DOCUMENT RESUME

ED 181 858 HE 012 300

TITLE National Collegiate Athletic Association--Enforcement Program. Hearings before the Subcommittee on Oversight and Investigations of the Committee on Interstate and Foreign Commerce, House of Representatives, Ninety-Sixth Congress, First Session (July 12, 1979).

INSTITUTION Congress of the U. S., Washington, D. C. House Committee on Interstate and Foreign Commerce.

REPORT NO House-96-50

PUB DATE 12 Jul 79

NOTE 141p.; Not available in paper copy due to small print

EDRS PRICE MF01 Plus Postage. PC Not Available from EDRS.

DESCRIPTORS Athletes; *Athletics; College Choice; *Compliance (Legal); Eligibility; Extramural Athletic Programs; Federal Government; Federal Legislation; Government Role; *Government School Relationship; Hearings; Higher Education; *Intercollegiate Programs; Professional Associations; *Student Recruitment

IDENTIFIERS *National Collegiate Athletic Association

ABSTRACT

The transcript of the resumption of hearings on the National Collegiate Athletics Association (NCAA) Enforcement Program, initiated in 1978, is presented. In this session the issues of fairness and of federal intervention into collegiate athletics are addressed, specifically as they relate to recruitment of athletes by colleges and universities. Included are the statements of William J. Flynn, president of the NCAA; James Frank, secretary-treasurer of the NCAA; William B. Hunt, assistant executive director of the enforcement program; and Charles Alan Wright, chairman of the NCAA committee on infractions. Additional material submitted for the record includes NCAA minutes and a report on the 1978 hearings, documents and letters concerning infractions, and letters of response to the 1978 report of the subcommittee. (MSE)

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION—ENFORCEMENT PROGRAM

HEARING

BEFORE THE

SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS

OF THE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE HOUSE OF REPRESENTATIVES

NINETY-SIXTH CONGRESS

FIRST SESSION

JULY 12, 1979

Serial No. 96–50

Printed for the use of the
Committee on Interstate and Foreign Commerce

U.S. GOVERNMENT PRINTING OFFICE
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CONTENTS

	Page
Statement of—	
Flynn, William J., president, National Collegiate Athletic Association	25
Frank, James, secretary-treasurer, National Collegiate Athletic Association	25
Hunt, William B., assistant executive director, enforcement program, National Collegiate Athletic Association	25
Wright, Charles Alan, chairman, committee on infractions, National Collegiate Athletic Association	25
Additional material submitted for the record—	
National Collegiate Athletic Association:	
Minutes of the NCAA council, June 14, 1979	92
Report with attachments on behalf of NCAA Council to Subcommittee on Oversight and Investigations 1978 report on NCAA Enforcement Program, with forwarding letter from William Flynn, president to Chairman Eckhardt	26
Oversight and Investigations Subcommittee, Interstate and Foreign Commerce Committee:	
Documents and letters supplied to the subcommittee re infractions of NCAA schools	118
Letters of response to the report of the subcommittee on Enforcement Programs of the National Collegiate Athletic Association	5

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION—ENFORCEMENT PROGRAM

THURSDAY, JULY 12, 1979

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10 a.m., in room 2237, Rayburn House Office Building, Hon. Bob Eckhardt, chairman, presiding.

Mr. ECKHARDT. The Subcommittee on Oversight and Investigations will be in order.

This morning we resume hearings on a subject that attracted this subcommittee's interest through 10 days of hearings in the last Congress. I did not have the privilege of participating in those hearings chaired by my predecessor, John Moss, but as I share his lack of great interest in sport, I also share his great interest in the fundamentals of fairness. As hearings on the enforcement program of the NCAA commenced in February of 1978 the issue sought to be examined was one of fairness. As the hearings resume today fairness remains our focus.

The subcommittee's report on the enforcement program of the NCAA was issued on the eve of the association's annual convention in January. Believing that Federal intervention into intercollegiate athletics was not the preferred course of action at that time, the report served as a challenge to self-reform. It contained 18 specific proposals to effectuate such reform. Today we seek to determine both the desire of the association to meet that challenge and its ability to achieve self-reform.

I note NCAA President Flynn's letter to me of June 22 detailing the council's action on our recommendations, and accept his assurances that the council has diligently attempted to respond in good faith to each. Equally, I accept his belief that reasonable individuals may differ in their viewpoints as to what procedures might best bring about a fair and effective enforcement program. We seek today to determine what those differences are and the basis for them.

I could not conclude without commending my colleague from Nevada, Jim Santini, for his dedication to this inquiry. Contrary to any possible thought at his initiation of the investigation that his interests were motivated by geography, his pursuit of this matter surely must be viewed as an effort to bring fair play to a process which is of vital educational, professional, economical, and even emotional concern to literally thousands of people.

Last year the subcommittee heard testimony from some 40 witnesses. Today we welcome back one of them, the distinguished professor of law, Charles Alan Wright, the chairman of the Committee on Infractions. Additionally, we are pleased to have the new president of the NCAA, Mr. William J. Flynn, and the secretary-treasurer, Lincoln University president, James Frank.

We will bring all the panelists to the table at this time: Mr. Flynn, Mr. Frank, and Mr. Wright.

Mr. Lent, do you have comments?

Mr. LENT. Thank you, Mr. Chairman.

I want to welcome the distinguished representatives of the NCAA who have journeyed from various parts of the United States to be with us today.

Messrs. Frank and Flynn are new to the subcommittee, and Prof. Charles Alan Wright testified during the 1978 round of hearings as a constitutional scholar of national repute who has contributed greatly to our understanding of the due process considerations implicit in the NCAA enforcement procedures.

As I have said before, I have always found it hard to justify this subcommittee's investigation of the Byzantine of college athletics. During 1978 the Oversight and Investigations Subcommittee devoted more of its time and resources to the NCAA investigation than any other single issue, including oversight over the Federal regulatory agencies and such vital questions as cancer-causing chemicals in foods and decontrol of crude oil in gasoline products.

Thankfully, the subcommittee did not conclude at the end of its series of hearings that there was a need for Federal intervention in intercollegiate sports. Such a proposal would have been in my opinion a mistake of inestimable proportions.

On the other hand, the subcommittee did develop 18 separate recommendations for reform of the NCAA enforcement procedure, 12 of which the minority members of the subcommittee felt to be sufficiently meritorious to warrant their support. But even in endorsing these 12 recommendations, either fully or in principle, we made it clear that we earnestly believed that the NCAA procedures then in place presented no problem of fairness. In the eyes of some, however, the NCAA had a problem with an appearance of unfairness which was grave enough to demand remedial action.

Happily, the NCAA has responded forthrightly and in good faith. At its convention in January 1979, which I attended along with Congressman Santini, no less than 6 of the 18 proposals were adopted and incorporated into the NCAA manual. Two others have been partially implemented. Three more will be reviewed by the NCAA council at its August meeting. The remainder have been rejected by the NCAA as not in accord with its philosophy and goals.

Now that fact may cause some consternation on the majority side of the subcommittee, but it is consistent with some of the rhetoric contained in the majority report issued in December 1978. Specifically on page 7 of the report, listing points that define the question of fairness, the majority cites this one among others: "Genuine opportunity for self-government; that is, effective ability to change those rules when it suits a majority."

Later at page 58 in discussing questions about eligibility the majority cites former NCAA President Thompsons' "entirely reasonable suggestion that the question be put to the NCAA membership for a vote at its next annual convention." Such a move, the majority said, would gage the NCAA council's willingness to submit the status quo to a test of self-government.

I submit that the question of self-government was fully tested at the NCAA convention in San Francisco in January 1979. A casual reading of the proceedings of the convention demonstrates that the subcommittee's investigation and its subsequent recommendations received a thorough airing. As I have said before, no less than six of the subcommittee's proposals were adopted at that convention.

Further, a representative of the University of Denver who had appeared before this subcommittee submitted a proposal that in substance covered all of the points in the subcommittee's list of 18 recommendations for self-reform. The University of Denver's proposal was soundly defeated by an overwhelming vote of the delegates. A followup motion calling for the Denver proposal to be sent to the NCAA council for review received an equally heavy negative vote.

In short, some 600 of the 800 NCAA members meeting in convention clearly exercised their right of self-government and soundly rejected a number of our recommendations. I believe that this subcommittee should accept the verdict handed down by the NCAA membership and turn itself toward more pressing matters.

I understand that the subcommittee chairman has received several communcations from member institutions which similarly offer unqualified support for the NCAA enforcement procedures and urge this subcommittee to permit the NCAA to go about the business of governing its own affairs and decide its own destiny without the threat of Federal intervention.

Let me reiterate what the minority said in views it filed with the subcommittee report:

> Due process on all fronts and in all aspects is an evolving doctrine and has been subject to great change, especially in the last two decades. The NCAA procedures are no different.

Thank you, Mr. Chairman.

Mr. ECKHARDT. Mr. Santini.

