THE INTERCOLLEGIATE ATHLETIC CARTEL: THE ECONOMICS, HISTORY, INSTITUTIONS, AND LEGAL ARRANGEMENTS OF THE NATIONAL COLLEGIATE ATHLETIC ASSOCIATION

by

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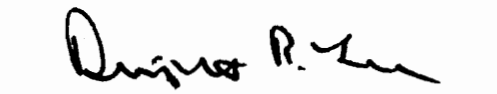
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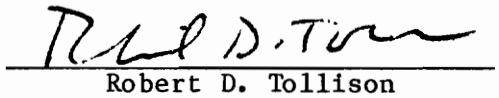
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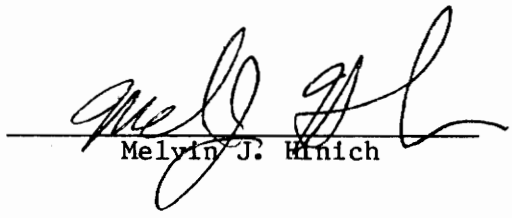
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CHAPTER I

INTRODUCTION

The National Collegiate Athletic Association (NCAA) was organized in 1905 in an effort to curb the widespread violence in college sports. The most violent intercollegiate sport at the time was football, which had been steadily gaining popularity since the early 1870's. In this period the game consisted of large teams (up to twenty-five players) kicking or hitting a ball on a field considerably larger than modern playing fields. Because a player wore no protective equipment and most actions in the game were violent (striking, kicking, butting), injuries were a commonplace occurrence. Football, in its ascent to the top of college sports at the beginning of the twentieth century, had left a wake of injured and dead in its trail.

The football season of 1905 ended with a series of fatal and near fatal injuries that outraged the general public. Instructed by the President of the United States to reform the sport or abandon it altogether, representatives of thirteen colleges and universities met in New York City in December 1905. They agreed that intercollegiate competition, under the proper conditions, could provide benefits to all involved. To remove violence from football, the Intercollegiate Athletic Association of the United States (IAAUS) was formed, and subsequently became the NCAA in 1910. The association elected a president and formed

an executive committee that drew up the association's first constitution in January 1906.

The NCAA's activities were initially limited to standardizing the rules of various sports.[1] Over time the association's responsibilities grew so that today it regulates virtually all aspects of college athletics in the United States. Among the rules the NCAA has enacted are limits on the number of games that may be played, specification of what a university may provide the student while he is being recruited, and restrictions on the number and size of athletic scholarships a university may offer. The association also maintains a section of its organization, the Department of Enforcement, which investigates alleged violations of its rules and penalizes the violators. The penalties the NCAA may levy range in severity from a private reprimand to termination of affiliation with the NCAA and banishment from participation in the national championship tournaments it conducts.

It is clear from the NCAA's organization and its influence in intercollegiate athletics that the association is an extremely powerful force in college athletics. Few economists, however, have attempted to analyze how far reaching the NCAA's policies are or exactly what effect they have on an individual producer or the structure of the market organization.[2] In contrast to the amount of research done on professional sports the literature on the economics of college athletics is quite limited.[3] Given this small amount of research on the subject this dissertation seeks to expand current knowledge of college athletics by examining the industry with economic tools.

This dissertation is an industry study of college athletics in the United States. Its goal is to present a plausible explanation for the structure of the market organization of college athletics, along with an understanding of the relevant legal, historical, and economic issues. Because the NCAA is such a dominant force in college athletics any attempt to explain the organization of this industry is actually an effort to explain the emergence and behavior of the NCAA. In this dissertation two theories are offered to interpret the actions of the NCAA.

The first theory offered in this dissertation contends that the NCAA was organized to internalize an intra-industry externality (safety). This argument for industry-wide action is similar to the public good argument. It holds that because there are two or more competing ideas or systems, society foregoes the benefits from the use of only one idea or system. According to this theory, members of an industry meet to decide which idea or system they will use to act more efficiently.

An obvious example of an intra-industry externality is the use of two or more measuring systems. In the United States, for example, the appearance of both metric and English measuring systems causes problems (duplication, lack of interchangeability) that could be corrected if all could agree to use one measuring system. Another example of an intra-industry externality is the weapon systems employed by members of the North Atlantic Treaty organization (NATO). If all members of this defense organization were to use the same weapons then resources

devoted to their maintenance, the storage of parts, and other problems caused by the lack of interchangeability, could be saved. Thus, the standardization of a system is seen as providing benefits to society.

However, while the gains to society from standardization may be great the only relevant criteria an individual firm would be interested in, when considering possible standardization, is the gain it stands to make. A firm may not be willing to make the many changes caused by converting to metric measuring units, nor an army willing to purchase and train with new weapons unless each perceives the benefits to be greater than the costs borne from the conversion. Accordingly, the standard problems of individuals shirking on collective responsibilities (freerider problems) and the group being unable to get organized (transaction costs) that normally surround public good questions also affect questions of standardization. Due to these problems it is normally asserted that a less than socially optimal amount of the public good (standardization) will be provided.

But even with the standard public good problems it is possible to make two observations about the willingness of an industry to internalize an externality. First, the larger the effect of the externality upon the industry the more willing the industry should be to deal with this problem. That is, the more firms that are forced to purchase two sets of tools or the more countries that are forced to set up logistical systems for different weapons, the greater will be their desire to internalize this problem. Second, the willingness to internalize an industry-wide externality is also positively related to

the perceived effect it will have on the demand for the product. Hence, firms would be quite willing to deal with an externality if its solution caused an increase in the demand for their product and firms would be less (not) willing to internalize an externality if the solution brought about no increase in the demand for their product.

Turning from measuring dimensions and weapons systems to intercollegiate sports, the lack of a set of standard rules governing the conduct of competition in the sport of football was an industry-wide externality. The American sport of football evolved through experimentation with the English sport of rugby. While early athletic associations tried to develop a set of standardized rules the non-binding status of their decrees as well as the continuous experimenting that was going on with skills and techniques of the sport prevented the establishment of a single mutually agreed upon set of rules.

As a result of the lack of a standardized set of rules teams that wanted to compete had to learn one or more sets of rules. No doubt this investment of time discouraged some teams from competing, highlighting the fact that one effect of this intra-industry externality in college sports was a reduction in the number of football games played. Further, football competition, without a standard set of rules, allowed many dangerous techniques to be employed and in and of itself was partially responsible for some of the injuries that occurred in the late 1800's and early 1900's. Hence, the establishment of a body in 1905 to address the problems confronting college football can be seen as a move to correct the problems caused by different rules.

By agreeing to a standard set of rules, schools (producers) were internalizing the externality in college sports. Consistent with theory schools were willing to internalize this externality because all schools that played the sport (all producers in the industry) were effected by it. Additionally, it was believed that the development of a single set of rules would make for a more exciting game that more people would want to watch (i.e., demand for athletic contests would increase). Thus, it is possible to interpret the establishment of the body that later became known as the NCAA as an attempt to internalize an intra-industry externality.

If this was the reason the NCAA was formed it is likely that the association would have limited its efforts to standardizing the rules of college sports. Were it the objective of the NCAA to address intra-industry externalities the association would not have become involved in such elements as the payments made to student-athletes, the number of games played, or the televising of college contests. Further, the NCAA would not have needed to set up a coercive enforcement mechanism if this were its goal because schools, noting that the marginal benefits outweighed the marginal costs of any industry-wide action, would voluntarily adhere to any agreement.

Given the implications of the theory that the NCAA was formed to internalize an intra-industry externality it will be shown in the history chapters that the early actions of the association were consistent with this theory. However, as the association grew and became involved in matters which were not externalities generated by

college sports it will be seen that the NCAA did not desire to internalize externalities. As the NCAA developed an intricate network of regulations governing intercollegiate sports in the United States and organized an agency to investigate member institution and punish those who violated its rules it becomes clear that these actions are not consistent with an association that sought only to internalize intra-industry externalities.

The second theory offered here presents the NCAA as an intercollegiate athletic cartel. This interpretation draws on economic theory which states that when producers collude to restrict output in an effort to raise price and profits then a cartel is formed.[4] This theory also acknowledges that, for a cartel to endure, a mechanism to enforce the restricting agreements is needed because once a cartel is formed financial incentives exist for each participant to violate the agreements.

In a competitive market firms compete with each other by attempting to sell the best product at the lowest price. In this way a firm hopes to capture a large share of the market and earn substantial profits. However, as all firms seek to do this, they increase their operating cost (firms spend money on research and development, marketing, inputs, etc.) and decrease the price of their product (firms increase the amount of the product produced causing price to fall). As a result of competition in the output and input markets economic profits fall and may become zero.

Rather than competing with other firms, which provides each firm the competitive rate of return, all firms can be made better off if they can collude and organize a cartel. By restricting competition a higher priced product can be sold that is produced by inputs which may be paid at a lower wage. Businesses that operate in a cartelized market enjoy larger profits because of the limits on competition.

Once agreements are made that limit competition, however, firms have financial incentives to cheat on the agreements. By selling the product at a lower than agreed price or offering a laborer a larger than agreed wage a firm will have an advantage over those who adhere to cartel rules. Because all firms face similar incentives to cheat on any agreement which restricts competition a cartel will have to devote resources to monitoring its agreement.

Application of cartel theory to intercollegiate athletics is possible by viewing each team as a producer of athletic contests. According to cartel theory, collective behavior evolves when producers of the same product have the chance to meet and organize at a low cost. Hence, the NCAA, which is composed of all producers of athletic contests, is the perfect location for restrictive behavior to emerge.

The early years of the NCAA can be interpreted through cartel theory as the period in which producers were organizing, ensuring that a majority of the industry would participate in any collective action. In this period the NCAA enlisted new members so that any limiting action would be successful. These early years, characterized by meetings and

exchange of information between schools, can be viewed through cartel theory as competitors comparing information prior to establishing a market sharing agreement.

Unlike the other explanation, cartel theory offers a plausible explanation for the emergence of restrictions on the wages paid to student-athletes, the number of games played in both the regular and postseason, and the decisions whether and where to televise these games. According to cartel theory these are all methods to restrict competition and transfer income from consumers or employees to producers. Cartel theory also offers an explanation for the many regulations the NCAA developed after World War Two which have little to do with internalizing an intra-industry externality. In general, this interpretation of the actions of the NCAA relies heavily on recognizing the economic benefits producers receive when these restrictions were enacted.

Of the two models contrasted in this dissertation only cartel theory provides an explanation for the developments of a strict enforcement mechanism by the NCAA to investigate and punish violators of its rules. According to cartel theory a school has an incentive to cheat on any NCAA agreement and gain an advantage over those schools which follow the agreement. The early experiences of the NCAA supported this and indicated that unsanctioned competition could take many forms. Hence, cartel theory holds that the NCAA developed an intricate set of rules detailing precisely how a school was allowed to behave and established an enforcement policy to ensure that all members followed the rules in order to restrict competition between members.

To determine which theory most plausibly explains the formation and the functions of the NCAA an extensive study of college athletics since the early 1800's was undertaken. This study chose to ignore the standard historical presentation of college athletics, which tends to highlight athletes and their spectacular performances, and examined the evolution of NCAA regulation of college sports and the emergence of a collective television plan. The adoption of a consistent pattern of rules which limited competition between producers and transferred revenue from consumers and student-athletes to producers can be observed by tracing the actions of the producers of college athletic contests. Consequently, the evidence yielded by an analysis of the history of the NCAA makes it clear that cartel theory offers the best explanation for the organization of the NCAA and the college athletic industry.

Other economists have offered a similar cartel interpretation of the NCAA. Alchian and Allen point to the "agreement" among universities restricting the wages of student-athletes as the basis for the cartel.[5] They offer ideas about who should cheat on the cartel, how the cartel is enforced, and what the relationship between cartelized athletics and subsidized higher education is. Their explanation why universities adhere to the agreement is:

> ...any college violating the athletic 'code' could find its academic accreditation threatened. Any college on probation or expelled would find it more expensive to recruit faculty and students would be dissuaded from attending. Even Phi Beta Kappa refused to authorize chapters at colleges that give disproportionate amounts of money to athletic scholarships. The survival of the college could be threatened.[6]

James V. Koch took exception to the analysis of Alchian and Allen by noting "there is no evidence that NCAA sanctions and penalties have caused any state university to lose accreditation or financial support."[7] He postulated that intercollegiate athletics could be analyzed by recognizing the market "approximates a cartelized agreement."[8] Koch went on to note that the organization where the college athletic cartel formulates its strategy, the NCAA, is dominated by schools which maintain "big-time" athletic programs, yet observation indicates that these schools do not dominate the NCAA. Indeed, had Koch explored the decision-making process of the NCAA in depth this would have become clear.

Koch's analysis of college athletics is also limited because it dealt with only the large revenue generating sport of football and failed to include the more than one dozen other sports the NCAA controls. While his work provided insight into the intercollegiate athletic cartel it lacked consistent analytical content, often merely hinting at the economic foundations of a particular item. For example, Koch set out to detail the production process in college athletics but neatly sidestepped the fact that an athletic department produces contests in many sports and that cross-subsidization between sports may take place.

Among the largest ommissions in all the previous analysis is the failure to integrate the NCAA restrictions in the output market (athletic contests) with the restrictions in the input market (student-athletes). By limiting production and payments to

student-athletes cartel rents are earned by transferring revenue from demanders and employees. This is a critical issue because it differentiates the college athletic cartel, which maintains a two-market cartel, from orthodox cartel theory, which stipulates retrictions only in the output market.

Economic theory also points out that for a cartel to endure an effective method to enforce the limiting agreements must be established. Without this enforcement mechanism the financial incentive for firms to cheat on the agreement will threaten the viability of any cartel. But while the NCAA has existed since 1905 and has established an effective method to prevent cheating there is little discussion about how the NCAA monitors its cartel in the literature on college sports.

Accordingly, a thorough analysis of the organization of college athletics must include a detailed examination of the method by which the NCAA monitors its cartel. Since the NCAA must monitor both the output and input market many questions must be answered. Among them, where does monitoring take place and what does monitoring involve? Analysis of the NCAA's system of cartel monitoring will be extremely enlightening when it is considered that the NCAA maintains an investigative staff of only thirteen members to monitor both the production of all college athletic contests and the recruiting of thousands of athletes by the 862 member schools.

While much has been written about cartels, domestic organizations that intentionally limit output to manipulate prices are outlawed in the United States by the Sherman Antitrust Act. For a long time, however,

most professional sports leagues were exempt (if only partially) from antitrust legislation. This exemption allowed owners to legally collude and restrict wages paid to athletes. In recent years the courts have ruled that the exemptions provided to professional sports were invalid and a partial result of this has been an increase in the wages paid to athletes.

In stark contrast to the professional leagues the NCAA still maintains a complex set of rules that restrict certain activities, including the wages paid to student-athletes. The NCAA has withstood several court tests challenging these limiting agreements and remains the monitor of a cartel free from direct federal intervention.[9] By successfully arguing that schools are free to leave the association and that it is a non-profit educational organization the NCAA has been protected from legal challenges designed to limit its power. Given the recent legal challenges to the NCAA and its success in defending itself important "law and economic" issues concerning the freedom to associate and the rights of state affiliated institutions need to be examined in connection with the college athletic cartel.

The economic theory of regulation holds that, even in light of the Sherman Antitrust Act, those cartels that have made arrangements to be protected from government intervention will endure, while those that remain unprotected will not. In contrast to the economic theory of regulation the NCAA has endured with only marginal assistance from the government. Clearly an important issue that merits examination in a

discussion of legal issues relevant to college athletics is how the NCAA has been able to withstand the legal challenges to its authority.

An athletic association, like any other producer, desires a monopoly situation relative to competing forms of entertainment. But because of the joint nature of the production of athletic contests and the knowledge that demand for the product depends on the uncertainty of the contest's outcome the athletic association desires that the competition between teams within the organization be "controlled." That is, to make demand for athletic contests as large as possible all teams should possess equal capabilities, making the probability of winning the same for each team.

Given the unique nature of the production of athletic contests a fundamental issue to be dealt with is the possible application of antitrust legislation to college athletics. Actions taken by the NCAA to allegedly increase competition between schools in the association (e.g., wage restrictions) may also be violations of the Sherman Antitrust Act. Of particular importance will be the regulations that appear to stimulate athletic competition but have the effect of stifling economic competition. In evaluating these restrictions the courts have been inclined to examine their intended results while admitting and ignoring their economic effects. This action has made it necessary to inquire why the actions of professional sports are scrutinized and occasionally subjected to legal prosecution, but the same actions conducted by college sports are permitted if carried out in the name of "amateurism."

Impressed by the shortcomings of the previous work and the enormous amount of unanswered questions in this field this dissertation seeks to expand current knowledge of intercollegiate athletics by analyzing the relevant problems with economic tools. By applying economic analysis to intercollegiate sports not only is it hoped that some novel insights into the organization of the college athletic industry will be yielded, but it is also envisioned that this dissertation will make a substantial contribution to orthodox cartel theory. Most particularly the information yielded by an examination of the NCAA's policies and institutions will provide a better understanding of how cartels emerge, how collective decisions are made within a cartel, and how a cartel monitors its agreement.

After this introductory chapter (Chapter One) this dissertation is divided into seven additional chapters. Each chapter is an examination of one issue relevant to intercollegiate athletics.

The next chapter (Chapter Two) is titled "Football and the Formation of the Association." It traces the development of the sport of football from its earliest form as a crude spinoff of rugby to a sport that was widely played by colleges at the turn of the nineteenth century. The sport became so violent that President Theodore Roosevelt threatened to outlaw it unless it was cleaned up. In response to Roosevelt's threat the NCAA was formed.

The third chapter, titled the "National Collegiate Athletic Association in Transition 1906-1945," traces the formation of the NCAA and its activities through World War Two. In this chapter a thorough

examination is made of the membership policies, the offices, and the functions of the NCAA in its early years. Economic analysis of early NCAA events makes it clear that the forces of self-interest were motivating the members of the NCAA, regardless of how they publicly explained their actions. However, it was not until just prior to the start of World War Two that members realized the potential they had as the group of producers of college athletic contests to adopt policies that would transfer revenue to them.

In the fourth chapter, "Formation of the Intercollegiate Athletic Cartel 1946-1960," the evolution of the cartel is traced. Prior to tracing the specific actions that support the cartel hypothesis the by-product theory of cartel organization is introduced. This theory provides an explanation for the evolution of cartels, with which the formation of the NCAA is consistent.

With the by-product theory of cartel organization as a backdrop a lengthy examination of the restrictions adopted by the NCAA in the input market and the method whereby these restrictions are enforced (monitored) is undertaken. An examination of the actions of the NCAA during this period reveals that the rules adopted by the association governing the payments to student-athletes were designed to reduce competition between schools for student-athletes and decrease the cost of producing these athletic contests. Further, while the NCAA was adopting these restrictions it was also developing a method to ensure all schools followed them. Thus, the NCAA's experience in the input market between 1946 and 1960 is consistent with cartel theory which

postulates that producers may collude to restrict behavior and organize a method to ensure that these restrictive agreements are followed.

A similar examination is also made of NCAA regulation of the output market during this period. In this study it can be seen that the NCAA restricted the number of games played and limited the games that could be televised so that live attendance and the revenue generated by these games would increase. Most notable in this section is the discussion of the NCAA's discovery of television and the adoption of a highly restrictive and regulated collective television plan which increased the payments made by television networks to the NCAA. Again, the NCAA's experience in the output market is consistent with cartel theory which holds that producers may collude to restrict output and earn larger profits.

Once the NCAA's actions in the input and output markets have been examined the discussion returns to the by-product theory to review the predictions of the theory and the evolution of the NCAA. In this discussion the ability of cartel theory to explain the market structure of college athletics as well as the power of the by-product theory to explain the evolution of the NCAA are emphasized.

The fifth chapter, "Fine-Tuning the Intercollegiate Athletic Cartel 1960-1980," updates the activities of the NCAA. In this chapter specific programs enacted by the association that were designed to limit certain behavior are examined. In the input market the discussion focuses on freshmen eligibility and the compensation to student-athletes. In the output market NCAA television policies, the

reorganization of the association, and the NCAA's interest in women's sports are explored.

The sixth chapter is titled "Operating the Intercollegiate Athletic Cartel." In this chapter an inquiry is made into why an individual athletic department seeks to restrict behavior. Normally it is asserted that the rents generated from these restrictive policies are divided among the producers and spent, but in college there are institutional constraints which prevent members of the athletic department from dividing and spending the money. Thus, an explanation for the adoption of these policies is offered here.

In this chapter there is also a discussion of the rent division and the decision-making policies of the NCAA. Because a cartel is composed of a group of producers almost all of its actions are the result of collective decision-making. However, the ability of a group to make collective decisions also impacts on many of the incentives that firms in the cartel face, making it possible to explain the actions of individual firms in the cartel as a response to the collective decision-making process. Additionally, under certain circumstances, the choice of a collective decision-making rule may also provide the vehicle for the wealth of members of the cartel to be redistributed.

As an example of the implications of a cartel's collective decision-making rule the internal functioning of the intercollegiate athletic cartel is examined and explained. In this examination it is shown that because the NCAA has such a diverse membership, in terms of their athletic aspirations, redistribution of wealth has been taking

place between members. The most obvious result of this practice was the conflict between the College Football Association and the NCAA which peaked in 1981.

Included in the sixth chapter is a lengthy examination of the monitoring mechanism of the intercollegiate athletic cartel. The examination begins by considering the method by which cartels are monitored. In this discussion it is shown that low cost monitoring consists of a particular strategy which determines which items to monitor (price or quantity) and where monitoring is actually done (point of production or sale).

With this knowledge of cartel monitoring an examination of specific methods which the NCAA uses to police college sports is conducted. Due to the openess of the NCAA's monitoring mechanism the discussion in this subsection contrasts the rules developed by NCAA to govern the behavior of the producers of athletic contests with economic theory. Here it is shown that the NCAA's Department of Enforcement ensures all members follow the rules that limit competition and allow each to conserve resources they otherwise would have spent on student-athletes. A comparison of the NCAA to the cartels in medieval Europe is also made in this section, reenforcing the validity of the cartel hypothesis as an explanation for the organization of college athletes.

The seventh chapter is titled "Law and Economics of the NCAA." In this chapter a detailed examination is made of the legal issues relevant to intercollegiate sports, with strong emphasis on the NCAA and

antitrust litigation. To make the discussion of these complicated legal issues clearer the chapter is divided into four subsections.

The first is titled "Control of Competition." In this section the methods by which the NCAA controls competition, either between members or between other forms of entertainment, are explored. Specific topics discussed include the NCAA's program of certifying various sports events and the NCAA television (both pay and non-pay) policies.

The second section is titled "Antitrust Litigation and the NCAA." Given the knowledge that the NCAA's policies are designed to control competition this section explores possible application of the Sherman Antitrust Act to intercollegiate athletics. By comparing NCAA policies with rulings made in the more standard antitrust cases it is shown that the NCAA does meet all of the criteria needed to be prosecuted by antitrust authorities.

The third section, "NCAA and Legal Interests of the Participants in Intercollegiate Athletics," discusses many of the cases in which the NCAA has been involved. In terms of antitrust prosecution the courts have allowed the NCAA to be tried for antitrust violations, but under a legal procedure which allows the court to weigh the intent of an NCAA action against its effect the NCAA has never been held in violation of the Sherman Antitrust Act. Other law cases examined in this section involve the legal interests of students and coaches which are often effected by NCAA rules. In these cases the NCAA has suffered several minor setbacks, but it has never lost a case.

Given this dissertation's examination of the activities of the NCAA and the unwillingness of the courts to declare the NCAA in violation of the Sherman Antitrust Act the last section of this chapter offers some observations about the apparently conflicting issues involved. For example, many call the NCAA a monopoly, yet it is not the only athletic association in the United States. Others claim schools are forced to join the association, but there is no law which coerces an institution to become an NCAA member. Thus, in this section many of the major issues involved in the conflicts in intercollegiate athletes are contrasted and reconciled.

The last chapter in this dissertation sums the results of this study. Since the initial problem posed in this dissertation was to model the college athletic industry, the last chapter discusses the overwhelming evidence that indicates this can best be done with cartel theory. Given this result, the chapter recalls the major insights provided by the use of cartel theory in this study of intercollegiate athletics.

Footnotes - Chapter I

1. Between 1906 and 1942 rules committees were organized for football, basketball, track and field, soccer, swimming, volleyball, wrestling, boxing, lacrosse, ice hockey, baseball, gymnastics, and fencing.

2. The best discussions of intercollegiate sports are James V. Koch, "The Economics of 'Big Time' Intercollegiate Athletics," Social Science Quarterly, Vol. 52, No. 2, (1971) pp. 248-263; Armen Alchian and William Allen, Exchange and Production: Competition, Coordination and Control, 2nd ed., (Belmont, Ca., Wadsworth Publishing Company) pp. 410-412.

3. Contrast the small amount of literature on the NCAA and the college athletic cartel with the research in professional sports. For a brief survey see Henry B. Dummert, An Economic Analysis of Professional Team Sports Industry in the United States, (Lexington, Mass., Lexington Books, 1973) and The Economics of Professional Team Sports, (Lexington, Mass., Lexington Books, 1973); Roger Noll, et al., Government and the Sports Business, (Washington, D.C., The Brookings Institute, 1974); David S. Davenport, "Collusive Competition in Major League Baseball," The American Economist, Vol. 13, (Fall, 1969); Mohamed El Hodirii and James Quirk, "An Economic Model of Professional Sports Leagues," Journal of Political Economy, Vol. 79, (November-December, 1971); J.C.H. Jones, "The Economics of the National Hockey League," Canadian Journal of Economics, Vol. 2, (February, 1969); Simon Rottenberg, "The Baseball Player's Labor Market," Journal of Political Economy, Vol. 64, (June, 1956), Walter C. Neale, "The Peculiar Economics of Professional Sports," Quarterly Journal of Economics, Vol. 78, (February, 1964), Mark Anderson, "The Sherman Act and Professional Sports Association Use of Eligibility," Nebraska Law Review, Vol. 47, (January, 1968); Maxwell Keith, "Development in the Application of Antitrust Laws to Professional Team Sports," Hasting Law Journal, Vol. 1, (November, 1958); Samuel R. Pierce, Jr., "Organized Professional Team Sports and Antitrust Laws," Cornell Law Quarterly, Vol. 43, (Summer, 1958); and Jay H. Topkis, "Monopoly in Professional Sports," Yale Law Review, Vol. 58, (April, 1949).

4. Cartel theory also points out that producers may collude to restrict the price of inputs.

5. Armen Alchian and William Allen, Exchange and Production: Competition, Coordination and Control, 2nd ed., (Belmont, Ca., Wadsworth Publishing Company) p. 411.

6. Ibid.

7. James V. Koch, "The Economics of 'Big Time' Intercollegiate Athletics," Social Science Quarterly, Vol. 52, No. 2, (1971), p. 249.

8. Ibid., p. 248.

9. See Jones v. NCAA, 392 F. Supp. 295 (1975); College Placement Services Inc. v. NCAA, 1975 Trade Cas. 60,117; Samara v. NCAA, 1973 Trade Cas. 74,536; Howard University v. NCAA, 367 F. Supp. 926 (1973); Buckton v. NCAA, 366 F. Supp. 1152 (1973); Parish v. NCAA, 361 F. Supp. 1214 (1973); Curtis v. NCAA, No. C-71 2088 ACW (N.D. Cal. Feb 1, 1972).

CHAPTER II

FOOTBALL AND THE FORMATION OF THE NATIONAL COLLEGIATE ATHLETIC ASSOCIATION

Sports have been played by college students for almost as long as colleges have existed in the United States. The first citation of athletic endeavors by college students appeared in the records of a Princeton faculty meeting in May 1761.[1] At this meeting the faculty expressed displeasure over students "playing at ball."[2] Little mention is made, however, of any competitive team sports appearing before 1820. Prior to this time cross country running and gymnastics were the most popular college sports with only intra-college competition taking place.

A game that somewhat resembled football is believed to have been played in 1820.[3] This game was played between college classes (i.e., Freshmen versus Sophmores) at West Point, Harvard, Yale, Princeton, Amherst, and Bowdoin in the early and mid-1800's. This sport initially consisted of two teams, each with a large number of participants, struggling for possession of an inflated animal bladder. There were few rules in these contests and, because most action by the participants involved kicking, some historians report these games closely resembled soccer.[4]

The first intercollegiate athletic contest in any sport took place in 1852 when Harvard defeated Yale in a two-mile, eight-oared barge race on Lake Winnepesaukee, Massachusetts. The first intercollegiate football game was played on November 6, 1869 between Princeton and

Rutgers at Rutgers' field in New Brunswick, New Jersey. Each team had twenty-five members and the game was played by kicking or butting the ball. Scoring six goals was necessary to win and, while descriptions of the teams indicate that Princeton was physically superior to Rutgers, Rutgers won the game six goals to four.[5] Two weeks later a rematch was played at Princeton and Princeton won eight goals to zero.

In the 1870's football evolved by drawing rules from English rugby and soccer. The first set of intercollegiate football rules was compiled on October 19, 1873 by representatives of Harvard, Yale, Columbia, Princeton, and Rutgers. Experience gained from drawing up this set of rules later helped each school, except Rutgers, gain a seat on the first organized and sanctioned Football Rules Committee sponsored by a football association.

During the 1870's football gained acceptance as more schools began intercollegiate play. Prominent among those who began play in this period were Columbia and Harvard, each of whom played their first intercollegiate contest early in the 1870's. In the middle of this decade the nation's oldest and most traditional rivalry began when Harvard played Yale at New Haven, Connecticut. On November 13, 1875, before 2,000 paying spectators, Harvard defeated Yale four goals to none in a game that closely resembled rugby.

Pure English rugby, devoid of all its Americanisms, was adopted by Princeton in mid-1876 as the official game of that school's football club. Princeton then invited Harvard, Yale, and Columbia to send

representatives to a meeting in Springfield, Massachusetts, where a discussion was to be held concerning the possible formation of the first football association. According to Princeton officials the association they wished to organize would be the means by which these schools could standardize the rules of the game. All schools sent representatives to the meeting that was held in late 1876, where the first football association, the Intercollegiate Football Association (IFA), was formed.

The IFA adopted the basic rules of the Rugby Union, but the representatives of the colleges voted additional rules detailing how a winner would be determined, how many officials would be present, and how long (time) a contest would be played.[6] Fierce debate took place over the number of players that would be on a team. Yale suggested eleven players while the rest of the IFA preferred fifteen players as outlined in the Rugby Union Code. This issue was so important to Yale that it declined to join the IFA when it was outvoted by the other schools. As a result Columbia, Harvard, and Princeton became the original members of the IFA. Yale eventually joined the IFA in 1879.

The IFA provided an important forum during the late 1800's for member schools to meet and discuss the rules and the techniques of the sport. During this time college football changed rapidly as many new innovations to the American game were made by adopting and altering skills developed in rugby. Much of the credit for the transition of the American sport of college football from English rubgy belongs to the early members of the IFA. According to Alonzo Stagg:

> Undeniably, credit must be given to Harvard, Princeton, and Yale for the adoption of Rugby, which formed the basis of our American game. To Harvard goes the credit for taking up Rugby and playing it consistently in 1874 and 1875 and 1876. To Princeton belongs the credit of initiating the calling of the Convention,...which resulted in the formation of an Association and the formal adoption of the Rugby Union Rules with slight changes and with two additional rules. And to Yale belongs the credit of persistently contending that the number of players on a team should be fixed at eleven instead of fifteen and finally winning her point in 1880.[7]

The IFA met at least once a year from 1876 until its disbanding in 1894. At these meetings the rules of football were changed and updated. Initially, only undergraduates attended these meetings, but in the mid-1880's graduate students began attending regularly. Eventually graduate students were allowed to form an advisory committee which could suggest possible rule changes.

Because intercollegiate athletics in this period was controlled entirely by students no faculty members attended the meetings of the IFA. Undergraduates were the first to manage intercollegiate sports, but as the first generation of student managers graduated and wished to remain associated with football, graduate students and alumni also came to manage college athletics. Nonetheless, during the last quarter of the nineteenth century members of the faculty had almost no voice in athletic issues. Some sports-historians speculate that this lack of faculty control over college athletics partially explains the evils and abuses that occurred in the early period of intercollegiate sports.[8]

Though Yale was not then a member of the IFA it sent a delegation, led by Walter Camp, to the early meetings of the association. Camp, who

would later receive the nickname "The Father of American Football" for his innovative ideas, lobbied unsuccessfully for four years for rule changes that would reduce the size of the teams and the field, and alter the method of awarding points.[9] In 1880 he was finally able to institute change. The IFA, at his recommendation, adopted rule changes that included decreasing the size of the field and the players per team.[10] Many other procedural rules were altered and the new techniques that emerged as a result of these changes became the basis for modern football. For example, one of the rule changes of 1880 allowed the ball to be put into play by directing it backwards from its last resting position. This caused the position in the middle of the line to earn the name of "center," and a new position, "quarterback," was created to handle the ball.

In the late 1870's the number of schools playing football increased considerably with newcomers to the game including Stevens, Tufts, City College of New York, Wesleyan, Pennsylvania, Trinity, Brown, Amherst, Pennsylvania Military College, Dartmouth, and Williams.[11] The popularity of football was not limited to the Northeast. The South's first game was played between Virginia Military Institute and Washington and Lee in 1877, while the first game in the Midwest took place in 1878 between Michigan and Racine.[12]

Through trial and error and with the desire of football officials to keep fan interest in the game high, the rules of football underwent constant revision. Among the major changes that resulted from this effort to eliminate what the fans found boring was the introduction of

rules designed to prevent game delays, introduction of downs and yards to gain, introduction of penalties for rule violations, and periodic reevaluation of the scoring values.

In 1884 the V-trick or wedge first appeared in a college football game. This technique involved seven players locking arms and forming a 'V' with the ballcarrier on the inside. The tip of the formation pointed downfield and once the ballcarrier had the ball, it moved downfield, virtually unstoppable. While both Princeton and Lehigh are credited with first using the V-trick, its introduction marked the first appearance of interference (i.e., blocking) in football. This was a radical departure from the sport's previous policy of imitating rugby because in the English game blocking was prohibited.

At the rules convention in March 1888 Walter Camp introduced a resolution that, when eventually adopted, legalized tackling of the ballcarrier below the waist but above the knees. Prior to this time tackling below the waist was prohibited. With "low tackling" outlawed, teams had been able to spread their offensive formations across the entire field. "High tackling" had brought a fast pace to football which allowed the game's style to be characterized as "open."

With the introduction of "low tackling," offensive formations contracted and the game became more conservative. Large ballcarriers, more susceptable to "low tackles," could no longer bowl over potential tacklers as they had often done when confronting a "high tackler." The lateral passing that characterized rugby gradually disappeared as play became "tighter." Contributing to the game's change in style was the

widespread use of blocking, though blockers were prohibited from extending their arms by rule changes in 1888. Other rule changes enacted in 1888 governed the use of safety equipment and the number of officials.

The introduction of "low tackling" and the tighter grouping of players made football a rougher and more dangerous game. Disagreement over how to solve this problem divided members of the IFA, and while temporary remedies were used, the issue was only partially resolved when the forward pass was introduced. The forward pass allowed teams to use more of the playing field making the game "wider."

In 1892 football's most dangerous technique was introduced by Lorin F. Deland, a man who never actually played football but who had studied military strategy and was a chess expert. He reasoned that while the V-trick or wedge had worked well, it could be even more effective if the players comprising the "V" were allowed to get a twenty to twenty-five yard running start. This practice became known as the "flying wedge." It was so effective that by 1893 all football teams employed it. However, the number of injuries that resulted from this technique increased dramatically. The effect of these injuries was so detrimental to the sport that the University Athletic Club of New York invited Harvard, Yale, Princeton, and Pennsylvania to form a new rules committee. A special invitation went to P. J. Dashiell of the United States Naval Academy, a highly regarded football official, who could offer an official's insight into possible rule changes.

This group made what Alonzo Stagg called "the most sweeping rule revisions in ten years."[13] The new committee:

> (1) ...outlawed the wedge or V-trick, and flying wedge. And they prohibited more than three men from grouping more than five yards behind the line of scrimmage to launch a momentum mass play.
>
> (2) The game was reduced from ninety to seventy minutes, divided into halves of thirty-five minutes.
>
> (3) The player was prohibited from laying his hands on an opponent unless the opponent had the ball.
>
> (4) On the kick-off, it was specified that the ball must travel 10 yards to be in play, unless touched by an opponent.
>
> (5) A linesman was added to the referee and umpire as a third official.[14]

These rule changes, however, did not stop the mass play that had caused the injuries in college football. Instead, the new rules only slowed the speed at which such plays took place by preventing running starts. The continuation of mass play led to more injuries, which prompted attacks from the press and public outcry over the brutality of the sport. Mass play also caused more problems for the IFA, which was trying to establish a standardized set of football rules, because some members opted to retain mass play while others wanted to abolish it. Yale and Princeton were the major football schools that wanted to outlaw mass play, while Harvard and Pennsylvania did not.

It may seem odd that any school would not want to do away with a style of play that caused so many injuries, but the explanation of why some schools wanted to retain mass play and others wanted to eliminate it must take into account the ability of each school to develop techniques to cope with it. The football teams from Yale and Princeton

had been unable to cope with mass play and were troubled by opponents who employed it. Accordingly, Yale and Princeton had a large self-interest in eliminating this style of play with rule changes so that their football teams would be more competitive (successful).

Harvard and Pennsylvania, on the other hand, had pioneered effective techniques to deal with mass play that gave them a large advantage over other schools. The University of Pennsylvania utilized these techniques so efficiently that between 1894 and 1896 they lost only one of the forty-one contests they played, yielding opponents only sixty-eight points in this three year span.[15] Because Harvard and Pennsylvania had developed a comparative advantage in football during the mid-1890's, it is understandable why they did not support rule revisions intended to alter the status quo.

Basic differences in each member school's approach to the rules of the game and the methods of determining player eligibility combined to put pressure on the IFA. The first sign of strain within the association came over the use of graduate students. In 1889 Harvard and Princeton exchanged charges that each was using "non-amateurs." After an investigation and rule changes by the IFA both schools dropped their charges, but the events caused bitter feelings between all involved, and Harvard withdrew from the association shortly afterward.

The final straw for the IFA came in late 1893 when Pennsylvania withdrew in the dispute over mass play and eligibility rules backed by Yale. Harvard and Pennsylvania invited Cornell to withdraw and form a

new rules committee. Only Yale and Princeton, both of whom had little influence in intercollegiate athletics, remained in the association. The IFA officially disbanded in 1894.

From 1876 to 1895 the eastern "big four" of Harvard, Yale, Princeton, and Pennsylvania, whether members of the IFA or not, dominated the college football rules committee. With the disbanding of the IFA, many new rules committees appeared. Various groups of eastern schools sought to reestablish control over football, but for the first time schools in other sections of the country, notably California and the Midwest, established their own governing bodies.

The most productive efforts came from the Western Intercollegiate Conference, the forerunner of the Big Ten, which was formed in 1895. The schools in the conference established rules governing freshmen eligibility and the number of years an athlete could participate in a sport, eliminated the training table, and opted for faculty control of athletics. This last effort was in direct contrast with the policies of the eastern schools which had had student-athletes manage their athletic programs throughout the nineteenth century.

It is interesting to consider why faculty members assumed control of college athletics. Some believed that faculty members could provide for participant safety in college athletics more efficiently than student managers could. Those who believed this offered an explanation for the faculty takeover of college sports that was based on altruistic motives. The explanation offered by Captain Palmer E. Pierce of West

Point was typical in this respect. He believed that faculty members took control of college athletics because:

> 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 of which faculties, who had come to regard student sports as beneath their notice, had for so many years neglected.[16]

While there may have been many well-intentioned individuals who acted for the reason described by Pierce, a more plausible explanation for faculty control, based on the self-interest of the faculty members, can be offered.

On the surface it would appear that faculty members sought control of college athletics so they could control the revenue generated by intercollegiate sports. This supposition is contrary to the fact that during this time period college athletics did not generate significant amounts of money. Large stadiums were rare and admission fees, when charged, were relatively low. Instead of seeking to control athletics for the revenue it generated, faculty members wished to control athletics because of the advertising potential it offered. A successful team had its exploits printed in all the major newspapers and had its games broadcast on the radio. In contrast to a superior academic department, which received little notice outside university circles, the nation's top college football teams received national publicity.

This explanation of faculty control of college sports postulates that the faculty sought to control athletics so it could use successful teams to advertise their university. A winning team promoted the name and image of a school, theoretically inducing more students to attend

that particular school. This increase in enrollment would not only preserve faculty jobs but, if the increased enrollment was large enough, it would also allow for expansion of the university and the faculty. The faculty, therefore, had very large incentives to gain control of college athletics and "encourage" the teams to become successful.

Casual support for this explanation of the faculty takeover of college athletics comes from observing that midwestern instead of eastern schools first decided on faculty control. Since the eastern schools were older and generally perceived as providing better quality education they had little trouble attracting students. Therefore, these schools did not need the advertising provided by college football and did not choose faculty control of college athletics.

Schools in the Midwest, however, did not have the reputation nor the tradition of the eastern schools. As a result, midwestern schools had a more difficult time attracting students. Consequently, it was logical for the faculty at these schools to get involved in college athletics and use them to advertise their schools. Hence, this explanation of the faculty takeover of college athletics, which is based on the advertising potential sports represented, receives support from considering which schools decided on faculty control.

Additional testimony supporting this idea comes from an article written by an anonymous faculty athletic adviser. He noted:

> A large factor in promoting this win-at-any-price policy of many college administrations is the newspaper attention given to winning teams and to individual stars. A recent sporting column gave a grave discussion of the duty of the colleges in the matter of furnishing the sporting public with athletic entertainment to tide over the dull season between professional baseball seasons.

> This willingness to give space to winning athletics coupled with the difficulty of getting adequate reporting of other phases of college life, campus scandals excepted, is the basis for the calculated use of athletics as an advertising medium which is the worst bane of college sport at the present time.
>
> From the point of view of the administrator of a small college without sufficient funds to carry on its program for development and without the full quota of students which it ambitions demand, the chance to obtain free publicity from winning athletics is very hard to withstand, even when there is a desire to stand against it. When the policy of the college is in the hands of alumni whose college life was enriched by the more spontaneous athletics of earlier days, there is only rejoicing that so favorable a method of advertising is open to the institution.[17]

Chancellor James R. Day of Syracuse University made a similar observation:

> There are institutions that will not play or row with some other colleges whom they fear, because if beaten it would hurt their prestige and decrease the advertising value of their teams or crew.[18]

Thus, a more plausible explanation for the faculty takeover of college athletics comes from noting that college sports could be used by the faculty to advertise a college or university.

Between 1890 and 1905 different coalitions organized rules committees, causing a great deal of confusion because teams often had to learn two or more sets of rules to play intercollegiate football. Even with these attempts to establish a set of rules, football remained a brutal game characterized by mass plays, little strategy, and scanty equipment. The public reacted negatively to football because it featured so much violence. Public outcry, however, was never as large as in 1905.

By the middle of the 1905 season public criticism of football prompted President Theodore Roosevelt to invite representatives of Yale, Harvard, and Princeton to the White House to discuss rule changes that would encourage safety. A meeting between the President and D. H. Nichols and W. T. Reid of Harvard, Arthur Hildenbrand and John B. Fines of Princeton, and Walter Camp and Walter Owsley of Yale, took place on October 19, 1905.[19] Another meeting between President Roosevelt and W. T. Reid and Herbert White of Harvard occurred on December 4, 1905 at a White House luncheon. At this second meeting the President discussed events of the previous season. After the second meeting the President concluded that it was the duty of these eastern universities to save the game. He advised them, "Brutality and foul play should receive the same summary punishment given to a man who cheats at cards."[20]

Roosevelt's words offered encouragement to the rules committee, but the largest stimulus came from a death and two near fatal injuries that occurred on the gridiron late in the 1905 season. On November 25, 1905, Harold Moore of Union College died during a football game with New York University. The coroner's report later showed that his "death ensued from a fracture of the skull, sustained ... in the impact with a single player...."[21] Added to Moore's death was the fact that Captain Hurley of Harvard and Douglas Carter of Columbia sustained serious injuries only a short time before that. In all, the 1905 football season left 18 dead and 159 "more or less serious injuries."[22]

Reacting to this violence and the public controversy Henry L. MacCraken, Chancellor of New York University, called for the abolishment of football. MacCraken stated:

> Speaking at present, for myself only, but knowing that our committee on student organizations and our physical director are of like mind, I urge abolition of football...[23]

Despite his pleas, New York University did not abolish football.

Columbia President Francis S. Bangs called the sport "brutal and abominable."[24] At the end of the 1905 season Columbia abolished football and did not resume intercollegiate play in the sport for ten years. In the Midwest, Northwestern and Union suspended football for one year while in the West, California, Leland, and Stanford dropped it completely choosing instead to play rugby.

The need to change the rules of football to make the game safe was obvious, but it was unclear who should enact the changes. It was agreed that it should not be the old rules committee because experience indicated they were incapable of making sufficient revisions. The old rules committee was labeled "self-perpetuating, irresponsible, impervious to public opinion and culpable" for not having installed better safeguards in the game.[25]

Harvard President Eliot was asked to take charge of the rule changes, but refused citing a "lack of jurisdiction."[26] Chancellor MacCraken of New York University finally took the initiative and invited nineteen colleges and universities to send representatives to a meeting to discuss the problems plaguing football. MacCraken, as indicated above, favored abolishing football. He outlined the meeting as a forum where three main questions would be discussed. They were:

(1) should football be abandoned,

(2) if not, what reforms are necessary to eliminate its objectionable feature,

(3) if so, what substitute would you suggest to take its place?[27]

Representatives of thirteen institutions attended the meeting held on December 8, 1905, at Murray Hill Hotel in New York City.[28] The meeting began with the scheduled debate over the possible abolishment of football. Columbia, New York University, and Union, the three schools directly touched by death and injury at the end of the football season, favored abolishing football. West Point lead the pro-football debate.

In the lengthy discussion that followed, Captain Palmer E. Pierce of West Point emerged as the most influential speaker among all the proponents of football. He pointed out that football was an excellent test of character and that the Army would continue to play the game whether other colleges did or not. Pierce, along with Lieutenant Colonel Howze (also of West Point)

> ...dominated the proceedings and after a battle secured a 2/3 vote to continue the game and make such changes as were recommended by the athletic association at West Point.[29]

After a majority of the schools present decided that football should not be eliminated, only reformed, it was decided that another meeting would be held on December 28, 1905. All major universities and colleges that played intercollegiate football would be invited to attend this meeting. At the second gathering a football rules committee would be chosen to rewrite the rules of the sport which would remove the game's brutal aspects.

The second meeting took place three weeks later. Sixty-two colleges sent representatives, but noticeably absent were delegations from Yale, Harvard, Princeton, Chicago, Cornell, Pennsylvania, and Annapolis (Navy), the institutions that formed the old (initial) rules committee. The first item the group considered was the establishment of a new rules committee.

One section of the group believed a new committee, distinct and completely separate from the old committee, should be formed. Other schools, however, felt the new committee should incorporate the old committee. After extended debate it was decided a seven-man committee would be established and asked to align itself with the old committee, if possible, to establish a set of rules that eliminated violence in the sport. If it was not possible to coordinate with the old committee, the new committee was instructed to organize a separate set of rules.

The conference charged the new rules committee with

> ...securing...
> (a) an open game,
> (b) elimination of rough and brutal play,
> (c) efficient enforcement of rules, making the rules definite and precise in all respects such as definitions of brutal playing, holding, tripping, and, in general, all infringment of the rules for which penalties are given,
> (d) organization of a permanent body of officials.[30]

The conference also adopted a resolution that condemned "as unworthy and dishonorable" universities offering inducements to athletes to enter their schools, the use of non-amateurs, and deliberate attempts to injure.[32] The conference went even further in pointing out who they

felt was responsible for athletic activities. They adopted a resolution that:

> ...recommends the academic authorities of the colleges and universities throughout the country hold themselves ultimately responsible for the conduct of athletics within their respective institutions.[32]

The group of schools formed the Intercollegiate Athletic Association of the United States (IAAUS) and elected Palmer E. Pierce of West Point as its first President. They appointed a smaller executive committee and ordered it to prepare a constitution. The association concluded by agreeing to meet again in one year (December 1906) unless the president should call an earlier meeting.

In retrospect the establishment of the IAAUS in 1905, the forerunner of the NCAA, probably saved college football from being outlawed. Yet it is worth considering why the response to the problem of frequent injuries in college sports was the formation of a body like the IAAUS. Violence was an unfortunate phenomena, but it did not represent a market failure because the cost of violence was internalized by an individual who chose to play the game. That is, the risk accepted when playing a dangerous game was part of the choice calculus an individual undertook before he played the game. Thus, while it has been postulated that the establishment of the IAAUS and the regulation of intercollegiate sports was designed primarily to prevent injuries, the establishment of this body seems to have been an odd response to a problem that was not a market failure. However, insight into the problems in college football and a more plausible explanation for the formation of the IAAUS can be found by examining the conflict in

incentives facing a firm (a school fielding a football team) and the industry (intercollegiate athletics) and observing that an intra-industry externality, from which injuries resulted, was present.

Individual schools had a large incentive to use dangerous techniques while attempting to win football games because of the favorable publicity surrounding a "winner." This desire to win football games and achieve national prominence led to rough tactics, violence, and deaths. Thus, injuries resulted when schools responded to the natural incentives they faced to win football games.

At the industry level, however, if all schools responded to this incentive and used dangerous techniques not only would the number of injuries and deaths increase, but demand for the product (athletic contests) would fall. Desire by the public to watch college football games would decrease because the game became less interesting when athletic prowess was replaced by rough and dangerous techniques. Thus, when all schools responded to the incentive to use dangerous techniques demand for the industry's product fell.

This conflict in incentives led to an industry-wide externality. If one school used violent techniques it prospered at the expense of the others by winning and receiving nationwide attention. If all schools used dangerous techniques, demand fell and each was made worse off. The obvious way to remedy this problem was for each school not to use violent techniques, but no school would willingly do this because others, not abandoning rough play, would be at an advantage.

This is what had occurred in intercollegiate football prior to the formation of the IAAUS. As football became more violent, it also became

less interesting. Frank W. Nicolson, secretary of the NCAA (the IAAUS changed its name to the NCAA in 1910) had observed this happen and detailed this experience in his report to the annual convention of 1912. He noted:

> For many years, the most popular of college sports, it still, to be sure, attracted its thousands of spectators, but even its enthusiastic supporters began to admit that it was losing its former thrills. Not infrequently it happened that the lovers of the sport left the field before the end of the game, wearied by the monotonous series of mass play, varied only at long intervals by a brilliant end-run or a kick that brought the audience to their feet with old-time enthusiasm. Not only was the game deadly in its dreariness, but, what was of more importance, it was growing more deadly to the participants and the number of deaths and serious injuries, due to the massing of the attack on individuals in the line, especially tackles, was growing year by year, until in 1905 the climax seemed to be reached in the killing of several college men in one season.[33]

To solve this incentive problem a body with industry-wide representation (IAAUS) was formed to establish a uniform set of rules and govern the conduct of the sport. The standardized set of football rules prevented injuries by outlawing the rough techniques used by some schools in their attempts to win football games. Since all schools recognized the authority of the IAAUS and agreed to abide by the rules the problem caused by the conflict in incentives was solved. The establishment of a standardized set of rules eliminated the incentive schools had to utilize rough techniques because schools no longer were at a disadvantage if they employed a safer style of play. Additionally, safer rules provided a higher quality product which more people would want to watch.

Given this understanding of the intra-industry externality present in college athletics at the beginning of the twentieth century it is now possible to compare the explanations for the formation of the IAAUS. It is often held that the IAAUS was formed to prevent injuries that had been occurring in intercollegiate athletics, yet an examination reveals that the rules which prevented injuries were designed to eliminate the problems producers faced when they responded to natural incentives. The incentive to use rough and dangerous techniques to win had to be eliminated or demand for the college athletic industry's product would fall. Accordingly, while it is certainly true that the IAAUS established a standardized set of rules, the establishment of this set of rules was the method by which the college athletic industry addressed an intra-industry externality. Hence, it is more accurate to assert that the IAAUS was organized to solve an intra-industry externality and in this way prevent demand for college football games from falling.

The formation of the IAAUS in 1905 also provides an opportunity to examine intercollegiate football and contrast events in the last quarter of the nineteenth century with what took place in the middle of the first decade of the twentieth century. In this thirty-year span not only can the development of a major sport be traced but questions about the administrative bodies emerge. Why, for example, did it take so long for one central body, designed to govern the sport, to be formed?

Prior to the formation of the IAAUS, many groups had tried to control college football. For the most part, however, these early attempts were not successful because members only recognized the group's

authority over the rules of the game (as opposed to other areas such as player eligibility) and even then members frequently refused to follow the decisions of the group. Schools that did not like an association's decisions either withdrew and continued to play football without the association's sanction, or remained in the association but ignored the rule changes they did not like. Either way an association had little recourse in dealing with a school that could not be verbally convinced to abide by its rules.

From 1876 to 1893 the Intercollegiate Football Association was the most influential football association in the United States. This group of eastern schools was able to establish a set of rules which all members followed. The breakup of the IFA, however, showed that schools only banded together when it was mutually convenient for them to do so. Once a school developed a superior football technique, it refused to allow the association to tamper with it even at the risk of destroying the association. The willingness of schools to do this also highlights the conflict in incentives facing the school and the industry.

The IFA eventually disbanded because of disagreement over the rules governing football skills. Some schools sought to maintain the advantages they had because of special athletic skills, but other members of the IFA tried to eliminate any advantage by outlawing the technique involved. An additional strain was put on the IFA's cooperative agreement when Yale introduced rules governing eligibility of the participants. The inability of member schools to deal with Yale's proposal indicated that the association was not prepared to address questions not directly pertaining to the rules of football.

After the IFA disbanded small regional coalitions of schools formed to standardize the rules of football. These groups were successful in their own regions, but confusion over which set of rules to use resulted when schools from different regions competed with each other. It was not until 1905 that these separate groups had any incentive to cooperate. The serious threat that football might be outlawed, brought about by the public's concern for the injuries that occurred at the end of the 1905 season, convinced sixty-two schools to join together and form an association (IAAUS) that would establish a standard set of rules for all to use.

Unlike the early football associations, most of which lasted only a short time, two observations about the IAAUS provide insight into its potential durability. The first point concerns the willingness of schools in 1905 to finally address the injury problem in college football with the lack of interest in injury problems of the early athletic associations. The second point compares the leadership of the IAAUS with that of the early athletic associations.

Injuries resulting from college football had prompted schools to band together prior to 1905, but these collective efforts had never succeeded in permanently addressing the problem. Consequently, the IAAUS, another athletic association seeking to rewrite football rules, must have met some measure of criticism when it was first formed. But while injuries in college football had aroused the concern of the general public before, the outcry had never reached the level of 1905.

The death of one player and the serious injury of two others in late 1905 received nationwide attention and prompted the President of

the United States to threaten intervention by the Federal Government into intercollegiate sports. Unless reforms were made it was likely that college football would have been abandoned as schools would have chosen not to play the dangerous game or because of the legal steps President Roosevelt seemed ready to take. Thus, in 1905, colleges and universities were more willing to cooperate because they realized that the cost of not cooperating (abandoning football) was considerably higher than ever before.

The willingness of schools to cooperate in 1905 is also consistent with the predictions of economic theory. When an industry seeks to address an intra-industry externality individual firms are often unwilling to act if they perceive the benefits they will reap from addressing the problem are less than the cost they will incur. However, once firms are certain the benefits they will reap are larger than their costs they should be anxious to address an intra-industry externality.

A large intra-industry externality had existed in intercollegiate sports since the last quarter of the nineteenth century, yet only in 1905 was a serious effort made to address the problem. According to economic theory the explanation for this sudden willingness of schools to cooperate comes from examining the gains each school stood to make once the problem was solved. In the late 1800's if schools had drawn up a set of binding football rules the gains to each (fewer injuries) would have been low compared to the cost (no longer being able to use a dangerous skill that provided a team with an advantage). However, by 1905 the gains each school stood to make from addressing the injury

problem, which included being allowed to continue playing football, an increased demand for the product, and fewer injuries, outweighed the cost. Thus, the willingness of schools playing college football to cooperate in 1905, in light of the fact that they had been unable or unwilling to do so previously, is no mystery when the injuries resulting from playing football are viewed as an intra-industry externality.

The second point to note about the IAAUS, which supports the notion that the IAAUS would experience more success than any association before it, comes from examining the individuals who comprised it. Prior to the formation of the IAAUS most athletic bodies had been run by students. Because the individuals in these associations changed so frequently, long-range planning was difficult. However, the IAAUS was composed primarily of faculty members and official representatives of competing institutions. These individuals brought a more formal attitude to the association and were not subject to high turnover. Further, the association's first elected President, Captain Palmer E. Pierce, a professional military officer schooled in discipline and organization, was qualified to provide more competent leadership than any other previous association had experienced. For these reasons it appears that the IAAUS would be able to offer a more lasting contribution to the goverance of football than any association before it.

Nonetheless, while this study postulates the formation of the IAAUS as the attempt by the college athletic industry to address an intra-industry externality, there is also evidence in this early period that this group sought to regulate all aspects of the sport. Palmer E.

Pierce, in a report to the IAAUS in 1909, indicated the association had sought control over sports-related items other than rules when it drew up its first constitution, but realized its desired system of enforcing these regulations as "impracticable" and was abandoned.[34] Thus, while those who ran football at various colleges and universities did not have sufficient power to band together and control all aspects of intercollegiate football, the organization for them to meet and contemplate how this could be done had been established in December 1905. As will become apparent later, overcoming this organizational problem was the key to the later evolutions of the regulation of college athletics. Briefly, once colleges had organized to police safety and standardize the industry's product, it would be relatively easy to go on to promulgate other types of athletic regulations.

Footnotes - Chapter II

1. Howard J. Savage, American College Athletics, The Carnegie Foundation for the Advancement of Teaching, Bulletin 23 (Boston: The Merrymount Press, 1929), p. 14.

2. Ibid.

3. Ibid., p. 6.

4. Ibid.

5. Allison Danzig, The History of American Football, (Englewood: Princeton Hall, Inc., 1956), pp. 7-8.

6. The sport of rugby got its name from the town where it was first played; Rugby, England. Rugby was first played in 1823. In 1871 a Rugby Union was formed to formalize the rules of the sport. The set of rules became known as Rugby Union. This is in contrast with Rugby League. The major difference between the two is the perception that Rugby Union, played with fifteen players per team, is "amateur" rugby, while Rugby League, played with thirteen man teams, is "professional" rugby.

7. Alonzo Stagg, quoted in Danzig, The History of American Football, p. 11.

8. Paul Stagg, "The Development of the National Collegiate Athletic Association in Relation to Intercollegiate Athletics in the United States" (Ph.D. dissertation, New York University, 1946), p. 17.

9. Danzig, The History of American Football, p. 14.

10. It was the adoption of eleven-man teams that brought Yale into the IFA in 1880.

11. Danzig, The History of American Football, p. 15.

12. Ibid.

13. Alonzo Stagg, "Touchdown," Saturday Evening Post, Oct. 23, 1926, p. 109.

14. Danzig, The History of American Football, p. 24.

15. Ibid., p. 493.

16. Fredrick W. Luehring, "The National Collegiate Athletic Association," Health and Physical Education, Vol. 18, No. 10, December 1947, p. 707.

17. The Faculty Athletic Advisor, "Commercialism in College Athletics," School and Society, Vol. XVI, July 1, 1922, p. 9.

18. J. R. Day, "The Function of College Athletics," Proceedings of the National Collegiate Athletic Association, IV, (Dec. 28, 1909), p. 35. (Hereafter all references made to Proceedings of the National Collegiate Athletic Administration will be cited as (year) NCAA Proceedings).

19. P. Stagg, "Development of the NCAA," p. 29.

20. Danzig, The History of American Football, p. 29.

21. New York Times, 5 Dec. 1905, p. 11.

22. Danzig, The History of American Football, p. 29.

23. New York Times, 29 Nov. 1905, p. 5.

24. Ibid.

25. New York Times, 5 Dec. 1905, p. 11.

26. Danzig, The History of American Football, p. 29.

27. New York Times, 8 December 1905, p. 7.

28. Those attending were West Point, Syracuse, Rutgers, Wesleyan, Stevens, Lafayette, Haverford, Swarthmore, Columbia, Union, Rochester, Fordham, and New York University.

29. New York Times, 8 Dec. 1905, p. 7.

30. New York Times, 29 Dec. 1905, p. 7.

31. Ibid.

32. Ibid.

33. Frank W. Nicolson, "Report of the Secretary," 1912 NCAA Proceedings.

34. Paul Stagg, "The Development of the NCAA," p. 32.

CHAPTER III

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION IN TRANSITION 1906-1945

Membership in the NCAA

The body of delegates at the IAAUS meeting on December 28, 1905, prior to having drawn up a constitution, elected a president, vice-president, and secretary-treasurer.[1] Palmer E. Pierce, the association's first president, then appointed four members of the association to an Executive Committee. These four, along with the president and the secretary-treasurer, who were members, ex officio, of the Executive Committee, penned the association's first constitution. This constitution was ratified by the entire association at the second IAAUS convention in December 1906.

The association's first constitution pointed out that "all colleges and universities in the United States are eligible for membership" with the understanding that each had to agree to the association's standard of conduct in athletics and willingness to confront abuses in college sports.[2] A twenty-five dollar membership fee was charged to "defray the necessary expenses of officers, committees, and of administration."[3] Each institution that paid this fee automatically became an active member and was entitled to one vote on all motions before each annual convention.

In 1908 a joint membership category was established. Joint members were two or more colleges or universities that combined together to be represented by one delegation. The membership on the delegation was divided between the schools involved, but a joint member had only one vote at the annual convention. A joint member to the association was charged a total of twenty-five dollars, part of which was paid by each institution.

In 1909 the IAAUS established the associate membership category. Any institution of learning, other than a college or university, that wished to be connected with the IAAUS could become an associate member. Prominent associate members were high schools, athletic clubs, conferences, and associations. Each paid a ten dollar membership fee, was entitled to a delegation at annual conventions, but could not vote.

Between 1909 and 1922 no revisions in the constitution that concerned membership took place. In 1910 the IAAUS changed its name to the National Collegiate Athletic Association. Also during this time the NCAA grew from 67 to 122 members. In 1922 revisions in the constitution provided for three membership categories; active, allied, and associate.

Active membership was open to all colleges and universities that abided by the rules of the association. Active members were required to pay a twenty-five dollar membership fee and were entitled to send a delegation of not more than three representatives to the annual convention. This delegation was empowered to cast one vote on all NCAA issues.

Allied membership, which replaced joint membership, was open to local athletic conferences of colleges and universities. Initially, allied members paid no dues, but in 1924 they also were required to pay twenty-five dollars. This was waived, however, if a majority of the conference members were already members of the NCAA. Allied members were allowed a three-man delegation and one vote at the conventions.

Associate membership was open to institutions of learning other than colleges and universities and/or other "groups of colleges and universities that are organized for the purpose of conducting mutual competition in sports."[4] Associate members were required to pay a ten dollar membership fee, but this was waived if a majority of the members were members of the NCAA. An associate member was represented at the convention by a one-man delegation who could not vote on NCAA issues.

No revision in the NCAA constitution pertaining to membership took place between 1924 and 1941. During this time membership in the association grew from 145 to 252. At the 1941 convention constitutional changes were made that divided membership into the four categories that exist today; active, allied, associate, and affiliated. The first three membership categories retained the duties and responsibilities as outlined in the 1922 constitution while the fourth category (affiliated) was newly created. Affiliated membership was open to "groups and associations intimately related to intercollegiate athletics in their functioning and purposes, but failing by their nature to qualify for other classes of membership."[5] An affiliated member paid no dues, was not entitled to vote, but was allowed a one-man delegation to all conventions.

Thus, through a series of constitutional revisions completed by 1941, the NCAA had adopted a complex membership policy that resulted in the expansion of the association's membership. The success of the NCAA in increasing its membership stands in stark contrast to the unsuccessful attempts of athletic associations in the nineteenth century to expand their membership. Consequently, the question of why the NCAA succeeded in increasing its membership, while previous associations failed, needs to be addressed. One possible explanation for the success of the NCAA in attracting members is provided by economic theory.

Ignoring the notion that more schools wished to join the NCAA because it was better than any athletic association previously formed, it is possible to point to the NCAA's pricing policy and note that it possessed the flexibility needed to increase membership. Initially, all schools were charged a twenty-five dollar membership fee. But it was soon discovered that this fee kept some schools from joining the association. Paul Stagg, who researched the early history of the NCAA, observed this tendency and noted:

> It was found that the expense of maintaining membership kept many of the small institutions from joining as well as a few of the large ones.[6]

From simple economic theory it is known that individuals will engage in certain activities as long as the benefits exceed the costs of that act. In this context institutions that joined the NCAA perceived that the benefits from membership exceeded twenty-five dollars. Other schools, such as the ones described by Stagg that were discouraged from joining the NCAA because of the fee, felt that the benefits did not exceed the costs.

Economic theory also asserts that the way to encourage certain behavior is to lower the costs. Hence, the NCAA could have increased membership by decreasing the membership fee. But, when the cost to all members is decreased, the association foregoes money that some schools, willing to join the association at the higher price, would have paid. In its early days the NCAA faced a dilemma when searching for an optimal pricing strategy; it wished to charge a membership fee low enough to encourage many schools to join, yet at the same time maintain a pricing policy that allowed it to extract as much consumer surplus as possible from each member.

The answer to this dilemma for a supplier with sufficient monopoly power is price discrimination. If a supplier markets a good which can not be resold, is capable of differentiating different groups of buyers, and can accurately estimate their willingness to pay, he can charge each group a different price for the same product. In this way the supplier can charge a high price to an individual with a large demand for the commodity while simultaneously selling the commodity at a lower price to an individual with a smaller demand. In contrast to a uniform pricing system, price discrimination provides for more of the good to be sold and allows producers to earn more money.

By examining the position of the NCAA in intercollegiate athletics in the first decade of the twentieth century it is clear that it was the only association capable of supervising college sports. In 1908 the association had begun to standardize sports rules. It could claim, in a not completely false manner, that it had been sanctioned by the

President of the United States to perform this task. Further, the NCAA faced little competition from other athletic associations. On this basis it is apparent that the NCAA possessed sufficient monopoly power in intercollegiate sports to be a price-setter.

The NCAA also possessed the necessary information to measure each school's desire to belong to the association. The NCAA could obtain this estimate by observing the size of an institution's athletic program. It was then possible to predict that a school with a large and extensive sports program would have a much greater demand to join the NCAA and work to establish uniform and safe sports rules than would a school with a smaller athletic program. This is because a school with a large athletic program stood to make a substantial gain (publicity, gate receipts) when rules were standardized and games could be easily organized. Accordingly, the school with the larger program could be charged a higher membership fee.

Given that the NCAA possessed monopoly power because of its position as the largest college sports regulatory body in the United States and that it had the ability to differentiate between schools on the basis of their willingness to join the association, the NCAA's pricing policy can be analyzed in terms of third-degree price discrimination. The division of membership into initially three and ultimately four categories is evidence of the NCAA dividing consumers into classes with similar demands (high, low) for belonging to the association. The association's gauging of each school's willingness to pay and charging different prices to each class of demanders is an

example of behavior that a price discriminator would be expected to exhibit.[7] One predictable result of the NCAA adopting this pricing strategy was an increase in its membership. Stagg's observation that "the Allied Membership was introduced to stimulate membership and encourage conferences to join the association" is crude evidence of the effect of this pricing policy.[8]

While price discrimination appears to plausibly explain the membership policy of the NCAA it is not immediately clear that the association followed this pricing policy primarily to maximize revenue. This is the reason orthodox economic theory asserts price discrimination is used, but there are two points that appear to call into question the NCAA's motivation for using this pricing policy. However, once these two points are examined more carefully the revenue generating potential of the NCAA's policy and the true complexities of this membership policy will be apparent.

The first point concerns the small amount of money the NCAA collected in membership fees. While membership increased significantly between 1909 and 1922 (67 to 122), annual fees collected from members rose from $1675 to $2610 during this period.[9] Consequently, even if membership increased more dramatically due to the association's pricing policy, the increase in revenue would not have been substantial. Additionally, while the association relied solely on membership dues in its first ten years of existence to finance all its endeavors, it quickly saw that larger sums of money could be made at NCAA sponsored athletic events and these events were held frequently, beginning in the

late 1920's.[10] Thus, the small size of NCAA revenue collected from membership fees, relative to revenue collected from other activities, appears to question the motivation of the NCAA when designing its membership policy.

The appearance of other revenue generating ventures can be quickly reconciled with low-priced membership fees by considering how each was related. With a large number of schools enrolled and participating in NCAA activities it was hoped that purchases of NCAA items (rule books), attendance, and participation at NCAA events (tournaments, championships) would increase. Because substantial revenue was generated by charging admission to these NCAA organized sports events, more NCAA members meant a larger number of competitors and a better quality contest, which more consumers would pay to see. The understanding that more members translated into more revenue through the purchase of other NCAA controlled items highlights the complexities of the NCAA's revenue generating mechanism and supports the idea that the NCAA was seeking to maximize revenue with its membership policy.

The second point to be made here is that joint and later allied membership, which allowed schools to band together and join the association as a single member, did not have restrictions on the number of institutions that could join through this category. Because of the generous requirements for joint membership a large number of schools could join under this category and each school would pay only part of one fee. This is precisely what the Kansas Intercollegiate Athletic Conference did in 1921. By joining the association as a joint member, these eighteen Kansas colleges paid only one $25 fee instead of separate

fees totaling $450. Had the NCAA followed a strict revenue maximization policy from membership fees it appears that large joint memberships, which represented considerable income foregone by the association, would not have existed.

But given the NCAA's policy of raising revenue through the sale of NCAA-related items (books, athletic meets, etc.), the joint and allied memberships may be consistent with revenue maximization even in light of the membership revenue foregone. While joint membership allowed many institutions to avoid paying the full membership fee of twenty-five dollars, membership in the association required each school to purchase NCAA items (e.g., rule books) and pay entrance fees to NCAA sanctioned athletic events. Thus, when it is recognized that the revenue foregone by allowing several schools to join under one membership fee might have been quite small relative to the revenue the NCAA stood to collect through the sale of NCAA-related items, joint and allied memberships were consistent with revenue maximization.

The goal of the NCAA's membership policy was also more complex than simply increasing the number of members so as to increase revenue. No doubt the NCAA sought more, as opposed to less, revenue, but the association was also concerned with the size of the membership for another reason. To further understand why the NCAA was concerned with the size of its membership consider the voluntary nature of the NCAA and its desire to standardize the rules of most college sports.

For the NCAA to establish its authority to change the rules of college sports it had to show all involved that it represented a large majority of the colleges and universities that maintained athletic

programs. It could best show that it represented the interests of these schools if they were members of the association. Thus, this explanation for the early membership policy of the NCAA incorporates the idea that the association was extremely interested in attracting members in order to gain a measure of credibility and respectability. With a large membership the NCAA would be able to convince all who played the sports whose rules they standardized that the association had the consent and, more importantly, the authority to make the rule revisions.

With this understanding of the NCAA's need to increase membership it is possible to explain why the association actively petitioned the schools which comprised the old football rules committee, Harvard, Yale, Pennsylvania, Chicago, Cornell, Princeton, and Annapolis, to join the association. Their membership in the association would have sanctioned the existence of the NCAA and reenforced its power to change the rules of various sports. Without these, and many other schools, the NCAA would have been a small group of eastern schools unable to regulate college sports.

Because the NCAA was determined to increase its membership, it is also understandable why the NCAA encouraged high schools and athletic clubs to join by establishing special membership categories and prices for each. The NCAA needed to be recognized as the organization empowered to undertake certain activities and sought this recognition from many athletic groups, including those not based on a college campus. In addition to the revenue these organizations could provide

the NCAA, by joining the association they also recognized the NCAA's authority to establish control over sports rules.

At first glance this last point appears trivial because any new group or club naturally seeks to increase its membership. It should be recalled, however, that the NCAA was not merely a club, but a group seeking to regulate college sports. Unlike other regulatory agencies, which have legal sanctions forcing all to comply with their decisions, the NCAA had no power to force schools to adopt its rules. For the association to ensure that the dangerous elements were eliminated from certain sports it not only had to establish rules that promoted safety, but these rules had to be accepted and adopted by all who played the sport.

The fact that compliance with NCAA rulings was strictly voluntary put the NCAA in a difficult situation. The NCAA had to get schools to recognize its set of sports rules, even though it had no coercive power. In contrast to standard regulatory bodies, whose decisions are enacted without questions directed at their authority, the NCAA in its early days did not have this luxury. Recognizing that schools had often been unwilling to comply with the decisions of earlier athletic associations and that this attitude of non-cooperation had led to the demise of the early associations, the NCAA had to persuade schools to comply with its rules. Hence, a membership policy designed to make membership in the association more appealing was also an attempt to persuade schools to recognize the NCAA's decision-making power.

Practices designed to increase membership had a significant effect in establishing the NCAA as a national sports body. By 1941 the NCAA was able to claim that its decisions carried the approval of 252 members. In this period a large membership not only increased the revenue generated by the NCAA but it also sanctioned the NCAA's activities. Later in this chapter it will be shown that a large membership, which included a majority of colleges and universities that maintained athletic programs, was a necessary prerequisite for the NCAA to establish policies that restricted the actions of producers of athletic contests and the wages paid to student-athletes.

Officers of the NCAA

Though the association had elected a president, vice-president and secretary-treasurer without a constitution, the first constitution made these positions official. The constitution provided for each officer to serve a term of one year with elections held at the annual convention. A vacancy during the year in any of these positions would be filled by the Executive Committee.

The early constitutions of the NCAA gave each officer specific but limited power. The president would call and preside over meetings of the association's Executive Committee. The vice-president would act as president if the president were absent. The secretary-treasurer would keep records of all meetings, report the minutes, and be in charge of all funds.

The constitution of 1906 also allowed the president to appoint a Nominating Committee that would select nominees for an Executive

Committee. These nominees, plus others offered from the floor, were voted on by the entire association and became the Executive Committee. The Executive Committee conducted the work of the association between meetings through correspondence and with proper notification to the secretary-treasurer. It also met the evening before the annual convention to consider the meeting's agenda.

The first two Executive Committees were composed of four representatives from very distinct sections of the country; the Northeast, Midatlantic, Midwest, and South. In 1908 revisions in the constitution provided for the expansion of the Executive Committee to six members, each representing specific geographic districts. Constant redivision of the United States by the association caused the number of districts on the Executive Committee to grow to seven in 1911, eight in 1912, and nine in 1916. Constitutional changes in 1924 consolidated two districts, returning the number of district representatives on the Executive Committee to eight.

Between 1924 and 1941 the districts were arranged as follows, with members of the NCAA belonging to the district which included the state they were located in:

1. Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, Connecticut.

2. New York, Pennsylvania, New Jersey, Delaware, West Virginia.

3. District of Columbia, Maryland, Virginia, North Carolina, South Carolina, Kentucky, Tennessee, Mississippi, Georgia, Louisiana, Alabama, Florida.

4. Ohio, Illinois, Indiana, Michigan, Wisconsin, Minnesota.

5. North Dakota, Missouri, South Dakota, Kansas, Nebraska, Iowa, Oklahoma.

6. Arizona, Texas, Arkansas.

7. Wyoming, New Mexico, Colorado, Utah, Montana.

8. California, Oregon, Washington, Idaho, Nevada.[11]

Membership in the Executive Committee did not stop increasing once the number of district representatives was stabilized. This was because of the changes in the NCAA's constitution made in 1910 that allowed

> ...one member from each local league or conference of colleges, whose membership consists of at least seven colleges, four or more of them being members of the association...to be on the Executive Committee.[12]

To solve the problem of an Executive Committee that was becoming too large to function effectively the Council of the NCAA (referred to simply as the Council) replaced the Executive Committee as the governing body of the NCAA.

The Council was established in 1922 and was charged with the governance and general direction of the association. It consisted of representatives from each geographical district (then nine, but only eight districts two years later), five members-at-large, the president, and the secretary-treasurer, the last two of which were members ex officio. The inclusion of the members-at-large allowed athletic conferences to be represented, but unlike the revisions of 1910, it limited their number thus making the Council a more functional body. At the same time a new Executive Committee was formed. This new committee was composed of five members of the Council who were elected by the Council. They served one year terms "under the direction and general instruction of the Council."[13]

Other revisions made in 1922 included the official consolidation of the two offices of secretary and treasurer into one office (secretary-treasurer) and the elimination of the office of vice-president. In place of one vice-president the association renamed each of the eight representatives of districts a vice-president.

All vice-presidents were empowered to represent the president in their district and arbitrate decisions concerning possible violations of the principles of amateurism. Each was charged with "observing and supervising the conduct of intercollegiate sports in his district."[14] Further, all were authorized to appoint three or more assistants (an advisory committee) to help perform these duties.

Constitutional changes in 1922 required each vice-president to present a report at the annual convention covering:

> (1) The degree of strictness with which the provisions of the constitution and by-laws and the existing eligibility rules have been enforced during the year;
>
> (2) Modifications or additions to the eligibility code made by institutions, individually or concertedly;
>
> (3) Progress toward uniformity in the conduct of sports and of the activities of intercollegiate athletic associations and local athletic conferences or leagues;
>
> (4) District competitions, if any;
>
> (5) Any other facts or recommendations that may be of interest to the Association.[15]

No revisions in the constitution concerning the officers took place until 1928. At that time the major changes involved expanding the number of members-at-large on the Council and the size of the Executive Committee from five to seven and detailing more precisely the functions

of the Executive Committee. These revisions provided the Executive Committee with more authority to conduct the business of the NCAA.

The 1928 NCAA convention charged the Executive Committee with "...representing the Council and ...empowered [it] to transact the business and direct the affairs of the association between conventions."[16] The Executive Committee had the power to adopt the association's budget for the fiscal year, appoint the Committee to Nominate Officers which selected individuals to be nominated for offices of the association, and appoint the Committee on Committees which chose nominees for the various rules committees.

An examination of the revisions made in the constitution of the NCAA during this period reveals that nothing in the development of the association's governing mechanism appears unusual. Any club, regardless of size, normally elects a president, vice-president, and secretary-treasurer. Further, in accordance with the early objective of the NCAA, which was to "...maintain [athletics] on an ethical plane in keeping with the dignity and high purpose of education," the formation of rules committees to ensure safety is justifiable.[17] However, the development of smaller governing bodies such as the Council and Executive Committee and the increase in the number of vice-presidents merits additional inquiry.

The association's concern with the enforcement of many of its codes that were unrelated to sports rules (as witnessed by the responsibilities of the vice-presidents) draws into question whether the association actually desired a role in intercollegiate sports limited

merely to standardizing rules and organizing tournaments. Had the association sought this limited role why did it set up such an extensive mechanism to control sports items other than rules (e.g., eligibility)? An examination of the expanded responsibilities of the vice-presidents provides insight into the role the NCAA actually sought in college sports.

The eight newly established vice-presidents were empowered, under the changes in the 1922 constitution, to arbitrate cases that concerned possible violations of NCAA rules. Thus, one interpretation of the establishment of these offices is that the NCAA was allocating the policing of its rules on a regional basis. When it is recalled that a cartel requires a monitoring mechanism to prevent cheating by its members the establishment of eight regional monitors provides the first hint of the NCAA's true goal in college sports; cartelization of intercollegiate athletics. Further support for the notion that the NCAA actually sought to cartelize college sports comes from other efforts (albeit non-binding) by the association during this period to limit competition for athletes and restrict certain activities of schools producing athletic contests.

It must also be asked why the association set up such an elaborate governing mechanism. Perhaps this system was actually needed to carry out the official objective of the association efficiently, but a more plausible explanation for this governing apparatus can be found by examining the high cost of decision-making in large groups.

As membership in the NCAA increased the association found that it was difficult to make decisions at conventions when a large and often uncontrollable group was present. With hundreds of members in attendance it was impossible for many members to participate in debate. Consequently, issues voted on by the association tended to be non-controversial recommendations and resolutions. To conduct the business of the NCAA it was logical for the association to turn to smaller groups, such as the Council and Executive Committee, which had lower decision-making costs.

To deal with the increase in the size of the NCAA additional governing bodies were created. The various sports rules committees still reported to the entire convention, but between annual conventions these committees worked with the Council and Executive Committee. The vice-presidents and these two bodies also had a large influence on the agenda of each convention. Hence, this analysis explains the appearance of the Council, Executive Committee, and eight vice-presidents as the association's effort to control a growing bureaucracy and to decrease decision-making costs.

It should also be noted that economic theory predicts that once the cost of making decisions is decreased more decisions are likely to be made. In the context of the early years of the NCAA this means that once the association had set up a low cost decision-making process it would be expected to use this mechanism to make more decisions. Because of this the establishment of the Council, Executive Committee, and

eight vice-presidents marked a major change in the philosophy of the NCAA. Without these institutions the NCAA would have been forced to consider simple issues that could have been easily handled in large groups. With these institutions, however, the association had the potential to render decisions on more intricate and controversial matters.

Functions of the NCAA

In the period immediately after the NCAA was formed the association faced many challenges. As a new organization attempting to rewrite sports rules to ensure they contained safeguards against injury, a goal which other athletic associations had failed to accomplish, the NCAA had no time-tested path to follow. Instead, most of the NCAA's early efforts in intercollegiate athletics were characterized by trial and error.

