 1.600 grade point average and were eligible for the aid and no longer needed outside employment.

As a result of investigations, the Association's Council ruled that the student-athletes violated the amateur rule by receiving financial payments other than those regulated by the institution. The penalty assessed for the infractions was denial of any participation in intercollegiate athletics for the remainder of the plaintiffs' college career. This ruling was appealed and was reduced to one semester beginning January, 1973.

The litigation sought a temporary restraining order to regain eligibility and was filed for damages of $2.5 million for libel. The plaintiffs claimed that the Association published accusations against them in national news media which subjected them to public ridicule and caused damage to the University and to their home communities.

The complaint against the Association, filed in Pennsylvania, declared:

> Throughout the aforesaid proceedings and appeals procedure conducted by the defendant, plaintiffs were never allowed the opportunity of a hearing, nor were they permitted to confront witnesses whose testimony might be adverse to their position nor were they granted the right of defense. Such procedures are

> violative of the plaintiffs' rights as guaranteed by the 5th, 6th and 14th Amendments to the Constitution of the United States of America.[35]

In answer to the complaint, the defendants submitted that the Court lacked jurisdiction to issue a restraining order and asked that the injunction be dissolved. The defense lawyers cited the case history of the enforcement procedures by stating:

> . . . the pleadings indicate that plaintiffs were ineligible in their freshman year; that they were eligible and played during their sophomore year; that they were eligible and played during their junior year until declared ineligible by New Mexico State University; that they were originally ruled ineligible to never again participate in intercollegiate athletics; that upon first level appeal to defendant's subcommittee the ineligibility determination was modified so as to last only for the remainder of the present semester; and that the final administrative appeal has been exhausted.[36]

On November 27, 1973, Judge Louis C. Bechtle ordered the motion dismissed with prejudice. The litigation actually became moot when one student signed a professional contract and the other completed his years of eligibility. The libel case was not litigated. It was considered a device used to gain publicity.

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[35]Grant v. NCAA, Civil Action No. 5483 (Ct. of CP, Phila. Cnty., Complaint, Unreported, Filed January 26, 1973), p. 3.

[36]Ibid., (Defendant's Brief), p. 6.

Larson v. National Collegiate Athletic Association

Ice Hockey

Amateurism

Fourteenth Amendment, 28 U. S. C. Section 1343(3)(4), 2201, 2202, 42 U. S. C. Section 1983

Temporary restraining order issued, Pending

Reed Larson was an American hockey player who signed a professional contract while a junior in high school; he then decided to attend college.

Plaintiff sought relief from the Association's sanctions against the University of Minnesota or against him if he participated in hockey at the University. Larson graduated from high school in the spring of 1974 and the University offered him a full scholarship if he were eligible to participate. On this basis, plaintiff sought relief under the Equal Protection Clause of the Fourteenth Amendment.

At the time that Larson signed the two professional hockey contracts, one which included retaining an agent, he was 17 years old. Five days after signing, he reversed his actions and sent letters so stating to the parties involved. No monies or considerations of any kind were exchanged.

In June of that year, the eligibility committee of the Big Ten Athletic Conference ruled that:

> . . . the plaintiff was eligible to participate in intercollegiate athletics "because there was not a valid legal document due to Mr. Larson's age."[37]

On September 12, Judge Miles Lord issued a temporary restraining order against the Association. The Association was given ten days to reply to that order. Mr. Warren S. Brown, Assistant Executive Director of the Association, filed the following affidavit in opposition to the order:

> . . . that deponent is advised that a legal action has been filed against the NCAA by Reed Larson seeking an injunction which would prevent the NCAA from delcaring plaintiff ineligible to participate in intercollegiate athletics on a team of the University of Minnesota. . . . That the NCAA does not take action against either prospective student-athletes or against student-athletes but only against its member institutions, and it has taken no action of any kind against plaintiff and does not propose to do so in the future; . . . that no action or rule of the NCAA, under the facts alleged, prohibits the University of Minnesota from granting financial aid to plaintiff, or from permitting plaintiff to practice with the hockey team or any other team . . . that the University of Minnesota is free to follow the appeal procedure when plaintiff becomes a student-athlete, but it has not done so.[38]

The Court ordered the University of Minnesota to appeal the eligibility ruling after Reed Larson becomes

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[37]Larson v. NCAA, Civil Action No. 4-74-432 (D. Minn., Complaint, Unreported, Filed September 9, 1974), p. 4.

[38]Ibid., (Defendant's Affidavit), pp. 1-2.

a student. The Association's Council would render a decision at that time.

Mike Smith v. Southern Methodist University, Southwest Athletic Conference and National Collegiate Athletic Association

Football

Amateurism, Enforcement Procedures

Fourteenth Amendment, U. S. Const. art III, Section 2, 28 U. S. C. Section 1343, 42 U. S. C. Section 1983

Temporary Injunction granted, Reversed and denied

Mike Smith, a football player at Southern Methodist University, Dallas, Texas, sought relief in the State and Federal Courts from the jurisdiction of the National Collegiate Athletic Association.

Smith, a married student-athlete, was one of twenty-three players involved in violation of the amateur rule and he was declared ineligible by Southern Methodist University. The specific violations of the members of the football team consisted of players receiving $5 for each tackle on the punt coverage team ($25 if it were a solo tackle); $5 as a participant on the special scout team in drills; $200 in lieu of complimentary tickets to the home football games; movie passes for outstanding practices and performances; and free dinners for superior performance on the field. In addition to the monies received for tackles and

distinguished play, Mike Smith received a rent-free apartment for him and his wife. One of the assistant coaches made the arrangements with a realtor. From December 1973 to August 1974, they continued to receive all benefits of the full athletic award plus the apartment.

In November of 1973, Paul Hardin, the President of Southern Methodist University, received a report from the coaching staff to the effect that violation might have occurred in the football program.

On December 7, 1973, a letter was sent to the Southwest Athletic Conference listing the possible violation noted above and the disciplinary actions already taken against the players, coaches and staff. A possible course for future actions was deliniated.

On January 7, 1974, the Southwest Athletic Conference noted response of Paul Hardin and added a one-year probation and public reprimand to the other penalties and corrections.

From January 7 to August 13, 1974, nothing further was indicated concerning the penalties or disciplinary action, by the University, the Conference or the Association. On August 13, the Association informed Southern Methodist University of seven penalties. No mention was made of punitive action against the individual student-athletes.

On August 26, the report was made public and Southern Methodist University gave notice of appeal. The first week of September, the University was notified that all student-athletes involved were ineligible. The University appealed again and at this time the Association reversed its decision and declared all student-athletes eligible with the exception of Mike Smith.

In an affidavit in opposition to the preliminary injunction, Assistant Executive Director of the Association, Warren S. Brown, stated:

> . . . that said appeal was heard by a subcommittee on Eligibility Appeals of the Council on September 6, 1974 with the result that eligibility of the plaintiff and others with respect to the violations described . . . was restored, but that eligibility of plaintiff to participate on the SMU football team with respect to violations (in which Smith was involved) was not restored . . .[39]

On September 13, Smith instituted legal action against the Association, the University and the Southwest Athletic Conference. This action was based on State Action, the Equal Protection Clause and the Civil Rights Act, as well Article III, Section 2 of the United States Constitution. In the proceedings, Smith admitted freely that he had received financial assistance surpassing that offered by normal procedures and that his benefits had been greater

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[39]Smith v. NCAA, Civil Action No. 3-74895-B, (D. Texas, Affidavit, Unreported, Filed September, 1974), p. 6.

than that to which a student-athlete was entitled ordinarily. This admission was instrumental in finalizing the litigation.

With the football season approaching, Smith attempted to obtain a temporary restraining order to permit him to complete the season before action could be taken. Between September 13 and October 23, Smith instigated the litigation from the District Court to the Supreme Court of Texas and into the Court of Civil Appeals in the Fifth Supreme Judicial District of Texas. When the appeal failed to gain relief, Judge Sarah Hughes dismissed the order for a temporary injunction against the three defendants. She discovered no violation of the Constitutional laws in the enforcement of the eligibility rules, and found no substantial Federal question under the Civil Rights Act.

College Athletic Placement Service, Inc. V. National Collegiate Athletic Association

Minor Sports

Amateurism

Sherman Act 15 U. S. C. Section 1, 2, Clayton Act 15 U. S. C. Section 15, 26

Injunction denied

In February 1972, Mr. William E. Serra organized a business offering the opportunity to obtain athletic

scholarships for high school athletes. This service was instrumental in locating colleges and universities that lacked time and money for recruitment in the minor sports. For a contractual fee from the students' parents, CAPS would locate the scholarships available.

In January 1974, the plaintiff learned that a proposed amendment would be ratified at the Association's annual convention negating the services offered by Mr. Serra. This amendment would make any student-athlete represented by an agent ineligible for intercollegiate competition, and would be effective August 1, 1974.

The amendment passed and was stated as follows:

> Any student-athlete who agrees or has ever agreed to be represented by an agent or an organization in the marketing of his athletic ability or reputation no longer shall be eligible for intercollegiate athletics. . . . Any individual, agency or organization representing a prospective student-athlete for compensation in placing the prospect in a collegiate institution as a recipient of athletically related financial aid shall be considered an agent or organization marketing the athletic ability or reputation of the individual.[40]

The complaint by the plaintiff was an attempt to restrain the Association from applying the newly adopted rule in view of the fact that it placed a restraint of trade on him and was monopolizing commerce. These two complaints are in direct violation of the Antitrust Laws.

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[40]NCAA Manual, 1974-1975, Article 3, Section 1 (c), p. 6.

Judge Clarkson S. Fisher wrote an opinion and order handed down in August 1974:

> The evidence before the court reveals that the NCAA in ratifying the challenged amendment was motivated not by any anti-competitive motive or purpose to eliminate or damage CAPS, but to insure that the academic admission standard of the member institutions are not compromised by an individual or organization that has a financial interest in having a particular student admitted to an NCAA college or university.
>
> Thus, where no anti-competitive intent is present the rule of reason has been applied to collective refusals not to deal. However, in the instant case not only is there no anti-competitive intent, there is, in fact, no competition. The NCAA's action in ratifying an amendment to its Constitution for the purpose of preserving educational standards in its member institutions does not come within the purview of the Sherman Act.
>
> In the case at bar, the only "refusal to deal" with CAPS was inherent in the adoption of a rule by the NCAA for the purpose of furthering the noncommercial objectives of the organization. The "exclusion" was a by-product of the NCAA's decision to insure that the admission standards of member colleges and universities would not be compromised by a party with a financial stake in the admission of a student-athlete. I find nothing in this record disclosing an intent on the part of the NCAA to discriminate against or to exclude CAPS from a particular area of interstate commerce . . .[41]

On November 25, 1974, Judges Francis L. Van Dusen of the Court of Appeals agreed with Judge Fisher's decision and again denied issuing an injunction.

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[41]CAPS v. NCAA, Civil Action No. 74-1904, (D. New Jersey, Judgment Order, Unreported, Filed August 22, 1974), pp. 220a, 222a, 224a.

Kanter v. Arizona State University, Western Athletic Conference and the National Collegiate Athletic Association

Tennis

Amateurism

Fourteenth Amendment, 28 U. S. C. Section 1343, 42 U. S. C. Section 1983, 1988

Moot

On April 9, 1974, David Kanter filed a suit against his institution, Conference and the Association. Kanter was captain of the Arizona State University tennis team. He obtained summer employment in 1973 as a head tennis instructor for a private tennis club in Denver, Colorado. During an interview with a newspaper writer, the particulars of the employment were publicized. From this information, the Western Athletic Conference and the Association ruled that Kanter was in violation of their Amateur Rule which states that no remuneration may be received because of athletic ability or the amateur standing may be in jeopardy. Since his status as an amateur intercollegiate player had been questioned he was subsequently declared ineligible and his grant-in-aid was cancelled by Arizona State University. Kanter was not given notice of such action and was not allowed a hearing on the matter. He therefore instigated suit in which he stated that: " . . . He was arbitrarily

and capriciously declared ineligible for further competition, all in violation of his constitutional civil rights."[42]

The Federal court holds jurisdiction in this matter since the causes of action arise under the Equal Protection and Due Process Clauses of the Fourteenth Amendment.

On June 10, 1974, the litigation was declared moot and dismissed with prejudice. The tennis season was over and no further action was taken.

The National Collegiate Athletic Association v. American Basketball Association, The Carolina Cougars and James McDaniels

Basketball

Amateurism

Common Law Fraud

Pending.

James McDaniels, a basketball player at Western Kentucky University, is alleged to have signed a professional basketball contract with the American Basketball Association prior to the conclusion of the 1970-1971 intercollegiate basketball season.

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[42]Kanter v. NCAA, Civil Action No. 74-267, (D. Arizona, Complaint, Unreported, Filed April 15, 1974), p. 2.

This litigation is one of two cases in which the Association was the plaintiff and was obligated to take the matter to the courts for final jurisdiction. The suit was tried under Common Law Fraud and asked for $285,000 in damages. The case is pending. Basically the Association is attempting to recover expenses incurred by Western Kentucky during the tournament.

McDaniels was approached by friends who proposed to find an agent to represent him for purposes of obtaining the best possible salary in either the American Basketball or the National Basketball Association.

In the fall of 1970, McDaniels allegedly signed an undated agency contract indicating his willingness to sign with whichever professional basketball team would be the highest bidder. On November 2, 1970, he allegedly signed another contract for $900,000 to be paid over a period of five years. On November 27, 1970, he allegedly signed an added option for an additional year at a total of $1,150,-000 and received a $25,000 check as a bonus from the American Basketball Association.

During the 1970-71 intercollegiate basketball season, McDaniels continued to play for Western Kentucky. When rumors became rampant concerning the alleged illegal early signing of a professional contract, McDaniels was asked to verify statements that he had not signed such a document.

On February 11, 1971, McDaniels made a sworn affidavit, both written and oral, that no agreement had been made with the American Basketball Association.

Western Kentucky was invited to play in the Division One Championships as a result of their season record, to which McDaniels' fine play was considered a contributing factor. During the Championships, the tournament and television arrangements netted Western Kentucky $85,703.80 plus trophies and many honors.

When a later investigation disclosed that the illegal early signing had in fact taken place, Western Kentucky was forced to surrender all monies and awards. To recent date, $60,289 and the awards have been returned.

The complaint is for the purpose of recovering damages incurred from the loss of revenue and enforcing professional teams to respect the rules and regulations of the amateur Association.

James McDaniels claimed: ". . . no disciplinary action can be taken against him for alleged violation of NCAA rules, since McDaniels was not a member of the NCAA."[43]

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[43]NCAA v. McDaniels, ABA, Civil Action No. 7225-A, (W. D. Kentucky, Brief for the Defendant, Unreported, Filed April 5, 1971).

The case involved McDaniels, the ABA, the Carolina Cougars and McDaniels' agent. The proceedings have been lengthy and the case is pending.

The National Collegiate Athletic Association v. American Basketball Association and Howard E. Porter

Basketball

Amateurism

Common Law Fraud

Pending

This is the second of the two cases in which the Association filed suit against an individual and/or an association. The case is similar to McDaniels in that it pertains to amateurism and the early signing of a professional basketball contract. The subsequent forfeiture of trophies, awards, games and championships is involved.