Mr. SANTINI. Thank you, Mr. Chairman. I appreciate the opportunity to share preliminary remarks with committee members.

I want to commend you initially for your willingness to continue what proved to be among the most demanding investigative work this subcommittee assumed in the last Congress. I think the net result of it was that anyone who listened to and participated in those hearings came to the conclusion that substantive change was very necessary, demonstrated by the fact that my very good friend from New York and the minority, who at the inception of those hearings found themselves exceedingly defensive in terms of concern for the NCAA; in conclusion found themselves supporting 12 of the 18 recommendations that had been made by the majority for substantive or procedural change.

The issue is fairness. I think recent events will rapidly demonstrate that fairness is very much at issue. I particularly, as a single member of this subcommittee, feel there have been instances of

outrageous unfairness by any standard or rule of fairness which one might wish to offer.

We will examine the 18 recommendations that were made by this subcommittee. In a very responsive and I thought well-tempered and reasoned response, President Flynn indicated in a letter to us recently that 11 of those recommendations have been adopted. We shall examine these recommendations in the course of this morning's hearing.

He indicated further, I believe, if my recollection of that letter is correct, that three more recommendations were under consideration for an August hearing the council was going to conduct. We shall examine at least one of those recommendations.

There have been many, many responses to this member and, I am informed, to this subcommittee in the course of the aftermath of the hearings of the last Congress. Most all of those responses have been encouraging, positive, affirmative assertions that we are examining an issue which has laid dormant too long.

Mr. Chairman, I would move at this point that all of the letters received in response to this committee's report from member institutions be entered in our committee record, if that is considered appropriate.

Mr. ECKHARDT. Do you make that as a unanimous-consent request?

Mr. SANTINI. I withdraw my motion and make it in the form of a unanimous-consent request.

Mr. ECKHARDT. Is there objection?

It is so ordered.

Thank you, Mr. Chairman.

[Testimony resumes on p. 25.]

[The material referred to follows:]

CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS
OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE
WASHINGTON, D.C. 20515

March 28, 1979

Dr. William D. Carlson, President
University of Wyoming
Laramie, Wyoming 82071

Dear Dr. Carlson:

I am pleased to forward a copy of the report of the Subcommittee on Oversight and Investigations bearing upon the enforcement procedures of the National Collegiate Athletic Association (NCAA). The report represents a rather extensive effort of the Subcommittee, the first of its kind by a Congressional body. I might add that the inquiry was initiated only after the urging of some seventy Members of the House.

The report contains eighteen recommendations calling for the NCAA to undertake reform of its enforcement procedures. Minority Members of the Subcommittee joined, at least in principle, with two-thirds of them.

Since the report was issued immediately prior to the NCAA's recent annual convention, there was no opportunity for the membership to address the Subcommittee recommendations. While the membership did adopt some modifications to the enforcement procedures, they were minor in the overall context of needed reform.

One aspect of the convention, however, was disappointing. The Council rejected a most reasonable Subcommittee recommendation calling for the Council to appoint an independent Blue Ribbon Committee from among the NCAA's membership to review the Subcommittee's effort and conduct whatever other study may be deemed desirable for the purpose of reporting back to the Council and the 1980 convention. Despite this rejection, I am somewhat encouraged by the fact that certain officials of the Association, including former President Neils Thompson and Council member John Toner, gave assurance to representatives of the Subcommittee that the new Council will seriously address the Subcommittee's findings and recommendations.

Clearly, self-correction is preferred over Congressional intrusion. The issues are important, with the potential of affecting the educations and, indeed, the very lives of many young student-athletes. For these reasons, I urge you personally to carefully review the Subcommittee's report and then take appropriate action within the Association to insure that meaningful reform becomes a reality.

Sincerely yours,

Bob Eckhardt

Bob Eckhardt
Chairman

BE:bf
Enclosure

Best, Pat

SPRINGFIELD COLLEGE

SPRINGFIELD
MASSACHUSETTS 01109

WILBERT E. LOCKLIN, President

March 23, 1979

The Honorable Bob Eckhardt
Chairman
House of Representatives
Subcommittee on Oversight and Investigations
Committee on Interstate and Foreign Commerce
Washington, D. C. 20515

Dear Congressman Eckhardt:

Thank you for your informative letter and the copy of the report of the Subcommittee on Oversight and Investigations bearing upon the enforcement procedures of the National Collegiate Athletic Association.

I am looking forward to reading the report and, like you, am encouraged that officials of the NCAA have given assurance to representatives of your subcommittee that the new council will address the recommendations in the near future.

By copy of this letter I am sharing this information with Springfield College's Director of Athletics, Dr. Edward S. Steitz, who is a member of long standing of the NCAA Executive Committee. I know that he and others here will be interested in the subcommittee's recommendations.

As the president of an independent institution of higher education, I wholeheartedly agree with your conclusion that self-correction where possible is preferred over Congressional intrusion.

With appreciation for your concern,

Sincerely,

Wilbert E. Locklin

PRAIRIE VIEW A&M UNIVERSITY
PRAIRIE VIEW, TEXAS 77445

April 12, 1979

RECEIVED

Office of
The President

Congressman Bob Eckhardt, Chairman
Subcommittee on Oversight and
Investigations of the Committee
on Interstate and Foreign Commerce
Washington, DC 20515

Dear Congressman Eckhardt:

Thank you for sending me a copy of the enforcement procedures of the National Collegiate Athletic Association.

We shall study this material very carefully to determine its implications for Prairie View A&M University and take appropriate action within the Association to assure that meaningful reform becomes a reality.

Thank you for sharing this document with us.

Very truly yours,

Alvin I. Thomas
President

AIT/rr

University of Cincinnati

Office of the President

Cincinnati, Ohio 45221
Phone 513 475-2201

RECEIVED
April 2, 1979
1979

BOB ECKHARDT, M.C.

Representative Bob Eckhardt
Chairman
Subcommittee on Oversight and
Investigations of the
Committee on Interstate and Foreign Commerce
House of Representatives
Washington, D. C. 20515

Dear Representative Eckhardt:

I appreciate receiving a copy of the Subcommittee's report concerning its investigation bearing upon the enforcement procedures of the National Collegiate Athletic Association. As one of the member institutions, we will review the report carefully and take any appropriate steps to improve the Association's rules.

Sincerely,

Henry S. Winkler

Henry S. Winkler
President

St. Mary's College of Maryland

ST. MARY'S CITY, MARYLAND 20686

OFFICE OF THE PRESIDENT

April 2, 1979

The Honorable Bob Eckhardt
United States Congressman
Rayburn House Office Building
Room 2323
Washington, D. C. 20515

Dear Congressman Eckhardt:

Thank you for taking the time to send me a copy of the report of the Subcommittee on Oversight and Investigation.

It is my intention to carefully review the contents of the report with the appropriate officers of the College.

You can be certain that we share your concern for the needs of the student-athlete.

Sincerely yours,

J. Renwick Jackson Jr.

J. Renwick Jackson, Jr.

bgm

JOHNSON C. SMITH UNIVERSITY
CHARLOTTE, NORTH CAROLINA 28216

OFFICE OF THE PRESIDENT

April 2, 1979

The Honorable Robert Eckhardt, Chairman
Subcommittee on Oversight and Investigations
of the Committee on Interstate and Foreign Commerce
House of Representatives
Washington, D. C. 20515

Dear Congressman Eckhardt:

Thank you for sharing with us a copy of the report of the Subcommittee on Oversight and Investigations bearing upon the enforcement procedures of the National Collegiate Athletic Association. I expect to read in detail the Committee's report and its recommendations. As you indicated, self-correction is preferred over outside intrusion, however, those of us entrusted with the total wellbeing of our student athletes must take the long view and insure that the Association manifests its concern for the students' welfare also.

We appreciate your comments and thank you again for sending us a copy of the report.

Sincerely,

Wilbert Greenfield
President

UNIVERSITY OF HARTFORD

To McLaurin

West Hartford, CT 06117
The President
203 243-4417

March 6, 1979

The Honorable Bob Eckhardt, Chairman
Subcommittee on Oversight and Investigations
of the Committee on Interstate and Foreign Commerce
Congress of the United States
Washington, D. C. 20515

Dear Congressman Eckhardt:

Thank you so much for your letter of February 24 and the report which accompanied it.

By way of a copy of this note and yours, I shall share the material which you have provided with my Dean of Students, Doris Coster, to whom our Athletic Department reports.

All good wishes.

Sincerely,

Stephen Joel Trachtenberg
President

SJT/bv
cc: Dean Doris Coster

MAR 9 1979

MERCER UNIVERSITY
MACON, GEORGIA
31207

Office of the President

March 26, 1979

Mr. Bob Eckhardt, Chairman
Subcommittee on Oversight and
Investigations of the Committee
on Interstate and Foreign Commerce
Room 2323
Rayburn House Office Building
Washington, DC 20515

Dear Mr. Edkhardt:

I wish to acknowledge with appreciation for President Harris your letter and enclosure of March 20, 1979. I am placing these items on his desk for his attention, but in the meantime I feel sure he would want me to thank you now.