The first major problem the NCAA addressed was the establishment of a uniform set of football rules. Once this was underway the association became interested in the administration of other sports. In the next thirty years the NCAA took it upon itself to rewrite the rules and organize the championship tournaments of fifteen sports, even though the association admitted some of these sports already had an adequate set of rules. One fact that is apparent in this period is that unlike the rules of football, which the association rewrote under the threat of being outlawed, the NCAA began to conduct these other sports for reasons other than necessity.

When the NCAA was originally formed it began with a specific, limited objective (standardizing rules), but in this period the association expanded it's span of influence to other areas such as competition for student-athletes, the number of games played, the qualifications of employees, radio broadcasting of contests, and the use of motion pictures. As the activities of the association changed from simply revising rules to considering all aspects of sports, the NCAA began to evolve from an advisory group to a regulatory body. In this transition period the NCAA discovered that once it was able to get all producers (schools) together to discuss rules, the additional cost of discussing other subjects (output, inputs, etc.) was quite low. Again, however, in this period the NCAA had to overcome several obstacles before it could effectively begin regulating intercollegiate sports.

The largest problem the NCAA had to overcome was the fact that members of the association would not adhere to the resolutions they passed at the annual conventions. Throughout the period after the NCAA was formed and until World War Two NCAA members were eager to vote for resolutions that limited behavior, but were unwilling to enforce the rules they enacted. At first the NCAA believed this problem stemmed from a lack of resolutions specifically outlining what was allowable and what was not. But after more resolutions were passed and violations continued the NCAA learned that the actual problem was the method of enforcing these rules.

In this period the NCAA discovered that for it to be an effective regulatory body it had to ensure members would follow its rules.

Initially, the NCAA tried to enforce its rules through voluntary compliance, believing each institution would comply without the threat of punishment. But, as the NCAA's experience revealed, voluntary compliance did not work because schools had sufficient incentives to cheat on the rules. The NCAA's frustrating experience with voluntary compliance taught the association that an effective enforcement system had to include a coercive mechanism.

The forty year transition period traced in this chapter is highlighted by the NCAA realizing that it needed to establish a stronger enforcement mechanism. Coupled with the general experiences of the association in this time were four major events which reemphasized how important adequate enforcement was. They were; the publishing of a major report detailing how widespread violations of the NCAA's rules were, the depression of 1929, the effects of federal taxation and radio broadcasting of football games on athletic revenue collected by schools, and the attempt in 1934 by the NCAA to establish a stricter set of rules to deal with recruiting and subsidization of student-athletes. The effect of each of these ultimately made the NCAA realize how important it was to have a strict enforcement mechanism.

At the end of the period covered by this chapter the NCAA was prepared to enact strict, binding rules on all its members. However, this mechanism was not formalized until the NCAA experienced many growing pains. The discussion of the growth of the NCAA and its experiences with rules and enforcement begins with the association's handling of football.

College football provided the major stimulus that led to the formation of the NCAA. The widespread violence and frequent fatalities that characterized the sport drew sufficient public attention in 1905 to cause the schools that played the sport to band together and form the NCAA, pledging to eliminate the game's violent tendencies. Among the first official acts of the NCAA, once it decided college football should not be abolished, was the establishment of a Football Rules Committee. This seven-man committee was instructed to rewrite the rules of college football prohibiting dangerous techniques.

Because the committee that maintained the rules of football prior to 1905 was still intact the Football Rules Committee formed by the NCAA became known as the new rules committee. The old committee consisted of Yale, Harvard, Princeton, Cornell, Pennsylvania, Chicago, and Annapolis, each of whom refused to join the NCAA in 1905. Refusal by these seven schools to join the association put intercollegiate football in the unique position of having two rule-making bodies. The NCAA foresaw this problem and authorized its rules committee to seek alignment with the old committee before setting off on its own and writing a separate set of rules.

The new committee proceeded to Philadelphia, Pennsylvania, on December 29, 1905, and met with the old committee to discuss their merger. Members of the old committee pointed out that they could not affiliate with the NCAA rules committee without instructions from their schools. Affiliation was delayed until mid-January 1906 when proper authorization was granted by each school on the old committee. On

January 12, 1906, a fourteen-man joint Football Rules Committee (seven from both the old and the new committees) was formed and four subcommittees, each devoted to studying specific aspects of football, were appointed.

Members of the old committee were understandably reluctant to share control of football with the new committee but realistically had no alternative. Because the old Football Rules Committee ruled by influence rather than coercion, a breakdown in the committee's ability to influence meant the committee had little power to effect the rules of the sport. This problem had frequently occurred in the athletic associations that appeared and quickly disappeared in the last twenty years of the nineteenth century and was occurring in 1905 with the old Football Rules Committee.

The old committee was experiencing a decline in its ability to influence other colleges for two reasons. First was the fact that the old committee had presided over football during a period that was characterized by many serious injuries and deaths. Schools were hesitant to trust reform to a group that appeared incapable of ensuring safety in the sport. Second, schools other than the seven on the old committee were skeptical of the committee because they saw it as an elite group not seeking or accepting any outside advice. For these reasons most schools had little confidence in the old committee.

With the influence of the old Football Rules Committee having decreased rapidly due to the football deaths in late 1905 and with the apparent willingness of the NCAA to establish a separate rules system it was logical for the old committee to have affiliated with the NCAA

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committee. Combined with the NCAA's Football Rules Committee the old committee at least shared control of the rules. Had the old committee decided to establish a separate set of rules it is likely that more schools would have followed the NCAA rules. This is because the association had a larger span of influence (at least sixty-two schools instead of seven on the old committee) and was more open to suggestions (schools from all over the United States had a voice in writing the NCAA's rules while only seven schools were represented on the old committee).

Between 1905 and 1920 joint meetings between the old and new groups of the rules committee occurred with the new rules committee reporting changes to the annual convention of the NCAA. Gradually, the distinction between the two sections of the committee disappeared as members of the old committee joined the association.[18] When Annapolis, the remaining member of the old rules committee, joined the association in 1920 the old rules committee officially dissolved. In 1921 the number of members on the Football Rules Committee was reduced to twelve and representatives were limited to serving terms ranging from one to three years.[19] By 1927, when it was decided that one member of the Football Rules Committee would be elected from each district to provide greater representation, any influence the original seven members of the old committee still had on football rules ended.

The Football Rules Committee studied the sport and recommended changes in procedures that were voted on at each annual convention. The recommendations adopted by the entire association included standardization of rules, prohibition of dangerous techniques, the

monitoring of officials, and the endorsement of certain equipment. The number of deaths in college football decreased considerably due to football rule changes adopted by the NCAA. With the exception of 1931 and 1932, when a series of deaths traced to intercollegiate football brought immediate changes in the rules and equipment used, injuries were never a serious problem after the NCAA began standardizing the rules of college football.

After the establishment of a Football Rules Committee the NCAA began considering the possibility of standardizing rules in other sports. In each case a familiar pattern of events was followed. Initially, a committee was formed to study a particular sport and report to the association on its conduct (i.e., administration, rules). On the basis of the committee's report to the association, which always concluded the sport could be administered more effectively, the NCAA officially appointed its own rules committee and instructed it to reorganize the rules of the sport. In this way, during the period considered by this chapter, the NCAA established rules committees in basketball (1908), track and field (1909), soccer (1911), swimming (1913), wrestling (1917), volleyball (1918), boxing (1919), lacrosse (1929), ice hockey (1923), gymnastics (1927), baseball (1928), fencing (1932), golf (1935), and tennis (1937).

The size of the first committees varied from sport to sport but generally ranged between three and twelve members with the Football Rules Committee being the largest. In an effort to obtain qualified advice it was suggested that each rules committee solicit the help of

officials of the sport. This led to the establishment of an advisory committee to each rule committee in 1916. When first introduced advisory committees in each sport consisted of officials in that sport, but through the process of selecting committee members within several years representatives of colleges and universities occupied all seats on the advisory committee. The introduction of advisory committees increased the size of each rules committee to the point where the smallest committees had at least five members while the largest committee had close to twenty members.

Because the membership of all committees was elected at the annual conventions there existed the possibility that all members from the previous year would not be reelected, causing a breakdown in the committee's ability to function. To address this possibility the NCAA, in 1929, divided all committee members into four classes with terms of office for each class ranging from one to four years. Recognizing that continuity on a committee was important but that it was also necessary to permit occasional changes in leadership, in 1936 the association limited the terms of a committee chairman to four years.

Had the NCAA stopped at this point and not expanded its role in college sports beyond standardizing rules and equipment the most plausible explanation for the existence of the NCAA would come from postulating the association's formation as an effort to internalize an industry-wide externality. When an industry-wide externality places a large enough burden on a majority of the producers it is logical for these producers to organize and internalize these costs. By dealing

with this externality, costs of production decline thus enabling more efficient production to occur and demand for the industry's product may increase.

In intercollegiate sports the industry-wide externality was the absence of a uniform set of rules by which athletic contests were played. Because athletic output required inputs (teams) controlled by different agents the lack of a standard set of rules often prohibited production. That is, the fact that teams could not agree on which set of rules to play by led to fewer games being played. Once this externality was internalized (establishment of an official set of rules), more output (athletic contests) was produced. In contrast to an industry producing a pure private good, where each producer must initially address (or not address) the externality on an individual basis, the fact that production of athletic output required at least two agents may have hastened recognition of the externality by the industry and its efforts to deal with it.

Had the NCAA continued only to write sports rules this theory would explain the activities of the association, but the functions of the NCAA did not stop with control of the rules. Shortly after its formation the association began to consider player eligibility, scheduling, and the inducements a school could offer an athlete to attend its institution and participate in athletics while there. In the period considered by this section the actions taken by the NCAA on these subjects were nothing more than non-enforceable resolutions or recommendations. Nonetheless, in considering how the NCAA grew from a

group that only formulated rules to a body which regulates all aspects of college sports it is important to study this transition period.

One of the most important events in this transition period was the NCAA's ability to overcome the free-rider problem. The free-rider problem exists when a group makes a public decision that is to apply to all involved. Individuals in this group can behave strategically by hiding their true preferences because they recognize that once a decision is made they will reap the benefits. Individuals who reap the benefits from collective decisions but who shirk the costs of these decisions are said to free-ride.

In the context of the NCAA and intercollegiate athletics many free-rider problems existed. The most apparent problem concerned enforcement of the association's resolutions by its members. In this era the NCAA placed the responsibility of enforcing its resolution on the individual college or university. While all schools agreed in principle to the statutes that outlined the types of behavior allowed in college athletics, few actively enforced them. Those schools that did not enforce the resolutions, but enjoyed the benefits from other schools that enforced them (e.g., decreased competition for student-athletes) were free-riders.

Unfortunately for the NCAA the free-rider problem associated with the enforcement of its resolutions was quite large. Further, other than pass resolutions condemning schools that did not enforce NCAA agreements, few institutions wanted to consider measures that would deal effectively with violators. With a large free-rider problem and

virtually no efforts made to remedy this situation it is understandable why the NCAA had such difficulty controlling intercollegiate activities in this period.

For the NCAA to effectively address the free-rider problem it needed a large majority of the colleges and universities that maintained athletic programs (produced athletic contests) enrolled in its association. With the sanction of a majority of the industry, the association could act with more authority and have greater recourse to deal with those schools that did not cooperate than it did when the NCAA represented a minority of the industry. Thus, no serious efforts to overcome the free-rider problem could be made until a majority of the schools playing college sports were enrolled in the NCAA, something that did not occur until shortly before World War Two.

An examination of NCAA activities prior to World War Two also provides insight into why members of the association were finally willing to consider establishing an enforcement mechanism capable of adequately dealing with violators. The explanation for the schools' willingness to cooperate is based on the fact that once schools learned the true cost of unsanctioned competition for student-athletes they also recognized the potential for all to be made better off if this competition could be restricted. Accordingly, once members of the association recognized the incentive problem within intercollegiate athletics their refusal to enact effective and enforceable rules ceased.

This incentive problem stemmed from the different incentives an individual firm (a school) and the industry (college athletics) faced. Once NCAA resolutions were passed each school had an incentive not to enforce them, obtaining an advantage by not restricting its behavior when all other competitors were. If all schools reacted to this incentive and failed to enforce the resolutions each spent resources competing, yet none obtained an advantage. If the diverging-incentive problem could be solved by making it impossible for schools to violate NCAA agreements, all firms in the industry would be better off because they could conserve resources that would have been otherwise expended in fruitless competition.

In the transition period discussed in this chapter the NCAA discovered this incentive problem through trial and error. Consistently resolutions were passed and violated. At some indeterminate point in time the NCAA realized that failure by most members to adhere to agreements was not a function of the resolutions, but a natural reaction to the lack of adequate enforcement of these resolutions. A thorough understanding of the period during which members of the NCAA recognized and eventually began to address the free-rider problem comes from examining the NCAA's first efforts to control the eligibility of student-athletes.

The Amateur Code of the NCAA, drawn up shortly after the association was formed, was the association's first statement about player eligibility. Player eligibility was one of the first non-rule questions the NCAA studied when it was formed. The association initially considered the question of eligibility for graduate students

and decided against allowing post-graduates to participate. The NCAA also considered the possible participation of amateurs and professionals in college sports.

The first official statement by the NCAA regarding the amateur-professional question appeared in the association's 1906 constitution. In the section entitled "Principles of Amateur Sport" the NCAA declared itself in favor of amateur participation and against the rewarding of college athletes with money for their performances. The section stated:

> Each institution which is a member of this Association agrees to enact and enforce such measures as may be necessary to prevent violations of the principles of amateur sports such as
>
> a. Proselyting
>
> 1. The offering of inducements to players to enter colleges or universities because of their athletic abilities and of supporting or maintaining players while students on account of their athletic abilities, either by athletic organizations, individual alumni, or otherwise, directly or indirectly.
>
> 2. The singling out of prominent athletic students of prepatory schools and endeavoring to influence them to enter a particular college or university.
>
> b. The playing of those ineligible as amateurs.
>
> c. The playing of those who are not bona fide students in good and regular standing.
>
> d. Improper and unsportsmanlike conduct of any sort whatsoever, either on the part of the contestants, the coaches, their assistants, or the student body.[20]

During the NCAA's first six years several committees were formed to study amateurism. The NCAA committees adopted these definitions of

amateurs and professionalism. According to the NCAA's Committee on Amateurism of 1912:

> An amateur in athletics is one who enters and takes part in athletic contests purely in obedience to the play impulse or for the satisfaction of purely play motives and for the exercise, training, and social pleasures derived. The natural or primary attitude of mind and motives in play determines amateurism.
>
> A professional in athletics is one who enters or takes part in athletic contests from any other motive than the satisfaction of pure play impulses or for the exercise, training, and social pleasures derived, or one who desires and secures from his skill or who accepts of spectators, partisan or other interest, any material or economic advantage or reward.[21]

Given the NCAA's early concern with the amateur-professional question it is worth considering why the NCAA adopted an Amateur Code and why the association recommended (it lacked the authority to do anything else) that only amateurs be allowed to participate in intercollegiate atheltics.

Simple economic theory asserts that some individuals will be more capable of performing a skill than others. In college athletics the same division can be made with athletes. In the context of intercollegiate sports this theory states that all athletes can be divided into two general classes; more skilled and less skilled. Instead of referring to players as infra-marginal and marginal, the NCAA chose to call each group professional (skilled) and amateur (less skilled). Application of economic theory to the NCAA's division of athletes into amateur and professional status holds that it was an effort by the association to screen the market and provide information about the general skill level of all athletes.

Many believed that the NCAA endorsed the participation of amateurs to keep intercollegiate athletics "pure," but when it is recognized that the distinction between amateurs and professionals was a method of identifying the more skilled players, efforts to keep professionals out of college sports appear more aptly designed to equalize competition in college athletics.[22] By banishing professionals, no school could obtain an advantage by using the more skilled players. Because all teams would use players with approximately the same skill, the probabilities of each team winning would converge. Since demand for athletic contests varies directly with the uncertainty of the outcome, attempts to equalize competition were also efforts to increase demand for the sport.

The NCAA chose to equalize competition with less skilled players rather than more skilled players because the association believed it would be less costly. The association prohibited any payment to athletes to cut the production costs of institutions maintaining athletic programs in the mistaken belief that they could prohibit pay to college athletes by merely passing a resolution.

To augment the NCAA's Amateur Code the association also formalized rules of eligibility. Prior to the formation of the association, athletes often traveled from school to school participating in athletics at each institution.[23] Before the NCAA was established some athletic conferences had addressed the problems of the "tramp" athlete by establishing rules prohibiting the playing of freshmen (one-year freshmen rule), limiting participation (three-year participation rule), requiring a student to be enrolled for a minimum number of credits, and

preventing a student from participating in athletics for a year if he transferred to another school (one-year transfer rule). The NCAA's first eligibility code combined sections of the codes of different athletic associations but closely resembled the code of the Western Conference (Big Ten) which had established one of the most thorough codes in the country.[24]

The NCAA made a major investment of resources developing codes on amateurism and eligibility, but it extended almost no time and effort to ensure the codes were followed. While the early actions of the NCAA highlight the method by which the formation of rules and codes became the function of a central body, they also reveal that the association never envisioned that these codes would be enforced by the same central body. In this period the NCAA decentralized enforcement, relying on each school, conference, or league to police violations.[25]

Decentralized enforcement had a small effect on the number of violations because these athletic bodies did little to enforce the NCAA's rules. It was during this time (the middle of the second decade in the twentieth century) that the NCAA discovered the diverging-incentive problem. While continually condemning violators of the Amateur and Eligibility Codes the association also continually encountered violations. No doubt the sport that provided the NCAA with the most problems was college baseball.

Unlike either football or basketball, whose rules the NCAA took upon itself to standardize and make safe, at the turn of the nineteenth century baseball, which had been invented more than sixty years before, already had an established set of rules. Nonetheless, the NCAA chose

to exert control over the rules of intercollegiate baseball because it posed a much larger problem for the association. College baseball provided the NCAA with the first test of its amateur law. In contrast to the first two sports considered by the NCAA the existence of an extensive professional market (major and minor leagues) where college baseball players could sell their services provided many problems for the NCAA.

Given the size of professional baseball, it was not unusual for college baseball players to have actually played professional baseball prior to attending college. Further, while some students were employed during the summer between academic years as janitors, cooks, mechanics, and the like, because of the existence of summer professional baseball leagues it was not unusual for college baseball players to earn summer money by playing professional baseball during the summer, in direct conflict with the Amateur Code of the NCAA. But while the play-for-pay practice of baseball was a violation of the NCAA Amateur and Eligibility Codes no effective action was taken by the association and participation of college athletes in professional baseball continued.

NCAA President Palmer E. Pierce was among the first to note the dilemma presented by professional baseball. He observed:

> Some of our colleges honestly endeavored to make the amateur law apply strictly to baseball as to other sports; some pretend to do this; while a few come out squarely and say their students can play during the summertime and not lose their eligibility status.... How are we to reconcile methods so widely different?[26]

By 1917 participation of college students in summer professional baseball was so widespread that Dr. J. H. McCurdy of the NCAA reported

"137 colleges state that the student must be an amateur, though 105 allow summer baseball."[27]

While summer baseball provided the most flagrant violations of the codes each institution was supposed to follow, reports of violations in other sports increased in the second decade of the twentieth century. In 1912 a survey on "College Athletic Administration" conducted by NCAA Secretary-Treasurer Frank W. Nicolson found that 27 percent of the schools enforced the one-year freshmen rule while 10 percent of the schools enforced less stringent residence requirements. The survey also reported that about 60 percent of all schools prohibited graduate students from participating in college athletics, fewer than 50 percent barred professional students, and less than 40 percent barred special students. Further, the survey revealed that less than 60 percent of the institutions enforced the one-year transfer rule.[28]

By the time the First World War ended it was well known that the codes were not being adequately enforced. At the annual convention of 1919 the association restated its belief in the codes when it passed a resolution recommending

> ...that its members schedule games hereafter with those institutions only whose eligibility code is in general conformity with the principles advocated by the Association; such as the freshmen rule (for either a year or semester), the one year migratory rule, the limitation in the years of athletic participation, and the amateur rule.[29]

A resolution similar to this was also passed at the annual convention of 1920, but in both instances these resolutions had little effect on the members who violated the codes.

At the annual convention of 1921 the NCAA sought to solve the enforcement problem plaguing intercollegiate athletics by revising its constitution. The revisions proposed and adopted represented a substantial change in the philosophy of the NCAA. The original constitution stated that the object of the association

> ...shall be to study various important phases of college athletics, to formulate rules governing athletics, and to promote the adoption of recommended measures, in order that the athletic activities in the colleges and universities of the United States may be maintained on an ethical plane in keeping with the dignity and high purpose of education.[30]

This was changed to:

> The purposes of this Association are:
>
> (1) The upholding of the principle of institutional control of, and responsibility for, all collegiate sports.
>
> (2) The stimulation and improvement of intramural and intercollegiate athletic sports.
>
> (3) The promotion of physical exercise among the students of the educational institutions of the United States.
>
> (4) The establishment of a uniform law of amateurism and of principles of amateur sports.
>
> (5) The encouragement of the adoption by its constituent members of strict eligibility rules to comply with high standards of scholarship, amateur standing, and good sportsmanship.
>
> (6) The formation of rules of play for the government of collegiate sports.
>
> (7) The supervision of regulations, and conduct, by its constituent members, of intercollegiate sports and regional and national amateur athletic contests, and the preservation of collegiate athletic records.

> (8) In general, the study of the various phases of competitive athletics, physical training, and allied promotions, establish standards for amateur sports, and promote the adoption of recommended measures, to the end that the colleges and universities of the United States may maintain their athletic activities on a high plane and may make efficient use of sports for character building.[31]

The association went much further in advocating the Principles of Amateurism by adopting a new section to the constitution that detailed the members' views on amateurism. To show that it wanted the Amateur Code to have a more important place among all association policies the association moved the code from the by-laws of the constitution to the main body. Most prominent in the new section was an outline of what were considered to be violations of the Amateur Code. According to the NCAA:

> The following acts are considered violations of amateurism:
>
> (1) Competition or exercise in any sport under an assumed name, with intent to deceive.
>
> (2) Directly or indirectly receiving pay or financial benefit in consideration of, or as a reward for, participating in any sport in any public competition or exhibition, or disposing of prizes for personal gain.
>
> (3) Directly or indirectly receiving pay or financial benefits in consideration of, or as a reward for, instructing or appearing in person in or for any competition, exhibition, or exercise in any sport.
>
> (4) Intentional violation by an undergraduate of the laws of eligibility established by the educational institution of which he is a member.
>
> (5) Fradulent representation of facts or other grossly unsportsmanlike conduct in connection with any sport or the rules governing it.

> (6) Participation by a matriculated student in any public competition or exhibition as a member of a team upon which there are one or more members who have received, do receive, or who are to receive, directly or indirectly, pay or financial benefits for participation, without having obtained, as condition precedent, the consent in writing from the proper faculty authority of the institution to which he belongs.[32]

These changes were described by the New York Times as attempts by

> ...members of the NCAA to lift [the association] out of the theoretical situation under which it has been laboring since birth in 1906 and move it into an up to date working body in which practice and theory are bedfellows.[33]

Others, however, saw these constitutional revisions as an attempt by the NCAA to go beyond its original purpose of guiding by influence and to establish a system of control over college athletics. Princeton, Harvard, Cornell, and City College of New York were so upset with the constitutional revisions that they accused the NCAA of seeking more power and threatened to withdraw from the association.

NCAA President Palmer E. Pierce responded to their charges pointing out that the reasons for the changes were:

> ...to enunciate more clearly its [the association's] purpose; to incorporate the amateur definition and principles of amateur spirit, to widen the scope of government....[34]

Some members also questioned the motives of the individuals involved, especially Pierce's, suggesting that these people were seeking dictatorial control of the NCAA with the new changes. Pierce, described as "expressing heated resentment that any reflections should be passed upon the motives of those espousing constitutional changes," dispelled the accusations by noting that he had asked not to be renominated for

the association's presidency.[35] Despite the controversy and threats of withdrawal surrounding the constitutional changes, the revisions were adopted in late December 1921.

The NCAA envisioned that the revisions of 1921 would, by specifically detailing prohibited activities, solve the problem the NCAA had with members violating its codes. But predictably, due to the lack of an enforcement mechanism, violations continued.[36] Baseball continued to be the most troubling sport as NCAA President Pierce noted in 1924:

> Summer baseball continued to give much trouble in the enforcement of amateur law. It is to be regretted that all colleges do not unite on a whole hearted and effective effort to prevent their undergraduates playing, without loss of amateur status, baseball for money or its equivalent. When concerted efforts are made to this end the reports of the district representative indicate they have been successful.[37]

Pierce also recognized that the major problem confronting the NCAA was not a lack of resolutions, but the absence of enforcement. In the same speech he observed:

> All members of the national Collegiate Athletic Administration have adopted Amateur Law, the enforcement of this law, however, is not uniform throughout the country.[38]

No new measures to ensure that members obeyed the association's regulations were adopted between 1921 and 1934, but during this time there was no shortage of NCAA resolutions recommending what behavior should be followed. The condemnation of employing persons previously employed by professional football, the disapproval of pre-season football practice, the organization of committees for investigation of

amateur violations, the condemnation of postseason football (bowl games), and efforts to limit the number of regular season football games were the subject of a number of the resolutions passed in this period. While none of these resolutions were enforceable and, therefore, had little effect on intercollegiate sports they represented an increase in the subjects on which the NCAA had passed judgement.

When the association was formed it began with the limited goal of establishing a set of safe rules for football. But in the 1920's the NCAA began to consider many different subjects in addition to rules. As these resolutions indicate the association began to concern itself with the number of contests (output) and the qualifications and payments made to all connected with playing these contests (inputs).

When the NCAA was formed to establish a uniform set of rules the activities of the association were consistent with an industry internalizing an intra-industry externality. However, once the NCAA began to deal with subjects other than rules it is difficult to reconcile the actions of the NCAA with those expected by an industry dealing with an externality. In the period considered by this chapter the NCAA's transition from rules to non-rule items reveals that the association was becoming increasingly interested in matters other than sports rules and was no longer merely addressing an industry-wide externality. To further support the idea that the NCAA was not limiting its activities to addressing industry problems but was interested in expanding its span of influence consider the association's conflict with the Amateur Athletic Union (AAU).

In the 1920's the NCAA clashed with the AAU, the nation's other major athletic body, over control of the United States Olympic Committee (USOC), the group that picked the athletes to represent the United States in the Olympics. Because the AAU controlled American representation in all international athletic events it was charged with appointing the USOC. But the NCAA believed, because it represented the nation's athletes, it should have had more representation on the USOC. In the 1920's the NCAA fought for increased representation on the USOC, withdrawing from the larger American Olympic Association in 1926 and then rejoining in 1927 when it was allowed more representation on the USOC.

Arnold W. Flath conducted an independent, in-depth study of the conflict between the AAU and the NCAA in this period and it is certainly not the purpose of this section to reiterate information made available by his study.[39] Instead, reference is made here to the Olympic dispute in an effort to show that during the 1920's the NCAA, in addition to exerting control over the rules of many intercollegiate sports, sought power to control other activities. The NCAA's desire to become involved in the selection of the United States Olympic Team, to the point of establishing its own Olympic Committee, was an effort by the NCAA to expand its influence in intercollegiate sports.

The NCAA progressed through the 1920's attempting to exert control over college athletics by passing resolutions governing the conduct of various sports and seeking more representation on those committees with which college athletics was affiliated. But the NCAA discovered that without any ability to enforce its decisions they had little real power

and were not taken seriously by other groups. The best examples of the association's lack of power in this period were the widespread violation of its Amateur Code and NCAA representation on Olympic Committees that made no major policy decisions.

Four Major Events Impacting on the NCAA Between 1929 and 1939

As the 1920's came to a close the NCAA had become involved with many sports items other than rules, yet the association's inability to exert control over any of these activities could be traced to the lack of an effective enforcement mechanism.[40] In the eleven years before World War Two, however, four events occurred that made numbers of the NCAA even more aware of the importance of an enforcement mechanism. These were; the release of a report by the Carnegie Foundation on "American College Athletics" in 1929; the effects of the depression which ran through this period; the realization of the importance of the revenue generated by college sports emphasized by the Federal Government's willingness to tax admissions and the effect of radio broadcasts on attendance, and the failure of a more comprehensive but equally unenforced code on subsidizing and recruiting student-athletes, adopted in 1934, to have any effect on the number of amateur violations in intercollegiate athletics.

Carnegie Foundation Report

In 1916 the NCAA adopted a resolution calling for an independent foundation to study intercollegiate athletics in the United States.[41] After several foundations declined, the Carnegie Foundation undertook

the task.[42] The Carnegie Foundation issued its report, which detailed widespread violations of the Amateur Code in college sports, in 1929. Ironically, this report came four years after members of the association believed they had removed all commercial elements from intercollegiate sports.[43]

The Carnegie Foundation visited 112 colleges and universities in the United States and Canada to conduct their study of intercollegiate sports. The study traced the growth, development, and administration of college sports in the United States. It also reported on the quality of college coaching, the relationship of the press and college athletics, and the values taught by college athletics. However, the section of the report that drew the most attention was the chapter on "The Recruiting and Subsidization of Athletes."[44]

The Carnegie Foundation defined recruiting as "the solicitation of school athletes with a view to inducing them to attend a college or university" and subsidization as

> the provision of financial or other assistance to athletes in consideration of their services on school or college teams or squad, whether in the years during which these services were rendered or some other years.[45]

Accordingly, both recruiting and subsidization of athletes were prohibited by the NCAA. But the public revelation by the Carnegie Foundation that recruiting and subsidization of college athletes were widespread made each member of the NCAA aware of how ineffective the association's codes were.

The Carnegie Foundation reported that recruiting of athletes, which was a direct violation of the NCAA code, was conducted by alumni,

athletic coaches, and fraternities. Recruiting, they found, varied from writing letters detailing a particular institution to an athlete to lavish, all-expense paid trips for athletes to visit a campus. In contrast to the NCAA, which had been downplaying the existence of recruiting, the Carnegie Foundation summarized its findings as follows:

> The recruiting of American college athletes, be it active or passive, professional or non-professional, has reached the proportions of nationwide commerce. In spite of the efforts of not a few teachers and principals who have comprehended its dangers, its effect upon the character of the schoolboy has been profoundly deleterious. Its influence upon the nature and quality of American higher education has been no less noxious. The element that demoralizes is the subsidy, the monetary or material advantage that is used to attract the schoolboy athlete. It is seldom lacking in the general process of gathering a 'winning team.'[46]

The report also found that subsidization, expressly outlawed by the NCAA, occurred at 81 of the 112 institutions studied.[47] The report noted that the primary method of subsidizing athletes was the offering of jobs and work of various kinds, scholarship, or loans. The Carnegie Foundation reported in great detail that subsidization took place in an organized manner (from athletic departments) and from unorganized sources (alumni and fraternities). Thus, the report showed that subsidization of college athletes was a commonplace occurrence and that the practice was not disappearing as the NCAA had claimed.

The Carnegie Report received considerable publicity when it appeared in 1929. For the next few years newspapers and magazines contained many reports and follow-up studies about it.[48] The report's impact was so large that Howard Savage, the principal author, was asked

to speak at the NCAA convention in 1929 and 1930 and on several occasions to write articles about the NCAA and the report in the New York Times.[49]

Because of the content of the Carnegie Foundation Report and the magnitude of the publicity it received, if anything short of coercion was going to make schools enforce the code this revelation of how poorly institutions had previously enforced the Amateur and Eligibility Code might have been it. But while the report became the prominent subject of discussion at the 1929 and 1930 NCAA conventions, little action to halt violations of the Amateur or Eligibility Code was taken by the association during these years. In 1931 the New York Times found out exactly how small an effect the Carnegie Report had had on intercollegiate athletics when it conducted a survey of NCAA members. When asked, "what, if any, changes have been manifest since the publication a year ago of the Carnegie report on subsidizing and recruiting?," two-thirds of the schools replied, "none."[50]

The Carnegie Foundation Report revealed how ineffective the NCAA had been in maintaining its Amateur and Eligibility Codes. The report received considerable publicity and was the topic of much discussion by members of the association but it was not the cause of any official NCAA action designed to decrease violations. Nonetheless, it was an important instrument that made members of the association aware of the true size of the free-rider problem and forced them to consider what might be done to solve this problem.

Depression of 1929

In addition to being the year the Carnegie Report was issued, 1929 also marked the beginning of the Great Depression. Throughout the 1920's spending by the public on college athletic events (purchase of tickets) had increased steadily. Most schools that maintained competitive athletic programs enjoyed large increases in revenue and used this money to fund minor (non-revenue) sports and to expand their facilities. But the contractionary effects of the depression on the economy also decreased the public's willingness to attend college athletic events.

The depression did not effect college sports substantially until 1931. In that year revenues from all college sports fell by 15 percent.[51] By 1933 some southern schools were reporting cuts in revenue of up to 25 percent.[52] Other schools offset the decrease in demand for athletic contests by lowering the price of admission and were able to report increases in attendance but not revenue.[53]

The decrease in revenue caused by the depression forced colleges to take many cost-cutting measures. As an example of these cuts, in 1931 the University of Iowa cut spring baseball and reduced the number of athletes taken on trips. In the same year Temple University decreased the number of football games it played from ten to nine.[54] The next year the Universities of Michigan and Minnesota dropped hockey while the University of Wisconsin dropped hockey and crew.[55]

The overall effect of the depression on athletic departments was to reduce scheduled athletic contests, cancel or cut trips, reduce staff,

and drop non-revenue sports. These economies were noted in reports made to the NCAA. Professor H.H. King of Kansas State College observed that curtailment of expenses could be accomplished by

> ...(a) reducing salaries of men connected with the administration of athletics, (b) temporarily reducing intercollegiate competition in certain minor sports, particularly when long and expensive trips are involved, (c) cutting down expense of travel by use of busses, private car, etc. (d) making use of some forms of local accommodations other than hotels.[56]

The Football Rules Committee also observed:

> ...Expense budgets have had to be pared by the elimination of unnecessary and luxurious practices, some of which had had a demoralizing effect upon the players and followers of the game. It is to be hoped that football will have learned its lesson from the rise and fall which has occurred, and that it will not only place but keep its management upon a sound economic base hereafter and avoid the inflations which have taken place in the past decade.[57]

The depression taught all athletic departments how dependent they were on the revenue generated by college football to finance other sports-related activities. In response to the decrease in demand for their product forced on them by the depression schools examined their production process and found many ways to cut cost. Thus, the most important and lasting effect of the depression was that it made schools aware of the economy measures they could make, especially those designed to reduce the wages paid to inputs.

Effects of Radio and Federal Taxation

In the 1930's tremendous technological advances, most particularly the widespread use of the radio, made college sports (mostly football) accessible to more people. Schools soon discovered, however, that by

broadcasting games on radio they were in direct competition with themselves for the consumer's entertainment dollar. Sports fans, instead of attending the game and spending money on tickets, food, drink, souvenirs, and so forth, stayed at home and listened to the game on the radio. One effect of increased broadcasting was believed to be decreased attendance.

Some felt that radio broadcasting actually increased attendance by exposing different sports to people who would later pay to see them played, but few people really believed this. For the most part broadcasting games was perceived by members of the association as cutting into live attendance. Professor W. B. Owens of Stanford University noted this in his district report:

> Certain definite problems have, however, thrust themselves rather abruptly on the attention of athletic authorities as a consequence of this drop in attendance. One of these is that of the radio. There is a feeling, fairly widespread, that the broadcasting of games has made serious inroads on the attendance at football games, and that its effect in this regard may increase. Thousands of people, it is contended, are coming to prefer a congenial party before the fireplace in the living room, with the radio bringing the game to them, to a seat in the stands from which to witness the contest. "Radio parties" are becoming popular. Even where the "party" does not enter in, it is contended that thousands who might otherwise have gone to the game have preferred listening in at home, to paying the price for tickets and going to the games.[58]

Professor H. H. King also observed the same phenomena. He noted that one way to stop attendance from falling was to halt the radio broadcasts of games. He reported:

> This means of increasing revenue is also questionable, but is being employed by some of our schools. The "Big Six" conference plans to stop broadcasting basketball games. It is claimed by smaller schools that the broadcasting of

> the so-called "big" games keeps down the attendance at their own games.[59]

Enough schools believed radio broadcasting decreased attendance that many joined together at the local level to ban radio broadcasts. A survey by the Associated Press revealed that:

> The Southern Conference, consisting of twenty-three colleges and universities, decided at the close of the 1931 season to bar football broadcasting, until further notice.
>
> The Western Conference, Big Ten, according to its commissioner, also is opposed to putting future games on the air.
>
> The Southwest Conference, has ruled out all broadcasting except that covered by existing contracts.
>
> The Big Six, meeting in Kansas City, deferred action until the National Collegiate A.A. session in Los Angeles, just before the Olympic Games.[60]

Unfortunately no statistics were kept that accurately measured the effect of radio broadcasts on live attendance during this period. Further, these statistics if they had existed, would have had to be adjusted for the decrease in demand for athletic contests due to the depression. Nonetheless, it is clear that attendance at college sporting events began increasing again in 1934 and continued increasing until World War Two. Additionally, radio broadcasting and the controversy surrounding it also continued during this period.[61]

The most important factor revealed by the broadcasting of college games was that members of the NCAA, in this case divided into conferences and leagues, were capable of collective action if the potential gain each stood to accrue or loss each would incur was large enough. In contrast to the NCAA's attempts to enforce its Amateur and Eligibility Codes, which were plagued by diverging-incentive problems and schools which did not obey the codes, members of the association

were quite successful in acting together and restricting radio broadcasts. However, when a closer examination is made of the attempts to restrict behavior (Amateur and Eligibility Codes) and the effort to prevent radio broadcasts this should not appear unusual.

The NCAA's Amateur and Eligibility Codes were plagued by violations because it was difficult to observe members not enforcing the code and failure to enforce the code had no measureable results observed by each member. But collective action that led to the banning of radio broadcasts had few violations because it was easy to observe (listen to) who violated the agreement. Violations of the agreement, which led to decreased attendance, were further observable when gate receipts were counted. The method by which colleges dealt with broadcasts made it clear that schools could successfully band together and act collectively if the benefits were large and violations were observable to each member.

Another example of the willingness of the association to act collectively when money was the primary motivation came in the 1930's when the NCAA organized a special committee to deal with the federal tax levied on admission to athletic contests between educational institutions. The Federal Revenue Act of 1932 was amended so that admission to college sports events could be taxed. The NCAA believed that the tax, as applied to state supported institutions, was unconstitutional and organized special cases to challenge the law. In these test cases member schools intentionally withheld the tax revenue so that the government was forced to take the schools to court. It was thought that in court the tax would be declared unconstitutional.

After several intermediate court tests, where the association "won," the Federal Government appealed to the Supreme Court and had all lower court decisions reversed. Regardless of the outcome, the action by the NCAA further indicated that it was possible for the entire association to organize and each member pledge financial support, when the costs of not acting were readily visible to each member.

1934 Code on Recruiting and Subsidizing of Athletes

Problems already familar to the NCAA continued to plague the NCAA in the 1930's. Violations of the association's Amateur and Eligibility Codes continued even though these codes were augmented by stronger codes developed by individual conferences.[62] By the mid-1930's it was apparent that the codes, last updated in 1921, were ineffective.

It was decided in 1933 that an effort should be made to rewrite the Amateur and Eligibility Codes. At the annual convention that year the President of the NCAA appointed a special committee to

> ...consider recruiting and subsidizing of athletes, the duty of the committee being to consult the rules of the several local conferences, and other sources of information, and to draw up a statement, if possible, regarding legitimate and illegitimate recruiting, for the benefit of the colleges this to be advisory, and not obligatory upon the members.[63]

In 1934 the special committee reported back to the association with a seven item code that became known as the NCAA Code on Recruiting and Subsidizing of Athletes.[64] It was adopted by the annual convention of 1934 as the method to distinguish between "legitimate and illegitimate methods of recruiting athletes."[65]

In the same year that the code was officially adopted the secretary of the NCAA sent out questionnaires to all members asking their opinion of the new code. Of the one hundred schools that replied, thirty-six colleges and universities stated that they enforced the code while thirty-eight responded by pointing out they could not "conscientiously reply in the affirmative to the question of enforcement."[66] The comments made by these thirty-eight schools in response to other questions in the survey not only underscored the fact that a substantial percentage of the members of the association believed the code was impossible to enforce, but also provided the NCAA with an accurate picture of how ineffective voluntary enforcement of the new code would be.[67]

The new code was the most extensive set of rules on this subject compiled by the NCAA in its twenty-nine years of existence. It was adopted with the mild objection of some members who believed it was an attempt by the association to obtain more power. It was also adopted without an adequate enforcement mechanism and, just like the previous code which lacked effective enforcement, it was consistently violated.

John J. Tigent, President of the University of Florida, noted:

> After long experience, I have come to the conclusion that prohibition of emoluments to athletes is as impossible as prohibition of the consumption of intoxicating liquors. Both represent an ideal that seems to be impractical to enforce. Unquestionably the institutions can take steps to prevent subsidies, but they cannot control the actions of alumni and outsiders, many of who honestly believe that they are promoting the welfare of the institution and of its athletes in providing some kind of material assistance to them and enabling them to get a college education. When an attempt is made to prohibit strictly the

> acceptance by athletes of any assistance whatsoever for their athletic services, a situation of dishonesty and hypocrisy develops.[68]

Professor C. L. Eckel of the University of Colorado also observed:

> Problems of recruiting and subsidizing and of drinking and betting are still with us; however, it is believed that some progress has been made in minimizing these evils. No institution will admit that it is guilty of subsidizing in the offensive sense of this word; still, when it realized that students come from homes and high schools with varied backgrounds, that athletic ability and poverty seem to go together, then it must be recognized that the athlete may be a student aid problem, and as such, he is entitled to the same treatment that is accorded any other student in similar financial circumstances.[69]

The code of 1934 revealed how powerless the NCAA was to stop certain activities. Without an enforcement mechanism, no matter how well intentioned its efforts or how large its attempts to persuade members to adhere to a particular code, the NCAA could not control schools from offering athletes inducements without some form of coercion. The experience the NCAA had with the 1934 code and the repeated violations in that year made a majority of the members aware of this.

NCAA in 1939

By the beginning of World War Two many events had helped put the NCAA in a position where it was ready to make the transition from an organization that only made recommendations to one which would have the power to control the actions of its members. From the time the association was formed its efforts to organize collective action by the member schools had been unsuccessful because of the free-rider problem

inherent in collective action. However, by World War Two the NCAA was ready to solve the free-rider problem that had plagued the association since 1906.

One of the major reasons it took so long for the association to become a body capable of coercion was its lack of members. In the NCAA's early years many large and important (in terms of their influence on other schools) eastern schools perceived the NCAA as another short-lived athletic association and did not join. Gradually, however, membership increased until almost all schools that maintained major athletic programs and most schools that had less competitive programs were enrolled in the association. Only then was the NCAA able to act with the approval of a large majority of those involved in intercollegiate athletics. Had the NCAA tried to coerce members before it spoke for such a large group the association would have failed in much the same way that a group that tries to negotiate with management, having unionized only a small part of an industry, fails. In both cases the union and the NCAA could have been ignored since each would have had little power to retaliate.

The NCAA's experience during the depression and the difficulties it had with radio broadcasting and federal taxes also aided the NCAA in making the transition to a regulatory body. Each experience made clear that, above all, college athletics was a business that depended on paying customers. The depression showed athletic departments how much they needed the revenue generated from football as well as where possible cost-cutting efforts could be made. Radio broadcasting of

college events and federal taxation of admissions also revealed that the revenue generated by sports was subject to fluctuations due to competition and confiscation by the Federal Government in the form of taxation. In this period the effects of the depression, radio broadcasts, and taxation combined to teach the NCAA a major economic lesson.

Radio broadcasts of games and the taxation of admissions also made the NCAA aware that its members could act collectively under the proper circumstances. The NCAA's response to these events, both of which led to decreases in a school's revenue from athletic events, was to band together. When the effects of any action were observable and measurable by all schools involved member institutions were able to successfully act collectively and prevent any free-rider problems. In this period members of the NCAA learned that when the monetary rewards were sufficient they could act together.

This was important knowledge because prior to this members of the NCAA had not been able to successfully band together. Each code of behavior the NCAA adopted that featured only voluntary enforcement was violated. Initially, it was believed that violations of the code were not widespread, but the Carnegie Report made quite clear how common violations were. The violations that occurred again, after the establishment of a more thorough but equally unenforced code in 1934, revealed that the problem facing the NCAA was not a function of the code but rather the lack of an effective enforcement mechanism. The consistent and continuous violations of the NCAA's codes in this period

made it obvious that moral persuasion could not be expected to make schools adhere to these codes.

From the time the NCAA acknowledged that it desired to regulate intercollegiate athletics, instead of merely standardizing the rules of college sports, an enforcement mechanism based on coercion was needed by the association. For reasons detailed in this section the NCAA did not have the power nor the willingness to develop such a mechanism in this period. However, as the association's membership grew, it was forced to deal with potentially damaging decreases in income. The NCAA found out how widespread violations of its codes were but also realized that it possessed the ability to organize an enforcement mechanism capable of deterring certain behavior.

NCAA During World War Two

As the United States prepared for World War Two the NCAA was beginning to realize that in order for it to effectively control college athletics it needed a more thorough code of rules to restrict certain behavior, as well as a method to enforce these rules. In response to this revelation the NCAA made a significant revision of its constitution at the annual convention of 1939. At that time a new third article of the constitution, entitled "Declaration of Sound Principles and Practices for Intercollegiate Athletics," was added.[70] However, there were so many questions about this new article that in 1941 administrative notes designed to explain each issue and answer most inquiries were included.

Sections one through three of this new article were little more than a summation of previous NCAA policies. Section one, entitled "Amateurism," was almost a word-for-word restatement of the previous NCAA policy on amateurism. Section two, entitled "Control of Athletics," and section three, entitled "Institutional Responsibility," were additions to the constitution, but their contents were not entirely new as these concepts had been frequently discussed before these sections were adopted. However, section four, entitled "Aid for Athletes," contained material that had not been in any part of a previous constitution and until the late 1930's had not even been the subject of serious discussion by members of the association.

This section represented a major change in the NCAA's policy of not specifically detailing what type of financial aid institutions were allowed to give athletes. Prior to this the NCAA had merely asserted that all athletes should be amateurs and allowed each institution to determine what an amateur was entitled to receive. The constitutions used throughout the 1930's contained examples of amateur violations, but nothing in these constitutions could be described as anything more than a general recommendation. In contrast to previous NCAA regulations, section four contained very specific descriptions about what aid an athlete was entitled to and administrative notes that further explained each subsection.

The first subsection of section four ('a') pointed out that athletes should not enjoy any special aid simply because they were athletes. In response to questions about this the NCAA, in a special note, went on to explain:

> Athletes should not be placed on a different basis from other students in the award of financial aid. In some quarters there has been a feeling that an athlete deserves, ipso facto, financial aid; in others that no greater proportion of athletes should receive such aid than the proportion of other members of the undergraduate body. The Association feels that the problem cannot properly be met on any such arbitrary basis. The purpose of all such aid is to enable students to receive the benefits of a complete college education. If a boy's need is established, he should be entitled to aid. On the other hand, if his financial status is such that he or his family can afford to pay for his college education, he should be required to do so. The Association recognizes that this is a problem in all institutional aid but believes that the same investigations and findings in each case should be made with respect to the athlete as with respect to any other undergraduate. Any other institutional point of view the Association believes both undemocratic and unprofessional.[71]

The second subsection ('b') stated that all aid to athletes should be awarded by the institution's office responsible for providing financial aid. The NCAA felt a special need to expand on the policy outlined in this section. Noting the previous policies of aid being promised from organizations or individuals not connected with the university, the association demanded that henceforth all offers of aid be written so that the student-athlete would not have questions about what he was receiving. According to the NCAA:

> Many instances have come to the attention of the Association of individuals, generally not officially connected with the institution, making promises with respect to financial aid to athletes. In many cases this has caused embarrassment to the institution's officials, and to the student who believed that such aid had been granted him officially by the institution. If all institutions adopt the practice of giving a written statement to the entering student, telling him exactly what aid is being given, much of this difficulty may be avoided. The carrying out of this provision will mean that the institution

> has a specific record of its obligation to the student, and that the student has a definite statement of the institution's obligation to him.[72]

The NCAA also went on to note, in much detail, how the aid should be accounted for and provided certain guidelines for institutions to follow:

> The Association recognizes that the source of funds available for financial aid to athletes must be carefully scrutinized and safeguarded to prevent abuses, but it further recognizes that modern institutional accounting practices often involve allocation or inclusion of athletic receipts or contributions from individuals or organizations, for this purpose, within general institutional budgets, which make arbitrary prohibitions on the use of funds from such sources impracticable.
>
> The Association, in determining adherence to the standards specified in this article, may require complete information regarding the administration of student aid in any member institution.
>
> Some of the factors that should be considered in order to secure acceptable safeguards for the institution and the athlete are:
>
> (1) Control and administration of such aid should be in the hands of the regular agency established by the institution for the granting of aid to all students, and independent of the athletic department of the institution.
>
> (2) Athletic participation should not be a condition for such aid.
>
> (3) Awards of financial aid to athletes should be based on the same considerations as to need, etc., as govern such awards to all students.
>
> (4) Complete information regarding the award of such aid should be readily available to responsible persons and organizations. It has been found to be a desirable practice, to publish in the official student aid reports of the institutions the names of the recipients of such aid, with the terms and amounts of such awards.[73]

The third subsection ('c') ensured that aid was not taken from an athlete if he discontinued his participation in sports. The NCAA explained:

> In some institutions aid has been granted to an athlete and subsequently taken away if, for one reason or another, the recipient fails to take part in the intercollegiate athletic program. The Association believes that this is unfair to the athlete and is a direct professionalizing influence in intercollegiate sport. A student should be free to make his contribution to athletics just as he is free to make any other extra-curricular contribution. If, however, for any reason he does not enter athletic competition, he still deserves his aid to the extent of the obligation incurred by the institution, provided he meets, in other respects, the requirements set up by the institution.[74]

The fourth subsection ('d') detailed the conditions whereby an athlete could receive aid from a source other than a relative or guardian or an institution. The NCAA noted:

> The necessity for careful and reasonable administration of this paragraph is fully recognized by the Association. There are, of course, many cases in which aid from outside sources is legitimate. Some of the factors that should be taken into consideration in this administration are:
> (1) The length of time the donor has known the recipient of such aid;
> (2) The interest which he has taken in the recipient during this time;
> (3) The understanding by the recipient of just what the aid involves and the reason for which it is given;
> (4) The protection of the recipient from sudden withdrawal of the aid;
> (5) The appropriateness of such aid from the standpoint of the institution.[75]

The fifth subsection ('e') noted that the wages paid to athletes who were employed while in schools were to be equal to the wages paid to a non-athlete if he held the job instead. The NCAA went on to note:

> This provision recognizes that an athlete should receive fair compensation for his services and that he should not receive more than fair compensation. The Association has found that, where athletes have jobs for which they do not give value recieved, a

> bad psychology is developed all along the line. The person giving the job feels that he is being "used" and is often unwilling to give any employment at all to college students after a bad experience with an athlete. The athlete feels just as definitely, if not as openly, that he is being paid for athletic participation in an indirect and shameful way. The Association makes the suggestion that, in order to carry out the provisions of this paragraph, institutions have jobs held by athletes handled by the same college agency that is responsible for jobs for all students. If this is done, it is possible for the institution to check with the employer to see that all undergraduates holding jobs are working for what they get. With the job set-up handled in this way, an athletic department is freed, on one hand, from the responsibility of a job program and is, on the other hand, completely free from legitimate criticism except as the institution's job program may be criticized.[76]

The adoption of this new section and the administrative notes that answered frequently asked questions about the policy signalled that the primary functions of the NCAA were changing. Prior to this time the NCAA had only provided very general advice to its members. But with the adoption of this section the NCAA began making detailed rules on subjects quite different from those the association was formed to deal with. By examining the subsections of this new article it can be seen that the NCAA was becoming interested in the competition between member schools for athletes. By examining the new section carefully it can be seen that no matter how the NCAA tried to justify or explain why a particular subsection was needed, each subsection contains elements designed to limit competition for athletes, to make what little competition that was allowed observable to all competitors, or where it is impossible for all to observe what each school is providing athletes,

to ensure either the NCAA or some other organization could observe what an athlete received from a school.

Reconsider the first subsection governing the financial aid an athlete could receive. Obviously, an attempt to establish rules governing the payments (or lack thereof) to athletes represents an attempt to limit competition for athletes. In this section the NCAA sought to limit the money all schools could spend fielding a team. That is, if an athlete could not demonstrate need schools would be prohibited from offering him financial aid to attend. In this way universities could not use financial aid to compete for those student-athletes who could not demonstrate need.

The fifth subsection, which governed the wages paid to athletes, can also be interpreted as an attempt to limit competition. It was well known by the NCAA that once direct money payments to athletes were prohibited some schools sought to compensate athletes indirectly. One such method was to employ an athlete at an artifically high wage or in a job which had no real responsibilities (e.g., watch the grass in the college stadium grow). Through this indirect method of compensation the athlete received the same money he would have received if the compensation had been more direct. Further, the use of this type job as an inducement for an athlete to attend a particular institution represented competition for athletes. Thus, to avoid this competition it was logical for the NCAA to prohibit athletes from earning extra money this way.

The second and fourth subsections sought to make all money paid to athletes observable so that any non-sanctioned competition could be detailed. The fourth subsection made it necessary for all financial aid paid to athletes from sources other than relatives or the institution to be approved by the institution's financial aid office. This was done to observe any additional money paid to an athlete. It was envisioned that this would prevent competition for athletes that took place when alumni or fraternities offered money to student-athletes to induce them to attend a university and participate in sports.

The second and fourth subsections not only represented attempts to limit competition for student-athletes, making it difficult for one school to obtain an advantage over other, but they also were attempts by the NCAA to have other organizations bear the cost of ensuring the agreements were followed. Each subsection provided for the financial aid office to monitor the payments made to athletes, forcing the costs of monitoring the NCAA's agreements to be borne by an institution's financial aid office. Though the NCAA did make arrangements to review financial aid records the method devised by the NCAA in this period to control competition for athletes reveals that the association envisioned most monitoring to be done at the institutional level.

As the 1940's began the NCAA appeared ready to address the problem of how to effectively control intercollegiate athletics. As this last addition to the constitution showed the NCAA had already begun to enact measures designed to decrease the cost of producing an athletic contest by limiting competition for student-athletes. But World War Two

temporarily postponed the introduction of more regulatory measures in college athletics.

The requirements of the United States Armed Forces during World War Two nearly depleted the ranks of intercollegiate sports, drawing from both athletes and coaches. Consequently, in this period the NCAA did not have the personnel to expand its influence. In fact, due to the war the NCAA barely had the personnel needed to maintain its athletic program in this period.

As more athletes joined the service the NCAA realized it would have to take steps to ensure a sufficient number of participants were available to play out the college sports schedule. Among the measures the NCAA took to ensure all scheduled games were played was the temporary adoption of freshmen eligibility for intercollegiate competition. During the war the one-year residency requirement was lifted enabling freshmen to compete at the varsity level. Freshmen eligibility contributed significantly to intercollegiate athletics functioning with a full schedule, if not at as high a level of skills as before the war, and also provided NCAA members with valuable experience they could draw on twenty years later when they would consider permanently adopting freshmen eligibility.

Outside of the approval of freshmen eligibility little of note happended in intercollegiate athletics during World War Two. Events in the United States became so war oriented that in 1943, for the first and only time, the association's annual convention was cancelled. Instead, the association relied on the Council, which met as regularly scheduled,

to issue any new guidance. Otherwise, the major topics considered at annual conventions during the war were efforts to integrate intercollegiate athletics with the war effort (e.g., the contribution of intercollegiate athletics to the war).

Perhaps the most interesting observation about the NCAA during World War Two comes from contrasting the behavior of the association in the Second World War with its performance during World War One. When the First World War began a large number of schools immediately dropped or cut their athletic programs. Some schools even called for hand-grenade tossing to become an NCAA championship event. During World War Two, however, few schools were anxious to curtail their programs and most association efforts in this war period were designed to maintain athletic schedules. An understanding of why the NCAA behaved differently in these similar situations highlights the change in the NCAA that took place between the wars.

If one accepts the casual empiricism this assertion implies it is possible to explain the different NCAA behavior in these war periods as a result of a change in the goals and functions of the NCAA. During the First World War members of the NCAA found the opportunity cost of being patriotic and cancelling an athletic schedule quite low because college sports did not generate large amounts of money in this period. However, as the asssociation grew its members quickly recognized that college sports generated substantial amounts of money and even during World War Two they were not anxious to forgo this income. Thus, the contrast in the willingness of the association to curtail athletic programs during

the wars reveals that by the Second World War the NCAA had come to appreciate the money involved in college sports.

While World War Two temporarily interrupted attempts by the NCAA to regulate intercollegiate sports the realization of the revenue generating capabilities of intercollegiate athletics provided members with much to think about during the war. Part of this thinking was devoted to considering how competition for athletes could be restricted, as the regulations adopted in the early 1940's demonstrated, while other considerations went to possible changes in taste and technology that would occur in intercollegiate athletics after the war ended. In short, World War Two delayed expansion of the NCAA's influence, but gave members time to consider possible responses to the problems the association would face at its conclusion. These problems would not be confined to sports rules, which the association was accustomed to dealing with, because for the first time in its history the association would begin to consider economic items such as revenue from and attendance at athletic contests, the cost of producing these athletic contests, and the number of athletic contests played.

Footnotes to Chapter III

1. Technically this was two offices, but one individual filled both positions.

2. 1910 NCAA Proceedings, p. 63.

3. Ibid., p. 66.

4. 1925 NCAA Proceedings, p. 122.

5. 1941 NCAA Proceedings, p. 180.

6. Paul Stagg, "The Development of the NCAA," p. 33.

7. Recall that the different classes of membership carried specific descriptions about which type of organization could belong and that each category carried a different membership fee per school.

8. Paul Stagg, "The development of the NCAA," p. 34.

9. The amount of membership fees in 1909 was obtained by multiplying the number of schools by the appropriate fee. The fees paid in 1922 were found in 1922 NCAA Proceedings, pp. 98-100. Note that in 1922 most schools paid these fees, but some were delinquent.

10. In the Report of the Treasurer in 1922 NCAA Proceedings, two track meets and the royalities for co-publishing football and basketball rules netted $2659, more than all membership dues.

11. 1924 NCAA Proceedings, p. 11.

12. 1910 NCAA Proceedings, p. 35.

13. 1927 NCAA Proceedings, p. 106.

14. 1922 NCAA Proceedings, p. 105.

15. Ibid.

16. 1944 NCAA Proceedings, p. 182.

17. 1910 NCAA Proceedings, p. 63.

18. Pennsylvania joined in 1906, Chicago in 1907, Harvard in 1908, Princeton in 1913, Yale in 1915, Cornell in 1919, and Annapolis in 1920.

19. 1921 NCAA Proceedings, p. 63.

20. 1906 NCAA Proceedings, p. 73.

21. 1912 NCAA Proceedings, p. 34.

22. As an example of how some viewed the need to keep college athletics "pure" by using only amateur, consider the comments made by the Committee on Amateurs:

> "It long has been recognized that the amateur and the professional spirit in competitive play are directly antagonistic and that whenever the professional spirit has entered into the conduct of any spot, the nature of the sport has been completely changed, it ethical and moral values have disappeared, and its results have become such in some instance as to place it under the ban of the law of the state. Every organization for the control of one form or another of athletic sport expresses the fact in the rules today."

(1912 NCAA Proceedings, p. 32.).

23. According to one anonomous observer:

> "I remember the distinct regret with which we once parted with an athlete, a four-sport man, in his junior year. His (or our) misfortunate was that in place of continuing his habit of getting drunk in private he chose to attempt a solo at a village festival when so intoxicated that he did not recognize that the end of a perfect day was not an appropriate theme for that holiday even if his rendering had been less uncertain. It must be recorded that within a week he was captain of the team in neighboring college, which did not belong to our athletic organization."

(The Faculty Athletic Advisor, "Commercialism in College Athletics," School and Society, June 24, 1922, p. 684).

24. See Appendix I.

25. See the preamble of the NCAA's First Eligibility Code in Appendix I.

26. 1909 NCAA Proceedings, p. 53.

27. 1917 NCAA Proceedings, p. 39.

28. F. W. Nicolson, "Replies to Questionnaire on College Athletic Administration," Booklet, 1912.

29. 1919 NCAA Proceedings, p. 27.

30. 1921 NCAA Proceedings, p. 90.

31. Ibid., p. 96.

32. Ibid., pp. 98-99.

33. New York Times, 29 Dec. 1922, p. 10.

34. 1922 NCAA Proceedings, p. 10.

35. Ibid.

36. See various Committee Reports in 1922-1925 NCAA Proceedings.

37. 1924 NCAA Proceedings, p. 81.

38. Ibid.

39. Arnold William Flath, "The History of Relations Between the National Collegiate Athletic Association and the Amateur Athletic Union of the United States," (Ph.D. dissertation, University of Michigan, 1963).

40. As another piece of evidence, see the report on attempts by the NCAA to stop the use of still and motion cameras at football games, 1924 NCAA Proceedings, p. 70.

41. 1916 NCAA Proceedings, p. 55.

42. Savage, American College Athletics.

43. New York Times, 4 Jan. 1925, p. 31.

44. Savage, American College Athletics, pp. 224-265.

45. Ibid., p. 224.

46. Ibid., p. 240.

47. Ibid., p. 241.

48. J. R. Tunis, "Amateur Racket: Discussion of the Carnegie Report," World's Work, Dec. 1930, pp. 52-4; "American School and College Athletics; "Carnegie Foundation's Inquiry," National Education Association, January 1930, p. 6; "Carnegie Lifts the Lid," School and Society, Jan. 13, 1931, p. 789.

49. See New York Times, 7 Nov. 1930, p. 31 and 15 June 1931, p. 12.

50. New York Times, 11 Jan. 1931, Sect. 10, p. 4.

51. New York Times, 4 Jan. 1931 Sect. 11, p. 2.

52. 1933 NCAA Proceedings, p. 26.

53. Ibid., p. 28.

54. New York Times, 4 Jan 1931, Sect. 11, p. 2.

55. New York Times, 15 Jan 1933, Sect. 3, p. 1.

56. 1932 NCAA Proceedings, p. 36.

57. Ibid., p. 50.

58. 1931 NCAA proceedings, pp. 41-42.

59. Ibid., p. 36.

60. "Does Radio Cut the Football Gate?", The Literary Digest, July 16, 1932, p. 32.

61. As an example of the continued problem offered by radio consider this observation from the Second District Report:

> Radio broadcasting of football games and other college athletic events is on the rise. As ever, there is considerable division of opinion relative to the ethical implications involved and to the effect produced by broadcasting upon attendance at games. It is felt in some quarters that the broadcasting of so-called major games has developed a desire among spectators for thrilling play, which has definitely imposed a handicap upon the smaller college teams and is reflected in the attitude of the spectators at these contests. One authority holds that the broadcasting of major football games has been the chief factor in the decline of attendance at many of the smaller college games.

(1937 NCAA Proceedings, p. 23).

62. All codes still lacked coercive enforcement mechanism.

63. 1932 NCAA Proceedings, p. 17.

64. See Appendix II.

65. 1935 NCAA Proceedings, p. 17.

66. Ibid., p. 109.

67. For more comments see 1935 NCAA Proceedings, pp. 107-110.

68. 1935 NCAA Proceedings, p. 90.

69. 1938 NCAA Proceedings, p. 37.

70. See appendix III.

71. 1941 NCAA Proceedings, p. 143.

72. Ibid., pp. 143-144.

73. Ibid., p. 144.

74. Ibid.

75. Ibid., pp. 144-145.

76. Ibid., p. 145.

APPENDIX I

THE NCAA'S FIRST ELIGIBILITY CODE*

The acceptance of a definite statement of eligibility rules shall not be a requirement of membership in this Association. The constituted authorities of each institution shall decide on methods of preventing the violation of the principles laid down in Article VI (Principles of Amateurism).

The following rules, which may be made more stringent where local conditions permit, or where associations of colleges and universities have taken, or may take, concerted action, are suggested as a minimum:

1. No student shall represent a college or university in any intercollegiate game or contest, who is not taking a full schedule of work as prescribed in the catalogue of the institution.

2. No student shall represent a college or university in any intercollegiate game or contest who has at any time received, either directly or indirectly, money, or any other consideration, to play on any team, or for his athletic services as a college trainer, athletic or gymnasium instructor, or who has competed for a money prize or portion of gate money in any contest, or who has competed for any prize against a professional.

In applying this rule the constituted authorities shall discriminate between the deliberate use of athletic skill as a means to a livelihood, and technical, unintentional, or youthful infractions of the rules.

3. No student shall represent a college or university in any intercollegiate game or contest who is paid or received, directly or indirectly, any money, or financial concession, or emolument as past or present compensation for, or as prior consideration or inducement to play in, or enter any athletic contest, whether the said remuneration be received from, or paid by, or at the instance of any organization, committee or faculty of such college or university, or any individual whatever.

This rule shall be so construed as to disqualify a student who receives from any source whatever gain, or emolument, or positon of profit, direct or indirect, in order to render it possible for him to participate in college or university athletics.

In case of training table expenses, no organization or individual shall be permitted to pay for the board of a player at said table more than the excess over and above the regular board of such player.

4. No student shall represent a college or university in any intercollegiate game or contest who has participated in intercollegiate games or contests during four previous years.

5. No student who has been registered as a member of any other college or university shall participate in any intercollegiate game or contest until he shall have been a student of the institution which he represents at least one college year.

6. Any football player who has participated in any intercollegiate football contest in any college or university and leaves without having been in attendance two-thirds of the college year in which he played shall not be allowed to play as a member of the team during the next year's attendance at the same institution.

7. Candidates for positions on athletic teams shall be required to fill out cards, which shall be placed on file, giving a full statement of their previous athletic records as follows;

ELIGIBILITY CARD

Name of college or university.
Date.
Name of player or contestant.
Age of player or contestant.
Weight of player or contestant.
Branch of sport or contest.

QUESTIONS

1. On what date this session did you register?

2. Have you ever at any time competed for a money prize, or against a professional for any kind of prize?

3. Have you ever received money or any other compensation or concession for your services, directly or indirectly, either as a player or in any other capacity?

4. How many hours or recitation and lectures are you attending per week? How many hours of practical work?

5. How long have you been a student at (name your institution)?

6. Did you receive any inducement or concession to attend (name your institution)?

7. Have you ever participated in intercollegiate contests as a member of (name your institution) team? If so, state what team or teams, and when.

8. Have you ever taken part in any intercollegiate contest as a member of the team of any college or university other than (name your institution)? If so, state what institution you represented, on what team or teams, and when.

9. Have you won an initial at any institution? (In your answer give date and place.)

10. If on a team in any other institution, what position did you fill?

11. Have you ever taken part, as a member of any athletic club team, in any baseball or football game or games, or any track event?

12. Have you ever played baseball on a summer team? If so, what team or teams and when? Have you ever received for such playing any compensation or emolument?

13. Do you hold a scholarship of any kind? If so, how and by whom awarded?

14. Do you hold any official position in your college? If so, at what salary and for how long have you held it?

15. Are you under any contract or understanding expressed or implied to engage in athletics at (name your institution) for money or any other consideration or emolument to be received from any source whatever, either directly or indirectly?

On my honor as a gentleman I state that the above answers contain the whole truth, without any mental reservation.

(Signature)

(Date)

*Article VII, "Eligibility Rules," NCAA Constitution, 1906.

APPENDIX II

THE NCAA CODE ON RECRUITING AND SUBSIDIZING OF ATHLETES*

It is unjustifiable--

(1) For a student to receive any subsidy of monetary value, either directly or indirectly, primarily for his athletic services.

(2) To employ prospective athletes before they matriculate in an institution, or to make advance payment to a prospective student for future services, or to make any guarantee of payment which is not conditioned upon the service being performed in advance of the payment, or to make any payment for services at a rate greater than the current rate for other students in the institution.

(3) To permit a boy to participate in intercollegiate contests who has ever received a loan, scholarship aid, remission of fees, or employment, primarily because he is an athlete, through channels not open to non-athletes equally with athletes.

(4) For members of athletic or physical education staffs to recruit athletes by initiating correspondence or conversation, or by arranging for interview with boys who are prospective athletes.

(5) To promise prospective athletes employment, loans scholarships, or remission of fees, except as they may be secured by other students through the regular channels of the institution, and those channels should be outside the athletic or physical education departments.

(6) For alumni groups, clubs, fraternities, or other organizations to make promises or direct or indirect subsidies to prospective students, primarily for their athletic ability.

(7) To endeavor to persuade a prospective athlete, by offer of a scholarship or a job, or by any other means, to transfer from a college where he has made application for admission and has been accepted.

*1935 NCAA Proceedings A-II.

APPENDIX III

DECLARATION OF SOUND PRINCIPLES AND PRACTICES FOR INTERCOLLEGIATE ATHLETICS*

Intercollegiate athletics should be conducted upon sound principles and with a proper understanding of their relationship to the educational functioning of the college or university, in order to constitute an important and useful adjunct of undergraduate life and training. This Association believes that the minimum standards specified in this article are essential to the conduct of intercollegiate athletics upon sound principles.

SECTION 1. Amateurism. A college athlete should in all respects meet the Association's definition of an amateur sportsman: "An amateur sportsman is one who engages in sports primarily for the physical, mental, or social benefits he derives therefrom, and to whom the sport is an avocation."

The Association believes that the spirit of amateurism carries with it all that is included in the definition of an amateur and much more. It stands for a high sense of honor, honesty, fair play, and courtesy. It stoops to no petty technicalities and refuses to twist or avoid the rules of play, or to take an unfair advantage of opponents. Intentional violation by an athlete of the laws of eligibility established by the educational institution of which he is a member is a violation of amateurism.

SECTION 2. Control of Athletics. The control and responsibility for the conduct of both intercollegiate and intramural athletics shall in the last analysis be exercised by the institution itself.

SECTION 3. Institutional Responsibility. The institution shall see to it that an athlete is both admitted to college on the same basis as any other student and observes and maintains the same academic standards.

SECTION 4. Aid for the Athlete.

a. In the award of student aid an athlete shall neither be favored nor discriminated against.

Note 1--Athletes should not be placed on a different basis from other students in the award of financial aid. In some quarters there has been a feeling that an athlete deserves, ipso facto, financial aid; in others that no greater proportion of athletes should receive such aid than the proportion of other members of the undergraduate body. The Association feels that the problem cannot properly be met on any such arbitrary basis. The purpose of all such aid is to enable students to receive the benefits of a complete college education. If a boy's need is established, he should be entitled to aid. On the other hand, if his financial status is such that he or his family can afford to pay for his college education, he should be required to do so. The Association recognizes that this is a problem in all institutional aid but believes that the same investigations and findings in each case should be made with respect to the athlete as with respect to any other undergraduate. Any other institutional point of view the Association believes both undemocratic and unprofessional.

b. Any scholarship or other aid to an athlete shall be awarded only through the regular agency established by the institution for the granting of aid to all students; this agency should give to the recipient a complete written statement of the amount, duration, conditions and terms of the award.

Note 1--Many instances have come to the attention of the Association of individuals, generally not officially connected with the institution, making promises with respect to financial aid to athletes. In many cases this has caused embarrassment to the institution's officials, and to the student who believed that such aid had been granted him officially by the institution. If all institutions adopt the practice of giving a written statement to the entering student, telling him exactly what aid is being given, much of this difficulty may be avoided. The carrying out of this provision will mean that the institution has a specific record of its obligation to the student, and that the student has a definite statement of the institution's obligation to him.

Note 2--The Association recognizes that the source of funds available for financial aid to athletes must be carefully scrutinized and safeguarded to prevent abuses, but it further recognizes that modern institutional accounting practices often involve allocation or inclusion of athletic receipts or contributions from individuals or organizations, for this purpose, within general institutional budgets, which make arbitrary prohibitions on the use of funds from such sources imparcticable.

The Association, in determining adherence to the standards specified in this article, may require complete information regarding the administration of student aid in any member institution.

Some of the factors that should be considered in order to secure acceptable safeguards for the institution and the athlete are:

(1) Control and administration of such aid should be in the hands of the regular agency established by the institution for the granting of aid to all students, and independent of the athletic department of the institution.

(2) Athletic participation should not be a condition for such aid.

(3) Awards of financial aid to athletes should be based on the same considerations as to need, etc., as govern such awards to all students.

(4) Complete information regarding the award of such aid should be readily available to responsible persons and organizations. It has been found to be a desirable practice, to publish in the official student aid reports of the institutions the names of the recipients of such aid, with the terms and amounts of such awards.

c. No athlete shall be derived of scholarship or other aid because of failure to compete in intercollegiate athletics.

Note 1--In some institutions aid has been granted to an athlete and subsequently taken away if, for one reason or another, the recipient fails to take part in the intercollegiate athletic program. The

Association believes that this is unfair to the athlete and is a direct professionalizing influence in intercollegiate sport. A student should be free to make his contribution to athletics just as he is free to make any other extra-curricular contribution. If, however, for any reason he does not enter athletic competition, he still deserves his aid to the extent of the obligation incurred by the institution, provided he meets, in other respects, the requirements set up by the institution.

d. Financial aid extended to an athlete from any source other than (a) persons on whom he may be naturally dependent for support, or (b) the regularly constituted sources of such aid within his institution, shall be approved or disapproved, on the basis of need, by the regular agency established in his institution for the granting of aid to all students.

Note 1--The necessity for careful and reasonable administration of this paragraph is fully recognized by the Association. There are, of course, many cases in which aid from outside sources is legitimate. Some of the factors that should be taken into consideration in this administration are:

(1) The length of time the donor has known the recipient of such aid;

(2) The interest which he has taken in the recipient during this time;

(3) The understanding by the recipient of just what the aid involves and the reason for which it is given;

(4) The protection of the recipient from sudden withdrawal of the aid;

(5) The appropriateness of such aid from the standpoint of the institution.

The Association believes many of the difficulties arising under this paragraph can be solved if administrative officers, recipients and donors have a complete understanding of the problems involved.

e. The compensation of an athlete for employment shall be commensurate with the service rendered.

> Note 1--This provision recognizes that an athlete should receive fair compensation for his services and that he should not receive more than fair compensation. The Association has found that, where athletes have jobs for which they do not give value received, a bad psychology is developed all along the line. The person giving the job feels that he is being "used" and is often unwilling to give any employment at all to college students after a bad experience with an athlete. The athlete feels just as definitely, if not as openly, that he is being paid for athletic participation in an indirect and shameful way. The Association makes the suggestion that, in order to carry out the provisions of this paragraph, institutions have jobs held by athletes handled by the same college agency that is responsible for jobs for all students. If this is done, it is possible for the institution to check with the employer to see that all undergraduates holding jobs are working for what they get. With the job set-up handled in this way, an athletic department is freed, on one hand, from the responsibility of a job program and is, on the other hand, completely free from legitimate criticism except as the institution's job program may be criticized.

*1941 NCAA Proceedings, pp. 142-145.

CHAPTER IV

THE FORMATION OF THE INTERCOLLEGIATE ATHLETIC CARTEL 1946-1960

Introduction

The previous two chapters have traced the evolution of college sports and the formation of the NCAA. Due to the lack of organization in college sports at that time (1906-1946) there were no standardized sets of sports rules for all to follow. As a result injuries and death were frequent occurrences in college sports, especially football. In response to injuries in college football the NCAA was organized.

The NCAA's first goal was to establish a standard set of football rules that would ensure the safety of all participants. With this underway the association took it upon itself to organize a standard set of rules in many other college sports. Additionally, by the late 1930's the association was organizing and conducting championship tournaments in more than one dozen college sports.

During this time the association's activities can be easily modeled by viewing its efforts to organize safer sports rules as an attempt to internalize an intra-industry externality. However, by the early 1940's the association had become extremely interested in many sports items other than rules. Prior to World War Two, for example, the association had begun issuing lengthy rules governing the compensation that could be

paid to athletes. Thus, at the beginning of the 1940's the association was ready to make the transition from an organization that offered only general recommendations about the rules of various college sports to one that could establish binding regulations governing all aspects of intercollegiate athletics.

This chapter examines the activities of the NCAA from the end of World War Two until 1960. During this period the actions of the NCAA indicate that while the members remained interested in sports rules and tournaments they were also beginning to take steps usually associated with the establishment of a cartel. To better understand the actions of the NCAA in this time period the by-product theory of cartel organization is presented.

The by-product theory of cartel organization offers an explanation for the appearance of cartels. Accordingly, it can be used to analyze the evolution of the NCAA. Briefly, it holds that the reason the NCAA turned from being an advisory body into a cartel was that once all schools (producers of athletic contests) got together and began discussing football rules, the additional cost of discussing the quantity of output, input prices, and other economic variables was quite low. That is, the largest cost of collective action is the cost of organization. Once the initial cost of organizing is overcome, however, the additional cost of establishing a cartel is small.

With the by-product theory as a backdrop a historical discussion of NCAA regulation of the input and output markets of college athletics follows. In the input market the development of the code restricting

wages paid to student-athletes, the code restricting methods that could be used to induce an athlete to attend an institution (recruiting), and the set of rules governing the personal conduct of student-athletes and coaches are traced over this fifteen year period. In the output market the discussion begins with the effect of television broadcasting of college games on gate receipts and then traces the development of the NCAA's television policy, its restrictions on postseason competition, and the association's regulations limiting the number of games played by each school in several sports.

By-Product Theory of Cartel Organization

Cartel theory has received much attention in the standard economic literature.[1] Due partly to the discussion in these sources and partly to the large volume of publicity the OPEC cartel received in the 1970's it is known that cartels restrict output in an effort to make greater profits. However, the question that remains unanswered in all this literature is how cartels are organized. In view of the fact that efforts are constantly made to avoid competition through cartelization this question warrants attention. Therefore, the primary purpose of this subsection is to develop a theory that explains the appearance of cartels.

By ignoring this section of cartel theory authors would have readers believe that cartels emerge according to the "spontaneous generation" principle. According to this principle a typical cartel is formed when all major producers in a particular industry coincidentally

meet and suddenly begin geographically dividing the market and setting production quotas. Another version of the same principle is the oft-envisioned clandestine meeting between producers in a secluded country villa, where limiting rules are agreed upon. But both of these scenarios, as well as all previous discussions about cartel theory, fail to explain how these meetings are organized. That is, in standard cartel theory no mention is ever made of how the discussions (meetings) that lead to market division and production quotas are organized.[2]

The cost of organization commonly refers to the time and effort devoted to arranging meetings, discussions, and formulating a strategy. The cost of organization as related to cartel theory merits consideration because it is one of the largest inhibitors to cartel formation. In fact, in the theory that follows it will be postulated that once the cost of organization is overcome it is relatively easy for a group to cartelize.

A cartel does not emerge, it evolves. A cartel starts to take shape when a group of producers, who initially organized to discuss occupational or professionally-related subjects, begin comparing price and production. While in this group producers soon discover or, at a minimum, are made more aware that through competitive practices all are being made worse off relative to the position they would occupy in a less competitive market. Therefore, one of the most important events in the sequence leading to the formation of a cartel is the establishment of a group or body where producers can meet and exchange information at a low cost.

Trade or professional associations are good places for producers in an industry or members of an occupation to meet. These associations spend resources organizing direct exchanges of information (conferences, seminars) and indirect exchanges (journals, newsletters) between members who are, nonetheless, competitors. Further, since these associations were initially formed in response to an intra-industry externality the benefits obtained from joining are large enough to encourage many in the profession or industry to join. Thus, a trade or professional association is the ideal place for thoughts of collective action to be born because of the ease with which information may circulate between competitors and because a majority of the industry, a necessary prerequisite for successful collective action, usually belongs to the association.

For the most part trade or professional associations are formed to solve a problem plaguing the industry or profession. Frequently, and especially in the professions, solving this intra-industry externality is perceived as providing large benefits to the public. Beginning with the first act that aids the formation of a professional association it is not unusual for this association to accumulate a large stock of goodwill capital. This is accomplished by undertaking ventures that are portrayed as being in the public's interest. In response to these deeds performed by the association the public grows less skeptical of it, perhaps believing its members are extremely ethical and/or motivated by altruistic reasons. Other responses by the public may include special

tax and legal sanctions for this group as well as the power to establish industry-related rules or regulations.

Over time, however, an association begins to use its power to establish binding rules or regulations that limit entry or competitive practices. Advocated by members who may truly be altruistic or, more likely, members who are aware of the true effects of the actions, rules are developed that are rationalized as in the public's interest, but raise the cost of entry into this profession or restrict competition between members. The public, grown accustomed to actions designed for their benefit, tends to accept this justification for the group's action, while members of the profession receive positive reenforcement from their actions through larger incomes.[3] Regardless of the reasoning employed, the main effect of rules that restrict entry or competition is an increase in the wages of the members of the profession and a decrease in the quantity of the service supplied to the public relative to the quantity that would be supplied in a perfectly competitive situation.

This theory of cartel organization is called the by-product theory because industries and professions begin to cartelize as a by-product of efforts to solve an industry-wide externality. Most associations are formed with the goal of solving a problem plaguing the entire industry, but soon realize that once they have overcome the cost of organizing the additional cost of establishing rules that limit certain behavior are quite low. These restrictions, covered in public interest arguments, have the ultimate effect of raising the wages of members of the profession or the profits of firms in the industry.[4]

Many organizations exist which can be explained with the by-product theory. Any professional association that has rules to limit entry (professional tests) or makes an effort to restrict competitive practices (limits on advertising) probably established these restrictive agreements in the method outlined by the by-product theory. There are few examples of this theory within the industrial community because of the difficulty an industry has in trying to convince the public that higher prices are in their best interest. Nonetheless, certain industries, most notably agriculture, have been able to do this. Given that the by-product theory better explains the cartelization of professions the following discussion compares the cartelization of the medical profession in the United States with the predictions of the by-product theory.