In filing the brief in the Court of Common Pleas, the plaintiffs' lawyers stated:

> The NCAA regulates intercollegiate athletics among its members. It also sponsors championship events which are limited to student-athletes who meet the eligibility standards for amateurism established by the NCAA. Prior to the acts of defendants hereinafter alleged the NCAA enjoyed a public reputation for scrupulously adhering to and rigorously enforcing its eligibility standards for participants in athletic events regulated or sponsored by the NCAA. This reputation and the public's trust and confidence in the fairness and integrity of NCAA events can be maintained only by assuring that only eligible athletes, and educational institutions represented exclusively by eligible athletes,

> participate in athletic events regulated or sponsored by the NCAA.[44]

During the 1970-1971 collegiate basketball season, Porter played for Villanova University in the Eastern Regionals and the 1971 National Collegiate Athletic Association Championship finals. Villanova certified that Porter was eligible for all contests.

On December 16, 1970, Porter allegedly signed a player contract with the American Basketball Association and on January 22, 1971 was assigned to the Pittsburgh Condors basketball team.

This infraction was denied by Porter both orally and in writing throughout the remainder of the season and the Association's championship tournament.

While the suit is pending, Villanova University was caused to forfeit all basketball games in which it competed after December 16. The Association forfeited and vacated the Eastern Regional title and Villanova University lost its second place standing in the 1971 Championship Tournament.

The plaintiffs' claim for redress is based on the following:

> As a direct and proximate result of the foregoing material, false, fraudulent, and deceitful

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[44]NCAA v. ABA, Howard E. Porter, Civil Action N. 2145, (Ct. CP, Delaware Cnty, Pa., Complaint, Unreported, Filed February 22, 1971), p. 3.

> representations and conduct of defendants ABA and Howard E. Porter, the plaintiff NCAA has sustained or incurred special damage: for the expense of investigating the eligibility of said Howard E. Porter and Villanova University; for the cost of the regional and national awards made to Villanova University and its players; for the expense of republishing statistics and seasonal records pertaining to Villanova University's basketball games and the several tournament standings; and for tournament expenses paid by the NCAA to Villanova University for participation in the 1971 First Round Regional, Eastern Regional, and National Collegiate Basketball Championship tournaments; all in the total sum of at least $16,663.00.[45]

In addition, the Association is seeking $100,000 exemplary damages against Howard E. Porter. The final decree is pending.

TRANSFER

A concentrated effort by the Association is being directed toward the elimination of the "tramp" athlete. Regulations have been written to prohibit a student-athlete from playing for one institution, transferring, playing for a second institution and then a third. Transferring is possible for litigimate reasons such as elimination of an athletic program at an institution or graduation from a two-year institution. Other circumstances are noted in Appendix A.

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[45]Ibid., p. 10.

The basic rule within the Association states that a transfer student-athlete must remain out of intercollegiate competition for one year in order to be certified eligible for championship events.

Fisk University v. Southern Intercollegiate Athletic Conference and the National Collegiate Athletic Association

Basketball

Transfer

Injunction denied

This complicated case involved the Southern Intercollegiate Athletic Conference, the National Collegiate Athletic Association, Fisk University, Mississippi Valley State College, Columbia State Community College, Alabama State University, the Southern Intercollegiate Athletic Conference basketball tournament and transfer eligibility of two players.

On January 23, 1973, Alabama State University lodged a formal protest with the Conference concerning the eligibility of two players on the Fisk University basketball team. In the month that followed, transcripts of the players, William H. Sweatt and George House, were gathered from the various institutions that they had attended. On February 18, the Commissioner of the Conference, Mr. G. H. Hobson, ruled that the players were eligible and the Fisk

University team would be allowed to compete in the Conference basketball tournament.

On February 24, the first day of the tournament, Fisk University was advised by the Executive Committee of the Conference that one of the players was ineligible and the University would not be allowed to represent the Conference in the National Collegiate Athletic Association Championship playoffs. Fisk University, the regular season winner of the Conference, played and lost in the first round of the Conference tournament without the ineligible player.

Fisk University charged the Executive Committee of the Conference with damage and injury for failure to hold a formal hearing; and a preliminary injunction was issued against the Association prohibiting the acceptance of any representative from the Southern Intercollegiate Athletic Conference until after the court settled the issue.

On March 3, the court held a formal hearing and found Mr. Sweatt to be in violation of the transfer rule of the Association. He had attended a four-year college, transferred to a junior college and then transferred to Fisk University without graduating from the junior college. Appendix A contains this rule.

The preliminary injunction was dismissed and Fisk University forfeited all conference games and the regular

season championship as well as the participation in the National Collegiate Athletic Association's playoffs.

ALL-STAR CONTESTS

This unusual litigation was prompted by a change in the National Collegiate Athletic Association regulations in 1962. At that time the annual convention adopted an eligibility rule which prohibited high school seniors from participating in All-Star contests unless the contests were approved by the various state High School Athletic Associations.

In 1962, the Association amended the rule to indicate that it would designate a committee to sanction these contests if the various states would not do so.

One stipulation of the Association required that some of the proceeds of the game go for charitable or educational purposes.

Casperson v. Board of Regents of the University of Minnesota and the National Collegiate Athletic Association

Football

All-Star Contest

Fourteenth Amendment

Injunction denied

The plaintiff and the American Legion All-Star Corporation promoted football games among high school graduates from 1952 through 1960. During those nine years, $161,166.36 gross receipts were collected and only one $2,500 educational scholarship had been awarded. The special All-Star Committee of the Association denied sanction of the American Legion Corporation on the basis of past criteria. In so doing, the committee declined to certify the proposed 1962 football game. The plaintiffs sought restoration of the annual game.

District Judge J. K. Underhill dismissed the action stating:

> The said eligibility rule is not arbitrary, capricious, unreasonable or discriminatory, and it does not violate any rights of the plaintiffs . . . and . . . the action of the NCAA Special All-Star Committee was not . . . without reasonable foundation.[46]

EXTRA EVENTS

The Extra Events Committee was established by the Association to certify all contests that involve member student-athletes outside the jurisdiction of their college or university. These contests include postseason

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[46]Casperson v. Bd. of Reg. of U. of Minn., Civil Action No. 586023, (D. Minn., Judgment order, Unreported, Filed February 10, 1970), p. 5.

football, college all-star football and basketball, track and field meets and gymnastic meets. Each event must satisfy pertinent qualifications and applicable regulations of the Association in order to allow participation by member student-athletes or prospective student-athletes.

Samara v. National Collegiate Athletic Association

Track

Extra Events Certification

First, Fifth, Fourteenth Amendments, 28 U. S. C. Section 1331, 1343, 42 U. S. C. Section 1983, Sherman Act, 15 U. S. C. 1

Dismissed

The rule procedure being questioned is known as the Extra Events rule and the plaintiffs presented the action under Federal jurisdiction of the First, Fifth and Fourteenth Amendments as well as under the Sherman Act. Two track athletes failed to request the proper certification by the Association before entering a meet between the United States and Russia sponsored by the Amateur Athletic Union. This event is considered outside the jurisdiction of the intercollegiate program of the Association and must be approved prior to participation by member student-athletes.

The two athletes, Samara and Walker, attended different colleges and both men wanted to compete in this auspicious event. The Extra Events Committee indicated that the event met all of their criteria, and sanction would have been granted had they made application. Samara and Walker were denied further intercollegiate eligibility as a result of their participation. This suit was an effort to restore that eligibility.

The tort of interference by the defendant was dismissed:

> There is no evidence of malicious intent on the part of the defendant, to the contrary a legitimate and commendable purpose underlies the regulations promulgated by the NCAA; and, most importantly, anticipated benefits are highly speculative where as here there is no evidence to substantiate any future economic detriment to the plaintiffs.[47]

As to the invocation of the Sherman Act, the court stated:

> This is at best an indirect threatened group boycott insofar as plaintiffs are concerned. Any economic injury to the plaintiffs here is speculative; indeed, the evidence of any such injury is non-existent. Even accepting the judicially noted "big business" of college athletics recited in Behagen v. Intercollegiate Conference, 346 F. Supp. 602, 604 (D. C. Minn. 1972), the court cannot extend that

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[47]Samara v. NCAA, Civil Action No. 104-72-A, (Memorandum Opinion and Order, Unreported, May 1, 1973), p. 4.

> notice to the narrow issue of track and field activities involved here.[48]

The court held that only one of the athletes attended a state-supported institution and state action did not apply in either case.

> If this is state action then it seems that the requirement of certification is analogous to a requirement of licensing. The regulations here are reasonable. The plaintiffs argue that even so it was unreasonable to apply the regulation to the March 16 meet, pointing to defendant's position that if the AAU had just applied certification would have been forthcoming. This they say indicates that there was no need for application of the regulation to this meet. But it is no answer to a licensing requirement, otherwise valid, to say that "Since I meet all the requirements of the license I need not apply for one."[49]

In dismissing the complaint against the Association, the Judge concluded: "Nor does the court find any right guaranteed to the plaintiffs by the First or Fifth Amendments to be violated."[50]

TELEVISION PLAN

The televising of college football games by the Association provoked the formulation of a committee to supervise these activities. Guidelines were developed to ensure smooth operation. With a lucrative plan involving the American Broadcasting Company, the Association member institutions received $16,000,000 in

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[48]Ibid., p. 5 [49]Ibid., p. 7. [50]Ibid.

television rights in 1974.[51] This incentive is positive enough to remind most member institutions of their obligations to the Association. The Enforcement Committee has, in the past, disallowed universities to play on national television as a disciplinary measure for violation of regulations. The Association does not schedule football games for the viewing audience but can control which teams will not play.

Dr. Olivett v. Regents of the University of California, and National Collegiate Athletic Association

Football

Television Plan

No Federal jurisdiction

Case dismissed

Dr. Jerry Olivett and his friends were upset with the televising procedure and selection of football games that were being aired. The plaintiffs wished to view more "live" UCLA football games and were under the impression that the University of California at Los Angeles was responsible for the selection and video taping of the games. They further stated that they were being discriminated

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[51]National Collegiate Athletic Association, Television Committee Report, 1974, p. 7.

against in that they could view only three "live" games a year and that others were taped and shown twenty-four hours later.

On September 20, 1973, Judge David Thomas ordered the case dismissed after he had concluded that the University of California had no jurisdiction over the use of the airwaves and had no broadcast license to make such telecasts. His rather classic remark in dismissal was thusly stated:

> Wherefore, the University respectfully submits that, for the reasons stated above, plaintiffs are not entitled to a preliminary injunction and further submit that no facts are alleged in the complaint sufficient to constitute a cause of action and request that its demurrer be sustained so that no further time of the court and counsel are wasted on this frivolous lawsuit.[52]

Not satisfied with this action, the plaintiffs brought suit against the Association. In this litigation, they requested that a member of the viewing public be allowed to participate in the selection committee that decides which football games will be telecast.

Attorneys for defendant Association stated:

> There is no more reason for the court to appoint a representative of the public to the NCAA television Committee than there is to

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[52]Dr. Olivett v. Bd. of Regents of Calif., Civil Action No. 66727, (Defendant's Brief, Unreported, 1974), p. 7.

> appoint one to the governing body of any other private group, the activities of which affect the public.[53]

Both cases were dismissed.

Highley v. The Big Eight Athletic Conference and the National Collegiate Athletic Association

Football

Television Plan

Eighth Amendment, Fourteenth Amendment, 28 U. S. C. Section 1343, 2201, 42 U. S. C. Section 1985, Sherman Act 15 U. S. C. Section 1, 2, Clayton Act 15 U. S. C. Section 15, 26

Case dismissed with prejudice

In the complaint filed by Jack Highley and Paul "Buddy" Burris against the Big Eight Athletic Conference and the Association, the plaintiffs sought relief to allow the "Great Unwashed Alumni" of the University of Oklahoma the opportunity to watch their football team on television.[54]

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[53]Dr. Olivett v. NCAA, Civil Action No. 000076, (Calif., Defendant's Brief, Unreported, 1974), p. 20.

[54]Highley v. Big Eight Conference, Civil Action No. 73-630-D, (W. D. Okla., Complaint, Unreported, Filed December 4, 1973), p. 2.

During the 1972 season, an ineligible player had been used in eight football games, each won by Oklahoma. In the spring of 1973, this fact was discovered. The player had not predicted a 1.600 grade point average and his transcript from high school had been changed to a higher average. One of the assistant coaches had known of the falsification of the transcript. The University of Oklahoma discovered the violation and reported the discrepancy to the Association. However, the University was penalized with the forfeiture of the games, one year of ineligibility for the player, dismissal of the assistant coach and suspension from participation in the 1974 and 1975 National Championships or any Association sponsored Bowl Games. This action meant loss of television revenue for two years.

The plaintiffs alleged that the Eighth Amendment was a part of their basis for this litigation. Their statement of "cruel and unusual punishment" indicated that all individuals involved in the eligibility violation had been penalized:

> . . . the infliction of which not only punishes the members of the class for which this action is brought, but punishes them to the extent that it deprives the State of Oklahoma of approximately $400,000 in revenue for the years 1974 and 1975; that it deprives the members of the football team from receiving their just rewards for their efforts on the football field

> and in the classroom and places all citizens of the State of Oklahoma under an enigma . . .[55]

The plaintiffs stated that their punishment was "cruel and unusual" in comparison to the punishment handed down by the Association to another university just two months prior. That college was a member of the Big Eight Athletic Conference and had been found in violation of the Association regulations. The penalty received had consisted of only one year probation and no loss of television revenue.

Judge Fred Daugherty's arguments for dismissal in regard to the Sherman and Clayton Antitrust Acts were as follows:

> Plaintiffs have not alleged, nor can they allege, that they have been damaged in their "business or property" as required. . . . The antitrust laws simply have no application to plaintiffs' opportunity or lack thereof to watch a football game. Finally, plaintiffs lack "standing to sue" under . . . the Clayton Act.[56]

Judge Daugherty had classic remarks in his argument regarding the Eighth and Fourteenth Amendments. In applying the Eighth Amendment, he argued:

> The Eighth Amendment is directed solely to criminal matters and is not applicable to civil matters. . . . That plaintiffs will be deprived of viewing the team on television does not, therefore (quite apart from its patent absurdity),

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[55]Ibid., p. 4.

[56]Ibid., (Motion to dismiss, Unreported), p. 4.

> constitute "cruel and unusual punishment." Further, it is axiomatic that in order for the Eighth Amendment to have application, any action by defendant must be found to have amounted to "state action." . . . Clearly, the action of defendant is not action under color of state law . . .[57]

As to the Fourteenth Amendment, he stated:

> The opportunity to watch a football game is simply not among the Federal rights protected by the Fourteenth Amendment nor, in turn, by the Civil Rights Act. Many alleged rights far more basic than watching a football game are not guaranteed by the Constitution.[58]

The court ruled that every restriction "inflicted" upon the plaintiffs was the action of someone other than the Association, with the exception of the prohibition of television broadcasts and bowl appearances.

The Association filed a motion to dismiss on the grounds that the plaintiffs failed to state a claim upon which relief could be granted. The case was dismissed with prejudice.

Scott v. National Collegiate Athletic Association

Football

Television Plan

No Federal jurisdiction

Temporary Injunction, Moot

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[57]Ibid. [58]Ibid., p. 6.

Roger R. Scott and his friends filed a complaint against the Association for its failure to televise a 1971 Texas-Oklahoma football game in the Tulsa, Oklahoma area. The complaint involved a request for a temporary injunction to allow the game to be viewed in Tulsa, and challenged the authority of the Association's Television Committee.