With good wishes, I am

Yours very truly,

Mary Gardner

Mary F. Gardner (Mrs.)
Secretary to the President

DAVIDSON COLLEGE DAVIDSON, NORTH CAROLINA 28036 • 704/892-2000

OFFICE OF THE PRESIDENT

March 22, 1979

RECEIVED
MAR 27 1979
BOB ECKHARDT, M C

The Honorable Bob Eckhardt
Chairman
Subcommittee on Oversight and Investigations
Committee on Interstate and Foreign Commerce
House of Representatives
Washington, D. C. 20515

Dear Mr. Eckhardt:

Thank you for your thoughtful letter of March 15 enclosing the report of your subcommittee entitled "Enforcement Program of the National Collegiate Athletic Association." Dr. Spencer will be pleased to have this on his desk when he returns Monday from an alumni chapter and other meetings in Florida, and I'm sure that he will read the report at first opportunity. Thank you for sending it to us.

Sincerely,

Loyce S. Davis

(Mrs.) Loyce S. Davis
Secretary to Dr. Spencer

53-237 O - 79 - 2

KSU
KANSAS STATE UNIVERSITY

Office of the President

Anderson Hall
Manhattan, Kansas 66506
913-532-6222

April 2, 1979

Representative Bob Eckhardt
Chairman
Subcommittee on Oversight and
Investigations
House of Representatives
Room 2323
Rayburn House Office Building
Washington, D. C. 20515

Dear Mr. Eckhardt:

Thank you for sending us the copy of the report of the Subcommittee on Oversight and Investigations of the NCAA.

We will review this report for appropriate action that should be taken.

Sincerely,

Duane Acker
President

/sls

cc: DeLoss Dodds, Athletic Director

CORNELL UNIVERSITY
300 Day Hall
P.O. Box D.H.
Ithaca, N.Y. 14853

Office of the President

RECEIVED
1979
BOB ECKHARDT, M.C.

March 22, 1979

The Honorable Bob Eckhardt
Chairman
Subcommittee on Oversight and
Investigations of the
Committee on Interstate & Foreign
Commerce
House of Representatives
Congress of the United States
Washington, DC 20515

Dear Mr. Eckhardt:

Thank you for your letter of March 15, enclosing a copy of the report of the Subcommittee on Oversight and Investigations. I shall read this with interest and plan to share it with my colleagues.

Thank you, again, for your thoughtfulness in sending me a copy.

With kind regards,

Sincerely yours,

Frank H. T. Rhodes

OFFICE OF THE PRESIDENT

Mississippi College
CLINTON, MISSISSIPPI 39058

TELEPHONE 601-924-5131

April 13, 1979

The Honorable Bob Eckhardt, Chairman
Subcommittee on Oversight and Investigations
of the Committee on Interstate and Foreign Commerce
Congress of the United States
Washington, DC 21515

Dear Congressman Eckhardt:

Thank you for your kind letter of March 20, and the information relative to the report by your subcommittee on the enforcement program of the National Collegiate Athletic Association. I am deeply appreciative of the interest and concern that Congress has shown in the work of the NCAA.

I would be the first to agree with you that there are obviously changes that should be made with regard to many facets of the work of the NCAA; there were many changes made in the overall guidelines and documents of the Association at its meeting in San Francisco last January.

Quite frankly, however, I find it more than disappointing that the Congress of the United States is attempting to inject itself into an area which is a voluntary association of member institutions. I believe that the institutions themselves are perfectly capable of finding the ultimate answers that are needed to the problems that are inherent in the NCAA without the intrusion of the authority of the United States Government into this area. I believe that the Congress, the Senate, and the Executive Branch have more than enough to do in finding an answer to the energy problem facing this Nation, along with curbing the inflation that is so rampant among us without spending time and energy in an effort such as this.

While I may be a minority of one with these particular views, I did want to share them with you because of your kindness in sharing with me your thoughts and the copy of the report as submitted.

Sincerely,

Lewis Nobles

Lewis Nobles, President

LN:ps

cc: Honorable John Stennis
Honorable Thad Cochran
Honorable Trent Lott
Honorable David Bowen
Honorable Sonny Montgomery
Honorable Jamie Whitten
Honorable Jon Hinson

COLGATE UNIVERSITY
HAMILTON, NEW YORK
13346

RECEIVED

OFFICE OF THE PRESIDENT

March 20, 1979

Dear Congressman Eckhardt:

I've been asked to acknowledge your letter of March 6 which has just arrived while President Langdon is away from the campus. I know that he will will wish to review the report of the Sub-committee on Oversight and Investigations, and I extend his thanks for your thoughtfulness in making the full report available to him.

Sincerely,

B. S. Ryder
Executive Assistant

The Honorable Bob Ekchardt
Room 2323
Rayburn House Office Building
Washington, D. C. 20515

Columbia University
in the City of New York
NEW YORK, N.Y. 10027
PRESIDENT'S ROOM

March 20, 1979

Dear Mr. Eckhardt:

Thank you for the Report of the Subcommittee on Oversight and Investigations bearing on NCAA enforcement procedures. Needless to say my staff and I will read it with great interest.

Sincerely,

William J. McGill
President

Mr. Bob Eckhardt
Chairman, Subcommittee on
Oversight & Investigations of the
Committee on Interstate and Foreign
Commerce
Congress of the United States
Washington, D.C. 20515

vre/t

Pat

University of the
District of Columbia

4200 CONNECTICUT AVENUE, N.W.,
WASHINGTON, D.C. 20008
202-282-7550

PRESIDENT

MAR 26 1979

The Honorable Bob Eckhardt
U. S. House of Representatives
Washington, D. C. 20515

Dear Mr. Eckhardt:

Thank you for your letter of March 15 in which you enclosed a copy of the report of the Subcommittee on Oversight and Investigations. I look forward to reading it and will share it with the appropriate persons here in the University.

Best wishes.

Sincerely,

Lisle C. Carter, Jr.

WAKE FOREST UNIVERSITY
WINSTON-SALEM, NORTH CAROLINA 27109

OFFICE OF THE PRESIDENT

April 4, 1979

Mr. Bob Eckhardt, Chairman
Subcommittee on Oversight
and Investigations of the
Committee on Interstate and Foreign Commerce
Room 2323, Rayburn House Office Building
Washington DC 20515

Dear Congressman Eckhardt:

I appreciate the copy of the Report of the Subcommittee on Oversight and Investigations bearing upon the enforcement procedures of the NCAA. I agree with the conclusion of your letter that self-correction by the NCAA is preferred over Congressional intrusion. My experience with the NCAA is that it is a very responsible organization and that its strength is dependent on the integrity of the individual schools. Unfortunately, many of the member schools are looking for ways to circumvent the rules instead of using them as a guideline under which to operate.

Please rest assured that we are cognizant of the problems which are involved with the NCAA enforcement procedures. Certainly there have been occasions when the procedures have appeared to be unfair, but on balance, I believe the record of the organization is remarkable. Quite obviously there are many schools which are not being policed as many of us would like them to be.

We are in the process of studying the Subcommittee's report and will do everything we can to encourage appropriate action within the Association to ensure that those who violate the NCAA rules and regulations are dealt with fairly and consistently.

Thank you for the interest that you and the Committee have shown in a matter which is so vital to so many of us in University administration.

Faithfully yours,

James R. Scales
President

JRS:a

cc: Dr. Gene Hooks, Director of Athletics

The University of Tennessee

PRIMARY CAMPUSES:
Knoxville
Memphis
Martin
Chattanooga
Nashville

Office of the President

Suite 800, Andy Holt Tower
Knoxville 37916
Telephone 615 / 974-2241

March 29, 1979

The Honorable Bob Eckhardt
House of Representatives
2323 Rayburn House Office Building
Washington, D. C. 20515

Dear Representative Eckhardt:

Thank you for sending me a copy of the report of the Subcommittee on Oversight and Investigation on the enforcement program of the National Collegiate Athletic Association. From a cursory review of the report, it appears the Subcommittee has responded admirably to the urging of members of the House to undertake this project. You are to be commended for your good work.

We share your opinion that any proposed changes in the NCAA enforcement procedures should be the result of action by the Association, not by Congressional action. You may be assured that all of us at the University of Tennessee who have responsibilities in the athletics area will carefully study the Subcommittee's recommendations and will react according to our perceptions of the best interests of the student athletes and the member institutions when the recommendations are formally considered by the NCAA.

Again, we are pleased to have a copy of the complete report, and we appreciate the expressed concern of the Subcommittee members which it reveals.