The American Medical Association (AMA) was organized on May 2, 1848. It began as a professional society for doctors concerned about the quality of medical services in the United States, particularly the quality of medical education. After battling with many other medical associations, the AMA emerged in 1870 as the largest professional medical society in the United States.

Concern over the poor quality of medical education in the United States led the AMA to evaluate educational techniques being used at medical schools in the United States. The AMA found that in 1867 the methods used to educate doctors had hardly changed since the early 1800's. Due to a lack of power the AMA could do little to directly influence low education standards. However, in 1894 the AMA began

exposing inferior medical institutions in the Journal of the American Medical Association.

In 1910 the AMA commissioned Abraham Flexner, working for the Carnegie Foundation, to report on medical schools in the United States and Canada.[5] Though Flexner did not have the qualifications needed to be a medical investigator, his report became the basis on which the AMA objected to "inferior schools."[6] The AMA, having sufficient power, refused to certify schools without a certain minimum level of standards. Approximately seventy medical schools that were unable to achieve these standards closed by 1920.

It is unnecessary to trace the development of the AMA any further because all the facts needed to support the by-product theory of cartel organization have been presented. First observe that in accordance with the by-product theory the association was formed to deal with what was perceived to be an industry-wide problem; the lack of quality medical training. However, the cost of organization was quite large as the early experiences of the AMA revealed. According to Burrow:

> Professional apathy that had contributed to the defeat of earlier organizational efforts also restricted the size and representative character of the New York session that had as its principal object the establishment of a national organization to raise the standards of medical education. A little over half of the approximately 100 delegates who attended came from the state of New York, and about two-thirds of the medical colleges sent no representatives.[7]

Further, the AMA also had to struggle with other medical societies for control of the profession.[8]

Once the AMA was established as the largest medical society in the country it began to undertake many ventures which were rationalized as in the public's interest. It supported various efforts to improve health care, such as an attempt to establish a federal Department of Health in the late 1800's and early 1900's. In an attempt to build up a stock of goodwill capital the AMA also established committees which contained public relations features, like the Council on Health and Public Instruction, which reported in 1917 that it had distributed 1,133,500 pamphlets in the preceeding two years.[9] Thus, as predicted by the by-product theory, the AMA made efforts to gain the support of the public and the government through actions appealing to the public's interest.

The AMA acquired a valuable tool when it was empowered to certify the medical schools it deemed to be producing doctors under adequate methods. This was declared to be in the public's interest because doctors were most qualified to judge the training of other doctors.[10] However, the ability to close medical schools was also a method to limit entry into the medical profession, causing the wages of doctors to increase.

The evolution of the AMA from a body that sought quality education for all doctors to a body that regulates the supply of doctors by limiting the places where they can be trained is consistent with the by-product theory. In the case of medicine, once the cost of organization was overcome it took little time for the AMA to consider efforts to limit competition. Additionally, cartelization of the

medical profession was accomplished with the support of the public and the government, due mainly to the successful effort by the AMA to convince both groups that it was acting in their interest. The experience of the medical profession highlights the explanatory power of the by-product theory of cartel organization.

Turn now and consider the by-product theory of cartel organization in the context of intercollegiate athletics. In response to an industry-wide externality (widespread violence and injury) a small group of producers of college athletic contests organized to form the NCAA. However, this group required approximately forty years to overcome the cost of organization because many schools were initially unwilling to join the NCAA. Even after a large majority of the colleges and universities producing athletic contests enrolled in the association a long time passed before the proper circumstances for successful collective action by the group appeared.

The NCAA began by rewriting the rules of football, claiming to promote safety for "the good of the sport," but the association soon extended its control to the organization of rules and championship events in more than one dozen sports before World War Two. This effort to expand the control of the NCAA represents a successful attempt by the association to employ the public interest argument. That is, the association was able to convince the public that it gained control of these sports for purely non-selfish reasons, thereby avoiding any charges of self-interest.

The NCAA also began conducting regular meetings (annual conventions) and other exchanges of information (published reports) between members. Gradually, and occurring simultaneously with NCAA efforts to administer various intercollegiate sports, members of the NCAA started considering subjects other than rules and tournaments. The members became interested in the eligibility of and the payments to student-athletes, the number of games a school played, if college athletic contests were broadcasted on the radio, and whether the Federal Government was legally entitled to levy a tax on the revenue earned from these athletic events. Given the mechanism the NCAA had established to formalize sports rules and these new interests, the NCAA used the same rule-making mechanism to limit competition for student-athletes and restrict the behavior of all involved in the production of athletic contests (e.g., no summer baseball for athletes, no college jobs for individuals who previously worked for professional sports). However, the NCAA had tremendous difficulty enforcing these rules.

The development of the NCAA is consistent with the by-product theory of cartel organization. The organization of a professional association (NCAA) was in response to an intra-industry externality and the consideration of items besides sports rules by the NCAA occurred once competitors had overcome the costs of organization. However, while the NCAA had made many limiting agreements as World War Two ended the association's failure to enforce these restrictions prevented the agreements from being effective. Therefore, the last major step needed

to ensure intercollegiate athletics was effectively cartelized would be the adoption of an eforcement mechanism by the NCAA.

The by-product theory predicts that cartelization of an industry or profession evolves from the exchange of information between competitors in the trade or professional association. Accordingly, the experience of the NCAA prior to World War Two is consistent with the by-product theory. But before examining NCAA activities after World War Two it needs to be recalled that the by-product theory of cartel organization asserts that a cartel is formed through experiments of a group attempting to maximize an objective function (profits, members' income, etc.). With this thought in mind it will be shown in the next two sections of this chapter that the cartelization of intercollegiate athletics evolved from attempts by the association to ensure the revenue earned from athletic contests was as large as possible, while the cost of producing the athletic contests was as small as possible.

In the next section attempts by the NCAA to decrease the cost of producing athletic contests will be detailed. It will be revealed that one of the most effective methods the NCAA found to cut costs was to reduce competition for student-athletes between schools. Hence, out of the NCAA's efforts to control costs came the restrictions on the inducements that an athlete could be offered to attend a particular university. Further, since experience showed that these rules were frequently violated, the NCAA developed a strict method of enforcement to deal with cheaters. In this section the development of limiting agreements and the method of enforcing these rules will be shown to have

come out of the association's search for ways to cut the costs of producing athletic contests.

The following section traces the attempts by members of the NCAA to generate as much revenue as possible from athletic contest. In the late 1940's one new method to increase the revenue earned from athletic contests was to sell television broadcasting rights to football games. It was soon discovered that television broadcasting of football games caused attendance at football games to decrease. In an attempt to maximize the revenue earned from television broadcasting while minimizing the losses in gate receipts the NCAA established a complex set of rules restricting the television broadcasting of football games. In a similar attempt to maximize revenue the NCAA also restricted the number of regular and postseason events. Thus, the major result of NCAA efforts to maximize revenue generated by athletic contests was the establishment of complex rules governing the use of television broadcasting and placing limits on the number of games each institution could play before a television audience.

When these two sections are examined it will be seen that NCAA efforts to address the problem of revenue maximization and cost minimization resulted in policies that are identical to the characteristics of a cartel. The association's attempts to decrease production costs that resulted in a rigid set of limits on competition in the input market and the association's attempts to increase revenue that resulted in restrictions in the output market and a geographic division of the television market are equivalent to the agreements

established in a cartel that restrict wages paid to inputs, limit the quantity of output produced, and divide the marketplace. Additionally, the NCAA, again consistent with cartel theory, made provisions for these restrictions to be enforced. Accordingly, if it is believed that a cartel is a group of producers who follow a certain strategy, the intercollegiate athletic industry, by virtue of the fact that producers of college athletic contests have organized to follow this same strategy, must therefore be a cartelized entity.

Development of NCAA Regulation of the Input Market and the Organization of the Association's Enforcement Mechanism

Sanity Code

The failure of all previous NCAA efforts to effectively restrict the behavior of member schools revealed to the association the need for a device designed to enforce its rules. The association appeared prepared to enact measures to deal with schools that violated NCAA rules, but World War Two interrupted these efforts. Shortly after the war ended, however, the NCAA took steps to address this problem.

On July 22, 1946 the "Conference of Conferences" was held in Chicago, Illinois. At this two day event representatives from all major athletic conferences in the United States met to discuss conditions in intercollegiate athletics. In addition to discussing the effects the war would have on college athletics the group also considered efforts to stop college and universities from violating NCAA rules. After considering various methods to stop violators representatives at this conference drew up the first draft of "Principles for the Conduct of

Intercollegiate Athletics." These principals and a questionnaire were sent to all NCAA members to solicit their reaction to this code.

The response to the questionnaire concerning this set of principles was so enthusiastic that at the annual convention of 1946 members of the association adopted the five principles as the guidelines to be followed when dealing with student-athletes. The NCAA went on to recommend that all schools in the association be prepared in one year to abide by the set of principles or face termination of their NCAA membership. Because it was believed that this code would return sanity to the process of recruiting and compensating student-athletes, the set of five principles became known as the Sanity Code.[11]

Adoption of the Sanity Code was surrounded by many assertions that it was done to preserve amateurism and protect college athletics. Sections one, two, three, and five of the code provide solid support for those who argued this code was adopted by the members for altruistic reasons because these sections are statements of the NCAA's philosophy rather than actual rules to implement this philosophy. However, a closer look at the Sanity Code, especially section four, "Principles Governing Financial Aid to Athletes," reveals that it was the NCAA's strongest effort to date to limit competition between schools for student-athletes.

Section four was the most important part of the Sanity Code because it specifically detailed what an athlete was allowed to receive from the university in terms of financial aid. It pointed out that aid could be awarded only on the basis of need or scholarship (demonstrated in either

high school or college), but not solely because of athletic ability. Further, it noted that the amount of aid an athlete could receive would not exceed tuition and incidental fees. While many believed this section was included to ensure college athletes maintained amateur status a more plausible explanation for restrictions on what an athlete could be offered comes from interpreting this section of the Sanity Code as an effort to limit competition for student-athletes.

Were schools not restricted in what they could offer an athlete to attend their university it is likely that they would respond by offering money. When all schools responded this way money payments to certain athletes would increase as each school bid to secure their services. Increases in student-athletes' wages due to competition would have the additional effect of increasing the cost of producing athletic contests. Therefore, efforts to limit payments to athletes were also attempts by members of the NCAA, who were the producers of athletic contests, to hold down their production costs.

Other safeguards were included in section four of the Sanity Code to ensure schools did not bid for athletes. The most important were the stipulations that all financial aid was to be awarded through the institution's office of financial aid and that the student was to receive a written statement detailing the exact amount of aid he would receive. These conditions brought competition for athletes into the open and made non-sanctioned offers easier to observe.

The Sanity Code also included the NCAA's first attempt to punish violators of its rules. Any athlete who received aid not sanctioned by

the Sanity Code would be declared ineligible to participate in intercollegiate sports. Further, since the Sanity Code was written into the NCAA's constitution, failure by any member to adhere to the code's principles would result in possible termination of that school's membership in the NCAA. This would occur under the rules of the constitution which provided that a membership could be terminated at an annual convention by a two-thirds vote of the delegates.

At the annual convention of 1947, one year after the code was introduced, the NCAA adopted the Sanity Code as the official set of rules all members would abide by in their dealings with student-athletes. At the same time the NCAA also established a three-man Compliance Committee to ensure schools followed the guidelines set out in the Sanity Code. The first three members of the Compliance Committee were Clarence P. Houston of Tufts University, who was elected chairman of the committee, James H. Stewart of the Southeastern Conference, and Ralph W. Aigler of the University of Michigan.

According to the NCAA constitution the Compliance Committee was

> ...authorized to make rulings either on its own motion, or at the request of the officers of the Association, or of any member institution regarding the interpretation of the constitutional language and, more particularly, to answer inquiries as to whether stated practices, actual or contemplated, are forbidden by, or are consistent with, the provisions of the Constitution. Such rulings and answers shall be deemed final and authoritative, subject only to reversal by vote of the Association in convention assembled.[12]

A Fact Finding Committee was also created to act as investigators in all instances when it was felt an investigation was warranted. It

was set up on a permanent basis like other NCAA committees were and was composed of three members whose names were chosen from a list of at least fifteen potential members. This list of at least fifteen potential members was known as the Panel.[13]

Even though the Sanity Code represented the most complex attempt by the NCAA in its forty-two year history to ensure schools were not violating the association's rules some parts of the code were still not sufficiently detailed to provide the restrictions the NCAA sought. The most troubling part of the code was the first subsection in section four which allowed each school to determine the financial need of an athlete. The NCAA attempted to convince schools to evaluate an athlete's need in the same method as non-athletes but, without specific instructions, the potential was present for the criteria used to determine financial need to vary with each school. The NCAA's position on this matter was best stated by Clarence P. Houston. He pointed out:

> We [the NCAA] can't presume to tell 300 schools a definite method of determining the needs of athletes, but we can urge each school's officials to make the same examination of applications for aid by athletes as they do for other students.[14]

It was also apparent that enforcement of the Sanity Code was going to be a difficult task. With only a three-man committee charged with investigating approximately 250 universities it was unclear how the NCAA could adequately enforce the code. But the Compliance Committee was saved from many of the problems of trying to find violators because some schools, such as the University of Virginia, made public declarations

that they would or could not adopt the Sanity Code or enforce its rules.

On August 9, 1948 the University of Virginia called a news conference at its Charlottesville, Virginia campus and announced that it would not adopt the Sanity Code. Their spokesman said, "While we may agree with the spirit of the plan, it is the belief of our board that it cannot be enforced."[15]

The NCAA was troubled by the University of Virginia's statement, but there was little they could do immediately because a school had to violate the Sanity Code before it could be prosecuted. And, as detailed in the constitution, any school whose NCAA membership was going to be considered for termination had to be notified four months in advance. Thus, the lack of an immediate reaction by the NCAA to the University of Virginia's statement did not represent unwillingness on the part of the association to deal with violators, only that the enforcement process set up by the NCAA required time to respond.

One year later on July 27, 1949 the University of Virginia again publicly rejected the Sanity Code. This time they argued that student-athletes at the school had to spend their spare time studying and, therefore, could not earn money to pay for items NCAA sanctioned financial aid did not provide for (room and board, books, etc.). Because of its emphasis on academics the school felt justified in providing more aid to student-athletes.

By mid-1949, however, the Compliance Committee had begun to find evidence of violations of the Sanity Code. Throughout the year rumors

circulated that the Compliance Committee had sufficient evidence to call for the termination of as many as twenty memberships at the next annual convention. But one month before the annual convention of 1949 it was revealed that seven institutions were being officially charged with violations of the Sanity Code. The schools were: Boston College, the Citadel, the Uiversity of Maryland, the University of Virginia, Villanova University, Virginia Military Institute, and Virginia Polytechnic Institute. At the upcoming annual convention the Compliance Committee wanted their NCAA memberships terminated.

The annual convention of 1949 convened in the second week of January 1950.[16] After most of the association's regular business had been completed the entire convention considered the motion to terminate the membership of seven schools. In the discussion that took place during consideration of this motion it was revealed that the Compliance Committee had been actively investigating many schools and these charges resulted from this investigation.

The investigation started shortly after the Compliance Committee was formed when it sent out 270 questionnaires to members inquiring about the methods they used to award aid to student-athletes. After all responses had been received and analyzed the Compliance Committee sent out 101 additional questionnaires. From these responses and information provided by other sources the Compliance Committee authorized investigation of twenty-nine institutions. These investigations were conducted by paid investigators or through the mail and included investigations of more than one incident or case at several institutions.

From the information these investigations yielded the Compliance Committee concluded that on January 1, 1949 there were twenty institutions in violation of the Sanity Code. The committee wrote these schools informing each of their findings and notifying them that they had until July 1, 1949 to rectify the problems or at least make clear in a letter that all violations would be corrected by September 1, 1949. Of the twenty institutions in question thirteen wrote by July 1, 1949 detailing the corrections that had been or would be made. As a result of these corrections the thirteen were no longer in violation of the Sanity Code.

More letters were written to the seven institutions that did not respond or who had responded inadequately in an attempt to get them to state they would be in compliance with the Sanity Code by September 1, 1949, but none responded in this manner. On that date, in accordance with the rules detailed in the constitution, written notice in the form of a registered letter from the Compliance Committee was sent to the presidents of each of the institutions informing them of the committee's intention to seek the termination of their membership.

The NCAA's constitution provided for certain steps to be followed when a school's membership was being considered for termination. The first step consisted of notifying each school involved, at least four months prior to the annual convention, that the Compliance Committee was considering terminating their membership. In this case this was done on September 1, 1949.

The Compliance Committee's resolution seeking the termination of these schools' memberships then had to be approved by the Council and Executive Committee. Both bodies approved the measure on January 12, 1950. With this done the last step was to have the annual convention approve the resolution for membership termination by a two-thirds vote.

On January 14, 1950 the motion calling for the termination of the seven institutions' memberships was placed before the convention. Chairman of the Compliance Committee Clarence P. Houston began the proceedings by briefly describing the violations allegedly made by each school. All charges involved the awarding of financial aid to student-athletes that was greater than the amount the NCAA allowed.

The University of Maryland was charged with violating the Sanity Code because, after corresponding several times with the Committee, they never sent the committee a letter explicitly declaring they were not in violation of the code. This incident arose when it was discovered that Maryland was granting financial aid to football players in excess of that allowed by the Sanity Code. The Compliance Committee wrote two letters informing the president of the university of this discovery and asking him to rectify the situation. The president wrote back and said he presumed the practice had stopped, but because he did not come out and declare it had ended Maryland was charged with violating the Sanity Code.

The Citadel, Virginia Military Institute, and Virginia Polytechnic Institute, all military schools, were charged with violating the code by awarding aid to student-athletes that was greater than the amount

permitted by the code. The Sanity Code allowed a school to provide a student-athlete with only tuition and incidental fees, but military schools also provided student-athletes with room and board. The NCAA felt that these were not incidental fees and charged the schools with violating the Sanity Code.

Villanova, Virginia, and Boston College were charged with violating the code by providing aid to student-athletes in excess of the amount permitted by the Sanity Code. Villanova admitted this was being done in a series of letters to the Compliance Committee, but never answered the committee's last letter requesting more information. The charges against Virginia stemmed from the fact that it had openly flaunted the large amounts of aid it provided to student-athletes for more than a year. Boston College, which had been in violation at the time the Compliance Committee had investigated but had since corrected the situation, was being prosecuted under a technicality.

The discussion that followed the reading of the charges consisted of explanations of a particular university's behavior or an attack on the strictness of the Sanity Code. Representatives of each school got a chance to address the convention and tried to avoid having their membership terminated by doing one or the other. The delegate from the Citadel, however, did both.

He defended the Citadel's financial aid policy by noting that the Citadel was a military college with greater demands on a student-athlete's time than other schools. Because of the Citadel's policy that no student could leave the campus from 6:30 p.m. Sunday

until 5:30 p.m. Friday it was not possible for student-athletes to earn money to pay for room and board. Consequently, with the Citadel decided to provide student-athletes with room and board, in direct violation of NCAA policy, and to withdraw from the NCAA until the association's rules were changed to permit the Citadel to continue its current practice of awarding financial aid. Once this was done the Citadel's representative launched a lengthy and thorough attack on the Sanity Code.[17]

Representatives from the two other military schools defended their financial aid policies in a similar manner, arguing that the demands on students in military schools were considerably different from the demands on students in non-military schools. The representative from Virginia Polytechnic Institute pointed out that it was impossible for a student-athlete to earn enough money to purchase room and board given the school's military status and openly admitted that because of this the school was in violation of the Sanity Code. The representative of Virginia Military Institute believed conditions had changed at his school since September 1, 1949 and that his school was no longer in violation. In light of the lengthy statement by the Citadel which explained the special circumstances facing a military school, remarks by these schools to the convention were very short.

The representatives of Boston College and the University of Virginia attacked the Sanity Code as an arbitrary mechanism that allowed outside interference in what were the individual college's functions. Boston College was especially upset at the idea of NCAA interference in its

affairs. It instructed representatives to read a prepared statement that pointed out:

> Undoubtedly, an honest difference of opinion exists, with Boston College maintaining that it has the right to judge itself on educational standards in relation to college entrance examinations requirements, and the NCAA Compliance Committee adopting the stand that it should be the judge and jury. Boston College simply cannot admit that a body set up for the handling of intercollegiate athletics can conceivably be more competent to judge a college's educational standards then the college itself.[18]

The University of Virginia attacked the Sanity Code because it felt it was unjust. The University of Virginia felt unfairly treated because the university did not award aid to student-athletes. Instead, the school's Alumni Association, over which the university had no control, awarded the money. The school's representative pointed out:

> At the University of Virginia at the present time on our varsity football squad there are 24 members who receive aid. The institution offers no form of athletic aid whatsoever. It offers no concessions and no remissions of fees. We have, however, an alumni association or committee which does offer aid in varying degrees, none of which exceeds the man's complete expenses. Eleven of those awards are on our varsity football squad, and thirteen partial awards, making a total of twenty-four.[19]

Virginia also felt the academic demands of the school required so much time that it was impossible for student-athletes to get part-time jobs. They believed their aid policy was justified and in accordance, if only in spirit, with the Sanity Code.

H. C. Byrd, athletic director at the University of Maryland made the last statement in defense of the seven institutions by noting what

he thought was a large contradiction in NCAA policy. He cited Ohio State University as an example of a large school with sufficient resources to attract athletes and provide them with jobs and contrasted it with the University of Virginia, a school with few job opportunities but capable of attracting athletes by offering other forms of financial aid. He reasoned that while each school could provide identical dollar amounts of aid the Sanity Code gave an unfair advantage to schools, such as Ohio State University, by penalizing efforts by schools such as the University of Virginia. He summed up the situation and asked rhetorically:

> ...I question a set of regulations under which Ohio State can get itself or attract to itself a lot of good athletes and because Virginia doesn't have the same kind of conditions, would deny to Virginia the right under some other procedures to attract athletes. In other words, I am going to ask Ohio State University this question, just as I asked myself this question last fall: Does Ohio State want to vote for the expulsion of the University of Virginia when Ohio has, I am quite sure, facilities which would enable it to take care of four or five times the number of athletes that the University of Virginia has, or has tried to help? Is that a fair and equitable proposition in this court of equity on which you gentlemen sit as judges?[20]

Besides the two members of the Compliance Committee, who defended the charges brought against the seven institutions, only one person spoke out in favor of termination of the memberships. Victor Schmidt noted that the Sanity Code had been formulated two years before and that all members had agreed to its principles then, aware of the punishment that would be handed out if a member failed to comply with it. To Schmidt, breaking down when confronted with violations and not

administering the subscribed punishment seemed sadly ironic. He summarized the choices facing members who were about to vote on the motion to terminate these memberships this way:

> I think the question is a very simple one that we have to decide here today aside from the personalities of any institution involved or their representatives; it is a question, it seems to me, of simply this: Are we going to wear the red badge of courage, or are we going to show the white feather of surrender and despair?[21]

In a secret ballot vote that grouped the question of terminating all seven institutions' memberships into one motion the body voted 111 to 93 in favor of termination. The vote was not by the required two-thirds majority, however, and the motion was defeated. The first test of the enforcement mechanism of the Sanity Code ended with no memberships terminated.

The failure of delegates at the annual convention to prosecute any school under the rules set out in the NCAA constitution revealed many flaws in the Sanity Code as well as the association's procedures. Perhaps the biggest problem contained in the Sanity Code was that it had only one major, effective form of punishment. For any offense, large or small, the only real punishment that could be administered was termination of a school's membership in the NCAA. From the events surrounding this case it appeared that the main problem with the Sanity Code was the inflexibility of its penalties. Thus, while it may have been clear that some schools were exceeding the NCAA's limit on financial aid to student-athletes, it was not clear to many of the NCAA's members that exceeding this limit warranted termination of membership.

The discussion during consideration of the motion also revealed that many members had discovered that the Sanity Code put an additional restriction on student-athletes. Under its rules a student-athlete could only receive financial aid that was limited to payment of tuition and fees. A non-athlete, however, had no limit on the amount of aid he could receive, regardless of the source. This caused resentment among many in intercollegiate athletics who felt they were victimized by this unfair restriction. No doubt some individuals took out their displeasure with this situation by voting against termination of the memberships.

The method in which the Compliance Committee enforced the Sanity Code showed there were few rewards for honesty. In many cases the Compliance Committee got the information that led to an investigation by writing the university involved and asking. If a university was truthful and told the Compliance Committee the amount of aid they awarded student-athletes they risked the chance of having their membership terminated. On the other hand, if a university was dishonest and told the Compliance Committee they were complying with the Sanity Code when they were not, it was possible that they would not be investigated any further. Under the system of self-enforcement set up by the NCAA each school had to make a difficult decision when considering whether to be honest or not.

The Compliance Committee's presentation of the cases before the annual convention of 1949 highlighted organizational problems that effected enforcement of the Sanity Code. One problem was the time lag

between the date the NCAA found a member to be in violation of the code and the date the institution was prosecuted. It seems clear that any institution, notified that its membership was going to be terminated, would probably correct the problem just to retain its membership. This would place the NCAA in a dilemma because on the date the case came before the association the university would not be violating the Sanity Code, but at the time the school was investigated it was in violation of the code. This was particularly relevant to Boston College, which had corrected the violations it was charged with and was no longer violating the code when it appeared before the annual convention of 1949, but was charged anyhow. Obviously, the problem caused by the long time delay had to be corrected.

Other questions raised during the NCAA's attempt to prosecute the seven institutions highlighted the fact that it was the first time the Compliance Committee had attempted to terminate a member's affiliation with the NCAA. Throughout the case there was considerable confusion surrounding the evidence against the schools and how the Sanity Code was officially interpreted. Did a particular university send this letter? Did they openly declare they were complying with the Sanity Code or did they just think they were? What was the definition of an incidental fee? Did the Sanity Code make any attempt to address regional differences? All of these questions emerged from the discussion at the annual convention of 1949, but no official answers were given. Confusion over evidence and policy revealed the need for more detailed NCAA guidelines.

Another example of the disorganization surrounding the NCAA's first attempt to work with the Sanity Code was the timing of the discussion of the motion. The motion was brought up close to lunchtime after the convention had already handled a large amount of other NCAA business. No doubt the attention span of many members was taxed because the discussion occurred late in the morning and ran into the usual lunch hour. Said one delegate during the course of the debate (to the entire convention), "We're getting hungry and I want something to chew on. Let's get at it."[22] Given these circumstances it can be argued that the outcome was effected by members voting without giving as much careful thought to the question or a closer examination of the evidence than would have been given had the motion been taken up at a different time.

Finally, the first attempt to terminate a school's membership revealed to the NCAA the difficulty of dealing with a large group. In the opinion of the Council and the Executive Committee, both very small groups, all schools were guilty of violations and deserved to be removed from the NCAA. However, once the motion was put before the large group, many things could have happened which the leadership of the NCAA had no control over (the formation of coalitions, vote trading, etc.). Thus, if the NCAA wanted to develop a strict enforcement mechanism capable of effective punishment this first experience revealed that the association would be better off dealing with a smaller group.

While the seven schools in question did not have their memberships terminated, they did not escape completely untouched. Four days after the convention failed to pass the resolution to terminate their

membership the Executive Committee voted each school a "member not in good standing." This sanction banned the schools from participating in NCAA meets or tournaments and was supposed to prevent other NCAA members from competing against them. While the first condition was fulfilled the second was not because the NCAA allowed contests already scheduled with these schools to be played. Since schools scheduled games far in advance few, if any, games were cancelled. This sanction amounted to a minor inconvenience to all seven schools.

During the next year between annual conventions many important events in the administration of intercollegiate sports occurred. On February 25, 1950 the Council of the NCAA met and, just four weeks after it had certified Boston College a "member not in good standing," it removed all sanctions against Boston College. This was consistent with what had been brought out at the discussion during the annual convention of 1949. Boston College had corrected its violations between September 1, 1949 and January 14, 1950 and deserved no penalty. Evidently the NCAA realized this and, therefore, removed the sanctions placed on Boston College.

The Compliance Committee continued investigating schools during this year. At the August meeting of the Council Clarence P. Houston reported that the Compliance Committee had investigated eleven institutions and that he had recommended the memberships of six schools be terminated. It was reported in the New York Times that the University of South Carolina and Clemson University were among the six schools being accused of violating the Sanity Code. These schools

responded by threatening to leave the NCAA if the Sanity Code was enforced.

These schools were not alone in their efforts to limit the enforcement of the Sanity Code. During 1950 much public criticism of the code and its enforcement appeared. Most criticism came from southern schools who said they would propose amendments to the constitution at the next annual convention to limit the ability of the Compliance Committee to enforce the Sanity Code. Other schools, primarily from the northern part of the United States (e.g., the Big Ten Conference), repeatedly spoke of not changing the code. As a result, when the annual convention of 1950 convened a clash between supporters of the Sanity Code and those who wanted to change it seemed certain to occur.

Support or non-support of the Sanity Code had little to do with a school's philosophical approach to college sports. For years members of the NCAA had been justifying their support of NCAA rules on the basis that they were consistent with the amateur philosophy of sports. But in 1950, instead of supporting the Sanity Code because it preserved amateur college sports, member schools now supported the code only if it was in their self-interest to do so. Consequently, supporters of the code were small colleges and most northern schools. Those who wanted it changed were the large and southern schools.

Small schools supported the Sanity Code because it put strict restrictions on the financial aid a school could provide, conserving their limited resources. Schools from the northern United States, where most major cities and industries were located, also supported the code

because it stipulated that athletes had to work for all aid above tuition and fees. These schools had an advantage because of the number of jobs available in their area. Generally, smaller colleges and northern schools supported the code because it limited the money they could provide student-athletes and in doing so kept down their costs of producing athletic contests.

Large schools favored changing the code because they were better able to compete directly in bidding for athletes and desired to make it possible for them to do so without restrictions. Similarly, southern schools, which tended to be located in rural areas, did not like the provisions of the code that forced athletes to get jobs because there were not enough job opportunities at many schools to make this feasible. Most large and southern schools favored changes in the code so that their advantage in recruiting could be maintained.

At the annual convention of 1950 there was much discussion of the Sanity Code. One morning's discussion was devoted specifically to considering the Sanity Code. Opinions varied in this discussion ranging from total support of the code to a willingness on the part of some schools to drop the entire concept.

NCAA officials and members of the Compliance Committee provided the strongest support for the Sanity Code. They pointed out that the code had been adopted at the request of members of the association who watched the number of violations of NCAA rules increase yearly without any action being taken to punish the offenders. Now that the code was being enforced, however, these same members were complaining. The

problem was not with the Sanity Code, NCAA officials believed, but rather it was with the individual schools' incentive to cheat. Clarence P. Houston argued:

> The real trouble comes from the pressures on institution "A" and institution "B" and institution "C" to win more than its numerical share of the contests that it takes part in. Do you think if, we started out--well, let's say a foolish suggestion is that each and every athlete coming into that institution should be allowed a thousand dollars each year--that the alumni and the staffs of those institutions would be content? Would that take away then this desire to win their games from their competitors or does it simply provide another base?[23]

While it was never stated exactly this way officials of the NCAA and smaller schools favored the Sanity Code because it attempted to equalize competition. NCAA officials thought the code addressed the firm-industry incentive problem by preventing any school from getting far better than its competitors and causing fan boredom because the outcome of the athletic contests would be less uncertain. Smaller colleges supported it because under the code they stood a better chance of competing equally with the larger, "big-time" athletic school. Not surprisingly, many of the supporters of the Sanity Code at the annual convention of 1950 were NCAA officials or representatives of small colleges.

Others felt the NCAA had no right to enforce the Sanity Code. They were in favor of "institutional integrity," a phrase which was interpreted to mean allowing each university to enforce the association's rules. To many the question of institutional integrity versus NCAA enforcement of the Sanity Code was an ideological point tied

to the rights of a school to govern itself. Lee Prater of Northwestern State College in Louisiana compared enforcement of the code to prohibition, noting that local enforcement was the best system. Prater said:

> I believe in local self-government and I believe that if there are some fundamentals on which we can actually agree and which we will enforce, then I think it is a fine thing.
>
> Every other thing, in my judgement, should be left to local conferences, and that is in brief, my belief on this matter.[24]

Undoubtedly some schools supported the move toward self-enforcement because they knew it would be easier to violate the code. A school that violated the code by offering more financial aid to student-athletes would then gain at the expense of schools who were following the code. James Lynah, Chairman of the NCAA Panel, noted that it would be relatively inexpensive for a school to offer non-sanctioned aid because the code was not rigorously enforced at the local level. According to Lynah:

> My experience in personal contacts with some of the institutions that I have investigated leads me to believe that they have been very loose and very derelict in the determination of need claimed by athletes to whom aid was granted.[25]

Five amendments to the constitution designed to alter the Sanity Code were introduced at the annual convention of 1950. The one that received the most attention was amendment D, which called for section four of the Sanity Code to be deleted. Section four of the code listed the restrictions on financial aid a student-athlete could receive. Adoption of amendment D would make the Sanity Code meaningless because

there would be no agreed upon restrictions on financial aid and, hence, no official limits on how much aid a school could offer a student-athlete.

Some argued for adoption of the amendment on the grounds that one code could not address all problems in the United States. A. D. Kirwan of the University of Kentucky made this point:

> We do so because we are convinced that conditions within this great country are so diverse and institutions are so different in nature that one set of regulations cannot possibl[y] react with equal effect upon all.
>
> Some of our friends in neighboring areas tell us that it is possible for their athletes to secure legitimate jobs of such a nature and compensation that they have no difficulty in paying their expenses while at the same time they are engaging in athletics and doing satisfactory academic work. We do not doubt that this may be true in some place, but we know only too well that such is impossible within the geographical area of our conference.
>
> We are, therefore, placed in the unwholesome position of creating jobs for our athletes which do not, we fear, meet the requirements as set up in ...Section 4, paragraph (f).[26]

Kirwan went even further, approaching the problem in intercollegiate sports from a moralistic viewpoint:

> If it is not morally wrong to grant a student his institutional fees so that he may be able to go to college, and play football, why should it be evil to give him three meals a day and a bed to sleep in so that he may remain in college.[27]

The primary opponents of this amendment were small colleges. S. W. Cram of the Central Inter-Collegiate Conference best summed their views when he noted:

> We, of the small colleges, still need protection. Our protection is twofold. We do not feel as a group that our own conferences can impose

> a code. Some of us have had instances of it, attempted it and have not been successful.
>
> The structure and intelligence of a national group like the NCAA means something to us. It also protects us from another viewpoint, that of proselyting from the larger schools. We are being confronted continuously by recruiting agents from the larger schools.
>
> A track man is gone; a football man is gone; a basketball man is gone. We meet those things continually.[28]

After all debate ended the amendment was passed by more than the needed two-thirds majority, 130 to 60, effectively killing the Sanity Code. The vote returned enforcement of NCAA rules to the individual schools which previous experience showed were very unwilling to actively enforce the codes. It also allowed the Citadel to rejoin the association and removed Virginia Military Institute, the University of Virginia, Virginia Polytechnic Institute, Villanova University, and the University of Maryland from "member not in good standing" status.

The NCAA's experience with enforcement and the Sanity Code indicated several things. While it was obvious that an enforcement policy was needed it was also clear that the Sanity Code had been a radical departure from past NCAA policies and had been rejected partly because it attempted to bring strict enforcement faster than members were willing to accept it. This experience with the Sanity Code indicated that if an NCAA enforcement policy was to be developed it would have to be done at a much slower rate.

Perhaps members of the NCAA recognized this because the next day, when major revisions of the constitution were undertaken, the Compliance Committee was retained even though there was no official purpose for it. Since section four of the Sanity Code had been dropped the Compliance

Committee had no rules to enforce, but a motion to drop the Compliance Committee was defeated 68 to 52. In retrospect, retaining the Compliance Committee was an important step since it would form the foundation of a stronger enforcement committee.

After the Sanity Code: Stronger Regulation and the Establishment of the Committee on Infractions

At the same annual convention where the battle over the Sanity Code occurred one of the largest group of changes in the NCAA's constitution was also made. Parts of each section of the constitution were rewritten and a major reorganization of the articles in the body and by-laws was undertaken. The way in which the constitution was reorganized was described by Victor O. Schmidt, Chairman of the Constitutional Revision Committee:

> The scheme employed to accomplish this [reorganization] was:
> (a) To retain fundamental and basic organizational material principles in the Constitution where they could be changed only by a two-thirds vote and upon previous written notice to the membership.
> (b) To transfer regulatory legislation and committee procedures to the By-laws where they could in most cases be changed by a majority vote at any annual Convention without notice.
> (c) By preserving even in the By-laws the requirement for written notice for amendment of Financial Aids (now excluded) and Recruiting provisions although permitting their amendments by majority vote.[29]

It is interesting to examine the effect of these changes. Consider (b) in the quote by Schmidt. By moving regulatory legislation to the constitution's by-laws the NCAA made it easier for its members to regulate college athletics. The effect of requiring a simple majority

vote to change or add a new regulatory section (instead of the previous policy of requiring a two-thirds majority vote) and the removal of the requirement that all members had to be notified in advance of the introduction of regulatory legislation was to lower the cost of establishing regulations governing the conduct of college athletics. One interpretation of this revision of the NCAA constitution was that it was designed to make it easier for the NCAA to regulate intercollegiate athletics.

In 1951 the smaller governing bodies of the NCAA, the Executive Committee and the Council, became more active in establishing NCAA policy. At their meetings throughout the year the Council moved to adopt many new regulatory measures. In March 1951 it approved the establishment of a subcommittee to aid the Constitutional Revision Committee in formulating regulations that would increase the enforcement policies of the NCAA. At the August meeting of the Council the subcommittee reported back with a twelve point program designed to eliminate many of the elements and influences hampering college sports. The twelve recommendations the subcommittee provided the Council, which supported the plan, were:

1. Confine practice sessions to the recognized season of the sport or limit and rigidly supervise out of season practice.
2. Limit the number of games in each sport particularly football and basketball, either through curtailment of the season or definite game limitations.
3. Re-examine the post-season games in the light of the pressures they create.

4. Urge reconsideration of the free substitution rule to eliminate pressure implications of the platoon system, but preserve the protective health features of reasonable substitutions.

5. Insist upon normal academic progress toward a degree for purposes of eligibility.

6. Deny athletic eligibility to any student who has not been admitted in accordance with regular published entrance requirements.

7. Limit the number and amount of financial grants to athletes.

8. Enlist the support of all true lovers of wholesome college athletics, particularly in alumni areas, to reduce undesireable recruiting activity. This effort should be stimulated by top-level institutional administration.

9. Demand strict adherence to the letter and spirit of rules, once they have been established either by institutions or by regional or national groups.

10. Inflict the penalty of ineligibility on the athlete who knowingly or willfully enters into collusion for the purpose of receiving gifts or subsidy beyond that regularly permitted by the institution or conference of his choice.

11. Eliminate excessive entertainment of prospective athletes.

12. Give close attention to the curriculum of the athlete to assure that he is not diverted from his educational objective.[30]

The Council sent a copy of these recommendations to each NCAA member seeking their opinion. The results of the survey indicated overwhelming support for these principles.[31] The Council interpreted the survey results as a mandate from its members and began to formulate amendments to the constitution or its by-laws to enact this twelve point plan.

In 1951 nothing as dramatic as the previous year's fight over the Sanity Code occurred, but the actions of the Council made it clear that the smaller governing bodies of the NCAA were beginning to use their authority to set the agenda of the annual convention to establish

regulatory legislation. The Council, for example, while preparing legislation based on the twelve point program was actually using its influence to establish rules restricting the behavior of member schools. While the Council urged members to adopt these rules for a number of reasons it is clear that legislative efforts based on items six through twelve in the NCAA's plan were attempts to limit competition for athletes. Given this interpretation of the Council's program, it was expected that few schools (producers of athletic contests) would not favor the adoption of the Council's regulatory measures which would have the effect of lowering the cost of producing athletic contests.

At the annual convention of 1951 several minor changes were made in the wording of the constitution to make it understood that members had to comply with the policies of the NCAA to remain in good standing. These changes were needed so that the NCAA would have the grounds to punish schools that violated NCAA rules. This was particularly relevant in light of the simultaneous problems the NCAA was having with television broadcasting.[32]

Among the more important changes made at the 1951 annual convention was the elimination of the Compliance Committee. The Compliance Committee was replaced by a nine-man Membership Committee which was empowered to

> ...receive and consider complaints which may be filed with the Association which charge the failure of any members institution to maintain the academic or athletic standards required for membership or the failure of any member to meet the conditions and obligations of membership in the Association. The Committee shall have the authority upon the filing of such a complaint or upon its own initiative to

> institute an inquiry or an investigation regarding any failure of any members institution to maintain such standards or meet such conditions or obligations.
>
> The Membership Committee may, when it deems such action advisable, notify the Council that any member is, in the opinion of the Committee, subject to termination of its membership or other discipline as provided in Section (6) of Article IV of the Constitution. The Council shall thereupon determine whether it shall or shall not initiate proceedings for termination of membership or other discipline of the member and the giving of the notice provided therefor in the Constitution.[33]

In a vote of the entire convention the motion which enacted this change passed 176 to 1.

At the urging of the Council the convention adopted a measure to limit the aid a student-athlete could receive. This came directly from one of the recommendations made in the twelve point program. The proposed amendment was entitled "Principles Governing Financial Aid" and stated:

> Any college athlete who receives financial assistance other than that administered by his institution shall not be eligible for intercollegiate competition; provided, however, that this principle shall have no application to assistance received from anyone upon whom the athlete is naturally or legally dependent.[34]

Initially the motion was criticized as too lenient, but it passed 168 to 0.

Out of the backlash of the 1951 college basketball gambling and point shaving scandal the NCAA passed an amendment establishing an Ethics Code:

> Individuals employed by or associated with member institutions for the administration, the conduct or the coaching of intercollegiate

> athletics, shall depart themselves with the honesty and sportsmanship at all times to the end that intercollegiate athletics, as a whole, their institutions and they, as individuals, shall stand for the honor and dignity of fair play, and the generally recognized high standards associated with wholesome competitive sports. The By-laws shall provide for a Committee to carry forward the principle of this section.[35]

The Convention also established a Committee on Ethics and empowered it to investigate members who violated the newly established Ethics Code. According to the NCAA:

> The Committee on Ethics shall consist of five members. The Committee shall be concerned with any incident or occurrence which is deemed by the Council of this Association to be detrimental to the welfare of intercollegiate athletics as a whole, and contrary to the principles set forth in Section 6, Article III of the Constitution. The Council, by a vote of two-thirds of its members, may direct the Committee to investigate any such occurrence or incident and ascertain all the available facts and information pertinent to the case.
>
> The Committee, in turn, shall report its findings with or without recommendations to the Council which shall review the report of the Committee and determine whether the facts warrant further action. If it is the judgement of the Council that the facts clearly indicate that the occurrence or incident was detrimental to the welfare of intercollegiate athletics as a whole, the Council shall:
>
> (1) Censure the person or persons, organization(s) or institution(s) responsible for the occurrence or incident; and
>
> (2) If the facts warrant, report the results of the investigation and the Council's decision to the Membership Committee of this association and to the Officers of any other organization which would have similar responsibilities or jurisdiction in such a matter.[36]

While the 1951 convention did not attract much attention, many important subjects were addressed by the body. Equally important was the way in which the NCAA, under the Council's guidance, handled these issues. In contrast to the previous two years, when the leadership of the NCAA learned it was going "too far, too fast" with association policies, resolutions with the same intent as those defeated in the past were passed at the 1951 annual convention because they were handled more pragmatically.

The Council had begun the year by studying conditions in intercollegiate athletics, developing a list of recommendations, and getting feedback from members of the NCAA. With the approval of all its members the Council drafted several amendments and effectively portrayed them as the recommendations of the NCAA's representatives from all parts of the country. The overwhelming way these resolutions were passed is good indication of how better organized the leadership of the NCAA was at the annual convention of 1951 than at the annual conventions of 1949 or 1950. Further testimony to the successful methods of the Council is the fact that at the annual conventions of 1949 and 1950 the association defeated measures designed to restrict behavior and enforce the association's rules, but at the annual convention of 1951 measures with the same intentions were passed.

A critical look at the major legislation passed by the association at the 1951 annual convention reveals that the amendments were designed to either limit competition between schools for student-athletes, restrict the behavior of participants in the intercollegiate athletic

industry, or establish and strengthen a mechanism to enforce NCAA rules. The motion that was passed which limited financial aid to student-athletes can be readily interpreted as an attempt to limit monetary competition for student-athletes. The establishment of a Code of Ethics was an effort by the NCAA to restrict certain behavior of the participants in the industry, while the organization of a Committee on Ethics was another attempt to enforce NCAA rules.

The establishment of a Membership Committee, larger than the Compliance Committee and empowered to enforce all NCAA rules, represented a second attempt by the association to prevent schools from violating its rules. While the Membership Committee had powers almost identical to those of the Compliance Committee the members of the association were more willing to accept the Membership Committee (i.e., there was considerably less objection to the establishment of the Membership Committee than there had been to the establishment of the Compliance Committee), because there were few specific rules for the Membership Committee to enforce. Nonetheless, the establishment of the Membership Committee was the beginning of the NCAA's effort to organize a mechanism to enforce its regulations. Once the mechanism to investigate and punish violators of NCAA rules was set up, the NCAA simply had to strengthen its limiting rules and it would have an effective enforcement device.

The legislation adopted in 1951 also provided insight into what direction the NCAA was heading. That is, efforts by the NCAA to restrict behavior and limit competition showed that the association was

rapidly becoming a regulatory body. When it is also considered that in a cartel producers organize to restrict competition and develop a method to enforce its rules it appears that the association of producers of athletic contests was making substantial progress towards cartelizing college athletics. The constitutional changes of 1951, adopted for reasons alleged to be in the best interest of amateur college sports (e.g., keep gambling out of college sports, remove the tendency for schools to make monetary payments to student-athletes), can also be interpreted as early efforts by the NCAA to establish a cartel in the intercollegiate athletic industry.

In 1951 the Membership Committee began to function according to the rules outlined in the constitution. Shortly after investigating several schools the membership committee discovered that it did not have the resources to handle all investigations. To allow them to investigate more cases the Membership Committee, with the approval of the Council, created the Subcommittee on Infractions on April 18, 1952.

The Subcommittee on Infractions consisted of members of the Council, who were appointed by the Membership Committee, and the NCAA's Executive Director, who served as chairman ex-officio. The Subcommittee on Infractions was authorized to review all allegations of violations of NCAA rules and investigate those which came from responsible sources. Once an investigation was concluded the Subcommittee on Infractions was instructed to issue a written report to the Membership Committee. The first Subcommittee on Infractions investigated many incidents but did

not turn up any violations until it investigated the basketball programs at the University of Kentucky and Bradley University.

The University of Kentucky had been the NCAA Basketball Champion in the school year 1951-1952, but in April 1952 three of its basketball players were convicted of point shaving and gambling. Public statements made by Judge Saul S. Streit, who presided at the trial and sentenced the players, led the NCAA's president to direct the Membership Committee to investigate the basketball program at the University of Kentucky.

The Membership Committee directed the Subcommittee on Infractions to investigate the basketball program at the University of Kentucky all the way back to the 1944-1945 academic year. The subcommittee found incidents of players who were considered ineligible under NCAA rules openly competing in NCAA events and repeated violations of NCAA statutes which prohibited intercollegiate athletics to receive pay. The volume of evidence dating back to 1948 indicated a consistent pattern of flagrant violations of NCAA rules by the athletic department at the University of Kentucky.[37]

The University of Kentucky disciplined its athletic program by limiting the number of scholarships it could offer, restricting where the basketball team could play, restricting appearances by the basketball team in postseason tournaments, banning the team from competing in the Southeastern Conference for one year, and reprimanding the basketball coach. These sanctions did not stop the Council from recommending additional punishment. The Council recommended, and the

members of the association at the annual convention of 1952 approved, these penalties:

1. The University of Kentucky be placed upon probation for the academic year 1952-1953;
2. The Association direct the members of the Association to refrain from competing with the University of Kentucky in basketball during the academic year 1952-1953;
3. The Association declare that the teams and athletes of the University of Kentucky are ineligible to compete in NCAA events during the academic year of 1952-1953, and
4. The Association direct the Council to review the athletic operations of the University of Kentucky at the summer meeting of the Council in 1953.[38]

Judge Saul S. Streit also sentenced three basketball players from Bradley University in the college basketball scandal. This led the president of the NCAA to recommend an investigation of the basketball program at the Bradley University. The Subcommittee on Infractions uncovered evidence of basketball players being paid and ineligible players participating in NCAA events. Even though Bradley University enacted penalties against its athletic department the Council recommended, and members of the NCAA at the annual convention of 1952 approved, these additional penalties:

1. The Association reprimand and censure Bradley University;
2. The Association declare the Bradley University basketball team to be ineligible to compete in the 1953 NCAA Basketball Tournament; and
3. The Association direct the Council to review the athletic operations of Bradley University at the summer meeting of the Council in 1953.[39]

Sanctions against the University of Kentucky and Bradley University were the first penalties imposed by the NCAA on its members under the post-Sanity Code system. The imposition of these penalties made it clear that the NCAA was serious in its efforts to enforce the code. The

approval of the penalties by the members of the NCAA also indicated that the members were more willing to condone penalties less severe than membership termination. Additionally, knowledge of the type of penalties the members were willing to approve made it easier for the Council to get the membership to approve its recommended penalties.

This experience revealed to members of the enforcement organization (the Membership Committee, the Subcommittee on Infractions, and the Council) how tedious it was to sanction a member school. After charges were investigated and it was decided by the Council that penalties should be imposed, the Council had to wait until the next annual convention before the sanctions could be approved and become effective. Given the problems caused by the time delay as well as the knowledge that the members of the association appeared willing to accept the Council's judgement on all penalties short of termination, the Council proposed changes in the constitution at the 1952 annual convention that would make enforcement of NCAA rules more efficient. The Council proposed:

> ...Disciplinary or corrective actions other than termination of membership or suspension may, on the recommendation of the Membership Committee, be effected during the period between annual Conventions by a two-thirds vote of the members of the Council 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.[40]

Adoption of this proposal would allow the Council to issue all penalties between annual conventions (except termination of membership) without approval of a majority of the association.

Criticism of this proposal came from the southern schools which did not like the principle of outside enforcement and also favored the imposition of sanctions by the entire association. Most southern schools preferred a system of voluntary enforcement because they had greater freedom (fewer restrictions) in recruiting and subsidizing student-athletes. Further, they did not desire an efficient mechanism to impose sanctions between annual conventions because their methods could be dealt with more swiftly. Voluntary enforcement and the imposition of penalties by the entire association translated into an advantage for southern schools in the production of athletic contests.

Typical of many who criticized the proposal, T. P. Head of Louisiana State University noted how the new rules look similar to old efforts that had been tried and voted down. He observed that this proposal "appear[s] to be the old Sanity Code dressed up in a different suit."[41] He was also insightful enough to see that schools that violated NCAA rules were penalized less severly when the membership of the association could review the sanctions than if the Council acted alone. Accordingly, he argued:

> It does seem to me that, if we have a complaint against an institution, this body as a whole should take the responsibility to discipline that institution, rather than to delegate the authority to a committee or a commission.[42]

Other schools argued that an enforcement mechanism that could deal quickly with those who violated NCAA rules was badly needed and the sooner all schools recognized this the better off the entire association was going to be. Clarence P. Houston, Chairman of the Membership

Committee and a member of the Council, was in favor of increasing the enforcement powers of the Council. He best summed up the arguments for the proposal when he said:

> So, if this motion to adopt these resolutions is not carried, I think it leaves us in a very awkward position. Having set up standards, weak though some of them may be, we are going to do nothing about observance and enforcement. We ought to give the Council the power it should have. It is clear that it has carefully, methodically and logically worked out this workable program. We should approve it so that it can be said with some sincerity that the NCAA is making at least an attempt to enforce the provisions of its Constitution.[43]

After a moderate amount of discussion the question was called and the motion passed 135 to 14.

The Council also introduced several other motions at the annual convention of 1952. One motion was designed to push back the date when a school had to be notified that termination of its membership had been recommended. Previously the constitution had required that a school be notified by the first of September if termination of its membership was going to be considered at the next annual convention. The Council, arguing that this time constraint interfered with investigations, pointed out that moving the date back to the first of November would make it easier for the NCAA to complete its investigations while still providing sufficient time for the schools in question to prepare a defense. The motion containing this proposal passed with no debate.

Two minor alterations of the constitution, changing the wording of the sections on institutional control of financial aid, were also made at the annual convention of 1952. By themselves these wording changes

were insignificant, but added to the many other rules in the constitution they reemphasized the effect of the major consitutional change, which was to make the method in which the NCAA enforced its rules more efficient.

The actions of the NCAA in 1952 demonstrated that the association, at the insistence of the Council, was determined to enforce its rules. Further, the endorsement of the first sanctions against member institutions (University of Kentucky and Bradly University) by the association revealed that a majority of the members of the NCAA favored flexible penalties for rule violators. During the Membership Committee's investigation it was also discovered that many administrative procedures in the enforcement mechanism could be improved. In response to this discovery the Council prepared, and the member institutions approved, changes in rules governing the enforcement procedure. Thus, the association's actions in this period indicate that it was clearly interested in establishing an efficient and effective mechanism to enforce its rules.

Efforts to strengthen the enforcement mechanism of the NCAA continued after the annual convention of 1952 with the "Conference of Conferences," held in Chicago, Illinois on February 7 and 8, 1953. Officials from twelve major sports conferences met and discussed different ways to prevent schools from violating NCAA rules. While many different approaches to the problem were offered all representatives at the conferences agreed the NCAA had to "get tough." Suggestions made at

this conference were the basis for constitutional changes at the annual convention of 1953.

During 1953 the Membership Committee was extremely active. It received allegations of thirty-five violations it believed warranted inquiry. By the end of the year nine cases had been investigated and dismissed, six cases had been reported to the Council and action taken, but twenty cases remained to be investigated. This back-up of cases led the Council to carefully review its procedures.

The Council studied the enforcement procedure and concluded that one of the reasons it took so long for a case to be investigated and acted on was because the procedure involved many steps, some repeating and duplicating work done before. Under the established procedures the Subcommittee on Infractions had to investigate and report to the Membership Committee, which had to report to the Council. Since all members of the Membership Committee and most, if not all, members of the Subcommittee on Infractions were also members of the Council, the process of reporting the case twice to essentially the same group involved duplication. It was decided that the Membership Committee could be eliminated and the procedure would be just as efficient.

In one motion at the annual convention of 1953 the Council proposed the elimination of the Membership Committee and upgrading the Subcommittee on Infraction to committee status. The Committee on Infractions would still have three members, but it would retain all the powers of the Membership Committee. In one of the shortest parliamentary

maneuvers at any annual convention the motion passed unanimously, without any debate or discussion.

The establishment of a Committee on Infractions centralized all NCAA powers of investigation in one committee. It made enforcement of NCAA rules less difficult because there were fewer steps to be completed. It also effectively removed all power from the Committee on Ethics and the Committee on Eligibility, each of whom were charged with maintaining their respective codes. For the most part the Code of Ethics and the Code of Eligibility became additional rules for the Committee on Infractions to monitor.

Other steps taken at the annual convention of 1953 to strengthen the NCAA's enforcement mechanism included the association's approval of a plan proposed by the Council to get all schools to certify they were complying with NCAA regulations. The plan, called "Certification of Compliance," required the chief executive officer of each university to certify in writing their school was not breaking NCAA rules in its dealings with student-athletes. The Council initiated the plan on May 7, 1954.

In 1954 the Council took punitive action against many more schools. Among the most widely publicized penalties were those imposed on the City College of New York, the University of Miami (Florida), Western Illinois State, and the University of Portland. In all the Committee on Infractions reported:

> Of the 52 cases, 39 have been completed. Of the 39 completed cases, the Committee reported violations of varying degrees in 14. These were subsequently acted upon by the Council of the

> Association. It was the Committee's conclusion that in 15 cases the allegations were unsupported and in 8 instances the alleged incidents did not constitute violations of NCAA requirements. There are an additional 13 cases in the Committee's active file at the present moment. It would be my thought that 8 of the 13 cases now in the active file will be handled at the first Council meeting following this convention [1954]. This is not to indicate whether the cases will involve violations or not.[44]

NCAA Efforts to Restrict Behavior in the Input Market Between 1954 and 1960

Restricting Competition for and Payments to Student-Athletes

Between 1954 and 1960 the NCAA enacted many rules that restricted the behavior of the producers in intercollegiate athletics. Prominent among these were restrictions on the methods that could be used to recruit athletes and limits on the compensation that could be paid to an athlete while he participated in college sports. While all NCAA rules adopted in this process were rationalized as preserving amateurism, these rules can also be interpreted as methods to limit economic competition between schools and control the cost of producing athletic contests. Additionally, when it is recalled that the viability of a cartel depends upon the ability of its members to restrict competition these NCAA efforts further support the idea that the NCAA was cartelizing intercollegiate athletics in this period.

In 1954 the Council adopted rulings that limited the monetary competition for student-athletes by restricting financial aid a school could offer. According to the Council's minutes:

> The Council considered two proposed revisions of Official Interpretations which would limit athletic aids to the undergraduate period of the

> recipient, and, also, place a ceiling on the amount of unearned financial aids an athlete might receive from all sources.
>
> It was the sense of the meeting (unanimous show of hands) that the Council issue an interpretation limiting aid to an athlete's undergraduate period and that Mr. Aigler should present the appropriate language for the Council's consideration at its next meeting.
>
> It was the sense of the meeting (unanimous show of hands) that college competition should be limited to undergraduate students, although the meeting recognized that this was a matter for institutional and conference attention rather than NCAA legislation.[45]

In a similar effort the Council began to study the practice of recruiting athletes. It established a special committee to

> ...examine various phases of the problem, including the development of boosters groups to pay the cost of prospective athletes' transportation, the time demand being placed upon high schools seniors by the official and unofficial representatives of universities and colleges, the excessive transportation of prospects, the unremitting pressure which is placed upon top prospects by overzealous recruiters, etc.[46]

Because payment of financial aid and recruiting were costs borne by the producers of athletic contests efforts to limit payments to student-athletes or restrict the behavior of a school while it was recruiting a student-athlete were also cost-cutting measures. Further, since each of these were methods whereby schools could compete for the services of student-athletes efforts to study and later regulate these practices were designed to restrict competition between schools.

The NCAA already had several restrictions on how a school could recruit a student-athlete. At the annual convention of 1949 the NCAA had established a by-law on recruiting. It stated:

> No member of an athletic staff or other official representative of athletic interests shall solicit the attendance at his institution of any prospective student with the offer of financial aid or equivalent inducements not permitted by this Association, his institution, or if his institution is a member of a regional conference, by such conference.
>
> No member institution shall, directly or through its athletic staff members or by any other means, pay the traveling expenses of any prospective student visiting its campus, nor shall it arrange for or permit excessive entertainment of such prospective student during his visit there.
>
> No member institution shall, on its campus or elsewhere, conduct or have conducted in its behalf any athletic practice session or test at which one or more prospective students reveal, demonstrate, or display their abilities in any branch of the sport.[47]

Again, adopting rules that prohibited certain activities (monetary or non-monetary payments, the payment of expenses while a school was recruiting an athlete) was a method of restricting competition between NCAA schools. However, the Council's desire in 1954 to examine the recruiting process more carefully indicates that the 1949 rules were not adequate.

The special committee appointed in 1954 to examine recruiting reported to the association in 1955. The special committee found that schools were spending large sums of money while recruiting student-athletes. This money was spent on lengthy, all-expense paid trips to the campus, lavish gifts, and often excessive entertainment of prospective student-athletes. Further, because groups separate from the university such as Alumni Associations or University Booster Clubs were able to raise money and willing to entertain prospective student-

athletes, universities often had no control over the recruiting activities that were occurring at their school.

The recruiting of student-athletes by member schools intensified in the 1950's. Because of the development of the airplane and the ease with which an individual could travel across the country a coach's effort to obtain superior athletes allowed him to search nationwide rather than just in the local area. As a result, the best athletes were actively sought by many more schools. Lynn O. Waldorf of the NCAA described recruiting in the mid-1950's this way:

> What are the problems of recruitment from the standpoint of an athlete? We have come a long way from the day when a father used to bring his son to visit the campus to make arrangements for the housing and opportunities to meet professors, etc. Now, it is not at all unusual for a boy who weighs 190 pounds and can run 100 yards in ten seconds with a football under his arm, to spend the greater portion of his senior year in visiting campuses. It is not at all unusual for the sought-after boy to visit six or eight campuses three or four times in some cases, one or two times in others. It is a wonder to me that a boy in his senior year is able to keep up with his studies to the point where he can graduate.
>
> In cases where home visitation is permitted I understand that many times a boy will be visited by 10-20 different coaches a great many different times.[48]

Some members of the NCAA desired to control recruiting because it disrupted the student's last year in high school. They argued that an athlete traveling around the country during his senior year could cause him to miss enough classes that he would not graduate. While all in the NCAA confessed concern for the high school athlete few believed this was the real reason the NCAA wanted to limit recruiting. A more plausible

explanation for the NCAA's effort to restrict recruiting comes from viewing it as another attempt by the NCAA to decrease the cost of production of athletic contests.

Because of the threat of another school recruiting a particular student-athlete a school would visit him and/or bring him to their campus several times. Given this, other schools in competition for this student-athlete were forced to visit him and bring him to their school several times. In this process all schools increased their expenditures. However, if the schools involved could agree to limit their visits and expense paid trips no school's recruiting position would be altered (i.e., in terms of convincing an athlete to attend, they would be neither better nor worse off), but all would lower their costs. Thus, NCAA efforts to control the number of times a school visited an athlete, the number of times a school could pay for an athlete to visit the campus, and how long an athlete could be entertained at the school's expense were efforts to save money for all the schools.

The NCAA also wanted to curtail recruiting because it had no way of knowing what took place when an athlete was being recruited. Because the NCAA limited financial aid to athletes the potential for sidepayments to be arranged between a student-athlete and a school was always present. Further, gifts and lavish recruiting trips that were within the pre-1955 limits set by the NCAA could be used to induce an athlete to attend a school. Because the process of recruiting offered schools a chance for pecuniary and non-pecuniary competition the NCAA

sought to control recruiting to limit this competition for athletes and in this way save money for all the schools.

Few felt that recruiting should be abandoned altogether, merely better controlled. In response to this desire by the membership the Committee on Recruiting proposed strict restrictions on recruiting that included limits on the length of an athletes' campus visit and the money that could be used to entertain the athlete during the visit. These restrictions were never considered by the association because they were not introduced at the annual convention. Instead, Earl S. Fullbrook of the University of Nebraska and Chairman of the Committee on Recruiting introduced legislation at the annual convention of 1955 to limit recruiting that was based on his committee's report. The modified limitations he proposed were:

> No member institution shall finance more than one visit to its campus for any prospective student-athlete, it being understood that only actual and necessary round-trip transportation costs between the student's home and the institution's campus shall be paid and the visit shall not take place if any high school class time is missed (unless written permission for this absence is given by the student's high school principal prior to the visit).
>
> No member institution shall directly or by any other means finance the transportation costs incurred by relatives or friends of a prospective student-athlete.
>
> No member institution shall arrange for or permit excessive entertainment of any prospective student-athlete.
>
> No member institution shall permit an outside organization or agency to utilize or administer funds for the purpose of transporting prospective student-athletes to its campus, it being understood that the pooling of resources by two or more persons for this purpose shall constitute such a fund; however, the foregoing prohibition does not apply to

> persons upon whom a given student-athlete may be naturally or legally dependent, and, further, any other person may transport or pay the transportation costs of a prospective student-athlete to visit the campus provided said person accompanies the student to and from the campus.[49]

Sizable opposition mounted to these proposals at the annual convention of 1955. Many felt that a national effort to control recruiting was impractical and believed that the individual athletic conferences should be the bodies that made these rules. This group introduced their own recruiting legislation. Their proposal, known as the Dartmouth Amendment, stated:

> No member of an athletic staff or other official representative of athletic interests shall solicit the attendance at his institution of any prospective student with the offer of financial aid or equivalent inducements not permitted by this Association, his institution, or if this institution is a member of a regional conference, by such conference.
>
> No member institution shall, directly or through its athletic staff members or by any other means, pay the traveling expenses of any prospective student visiting its campus, nor shall it arrange for or permit excessive entertainment of such prospective student during his visit there.
>
> No member institution shall, on its campus or elsewhere, conduct or have conducted in its behalf any athletic practice session or test in which one or more prospective students reveal, demonstrate or display their ability in any branch of sport.[50]

While the Dartmouth Amendment appeared similar to the restrictions proposed by the NCAA, the restrictions in the Dartmouth Amendment were actually less strict than those in NCAA legislation because they included no limitations on non-university bodies such as Alumni Associations. For precisely this reason the leadership of the NCAA was strongly against the Dartmouth Amendment.

Members of the Committee on Recruiting argued that the looseness of the Dartmouth Amendment, particularly the lack of limits on visits not funded by the institution (in the second paragraph), would lead to unchecked competition between members. The Committee on Recruiting felt that under the Dartmouth Amendment members would be unable to finance recruiting visits or entertainment and would be forced to solicit help from alumni groups. In the past athletic departments soliciting alumni help led to the creation of special funds for transporting athletes. These special funds, managed by sources outside the university, had often been used improperly. Additionally, once an Alumni Association got involved in recruiting it was difficult for a school to control their activities. This problem was particularly important because the NCAA had no method of controlling what transpired between the Alumni Association and a student-athlete. Frank N. Gardner of Drake University noted:

> I can assure you that the Committee of Infractions has found it extremely difficult to ascertain all that goes on between that alumnus and that boy to prevail on him to attend that institution even on a visit. I finally arrived at the position which was contrary to my original position. If we can arrive at greater control at the institutional level through such a proposal that has been advanced, then we can at least modify some of the present evils.[51]

At the annual convention of 1955 when the time came to consider changes in recruiting rules the Dartmouth Amendment, due to the date it was proposed, was considered first. The motion to accept it was passed by the association, but it was decided that an additional study should be made of recruiting practices. A motion that the Council study the

recruiting problem and submit definite recommendations at the next convention (1956) also passed.

At the annual convention of 1956 the Council reported the results of the year-long study it had conducted of the recruiting practices of colleges. The Council's study confirmed the major result of the study conducted the year before by the Committee on Recruiting, which was that schools were spending large amounts of money attempting to induce prospective athletes to attend their institutions. The Council concluded, as the committee had also done the year before, that unchecked competition between schools should be avoided so that all schools could save money.

The Council introduced a detailed amendment to the constitution designed to prevent competition between schools by outlawing many of the practices member institutions used when recruiting high school athletes. The proposals limited what a school spent on an athlete while he was being recruited (how many visits, how long each visit would last, etc.), prevented Alumni Associations from recruiting student-athletes without a university knowing about it, and included safeguards against unsanctioned competition for student-athletes by requiring all recruiting of high school athletes to be open and observable. The proposal stated:

> All funds for the recruiting of prospective student-athletes shall be deposited with the member institution. The institution shall be exclusively and entirely responsible for the manner in which it expends the funds.
>
> A members institution may finance one and only one visit to its campus for a given prospective student-athlete, such visit not to exceed two days

> and two nights. Only actual round trip transportation costs by direct route between the student's home and the institution's campus may be paid.
>
> No member institution may finance the transportation costs incurred by relatives or friends of a prospective student-athlete to visit the campus or elsewhere.
>
> No member institution may arrange for or permit excessive entertainment of any prospective student-athlete to visit campus or elsewhere.
>
> No member institution shall permit or allow any outside organization, agency, or group of individuals to utilize, administer or expend funds for the recruiting of prospective student-athletes, including the transporting, the entertaining, and the giving of gifts or services to prospective student-athletes, or to the relatives and friends of prospective student-athletes. The pooling of resources for such purposes by two or more persons shall constitute such a fund. The foregoing prohibition shall not apply to persons upon whom a given prospective student-athlete may be naturally or legally dependent; further, any person, at his own expense, may transport or pay the transportation costs of a prospective student-athlete to visit the campus of a members institution.
>
> Any staff member or other representative of a member institution desiring to visit a prospective student-athlete at the student-athlete's high school shall first contact the principal or his authorized representative, explain the purpose of his call and request permission to contact the student-athlete. Only if permission is granted may the contact be made at the high school.[52]

Since this proposal was solidly backed by the Council, whereas the previous year's attempt to impose similar restrictions had only the backing of the Committee on Recruiting, little debate ensued and the motion was passed.

In 1956 the Council of the NCAA also made a decision concerning the amount of financial aid that could be awarded to student-athletes. In the mid-1950's the Council began to issue official interpretations of

passages of the constitution. Shortly after the Council began issuing these official interpretations they were printed in a special section of the NCAA constitution. By 1956 the Council had developed an elaborate system of interpretations to better define what an amateur was, but only in 1956 did the Council officially begin specifying what an amateur student-athlete was allowed to receive in terms of compensation.

Prior to this time the Council had allowed a school to pay a student-athlete "commonly accepted educational expenses."[53] But without a more specific definition the NCAA ran into problems with schools that were providing student-athletes many things and who believed, honestly or not, that they were providing aid in accordance with the rules of the NCAA. In mid-1956 the Council decided to end the problems the NCAA was having with this vague definition of aid. It ruled that "commonly accepted educational expenses" were "tuition and fees, room and board, books and not to exceed $15 a month laundry money."[54]

This ruling by the Council established the first national limit on what a school could provide a student-athlete. It made investigations simpler for the Committee on Infractions because they were not forced to debate whether a payment to a student-athlete was justified or not. It was also the most blatant effort by the NCAA at that time to limit competition for the services of a student-athlete since schools had often used room, board, money, etc., as inducements.

At the annual convention of 1958 the NCAA instituted many minor changes in the constitution which had the effect of limiting competition between schools and ensuring that all efforts to attract student-athletes

were open and observable. Among the most obvious efforts to use NCAA rules to restrict the behavior of the members was a plan to ensure that the payments to student-athletes were easily observable. The NCAA amended the section of its constitution known as "Principles of Conduct of Intercollegiate Athletics" to include this additional restriction:

> In all cases, the institutional agency making the award of aid shall give the recipient a written statement of the amount, duration, conditions and terms thereof.[55]

Adoption of this section by the NCAA also made it easier for the Committee on Infractions to investigate the amount of financial aid a student-athlete received because it had to be documented.

Not all efforts to restrict competitive practices during the time period covered in this section originated in the Council of the NCAA. At the annual convention of 1955 the discussion about recruiting practices revealed that some athletic conferences had made their own arrangements to prevent fruitless competition for student-athletes. Delegates from the Southwestern Conference revealed a method they borrowed from the Southeastern Conference, called the Letter of Intent. According to a Southwestern Conference spokesman a Letter of Intent

> ...is a printed agreement drawn up within our Conference and passed on to our schools which in reality states that this prospective athlete agrees to enroll at the said institution, and within this document it states what he shall receive as far as financial aid is concerned. That is produced with copies and when finally completed bears the signatures of the athletic director, the coach, the faculty chairman of athletics, all representing the institution, and the prospective athlete involved, and either his parent or parents or guardian. It has several signatures on it. It must be filed in our Conference office within two weeks after being

> signed by all parties....A copy is retained in the Conference, and one is sent to the institution that signs the boy. We cannot sign any boys prior to April 1 of the year he plans to enroll in the institutions....There is no penalty if the boy does not enroll in the institution, but if that boy signed a letter of intent with one of our Conference institutions, he is ineligible if he decides to enroll in any other institution.[56]

Members of the Southwestern Conference had adopted the Letter of Intent in 1952 and most thought it was a good idea. Madison Bell of Southern Methodist University described its effect on recruiting, noting that "When a boy once signs the letter the other schools leave him alone and he doesn't have to worry about recruiters at his doorstep."[57] While Bell believed the advantages of a Letter of Intent came from the fact that a student-athlete did not have schools continuing to recruit him after April 1, it was obvious that schools liked the Letter of Intent because they could stop spending money on some student-athletes knowing that no conference schools would "steal" their recruits. At the annual convention of 1955, however, no official action regarding the Letter of Intent was taken by the membership.

The Letter of Intent reappeared at the General Round Table discussion at the annual convention of 1958. Round Tables were seminars that took place at each annual convention where several speakers gave short addresses on sports-related subjects and then questions and comments from the audience were entertained. By 1958 there were four of these seminars or discussions at each annual convention; the Athletic Directors' Round Table, the Faculty Representatives' Round Table, the General Round Table, and the College Round Table. The subject matter

often varied widely at these discussions, but at the General Round Table at the annual convention of 1958 members of the association discussed the establishment of a national Letter of Intent.

The Letter of Intent was brought up in discussions several years before and was adopted, at least in principle, by most members. By 1958 the NCAA was discussing the possibility of establishing one central Letter of Intent that all schools would honor. The restrictions in a national Letter of Intent would replace those limits in each conferences' Letter of Intent, which varied widely around the country.

At the General Round Table representatives of institutions from all over the country offered their ideas on the subject. Most wondered why a superior high school athlete would sign and commit himself when any school would enroll him at any time. Others wanted to know what would happen if any athlete changed his mind after signing a Letter of Intent.

Representatives of the Southwest, Intercollegiate (Big Ten), Southeastern, and East Coast Conferences went further than just offering opinions about the Letter of Intent. These individuals documented and detailed the Letter of Intent policy followed by their conference.[58] The discussion by these conferences of their individual Letters of Intent may not seem unusual until it is recalled that the Letter of Intent is a method of restricting competition between schools for student-athletes and the schools in these conferences are competitors in the intercollegiate athletic industry. Given this insight, this round

table discussion was actually an exchange of information between producers in an attempt to limit competition for an input.

In standard economic theory when producers meet and discuss methods to limit competition with the intent of adopting these restrictions, a cartel is considered. Accordingly, the effort by colleges to establish a national limit on recruiting which was designed to limit competitive practices was consistent with other NCAA attempts to cartelize the intercollege athletics industry. Additionally, the meeting and discussion of production techniques by producers of athletic contest in an effort to limit competition was identical to the actions that would be expected from producers in any industry seeking to restrict competition.

NCAA Efforts to Limit Athletic Competition and Save Money for the Member Schools

In 1955 the Executive Committee came under increasing pressure to sponsor an amendment to the constitution to make college freshmen eligible for NCAA events. During World Wars One and Two and for one year of the Korean War (1951-1952) the NCAA had passed special legislation making freshmen eligible to participate in college athletics. This special legislation was passed to ensure that sufficient manpower would be available so that colleges could complete their sport schedules. While most able-bodied undergraduates were in the service freshmen took their places allowing schools to continue their sport schedules (and earn money) rather than cancel them. Shortly after each conflict ended and upper classmen returned to school freshmen

eligibility was dropped. But in the mid-1950's there were many schools that wanted to continue to allow freshmen to be eligible.

At its August 1955 meeting the Executive Committee announced it would refuse to introduce the freshmen eligibility amendment because participation by freshmen in athletics would interfere with their school work. However, when it is considered that all athletics interfere with school work the use of this argument appears irrelevant. A more plausible reason for the Executive Committee's unwillingness to allow freshmen to participate can be seen when the economic interests involved are analyzed.

Because schools paid the student-athlete's expenses during his freshmen year when he did not participate in athletics some schools wanted an athlete to participate during his first year. But these schools failed to compare a student-athlete's expenses during the first year in college with what he could provide the school in his next three years (victories, sold-out stadiums). If a student-athlete participated in athletics during his freshmen year and found out he could not adapt to college, the school would have lost someone they had invested resources recruiting and training when he dropped out. Instead, by allowing a student-athlete a year to adapt to college the school stood a better chance of him not failing out. Thus, forgoing a student-athlete's participation in his first year so that he would be able to participate in his next three years was a rational decision.

No school, however, would voluntarily institute such a program because it would be put at a disadvantage relative to other schools.

That is, if one school decided to make student-athletes wait a year before competing, student-athletes would be less likely to attend that school, preferring to attend a school where they could participate in sports the first year. This would put the school that prevented freshmen from playing at a disadvantage when competing with other schools because it would have a difficult time attracting student-athletes.

To solve this dilemma the schools were able to work through the NCAA and establish a binding rule prohibiting freshmen from participating. With this rule all schools would be more assured of getting a larger (longer) return from each student-athlete. Additionally, any school that sought to postpone and thereby enhance a student-athlete's career would not be placed at a disadvantage.

In late 1959 the NCAA formed a committee to study the recruitment of alien student-athletes. This committee was formed because many foreign athletes were being recruited by American colleges and the NCAA had few rules dealing with this phenomena. In many cases these foreign athletes were older than the average American student-athlete and had been participating in an amateur system that was very different from the American system. Consequently, many new problems emerged that the NCAA had to study and rule on.

At the annual convention of 1959 an amendment was introduced to place an age limit on all alien student-athletes. Much debate ensued, but most members agreed that the motion was discriminatory and it was voted down. Nonetheless, after this vote members of the association

still expressed great concern for the foreign athlete problem and voted to study the subject more carefully.

Members of the association liked and feared the recruiting of foreign athletes for the same reason. Because foreign athletes had been trained in a different country and in some cases had recorded impressive performances (track and field stars were among the first foreign athletes to enroll in American colleges) the investment these athletes would require in training from American schools would be low. Thus, when given a choice between paying the NCAA restricted price for an American high school athlete who had been trained by a part-time high school coach or a foreign athlete who had been on a national team that utilized the best facilities in his country many coaches chose the foreigner.

However, because foreigners had previous training and in some cases were much better athletes than incoming American freshmen many members of the NCAA were anxious to restrict their participation in American college sports. They feared that a school with a comparative advantage in attracting highly skilled foreign athletes would dominate many of the college sports that were played internationally. Accordingly, these individuals wanted to eliminate this possibility by restricting the use of foreign athletes. As a result of this phenomena the association adopted an amendment at the annual convention of 1960 that stated:

> Participation as a representative of any team whatever, or as an individual, experienced in a foreign country by an alien student-athlete in each twelve-month period after his twentieth birthday, and prior to his matriculation at a member institution, shall count as one year of varsity competition as referred to in this paragraph.[59]

Because foreign athletes tended to be older (they often had to fulfill their country's armed service requirement after high school) the NCAA was able to limit their participation by adopting special rules that required the years they participated in athletics in their own country to be counted as years of college eligibility and forced foreign student-athletes to adhere to the NCAA's three years of varsity competition rule.

The restriction on the use of foreign athletes at the annual convention of 1960 was also designed to limit competition between schools. If the NCAA made it difficult to use foreign athletes by curtailing their eligibility and preventing the older and more experienced ones from participating for colleges in the United States, all colleges would be forced to draw on the same pool of American student-athletes, who had received approximately the same training. If all schools used inputs of approximately the same quality then competition would be more equal. By restricting the circumstances whereby foreigners could participate in American college athletics the NCAA restricted competition between schools.

At the 1960 annual convention the members of the association also passed an amendment to the constitution known as the Five Year Rule. The Five Year Rule received its name from the fact that it limited student-athletes to completing their three years of varsity eligibility in five years. It stated:

> He [a student-athlete] 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 or on compulsory church missions being excepted.[60]

By limiting a student-athlete's varsity participation to a period of five calendar years schools would be able to cut costs because they could not support a student-athlete beyond his fifth year. Further, by limiting participation to five years the NCAA also limited athletic competition between schools. Without the Five Year Rule schools were able to hold back student-athletes from competition (red-shirt) while letting them practice. In this way schools could field teams of older, more experienced student-athletes that would dominate competition. The adoption of the Five Year Rule still allowed coaches to red-shirt student-athletes for one year, but prevented any school from gaining an advantage by using much older, better trained athletes.

NCAA and Non-College Sports Groups

In 1954 the NCAA failed in an attempt to get major league baseball to limit its signing of college baseball players while they were still in school. In 1953 NCAA Executive Director Walter Byers had tried to persuade the major leagues from signing undergraduate baseball players to professional contracts. However, on January 30, 1954 owners of National League teams voted down any agreement with the NCAA 5 to 3. At the same time American League owners delayed any decision until a later date.

The move to establish an agreement with major league baseball was allegedly designed to preserve the amateur status of baseball players. A closer look reveals that this effort was actually an attempt to save

colleges and universities money. When an undergraduate signed a professional baseball contract a university lost a player they had recruited and trained. When a college baseball player turned professional a university suffered a loss without compensation. That is, when a student-athlete did not complete his three years of varsity competition a university was forced to forgo some part of the return on its investment in the student-athlete. The establishment of an agreement prohibiting the signing of baseball players while they were in college would prevent universities from losing a player for which they had spent resources to recruit and train.

In 1954 the Council adopted the following resolution, which automatically became part of the NCAA's "Recommended Policies and Practices for Intercollegiate Athletics":

> The Council recommends that members of athletic staffs of member universities and colleges should not participate as scout, player, official, coach or promoter in professional sports such as football, basketball, baseball, boxing, wrestling and ice hockey.[61]

This resolution, which advised members of college athletic staffs not to participate in professional sports, was conceived and passed partly because many of the non-athletes in the betting scandal of the early 1950's had been connected with both professional and college athletics. Consequently, this resolution was seen as an effort to remove the "evil" influences of professional sports.

This resolution can also be interpreted as an attempt to restrict the behavior of members of college athletics. By establishing codes that limit the conduct of individuals involved in the production of

athletic contests members of the industry need not worry about one individual obtaining an advantage over the other. In college sports it was envisioned that by preventing coaches from becoming involved in professional sports none would obtain skills or knowledge (about techniques, training, etc.) that all did not have. Restrictions on the behavior of the producers of college athletic contests can be seen as an effort to equalize competition by attempting to prevent some athletic staffs from getting an advantage over others.