Under the Television Plan Article 16, no game that has not already been scheduled for viewing can be televised unless a complete "sell out" has occurred forty-eight hours prior to kick-off time, and only then if no conflicting college or high school games are being played in the immediate viewing area. Also, only three television stations may carry the game if it is a "sell out," those of the two home cities of the competing institutions and that of a third city if the game is played at a neutral site.

A temporary injunction was issued and a citation for contempt of court was filed after the game was played. The defendants pleaded that the rules must be upheld. No constitutional laws were involved. The court upheld Article 16 of the Television Plan and the case was stricken as moot on October 10, 1972.

ENFORCEMENT PROCEDURES

The Enforcement Procedures of the Association are designated to enhance the control of the intercollegiate athletic program. These procedures are found in Appendix A. The membership is encouraged to abide by the guidelines when involved in or discovery of infractions within an institution's athletic program. The method of reporting and the notice of appeal are among the regulations of this section of the Manual.

State Board of Education
v. National Collegiate
Athletic Association

Basketball

Procedural Rights

Preliminary Injunction granted in State Court, Reversed in Federal Court

On behalf of the University of Southwestern Louisiana, the Louisiana State Board of Education won an injunction against the Association in the State court. The ruling was appealed and the injunction denied.

This litigation does not involve any of the alleged infractions of the Association's regulations governing eligibility, only the procedures in conducting investigations. The plaintiffs claim the probations placed on the two basketball coaches were done so without the procedural

process as outlined by the Association. The University and the Board of Education brought suit to require the Association to bring forth witnesses and information pertaining to the University's alleged violations. The plaintiffs stated that the Association relied on undisclosed information gained from interviews with witnesses and they were not being afforded the opportunity to be heard at a time and place that was mutually convenient. This action, they maintain, disregards the Official Procedure of the Association's Enforcement Program. Additionally, the plaintiffs declare that they would suffer irreparable injury if they were placed on probation as a result of the findings and would not receive television or tournament funds.

The University of Southwestern Louisiana obtained a preliminary injunction against the Association to delay action because of the possibility of its participation in post-season basketball tournament and television rewards. The State court held that the University would suffer irreparable injury and possible deprivation of extra monies because of action by the Association.

Judge John L. Miller, in the Court of Appeals, claimed that the lower court erred in issuing a preliminary injunction, that no penalty had been imposed on the University and therefore no irreparable injury had occurred.

He wrote: "In this regard the trial court erred in taking jurisdiction of the dispute between the University and the Association."[59]

A second point in reversing the injunction was based on non-interference of the internal affairs of a private association. Judge Miller continued:

> Courts will not interfere with the internal affairs of a private association except in cases when the affairs and proceedings have not been conducted fairly and honestly, the invasion of property or pecuniary rights, or when the action complained of is capricious, arbitrary or unjustly discriminatory . . . and even in cases of fraud, oppression, bad faith or the violation of property or civil rights, the courts will not take jurisdiction unless the complaining member has exhausted such remedies as may be provided by the laws of the Association itself.[60]

Judge J. Cleveland Frugé, Court of Appeals, dissented on the opinion and affirmed the injunction of the lower court. He stated:

> . . . proceedings against a member school in a "piecemeal" manner discriminates against the institution. . . . Member has not asked any court to consider the merits of the alleged violation; it asks only that the NCAA be compelled to adhere to its procedural requirements to the end that it may be afforded a reasonable notice and opportunity to be heard.[61]

Judge Miller noted that the Association's enforcement procedures were fair and that the University does not

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[59]State Bd. of Ed. v. NCAA, 273 So. 2d 912 at 915 (1973).

[60]Ibid. [61]Ibid., at 923.

have to be a member, but if it is, it should be governed by the regulations of the Association. Additionally, no statutory or jurisprudential authority was cited to support this action.

HARDSHIP RULE

The Association is aware that extenuating circumstances may hinder the normal progress of a student-athlete in his college career. The Association has provided for this event with the passage of Bylaw 4-1-(f)-(1) in August 1973. This rule grants an additional year of eligibility for reasons of hardship. The Official Interpretation (O.I. 400) is found in Appendix A.

Saulny v. National Collegiate Athletic Association

Basketball

Hardship Rule

First and Fourteenth Amendments, 28 U. S. C. Section 1343-(3)(4), 1391(b), 2201, 2202

Injunction denied

This is the first case to challenge the Hardship Rule, and according to the court's decision, it is a viable and substantial rule as presented.

On November 19, 1974, Eric Saulny, plaintiff, filed a complaint seeking an additional year of eligibility under

the Hardship Rule and named the Association, San Jose State University and the Pacific Coast Athletic Association as defendants.

Saulny, a basketball player at San Jose State University, played in the first three games of the 1973-1974 basketball season. He was injured before the next game, but was able to compete. During the fifth game, the injury forced him to leave the floor. The trainer diagnosed the injury as a stress fracture, painful and difficult to x-ray. The anticipated six-week healing process indicated a loss of participation for the rest of the basketball season. Saulny, in his senior year, petitioned the Pacific Coast Athletic Association for a hardship waiver.

The petition was voted on by the athletic representatives of the member institutions of the Conference and their vote granted Saulny an additional year of eligibility.

On August 26, 1974, a letter was sent from the Conference to the National Collegiate Athletic Association seeking a ruling on post-season eligibility if Saulny were granted eligibility. On September 11, the Association replied that Saulny's participation would jeopardize the automatic qualification status of the Conference.

The Conference then reversed its decision and declared Saulny ineligible for another season of basketball.

Thomas W. Hernstedt, an Assistant Executive Director of the Association, filed an affidavit in opposition to the plaintiff's requested preliminary injunction. In the affidavit he maintained:

> . . . that the purpose of the rule requiring automatically qualifying conferences to observe rules during the regular season at least as demanding as the eligibility rules of the NCAA for championship events is to make certain that the conference champions thus automatically qualified will be able to field the same team in the NCAA championship: the PCAA has not been certified to have its basketball champion automatically qualified for the NCAA Basketball Championship Tournament . . .
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> . . . that the NCAA Division I Basketball Committee has twice refused to grant the request of PCAA for an exception to the automatic qualification rules which would permit PCAA to be certified under such rules . . . that the decision regarding an individual player's eligibility is a matter for the conference to determine, and that the conference members would still be eligible for selection to the championship bracket on at-large basis even if the conference did not meet the criteria for automatic qualification.[62]

Judge Samuel Conti handed down the order on December 17, 1974, denying the plaintiff's request for a preliminary and permanent injunction. He wrote that the Association rule does not violate plaintiff's:

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[62]Saulny v. NCAA, Civil Action No. C-74-2489 SC, (N. D. Calif., Affidavit, Unreported, Filed December 1974), p. 4.

> 1) . . . procedural due process rights because there is not "liberty" or "property" interest of the plaintiff at stake here,
> 2) . . . substantive due process rights because there is a valid, rational purpose,
> 3) . . . equal protection rights because it is not wholly arbitrary or capricious and it has a reasonable relation to its purpose as shown,
> 4) . . . first amendment right to freedom of association because the NCAA's interest in applying the by-law and thereby maintaining the athlete as an integral part of the student body outweighs plaintiff's interest in playing basketball,
> 5) . . . common law right to private association because that right deals with loss of the opportunity to practice a given profession and plaintiff Saulny has not shown a specific opportunity to participate in professional basketball.[63]

TORT LIABILITY

A tort is an actionable civil wrong allegedly committed by a responsible organization. The following three cases involve the Association as a responsible and interested party in the proceedings. Each complaint states that the Association is the perpretrator of the wrongful action through negligence and carelessness.

New v. National Collegiate Athletic Association

Football

Tort Liability

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[63]Ibid., (Order, Unreported, Filed December 17, 1974) pp. 4-5.

Eleventh Amendment, 28 U. S. C. Section 1332, 1343, 1406(a), 42 U. S. C. Section 1981

Case dismissed against the Association

In May of 1967, Cecil New, Jr., Signed a letter of intent to attend the University of Kentucky and participate in football. On September 9, plaintiff was severely injured in practice to the extent that he became a quadraplegic. The suit instigated against the Association, the University of Kentucky Athletic Association and the University of Kentucky, seeks arbitration of punitive and exemplary damages in the total of $10,000,000, plus expenses incurred.

In support of the plaintiff's complaint, his attorneys alleged:

> Defendants, in their promotion and advancement of intercollegiate athletics and of football in particular, have recruited and financially subsidized numerous athletes and football players throughout the United States, including plaintiff, over many years last past, and have for their purpose the aggrandizement of the athletic prestige of defendants and the member universities and college of NCAA, the satisfying of the egos and pleasure of "old grads," the obtaining of large television and gate receipts at intercollegiate contests for the general use of defendants, and the development of players who would qualify for play with professional groups such as the National Football League, with reflected glory on defendants and other member universities and colleges of NCAA, so that all could continue the programs, purposes and activities of defendants as alleged herein. Players such as plaintiff were and are essential

> to the continuance and success of such programs of defendants and the professional leagues.[64]

The attorneys for the defendant contended that the case was improperly charged to the court. They ascertained that:

> . . . this case is either a lawsuit for personal injuries arising from tort or it is a claim for breach of an express or implied contract of (and this involves the outer limits of legal imagination) it is a products liability action. In no sense, however, is it a Civil Rights case.[65]

The Association filed a motion to dismiss the proceedings against it on the basis of lack of jurisdiction and that the Association had no dealings with the plaintiff at any time.

In March of 1972, the court ordered the Association dismissed as co-defendant in the case. The University of Kentucky Athletic Association and the University of Kentucky were successful in having the suit dismissed on July 3, 1974.

Ibarra v. University of San Francisco and the National Collegiate Athletic Association

Swimming

Tort Liability

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[64]New v. NCAA, Civil Action No. 8077 (S. D. Ohio, Complaint, Unreported, Filed August 9, 1971), p. 7.

[65]Ibid., (Brief for Defendant), p. 3.

Pending

On July 12, 1973, Oscar Ibarra was enrolled in a summer sports program at the University of San Francisco. The complaint claimed that the defendants owned and operated, supervised and controlled the program so carelessly and negligently that the plaintiffs' son drowned in the pool. The plaintiffs sought one million dollars in general damages and medical and burial expenses.

The University of San Francisco answered the complaint by responding that the plaintiffs:

> . . . had full knowledge of all the risks, dangers and hazards if there were any and nevertheless voluntarily and with full appreciation of the amount of danger involved . . . assumed the risk of injuries to decedent . . .[66]

The National Collegiate Athletic Association lawyers declared:

> . . . that at said time and place said decedent Oscar Ibarra and his parents . . . failed and neglected to use any care or caution for his safety and protection and then and there negligently and carelessly conducted themselves.[67]

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[66]Ibarra v. U. of San Francisco, Civil Action No. 663 356, (Brief for Defendant, Unreported, Filed August 15, 1973), p. 2.

[67]Ibid., p. 1.

Datillo v. National Collegiate Athletic Association

Tort Liability

Fourth, Fifth, Eighth and Fourteenth Amendments, 28 U. S. C. Section 1343, 42 U. S. C. Section 1983

Case dismissed against the Association

On March 22, 1969, John Datillo and Robert Noonan brought suit against the Association for alleged denial of privileges and immunities as citizens of the United States and for cruel and unusual punishment. They attempted to purchase tickets to view a National Collegiate Athletic Association Championship Basketball game. The Freedom Hall at Louisville, Kentucky, was sold out. A ticket seller directed them to an usher who would sell them standing room tickets. These tickets were allegedly fraudulent.

The plaintiffs asserted that they were arrested with force and were humiliated among their friends and acquaintances. Their good name and reputation were damaged because of the publicity in the local news media.

The plaintiffs filed the complaint against the usher, the security guards and the Association as the sponsor of the game. Plaintiffs were found not guilty of the bribery charge and were released. They sought punitive and general damages from all defendants in the amount of $500,000.

Counsel for the Association stated: "There is no proof by plaintiffs that the NCAA had any connection with the alleged injury for which they claim damages."[68]

On September 13, 1971, the court ordered that the complaint against the Association be dismissed.

RELATED CASES

The litigation herein recounted has been cited to demonstrate the enormity of the organization governing the member institutions. The regulations, the finances, the complexity of television coverage and the number of institutions reflect the sphere of influence. This influence is further demonstrated by reviewing litigation conducted wherein the Association was not named as defendant but whose presence was singularly apparent.

These five cases relate indirectly to the regulations of the Association. Each displays the magnitude of the organization and each reflects the impact of the regulations that govern intercollegiate athletics.

Taylor v. Wake Forest University

Football

Financial Aid

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[68]Datillo v. NCAA, Civil Action No. 6477 (W. D. Ky, Brief for Defendant, Unreported, Filed August 31, 1971), p. 2.

No Federal Jurisdiction

Case dismissed

In February 1967, Gregg Taylor and his father submitted an application to Wake Forest University for an Atlantic Coast Conference Football Grant-in-aid. Wake Forest is a member of the conference and the conference is an allied member of the National Collegiate Athletic Association.

Taylor entered the University in the fall and participated in football. At the end of the first semester, his grade point average was 1.000. The University required a 1.35 grade average. Taylor did not report to spring practice in order to try to improve his grades. At the end of the second semester his average was above 1.9, and when he finished the third semester, he had achieved 2.4. Taylor did not return to the football program while completing his education at the University.

In May of 1969, the Faculty Athletic Committee of Wake Forest University called Taylor for a hearing concerning the termination of his grant-in-aid. At the time of the agreement between Taylor and the University, the Association had stated that:

> Any such gradation or cancellation of aid is permissible only if (1) such action is taken by the regular disciplinary and/or scholarship awards authorities of the institution, (2) the student had had an opportunity for a hearing, and (3) the action is based on institutional

policy applicable to the general student body.[69]

After graduation from Wake Forest University in 1971, Taylor sued the University for expenses incurred after the termination of his grant-in-aid. Judge Robert M. Gambil, Jr., asserted:

> Plaintiff failed to comply with his contractual obligations where he had agreed, in consideration of a scholarship award by defendant university, to maintain his athletic and scholastic eligibility for playing football, but refused to attend practice sessions in order to devote more time to his studies; since defendant university fully complied with its agreement, but plaintiff failed to do so, there was no genuine issue of material fact and summary judgment was properly entered.[70]

Begley v. The Corporation of Mercer University

Basketball

1.600 Rule

Fourteenth Amendment, Civil Rights, 28 U. S. C. Section 1332(a)(1)(c), 1441(a)

Failure to state a proper claim, case dismissed

Mark Begley attempted to recover his educational expenses from Mercer University after it was discovered that the basketball grant-in-aid had been awarded under false

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[69]Taylor v. Wake Forest University, 191 S. E. 2d. 379 at 381 (1972).

[70]Ibid., p. 379.

assumptions. The University offered the contract on the basis of the student-athlete's having a 2.9 grade point average and a 760 on the Scholastic Aptitude Test. These scores comply with the Association's standards. Before enrolling at the University, it was discovered that the high school transcript was based on a maximum of 8.00 grade point average instead of the usual 4.00. The grant-in-aid offer was withdrawn.

In excusing Mercer University from liability for its reluctance to fulfill its promise to Begley, Judge C. G. Neese wrote:

> It is the rule that where one party is unable to perform his part of the contract, he cannot be entitled to the performance of the contract by the other party.[71]

The Judge further stated:

> The court notices judicially that the National Collegiate Athletic Association could not consent to Mercer's violation of the aforequoted NCAA regulation without a change in that organization's regulations, affecting all its member institutions.[72]

The motion for damages was denied the plaintiff.