Sincerely yours,

Edward J. Boling
President

EJB:ka

cc: Dr. Andrew J. Kozar
Dr. H. Alan Lasater

Winston-Salem State University
WINSTON-SALEM, NORTH CAROLINA 27110

Office of the Chancellor

March 28, 1979

The Honorable Bob Eckhardt
Chairman
House of Representatives
Subcommittee On Oversight And
Investigations of the Committee
On Interstate And Foreign Commerce
Washington, DC 20515

Dear Congressman Eckhardt:

I gratefully acknowledge receipt of the report of the Subcommittee on Oversight and Investigations bearing upon the enforcement procedures of the National Collegiate Athletic Association (NCAA). I shall be please to review the report with interest. Likewise, I will share it with my colleagues and discuss any appropriate action deemed necessary.

Again, thank you for your consideration.

Sincerely,

Douglas Covington
Chancellor

cc: Mr. Clarence Gaines
Athletic Director

ITHACA COLLEGE
Ithaca, New York 14850
TELEPHONE (607) 274-3111
OFFICE OF THE PRESIDENT

March 27, 1979

Hon. Bob Eckhardt, Chairman
Subcommittee on Oversight and Investigations
of the Committee on Interstate and Foreign Commerce
Room 2323
Rayburn House Office Building
Washington, D. C. 20515

Dear Representative Eckhardt:

Thank you very much for sending me the Subcommittee on Oversight and Investigations' report on the enforcement procedures of the National Collegiate Athletic Association.

I will review this report carefully with the College's director of athletics and the dean of the School of Health, Physical Education and Recreation. Ithaca College will certainly work as a member of the NCAA to bring about meaningful and reasonable changes in the NCAA enforcement procedures.

Thank you for bringing this matter to my attention.

Very sincerely,

James J. Whalen

JJW:jcd

7

THE UNIVERSITY OF KANSAS

Office of the Chancellor
223 Strong Hall, Lawrence, Kansas 66045
(913) 864-3131

April 1, 1979

The Honorable Bob Eckhardt
House of Representatives
Congress of the United States
Room 2323 Rayburn House Office Building
Washington, D. C. 30515

Dear Congressman Eckhardt:

This will acknowledge receipt of your March 27 letter and the attached copy of the Report of the Subcommittee on Oversight and Investigations bearing upon the enforcement procedures of the National Collegiate Athletic Association. I appreciate having your letter and the copy of the subcommittee's report. The member schools of the National Collegiate Athletic Association are always looking for ways to improve the Association's enforcement procedures. I believe I am correct in saying that most of us believe the NCAA has done a very commendable job in the enforcement area.

Congressman Eckhardt, I cannot let go by this opportunity to tell you that many of us across the land are terribly disillusioned with some of the activities of the United States Congress. When our nation faces extremely serious problems in the energy field, with inflation, in national defense, and in a variety of other areas, we find it disheartening that the focus of the Congress seems too often to be on finding additional ways to intervene in the life of this nation's citizens and its institutions. I, for one--and I know that many share my views--am increasingly discouraged by the lack of leadership emanating from Washington, especially from the Congress, in dealing with some of these problems. It seems to me that the Congress of the United Sates and your Committee have vastly more important things to do than to be concerned about the enforcement procedures of the National Collegiate Athletic Association.

I thank you for writing. I earnestly hope that you and members of your Committee will permit the higher educational institutions of this country to manage their own affairs with a minimum of federal intervention and federal influence.

Sincerely,

Archie R. Dykes
Chancellor

ARD:jj

Mr. ECKHARDT. Mr. Luken?

Mr. LUKEN. I have nothing to say at this time, Mr. Chairman.

Mr. ECKHARDT. Gentlemen, do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Mr. FLYNN. I do.

Mr. FRANK. I do.

Mr. WRIGHT. I do.

Mr. ECKHARDT. You may proceed.

TESTIMONY OF WILLIAM J. FLYNN, PRESIDENT, NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, ACCOMPANIED BY JAMES FRANK, SECRETARY-TREASURER; CHARLES ALAN WRIGHT, CHAIRMAN, COMMITTEE ON INFRACTIONS; AND WILLIAM B. HUNT, ASSISTANT EXECUTIVE DIRECTOR, ENFORCEMENT PROGRAM

Mr. FLYNN. Mr. Chairman and members of the committee, we appreciate the opportunity to be with you this morning.

I have a very short statement to make.

I was elected president only a short time ago, namely, January 1979. I received your letter in March which suggested that since the council did not have the opportunity to review the report of the 18 recommendations of the subcommittee concerning the enforcement program of the NCAA that we should review them in detail at our next meeting, which was last April, and to report back to you. This was done, and you have received the report. At your suggestion we are here today to discuss it.

As the report states, we have approved about two-thirds of the suggestions from the subcommittee in whole or in part.

I have with me two of my colleagues, the secretary-treasurer of the NCAA, Jim Frank, who is president of Lincoln University in Missouri, and also Prof. Charles Alan Wright from the University of Texas, who is chairman of the infractions committee. They are much more knowledgeable perhaps than I am of many of these questions. Therefore, I will refer to them to help me out in answering your questions. We will try to the best of our ability to answer your questions.

I submit for the record the report which I sent to the chairman.

Mr. ECKHARDT. Excuse me. Did you ask that something be included in the record?

Mr. FLYNN. Yes, the report that I sent to you, if that is appropriate.

Mr. ECKHARDT. Without objection, that will be included in the record.

[Testimony resumes on p. 65.]

[The report referred to follows:]

The National Collegiate Athletic Association

President
WILLIAM J. FLYNN
Boston College
Chestnut Hill, Massachusetts 02167

Executive Director
WALTER BYERS

Secretary-Treasurer
JAMES FRANK
Lincoln University
Jefferson City, Missouri 65101

RECEIVED

June 22, 1979

BOB ECKHARDT, M.C.

The Honorable Bob Eckhardt
U. S. House of Representatives
Room 2323, Rayburn House Office Building
Washington, D. C. 20515

Dear Congressman Eckhardt:

Enclosed you will find my report, on behalf of the NCAA Council, in response to your request that the 1979 Council review the House subcommittee's report on the NCAA enforcement program.

We will be pleased to appear before the subcommittee July 12. The NCAA will be represented by its secretary-treasurer, President James Frank of Lincoln University, and by me, as president of the Association and chairman of the Council. With your permission, we might include an additional member or members of the Council.

We had assumed that a public hearing was in the offing and the suggestion in my May 25 letter, as to a private meeting with myself, President Frank and Professor Charles Alan Wright, was advanced in the thought that since you, personally, had not participated in the 1978 hearings, you might first welcome a personal discussion with the NCAA officers and the chairman of the Committee on Infractions.

Professor Wright, of course, is not a member of the Council, and it would not be appropriate for him to appear to represent the Council. He will be present, however, as chairman of the Committee on Infractions, and will be prepared to answer any questions of the subcommittee as to the Committee on Infractions' policies and procedures.

National Office U S Highway 50 and Nall Avenue • Mission, Kansas
Mailing Address P O Box 1906 • Shawnee Mission, Kansas 66222 • Telephone 913/384-3220

We will await further direction from you as to the time and place of the July 12 hearing and the procedures we are to observe at that time.

Sincerely,

William J. Flynn
President

WJF:lls

Enclosure

cc: Mr. James Frank
NCAA Committee on Infractions
NCAA Council

The National Collegiate Athletic Association

President
WILLIAM J. FLYNN
Boston College
Chestnut Hill, Massachusetts 02167

Executive Director
WALTER BYERS

Secretary-Treasurer
JAMES FRANK
Lincoln University
Jefferson City, Missouri 65101

June 22, 1979

The Honorable Bob Eckhardt, Chairman
Subcommittee on Oversight and Investigations
U. S. House of Representatives
Washington, D.C. 20515

Dear Congressman Eckhardt:

In my March 19 letter to you, I indicated that following the April 23-25 meeting of the NCAA Council, I would write to you in detail concerning the 1979 Council's review of the recommendations in the December 1978 report of the House Subcommittee on Oversight and Investigations. Pursuant to our subsequent correspondence of May 25 and June 6, this letter is intended to report to you the results of the Council's deliberations and submit additional observations which I hope will prove of value.

This letter also provides the first opportunity to my knowledge for the Association's leadership to communicate with you personally concerning the NCAA enforcement program. Thus, I would like to preface the remainder of this letter by expressing my appreciation for your interest in considering the viewpoint of the 18-person NCAA Council, which is elected by the NCAA membership to represent it during the interim between the annual NCAA Conventions.

The 1979 NCAA Council is composed of five new members, including myself. The remaining 13 members served on the 1978 Council and, in some instances, previous Councils. President Frank has been a continuous member of the Council since January 1975.

The 1978 NCAA Council did have an opportunity to review the report of the House Subcommittee through advance copies which were made available to it. This was done prior to the 1979 NCAA Convention. The 1979 Council thought it was most appropriate, as you suggest, for it also to review in detail the entire report and its recommendations.