At the annual convention of 1955 the NCAA adopted a motion to limit the participation of their members in high school all-star games. This amendment to the recruiting by-law stated:

> 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.[62]

This motion was introduced after a three-man committee on all-star events spent two years studying postseason high school football and basketball events. Their study concluded that the games were often poorly conducted, noting that many times athletes were injured. Further, the study observed that while these games were operated under the guise of charity little money ended up in the proper place. Some members of the NCAA worried this amendment would hurt legitimate

charities, but the NCAA satisfied them by pointing out that some all-star games could still be played if they were properly sanctioned according to the provisions of the last sentence of the amendment to the recruiting by-law (above).

While the NCAA claimed this amendment was adopted to protect prospective college athletes it can also be interpreted as a method to limit competition by restricting the behavior of the producers in the intercollegiate athletic industry. If a coach was allowed to participate in an all-star game he would have the opportunity to observe athletes interacting with others, practicing, and competing with equally skilled athletes under game conditions. This would give a coach an advantage in recruiting some of these athletes because he would be able to make a more accurate estimation of the type college player a particular high school athlete would be. Since all coaches could not participate in high school all-star games the NCAA made a rule prohibiting any college coaches from participating. Under NCAA rules all coaches could sit in the stands and observe the same event (an athlete performing), but none was allowed to obtain an advantage by working closely with the athletes. Thus, this effort to restrict behavior was designed to limit competition between colleges for high school athletes.

In 1957 the Special Committee on College-Professional Relations conducted a study of the relationship between college and professional sports. This committee was organized partially because the NCAA had been unsuccessful in its efforts to petition professional baseball to

stop signing undergraduates and many members of the NCAA were curious as to why this should be. These people wanted the committee to examine the administration and organization of professional sports. In addition, the committee also sought to study the major differences between amateur and professional sports in the United States.

In its report the committee recommended that legislation be introduced "to prohibit the members of the athletic staffs of member institutions from participating in organized professional sports as salaried employees."[63] This was based on the recommendation that:

> We [The Committee on College-Professional Relations] do not believe that any man can successfully serve two masters. The philosophies and concepts of college and professional athletics are too diverse to enable a staff member to be obligated to both.
>
> To be specific, a staff member of a college athletic department has a definite responsibility to counsel the young men who come under his tutelage. He not only counsels his students as to their college life, but he frequently is asked for and offers advice regarding post-college job possibilities.
>
> We believe that a staff member who is in the pay of a professional sports organization cannot offer his students objective advice.[64]

While the NCAA may have been quite concerned with the welfare of the students, this legislation (based on the committee's report) that would be introduced and adopted at the next annual convention was designed to limit the behavior of the producers of athletic contests so that none could acquire a skill from the professional leagues and gain a comparative advantage in the production of athletic contests.

In 1960 the NCAA was able to reach an agreement with professional baseball concerning the signing of undergraduates. While the agreement

was not exactly what the NCAA had desired, professional baseball did agree not to sign college baseball players during the academic year. This provided a measure of protection for schools that invested in the training of student-athletes, but fell far short of the NCAA's desire to establish a ban on all signings of undergraduates by professional baseball. This agreement, however, did allow the NCAA to spend more time on the problem of college baseball players participating in summer baseball, a problem that had plagued the NCAA since its formation.

NCAA's Enforcement Mechanism from 1954 to 1960

At the annual convention of 1954 the NCAA's enforcement mechanism officially received added support from other affiliated sports bodies. During the year, at the request of the Council, Executive Director of the NCAA Walter Byers surveyed many of the organizations that conducted prestigious regular or postseason tournaments. He asked each event's director whether it would honor NCAA sanctions against a particular institution (i.e., if a particular university was declared ineligible by the NCAA would the tournament also bar the school?). At the annual convention of 1954 it was reported that organizers of fourteen track and field, basketball, and football events agreed to comply. The fact that these athletic bodies would prohibit a school the NCAA sanctioned for violating its rules from participating in an athletic event made the Council's decision to declare a member ineligible more punitive.

1955 marked the first time the Committee on Ethics found an individual guilty of violating the NCAA's Code of Ethics. While the Committee on Ethics had most of its power given to the Committee on

Infractions it still was able to investigate major ethics violations. On April 25, 1955 the Committee on Ethics recommended and the Council endorsed a motion to censure Jack Gardener of the University of Utah for unsportsmanlike and unethical conduct concerning an incident that took place in the summer of 1953. The speed with which the Committee on Ethics responded to this violation (two years) and the severity of the penalty (short of being found not guilty, censure was among the lightest penalties an individual could be given) reveals that the Committee on Ethics had little real power compared to the Committee on Infractions, but it makes clear that the NCAA was determined to monitor the behavior of members of the college athletic industry.

In 1957 the NCAA conducted business without the publicity it had received in the early 1950's. During the year the Committee on Infractions sanctioned Montana State College, the University of Omaha, Indiana University, and West Virginia University. Each received one year penalties for their violations.

In 1957 the Council also adopted rules making enforcement of NCAA regulations more efficient. According to NCAA rules in 1956 once the Council imposed sanctions on a school the school could appeal the decision to the Council. This often led to the Council hearing the same case twice. In order to stop this duplication the Council ruled:

> When a penalty has been imposed by the Council of the Association, there shall be no review of the penalty by the Council except upon a showing of newly discovered evidence which is directly related to the Council's 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 on Infractions or Council.[65]

Because of this ruling the only appeal open to a school without new evidence was to the entire association at an annual convention.

This decision by the Council appears to have been made in an effort to make the enforcement process more efficient, but it had the additional effect of increasing the power of the Council. Without an appeal process for schools that did not produce new evidence the Council's decisions were final. The Council was not concerned with being overruled on the penalties it imposed and, with the exception of action by a majority of the association, the Council was left unchecked by the NCAA to penalize violators of the rules of the association.

Development of NCAA Regulation of the Output Market

Introduction

During the NCAA's first forty years members of the association made little effort to control the number of athletic contests each school played. While resolutions were constantly passed at the annual conventions recommending a certain number of football or basketball games be played no enforceable limits were set. As a result, schools were free to choose the number of games they played.

After World War One schools discovered that there was a large amount of money to be made by charging admission to college athletic events. Football, it was found, was the largest money making college sport. Additionally, in the late 1920's and early 1930's it was discovered that more money from college sports could be made by selling the broadcasting rights to radio stations.

The number of college athletic contests increased to meet the demands of the public. In football, for example, postseason (bowl) games were scheduled in an effort to match the best teams in the country. After World War Two, however, two events associated with the increased interest in college sports, one major and one minor, began to trouble the NCAA. The major event troubling the association was the advent of television broadcasting. The minor item was the increasing number of postseason football bowl games.

NCAA and Television

Effect of Television on Attendance: the NORC Study

The first college football game was broadcasted on television in 1939, but few initially paid much attention to television because there were only several stations and a few thousand sets in the entire United States. After World War Two, however, the television industry began to expand rapidly causing members of the NCAA to wonder about the effect television broadcasting would have on college sports. Some viewed television suspiciously, but most knowledgeable NCAA officials recognized that television represented problems similar to those created by radio broadcasting of college sports events and therefore it had to be studied. The most important question many officials wanted answered was how television broadcasting of college games would effect live attendance and gate receipts.

One of the first attempts by members of the NCAA to consider the effect of television occurred at the annual convention of 1947 at a Round Table session. The main speakers at the discussion were:

representatives of WBKB, a Chicago television station; Northwestern University, a school that began televising its football games in 1945; and the Don Spencer Company, a promotional group trying to convince the NCAA to grant it exclusive rights to market and sell college events to television. These representatives expressed the whole range of opinions about the effect of television broadcasting of college sports, particularly football.

Some believed that televising college football increased interest in the sport. People who shared this view equated the problems of televising football to the early problems with radio broadcasting of football. They noted that there had been a large outcry against radio broadcasting when it was first introduced, but that it did not have any of the detrimental effects on attendance that were predicted. In fact, they argued, it led to increased attendance because it spurred people's interest in the game.

While no attempt was made to introduce rigorous empirical evidence to prove these hypotheses most who argued this point believed causal empiricism supported them. The written statement of Harry Bannister of television station WWJ in Detroit, introduced at the Round Table discussion by the representative of the television industry, is typical of those who expressed this point:

> "There are any number of case histories involving teams which kept away from broadcasting while these general increases were piling up, and sooner or later, these teams found out they were missing the boat. When they started to broadcast their games, they, too, came in for the gravy.

> "In the case of television, I am positive, that radio's experience will be duplicated. It is quite possible that some fans who now pay their way into ball parks and stadiums to watch athletic contests will stay home and look at television instead. But the number of new people who will be interested in these sports by first seeing them over television is so much greater potentially, that it could well be true that if every single fan of today became a television viewer instead and stayed home, in very short order so many new fans would be created that they'd have to build parks and stadiums. And of course it is ridiculous to assume that any considerable number of present fans are going to be satisfied to sit home and watch television as a steady diet. Television will just whet the appetite for the real things.[66]

Some expressed the opinion that college sports events should be televised because of the service they provided people unable to make it to the stadium. Bill Durney, Assistant to the President of St. Louis University, made an argument in support of this viewpoint:

> "The television of St. Louis University's athletic events is a means of bringing collegiate sports to many people who haven't had an opportunity to attend the football and basketball games. During the 1947 football season, a group of approximately twenty elderly priests watched the St. Louis University football games on a television receiver. Were it not for television, they wouldn't have been able to see the Billikens play. We believe television is a service to a considerable number of shut-ins and others who would not be able to come to the stadium.
>
> "We also believe that through television we will be able to interest more people in the athletic activities of St. Louis University. It is also our opinion that we have a responsibility to the community of St. Louis and making athletic events at St. Louis University available to television is part of that responsibility.[67]

Harold P. See, manager of Baltimore television station WBAL, also believed this. He wrote:

> "Mothers, fathers, relatives and friends of the players in college sports do not always have the opportunity to see the person in whom they are particularly interested while he is engaged in collegiate sport. Television will aid this instance.[68]

Other arguments made to support the televising of college sports included the notion that it would provide publicity to a school. Harold P. See asserted, "Complete television coverage of college sports will, however, provide publicity for the institution which in the future will have no parallel."[69] It was also argued that television could be used to keep alumni affiliated with the school's endeavors:

> "The gate receipts for collegiate games in the large cities are primarily, so I understand, gained from people who never attended either of the colleges contesting in the particular sport. The alumni are scattered and satisfy themselves concerning the sports efforts of their alma mater by following the newspapers and listening to the radio broadcasts. The advent of network television may serve to restimulate the interests of many graduates in the activities of their school. Clever use of the medium by educational institutions may easily serve to bring forth contributions and donations to the sports budget from graduates who might have lost some interest.[70]

And, television broadcasting could be used as a training device for future athletes:

> "There is, according to law-enforcement agencies, nothing which makes a greater contribution in combating juvenile delinquency than stimulation of sports activities among the adolescent generation. Television sets will very soon be available in the medium-price range. Already young people gather around store windows watching sports events. Collegiate sports are noted for being handled in a clean, refined and sportsmanlike manner. This is, of course, no condemnation of professional sports, but the collegiate sport has the additional interest added by the fact that

> younger men are participating. To sum it up, the televising of collegiate sports can be partially considered to be public service matter.
>
> "The use of television in collegiate sports allows potential players, trainers and coaches continuous and intimate view of the playing action. The medium and close-up lens of the television system give any viewer a better appreciation of the technic [sic] employed in the sport and the skill, or lack of it, evidenced by a particular player.[71]

At the Round Table discussion Ted Payseur, the representative of Northwestern University, urged members of the NCAA to carefully consider the question of television broadcasting. Though he was neither in favor or against broadcasting of college games he noted that it was a relatively new phenomena and needed to be studied. He pointed out that Phil Wrigley, then owner of the Chicago Cubs baseball team, was also experimenting with televising sports events and had advised him, "We don't know a thing about television, and what is more, neither do the television people."[72]

Payseur also pointed out that in late 1947 there were nineteen television stations actually broadcasting, but fifty-four had received licenses and sixty-four more applications were pending so that in a year's time 137 stations could be broadcasting.[73] Further, in the previous one year period the number of television sets had increased from 8,000 to 170,000 and was expected to increase fivefold in the next year. Consequently, he believed that television was too new an industry for college sports to make any long term commitments and urged all NCAA members not to make television plans for periods longer than one year.

Don Spencer, of the Don Spencer Company, Incorporated, was at the Round Table discussion to petition the NCAA to let his company handle

the promotion of all NCAA television production. He took a more business oriented approach to the problems of televising college sports. In his opinion the most important television-related issue members of the association had to deal with was how it would effect attendance and gate receipts.

Spencer believed televising games would decrease attendance because of:

1. The close-up view offered by television.
2. Bad weather conditions.
3. Difficulty to get tickets and bucking traffic.
4. Out-of-the-way location of many stadiums.
5. Admission by television is free.[74]

As a result, he recommended:

> 1. The immediate appointment of a national NCAA television control committee headed by a National Coordinator or Commissioner.
> 2. The appointment of a national representative to handle the sale of television rights and to work with your NCAA committee for a sound and constructive national television program to benefit all of the colleges.[75]

Spencer strongly believed that establishment of an NCAA Television Coordinator and a national representative (his company) was the proper method for the NCAA to handle many of the problems caused by televising college games. He emphasized how this group would be in charge of deciding which area of the country should view what games and how the money earned from controlling the rebroadcasting of games and feature shows, which contained the more exciting moments of many college games, should be divided. In short, he believed this organization should be established for "the regulation and coordination of network sports programs emanating from colleges."[76]

Spencer also believed that the main tasks that the NCAA Television Coordinator and his national representative would perform were:

> 1. Establish general codes as to proposition of commercial time allocated to sponsors, acceptability of sponsors, and products, types of commercials and other related factors.
> 2. Formulate standard procedures for television contracts between colleges and advertisers.
> 3. Outline a constructive public relations program to be followed by the colleges specifically requiring sponsors to allocate time for promoting the individual college.
> 4. Provide a progressive national rate study for the information and guidance of all colleges.
> 5. Standardize rates on a sound national basis, assuring a fair return to all schools.
> 6. Eliminate bargaining of one school against the other by advertising in their attempts to purchase television rights.
> 7. Sell national advertising accounts which ordinarily cannot be contacted by each school.
> 8. Prepare and present professional sales presentations aimed at the top dollar.
> 9. Provide a well-planned and organized merchandising service for film releases on television.
> 10. Add impetus to sports on television through publicity releases.
> 11. Boost minor sports through special tie-in sales for sponsorship of football, basketball and other sports.[77]

The discussion at the Round Table at the annual convention of 1947 highlighted the major problems and interests involved in televising college sports events. The television industry believed, for reasons such as increasing fan interest or providing a public service, that the televising of college games should be encouraged. They conveniently chose to ignore the possibility that televising of college games might decrease attendance since their livelihood was based on ensuring sports events were televised. Thus, the owners of television stations, who

cared little about gate receipts and stood to gain substantially when games were broadcast, were understandably in favor of unlimited television broadcasting of college games.

Representatives of promotional companies, like Don Spencer, had an economic interest in ensuring that college maximized their revenue potential. Because of the self-interest involved Spencer recommended that the NCAA carefully control the broadcasting of sports events. In order to maximize revenue he recommended policies designed to regulate the sale of the broadcast rights of college sports to television and the administration of the sports once they were on television. Spencer, who would have contracted with the NCAA for a share of the television revenue, had a strong interest in recommending policies that would allow the NCAA to maximize revenue for the sale of broadcast rights.

As the annual convention of 1947 ended the NCAA found itself in a difficult position with regard to the television broadcasting of college events. Many members believed that the television problem was similar to the problem radio had presented twenty years before and would probably lead to increased attendance, but there was no solid evidence (i.e., an empirical study), to support this view. Further, these people failed to recognize that television provided entertainment more similar to actually attending the event than radio did. Thus, a good case was made by those who argued that this high degree of substitutability between television and attendance would lead to decreased attendance.

If this last point were true the NCAA would need to regulate television appearances by member institutions if it were concerned with

maximizing the membership's sports revenue. Doing this, however, would cause other problems because any steps to limit television appearances would infringe upon the rights of member schools to make separate agreements with television. Thus, by the end of the 1947 annual convention the NCAA was becoming more aware of the problems televising college games could present, yet it had few solutions. To determine the exact effect of television broadcasting on college sports the NCAA appropriated $5,000 for an independent agency to conduct a study.

At the annual convention of 1948 the results of the television study were made public. The study, conducted by Crossley, Incorporated, of New York, was little more than a survey of individuals' opinions about television and was conducted with questionable techniques. Nonetheless, the trends given by the results showed:

> 1. Football attendance dropped from 1946 to 1947; also from 1947 to 1948--though not enough to be alarming. But decrease in 1948 came in the face of acknowledged increase in interest by television. This increase of interest occasioned by television makes people want to see games televised but not go and buy tickets for them.
> 2. Television makes more persons football conscious, but the growth in contact with the game is through television.
> 3. The attendance percentage has been less for games at the season's end than for the season as a whole. Thus in 1948 television did not, as generally claimed for it, create interest which was translated into ticket purchases.
> 4. Eighty per cent of persons interviewed after seeing football on television readily admitted they enjoyed the experience, and one-third of them actually like it at the end of the contest.
> 5. Fifty per cent of set owners rate television as good or better than attendance, which is an alarming figure considering the rapid increase of the purchase and production of television sets.[78]

At the same time this survey was being conducted, the Eastern College Athletic Conference (ECAC) began examining the evidence the television industry used to argue that fan interest would be stimulated by television broadcasting. The television industry always cited professional baseball as a prime example of a sport that had televised its games and did not suffer a decline in attendance. College authorities dissected this argument and found

> ...[the television industry] took great pains to cite major league baseball attendance to prove the fact that it does increase attendance and that was a true fact in the large cities and in cities where television isn't considered on a large basis at all. But they neglected to tell you or give you the entire picture of baseball. They neglected to say how the minor leagues have suffered or these small teams around areas adjacent to the major league cities.[79]

Given the results of its own study of the subject and supported by NCAA research, the ECAC reasoned that television, "will have a great, if not fatal, effect upon small schools, and schools located in small centers of population."[80] Therefore, the ECAC concluded:

> 1. Television will definitely result in decreased revenues.
> 2. That television contracts should be made on a one-year basis only, and that no contract should be made in 1949 until after the results of the survey, which I refer to, are known; that audio and video rights should be kept separate in all broadcasting contracts; that filming of games for future television use, showing limited new shots, be restricted to three minutes or less. If they are for a longer period, then we feel that the college should be paid for that privelege.[81]

Ted Payseur of Northwestern University supported the ECAC's view of the effect of television on live attendance with his observation:

> I talked with Mr. Wirtz, who is the vice president and business manager, Chicago Stadium Corporation, and who is also in charge,... of the Olympia in Detroit, concerning the effect television will have on the Red Wing Hockey team and the Blackhawk hockey team....He states that previously they had been selling, you might say, poor seats, or standing room (they usually sell about $2,000 or $2,500 worth of standing room) until this year, when their games were televised. They are losing that, and they have lost some good box seat holders. They figure they are losing at least $2,000 or $2,500 a game, and over a period of 30 games that is quite a sum. They are going to eliminate television.[82]

Other universities argued that they had been televising games and it had not effected their attendance. Notre Dame was prominent among the schools that supported the view that television had no effect. Reverend John H. Murphy of Notre Dame pointed out:

> We do not know from one year to the next whether it is a good thing or a bad thing to televise our games. We have not noticed any attendance drop off in the two years we have had our home games televised, and all of the home games in the two years have been televised.[83]

Due partly to the lack of facts and partly to the division among the school over which policy the NCAA should follow no official action was taken by the NCAA at the annual convention of 1948. Instead the association decided to allocate more money to continue studying the problem. However, the discussion at the annual convention of 1948 about the NCAA's possible responses to television broadcasting of sports events revealed the differences in the interests of the members which were likely to emerge once the NCAA attempted to adopt a television policy that was binding on its members.

If it were true that televising games adversely effected attendance at small college games it would be expected that smaller schools would be in favor of a policy that restricted television broadcasts of sports events. Conversely, schools with superior sports programs that may have already sold the broadcast rights to their games and found no decrease in attendance would not be in favor of such an agreement. As a result of these conflicting interests any television policy the NCAA sought to adopt could be expected to run into opposition.

At the annual convention of 1949 a study of the effect of television on attendance at college football games conducted by a graduate student at the University of Pennsylvania was presented to members of the association at a Round Table discussion. This study showed that if television had any effect it was to increase attendance, though in areas where there were a large number of television sets attendance increased less than in areas in which there were few television sets. Further, by undertaking this study in the Philadelphia area, where there were many television sets and fifteen college teams, it was possible to conclude that "the fear that television of a big college would hurt a small college does not seem to be substantiated."[84]

While this study presented results exactly opposite those made public at the previous year's annual convention there are several important factors to note about this study. First is the fact that of all the studies conducted by the NCAA or an outside agency on the effect of television on college sports this was the only one to reach this

conclusion. It may be that the NCAA's studies were designed to intentionally support its interests (if the NCAA could prove television decreased attendance this would be a legitimate reason for the association to regulate broadcasting of sports events), but this appears improbable given the large number of different studies that were undertaken and the fact that most of these studies were conducted by groups not affiliated with the NCAA.

Additionally, while the major result of the study was based on the behavior of individuals living in a fifty mile radius from Philadelphia, no attempt was made to adjust for the fact that it was more densely populated than most of the country. Because the area had so many people it would be possible for attendance at college games not to fluctuate as people who had always wanted to attend a game but could not get a ticket were finally able to buy a ticket because other fans were choosing to watch the game on television. Without adjusting for population and the sports appetite of the area it was impossible to believe the results of this study were anything more than a record of the behavior of the citizens of the Philadelphia area and not a theory applicable to the entire United States.

Finally, it is interesting to note that this study was conducted at the University of Pennsylvania, which had been broadcasting its football games for almost ten years at the time the study was completed and would become one of the leading critics of NCAA regulation of television. Whether there was any connection between the University of Pennsylvania's desire to avoid NCAA regulation and the results of this

survey is unclear, but it is worth mentioning that in the conflict that would occur in the early 1950's over the attempt by the NCAA to regulate television broadcasting only the University of Pennsylvania would quote the results of this survey as evidence.

At the same meeting the ECAC presented results of the television survey it had conducted. The ECAC undertook this survey because it saw the NCAA would not complete its television study in time for the annual convention and because the ECAC had more experience with television and contained more association members than any other conference in the country. The ECAC conducted its survey by sending out 30,000 questionnaires and analyzing the 12,000 responses. It made a report to the annual convention of 1949 based on a preliminary inspection of 2,300 random responses.

From these responses the ECAC noted that 27.1 percent of the alumni of large colleges believed that television was better than actually attending a football game, while 38.3 percent of the alumni of small colleges believed this. According to these responses the ECAC reasoned that smaller schools would be more effected by the televising of football games than larger schools. On the basis of this fact the NCAA recommended

> ...the immediate appointment of an active and representative television committee of the National Collegiate Athletic Association with instructions that that committee make a thorough investigation of all material now available and report to the Executive Committee of the National Collegiate Athletic Association at the regular June meeting. Furthermore, if the study of the television committee indicates that action of any type should be necessary, that steps be instituted to provide

> for amendments to the Constitution of the National Collegiate Athletic Association in order that television be properly controlled.
>
> Pending any possible action at the 1951 convention, we urge that the National Collegiate Athletic Association recommend to its members that no television commitments be made beyond the 1950-51 college year.[85]

A motion that incorporated this recommendation was passed by members at the Round Table and later approved by the entire convention.

Tom Hamilton, on the athletic staff at the University of Pittsburgh, supported the ECAC's motion because of what he observed while a member of the football staff at the United States Naval Academy. He reported:

> Frankly, our experience was rather disappointing. As television sets grew in numbers in the area, our attendance figures went down, and from a monetary standpoint, which is probably a poor way of looking at it, the remuneration that came in from television only amounted to about 300 seats at the stadium, and we felt that probably thousands stayed away....at Pittsburgh I can state that I wrote to Father Murphy of Notre Dame after the announcement that Notre Dame was to televise their games in Pittsburgh on four of the Saturdays when we had home games scheduled at Pittsburgh. I told him of our concern.[86]

Schools in the Midwest were willing to support the effort to study the effect of television but not attempts to pass legislation to control it. Their representative reported:

> ... [University of] Wisconsin figures it [television broadcasting] did not affect their season ticket sales....Ohio State, for instance, has only one year of television. It has not affected them whatsoever in attendance....Minnesota, which has televisied two years, has the same opinion, that it does not affect them. They do not credit any decrease or increase to television....The University of Michigan has televised for three years. I think they had one of the largest attendance records in

> the country....The University of Notre Dame has not been affected either way....At Northwestern we televised for four years. I would say definitely it does not have an effect on our season tickets.[87]

Nonetheless, a committee was appointed to study television and told to report back to the association in one year, during which time all members of the association were advised not to make long-term television commitments.

The annual convention of 1950 began with the reports of the vice-presidents of the eight districts. In most 1950 reports a common theme of how television had adversely effected football attendance the previous fall appeared. Lloyd P. Jordan of Harvard University reported:

> The Athletic Directors, and other authorities concerned with the problems of college athletic administration, have been deeply concerned by the many problems posed by television during the 1950s. In most cases, colleges of this district have experienced a drop in attendance at football games and on the basis of careful analysis it would seem that "live" television is the cause for this attendance decline.[88]

Carl P. Shott of the Pennsylvanian State College reported:

> The Athletic Directors expressed deep concern over the falling off of attendance at football games. Traditional games are still packing the stadiums but the other games do not draw as they did formerly. A large majority reported that attendance was lower than last year - two were off as much as fifty per cent. Several reasons were given. The one mentioned most, as having the greatest effect, was television. It seems to be the number one headache at every college within video area.[89]

H. C. Byrd of the University of Maryland noted:

> Certainly, the minor games have been seriously affected by television, especially when games of

> major national importance were on the television program for that afternoon. This is a matter that has caused concern and needs careful study.[90]

H. P. Evert of the University of Washington observed:

> While the interest in intercollegiate competition on the Pacific Coast has continued to increase, it has not made itself evident by increased traffic through the turnstiles of the stadia. There is every evidence in this district to prove the contention of the athletic directors that this is due to the invasion of television....The inescapable conclusion is that television wound beyond the point of endurance.[91]

Because of the decrease in football attendance that many attributed to television broadcasting of football games, the control of television by the NCAA became a central issue at the 1950 meeting. At the Large College and University Group Round Table session representatives of many schools offered their opinions about what should be done. The ECAC called for a moratorium on live broadcasts of football games and wanted the NCAA to experiment with delayed television and different forms of cable television in an effort to determine how each effected attendance. Fritz Crisler of the Big Ten Conference revealed that schools in his conference had already met to discuss television and they had decided to ban live television in the 1950 football season. Both Crisler and Wilbur Johns of the Pacific Coast Conference shared the experiences of their respective conferences which indicated television had caused not only attendance but revenue to fall. They concluded, therefore, schools were correct in choosing controls on televisions.

To settle the question of whether televising games actually effected attendance the NCAA authorized the National Opinion Research

Center (NORC) to study the subject. Their survey was more credible than any of the previous ones conducted because it relied on statistics on attendance and television broadcasting, which were kept for the first time during the 1950 football season. The preliminary results of the study by NORC were presented at the Round Table session. They solidly supported the hypothesis that television led to a decrease in attendance.

The survey used the averages of attendance in 1947 and 1948 season to adjust for home and home series arrangements between schools which had stadiums of different sizes and would cause problems with the calculations.[92] The survey showed that in 1949 football attendance at all games was up 3.3 percent over the 1947-1948 average and that in 1950 football attendance at all schools was down .3 percent compared to the 1947-1948 average. But overall attendance in 1950, when there was more television broadcasting than the previous year, was down 3.5 percent from 1949. Further, when the schools in this survey were divided into groups of schools in areas receiving televised games and schools in areas not receiving televised games the statistics became more convincing. Between 1949 and 1950 attendance at football games fell 6 percent in areas with televised games while in areas without televised games attendance increased 2.5 percent. See Table 1.

The NORC study adjusted for team performance to see how this effected attendenace. While its findings supported the idea that the very superior teams (winning 75 percent or more of their games) would continue to draw fans even with television, the results also revealed

Table One

ATTENDANCE TRENDS FOR COLLEGES IN TV AREAS
AND OUTSIDE THEM

	Percent Change From 1947-1948 Average		Percent Change 1949 to 1950
	1949	1950	
All Colleges	+ 3.3	- 0.3	- 3.5
Colleges in TV Areas	+ 1.9	- 4.2	- 6.0
Colleges Outside TV Areas	+ 6.6	+ 9.3	+ 2.5
District 1 - New England	+ 2.6	-24.4	-26.3
In TV Areas	+ 0.7	-28.2	-28.7
Outside TV Areas	+12.1	+ 1.1	- 9.8
District 2 - East	- 5.8	-19.5	-15.5
In TV Areas	- 8.1	-23.0	-16.2
Outside TV Areas	+21.3	+33.3	+ 9.9
District 3 - Southeast	+ 4.7	+ 4.6	- 0.1
In TV Areas	+ 2.5	+ 1.6	- 0.9
Outside TV Areas	+ 7.4	+ 7.9	+ 0.5
District 4 - Midwest	+ 0.6	+ 1.0	+ 0.4
In TV Areas	+ 0.2	- 0.1	- 0.3
Outside TV Areas	+ 1.7	+ 4.1	+ 2.4
District 5 - West Central	+12.2	+11.4	- 0.7
In TV Areas	+11.1	+11.6	+ 0.5
Outside TV Areas	+13.8	+11.1	- 2.4
District 6 - Southwest	+16.0	+34.0	+15.5
In TV Areas	+26.9	+49.7	+18.0
Outside TV Areas	+ 4.9	+20.5	+14.9
District 7 - Mountain	+13.4	-10.2	-20.8
In TV Areas	+14.5	-18.7	-29.0
Outside TV Areas	+12.8	- 6.1	-16.8
District 8 - Pacific	+ 0.3	- 3.4	- 3.7
In TV Areas	+ 0.6	- 5.8	- 6.4
Outside TV Areas	- 1.5	+ 8.1	+11.0

1950 NCAA Proceedings, p. 147.

that television broadcasting dramatically effected attendance at games involving below average teams (winning between 25 and 49 percent of the time) and inferior teams (winning between 0 and 24 percent of the time). To highlight the magnitude of the effects of television the survey showed that all teams that played outside the range of television, except for the inferior ones, experienced increases in attendance during the same period. See Table 2.

The result that televising games adversely effected attendance was also supported in the NORC study of attendance in regions where television ownership varied. See Table 3. However, the evidence the members of the NCAA gave the hardest and longest look at was the record of the absolute number of people that attended games in 1950. See Table 4. This part of the study repeated the initial results that overall attendance in 1950 was down slightly from the 1947-1948 average but it also translated the 4.2 percent decrease in attendance inside areas with televised games and the 9.3 percent increase in areas without televised games into an actual number of fans. Realization that a 4.2 percent decrease in attendance in television areas represented nearly half a million fans who did not purchase tickets to games made NCAA delegates (often a school's athletic director or football coach) better understand the problem. These statistics were also divided into regions so that it could be shown which geographic areas were gainers (the southwest) and losers (the east) with unlimited television broadcasting. See Table 5.

After the results of this study were presented representatives of the NCAA's Television Committee presented their recommendations. Given the results of this study the Television Committee believed that

Table Two

ATTENDANCE IN RELATION TO TEAM PERFORMANCE

Colleges with Teams which Won	Percent Change in 1950 Attendance From 1947-1948 Average IN TV Areas	OUTSIDE TV Areas
75% or more of games	+ 9.8	+12.6
50-74% of games	- 2.9	+13.8
25-49% of games	-23.1	+ 2.5
0-24% of games	-22.7	- 1.5

1950 NCAA Proceedings p. 147.

Table Three

ATTENDANCE IN RELATION TO NUMBER
OF TV SETS IN AREA

Percent of families owning TV Sets	Percent Change in 1950 Attendance From 1947 - 1948 Average
50-59% (8 areas, 35 colleges)	-18.3
40-49% (11 areas, 29 colleges)	- 4.2
30-39% (9 areas, 15 colleges)	0.0
20-29% (14 areas, 28 colleges)	- 5.5
1-19% (13 areas, 21 colleges)	+11.1
Areas without television	+ 9.3
Colleges in areas where 30% or more of families own TV sets	-10.1
All other colleges	+10.7

1950 NCAA Proceedings, p. 148.

Table Four

1950 ATTENDANCE BY MAJOR AND MINOR COLLEGES

	1950 Actual Attendance	1947-1948 Average Attendance	Percent Change
Major Colleges	13,261,446	13,253,430	+ 0.1
Minor Colleges	1,399,861	1,457,226	- 3.9
Total	14,661,307	14,710,656	- 0.3
In TV Areas			
Major Colleges	9,190,244	9,569,118	- 4.0
Minor Colleges	838,275	903,549	- 7.2
Total	10,028,519	10,472,667	- 4.2
Outside TV Areas			
Major Colleges	4,071,202	3,684,312	+10.5
Minor Colleges	561,586	553,677	+ 1.4
Total	4,632,788	4,237,989	+ 9.3

1950 NCAA Proceedings, p. 148.

Table Five

ATTENDANCE IN MAJOR CONFERENCES

	1950 Actual Attendance	1947-1948 Average Attendance	Percent Change
Ivy League	1,120,025	1,498,252	-25
Southeast	1,765,922	1,784,342	- 1
Southern	865,331	791,058	+ 9
Big Ten	2,223,408	2,175,504	+ 2
Big Seven	974,775	790,982	+23
Southwest	1,221,891	879,479	+39
Mountain	366,494	429,425	-15
Pacific Coast	1,557,956	1,670,990	- 7

1950 NCAA Proceedings, p. 148.

football broadcasting, unless controlled, would continue to have an adverse effect on attendance. While a few schools with superior teams would prosper with unlimited television, most schools would suffer. Accordingly, they desired to institute a system to control television and allow schools to receive an appropriate payment for the rights to their games. The committee recommended that a moratorium be declared on live telecasting of college football games and a Television Steering Committee be formed with representation from the eight districts. The Television Steering Committee would be charged with working out the problems the NCAA was experiencing with television. It would establish an NCAA policy governing the use of feature (highlight) shows and other programs about college football while encouraging the use of pay television features such as cable (phonovision and skiatron) and theatre television.

The Television Committee's recommendations were accepted by the members at the Round Table and arrangements were made to incorporate the ideas into a motion that would be presented at the business portion of the annual convention. At both presentations of the Television Committee's recommendations most opposition to the plan came from the Universities of Pennsylvania and Notre Dame. These schools were opposed to the plan for many different reasons, but the best explanation for their objections comes from the fact that prior to the enactment of an NCAA television policy each school had been earning substantial revenue from televising its games. With a policy that limited or banned television broadcasting completely these schools would forgo large amounts of money.

Francis Murray of the University of Pennsylvania spoke out against both presentations of the Television Committee's recommendations arguing, despite the study by the NORC, that there were not enough facts to warrant the measures the NCAA recommended and he proposed that further study of the problems posed by television be conducted. He emphasized that the University of Pennsylvania had been televising its football games for ten years but attendance fell only in 1950. Murray believed this decreased attendance could have been due to the bad weather that fall (1950) as easily as television. He also questioned the legality of the agreement and, as is the practice of those who have an economic self-interest in an issue, he cited the public service they would be providing by continuing the old policy of unlimited broadcasts of football games.

Reverend T. M. Hesburgh of the University of Notre Dame also spoke against the moratorium. He asserted that a binding NCAA plan would hurt Notre Dame because the publicity from television attracted many of the quality students that made Notre Dame a "better school."[93] He also cited the public interest argument stating:

> Another thing we must always think of is the public because it is the public that supports our sports program, and the more of them that knows our program, that follows our program, the wider support we should get.[94]

Despite the appeals by Notre Dame and the University of Pennsylvania it was clear that few NCAA schools were in favor of their position and most felt they would gain under a policy of NCAA control of television. As a result, the recommendation of the Television Committee, which stated:

> "It is resolved that the members of the N.C.A.A. agree to declare a moratorium on live telecasting of college football games for 1951, and
>
> "It is further resolved that members will cooperate with the N.C.A.A. and the television industry to experiment with all types of television broadcasting to include such methods as delayed showing of films, use of highlights and special feature, Phonevision, Skiatron, theatre television, special controlled live telecasts, and any other methods which may be developed.
>
> "It is further recommended that a committee consisting of one member from each N.C.A.A. District be appointed by the Executive Committee to work on and direct this project of the N.C.A.A."

passed in a vote of the entire association 161 to 7.[95]

Passage of this resolution provided the NCAA with the most power it ever had in its forty year history to limit competition between producers in the intercollegiate athletic industry. Prior to the establishment of a television policy each school sought to maximize the revenue it earned from football. In this attempt it was rational to sell television broadcasting rights in addition to charging fans an admission fee. Because of the technical capabilities of television the broadcasts resulting from the sale of television rights caused more schools to become direct competitors for the spectator's entertainment dollar. With television a fan had the choice of attending a local game or watching a well-known team(s) on television. As the NORC study indicated more fans preferred to watch television, causing attendance to fall at almost all games.

Standard economic theory offers an explanation for the series of events the NCAA was experiencing. In any competitive industry producers of a product seek to maximize the revenue earned from selling their product. However, as all producers expand production the economic

profits of the group decrease and may become zero. This was what happened in college football in the late 1940's and early 1950's. As schools sought to earn as much money as possible from football they ended up competing with each other through television. This competition caused the school's earnings to decrease as the reports of the districts at the 1950 annual convention indicated.

Economic theory offers two solutions to the individual firm in this situation. Facing competitive pressures a firm can respond by developing a technique far superior to any of its competitors and dominate the industry by producing a better product. This method, however, involves a firm incurring considerable costs (research and development, marketing, etc.) and offers no guarantee that a firm will discover this superior technique.

The second method for firms to deal with small profits or losses calls for all firms in the industry to organize so that industry output is restricted and the product's price increases. By dividing the marketplace or setting quotas and establishing a mechanism to ensure the agreements are followed a cartel could be formed that would raise profits. Schools in the NCAA, confronted with this choice over how to secure larger profits, chose cartelization.

The moratorium on live television and the NCAA efforts to limit the use of television can be interpreted as methods of limiting competition between schools. Without the broadcasts of football games it would be expected that more fans would attend college games. Thus, the NCAA efforts to control television are equivalent to methods to divide the

marketplace and limit competition between producers and are consistent with competition limiting behavior described in cartel theory.

The establishment of a Television Steering Committee to organize and supervise the NCAA's television policy can also be interpreted as the method by which production quotas would be arranged and enforced. The Television Steering Committee had the power to select which games would be televised and where they would be shown. Because of this power it was capable of monitoring television programming to ensure that all were following the agreement. The ability of the Television Steering Committee to control production and monitor all arrangements only makes the similarities between NCAA efforts and the predictions of cartel theory more clear.

Because some members objected to the NCAA's television policy and it was feared that they would not adhere to the agreement the Council recommended that any school which did not observe the conditions of the resolution adopted by the annual convention of 1950 be declared a "member not in good standing." A mail vote by the members of the NCAA showed at least two-thirds of the members approved this idea. The membership also approved the Council's plan to recommend expulsion of any member who did not abide by the television resolution.

NCAA's First Binding Television Plan

The nine-man Television Steering Committee met frequently after the annual convention of 1950 to discuss the problem of television broadcasting. After consulting many authorities in the television field the Television Steering Committee adopted a plan that allowed it to

control the number of games broadcasted, the area in which the broadcasts would be shown, and how the revenues generated from television would be divided. The program called for:

> 1. One game a week would generally be broadcast on Saturday afternoons in each area during the regular season from September 22 to November 24.
> 2. On 3 of the 10 Saturdays during the regular season there would be a blackout in each area.
> 3. A team could only be telecast twice - once at home and once away.
> 4. There would be no restrictions whatever except on Saturday afternoons during the regular season.
> 5. The games to be telecast would be chosen by the sponsor subject to the requirements that different types of games (local games, sectional games, national games, etc.) be offered on different Saturdays.
> 6. A systematic study of the effects of this program on attendance at college football games would be made by the National Opinion Research Center.
> 7. Proceeds from the sale of television rights would be divided as follows: 40% to the contestant colleges and 60% to the N.C.A.A. for research and to promote the athletic interest of colleges throughout the nation.
> 8. Maximum encouragement would be given to theatre television, color television, Phonevision, Skiatron, postgame films and any other new methods under development.[96]

The Television Steering Committee unanimously adopted this plan and, contrary to what was envisioned, most complaints about it came from members who felt the program did not do enough to control the use of television.

Only the Universities of Pennsylvania and Notre Dame raised objection to the program based on the belief that it excercised too much control over the television appearances of the members. They also expressed concern over the proposed 40-60 division of revenue arguing that the Television Steering Committee had no authority in the constitution to institute this rule and that all schools should be

allowed to make their own financial arrangements with television. While it is clear that these schools argued this point because they had previously negotiated contracts that provided them with more money for television appearances than they would earn under the NCAA program, other schools agreed that the 40-60 division of revenue should not be undertaken without a vote of the association. Consequently, two months later the 40-60 division of television revenue plan was dropped and replaced with a plan to assess a fee on the schools whose games were broadcasted to finance future television research.

Even after the division of revenue plan was changed the University of Pennsylvania remained in conflict with the NCAA over the television policy and vowed that it would continue to broadcast all its home games. In response to this announcement the Council declared the University of Pennsylvania a "member not in good standing." As a result of this declaration four Ivy League schools, Cornell, Columbia, Dartmouth, and Princeton, who were scheduled to play football against the University of Pennsylvania in Philadelphia, informed the University of Pennsylvania they would not compete against them in the 1951 season.

The University of Pennsylvania believed the NCAA was in violation of antitrust laws and appealed to the federal Department of Justice for help. At this time, however, the Department of Justice was engaged in an antitrust case against the National Football League owners for banning together to negotiate the league's television contract and offered the University of Pennsylvania no advice. The University of

Pennsylvania then reconsidered its decision and agreed to abide by the NCAA's television policy.

When the NCAA announced its television policy many of the business interests it would effect were also upset. Television networks and sponsors were initially hesitant to negotiate with the NCAA hoping that the association would not be able to act collectively. Television set manufacturers also expressed opposition to the plan because they believed that the association's plan would effect the public's willingness to purchase their product. But when it was clear that the University of Pennsylvania had failed in its efforts to conduct its own broadcasting plan and all of the approximately 400 colleges in the NCAA were going to follow the NCAA's television policy then sponsors began to petition the NCAA for television rights.

In contrast to the NCAA's present television policy, where only the major networks bid for the broadcast rights to college games, interests other than television networks bid for and won NCAA football television rights.[97] No doubt this was because television networks were not as large as they would later become and automobile, oil, or appliance companies (sponsors) could negotiate with the many small stations that would be involved in broadcasting games as easily as the networks. In any event, the NCAA awarded the rights to the Westinghouse Electric Company because:

> 1. Westinghouse's thorough study of all aspects of the experimental plan, its well-conceived and superior program to carry out that plan, and its whole-hearted cooperation with the Committee in all phases of the plan.

2. Its willingness to participate in an extensive program of public relations for both the N.C.A.A. and the individual member institutions.
3. Its long record of active and intensive interest in college education, not only of its own worthy employees, but also of promising youths in no way connected with the company.
4. Its offer of 2 1/2 times the station rate as a minimum payment to the competing institutions was one of the two equally high bids.[98]

The Westinghouse Electric Company chose the National Broadcasting Company to broadcast the games, but other independent stations also carried games. In 1951, television broadcasted twenty games in which thirty different college teams appeared. The NCAA, in conjunction with the NORC, carefully monitored these broadcasts as part of statistical research into television and estimated that 35 million people viewed all or parts of an NCAA football game in 1951.

The broadcasting of games in 1951 went according to the plans of the NCAA. One game was broadcasted in all areas of the United States on seven out of the ten weeks of the football season and each area received no television broadcast (blackout) on three Saturdays of the season. Because it was not technically possible to set up the broadcasts by the first Saturday (September 22, 1951) this counted as one of the three blackouts in all areas. The other two blackout dates in each area were chosen by the Westinghouse Electric Company and the NORC.

The television plan of the NCAA was not completely arbitrary, however, because while it sought to control the adverse effects of television on attendance the plan also included efforts to secure the goodwill of the public. Rather than maintain its blackout policy at the

risk of alienating the general public the Television Steering Committee's plan was flexible enough to allow the broadcasting of games that were considered to be in the public's interest. A good example of this occurred on October 20, 1951 when the football game between Virginia Military Institute and Duke University was broadcasted.

Originally the game was not scheduled to be broadcasted but the Television Committee decided that because all proceeds were going to the Shrine Crippled Children's Fund and, more importantly, because the game was sold out, it would be televised. By broadcasting this game the NCAA not only built goodwill with the Shrine Foundation, it also produced an exception to its television policy it could cite as an example of its efforts to serve the public. Further, because the game was sold out the cost of obtaining this goodwill in terms of forgone attendance was relatively low.

The NCAA was also aware of the special relationship it enjoyed with the Federal Government. While there may have been questions about the legality of the NCAA's collective television policy, the Federal Government did not appear willing to investigate it. The NCAA in turn, did not want to make any effort to encourage the government to do so. Accordingly, the NCAA made special provisions in the broadcasting of the 1951 football season not to upset the government officials (who were also football fans) in and around Washington, D.C. (Congressmen, high ranking bureaucrats) who had the power to curtail the NCAA's television policy.

To ensure these special football fans were satisfied with the NCAA's policy the Television Committee made arrangements for the Washington, D.C. area to view a televised game between two of the nation's superior teams (University of Notre Dame and Michigan State University) when the area otherwise would have been blacked-out. The Waashington, D. C. area was originally scheduled for its second blackout on November 10, 1951, the same day that Notre Dame played Michigan State University in East Lansing, Michigan.[99] To accomodate the Washington, D.C. fans the NCAA pushed the areas' blackout date back until November 17, 1951 and showed the Notre Dame-Michigan State University game on television on November 10, 1951.

The NCAA rationalized this change by claiming it was done because "there was no game available for fans to attend on that date."[100] However on that date (November 10, 1951) the United States Naval Academy played football against the University of Maryland at Maryland's field in College Park, Maryland, no more than thirty miles from the center of Washington, D.C. Given the fact that fans could have gone to the Navy-Maryland game without much problem, a more plausible explanation for the NCAA's behavior comes from the fact that it was not anxious to upset football fans in Washington, D.C. who had the power to examine and perhaps halt the NCAA's competition reducing television policy.

While the NCAA's Television Plan was flexible when altering it meant increasing its goodwill with a specific group (Shriners, Congressmen) the NCAA also demonstrated during the 1951 football season that it would not alter its television policy simply because a group

brought pressure on it to do so. On November 24, 1951 the television plan called for the southeastern United States to be blacked-out for the third time. However, on the same date the University of Kentucky was to play the University of Tennessee. Louisville, Kentucky television station WHAS and the city's newspaper, the Courier Journal, mounted a campaign to get the game broadcasted. They argued that the game should have been broadcasted in the Lousiville area because it was a sell out. After the Westinghouse Electric Company, the NORC, and the Television Steering Committee decided to maintain the blackout the television station and the newspaper continued applying pressure, going as far as contacting the Department of Justice (which did nothing) and using its name in their campaign. These media organizations stopped when the University of Kentucky, which did not support their efforts, sent the Television Committee a telegraph stating it would not televise the game under any circumstance.

The television station and the newspaper insisted their pressure campaign was conducted in the best interest of the public, claiming they only sought to have the game shown so that area fans could enjoy the game. But this appeal by the television station and newspaper was also motivated by self-interest because they stood to gain monetarily when the game was broadcasted and, to this end, had recently invested in new electronic equipment to handle the game.[101] Their willingness to attempt to get the game shown on television (organizing the public, contacting the Department of Justice, etc.) indicated they perceived the rewards from broadcasting the game to be substantial.

The NCAA rationalized its defense of the blackout by claiming they had invested $50,000 on a research program and the accuracy of the results would be seriously jeopardized if the game were shown. While this may have been true it is just as plausible that the NCAA did not televise this game because it wanted to demonstrate that it was immune to pressure tactics. If it had given in to one group then it would have a difficult time rationalizing not giving in to all groups that mounted similar campaigns. Further, since television payments for all schools were to increase because of the NCAA's policy restricting television broadcasts this increase in revenue would be in jeopardy if the NCAA continually yielded to all pressure to show blacked-out games. In this case the NCAA's response to pressure from the television station and newspaper was logical because, unlike the broadcasting of the Shrine or the Notre Dame-Michigan State University game, which were also sold out, the association had little to gain (the goodwill of Louisville citizens offered the NCAA little compared to the goodwill of the United States Congress) and much to lose (by broadcasting the game the NCAA would be indirectly telling others they could circumvent the association's policy by applying pressure).

In addition to developing a policy for television broadcasting of football games the NCAA experimented with the use of theatre television, color television, cable television, and the sale of post-game film.[102] The NCAA found out that theatre television generated considerable amounts of money in areas which were blacked-out and noted that by the end of the season there were seats for 200,000 viewers in theatres

connected with the program. The NCAA's experiment with color television was postponed because of the demands of the Department of Defense during the Korean War and its cable television efforts went slow due to the general lack of knowledge about its potential. Nonetheless, in light of the large demands of the public to watch football cable television was seen as possible source of large revenue. Sales of football games films to be rebroadcasted were also encouraging and the Television Committee recommended they be continued.

Even with the NCAA's program of restricted television broadcasting attendance at all NCAA college games fell by 6 percent.[103] While this fall was due to many things besides television (records of the teams involved, changes in personal disposable income, etc.) the Television Committee noted that attendance at college games in television areas in 1951 fell only 4 percent compared to 6 percent in 1950. Other statistics supported the idea that the restrictions on television broadcasting had slowed the adverse effects of television on attendance, but the Television Committee and NORC felt the study they had made was too limited to be conclusive. Consequently, while the Television Committee felt restrictions on television broadcasting during the 1951 football season had reduced competition and helped attendance they urged the 1951 annual convention to adopt a television policy similar to the one adopted at the 1950 annual convention.

Live Attendance Increases: NCAA Television Plans Between 1952 and 1960

At the 1951 annual convention a large amount of discussion was devoted to the NCAA's television policy. The Television Committee

recommended that the following television plan be adopted for the 1952 season:

> 1. A television program for the 1952 season controlled and directed by the N.C.A.A.
> 2. The objectives of the program shall be:
> (a) To minimize the adverse effects of live television upon attendance at college and high school football games;
> (b) Within the limits of such control plan as may ultimately be adopted, to spread television among as many colleges as possible;
> (c) To provide television to the public to the extent consistent with the first two objectives.
> 3. The 1952 television program shall be worked out by a TV Committee to be appointed by the Council of the N.C.A.A.
> 4. The Committee shall give full consideration to the final N.O.R.C. report when available.
> 5. When the plan has been worked out by the Committee, it shall be submitted to the membership, of the N.C.A.A. for adoption by mail referendum vote.
> 6. No member of the N.C.A.A. shall make any contracts or arrangements for the televising of games for the 1952 season except in accordance with the approved plan.[104]

Representatives of most NCAA schools, who believed their institution gained through increased attendance or television payments under the NCAA's television policy, spoke in favor of the resolution, but the representative of the University of Pennsylvania, who felt his school was incurring large financial losses under the policy, was one of the few who spoke out against the television resolution.

Francis Murray of the University of Pennsylvania was very adamant in his desire to defeat the resolution by the Television Committee. He petitioned for the defeat of the resolution citing many reasons. He tried to convince members of the NCAA that the policy was not in the public's interest. He argued:

> The one year control of television by the National Collegiate Athletic Association has resulted in widespread adverse public reaction to the N.C.A.A. and to

> its member institutions in their intercollegiate athletic program.
>
> The attempt to force people to pay admission to stadiums by denying them the opportunity to see football games on television is a bad example of commercialism in collegiate sports and adds to the criticism of our institution on this score.[105]

He also argued that the policy was inconsistent with institutional control of athletics:

> To permit each institution to make its own arrangements for television provided these arrangements are agreeable to the individual opponents in the individual games is consistent with the long standing arrangements with regard to radio broadcasting of games.
>
> To permit each institution to make its own arrangements subject to approval of its individual components is likewise consistent with the Constitution of the N.C.A.A. which emphasizes institutional control of athletics.[106]

But Murray was most effective when he argued that the television violated federal antitrust laws.

Since it was the University of Pennsylvania's desire to negotiate its own television contract Murray sought to defeat the television resolution by quoting sections of the transcript of the antitrust trial of the National Football League which was being prosecuted because its members had organized its television contract collectively. Because the professional league's policy was similar to the NCAA's policy Murray tried to show that the NCAA's policy was illegal by quoting a passage from the trial's transcript which supported his point:

> "The Presiding Judge was Judge Grim and addressing his questions to Mr. Epes of the Justice Department who was prosecuting the case, the Judge asked this question: "Do your theories cover the college situation, the situation where the colleges agree to black out [sic] certain areas at certain times. For instance, the University of Pennsylvania, I believe was not permitted

> to televise its games because of the agreement among colleges. Would your theory cover the college situation as well?"
>
> "The gentleman from the Justice Department replied: "Well we feel that any agreement which restricts the sale of broadcasting and televising rights by a group, by group action, and takes away from an individual team its right to make its own determination is a violation of the Sherman Act."
>
> "The Court came back: "Whether it be an institution not for profit, like the University of Pennsylvania, or whether it be the Philadelphia Eagles, which is definitely a business for profit, would the same rule apply?"
>
> "Mr. Epes said: "We think so, Your Honor, although of course it is not the issue here. But we think so. A combination and conspiracy among a group of sellers which curtails the freedom of each to exercise an independent judgement on the areas in which and under what terms and conditions he will sell, have been consistently condemned under the Anti-Trust Laws."[107]

Murray was supported by representatives from several other schools, but their arguments were, for the most part, politely listened to and then ignored because the members passed the motion that adopted the television resolution 163 to 8.

A closer look at the problems the University of Pennsylvania had with the NCAA's television policy reveals that they are consistent with many of the problems that economic theory asserts will plague a cartel. Economic theory states that whenever a group of producers colludes and makes decisions collectively one of the first problems to emerge concerns income distribution. Cartel theory predicts that if the gains from membership accrue unequally but members make decisions in such a way that all opinions receive equal weight (e.g., one member-one vote in majority vote) redistribution of income from the wealthier members to the poorer members will occur. This may threaten the survival of a

cartel because without a decision-making rule that allows wealthier producers to block unfavorable income redistribution then those from whom income is being distributed would be willing to withdraw from the cartel unless there is a large penalty for withdrawing.

Given the predictions of cartel theory, the objections of the University of Pennsylvania (and Notre Dame at the annual convention of 1952) are consistent with the understanding of individual behavior in collusive groups. Without the NCAA's competition limiting television agreement the Universities of Pennsylvania and Notre Dame were able to sign sizeable television contracts. But once the NCAA organized a collective television policy then television income that would have been earned by the Universities of Pennsylvania and Notre Dame would instead be distributed to other schools that were paid for appearing on NCAA organized television. Further, under the decision-making rule of the NCAA there was little these two schools could do about it. Because a majority of NCAA schools stood to gain through the association's policy of restricting television broadcasting the Universities of Pennsylvania and Notre Dame were constantly outvoted on questions of television policy.

Notre Dame suffered one of the largest losses of any school under the NCAA's television policy during this period. It estimated that foregoing television appearances under the association's policy in 1951 cost the school $600,000 in 1951 and $1 million in 1952.[108] This caused Moose Krause, Athletic Director at Notre Dame to remark, "The NCAA started as an advisory body, then became a regulatory body and now

[1953] has become a confiscatory one.[109] However, neither Notre Dame nor the University of Pennsylvania withdrew from the association because the University of Pennsylvania's experience the year before (when schools threatened not to compete against them in football) showed both schools that without NCAA members to compete against neither school could fill a football schedule.

During the 1952 football season the NCAA's television policy allowed television games to be broadcasted on eleven Saturdays. There were eleven national games shown and twelve small college games shown involving a total of forty-six teams. Additionally, under the NCAA's sell out rule, ten more games were shown making the total number of football games broadcast in the 1952 season thirty-three. In all, fifty-one different college football teams appeared on television in the fall of 1952.

The fifty-one schools that appeared on television during 1952 divided $1,151,109.22, less a 12 percent assessment made on all revenue by the NCAA to cover expenses.[110] However, according to the NCAA's rules part of the money the association assessed (in excess of money used to pay expenses) was returned to schools. This money was divided among the fifty-one schools by a formula that was based on the number of stations that carried a particular game. Thus, the schools that received the largest payments were the United States Military and Naval Academies whose annual football contest was carried nationwide.

Under the NCAA's television policy overall attendance at college football games fell 1.1 percent between 1951 and 1952.[111] The most interesting statistics revealed that:

> For the country as a whole, paid attendance in 1952 was about the same as in 1951; but colleges facing TV competition remained 16 per cent below their average pre-television 1947-1948 base, while colleges which were not exposed to television competition drew 10 per cent larger audiences than they did in 1947-1948.[112]

And, while the Television Committee had no method to determine what would have happened to attendance with unlimited broadcasting it surmised:

> With unlimited telecasting at present saturation levels, one can only assume that attendance in TV areas, which will soon include the whole country, would again turn sharply downward.[113]

In 1952 the NCAA again employed the NORC to study the effect of television on attendance. To ensure the NORC was conducting the study properly the NCAA also hired Benson and Benson, a market-research organization, to evaluate the NORC effort. Benson and Benson concluded that the NCAA was conducting the study properly. They reported:

> Preliminary findings of the 1952 attendance study appear to confirm the 1951 findings that, even when the televising of college football is restricted, television has an adverse effect on college football attendance, which effect, in turn, is of less magnitude than was found prior to the imposition of such restrictions (1950).[114]

Based on the declining attendance and the reports of the two independent agencies that conducted surveys of the television problem the Television Committee recommended that

> ...the members of the NCAA hereby agree that there shall be a television program for the 1953 football season, to be directed by a Television Committee appointed by the Council of the NCAA, and to follow the general spirit and purposes of this resolution as above expressed.

> ...that said Committee shall hold hearings at which all interested persons shall have full opportunity to be heard and to proposals for the 1953 television program.
> ...that, as promptly as possible after such hearings, the Committee shall work out a plan to go into effect only if it is approved by mail-referendum vote of two-thirds of those voting.
> ...that no member institution of the NCAA shall make any committments, arrangements, or contracts for the televising of college football games for the 1953 season until the adoption of the approved plan, and then only in conformity with the provisions of the approved plan.[115]

However, while the previous year's television policy had met with little opposition the proposal of the 1952 Television Committee was vigorously opposed by the Universities of Pennsylvania and Notre Dame.

During discussion of the Television Committee's resolution Francis Murray, representing the University of Pennsylvania, launced a lengthy attack on the committee's recommendation as well as the results of the study conducted by the NORC. He began by noting that even though television was being controlled attendance at ten of the smaller schools in the Philadelphia area had declined, a result which he believed was opposite to what the NORC postulated. He continued by attacking the assumptions and the methods by which the NORC conducted its study, quoting an advertising executive who wrote:

> "The major fault with NORC research is that it is based upon a completely unsound and untenable theory. It uses the years 1947 and 1948 as its measuring base, and calls them the most normal of the postwar years for colleges. Almost any college president would have told them that these years were about the most abnormal peacetime years in the entire history of American colleges.
> "There were more than one million GIs in college during those years, with many of their expenses paid by the GI Bill of Rights, and with money they had saved during the war. A large number had wives living on the campus or near-by. They should have been much more

> likely to attend football games than the average student, but no study was made of this factor, so far as I know.[116]

Murray concluded by pointing out that professional football was involved in an antitrust suit and warned that members of the association should heed that trial as a warning against adopting a collective policy.

Notre Dame was also an outspoken critic of the television plan during 1952. It drew up a list of ten reasons why the Television Committee should not control college television broadcasting and distributed them to all delegates and the press.[117] But unlike the University of Pennsylvania, which used evidence and facts to try and convince members they were wrong to want to control of televising football games, Notre Dame appealed to the association by arguing that the policy was not in the public's interest. In the section of his speech to members of the association the representative of Notre Dame observed:

> Television can further this widespread public interest in collegiate football and, what is more important, can promote greater public interest in the educational institutions of which the teams are but one dramatic aspect.
>
> We believe that the current plans of restricted television have not been in the public interest. On the contrary, they have attempted to dictate what the public can and cannot see with little regard for what the public would like to see.
>
> .....
>
> We believe that public interest generally follows the same pattern which prevails regarding other events on television. The public interest is local, regional, and national.[118]

The appeals by the Universities of Pennsylvania and Notre Dame at the annual convention of 1952 demonstrated the costs each was willing to incur to ensure the NCAA's Television Policy did not pass. Under the

television policy both universities were having money redistributed from them to other members of the association. Indeed, based on the persistence of the Universities of Pennsylvania and Notre Dame it appears the redistribution involved large sums of money. Nonetheless, each had a large self-interest in getting the NCAA to return to a policy of unlimited broadcasts and, to this end, they used several different approaches. Their efforts were not successful, however, because the membership voted 172 to 13 to accept the Television Committee's general resolution and to vote by mail later in the year on the specific plan.

On April 25, 1953 the Television Committee sent each school a copy of its proposed television plan. By May 4, 1953 all voting was completed and it was revealed the plan passed 157 to 12. The National Broadcasting Company, which made a bid for college football television rights in association with General Motors, received the television contract.

Under the television plan that was in effect during the 1953 football season the NCAA arranged for one broadcast on each of the thirteen dates set aside. In an effort to ensure more teams appeared on television the NCAA television policy stipulated that a college could only be on television once a season (the one appearance rule) and that at least one game would be shown from each geographical district. The plan also allowed for sold-out games to be shown and under this agreement eleven other games were shown. Only three, however, were shown in addition to the scheduled broadcast rather than being substituted for the scheduled game. Under other provisions of the 1953

NCAA television policy the NCAA also conducted experiments with panorama presentations and cable television.

A panorama presentation consisted of showing parts of four football games in the time one would be played. Under the NCAA's plan television crews set up in college stadiums in Princeton, New Jersey; Memphis, Tennessee; Champaign, Illinois; and Iowa City, Iowa. During the time slot normally allocated for the broadcast of one game, parts of the games being played at these four cities were shown. While there were no technical difficulties involved in switching from city to city fans who saw the panorama presentation thought it was disjointed and over 90 percent of the individuals who contacted General Motors the next day disliked it. Consequently, the panorama presentation shown on October 24, 1953 was the first and last NCAA attempt to combine four live broadcasts into one show.

In contrast to the panorama presentation, pay-as-you-go television met with much success. The initial reports of several experiments with cable television indicated that fans were willing to pay to see games broadcasted. Three types of cable systems were said to be capable of functioning without difficulties. The three types were; phonevision (telephone hook up and charge), skiatron (ticket in slot), and telemeter (coin in slot). Yet in late 1953 the Federal Communication Commission still had not approved their use.

In 1953 a school appearing on a televised game earned substantial revenue. The National Broadcasting Company announced when it won the television contract it would pay "twice the standard hourly rate" and

during 1953 the NCAA, for the first time since television policies were established, did not set a rate but allowed each school to negotiate with the network.[119] Payments ranged from $50,000 to each of the four schools that appeared on the panorama presentation to a maximum of $123,930 to be divided between the schools that appeared on a game that was televised by 92 different stations.[120] The average payment during the season was $120,306 which was divided between the two schools that played.[121]

Even with the NCAA's policy of strict control of television attendance in 1953 at all college football games fell by 3.51 percent.[122] This prompted the Television Committee to recommend that it prepare a policy for the 1954 season similar to the plan used in 1953. The Television Committee issued a recommendation to the 1953 annual convention calling for it to prepare a television policy that would be voted on by the members through the mail and urging all schools not to make any commitments to television for the 1954 football season.

As expected, the Television Committee's recommendation drew criticism from the University of Notre Dame. While most of the arguments had been made at other annual conventions Father Edmund Joyce did make headway with some members by arguing that the method in which the NCAA Television Committee formulated the specific television policy allowed for little input from the members of the association, who were only given the chance to approve or disapprove the policy. Fr. Joyce was successful in passing an amendment to the television resolution that

called for the Television Committee to be more open to the suggestions of member schools when it formed the year's television policy.

Fr. Joyce was not successful, however, in getting the NCAA to change its basic television policy. He attacked the plan, using the NCAA's own statistics, to argue that the decrease in attendance showed that the current policy was not working. He also described the television policy of professional football, which allowed all games to be broadcasted if they were sold out, and wondered why the NCAA did not maintain such a policy.

The strength of Father Joyce's argument decreased considerably when it was revealed that the National Football League owners also employed a blackout policy similar to the NCAA's. Further, once it was noted that the National Football League consisted of twelve teams and had only six games per week to televise then the impracticality of the NCAA adopting professional football's solution to the television problem was obvious. In short, Notre Dame tried, for reasons of self-interest, to eradicate the NCAA's television policy but again it was not successful as the membership voted 172 to 9 to accept the Television Committee's resolution.

The television policy developed by the Television Committee for the fall of 1954 was similar to the plan used the previous fall. It called for one broadcast per Saturday, one appearance per school, and at least one broadcast originating from each of the eight geographical districts. Under this television policy attendance at college football games increased 2.2 percent in 1954, marking the first increase in attendance

since the NCAA instituted a television policy.[123] As a result, at the annual convention of 1954 the Television Committee recommended that a television plan very similar to the one used during the 1954 football season be employed in 1955.

Because the specific television policy was never formulated until mid-year the resolution offered by the Television Committee at the annual convention of 1954 was a general resolution calling for the formation of a committee to study and recommend a television policy that would be voted on during the year and prohibiting members from making any television commitments for the 1954 season. But, in addition to the general resolution submitted by the Television Committee, six separate and specific television plans were offered for consideration by the members at the annual convention, making passage of the Television Committee's resolution more difficult than it had been at any previous annual convention. These other television proposals drew their popularity from and stood in open contrast to the NCAA's plan over the issue of regional television.

Regional broadcasting consisted of restricting a broadcast to a specific geographic (region) area. The move to develop a television policy that allowed more regional broadcasts stemmed from the experience of the National Football League and was aided by the differences in the size and geographical area of conferences that composed the NCAA. The National Football League had been showing six games per weekend with each game being shown in the geographic area it originated from. The National Football League's regional policy appeared to be more popular

than the NCAA's policy of showing one national game to all areas of the country. The idea of college sports adopting a more regional policy also received support from conferences located in sparsely populated states with only one major college in a large area.

Because of the many opinions at the annual convention of 1954 about which television policy should be adopted, three different strategies were considered. The television strategy supported by the NCAA's Television Committee called for the readoption of the policy employed the previous year. A few schools supported a motion which called for the return to unlimited broadcasting. However, many schools expressed interest in one of the four national-regional plans introduced at the convention. Under each of these proposed television policies (they varied only slightly) the country would be divided into several television regions and each school would be allowed to broadcast one football game a year inside the region. Teams would be allowed to broadcast when playing at home or away and each institution would be allowed to negotiate its own television contract.

The idea of a regional television policy appealed to many schools because it offered fewer restrictions than the NCAA's national television policy. The regional plan was supported by conferences such as the Big Ten (midwest) and the Pacific Coast Conference (west coast) whose fans were located in large areas and whose teams had few schools in the area to compete with. It was opposed by schools in the east, which were located closer to each other than most other schools, because it would provide for more competition between the eastern schools. A

straw vote of the members revealed a regional plan was preferred to readopting the 1954 plan 84 to 81, but due to parliamentary procedure the only resolution members got to vote on was the one introduced by the Television Committee. It passed 102 to 71.

Though the Television Committee's resolution was adopted at the annual convention of 1954 the committee came under pressure to include regional broadcasts in its plan for the 1955 season. Responding to those who argued that regional broadcasts would stimulate interest in local teams and would result in increased ticket sales the Television Committee proposed a plan that called for eight Saturdays of one national broadcast and five Saturdays of regional broadcasts. The plan also included another attempt to capitalize on regional interest; the 400-mile exception. The 400-mile exception was

> ...a clause allowing a game played 400 miles or more away from the visiting team's campus to be released for telecast in the visiting college's home television station area, and in that area alone - provided that such arrangement would do no harm to any other game occurring simultaneously in that same area.[124]

Because the final NCAA plan included many of the provisions lobbied for at the annual convention it passed in a mail vote 193 to 27.

On March 26, 1955 the NCAA awarded its television contract to the National Broadcasting Company, which had been competing with the Columbia Broadcasting System for the rights to broadcast college football games. The National Broadcasting Company immediately won the right to broadcast on the eight national dates, but under the provisions of the NCAA's plan which left the teams to be shown on the regional dates open to direct negotiation between the institution(s) and any

television station, the National Broadcasting Company had to compete with other stations for regional contracts. Nonetheless, under the national-regional plan followed in 1955, 124 teams appeared on televisions. Further, attendance at NCAA games was up 3.3 percent over the 1954 season, to 14.5 million.[125]

Because the 1955 television plan worked so well, the Television Committee moved for adoption of a plan very similar to it to be used in 1956. The Television Committee's general resolution, which called for the study of television, the formation of recommendations, and the prohibition of television commitments until an NCAA television policy, passed with no debate. Even Notre Dame and the University of Pennsylvania, which had been against previous plans, did not object to the NCAA's plan which allowed them to occasionally broadcast on a regional basis and regain some of the revenue they had been forgoing under earlier NCAA television plans.

The specific television plan drawn up by the committee appointed at the annual convention of 1955 called for a national-regional broadcasting policy similar to the one used the previous year. The policy was approved in a mail vote by the membership 225 to 12. The NORC reported that this policy led to a 5 percent increase in overall attendance during the 1956 season.[126] Further, the NORC reported:

> ...we find that about a third of all games faced no television competition during the past season, and these games facing no TV competition were 8 per cent better off than those games facing television competition.
> .....
> Games facing the distant television teams were 8 per cent better off than games facing regional competition.

> Regional TV hurts the most, with average attendance off 16 per cent from the average game facing no TV competition at all.[127]

Because the television plan used during the 1956 football season had been so successful the Television Committee had little problem getting its general resolution for the 1957 television plan passed at the annual convention of 1956.

During 1957 the specific television plan was adopted by the membership in a mail vote 212 to 4. This plan called for eight national dates and four regional dates of broadcasting. In return, as much as $85,000 was paid to schools (and divided according to their agreement) that appeared on the national broadcast and $80,000 was paid to those schools (and divided accordingly) that appeared on the regional telecast.

The television plan used in the 1957 season led to a 2.7 percent increase in attendance.[128] Though the broadcast plan was similar to those used in the past four years the NCAA began to use television to deliver special "halftime messages." At the halftime of all football games the NCAA seal was superimposed on the screen and an educational message was read. The subjects covered by these messages included:

> 1. The Association's 52-year growth to a membership of 519 colleges and universities, athletic conferences and other organizations, all devoted to sound administration of intercollegiate athletics.
> 2. The Association's emphasis upon the fact that a college undergraduate is a student first, an athlete second.
> 3. The Association's development through one of its 13 sport rules committees of the new look in college football, the greatest of the athletic spectacles.

4. The Association's quest for expanded sports and recreational facilities needed by the increased college enrollment of the near future;
5. The Association's sponsorship of a 75-year-old series of national championship meets and tournaments now embracing 15 events:
6. The Association's Colleege Division program designed to promote the interests of the smaller institutions on its roll;
7. The Association's publication of Official Guides and Rules Books for 15 sports;
8. The Association's program for strict enforcement of rules requiring proper conduct of intercollegiate athletics.
9. The Association's embodiment of the country's colleges speaking of and acting upon athletic matters at the national level.[129]

It is interesting to consider why the NCAA undertook this "halftime message" program. No doubt part of the reason they disseminated this information had to do with money. By publicizing the fact that the NCAA published rule books it was envisioned that some people would purchase these books. However, an explanation for the majority of these messages that appeared altruistically motivated comes from considering the special need of the NCAA to be looked upon favorably by the public.

These messages were efforts by the NCAA to portray itself as a positive force in college sports not motivated by reasons of economic self-interest. The messages were shown in order to increase the stock of goodwill the NCAA maintained with the public. In this way the NCAA was able to enact restrictive measures, that perhaps could have been challenged legally, without the public questioning their motives. Constantly reminding the public that the NCAA only had college sports at heart allowed the association to proceed unchecked in other sports-related areas.

By 1960 the NCAA was experiencing record attendance levels at its college football games. As a result, adoption of a television policy no longer caused the problems it had in the early 1950's. In fact, in 1960 the NCAA decided to economize on the process of studying and reporting back to the annual convention with television recommendations by adopting a television plan and awarding television contracts over a two year period.

NCAA Control of Postseason Competition

The other problem the NCAA faced after World War Two was the growing number of postseason football bowl games. Though it was commonly believed these games were run by charities the NCAA actually knew little about them and grew concerned that as their number increased many improprieties were taking place. The NCAA was particularly concerned that participating member schools received a fair share of the revenue each game generated. To find out more about the financial arrangements of each bowl game the NCAA sent out a questionnaire to the sponsors of all bowl games in 1946.

The NCAA had believed there were as many as thirty bowl games, but only sixteen returned the questionnaire.[130] The information contained in the responses to the questions revealed that while some bowl games were run for charity, most were run for the profit of their sponsors. The sixteen schools that responded to the survey reported total gate receipts of $1,500,727.78 and an after-expense revenue of $202,569.46.[131] All games reported a profit except the Will Rogers Bowl which was conducted at a loss of $11,145.[132]

The NCAA was interested to learn the objective functions of the sponsors of each game and the amount of money paid to each school that participated. It also wanted to find out about the bowl games whose sponsors did not respond. In an effort to solicit more information the association decided to send out another questionnaire in 1947.

At the annual convention of 1948 the members of the association heard the results of the second survey conducted by the group investigating bowl games. Only seventeen of the fifty bowl games surveyed responded to the letter the NCAA sent out asking about the financial arrangements each bowl made with the schools involved. The NCAA was surprised to learn that the percentage of the revenue the bowl games generated which was given to the schools involved varied from 86 to 38 percent.[133] The unwillingness of the other thirty-three sponsors to report the relevant financial data from their games was also viewed with some suspicion by the committee that conducted the survey.

Based on the lack of responses and the few facts that were reported the group charged with investigating postseason football games concluded that an insufficient amount of money was being paid to schools that participated in bowl games. Their report recommended, and the members of the association agreed, that no NCAA school make committments to bowl games after 1950. Agreeing in 1949 not to contract with sponsors of games in 1951 made it possible for the NCAA to establish and institute a national bowl game policy which all association members would follow. Accordingly, the NCAA authorized the group that had conducted the study of bowl games to recommend a policy for postseason competition.

The Bowl Game Committee reported back with recommendations to control postseason competition at the annual convention of 1949. The committee recommended the NCAA constitution be amended to include a code of rules to control the management of the games, the participation of schools, and the division of the revenue. This code was the "Principles Governing Competition in Post-Season and Non-College Sponsored Contests.[134]

This code established strict rules governing the appearance of NCAA members in any postseason football game. It limited how often a school could appear by stating, "No members institution shall participate in more than one such game during any academic year."[135] It established rules governing what a participating school was to be provided in terms of tickets to the game:

> Competing institutions shall be allocated not less than one-third of the total seats in the stadium in such proportion as they may agree, or if they do not agree then with a minimum of one-sixth of the total seats in the stadium to be made available to each. An institution not requiring its full allocation of tickets shall make available its unused portion of the allotment to the other institution. All unsold tickets shall be returned to any sponsoring persons or organizations not less than 15 days in advance of the date of the game.[136]

The code specified how the revenue generated from the game was to be divided:

> The competing institutions shall receive not less than seventy-five per cent (75%) of the gross receipts, out of which each may be required to defray its own traveling and other team expenses incidental to the game. Not more than twenty-five per cent (25%) of the gross receipts shall be paid to or retained by any sponsoring person or organization, and out of such portion of the gross

> receipts shall be paid all game expenses including stadium rental, printing of tickets, ticket sellers, ticket takers, ushers, game officials, promotion, publicity, and any other expense.[137]

It also specified that the sponsors of postseason games were required to have NCAA representatives on their board of directors.

To ensure that these rules were followed the NCAA established a Committee on Extra Events which was charged with:

> (a) Receiving evidence insuring that any contests covered by this section [Extra Events] which are presently established comply with the qualifications pertinent to them.
> (b) Examining notices of intent for the inauguration of such contests, which are to be received from proposed sponsors only at an annual meeting of this Association and which the Committee will approve or disapprove at the succeeding national convention of the Association.
> (c) Certifying that any given contest meets these qualifications and other regulations of the Association.[138]

The efforts of the NCAA to control postseason football competition represents one of the most open maneuvers by the NCAA to use its rules to transfer income to its members. In many other events the NCAA couched its desire to control a practice in public service terms, arguing that its efforts were for the "good of the sport." However, the move to control postseason events, briefly argued to be designed to protect student-athletes from possible injuries, can be readily seen as a move to redistribute income from the sponsors of the bowl games to the members of the NCAA.

Given the efforts of the NCAA to study the bowl game situation and establish rules governing the percentage of the gross receipts the participating NCAA schools were required to receive it is difficult not

to interpret these rules as an effort to redistribute money. Indeed, the NCAA was so determined to ensure schools collected this money that they went on to define gross receipts so there could be no discrepancy. According to the NCAA rules gross receipts shall be

> ...all revenues derived from the game including sale of tickets (less taxes), concessions, programs, radio rights, video rights, movie rights and any other income derived from the operation of the game. Any complimentary tickets shall be accounted for at face value and shall become a part of the gross receipts.[139]

It is interesting to observe how the NCAA intended to ensure that the plan would work. Unlike the recruiting process, which needed to be watched carefully, the NCAA did not have to search the country for unsanctioned bowl games. Instead the NCAA chose to make its postseason plan work by certifying postseason games.

The NCAA, given its rules allowing a team only one postseason football appearance per year and its ability to certify games, was able to effectively restrict the number of bowl games played each year. Since the demand by the public to see these games was large then if the NCAA decreased the number of postseason contests by certifying fewer games the price the public would pay to see them would increase. The higher admission prices would lead to increased revenue generated by the games. The increased revenue made it possible for sponsors to pay expenses with a smaller percentage of the gate receipts and provided the participating schools with more money.

It is also worth contrasting the NCAA's postseason football game policy with simple cartel theory. Cartel theory states that producers

can organize and restrict the quantity of output, raising the price of the good and generating large profits. The NCAA's postseason policy, however, had characteristics identical to those presented in cartel theory. Through certification and rules limiting appearances the NCAA was able to restrict the number of postseason games, which theory predicts should have resulted in an increase in the money paid to schools participating in those games. By adopting this policy on postseason competition the NCAA took one of the first official steps to limit industry output (athletic contests) and in this way cartelize intercollegiate athletics.

At the same annual convention of 1952 the Committee on Extra Events detailed its efforts to certify postseason games. It reported:

> Following the 1951 season, there were 11 games certified and 10 of these were played. Following the 1952 season, there were nine games certified, all of which were played. They were: the Cotton Bowl, Gator Bowl, Refrigerator Bowl, Rose Bowl, Salad Bowl, Sugar Bowl, Sun Bowl, Tangerine Bowl, and Orange Bowl.[140]

Recalling that in the late 1940's there had been as many as fifty bowl games played and by 1952 the NCAA was only allowing nine games to be played another similarity between NCAA actions and the predictions of cartel theory can be drawn.[141]

Cartel theory asserts that efforts to restrict output will make all firms better off relative to the position they occupied in a competitive market. This is because firms in a competitive market will increase output causing the price of the good to fall, whereas in a market which restricts output, price of the product will increase. The NCAA made this happen in its handling of postseason football games.

In the late 1940's when as many as fifty bowl games were played there were so many postseason contests that considerable economic competition for the spectators' entertainment dollar resulted. This is partially supported by the fact that in 1946 one bowl game operated at a loss. However, by restricting the number of bowl games through the NCAA's certification process these games enjoyed more financial success. As cartel theory predicts the NCAA's policy of certifying postseason football games was used to restrict the number of games played, with the end result being larger revenue generated by the bowl games and increased payments to the NCAA schools that participated in the games.

At the annual convention of 1955 the Extra Events Committee reported on its efforts to control postseason games. The chairman reported that since the association instituted the ten football game limit a large number of schools which played only nine games had been asking if this meant they could play a postseason game. The committee felt this could not be done and urged members to avoid commitments from representatives of uncertified bowl games. The committee also revealed the football games they had certified for the upcoming season.[142]

After the 1955 annual convention the Extra Events Committee gave only a short report to each annual convention. In its report the committee usually outlined the postseason games it had certified. Nonetheless, the actions the NCAA took through the Extra Events Committee provide solid support for the hypothesis that intercollegiate athletics closely resembles a cartelized industry.

Other NCAA Regulations that Restrict Behavior in the Output Market

During the 1950's the NCAA took many other steps to restrict the behavior of the producer of athletic contests. In addition to controlling the televising of football games and the number of postseason contests the NCAA became interested in and eventually regulated many of the methods used to produce these games. This discussion traces the development of these NCAA's which were enacted in this period.

At the annual convention of 1951 the NCAA acknowledged it was interested in studying the number of contests played by each school, the length of the playing season, and the length of practice sessions during the regular and the off seasons. To undertake this study the NCAA established a five-man committee and required it to present recommendations about the possible "restriction of these three areas of athletic competition."[143] The resolution which established this committee also authorized the Council to submit its recommendations on the same subject at the next (1952) annual convention. However, to better appreciate the possible actions the NCAA could take consider the similarities between a football team producing a winning team and an individual firm producing a good.