Bounds v. Eastern College Athletic Conference

Basketball

No Federal Jurisdiction

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[71]Begley v. Corporation of Mercer University, 367 F. Supp. 908 at 910.

[72]Ibid.

Transfer Rule

Injunction denied

The Eastern College Athletic Association is an allied member conference of the Association and consists of 210 colleges and universities. The State University of New York at Brockport is a member of that conference.

This litigation upholds the Conference and the Association rules regarding transfer from a junior college to a four-year institution. Norman Bounds completed fifty-eight hours of academic work at Erie Community College. Brockport accepted only thirty-four of these hours. Bounds did further work during the summers at Brockport, but the hours were not accepted by Erie. He contended that the total hours completed were more than the minimum forty-eight required by the Conference and the Association.

The issue was decided by Supreme Court Justice James H. Boomer on the basis that:

> Plaintiff can derive no legal rights from the principle that the Constitution and Bylaws of an unincorporated association express the terms of a contract which define the privileges secured by those who have become members. . . . Any right the plaintiff may have to participate in intercollegiate athletics arises out of his status as a student of Brockport and depends upon the rules of that institution.[73]

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[73]Bounds v. ECAC, 330 N. Y. S. 2d 453 at 455-456 (1972).

In denying the injunction, the Judge continued: "There is no proof that ECAC has threatened any action against Brockport which would impair the rights of the plaintiff. . . ."[74]

Behagen v. Intercollegiate Conference of Faculty Representatives

Basketball

Procedural Rights

Fourteenth Amendment

Relief granted plaintiffs until hearing is held

The plaintiffs sought a preliminary injunction against the defendant Intercollegiate Conference of Faculty Representatives (commonly known as the "Big Ten"). The Association is not listed as a defendant and not directly involved; however, the "Big Ten" Conference is an allied member of the Association and operates under the same regulations.

This litigation is an outgrowth of the altercation which occurred between Minnesota and Ohio State basketball teams in January, 1972.

The plaintiffs, Ronald M. Behagen and Marvin D. Taylor, contend that their rights to due process were

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[74]Ibid. at 456.

violated since they were suspended from games and practice without proper hearing procedures. The plaintiffs were suspended on January 28, 1972, for the remainder of the 1971-1972 season. This suspension was ordered by the Faculty Representatives and the Athletic Directors of the "Big Ten." A third investigating committee, called the Twin Cities Assembly, a campus group, reheard the plaintiffs and determined that the due process rights had been violated.

Behagen and Taylor stated that they had never had the opportunity to appear at a meeting in which the commissioner's report was made, nor were they given the chance to be heard in response to the charges. The plaintiffs held that: ". . . because of significant omissions regarding due process, their rights had been violated."[75]

In the Memorandum Order, Judge Earl R. Larson stated:

> . . . if these suspensions are continued longer than is reasonably necessary for the commissioner to prepare this report and to secure a hearing by the Directors of Athletics, they will become punitive and will at such time deprive plaintiffs of their rights to due process.[76]

The plaintiffs were allowed to resume practice with the team until the due process hearings were held. The

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[75]Behagen v. Inter. Conf. of Faculty Reps., 346 F. Supp. 602 at 606.

[76]Ibid. at 607.

Judge ordered that relief should be granted based on the following statement:

> The plaintiffs having shown irreparable injury and the likelihood of success at trial on the issue of their suspension from practice, but having failed to show likelihood of success at trial on the issue of participation in games, unless the Athletic Directors do not hold a hearing, as is required by their rules, within a reasonable time, it is the opinion of the Court that relief should be granted. . . .[77]

The court outlined the proper elements of a hearing which would meet the standards of due process. This hearing was to be held within four days or the suspensions already in force would be negated by this court. On this basis, relief was granted for the plaintiffs.

Joslyn v. Walt Byers

Television Plan

No Federal jurisdiction

Injunction denied

Dan Joslyn filed two suits for temporary and permanent injunction directing Walt Byers, Executive Director of the Association, and Chuck Neimas, Commissioner of the Big Eight Conference, to lift their television ban on the University of Oklahoma football team. The first suit was a request for an injunction to lift the ban on all University of Oklahoma football games. The second suit was filed:

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[77]Ibid.

> On behalf of himself, the indigent, the ill, the incapacitated, the infirm and for those who are unable for a myriad of reasons to obtain admission tickets to games involving the University of Oklahoma.[78]

The plaintiff specifically wanted the ban lifted by November 30, 1974, because he did not have a ticket to the University of Oklahoma-Oklahoma State University game.

On November 27, 1974, the Judge consolidated both actions and denied the injunction and ordered the action dismissed on the grounds that no issue was in contest.

SUMMARY

The litigation herein reported upheld the constitutionality of the Association's rules of membership in all but three cases. Of the thirty-four cases reported, nine were dismissed or stricken as moot. Seventeen additional litigations found the courts denying an injunction against the Association or its allied members, as defendants.

Of the remaining eight cases, five are still pending. Porter, McDaniels and Ibarra are still in the courts. Buckton and California State-Hayward were appealed by the Association and are pending.

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[78]Joslyn v. Byers, Civil Action No. 74-894-D, (W. D. Okla., Complaint, Unreported, Filed Oct. 11, 1974), p. 2.

Two of the remaining three cases have expired the limitations set by the court for a temporary restraining order. In Larson, the court granted a temporary restraining order against the Association for a ten-day period in which the plaintiff could file an appeal with the Association's Council. This was so ordered in September 1974. The court ordered a four-day injunction against the Association to allow a hearing by the plaintiff in Behagen. This injunction expired February 25, 1972.

In the third case, the court decreed that the Foreign Student rule was discriminatory and unconstitutional while the 1.600 and Five-Year Rules applied in the Howard case. In both Buckton and California State-Hayward, the Association appealed the lower court's temporary injunction. Both cases found the rules of the Association unconstitutional: in Buckton, the Amateur rule, and the 1.600 rule in California State-Hayward. Both rules have since been modified by the Association. The 2.000 rule which replaced the 1.600 rule has been tested by the courts. This rule was litigated as constitutional in the Schubert case. The rewording of the Amateur rule was litigated as constitutional in the Jones case. The Foreign Student rule has not been modified.

Chapter VI

SUMMARY AND CONCLUSIONS

The purpose of the study was to examine the legal aspects of court cases involving the National Collegiate Athletic Association. It was the intent of the writer to evaluate the litigation as it applied to the support or opposition of the National Collegiate Athletic Association's control of intercollegiate athletics.

The procedure was to examine the court proceedings and analyze each case for violations of the controls of the Association. These proceedings were to answer questions pertaining to the specifics of the rules and regulations of the membership of the Association. On the bases of the judges' rulings of the various courts, the following questions were to be answered:

A. Do the Constitution and Bylaws of the Association comply with the civil rights doctrines?
   1. Does the Association comply with the Fourteenth Amendment of the Constitution by providing due process?
   2. Do the Association regulations fulfill the reasonableness of Constitutional laws?

B. Is uniformity maintained in intercollegiate athletic eligibility rules under the regulations of the Association?
   1. Is the 1.600 rule constitutionally sound?
   2. Has the 2.000 rule been justified by the courts in defining the term student-athlete?
   3. Do the regulations on foreign students apply without discrimination?
   4. Do the regulations of amateurism affect the student-athlete?
   5. Does a student-athlete lose eligibility by transferring from one institution to another?
   6. Does a student-athlete lose his eligibility during his freshman year as a result of actions by him?
   7. Does the Association allow member student-athletes to participate in unsanctioned events?

C. Are the regulations of the Association constitutionally sound under the State Action Statute and the Volunteer Private Association Doctrine?

D. Does the Association provide procedural methods for recourse in the investigations of the membership?

A review of the literature has shown that no other study has been undertaken on the topic of College Athletics and Court Litigation. Other works have included high school athletics and physical education involved in litigation and several studies involved the controls of intercollegiate athletics.

The procedure used in this study has been one of selection, interpretation and categorization of the litigation. The two categories were delimited as Federal Laws and Rules and Regulations of the National Collegiate Athletic Association.

The interpretation of the litigation and the judicial decisions tested the validity of the Association. The final analysis determined the constitutionality of Rules and Regulations of the National Collegiate Athletic Association.

FINDINGS

Selected interpretations of the litigation have found the following:

The litigation has involved twelve Federal laws as jurisdiction in the Federal courts. These include the First, Fourth, Fifth, Sixth, Eighth, Ninth, Eleventh and Fourteenth Amendments to the Constitution of the United

States and, in addition, Article III of the United States Constitution, Civil Rights Act, the Sherman Act and the Clayton Act.

The litigation has been asked to rule on eleven specific rules of the Association. These rules include the 1.600, 2.000, Foreign Student, Transfer, Extra-Event, Amateurism, Television Plan, Five-Year, Hardship, All-Star and Enforcement Procedures.

The litigation was heard in the State Courts, District Courts, Court of Appeals, and the Supreme Court of the United States.

The litigation has increased in the last five years. In 1970, only one case was heard; in 1971, two cases; in 1972, six cases; in 1973, twelve cases; and in 1974, thirteen cases.

The litigation involved eleven different types of activities engaged in by the plaintiffs or defendants. These activities included Basketball, Football, Soccer, Baseball, Tennis, Track, Hockey, Minor Sports, Television viewing, Ticket scalping and Swimming.

The litigation involves thirty-four separate trials. Twenty-nine of the cases are directly related to the Association. The other five are related in that they involve institutions and conferences that abide by the rules of the Association.

The courts denied an injunction against the Association in seventeen of the cases. Five cases were vacated as moot, and six more were dismissed for various reasons. Six cases were listed as pending, with one having expired the time limitations. The other five are awaiting final jurisdiction by the courts. Six of the thirty-four cases originally issued a temporary injunction against the Association. One has been reversed upon appeal, one is moot, and one is dismissed. The remaining three cases have caused the Association to review its rules. Two decisions have been appealed and the other declared the Association discriminatory.

The litigation was taken into the Federal courts under the jurisdiction of the First and Fifth Amendments six times each; the Eighth Amendment, twice; and the Fourth, Sixth, Ninth, Eleventh once each. Article III of the Constitution was cited one time. The Fourteenth Amendment was cited in the litigation twenty-one times. This Amendment was divided into three parts and listed under each in the litigation. State Action was argued fourteen times, Equal Protection seventeen, and Due Process, twelve times.

The antitrust laws were litigated against the Association six times. The Sherman Act was involved five times, and the Clayton Act, four times.

The litigation invoked Federal Law 28 U. S. C. fifteen times, with Section 1343(3)(4) being cited in thirteen cases. Title 42 U. S. C. was listed fourteen times, with Section 1983 being named in thirteen of the suits.

The litigation involved the State Courts in eleven of the cases, the District Court twenty-five cases, the Court of Appeals, seven cases and the Supreme Court in one case.

The litigation found State Action as an integral part of the suit in fourteen cases. Nine of the judges decreed that the Association was a part of State Action and five found no State Action or it did not apply.

No violations were found in the First, Fourth, Sixth, Eighth, Ninth or Eleventh Amendments to the Constitution. The Fourteenth Amendment was found to be in violation in three cases and the Fifth, once.

The Civil Rights of the plaintiffs were found by the courts to be violated by the defendant in three cases. The specific sections were 28 U. S. C. 1343(3)(4), 1331, and 42 U. S. C. 1981, 1983. The antitrust laws were held in violation by the courts in only one case. The Sherman Act 15 U. S. C. 1, 2 and the Clayton Act 15 U. S. C. 15 cited irreparable harm against the plaintiff by the Association.

Of the eleven specific rules of the Association, four were found in violation by the courts. Due Process, Foreign Student, 1.600 and Amateur rules were not upheld by the courts in some cases. The Due Process litigation involved a temporary injunction to allow a reasonable time to review the testimony of the plaintiffs. The 1.600 and Amateur rules have been modified by the Association hopefully to comply with findings of the court. The Foreign Student rule has not been changed and is considered unconstitutional and discriminatory.

The three cases not upheld by the courts involved soccer, ice hockey and track student-athlete participants.

All of the cases except one, involving student-athletes, received athletic scholarships or grant-in-aid from the institution at which they participated.

CONCLUSIONS

The Constitution and Bylaws of the National Collegiate Athletic Association comply with the Civil Rights Doctrines in fourteen of the seventeen cases.

The Association complied with the Due Process clause of the Fifth and Fourteenth Amendments in twenty of the twenty-one cases and in that one instance the courts granted a temporary injunction for four days to allow compliance.

No regulations of the Association were found to be unreasonable, capricious or arbitrary under Constitutional law.

Uniformity of intercollegiate athletic eligibility was maintained under the regulations of the Association, with the defining of "student-athlete" and the enforcement of that definition. The 1.600 rule was challenged by the plaintiffs in nine cases and only one found the rule unconstitutional.

The 2.000 rule has been upheld by the Supreme Court.

The Foreign Student rule has been held as discriminatory by the courts.

The amateur regulations are imposed upon student-athletes to help prevent professionalism in intercollegiate athletes sanctioned by the Association. The rules governing ice hockey players and their amateur status has been litigated, and the court found discrepancies between the American and Canadian methods of disbursing financial aid. This discrepency has been modified in the rules to allow greater consistency among the student-athletes.

Other amateur rules require cancellation of eligibility when violations occur.

In both cases of transfer, the student-athlete lost eligibility by failure to comply with the rules of the Association and its member institutions.

In the fourteen cases involving freshman eligibility, three did not predict the required 1.600 or 2.000 grade point average. The other case ruled out eligibility on the basis of receipt of monies in violation of the Amateur rule. The additional eleven were discovered in violation after the completion of the freshman year.

The Association does not allow member student athletes to participate in unsanctioned events.

The regulations of the Association were upheld as constitutionally sound under the State Action Statute in fourteen cases. Nine of those actions involved State Action and therefore came under the jurisdiction of the Federal Court. The other five found that even though no State Action was involved and, therefore, was not a viable part of the case, it was instrumental in denying an injunction against the Association.

One case challenged the Private Association Doctrine. The rights of the Association were upheld.

The Association provides methods for recourse in the investigation of its membership. The enforcement procedures outlined in the NCAA Manual define these methods. Only two of the cases litigated sought relief for improper hearing procedures. In view of the number of investigations held each year by the Infractions Committee and the NCAA Council, this figure is minute.

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APPENDIX A

Regulations and Policies of the Constitution and Bylaws of the National Collegiate Athletic Association

Purposes and Fundamental Policy

Constitution, Article Two: Section 1. The purposes of this Association are:

(a) To initiate, stimulate and improve intercollegiate athletic programs for student-athletes and promote and develop educational leadership, physical fitness, sports participation as a recreational pursuit and athletic excellence.

(b) To uphold the principle of institutional control of, and responsibility for, all intercollegiate sports in conformity with the Constitution and Bylaws of this Association.

(c) To encourage its members to adopt eligibility rules to comply with satisfactory standards of scholarship, sportsmanship and amateurism.

(f) To supervise the conduct of, and to establish eligibility standards for, regional and national athletic events under the auspices of this Association.

(h) To legislate, through Bylaws or by resolution of a Convention, upon any subject of general concern to the members in the administration of intercollegiate athletics.

(i) To study in general all phases of competitive intercollegiate athletics and establish standards whereby the colleges and universities of the United States can maintain their athletic activities on a high level.