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As you undoubtedly are aware from your knowledge of the hearings conducted by the subcommittee in 1978, various opinions--often conflicting--were expressed by witnesses related to the procedures which would be most desirable in implementing the Association's enforcement program. I am enclosing (Attachment A) a copy of the written statement presented to the subcommittee by Charles Alan Wright, professor of law at the University of Texas, inasmuch as Mr. Wright is a nationally known authority on constitutional law and federal court procedures, and he now serves as the chairman of the NCAA Committee on Infractions. In my opinion, Mr. Wright gives a thorough and astute analysis of many of the issues raised by the recommendations in the subcommittee's report, and I believe his appraisal of the procedures implemented at present in the Association's enforcement program should be given careful consideration. In particular, may I direct your attention to the final paragraph of Mr. Wright's statement, which acknowledges his interest in continually seeking to improve the program. He concludes:

> "But I think that the whole record will show that the NCAA is entitled to a verdict of an honest effort to run a scrupulously fair enforcement program and of good success in achieving that goal."

The minority view contained in the subcommittee's own report states:

> "We believe that those administering the NCAA enforcement program have been, are now, and will continue to be fairminded persons who will make every effort to deal with those with whom they come into contact in a fair way. We also note that the Subcommittee report does not find that the NCAA enforcement program is corrupt; does not find wrong-doing on the part of those administering it; and goes to some effort to point out that it is not challenging the integrity of the members of the NCAA Council nor the Committee on Infractions.

> "With these thoughts in mind, especially the thought that we are dealing with persons of exceptionally high integrity and outstanding reputations for fairness, we advance or concur in certain recommendations that we believe will enhance the perception of fairness . . . Even without these changes, however, we still believe that the NCAA enforcement procedure is intrinsically fair and evenhanded."

Attachment A may be found in Part 2--NCAA Enforcement program, Serial No. 96-60 on page [illegible].

My reference to these statements is not intended to be a blind defense of the Association's present enforcement procedures or to minimize the consideration due the recommendations made in the subcommittee's report. Rather, I have cited these opinions to assist in properly addressing this general subject which is of serious concern to me personally.

As you know, the subcommittee report contains 18 recommendations. Twelve of those recommendations were endorsed in whole or in principle by both the majority and minority reports of the subcommittee. Eleven of the 12 recommendations have received affirmative responsive action from the NCAA Council or Committee on Infractions. Specifically, six of the recommendations already have been implemented in the present enforcement program, two have been partially implemented, and three are being reviewed for consideration by the Council during its August meeting.

The six proposals already implemented in the NCAA enforcement program are: (1) development of a statute of limitations; (2) establishment of evidentiary standards; (3) "elimination" of a presumed "gag" rule, which, in fact, did not exist; (4) facilitating student-athletes' direct access to enforcement proceedings; (5) clarification of the enforcement policy prohibiting ex parte contacts with the Committee on Infractions or Council, and (6) elimination of the Committee on Infractions' supervision of the enforcement staff. The discussion of the Council in reference to each of these proposals is set forth in the enclosed portion of the April 23-25, 1979, Council minutes (Attachment B).

The two proposals which have been partially implemented are: (1) providing advice as to self-incrimination and "right-to-counsel," and (2) establishment of a procedure for providing advance eligibility determinations. Those proposals to be considered further by the Council in its August meeting are: (1) specifying the standard of review for Council appeals in infractions cases; (2) appointment of a staff clerk to the Committee on Infractions, and (3) specifying a time limit between preliminary and official inquiries. The Council's review of each of these five recommendations also is set forth in the enclosed copy of the April Council minutes.

Only one of the 12 proposals which received both majority and minority support has not found favor with the Council, and that is the recommendation that transcripts of hearings be provided in infractions cases.

As noted in the April Council minutes, this proposal received minority support only if such transcripts were made available under very limited circumstances; further, the report recognized the problems inherent in providing such transcripts under the Association's administrative procedures. In this regard, your attention is directed to pages 22-24 of Mr. Wright's statement, which sets forth his analysis of this proposal. Finally, it should be emphasized that the tape-recording of each infractions hearing is available for review by the institution at the NCAA's national office, and the NCAA has gone to considerable expense to improve the quality of the recordings since the House Subcommittee's inquiry was initiated.

Six additional recommendations received support in the subcommittee's majority report, but were rejected in the minority report signed by five Congressmen. Of these six proposals, one (to permit participation by former student-athletes and athletic representatives in infractions hearings) has been implemented in part (for such student-athletes with remaining eligibility). Another (to revise and recodify substantive rules) has been referred by the Council to the staff for additional research after an initial report from the NCAA Constitution and Bylaws Committee. The other four recommendations, which the Council does not support, are: (1) conducting joint investigations with institutional personnel; (2) directing the NCAA, rather than the individual institution, to make declarations of ineligibility; (3) establishing a schedule of penalties for "major" and "minor" offenses, and (4) the appointment of a "blue ribbon" commission to review the Association's enforcement program. The rationale for the Council's position in each instance is set forth in the April Council minutes, as well as in the minutes of previous Council meetings during which these same recommendations have been extensively reviewed (the August and October 1978 Council minutes are enclosed as Attachment C). In addition, Mr. Wright has reviewed several of these proposals in his written statement to the subcommittee, and the subcommittee's minority report contains a detailed commentary on each of the four proposals in question.

In summary, the NCAA Council and Committee on Infractions have now reviewed proposals emanating from the House Subcommittee inquiry on at least three separate occasions over a period of time approaching one full year. From the original list of 46 proposals

(reviewed in the November 22, 1978, letter enclosed as Attachment D which was forwarded from the NCAA officers to Messrs. Moss and Lent), a total of 18 proposals eventually were included in the subcommittee's final report. Of those 18 recommendations, 12 received support in both the majority and minority reports of the subcommittee. Of those 12, 11 presently are implemented in whole or in part in the Association's existing enforcement procedure, or are in the process of being reviewed further by the Council.

In my personal judgment, any objective view of this information demonstrates that the NCAA Council has approached the recommendations of the subcommittee in an open-minded fashion, and has taken or supported actions of those recommendations which, in its careful and considered opinion, would represent improvement in the NCAA enforcement program. In this regard, the Association's membership adopted six amendments to the official NCAA enforcement procedure which were sponsored by the Council at the 1979 NCAA Convention.

It should be noted that an additional proposal (drafted by a University of Denver attorney who testified before the House Subcommittee during the NCAA hearings) was distributed to all NCAA members and then presented for consideration during the 1979 Convention and contained references to virtually every recommendation in the subcommittee's majority report. This proposal to revise extensively the existing NCAA enforcement procedure was defeated overwhelmingly by the Association's membership. A subsequent resolution to refer the Denver proposal for an extensive evaluation by a select group of university legal counselors also was defeated almost unanimously by vote of the membership.

I believe the actions taken by the Association's member institutions in considering these amendments during the 1979 Convention indicate strong support for the enforcement procedures which have been developed through experience and study with the approval of the Association's membership. The manner in which these procedures have been developed, as well as the Association's successful legal record in the federal courts, clearly supports the fact that the NCAA has exercised extreme care to make certain that the Association's enforcement process is consistent with fundamental concepts of fairness and due process, notwithstanding negative perceptions by some members found guilty of serious transgressions.

The remaining recommendations of the House Subcommittee which have not yet received support of the NCAA Council or membership are stated in detail in the subcommittee's report, which is available to every member institution. If, in fact, there exists within the NCAA membership a significant conviction that further changes in the Association's enforcement program are necessary, clearly the House Subcommittee's report and record will provide the basis for initiating such proposals. I should add that the Council is undertaking correspondence with those institutions which have indicated by their testimony to the subcommittee some dissatisfaction with the NCAA enforcement program in order that the Council may evaluate specific proposals they may have in mind in addition to those adopted by the 1979 Convention.

Once again, the Council wishes to report that although reasonable individuals may differ in their viewpoints of certain procedures which would best serve the interests of the NCAA membership in maintaining a fair and effective enforcement program, the Council has diligently attempted to respond in good faith to each of the recommendations submitted to it. To do otherwise and endorse or promote recommendations with which it does not honestly concur would compromise the integrity of individual Council members and, in effect, serve to disregard the demonstrated and strong support of the majority of the Association's member institutions for existing enforcement procedures.

It is the Council's position that the record before the subcommittee clearly indicates both the willingness of this Association to react constructively to recommended changes in its enforcement procedures and the support of the Association's membership for the basic fairness of the procedures which they have approved and adopted. It is the hope of each member of the NCAA Council that you will concur in our judgment that by any reasonable standard the House Subcommittee's inquiry has accomplished its legitimate purposes.

Thank you for your time and consideration in reviewing this information.