In an effort to maximize profits a firm makes many decisions. It must decide what quantity and quality of inputs to use and how much output it should produce. With the exception of techniques that impose hardship upon a third party (e.g., polluting the air) this firm is

limited only by its imagination and its budget constraint in choosing the method by which it produces the good.

In a perfectly competitive market there is little cooperation between firms producing the good. While firms may act collectively to address an intra-industry externality they are forbidden by law to make collective decisions that restrict industry output or limit the competitive practices each firm follows. Because cartelization is forbidden under the Sherman Antitrust Act industry behavior is monitored by the Department of Justice to ensure it does not happen.

Return and consider what the NCAA's five-man committee proposed to study. At the annual convention of 1951 the NCAA, which was composed of most producers in the intercollegiate athletic industry, prepared to study the length of practice sessions and the number of contests played. In theory of the firm terms the length of practice sessions is equivalent to the use of an input and the number of contests played is equivalent to the quantity of the output produced. What the NCAA choose to study was the production process of an individual firm (team) in intercollegiate athletics.

Why the NCAA chose to study the production process of an individual firm is worth examining. Perhaps it was believed that when an athletic contest was produced an intra-industry externality was generated. Thus, if there was an intra-industry externality and the NCAA chose to enact legislation that addressed the problem then the function of the NCAA would be clear. However, if the production process was being studied because producers believed the cost of producing athletic contests was

"too high" or there were "too many" games being played, steps to remedy these problems would demonstrate that the NCAA was using its power to cartelize college athletics. Insight into what would happen when the committee studying the length of practice sessions and the number of games reported to the association comes from examining NCAA consideration for an amendment to eliminate out-of-season practice at the 1951 annual convention.

Victor O. Schmidt, representative of the Pacific Coast Conference, introduced an amendment to ban football practice prior to the first of September in one year and after the second of January in the next year. Few delegates at the annual convention of 1951 favored this amendment because its restrictions on practice were not strict enough. Instead, the delegates preferred to consider and pass an amendment proposed by members of the Southwest Athletic Conference which stated:

> Organized post-season practice in football shall be limited to twenty sessions in a period of thirty calendar days.
>
> Organized post-season practice in basketball shall be limited to twenty session in a period of twenty-four calendar days.[144]

This amendment was seen as a method to control spring football practice but delegates at the convention also believed it would allow student-athletes more time to study. Carl P. Schott of the Pennsylvania State University argued:

> It is most important I believe to define such limits as a means of providing our athletes with more time for study and other non-athletic activities. However reluctant we may be to admit weaknesses in our athletic practices, there is no question in my mind that highly organized sports such as football and basketball presently take entirely too much time from an athlete's

> educational pursuits. There undoubtedly are colleges and universities which do a good job of controlling these practices, but in the main abuses such as these persist only because of the absence of a uniform code.[145]

While this proposal did control spring football practice and may have provided student-athletes with more time to study it is worth considering how limits on the number of practices a team could conduct effects the cost of producing athletic contests and the degree of competition between schools.

The number of practices a team conducts is a decision a coach makes when he optimizes an objective function. In a firm in a competitive industry the decision whether to train an employee or how much training an employee should receive will be made after considering how this training will aid the firm in attaining its objective (maximize profits). Similarly, in the college athletic industry team practice (investment in human capital) will be used to achieve the team's goal (develop a superior team). Just as some firms will have more efficient managers some athletic teams are likely to have coaches who are more efficient than others and, because the quality of the inputs (student-athletes) is likely to differ from team to team, some teams will chose to practice more than others.

Limits on the number of practices not only decreases the total cost of producing athletic contests, but they can also be interpreted as methods of reducing competition between schools. While a firm in a competitive industry will seek an advantage over its competitors by varying production techniques, (e.g., working longer) one of the methods an athletic team can use to obtain a comparative advantage over its

competition is to practice more often. Thus, rules limiting the number of practices a team may hold reduces the possibility that one team may obtain an advantage over another. By instituting rules that prevented teams from developing an advantage over the others the NCAA was reducing competition between its members.

The committee to study the length of practice sessions and the number of games played, which was appointed the previous year, reported to the annual convention of 1952. It had conducted a lengthy study into many NCAA sports and found that most practice sessions were run safely, but it believed that the number of games played in some sports should be decreased. Due to the length of the committee's report and the fact that no member had had the time to study it, action on NCAA regulations governing the number of games or the length of practice sessions was postponed until the next annual convention. (However, no official action would be taken until the annual convention of 1954.)

During 1953 the NCAA appointed a Basketball Television Committee to study all aspects of the televising of college basketball games. The committee conducted an extensive survey but was unable to draw any firm conclusions.[146] At the annual convention of 1954 members felt this subject warranted more study and approved the committee's recommendation to continue investigating college basketball.

Other events that took place at the annual convention of 1954 included the introduction of legislation governing the number of contests and the length of time devoted to practice. This legislation stemmed from the findings of the committee appointed by the Council to

study the conduct of sports seasons. After making a thorough study they recommended that limits be established on the number of football and basketball games played each season and on the number of times prior to the season (preseason) that a team could practice.

At the 1954 convention the delegates first voted to move the section in the constitution on "Play and Practice Session" from the main body to the by-laws. This made changing the section easier because amendments to the by-laws required only a simple majority vote of the membership rather than the two-thirds majority required by an amendment to the body of the constitution. The delegates then considered and passed limits on preseason football and the number of football games played. They stated:

> Pre-season practice in football shall not begin prior to September first of each year or prior to two weeks before the first day of classes, whichever is earlier, and the regular playing schedule shall be limited to a maximum of ten games in a season (exclusive of post-season competition).[147]

The association also passed limits on preseason basketball practice and the number of basketball games played. These stated:

> Pre-season practice in basketball shall not begin prior to November first of each year; the first scheduled game shall not be played prior to December first, and the maximum number of regularly scheduled games shall not exceed twenty-six in a season (exclusive of post-season tournaments).[148]

The NCAA's policy of restricting the number of football and basketball games is consistent with the predictions of simple cartel theory which assert that profits can be raised if output is restricted. Accordingly, by decreasing the number of games played in each sport, it

is expected that schools would be able to charge a higher price for admission. While the NCAA justified this as an attempt to protect athletes from injury these rules were also efforts to restrict output, consistent with cartel theory.[149]

The effort by the NCAA to regulate the length of preseason practice can also be interpreted as a method to reduce athletic competition between schools. The ability of the school to develop a team superior to its opponents is limited if the time in which a team could train is restricted. Thus, rules designed to limit practice also decrease the possibility that one team can develop an advantage over the others in the production of skilled football teams. Rules such as those passed at the annual convention of 1954 limiting practices and, therefore, competition are also consistent with the competition restricting actions described by cartel theory.

The only constitutional changes at the annual convention of 1955 limiting the production methods of teams were measures designed to further restrict the time in which a team could train. It was found that since the number of games played in football and basketball had been limited some schools had begun to play more preseason scrimmages, thus defeating the purpose of the NCAA regulation. To make the guidelines stricter in football the NCAA adopted these restrictions:

> Pre-season practice in football shall not begin prior to September first of each year prior to two weeks before the first day of classes, whichever is earlier, and the total playing schedule for any intercollegiate team shall be limited in a year (September first of one year to August thirty-first of the following year, inclusive) to a maximum of ten contests (games or scrimmages) with outside competition (exclusive of one

> scrimmage or contest at the conclusion of spring practice, provided that the same be with a team composed of bona fide alumni or students, or both, and exclusive of one post-season game approved by the Association's Extra Events Committee).[150]

In basketball it was felt that schools needed more time for preseason practice. Accordingly, the date which preseason basketball practice would begin was moved up and other restrictions were adopted. The amendment stated:

> Pre-season practice in basketball shall not begin prior to October fifteenth of each year; the first contest with outside competition shall not be played prior to December first, and the maximum number of contests (games or scrimmages) with outside competition shall not exceed twenty-six in a year (October fifteenth of one year through October fourteenth of the following year), exclusive of post-season tournament contests held prior to April first. In the event November thirtieth falls on a Friday, the first contest (game or scrimmage) of that year may be played on that date. Practice scrimmages with outside competition may be permitted prior to December first but such scrimmages shall be counted against the permissible twenty-six contests.[151]

Once the NCAA began limiting the number of practices a team could hold those teams which wanted to practice more often held "meetings" and "chalk talks" in an attempt to circumvent, but not violate existing rules. In the early 1950's the Council began issuing official interpretations clarifying what a "practice" consisted of. By the 1955 annual convention, however, the council had developed a long and complex list of what was allowed and what was prohibited under NCAA rules.[152] Thus, the efforts by the NCAA to control production techniques and limit competition between member institutions forced them to develop a set of intricate guidelines to prevent members from sidestepping NCAA limits.

Between 1955 and 1960 no major regulations of this kind were enacted by the association. During this time the NCAA adopted several minor restrictions that limited production techniques and altered minor provisions of previously adopted restrictions. Nonetheless, the effort of the NCAA to use these rules to limit competition between schools and decrease the cost of producing athletic contests is consistent with the predictions of cartel theory.

By-Product Theory of Cartel Organization Revisited

At the beginning of this chapter the by-product theory of cartel organization was introduced. This theory asserted that cartels tend to emerge from professional associations of producers of a good or service who initially meet to discuss industry-related topics but often end up comparing prices, production techniques, and market shares. The formation of the American Medical Association and the establishment of rules restricting entry into the medical profession was examined as evidence of the validity of the theory. Now, however, it is possible to reexamine the activities of the NCAA from 1905 until 1960 and discover that the organization of the NCAA is also consistent with the predictions of the by-product theory.

The NCAA was organized as a response to the increasing violence in college football in 1905. The early functions of the association consisted primarily of standardizing sports rules, organizing tournaments, and enlisting members. During this time representatives of member institutions (football coaches and athletic directors) met

annually and discussed problems related to college sports, primarily football.

A plausible explanation for the actions of the NCAA from 1905 until World War Two is that the association was a group organized to internalize an intra-industry externality. According to this explanation the NCAA was formed in order to stop the violence in college sports. By establishing a set of football rules that prevented injuries the NCAA promoted safety and made football more exciting for fans to watch. One result of the formation of a set of football rules was an increase in demand by the general public to watch college football games.

After World War Two, however, the functions of the NCAA changed considerably. While the association continued to organize tournaments it also became interested in the compensation provided to those who participated in intercollegiate athletics, the production, and sale of athletic contests. But the early experience of the association showed that not all members complied with rules that restricted certain actions. As a result the NCAA was forced to develop a mechanism to enforce these rules.

In the late 1940's the NCAA attempted to inaugurate many of these rules too rapidly. In 1948 the association adopted the Sanity Code, a set of five principles limiting the aid a school could provide a student-athlete. This code met with general disapproval from the membership and was repealed, but within four years the association had adopted rules almost identical to those in the Sanity Code. Thus, this

experience indicated that adopting rules that limited the payments to student-athletes could be accomplished but only if they were enacted slowly and adequately enforced.

After World War Two the NCAA also discovered that there was a very large demand for its product. Not only were millions of fans willing to pay to see college games, but television provided additional revenue opportunities for schools. Television, however, was a mixed blessing because while it provided some colleges with money from the sale of their broadcast rights concurrent uncontrolled televising of college football games caused live attendance to fall sharply. To reduce the effect of television on attendance members of the NCAA organized the collective sale of television rights and limited the unrestricted broadcasting of college games. Nevertheless, four years after the adoption of a collective television plan college football attendance increased and continued increasing throughout the period covered by this chapter.

The NCAA's collective sale of television rights and the association's efforts to limit or reduce payments to student-athletes demonstrates the greater plausibility of cartel theory in explaining the actions of the NCAA than the intra-industry externality explanation. While the intra-industry externality explanation explains the actions of the NCAA until 1940 it does not provide any explanation for the appearance of NCAA policies after World War Two that restrict behavior. However, cartel theory does.

According to cartel theory producers in an industry may collude to restrict output and increase profitability. Through the NCAA, producers

of athletic contests were able to do just that. By restricting the sale of television rights the association was able to guarantee that they would receive a larger payment than if all schools competed in the sale of these rights. The restrictions on the sale of television rights also ensured that a television broadcast did not compete with a live game for customers which, as experience showed, caused attendance and gate receipts to decline.

Other actions taken by the NCAA that can be explained with cartel theory include the association's explicit restrictions on the payments to a student-athlete. According to cartel theory increased profits can be made if competition between producers in the input market can be limited. Thus, NCAA restrictions on payments to student-athletes and the means by which they could be recruited can be interpreted as limits on the competition between schools for student-athletes.

The evolution of the NCAA and its rules that helped increase demand for the industry's product and decreased the cost of production demonstrates the validity of the by-product theory. According to this theory after producers in the industry meet it is logical for them to discuss output and prices. Out of these discussions emerge efforts to restrict output and increase prices. Hence, once the producers of athletic contests began meeting in the NCAA a logical by-product of their discussions was a restriction on the sale of television broadcasting rights and the adoption of rules limiting competition for student-athletes. The development of the NCAA in this period is consistent with the by-product theory of cartel organization similar to the development of the AMA.

The actions of the NCAA between 1945 and 1960 reveal that cartel theory provides the best explanation for the organization of intercollegiate athletics. Admittedly, in its early years, the association functioned similar to a group correcting an industry-wide problem. But, during the fifteen years discussed in this chapter, when the association devoted most of its resources to manipulating the input and output markets, the NCAA functioned as a cartel.

Footnotes to Chapter IV

1. See the discussion in James M. Henderson and Richard E. Quandt, Microeconomic Theory A Mathematical Approach (New York: McGraw-Hill Book Company, 1980), pp. 175-190 and Roger LeRoy Miller, Intermediate Microeconomics Theory, Issues, and Applications (New York: McGraw-Hill Book Company, 1978), pp. 305-311.

2. Nowhere in George W. Stocking and Myron W. Watkins, Cartels in Action, (New York: The Twentieth Century Fund, 1946), a lengthy book about many of the cartels that have existed in the United States and in the international arena, is there a discussion about how any of the cartels were organized.

3. It is also possible and perhaps more probable to assert that the public does not really comprehend or care what the group is trying to do. This can be done by postulating rational ignorance on the part of the public.

4. Mancur Olson presents another by-product theory for collective action by certain groups in The Logic of Collective Action, (Cambridge, Massachusetts: Harvard University Press, 1965).

5. Abraham Flexner, Medical Education in the United States and Canada, The Carnegie Foundation for the Advancement of Teaching, (Boston: The Merrymount Press, 1910).

6. There is some question about how much original work Flexner did or whether he merely duplicated AMA research. For a discussion of this see Reuben Kessel, "The AMA and the Supply of Physicians," Law and Contemporary Problems, Spring 1970,. vol. 35, pp. 267-283.

7. James G. Burrow, AMA Voice of Medicine (Baltimore: Johns Hopkins Press, 1963), p. 1.

8. James G. Burrow, AMA Voice of Medicine, p. 2.

9. Ibid., p. 46.

10. Ironically, Abraham Flexner was not a doctor and had little training in science when he made his study of medical schools.

11. See Appendix I.

12. 1947 NCAA Proceedings, p. 222.

13. For a full description of the procedures used by the Compliance and Fact Finding Committees see Executive Regulation IV, "Regulation for Determining Qualifications for Membership or Continued Membership," in 1947 NCAA Proceedings, pp. 222-224.

14. New York Times, 18 April 1948, p. 17.

15. New York Times, 10 April 1948, p. 28.

16. After World War Two the NCAA's annual convention, which had been held in the last week of December, was held in January of the next year. Thus, the annual convention of 1949 was actually held in January 1950.

17. For this discussion see 1949 NCAA Proceedings, pp. 198-201.

18. 1949 NCAA Proceedings, p. 202.

19. Ibid., p. 195.

20. Ibid., p. 204.

21. Ibid., p. 205.

22. Ibid., p. 203.

23. 1950 NCAA Proceedings, p. 154.

24. Ibid., p. 168.

25. Ibid., p. 154.

26. Ibid., p. 209.

27. Ibid.

28. Ibid., p. 211.

29. Ibid., p. 215.

30. 1951 NCAA Proceedings, p. 106.

31. For survey results see 1951 NCAA Proceedings, pp. 101-102.

32. Television broadcasting of college games is discussed in the next section.

33. 1951 NCAA Proceedings, p. 262.

34. Ibid., p. 254.

35. Ibid., p. 220.

36. Ibid., p. 264.

37. See 1952 NCAA Proceedings, pp. 266-270 for the report on the investigation of the University of Kentucky.

38. 1952 NCAA Proceedings, pp. 269-270.

39. Ibid., p. 273.

40. Ibid., p. 313.

41. Ibid., p. 257.

42. Ibid.

43. Ibid., p. 260.

44. 1954 NCAA Proceedings, p. 267.

45. Ibid., p. 134.

46. Ibid., p. 264.

47. Ibid., p. 352.

48. Ibid., p. 161.

49. 1955 NCAA Proceedings, p. 196.

50. Ibid.

51. Ibid., p. 190.

52. 1956 NCAA Proceedings, p. 299.

53. Ibid., p. 208.

54. Ibid.

55. 1958 NCAA Proceedings, p. 249.

56. 1955 NCAA Proceedings, pp. 165-166.

57. Ibid., p. 166.

58. See 1958 NCAA Proceedings, pp. 192-202.

59. 1960 NCAA Proceedings, p. 288.

60. Ibid., p. 6.

61. 1954 NCAA Proceedings, p. 267.

62. 1955 NCAA Proceedings, p. 25.

63. 1957 NCAA Proceedings, p. 190.

64. Ibid.

65. Ibid., p. 234.

66. 1947 NCAA Proceedings, pp. 119-120.

67. Ibid., p. 121.

68. Ibid., p. 123.

69. Ibid.

70. Ibid.

71. Ibid., p. 126.

72. Ibid.

73. Ibid.

74. Ibid., p. 132.

75. Ibid.

76. Ibid., p. 133.

77. Ibid., pp. 133-134.

78. 1948 NCAA Proceedings, pp. 113-114.

79. Ibid., pp. 114-115.

80. Ibid., p. 116.

81. Ibid.

82. Ibid., p. 119.

83. Ibid., p. 121.

84. 1949 NCAA Proceedings, p. 108.

85. Ibid., p. 117.

86. Ibid., p. 118.

87. Ibid., pp. 119-120.

88. 1950 NCAA Proceedings, p. 34.

89. Ibid., p. 35.

90. Ibid., p. 37.

91. Ibid., p. 45.

92. Home and home arrangements were agreements between schools to play each other over a two year period at each school's home field.

93. 1950 NCAA Proceedings, p. 145.

94. Ibid.

95. Ibid., p. 203.

96. 1951 NCAA Proceedings, p. 154.

97. Among those bidding were the Chevrolet Motor Company, the Atlantic Richfield Company, the Westinghouse Electric Company, the National Broadcasting Company, and the Dumont Television Network.

98. 1951 NCAA Proceedings, p. 155.

99. This was undoubtedly an exciting game for spectators to watch since Michigan State University was ranked ninth in the nation by the Associated Press Poll in 1950 and would end the 1951 season ranked second in the nation. Notre Dame, always the fans' favorite, ended the 1949 season ranked first in the nation.

100. 1951 NCAA Proceedings, p. 157.

101. Ibid., p. 158.

102. Theatre television involved fans paying a fee to enter a theatre and see a live broadcast of a football game.

103. Attendance at all college games fell by 7.8 percent. See 1969 Report of the NCAA Television Committee, p. 39.

104. 1952 NCAA Proceedings, pp. 166-167.

105. 1951 NCAA Proceedings, p. 213.

106. Ibid., pp. 213-214.

107. Ibid., p. 172.

108. New York Times, 4 Jan. 1953, p. 4.

109. Ibid.

110. New York Times, 23 March 1953, p. 28.

111. 1969 Report of the NCAA Television Committee, p. 39.

112. 1952 NCAA Proceedings, p. 169.

113. Ibid., p. 170.

114. Ibid., p. 171.

115. Ibid., p. 173.

116. Ibid., pp. 175-176.

117. See New York Times, 4 Jan. 1953, p. 4.

118. 1952 NCAA Proceedings, p. 179.

119. 1953 NCAA Proceedings, p. 210.

120. Ibid.

121. Ibid.

122. 1969 Report of the NCAA Television Committee, p. 39.

123. 1969 Report of the NCAA Television Committee, p. 39.

124. 1955 NCAA Proceedings, p. 267.

125. Ibid.

126. 1956 NCAA Proceedings, p. 227.

127. Ibid., pp. 227-228.

128. 1958 NCAA Proceedings, p. 187.

129. Ibid., pp. 184-185.

130. These bowl games, listed by game, location, and sponsor answered the questionnaire:

Rose Bowl, Pasadena, California, Pacific Athletic Conference;
Shrine East-West All-Star, San Francisco, California, Shrine Temple;

Will Rogers Bowl Classic, Oklahoma City, Oklahoma, Veterans of Foreign Wars;
Sun Bowl, El Paso, Texas, Southern Sun Carnival Association. Directors are members of various service clubs, such as Rotary, etc.
Cotton Bowl, Dallas, Texas, Cotton Bowl Athletic Association. Appointed by Southwest Conference;
Oil Bowl, Houston, Texas, Houston Chamber of Commerce;
Raisin Bowl, Fresno, California, Fresno Junior Chamber of Commerce;
Sugar Bowl, New Orleans, Louisiana, New Orleans Mid-Winter Sports Association, a civic organization composed of 39 businessmen;
Tampa Cigar Bowl, Tampa, Florida, Egypt Temple Shrine;
Orange Bowl, Miami, Florida, Orange Bowl Committee, an organization of 42 Florida-minded men;
Gator Bowl, Jacksonville, Florida, Gator Bowl Association, an organization of local businessmen;
Tangerine Bowl, Orlando, Florida, Benevolent and Protective Order of Elks;
Pineapple Bowl, Honolulu, Hawaii, University of Hawaii;
Glass Bowl, Toledo, Ohio, University of Toledo;
Alamo Bowl, San Antonio, Texas, Benevolent and Protective Order of Elks;
Harbor Bowl, San Diego, California, San Diego Chamber of Commerce.

(1947 NCAA Proceedings, p. 183.)

131. 1947 NCAA Proceedings, p. 184.

132. Ibid.

133. The Cotton Bowl reported that it paid the two schools that participated 75 percent of the gross receipts; the Rose Bowl reported 70 percent; the Sugar Bowl reported 55 percent; the Orange Bowl reported 38 percent; the Salad Bowl reported 86 percent; the Glass Bowl reported 85 percent; the Pear Bowl reported 82 percent; the Tangerine Bowl reported 76 percent; the Gator Bowl reported 70 percent; the Sun Bowl reported 67 percent; the Gold Dust Bowl reported 56 percent; the Raisin Bowl reported 47 percent; the Burley Bowl reported 40 percent; the Junior Rose Bowl reported 33 percent.

(New York Times, 8 Jan. 1948, p. 31.).

134. See Appendix II.

135. 1950 NCAA Proceedings, p. 269.

136. Ibid.

137. Ibid. The initial division of revenue was 80 percent for the participating schools and 20 percent for the sponsors, but it was changed to the 75-25 split a year later in 1950.

138. 1950 NCAA Proceedings, p. 270.

139. Ibid., p. 269.

140. 1952 NCAA Proceedings, p. 225.

141. The knowledge that the number of postseason games decreased so significantly presents many questions about the elasticity of demand for postseason games. However, the lack of available data prevents any rigorous analysis and conclusions.

The most obvious question concerns the increase in revenue generated by these games as a result of the decrease in their number. The lack of data makes this impossible to accurately ascertain but footnote 22 in Chapter Six reveals that the payments to teams in some bowl games increased significantly. However, it is worth acknowledging that not all games were terminated as a result of NCAA action. No doubt some games, played in cold weather regions, ceased because of the harsh climate. But while it is difficult to discern which games were curtailed by NCAA action and what the actual effect on revenue was, the general result that the decrease in postseason games caused revenue to increase appears quite plausible.

The NCAA's handling of postseason bowl games also reveals that it was dealing with a complicated issue. The first item to note is why some games ceased to be played. True, the NCAA did want to increase the revenue generated by these games, but the association wanted to ensure these returns were paid to NCAA members. Hence, the association established a rule requiring 75 percent of the revenue from the game be paid to the schools competing in that game. By lowering the return to the organizers of the game the association undoubtedly discouraged the production of these games.

The association also faced the standard monopoly pricing problem when deciding which games it would allow to be played. No doubt the NCAA sought to establish an optimal rate of return from all bowl games, but had it been able to discriminate between postseason games it is likely that more could have been played. That is, if the association established a rule that 75 percent of the game's revenue be paid to the participating schools postseason games which only paid schools 25 percent of the revenue would not be paid. Yet bowls that were willing to pay the participants, say 60 percent of the revenue, obviously would have provided association schools with some money, but under NCAA rules these games could not be played.

This section of the chapter recognizes that the NCAA postseason policy involved many complex issues, some of which were not explored here because of the lack of data.

142. The games certified by the Extra Events Committee were; the Corn Bowl played in Bloomington, Illinois on November 24, 1955; the Cotton Bowl, Dallas, Texas, January 2, 1956; the Gator Bowl, Jacksonville, Florida, December 31, 1955; the Orange Bowl, Miami, Florida, January 2, 1956; the Prairie View Bowl, Prairie View, Texas, January 2, 1956; the Refrigerator Bowl, Evansville, Indiana, December 4, 1955; the Rose Bowl, Pasadena, California, January 2, 1956; the Sugar Bowl, New Orleans, Louisiana, January 2, 1956; the Sun Bowl, El Paso, Texas, January 2, 1956; the Tangerine Bowl, Orlando, Florida, January 2, 1956.

(1955 NCAA Proceedings, p. 259.)

143. 1951 NCAA Proceedings, p. 231.

144. Ibid., p. 227.

145. Ibid., p. 226.

146. For the report of the Basketball Television Committee see 1954 NCAA Proceedings, pp. 140-150.

147. 1954 NCAA Proceedings, p. 358.

148. Ibid.

149. It is worth noting that in the late 1800's and early 1900's schools played as many as sixteen football games a season with considerably less equipment and there was never any attempt to regulate the number of games played in the name of safety.

150. 1955 NCAA Proceedings, p. 259.

151. Ibid., p. 27.

152. See Appendix III.

APPENDIX I

PRINCIPLES FOR THE CONDUCT OF INTERCOLLEGIATE ATHLETICS*

Section 1. Principle of Amateurism. An amateur sportsman is one who engages in sports for the physical, mental or social benefits he derives therefrom, and to whom the sport is an avocation. Any College athlete who takes or is promised pay in any form for participation in athletics does not meet this definition of an amateur.

Section 2. Principle of Institutional Control and Responsibility. The control and responsibility for the conduct of both intercollegiate and intramural athletics shall, in the last analysis, be exercised by the institution itself.

Section 3. Principle of Sound Academic Standards. Athletes shall be admitted to the institution on the same basis as any other students and shall be required to observe and maintain the same academic standards.

Section 4. Principles Governing Financial Aids to Athletes. Financial aids in the form of scholarships, fellowships or otherwise, even though originating from sources other than persons on whom the recipient may be naturally or legally dependent for support, shall be permitted without loss of eligibility

(a) if approved and awarded on the basis of need by the regular agency established in the recipient's institution for granting of aids to all students, provided, however, that the aid thus awarded shall not exceed the amount of tuition for instruction and for stated incidental institution fees, or

(b) if approved and awarded on the basis of qualifications in which high scholarship on the part of the recipient is the major factor and such award is made by the regular agency established by the awarding institution for the making of such awards, provided, however, that the existence of such scholarship, fellowship or other aid and its terms are announced in an official publication of such institution, or

(c) if awarded on the basis of qualifications of which athletic ability is not one, and the existence of such scholarship, fellowship or other aid and its terms are announced in an official publication of the institution.

Any student receiving aid permissible under (b) or (c) shall, however, not be awarded aid under (a) except to the extent that the aid awarded him under (b) or (c), or both, falls short of that permissible under (a).

In all cases the agency making the award of aid shall give the recipient a written statement of the amount, duration, conditions and terms thereof.

The acceptance of financial aid not permitted by the provisions of this section shall render the recipient ineligible for intercollegiate athletic competition.

(d) Any scholarship or other aid to an athlete shall be awarded only through a regular agency approved by the institution for the granting of aid to all students.

(e) No athlete shall be deprived of financial aids permitted by paragraphs (a) (b) and (c) of this section because of failure to participate in intercollegiate athletics.

(f) Compensation of an athlete for employment shall be commensurate with the service rendered.

(g) No one shall be denied student aid because he is an athlete.

(h) Nothing herein shall, however, be construed as a disapproval of indirect aids in the form of benefits reasonably incidental to actual participation in intercollegiate athletics, such as medical attention, meals on sanctioned trips, and during officially-sanctioned practice periods while the institution is not in session, and one meal per day while on the home campus during the season of the sport in which the recipient is engaged.

Section 5. Principle Governing Recruiting. No member of an athletic staff or other official representative of athletic interests shall solicit the attendance at his institution of any propspective student with the offer of financial aid or

equivalent inducements. This, however, shall not be deemed to prohibit such staff member or other representative from giving information regarding aids permissible under Section 4.

*1947 NCAA Proceedings, pp. 212-213.

APPENDIX II

EXTRA EVENTS*

Section 1. No member institution of the National Collegiate Athletic Association shall compete in any football games that is not scheduled as to the identity of a participating collegiate team before the beginning of the regular football season of the college for any academic year, unless the given contest complies with the following requirements:

(a) Any non-collegiate or non-Conference sponsoring committee of any such game shall include in the membership of its administrative committee at least two representatives from member institutions of this Association, one to be a faculty member and one to be an athletic official, to be appointed by the Executive Committee of the Association.

(b) No member institution shall participate in more than one such game during any academic year.

(c) Game officials shall be mutually agreed upon by the competing institutions.

(d) Competing institutions shall be allocated not less than one-third of the total seats in the stadium in such proportion as they may agree, or if they do not agree then with a minimum of one-sixth of the total seats in the stadium to be made available to each. An institution not requiring its full allocation of tickets shall make available its unused portion of the allotment to the other institution. All unsold tickets shall be returned to any sponsoring persons or organization not less than 15 days in advance of the date of the game.

(e) The competing institutions shall receive not less than seventy-five per cent (75%) of the gross receipts, out of which each may be required to defray its own traveling and other team expenses incidental to the game. Not more than twenty-five per cent (25%) of the gross receipts shall be paid to or retained by any sponsoring person or

organization, and out of such portion of the gross receipts shall be paid all game expenses including stadium rental, printing of tickets, ticket sellers, ticket takers, ushers, game officials, promotion, publicity, and any other expense.

The gross receipts shall be all revenues derived from the game including sale of tickets (less taxes), concessions, programs, radio rights, video rights, movie rights and any other income derived from the operation of the game. Any complimentary tickets shall be accounted for at face value and shall become a part of the gross receipts.

In instances in which any sponsoring person or organization may have made legal commitments prior to August 14, 1949, for capital improvements on the stadium in which the game is played it may

(a) To repay to the general fund of the Association the amount of any deficit incurred in previous years in the sport involved.

(b) If any balance remains, fifty per cent thereof shall be paid to the general fund of the Association, and fifty per cent may be prorated to the competing institutions, on a basis determined by the rules committee of the sport and approved by the Executive Committee.

Section 6. Payments to a Sponsoring Institution. No sum out of receipts of a tournament or meet, or from any other source, shall be paid to the college or university sponsoring or acting as "host" for such event, except to cover expenses actually incurred in the conduct of the same.

*1950 NCAA Proceedings, pp. 269-270.

APPENDIX III

OFFICIAL INTERPRETATIONS OF LIMITATIONS ON OUT-OF-SEASON PRACTICE*

O.I. 1. "Practice" is any practice held at the direction of or supervised by any member or members of an institution's coaching staff.

O.I. 2. "Post-season" practice is any practice or instruction in a sport held after the last game of an institution's playing season and before the first day of the practice season for the next ensuing year. Post-season practice does not include practice for any established event, participation in which is not prohibited by the NCAA.

O.I. 3. A "post-season tournament" contest in basketball is one between teams that are not identified until the close of the preceding regular season, the term "post-season" necessarily implying that the time of the event shall be after a regular season.

O.I. 4. "Calendar days," insofar as the term applies to the period within which post-season practice in football must fall, are consecutive days, omitting vacation and examination days, officially announced on the institution's calendar.

O.I. 5. Engaging in any or all of the following activities on any day constitutes "practice":

(1) Field or floor practice
(2) Chalk talk
(3) Lecture, or the discussion or showing of motion pictures

The duration and distribution of these activities on any day are to be determined by the institution itself, subject to controlling legislation by the conference or similar organization of which the institution is a member.

O.I. 6. These Sections apply to the candidates for any college squad which has a playing season other than of intramural nature; i.e. the legislation concerns varsity and sub-varsity squads which compete against other colleges or outside organizations and, also, applies to freshman squads which engage in intercollegiate competition or competition with other outside organizations. It does not apply to freshmen or other squads which do not participate in outside competition of any type.

O.I. 7. Practice activity conducted under the guise of physical education must be counted as practice sessions under the requirements of these Sections.

*1955 NCAA Proceedings, pp. 362-363.

CHAPTER V

FINE-TUNING THE INTERCOLLEGIATE ATHLETIC CARTEL 1960-1980

While the major behavior restricting regulations were enacted by the NCAA during the fifteen years after World War Two, the NCAA did not stop adopting rules that were designed to prevent competition and save member institution's money after this period. During the twenty year period covered by this chapter the NCAA adopted more measures that prevented competition between members or between members and other sports groups. In these two decades the association also enacted rules that had the effect of retarding competition between schools as they sought to recruit and compensate student-athletes.

Rules enacted by the NCAA governing the use of student-athletes and measures adopted by the NCAA to restrict competition for student-athletes are discussed in the following section of this chapter. Those rules enacted by the NCAA to prevent competition in the output market are examined in the succeeding section.

NCAA Regulation of the Input Market

Freshmen Eligibility for Varsity Competition

Throughout the late 1950's and early 1960's some members constantly petitioned for freshmen to be made eligible to compete in varsity competition. This process continued at the 1966 annual convention where a long discussion took place over the use of freshmen student-athletes on

varsity teams. Since 1952 the NCAA had prohibited freshmen from competing on varsity squads, requiring them to attend school for one year before they could become eligible. Schools had been in favor of this rule because it was an opportunity for freshmen to adjust to the academic rigors of school prior to taking on the large time demands of sports. Colleges opposed freshmen eligibility throughout the 1950's and early 1960's because any student-athlete who dropped out did not help an athletic program and because colleges generally had sufficient funds to pay a student-athlete's expenses for the first year even though he did not participate in intercollegiate athletics.

At the annual convention of 1966 many schools wanted to drop this rule and allow freshmen to participate. Some argued that freshmen in 1967 were more mature than their predecessors in the 1950's.[1] Others believed that athletics took no more time than other extracurricular activities such as the band in which freshmen were allowed to participate.[2] But while these points may or may not have been true the most plausible explanation for this support of freshmen eligibility comes from examining the general financial status of athletic programs in 1967.

In the 1950's an institution's athletic budget had to support fewer sports and, therefore, fewer student-athletes than in 1967. By 1967, however, the decision to pay for a student-athlete's first year of school, while he did not participate in athletics, was a drain on schools with financial problems. By instituting freshmen eligibility schools would receive four years of participation for each scholarship they

awarded instead of three years and could potentially award fewer scholarships and receive the same number of student-athlete years of participation. Clarence L. Munn recognized these financial problems when he observed:

> We have the people who want competition and the problem boils down to economics. A lot of us are having trouble running an intercollegiate program with the income we have.[3]

Thus, the discussion of freshmen eligibility was motivated by the economic considerations of an athletic department. Nevertheless, no official action was taken at the annual convention of 1966.

At the annual convention of 1967 an official proposal to make freshmen eligible to compete in varsity sports was presented. However, this proposal called for freshmen eligibility in all sports except football and basketball. When asked why these sports were omitted the author of the proposal admitted he had no specific reason, but felt these were the sports that would exert more pressure on student-athletes and require more of their time. Little debate over this proposal ensued and the proposal narrowly passed 163 to 160.

At the annual convention of 1972 a motion making freshmen eligible in football and basketball was adopted by the association. Prior to this time freshmen had been eligible in all sports except these two because it was believed these sports required more time and exerted more pressure on the new student-athletes. However, by the annual convention of 1972 it was clear that schools were more concerned with the cost-cutting features of this proposal (a four year athletic scholarship would purchase four years of varsity participation instead of three) and the measure passed.

In retrospect the NCAA's handling of freshmen eligibility highlights the association's general approach towards the adoption of measures that had cost-cutting features. Initially the association was reluctant to adopt freshmen eligibility and, as long as its members could afford not to, it did not. However, once the NCAA began to take steps to save members money the reasons the association had been unwilling to adopt freshmen eligibility were neatly sidestepped.

Restrictions on Compensation for Student-Athletes

Between 1960 and 1980 the NCAA enacted many measures that limited the compensation provided to student-athletes by schools. Often these measures were said to be necessary to preserve amateurism. However, a closer examination reveals that these measures had the additional effect of decreasing the costs of an NCAA school producing athletic contests.

In 1961, for example, the NCAA took several steps which were designed to decrease the total cost of producing athletic contests. Due to competition between the National Football League (NFL) and the American Football League (AFL) for college athletes, which resulted in football players being signed to professional contracts while in the last semester of their senior year, the NCAA approved a policy of ceasing athletic aid to the student-athlete once he signed a professional contract. Under this policy a school was directed to cease further athletic aid if the monetary value of the contract the student-athlete signed was in excess of the remaining aid he was to receive from the school.[4] While rationalized as preserving amateurism it is clear that

the policy allowed schools to retain money they otherwise would have paid to student-athletes.

In 1961 the NCAA also conducted an extensive examination of what student fees a member school was required to pay if the student was on an athletic scholarship. From the information yielded by this study the Council adopted an official policy governing the payment of fees for tests, dormitory deposits, uniform fees (if the student-athlete were enrolled in ROTC), and summer school tuition. The Council also issued rules governing the payment of and the hours worked by a student-athlete who was employed by a grant-in-aid agreement.[5]

These rules adopted by the Council had the effect of decreasing the money spent by an athletic department. Not only did these rules standardize what a school was allowed to pay for, but they also provided clear standards for all schools to follow which prevented universities from competing for athletes by using the payments of these fees as an inducement. Thus, rules such as these which began being issued frequently in the 1960's highlight the association's efforts to limit the compensation to student-athletes and save member schools money.

During 1962 the Council adopted several official interpretations outlining what a school could and could not provide an athlete. One of the interpretations, designed to limit the money spent by NCAA schools, governed the payment of the expenses of student-athletes competing in athletic events which were not run by colleges.[6] Another interpretation revised the definition of amateurism to allow a student-athlete to be employed by the intramural office and still retain his amateur status.[7]

Another set of official interpretations issued by the Council in 1962 specified the services a school could provide a student-athlete. Since the financial aid a school could award a student-athlete was limited by NCAA regulations schools had begun to induce athletes to attend by providing them with services. Prominent among these non-pecuniary awards was the provision of transportation at no cost to the student, his friends and/or parents. To control this avenue of competition the NCAA had to make very specific rules about when and how it was allowable for a school to transport a student-athlete and when it was not permissible.[8]

In 1963 the Council established more rules that limited the payments to student-athletes. In mid-1963 the Council issued a ruling governing the compensation provided to a student-athlete participating in a postseason bowl game.[9] This ruling stated the circumstances under which a student-athlete's wife could have her transportation to the game paid for. Since payment of the transportation expenses of a student-athlete's wife was a method of providing the student-athlete compensation the Council established a rule to control the practice in order to clarify and limit the indirect payments to student-athletes.

In the mid-1960's the Council adopted rules governing the arrangements that could exist between a student-athlete who participated in summer baseball and professional baseball teams.[10] Since the association was formed summer baseball had presented problems because student-athletes were often paid for playing, violating amateur principles and association rules. But NCAA efforts to prevent

student-athletes from receiving pay had only resulted in teams employing indirect methods of paying student-athletes.

Because the NCAA was incapable of preventing summer baseball from being played, and its members felt student-athletes who participated in summer baseball deserved the opportunity to earn money for college expenses, the NCAA set out rules governing what a student-athlete could receive and the tasks he could perform. Among the most explicit rules the Council made were those issued in 1964. As an example of the detail the Council had to undertake in order to control methods of paying student-athletes for their athletic services consider the Council's directive on the employment of a student-athlete during the summer. According to the Council:

> A student-athlete may be employed as a supervisor of children's sport programs, such as a counsellor in a summer camp or in a recreation department program, and his duties may include some coaching and officiating responsibilities provided that any instruction is part of the over-all terms of employment and not on a fee-for-lesson basis; he also may work in a tennis or golf shop provided he does not give instruction for compensation.[11]

In 1964 the Council of the NCAA established more rules governing what a student-athlete could receive in terms of compensation.[12] Ironically, while the NCAA had established complex rules restricting the payments to student-athletes the Council also endorsed the position of the Legislative Committee of the NCAA, which came out strongly against the player draft by professional sports noting that it denied a student-athlete the opportunity for teams to bid for his services. According to the Legislative Committee:

> The Legislative Committee recommends that the NCAA direct the attention of Congress to the fact that the essence of the free-agent draft is a restriction upon an individual's right to negotiate for his services; in the case of a single draft in a sport he is completely denied the opportunity for competitive bargaining.[13]

Thus, the NCAA, which refused to let its members competitively bid for student-athletes because of the money it would force schools to spend, solidly supported the competitive process to allocate athletes once they left college.

In 1965 the NCAA took several more steps that were designed to reduce the expenditures of athletic departments. Early in the year the Council proposed studying the possible elimination of the fifteen dollar per month payment to student-athletes on scholarship (the laundry or incidental fee), but no other action was taken. Other efforts by the NCAA to limit payments included the establishment of rules governing what amount student-athletes could receive in return for their services while employed by a college.

Because the aid an athletic department could provide student-athletes was limited by NCAA regulations a student-athlete was often compensated for his athletic services by being employed at a summer sports camp run by a college coach. Since there were so many of these camps it was difficult for the NCAA to determine what arrangements were made between the student-athlete and the person paying him. To control the potential for side-payments and non-pecuniary rewards the NCAA established lengthy and detailed rules governing what an athlete could be provided with while employed or attending a summer camp.

These rules adopted by the NCAA outlined what an athlete could be paid while employed and the fees an athlete had to pay if he attended the camp. The rules limited the number of student-athletes from one school that could be employed and restricted the use of a student-athlete's name and picture in publicity or advertising promoting the camp. Thus, these rules were drawn up in an effort to limit the payments that could result when schools employed student-athletes and to also prevent coaches from using employment at these camps as a method of obtaining an advantage in the recruiting of an athlete.[14]

For the remainder of the 1960's the NCAA did not adopt any new restrictions that effected the membership. However, in the 1970's a major issue troubling the NCAA was the method used by members to award financial aid to student-athletes. At the annual convention of 1972 the first official proposal since the early 1950's for the awarding of aid to student-athletes based on need was presented. While this idea had been seriously considered at the annual convention of 1971 it did not receive official consideration until the NCAA Council had a year to study it. Considerable debate ensued over this proposal and though it was defeated by the membership in a vote the fact that this item reached the floor of the convention and forced members to vote on a measure with important economic consequences revealed that within the association members were making difficult financial decisions and were not in agreement among themselves.

In the 1960's when colleges and universities generally had sufficient funds for athletics there was little mention by athletic

departments of cost-cutting. However, in the 1970's some member institutions were facing severe budgetary pressures that forced them to search for methods to reduce expenditures. One appealing method to cut costs was to reduce the payments to student-athletes by reducing the amount of aid awarded in each athletic scholarship.

The magnitude of this budgetary strain was not the same for all members of the association. This was revealed in the debate that preceded the vote at the 1972 annual convention. Members of the College Division (smaller schools) generally spoke in favor of the proposal, while representatives of schools in the University Division (larger schools) opposed it. Using each groups as a proxy it can be seen that the smaller schools, as compared to the larger schools, were more effected by the budgetary pressures. Hence, the vote on this proposal revealed that most small schools were facing budgetary pressures and believed that they could cut costs by reducing payments to student-athletes, yet they were outvoted.

The vote over this proposal also revealed a critical problem the NCAA was having when it made decisions. Under the collective decision-making mechanism the NCAA used at the annual convention of 1972 all schools, regardless of size or athletic desires, had one vote. This gave the smallest schools in the NCAA the same voice in an NCAA decision as the largest. While it had not happened on the vote on the proposal for aid based on need, the potential for the smaller schools (who made up more than a majority of the NCAA) to band together and force their will on the larger schools was clear. This problem of collective

decision-making within the NCAA would continue to cause difficulties and would eventually be part of the reason why the association would call a special mid-year convention.

The question of basing athletic aid on need came up again at the annual convention of 1975. While similar proposals had been brought up at previous annual conventions and defeated the proposal at the annual convention of 1975 received serious consideration by the members and nearly passed. After much parliamentary maneuvering and several votes on the proposal the membership took its first ever roll call vote and officially defeated the proposal.

The results of the roll call vote served as additional evidence of the diversity growing within the membership of the association. The vote revealed that the larger schools, which maintained major athletic programs, voted against the proposal because they had sufficient resources to compete effectively for student-athletes. The smaller schools, however, favored the proposal because they saw it as a method of relieving some of the financial pressure on their budget. While enough schools voted against the proposal to defeat it the closeness of the vote again emphasized the possibility that the smaller schools, due to their numerical superiority, could band together and impose their desires on the membership of the NCAA.

The issues of awarding financial aid was brought up again at the annual convention of 1976. Approximately a half-dozen motions about financial aid were submitted for consideration but the one that attracted the most attention was proposed by representatives of the

University of California, Berkeley. Under this proposal all athletic aid above tuition and mandatory fees would be based on need. Though this proposal provided schools with more flexibility in terms of the aid they could provide it still was not supported by schools that felt they had the resources to compete effectively for student-athletes. The proposal also drew criticism from many who felt it could not be effectively enforced. Given these objections the proposal was narrowly defeated and all other proposed amendments to the NCAA Constitution on this subject were withdrawn.

As in the 1970's came to a close the NCAA was still searching for methods to reduce the costs of maintaining an athletic program. Several minor rules further restricting payments to student-athletes were adopted in the late 1970's but these provided schools only marginal assistance. Members frequently spoke of resubmitting the proposal for basing aid on need but after the experiences of the mid-1970's this was not considered too seriously.

NCAA Rules to Restrict Economic Competition and Save Members Money

Among the proposals considered at the annual convention of 1961 were two measures that would have limited competition between schools for student-athletes. The first was an effort to have all student-athletes pre-register with the school they planned to attend. Under this national plan, called pre-registration, a high school athlete would sign an agreement with the school he planned to attend in the fall and all other schools would halt their efforts to recruit him. Further,

this proposed plan allowed each school to pre-register only thirty-five athletes, of which no more than twenty-five could be for football.

The anticompetitive aspects of the pre-registration plan were clear. By agreeing to limits and recognizing the validity of a pre-registration agreement all schools would save resources they otherwise would have spent attempting to induce athletes to attend their school. Even the NCAA recognized this fact and made little effort to deny it.[15]

To ensure pre-registration would work and schools would honor the agreement the proposal also included a plan to penalize those athletes who pre-registered with one school and then attended another. According to the proposal an athlete who did this would not be allowed to represent the school he attended in athletic competition until he had been in residence for two calendar years. Additionally, the athlete would not be able to represent the school for more than two seasons. Thus, the proposal to limit competition for athletes through the use of penalties on those who violated the agreement contained an effective method of ensuring it would be honored.

Not all members of the association, however, believed pre-registration was a policy worth adopting. During the debate over the proposal many doubted it could be employed due to the vagueness of the rule. The schools in the Ivy League were vocal opponents to pre-registration because they believed it too closely resembled the contractual agreement made between an athlete and a professional team. Given these objections the members voted for approval of the policy 131

to 98, but because a two-thirds majority was not recorded, the motion failed.

The second major proposal at the annual convention of 1961 that had anticompetitive effects concerned the rules by which freshmen and transfer students became eligible to participate in sports at four year institutions.[16] This rule required that both types of students complete one full year (two semesters or three quarters) at the institution before becoming eligible. It was geared primarily toward junior college transfers after it became noticeable that many were transferring from junior colleges to four year schools prior to graduating and just in time to participate on the four year institution's tournament bound team. The competition-limiting appeal of this rule was obvious (it prevented schools from acquiring superior junior college athletes prior to competing in an NCAA tournament) and the proposal passed the convention 102 to 36.

Though the pre-registration plan of 1961 was not adopted, some members of the NCAA established a voluntary Inter-Conference Letter of Intent program in 1963. Under this program, which was similar to the pre-registration, six major conferences and four independent schools had agreed on April 1, 1963 to stop recruiting those student-athletes who signed a Letter of Intent by May 20, 1963. According to the report given at the annual convention of 1963, 1641 student-athletes had signed a Letter of Intent in 1963 and there had been no evidence of schools "tampering" with recruits who had signed.

Another proposed amendment to the constitution based primarily on economic effects was presented at the annual convention of 1966. This motion called for members to limit the awarding of athletic scholarships to a one year period. It was argued that this measure would provide the schools with more flexibility in their handling of athletes since schools would not be committed to a student-athlete who did not perform adequately, yet did not voluntarily give up his scholarship. Others thought this policy would become too arbitrary and appeared to model a professional contract too closely for amateur sports.

In the discussion about this proposal it was noted that schools had the option to award athletic scholarships on a one year basis and because of this the motion appeared unnecessary. However, it was clear that without a binding agreement schools that awarded scholarships for longer periods of time would have an advantage in attracting athletes over schools that provided aid for shorter periods. The members of the association voted for this proposal 138 to 109, but it was not approved because it did not receive the required two-thirds majority.

Though cost-cutting measures presented at previous annual conventions had never been openly referred to as such, by the annual convention of 1968 members of the association had become so concerned with the financial pressures being put on their athletic budgets that they assembled a Combined Faculty Representatives and Athletic Directors Round Table to discuss "The Rising Cost of Intercollegiate Athletics."[17] At this forum members voiced ideas about how their production costs could be controlled. Among the methods suggested were possible limits

on visits made by a recruiter to an athlete's home, limits on the expense-paid visits an athlete could make to a campus, limits on the entertainment that could be provided to an athlete, limits on the number of football scholarships, a decrease in the amount of aid provided to a student-athlete in an athletic scholarship, an earlier signing date for the Letter of Intent so that recruiting costs could be cut, and limits on the number of full-time coaches.

None of these proposals went beyond the discussion stage at the annual convention of 1968, yet the fact that the association was making an obvious effort to control the production costs of an athletic department indicates how the goals of the association had changed. Since its formation members of the NCAA liked to believe it was a group concerned with only the sporting aspects of institutions of higher education. To support this view members often noted how they standardized rules and organized tournaments. However, after the annual convention of 1968, where the association began openly discussing methods to control costs, it becomes difficult for even the most naive observer to accept the association's claims that its actions were not motivated by standard business world desires to increase revenue and decrease costs.

It is also interesting to note how the association believed these cost-cutting programs should be organized. While any institution could readily cut costs by limiting the payments made to student-athletes or coaches, most members recognized that no schools would voluntarily do this because others that did not limit these payments would obtain an

advantage at their expense. Instead the members of the NCAA recognized the importance of making these limits mandatory so that no institution could gain at the others expense. Referring to the competition that resulted without these agreed upon limits and the need for standardized rules one member noted:

> I am for a program whereby we practice economic discipline on a national scale, because nobody has ever been able to keep up with the Joneses.[18]

Among the rules established at the annual convention of 1968 was one that prohibited the appearance of a prospective student-athlete on the television program conducted by a coach of an NCAA team and another that prohibited athletic staff members from admitting a prospective student-athlete to their sports instructional camp. The first rule, which prevented coaches from using a television appearance as an inducement to recruit an athlete, was designed to limit competition for student-athletes because a television appearance could be an effective inducement and the coaches that had their own television show had an advantage over those who did not. The second rule, concerning the attendance at summer camps, prevented any coach from gaining an advantage by learning more about the athletic skills of a prospective athlete than was generally available to those who only watched him perform in high school contests. Thus, both of these rules had the effect of limiting competition between NCAA members for student-athletes.

At the annual convention of 1969 the association adopted two cost-cutting measures covering the repurchase of complimentary tickets given

to student-athletes and the number of expense paid visits a school could provide a recruit. It was common practice for a school to provide a student-athlete with complimentary tickets so that he could have his wife, parents, or friends see him perform. Student-athletes, however, often sold these tickets at a price considerably higher than the face value of the ticket. To stop this practice the NCAA had allowed schools to repurchase the unused complimentary tickets at face value. But this practice was prohibited by NCAA rules after the NCAA passed an official motion banning it.[19]

The second measure enacted by the association to cut the production costs of member athletic departments was designed to limit the number of expense paid visits a school could provide a recruit. Under this proposal a school could only offer a recruit two expense-paid visits, but the recruit could visit as often as he liked if he paid his own way. Decreasing the number of expense-paid visits reduced the money spent by schools recruiting student-athletes.

In August 1975 the NCAA held its second special convention to discuss economy measures that could be made to save money. Among the steps the members took to cut costs were; the elimination of the fifteen dollar per month payment made to athletic scholarship holders; an agreement that scholarships would not pay for school supplies such as pens, pencils, notebooks, artist materials, and slide rules; a decrease in the number of scholarships in sports other than football and basketball to eighty in Division I and sixty in Division II; and a cut in the total scholarships that could be offered in football to ninety-five.

The NCAA also undertook several other economy measures that caused considerable controversy. These measures were; limitations on the number of times a coach could visit a recruit; limits on the size of a team, and limits on the number of coaches on a school's athletic staff.

The limits on the number of times a coach could contact a recruit (three), the limits on the number of expense paid-visits an athlete could make (six), and the total number of expense-paid visits a school could provide each year (seventy-five in football, twelve in basketball in Division I) drew criticism from the members, but all passed the convention in one vote. The limits on team size drew a lawsuit from some member schools, which in part contributed to it being abandoned the next year. The limits on the size of the coaching staff also drew a lawsuit, but the association's actions were sustained in court and the rule was retained.[20]

At the annual convention of 1975 members of the association enacted more of legislation to control the expenditures by and the competition between universities. Among the rules the NCAA enacted were strict limits on the entertainment that could be provided a high school athlete when he came to visit a college campus and limits on the methods in which an athlete could be transported to a college campus (tourist class or its equivalent if transported by plane). At the same time the NCAA enacted explicit restrictions on the time of the year when a recruit could be contacted and the publicity surrounding signing of a recruit.

For the remainder of the 1970's the association devoted considerable time to instituting new limits or tightening old rules that

limited the expenses member institutions could incur by either recruiting or compensating student-athletes. Among these were new rules limiting the special arrangements that could be made to compensate student-athletes, new limits on the maximum number of scholarships that could be awarded, and further restrictions on the time when a coach could contact a high school athlete.[21]

NCAA Regulation of the Output Market

Television and the Reorganization of the NCAA

NCAA control of television was a major subject of discussion at the annual convention of 1961. Because football was entering the second year of the two year contract and the negotiation of a new contract was scheduled to be accomplished after the convention there was no lengthy report or debate about television. Instead, the Television Committee gave a general report indicating there had been an increase in attendance.

The NCAA did, however, express interest in 1961 in the television broadcasting of college basketball games. During the year the association established a committee to study the effect of the televising of basketball on other games in surrounding areas and instructed it to report back in one year to the association with its findings. Additionally, the NCAA also suggested to the member schools that they voluntarily develop a regional policy that would minimize television competition.

In 1962 members of the NCAA began to consider the differences in their approaches to intercollegiate athletic problems. They realized that these differences were based on the size of their respective institutions. In the 1950's a practice developed of dividing members into one group consisting of only college size institutions (College Division) and another group consisting of only university size institutions (University Division) for the purpose of discussions. There had never been any outright conflict between the two groups, but the first hint of potential problems between the two occurred when the television contract for the 1962 and 1963 seasons was being negotiated.

In early 1962 the NCAA negotiated a collective television contract with the Columbia Broadcasting System (CBS) covering the 1962 and 1963 college football seasons. Under the provisions of this contract CBS agreed to pay the association $5.1 million each year ($10.2 million total) for a number of games that would include appearances by 37 college football teams. In the standard mail referendum vote conducted by the association the contract was approved 178 to 62. Though the 178 'yes' votes surpassed the necessary 160 votes needed for approval the 62 'no' votes represented the largest negative response ever given to the NCAA's Television Plan.

A closer examination of the results of this vote indicates that many schools that did not appear on television were unhappy with the method in which the television revenue was being divided. Instead of having only those schools that appeared on television divide the money, leaving those schools that did not appear on television without any

television revenue, the schools that seldom or never appeared on television began voicing support for the share-the-wealth principle. The share-the-wealth principle, first mentioned in 1952 but seldom since then, called for a set fee to be paid for a television appearance and then the distribution of the balance of the television money among the remaining members who did not appear on television.

CBS gave careful consideration to basing its television payments on the share-the-wealth principle. At one point it contemplated allocating $4.35 million to schools that would appear on televised games and then dividing the remaining $750,000 among the other NCAA members (approximately $18,000 per school). However, in light of the legal problems professional football was having with the collective provision of its television contract CBS decided it did not want to risk similar legal problems and declined any further opportunity to get involved with the share-the-wealth principle.

Members of the NCAA approved the 1962 and 1963 television contract and instructed the Television Committee to begin negotiating a television contract for 1964 and 1965, yet the difficulties the NCAA was having when making collective decisions was becoming more apparent. The smaller schools, which did not appear on television wanted a larger share of the television money, while the larger schools, which appeared on television and earned this money did not want to share it with them. Understandably the NCAA recognized this problem and observed:

> This circumstance, coupled with the dissatisfaction with status quo presently making itself evident in some geographical areas and among some conferences, would seem to suggest that in the years ahead study should be made

> of ways legally to enable more of the colleges - perhaps all of those maintaining football teams whose gate receipts suffer from television competition - to share at least modestly in the tangible returns from the NCAA television program, without losing the great intangible benefit which belongs to the entire NCAA roll of members - protection from the disaster which would befall intercollegiate football were reasonably controlled television to be replaced by unrestricted airing of games hour after hour, Saturday after Saturday.[22]

The problems confronting the NCAA's decision-making mechanism, which became apparent at the annual convention of 1962, can be readily interpreted with cartel theory. A cartel, which restricts output and as a result earns larger profits, will be forced to make collective decisions when members attempt to reach agreement on how the cartel will function (i.e., output, price, market division, division of profits). This decision-making process will be less costly when all members have similar objective and cost functions. The reason is that members will be more willing to agree on policies that effect all in the same way. That is, if all have the same objective function a policy that increases the profits of one member will be readily accepted by all members.

However, if the members of the cartel have different objective and cost functions then decision-making may be quite difficult. With members having different objective functions, adoption of a policy that would increase the profits of one firm would not be approved by those firms whose profits would not increase with the policy. Thus, with members whose goals and methods differ, the process of making collective decisions will be difficult and costly.

As a cartel the NCAA faced the same problems in 1962. When members of the NCAA were deciding on a television contract they were actually

dividing the rents earned by agreeing to restrict television broadcasts. But the difficulties the NCAA was experiencing while making this decision indicates that all members of the association did not have the same stake in the decision. The few schools that appeared on television were content with the way the association was handling the division of the television revenue, but those who did not appear on television did not approve of the division of the revenue. Thus, the NCAA faced the standard problem of making collective decisions that cartels composed of members who have different goals often face. Indeed, as the NCAA grew in this period this problem would continue to plague the association when making collective decisions.

At the 1963 annual convention the Television Committee of the NCAA announced that it had contracted with the National Broadcasting Company (NBC) to televise the 1964 and 1965 college football seasons. The committee also revealed that college football was increasing in popularity as witnessed by total attendance from the previous fall's football schedule exceeding 22 million. Further, the committee estimated that without television broadcasting football attendance would have been in excess of 30 million fans.

1964 marked the first year of the two year football television contract the NCAA had signed with NBC. Under the provisions of the contract NBC paid the association $6,522,000 for the rights to broadcast 29 college football games that year.[23] Due in part to this limited television policy as well as the good weather in the fall of 1964 live football attendance recorded the largest increase since the NCAA began

keeping records in 1947. According to the NCAA's figures football attendance increased 5.02 percent, which translated into a record increase of 1,117,383 fans.[24]

In 1965 NBC broadcast thirty-two college football games, completing the two year agreement signed the previous year. Due to good weather, increases in personal income, and the restrictive television policy football attendance broke the records set the previous year increasing by 1,328,095 fans (5.69 percent) to 24,682,572.[25] In 1965 the Television Committee also sold the broadcast rights for the 1966 and 1967 college football seasons to The American Broadcasting Company (ABC) for a total of $15.5 million. The contract also had an option for ABC to renew the agreement for two more seasons (1968 and 1969) making the total payment for the four seasons $32.2 million.[26]

In October 1971 the membership of the NCAA approved the television contract for the 1972 and 1973 seasons in a mail referendum by a vote of 191 to 16. This two year contract with ABC called for the network to pay $13.5 million to the NCAA each year for the rights to televise college football. A minor novelty in this contract was the provision by which ABC would televise a College Division bowl game, paying a total of $240,000 to the participants, and, also televise four other College Division championship events, for which the network agreed to pay $80,000 per game. The football seasons of 1972 and 1973 were moderate successes, providing ABC with some of the highest television ratings of the decade and attracting more than 60 million live fans in the two seasons.

At the special summer convention of 1973 the membership categories of the NCAA were reorganized. As noted above members of the NCAA had become a diverse group differing in goals and skills. To enable members with similar athletic goals and desires to make collective decisions the NCAA was organized into three divisions, each of which would make decisions binding on only the members of the division.

Division I was generally composed of large schools that maintained "big-time" athletic programs. Division II was composed of somewhat smaller schools that desired to maintain "big-time" programs but admittedly did not have the resources to do so. Division III was composed of the smallest schools that did not field highly competitive teams, either by desire or because of limited resources, but still maintained athletic programs.

At the annual convention of 1973 the Television Committee announced the contract it had negotiated for the 1974 and 1975 seasons had been approved in a mail referendum vote 300 to 10. Under the provisions of this contract twenty exposures were to be presented, with a national appearance being paid $488,000 (as compared to $431,000 under the previous contract) and a regional appearance being paid $355,000 (as compared to $315,000).[27] The contract also called for the NCAA Division II semifinal and championship football games and the Division III football championship game to be broadcast.

A major issue brought up at the 1975 annual convention concerned the division of television revenue. Under a plan composed by Stephen Horn, President of California State University, Long Beach, it was proposed

that the television revenue be divided among all schools in the NCAA that played football rather than just the schools that appeared on television. According to Horn's plan only 15 percent of the television money would go to schools that appeared on television. The remainder of the money would be divided so that schools in Division I would split 50 percent, the schools in Division II would divide 25 percent, and the schools in Division III would divide 25 percent.

Horn's plan was particularly appealing to many of the smaller schools that never appeared on television because under his proposal all would share in the television money. Hence, his plan was not attractive to member schools in Division I who would earn only $46,000 for a television appearance instead of the 1975 fee which was nearly six times as large.[28] To many this fact highlighted the redistribution that would take place under this proposal, from the large "wealthy" schools to the smaller, less financially able schools, and earned Horn's proposal the nickname the "Robin Hood Agreement."

Horn also proposed a similar redistribution for the money earned by schools that played in postseason bowl games. Under his plan 50 percent of the money generated by postseason bowl games would be divided between the schools that participated in the games, 25 percent of the money generated would be divided among Division I schools, and 12 1/2 percent of the funds would go to Division II and Division III. Again this plan appealed to many smaller schools because they would earn money if it were instituted, but it did not appeal to the large schools that participated in bowl games and would have money taken away from them.

Horn was able to present his idea and considerable debate about its merits was held in the Division I Round Table Discussion, but because the television contract was written and negotiated by the Television Committee a motion to adopt his ideas by amending the NCAA Constitution was ruled out of order. Nonetheless, while Horn's "Robin Hood Agreement" never got to be voted on, the discussion of these ideas provided the larger schools within the NCAA with one important fact to think about. As long as collective decisions were made on the basis of one-school one-vote and there were more small schools than large schools it would be possible for the smaller schools to band together and redistribute resources from the larger schools to themselves. The possibility of this happening as evidenced by an open attempt at the annual convention of 1975 provided "big-time" athletic schools with an important issue to resolve.

At the annual convention of 1976 members of the NCAA attempted to pass a motion that covered the voting procedures of members of the NCAA. Since the association had been divided into three membership divisions schools were instructed to vote in their respective divisions. But problems arose over the voting arrangements of members who maintained football or basketball teams that played in different divisions than the remainder of the school's athletic teams. To solve this problem the NCAA Council proposed that members vote in the division in which their football or basketball team was classified. Both Division II and Division III approved this legislation, but Division I did not,

defeating the procedure since it required the approval of all three divisions.

Division I defeated the measure because there were many schools that maintained football or basketball teams in Division I, but were not, in terms of the size and goals of their entire athletic program, Division I schools. The schools in Division I recognized that when it came time to vote on certain issues, these schools, because of their differences, would not vote with the other Division I school. Division I, recognizing the importance of having schools within the division maintain similar athletic goals, defeated the rule that would have allowed basically different schools to vote in their division.

The biggest issue at the annual convention of 1977 concerned plans to reorganize Division I into Division I-A and Division I-AA. Since the membership categories had been reorganized in the summer of 1973 conflicts between schools in Division I, based upon the differences in their outlook and approach to NCAA problems, had been increasing. To solve these problems it was proposed that the division be further divided in I-A, which would consist of the larger schools that desired to maintain "big-time" football programs, and I-AA, which would consist of schools that maintained major, but not "big-time" football programs.

The association established four criteria for a member institution to enter Division I-A. It had to maintain at least eight varsity intercollegiate sports (including football), it had to schedule at least 60 percent of its football games against Division I-A opponents, it had to have averaged 17,000 paid attendance at all home games in the last

four years (1974-1977), and it had to utilize a stadium for home games that had a minimum of 30,000 permanent seats. Of all the Division I-A criteria the one that caused the largest controversy was the requirement that schools had to have averaged 17,000 in paid attendance in the past four years.

Without the inclusion of this criteria almost all Division I schools could enter Division I-A. However, with the inclusion of this requirement it was clear that many schools would be forced into Division I-AA. For the larger schools in Division I-A this was viewed favorably because fewer schools in Division I-A meant there could be more television money for each member. But to the schools that would be forced into Division I-AA this requirement was critical since they would be denied access to Division I-A television money and would not be able to vote with Division I-A. Consequently, a lengthy debate ensued over the adoption of this criteria which was finally settled in a roll call vote. The vote, which revealed that generally the larger schools backed the proposal and the smaller schools did not, was 82 to 73 in favor of the proposal and indicated that the plan to reorganize into Divisions I-A and I-AA would pass.

The division of the association's top membership category was not without problems. At the last minute an amendment to this plan, known as the Ivy League amendment, allowed schools which fielded varsity teams in twelve NCAA sports (including football) to become members of I-A. The passage of this amendment brought the number of schools in Division

I-A to 137 and compounded many of the decision-making problems by dividing Division I.

As the 1970's ended the association periodically returned to the reorganization plan to adjust many of the details it overlooked. However, the adoption of the Ivy League amendment which allowed many small schools into Division I-A ensured that major collective decision-making problems would continue to plague the NCAA.

NCAA and Women's Athletics

The NCAA had expressed an interest in women in sports in the mid-1960's, but at that time it had only commissioned a study on the subject. In 1971 the Association of Intercollegiate Athletic Women (AIAW) was founded and it performed many of the same functions that the NCAA did for men's sports. The organization of this body left the NCAA to contemplate how much it desired to control women's intercollegiate athletics if it was going to have to fight the AIAW. In the mid-1970's, however, a major federal regulation, Title IX, forced the NCAA to become interested in intercollegiate women's sports.

Under the provisions of this regulation college athletic departments were told to provide equal opportunities and facilities for women student-athletes. The question of what equal facilities meant and the cost at which these could be provided caused concern among NCAA members. To provide truly equal facilities would be prohibitively expensive, yet the regulation was so vaguely worded that it was difficult for member institutions to determine how to react. As a response to Title IX members authorized the Joint Legislative Committee for Governmental

Affairs to petition congress to protect their interests, but the NCAA's concern over the effect of Title IX still remained large in 1980.

As the association entered the 1980's it had finally formulated a policy on women's sports. Over the objection of the AIAW the NCAA announced that it would begin sponsoring championship tournaments in women's sports as early as 1981-1982. Though most womens sports groups did not like the idea of the NCAA running these events the possible access to NCAA funds (the NCAA often paid a school's tournament expenses) and television exposure was appealing to many women student-athletes whose championship events were run on small budgets and seldom televised. While the NCAA claimed its desire to run women's sports was motivated by its desire to provide women student-athletes with better quality tournaments it is also possible to interpret their desire to control these tournaments as a method of reducing competition between men and women's sports tournaments for the spectator's dollar and as a means of ensuring the NCAA, instead of the AIAW, was the residual claimant on the tournament money.

With men and women's championship events conducted by separate bodies the two groups often ended up competing between each other for customers. However, if the NCAA controlled both events it could arrange the scheduling of the tournaments so that this competition was reduced. Reduced competition between tournaments would allow higher admission prices to be charged.

If the NCAA controlled the women's tournaments it would become the residual claimant of any funds that were left after expenses.

Previously, these funds had been retained by the AIAW, but with the NCAA running the tournaments any residual would go to the NCAA. Though the money these tournaments generated had never been large the increase in demand to watch women's sports, as witnessed by the popularity of their national basketball tournament in the late 1970's and early 1980's led the NCAA to believe that in the future women's programs would generate substantial revenue. Hence, it was logical for the NCAA to seek control of these events to capture a share of the money they would generate.

Conclusion

In the two decades discussed in this chapter the NCAA enacted many new rules. These rules were often rationalized as preserving amateurism or protecting the best interest of college sports. However, when the effects of these rules were examined carefully it was shown that the rules also limited economic competition between NCAA members and saved money for all involved.

The major rules the NCAA established that limited behavior in the input market during this time included the establishment of permanent eligibility of freshmen in all sports, and restrictions on the competition for and compensation paid to student-athletes. These rules limited the behavior of the NCAA participants and saved schools money by preventing them from expending resources in competition that could be halted without altering the competitive position of each school. Freshmen eligibility in all sports provided schools with more years of student-athlete participation. And the many rules the NCAA adopted

that prohibited certain practices used when schools recruited athletes and limited the pecuniary and non-pecuniary payments to student-athletes allowed member schools to decrease their total cost of producing athletic contests.

In the output market during this time the NCAA continued to adopt television plans similar to those first adopted in the 1950's and established a plan to administer championship tournaments in women's sports. The television plans adopted in the 1960's and 1970's earned the NCAA sizeable revenue (eventually exceeding $100 million per contract period), but also brought many problems. These problems, which resulted from the method by which the association divided the television money, revealed that major differences among the members were making it collective decisions to be made by the NCAA. In response to these differences the NCAA held two special summer conventions in the 1970's and reorganized its membership categories.

In the late 1970's the NCAA announced it would begin conducting women's championships as early as 1982. Over the objection of the national women's athletic body (AIAW), which previously conducted these tournaments, the NCAA claimed it was doing this to provide better quality tournaments and television exposure for women. However, careful examination of the monetary gain the NCAA stood to make by conducting women's tournaments reveals that altruism was not the only factor that motivated the NCAA.

Thus, during the twenty years outlined in this chapter the NCAA continued to enact restrictive rules similar to those the association

first adopted in the late 1940's. In the input market these rules put restrictions on the payments to student-athletes while in the output market the NCAA limited competition between members and between NCAA members and other sports bodies. Accordingly, the actions of the NCAA in this period further support the hypothesis that intercollegiate athletics functioned like a cartelized industry.

Footnotes to Chapter V

1. See 1966 NCAA Proceedings, p. 86.
2. Ibid.
3. 1966 NCAA Proceedings, p. 93.
4. See 1961 NCAA Proceedings, p. 118.
5. See 1961 NCAA Proceedings, pp. 128-129.
6. See 1962 NCAA Proceedings, p. 215.
7. See 1962 NCAA Proceedings, p. 152.
8. See 1962 NCAA Proceedings, p. 147.
9. See 1963 NCAA Proceedings, p. 132.
10. See 1963 NCAA Proceedings, pp. 165-166, 171-172.
11. 1964 NCAA Proceedings, p. 166.
12. See 1964 NCAA Proceedings, p.p. 151, 217.
13. 1964 NCAA Proceedings, p. 165.
14. An additional rule established by the NCAA at the annual convention of 1965 that limited the payments made to a student-athlete forced the monetary evaluation of all gifts made to student-athletes and the inclusion of these gifts in the amount of financial aid administered by the athletic department.
15. See 1961 NCAA Proceedings, p. 258.
16. See 1961 NCAA Proceedings, pp. 282-284.
17. See 1968 NCAA Proceedings, pp. 36-49.
18. 1968 NCAA Proceedings, p. 48.
19. See 1969 NCAA Proceedings, p. A-22.
20. See Chapter VII, Law and Economics of the NCAA.
21. See 1978 NCAA Proceedings, Appendix A, and 1979 NCAA Proceedings, Appendix A.

22. 1962 NCAA Proceedings, p. 203.

23. 1964 Report of the NCAA Television Committee, p. 39.

24. Ibid., p. 35.

25. 1965 Report of the NCAA Television Committee, p. 38.

26. Ibid.

27. 1973 NCAA Proceedings, p. 42.

28. If member schools evenly divided the $488,000 for a national appearance their payment would be almost six times as large as the payment Horn proposed.

CHAPTER VI

OPERATING THE INTERCOLLEGIATE ATHLETIC CARTEL

Restrictions in the Input and Output Markets

Consider briefly how the rules and regulations adopted by the NCAA effect the market for student-athlete services in which student-athletes exchange their athletic skills for grants-in-aid (scholarships). With the assumption that universities would seek to acquire more of these services if the price were lower and that more students would attempt to become athletes if the rewards were greater, uninhibited exchange between demanders and suppliers of the service would yield a price at which the market cleared. But due to rules adopted by the NCAA uninhibited exchange between the two groups is not possible.

The NCAA has a lengthy and detailed list of what compensation a university can not provide a student-athlete in return for his athletic services.[1] The compensation that the NCAA does allow is generally perceived to be below the compensation that would be paid to an athlete if he could exchange his services in a free market. Thus, the intervention by the NCAA has the same effect on the market for student-athlete services as a price control in any market set below the equilibrium price.

Members of the NCAA are able to save the money they would have otherwise paid to student-athletes by establishing an agreed upon price for the services of student-athletes and ensuring that all adhere to the

agreement. By having the NCAA control the wages paid to student-athletes the producers of athletic contests retain the payments in excess of the amount dictated by the NCAA needed to induce athletes to participate at a particular university. With this restrictive policy and provided unsanctioned competition for student-athletes does not occur, producers are allowed to capture rents from infra-marginal athletes.

The NCAA has also established strict rules that restrict the behavior of its members in the output market (athletic contests). Without NCAA rules that limit the number of athletic contests that can be produced, colleges would continue to engage in athletic competition until the revenue derived from the last game was equal to the cost of producing the game. However, with NCAA rules limiting the number of games a school can play NCAA institutions are prohibited from producing the competitive number of athletic contests.

With these restrictions on production the amount of money schools earn from playing a game is increased. Due to these restrictions and the limiting effect they have on economic competition between members, the NCAA schools receive larger payments for their product than they would have received had they played more games. Thus, one effect of NCAA intervention in the output market is to allow schools to secure rents from demanders.

Given this understanding of how NCAA policies allow producers to capture rents in both the input and the output markets it is interesting to consider why producers of college athletic contests have banded

together and adopted these policies. In a standard business setting these rents are normally secured so that they can be divided among the producers (wealth maximization). But, due in part to the institutional setting, the producers of college athletic contests can not do this. Consequently, what the producers of college athletic contests do with the money they secure by paying athletes less than the market-determined wage and by charging customers higher than competitive admission prices to certain sports events merits examination.

The NCAA is an unincorporated, non-profit organization that works closely with the athletic departments of the 862 member universities and colleges. An institution's athletic department producing athletic contests behaves similar to a business firm producing any output. However, two differences between the firm and the athletic department are apparent. The first difference is the objective function of each body. While it is generally agreed that a firm seeks to maximize profits there is some question about the objective function of an athletic department. The second difference is the absence of the monitor and/or residual claimant from the athletic department.

A firm is an organization that buys and hires inputs and sells goods and services. One of the first principles of economic behavior is that firms seek to maximize profits, where profit is equal to revenue less cost. In a firm there exists a monitor whose primary function is to oversee employees and ensure they do not shirk on their job responsibilities. The monitor is charged with metering employee performance and minimizing production costs. The incentive for him to

monitor effectively is his share of what remains after all contractual obligations have been met. If his job has been done correctly the residual and his reward will be large. If he has shirked his responsibilities his reward will be low or zero. Theoretically his actions ensure that production occurs.

While a few athletic departments attempt to maximize profits this is not the objective function of the majority of NCAA athletic departments. A more plausible explanation for the behavior of NCAA athletic departments is offered by Armen Alchian in his definition of a restricted profit rate firm. According to Alchian this type firm faces institutional constraints that limit the profit it can earn and alters the behavior of its management.

When this type firm reaches its profit limit the cost of certain behavior by management becomes low. More specifically this behavior features a transition on the part of management from pecuniary wealth maximization to utility maximization. Referring to utility maximization Alchian notes:

> By doing so the manager's behavior is interpreted as choosing among opportunities to obtain increments of non-pecuniary goods in his utility function (e.g., pretty secretaries, thick rugs, friendly colleagues, leisurely work load, executive washrooms, larger work staff, relaxed personnel policies involving job security, time off for statesmanlike community activities, gifts of company funds to colleges, out of town hotel suites, racial and religious discrimination in personnel policy, etc.)[2]

An NCAA athletic department faces two constraints that make it behave similar to a profit restricted firm. The first comes from the institution it is set in. A university generally operates in a

non-profit atmosphere and, though the production of athletic contests has been allocated to the athletic department, many of the same contractual arrangements made between the university and its employees are also made between the athletic department and its employees. Specifically there is no monitor and/or residual claimant in the athletic department.

The position with responsibilities most similar to the monitor is the athletic director. An athletic director is usually paid a flat salary and has little incentive to monitor as effectively as the residual claimant in the business firm, whose own performance is reflected primarily in his income. This doesn't mean that rewards for the athletic director's performance have been eliminated entirely. When his contract is renewed a superior performance must be rewarded or he will seek another job. But because the athletic director may have to wait several years before his contract expires this process is not as efficient as the arrangements between a firm and its monitor, who is often holding shares of the company's stock and has his wealth augmented as the stock's value increases.

The second constraint on an athletic department comes from the academic environment surrounding it. Many members of the college community view athletics as a threatening force which dominates university life rather than being one of many secondary features. These individuals deplore what appears to be a double standard in academics for athletes and athletic administrators. Additional tension between the university and athletic personnel results from some athletic departments constitution as a separate financial entity which is not

required to return money to the university. Large profits earned by the athletic department contribute to an antiathletic mood and resentment by the college faculty who could possibly organize and attempt to appropriate some of the resources devoted to athletics. This is one reason why there is a limit, if only implicit, on athletic profitability.

Given that the athletic department has no monitor to take home the residual and that it faces pressure from the university not to generate profits beyond a restricted limit then implications for the behavior of the athletic department can be drawn. First, whereas the business firm has a monitor/residual claimant whose job it is to minimize costs the lack of such an individual in an athletic department to strictly minimize cost should lead to expenditures in the athletic department that are larger than they might be otherwise. Expenditures on items such as salaries, scholarships, recruiting, traveling, equipment, facilities, and office expenses should be larger than if there was a person in the athletic department whose income depended on the department's profits.

While an athletic department may have little incentive to cut costs it still may have incentives to increase the revenue from the sale of its output (i.e., budget maximization). This behavior should cause expenditures to increase up to the size of revenues, suggesting that expenditures by an athletic department may be positively related to rents generated by an athletic department. This cost increasing process, traced directly to the lack of monitoring, can explain the current complaints from athletic departments which are having a difficult time preventing costs from exceeding revenue.

According to a survey financed by the NCAA in 1977 members who maintained an athletic department that fielded teams in ten or more intercollegiate sports (including "big-time" football) earned average total revenues of $2.183 million, but had total expenses that averaged $2.213 million.[3] Thus, in 1977, the average member of the NCAA that responded to this survey had an athletic department with a deficit of $30,000. Many of the schools attributed the rapid increase in expenses that led to these deficits to the effects of inflation, yet as the survey pointed out the general price index between 1970 and 1977 increased approximately 54 percent while expenses increased by 75 percent. Accordingly, the theory offered here suggests that the difference may be accounted for by an increase in non-pecuniary benefits provided to members of the athletic departments. Crude evidence to support this also comes from the same survey where it was reported that the percentage of total expenses spent on Grants-in-Aid and Salaries and Wages had decreased between 1969 and 1977, while the percentage of total expenses spent on Team and Other Travel, Equipment and Supplies, and All Other Expenses had increased during the same period.[4]

Given that the NCAA has enacted policies to allow its members to capture rents then one explanation of how these resources are expended places emphasis on the institutional setting. Because members of the athletic department are unable to take home profits in monetary form and, therefore, seek to maximize their own utility it is expected this money is spent on fancier offices, attractive secretaries are hired, and bigger and better facilities are built. With members of the athletic

department maximizing utility by expending resources on non-pecuniary benefits they should not be anxious to return money to the university. Any money returned to the institution's general fund is done to calm ongoing disputes between athletics and academics. This money is used to purchase intangible capital known as "goodwill."