Section 2. Fundamental Policy

(a) The competitive athletic programs of the colleges are designed to be a vital part of the educational system. A basic purpose of this Association is to maintain intercollegiate athletics as an integral part of the educational program and the athlete as an integral part of the student body, and, by so doing, retain a clear line of demarcation between college athletics and professional sports.

(b) Legislation governing the conduct of intercollegiate athletic programs of member institutions shall apply to basic athletic issues such as admissions, financial aid, eligibility and recruiting: member institutions shall be obligated to apply and enforce this legislation, and the enforcement program of the Association shall be applied to an institution when it fails to fulfill this obligation.

Article Three: Section 1. Principle of Amateurism and Student Participation.

An amateur student-athlete is one who engages in a particular sport for the educational, physical, mental

and social benefits he derives therefrom, and to whom participation in that sport is an avocation. (Revised: 1/9/74)

(a) A student-athlete shall not be eligible for participation in an intercollegiate sport if:

(1) He takes or has taken pay, or has accepted pay in any form, for participation in that sport, or

(2) He has entered into an agreement of any kind to compete in professional athletics in that sport, or to negotiate a professional contract in the sport, or

(3) He has directly or indirectly used his athletic skill for pay in any form in that sport; however, a student-athlete may accept scholarships or educational grants-in-aid from his institution which do not conflict with the governing legislation of this Association. (Revised: 1/9/74)

(b) Any student-athlete who signs or who has ever signed a contract or commitment of any kind to play professional athletics in a sport, regardless of its legal enforceability or the consideration (if any) received; plays or has ever played on any professional athletic team in a sport, or receives or has ever received, directly or indirectly, a salary, reimbursement of

expenses or any other form of financial assistance from a professional organization in a sport for any purpose whatsoever, except as permitted by the governing legislation of this Association, no longer shall be eligible for intercollegiate athletics in that sport. (Revised: 1/9/74)

(c) Any student-athlete who agrees or has ever agreed to be represented by an agent or an organization in the marketing of his athletic ability or reputation no longer shall be eligible for intercollegiate athletics; however, a student-athlete may secure advice from a lawyer concerning a professional sports contract without violation of this provision provided the lawyer does not represent the student-athlete in negotiation of the contract. Any individual, agency or organization representing a prospective student-athlete for compensation in placing the prospect in a collegiate institution as a recipient of athletically related financial aid shall be considered an agent or organization marketing the athletic ability or reputation of the individual. (Revised: 1/9/74)

O.I. 5. A student-athlete may have played ice hockey on a team in a foreign country prior to his matriculation at a member institution, provided that any student-athlete who has been a member of any ice hockey team in a foreign country shall be ineligible if he has received,

directly or indirectly, from a hockey team any salary, division or split of surplus, educational expenses, or has received payment for any expenses in excess of actual and necessary travel expenses on team trips, a reasonable allowance for one meal for each practice and home game and actual and necessary travel expenses to practice and home games. No student-athlete shall represent his institution in ice hockey unless there is on file in the office of the director of athletics an affidavit in form prescribed by this Association signed by the student-athlete stating his compliance with this provision. (The prescribed affidavit form is printed on pages 29-30.)

O.I. 6. Any student-athlete who has participated as a member of the Canadian Amateur Hockey Association's major junior A hockey classification shall not be eligibe for intercollegiate hockey.

(f) Financial aid, including a grant-in-aid which carries with it a partial work requirement, may be awarded for any term (semester or quarter) during which a student-athlete is in regular attendance, provided he is not under contract to or currently receiving compensation from a professional sports organization. Financial aid awarded by an institution to a student-athlete shall conform to

the rules and regulations of the awarding institution and of that institution's conference, if any. (Revised: 1/9/74)

(1) In the event such aid exceeds commonly accepted educational expenses (i.e., tuition and fees; room and board; required course-related supplies and books, and incidental expenses not in excess of fifteen dollars per month) during the undergraduate career of the recipient, it shall be considered "pay" for participation in intercollegiate athletics.

(3) Payment of excessive or improper expense allowances, including, but not limited to, payment of (i) money to team members or individual competitors for unspecified or unitemized expenses; (ii) expenses incurred by a student-athlete which are prohibited by the rules governing an amateur non-college event in which the student-athlete participates, or (iii) expenses incurred by a student-athlete competing in an event which occurs at a time when he is not regularly enrolled in a full-time program of studies, or not eligible to represent his institution, except that expenses may be paid for a student-athlete to compete in regularly scheduled

intercollegiate events and established national championships occurring between terms, provided he is representing his institution and was eligible for intercollegiate competition the preceding term, and in international competition approved by the NCAA Council. (Revised: 1/9/74)

Membership

Constitution, Article Four: Section 1. Eligibility for Membership.

Colleges, universities, other institutions of learning, athletic conferences or associations and other groups related to intercollegiate athletics, located in the United States, its territories or possessions, with acceptable academic standards as defined in the Bylaws, which accept and observe the principles set forth in the Constitution and Bylaws of the Association are eligible for membership in this Association.

Section 2. Conditions and Obligations of Membership. The members of this Association agree:

(a) To administer their athletic programs in accordance with the Constitution, the Bylaws and other legislation of the Association;

(b) To observe directions of the Council made pursuant to Constitution 4-6, or by the annual Convention, to refrain from athletic competition with designated institutions;

(c) To establish and maintain high standards of personal honor, eligibility and fair play, and

(d) To sponsor and conduct a representative schedule in a minimum of four intercollegiate sports according to the level of intercollegiate competition of a conference or an individual institution, with at least one sport in every season.

Section 6. Termination of Membership--Discipline of Members.

(a) Disciplinary powers of the Association shall be exercised in accordance with the provisions of this Section and the Bylaws.

(b) The membership of any member failing to maintain the academic or athletic standards required for membership, or failing to meet the conditions and obligations of membership, may be terminated or suspended or the member otherwise disciplined by a vote of two-thirds of the delegates present and voting at an annual Convention, provided that a member shall not be suspended or its membership terminated unless:

(1) Notice of intention to move such termination or suspension, stating the grounds on which such motion will be based, is given in writing to the secretary of this Association, and to the president of such member on or

before the first day of November prior to the Convention; and

(2) The council approves the giving of the notice of intention to move for such termination or suspension; and

(3) Such notice is included in the Official Notice to the annual Convention.

(c) Disciplinary or corrective actions other than suspension or termination of membership may be effected during the period between annual Conventions by members of the Committee on Infractions present and voting at any duly called meeting thereof, provided the call of such meeting shall have contained notice of the situation presenting the disciplinary problem. The actions of the Committee on Infractions, however, shall be subject to review by the Council upon appeal. (Revised: 1/13/73)

(e) If any member of an athletic conference is found to be ineligible for active membership in this Association, such conference shall be ineligible for allied membership and its membership terminated.

(g) Upon termination or suspension of membership, all rights and privileges of the member shall cease forthwith.

Eligibility

Constitution, Article Three: Section 9. Principles Governing the Eligibility of Student-Athletes.

An institution shall not permit a student-athlete to represent it in intercollegiate athletic competition unless he meets the following requirements of eligibility:

(a) He must complete his seasons of participation within five calendar years from the beginning of the semester or quarter in which he first registered at a collegiate institution, time spent in the armed services, on official church missions or with recognized foreign aid services of the U. S. Government being excepted. The Council, by a two-thirds majority of its members present and voting may approve exceptions to this paragraph on behalf of student-athletes of the national service academies who have exhausted eligibility in one sport, but wish to compete in another sport or sports in which they have eligibility remaining.

(b) He shall be denied his first year of varsity athletic competition if, following his graduation from high school and before his enrollment in college, he was a member of a squad which engaged in any all-star football or basketball contest which was not specifically approved by the appropriate state high school athletic association or, if interstate, by the National Federation

of State High School Athletic Associations or all of the state high school athletic associations involved. The council of the Association may designate a committee to act in place of any state association which declines to assume the jurisdiction described in this paragraph.

(c) He must not participate in any organized, outside basketball competition except during the permissible playing season specified in Bylaw 3, and if his institution's playing season ends before the concluding date of the permissible playing season as defined by the NCAA, then he may not engage in any outside competition following his institution's playing season. Such participation shall require the member institution to rule the student-athlete ineligible for intercollegiate competition in the sport of basketball. . . .

(e) He shall be denied eligibility for intercollegiate competition in all sports if

(1) He has knowlingly and willfully violated Constitution 3-4;

(2) He has been guilty of fraudulence in connection with an entrance or placement examination, or

(3) He has otherwise exhibited gross dishonesty in evading or violating NCAA regulations.

(f) He shall be denied further intercollegiate athletic eligibility in all sports if he engages as a member of a squad in any college all-star football or basketball contest which is not certified by the Association's Extra Events Committee.

(g) He shall be denied eligibility for intercollegiate track and field competition, if, while a candidate for the intercollegiate team in track and field, he participates in track and field competition which is subject to the certification program specified in Bylaw 2, but which has not been certified.

(i) He shall be denied eligibility for the championship meets and tournaments sponsored by this Association unless he meets the individual eligibility requirements which shall be provided for in the Bylaws.

Section 4. High School All-Star Games.

No member institution shall permit any employee to participate, directly or indirectly, in the management, coaching, officiating, supervision, promotion or player selection of any all-star team or contest in football or basketball involving interscholastic players or those who, during the previous school year, were members of high school teams. Facilities of a member institution shall not be made available unless such a contest is first sanctioned by the appropriate state high school

athletic association or, if interstate, by the National Federation of State High School Athletic Associations.

Section 4. Track and Field Meets.

No member institution shall be represented or permit its student-athletes to compete in any track and field meet which is not sponsored, promoted, managed and controlled by a collegiate entity, unless such meet complies with the following requirements:

(a) The management of the meet must comply with the Association's principles of amateurism and all applicable interpretations.

(b) The sponsoring body must show evidence of sound management and the ability to conduct properly track and field competition. Any non-collegiate or non-conference sponsoring organization shall include in the membership of its administration committee at least two representatives from member institutions of this Association, one a faculty member and one an athletic official, to be appointed by the Extra Events Committee of this Association.

(c) The meet shall be conducted by competent track and field officials and proper medical supervision shall be provided as verified by one of the NCAA representatives serving on the meet's administration committee.

(d) Meets shall not be certified if they conflict with each other because of dates and geographical location.

(e) The management of a certified meet must submit to the Extra Events Committee an audited or notarized financial report of the immediate past meet before an ensuing meet may be certified; further, if a meet is certified but is not held that season, the certification shall lapse.

Bylaws, Article Four: Section 1. Individual Eligibility.

Any participant in a National Collegiate Athletic Association championship must be certified by his institution as satisfying all of the following requirements for eligibility.

(a) He must be eligible under the rules of his institution as well as the rules of the intercollegiate athletic conference of which his institution is a member, if such affiliation is held.

(b) He must be eligible to represent his institution in intercollegiate athletic competition under all of the applicable provisions of the Constitution and Bylaws.

(c) He must, at the time of competition, be registered for at least a minimum full-time program of studies as defined by his institution, which, in any event, shall not be less than twelve semester hours or twelve quarter hours; or, if the competition takes place between terms,

he must have been so registered in the term immediately preceding the date of competition.

(e) He must, after transfer from a junior college, have completed one full year of two full semesters or three full quarters and one calendar year must have elapsed from his first registration at the certifying institution, except that these provisions shall not apply if: (i) he is a graduate of the junior college; or (ii) at the time of his graduation from high school, he presented an accumulative sixth, seventh or eighth semester grade point average of 2.000 and he presents a minimum of twenty-four semester hours or a minimum of thirty-six quarter hours of transferable degree credit from the junior college with an accumulative minimum grade point average of 2.000 and he has spent at least two semester or three quarters in residence at the junior college, excluding summer sessions; or (iii) at the time of his graduation from high school, he did not present an accumulative sixth, seventh or eighth semester minimum grade point average of 2.000, but he presents a minimum of forty-eight semester hours or a minimum of seventy-two quarter hours of transferable degree credit with an accumulative minimum grade point average of 2.000 and has spent at least two academic years (four semesters of six quarters) in residence at the junior college, excluding summer sessions, or he presents a minimum of

thirty-six semester hours or a minimum of forty-eight quarter hours of transferable degree credit with an accumulative minimum grade point average of 2.250 and has spent at least three semesters or four quarters in residence at the junior college, excluding summer sessions, or he presents a minimum of twenty-four semester hours or a minimum of thirty-six quarter hours of transferable degree credit with an accumulative minimum grade point average of 2.500 and has spent at least two semesters or three quarters in residence at the junior college, excluding summer sessions.

(f) . . .

(1) Any participation during a season in an intercollegiate sport, regardless of time, shall be counted as a season of competition in that sport, except that a student-athlete granted an additional year of competition by his conference or institution for reasons of hardship is eligible for an additional season. Indoor and outdoor track and field shall be considered separate sports. (Revised: 8/1/73)

O.I. 400. "Hardship" is that incapacitating condition resulting from injury or illness which occurs in one of the three seasons of varsity competition after the student-athlete's

freshman year and which prevents him from participating in more than one football game, or in more than three contests in other sports, provided the injury or illness occurred during the first half of the institution's regular schedule in the sport involved. This provision shall be administered by the allied conferences of the Association, or in the case of an independent member institution, by the NCAA Eligibility Committee.

(2) Participation as an individual or as a representative of any team whatever in a foreign country by an alien student-athlete in each twelve-month period after his nineteenth birthday and prior to his matriculation at a member institution shall count as one year of varsity competition.

(3) Freshmen are eligible for varsity competition in all sports. Participation by a freshman on the varsity team of a junior college shall be counted as one of the four permissible seasons of varsity competition.

The 1972-1973 NCAA Manual states the 1.600 rule as follows:

Bylaw 4-6-(b)
(b) A member institution shall not be eligible to enter a team or individual competitors in an NCAA-sponsored team or tournament, unless the institution

in the conduct of all its intercollegiate athletic programs:

(1) Limits its scholarship or grant-in-aid awards (for which the recipient's athletic ability is considered in any degree), and eligibility for participation in athletics or in organized athletic practice sessions during the first year in residence to student-athletes who have a predicted minimum grade point average of at least 1.600 (based on a maximum of 4.000) as determined by the Association's national prediction tables or Association-approved conference or institutional tables, except that an institution may provide financial aid to a student whose matriculation was not solicited by a member of the athletic department or by a representative of its athletic interests and whose admission and financial aid have been granted without regard in any degree to his athletic ability; such a student shall not be eligible for participation in athletics or in organized athletic practice sessions unless he satisfies the requirements of paragraph (2) and there is on file in the office of the director of athletics certification by the faculty athletic representative, the admissions officer and chairman of the financial aid committee that this exception applies;

(2) Limits its subsequent scholarship and grant-in-aid awards (for which the recipient's athletic ability is considered in any degree) and eligibility for competition in varsity intercollegiate athletics to student-athletes who have a grade point average, either accumulative or for the previous academic year, of at least 1.600; except that the performance requirement of this paragraph shall not apply to a student-athlete who predicted at least 1.600 upon entrance into an institution which uses the Association national prediction tables or more demanding institutional or conference predictive formulae in applying paragraph (1). As to such a student-athlete, he shall be limited only by the official institutional regulations governing normal progress toward a degree for all students, as well as any other applicable institutional eligibility rules, including those of the athletic conference of which the institution is a member. These institutional or conference standards shall be filed in the office of the Association, and

(3) Limits its initial scholarship and grant-in-aid awards (for which the recipient's athletic ability is considered in any degree) and eligibility for participation in athletics or organized practice sessions during the first year of residence of student-athletes transferring from another collegiate institution to those who meet the requirements outlined in paragraph (2) above, except that a student athlete who transfers from a junior college and who failed to predict 1.600 on the Association's national prediction tables must (i) be a graduate of the junior college; or (ii) present a minimum of forty-eight semester hours or a minimum of seventy-two quarter hours of transferable degree credit, and have spent a minimum of two academic years in residence at the junior college, excluding summer sessions.