Sincerely,

William J. Flynn

WJF:jb
Enclosures
cc: NCAA Council

ATTACHMENT B

9. Governmental Affairs Committee (Continued). The Council turned to consideration of the December 1978 report of the House Subcommittee on Oversight and Investigations, reviewing the recommendations in the subcommittee majority and minority reports and reconsidering the previous Council review of each of the 18 recommendations cited.

   a. The majority and minority reports agreed that a statute of limitations should be specified in the enforcement procedure. The Council previously proposed and the 1979 NCAA Convention adopted an amendment [Proposal No. 66, Enforcement Procedure 3-(c)] to confirm the time period subject to investigation in an infractions case, as suggested by the recommendation.

   b. The majority and minority reports agreed that evidentiary standards should be established in the enforcement procedure. The Council previously proposed and the 1979 NCAA Convention adopted an amendment [Proposal No. 66, Enforcement Procedure 4-(a)-(3) and 4-(b)-(2)] to clarify the existing Committee on Infractions procedures in that regard.

c. The majority report recommended that the "gag" rule on institutions in enforcement procedures be liberalized. The minority agreed with that principle but correctly pointed out that no "gag" rule exists in the NCAA procedure inasmuch as an institution in an infractions case can make any statements it wishes. The only restrictions in that regard are placed on the Council, the Committee on Infractions and the staff during the processing of a case. Subsequent to the final hearing in a case, the Association does ask the institution not to announce the final disposition of the case until the official press release is available. The Council agreed that these procedures should be explained to the new subcommittee chairman.

d. The majority and minority reports agreed that a more narrow standard should be specified for review of an infractions case by the Council. The Council noted, as indicated in earlier correspondence with the subcommittee, that this matter presently is under consideration by the Council, and diverging views exist within the group. The Association's legal counsel has suggested that the full appeal opportunity presently available to a member institution should not be limited. The subject will be reviewed again during the Council's August meeting.

(1) The chairman of the Committee on Infractions had asked that the Council be informed of the committee's discussion of this recommendation. He noted that the institution currently has the best possible appeal opportunity in that the Council is enabled to review any facet of the case. Any change made in this procedure would only narrow the scope of the institution's appeal opportunity.

(2) It was the sense of the meeting that, during its review of this matter in August, the Council would consider an amendment to clarify the existing Council review procedure.

e. The majority and minority reports agreed in regard to a recommendation that a staff clerk be appointed to work with the Committee on Infractions. This specific suggestion had not been considered previously by the Council. The minority report noted that this suggestion evolved from erroneous charges concerning the relationship between the enforcement staff and the Committee on Infractions; further, that the primary purpose of such a change would relate to appearance rather than substance. The minority report did not indicate that a clandestine arrangement presently exists between the staff and the committee.

(1) It was noted that the House subcommittee itself does not follow this procedure in its own structure; further, that the NCAA procedure appears consistent with that of various government agencies.

(2) It was reported that, in order to implement such a recommendation from an organizational standpoint, it would be necessary to assign the staff clerk directly to the Committee on Infractions but place the individual on the general administration staff rather than in the enforcement department. The Council agreed to study the feasibility of this proposal further in the August meeting.

f. The majority and minority reports agreed that involved student-athletes should be permitted access to enforcement hearings. The Council earlier had reported that this has been the case in both infractions and eligibility hearings for some time. It also was noted that Case No. 58 was adopted in part as a response to comments in the subcommittee hearings to permit the payment of legal expenses for involved student-athletes; further, that an institution is permitted to pay transportation costs for its student-athletes to attend such hearings.

g. The majority and minority reports agreed that ex parte contacts with the Committee on Infractions and the Council should be prohibited. The Committee on Infractions and the Council concur that new information related to findings should not be presented on an ex parte basis, and the 1979 Convention adopted an amendment [Proposal No. 67, Enforcement Procedure 4-(b)-(1) and 12-(c)-(13)] to clarify the present procedure prohibiting such ex parte contacts.

h. The majority report recommended that the institution be provided a written transcript of an infractions hearing, and the minority agreed in principle that a transcript could be provided under certain limited circumstances. The Council discussed this recommendation at length during previous meetings and determined to maintain the present NCAA policy.

(1) In reviewing this recommendation again, it was noted that considerable disagreement exists among lawyers regarding the requirements necessary to provide due process in the varying applications of the law. The primary questions are whether the NCAA's procedures are fair to those involved and whether they are effective. In those regards, it has been the NCAA's position that the present procedure is fair to all parties concerned and that a written transcript would provide a further opportunity for representatives of an institution to expose selected favorite portions of the information therein, including comments taken out of context. This also would diminish sources of information in future infractions cases. The Association must depend upon voluntary information sources; and such a procedure would destroy the confidentiality protecting individuals involved in the case, including those at the institution.

(2) It was emphasized that the recorded proceedings of infractions cases are available to the institution for review at the NCAA national office, and the Association has gone to considerable expense to improve the quality of the recordings themselves since the House subcommittee hearings were initiated.

(3) It was VOTED

That the Council affirm its previous position regarding written transcripts and that the House subcommittee be informed that the recorded proceedings are available to be reviewed by authorized representatives of the institution; this policy has proved to be satisfactory for the

Association's administrative procedures, and any member is privileged to initiate an amendment for consideration by an NCAA Convention to require that written transcripts be provided."

i. The majority report recommended and the minority report agreed in principle that the enforcement staff should not be supervised by the Committee on Infractions. The 1979 Convention adopted Council-sponsored amendments [Proposal Nos. 62 and 63, Enforcement Procedure 1-(a); 2-(b), (c) and (d); 3-(b); 12-(b), and 12-(c)-(1)] to effect that adjustment in procedures and separate the Committee on Infractions from supervision of the enforcement staff.

j. The majority report recommended that there be a specific limit established on the time period between a preliminary inquiry and an official inquiry. The minority report agreed that the time period should be "reasonable," which is consistent with present enforcement practice. It was noted that this criticism stemmed from earlier instances when there were appreciable delays in processing an infractions case, but the expanded enforcement staff has removed for the most part the backlog of such cases and is staying more current with its investigative assignments. Messrs. Scott and Geraud suggested periodic "progress reports" to the involved institution during this time period. It was agreed that the Council would consider legislation in its August meeting to specify in the enforcement procedure that the time period is to be "reasonable" and that contact is to be maintained with the institution in the interim.

k. The majority report recommended that self-incrimination and "right-to-counsel" warnings be given to all persons contacted by investigators. The minority report disagreed, except under circumstances similar to those described under present NCAA procedures. The Council earlier had reviewed this proposal and supported the existing NCAA standards.

(1) The Council observed that self-incrimination warnings are given per Enforcement Procedure 12-(a)-(6) and that the subcommittee chairman should be informed of those provisions; further, anyone whose interests may be affected adversely is permitted on request to have legal counsel present during questioning by an enforcement representative. In addition, it was noted that, inasmuch as the Association has no subpoena power in its procedures, witnesses must voluntarily provide information; and restrictive procedures such as this recommendation would diminish the effectiveness of the investigative process and, in fact, could deter individuals from involvement in that process.

(2) It was VOTED

"That the Council affirm the present policy in this regard and inform the subcommittee chairman of the provisions that do exist regarding self-incrimination and right to counsel."

l. The majority report recommended that a procedure be established for advance determination of eligibility; the minority report agreed in principle and

asked the Council to review the issue. It was noted that this recommendation deals with a prospective student-athlete (one who is not yet enrolled in a member institution) and whether the Eligibility Committee should entertain requests for restoration of eligibility from such individuals, rather than from their eventual collegiate institutions. The Council was informed that the Eligibility Committee does attempt to advise prospective student-athletes generally, based on the information available at the time, and actually has considered cases involving the eligibility of such individuals under the provisions of Bylaw 4-1-(i) in advance of their college enrollment. Further, the national office provides eligibility interpretations to prospective student-athletes. It was agreed that the subcommittee chairman should be informed of the fact that the Association thus meets this recommendation to that extent.

m. The majority report recommended that former student-athletes and representatives of an institution's athletic interests be permitted to participate in infractions proceedings involving that institution. The minority report agreed only in the case of former student-athletes who have remaining eligibility and disagreed in the matter of athletic representatives. The Council was informed that involvement of former student-athletes with remaining eligibility rarely occurs, and a request of that nature never has been received. If it were, it is assumed it would be permitted. Including representatives of athletic interests, however, is contrary to the Association's fundamental policy of institutional control and would serve only to retard the enforcement procedures. For example, the minority report includes information indicating that if representatives (and their legal counsel) had been permitted to participate in a recent infractions hearing, more than 75 individuals could have been involved. It was the sense of the meeting that the subcommittee chairman should be informed of the Council's previous and continued support of the existing NCAA policy regarding representatives and of the fact that the Committee on Infractions is reviewing the matter of including in the proceedings an involved former student-athlete who has remaining eligibility.

n. The majority report recommended that the NCAA conduct joint and parallel investigations with the institution's personnel. The minority report strongly disagreed, and the Council earlier rejected this suggestion. It was emphasized again that this recommendation (as it relates to joint investigations) is fundamentally unworkable as an investigative procedure, a position sustained in reports from various agencies involved in field investigative work. Further, it was noted that joint investigations would serve to delay and deter the determination of facts in a case. It was noted also that the House subcommittee itself does not conduct joint investigations.