Another explanation for NCAA policies that restrict the payments to athletes has to do with the cross-subsidization between sports. By restricting certain behavior in the major revenue generating sports the money saved can be used to finance other sports that do not generate sufficient funds to cover their cost of production. Hence, the heavy regulation of football and basketball, resulting in the two sports being more profitable than they otherwise might be, may in part be done so that the remaining money can be used to finance other minor sports.

According to the response by major sports institutions to the NCAA financed survey college the average football program generated a profit of $288,000 in 1977.[5] No doubt this money remained in the general fund of the athletic department and was used to fund other sports that were not profitable. Consequently, the net effect of restricting payments to college football players and limiting games played in order to increase ticket prices is to earn rents which could be used to finance other intercollegiate sports.

The NCAA takes pride in noting that a large number of its members maintain athletic programs which field more than a dozen intercollegiate sports and that more than one million student-athletes participate in the sports the association sanctions, yet it is interesting to examine

how the minor sports are subsidized by the more profitable sports. By restricting the wages paid to student-athletes who play football or basketball colleges are able to pay the athletes who participate in non-revenue sports. To underscore the problems embodied in this policy consider any group that restricted the wages of the most productive members so that its least profitable members could be paid the same amount. In such a situation there would be a tremendous amount of criticism based on equity criteria and stressing the importance of allowing wages to be freely determined in the marketplace. Yet, while the same policy is conducted in intercollegiate athletics there is little criticism of it.

Given this understanding of the policies of the NCAA, which allow rents to be captured by producers, the model presented here asserts that these rents can not be divided by the producers and spent as they would be in a business setting. Instead, the rents are either spent by athletic departments to purchase non-pecuniary benefits consistent with Alchian's theory of the restricted profit rate firm or used to subsidize the production of sports that would not be produced because they could not generate sufficient funds to cover costs. Thus, in this section major questions concerning the reasons why athletic departments have organized through the NCAA to adopt certain rules have been addressed.

Decision-Making and Division of Rents in the Intercollegiate Athletic Cartel

Cartel Composition and Decision-Making

Because a cartel consists of two or more producers most of its actions are the result of collective decisions. In a cartel

representatives of the firms that have colluded to restrict certain activities are forced to make decisions about production, price, market division, etc., through a collective decision-making rule. Given the importance of collective action in any cartel it is possible to highlight several factors that will be effected by the collective decisions of the cartel.

It is well known that the cost of making collective decisions becomes greater as the size of the group involved increases. One way to minimize many of the problems that result when large groups make collective decisions is to ensure all firms have approximately the same objective and cost functions. That is, if firms in the cartel have similar goals and production methods then each decision will have approximately the same impact on all members. Consequently, a cartel composed of producers with similar goals and methods will find it less costly to make collective decisions than a smaller group composed of members with diverse interests.

The importance of having a cartel composed of members with similar goals and methods can not be overemphasized in view of the incentives that exist to cheat on any limiting agreement. Because a firm can gain an advantage over others in the cartel by not adhering to the restrictive agreement (while all others do) and because all firms recognize this fact, cartels tend to be unstable. Commenting on the durability of cartels Charles M. Schwab once remarked, "Many of them lasted a day, some of them lasted until the gentlemen could go to the telephone from the room in which they were made..."[6]

Because collusion to cartelize and organize monopoly behavior in the United States is prohibited under the Sherman Antitrust Act, a group of producers that attempts to adopt strong (and visible) measure to monitor output and prevent cartel cheating will be a likely target for legal action. Yet a cartel that does not have arrangements to prevent cheating will have a difficult time effectively manipulating price. This leads the theory to conclude that cartels which are protected from legal action (through special arrangements with the government) will be more stable because their limiting agreements can be enforced without government interference, while those cartels that have not made arrangements with the government (i.e., unprotected) will tend to be unstable since they will not be able to adequately enforce their restrictions.

Collective decision-making also impacts on the incentives of the firms in the cartel. If a firm is not in a cartel and chooses to take more risks in its pursuit of profits it alone will incur the losses if the project is not successful or reap the gains if it is successful. But if the firm was in a cartel and the new discovery had to be shared with other cartel members or the firm was not allowed under cartel rules to expand production and reap the increased profits this discovery made available then the firm would be less willing to undertake new ventures. Hence, an additional effect of collective action is its impact on the willingness of firms in the cartel to develop new projects.

The method in which collective decisions are made by the cartel has important implications upon the distribution of the rents generated by

the cartel. If decisions are made by a voting rule that gives each member an equal say and the gains from cartel membership accrue equally the potential for redistribution of income between members is small. The potential for redistribution will also be small, even though the cartel rents may accrue unequally, if a voting rule is used in the decision-making process that allows the votes of the members to be weighted according to the magnitude of their wealth. Under these circumstances members would have little incentive or chance to redistribute wealth.

The largest potential for income redistribution within a cartel will occur when gains from cartel membership accrue unequally and the decisions of the group are made by members who have the same voting privileges. Under certain circumstances a minority of the membership may collect a majority of the rents. In this case the majority of members who receive the smaller share of the rents will be able to band together and outvote the minority that receives the larger share of the rents. Due to their large number and a voting rule that allows them to take advantage of this fact the "have-nots" in the cartel should be able to pass any motion that is designed to transfer revenue from the group that receives a larger share of the cartel rents to the group that receives the smaller share.

With a decision-making rule that offers this potential the viability of any cartel could be challenged because the "have" firms might prefer to withdraw from the cartel and compete against the "have-not" firms. Theory predicts that they would do so unless there

was a sufficiently large penalty for withdrawal. To avoid this situation "have" firms will attempt to prevent redistributiion by seeking a decision-making rule that allows them to defeat proposals that would redistribute their income.

With this general understanding of the composition of a cartel and the method by which collective decisions are made it is now time to examine the membership of the NCAA and its decision-making rule. In the next section it will be shown that the NCAA is plagued by many of the same problems that cartel theory predicts all cartels will face. Further, because of the failure of the NCAA to address some of the problems that stem from the composition of its membership and its decision-making rule the viability of this cartel has been increasingly threatened since the mid-1970's.

Decision-Making and Rent Division in the NCAA

When the NCAA was formed it consisted of sixty-two member institutions, most of whom were located in the northeastern United States. Given that football (the major college sport at the time and often the only athletic team a college fielded) had not developed much beyond the English sport of rugby early members of the NCAA maintained athletic programs that were quite similar. As a result of the similarities among members there were few major disagreements within the NCAA during its early years.

To make decisions the members of the NCAA chose the one vote per school rule and also allowed athletic conferences to have one vote. To

amend the NCAA constitution it was necessary for a motion to receive a two-thirds majority while a simple majority was needed to amend the NCAA's by-laws. Again, due to the similarities between members this voting rule functioned effectively until shortly after World War Two.

After World War Two the NCAA, whose membership had increased significantly since 1905, became interested in controlling the televising of college football games. The NCAA soon discovered that by restricting these television broadcasts it was able to earn a larger payment for the rights to broadcast college football games than if each school individually attempted to sell their television rights. Thus, the increased payments for the rights to broadcast college football games represented the rents generated by the producers of college football games banding together and selling them as a package.

The first major disagreement between NCAA members took place during the association's initial efforts to establish a collective television policy. Under the plan adopted by the association schools that were already broadcasting many or all of their football games were asked to make a large financial sacrifice and not broadcast their games. These schools (most prominently the Universities of Pennsylvania and Notre Dame) were naturally upset at this and were vocal opponents of the NCAA's plan. But, due to the NCAA's decision-making rule these schools were easily outvoted and the television policy was adopted.

The NCAA's experience in the late 1940's and early 1950's during the adoption of a television policy serves as a good example of the problems generated by collective decision-making. Over the question of

a restrictive television policy members chose sides based on their economic interests. Those institutions that maintained highly competitive football teams did not want to be limited in their television appearance or the revenue earned from them limited. The majority of NCAA schools, which did not appear regularly on television and had their attendance fall because of television broadcasts, preferred a policy of restrictive broadcasting. Consequently, under the one vote per school rule the large majority imposed their will on the smaller group and transferred money earned from television appearances away from the smaller group of schools.

As the association increased in size it became clearer that members differed considerably in areas such as the size of their athletic programs and their approach to athletic problems. Some schools had large budgets and openly desired to have the nation's best athletic program while other members had much smaller budgets and aspirations. To solve some of the problems caused by these differences the NCAA divided its members into University and College Divisions for athletic competition and discussions of common problems (at NCAA conventions), but the association still made decisions en masse.

As the association entered the 1970's the problems caused by the differences among the members were compounded by the budgetary problems that the athletic departments were experiencing. Schools which maintained larger athletic programs offered many possible solutions to these problems, but they were generally rejected by the schools which had smaller athletic departments. Additionally, the solutions presented

by the smaller schools were usually rejected by the larger schools. Thus, by the early 1970's differences between NCAA members were beginning to put a strain on the ability of the cartel to function.

The larger schools were also beginning to express dissatisfaction with the number of appearances their football teams were making on television. Under the NCAA's television policy the only way to receive a share of the rents generated by the cartel was to appear on television. Consequently, the large schools believed that they were not making enough appearances and that the smaller schools were appearing too often. The schools that maintained superior football programs recognized that without the NCAA's restrictive policy they could earn more television money and hints by these schools of possibly withdrawing from the NCAA and conducting an independent football season began appearing.

To address many of these problems the NCAA organized its first summer convention. At the August 1973 meeting the NCAA reorganized its membership into three categories (Divisions I, II, and III) each based on the size, scheduling, and commitment of a school's athletic program. Under this plan each division was also allowed to adopt some rules that would be binding on its own membership.

The reorganization of the NCAA appeared to remedy most of the problems that had necessitated the special summer convention until it was observed that Division I, instead of consisting solely of the truly superior athletic schools, actually contained many schools that simply did not maintain big-time programs. The schools with highly competitive

athletic programs called for Division I to be reorganized, but all attempts to do this were postponed until 1978.

In the late 1970's two important events that would impact upon the conflict between members in the NCAA took place. The first was the establishment of the College Football Association (CFA). The CFA was a group of sixty-one universities that maintained a similar financial and philosophical approach towards fielding superior athletic teams.[7] These schools organized to discuss many of the problems they faced as producers of big-time football and to adopt responses (including the drafting of proposals to the NCAA constitution) to the challenges against their programs by the smaller schools.

About the same time the CFA was organized the "Robin Hood" proposals were introduced at an NCAA Annual Convention. Under these proposals income would be directly redistributed from the schools which maintained large athletic programs and fielded football teams that frequently appeared on television and in the postseason bowl games to the schools which had smaller programs and seldom appeared on television. It was likely that these proposals might have been adopted since those institutions that stood to gain financially outnumbered those who would lose money, but the proposals were never formally considered by the association due to parliamentary procedure.

The "Robin Hood" proposals, however, provide an example of the predictions of cartel theory. Under the collective decision-making rule of the NCAA the schools with a smaller commitment to sports had the same voice in NCAA decisions as the larger schools which maintained

multi-million dollar athletic programs. The larger number of these smaller schools, even within Division I, provided the proper circumstances for redistribution of income to take place as witnessed by the attempt to do so with the "Robin Hood" proposals.

In 1978 Division I was reorganized into Divisions I-A and I-AA. It was hoped that Division I-A would be organized into a group consisting only of the superior big-time athletic schools, which numbered eighty-one according to the CFA. But under a special arrangement known as the Ivy League amendment any school which maintained twelve or more intercollegiate sports was permitted to join Division I-A. This amendment increased the size of Division I-A to 137 members and prevented the CFA schools from controlling the rules by which they were forced to operate. Acceptance of the Ivy League amendment also indicated that twenty big-time schools not in the CFA (primarily in the Pacific Coast Conference and the Big Ten Conference) had voted for the amendment. This meant that the sixty-one CFA schools could be easily outvoted on any issue by the other Division I-A members.

The problems within the NCAA remained dormant, but clear, until 1981. During this time (1978-1981) the schools which maintained larger athletic programs continued to voice opposition to the method by which NCAA decisions were made. They believed the system allowed a majority coalition composed primarily of schools that did not maintain major football programs to dictate to them how to run their football programs. These schools also expressed opposition to the NCAA's method of choosing which football games were to be televised because they believed they

should be making more appearances and earning more of the rents generated by the restrictive broadcasting policy. Through the CFA the larger schools repeatedly threatened to negotiate their own television contract to correct this situation, but few took their threats seriously until 1981.

In mid-1981 the Council of the NCAA announced the signing of a new four year television contract that would begin in 1982 with both ABC and CBS. Under this agreement a total of $263.5 million would be paid to the NCAA for the rights to broadcast 70 college football games each year. While the payments for regional and national appearances were increased under this agreement no team was guaranteed any television appearances.

Frustrated over their inability to control their own athletic programs and receive a larger share of the television payments the directors of the CFA initialled a television contract with NBC. If approved, this agreement called for NBC to pay the CFA $180 million over a four year period for the rights to broadcast their games. In contrast to the NCAA-ABC-CBS plan the CFA contract encompassed only those schools in the CFA, but guaranteed each a minimum of two appearances in the four years.

The two television contracts put a severe strain on the NCAA's existence. Not surprisingly, this pressure resulted directly from the NCAA's failure to adopt a decision-making rule that prevented redistribution of income between members from occurring. Indeed, the schools in the CFA made little effort to hide their displeasure over the

fact that schools with smaller athletic programs were able to tell them what to do.

Because of the importance of television in the intercollegiate athletic cartel the struggle between the CFA and the NCAA was not a question of which network was allowed to broadcast the games, but rather who was entitled to sell the broadcast rights. Since the first collective college television contract was signed the NCAA had been able to sell the package of television rights for large sums of money. In turn the NCAA subtracted a small percentage of the revenue for expenses and then divided the remainder of the money among its members by having them appear on television.

This method of selling television rights worked well until it became clear to a number of schools that fielded highly competitive football teams that they could earn more money by selling their broadcast rights than by appearing on two or three NCAA sanctioned broadcasts per year. The Universities of Pennsylvania and Notre Dame had seen this in the 1950's but had been unable to effectively oppose the NCAA's program because of their small number. The CFA, however, because of their large membership was able to oppose the NCAA plan and could conceivably withdraw from the NCAA and continue to play football.

In contrast to the NCAA the members of CFA believed that the property rights to television broadcasting belong to the institution. Accordingly, members of the CFA felt they were legally entitled to sign a contract with NBC. The NCAA, however, recognized the importance of restricting the sale of television rights to secure larger payments for

the entire association and threatened punitive action against any member who appeared on a non-sanctioned broadcast.

In September 1981 members of the CFA met and tenatively approved the NBC contract 33 to 20, with 5 abstentions and 3 voided votes. The final vote on the contract was scheduled to be held two weeks later but the meeting never occurred. Instead, the NCAA urged the CFA to postpone any decision until a special NCAA convention could be held on December 3 and 4, 1981, when reorganization of the membership categories would be considered.

On December 3 and 4, 1981, the NCAA held a special meeting of Division I-A members in St. Louis, Missouri. Division I-A members were called together to consider paring down the division and settling the television dispute. Members of the CFA also wanted the convention to officially rule on the property rights of television broadcast rights, but NCAA officials had that discussion postponed because they felt it should be conducted before an annual convention when the entire association was present.

At the special convention several proposals to decrease the size of Division I-A were considered. The first proposal, which came from the CFA, called for the creation of a new membership category (Division IV) which would be composed only of schools maintaining superior football programs. It was defeated. The second proposal, put forth by members of the Big Eight athletic conference, called for Division I-A to be trimmed to eighty-five members, but it was also defeated.

A motion backed by the council of the NCAA that called for the top membership category to consist of approximately 100 members was considered last. This motion passed and the decision as to which schools would remain in Division I-A and which schools would be moved to I-AA was delayed until the NCAA's next annual convention.

Some members of the CFA were not satisfied with the outcome of the special December convention. They threatened to push for adoption of the NBC television contract anyhow. But in late December, 1981, the CFA was unable to get a sufficient number of members to approve the contract and the television arrangement with NBC was cancelled.

The decision by the NCAA to call a special convention and appease the members of the CFA appears to have been a logical one. By agreeing to changes that allowed the members of the CFA to receive a larger share of the rents generated by the television policy (fewer members in Division I-A provides more television appearances for CFA members) most members of the CFA were content and did not want to withdraw from the NCAA. More importantly the NCAA, as the organization of producers of college athletic contests, remained intact to continue transferring revenue to the producers of these games and was not to be splintered by the CFA.

Without an attempt to appease the CFA the NCAA would have found itself in an extremely difficult situation. In an effort to punish members of the CFA the NCAA would have had to prohibit members of the NCAA from competing against them. Perhaps all NCAA members would have followed this policy, perhaps not. Compounding these problems was the

possibility that the CFA would have organized a "super-conference" thereby avoiding the sanction of the NCAA and eventually competing with it for fans and revenue.

It is also likely that the NCAA would have found itself involved in a lengthy court case that could have yielded disastrous results. No doubt one issue the court would have ruled on was the question of who owns the property rights to broadcast a college game. If these were awarded to the individual schools then the ability of the NCAA to collectively negotiate a television contract would have ceased. Even more importantly, the NCAA could have been subjected to an antitrust case that would have had far reaching implications on its tax-exempt status and ability to operate almost unchecked in intercollegiate athletics.

In light of the consequences that might have resulted from a direct confrontation with the CFA the NCAA's decision to call a special meeting and appease these members was rational. Nonetheless, the problems the NCAA had with the CFA are consistent with the predictions of cartel theory. Once it is recognized that this struggle was over the division of cartel rents it is relatively easy to trace the origin of the problem to the decision-making rule of the NCAA.

Monitoring the Intercollegiate Cartel

The NCAA maintains an efficient cartel by restricting behavior in the output and the input markets of college athletics. In the output market the number of athletic contests played by member institutions are

restricted by NCAA regulation and the televising of these contests is carefully directed by an NCAA committee. Few resources, however, are spent monitoring the output market.

Because of the unique nature of the product it would be virtually impossible to play an unsanctioned contest and go unnoticed. Further, the method in which the Television Committee coordinates with the network that televises college sports (they meet and agree on which teams are to be televised and in what areas) as well as the fact that television is designed to bring an event to a large number of people prevents any college team from appearing on television without the NCAA's knowledge. Because of the open and public nature of its product the NCAA devotes few resources to ensuring its rules restricting behavior in the output market are followed.

In the input market the NCAA restricts the payments to student-athletes, the methods in which they may be induced to attend a particular univesity, and the general conduct of both athletes and athletic staff members. Because the activities that occur while an athlete is recruited or compensated for playing are more private than the transactions in the output market the potential for violations of NCAA rules in the input market is larger. As a result, the NCAA devotes most of its monitoring resources to ensuring restrictions in the input market are adhered to.

Given this simple understanding of the priorities of the NCAA's monitoring system this section examines the process by which the services of student-athletes are exchanged for scholarships. It

explores the ways in which educational institutions can compete for student-athletes and the methods by which the NCAA prohibits this competition. General cartel monitoring, which details how and when a cartel should be monitored, is also integrated and contrasted with the NCAA's efforts to monitor college athletics. This chapter concludes with a section that analyzes current rules and regulations the NCAA maintains that restricts competition between member institutions for student-athletes and decreases the cost incurred by schools producing athletic contests.

Cartel Monitoring

In an unrestrained competitive environment firms compete by trying to produce the best product in order to capture a large share of the market and earn large sums of money. In this process all firms incur costs by experimenting with new production techniques and bidding for scarce inputs. Firms in the industry could agree to limit many of these practices to avoid these costs involved in the search for new and innovative techniques. However, once firms agree to restrict behavior there will be incentives for a firm to cheat on the agreement and gain at the expense of those who adhere to the limits. For the agreements to be effective there must be a method to ensure all are following them.

It is also known that a cartel exists when producers collude to act as non-discriminating monopolists. This is characterized by charging a higher price for the product than it would bring in a competitive market and reducing the quantity of output (compared to a competitive situation). But again, there will be incentives for a firm to expand

production and earn more money while all others have reduced production.

These two examples reveal a critical issue in cartel theory; chiselling. Because of this methods to prevent cheating on limiting agreements in the input or output market need to be examined. This is an important issue because cheating on the limiting agreements can bring about the demise of the cartel. Thus, this discussion explores how a cartel is monitored.

The ideal cartel monitoring arrangement is one where a monitor can count output by hand and ensure, by watching the payments made, that the predetermined price is being charged. But the impossibility of this situation due to the cost of obtaining this information may make efficient monitoring of a cartel come down to a choice between monitoring price or output.

Making prices public information in no way assures that this is the price being charged. Tie-in sales and kickback arrangements are just two methods by which output could be expanded and the posted price unchanged. Knowledge of price by the monitor does not guarantee that a stable cartel agreement exists.

Consider what information is provided when the monitor knows what quantity is produced. By knowing the number produced the simple information provided by any demand curve (i.e., willingness to pay) makes price determinable. With knowledge of output it is also recognizable that the only way to sell and, therefore, produce more is to decrease price. Further, compared to price, which may never be

known, output tends to be countable. One would only have to sit in a mideast seaport and observe the number of oil tankers leaving to get a good idea of how much oil the country is exporting. In a more extreme case members of medieval European guilds affixed a personal stamp to their output. Other things being equal, the cartel monitor will be more concerned with industry output rather than price.

The next point to consider is where output monitoring takes place. Should output be monitored at the point of production or the point of sale? It is expected that monitoring would occur at the place where the actual counting or observing was easiest, i.e., the point at which monitoring costs are lowest. If it is agreed that costs increase with size, that is, it is more difficult to observe larger groups than smaller groups, monitoring should take place at the point where the smallest group is involved.

If there are fewer producers than consumers, output should be monitored at the point of production. This is the case with lawyers, doctors, and dentists. Output is controlled by restricting entry into these professions (the point of production); hence, fewer medical and law schools and the emergence of professional (e.g., Bar) examinations. Raw materials such as oil, would also fall into this category.

Conversely, if there are fewer consumers than producers it would be logical to monitor output at the point of sale. Due to the large geographical area where farming and ranching take place in the United States it would be quite costly to travel to each location and observe how much of each crop or animal is being produced. Instead, it would be

less expensive to control output if a central market exists where crops or animals are sold. Agriculture products are an example of goods which could be monitored at the point of sale, with farm trade associations emerging as one possible group that could do the monitoring.

Cartel Monitoring Conducted by the NCAA

Turn, now, to college athletics where output is athletic contests. It is clear that there are fewer producers than purchasers of this good. But, in terms of cartel monitoring, the NCAA is in the unique position of having the point of production and the point of sale of athletic contests being the same place. Hence, the location at which output is monitored is obvious. The NCAA's effort to monitor college athletics is also made easier because the price of the output is public information and public record of the outcome of the contests (newspapers, television, and radio), is large enough to make production of another unmonitored unit of output impossible. Consequently, the NCAA is able to monitor output in the three sports for which it limits the number of contests played, basketball, football, and soccer, at a very low cost.

The NCAA, however, does not limit its policy of restricting behavior to only the output market. The association's experiences in the first half of the twentieth century revealed that unrestrained competition in intercollege athletics led athletic departments and Alumni Associations to offer student-athletes direct monetary payments and non-pecuniary inducements such as cars and clothing. Producers in the intercollegiate athletic industry soon realized that all would save money if the practices used to attract and retain student-athletes could

be controlled and limited. The experiences of the 1930's and 1940's revealed, however, that these limiting agreements were of little value unless they were enforced. Thus, the NCAA set up an enforcement mechanism to prevent cheating on the rules that limited competition and saved schools money.

Without safeguards to ensure schools did not violate NCAA limits schools competing for highly skilled student-athletes had sufficient incentives to offer these student-athletes unsanctioned payments. If a school recruited the student-athlete and he helped produce a successful (winning) team more people would want to attend their games. This increase in demand would lead to higher admission prices or more appearances on television, both resulting in increased revenue for the school.

Recruiting of superior athletes also decreased the cost of producing of athletic contests. With a team of highly skilled student-athletes less time would be needed for training. This decrease in time, athletic staffs, or equipment not needed by a team of superior athletes would result in less money spent by an athletic department.

Because recruiting superior student-athletes offered many advantages to a school, NCAA members were often willing to violate the association's rules. Indeed, in the sports with a smaller number of participants (e.g., basketball) the recruitment of just one highly skilled student-athlete could turn an inferior team into one that would receive national publicity, which translated into television appearances, higher ticket prices, and increased revenue. To prevent

this competition for student-athletes and restrict wages paid to student-athletes, which allowed athletic departments to capture these rents, the NCAA established a complex system of enforcement.

The NCAA established a series of committees designed to monitor its rules that evolved into what is known today as Committee on Infractions. This five-man committee was designated to:

> ...Consider complaints which may be filed with the Association charging the failure of any member to maintain the academic or athletic standards required for membership or the failure of any member to meet the conditions and obligations of membership in the Association;
>
> Formulate and revise as necessary a statement of its established operating policies and procedures, including investigative guidelines, which shall be published in conjunction with the official procedure governing the enforcement program;
>
> Determine facts related to alleged violations and find violations of NCAA rules and requirements;
>
> Impose an appropriate penalty on a member found to be in violation, or recommend to the Council suspensions or termination of membership, and
>
> Carry out any other duties directly related to the administration of the Association's enforcement program.[8]

The Committee on Infractions works closely with the association's Department of Enforcement. Enforcement is one of five NCAA departments; the other four are the committees for Administration, Events, Publishing and Communication. In the year ending August 31, 1979, the Department of Enforcement had a budget of $546,651, while the operating expenses of the entire NCAA was $13,846,390.[9] See Tables Six and Seven. Members of the Department of Enforcement conduct the actual investigation of an NCAA member alleged to have violated the association's rules.

An investigation into a possible violation of NCAA rules begins with an allegation or complaint by an individual concerning an

Table Six

EXPENDITURES BY THE DEPARTMENT OF ENFORCEMENT
FOR THE YEAR SEPTEMBER 1, 1978 TO AUGUST 31, 1979

Salaries	$315,670
Payroll Taxes	16,964
Annuity and Insurance	46,371
Travel	122,606
Entertainment	1,399
Office Supplies	7,891
Telephone	25,491
Office Equipment	1,401
Printing and Duplicating	2,556
Misc.	590
	540,939

Annual Reports of the National Collegiate Athletic Association, p. 271, 1979.

Table Seven

TOTAL EXPENDITURES BY THE FIVE DEPARTMENTS OF THE NCAA

Administration	--	$ 474,363
Communication	--	1,900,592
Events	--	353,031
Enforcement	--	546,651
Publishing	--	687,487

Annual Reports of the National Collegiate Athletic Association, p. 271-275, 1979.

institution's failure to comply with NCAA regulations or at the initiative of the investigative staff of the Department of Enforcement. The investigative staff, subject to the rules of the NCAA, investigates the allegation(s) and presents its findings to the Committee on Infractions. If the Committee on Infractions determines it is a minor violation it may reprimand or censure the university without a hearing. If the committee determines the violation is of serious enough nature it invites the university to a hearing where it can respond to the charge(s). The committee then weighs the evidence and if it decides to punish the institution it choses from these penalties:

(1) Reprimand and censure;

(2) Probation for one year;

(3) Probation for more than one year;

(4) Ineligibility for one or more NCAA 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 total financial aid awards ... which may be awarded during a specified period;

> (11) Requirement that an institution which has been represented in an NCAA championship by a student-athlete who was recruited or received improper benefits (which would not necessarily render him ineligible) in violation of NCAA legislation shall return its share of net receipts from such competition in excess of the regular expense reimbursement, or if said funds have not been distributed, they shall be withheld by the NCAA executive director; 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.[10]

An institution has the right to appeal the decision to the eighteen member Council of the NCAA if new evidence can be introduced and, with or without new evidence, a school can appeal any penalty to the annual convention of the NCAA.

To appreciate the scope and magnitude of the task undertaken by the NCAA enforcement system consider an equivalent business world example. Suppose, for whatever reason, a cartel is unable to continue restricting output. Perhaps it has reached the revenue maximizing quantity of output and any attempts to manipulate output will result in the decline of total revenue. This cartel will realize that it can not increase profits by increasing total revenue and must, therefore, turn to the cost side of its profit equation. Cost can be reduced and profits increased if an agreement can be reached between firms in the cartel to restrict payments to inputs. If the agreement is to pay inputs less than a market equilibrium price the market will not clear and firms which do not obtain the resource will have incentive to pay more for the input than is allowed. Again, monitoring is needed to ensure that firms do not cheat on the cartel's agreement.

One possible scenario for what could occur is the following. Control of output is assumed not to be a problem. Due to efficient monitoring, firms do not cheat on the output restrictions. In an effort to reduce costs firms agree to pay the input (labor) the same, low wage. Because firms can not bid for the services of the most efficient (productive) workers allocation of these workers becomes based on non-price criteria, (e.g., cleanliness of workplace, compatibility of co-workers, etc.). Some firms, unable to compete in these non-price categories realize that they can obtain workers by cheating on the wage restricting agreements and by offering them more money. Indeed, this set of superior worker may be so efficient that they can lower average cost considerably, resulting in large profits even with the higher payments.

The problem confronting the cartel is how to monitor this agreement. Clearly firms will not want to offer more money to those workers with a value of their marginal product less than or equal to the agreed upon restricted wage. Firms will only have incentive to offer higher wages to workers with a value of their marginal product larger than the restricted wage. The task confronting the monitor is to ensure that all workers are paid the same wage.

If the monitor had no budget constraint there are many ways he could ensure that all were following the agreement. With unlimited resources it would be possible to check each payment made to each worker. Or the monitor could identify all superior (efficient) workers, who were likely to be made larger offers, and check their pay. But

given that the monitor does not have endless resources and the difficulties that exist in monitoring price then a low cost method to monitor this agreement would be needed or the stability of the cartel could be threatened.

One reason each of these systems of monitoring would be costly to implement is that the monitor could spend considerable time and effort and find few, if any, violations. That is, the probability of finding a cheater may be quite low when the monitor has to check a large group for violations. Instead of investigating all possible cases the monitor could lower costs if he could obtain information about alleged violations and then investigate those incidents. The monitor will act more efficiently in terms of resources spent and cheaters apprehended if he investigates fewer cases, each with a higher probability of finding a violation. The monitor can be more effective, given his constraints, if he can obtain initial information about who may be cheating on the agreement and in this way decrease the number of investigations.

The competitive process in which firms seek this input is a natural mechanism for this information to be provided. As firms compete for the superior workers they undoubtedly learn what other firms have offered the worker.[11] Rival firms in the contracting process have incentive to inform the monitor about cheating by other firms with the knowledge that the monitor will "punish" the violator and they will gain, either directly, with a payment for this information, or indirectly, by obtaining the resource for which the violator was competing. Given that the rewards to the "informer" are sufficient, information about possible violations, which may be revealed as firms compete, will be conveyed

to the monitor. In this way the monitor will be able to investigate possible violations more efficiently and at a lower cost.

Return to the cartel in college athletics. Output is easily monitored but unaltered, perhaps because the revenue maximizing quantity is being produced. To increase profits this cartel seeks to decrease production costs. One way to do this is by having all members of the cartel agree to pay student-athletes only room and board, tuition and fees, and a limited amount of book money in exchange for their services. But because of the incentives to cheat on any limiting agreement the NCAA needed a system to ensure all members were obeying association rules. Monitoring this agreement, however, was complicated by the large number of people (athletes and administrators) located in a widespread area. One method for monitoring the NCAA's agreement restricting wages paid to inputs comes from considering what takes place when a university seeks the services of a student-athlete.

After having displayed his skills in high school athletic competition the athlete is contacted by universities which desire his services. While it is not unusual for a superior athlete to be contacted by hundreds of schools it is worth noting that a few universities with established reputations only contact those athletes who contact them first. The economic description of the process that occurs as schools seek athletes is the rationing of the supply of student-athletes among demanders.

A close analogy to this process occurs in the professional baseball league in the United States where baseball players not under contract

after six years in the league become free agents, able to search the market and sign a contract with the team of their choice.[12] As the baseball player searches the market, important information about the value of his skills is revealed by the bid each team makes for his services. Important adjustments in the bidding process take place as the player informs each team, indirectly perhaps, of other offers. When the player and a team finally reach an agreement a contract is drawn up and signed. An efficient outcome is determined as the team that is willing to make a better offer than any other team obtains the service of the player.

The situation in the market for student-athletes has many similarities to the market for professional baseball players, but also several differences. Like the baseball player who searches for the team he believes is best for him, whether it be the team offering the largest salary, the one with the most promise, or any combination of these or any other characteristics, the student-athlete searches for the university or college that is right for him. While the university may offer the student-athlete many things, (the chance to be on starting team, the possibility of being instructed by the best economics faculty in the country) one of the things a university can not do is bid with money for his services. Because the NCAA's rules limit the amount that a player may be paid in exchange for his athletic services, the competitive bidding processs that takes place in a free market does not exist in the market for college athletes.

The free agent professional athlete is able to determine his value by the offers which teams make for his services. By letting teams bid

for his services, the interested teams decrease as the offers increase, until eventually the highest bidder secures the athlete's services. However, because this mechanism does not exist in college athletics the exact value of an athlete's service is much more difficult to determine. As a proxy he may base the demand for his services on the number of schools that express interest in him (i.e., visit, call), but this method for determining value is not as straightforward as the pricing mechanism.

Without the pricing mechanism one predictable outcome is observed. Because there is no device that directly conveys cost-benefit information, schools which would normally be eliminated from the bidding have incentives to continue to seek the athlete's services. Thus, the contracting process between the athlete and the university may be more drawn out, involving more universities (demanders) for a longer period of time, than if the process had a price mechanism to allocate resources.

The final agreement between a prospective athlete and a school is approximately as formal as the agreement between a professional athlete and a professional team. Once a professional athlete has signed a contract with a team any attempt by another team to induce him to violate the contract will bring charges of "tampering" from league officials, which is punishable by monetary sanctions and/or restrictions on league privileges (e.g., forfeiture of draft choices). When a high school senior decides which university he will attend he signs a National Letter of Intent, which binds him to a university and severe penalties will be imposed if he chooses to attend another

university. There are, however, a number of schools that do not honor the National Letter of Intent so it is not clear that a high school athlete will actually attend the university he first chooses.

The page long document known as the National Letter of Intent is a written statement signed by an athlete, his parents, and the Director of Athletics which lets all know that the athlete intends to attend a specific university. Under the agreement connected with the National Letter of Intent all recruiting of the athlete is supposed to stop once he signs the document. But because some NCAA schools do not participate in the National Letter of Intent agreement universities often have to expend resources protecting high school athletes after they have signed a National Letter of Intent from other universities which would like to convince the high school athlete to attend their school.[13]

The National Letter of Intent agreement calls for penalties to be imposed on any athlete who signs an agreement with one school and then attends another. Should an athlete do that he is prohibited from representing the institution until he has attended that school for two calendar years and will not be eligible to compete in any intercollegiate sport for more than two years. However, there are also provisions in the National Letter of Intent agreement which invalidate sanctions against the athlete. If an athlete attends another school penalties will not be imposed if the athlete failed to meet entrance requirements of the institution and the NCAA; if the athlete attends the institution he signs the National Letter of Intent for one year; if the athlete graduated from a junior college after having signed the National

Letter of Intent while in high school or the first year of junior college; if the athlete served in the armed forces of the United States or on a church mission for eighteen months; if the sport is discontinued; or if the athlete attended any institution because financial aid was not provided by the institution that signed the letter and the athlete received the proper waiver by having the Director of Athletics issue a statement confirming that aid was not provided.[14]

While the National Letter of Intent is respected as a sign that the high school athlete will attend a certain university, the market for athletes transferring from junior college to four year institutions is even more competitive because there is no centrally recognized agreement such as the letter of intent. In terms of athletics, two year junior colleges exist as a feeder system for major, four year universities for athletes unable to move directly from high school to the larger schools.[15] At the end of two years these athletes, provided they have a sufficient grade point average and enough credits, can transfer to a university and participate in sports. Because junior college athletes have already displayed their skills in competition with other college athletes (whereas only a good estimate can be made of how a high school athlete will fare in college competition), there are advantages to recruiting junior college transfers. The most obvious advantage to recruiting a junior college athlete is that unlike an athlete who transfer from one four year institution to another and has to "sit out" a year before he can participate in sports, a junior college transfer can immediately compete in intercollegiate athletics. However, nothing approaching a formal agreement to limit competition for junior

college athletes, such as a Letter of Intent, is available for junior college transfers. The market for superior junior college athletes is so competitive that in addition to the usual practices to ensure no other university "steals" a recruit, assistant coaches often walk a new athlete to his first class to establish, according to NCAA rules, that the athlete is officially enrolled and make it impossible for him to leave the school to participate in sports at another university without "sitting out" a whole year.

Given the unique nature of recruiting there is no central location, per se, in which student-athlete services are exchanged. Indeed, recruiting can take place in almost any location and, as a result, attempts to ensure that all recruiting is done according to the rules of the NCAA could be extremely difficult. But the method whereby recruiting takes place provides insight into the way it can be monitored.

The process of convincing a student-athlete to attend a certain university consists of each university making the student-athlete an offer in exchange for his services. When he compares universities he is comparing the offers that each has made to him. Given the flow of information between student-athlete and the various schools it is likely that each school knows what the other is offering the student-athlete. If there is incentive for a university to make the student-athlete an NCAA prohibited offer, knowledge of the offer may show up in the recruiting process as each school learns what the other schools are offering. With this knowledge of how recruiting occurs and information

is transmitted from the supplier (student-athlete) to the demanders (universities) a better understanding of the NCAA's monitoring policy can be obtained.

The NCAA monitors the college athletic cartel by ensuring that the output and input agreements are followed. The output agreement is relatively easy to monitor due to mass media, but the input agreement is considerably more difficult to check. Given the magnitude of the task confronting the NCAA (862 schools seeking the services of thousands of athletes) and the size of its enforcement staff (13 members) it is apparent that the NCAA makes no attempt to check every recruiting procedure. Instead, given the information that is conveyed between a recruit and the schools actively recruiting him and the incentive each school has to eliminate the other universities in competition for a recruit, the NCAA accepts all allegations of possible violations from any source and investigates the reasonably substantiated charges. According to the NCAA:

> ...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 investigation staff.
>
> ...The investigative staff, so far as practicable, 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 for a reasonable period of time to determine whether there is adequate evidence to warrant an official inquiry; and in conducting this inquiry, the services of a field investigator may be used. During this period of the preliminary inquiry, the investigative staff shall inform the involved institution of the general status of the inquiry not later than six months after the initial notice.[16]

Thus, the NCAA's strategy of low cost monitoring based on information provided to them is consistent with the theory developed above. It demonstrates that in situations where monitoring all incidents would be very costly, efficient monitoring consists of encouraging competitors to report violations as they see them and investigating a smaller number of incidents.

In terms of monitoring, the NCAA also has one advantage because of the nature of its product. Above, in the ficticious example of firms holding down wages of workers, it was noted that monitoring the agreement could possibly consist of checking that superior workers (the ones that firms would have incentives to make larger offers to) were paid the agreed upon wage. It was also noted that the large amount of information needed to make this system effective also made this a costly technique. But application of this monitoring mechanism to college athletics may be possible.

As each high school season finishes various sports organizations (coaches associations, sportswriters, etc.) compile lists of the country's top players, (e.g., High School All-Americans). Locally, each geographic area chooses its own regional or district all-stars. With this information revealing the names of the superior or above average athletes the NCAA can concentrate on monitoring a smaller group. Monitoring could include an actual visit by a member of the enforcement staff or simply mailing the athlete a written statement detailing what a college coach is allowed to offer a prospective athlete. In either case monitoring costs are reduced because a smaller group, more likely to be offered larger non-sanctioned payments, is involved.

Because of the NCAA's policy of encouraging universities to inform on other schools the potential for strategic behavior deserves considerations. In the extreme it can be envisioned that some schools will turn in any and all schools even if no violation has occurred.[17] But it seems probable that the NCAA will soon learn which schools follow this strategy and discount all their allegations of cheating. Further, by "crying wolf" at every occasion a school decreases the chances it will be believed when it actually has found a violation. Strategic behavior consisting of informing on a school which has not committed a violation may be a problem, but not a big one. Nonetheless, the NCAA has developed safeguards against this strategy by seeking to substantiate a charge before it is investigated.

Punishing and Rewarding Member Institutions

The NCAA's policy of allowing anyone to contact the association in reference to a violation may create an incentive problem. Unless the rewards to the informer or the costs of not informing are large it is not clear that knowledge of an alleged violation will be brought to the NCAA's attention. The NCAA does not reward the informer directly. Instead, the informer is rewarded indirectly by having the university penalized. If the university is the informer's rival and the informer is able to directly take advantage of the penalty (the penalty prevents them from going to postseason competition and the university that "informed" goes in their place) then the reward to the informer may be large. But these circumstances are so critical that the specific

rewards for turning in a violator may not be obvious and, accordingly, fewer violators will be turned in.

The second method of influencing the amount of alleged cheating violations that are brought to the attention of the NCAA is by manipulating the cost of not informing. Against a direct rival school, the cost of not informing is having to compete against the athlete. But, since nationwide recruiting is now a common practice, the probability of competing against an individual athlete may be low. However, since a university competes against more NCAA schools in basketball than any other sport it is likely that more reports of alleged violations concern basketball because the probability of competing against an improperly recruited (superior) student-athlete is higher in basketball than any other sport. Ceteris paribus, were the cost of not informing higher more alleged violations would become known.

Acknowledging that it would be difficult to prove that a representative of a school knew of a violation and did not inform the NCAA then one system of increasing the number of reported violations would involve instituting a policy based on the West Point Honor Code.[18] Under this system it would not be sufficient to simply honor the agreement because knowing someone had violated the agreement and remaining silent would result in a violation. In any event, were the incentives for turning in alleged violators higher, regardless of how this was accomplished, the NCAA could monitor the college athletic cartel more effectively.

If the NCAA is to discourage cheating it must also be able to impose the appropriate penalties. The NCAA can impose many penalties, but it must be careful to impose sufficiently large penalties when warranted. Obviously, if the expected reward from cheating is larger than the penalty it will be logical for schools to violate NCAA rules.

This is what happened in the North Carolina State University-David Thompson affair. In 1972 the NCAA found North Carolina State University guilty of violating its rules when it recruited highly skilled basketball player David Thompson in 1970. Given a one year probation (no television appearances and no postseason competition for the basketball team during the 1972-1973 season) the North Carolina State University basketball team, led by David Thompson, went on to win the NCAA Basketball Championship the next year (1974) and received monetary rewards in excess of the penalty imposed. If the NCAA seeks to discourage cheating it must devote attention to ensuring the penalties it imposes are of sufficient magnitude.

The key to controlling violators is to keep the penalties high. The penalties that can be imposed on individuals, who are the actual violators of the rules, include:

> ...termination of the coaching contract of the head coach and any assistants involved; suspension or termination of the employment status of any other institutional employee who may be involved; severance of relations with any representative of the institution's athletic interests who may be involved; the debarment of the head or the assistant coach from any coaching, recruiting or speaking engagements for a specified period, and the prohibition of all recruiting in specified sport for a specified period.[19]

But while these are the penalties that can be imposed, casual observation indicates they are seldom imposed. The cases of two coaches who violated NCAA rules deserve attention at this point.

The first example is Frank Kush, football coach at the Arizona State University in the 1970's. Rather than be subjected to an NCAA examination of his tenure as head coach he resigned. In turn, the school's athletic department paid off his contract, at some discount for presumably not dragging the school through as much bad publicity as could be envisioned. The Kush case serves as a reminder that individual violators will more often leave on their own than be fired. Kush was later hired to coach a team in the Canadian Professional Football League and then the National Football League, and, despite his rule violations, could still be hired by another college if an agreement could be reached.

The second case concerns Jerry Tarkanian then the basketball coach for California State University, Long Beach. Shortly after Tarkanian transformed the school's basketball team into a national power and departed to coach at the University of Nevada, Las Vegas, an NCAA investigation revealed that Tarkanian had committed hundreds of violations during his tenure at Long Beach. California State University, Long Beach was given a severe penalty, but Tarkanian, who committed the recruiting violations, escaped apparently untouched.

The NCAA then conducted an investigation of Tarkanian's methods at the University of Nevada, Las Vegas. They found that Tarkanian had again committed many violations while he built up the basketball

program. The NCAA severely sanctioned the basketball program and ordered the University of Nevada, Las Vegas to fire Tarkanian. Tarkanian appealed the action by the university to the Nevada Supreme Court. The Supreme Court blocked his firing by noting that he was a tenured Professor of Education who had the right to be transferred, not severed from the university.

These two cases highlight the power the NCAA has over individuals who violate NCAA rules. Some, such as Kush, are able to leave and avoid all sanctions indicating that the NCAA needs a more effective agreement between schools to prohibit violators from moving easily to another job. In the case of Tarkanian, a consistent cartel rule violator, the NCAA ordered the University of Nevada, Las Vegas to take action but it was blocked by the courts. Thus, while it appears the NCAA has set up a system to deal with violators, actual penalties are still quite low.

Because the NCAA is not a state body it has no power to imprison or fine a coach or student who violates its rules. Consequently, if it is believed that larger penalties discourage cheating then the fact that the penalties imposed on individuals are small or negligible indicates that the NCAA may not be able to control certain behavior as well as possible. This fact has certain implications on the stability of the cartel. By ruling that institutions must take all actions against violators (recall the Tarkanian case above, where the University of Nevada, Las Vegas was ordered to take action) the NCAA has acted to increase the penalties it can impose when it finds a violation.

Instead of punishing violators the NCAA forces the school to penalize the athlete and/or coach and in this way makes the university responsible for the behavior of these individuals. Theoretically, the threat of a penalty encourages schools to monitor its own athletic department and allows the NCAA to impose larger penalties. Large penalties are possible because the NCAA can take action against the school rather than the individual.

In the bylaws of its constitution the NCAA makes it clear that the school is responsible for all behavior by its athletic department and similarly interested associations, specifically, the Athletic Association. According to the NCAA:

> ...All funds for the recruiting of prospective student-athletes shall be deposited with the member institution, which shall be exclusively and entirely responsible for the manner in which it expends the funds.
>
> .....
>
> ...A staff member of the institution periodically shall inspect the financial records of the alumni organization and certify that the expenditures comply with the rules and regulations of the NCAA and the conference of which the institution may be a member.
>
> ...A club official shall be designated by the chief executive officer as the institution's official agent in the administration of the club's funds, and said club official shall file regular reports to the institution relating the manner in which the club funds have been spent in the recruiting of student-athletes.
>
> ...To facilitate administration of the one-visitation provision of Bylaw 1-7-(a), whenever club funds are used to transport prospective student-athletes to campus, the club official shall file a report with the institution including the names of the student-athletes so transported.
>
> ...When an alumni organization is certified by the chief executive officer as being a bona fide part of the institution, said organization becomes subject to all of the limitations placed upon the member institution by NCAA legislation; a violation of such legislation by any member of the alumni organization shall be a violation by the member institution.[20]

Further, notice the preamble to the possible penalties that can be imposed which details the association's policy of penalizing the school rather than the individual involved:

> ...Among the disciplinary measures, singly or in combination, which may be adopted by the committee or Council and imposed against an institution:...[21]

The NCAA's rule of requiring that universities declare student-athletes eligible has recently come under attack. Many feel that because the NCAA makes the rules and could conduct investigations on its own they should declare whether student-athletes are eligible or not. The NCAA has declined to make this determination by indicating that such a system of prosecuting violators would be characterized by a "catch me if you can" attitude by schools, with the NCAA hopelessly outmanned. Not only are they correct, because the probability of being able to catch violators would fall (only one group, the NCAA, would be policing the agreement instead of both the NCAA and the institution) but, by making the institution responsible the NCAA is able to impose much larger and, theoretically, prohibitive costs on violators.

Institutions are not helpless against the NCAA's policing of college athletics. They can purchase insurance by joining other schools and forming a conference. A conference is a group of schools which usually have athletic programs of the same caliber and are located geographically close to each other. They agree to compete primarily with each other in athletic events. They also have various revenue sharing agreements. For example, a popular agreement is to have each team devote a percentage of the money they earn from appearing on

television to a pool which is then divided among all the members. This is a risk averse strategy whereby teams are protected from the possibility of not being competitive enough to appear on television and, therefore, earning no television revenue. By joining a conference schools also act to lower the cost of violating NCAA rules.

Two of the most costly penalties the NCAA can impose are: restrictions on television appearances by a team during the regular season and prohibition from appearing in postseason competition. Under certain circumstances this could deny universities large amounts of money, thereby making a violation quite expensive.[22] However, if the institution is in a conference where television revenue is pooled, it will still collect a share of the revenue from the other school's appearances and, in effect, lower the cost of the violation.

With this analysis of the relationship between schools forming conferences and sharing revenue, certain implications can be drawn. First, as certain sports came to generate more revenue (basketball and football) and as the penalties for violating NCAA rules increased it would be expected that more conferences were formed to lower the cost of these violations. Second, due to the risk averse nature of conferences and the cost reducing effect they have on penalties imposed upon individual members, it would be expected that more violations of NCAA rules would come from schools in conferences rather than independent schools, (i.e., not in conferences). Thus, while the NCAA has instituted an efficient system to monitor a large group by raising both the probability of being caught cheating and the cost of violating the

rules, universities have found methods to reduce these costs by forming associations known as conferences.

Specific Intercollegiate Cartel Rules (1980)

In a market where producers attempt to provide a commodity there is natural pressure for these producers to compete. This competitive tendency forces them to cut the price of the output and bid against each other in the input market. In a truely competitive market, price will fall to cost and economic profits will equal zero. Thus, while competition provides many possible benefits to consumers it has obvious disadvantages for producers.

In response to this dilemma, producers may seek to avoid many of the disadvantages that competition entails. One way to do this is through cartelization. By forming a cartel, producers avoid a situation where each member cuts price, hoping to capture the others' share of the market, yet in fact earns only the competitive rate of return. Competition appears to be fruitless compared to the higher rate of return producers could earn if they could restrict certain behavior. The reason for the appearance of cartels can be traced to the advantages it offers producers when contrasted with competition.

For a cartel to achieve its goal of higher profitability and exist over time there must be rules that limit competition. Often these include geographic division of the market, pricing agreements, or production quotas. Due to the illegal nature of cartels these rules are

seldom written, but are informally discussed and debated by representatives of the firms in the cartel.

Many factors, however, are different in the intercollegiate athletic cartel. Its monitor, the NCAA, maintains a strict, published set of rules that are divided into two dichotomous categories. These two categories are; direct cost-cutting methods, which include explicit restrictions on the payments a firm may make, and competition-reducing agreements, which "establish guidelines" for firms to follow that reduce competition between each other and indirectly cut the firms' costs. An analysis of the rules that cut production costs and limit economic competition between NCAA members is presented which omits the rules the NCAA maintains to limit production.

NCAA Rules that were Designed to Decrease the Production Costs of Member Institutions

Consider briefly what would happen if a free-market existed for student-athletes to sell their services. There would be pressure on the wages of superior athletes to increase similar to the bidding for any resource. To capture the rents from infra-marginal student-athletes the NCAA restricts their wages. But while the NCAA has regulated what compensation a student-athlete can and can not be paid for his services there are many other ways to increase actual wages (non-pecuniary gifts) and, because of this situation, an intricate set of rules was needed to prevent "under the table" arrangements that would increase payments to a student-athlete. Further, by adopting rules that limit the amount a school may pay an athlete the cost of producing athletic contests is also being held in check, if not reduced.

One method of increasing the payments to a student-athlete is through the all-expense paid visit to a school's campus where a prospective athlete could be "wined and dined." Because of the large potential these visits offer to the schools to make non-monetary payments to prospective athletes it is clear that the NCAA needed to adopt specific rules governing all aspects of the expense paid visits. This includes rules limiting the number of expense paid visits a school can provide.

Not surprisingly, the NCAA has adopted such rules. According to the NCAA:

> ...Division I-There shall be a limit on the total number of paid visits an institution may provide prospective student-athletes in the following sports during an academic year: Football-95; Basketball-18. The institution must maintain a written record of the paid visits of prospective student-athletes pursuant to this paragraph.[23]

Further, the NCAA has specific limits on the duration of an athlete's visit and how he is to be transported if he uses public airlines:

> ...A member institution may finance one and only one visit to its campus for a given prospective student-athlete. Such visit shall not exceed 48 hours. Only actual round trip transportation costs by direct route between the student's home and the institution's campus may be paid. If commercial air transportation is used, the fare may not exceed tourist (or comparable) class.[24]

The NCAA also maintains detailed rules governing where the athlete's all-expense paid visit takes place, what may be purchased for The athlete during the trip, and how the athlete is to be transported if he does not travel by commercial transportation. According to the NCAA:

> ...If an institution is to pay the transportation costs of a prospective student-athlete to visit the campus, the visit actually must be made to the campus and not, for example, an

> off-campus site where the institution may be appearing in an athletic contest at the particular time.
>
> ...It is permissible for an institution to pay the actual cost (provided it is reasonable) of the meals consumed by a prospective student-athlete during his trip to and from campus.
>
> ...Whenever an aircraft (other than commerical airplane or one owned personally by one individual) is used to transport a prospective student-athlete, payment for its use must be at the established charter rates at the airport where the craft is based; and the institution must be prepared to demonstrate satisfactorily that such payment has been made.[25]

The NCAA recognizes that another way to make increased payments to an athlete is through his parents or relatives. Consequently, the association has strict rules about who may accompany him on his expense paid trip (his parent or legal guardian or spouse), how they shall be transported, and how they may be entertained:

> ...An institution may not use its own airplane to transport a prospective student-athlete to the campus if his relatives or other friends accompany him.
>
> ...No member institution shall permit a representative of its athletic interests to transport the relatives or friends of a prospective student-athlete to visit the campus or elsewhere in his own vehicle. Such representative may not pay the commercial transportation costs of a campus visit by the relatives or friends of a prospective student-athlete.
>
> ...It is permissible for an institution to provide local transportation between its campus and the airport nearest the campus for the parents or relatives of a prospective student-athlete making his official visit to that campus.
>
> .....
>
> ...An institution or representative of its athletic interests may provide entertainment for a prospective student-athlete and his parents (or legal guardians) or spouse at the institution's campus only. Transporting a prospective student-athlete to any other site for any purpose is not permissible. Further, it is not permissible to entertain other relatives or friends of a prospective student-athlete at any site.[26]

Other rules about entertainment of a prospective student-athlete dictate where it may take place, how much a companion who accompanies

the athlete can be reimbursed, and what the entertainment could possibly include. According to the NCAA:

> ...A prospective student-athlete's entertainment shall take place on campus; however, if on-campus entertainment is not available, it is permissible to entertain a prospective student-athlete off campus.
> ...In either case, a student host may be provided with a maximum of $10 for each day of the visit to cover actual and necessary expenses.
> ...It also is permissible to provide the student host with a complimentary admission to a campus athletic event if the ticket is utilized to accompany a prospective student-athlete to that event during the prospect's official paid visit to the campus.[27]

General guidelines for recruiting are provided as well as guidelines with specific cost reducing intentions:

> ...No member institution may arrange for or permit excessive entertainment of any prospective student-athlete on the campus or elsewhere.
> ...The institution or representatives of its athletic interests shall not provide cash to the prospect for entertainment purposes and shall not provide an automobile for the use of the prospect for a student host.[28]

However, the NCAA does not limit the places recruiting may take place. Instead, it maintains a strict rule regarding what can be purchased for the athletes during a recruiting visit by a member of the school's athletic department. According to the NCAA:

> ...A member institution's athletic department staff member or other representative of its athletic interests may visit a prospective student-athlete or his relatives at any location for recruiting purposes. However, on any such visit, neither the staff member nor any representative of the institution may expend any funds other than necessary for his own personal expense.[29]

The NCAA recognizes that the person closest to an athlete during the recruiting process may be his coach. Universities also know this and often they will attempt to recruit the athlete by offering his high

school coach pecuniary or non-pecuniary inducements (e.g., a job). To reduce competition for the athlete through his coach the NCAA provides very specific instructions on what a university can and cannot offer a coach. According to the NCAA:

> ...A member institution may entertain high school, college preparatory school or junior college coaches only on its campus. Such entertainment shall be limited to providing a maximum of two complimentary tickets to home athletic contests but shall not include food and refreshments, room expenses or the cost of transportation to and from the institution.[30]

No doubt the most direct way to control costs is to restrict the number of scholarships that can be awarded. According to the NCAA this restriction states:

> ...A member institution shall not make an award of financial aid (for which the recipient's athletic ability is considered in any degree) in excess of the number permitted by the following rules:
> ...Division I-In each sport, except football and basketball, there shall be a limit on the value of the financial awards in effect at any one time, including awards made to freshmen, transfer students (from two-year and four-year institutions) and upper-classmen; further, the total number (based on equivalencies) of financial awards in effect at any one time for all sports, except football and basketball, shall not exceed the maximum limit of 80.
> ...Division I-Following are the maximum awards which may be in effect at any one time:
>
> Total for all sports except football and basketball: 80
>
Baseball	13
Cross Country/Track	14
Fencing	5
Golf	7
Gymnastics	7
Ice Hockey	20
Lacrosse	14
Skiing	7
Soccer	11
Swimming	11
Tennis	5
Volleyball	5

Water Polo 5
Wrestling 11
.....

....Division I Basketball-There shall be an annual limit of 15 on the total number of financial awards which may be in effect the same year.[31]

Other ways to control costs include limiting the size of athletic staffs which allows the university to pay fewer people. According to the NCAA:

> ...A member institution shall not employ or otherwise utilize the services of coaches in excess of the following numbers: ...
> ...Division I Football-One head coach, eight assistant coaches, two part-time assistant coaches.
> ...Division I Basketball-One head coach, two assistant coaches, one part-time assistant coach.[32]

The NCAA also prohibits payments schools would make in an attempt to be competitive in certain sports:

> ...A Division I member institution shall not pay or permit payment of expenses incurred by its athletic department staff members or representatives, including professional scouting services, to scout its opponents or individuals who represent its opponents in any sport except football and basketball, where it shall be permissible for the institution to pay expenses of one person to scout each opponent on one occasion. It shall be permissible to pay the costs of exchanging films for scouting purposes in any sport.
> ...An institution shall not pay any costs incurred by an athletic talent scout or a representative of its athletic interests in studying or recruiting prospective student-athletes. An institution may not place any such person on a fee or honorarium basis and thereby claim him as a staff member entitled to expense money.[33]

Rules such as these that directly limit or restrict the money that a school can spend on the production of athletic contests ensure that all schools do not increase expenditures and negate any advantage one school sought to gain over its competitors. With these rules schools have a definite and observeable limit on expenditures. When all schools

adhere to these limits the producers of intercollegiate athletic contests retain resources they would have spent on inputs (e.g., student-athletes). Because of these rules producers are able to capture rents from infra-marginal student-athletes and remain better off compared to the position they would enjoy in a competitive environment.

NCAA Rules that Limit Economic Competition Between Members

Closely related to direct cost-cutting agreements are the arrangements that are designed to reduce economic competition between schools. If the resources that normally would have been devoted to competing with other schools can be saved all schools will be better off. The limiting rules needed by the NCAA must be very specific because each school will seek a comparative advantage within the rules. For example, the NCAA limits the recruiting activities of the school's coaching staff. In response to this restraint it is possible that the alumni of a school would undertake some recruiting tasks to get around this rule. Accordingly, to effectively restrict this kind of competition the NCAA had to prevent recruiting by the alumni. It ruled that:

> ...If an institution's staff member requests an alumnus or other friend of the institution to recruit a particular prospect or has knowledge that the alumnus or friend is recruiting the prospect, then said alumnus or friend becomes a "representative of athletic interest" of that institution. Once a person is identified as a representative, it is presumed he retains that identity.[34]

Thus, in cases where it was possible for outside interests to become involved in athletic matters it was logical for the NCAA to alter its rules to include these groups.

The most apparent competition reducing rules concern the contacting of a student-athlete by a university. In the recruiting process contact with the athlete is defined as the time during which each school attempts to convince him to attend their university. Resources of each university could be saved, however, if all agree to limit the number of visits made. To avoid what was regarded as fruitless competition the NCAA established the following rule:

> ...Divisions I and II-Contact in person with a prospective student-athlete or his relatives or legal guardian off campus for the purposes of recruitment ... by institutional staff members and/or representatives of athletic interests is subject to the following limitations:
> ...No more than three such contacts per prospective student-athlete prior to and on the occasion on which the prospect signs the National Letter of Intent, which shall include contacts with his relatives or legal guardian, shall be permitted by any single institution.[35]

After the NCAA limited the number of official contacts a school could make a natural reaction by the representatives of a school was to "bump" into the athlete. The classic example of this is the case of the coach of one school coincidentally being at the airport with a limosine when a highly sought recruit returned from visiting a rival school. In order to prevent this competition the NCAA established a very clear definition of a meeting between an athlete and a representative of the school. According to the NCAA:

> ...Any face-to-face encounter (between a prospective student-athlete, his parents or legal guardian and a member institution's staff member or athletic representative) during which any dialogue occurs in excess of an exchange of a greeting shall be a contact. Further, any face-to-face encounter which is by prearrangement or which takes place on the grounds of the prospect's educational institution or at the sites of organized competition and practice involving the

> prospect or the team (i.e., high school, prepatory school, junior college or all-star team) he represents shall be considered a contact regardless of the conversation which occurs.[36]

To further restrict competition between schools for student-athletes the NCAA also established limits on the earliest and latest date that contact between a student-athlete and school could occur. According to the NCAA:

> ...No such contact shall be made with a prospective student-athlete, or his relatives or guardian(s), until the prospective student-athlete has completed his junior year in high school, except in regard to the recruiting programs of the U.S. Air Force, Military and Naval Academies...[37]

Further, NCAA rules point out:

> ...The final date for contact in sports of football and basketball shall be May 15 in the prospective student-athlete's senior year in high school, except as provided in paragraph (1).[38]

Competition for athletes that have already been recruited and are playing for other universities is also limited by the NCAA. The appropriate rule states:

> ...No member of an institution's athletic staff or other representative of its athletic interests shall contact, directly or indirectly, the student-athlete of another senior collegiate institution for purposes of recruiting him without first obtaining the permission of the other institution's athletic director to do so, regardless of who makes the initial contact.
>
> ...If an known student-athlete proposes to transfer from a four-year collegiate institution to another four-year institution holding NCAA membership and the first institution declines to give permission ..., the second institution may not encourage the transfer and may not offer or provide financial assistance to the student-athlete. If the student-athlete proceeds to transfer to the second institution and the specified permission is not forthcoming, the second institution may not provide the transferee financial aid until he has attended the institution one academic year.[39]

This rule is designed to prevent one team from "raiding" another by convincing the superior athletes to transfer. Transfers do occur, but without the permission of the student's first university the new school can not offer him aid for one year. Since one of the major reasons an individual attends school on an athletic scholarship is because he could not afford to do so otherwise then denying permission and, therefore, financial aid, makes the cost of transferring prohibitively high. This rule gives the school control over transfers and restricts competition for the athlete's services while he is enrolled at a four-year institution.

The NCAA also enacted measures to control the information available to all schools about each recruit. According to the NCAA:

> ...No member institution, on its campus or elsewhere, shall conduct or have conducted in its behalf any athletic practice session, tryout or test at which one or more prospective student-athletes reveal, demonstrate or display their abilities in any phase of any sport.[40]

By prohibiting schools from conducting private tests of an athlete's skills all universities must make decisions about the athlete's skill based on the same information. This rule prevents any school from obtaining information about an athlete that was not known by all and prohibits schools from using this information to gain an advantage over their competitors.

The most noticeable fact in most of these rules is how they can be monitored at a very low cost. It can be easily observed whether a certain school waited until an athlete's senior year before it contacted him. By combining rules that can be checked by casual observation with

the incentive each school has to inform on a potential competitor, the NCAA has developed an effective monitoring mechanism for its cartel.

There are, however, many rules that can not be checked this way. The NCAA has accounted for these oversights by requiring that verifiable records be kept. Concerning the number of paid visits an institution may provide prospective athletes the NCAA requires that

> ...the institution must maintain a written record of the paid visits of prospective student-athletes pursuant to this paragraph.[41]

The NCAA also established special rules governing the institution's Alumni Association:

> ...A staff member of the institution periodically shall inspect the financial records of the alumni organization and certify that the expenditures comply with the rules and regulations of the NCAA and the conference of which the institution may be a member.
>
> ...A club official shall be designated by the chief executive officer as the institution's official agent in the administration of the club's funds, and said club official shall file regular reports to the institution relating the manner in which the club funds have been spent in the recruiting of student-athletes.
>
> ...To facilitate administration of the one-visitation provision ..., whenever club funds are used to transport prospective student-athletes to the campus, the club official shall file a report with the institution including the names of the student-athletes so transported.[42]

In general the NCAA rules are designed to limit economic competition between association members. This is accomplished by making all aspects of college athletics "open" and subject to inspection, either by casual observation or rigorous documentation. In this way the NCAA does not allow a school to obtain an advantage over its competitors and prevents all members from spending money trying to obtain such an advantage.

To ensure this the NCAA has also devoted special attention to issues or questions that are particularly troubling to its members. The last section of the NCAA Manual consists of a discussion of incidents that have frequently caused NCAA members to appear before the Committee on Infractions and explain their actions. By specifically detailing what is and what is not a violation of the association's code, the NCAA has tried to ensure that non-price competition and cheating on any limiting agreements does not take place. Indeed, the establishment of the case book, which cites specific examples of violations, is an obvious example of the efforts made by the NCAA to restrict behavior.

Cartel Theory Reenforced: Two Specific NCAA Rules

While rules discussed in the previous two subsections of this chapter were designed to either cut production costs or limit economic competition between members (or both), there are some NCAA rules that appear not to fall in either category. Two rules like this that are particularly interesting are discussed in this section. One concerns where, when, and how recruiting occurs. It states:

> ...Any staff member or other representative of a member institution's athletic interests desiring to contact a prospective student-athlete at his high school, college preparatory school or junior college first shall contact that institution's executive officer or his authorized representative, explain the purpose of his call and request permission to contact the student-athlete. Contact may be made at these places only when such permission is granted.
>
> ...No contact with a prospective student-athlete shall be made at the site of his school's athletic competition when the prospect is a participant therein. "Contact" with a prospect "at the site of his school's athletic competition" (high school, college preparatory school or junior college) shall be governed by the following:

> ...No contact shall be made with such prospect before the competition during the day of the competition.
>
> ...If the prospect reports on call at the direction of his coach (or comparable authority) and is to be involved in team activity from that point to the end of the competition (e.g., traveling to an away-from-home game) and this occurs prior to the day of competition, then no contact shall be made from the time the prospect reports until after the competition.
>
> ...After the competition has been completed, the "site" shall be interpreted as the facility in which the competition was conducted and any dressing room or meeting facility utilized in conjunction with the competition. Accordingly, contact shall not be made after the competition at the site until the prospective student-athlete is released by the appropriate institutional authority and departs the dressing and meeting facility.
>
> ...If a prospective student-athlete is involved in competition which requires his participation more than one day (e.g., basketball tournament), paragraphs (1) and (2) apply and no contact shall be made during the periods between the prospect's competition until his final contests is completed and he is released by the appropriate institutional authority and departs the dressing room or meeting room facility utilized in conjunction with his final participation in the competition.[43]

The other rule limits the publicity surrounding the announcement of a recruit signing a Letter of Intent. According to the NCAA:

> ...Publicity released by an institution about the commitment of a prospective student-athlete to attend the institution shall be limited to announcing the prospective student-athlete's signed acceptance of the institution's written tender of financial assistance to be provided on his enrollment and shall be limited to communications in those media forms normally used by the institution.
>
> ...The release of such communications shall be limited to the media outlets normally used by the institution and to the media outlets normally used by the educational institutions currently and formerly attended by the prospective student-athlete.
>
> ...Press conferences, receptions, dinners or similar meetings held for the purpose of making such an announcement are expressely prohibited, as is personal contact by institutional staff members with media representatives at the site of any form of acceptance of an offer by the prospective student-athlete. This express prohibition does not preclude the presence of bona fide media representatives who are otherwise employed on a part-time basis by the institution.

> ...Further, no member institution shall publicize or arrange publicity of the visit of a prospective student-athlete to the institution's campus or the student-athlete's intention to accept its tender of financial assistance.
>
> ...A member institution shall not permit a prospective student-athlete or a high school, college preparatory school or junior college coach to appear on a radio or television program conducted by the member institution's coach, a program in which the NCAA institution's coach is participating or a program for which a member of the athletic staff of the NCAA institution has been instrumental in arranging the appearance of the prospect or coach or related program material. This prohibition applies to appearance in person or via film or video tape.[44]

These rules seem odd when compared to other NCAA restrictions because they do not appear designed to limit any competitive practice. However, the curiosity aroused by these rules soon disappears when one considers that non-monetary competition can encompass many things. In intercollegiate athletics non-monetary competition for student-athletes is normally thought of as an offer of clothing or cars, but it could also include an appearance in front of a crowd with a highly-regarded coach or at a nationally televised news conference. These different items may enter into an athlete's utility function and to allow these activities would provide some schools with a recruiting advantage, a goal the NCAA seeks to avoid.

Further consideration of these restrictions also helps reenforce the interpretation of the organization of intercollegiate athletics as a cartel. In medieval times joint-stock companies formed together to restrict competition and cartelize markets. In establishing a viable cartel these companies not only monitored output, but they also kept a careful watch on the behavior of individuals involved. These restrictions were described by economic historian Eli F. Hecksher:

> From an economic point of view, the meticulous regulation of the lives of the merchants, their agents and apprentices is of minor importance, but throws light on the spirit of the system and expresses the striving after a supra-personal organization, embracing the whole individuality of its members. The members were never described as anything but "brethren", their wives were "sisters"; the "brethren" were to go together to church, to assist at weddings and burials. A whole chapter in the by-laws of the Merchant Adventurers is given up to punishments for indecent language, quarrels between brethren, fighting, drunkenness, card-playing, immorality, keeping of hunting dogs and so on. It was also unlawful to enter the porter's lodge on the arrival of the post--instead, letters were to be received at his window outside the lodge; further no one was to carry through the streets any more than could be decently held under the arm or in the sleeve--infringements of any of these carrying fines of different severity. The same rules are to be found in the sister organization, though typically enough masters were excepted from the prohibition against "undecent speeches or words of reproach or discredit" when they upbraided their apprentices and paid servants. Apprentices were the children of the large family and were treated as such.[45]

In the context of medieval history, the control of the personal life of members of the cartel was to make sure that no unmonitored activity took place. Strict and careful monitoring was a method of preventing cartel chiselling and guaranteeing that the medieval cartels remained intact. Similarly, the apparently senseless NCAA rules on whose permission is needed, how and where a coach can meet a high school athlete on the day of a game and the limits on publicity surrounding the signing of a recruit are also methods to control the behavior of the individuals involved in intercollegiate athletics for the purpose of restricting competition.

Conclusion

In this chapter a detailed analysis of the organization of the intercollegiate athletic cartel has been presented. This analysis was divided into three parts (sections).

In the first section of this chapter the methods by which the NCAA restricts behavior in the input and the output market were examined. This examination revealed that unlike members of standard business world cartels members of college athletic departments can not "pocket" the rents generated by NCAA restrictions. However, by drawing on Alchian's work it can be seen that athletic department members are still able to enjoy these rents by using them to purchase non-pecuniary benefits.

In the second section orthodox cartel theory was used to analyze many of the problems that plague organizations that are required to make decisions collectively. With this understanding of cartel theory as a background, a discussion of the problems facing the NCAA was presented. This discussion revealed that the conflicts that arose between members of the NCAA were consistent with the predictions of cartel theory and resulted from the problems inherent in the association's decision-making rule.

The last section outlined specific rules of the intercollegiate athletic cartel. In this section it was shown that in order for the NCAA to cartelize college athletics it had to adopt hundreds of rules. Many of these rules were designed to either reduce production costs or limit economic competition between members. Some rules, however,

appeared unrelated to economic variables (i.e., output, prices). But this last set of rules, as history demonstrates, is also consistent with the establishment of a cartel.

Footnotes - Chapter VI

1. For a detailed listing of what the NCAA does not allow a school to award an athlete see 1979-1980 Manual of the National Collegiate Athletic Association, 1979, National Collegiate Athletic Association, Shawnee Mission, Kansas, pp. 12-13.

2. Armen Alchian, "The Basis of Some Recent Advances in the Theory of the Firm," Journal of Industrial Economics, Nov. 1965, p. 34.

3. Mitchell H. Raiborn, Revenue and Expenses of Intercollegiate Athletic Programs, 1977, National Collegiate Athletic Association, Shawnee Mission, Kansas, p. 39.

4. Ibid., p. 25.

5. Ibid., p. 43.

6. Quoted in Burton J. Hendrick, The Life of Andrew Carnegie, Doubleday Doran, 1932, vol. 2, p. 50.

7. The members of the CFA are:

U. of Alabama
U. of Arkansas at Fayetteville
Auburn U.
Baylor U.
Brigham Young U.
Boston College
Clemson U.
U. of Colorado
Colorado State U.
Duke U.
U. of Florida
Florida State U.
U. of Georgia
Georgia Institute of Technology
U. of Hawaii
U. of Houston
Iowa State U.
U. of Kansas
Kansas State U.
U. of Kentucky
Louisiana State U.
Southern Methodist U.
U. of Southern Mississippi
Syracuse U.
U. of Tennessee at Knoxville
U. of Maryland at College Park
Memphis State U.
U. of Miami (Fla.)
U. of Mississippi
Mississippi State U.
U. of Missouri at Columbia
U. of Nebraska at Lincoln
U. of New Mexico
U. of North Carolina at Chapel Hill
North Carolina State U.
North Texas State U.
U. of Notre Dame
U. of Oklahoma
Oklahoma State U.
Pennsylvania State U.
U. of Pittsburgh
Rice U.
Rutgers U.
San Diego State U.
U. of South Carolina

U. of Texas at Austin
U. of Texas at El Paso
Texas A&M U.
Texas Christian U.
Texas Tech U.
Tulane U.
U.S. Air Force Academy
U.S. Military Academy
U.S. Naval Academy
U. of Utah
Vanderbilt U.
U. of Virginia
Virginia Polytechnic Institute and State U.
Wake Forest U.
West Virginia U.
U. of Wyoming

(Chronicle of Higher Education, September 2, 1981, p. 6.)

8. 1979-1980 Manual of the National Collegiate Athletic Association, National Collegiate Athletic Association, Shawnee Mission, Kansas, pp. 149-150. (Hereafter cited as NCAA Manual.)

9. 1978-1979 Annual Reports of the National Collegiate Athletic Association, National Collegiate Athletic Association, Shawnee Mission, Kansas, p. 273.

10. NCAA Manual, pp. 153-155.

11. Revealing this information is one way of getting firms to increase their wage offers.

12. Unlike the professional football or basketball leagues, which require the team that signs the free agent to give compensation to his former team (draft choices and/or money) the baseball player can, if he choses, "easily" change employers.

13. The following Conferences and Institutions have subscribed to and are cooperating in the National Letter of Intent Plan administered by the Collegiate Commissioners Association:

CONFERENCES:

Atlantic Coast
Big Eight
Big Sky
Big Ten
California Collegiate
Central Intercollegiate
Metropolitan
Mid-American
Mid-Continent
Southern
Southern Intercollegiate
Southland
Southwest
Southwestern
Sun Belt
Trans America
West Coast
Western

Mid-Eastern
Midwestern City
Missouri Valley
North Central
Ohio Valley
Pacific Coast
Pacific-10
South Atlantic
Southeastern

INSTITUTIONS:

Alabama State
Arkansas-Pine Bluff
Baptist
Ballarmine
Boston College
Campbell
Canisius
Central Florida
Central State (Ohio)
Charleston
Cleveland State
Connecticut
Dayton
Denver
DePaul
Detroit
Duquesne
East Carolina
Ferris State
Florida Southern
Fordham
George Mason
George Washington
Georgetown
Grand Valley
Hofstra
Illinois-Chicago Circle
Iona
James Madison
Kentucky Wesleyan
Lake Superior
Maine (Orono)
Marquette
Miami (Florida)
Michigan Tech
Minnesota-Duluth
Nevada-Las Vegas
New Hampshire
New Orleans
Niagara
North Carolina-Wilmington
North Texas State
Northern Kentucky
Notre Dame
Oakland
Old Dominion
Pan American
Penn State
Pittsburgh
Portland State
Providence
Randolph-Macon
Rhode Island
Richmond
Robert Morris
Rutgers
St. Bonaventure
St. Francis (Pa.)
South Carolina
Southeastern Louisiana
Southern Mississippi
Southwest Missouri
Stetson
Syracuse
Tampa
Tennessee State
Transylvania
Troy State
Vermont
Wayne State
West Virginia
William and Mary
Wisconsin-Green Bay
Wright State

14. The 1981 National Letter of Intent, Collegiate Commissioners Association.

15. Often the reason the athlete was unable to make the transition was because he did not maintain a 2.000 grade point average (on a 4.000 scale) in high school.

16. NCAA Manual, p. 150.

17. Given the intense competition for superior athletes it appears to be standard procedure for the loser in a recruiting war to claim the winner had cheated.

18. I shall not lie, cheat, or steal nor tolerate those among me who do.

19. NCAA Manual, p. 154.

20. Ibid., pp. 46-47.

21. Ibid., p. 153.

22. Consider what forbidding a postseason appearance in football meant in 1979.

BOWL GAME	TOTAL PAYOUT TO TEAMS
Rose	$4,339,184
Cotton	3,448,266
Orange	2,590,797
Sugar	2,011,165
Gator	812,675
Liberty	702,192
Fiesta	686,600
Peach	664,516
Holiday	542,428
Hall of Fame	526,551
Garden State	450,000
Sun	439,608
Bluebonnet	383,464
Tangerine	314,276
Independence	141,365

23. NCAA Manual, p. 49.

24. Ibid., pp. 48-49.

25. Ibid., p. 49.

26. Ibid., p. 51.

27. Ibid.

28. Ibid.

29. Ibid., p. 52.

30. Ibid.

31. Ibid., pp. 84-85.

32. Ibid., p. 88.

33. Ibid., p. 46.

34. Ibid., pp. 42-43.

35. Ibid., p. 43.

36. Ibid., pp. 43-44.

37. Ibid., p. 44.

38. Ibid.

39. Ibid., p. 50.

40. Ibid., p. 47.

41. Ibid., p. 49.

42. Ibid., p. 47.

43. Ibid., pp. 44-45.

44. Ibid., pp. 45-46.

45. Eli F. Hecksher, Mercantilism, (London: George Allen and Unwin Ltd., 1935), p. 380.

CHAPTER VII

LAW AND ECONOMICS OF THE NCAA

Introduction

Production of an athletic contest differs from the production of most other goods. In the business world production normally occurs when inputs, under the control of one agent, are combined to produce an output. Producing an athletic contest, however, requires inputs (teams) that are generally not under the control of one agent. In sports the inputs are "competitors." Thus, the first thing to notice about athletic contests is the jointness of production required for an output. That is, two or more teams are needed before an athletic contest can be produced.

In the business world most firms make decisions in accordance with their objective of profit maximization. Ideally, a producer of a good desires a monopoly situation to maximize his profits. Without competition from other firms a producer is able to limit production, thereby raising the market price of the good.

In the athletic industry it is believed that decisions made by a firm are consistent with profit maximization, but firms are also concerned with other criteria such as league standing, which may or may not be consistent with profit maximization. In athletics a monopoly situation is desired, but only with respect to other sources of entertainment competing for the potential spectator's dollar. The

unique nature of athletic output (i.e., the jointness of production) makes it completely undesirable, as well as impossible, for one team to be the only producer of a game.

In the athletic industry a great deal of attention is devoted to the relative quality of the competing teams because it is undesirable for any team to be far superior (or inferior) than the others. Because attendance (demand) depends upon the uncertainty of the outcome of the contest existence of clearly superior (or inferior) teams may lead to a decline in attendance (revenue). Consequently, if a league of teams seeks a large demand for its product they may take action to ensure competitiveness between all teams. But these steps to ensure competitiveness may also be interpreted as actions designed to limit economic competition and will be the basis for analysis in this chapter.

Consider the characteristics of the athletic output. One aspect consists mainly of the service acquired with the purchase of a ticket (i.e., in-stadium consumption). Because the pricing system can be used to exclude individuals from an athletic event the benefits from in-stadium consumption are referred to as the private good characteristics of athletic output.

Another aspect of the utility provided by athletic contests consists of the benefits provided from the television and radio broadcasting of sport events as well as a periodic summation of the outcome of the contests. That is, there are individuals who receive utility by watching a team's games on television, listening to them on the radio, or keeping track of the outcomes. Because these individuals

pay little for these benefits and all individuals consume the same good (non-rivalry in consumption) this aspect of athletic contests is referred to as its public good characteristics.

Like the production of any public good the production of athletic contests generates externalities, both positive and negative. As an example, consider the televising of a sports event which generates a negative externality by discouraging attendance and decreasing the revenue generated by another athletic contest. Conversely, the press coverage given to contests where the outcome is in doubt (e.g., close pennant races in professional baseball) is a positive externality that acts as unpurchased advertising, increasing fan interest and perhaps attendance (revenue).

Because of the existence of externalities the production of athletic contests differs from the production of other goods. While it would be irrational to stop externalities that lead to increases in fan interest and revenue the existence of externalities that can cause revenue to fall has been the stimulus for collective action in sports. The negative externalities generated by athletic contests, combined with the jointness in production of the output, provide some insight into why there appears to be more collective behavior by sports organizations than other industries.