The 66th annual Convention approved the following, effective August 1, 1972:

(c) Institutions which conform to the requirements of paragraph (b) shall maintain a file which contains certification that each eligible student-athlete meets the minimum requirements of paragraph (b) and such file shall be available for examination upon request.

. . . . . .

(d) Institutions which do not conform to the requirements of paragraph (b) shall be ineligible for NCAA-sponsored events and appearances on the NCAA national football television program until they have operated in conformity for a period of two years. Institutions in compliance with paragraph (b) - (1) through use of the NCAA national tables or more demanding predictive processes may qualify for the exception in paragraph (b) - (2) immediately. In other cases, paragraph (b) - (2) shall continue to apply to student-athletes recruited prior to compliance with the stipulations of paragraph (b) - (1).

. . . . . .

O.I. 409. Only the actual accumulative rank-in-class or grade point average at the end of the sixth, seventh or eighth semester in high school may be used as recorded on an official high school transcript (or other official form) sent directly by the high school to the admissions office of the college. If a high school graduate attends a college preparatory school for a full academic year, he may be judged by his predicted grade point average as a high school graduate or on the basis of his college preparatory record. It is not permissible to round a student's prediction regardless of the number of digits to which the computation is carried, e. g., a prediction of 1.59999 would not qualify a prospective student-athlete under the provisions of Bylaw 4-6-(b).

. . . . . .

O.I. 411. If a student's prediction has not been established and he reports for practice or competition, the student shall be required to take the ACT or SAT test on the first subsequent national test date, and the institution shall be required to determine his prediction within two weeks following the receipt of scores from such test. Until his prediction is determined, the student may engage in practice, but not participate in competition. If he then predicts 1.600 or better, he is eligible to continue practice and represent the institution in competition in accordance with other applicable institutional, conference and NCAA policies.

O.I. 412. The Scholastic Aptitude Test (SAT) and the American College Test (ACT) are the only tests which may be used to establish an acceptable table or a prospect's prediction. The qualifying test score submitted by a prospect must represent the total score achieved from a single attempt on any nationally-administered test date.

. . . . . .

O.I. 414. A student who establishes a grade point average of 1.600 or better at the

conclusion of his freshman year (including summer school if attended) shall qualify under Bylaw 4-6-(b) - (2) during his sophomore year, even though at the conclusion of his first semester (or first or second quarters) of that year his accumulative academic grade point average registers below 1.600. A student-athlete who established less than a 1.600 grade point average at the conclusion of his freshman year (including summer school if attended), however, shall qualify under Bylaw 4-6-(b) - (2), if at the conclusion of his first semester (or first or second quarter) of his sophomore year his accumulative grade point average equals 1.600 or better. These same principles shall be applicable to the junior and senior years.

(NOTE: If a student receives a four-year grant, but fails to meet the 1.600 requirement at the conclusion of a given academic year, aid then must be withdrawn until the student attains the required grade point average.)

. . . . . .

O.I. 418. A student-athlete who practices or participates while ineligible under the provisions of Bylaw 4-6-(b) shall be charged with the loss of one year of practice and varsity eligibility by his institution for each year gained improperly, which shall be the next year the student is in attendance. A student-athlete who receives financial aid while ineligible for such aid under Bylaw 4-6-(b) shall be declared permanently ineligible for practice, intercollegiate athletics and such financial aid by his institution. The institution may appeal to the Council for a reduction of the ineligibility in either instance. The loss of eligibility may apply only at the institution involved in the violation.

The 1974-1975 NCAA Manual states the 2.000 Rule as follows:

(b) A Division I member institution shall not be eligible to enter a team or individual competitors in an NCAA-sponsored meet or tournament unless the institution in the conduct of all its intercollegiate programs: (Revised: 1/9/74)

> (1) Limits its scholarship or grant-in-aid awards (for which the recipient's athletic ability is considered in any degree), and eligibility for participation in athletics or in organized athletic practice sessions during the first year in residence, to student-athletes who have graduated from high school with a minimum grade point average of 2.000 (based on a maximum of 4.000) for all work taken through the accumulative sixth, seventh or eighth semesters and certified officially on the high school transcript, except that an institution may provide financial aid to a student whose matriculation was not solicited by a member of the athletic department or by a representative of its athletic interests (see O.I. 100) and whose admission and financial aid have been granted without regard in any degree

to his athletic ability; such a student shall not be eligible for participation in athletics or in organized athletic practice sessions unless he satisfies the requirements of Bylaw 4-6-(b) - (2) and there is on file in the office of the director of athletics certification by the faculty athletic representative, the admissions officer and the chairman of the financial aid committee that this exception applies; (Revised: 1/13/73, 1/9/74)

(2) Limits its subsequent scholarship and grant-in-aid awards (for which the recipient's athletic ability is considered in any degree) and eligibility for competition in varsity intercollegiate athletics to student-athletes who meet the official institutional regulations governing normal progress toward a degree for all students, as well as any other applicable institutional eligibility rules, including those of the athletic conference of which the institution is a member, and (Revised: 1/13/73)

(3) Limits its initial scholarship and grant-in-aid awards (for which the recipient's athletic ability is considered in any degree) and eligibility for participation in athletics or organized

practice sessions during the first year of residence of student-athletes transferring from another collegiate institution to those who meet the requirements outlines in Bylaws 4-6-(b) - (1) and (2), except that a student-athlete who transfers from a junior college and who failed to present an accumulative sixth, seventh or eighth semester minimum grade point average of 2.000 upon his graduation from high school: (i) be a graduate of the junior college; or (ii) present a minimum of forty-eight semester hours or a minimum of seventy-two quarter hours of transferable degree credit with an accumulative minimum grade point average of 2.000 and have spent at least two academic years (four semesters or six quarters) in residence at the junior college, excluding summer sessions; or (iii) present a minimum of thirty-six semester hours or a minimum of forty-eight quarter hours of transferable degree credit with an accumulative minimum grade point average of 2.250 and have spent at least three semesters or four quarters in residence at the junior college, excluding summer sessions, or (iv) present a minimum of

thirty-six quarter hours of transferable degree credit with an accumulative minimum grade point average of 2.500 and have spent at least two semesters or three quarters in residence at the junior college, excluding summer sessions. (Revised: 1/13/73, 1/9/74)

(c) Division I institutions which do not conform to the requirements of Bylaw 4-6-(b) shall be ineligible for NCAA championships and appearances on the NCAA national football television program until they have operated in conformity for a period of two years. (Revised: 1/13/73, 1/9/74)

Principles of Institutional Control and Responsibility

Constitution, Article Three: Section 2. The control and responsibility for the conduct of intercollegiate athletics shall be exercised by the institution itself and by the conference, if any of which it is a member.

O.I. 13 (Official Interpretation). Administrative control or faculty control or a combination of the two, shall constitute institutional control. Administration and/or faculty staff members must constitute at least a majority of the board

in control of intercollegiate athletics or of the athletic advisory board; and if either board has a parliamentary requirement necessitating more than a simple majority to transact some or all of its business, then the administrative and/or faculty members of the board must be of at least sufficient number to constitute that majority.

O.I. 14. An institution's "responsibility" for the conduct of its intercollegiate athletic program shall include responsibility for the acts of an independent agency, organization or individual when the institution's executive or athletic administration has knowledge that such agency, organization or individual is promoting the institution's intercollegiate athletic program or any staff member of the institution participates or assists in the functions of the agency or organization.

Ethical Conduct

Constitution, Article Three: Section 6. It shall be a member institution's responsibility to apply and enforce the following principles:

(a) Individuals employed by, or associated with a member institution to administer, conduct or coach

intercollegiate athletics and all participating student-athletes shall deport themselves with honesty and sportsmanship at all times so that intercollegiate athletics as a whole, their institutions and they, as individuals, shall represent the honor and dignity of fair play, and the generally recognized high standards associated with wholesome competitive sports.

Enforcement Procedures

Bylaw, Article Seven: Section 5. Discipline of Members

(a) Complaints charging any member institution with failure to maintain the academic or athletic standards required for membership, or failure to meet the conditions and obligations of membership in the Association, may be filed either with the Committee on Infractions or the executive director, or both. Each shall have the authority, either upon the filing of such a complaint or upon its or his own initiative, to institute an inquiry or investigation.

(b) The Council shall formulate and publish the procedure governing the administration of the enforcement program as well as the performance of duties under this Section, and distribute it to the membership of the Association.

(c) A member under investigation:

1. Shall be given notice of any specific charges against it, and the facts upon which such charges are based, and
2. Shall be given an opportunity to appear before the Committee on Infractions (or Council upon appeal) to answer such charges by the production of evidence.

(d) All members of the Association are under an obligation to cooperate with the executive director (and his staff), the Committee on Infractions and the Council, and to answer all relevant inquires submitted to them.

(e) The Committee on Infractions shall determine whether it shall itself impose disciplinary measure authorized by Constitution 4-6, or recommend that such action be taken by the Council or next annual Convention.

Official Procedure Governing the NCAA Enforcement Program.

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

Much more is expected of them than of the less critically placed citizen.

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

Enforcement. Section 1. The Council shall designate a Committee on Infractions which shall be responsible to administer the NCAA enforcement program. The committee shall:

1. consider complaints which may be filed with the Association charging the failure of any member to meet the conditions and obligations of membership in the Association;
2. provide general guidance to the NCAA investigative staff in the development of information related to alleged violations;
3. determine facts related to alleged violations and find violations of NCAA rules and requirements;

4. impose appropriate penalties on a member found to be in violation, or recommend to the Council suspension or termination of membership;
5. carry out any other duties directly related to the administration of the Association's enforcement program. 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 when major infractions cases involving violations are to be considered.

Section 2. All allegations and complaints relative to a member's failure to maintain the academic or athletic standards required for membership, the member's violation of the legislation or regulations of the Association, or the member's failure otherwise to meet the conditions and obligations of membership, shall be received by the committee or the Association's executive director and channeled to the NCAA investigative staff. 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 evidence to warrant an official inquiry, and in conducting this inquiry the services of a field investigator may be used. Under the general guidance of the Committee, the investigative staff also may initiate an investigation on its own motion when it has reasonable cause to believe that a member is or has been in violation of its obligations as a member of the Association.

Section 3. If the Committee on Infractions, after consideration of the information which has been developed and after consultation with the investigative staff, determines that there has been a violation not of a serious nature, it may privately reprimand and censure without a hearing; if it determines that an allegation or complaint warrants an official inquiry, it shall determine its scope and thrust and direct a letter to the chief executive officer of the member involved (with copies to the faculty representative and athletic director of the member, to the executive officer of the allied conference of which the institution is a member and to the Association vice-president of the district in which the member is located) fully informing him of the matter under inquiry and requesting his cooperation to the end that the facts may be discovered. By this letter, the Committee shall call upon the chief executive officer of the member

involved for the disclosure of all relevant information and may require his appearance or the appearance of his representative before the Committee at a time and place which is mutually convenient, if such appearance is deemed necessary by the Committee. Similarly, a member which is subject to official inquiry shall, upon its request, be given the opportunity to have representatives appear before the Committee. If a member declines to meet with the Committee after having been requested to do so, the member shall not have the right to appeal either the Committee's finding of facts and violations or the resultant penalty.

Section 4.

(a) If a member appears before the Committee to discuss its response to the Committee's official inquiry, the hearing shall be directed toward the general scope of the official inquiry but shall not preclude the Committee from finding any violation resulting from information developed or discussed during the hearing. During the hearing, the investigative staff first shall present the information which its investigation has developed. The member will then present its explanation of the alleged violations and questionable practices, and any other arguments or information which it deems appropriate in the Committee's consideration of the case. The Committee, at the discretion of any of its members, shall question representatives of the member or the investigative staff, as well

as any other persons appearing before it, in order to determine the facts of the case. Further, under the direction of the Committee, questions and information may be exchanged between and among all parties participating in the hearing. The exact procedure to be followed in the conduct of the hearing will be determined by the Committee.

(b) After all representations have been made and the hearing has been concluded, the Committee shall excuse all others from the hearing and the Committee shall make its determinations of fact and violation. In arriving at its determinations, it may request additional information from any appropriate source including the member or the investigative staff. If the Committee determines there has been a violation or questionable practice, it shall impose an appropriate penalty, or it may recommend to the Council suspension or termination of membership in an appropriate case. The finding of a violation or questionable practice shall be by majority vote of the members of the Committee present and voting. The imposition of a penalty or recommended action shall require the favorable vote of at least three members of the Committee.

Section 5. The Committee, without prior public announcement, shall be obligated to promptly submit a written report, which sets forth its findings and penalty

to be imposed, to the chief executive officer of the member (with copies to those individuals receiving copies of the official inquiry) which has been subject to the official inquiry. The member then shall have the right to give written notice of appeal of the Committee's findings, the penalty, or both, to the Council. To be considered by the Council, the notice of appeal must be received by the NCAA executive director, Shawnee Mission, Kansas, not later than 15 calendar days from the date the member institution received the Committee's report. The member's notice of appeal shall contain a statement of the date the Committee's report was received by the chief executive officer. If the notice of appeal is not received within the 15 day period, or the member determines not to appeal, the action of the Committee will be promptly announced by the Committee through the NCAA executive office or at any other site determined by the Committee. The Committee shall forward a report of the case to the Council at the time of the public announcement. If appropriate notice of appeal is received, no public announcement will be made until conclusion of the case by the Council. Determinations of fact and violations arrived at in the foregoing manner by the Committee, or by the Council on appeal, shall be final, binding and conclusive, and shall not be subject to further review by the Council or any other authority.

Section 6. The Committee shall be obligated to submit a written summary statement to the Council on each case that is subject to appeal, and it shall include:

1. A statement of the origin of the case.
2. Violations of NCAA requirements or questionable practices in light of NCAA requirements, as determined by Committee.
3. Related factors appropriate for consideration in judgment of case.
4. Disciplinary or corrective actions taken by institution or conference, or any other agency involved in particular incident.

During an appeal to the Council, the chairman or another member of the Committee shall present the Committee's report. The member institution, if it desires to be represented before the Council, may challenge the Committee's finding of fact or penalty, or both. The Council then shall act upon the member's appeal and may accept the Committee's findings and penalty, alter either one or both or make its own findings and impose a penalty which it believes appropriate.

Section 7.

(a) The Constitution of the Association provides that disciplinary or corrective actions other than termination or suspension of membership may be effected during

the period between annual Conventions by the Committee on Infractions. As a guiding principle, the NCAA penalty should be broad and severe if the violation or violations reflect a general disregard for the governing rules; in those instances in which the violation or violations are isolated and of relative insignificance, then the NCAA penalty shall be specific and limited. Previous violations of NCAA legislation shall be a contributing factor in determining the degree of penalty.