It was VOTED

"That the Council affirm its previous decision to reject this recommendation."

o. The majority report recommended that the NCAA, rather than its member institutions, make declarations of individual ineligibility; the minority report disagreed, as did the Council in its earlier deliberations. The Council emphasized, as it did in 1978, that the NCAA is an organization of institutions, not individuals; the provisions of O.1. 11 are fundamental to the concept of institutional control. It was noted that involved student-athletes are permitted to participate in the Association's eligibility procedures and that the Committee on Infractions is being asked by the Eligibility Committee to expand its notification to an involved institution regarding possible individual eligibility applications [see Minute No. 5-a-(2) of these minutes.]

It was VOTED

"That the Council affirm its previous opposition to this recommendation."

p. The majority report recommended "revision and recodification of substantive rules." The minority report disagreed, and the Council referred the matter to the Constitution and Bylaws Committee. The report of that committee was received previously, and the Council had directed the staff to determine the specific "substantive rules" in question and pursue the matter further. [See Minute No. 3-d-(1)-(b) of these minutes.] The Council agreed that the subcommittee also should be informed of the provisions of Constitution 4-2-(d), which require member institutions to review appropriate portions of the Association's regulations annually with each student-athlete, and of the procedure by which the Association annually disseminates from 80,000 to 100,000 copies of A Guide for the College-Bound Student-Athlete, which summarizes the basic legislation affecting those individuals.

q. The majority report recommended that a schedule of major and minor offenses be established; the minority report disagreed, as did the Council. The Council again cited the difficulty in predetermining the severity of violations and resultant penalties, noting that the subcommittee minority itself had suggested such a "schedule" might invite some institutions to take the risk of minor violations. The August 1978 comments of the chairman of the Committee on Infractions were reviewed. The chairman termed this suggestion impractical as an administrative procedure because it would not take into account such factors as institutional cooperation in a case, previous penalties in similar cases or the institution's involvement in previous violations. The Council agreed that this proposal would be contrary to the fundamental concept of considering all related circumstances in a situation before determining the severity of a penalty.

r. The majority report recommended establishment of a blue-ribbon commission to review the Association's enforcement procedures; the minority report disagreed. The Council previously agreed that the House subcommittee itself was a "blue-ribbon" commission, for practical purposes; and to repeat this process would be redundant and unnecessary. The Council again emphasized that the Association's enforcement procedures are under constant study and alteration, and the Association welcomes that scrutiny. It was noted,

however, that appointment of another body to repeat that process would be wasteful in time and money; further, the Council's action to do so would imply that the Association's procedures are wrong, which they are not.

- It was VOTED

"That the Council affirm its January 1979 position opposing this recommendation."

s. President Flynn said he would make a full report to the House subcommittee chairman, noting that the Council has carefully reviewed all of the recommendations again and has taken positive action on a significant majority of those recommendations. He emphasized that the Council has made a sincere, good-faith effort to comply with Congressman Eckhardt's request. It was suggested that the officers consider seeking a personal meeting with the congressman to review these matters.

ATTACHMENT C

12. Committee on Infractions. Charles A. Wright, incoming chairman, joined the meeting to present the committee's recommendations in regard to various topics discussed in the joint meeting of the committee and the Council in April. In the interim, the House Subcommittee on Oversight and Investigations had submitted a compilation of 48 recommendations presented to the subcommittee by various

witnesses in its hearings regarding the Association's enforcement program. The subcommittee asked that the Council consider those recommendations, despite the fact that the Association still had not been given the opportunity to testify in the hearings.

a. The Council turned its attention to the submission by the House subcommittee. Mr. Wright reported that the Committee on Infractions had studied the recommendations and had not attempted to base its reactions on political considerations. He noted that the subcommittee emphasized the 48 recommendations were not necessarily supported by the subcommittee but merely were suggestions presented by witnesses. He emphasized that most of the items were proposed by individuals whose only involvement with the NCAA enforcement procedure had been in one infractions case; that while some of the recommendations were well-meaning, they were based on less than a full range of understanding regarding the enforcement procedure. Some of the recommendations, he asserted, would be extremely detrimental to the effectiveness of the Association's enforcement program, while others would be possible to implement but not necessarily desirable. The Council proceeded to consider each of the 48 recommendations, combining similar topics where appropriate. A summary of the recommendations and the reactions of the Council and/or Committee on Infractions are presented here as a matter of record.

(1) Initiation of an NCAA Infractions Investigation.

(a) "The member institution should be informed at the time a complaint is lodged with the NCAA and provided a description of the nature of such complaint." It was noted that many possible infractions cases, based on "the initial trickle of evidence," are not substantiated by subsequent investigation. Further, the reality of the situation is that not every institution is intent on learning the facts and correcting violations in its athletic program; if all institutions were so inclined, there would be no need for an enforcement program. Most institutions do have some knowledge of possible violations at the time a complaint is lodged with the NCAA, but in many cases there is considerable pressure at the institutional level to overlook or avoid acquiring detailed knowledge of possible violations.

(b) "The committee with oversight responsibility over the enforcement staff should determine whether preliminary evidence warrants an official inquiry." (There were similar suggestions regarding the relationship between the enforcement staff and the Committee on Infractions and appropriate functions for each.) The implication in this charge is that the committee is biased because it is familiar with the evidence when the official inquiry is filed. In fact, Mr. Wright explained, the committee merely authorizes the official inquiry and does not have the evidential background unless it is the type of case which results in a private reprimand. The committee believes the establishment of a second committee to oversee the enforcement staff would diminish the

efficiency and effectiveness of the present system. A double committee structure would delay the entire enforcement process; further, no system would preclude personal judgments by involved committee members concerning individual staff members.

(i) Mr. Byers noted the Executive Committee position regarding charges of improper conduct by staff members [see minute No. 3-d-(8) of these minutes]. If the staff were authorized to issue official inquiries without involvement by the Committee on Infractions, he suggested a procedure might be established by which the staff's actions in that regard would be reviewed periodically by the Council or a committee of the Council.

(ii) It was VOTED

"That the staff be directed to prepare an amendment to the enforcement procedure for consideration by the Council in its October meeting which would authorize the staff to issue letters of official inquiry and provide for a periodic staff report regarding its decisions in this regard to the appropriate NCAA body; further, that the Committee on Infractions be asked for its recommendation regarding that proposed amendment once it is prepared."

(2) The NCAA Investigation.

(a) "Investigations of potential NCAA infractions should be parallel and contemporaneous between the involved member institution and the NCAA enforcement staff." (There were similar suggestions regarding parallel investigative activities.) Mr. Wright noted that this suggestion is "absolutely unfeasible" and that the committee believes two independent investigations--by the institution and by the enforcement staff--provide checks and balances which protect the integrity of all parties. A combined fact-finding procedure would make it more difficult to schedule interviews and hearings and to obtain valid information from most witnesses; further, such a process could be used by an institution to deter the investigation. It was observed that the House subcommittee does not employ a parallel investigative technique in its own procedures.

(b) "All individuals subject to interview attendant to an NCAA infractions case shall be notified of the right to counsel of their choice at the time of the interview." Mr. Wright suggested that the individuals making this recommendation may not have been aware of Enforcement Procedure 12-(h)-(5), which permits attendance of personal legal counsel in any interview in which the information developed might be detrimental to the interests of the individual

being interviewed. Other than in that instance, notification to every individual interviewed would not only be unnecessary and cumbersome but would insert in this administrative procedure a greater protection than that afforded in criminal investigations, where the individual is informed of his rights only at the point of arrest.

(c) "Individuals being interviewed relative to an NCAA infractions case should have the right to record such interviews." The Committee on Infractions does not believe this would be a good procedure but believes that if it were implemented, the investigator also should tape the interview. Mr. Hunt noted that tape recording usually has an inhibiting effect on the free flow of information and also could destroy the confidentiality assured the member institution inasmuch as the recording, particularly selected and possibly distorted portions thereof, could be provided to or obtained by the news media.

(d) "At all times, individuals who have reported information concerning an NCAA infractions case should be given the opportunity to review information set forth in the report of the investigation and be provided the opportunity to make additions or corrections." Mr. Wright reported that this privilege has been a part of the Association's procedure for the past year and appears in the printed procedure as Section 12-(a)-(9), but he noted that the critics claim offering that privilege "whenever possible" is a camouflage. He stated that the charge is incorrect; that the enforcement staff affords that privilege whenever the individual involved is available. Further, he emphasized that although the Committee on Infractions gives less weight to statements that have not been verified, information may remain valid even if its initial source is not available for review.

(e) "Member institutions should be provided an outline or direction to be followed in responding to an NCAA investigation." It was noted that this now is provided through correspondence with the institution, as well as through implementation of Section 12-(a)-(14), which apparently answers this recommendation. However, in one recent case, the institution chose to ignore such assistance.