The appearance of externalities, per se, is not sufficient rationale for collective action. However, collective action may be needed to address the divergence of the incentives for both the individual and the group. At the group level, if all can agree to limit

or control a practice that generates a negative externality then all will be better off. But within this group an individual will be able to gain an advantage over others if he does not limit or control his actions.

The usual method employed to overcome the diverging incentive problem is the establishment of a central authority empowered to coerce (if necessary) all parties to obey the limits. For example, the problem of air pollution was addressed by establishing a government with power to make and enforce binding rules. Prior to that time all would have been better off without polluted air, but no firm would have voluntarily stopped polluting the air since others would have continued. Only when a central figure, that all agree to recognize, acts to improve the situation can the diverging incentive problem be remedied.

Similar to the solution to the problems presented by other externalities the externality produced by athletic contests could only be solved when a central figure, whose decisions all agree to follow, was established. In sports, because teams that compete often form a league, the central figure empowered to address the externality becomes the league. In intercollegiate athletics this body is the NCAA.

Earlier it was shown that the NCAA was organized to deal with an externality affecting college sports (lack of standardized rules). It was also shown that through time the NCAA began to use this authority to restrict competition in the output and input markets. In short, the NCAA used its power to cartelize the intercollegiate athletic industry, allowing it to act like a monopoly.

A monopoly, characterized by a higher return than the competitive rate, can not exist over time without barriers to entry. Without barriers to entry new firms would enter the industry, increase the amount of the product available and cause its price to fall. Of the many methods used to limit entry into an industry the establishment and enforcement of legal arrangements by the government that have the effect of prohibiting new firms from producing the good is frequently observed.

Professional sports had been successful employing government enforced arrangements to restrict competition and limit wages to athletes. Recently, however, the legal restrictions enacted by Congress which divided the television market, allowed owners to act collectively when negotiating television contracts, and restricted the bidding for players' services (reserve clause) have been challenged. In most of these legal challenges it was decided that the laws protecting professional sports actually restricted competition and were, therefore, illegal. However, while professional sports have had much of their legal protection removed college athletics, which employs similar rules limiting competition and has enlisted the support of the Congress of the United States to protect its television market, has not suffered the same fate as professional sports.

Colleges and universities in the United States, under the direction of the NCAA, have been able to effectively limit competition for student-athletes, restrict the number of contests played, and devise a collective television policy that earns the associations millions of

dollars annually. In addition, college athletics has organized an agency that actively enforces its rules. But while intercollegiate athletics operates like a cartelized market there have been few attempts (none successful) to prosecute the industry under the Sherman Antitrust Act, which prohibits competition limiting arrangements.

This chapter explores why the college athletic industry has been so successful at restricting competitive behavior, while remaining apparently immune to legal challenges. In this chapter specific NCAA programs designed to limit activity in the output and input markets, as well as the legal actions taken to challenge these programs, are examined. From this examination an explanation for the NCAA's ability to avoid antitrust prosecution will emerge.

Closely connected with any inquiry into the ability of the NCAA to remain free from government intervention are questions about its mechanism which ensures that all follow its rules. The NCAA monitors college athletics with an investigative staff that searches for rules violations (Department of Enforcement) and a group (Committee on Infractions) that imposes penalties on those who violate the agreements. This method of enforcing NCAA rules has been labeled "arbitrary" by its critics, while others question whether the process violates an individual's civil liberties. Given the controversy surrounding the NCAA's enforcement mechanism another important issue this chapter addresses concerns the manner by which the NCAA has been able to openly develop and operate this mechanism without government interference.

This chapter is divided into four major sections. The first, entitled "Control of Competition," details the measures the NCAA has employed to control competition within intercollegiate athletics. This section further examines the methods the NCAA uses to control competition from within college athletics as well as the steps the NCAA has taken to limit competition from other sports leagues. These methods used by the NCAA to restrict competition range from federal law which prohibits certain activities to NCAA regulations which require the association's approval for certain events. Each of the three subsections in this section explores in detail a specific policy (certification of postseason events, control of commercial television broadcasts, control of pay-television broadcasts) that the NCAA employs and shows how each is used to transfer resources to the producers of college athletic contests.

The second section, entitled "Antitrust Litigation and the NCAA," explores legal action that could be taken against the NCAA because of its limits on competition. This section explores what criteria must be fulfilled for an activity to be in violation of the Sherman Antitrust Act. It then examines how NCAA activities do, in fact, meet these requirements and demonstrates how the Sherman Antitrust Act could be applied to the NCAA. The section concludes with a discussion of legal cases in which the NCAA has been charged with antitrust violations.

The third section, entitled "NCAA and the Legal Status of the Participants in Intercollegiate Athletics," explores the role of the courts in settling disputes between student-athletes and/or universities and the NCAA. Because of the value of intercollegiate athletics in

developing and showcasing the skills of a student-athlete who seeks to become a professional athlete, student-athletes who have been penalized by the NCAA have turned to the court for relief. These student-athletes, sometimes along with their universities, have challenged NCAA rules and charged the association with violating the due process and the equal protection clause of the Fourteenth Amendment of the United States Constitution. In this section the principles involved in these suits are examined and several suits involving the NCAA, three where the association has been successful and two where it has not, are examined in detail.

The last section, entitled "NCAA as an Organization," explores how the NCAA maintains this unique position in college athletics. This section includes a discussion of the issues involved in defending the NCAA as a large and successful association which schools voluntarily join and agree to abide by its rules. The discussion contrasts this explanation of the NCAA's activities with that of the association as a group which exercises near dictatorial power over the colleges in the United States. This section also examines how the NCAA has been able to insulate itself from federal intervention and operates virtually unchecked in its regulation of college athletics.

Control of Competition

It is known by most, including those in charge of college sports, that having to compete with other producers lowers the return each firm earns. Accordingly, those facing competition would prefer to avoid it.

But while restricting competition would make producers better off there are many legal statutes in the United States (e.g., the Sherman Antitrust Act) that prohibit producers from limiting competitive practices.

There are obvious monetary incentives for producers to secretively band together and reach agreements restricting certain activities, but any such plan would face many organizational problems. Instead of organizing in this method an effective way for producers to restrict competition is for them to compile rules or laws that may appear motivated by altruistic reasons, but which also have the effect of restricting competition. Given the possibility that rules allegedly designed to protect the public welfare can be used to transfer wealth from consumers to producers it is critical that any such rule or law be analyzed to determine what income transfers, if any, take place as a result of its adoption.

This point is particularly relevant to intercollegiate athletics where many rules have been adopted to allegedly protect a specific group (or the general public), yet simultaneously restrict certain activities. For example, rules have been adopted by the NCAA to allegedly protect student-athletes from injuries which also have the added effect of limiting the number of games played. Additionally, the NCAA's television policy has often been rationalized as protecting the public from unlimited broadcasting which, the association claims, would result in the destruction of college football. Consequently, because "maintaining the public welfare" has been employed so frequently by the

NCAA when establishing limiting rules it is necessary to examine their claims more carefully.

If their claims are proven correct it will be impossible to take issue with the NCAA's altruistic motives. However, if these rules have been used to transfer wealth from one section of society to those who control intercollegiate athletics then the true goals of NCAA policy will be clear. In the next two subsections the NCAA's policy of certifying postseason athletic events is examined.

NCAA Certification of Sports Events

The NCAA maintains an Extra Events Committee that is charged with certifying postseason college sports events in various sports. According to the NCAA:

> ...The functions of the Extra Events Committee shall include the certification of the following extra events as satisfying pertinent qualifications and other applicable regulations and policies of the Association set forth in this article and as from time to time determined by the annual Convention or the NCAA Council: postseason football contests, college all-star football and basketball contests, track and field meets and gymnastics meets.[1]

The committee's decision about which games receive certification and, therefore, which members are eligible to participate in them are binding. Further, the NCAA has devised methods of punishing student-athletes who participate in non-certified events. According to the NCAA:

> ...[the student-athlete] shall be denied further intercollegiate eligibility in that sport 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.

> ...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...but which has not been certified.
> ...He shall be denied eligibility for intercollegiate gymnastics competition if, while a candidate for the intercollegiate team in gymnastics, he participates in gymnastic competition which is subject to the certification program ... but which has not been certified.[2]

The Extra Events Committee meets several times a year and decides which events it will certify. It has publicly explained the certification process as a method to ensure that athletes do not participate in events which would cause them physical or mental harm or damage their amateur standing.[3] The NCAA has also supported its certification program as an attempt to prevent possible economic exploitation of student-athletes. That is, they wish to prevent promoters from gaining at the expense of the student-athletes who perform in the events. However, when it is recognized that any certification process is also a method of preventing some events from being played (not granted certification), and that cartel theory is based on the principle that rewards will increase if production and competition decrease, a serious examination of the association's certification program must be conducted to determine the true goals of the NCAA's certification program.

If certification of college sports events is conducted by the NCAA for the reasons they assert an examination of these reasons will reveal that certification does accomplish these stated objectives and in the process no, or at most little, wealth is transferred between the consumers and producers of postseason college events. If, however, an

examination of this program reveals that substantial income is being transferred to those who produce college athletic events then it may be that the NCAA's defense of this program is solely to mask these transfers. This examination will also allow the altruistic goals of the NCAA's certification process to be contrasted with and tested for explanatory power against the predictions of cartel theory.

NCAA Rationale for Certification of College Sports Events

Consider the argument that certification of sports events is needed to prevent athletes from participating in events that might be improperly organized and could cause physical or mental injury. Implicit in this argument is the false assumption that athletes would willingly participate in any event that would cause them harm were it not for the NCAA. This is viewed as false because it is believed that most individuals are rational and as such would not willingly participate in events (athletic or otherwise) that would result in their incurring pain.

It is also possible to consider NCAA intervention into postseason college athletics in the same way that government intervention into the marketplace is evaluated. Government intervention is usually accepted when it forces individuals or firms to internalize actions that effect others. For example, when a firm pollutes the air during its production process the pollution effects individuals who have no control over the

actions of the firm. In this instance it is commonly agreed that an outside authority (government) can intervene to correct the situation.

The intervention by the NCAA in the market for postseason athletic events can be evaluated with the same criteria as government intervention. If the NCAA causes the appropriate group to internalize an externality then it would appear that its actions (i.e., limits on the games certified) are warranted. But if the effects of the NCAA actions are simply to limit the number of events conducted, it is likely the NCAA is using the certification program to transfer wealth. Therefore, consider what occurs at a postseason athletic contest.

At a postseason contest athletes participate in a sport, during which they face some possibility of being hurt. But at a sports event any risk caused by the nature of the sport or the facilities is borne entirely by the athlete. That is, the risk of being injured due to poor facilities or the conduct of a dangerous sport is included in any decision made by an athlete who tries to determine whether to participate or not. Because the injury that would possibly result from a postseason event is borne entirely by an athlete the NCAA's control of postseason contests as a means of internalizing an externality (injuries) makes little sense because no externality is produced. Hence, preventing injuries can not be the primary reason for the certification process.

Certification of postseason contests has also been rationalized as a means of ensuring athletes do not jeopardize their amateur status, but this appears to be a dubious claim. If it is accepted that amateur

status is something worth protecting (and not merely a method of keeping wages paid to student-athletes artifically low) it must be asked why then amateur status is guarded in only a handful of sports the NCAA certifies. Clearly, if one accepts this justification for certification amateur status in all sports must be important and, therefore, all postseason events should be certified. But the fact that the NCAA does not certify all postseason events raises doubts about the true goal of the program.

The NCAA's other reason for its certification program, preventing economic exploitation of student-athletes, is also suspect. Again, why should it be that postseason events in all sports are not certified if the NCAA actually wants to prevent economic exploitation? Further, if control of possible economic exploitation is the purpose of the certification program the association should be willing to certify those games conducted for charity, yet there have been cases where certification was denied to games where there was little danger of financial improprieties.[4]

Finally, the fact that the NCAA does certify some contests, allowing the nation's best college athletes to participate and the organizers to earn large amounts of money, and does not certify other games, claiming that athletes would be exploited, raises some question about which games the NCAA certifies. Because the NCAA is the group of producers of athletic contests it appears that it certifies events where the income that the game(s) generates benefits some group closely connected with college athletics (e.g., a school belonging to the NCAA)

and does not certify events where the money would be earned by those not connected with the NCAA. Thus, the NCAA's definition of economic exploitation of student-athletes seems to depend on who is the residual claimant of the event.

Given that the NCAA's rationale for its program of certifying postseason events is based on flawed reasoning and inefficient methods it is necessary to examine how the certification program can be used to transfer wealth. To appreciate how this could be done it is important to recognize that the producers of postseason events are in competition with each other for the spectator's entertainment dollar. With many postseason events played organizers would be forced to lower their price to attract customers. However, if the number of events were restricted (i.e., fewer events certified), higher admission prices could be charged and organizers would earn more money. The explanation of the NCAA's control of postseason events presented in the next subsection holds that the NCAA follows this policy to limit competition and make the rewards larger to those who organize the events.

Cartel Theory and NCAA Certification of Postseason Events

Cartel theory holds that producers can collude and restrict production to earn larger profits. In accordance with cartel theory the producers of athletic contests have organized to form the NCAA. Through the certification program the association has been able to restrict the number of postseason events, making it possible for the organizers of these events to earn more money than they would earn if more of these events had been played. As an example of the value of having an event

certified (and allowing superior amateur athletes to compete in it) consider the remarks of William M. Henry, President of the Southern California Committee for the Olympic Games, in 1965 after the AAU refused to certify its Los Angeles Colliseum Relays:

> This year, because of the dispute, and our inability to stage our usual meet in which both college and club, as well as foreign, athletes compete, our paid attendance fell to some 18,800 who came to see a meet in which, because this is and always has been primarily a meet between college relay teams, only college athletes participated. A month later a similar meet in the same coliseum, which attracted not only our country's best AAU athletes but also some of the finest and best publicized foreign athletes, drew slightly more than 12,000 spectators. It is my firm opinion that had we and the other meet enjoyed the usual combination of college and AAU and foreign participants, each of the meets would have drawn 30,000 to 40,000 spectators with benefit to all concerned.[5]

Also consider why the NCAA only certifies postseason events in football, basketball, track and field, and gymnastics when the association conducts championship tournaments in more than one dozen other sports. A partial examination indicates that the reason the NCAA certifies these postseason events may be because these are the only events the public is willing to pay to attend on a scale large enough to allow the organizers to show a profit. While it would make little sense (in terms of increasing revenue) to certify games the public is uninterested in, it is logical for the NCAA to certify those games the public will pay to attend in order to decrease their number and increase the revenue each can generate. The fact that the NCAA is interested in controlling the number of postseason events in only the sports that generate substantial revenue tends to support the idea that the NCAA

uses certification to limit games and increase the rewards from producing them.

The use of certification to control the number of postseason events was also a prime weapon employed by the NCAA in its battle with the AAU over the control of college sports during the 1950's and 1960's.[6] Both organizations sought sole control of college sports for the same reason one firm would like to monopolize a particular industry; the ability to establish production quotas and command a higher price for its product. In its effort to monopolize college sports the AAU established a sanction (certification) process that only allowed events to be certified if the organizer refused to recognize the NCAA. According to AAU rules:

> ...condition to the granting of an AAU sanction, the organization applying therefor must confirm that the AAU is the sole U.S. governing body in the sport for which sanction is applied, and must further agree that as further condition to the granting of such sanction, such organization will neither seek nor accept sanction from any other group or body claiming jurisdiction in such sport, nor permit athletes who are not eligible to compete under AAU rules to compete in such sanctioned event. Penalty for violation of such conditions, or any of them, shall be forfeiture of sanction if granted.[7]

Not to be outdone the NCAA refused to certify many events that had received AAU sanctions and was willing to punish college athletes who refused to obey its ban.

While the NCAA has been concerned with the participation of college athletes in postseason and all-star games since World War Two it has only recently become concerned with all-star games in which high school athletes participate. In the early 1980's the NCAA became aware of high

school athletes participating in as many as one dozen all-star games. To control these games, which the NCAA believed increased high school absenteeism, the association enacted rules that would require all high school all-star games to be sanctioned by the NCAA or a state high school federation. The association also limited interstate matches to players from two adjacent states and limited high school seniors to appearing in only two all-star contests. To enforce these limits the NCAA established rules that would declare any athlete participating in unsanctioned high school all-star games ineligible to participate in any NCAA events in his first year of college.

While the NCAA may have been genuinely concerned with students attending classes it seems likely that the establishment of the two appearance rule would have been sufficient to address this problem. However, the fact that the NCAA established rules to limit high school all-star games again indicates that the association might have been using these rules to provide financial benefits to the producers of college athletic contests.

Unlike college postseason or all-star games which are organized by college sponsors, colleges have no claim on the residual earned by high school all-star games. Thus, the NCAA has no monetary incentive to limit high school competition and provide a larger return to the organizers of the games. In fact, the NCAA has expressely sought to avoid having any individual make a windfall monetary gain from its high school certification policy by only sanctioning games which are played for charity or educational organizations.

The true goals, however, of NCAA measures to control high school all-star games can be seen by considering what takes place at these games. Because many of the country's best high school athletes participate in these postseason events and some are still undecided about which college they will attend, the games are attended by many college recruiters. Further, since so many recruiters are present coaches who have signed a superior athlete to a scholarship commitment for the following year may also devote resources to ensuring that he is not "stolen" by another school. Bob Geogham, director of the MacDonald's Capital Classic, a nationally known high school basketball all-star game played each spring in Landover, Maryland observed this tendency and remarked, "Even if a boy is signed, coaches feel that they have to put in an appearance just to let him know they're still interested."[8]

Given the large amount of money spent by college coaches in attending these high school all-star games it is plausible that the NCAA desired to control these games in order to reduce the expenditures by coaches. If fewer games were played then coaches and recruiters would travel and spend less. Further, with more all-star games played, coaches skilled at evaluating high school athletes would gain an advantage in the assessment of the college potential of each athlete. Consequently, not only does the NCAA control the number of high school all-star games to save coaches money they would have spent following athletes around the country, but by limiting the number of postseason

high school all-star games the association diminishes any advantage a coach would obtain in recruiting these athletes.

While the NCAA has justified its certification program many ways none of these justifications contain reasoning that can be substantiated when examined carefully. In many circumstances the NCAA's alleged purpose for certifying postseason events could be accomplished with fewer NCAA rules or even without the association's intervention. These justifications, however, mask a program that is designed to limit competition between sports events for the spectator's entertainment dollar and provide transfers of wealth from the consumers of these games to the producers.

NCAA Television Policy

Shortly after the NCAA was formed its members found that college sports, especially football, could be used to raise large sums of money. Because football is an exciting and entertaining game the public was quite willing to pay to see the game played. Thus, while much attention has been devoted to the evolution of college sports it should be noted that during this time the policy of charging an admission fee developed simultaneously.

In the late 1920's demand for college football games was so large that producers found they could sell the rights to broadcast football games on the radio. This caused considerable concern among many in college sports who believed radio broadcasting would keep fans from attending football games. But because radio was only a fair substitute

for the entertainment provided by actual attendance, overall attendance (effected in some areas because of radio broadcasting) increased during the period that radio broadcasting became widespread.

On September 30, 1939 college football was introduced to television. On that day the National Broadcasting Company (NBC) televised the contest between Waynesburg (of Pennsylvania) and Fordham. Though World War Two temporarily curtailed college football's experiments with television, after the war many college officials began to fear that increased televising of college football games would cause attendance to fall. As time passed, these people were proven to be correct. By the late 1940's football attendance had fallen sharply and the decrease was directly attributed to the unlimited televising of sports events. In response to the decrease in attendance the NCAA adopted a binding television policy that restricted the appearances of members' football teams on television.

The NCAA justified its first television policy as a means of preventing the ruin of the sport. However, it is worth noting that the television policy adopted by the NCAA gave the association the ability to limit the number of football games televised. Consequently, while the NCAA claims its television policy was adopted for the good of the sport there is evidence that this television policy has been used to limit competition (since a fan could stay home and watch television instead of actually going to the game) and restrict the number of games broadcasted, allowing NCAA schools that appear on television to earn a

larger fee than would be paid if the broadcasting of football games was not limited.

To determine whether the NCAA has used its television policy to prevent the ruin of college football or if the NCAA has designed and implemented the policy to transfer income the next subsection considers the NCAA's official view of television and what might happen if unlimited televising of college football games was conducted.

An Analysis of the NCAA's Official View of Television

The NCAA believes that unlimited televising would lead to the demise of college football. According to the association this demise would occur because fans would prefer to remain home and watch the increased number of televised games rather than actually attend one. The NCAA also reasons that this decrease in attendance would cause the sports revenue earned by schools to fall so that only a few schools (or perhaps none) could afford to play the sport. But though the NCAA paints a bleak picture for college football with unlimited televising it is worth looking closer at the assumptions implicitly made by the association in this scenario.

In the absence of NCAA limits on the number of games televised consider how many games would be shown on television. Much like other decisions concerning how much of an activity to undertake the number of football games televised would increase until the revenue derived from televising the last game was equal to the cost of broadcasting the last game. That is, a television station would be willing to broadcast a

football game as long as it could attract a large enough audience to enable the station to sell a sufficient amount of advertising to cover the cost of the game. Thus, based on the large demand by the American public to watch college football and the acceptance of standard economic theory it is likely that an unlimited broadcasting policy would lead to an increase in the number of games televised over what is currently broadcasted. Such a policy would not be truly unlimited because the televising of these games would be limited by their profitability.

Increases in the number of college games televised would probably lead to decreases in live attendance, as the experiences of the late 1940's and early 1950's indicated, provided colleges kept their ticket prices constant. Under the present NCAA television plan it is clear that fans are willing to pay a higher admission fee when the alternate method of satisfying their demand to watch college football is viewing the one NCAA designated game shown on television. It is also clear that if fans could choose between more televised games they would be less willing to go to the stadium, preferring to remain at home and watch the wider selection on television. However, it is not clear that fans would remain at home if more games were televised and in response to this phenomena, the ticket prices were decreased. That is, it is likely that at some admission price fans would prefer to see a live game rather than one on television. Therefore, to conclude, as the NCAA does, that unlimited televising would cause attendance to fall assumes that schools would hold the price of tickets constant, contrary to the predictions of economic theory.

The NCAA also asserts that increased televising would lead to decreases in football revenue. This may or may not be true. If schools respond to increased televising by lowering ticket prices it is possible that with the proper demand conditions (elastic demand) this could result in schools increasing gate receipts. Additionally, with increased televising of college games, it is also possible that schools could increase the money football generated because of larger television payments. Though the payments from television would probably be smaller than those currently earned (due to more games being televised) it is not clear that the total revenue a school earned from producing football games would fall if more of them were televised.

The crucial point made by the association in defense of restricted televising is that the decrease in revenue resulting from increased televising would be so large that college football would be ruined. The NCAA is predicting that colleges would earn so little money from the production of football games that the sport would not be cost effective and, therefore, abandoned completely. While the preceding paragraph argued that it is not necessarily true that all colleges would experience decreases in total revenue if the number of games televised increased, consider what would happen to college football if most programs experienced a decrease in total revenue.

Just like a firm that observes total revenue decreasing, jeopardizing the firm's existence (profitability), the college would examine its production process to see what changes could be made to reduce costs. It is likely that some practices (e.g., lengthy trips,

expensive equipment, the number of athletic scholarships) could be reduced or eliminated so that the program could remain financially sound. Schools that could make the necessary reductions would continue to play football while schools that could not make these reductions might or might not continue to field a football team.

If a serious cost-cutting effort were conducted and a school still could not generate sufficient revenue it is not clear that it would cease to play football. Currently there are many athletic programs that operate at a loss yet, through the use of government funds or private donations, these schools continue to maintain an athletic department. It is unlikely that these subsidies or donations would not be used to keep athletic departments going if unrestricted televising took place. But even after cost-cutting efforts and the solicitation of donations is made some football programs will cease to exist. In that event what should be done?

If, as is commonly argued, football provides the participants and its audience with some educational value (cooperation, teamwork, etc.) there may exist a good case for a university to subsidize the sport so its students can benefit from these values. However, if the school (or the students or the public) is unwilling to keep a program functioning then what they are telling the public is that the cost of

providing these values through football is simply too large. These values can still be provided, only not through football. Indeed, many colleges in the United States exist that teach the values of teamwork and cooperation without maintaining a football program.

If, as seems more plausible, football is a large business then its failure to remain cost-effective should be examined with economic tools. A football team that can not operate without losing money is viewed through economic theory as informing the school that its resources could be allocated in a more optimal way. Failure by a sufficient number of individuals to let the school know they value football enough to pay for it indicates that the resources used to produce football games are not being employed in their best social use.

In any event the increased televising of college football is likely to cause several changes in college athletics. Schools that are able to cut costs in response to the decrease in revenues will probably eliminate those sports that do not generate enough money to cover their operating costs (since the money used to fund these non-revenue sports comes from the money generated by football). Therefore, one effect of more television broadcasting would be that some schools compete in fewer intercollegiate sports.

Another effect would be more intercollegiate competition at the regional level. Rather than travelling across the country to play another school teams would find it cheaper to compete against local teams. As a result, more regional games would be played and shown on television.

The NCAA's primary concern with unrestricted televising is that a smaller number of schools will come to dominate the sport. According to the association only these schools will appear on television, generating the money and publicity that will allow them to continually produce superior teams. But with an unlimited television policy it is also likely that other schools that appear only infrequently or not at all in the NCAA's current plan will appear more often, perhaps providing these schools with the money and publicity to compete with the superior teams. Thus, if the NCAA can speculate about the future of college sports and surmise that unlimited televising would result in a small number of teams emerging to dominate the sport, an equally plausible case can be made for a more competitive arrangement due to television. Finally, any NCAA statement about a small number of teams emerging to dominate with unlimited television must be reconciled with the fact that under its current policy, presumably designed to induce competition, a small group actually dominates.[9]

The NCAA's understanding of what would happen if unlimited televising of college football games was conducted is speculative, but one point the association makes is probably correct. A policy of unlimited televising would result in a decrease in revenue earned by the schools producing football games. If it is then considered that the NCAA is the organization of producers of college football games their economic self-interest involved in the control of television is obvious. With a limited television broadcasting policy most members receive economic transfers from consumers in the form of larger gate receipts

and/or payments for television rights than could be obtained with unlimited televising. Given this information, the NCAA's strong defense of its restrictive television policy appears more plausibly designed to protect the large amount of money it generates rather than what the association inaccurately perceives as football's demise.

The 1978-1981 NCAA Television Contract

To appreciate the anticompetitive nature of the NCAA's television policy consider the 1978-1981 NCAA Television Contract.[10] Adopted in the spring of 1977 by a referendum mail vote of the membership this contract sold the television broadcast rights for college football games to the American Broadcasting Company (ABC) between 1978 and 1981 for approximately $116 million.[11] Under this contract ABC agreed to pay $533,600 to the Division I-A schools that appeared on a national broadcast (they in turn divide this money as per their agreement) and $401,000 for a regional broadcast.[12] ABC also agreed to pay $750,000 to the schools that played in the Division I-AA football championship, $520,000 to the schools in the Division II football championship, and $150,000 to the schools in the Division III football championship.[13] They also agreed to broadcast several Division II games ($30,000 per game) and Division III games ($15,000 per game). Further, the contract allowed the NCAA to assess eight percent of all money to promote college sports, fund postgraduate scholarships, and pay the travel expenses of participants in NCAA championship events.

The NCAA states the official reason for its control of the televising of college football in the first sentence of its television plan. According to the NCAA:

> The purpose of this Plan shall be to reduce insofar as possible the adverse effects of live television upon football attendance...[14]

The association continues by explaining that the plan is also designed to help educational programs and promote college football, but the major "adverse effect" acknowledged in this sentence is the competition provided by television that results in lower revenue generated for those who produce football games.

To limit competition provided by the televising of college football games the NCAA contracted with ABC to present twenty-three exposures each year.[15] These 23 exposures were required to contain a minimum of 116 team appearances.[16] The twenty-three exposures were to be divided into thirteen national exposures and ten regional exposures. To clarify the televising of these games the NCAA established rules that state:

> ...Each regionally televised game of an exposure shall be telecast into the areas of natural interest of the participating institutions and their traditional rivals, as nearly as practicable, with the sum of the regional areas providing compelete national exposure....
>
> On a maximum of two said exposures, the carrying network shall have the option of presenting two semi-national telecasts, with each telecast released to approximately 50 per cent of the nation. Each college appearing in such a telecast shall be charged with a national appearance, ...
>
> In presenting the 23 exposures each year, the carrying network may utilize doubleheader presentations (i.e., two games telecast into each television market area on the national network, the second telecast immediately following the first game telecast) on Thanksgiving, the Friday following Thanksgiving and on selected Saturdays, ...[17]

By establishing a policy that restricts the number of televised games and controls the geographic area where a game can be shown the NCAA has been able to ensure that gate receipts and money paid per television appearance have increased. This effort to control the televising of football is identical to the market division and production quota policy of a standard business world cartel. Hence, the NCAA serves as a good example of the validity of the predictions of economic theory revealing that decreases in competition cause less of product to be supplied and force a higher price to be paid for it.

To control the televising of college football games the NCAA requires the televising network to select the games it wishes to televise and present them to the NCAA for approval. By April first of each year the network must select all games it wishes to televise in September of the same year and present them to the NCAA for certification. After September the network must select the games and present them to the NCAA for approval prior to 11:30 a.m. (Eastern Time) on the fifth day prior to the telecast.

To control the appearance of Division I schools on television the NCAA established this rule:

> During each of the two-year periods covered by this Plan, a member institution is limited to four appearance, with not more than two (one national and one regional, or two regional) to occur in a single year, except for appearances pursuant to the "special exceptions" which follow. No institution may appear more than five times during either two-year period under any circumstances, including utilization of the "special exceptions."[18]

"Special exceptions" refers to permission by the NCAA to appear on television when the rules would normally prohibit it. Though "special

exceptions" appears to be a method to violate the spirit of the NCAA's restrictions this is not possible due to the controls over these appearances. According to the NCAA no institution may:

> ...Benefit from more than one of the foregoing exceptions during each year of this Plan;
> ...Receive an exception more than once during each two-year period of this Plan;
> ...Use any combination to gain more than five appearances in each two-year period of this Plan.[19]

The NCAA has also established much stricter rules governing the television appearances of smaller schools (Divisions I-AA,II,III). These rules limits the number of team appearances and broadcast areas of each game.[20] Further, the NCAA allows for the televising of more Division I games under two special arrangements known as the sellout and the 400-mile rules.[21]

To ensure that all NCAA schoools obey the association's television plan the NCAA charged the Committee on Infractions with enforcing the plan. According to the section of the association's plan that outlines disciplinary actions:

> The NCAA Committee on Infractions of Council, acting in accordance with the Association's rules and procedures, periodically may disqualify various member institutions from any appearance on the series telecasts and on related programs described in this Plan....
>
> An institution thus disqualified may not be a party to a tenative or firm commitment or private understanding or agreement for an appearance on the series after the sanctions have been removed by the NCAA Committee on Infractions or Council.
>
> Such an institution, however, may appear on a closed circuit telecast released only on the campus of its opponent institution, but it may not receive any compensation for such a closed circuit telecast.[22]

The NCAA also makes an effort to control the quality of its television presentations. Reasoning that the demand for the televising of college games (and the income earned by the NCAA) will increase if the quality is high the NCAA has retained final approval over items in the format of a televised game and network efforts to increase fan interest in the college games. For example, the association controls who may sponsor (i.e., buy commercial time) a football broadcast. According to the NCAA:

> Only sponsors approved by the committee may be used by the network for any program telecast pursuant to the Plan.
> Those sponsors approved shall be organized of high standards whose products and advertising are consistent with the promotion of college football and presenting it as an integral part of higher education.[23]

The association also controls the amount of time that can be used for commercials:

> There shall be not more than 22 commercial minutes presented in 21 commercial periods, 19 of not more than 60 seconds each and two of not more than 90 seconds each, and not more than two station breaks of no more than 63 seconds each, in each series telecast. The commerical periods shall be distributed in accordance with a format schedule approved by the committee, which shall stipulate that one of the 90-second commercials shall be aired at half time, the other between the first and second quarters, and that one station break shall be aired at half time and the other between the third and fourth quarters.[24]

Further, the NCAA even developed a specific format dictating when each of these commercials may be shown.[25]

Other television broadcast policies the NCAA controls to ensure quality include the selection of announcers, the use of pregame and postgame shows, and the production of special football oriented shows

prepared to increase interest in college football. This latter category includes the weekly highlight show and the yearly review shows.

Given this television policy and the large economic self-interest members have in controlling competition a plausible explanation for the restrictive television plans is that it ensures the financial rewards from playing football (gate receipts and television payments) remain large or increase. While the NCAA believes unrestricted televising would ruin the sport and defends its policy as preventing this ruin and promoting educational interests, the NCAA's policies are identical to the principles of cartel theory which calls for market division and production quotas.[26] Thus, while the NCAA has justified its television policy with many reasons, one result of a television plan such as the one outlined in this subsection is a redistribution of wealth to those who produce the contests.

The Relationship between College, Professional, and High School Football

The NCAA's television policy reveals that the association is aware of the competition that televising its games presents with live attendance. Other possible competition with college football for the spectator's football entertainment dollar comes from high school and professional football. The NCAA is aware of this competition and has taken actions, both formal legal measures and informal agreements, to limit this competition that could lower the return from producing college football games.

There are no legal arrangements between the NCAA and high school football. This is because high school football, in terms of money generating ability and interest, is a very small competitor with college football. A gentlemen's agreement between the two sports, honored by most, allows high school games to be played on Friday night and college games to be played on Saturday. To this end the NCAA has also limited its televising of football games when it could jeopardize high school attendance.[27]

Some high schools, however, do play games on Saturday. But the NCAA does not regard this violation as a major problem because of the size of the competition that high schools offers. As long as high school games are not televised then the competition they offer college sports is small and in the few areas where the high school games are played on Saturday the NCAA's lack of concern indicates they perceive high school football as no real threat to their revenue generating capabilities.

No doubt the largest direct competition with college football is professional football. Because of fan interest and the league's extensive televising schedule professional football could provide sufficient direct competition with college football to lower the return of college producers. However, the NCAA recognized this and took steps to limit the competition between professional sports and college football.

One form of competition between the two sports would occur if the games were played on the same day. This would require fans desiring to

attend a football game to chose between the two. To prevent the sports from earning a lower rate of return the NCAA and professional football established a working agreement whereby professional football would be played on Sunday and college football on Saturday. The fact that professional and college football games are played on different days can be easily explained by noting the limiting effect this policy has on competition between the sports for gate receipts.

The other and larger form of competition between the two forms of football is the competition that results from professional football televising its games into an area where a college game is played. This forces the football fan to chose between attending a college game or remaining at home and watching a professional game on television. To ensure its members earn a rate of return greater than the competitive rate the NCAA needed to restrict the choices available to football fans. But unlike the NCAA's method of handling the competition presented by the televising of its games the NCAA could not limit the competition presented by the televising of professional games because it did not control the professional television policy. Further, professional football would not voluntarily alter its television policy since this policy earned all members of the National Football League (NFL) large sums of money. However, through the establishment of federal law the NCAA was able to effectively restrict any competition televising of professional football games presented. To understand how the NCAA accomplished this it is necessary to consider the 1953 legal case The United States v. The National Football League.[28]

Prior to 1953 the teams in the NFL collectively negotiated one television contract and then divided the revenue it generated. Under previous contracts it had not been permitted to televise a team's home game in the same area it was played nor was it permitted to televise another game into a team's home area when the home team was playing out of town and televising its game back home. But in 1951 the federal Department of Justice charged the NFL with fifteen violations of the Sherman Antitrust Act to determine if the television policy of the league restricted or restrained trade.[29]

After a lengthy and much publicized trial Pennsylvania District Court Judge Allan K. Grim found the NFL to be in violation of the Sherman Antitrust Act, but not on all the counts as charged by the Justice Department. Grim noted that the NFL could restrict some practices if the overall effect was to equalize competition within the league by making provisions for the weaker clubs to get stronger. Accordingly, he declared that the NFL's policy of not televising a team's home game in an area seventy-five miles from the game was legal. But he also ruled that the league's policy of not allowing other games to be shown in a team's home area when it was broadcasting back into the area violated the section of the Sherman Antitrust Act prohibiting restraint of trade and was, therefore, illegal. Additionally, Grim declared that the league's policy of collectively negotiating a television contract was illegal and banned the practice.

In April 1961 the NFL collectively negotiated and signed a two year contract with the Columbia Broadcasting System (CBS) which provided the television network with exclusive rights to broadcast their football games in return for $4,650,000 per year. Whereas the collective television contracts signed before 1953, which had been declared illegal by Judge Grim, were binding on all NFL members, the collective television contract signed by the NFL in 1961 was the result of all teams voluntarily authorizing the commissioner of the league to sell a pooled package of televising rights. Because the package was organized voluntarily the NFL contended it did not violate the ban Grim had ordered on collective contracts in 1953. The Justice Department, however, believed the contract again violated the Sherman Antitrust Act and brought the NFL to court to receive a judgement on the legality of the contract.

The case was again heard by Judge Allan K. Grim of the Pennsylvania District Court. He ruled on July 20, 1961 that the new contract, despite its voluntary nature, violated the antitrust statute by eliminating competition in the sale of television rights. This second ruling by Grim made it clear to the NFL that it would be unable to collectively sell its television rights. This was a particularly discomforting thought in 1961 because in 1960 a rival professional football league, the American Football League (AFL), was formed to compete for the NFL's players and fans.

Given the NFL's failure in court the members decided that since their practice did not comply with the existing law they would attempt

to change the law. Less than six weeks after Grim made his second decision the NFL was able to convince New York Congressman Emanuel Cellar, Chairman of the Judiciary Committee, to introduce a bill that would provide the organized professional teams of football, baseball, basketball, and hockey an exemption to the Sherman Antitrust Act that would allow them to collectively negotiate television contracts. The bill (H.R. 8757) introduced by Cellar stated:

> Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the antitrust laws, as defined in section 1 of the Act of October 15, 1914, as amended (38 Stat. 717), shall not apply to any joint agreement by or among persons engaging in or conducting the organized professional team sports of football, baseball, basketball, or hockey, by which a league of clubs participating in professional football, baseball, basketball, or hockey contests sells or otherwise transfers all or any part of the rights of such league's members clubs in the sponsored telecasting of the games of football, baseball, basketball, or hockey, as the case may be, engaged in or conducted by such clubs....[30]

Representatives of organized professional football and baseball testified at the hearing on H.R. 8757 in favor of the bill for the obvious reason that it would allow them to earn increased revenue from television. Pete Rozell, Commissioner of the NFL, Ford Frick, Commissioner of Baseball, and Joe Foss, Commissioner of the AFL, made lengthy appearances at the subcommittee hearings declaring their support for the bill, though Foss had several reservations about the bill based on the fact that it would provide the NFL with a financial advantage over his league. Vincent T. Wasilewoki, Vice President for General Affairs of the National Association of Broadcasters (an organization of radio and television stations) testified against the

bill because it would force his employers to pay more for the broadcast rights to the games.

The NCAA saw this legislative attempt as an excellent opportunity to limit the television competition professional sports offered college sports. The NCAA sent William Reed, Legislative Committee Chairman, and Asa Bushnell, Director of the NCAA, to the committee hearings. Reed testified on behalf of the NCAA and made a statement stressing the non-profit nature of the association, which then provided sports activities for more than one million college students. He surmised that passage of H.R. 8757 would have adverse effects on NCAA members unless the committee amended the bill. He proposed that the bill include a clause that stated:

> Provided, however, That the granting of the right to telecast reports or pictures of contests in organized professional football from telecasting stations located within 75 miles of the game site chosen by a college or university on a day other than Sunday, when such college or university is scheduled to play there an intercollegiate contest in football, shall be unlawful whenever such granting of the right to telecast has not been consented to in writing by such college or university and the effect of such telecasting is injurious to or may tend to destroy the sport of football at that college or university.[31]

It was the intent of the NCAA sponsored amendment to officially limit the competition offered by professional sports for spectator's money and have the government enforce the limits. This clause would prevent professional football from broadcasting a game if it was played within seventy-five miles of the site where a college game was played. By limiting these broadcasts football fans would not have the choice between a college game and a televised professional game. Without the

opportunity to remain at home and watch the televised professional game the NCAA reasoned more fans would attend college games, resulting in increased gate receipts.

After some changes in the wording of the bill, the most important being an extension of the period when a professional game could not be broadcast without the professional team losing their antitrust exemption, it was passed by Congress and signed into law on September 30, 1961. This bill became Chapter 32 in the fifteenth volume of the United State Code.[32] It was later amended on November 8, 1966.[33]

The NCAA's successful federal effort to limit competition from professional football as well as its less formal limits on competition between member institutions and between college and high school football indicates that the NCAA has used its influence and power to increase the revenue generated by the sale of college football television rights. While the limits on competition with professional sports are specifically exempt from antitrust action, many questions about the possible violations of antitrust laws by the NCAA Television Plan remain unanswered. The antitrust issues relevant to the NCAA's television policy and postseason certification program will be examined following the discussion of the NCAA's policy of pay-television.

NCAA and Pay-Television

Pay-television differs from conventional television in that a special charge is paid by the viewer to see a show or a whole series of shows. To ensure that only the person who pays for the shows sees them the television signal is sent in a specially installed cable or the

signal is scrambled, requiring a decoder device. Forms of pay-television include subscription television, cable television, and CATV (Community Antenna Television).

The NCAA's exposure to pay-television is not a recent experience. When the NCAA began exploring the possibility of developing a television policy in the late 1940's its members were aware of and examined the use of pay-television to raise revenue. Surprisingly, the system had few technical difficulties, but did have many problems with the Federal Communications Commission (FCC). Given the difficulties that pay-television experienced with federal regulations and the fact that the commercial television networks were more developed and served a larger number of households, the NCAA television contract was always awarded to commercial television networks.

Over time, however, pay-television has grown. As an example, while total television households have remained static, subscriptions to pay-cable television increased 118 percent between 1975 and 1976 and then by 156 percent up to until mid-1978.[34] This increase should have caused concern among conventional television since pay-television represented competition for viewers, but conventional television did not initially fear the growth of pay-television because of the manner which pay-television had been regulated.

Conventional television had supported regulations adopted by the FCC that were designed to prevent the siphoning of shows by pay-television. Under these regulations all recent films (domestic and foreign) and all sports events which had been shown on conventional

television in the preceding five years were excluded from being shown on pay-television. Additionally, those sports events which had appeared only infrequently on conventional television were strictly limited as to when they could appear on pay-television.[35] While this regulation was allegedly designed to protect the public's right to view events it also prevented pay-television from showing many events and placed it at a disadvantage compared to commerical television in its ability to attract viewers.

In the late 1970's, after a series of legal challenges, all of the anticompetitive FCC regulations that placed pay-television at a disadvantage were removed. The landmark case was Home Box Office v. Federal Communications Commission.[36] In this case the court removed most of the regulations dealing with the televising of sports events by pay-television. Other sections of this regulation were removed in April and November 1978. As a result of these actions the lengthy and detailed regulation that appeared in Appendix IV was reduced to a two paragraph directive.[37]

The removal of these regulations, which had blocked pay-television from televising certain popular events, as well as the increase in the number of people who subscribed to pay-television, forced pay-television to begin searching for events it could broadcast profitably. Combining these factors with the American public's large demand to view sporting events pay-television sought sports contests it could broadcast. One sport event pay-television was particularly interested in was college football.

The televising of college football games on pay-television offered many advantages. The use of the cable gave the network better control over who could see the game. That is, the network would be allowed to show the game in different locations without having to broadcast nationwide. This ability to control the viewing audience would allow more games to be broadcasted, provide schools with television fees and viewers with the opportunity to see a wider selection of contests.

Pay-television broadcasts of NCAA events had been occurring for some time prior to 1977. These broadcasts had been limited to special groups (e.g., alumni) or educational broadcasts that did not provide competition with the major networks. But in 1977 Warner Communications of Columbus, Ohio started a major legal battle by trying to televise two Ohio State University (OSU) football games on pay-television.

In 1977 Warner Communications had the only per-program pay-cable system in the country. Under this system (QUBE) they had the ability to identify and then assess a fee to those who viewed a particular event. With QUBE the Warner system intended to broadcast the OSU football games played on November 5, 1977 (against Illinois) and November 12, 1977 (against Indiana), for which they reportedly paid OSU $150,000.[38]

In accordance with to NCAA rules Warner Communications applied for and received approval to conduct the pay-cable broadcast of these two OSU football games. But ABC, which held the exclusive rights to broadcast college football during the 1977 season, strongly objected to Warner Communication's attempt to broadcast. They based their objection on a clause in the television contract they had with the NCAA that

encompassed pay-television (wired systems). The article stated that the NCAA's Television Committee had the right to approve "telecasts by wired systems" but

> ...no presentation may conflict in point of time with any series being telecast on a live basis by the carrying network in the area involved.[39]

Because of this agreement ABC objected to the pay-television telecasts by arguing that they were in violation of the television contract.

The economic implication of ABC's objection was straightforward. ABC knew that as long as it controlled the rights to broadcast the only live college football games it could charge advertisers large fees by promising to deliver a large television audience. If pay-television were allowed to begin cutting into its audience then ABC would not be able to promise advertisers large audiences and, therefore, earn large advertising fees. Consequently, ABC opposed Warner Communication's broadcast of OSU football games because Warner Communications would destroy their monopoly position on college football television and cause them considerable financial harm.

The NCAA had authorized the QUBE broadcasts under a section of the television contract that allowed pay-television broadcasts to be conducted as a research experiment. The association also felt that because of the small size of the pay-television audience ABC would not object.[40] But ABC did object, causing bewilderment to both the NCAA and OSU and prompting a congressional hearing on the matter.[41]

At the hearing conducted by the Subcommittee on Communications of the House Committee on Interstate and Foreign Commerce, Roone Arledge,

President of ABC News and Sports, was questioned about his objection to Warner Communications broadcasting the OSU games. When asked why he had not relented and let the games be broadcast Arledge stated it was ABC's intent to "limit competition as much as possible."[42] Arledge also went on to reiterate his point noting that the incident with Warner Communications could be a troubling precedent, making clearer that ABC desired to be protected from other forms of television that could compete with the network for fans and money.

Warner Communications and later the Attorney General of Ohio both filed antitrust suits against the NCAA and ABC by June 1978. These actions potentially involved large sums of money. Were the NCAA and ABC to be found in violation of antitrust laws then this would have jeopardized the NCAA's ability to sell its television rights in a pooled package and ABC would have had its newly signed $116 million contract voided. When faced with this possibility ABC, which had vigorously opposed two pay-cable broadcasts in 1977, settled out of court with Warner Communications agreeing to let QUBE broadcast five games in each of the next two years (1978 and 1979). ABC claimed it was willing to let the NCAA conduct valuable research with these broadcasts, but it was obvious that the network did not want to jeopardize its exclusive college football contract and the money it earned by selling advertising spots at as much as $80,000 per minute.

The case of Warner Communications and the OSU football games was extremely troubling to the NCAA, which had been able to ensure the rights to broadcast its college football games sold for large amounts of

money, by guaranteeing the purchaser the exclusive rights. If pay-television was able to broadcast college games then this would lower the payment from the network that was awarded the rights to broadcast college football. But the NCAA, in terms of being able to control pay-television broadcasts and the competition it offers commercial television, was not powerless.

Under the provisions of the 1978-1981 Television Plan the NCAA must authorize all pay-television broadcasts of college football games. With this power to approve (and disapprove) the NCAA's Television Committee can block competition between pay and conventional television by simply not approving a school's request to broadcast on pay-television. Even with NCAA approval it is unclear how valuable the ability to televise a live game on pay-television would be since the NCAA strictly limits the geographic area where the signal can be received.[43]

The NCAA also maintains a clause in its television contract that allows for pay-television to broadcast football games in an effort to conduct market research experiments. There are, however, complicated rules in this provision that limit the number of times a school may participate in a pay-television experiment (four times a season) and restrict the geographic area where the experiments may be conducted. Further, the NCAA requires that a detailed research program be presented with an application to broadcast on pay-television and, assuming the NCAA approves the telecast, those televising the game are then subjected to a 25 percent assessment fee that the NCAA uses to pay for its research efforts or reimburse those who were injured (suffer decreases

in attendance) by the broadcast. Consequently, while the NCAA does provide for pay-television to broadcast some college games, by retaining the power to approve which games will be shown as well as providing a series of rules each broadcast must follow the association has effectively limited the competition that pay-television offers to conventional television.

The methods the NCAA has devised to control pay-television, conventional television, and the production of postseason athletic contests have been examined and revealed to be the means by which the NCAA restricts various forms of competition involving its members. In this analysis, however, the question of how these restrictions have withstood antitrust prosecution has been left unanswered. Without a doubt the possibility that NCAA activities might invoke antitrust violations merits attention. Accordingly, the next section discusses antitrust issues relevant to NCAA policies.

Antitrust Litigation and the NCAA

The previous section of this chapter detailed specific NCAA policies that highlight the restrictive nature of the association's actions on its members and other competing sports organizations. By requiring all postseason athletic events to be certified by its Extra Events Committee the NCAA has been able to limit the number of events played and enabled member schools that produced and participated in these events to earn larger financial rewards. Additionally, through the use of a complex televising scheme and federal law the NCAA has

effectively eliminated or reduced all televising of competing football games which threaten the gate receipts of its members. Thus, it has been argued that these policies which limit or restrict certain activities have been enacted by the NCAA so that its members (producers of athletic contests) may reap larger financial rewards.

There are, however, many legal implications resulting from the NCAA's effort to control of college athletics. For example, while the NCAA has regulated how many athletic contests may be played and if and where they will be televised, similar collective efforts by firms in other industries to limit the quantity of an output produced are prohibited under federal law. Consequently, measures enacted by the NCAA which allegedly regulate college athletics for the 'good of the sport' need to be examined for possible antitrust violations.

The most important antitrust statute is the Sherman Antitrust Act which was first adopted on July 2, 1890 and has been periodically revised. It outlines which practices in the area of commerce and trade are illegal. The first and most cited section of the Sherman Antitrust Act states:

> Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal. Every person who shall make any contract or engage in any combination of conspiracy hereby declared to be illegal shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding one million dollars if a corporation, or, if any other person, one hundred thousand dollars, or by imprisonment not exceeding three years, or by both said punishment, in the discretion of the court.[44]

Since its adoption a series of court cases have yielded rulings that indicate the Sherman Antitrust Act is only applicable to the events which effect or involve interstate commerce.[45] However, while some courts were deciding what areas the authority of the Sherman Antitrust Act covered Congress, along with other Judicial bodies, was simultaneously providing specific exemptions to the antitrust act. The similarity between some of the activities which were exempt from antitrust prosecution and activities conducted by the NCAA makes it necessary to examine these exemptions and consider their relevance to college athletics.

Antitrust Exemptions

One of the largest set of exemptions provided by Congress was awarded to agricultural interests. An important measure provided to agriculture was an exemption for non-profit organizations known as cooperatives. This and other agricultural exemptions appear in the Capper-Volstead Act, which was adopted in 1922, and is known as the Magna Carta of agricultural cooperatives. Section one states:

> Persons engaged in the production of agricultural products as farmers, planters, ranchmen, dairymen, nut or fruit growers may act together in associations, corporate or otherwise, with or without capital stock, in collectively processing, preparing for market, handling, and marketing in interstate and foreign commerce, such products of persons so engaged.[46]

The second section of the Capper Volstead Act authorized the Secretary of Agriculture, rather than the Department of Justice, to determine if an agricultural group had established a monopoly and was restraining trade. This was to provide a small group of farms with more efficient production techniques by allowing them to work together.

However, while the size and number of farm cooperatives has increased since the exemptions were established, these special exemptions remain intact after being upheld in three important Supreme Court Cases.[47]

A second set of congressional exemptions from the Sherman Antitrust Act was granted to organized labor after the 1908 Supreme Court decision in Loewe v. Lawler.[48] In this case a labor union, the United Hatters of North America, conducted a boycott of the hat products made by a non-union company. The owners of the non-unionized firm filed an antitrust suit against the United Hatters of North America and it was upheld by the Supreme Court.

To avoid further prosecution under the Sherman Antitrust Act organized labor received a congressional exemption in 1914 when the Clayton Act was passed. One section of the act exempted labor by pointing out that "the labor of a human being is not a commodity or article of commerce."[49] Other sections exempted the actions of organized labor in a labor dispute (e.g., strike, boycott), from antitrust violations.[50]

Another exemption granted by Congress was provided to non-profit institutions. This exemption states:

> Nothing in the Act ...shall apply to purchases of their supplies for their own use by schools, colleges, universities, public libraries, churches, hospitals, and charitable institutions not operated for profit.[51]

This exemption was passed in 1938 after it was revealed that compliance with the Robinson-Patman Act, which eliminated price discrimination, would force non-profit hospitals to pay approximately 20 percent more for hospital supplies. This specific exemption has been upheld in three

court decisions, but this category of exemptions has recently come under judicial scrutiny that will be discussed below.[52]

The previous exemptions have all been authorized by Congress and upheld in the courts. There is, however, another class of exemptions known as judicial exemptions. These are exemptions to the Sherman Antitrust Act that have emerged through rulings made in certain legal cases. These include exemptions for actions of federal and state governments, learned professions, and professional baseball.

As a result of the ruling in the United States v. Rock Royal Co-operative, Inc.,[53] the Federal Government is exempt from prosecution under antitrust laws. In this particular case the Federal Government was alleged to have violated the Sherman Antitrust Act by establishing cooperatives. However, the Supreme Court ruled that as long as a law had not been declared unconstitutional the Federal Government had the proper authority to make these laws and was, therefore, exempt from the Sherman Antitrust Act.

Due to the vague wording of the Sherman Antitrust Act it was not made clear how antitrust laws effected actions by state governments until 1942 when the case of Parker v. Brown[54] was finally decided. In 1933 the state of California established a raisin-marketing program which required raisin producers to turn over 70 percent of their crop to a state body which withheld all or part of the crop in order to stabilize the price of raisins. One California raisin farmer, Porter L. Brown, refused to turn over his raisin crop and was sued by the state.

Brown claimed the raisin-marketing agreement established by California violated the Sherman Antitrust Act, but because the actions of a state were not included in the wording of the law the Supreme Court was left to determine the applicability of the law to state behavior. In its opinion the high court exempted many actions of a state ruling:

> The Sherman Act makes no mention of the state as such, and as such gives no hint that it was intended to restrain state action or official action directed by a state.[55]

The court also noted that this exemption did not allow a state to "...give immunity to those who violate the Sherman Act by authorizing them to violate it, or by declaring that their action is lawful."[56] But, in what has become a well cited example of the inapplicability of the Sherman Antitrust Act to actions specifically sanctioned or run by a state, the Supreme Court noted:

> The state in adopting and enforcing the prorate program made no contract or agreement and entered into no conspiracy in restraint of trade or to establish monopoly but, as sovereign, imposed the restraint as an act of government which the Sherman Act did not undertake to prohibit.[57]

Another judicial exemption to the Sherman Antitrust Act has gone to the learned professions (e.g., medicine, law). In a number of cases involving the learned professions courts have ruled that these professions were not trade or commerce, as normally thought of, and were, therefore, immune to antitrust prosecution.[58] The learned profession exemption has existed for some time, but has recently come under pressure from those who believe the exemption is undeserved. In the Supreme Court decision in Lewis Goldfarb v. Virginia State Bar,[59]

for example, the court ruled against a much protected learned profession (law) citing it for antitrust violations.

The last judicial exemption discussed in this subsection is the exemption provided professional baseball. In Federal Baseball Club of Baltimore v. National League of Professional Baseball Clubs[60] the Supreme Court held that:

> The business of giving exhibitions of baseball, which are purely state affairs. [sic] ...But the fact that in order to give the exhibitions, the Leagues must induce free persons to cross state lines, and must arrange and pay for their doing so, is not enough to change the character of the league.... That to which it is incident, the exhibition, although made for money, would not be called trade or commerce in the commonly accepted use of those words.[61]

This ruling provided professional baseball with an exemption to antitrust laws that remained intact until the 1970's. However, while professional baseball has received a judicial exemption the courts have refused to exempt professional boxing, football, basketball, hockey, bowling, and golf.[62] The Supreme Court sized up this peculiar oddity by describing baseball's exemption as "an exception and an anomaly."[63]

Given these exemptions to the Sherman Antitrust Act it is not sufficient to point at the NCAA's certification and television policies, note that they restrict competition and trade, and conclude the NCAA is guilty of antitrust violations. Because many of the exemptions may be applicable to the NCAA there is considerable debate as to whether the antitrust statute may be used to examine the activities of the association.

For example, in the Capper-Volstead Act of 1922 an exemption was provided to cooperative farming groups. Since the NCAA could be

accurately described as a cooperative composed of college athletic departments it might be exempt from antitrust prosecution under the provisions of this law.

The Clayton Act of 1914 provided an exemption to labor because it was thought to have special characteristics. Because all NCAA activities involve labor (student-athletes, coaches), the association might be exempt from the Sherman Antitrust Act under this law.

Finally, the courts have provided special exemptions to non-profit groups, government actions, and certain professions. Since the NCAA is by definition a non-profit group, is composed of members who depend heavily on government funds, and differs from other sports bodies because of its emphasis on amateurism, the association could argue that it was exempt from antitrust prosecution under any of these three categories.

Because of the special exemptions created by Congress and the courts it is necessary to address each of these questions. Further, to demonstrate the NCAA violates the antitrust statute it is important to show that:

1) while the NCAA consists of many state institutions its functions involve considerable interstate activities;
2) while all members of the NCAA are by definition non-profit institutions, the courts have previously applied the Sherman Antitrust Act to other non-profit organizations and, therefore, it can be used in the context of intercollegiate athletics; and

3) the NCAA's policy of certifying postseason events and the association's television plan result in restrictions of trade or commerce that come under the jurisdiction of the Sherman Antitrust Act.

In the remainder of this section each of these categories is examined.

Interstate Activity and Antitrust Violations

Professional Sports and Interstate Activity

The applicability of antitrust laws to college athletics on the basis that it encompasses sizeable interstate trade receives considerable support from court rulings in antitrust cases involving professional sports. In William Radovich v. National Football League[64] the Supreme Court was forced to decide if the activities of professional football involved interstate trade before ruling on Radovich's claim that NFL blacklisting of his skills violated antitrust laws. The NFL argued it was exempt from antitrust for the same reason as professional baseball, but the Supreme Court upheld the applicability of the antitrust laws to professional football pointing out:

> As a further "part of the business of professional football itself" and "directly tied in and connected" with its football exhibitions is the transmission of the games over the radio and television into nearly every State of the Union. This is accomplished by contracts which produce a "significant portion of the gross receipts" and without which "the business of operating a professional football club would not be profitable." The playing of exhibitions themselves "is essential to the interstate transmission by broadcasting and television" and the actions of the respondents against Radovich were necessarily related to these interstate activities.[65]

Further, the court declared that application of the Sherman Antitrust Act to professional football was proper because of the number of television broadcasts conducted by the league and the revenue earned from those broadcasts. The court ruled:

> ...the volume of interstate business involved in organized professional football places it within the provisions of the act.[66]

Prior to this decision a prominent opinion on the applicability of the Sherman Antitrust Act to professional sports came in United States v. International Boxing Club of New York.[67] In this case the International Boxing Club was sued by the Federal Government for violating antitrust laws by allegedly monopolizing professional boxing. The first court that heard the case dismissed the government's complaint by drawing on the antitrust exemption granted professional baseball in Federal Baseball Club of Baltimore v. National League of Professional Baseball Clubs.[68] But the government appealed to the Supreme Court in an effort to get a favorable ruling on the applicability of the Sherman Antitrust Act.

The government contended that the promoters of professional boxing had sought to monopolize the sport beginning in 1949 and were subject to an antitrust suit because they utilized interstate trade and commerce to

> "(a) negotiate contracts with boxers, advertising agencies, seconds, referees, judges, announcers, and other personnel living in states other than those in which the promoters reside;
> "(b) arrange and maintain training quarters in states other than those in which the promoters reside;
> "(c) lease suitable arenas, and arrange other details for boxing contests, particularly when the contests are held in states other than those in which the promoters reside;

> "(d) sell tickets to contests across state lines;
> "(e) negotiate for the sale of and sell rights to broadcast and telecast boxing contests to homes through more than 3,000 radio stations and 100 television stations; and
> "(g) negotiate for the sale of and sell rights to telecast boxing contests to some 200 motion picture theatres in various states of the United States for display by large-screen television."[69]

Additionally, the government claimed that the Sherman Antitrust Act was applicable to professional boxing because promoters earned substantial revenue. The government noted:

> The promoter's receipts from the sale of television, radio, and motion picture rights to championship matches, according to the complaint, represent on the average over 25% of the promoter's total revenue and in some instances exceed the revenue derived from the sale of admission tickets.[70]

The Supreme Court considered this evidence in light of the antitrust exemption provided to baseball and decided that even though this case marked the first time the court had considered the sport of boxing:

> ...that fact along does not bar application of the Sherman Act to a business based on the promotion of such matches, if the business is itself engaged in interstate commerce or if the business imposes illegal restraints on interstate commerce .... it would be sufficient, we believe, to rest on the allegation that over 25% of the revenue from championship boxing is derived from interstate operations through the sale of radio, television, and motion picture rights.[71]

The decision that boxing did effect sufficient interstate trade and that it did not have an antitrust exemption similar to baseball's reversed the decision of the lower court and allowed the International Boxing Club to be sued by the government. The decision also established a standard (25 percent of the revenue derived from sale of broadcasting

rights) which could be used to measure the level of interstate activity of a sport.

An additional method of proving than an activity effects interstate trade or commerce is obtained by noting that an event which necessitates travel across state borders consequently involves interstate trade. This definition of interstate trade was revealed in the decision made in Barbara J. Blalock v. Ladies Professional Golf Association[72] which was filed by professional golfer Barbara J. Blalock after she was penalized by the Ladies Professional Golf Association (LPGA). Initially, the LPGA had fined Blalock $500 and placed her on probation for the rest of the 1972 season for allegedly moving her golfball during tournament play. But after two other women professional golfers informed the Executive Board of the LPGA of the remarks Blalock made (appearing to admit guilt) when she heard of her initial penalty, the board increased her penalty to a one year suspension. Blalock responded to this increased penalty by suing the LPGA for antitrust violations.

Prior to rendering a decision on Blalock's claim District Court Judge Moye had to rule on the applicability of the Sherman Antitrust Act to golf. He cited Justice Blackman's opinion in Flood v. Kuhn[73] which upheld baseball's antitrust exemption but noted that "... other professional sports, operating interstate--football, boxing, basketball, and, presumably, hockey and golf--are not so exempt."[74] Even with Blackman's decision Moye felt that for the Sherman Antitrust Act to be applicable to women's professional golf the sport had to have an effect

on interstate commerce. He felt this effect on trade was present and noted:

> ...it is clear that defendant LPGA conducts its business in such a manner as to constitute interstate commerce. The golf tournaments, cosponsored by defendant LPGA Tournament Players Corporation, are conducted in and among the several states and the rights to televise and broadcast certain tournaments for interstate transmission have been sold.[75]

Thus, the precedent Moye established in the case was that athletes traveling across state borders necessarily effected interstate trade, thereby making the sponsor subject to antitrust laws.[76]

Interstate Activity and the NCAA

Given the examination of NCAA functions conducted earlier in this chapter it should be clear that a substantial amount of interstate trade and commerce takes place in college athletics. The NCAA schedules many sporting events that involve interstate travel (and have a secondary effect on the volume of business at local hotels and restaurants) and controls the interstate television broadcasting of college sports. However, by using the decisions rendered in the court cases discussed in the previous subsection it is possible to show that the NCAA could be subjected to the Sherman Antitrust Act. This will be done by showing that the NCAA is involved in many activities that these decisions stated were necessary for the antitrust laws to be applied.

In Radovich v. NFL[77] it was decided that the Sherman Antitrust Act was applicable to professional football because of its sale of television broadcasting rights. Using the same logic the Sherman Antitrust Act could also be applicable to the NCAA because it maintains an

organized and complex policy for selling television broadcasting rights. Further, in 1957 when the Radovich case was decided, the NFL was composed of only eight teams whereas approximately one hundred times as many NCAA football teams exist. Since the sale of broadcasting rights is a criteria for applying the antitrust act (as demonstrated in Radovich v. NFL[78] and United States v. International Boxing Club[79]) then the Sherman Antitrust Act could be applied to the NCAA because of the sale of college television rights through its binding and more extensive television plan.

United States v. International Boxing Club[80] also revealed a numerical rule that could be used to determine how significant the sale of television rights were. In that case the court determined the Sherman Antitrust Act was applicable because over 25 percent of the (total) revenue raised by the boxing club came from the sale of broadcasting rights. The same comparison can be made with the NCAA to see if the Sherman Antitrust Act could be applicable by examining the amount of revenue the association earned from selling television rights.

According to NCAA statistics an 8 percent assessment was placed on all football television fees in 1978-1979.[81] Thus, in the year ending August 31, 1979 the NCAA reported it earned $2,183,757 from football television assessment fees.[82] The NCAA also earned substantial television money from the sale of television rights to its Division I Basketball Tournament. According to the agreement whereby the NCAA kept 50 percent of the revenue earned in the Basketball Tournament, the NCAA

earned $2,579,736.53 from the television rights to the 1979 tournament.[83] Given that the gross receipts of the NCAA in the year ending August 31, 1979 were $14,965,033,[84] the NCAA television revenue from just football and the Division I Basketball Tournament was approximately 32 percent of NCAA gross receipts.[85] With this high sale percentage of gross receipts (before the inclusion of television money from the sale of the rights to other sports) it is obvious that in 1979 the NCAA easily surpassed the 25 percent requirement set forth in United States v. International Boxing Club.[86]

The criteria for an event to involve interstate trade revealed in Blalock v. LPGA[87] also could apply to the NCAA and college sports. In this case it was noted that interstate trade was involved when athletes had to travel across state lines to participate in sports events. Because the NCAA conducts many events that require student-athletes to travel across state borders (including the recruitment of high school athletes) the activities of the NCAA qualify under the established definition as effecting interstate trade. With the knowledge that the activities of the NCAA involve interstate trade it is clear that the NCAA could be subjected to the Sherman Antitrust Act through this category.[88]

Non-Profit Enterprises and the Sherman Antitrust Act

Legal Precedents involving Non-Profit Institutions

Historically the Sherman Antitrust Act has been reserved for enterprises run for profit. One often cited opinion that supports this came in Eastern Railroad Presidents Conference v. Noerr Motor Freight.[89]

In this case trucking interests brought an antitrust suit against several railroads that were petitioning state legislators to pass laws to reduce trucking competition in the long distance hauling market. The claims of the trucking interests were upheld in a lower court, but the Supreme Court reversed that decision by ruling:

> The proscriptions of the [Sherman Antitrust] Act, tailored as they are for the business world are not at all appropriate for application in the political areana.[90]

The court also went on to state that the restraint Congress exercised when writing antitrust laws

> ...would...go for naught if we permitted an extension of the Sherman Act to regulate activities of that nature simply because those activities have a commercial impact and involve conduct that can be termed unethical.[91]

The ruling made clear that the Sherman Antitrust Act was designed solely for the business world. It has been cited in many other decisions, including the one in Majorie Webster Junior College v. Middle State Association of Colleges and Secondary Schools.[92]

In this case Majorie Webster Junior College sued the Middle State Association of Colleges and Secondary Schools after the latter, a voluntary non-profit educational corporation, refused to certify the former because it operated on a profit basis. Majorie Webster sued in the District Court and forced the Middle States Association to certify it after the court ruled that they had violated the Sherman Antitrust Act by denying Majorie Webster certification. After appealing the case to the Supreme Court, however, the lower court's decision was reversed and it was decided that the Sherman Antitrust Act was not applicable.

The Supreme Court noted that the language of the Sherman Antitrust Act was extremely vague and observed that antitrust laws were only applicable to business because they originated in

> ...the era of "trusts" and of "combinations" of businesses and of capital organized and directed to control of the market by suppression of competition in the marketing of goods and services, the monopolistic tendency of which had become a matter of public concern.[93]

Accordingly, the court ruled:

> ...the proscriptions of the Sherman Act were "tailored ...for the business world," not for the non-commercial aspects of the liberal arts and the learned professions. In these contexts an incidental restraint of trade, absent an intent or purpose to affect the commercial aspects of the profession, is not sufficient to warrant application of the antitrust laws.[94]

In light of these decisions there was considerable dissent by those who believed the Sherman Antitrust Act was designed to allow the market system to function without restrictions, regardless of where the restrictions came from.[95] Nonetheless, there was no serious challenge to the unwritten exemption provided to non-business groups until Lewis Goldfarb v. Virginia State Bar.[96] In this case the antitrust exemption provided lawyers was successfully challenged.

Lewis Goldfarb and his wife arranged to buy a home in Fairfax, Virginia and searched for an attorney to examine the title to the home (title examination). After surveying more than thirty lawyers Goldfarb was unable to find one who would do the title examination for less than the minimum fee dictated by the Fairfax County Bar Association and enforced by the Virginia State Bar. Goldfarb then filed a suit claiming, among other things, that the fee-schedule violated antitrust laws.

Before the Supreme Court would rule on Goldfarb's claim it had to determine whether it had jurisdiction in the case. One point argued by the Virginia State Bar was that the legal profession was exempt from the Sherman Antitrust Act because it was not a trade or business. The court did not accept this argument noting that the Bar

> ...maintains that competition is inconsistent with the practice of a profession because enhancing profit is not the goal of professional activities; the goal is to provide services necessary to the community. That, indeed, is the classic basis traditionally advanced to distinguish professions from trades, businesses, and other occupations, but it loses some of its force when used to support the fee control activities involved here.
>
> ...in arguing that learned professions are not "trade or commerce" the County Bar seeks a total exclusion from antitrust regulation. Whether state regulation is active or dormant, real or theoretial, lawyers would be able to adopt anticompetitive practices with impunity. We cannot find support for the proposition that Congress intended any such sweeping exclusion. The nature of an occupation, standing alone, does not provide sanctuary the Sherman Act...[97]

The Supreme Court established an important legal precedent with the decision that most anticompetitive actions, even if they originated from a traditionally exempt group such as law, could be subjected to the Sherman Antitrust Act.

The court's willingness to disregard special exemptions for certain groups, as demonstrated in the Goldfarb decision, has more relevance to college sports when considered with several other decisions involving professional sports and their claims of special exemption from antitrust legislation. The ruling in Amateur Softball Association of America v. United States[98] is one of several important sports related decisions.

In this case the government wanted the Amateur Softball Association (ASA) to turn over documents that would aid its antitrust

investigation of the ASA. The ASA filed suit against the government claiming that it was exempt from antitrust prosecution much like professional baseball. The ASA also sought an exemption from antitrust laws because they operated an "amateur" sport which was not "trade or commerce" (which had been defined by the court as the only category the Sherman Antitrust Act could be applied to).

The court rejected any exemption for softball based on the exemption provided to baseball noting that baseball's exemption was an extremely special time honored case and was not applicable to softball. The court also went on to disallow any special claim made by the ASA based on its amateur status. According to Judge Lewis Barnes:

> As to an exemption granted to amateur athletics, if any, we conclude that many activities not within the mind of those legislators who drafted the Sherman Act in 1890 or those who passed the Clayton Act in 1914, have more recently been held violative of the very broad and general language of Section 1 of 15 U.S. Code...[99]

He also pointed out:

> Any exemption claimed for amateur sports is, in short, one of the issues "wholly inappropriate for this Court's determination in the present posture of this proceeding." We cannot conclude, in the present status of this appeal, that amateur softball is or is not engaged in commerce.[100]

Thus, the decision rendered in Amateur Softball Association v. United States[101] did not provide any special status or exemptions for amateur sports indicating that it was up to the Congress, as author of the Sherman Antitrust Act, to make this decision.

The courts have also applied the Sherman Antitrust Act to professional sports which maintain non-profit rule making bodies. In professional golf, for example, the courts have ruled that it was

correct to use the Sherman Antitrust Act against the Ladies Professional Golf Association or the (Mens) Professional Golf Association when the conduct of their programs to sanction events violated antitrust laws.[102] The courts have also allowed the Sherman Antitrust Act to be applied to non-profit rule making groups in tennis[103] and the ruling making groups in bridge[104] and automobile racing.[105]

The court's consideration of Heldman v. the United States Lawn and Tennis Association (USLTA)[106] is extremely relevant to college sports because it involves a claim against a non-profit association that maintains rules similar to the NCAA. In this case Gladys M. Heldman sued the USLTA because it maintained rules that prevented players from participating in tournaments sanctioned by the USLTA. The court eventually ruled that while there were many reasons for the USLTA to sanction tournaments none of them were anticompetitive in nature. However, the court did allow the USLTA to be challenged through the Sherman Antitrust Act.

The specific USLTA rule in question stated:

> Pursuant to the standing rules and regulations of the USLTA, a Professional Player is eligible to participate in sanctioned USLTA tournaments if that player has played only in tournaments sanctioned by the USLTA. Should that player participate in a "non-sanctioned" event, in which prize money is awarded that player may be assignd the statue of a contract pro, in which event he or she may participate only in those USLTA tournaments which are designated "open for all categories" of players, i.e.; those who do or do not play under USLTA rules. A contract pro may apply for reinstatement to be permitted thereafter to play under the rules and regulations of USLTA thus restoring his eligibility for sanctioned tournaments.[107]

While the results of the case are not relevant to this discussion it is sufficient to note that the court was willing to consider an antitrust

challenge against a non-profit sports body which had adopted rules governing the eligibility of its players. This will be important when the NCAA's eligibility rules are considered.

Exemptions for Non-Profit Institutions and the NCAA

Return now and consider whether the Sherman Antitrust Act could be applied to the NCAA through this category. According to the NCAA's membership rules it is, by definition, a non-profit educational group. This is because any school that applies for NCAA membership must be accredited by one of the six accrediting agencies which accredit only non-profit schools.[108] Given this non-profit status it would appear that the NCAA could be exempt from any antitrust laws, but recent court decisions considering antitrust violations by sports groups provide insight into the applicability of the Sherman Antitrust Act in college sports.

In Amateur Softball Association v. United States[109] the court refused to grant the ASA special exempt status from possible antitrust violations simply because the group conducted an amateur sport. Consequently, the same logic could be used in the context of intercollegiate athletics. Due to the ruling in the ASA case the NCAA should not be given a special exemption and could be challenged by the Sherman Antitrust Act unless Congress passed special legislation exempting amateur athletics.

The willingness of the courts to consider challenges to the rule making bodies of golf, and more importantly, tennis also provide guidance for possible antitrust action against the NCAA. In both

professional golf and tennis the courts were willing to consider antitrust violations even though the groups were not run for profit and the activities that the groups monitored were not previously considered under the jurisdiction of the Sherman Antitrust Act. Because of the courts' willingness to consider these issues it is unclear how the NCAA could be granted a special antitrust exemption on any of the grounds examined in this subsection.

NCAA and Restraint of Trade

Once it has been determined that the Sherman Antitrust Act is applicable it is necessary to demonstrate that a particular action by a group does restrain trade or commerce. This restraint must be direct and must involve interstate trade. There are two types of violations that can occur under the Sherman Antitrust Act, the per se violation and the rule of reason violation. The per se violation is considered first.

Per Se Violation of the Sherman Antitrust Act

Though the Sherman Antitrust Act states that every agreement to restrain trade or commerce is illegal, the Supreme Court made several important rulings limiting the applicability of the Sherman Antitrust Act to only those agreements that unreasonably restrict trade. These decisions forced every incident in each antitrust case to be examined separately to determine whether an antitrust violation occurred. Since the duplication this caused proved costly the court adopted a series of infractions they considered automatic (i.e., per se)

violations of the Sherman Antitrust Act. The Supreme Court rationalized the establishment of this list by pointing out:

> [T]here are certain agreements or practices which because of their pernicious effect on competition and lack of any redeeming virtue are conclusively presumed to be unreasonable and therefore illegal without elaborate inquiry as to the precise harm they have caused or the business excuse for their use.[111]

Infractions considered to be per se antitrust violations are:[112]

1) agreement(s) between competitors to limit price competition (price fixing;[113]

2) plans for competitors to divide the marketplace and not to compete in other producers' geographic territory;[114]

3) tie-in sale agreements that require the purchaser of one good to also buy a second;[115]

4) and group boycotts where one group refuses to deal with another, thereby influencing the decisions of the group by imposing hardship.

The discussion that follows concentrates on the group boycott (per se) violation of the Sherman Antitrust Act because it is frequently cited in antitrust sports cases.

A group boycott is:

> an implicit or explicit agreement between two or more persons on one or more levels which coerces a third party to conform to conduct desired by the combination or removes such party from competition.[116]

The two Supreme Court rulings that are most cited in per se group boycotts are Klor's, Inc. v. Broadway-Hale Stores, Inc.[117] and Radiant Burners, Inc. v. Peoples Gas Light and Coke Company.[118]

In Klor's v. Broadway-Hale[119] George Klor opened an appliance store next to a branch of the much larger Broadway-Hale store in San Francisco, California. Broadway-Hale was able to convince large manufactures of appliances such as General Electric, Radio Corporation of America, Admiral, Zenith, and others not to sell their products to Klor, or to sell him the appliances at a higher price, putting Klor at a disadvantage in the appliance market. Klor then sued Broadway-Hale alleging that they had instituted a group boycott, a per se violation of the Sherman Antitrust Act.

In the lower court, which dismissed the case, Broadway-Hale did not deny that they had organized a boycott. Instead they argued that because there were many other stores in San Francisco where a consumer could buy an appliance they were not guilty of an antitrust violation. The Supreme Court, however, noted:

> Monopoly can as surely thrive by the elimination of such small businessmen, one at a time, as it can by driving them out in large groups. In recognition of this fact the Sherman Act has consistently been read to forbid all contracts and combinations "which tend to create a monopoly," whether "the tendency is a creeping one" or "one that proceeds at full gallop."[120]

Accordingly, the Supreme Court ruled that:

> Group boycotts, or concerted refusals by traders to deal with other traders, have long been held to be in the forbidden category,[121]

reversing the decision of the lower court.

In Radiant Burners v. People Gas Light and Coke Company[122] Radiant Burners of Lombard, Illinois, a manufacturer of ceramic gas burners, sued the association of gas companies that operated a laboratory to test

gas burners and which had refused to grant its seal of approval to their burner even though it was safer and more efficient than other gas burners that had been approved. Radiant Burners alleged that because their burner was not certified it was not purchased and, therefore, by not certifying the burner the power companies were effectively boycotting Radiant Burners. The Supreme Court agreed with Radiant Burners ruling:

> The conspiratorial refusal "to provide gas for use in the plaintiff's Radiant Burner[s] [because they] are not approved" ... falls within one of the "classes of restraints which from their 'nature or character' [are] unduly restrictive and hence forbidden by both the common law and the statute..."[123]

An example of a group boycott in sports was found in Washington State Bowling Proprietors Association, Inc. v. Pacific Lanes, Inc.[124] In this case a group of bowling alleys charged the body that conducted and sanctioned bowling tournaments with antitrust violations because they only sanctioned tournaments (and allowed participation) in certain bowling establishments. The group of bowling alleys that did not have their tournaments sanctioned sued the sanctioning body claiming this was a way of conducting a group boycott of their business. According to their claim:

> ...intended and actual effect of the said agreements, rules and practices has been and is to deprive non-member establishments of the patronage of persons who wish to engage in organized bowling, to enforce a boycott against non-member establishments, and thereby to suppress competition and monopolize the bowling industry.[125]

The sanctioning body contended that this was not a boycott since the per se boycott violation had only been applied to standard trade industries, but the court upheld the boycott issue stating:

> ...Appellants argue that this rule applies only to commercial boycotts, meaning presumably boycotts directed against "other traders" as in the Klor's case ....This contention is refuted by the language of rcent decisions of the Supreme Court and of this court in cases which held refusal of manufacturers or dealers to deal with customers to be per se violations of the Sherman Act.[126]

This boycott issue was also upheld in Blalock v. LPGA[127] establishing an important precedent on the use of the Sherman Antitrust Act in sports, which relies heavily on boycotting a member who does not abide by a group's (the league) rules.

Other attempts have been made to employ per se reasoning in antitrust suits involving professional sports.[128] The logic in these cases was that the refusal by professional sports to compete for a player's services, choosing instead for an orderly division of the available talent (e.g., the player draft), amounted to a group boycott of a certain practice. However, while efforts to prosecute some professional sports on antitrust violations have been generally successful (that is, the court was willing to consider the case), these challenges have not been through the per se method.

Because of the results in cases involving professional sports application of per se reasoning to college sports and the NCAA appears possible. In Blalock,[129] Heldman,[130] and Washington State Bowling[131] the courts held that the refusal of one group to deal with another if it violated certain rules was a group boycott and a per se violation of the Sherman Antitrust Act. Specifically, in Washington State Bowling Proprietors Association, Inc. v. Pacific Lanes, Inc.,[132] the court ruled that Pacific Lanes refusal to certify tournaments could be used to control the number of tournaments and was a per se violation.

Accordingly, the NCAA's use of a certification program for postseason events could also be subjected to antitrust prosecution under the per se rule. Further, since NCAA members stand ready to cancel all scheduled athletic contests (i.e., boycott) with a school that does not honor the limitations set out in the television contract the per se principle could be applied here.[133] Given the willingness of the courts to apply the per se violations in previous cases then the NCAA's reliance on the group boycott could subject it to antitrust prosecution under the per se principle.