Among the disciplinary measures, singly or in combination, which may be adopted by the Committee or Council and imposed against an institution are:

1. Reprimand and censure;
2. Probation for one year;
3. Probation for more than one year;
4. Ineligibility for one or more National Collegiate Championship events;
5. Ineligibility for invitational and postseason meets and tournaments;
6. Ineligibility for any television programs subject to the Association's control or administration;
7. Ineligibility of the member to vote or its personnel to serve on committees of the Association, or both;

8. Prohibition against an intercollegiate sports team or teams participating against outside competition for a specified period;
9. Prohibition against the recruitment of prospective student-athletes for a sport or sports for a specified period;
10. A reduction in the number of either initial or additional financial aid awards which may be awarded during a specified period;
11. Requirement that an institution which has been represented in an NCAA championship event 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; or individual or team records and performances shall be vacated or stricken; or individual or team awards shall be returned to the Association, or any combination of the preceding penalties;
12. Requirement that a member institution which has been found in violation show cause why;

(i) a penalty or an additional penalty should not be imposed if, in the opinion of the Committee (or Council), it does not take appropriate disciplinary or corrective action against athletic department personnel involved in the infractions case, any other institutional employee if the circumstances warrant, the student-athlete involved or representatives of the institution's athletic interests; or

(ii) a recommendation should not be made to the membership that the institution's membership in the Association be suspended or terminated if, in the opinion of the Committee (or Council), it does not take appropriate disciplinary or corrective action against the head coach of the sport involved, any other institutional employee if the circumstances warrant, the student-athlete involved or representatives of the institution's athletic interests.

"Appropriate disciplinary or corrective action" 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; declaration of ineligibility for any student-athlete involved for a

specific period; severance of relations with any representative of the institution's athletic interests who may be involved; the debarment of the head or assistant coach from any coaching, recruiting or speaking engagements for a specified period, and the prohibition of all recruiting in a specified sport for a specified period. The nature and extent of such action shall be the determination of the institution after due notice and hearing to the individuals concerned, but the determination of whether or not the action is appropriate in the fulfillment of NCAA policies and principles, and its resulting effect on any institutional penalty, shall be solely that of the Committee (or Council). Where this requirement is made, the institution shall show cause, or in the alternative, shall show the appropriate disciplinary or corrective action taken, in writing, to the Committee (or Council) within fifteen (15) days thereafter. The Committee (or Council) may, without further hearing, determine on the basis of such writing whether or not in its opinion appropriate disciplinary or corrective action has been taken, and may impose a penalty or additional penalty, take no further action, or it may, by notice to the institution, conduct a further hearing at a later date before making a final determination.

(b) In some instances, an institution is rendered ineligible to appear on television programs administered or controlled by the Association. When an institution is banned from such television programs, the penalty shall specify that the institution may not enter into any contracts or agreements for such appearances until the institution's probationary status has been terminated and it has been restored to full rights and privileges of membership.

(c) When an institution has been found to be in violation of NCAA requirements, and the report reflects academic violations or questionable academic procedures, the NCAA executive director shall be authorized to forward a copy of the report to the appropriate regional accrediting agency.

(d) If the Committee, after a review of institutional or conference action taken in connection with a rule infraction, concludes that the corrective or punitive action taken by the institution or conference is representative of and consistent with NCAA policies and principles, the Committee may exercise the discretion to take no further action. Further, self-disclosure shall be considered in establishing penalties, and if an institution uncovers a violation prior to its being reported to the NCAA and/or its conference, such disclosure shall be

considered as a mitigating factor in determining the penalty. Also, the Committee may adopt a penalty comparable to the institutional or conference penalty without conducting a hearing with the member; however, the Committee shall notify the member of the NCAA rules or regulations violated and the proposed penalty, and advise the member of the opportunity for a hearing. The member must request such a hearing within fifteen days of the receipt of the Committee's notification, if such a hearing is to be held. If a member requests such a hearing, the procedures outlined in Section 4 shall be followed. In the absence of a member's request for a hearing, the Committee shall impose the penalty and if appropriate make public announcement of its action. Punitive or corrective action taken by an institution or conference shall not prevent the Committee from taking any punitive action which it deems advisable or warranted in any case. In cases of serious violation, the NCAA should not leave the discipline in such cases exclusively to an institution or conference.

Section 8. When a penalty has been imposed and publicly announced, there shall be no review of the penalty except upon a showing of newly discovered evidence which is directly related to the findings in the case, or that there was a prejudicial error in the procedure which was followed in the processing of the case by the Committee.

Any institution which initiates such review shall be required to submit a brief of its appeal to the Committee at least 30 days prior to a Committee meeting and furnish sufficient copies of the brief for distribution to all members of the Committee; thereupon, the Committee shall review the brief and decide by majority vote whether it shall grant a hearing of the appeal. Disciplinary measures imposed by the institution or its conference, subsequent to the NCAA's action may be considered to be "newly discovered evidence" for the purposes of this paragraph. If a hearing of the appeal is granted, the Committee may reduce or eliminate any penalty, but may not impose any new penalty. The Committee's decision with respect to the penalty shall be final and conclusive for all purposes.

Section 9. When the Committee or NCAA Council finds that there has been a violation of the Constitution or Bylaws affecting the eligibility of an individual student-athlete or student-athletes, the institution involved and its conference (if the institution holds such affiliation with an allied member) shall be notified of the violation and the name(s) of the student-athlete(s) involved, it being understood that if the institution fails to take appropriate action, the involved institution shall be cited to show cause under the Association's regular enforcement

procedures why it should not be disciplined for failure to do so. It is understood that if an institution concludes that continued application of the rule(s) would work an injustice on any student-athlete, an appeal shall be submitted to the Council and promptly acted upon by the body or a sub-committee designated by it.

Section 10. The Committee on Infractions and the Council shall treat all cases before them as confidential, except as provided above, until the same have been announced in accordance with the prescribed procedures. Any member of the Committee on Infractions or Council who is directly connected with an institution under inquiry shall not take part in any NCAA proceedings connected with the case before the Committee or the Council.

APPENDIX B

Table of Cases

Achampong v. NCAA, Civil No. 74-B-9, (S. D. Texas, unreported, 1974)

Associated Students, Inc. of California State University-Sacramento v. NCAA, 493 F. 2d 1251, (9th cir. 1974)

Begley v. The Corporation of Mercer University, 367 F. Supp. 908, (E. D. Tenn. 1973)

Behagen v. Intercollegiate Conference of Faculty Representatives, 346 F. Supp. 602, (D. Minn. 1972)

Bounds v. Eastern College Athletic Conference, 169 Misc. 2d 676, 330 N. Y. S. 2d 453, (Sup. Ct. N. Y. 1972)

Buckton v. NCAA, 366 F. Supp. 1152, (D. Mass. 1973)

California State University-Hayward v. NCAA, No. 447076-6, (Super. Ct. Cal. unreported, May 7, 1974)

Casperson v. Board of Regents of the University of Minnesota, NCAA, File No. 586023, (4th Dist. Ct. Minn. unreported, 1970)

College Athletic Placement Service, Inc. (CAPS) v. NCAA, Civil No. 74-1144, (D. N. J. unreported, filed August 22, 1974), No. 74-1904, (3rd Cir. unreported, November 25, 1974), 506 F. 2d 1050 (1974)

Curtis v. NCAA, Civil No. C-71-2088 ACW, (N. D. Cal. unreported, 1972)

Datillo v. NCAA, Civil Action No. 6477, (W. D. Ky. unreported, 1970)

Detroit Football Co. v. Robinson, 186 F. Supp. 933, (E. D. La. 1960), 283 F. 2d 657, (5th Cir. 1960)

Dr. Olivett v. The Regents of the University of California, C-66727, (Super. Ct. Los Angeles County, Cal. unreported, 1973)

Dr. Olivett v. NCAA, CA-000076, (Super. Ct. Los Angeles County, Cal. unreported, 1974)

Fisk University v. Southern Intercollegiate Conference (S. I. A. C.), NCAA, No. A 2309-A, (Ch. Davidson County Ct. Tenn. unreported, 1973)

Golden Bear Athletic Fund v. NCAA, No. C-71-1930 ACW, (N. D. Cal. unreported, 1972)

Grant and Williamson v. NCAA, No. 5483, (C. P. Phila. County, Pa. unreported, 1973), Civil Action No. 73-274, (E. D. Pa. unreported, 1973)

Highley v. Big Eight Conference, Civil Action No. Civ-73-630-D, (W. D. Okla. unreported, 1973)

Houston Oilers, Inc. v. Neely, 361 F. 2d 36, (10th Cir. 1966)

Howard University v. NCAA, 367 F. Supp. 926, (D. Col. 1973), 510 F. 2d 213, (D. C. Cir. 1975)

Ibarra v. University of San Francisco, NCAA, No. 663 356, (Super. Ct. San Francisco County, Cal. unreported, filed July 26, 1973)

Jones v. NCAA, Civil Action No. 74-5519-T, (D. Mass. unreported, March 21, 1975)

Joslyn v. Byers, No. Civ.-74-894-C, (W. D. Okla. unreported, 1974), No. Civ. 74-1010-C, (W. D. Okla. unreported, 1974)

Kanter v. Arizona State University, Western Athletic Conference, NCAA, Civ. 74-267 Phx. WPC, (D. Ariz. unreported, June 10, 1974)

Larson v. NCAA, 4-74 Civ. 432, (D. Minn. unreported, September 9, 1974)

Los Angeles Rams Football Club v. Cannon, 185 F. Supp. 717, (S. D. Cal. 1960)

McDonald and Pondexter v. NCAA, 370 F. Supp. 625, (C. D. Cal. 1974)

New v. NCAA, Civil No. 8077, (S. D. Ohio, unreported, 1972)

New York Football Giants v. Los Angeles Chargers Football Club Inc., 291 F. 2d 471, (5th Cir. 1961)

NCAA v. ABA, James McDaniels, No. 7225-A, (W. D. Ky. unreported, filed April 5, 1972)

NCAA v. ABA, Howard Porter, No. 2145, (C. P. Delaware County, Pa. unreported, filed April 11, 1972), No. CA 72-717, (E. D. Pa. unreported, filed October 13, 1972)

Parish v. NCAA, 361 F. Supp. 1214, 1220, (W. D. La. 1973), 506 F. 2d 1035, (5th Cir. 1975)

Samara v. NCAA, Civil Action No. 104-72-A, (E. D. Va. unreported, 1973)

Saulny v. NCAA, No. C-74-2489 SC, (N. D. Cal. unreported, December 17, 1974)

Schubert v. NCAA, Civil Action No. IP 72-149-C, (S. D. Ind. unreported, 1974), Civil No. 74-1282, (7th Cir. unreported, 1974), No. 74-1067, (Sup. Ct. unreported, 1974), 95 Sup. Ct. 1574, (1974), 506 F. 2d 1402, (1975)

Scott v. NCAA, Civil C-71-2518, (Dist. Ct., Tulsa County, Okla. unreported, 1972)

Smith v. Southern Methodist University, Southwest Conference, NCAA, Civil Action No. 3-74895-B, (N. D. Texas, unreported, September 1974)

Smith v. NCAA, S. M. U., No. 74-3466, (5th Cir. unreported, October 4, 1974)

Smith v. S. M. U., No. 74-8617, (162nd D. Dallas County, Texas, unreported, October 8, 1974), No. 18519 (Civ. App. 5th Dist. Texas, unreported, October 23, 1974), No. B-4907, Sup. Ct. Texas, unreported, October 29, 1974)

S. M. U. v. Smith, 515 S. W. 2d 63, (Ct. App. Texas, 1974)

State Board of Education v. NCAA, 273 So. 2d 912, (3rd Cir. 1973)

Taylor v. Wake Forest University, 16 N. C. App. 117, 191 S. E. 2d 379, (Sup. Ct. N. C., 1972)

APPENDIX C

Primary Sources of Information

The National Collegiate Athletic Association

President
ALAN J. CHAPMAN
Rice University
Houston, Texas 77001

Executive Director
WALTER BYERS

Secretary-Treasurer
RICHARD P. KOENIG
Valparaiso University
Valparaiso, Indiana 46383

March 27, 1974

Mr. Milton E. Reece
Assistant Professor
Greensboro College
Greensboro, North Carolina

Dear Mr. Reece:

This is in response to your March 4 letter.

It is anticipated that a summary of the legal cases in which the NCAA has been involved will be prepared for distribution to the NCAA membership probably within the next month. I will be glad to mail you a copy once it has been completed. If you desire more detailed information concerning litigation in which the NCAA has been involved, it would be my suggestion that you plan a trip to our office here in Kansas City. The reason for my suggestion is that the materials related to each case are voluminous and therefore forwarding copies of the materials would not be practical from our standpoint.

I do not believe the NCAA has ever been involved in a case related to the right of females to participate in intercollegiate athletics. As a matter of fact, NCAA legislation does not preclude females from participating on an institution's varsity intercollegiate athletic teams, which as you know is the type of intercollegiate competition affected by NCAA legislation.

The NCAA does retain legal counsel and, when necessary, hire counsel in the area in which any particular litigation is tried. Our local legal counsel which coordinates either our defense or attack on legal issues is the firm of Swanson, Midgley, Eager, Gangwere & Thurlo. You may wish to write George Gangwere, a member of the firm, at 1500 Commerce Bank Building, Kansas City, Missouri 64106.

I hope that I have adequately responded to your inquiry.

Sincerely,

Warren S. Brown

Warren S. Brown
Assistant Executive Director

WSB:jb

National Association of Intercollegiate Athletics

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A. O. DUER, Executive Secretary-Treasurer

June 18, 1974

Mr. Milt Reece
Assistant Professor
Department of Physical Education
Greensboro College
Greensboro, North Carolina

Dear Mr. Reece:

This is to answer your letter of June 10th, regarding legal aspects of sports.

There can be no doubt that there has been a tremendous increase in legal involvement within the college sports area. Not only is there increasing legal action between organizations, but every athlete who is in violation of any policy must be given "due recourse" and it is increasingly true that these athletes seek court protection.

Of course, all legal action would come to my desk. We have been most fortunate in not being involved in legal cases involving the NAIA, NCAA, AAU or any other amateur organization. I believe, to this date, we have not had one court case. We have, however, had athletes who have sought injunctions on eligibility problems. Fortunately, these have been few in number.

Under separate cover, I have asked Don Powers to send you our list of official publications and we shall be glad to send you any official handbooks of rules and regulations. However, we send free copies to all official NAIA people and our member institutions. Therefore, our policy requires that those not officially receiving these be asked to pay for the cost of printing and handling.

Best of luck in your doctoral dissertation. It is my observation that the NCAA has had a great number of court problems and you might write them for information. Their address is 6299 Nall, Shawnee Mission, Kansas.

Sincerely,

A. O. Duer
Executive Secretary
NAIA

AOD:mg

LAW OFFICES

SWANSON, MIDGLEY, EAGER, GANGWERE & THURLO

1500 COMMERCE BANK BUILDING

KANSAS CITY, MISSOURI 64106

TELEPHONE 842-9692
AREA CODE 816

ROY P. SWANSON
KENNETH E. MIDGLEY
GEORGE H. GANGWERE
JOHN C. THURLO
MILTON C. CLARKE
JOHN J. KITCHIN
RICHARD K. ANDREWS
JAMES H. McLARNEY
CHARLES L. HOUSE
MICHAEL H. MAHER
ROBERT W. McKINLEY
MARSHALL V. MILLER
GERALD E. HERTACH
C.W. CRUMPECKER, JR.
JOHN S. BLACK

HENRY G. EAGER (1923-1972)
NORMAN O. BESHEER
OF COUNSEL

June 24, 1974

Milt Reece
Assistant Professor
Department of Physical Education
Greensboro College
Greensboro, North Carolina

Dear Professor Reece:

In response to your letter of June 10, I enclose herewith copies of the court opinions and some related papers in the following NCAA cases:

Casperson v. Board of Regents
Samara v. NCAA
Achampong v. NCAA
Associated Students v. NCAA
California State--Hayward v. NCAA (pending)
Dr. Olivet v. NCAA
Dr. Olivet v. Board of Regents
Highley & Burris v. NCAA
Schubert v. NCAA (Ball State) (pending on appeal)
Kanter v. NCAA

Also enclosed is a copy of the opinion in Bounds v. E.C.A.C. in which the NCAA was not involved.