Rule of Reason Violation of the Sherman Antitrust Act

The second approach to a restraint on trade that is an antitrust violation is the rule of reason principle. Under this principle each limitation enacted by an organization must be examined to determine what was the organization's intent and what was its effect on competition. Under this method some limitations, enacted with proper intent, are allowed to "reasonably" limit competition. To be subjected to antitrust litigation under the rule of reason approach it must be shown that the organization unreasonably effected competition, where reasonableness is determined by examining the purpose of the restraint and its effect on the particular market.

Use of the rule of reason approach requires the plaintiff to spend more effort to prove the Sherman Antitrust Act is applicable. It also gives the court considerable latitude in interpretation. Consequently, because the use of the rule of reason principle makes it more difficult to prove Sherman Antitrust violations and sports, it is often argued, is

a unique business, the management of professional sports has preferred this approach to possible antitrust violations over the use of the per se rule.

By using the rule of reason the court is forced to judge the validity of many unsubstantiated or unprovable claims. Is it the intent of professional sports to limit salaries by limiting the bidding for players' services with a draft or would bidding ruin the league because the better (wealthier) teams would buy all the good players? Further, does the division of the television market and the revenue earned from television in both professional and amateur sports promote competitiveness between the teams involved or the financial well-being of the respective sports?

A series of cases has provided some elementary rules for judges to follow when deciding this point but the best criteria for determining the use of the rule of reason comes from the opinion delivered in American Motor Inn v. Holiday Inn. Inc.[134] According to that opinion it is important to determine

> ...whether the restriction actually implemented is fairly necessary in the circumstances of the particular case, or whether the restriction exceed[s] the outer limits of [the] restraint reasonably necessary to protect the defendant.[135]

With this knowledge of the rule of reason approach to evaluating antitrust issues and recognition that courts have relied heavily on this method a discussion of antitrust cases involving the NCAA is relevant.

Antitrust Challenges Involving the NCAA

The first case considered is Frederick A. Samara v. NCAA.[136] Frederick A. Samara was a University of Pennsylvania student-athlete

who, along with another student-athlete from Adelphi University, participated in a track and field meet on March 16, 1973 that was not certified by the NCAA. In accordance with the rules of the NCAA Samara and the other student-athlete were then declared ineligible to participate in intercollegiate track.[137] Financed by the Amateur Athletic Union (AAU), which ran the track and field meet they had participated in, the two sought an injunction against the NCAA claiming that their denial of eligibility amounted to an antitrust violation (group boycott) by the NCAA.

The plaintiffs claimed they were harmed because by not participating in the sports event they could not showcase their athletic ability. They also contended that the rules the NCAA used to determine whether to certify an event were designed to limit the number of postseason events. The court, however, did not accept their claims observing:

> 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.[138]

The court also ruled that the plaintiffs did not have a case because there had been no boycott. At best, the court stated:

> ...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.[139]

Thus, in the Frederick A. Samara case the court did not allow the NCAA's policy of refusing to let student-athletes compete in events not certified by the association to be cited as a per se violation.

Another case involving college athletes and a group boycott is College Athletic Placement Service, Inc., v. NCAA.[140] This case involved William E. Serra who had organized the College Athletic Placement Service (CAPS). CAPS located scholarships that were available to high school athletes (in return for a payment from the student's parents) and provided students, who might not have otherwise attended college, with scholarship opportunities in the less popular sports.

Serra contacted the NCAA prior to organizing CAPS to ensure the service his company would provide would not effect a student's eligibility. He received a reply from the NCAA on February 23, 1972 that said a student-athlete's eligibility would not be jeoparidzed if he was associated with CAPS. In August 1973, however, legislation was drafted by the Council of the NCAA (that was eventually adopted at the annual convention of 1973) that stated:

> Any student-athlete who agrees or has ever agreed to be represented by an agent or organization in the marketing of this 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, 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.[141]

This NCAA legislation ruined CAPS because student-athletes, which CAPS served, could no longer be associated with the company. Serra heard about this legislation only shortly before it was adopted at the annual convention of 1973 (January 1974). Unable to present his point

of view at the annual convention and informed in a letter that effective August 1, 1974 student-athletes would be ineligible to participate in intercollegiate athletics if they associated with CAPS, Serra filed suit against the NCAA charging it with conducting a group boycott of his company.

The court chose to disregard the per se approach noting that the boycott was directed at the customers of CAPS rather than at CAPS itself. Instead, the court choose to evaluate the NCAA's activities under the rule of reason approach. Weighing the anticompetitive effects of the NCAA's actions with its intent the court found:

> The evidence before the court reveals that the NCAA in ratifying the challenged amendment was motivated not by any anticompetitive motive or purpose to eliminate or damage CAPS, but to insure that the academic admission standards 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.[142]

Further, the court ruled that the NCAA's refusal to deal with CAPS was

> ... a by-product of the NCAA's decision to insure that the admissions 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. CAPS is simply not the object of an illegal boycott.[143]

In this case the court rejected the per se approval in favor of evaluating the antitrust charge with the rule of reason method. But under this method the NCAA enactment of a rule that put CAPS out of business was not held to be an antitrust violation.

Another case involving the NCAA and charges of a group boycott is Stephen Jones v. NCAA.[144] In this case Stephen Jones, an American college student at Northeastern University, sued the NCAA because it denied him the opportunity to play intercollegiate hockey. He charged that NCAA rules, which prevented him from playing hockey at any of the more than 800 schools, constituted a group boycott and amounted to a per se antitrust violation. Though Jones did not have a substantial case against the NCAA the ruling in this case did provide an additional judicial interpretation of the legal status of the NCAA.

The court upheld the NCAA's ruling that he was no longer an amateur and could not play intercollegiate hockey because Jones had played hockey in Canada for money for several seasons prior to attending Northeastern University. The court continued by ruling on the appropriateness of antitrust action against the association, yet acknowledged that previous legal opinions had decided that not every form of a combination violated the Sherman Antitrust Act. Because of this the court denied that a per se violation of the Sherman Antitrust Act existed and preferred to evaluate the claim by Jones with the rule of reason principle.

The court contended that for the NCAA to have committed a violation of the Sherman Antitrust Act it was necessary to show that it was the intent of the NCAA to suppress competition. But the court held this was not the intent of the NCAA's rule preventing non-amateurs from participating, emphasizing the association's concern for safety. According to the court:

> The NCAA was originally established to promote amateurism in college sports and to integrate intercollegiate athletics into the educational programs of its members institutions. The NCAA eligibility rules were not designed to coerce students into staying away from intercollegiate athletics, but to implement the NCAA basic principles of amateurism, principles which have been at the heart of the Association since its founding. Any limitation on access to intercollegiate sports is merely the incidental result of the organization's pursuit of its legitimate goals. Its conduct does not, therefore, rise to the level of a violation of section 1.[145]

Therefore, the court dismissed Jones's claim and in the process provided another legal opinion that showed the NCAA was not guilty of violating the Sherman Antitrust Act when the rule of reason was applied.

Another case involving the NCAA and antitrust charges is Lawrence H. Hennessey and Wendell Hudson v. NCAA.[146] In this case Hennessey and Hudson sued the NCAA for enacting a rule that limited the number of assistant coaches a university could hire.[147] As a result of this rule Hennessey, who had been a full-time assistant coach at the University of Alabama for eighteen years, was reduced to a part-time coach and had his salary cut from $20,000 to $2,100 per year. Hudson, who had been a full-time assistant basketball coach at the University of Alabama for eight years, was also reduced to part-time status but by taking on additional non-coaching responsibilities his salary was not decreased. The two claimed that this NCAA action violated a contractual agreement they had with the University of Alabama and that they had been denied due process. Further, they contended that because the NCAA violated antitrust laws they were entitled to additional compensation. Here only the court's examination of their antitrust charge is considered.

Before the court could rule on Hennessey and Hudson's claim it had to decide if the Sherman Antitrust Act was applicable to the NCAA. The NCAA argued that it was not subject to the Sherman Antitrust Act since it was an educational association and not a business or commerce as envisioned by the authors of the act. The court did not accept this claim because of the Supreme Court's decision in Goldfarb v. Virginia State Bar[148] which pointed out that the Sherman Antitrust Act could be applied to many formerly exempt businesses. Accordingly, the court reasoned that the NCAA was not exempt from antitrust laws simply because it was an organization of educational institutions.

The NCAA also asserted that it should have been exempt from antitrust prosecution under "state action" as recognized by the Supreme Court in Parker v. Brown.[149] However, the court refused to recognize this exemption after careful consideration to the rulings in previous cases.[150] The court also refused to accept the coaches' claim that the NCAA's actions were a per se violation (i.e., group boycott) and chose to evaluate the association's actions under the rule of reason approach.

Using this principle the court ruled that the NCAA had not adopted the legislation to intentionally harm Hennessey or Hudson and was not guilty of violating antitrust laws. The court noted that association had expressed concern for those who would be injured under this rule at the time it was adopted. Indeed, the court recognized that the NCAA was so concerned with the possible detrimental effects of this rule that the association provided a grace period for those institutions with special problems.

The court felt that though the rule was designed to decrease the cost of running an athletic program it would preserve amateur athletics by making more money available for sports that might have otherwise suffered from budget cuts. It further contended that the rule would prevent powerful and successful schools from monopolizing college athletics. The court also speculated that the rule would allow some college sports programs to continue when they might otherwise have been curtailed and, therefore, it was difficult to determine whether there would be more or less coaching jobs available due to the imposition of the rule. Accordingly, since the court decided to evaluate the antitrust claim under the rule of reason standard, it felt the restraint was not unreasonable and refused to subject the NCAA to the Sherman Antitrust Act.

These four cases demonstrate how difficult it has been for the courts to subject the NCAA to the Sherman Antitrust Act. While a group boycott in almost any other business is a per se violation of the Sherman Antitrust Act the threat of a group boycott is not necessarily a violation when conducted in college sports. Further, if the alleged violation is not a per se violation the courts have required the NCAA's actions to be subjected to the rule of reason test. Under this approach the courts have looked favorably at the intent of the rules of the NCAA and have allowed the NCAA to defend legislation that contains obvious anticompetitive measures as being necessary to protect safety and amateurism. However, prior to discussing how the NCAA has come to occupy such a protected position with regard to the Sherman Antitrust

Act an examination is made of NCAA practices that have been settled in court cases involving issues other than the antitrust laws.

NCAA and the Legal Interest of the Participants in Intercollegiate Athletics

College athletics have historically existed as a training ground where individuals could polish their skills for four years before graduating to play professional sports. Prior to 1960, due to the monopoly position of the major leagues in each sport and their ability to restrict competition for athletes, only the superior professional athletes earned what was regarded as a large salary by playing professional sports. Consequently, the possibility that a college athlete would attract the attention of a professional scout and sign a professional contract was not only small, but the monetary value of this contract was low compared to modern standards.

In 1960, however, a large change in the professional sports world took place. In that year the American Football League, a major rival to professional football's National League, was formed. Unlike previous rival professional football leagues, which folded shortly after conception, the AFL received legitimacy by signing a multi-million dollar television contract with the National Broadcasting Company.

The appearance of the AFL lead to intense competition for college athletes and resulted in a rapid increase in the salaries of football players. Perhaps the first recognition of the magnitude of the price competition between the leagues occurred in 1965 when Joe Namath signed

a contract with the New York Jets of the AFL with a bonus of $400,000.[151]

In the 1960's other professional sports also experienced a rapid increase in the wages paid to its athletes when a second league was formed to compete for college and professional athletes. The most glaring example of this occurred in professional basketball where the established National Basketball Association experienced considerable competition from the newly formed American Basketball Association (ABA). The ABA, however, did not restrict competition for college athletes to those who graduated. In the late 1960's it began signing college athletes before they graduated from college.

Another example of a professional sport that experienced increased competition when a second league was establishment was hockey. In the early 1970's the World Hockey League (WHL) was formed and it immediately rivalled the National Hockey League. The formation of the WHL led to increased salaries for hockey players but had only a minor effect on American college athletes since most professional hockey players came from the Canadian hockey system.

With the formation of additional leagues and increased competition for college athletes it soon became clear that participation in college athletics was a prerequisite for a career in professional sports and a possible multi-million dollar contract. Consequently, action by the NCAA that resulted in a college athlete being declared ineligible to participate in college sports (or on a televised game) harmed the student-athlete who aspired to play professional sports. But because

the NCAA did not actually impose its sanctions or permit appeals to these sanctions unless new evidence could be introduced student-athletes or universities that were penalized turned to the judicial system for relief.

The most common claim made by a penalized individual or institution was that the NCAA had denied them due process or had subjected them to a rule or regulation that did not provide equal protection. The courts were initially hesitant to deal with cases involving the NCAA, but later recognized that if NCAA actions constituted "state action" then these claims of due process and equal protection could be heard. Establishing state action was important because it meant that the NCAA could be subjected to the provisions of the Fourteenth Amendment of the United States Constitution.[152]

There are several recognized tests to determine if a private action constitutes a state action. A private action is a state action if:
1) the private entity is subjected to a substantial degree of state control (e.g., financing, administration, regulation);
2) the private entity and its function is a surrogate for the state; and
3) the private entity exhibits a sufficient level of state participation.[153]

Courts have also been reluctant to get involved in the affairs of private associations. This is because they believed membership in a private association is voluntary and any member who felt he had been treated poorly could withdraw.[154] But experience showed that members

could still be injured, whether pecuniarily or non-pecuniarily, as a result of the actions of a private association. Therefore, three tests which were set forth in Dawkins v. Antobia[155] are used to determine whether it is appropriate for a court to intervene in the internal affairs of a private association.

Adopting these criteria for intercollegiate athletics it is proper for a court to alter any action taken by the NCAA if:

1) the rules and proceedings of the NCAA violated generally accepted principles of law;

2) if the action(s) of the NCAA was not taken in accordance with its own rules and regulations; and

3) if the method by which the NCAA determined what action was to be taken was not conducted properly.[156]

This examination of legal issues has revealed that in order for the NCAA to be successfully sued by a disgruntled individual two factors must be present. First, the actions of the association must be recognized as state action. Second, the NCAA action must fall into one of the three categories listed in the last paragraph. Given this definition an examination of four of the most prominent legal cases involving due process and the NCAA is conducted in the next subsection.

NCAA and Due Process

One of the most contested issues in intercollegiate sports in the 1960's was the NCAA's requirement that athletes needed a predicted grade point average of 1.600 (on a scale of 4.000) to participate in college

athletics. The relevant part of this rule, referred to as the 1.600 Rule, stated:

> ...A member institution shall not be eligible to enter a team or individual competitors in an NCAA sponsored meet, unless the institution in the conduct of all its intercollegiate athletic programs: (1) Limits ...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.[157]

As directed by this rule a student-athlete's predicted grade point average was determined by his high school grades or rank in class and his score on the standardized educational tests used for college admissions.[158]

One of the first challenges to the 1.600 Rule was Associated Students, Inc. of California State University-Sacramento v. NCAA.[159] In this case eleven student-athletes from California State University at Sacramento (CSUS) sued the NCAA for instructing CSUS to declare them ineligible to participate in intercollegiate athletics because they violated the 1.600 Rule. These students were admitted to CSUS under a California rule which allowed special students to be admitted to college on the basis of need, motivation, and maturity instead of the usual entrance criteria. Under this rule the eleven students were not required to take the SAT or ACT and, therefore, could not predict at least 1.600 as required by the NCAA. Once the NCAA discovered these students did not meet this requirement it ordered them declared ineligible.

The NCAA cited its official interpretation of the 1.600 Rule which provided clear instructions about what to do to the eleven CSUS student-athletes. The interpretation stated:

> A student-athlete who practices or participates while ineligible under the provisions of ... [the 1.600 Rule] 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...[160]

The eleven student-athletes argued that while none of them initially had a predicted grade point average of 1.600 this had not been discovered until they had been enrolled for one year during which time they had all maintained grades of 1.600 or better. They petitioned the NCAA to waive its rule but the NCAA refused to yield to the student-athletes. The student-athlete then sued the association claiming its action constituted state action and as such they were denied equal protection guaranteed under the Fourteenth Amendment of the United States Constitution.

The court upheld the student-athletes' claim that the NCAA's actions constituted state action according to the criteria outlined in Parker v. Brown.[161] The court sided with a ruling made in Parish v. NCAA[162] (which was being decided simultaneously) that held:

> Although NCAA is a nationwide association, it does control public schools which are State agencies to the extent that the high school athletic associations control their respective members at least insofar as regulations, sanctions, and discipline are concerned. Moreover, State funds are used by public schools to pay membership dues in this association. Therefore, we must and do conclude that there definitely is State action here...[163]

The court refused, however, to uphold the student-athletes' claim that they had been denied equal protection. It contended that the 1.600 Rule was adopted

> ...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.[164]

Accordingly, the court felt that the 1.600 Rule was not unreasonable nor had the association taken any action that was not in accordance with its own regulations or procedures. For this reason the court ruled that the year long sanctions were valid. The court also noted that if it granted this exemption the NCAA's policy could be circumvented by schools which would expressly recruit athletes without requiring them to take the college entrance examinations. This would prevent the NCAA from enforcing what the court contended was a reasonable rule.

At the time the NCAA was defending the 1.600 Rule in Associated Students, Inc. of California State University-Sacramento v. NCAA[165] it was simultaneously battling the same issue in Robert L. Parish v. NCAA.[166] Parish and four other basketball players from Centenary College in Shreveport, Louisiana sued the NCAA to block the association's attempt to have Centenary College declare them ineligible. The student-athletes had been told by the Centenary athletic staff that they were properly recruited, but actually did not qualify for varsity

competition beause of the NCAA's 1.600 Rule. The NCAA warned Centenary College that they would be subjected to sanctions if they provided these student-athletes with athletic scholarships and let them participate in NCAA events, but the college gave scholarships to the five student-athletes and let them participate. The NCAA then put Centenary College on indefinite probation in all sports. The association proposed to reduce the penalty to only two years if the college declared the student-athletes ineligible as required by the association's rules, but Centenary College declined. Centenary College refused to settle the matter through NCAA channels and turned to the courts with this suit.

In the suit the student-athletes contended that because NCAA's activities constituted state action they were denied equal protection. Additionally, Parish, the only negro among the plaintiffs, asserted that the 1.600 Rule was discriminatory. The five student-athletes initially brought suit in the United States District Court for Western Louisiana, but after being denied relief they appealed to the United States Court of Appeals.

The Court of Appeals confirmed that the NCAA could be tried under the state action doctrine by pointing out:

> .... that state-supported educational institutions and their members and officers play a substantial, although admittedly not pervasive, role in the NCAA's program. State participation in or support of nominally private activity is a well recognized basis for a finding of state action.[167]

But the court refused to confirm the five basketball players' contention that the 1.600 Rule was discriminatory, noting that while two experts

had testified that the tests used to determine an athlete's predicted grade point average were designed for a white middle class student they had not sufficiently proven that the tests discriminated against some specific group. Finally, the court ruled that the plaintiff's rights had not been violated since all that they had foregone was the opportunity to appear in the NCAA Basketball Tournament and not any "property" and/or "liberty" as defined in the Fourteenth Amendment of the United States Constitution. Accordingly, the court ruled the student-athletes had no claim to due process and confirmed the lower court's refusal to enjoin the NCAA from penalizing the student-athletes and Centenary College.

Another case in which the NCAA was sued for maintaining rules that allegedly did not provide due process and equal protection was Lonnie Shelton v. NCAA.[168] In this 1976 case Lonnie Shelton, a basketball player at Oregon State University, sued the association claiming he was denied equal opportunity because of the NCAA rule that allowed only amateur players (those athletes that had not contracted with professional sports clubs) to participate in intercollegiate athletics.

In the mid-1970's Shelton had signed a contract with a professional basketball team in the ABA but later declared the contract void and returned to college to play in intercollegite basketball. The NCAA, relying on its definition of professionalism, declared Shelton ineligible to play college basketball. Shelton then sued the NCAA in an effort to continue playing college basketball until the status of his contract with the ABA was resolved.

In court neither side disputed the basic facts of the case which were that Shelton had signed the contract and was declared ineligible by the NCAA because this violated its rules. But Shelton claimed that because he had been induced by fraudulent methods to sign a contract, the legality of which was being contested in another legal suit against the ABA team he had signed with, the NCAA's unyielding amateur rule violated the equal protection clause of the Fourteenth Amendment. The NCAA, however, contended that once Shelton signed the contract he was no longer an amateur and it was proper for him to be declared ineligible.

In his opinion the judge ruled that because one of the NCAA's stated goals was the preservation of amateurism in college sports the rule in question was not unreasonable. He noted that the rule was not the best method to achieve this goal and was certain to produce unreasonable situations (such as Shelton's case), but that it was not "judicial business to tell a voluntary athletic association how to best formulate or enforce its rules."[169] Therefore, the court ruled Shelton had not been denied equal protection.

One of the most contested and widely publicized suits involving the NCAA was Regents of the University of Minnesota v. NCAA[170] which was initiated in mid-1976 but due to an appeal was not settled until August 1977. This case grew out of an NCAA investigation of the University of Minnesota's athletic program which revealed that several NCAA rules had been violated. Because of these violations the NCAA wanted the University of Minnesota to declare three student-athletes (Michael

Thompson, David Winey, and Phillip Saunders) ineligible to participate in intercollegiate basketball.

The University of Minnesota, at the direction of the appropriate college body and with guidance from the NCAA, conducted an investigation into the alleged violations of each of the basketball players. The university's investigation yielded the same results as the NCAA's (the facts in the case were never in dispute), but the investigating body believed that the special circumstances surrounding each of the students' violations were significant enough to recommend to the university (i.e., the Board of Regents) that the student-athletes not be declared ineligible. Thus, the Board of Regents was caught between the NCAA, which ordered the university to declare the three student-athletes ineligible, and the school's own body which ordered the university not to declare the three ineligible.

The Board of Regents chose to obey the university body and did not declare the student-athletes ineligible. The NCAA then subjected all sports at the University of Minnesota to indefinite probation, but promised to reduce the penalty when the school complied with the rules of the association. The University of Minnesota successfully sued the NCAA and got an injunction against any action the association could take but the decision was appealed and the NCAA sanction was sustained.

The infractions committed by each student were revealed in court. Michael Thompson had sold complimentary basketball tickets given to him by the school with a face value of $78 for $180. This was a clear

violation of NCAA rules. When told he had violated the rules Thompson donated $180 to a university scholarship fund.

David Winey had been transported by a basketball supporter (Paul Johnson) to a northern Wisconsin camping area where he received free meals and lodging in a cabin owned by Johnson. Though this was a violation of NCAA rules the University of Minnesota's investigation revealed that Johnson had also extended the same arrangements to other students who were not student-athletes.

Phillip Saunders had made personal long distance phone calls on the university's WATS line. He was also given limited use of a car without charge and provided a free room for one night at Gustavus Adolphus College. The investigatory body was lenient because Saunders had reported these violations.

Because of the mitigating circumstances in each incident the university's investigatory body decided not to have the student-athletes declared ineligible. Consequently, when the NCAA ordered that the University of Minnesota declare the three ineligible the school sued the NCAA claiming that the student-athletes were denied due process and that the rules of the association were arbitrary and capricious. The lower court agreed with the university but the Court of Appeals did not.

The Court of Appeals ruled that the student's rights under due process had been protected because the investigations conducted by both the university, where the student-athletes were allowed to be represented by attorneys, and the NCAA had followed established rules. The court also felt that the specific NCAA's rules in question were not

unreasonable because they were designed to protect the amateur status of athletes. Therefore, the court ruled that since the student-athletes violated NCAA rules they should have been punished. In accordance with this ruling it removed the injunction issued by the lower court.

In the four cases considered here there are several important observations. For the most part, the activities of the NCAA have been interpreted by the courts as constituting state action, allowing disgruntled parties to sue the association for due process and equal protection.[171] But in all cases the courts have ruled that the NCAA did not violate the doctrine of associations and as a result no legal action could be taken. The most important fact in this process has been the refusal of the court to interfere in NCAA affairs after contrasting the effect of certain rules with their alleged intent. As seen from this discussion the willingness of the court to accept the NCAA's explanation of their intent has allowed the association to avoid possible judicial sanctions. Nonetheless, while the court upheld the NCAA position in these cases there have been cases when the NCAA was not as successful.

NCAA Legal Setbacks

While the NCAA has been extremely successful in court the association has not always "won." Indeed, even when the association has been successful in court the legal action has served as a stimulus for the NCAA to alter its regulations. For example, consider the NCAA's 1.600 Rule which drew much criticism and several legal challenges. Though the association was not overruled in any of the cases involving

this rule the number of suits filed indicated that the rule was costly to apply. This cost of application was one of the reasons that it was replaced by a rule requiring high school athletes to maintain a 2.000 grade point average before they could participate in college sports.

In one case, however, the NCAA was simply overruled in court. In William Buckton v. NCAA[172] two Canadian citizens sued the NCAA when they were declared ineligible by the NCAA and the Eastern Coast Athletic Conference (ECAC) to participate in intercollegiate athletics. This penalty was imposed after it was learned they had played for Canadian hockey teams that had provided them with room and board and incidental expense money. The rule the NCAA employed to assert the two were ineligible stated:

> 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 Asociation signed by the student-athlete stating his compliance with this provision.[173]

Nonetheless, the student-athletes contended that the NCAA's rule violated the equal protection clause of the Fourteenth Amendment by discriminating against Canadians and sued the NCAA.

The two Canadians were sophomores at Boston University when it was learned they had played on Canadian hockey teams that had provided them

with aid in excess of what the NCAA allowed and were declared ineligible to play college hockey. As a result of their legal action the court undertook a careful examination of the Canadian hockey system and found that it was standard for the team rather than the school (which made these provisions in the United States) to provide sufficient aid for an athlete to live and attend school. This examination also revealed that an American student-athlete with an athletic scholarship could actually receive more aid while attending school than a Canadian athlete playing hockey at the level the two players in question had played. Given this evaluation of both the United States and Canadian hockey systems the NCAA rule was declared to be discriminatory and the NCAA and the ECAC were enjoined from declaring the two ineligible.

Due to the result of this case the NCAA granted an exemption to approximately one hundred foreign student-athletes in 1974 and 1975, allowing them to participate in intercollegiate sports even though they had violated this NCAA rule. Further, at the 1975 annual convention, many of the rules that discriminated against foreign student-athletes were changed. However, the NCAA still maintains provisions which would make a hockey player ineligible if he had played for a team and received aid in "excess of necessary travel and meal expenses for practice and game competition."[174]

The second case in which the NCAA suffered a legal setback, though only a partial one, was Howard University v. NCAA.[175] In this case Howard University sued the NCAA after the association investigated the university's soccer program and found members of the teams had

participated in two NCAA national soccer tournaments while in violation of the 1.600 Rule, the Five Year Rule, and the Foreign Student-Athlete Rule.[176] Howard University sued The NCAA claiming that these rules did not provide equal protection as outlined in the United States Constitution and that they had been denied due process.

The NCAA began a preliminary investigation of the soccer program at Howard University in early 1972. In November 1972 they sent the President of Howard University an official notice that the school was under investigation and invited him to send a representative to a December 19th meeting that would be held to formally discuss the charges. At that meeting the Howard representative offered his explanation to NCAA charges that one or more of its student-athletes had violated these three NCAA rules. The NCAA Committee on Infractions, however, found Howard University guilty of the violations and made Howard University ineligible for postseason soccer competition for one year, voided their third place finish and championship in the soccer tournament, and asked that they return the trophy. Howard refused to comply with the NCAA's ruling and requested an appeal to a higher body. They were informed that the only avenue of appeal was to the annual convention of the association, which they did not explore before filing this suit.

Consistent with previous rulings the court held that the NCAA was subject to Howard University's charges because its activities constituted state action. Once this was determined the court found that student-athletes at Howard University had violated the 1.600 Rule and the Five Year Rule, but the court held that the Foreign Student

Rule discriminated against foreign student-athletes and it would not be considered valid.

The Foreign Student Rule stated:

> Any participant in a National Collegiate Athletic Association event must meet all of the following requirements for eligibility.
> ...He must not previously have engaged in three season of varsity competition after his freshman year, it being understood that:
> ...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.[177]

The NCAA claimed it needed the rule to prevent older foreign students from dominating competition because of their superior ability. But the court ruled that while it may have been necessary to prevent older student-athletes from competing it was not necessary to direct the rule exclusively at foreigners. Therefore, the court ruled that the Foreign Student Rule violated the equal protection guarantees and refused to enforce it.

Even without applying the Foreign Student Rule the court upheld the sanctions imposed by the NCAA noting that:

> Howard ... was given notice and full particulars of the charges against it, the right to participate and defend its actions before both the Committee and Council, and the opportunity to appeal the rulings of both bodies to the NCAA Convention.[178]

Nonetheless, as a result of this case the NCAA eliminated the Foreign Student Rule.

The two cases in which the NCAA suffered setbacks in the legal arena are also consistent with the rules outlined in the doctrine of

associations. Under this doctrine it was felt the court could only intervene if the association had "violated generally applied principles of law." As demonstrated in both Buckton v. NCAA[179] and Howard University v. NCAA[180] the court was only willing to intervene when it could be shown that the NCAA had violated these principles of law. But, as the decision in the Howard case showed, this judicial intervention did not guarantee that the final decision would be changed. Further, as both cases revealed, even with these decisions the NCAA only grudgingly changed its rules.

NCAA as an Organization

This chapter began with an examination of three areas where the NCAA maintains anticompetitive restrictions. It also included a discussion of many of the court cases where the NCAA successfully defended its interests. Now, however, it is appropriate to contrast the NCAA with other private associations and consider how the association has emerged as the most powerful intercollegiate sports body in the United States.

The examination conducted in this section reconciles the NCAA's desire to protect amateurism with its rules that redistribute income to its members. Special emphasis is placed on the industry's product (athletic contests) and its role in allowing the NCAA to obtain and maintain its current status. The association's alleged monopoly position in college sports and its efforts to influence the actions of the government are also explored.

Amateurism, the NCAA, and the Industry's Product

The NCAA occupies a very unique position relative to other regulatory bodies. It is an independent body that regulates all intercollegiate sports in which males participate at more than 800 colleges and universities in the United States. Beginning in 1982 the NCAA will expand its influence when it starts to conduct championship tournaments in women's sports. Adding to the NCAA's power in college sports is its complex set of rules that members must follow or be punished and its effective method of enforcing these rules. Nonetheless, because the NCAA is an unincorporated, private body it functions much like a club.

Under its rules member institutions voluntarily agree to join the NCAA and comply with its regulations. In return members are able to participate in sports that have standardized rules and techniques. They are also eligible for championship tournaments that the NCAA conducts which can mean large monetary rewards.

If the only functions of the NCAA were the standardization of sports rules and organization of tournaments it would be easy to accept the NCAA's definition of the organization, which contends that it is a voluntary, educational association. But over time the actions of the NCAA indicate that its functions and goals have changed from standardizing rules and organizing tournaments to transferring income to its members by establishing restrictions in the input and output markets in college athletics. Given this difference between the activities of and the explanations offered by the NCAA, the post-World War Two period

provides sufficient evidence for a plausible explanation of the NCAA's goals to be determined.

The interpretation of the actions of the NCAA offered in this dissertation was that of a cartel which restricted the behavior of its members in order to increase group profits. Yet, as the court cases discussed in this chapter indicate, the courts have refused to subject the NCAA to antitrust laws and have relied primarily on the rule of reason principle to evaluate the nature of the restrictions imposed by the NCAA. Under this principle the courts have chosen to disregard or minimize any anticompetitive effect of the association's regulations, preferring to accept the NCAA's claim that the rules are intended to preserve amateurism and protect student-athletes. This willingness to accept the NCAA's rationale for these policies which have obvious anticompetitive features has provided the association with unchecked regulatory power in college athletics. Further, since so many of the actions of the NCAA are taken in the name of amateurism it also makes one curious as to why the association is so concerned with "amateurism?"

Perhaps at the turn of the nineteenth century professional athletes were so unscrupulous that those who enjoyed playing a particular sport for the pure enjoyment (amateurs) wished to be recognized as a separate group. However, this reason for the distinction between the two groups no longer appears relevant. What differentiates a professional athlete from a student-athlete at a school fielding a major sports program? Both type athletes practice for long hours, both get paid for their athletic prowess, and both participate in a multi-million dollar

industry. The demarcation between the two is also compounded by NCAA rules that allow a student-athlete to be paid for performing one sport (professional) but remain an amateur in another. Thus, any differences between a student-athlete in a "big-time" sports program and a professional athlete is in the magnitude of the rewards provided each rather than the appearance of special qualities in the amateur which the professional lacks.

The alternative explanation presented by this dissertation for the NCAA's insistence on maintaining amateur status emphasizes the economic benefits its members receive from following this policy. According to NCAA rules an amateur is one who does not play a sport for "pay." Therefore, by requiring all student-athletes to be amateurs the NCAA reduces the amount of money its members must pay their student-athletes. This interpretation of the NCAA's amateur policy, which the courts have refused to accept, holds that the policy allows athletic departments to save the money they would have paid student-athletes and spend it on other items.

Nonetheless, the NCAA has a legitimate claim that it is a voluntary, private association that should remain free from government intervention unless it violates the doctrine of associations. Accordingly, the courts' unwillingness to intervene in matters where the rules of the NCAA, rather than its procedures, are in question is understandable. What remains unclear, however, is why the courts have refused to explore the anticompetitive effects of the association's restrictions and have consistently accepted the NCAA's explanations of

what these restrictions were intended to accomplish. No doubt this inconsistency highlights the special nature of the product the NCAA regulates and provides insight into why individuals are hesitant to regard it as a business and subject it to equally as rigorous an analysis as other businesses.

For reasons that are beyond the scope of this discussion there are several occupations that the public believes are practiced for reasons other than primarily monetary reward. For example, few individuals would give it a second thought if a machinist indicated that he chose that occupation because of the large salary, but most would not believe this is why an individual practices law or medicine. Because of the number of years of training needed before one can practice medicine or law and the perceived high level of integrity required of the members of these occupations the public is hesitant to believe that the individuals who practice these skills are running a business that follows the same rules as the machine shop owner.

In the same way, but not for the same reasons, sports occupy a similar position in society. The earliest official indication of this was the ruling in Federal Baseball v. National League[181] where the United States Supreme Court refused to call baseball a business. Though the courts have been less sympathetic to other professional sports, when this tendency not to regard sports as a business is combined with an effective campaign by the NCAA that highlights it alleged altruistic reasons for maintaining amateurism, it is clear why the courts (and the public) have been unwilling to consider college sports a business and subject it to the Sherman Antitrust Act.

It is also ironic that athletics has this special status because it is an industry that has special qualities which allow collusive behavior between owners to occur at a low cost. Unlike other industries sports is the only business where competitors (team owners) can freely meet to discuss industry related subjects that undoubtedly include price and quantity of output. Given this ability to exchange information between competitors it is not surprising that most sports leagues have effectively controlled athletes' salaries and made extensive efforts to control the number of games played and televised.

The NCAA serves as an example of the openness and the ease at which the producers of college athletic contests can meet, exchange information, and adopt rules that restrict competition. The entire association meets yearly and votes on the adoption of rules that have been shown to have anticompetitive aspects. Further, the NCAA maintains smaller committees that adopt rules and run the association between the yearly meetings. But while the NCAA has devoted considerable resources in this effort to restrict certain behavior and enhance its members welfare it remains open to public scrutiny. As a testimony to the openness of the association the NCAA prints many books and pamphlets, including records of its financial status and a partial transcript of what transpires at the annual convention, and provides them to the public. This openness has undoubtedly helped dissuade the public from believing the NCAA could be motivated by economic self-interest.

As the regulatory authority in college the NCAA functions without government inference. A large part of the explanation for this freedom

has to do with the industry's product being awarded special status by society. Further, while the NCAA has grown from a group that wrote rules and organized tournaments to a body that issues binding regulations in order to transfer income to its members it has been able to convince most people that these actions were taken to preserve amateurism. The willingness of the courts to accept NCAA justification for these actions combined with the special characteristics of the industry (which allows action to be taken at a low cost that reduces competition) provides a plausible explanation for the success of the association in cartelizing intercollegiate athletics.

NCAA as a Monopoly

The NCAA is constantly under attack from many who maintain it has monopolized college sports but the use of this term to describe the NCAA's position in intercollegiate athletics is meaningless. While it is true that the NCAA has organized the colleges that produce athletic contests into a group that has adopted a very successful pricing and production policy, the NCAA does not prohibit entry into the college athletic industry nor force schools to belong to the association. Accordingly, it is simply not correct to characterize the NCAA as a monopoly.

The definition of a monopoly is that there is only one firm in an industry producing the output. However, in college sports the NCAA is not the only association that organizes rules and conducts tournaments. The National Association of Intercollegiate Athletics (NAIA), the

National Junior College Athletic Association (NJCAA) and the Association of Intercollegiate Athletics for Women (AIAW) are other organizations that operate athletic programs similar to the NCAA. There also exists the possibility of forming another athletic association. Thus, to conclude that the NCAA is a monopoly is false because of the many other competing athletic associations.

An essential feature of any monopoly is the ability to restrict entry into the industry. In this way the monopolist can prohibit others from encroaching on its market. But the NCAA maintains no such entry restrictions to prevent the formation of a new athletic association. Any school that is currently a member of the NCAA could withdraw from the association and join or form another athletic association without reprisals from the NCAA. Given this ability to enter the industry it is incorrect to describe the NCAA as a monopolist.

Closely connected with this last point is the assertion that schools are "forced" to join the NCAA. However, there is no legal statute in the entire United States that compels an institution to join the NCAA. Membership in the NCAA is voluntary and there is no record of any school being coerced into joining or being forced to remain in the association against its will. To contend that an institution must belong to the NCAA is to ignore the fact that a school does have a choice when considering whether to join the NCAA or not. This is not to deny that the NCAA provides substantial benefits to its members and that the decision not to join the association means that a school forgoes

those benefits, only that these forgone benefits do not alter the fact that schools do have a choice.

While the NCAA is technically not a monopoly it does exhibit substantial market power by operating as a cartel. Its members agree to follow association rules that reduce competition for athletes and the decisions of the Television Committee which limit the number of games that are televised. By adhering to these rules members have been able to limit the money they spend on compensation to student-athletes and receive larger payments for their appearances on television. These NCAA actions effect the price and quantity of athletic related factors that would otherwise be determined in the free market. Thus, NCAA activities can best be explained by the predictions of cartel theory.

NCAA and the Government

As a large private association that is extremely visible to the public the NCAA is aware of the importance of maintaining good relations with the Federal Government. The Federal Government not only has the power to grant the association special status (e.g., antitrust exemptions), it can also levy taxes on the association and possibly encroach on the power of the association. Given the power of the Federal Government the NCAA has been careful to maintain good relations with the government and has attempted to influence its decisions when they effect the interests of the NCAA.

The NCAA's first effort to influence the Federal Government occurred in the late 1920's and early 1930's when it sought to avoid

having a federal excise tax imposed on the admission fees to college sports events. Though the NCAA was unsuccessful in getting the government not to impose the tax the NCAA was influential in having an amendment to eliminate the excise tax on college events incorporated into a bill that President Eisenhower signed on March 31, 1954.

The NCAA also used its political influence to achieve tax exempt status. Even with this tax break the NCAA still actively lobbies all levels of government though it is limited by law to spending no more than a million dollars a year to do this. The NCAA maintains a Governmental Affairs and Joint Legislative Committee to conduct its lobbying and keep the association abreast of matters of interest. In addition to monitoring athletic-oriented legislation the committee recently organized testimony on Title IX (women's sports), the Communication Act (which would effect broadcasting sports events), and the Congressional Hearing on the Enforcement Program of the NCAA (1977 and 1978). In this latter case the powers of the NCAA were directly threatened by the possibility of intervention by the Federal Government, while in the first two hearings the topic was a subject of interest to the NCAA.

By establishing a committee such as the Governmental Affairs and Joint Legislative Committee the NCAA has been able to protect its interests in the legislative arena. Coupled with efforts to guard against government actions which would limit the association's power the NCAA has also sought to convince all that its activities are actually designed to foster competition between schools. Therefore, while the NCAA operates an organization that is technically protected from legal

interference it has also remained in good standing with the Federal Government by organizing a committee to present its official point of view on all athletic issues the government is interested in.

Conclusion

In summation several conclusions can be made about the NCAA. The NCAA is a voluntary, private association that is able to establish rules that all members must abide by. When it was originally formed it was primarily concerned with rules and tournaments, but eventually evolved into an organization devoted to transfering income to its members. However, little has been done about this because the association has been able to convince the courts, the public, and the government that the goal of these anticompetitive rules and regulations are to preserve amateurism and prevent the exploitation of student-athletes. Finally, when the ability to enter the college athletic industry and a school's choice when determining whether to join the NCAA are considered it is clear that the NCAA is not a monopoly. Instead the association can be accurately modeled as a cartel.

Footnotes - Chapter VII

1. 1979-1980 Manual of the National Collegiate Athletic Association, National Collegiate Athletic Association, Shawnee Mission, Kansas, p. 54. (Hereafter cited as NCAA Manual).

2. NCAA Manual, pp. 24-25.

3. Note, "National Collegiate Athletic Association's Certification Requirement: A Section One Violation of the Sherman Antitrust Act," 9 Val. U. L. Review (1974), pp. 104-106.

4. See Chicago Tribune, 9 November 1973, Section 3, p. 1.

5. Hearings Before the Committee on Commerce of the United States Senate on the Controversey in Administration of Track and Field Events in the United States, 89th Cong., 1st Session., ser. 89-40, at 72.

6. For a detailed discussion of the AAU-NCAA struggle see Arnold Flath, "The History of Relations Between the National Collegiate Athletic Association and the Amateur Athletic Union of the United States," (Ph.D. dissertation, University of Michigan, 1963).

7. Amateur Athletic Union Bylaws Art. 1, Section 2 (b) 1962.

8. Sports Illustrated, 23 February 1981, p. 11.

9. While the NCAA allegedly seeks to induce competitive balance among teams casual observation draws their effectiveness into question. According to the Associated Press's end of the year football poll in the decade of the 1970's a handful of teams consistently ranked in the top five. Among them were the University of Oklahoma, which appeared in the top five eight times in the ten years, the University of Alabama, which appeared seven times, the University of Southern California, which appeared five times, and Pennsylvania State University, which appeared four times.

10. Here consider only non-pay television (i.e., conventional television).

11. Report of 1978 NCAA Television Committee to the 73rd Annual Convention of the National Collegiate Athletic Association, National Collegiate Athletic Association, Shawnee Mission, Kansas, 1979, p. 7. (Hereafter cited as 1978 Television Committee Reports).

12. 1978 Television Committee Report, p. 7.

13. Ibid.

14. Ibid., p. 8.

15. According to the NCAA an exposure is the release of a single date of a live game telecast into each television market on the network.

16. According to the NCAA a team appearance is one team's participation in one televised game.

17. 1978 Television Committee Report, p. 11.

18. Ibid., p. 18. The special exceptions are:

    (a) The "wild-card" games authorized by Article 15;
    (b) The game(s) on the first Saturday in December each year;
    (c) The game(s) on the initial Saturday of the series each year;
    (d) The game(s) on Thanksgiving of each year;
    (e) The game(s) on the Friday following Thanksgiving each year;
    (f) The game(s) on Labor Day and Veterans Day of each year;
    (g) Other weeknight (Monday through Thursday) games, which may be approved by the committee on an individual basis.

    (1978 Television Committee Report, p. 18).

19. 1978 Television Committee Report, p. 18.

20. See Appendix I.

21. See 1978 Television Committee Report, pp. 21-22.

22. 1978 Television Committee Report, p. 9.

23. Ibid., p. 14.

24. Ibid.

25. See Appendix II.

26. For a better understanding of the market division that takes place consider the NCAA's policy for broadcasting regional games:

    For any date on which regional telecasts are to be released, the carrying network shall present for committee approval a map of the United States indicating suggested regions of release in accordance with the above state requirements for regional coverage. When institutions with overlapping areas of interest appear in different telecasts on the same date, the committee and the network will establish network divisions which, insofar as possible, serve the best interest of all parties.

    (1978 Television Committee Report, p. 12).

27. According to the NCAA:

    Weeknight telecasts (Monday through Thursday) may be approved on an individual basis by the committee. Friday night telecasts from the first Friday in September through the Friday following Thanksgiving will not be approved.

    (1978 Television Committee Report, p. 11).

28. United States v. The National Football League, 116 F. Supp. 319 (1953).

29. The appropriate part of the Sherman Antitrust Act states:

    Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations is declared to be illegal.

    (15. U.S.C. 1).

30. H.R. 8757, 87th Cong., 1st Sess., 2 (1961).

31. Ibid., p. 66.

32. 15 U.S.C. sections 1291-1294.

33. See Appendix III.

34. Philip R. Hochberg, "The Four Horsemen Ride Again: Cable Communications and College Athletics," Journal of College and University Law, Vol. 5, Fall 1977, p. 44.

35. See Appendix IV.

36. Home Box Office v. Federal Communication Commission, 567 F. 2d. 9 (1977).

37. See Appendix V.

38. Boston Globe, 9 October 1977, p. 74.

39. Report of the 1976 Television Committee to the 71st Annual Convention of the National Collegiate Athletic Association, National Collegiate Athletic Association, Shawnee Mission, Kansas, 1977, p. 28.

40. Philip R. Hochberg, "The Four Horsemen Ride Again: Cable Communications and College Athletics," Journal of College and University Law, Vol. 5, Fall 1977, p. 45.

41. Network Sports Practices, Committee Hearings Before Subcommittee on Communications, House Committee on Interstate and Foreign Commerce, 95th Cong., 1st Sess.

42. Ibid., at 182-183.

43. See 1978 Television Committee Report, p. 19.

44. 15 U.S.C. 1.

45. For cases that show the Sherman Antitrust Act applies to interstate trade or trade that effects interstate commerce see United States v. Central States Theatre Corp., 187 F. Supp. 114 (1960); Elizabeth Hosp., Inc. v. Richardson, 269 F. 2d 167 (1959), cert. denied, 361 U.S. 884 (1959); Motel Phillips, Inc. v. Journeymen Barbers, 195 F. Supp. 664 (1961), aff'd 301 F. 2d 443 (1962).

46. 7 U.S.C. 29.

47. The three cases that provided favorable interpretation of the agricultural cooperative exemption were United States v. Borden Co., 308 U.S. 188 (1939); Maryland and Virginia Milk Producers Association v. United States, 362 U.S. 458 (1962); Sunkist Growers, Inc. v. Winckler and Smith Citrus Products Co. 370 U.S. 19 (1962).

48. Loewe v. Lawler, 208 U.S. 274 (1908).

49. 15 U.S.C. 17.

50. See 29 U.S.C. 52, 104, 117.

51. 15 U.S.C. 13(c).

52. The cases that upheld the non-profit exemption were General Shale Products Corp. v. Struck Const. Co., 37 F. Supp. 598 (1941), aff'd 132 F. 2d. 425 (1942), cert. denied 318 U.S. 780 (1943); Students Book Co. v. Washington Law Book Co., 232 F. 2d. 49 (1955), cert. denied 350 U.S. 988 (1956); Logan Lane Inc. v. Brunswick Corp., 378 F. 2d. 212 (1967), cert. denied 389 U.S. 898 (1967).

53. United States v. Rock royal Co-operative, Inc., 307 U.S. 533 (1939).

54. W. B. Parker v. Porter L. Brown, 317 U.S. 341 (1942).

55. Ibid., 351.

56. Ibid.

57. Ibid., 352.

58. See, e.g., the Nympth, 18. F. Cas. (No. 10, 388) 506 (C.C. Me. 1834).

59. Lewis Goldfarb v. Virginia State Bar, 421 U.S. 773 (1975).

60. Federal Baseball Club of Baltimore v. National League of Professional Baseball Clubs, 259 U.S. 200 (1922).

61. Ibid., 208-209.

62. Professional Boxing was denied an exemption in United States v. International Boxing Club, 348 U.S. 236 (1955); professional football in Radovich v. National Football League, 352 U.S. 445 (1957); professional basketball in Washington Pro. Basketball Corp. v. National Basketball Ass'n, 147 F. Supp. 154 (1956); professional Hockey in Peto v. Madison Square Garden Corp., 1958 Trade Case 69,106 (1958); professional bowling in Washington State Bowling Proprietors Ass'n v. Pacific Lanes, Inc., 356 F. 2d 371 (1966), cert. denied 384 U.S. 846 (1966); professional golf in Deesen v. Professional Golfer's Association of America 358 F. 2d 165 (1966), cert. denied 385 U.S. 846 (1966).

63. Curt Flood V. Bowie Kuhn, 407 U.S. 258 (1972).

64. William Radovich v. National Football League, 352 U.S. 445 (1957).

65. William Radovich v. National Football League, 352 U.S. 445 (1957), 449.

66. Ibid., 451.

67. United States v. International Boxing Club of New York, 348 U.S. 236 (1955).

68. Federal Baseball Club of Baltimore v. National League of Professional Baseball Clubs, 259 U.S. 200 (1922).

69. United States v. International Boxing Club of New York, 348 U.S. 236 (1955), 293.

70. Ibid. Footnotes omitted.

71. Ibid., 241. Footnotes omitted.

72. Barbara J. Blalock v. Ladies Professional Golf Association, 359 F. Supp. 1260 (1973).

73. Curt Flood v. Bowie Kuhn, 407 U.S. 258 (1972).

74. Ibid., 282-283.

75. Barbara J. Blalock v. Ladies Professional Golf Association, 359 F. Supp. 1260 (1973), 1263.

76. See also Yonker's Raceway v. Standard Owners Association, 153 F. Supp. 552 (1957). In this case it was ruled that horses traveling across state lines constituted interstate trade.

77. William Radovich v. National Football League, 352 U.S. 445 (1957).

78. Ibid.

79. United States v. International Boxing Club of New York, 348 U.S. 236 (1955).

80. Ibid.

81. 1978 Television Committee Report, p. 7.

82. 1978-1979 Annual Reports of the National Collegiate Athletic Association, National Collegiate Athletic Association, Shawnee Mission, Kansas, p. 267. (Hereafter cited as 1978-1979 Annual Reports).

83. 1978-1979 Annual Reports, p. 236.

84. Ibid., p. 268.

85. The television revenue from the Division I Basketball Tournament and from Division I-A football television fees totals $4,763,496.53, which was divided by total revenues of $14,965,033, yielding 31.80 as the percentage of NCAA gross receipts earned from these television fees.

86. United States v. International Boxing Club of New York, 348 U.S. 236 (1955).

87. Barbara J. Blalock v. Ladies Professional Golf Association, 359 F. Supp. 1260 (1973).

88. The courts have allowed the NCAA to be sued for antitrust violations because of the role of interstate trade in the organization. See, for example, Lawrence H. Hennessey and Wendell Hudson v. NCAA, 564 F. 2d 1136 (1977).

89. Eastern Railroad Presidents Conference v. Noerr Motor Freight, 365 U.S. 127 (1961).

90. Ibid., 141.

91. Ibid.

92. Majorie Webster Junior College v. Middle State Association of Colleges and Secondary Schools, 432 F. 2d 650 (1970).

93. Ibid., 654.

94. Ibid. Footnote omitted.

95. See 1. Trade Reg. Rep. 620 at 1251 FTC (1973) and Note, "The Applicability of the Sherman Antitrust Act to Legal Practices and Other "Non-Commercial" Activities," Yale Law Journal, 82 (1972), 313.

96. Lewis Goldfarb v. Virginia State Bar, 421 U.S. 773 (1975).

97. Ibid., 786-787.

98. Amateur Softball Association of America v. United States, 467 F. 2d 312 (1972).

99. Ibid., 314.

100. Ibid., 315. Footnote omitted.

101. Amateur Softball Association of America v. United States, 467 F. 2d 312 (1972).

102. See Barbara J. Blalock v. Ladies Professional Golf Association, 359 F. Supp. 1260 (1973); Deesen v. Professional Golf Association, 358 F. 2d 155 (1966).

103. See Gladys M. Heldman v. United States Lawn and Tennis Association, 354 F. Supp. 1241 (1973).

104. See Bridge Corp. of America v. American Contract B.L. Inc., 428 F. 2d 1365 (1970), cert. denied, 401 U.S. 940 (1971).

105. See STP. Corp. v. United States Auto Club, Inc., 286 F. Supp. 146 (1968).

106. Gladys M. Heldman v. United States Lawn and Tennis Association, 354 F. Supp. 1241 (1973).

107. Ibid., 1244-1245.

108. See NCAA Manual, p. 26.

109. Amateur Softball Association of America v. United States, 467 F. 2d 312 (1972).

110. See Chicago Board of Trade v. United States, 246 U.S. 231 (1918); Standard Oil Co. v. United States, 221 U.S. 1(1911); United States v. American tobacco Co., 221 U.S. 106 (1911).

111. Northern Pacific Railway v. United States, 356 U.S. 1 (1958) 5.

112. This discussion of what a per se violation consists of is drawn heavily on the discussion in John C. Weistart and Cym H. Lowell, The Law of Sport, (New York: The Boobs-Merill Company, Inc., 1979).

113. See United States v. National Association of Real Estate Boards, 339 U.S. 485 (1950).

114. See United States v. Topco Assoc. Inc., 405 U.S. 596 (1972); Timkin Roller Bearing Co. v. United States, 341 U.S. 593 (1951).

115. See Fortner Enterprises v. United States Steel Corp., 394 U.S. 495 (1969); Northern Pacific Railway v. United States, 356 U.S. 1 (1958).

116. Note, "National Collegiate Athletic Association's Certification Requirement: A Section One Violation of the Sherman Antitrust Act," 9 Val. U.L. Review (1974) p. 206.

117. Klor's Inc. v. Broadway-Hale Stores, Inc., 359 U.S. 207 (1959).

118. Radiant Burners, Inc. v. Peoples Gas Light and Coke Company, 364 U.S. 656 (1961).

119. Klor's Inc. v. Broadway-Hale Stores, Inc., 359 U.S. 207 (1959).

120. Ibid., 213-214.

121. Ibid., 212.

122. Radiant Burners, Inc. v. Peoples Gas Light and Coke Company, 364 U.S. 656 (1961).

123. Ibid., 656. Footnote omitted.

124. Washington State Bowling Proprietors Association, Inc. v. Pacific Lanes, Inc., 356 F. 2d 371 (1966).

125. Ibid., 374.

126. Ibid., 376.

127. Barbara J. Blalock v. Ladies Professional Golf Association, 359 F. Supp. 1260 (1973).

128. See Flood v. Kuhn, 407 U.S. 258 (1972); Toolson v. New York Yankees, Inc., 346 U.S. 356 (1953); Niemiec v. Seattle Ranier Baseball Club, Inc., 67 F. Supp. 705 (1946); Mackey v. Rational Football League 543 F. 2d 606 (1976); Smith v. Pro-football, 420 F. Supp. 783 (1976).

129. Barbara J. Blalock v. Ladies Professional Golf Association, 359 F. Supp. 1260 (1973).

130. Gladys M. Heldman v. United States Lawn and Tennis Association, 354 F. Supp. 1241 (1973).

131. Washington State Bowling Proprietors Association, Inc. v. Pacific Lanes, Inc., 356 F. 2d 371 (1966).

132. Ibid.

133. The NCAA's Television Plan could also be subjected to an antitrust violation due to its limit on price competition and market division.

134. American Motor Inns, Inc. v. Holiday Inns, Inc., 521 F. 2d 1230 (1975).

135. Ibid., 1248.

136. Frederick A. Samara v. NCAA, 1973 Trade Case 74,536.

137. The appropriate part of the NCAA rule stated:

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

(Frederick A. Samara v. National Collegiate Athletic Association, 1973 Trade Case 74,536, 94,384).

138. Frederick A. Samara v. National Collegiate Athletic Association, 1973 Trade Case 74,536, 94,384.

139. Ibid.

140. College Athletic Placement Service, Inc., National Collegiate Athletic Association, 1974 Trade Case 60,117.

141. Ibid., 65,264.

142. Ibid., 65,266.

143. Ibid., 65,267.

144. Stephen Jones v. NCAA, 392 F. Supp. 295 (1975).

145. Ibid., 304.

146. Lawrence H. Hennessey and Wendell Hudson v. NCAA, 564 F. 2d 1136 (1977).

147. The rule stated:

...A member institution shall not employ or otherwise utilize the services of coaches in excess of the following numbers:

(a) Football - Division I
One head coach, eight assistant coaches, two part-time assistant coaches.
(b) Basketball - Division I
One head coach, two assistant coaches, one part-time assistant coach.

(NCAA Manual, p. 88).

148. Lewis Goldfarb v. Virginia State Bar, 421 U.S. 773 (1975).

149. Parker v. Brown, 317 U.S. 341 (1942).

150. See, for example, Stephen Jones v. NCAA, 392 F. Supp. 295 (1975).

151. New York Times, 3 January 1965, sec. 5, p. 1.

152. The appropriate part of the Fourteenth Amendment states:

...No state shall make or enforce any law which shall abridge the privelege 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 law.

(U.S. Const. amend. XIV. sec. 1.).

153. Note, "Judicial Review of Disputes Between Athletes and the NCAA," 24 Stan. L. Rev. 903 (1972), 919.

154. An association here is a group run not for profit.

155. Dawkins v. Antobia [1881], 17 Ch. D. 615.

156. Zechariah Chafee, Jr., "The Internal Affairs of Associations Not for Profit," Harvard Law Review, 43 (1930) 993, 1014.

157. Associated Students, Inc. of California State University - Sacremento v. NCAA, 493 F. 2d 1251 (1974) 1253.

158. These are the Scholastic Aptitude Test (SAT) and the American College Test (ACT).

159. Associated Students, Inc. of California State University - Sacremento v. NCAA, 493 F. 2d 1251 (1974). (An earlier suit over the 1.600 Rule instituted by James McAlister of UCLA was dropped).

160. Associated Students, Inc. of California State University - Sacremento v. NCAA, 493 F. 2d 1251 (1974), 1253.

161. Parker v. Brown, 317 U.S. 341 (1942).

162. Robert L. Parish v. NCAA, 361 F. Supp. 1214 (1973).

163. Associated Students, Inc. of California State University - Sacremento v. NCAA, 493 F. 2d 1251 (1974), 1254.

164. Ibid., 1255.

165. Associated Students, Inc. of California State University - Sacremento v. NCAA, 493 F. 2d. 1251 (1974).

166. Robert L. Parish v. NCAA, 361 F. Supp. 1214 (1973).

167. Ibid., 1032.

168. Lonnie Shelton v. NCAA, 539 F. 2d 1197 (1976).

169. Ibid., 1198.

170. Regents of the University of Minnesota v. NCAA, 560 F. 2d. 352 (1977).

171. Although there was one case where the court decided the NCAA did not constitute state action. See Glenn MacDonald v. NCAA, 370 F. Supp. 625 (1974).

172. William Buckton v. NCAA, 366 F. Supp. 1152 (1973).

173. Ibid., 1157.

174. NCAA Manual, p. 9.

175. Howard University v. NCAA, 510 F. 2d 213 (1975).

176. In 1970 Howard's soccer team finished third in the national tournament while in 1971 they won the national title.

177. Howard University v. NCAA, 510 F. 2d 213 (1975), 215.

178. Ibid., 222.

179. William Buckton v. NCAA, 366 F. Supp. 1152 (1973).

180. Howard University v. NCAA, 510 F. 2d 213 (1975).

181. Federal Baseball Club of Baltimore v. National League of Professional Baseball Clubs, 259 U.S. 200 (1922).

APPENDIX I

APPEARANCE REQUIREMENTS*

The carrying network shall include in the series the following required appearances by member institutions:

(a) The institutions which are members of Division I-AA Football shall receive a minimum of 11 aggregate appearances as a part of the regular series telecasts during the 1978 and 1979 seasons. (See Notes 2, 3, and 4).

(b) The football-playing institutions which are members of Divisions II and III (See Notes 2, 3, and 4) shall receive the following aggregate appearances each season in telecasts as described below:

(1) From among all such institutions, 22 appearances on 11 annual telecasts.

(2) From among the members of Division II, 14 appearances on seven annual telecasts. From among the members of Division III, eight appearances on four telecasts annually. The telecast of the Division III Championship game may be one of the four Division III games required each year. The telecasts of the Division II semifinal games and national championship game may be three of the Division II games required each year.

(3) Each of the four Division II football regions shall be represented annually by two teams in the regular season telecasts required in (2), and three of the four Division III regions shall be represented similarly.

(4) No member institutions may appear more than one time during each two-year period of this Plan in such a telecast, unless the second or subsequent appearance is on a telecast of the Division II or III Championship. No institution which previously has been selected for the NCAA series during the then-current two-year period of the Plan may appear in such a telecast, unless it is one of the NCAA Championship telecasts.

(5) Each telecast is to be released at least in the home television market of each participating institution.

(6) An institution which is ineligible under NCAA governing legislation for the National Collegiate Division II or III Football Championship shall be ineligible for participation in these regular-season telecasts.

Note 2: The football classification of each NCAA football-playing member institution may be found in the NCAA Directory.

Note 3: For the purposes of the administration of the Plan for the seasons of 1978 and 1979, a college will occupy the membership classification in the sport of football held on January 1, 1978, except the membership of Division I-AA football shall be as determined April 13, 1978.

Note 4: Any institution joining Division I-AA football subsequent to April 13, 1978, shall not be considered to be a member of that division for purposes of the administration of this Plan for the 1978 and 1979 seasons.

*Report of the 1978 NCAA Television Committee to the 73rd Annual Convention of the National Collegiate Athletic Association, National Collegiate Athletic Association, Shawnee Mission, Kansas, 1979, pp. 16-17.

APPENDIX II

COMMERCIAL FORMAT*

There will be 21 commercial positions, all but two of 60 seconds length, in each game telecast, distributed in accordinance with the following format:

	Start of Game Telecast
	Introduction of Players
(1)	Commercial
	Start of First Quarter
(2)	Commercial
(3)	Commercial
(4)	Commercial
	End of First Quarter
(5)	2 Commercials (60 plus 30)
	Start of Second Quarter
(6)	Commercial
(7)	Commercial
(8)	Commercial
(9)	Commercial
	End of Second Quarter
	Half Time
(10)	Station Break (63 seconds)
	Commercial**
(11)	2 Commercials (60 plus 30)
	Start of Third Quarter
(12)	Commercial
(13)	Commercial
(14)	Commercial
	End of Third Quarter
(15)	Commercial
	Station Break (63 seconds)

Start of Fourth Quarter

(16) Commercial
(17) Commercial
(18) Commercial
(19) Commercial

End of Fourth Quarter

(20) Commercial
(21) Commercial

End of Game Telecast

*Report of the 1978 NCAA Television Committee to the 73rd Annual Convention of the National Collegiate Athletic Association, National Collegiate Athletic Association, Shawnee Mission, Kansas, 1979, pp. 37-38.

**30 or all 60 seconds of this may run adjacent to Fireman's Fund Flashback rather than station break.

APPENDIX III

CHAPTER 32 OF TITLE 15 USC SECTIONS 1291-1294

TELECASTING OF PROFESSIONAL SPORTS CONTESTS

§1921. Exemption from antitrust laws of agreements covering the telecasting of sports contests and the combining of professional football leagues

The antitrust laws, as defined in section 1 of the Act of October 15, 1914, as amended (38 Stat. 730) [15 U.S.C. 12], or in the Federal Trade Commission Act, as amended (38 Stat. 717) [15 U.S.C. 41 et seq.], shall not apply to any joint agreement by or among persons engaging in or conducting the organized professional team sports of football, baseball, basketball, or hockey, by which any league of clubs participating in professional football, baseball, basketball, or hockey contests sells or otherwise transfers all or any part of the rights of such league's member clubs in the sponsored telecasting of the games of football, baseball, basketball, or hockey, as the case may be, engaged in or conducted by such clubs. In addition, such laws shall not apply to a joint agreement by which the member clubs of two or more professional football leagues, which are exempt from income tax under section 501(c)(6) of the Internal Revenue Code of 1954 [26 U.S.C. 501(c)(6)], combine their operations in expanded single league so exempt from income tax, if such agreement increases rather than decreases the number of professional football clubs so operating, and the provisions of which are directly relevant thereto.

(Pub. L. 87-331, §1, Sept. 30, 1961, 75 Stat. 732; Pub. L. 89-800, §6(b)(1), Nov. 8, 1966, 80 Stat. 1515.)

§1292. Area telecasting restriction limitation

Section 1291 of this title shall not apply to any joint agreement described in the first sentence in such section which prohibits any person to whom such rights are sold or transferred from televising any games within any area, except within the home territory of a member club of the league on a day when such club is playing a game at home.

(Pub. L. 87-331, §2, Sept. 30, 1961, 75 Stat. 732; Pub. L. 89-800, §6(b)(2), Nov. 8, 1966, 80 Stat. 1515.)

§1293. Intercollegiate and interscholastic football contest limitations

The first sentence of section 1291 of this title shall not apply to any joint agreement described in such section which permits the telecasting of all or a substantial part of any professional football game on any Friday after six o'clock postmeridian or on any Saturday during the period beginning on the second Friday in September and ending on the second Saturday in December in any year from any telecasting station located within seventy-five miles of the game site of any intercollegiate or interscholastic football contest scheduled to be played on such a date if--

(1) such intercollegiate football contest is between institutions of higher learning both of which confer degrees upon students following completion of sufficient credit hours to equal a four-year course, or

(2) in the case of an interscholastic football contest, such contest is between secondary schools, both of which are accredited or certified under the laws of the State or States in which they are situated and offer courses continuing through the twelfth grade of the standard school curriculum, or the equivalent, and

(3) such intercollegiate or interscholastic football contest and such game site were announced through publication in a newspaper of general circulation prior to August 1 of such year as being regularly scheduled for such day and place.

(Pub. L. 87-331, §3, Sept. 30, 1961, 75 Stat. 732; Pub. L. 89-800, §6(b)(3), Nov. 8, 1966, 80 Stat. 1515.)

§1294. Antitrust laws unaffected as regards to other activities of professional sports contests

Nothing contained in this chapter shall be deemed to change, determine, or otherwise affect the applicability or nonapplicability of the antitrust laws to any act, contract, agreement, rule, course of conduct, or other activity by, between, or among persons engaging in, conducting, or participating in the organized professional team sports of football, baseball, basketball, or hockey, except the agreements to which section 1291 of this title shall apply.

(Pub. L. 87-331, §4, Sept. 30, 1961, 75 Stat. 732.)

APPENDIX IV

47 CODE OF FEDERAL REGULATIONS 73.643*

Subscription television broadcast programming shall comply with the following requirements:

(a) Feature films shall not be broadcast except as provided in this paragraph.

(1) A feature film may be broadcast if--

(i) The film has been in general release in theaters anywhere in the United States for three (3) years or less prior to its proposed broadcast;

(ii) A conventional television broadcast station licensed in the market of the subscription television broadcast station holds a present contractual right to exhibit the film. For purposes of this subdivision, a television station affiliated with a television network will be deemed to hold a present contractual right to exhibit a film if the network to which it is affiliated holds such a right;

(iii) The film has been in general release in theaters anywhere in the United States for more than ten (10) years prior to its proposed subscription broadcast and the film has not been exhibited over conventional television in the market of the subscription television broadcast station for three (3) years prior to its proposed subscription broadcast. Once a film has been broadcast in the market pursuant to this subdivision or cablecast on a subscription basis pursuant to §76.225(a)(1)(iii), such film may thereafter be broadcast on a subscription basis in the market without regard to its subsequent exhibition over conventional television;

(iv) The film is in a foreign language;

(2) Feature films otherwise excluded by this paragraph may be broadcast upon a convincing showing to the Commission that they are not desired for exhibition over conventional television in the market or that the owners of the broadcast rights to the films, even absent the existence of subscription television, would not make the films available to conventional television.

(3) Every subscription television broadcast station over which a feature film is broadcast pursuant to this paragraph shall maintain for public inspection a file listing the title of the film, the date on which

it was broadcast and the provision of this paragraph pursuant to which it was broadcast. When a feature film is broadcast pursuant to subparagraph (1)(ii) of this paragraph, the station or network, serving the market and holding a present contractual right to exhibit the film shall be specified. These files shall be retained for a period of two years.

(b) Sports events shall not be broadcast live except as provided in this paragraph.

(1) A specific event may be broadcast if the event has not been broadcast live over conventional television in the market of the subscription television broadcast station during any one of the five (5) seasons preceding the proposed subscription broadcast. If a regularly recurring event takes place at intervals of more than one year (e.g., summer Olympic games), the event shall not be broadcast on a subscription basis if it has been broadcast live over conventional television in the market of the subscription television broadcast station during any one of the ten (10) years preceding the proposed subscription broadcast.

(2) New specific sports events that result from the restructuring of existing sports shall not be broadcast on a subscription basis until five (5) seasons after their first occurrence. Thereafter, subscription broadcasts shall be governed by paragraph (b)(1) of this section.

(3) The number of non-specific events which may be broadcast on a subscription basis in any given season shall be determined as follows:

(i) If less than twenty-five (25) percent of the events in a category of non-specific events were broadcast live over conventional television in the market of the subscription television broadcast station during each of the five (5) seasons preceding the proposed subscription broadcast, the number of events in the category broadcast on a subscription basis shall not exceed the number of events in the category not conventionally broadcast in that season among the preceding five (5) seasons when the largest number of events in the category were broadcast over conventional television.

(ii) If twenty-five (25) percent or more of the events in a category of non-specific events were broadcast live over conventional television in the market of the subscription television broadcast station during any one of the five (5) seasons preceding the proposed subscription broadcast, the number of events in the category broadcast on a subscription basis shall

not exceed fifty (50) percent of the number of events in the category not broadcast in that season among the preceding five (5) seasons when the largest number of events in the category were broadcast over conventional television. However, if the number of events in the category to be broadcast over conventional television in the current season is a reduction from the number of events broadcast in that season among the preceding five (5) seasons when the largest number of events in the category were broadcast, the number of events in the category which may be broadcast on a subscription basis pursuant to this subparagraph shall be reduced in proportion to the reduction in events broadcast over conventional television.

(c) No commercial advertising announcements shall be carried during subscription television operations except for promotion of subscription television broadcast programs before and after such programs.

(d) Not more than 90 percent of the total subscription programming hours shall consist of feature films and sports events combined. The percentage calculations may be made on a yearly basis, but, absent a showing of good cause, the percentage of such programming hours may not exceed 90 percent of the total subscription programming hours in any calendar month.

(e) Any television broadcast station licensee or permittee authorized to broadcast subscription programs shall broadcast in addition to its subscription broadcasts, at least the minimum hours of nonsubscription programming required by §73.651.

(f) Except as they may be otherwise waived by the Commission in authorizations issued hereunder, the rules and policies applicable to regular television broadcast stations are applicable to subscription television operations.

*Amended last in 1975.

APPENDIX V

47 CODE OF FEDERAL REGULATIONS 73.643*

§73.643 Subscription TV operating requirements

Subscription television broadcast programming shall comply with the following requirements:

(a) Any television broadcast station licensee or permittee authorized to broadcast subscription programs shall broadcast in addition to its subscription broadcasts, at least the minimum hours of nonsubscription programming required by §73.1740.

(b) Except as they may be otherwise waived by the Commission in authorizations issued hereunder, the rules and policies applicable to regular television broadcast stations are applicable to subscription television operations.

*Amended last November 15, 1979.

CHAPTER VIII

CONCLUSION

The primary purpose of this dissertation was to examine and model the college athletic industry. Of central importance in this industry has been the organization of the NCAA, the professional association of producers of college athletic contests. Because of the major role the NCAA has played in college athletics this dissertation also sought to examine the functions and goals of the NCAA and explain the effect of NCAA actions on the welfare of industry members.

A careful examination of the activities of the NCAA since its formation demonstrates that cartel theory offers the best explanation for the actions of the NCAA. According to cartel theory producers collude to restrict output or the payments to inputs in order to transfer revenue from consumers or employees to themselves. Additionally, to ensure that all producers follow these agreements the cartel will expend resources to monitor its rules. The history of the NCAA provided in this study indicates that the association has organized its members into a body that functions exactly as cartel theory predicts.

The examination of the NCAA conducted in this dissertation revealed that in its early years the association was primarily concerned with writing sports rules and organizing tournaments. The association was formed in response to the need for a set of standardized football rules and, until World War Two, it engaged in few activities that seemed

inappropriate for an athletic association to manage. From its original formation until World War Two the association can be accurately modeled by viewing it as an organization attempting to internalize an intra-industry externality.

After World War Two, however, the NCAA began enacting measures that had obvious anticompetitive economic effects. In the late 1940's the NCAA started adopting rules that limited payments to student-athletes. Under the guise of protecting amateur status the NCAA instituted a lengthy and detailed set of rules governing the payments to student-athletes and the methods by which universities could compete for athletes. Thus, consistent with the predictions of cartel theory the college athletic industry colluded through the NCAA to restrict the payments to and the competition for inputs.

At approximately the same time as the NCAA began limiting the payments to student-athletes it also began enacting measures that restricted the televising of college sports. The NCAA first became interested in television when it noticed that unrestricted televising of football games caused live attendance to decrease to a record low. To protect schools from declining attendance the NCAA adopted a collective television plan that limited the broadcasting of all college football games. While many believed this plan was designed to aid schools that had a difficult time attracting fans it soon became clear that by adopting a program that restricted the number of games shown the NCAA was also able to get the television networks to pay more money for television broadcast rights.

The NCAA also enacted other measures to limit competition in the output market. In addition to controlling the number of regular season games played in several sports, the association established a committee to approve and monitor all postseason sports events. The NCAA required all athletic events sponsored by non-colleges to be certified by this committee before allowing NCAA student-athletes to compete in them. The establishment of these policies, in addition to the collective television plan, has allowed producers of athletic contests to control the quantity of contests produced thereby increasing the revenue they generate. Again, this result is consistent with the predictions of cartel theory.

To ensure that these agreements are followed the NCAA established a special section of its organization to monitor the agreements. When the association was first formed it relied on voluntary enforcement by the individual schools, but this did not work well. Recognizing that the rewards earned from successfully cheating on the agreements could threaten the ability of the NCAA to function (since all members could cheat and NCAA rules would be meaningless) the association established the Department of Enforcement to investigate alleged violations of its rules and penalize those who violated the agreements. The establishment of a monitor provides additional evidence to support cartel theory as the most plausible explanation for the organization of college athletics.

While explaining the organization of the college athletic industry this dissertation also developed an explanation for the formation of cartels. According to the by-product theory of cartel organization

cartels tend to evolve from a professional or trade association which is first formed to discuss an industry problem but then begins adopting restrictive rules that increase the members' income. This theory plausibly explains the restrictive behavior observed in medicine (orchestrated by the AMA), law (ABA), and college athletics (NCAA).

Given that this study accepted cartel theory as the most plausible explanation for intercollegiate athletics this dissertation then examined various NCAA policies to understand their effect on the production of athletic contests by individual firms (athletic departments). This study also examined the collective actions undertaken by any cartel and contrasted these with the internal functioning of the NCAA. In a cartel most actions are the result of collective decisions made by the members. However, the method in which these decisions are made and the characteristics of the firms that make the decision are important factors that should not be overlooked in any study of a cartel's organization.

With a general knowledge of the workings of a cartel an examination was made of the collective decision-making process in the NCAA. Since the NCAA chose to make all decisions by the one vote per school rule the association has had predictable problems with income being redistributed from the schools that maintain "big-time" athletic programs (who comprise a minority of the members of the NCAA) to the smaller schools (who comprise a majority of the members in the NCAA). This practice became such a serious problem in 1981 that it drew the existence of the NCAA into question when "big-time" schools, organized into the College

Football Association (CFA), threatened to withdraw from the association unless the problem was corrected. Thus, by examining the collective decision-making process within the NCAA, insight into its possible demise was provided.

In the literature on cartel theory there is little mention of how a cartel monitors itself. It is generally recognized that effective cartel monitoring is needed for a cartel to endure, but there is little discussion of how this monitoring takes place. Therefore, one of the important contributions this dissertation provided was an explanation of cartel monitoring.

In the discussions of cartel monitoring presented in this dissertation it was pointed out that cartel monitoring consists of observing quantity (rather than price) and choosing the cite for monitoring to occur (point of production or sale) where the costs are lowest. This general understanding of cartel monitoring was then contrasted with the practices of the NCAA's Department of Enforcement, which monitors the production of all athletic contests and the recruiting of thousands of athletes each year by members of the NCAA. This examination of NCAA monitoring also included a discussion of specific rules adopted by the association which restrict the behavior of the participants in intercollegiate athletics and limit competition (both monetary and non-monetary) between schools.

The final contribution of this dissertation was an examination of legal issues relevant to intercollegiate athletics. Since World War Two college sports in the United States have grown into a multi-million

dollar industry. As a result of the large financial rewards involved and the lack of an appeal process within the NCAA many individuals have turned to the courts in hopes of reversing an NCAA decision. In this section of the dissertation the two types of legal cases which the NCAA has been involved in, antitrust and due process, were discussed.

Since the NCAA exercises extensive control over college athletics it is natural that there should be questions about the association violating the Sherman Antitrust Act. While antitrust laws are often envisioned as applying only to more standard business situations the willingness (and the success) of the government to prosecute professional sports for antitrust violations indicates that sports, per se, are not immune from this scrutiny. However, the NCAA, which imposes many of the same restrictions professional sports were forced to abandon, has never been held in violation of the Sherman Antitrust Act.

After a careful examination of the issues involved in intercollegiate athletics it can be seen that the NCAA has enacted many measures which limit economic competition between its members. In an orthodox business setting these limiting rules would constitute an antitrust violation. But because the courts have chosen to decide all NCAA antitrust cases with the rule of reason principle the association has escaped punishment.

According to this principle the court weighs the intended effect of NCAA legislation with its actual results. With this method of evaluating NCAA antitrust issues the courts have consistently held that the intent of NCAA legislation (e.g., maintain amateur status) was more

important and outweighed any additional effect (e.g., restrict wages of student-athletes) it may have had. Consequently, the willingness of the courts to evaluate NCAA legislation in this way has provided the association with almost unchecked power in intercollegiate sports. Further, given the special status of amateur sports in the United States and the effective way in which the NCAA has presented itself to the public, the NCAA has been able to adopt almost any rule by rationalizing it in the name of amateurism.

The NCAA has also faced several court challenges from student-athletes and coaches who were adversely effected by association rules. Because there is no appeal process within the NCAA these individuals have turned to the courts and sued the NCAA claiming their rights were infringed because the association failed to provide "due process." In most cases the courts have upheld the NCAA actions as long as the association arrived at its decision by its stated decision-making procedure. In the cases where the NCAA did suffer setbacks the courts ruled that the association's rules discriminated against one group (e.g., foreign athletes).

This dissertation concludes by noting that the NCAA has existed for over seventy-five years, but currently faces its greatest challenge since the late 1940's. Ironically, it again has to do with television. In the late 1940's the appearance of television caused attendance at football games to decrease tremendously. In the 1980's, however, the struggle over the division of the television payments (cartel rents)

between the members of the CFA and the other members of the NCAA posses real problems for the NCAA.

While the NCAA's 1981 conflict with the CFA ended without a major fight the eventual question the NCAA needs to address concerns who owns the television broadcast rights of a college sports event, i.e., the schools or the NCAA. If the NCAA allows individual schools to negotiate their own television contract the association's ability to earn rents by selling a collective television package would be ruined. But if the NCAA continues to deny individual schools this right and is forced to settle this issue in court it may lose. Thus, the NCAA is in a delicate situation that is further compounded by the expansion of cable television.

Soon it will be possible for many schools to sell their television rights to local cable systems. Again, if the NCAA seeks to limit this practice it could find itself involved in a large antitrust suit that it would probably lose. But if the association permits schools to sell these rights its ability to generate rents will be curtailed. Thus, while the NCAA has come a long way in three-quarters of a century its most difficult challenges lie ahead.

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Paul R. Lawrence

THE INTERCOLLEGIATE ATHLETIC CARTEL: THE ECONOMICS, HISTORY, INSTITUTIONS, AND LEGAL ARRANGEMENTS OF THE NATIONAL COLLEGIATE ATHLETIC ASSOCIATION

by

Paul R. Lawrence

(ABSTRACT)

The National Collegiate Athletic Association (NCAA) was founded in 1906 in an attempt to control the widespread violence in college football. Since its beginning the NCAA has grown from an organization that standardized sports rules and conducted tournaments to a regulatory body that today controls virtually all aspects of college sports in which males participate. In addition to restricting the number of athletic contests produced (and where they may be televised) and establishing strict rules limiting the compensation paid to student-athletes for their services the NCAA maintains a Department of Enforcement which investigates alleged violations of its rules and penalizes the violators.

The question posed at the outset is how to model the behavior of the NCAA and college athletics. The interpretation offered in this dissertation is that the NCAA has helped engineer an efficient cartel in college athletics with restrictions in the output (athletic contests) and the input (student-athletes) market. To counter the standard cartel cheating problem the NCAA has also developed an enforcement mechanism. But unlike a cartel in the business world the intercollegiate cartel operates in a non-profit setting and, therefore, implications based on this difference are developed in this dissertation.

This dissertation is an industry study of college athletics. The introductory chapter details the specific questions this study addresses and contrasts the possible explanations for the organization of intercollegiate athletics. The second, third, fourth, and fifth chapters trace the history of the NCAA. Based on the wealth of evidence presented the fifth chapter concludes that cartel theory offers the most plausible explanation for the actions of the NCAA.

Given that cartel theory provides the best explanation for intercollegiate athletics, the sixth chapter examines the internal functioning of the NCAA and explores the actions an efficient cartel monitor should undertake to ensure the limiting agreements are followed. The seventh chapter details the legal issues and resulting economic implications that pertain to intercollegiate athletics. The last chapter summarizes and highlights the major results of this dissertation.