You will find the published opinion in McDonald & Pondexter v. NCAA at 370 F. Supp. 625. This is an important decision on the issue of state action. The case is presently on appeal, but will probably be dismissed as moot.

In addition, I call your attention to two plaintiff cases the NCAA is presently pursuing: Muskingum College, et al. v. A.B.A., James McDaniels, et al. (W.D. Ky.) No. 7225A; and NCAA v. Howard Porter & A.B.A. (Court of Common Pleas of Delaware County, Pa.) No. 2145.

Finally, in case you are interested in tort cases, I refer you to Cecil New v. NCAA, et al. (S.D. Ohio) No. 8077; Dattillo v. NCAA (W.D. Ky.) No. 6477, and Ibarra v. University of San Francisco, et al. (Superior Court in San Francisco) No. 663-356.

Scott v. NCAA (District Court for Tulsa County, Okla.) No. C-71-2518 represented an interesting attempt to require the televising of an NCAA football contest by injunction. The attempt was unsuccessful.

I trust the foregoing will be helpful to you. I am, of course, very much interested in the subject-matter, and would be interested in reading the results of your research and study.

I enclose a statement for the expense of copying the enclosed opinions. I will be pleased to attempt to answer any questions you may have.

Yours very truly,

George H. Gangwere

GHG/bb
Enclosures

The National Collegiate Athletic Association

President
ALAN J. CHAPMAN
Rice University
Houston, Texas 77001

Executive Director
WALTER BYERS

Secretary-Treasurer
RICHARD P. KOENIG
Valparaiso University
Valparaiso, Indiana 46383

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June 26, 1974

Mr. Milton Reece
Physical Education Department
Greensboro College
Greensboro, North Carolina 27420

Dear Mr. Reece:

Regretfully, I am unable to provide you with a summary of the legal cases in which the NCAA has been involved. It is anticipated that such a summary will be prepared when time permits. Earlier, it had been planned that such a summary would be sent to the membership in the early spring of this year. This plan was canceled for several reasons.

I would be more than happy to forward a listing of the cases without any summary of the complaints and responses. This at least, would provide you with the appropriate court and action number, which in turn you could use to obtain directly the information you desire.

Please contact me if you desire such information.

Sincerely,

Warren S. Brown
Assistant Executive Director

WSB:jb

The National Collegiate Athletic Association

President
ALAN J. CHAPMAN
Rice University
Houston, Texas 77001

Executive Director
WALTER BYERS

Secretary-Treasurer
RICHARD P. KOENIG
Valparaiso University
Valparaiso, Indiana 46383

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July 10, 1974

Mr. Milton E. Reece
Physical Education Department
Greensboro College
Greensboro, North Carolina 27420

Dear Mr. Reece:

Warren Brown has asked me to respond to your July 3 letter.

Enclosed please find a listing of the legal cases in which the NCAA has been involved in recent years, including the appropriate court and action number for each case. I hope this information will be of service to you in the preparation of your dissertation.

Please contact this office if we can be of further assistance.

Sincerely,

William B. Hunt

William B. Hunt
Executive Assistant

WBH:cmb
Enclosure

LEGAL CASES

1971

Isaac Curtis-Larry Brumsey vs. NCAA
#C-71-2088-ACW U.S. District Court for the Northern District of California

W. Leonard Renick & Golden Bear Athletic Fund vs. NCAA
#C-71-1930-ACW U.S. District Court for the Northern District of California

1972

NCAA by Muskingum College vs. American Basketball Association by Munchak Corporation & RDG Corporation/The Carolina Cougars and James R. McDaniels
Civil Action #7225-A U.S. District Court for the Western District of Kentucky at Louisville

NCAA vs. American Basketball Association and Howard E. Porter
Civil Action #72-142 U.S. District Court for the Eastern District of Pennsylvania

1973 --- PENDING

William J. Buckton and Peter Marzo (Boston University) vs. Eastern College Athletic Conference and NCAA
Civil Action #73-3475-T U.S. District Court for the District of Massachusetts

Glenn S. McDonald and Roscoe Pondexter vs. NCAA and California State University, Long Beach
Civil Action #74-87-LTL U.S. District Court for the Central District of California

Associated Students, Inc., of California State University, Sacramento vs. NCAA
Civil Action #S-2754 U.S. District Court for the Eastern District of California

Robert L. Parish (Centenary College) vs. NCAA
Civil Action #18,733 U.S. District Court for the Western District of Louisiana, Shreveport Division

Emmanuell Achampong (Pan American University) vs. NCAA
Civil Action #74-B-9 U.S. District Court for the Southern District of Texas, Brownsville Division

Jack M. Highly and Paul "Buddy" Burriss (University of Oklahoma) vs. The Big Eight Conference and NCAA
Civil Action #73-630-D U.S. District Court for the Western District of Oklahoma

Howard University and Mori Diane vs. NCAA
Civil Action #1120-73 U.S. District Court for the District of California

California State University, Hayward vs. NCAA
Civil Action #447076-6 Superior Court of the State of California for the County of Alameda
David A. Kanter vs. NCAA and Arizona State University
Civil Action #74-267-WDC U.S. District Court for the District of Arizona

CLOSED

Roland Louis Grant and John Lee Williamson (New Mexico State University) vs. NCAA (1973)
Civil Action #73-274 U.S. District Court for the Eastern District of Pennsylvania
Fred Samara and Dennis Walker vs. NCAA (1973)
Civil Action #104-73-A U.S. District Court for the Eastern District of Virginia
University of Southwestern Louisiana vs. NCAA (1973)
Civil Action #18600 U.S. District Court for the Western District of Louisiana, Lafayette Division
Paul K. Schubert vs. NCAA and Trustees of Ball State University (1974)
Civil Action #IP-74-149-C U.S. District Court for the Southern District of Indiana, Indianapolis
Fisk University vs. NCAA and Southern Intercollegiate Conference (1973)
Civil Action #A-2309-A Chancery Court for Davidson County, Tennessee

Greensboro College
Chartered 1838
Greensboro, North Carolina

August 9, 1974

Clerk of Court
Chancery Court
Davidson County, Tennessee

Dear Sir:

I am a Doctoral Candidate at the University of North Carolina at Greensboro, in Physical Education. My topic involves Athletes, Eligibility, Courts and the National Collegiate Athletic Association. I have found that all of these court cases have been tried in the last three years and most of them have not yet been reported in the law books and some are still pending.

I would appreciate any help you can give me in locating a file, a brief or a pleading involving Fisk University vs NCAA and Southern Intercollegiate Conference (1973) Civil Action #A-2309-A.

If any expense is involved in duplicating or mailing this document, I would be happy to remit this expense.

Sincerely,
Milton E. Reece
Milton E. Reece
Assistant Professor
Department of Physical Education

I am enclosing the following papers which I think will be of assistance to you. There is no charges as we are glad to furnish the material to you andhope it will be of assistance to you in obtaining your Doctoral.

Yours truly
Raymond L. Barrett, Clerk and Master

LAW OFFICES
SWANSON, MIDGLEY, EAGER, GANGWERE & THURLO
1500 COMMERCE BANK BUILDING
KANSAS CITY, MISSOURI 64106
TELEPHONE 842-9692
AREA CODE 816
HENRY G. EAGER (1923-1972)

ROY P. SWANSON
KENNETH E. MIDGLEY
GEORGE H. GANGWERE
JOHN C. THURLO
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ROBERT W. McKINLEY
MARSHALL V. MILLER
GERALD E. HERTACH
C. W. CRUMPECKER, JR.
JOHN S. BLACK
JAMES M. SMART, JR.
LAWRENCE D. BLUME
NILES S. CORSON

March 27, 1975

Milt Reece
Assistant Professor
Department of Physical Education
Greensboro College
Greensboro, North Carolina

Dear Professor Reece:

I now enclose additional pleadings and opinions relating to the following NCAA cases:

Paul K. Schubert v. NCAA, et al.
Eric J. Saulny v. NCAA, et al.
Stephen A. Jones v. NCAA, et al.
College Athletic Placement Service, Inc. et al. v. NCAA, et al.
Dan Joslyn, etc. v. Walter Byers, et al.
Reed Larson v. NCAA
Mike Smith v. NCAA, et al.
Jesus Ibara, et al. v. NCAA, et al.
Grant and Williamson v. NCAA
John Dattillo, et al. v. NCAA, et al.

I have not sent you all of the pleadings in these cases, but a sufficient portion of our file in each to enable you to properly analyze the case. If there is anything further you need, please call upon me.

I also enclose a statement for the copying expense.

Yours very truly,

George H. Gangwere

George H. Gangwere

GHG/bb
Enclosures

Greensboro College
Chartered 1838
Greensboro, North Carolina

August 9, 1974

Clerk
District Court
Tulsa County, Oklahoma

Dear Sir:

I am a Doctoral Candidate at the University of North Carolina at Greensboro, in Physical Education. My topic involves Athletes, Eligibility, Courts and the National Collegiate Athletic Association. I have found that all of these court cases have been tried in the last three years and most of them have not been reported in the law books and some are still pending.

I would appreciate any help you can give me in locating a file, a brief or a pleading involving Scott vs. NCAA #C-71-2518.

If any expense is involved in duplicating or mailing this document, I would be happy to remit this expense.

Sincerely,
Milton E. Reece
Milton E. Reece
Assistant Professor
Department of Physical Education

I hope this is what you are looking for. If there is anything else you need please let me know Up to now there isn't any charge.

DON PERRAM
Deputy Court Clerk

UNITED STATES DISTRICT COURT

OFFICE OF THE CLERK
WESTERN DISTRICT OF KENTUCKY

August 16, 1974

AUGUST WINKENHOFER, JR.
CLERK

Mr. Milton E. Reece
Assistant Professor
Department of Physical Education
Greensboro College
Greensboro, North Carolina

Dear Mr. Reece:

In response to your letter of August 9, 1974, we are enlcosing a copy of the docket entries in Civil Action 7225-A. As you can see, the file in this matter is quite voluminous and the cost involved in the reproduction of the entire action would be prohibitive, at $.50 per page. If you will peruse the docket entries and advise us as to which of the pleadings you wish copies, we will, by return mail, notify you of the exact cost involved and upon receipt of your check in that amount mail those copies to you.

In regard to the other action about which you inquired, Civil Action No. 6477-B, be advised that this was a civil rights action involving an incident at a sporting event and was dismissed against the NCAA, and it is our thought that it is not a case in which it seems that you have evinced interest.

Yours truly,

AUGUST WINKENHOFER, JR., CLERK

By Marjorie M. Welch
Marjorie M. Welch
Deputy Clerk

Enclosure

Greensboro College
Chartered 1838
Greensboro, North Carolina

August 19, 1974

Clerk of Court
U. S. District Court
450 Golden Gate Ave.
San Francisco, Calif.

Dear Sir:

I am a Doctoral Candidate at the University of North Carolina at Greensboro, in Physical Education. My topic involves Athletes, Eligibility, Courts and the National Collegiate Athlete Association. I have found that all of these court cases have been tried in the last three years and most of them have not been reported in the law books and some are still pending.

I would appreciate any help you can give me in locating a file, a brief or a pleading involving;

W. Leonard and Golden Bear Athletic Fund vs. NCAA
#C-71-1930-ACW U. S. District Court for the
Northern District of California.

If any expense is involved in duplicating or mailing this document, I would be happy to remit this expense.

Sincerely,
Milton E. Reece
Milton E. Reece
Assistant Professor
Department of Physical Education

Dear Sir. 8-27-74

I do have the above file that you mention. The copy work is .50 a page. Do you want the entire file copied or only certain documents? If you want the file copied pls. sent in a check not to exceed $15.00.

Thank you
Bob Monnett

UNITED STATES DISTRICT COURT

OFFICE OF THE CLERK
SOUTHERN DISTRICT OF OHIO

JOHN D. LYTER
CLERK

234

CINCINNATI, OHIO 45202

August 19, 1974

in re: Civil case #8077
Cecil New, Jr. vs.
National Collegiate
Athletic Assn., et al.

Milton E. Reece
Assistant Professor
Dept. of Physical Education
Greensboro College,
Greensboro, North Carolina

Dear Mr. Reece:

Your letter originally addressed to our Columbus, Ohio office has been received by this office here in Cincinnati this date, after first being forwarded from Columbus to our Dayton, Ohio office, then finally to us here in Cincinnati. This case to which you refer was a Cincinnati case.

There are 27 documents to the file in this case. The cost for reproducing zerox copies is .50 cents per page. I have enclosed herewith a copy of the docket entries which list each document by title and number. You may determine the cost for which ever document you desire by calling this office at Area Code 513, 684-2964 and asking for the undersigned.

Immediately upon receipt of what ever amount happens to be required together with proper identification, any papers you request will then be sent forthwith.

As an additional footnote. This case has been closed for over a year and there is a companion case #8150 entitled Cecil New, Jr. vs. Riddell Incorp. which was transferred from the Federal Court in San Francisco to this Court in 1971. That case is still presently pending although on 5/28/74 it was reported to have been settled. Nothing further has occurred since then.

The cost for the copy of the docket entries enclosed is $1.50. Please send $1.50 made payable to "Clerk, U.S. District Court" in Certified Check, Cashier Check or Money Order Form and address same to the address stamped below.

OFFICE OF THE CLERK
U. S. DISTRICT COURT
ROOM 832
POST OFFICE & COURTHOUSE BLDG.
CINCINNATI, OHIO 45202

Sincerely,

JOHN D. LYTER, Clerk

By: Roland L. Perry

DEPUTY CLERK, U. S. DISTRICT COURT, S. D. O.

CLARK, LADNER, FORTENBAUGH & YOUNG
ATTORNEYS AT LAW
17TH FLOOR WIDENER BUILDING
1339 CHESTNUT STREET
PHILADELPHIA, PA. 19107

215 LOcust 4-5300
TELEX No. 831-462

CABLE ADDRESS: CLARKLAD

September 9, 1974

Mr. Milton E. Reece
Assistant Professor
Physical Education Department
Greensboro College
Greensboro, North Carolina

Re: NCAA v. Porter and ABA

Dear Professor Reece:

In response to the request contained in your letter of September 1, 1974, I am pleased to enclose herewith a copy of the Complaint filed in the Court of Common Pleas of Delaware County, Pennsylvania to No. 2145 of 1972 in the above case.

The ABA removed the case to the United States District Court for the Eastern District of Pennsylvania, which subsequently remanded the case to the original jurisdiction in Delaware County, which is the reason why the District Court Clerk has only a docket on the case.

There will be no charge for this service. Please let me know if we may be of further assistance.

Sincerely,

W. CHARLES HOGG, JR.

WCH:rlw
Enclosure