(f) "The institution should have a staff member present whenever a student-athlete is interviewed on campus or in the locale of the campus, unless the student-athlete objects." Mr. Wright reported that this procedure is an established part of the Association's policy and is set forth in Enforcement Procedure 12-(a)-(3) and (4); further, the decision is not left solely to the student-athlete.

(g) "Immunity should not be granted to an individual who knowingly engaged in serious violations." Mr. Wright reported that immunity is granted only in rare instances and only to student-athletes.

It was emphasized that the enforcement procedure is designed primarily to determine institutions which are violating the Association's rules, rather than to punish student-athletes involved in such cases. The executive director expressed the opinion that immunity should be granted more frequently if such action would substantially assist an investigation.

(h) "Allegations should be clear and specific." The committee agrees and believes they are; further, steps have been taken to clarify references to the rules involved in the letter of official inquiry.

(3) The Hearing Process.

(a) "All individuals, including former student-athletes and representatives of the university's athletic interests, subject to a charge of possible violation of NCAA legislation should have the right to notice of the charges and the right to appear with counsel before the Committee on Infractions as well as the NCAA Council should appeal be taken." Mr. Wright said this is consistent with present Association practice with the exception that it is not extended to former student-athletes and representatives of athletic interests because the Association has no jurisdiction over those individuals except to direct an institution to sever certain relationships with representatives of its athletic interests (i.e., under present policies, recruiting activities of a representative). Extending this policy to include such individuals would complicate and delay the proceedings; further, the institution has the responsibility to interview such persons and represent their views in any appeal.

(b) "There should be a verbatim transcription taken of all infractions case hearings and a usable transcript should be provided to member institutions as well as to other parties." The Committee on Infractions considers this a substantial issue and discussed it with the Council in April. Mr. Wright said such a procedure would be a major, though not a fatal, change, noting that "selective leaking" of the information in a transcript would destroy the confidentiality afforded the member institution, result in comments being quoted out of context and possibly result in serious unsubstantiated allegations regarding individuals appearing in the news media. Further, he believes the presence of a court reporter would inhibit the present free exchange of conversation, would create a courtroom type of setting, would reduce the hours the committee can meet to the working day of the court reporter (the committee often meets throughout the day and well into the evening hours) and would increase the costs of the enforcement procedure. The Committee on Infractions has recommended, however, that a higher-quality recording system be purchased to improve the quality of taped hearings, which no institution is permitted to hear in the NCAA national office.

(c) "There should be a right of both the NCAA and the member institution to call key witnesses to appear before the Committee on Infractions or the NCAA Council." Mr. Wright reported that the committee is empowered to call any witnesses it deems necessary but generally

53-237 O - 79 - 4

does not because of costs involved, the reluctance to pattern the hearing after a formal legal proceeding and the lack of subpoena power to require appearance of witnesses. He emphasized that the individuals permitted to appear in behalf of the institution are identified clearly in Enforcement Procedure 12-(c)-(5).

(d) "Section 12-(c)-(9) should be amended to provide that the worksheet prepared by the enforcement staff be submitted to both the Infractions Committee and the member institution and only at the time at which the hearing commenced." Mr. Wright termed this a "frivolous point," explaining that the allegation worksheet used by the committee is only a "notepad" with the same listing of alleged violations and rules references contained in the letter of official inquiry.

(e) "Section 12-(c)-(12) and (13) should be amended to provide that any time the Committee on Infractions requests information from either source, the institution or the investigative staff, that the other party be allowed to be involved in that process." Mr. Wright stated that this is the practice followed by the committee in regard to new information and that subparagraph (13) will be revised to clarify that point. He emphasized that the committee does not consider ex parte information or accept new evidence on that basis.

(f) "There should be some type of standard of proof whereby conflicts of evidence are resolved and some standard of evidence-gathering whereby the accuracy of information can be readily assured." (There was a similar suggestion regarding proof of evidence.) The committee believes it does employ a reasonable standard of proof with the burden clearly on the enforcement staff, but agrees that it is not clearly defined in the printed procedure and intends to submit appropriate language toward that end.

(4) Sanctions.

(a) "A distinction should be made between major and minor violations with attention directed to major violations and some standard established for appropriate penalties based upon the nature of the violation." (Other recommendations also dealt with this area.) Mr. Wright noted that this is not a new recommendation, and the committee's position is that such a procedure is impractical in an administrative process because it does not take into account such factors as institutional cooperation in a case, previous penalties in similar cases or the institution's involvement in previous violations.

(b) "That student-athletes' ineligibility declarations should be made by the NCAA, as opposed to the member institution, and only after a due process hearing is provided to the involved student-athlete, who has had opportunity to call witnesses before the hearing body."

(Other suggestions were made regarding determination of eligibility.) The committee believes this would be a major mistake inasmuch as the Association is an organization of institutions, rather than individuals, and institutional responsibility would be destroyed by this recommendation. It was noted that the vast majority of eligibility cases (which are not reviewed by the Committee on Infractions) are originated by the institutions themselves, rather than stemming from an infractions case; if the institution were not required to apply eligibility rules, some would choose not to report an eligibility violation or raise questions regarding a student-athlete's eligibility. Further, the attempt to involve the NCAA in every eligibility case would result in difficult, if not impossible, administrative problems. Mr. Toner, chairman of the Eligibility Committee, agreed with that assessment, adding that the NCAA and allied conferences would be required to add additional personnel if the institution were not responsible in this area.

(c) "Sanctions should not go beyond the involved sport; i.e., violations in a football program solely should not result in a probation of the entire athletic program." Mr. Wright stated that this is exactly the policy of the Committee on Infractions. As a general rule, the only instance in which sanctions extend to an entire athletic program is when the institution has violated the conditions and obligations of membership set forth in Constitution 4-2. The Council noted that this recommendation was made by two individuals whose institutions violated those constitutional provisions.

(d) "Section 12-(e)-(1) should be amended to provide that if further information is obtained from the enforcement staff concerning penalties, the member institution involved should be afforded an opportunity to provide its input regarding the appropriate penalty." Mr. Wright reminded the Council that the staff does not recommend penalties in any case. Its only input in that area is to provide factual data regarding penalties assessed in previous cases. The involved institution does not know the details of those cases and, in any event, has been afforded a full opportunity to present its position regarding appropriate penalties.

(e) "There should be an even application of the rules. Athletic dormitories which may have private swimming pools or be air-conditioned, with year-around training tables (which are not available to the student body generally) should not be overlooked while less serious arrangements are pursued." The committee agrees that rules should be applied evenly and believes this is the case at this time. Mr. Wright noted that athletic dormitories would not appear to be a question for consideration by the Committee on Infractions inasmuch as such dormitories are treated only in a recommended policy of the Association and not in the constitution or bylaws.

(f) "Except in very serious financial aid violations, it is inappropriate to hold student-athletes accountable; rather, coaches and institutions should be accountable." Mr. Wright repeated that the Committee on Infractions does deal with institutional penalties and involvement by institutional personnel, not with student-athletes. Mr. Hunt repeated that the Council's Subcommittee on Eligibility Appeals does give significant or complete restoration of eligibility in most cases because the circumstances warrant such relief.

(g) "An institution's 'due process' hearing under Recommended Policy 13 should be conducted by an arbitrator supplied by the American Arbitration Association." Mr. Wright said he knew of no knowledgeable individual who would support such a suggestion, citing the obvious administration difficulties involved, as well as the problem of uneven application of rules in arbitration decisions because precedent is not a factor in such proceedings.

(5) Appeal.

(a) "The appeal to the NCAA Council should be modified in that it is often an exercise in futility and merely a rubber stamp of the decisions made by the Committee on Infractions." Mr. Wright reported that the committee does not believe this is true but that analysis of this comment should be left to the Council. Mr. Hunt estimated that the Council had made changes, including several which were significant, in approximately half of the most recent appeals. The executive director emphasized that the Council should not be concerned about "numbers." In fact, there should not be numerous Council changes if the committee is performing adequately in view of the fact that the same committee hears all cases and balances penalties from case to case, unlike the judicial process involving rulings by different courts at different levels in different geographic areas.

(b) "All individuals subject to penalty should have the right to appeal independent of the involved member institutions." It was reemphasized that the NCAA is an organization of institutions, not individuals; the institution has the responsibility to represent the interests of individuals connected with it in NCAA proceedings.

(c) "As long as minor violations can continue to result in a declaration of ineligibility, the Eligibility Committee should be entirely free to restore eligibility without any penalty at all." The Council noted that this is exactly the case under current NCAA procedures.

(d) "More time should be provided to an institution for the purpose of presenting its case on appeal." Mr. Wright said this is left to the discretion of the Council but noted that the institution is granted more time in NCAA procedures than attorneys are granted to present cases on appeal in a court of law.

(6) Miscellaneous.

(a) "There should be established some type of statute of limitations as there becomes a point in time when an infraction becomes so stale and the requisite penalty pointless." Mr. Wright reported that the committee is somewhat sympathetic to this recommendation. He noted that the staff generally observes only a four-year period for investigating violations, but that some recent cases have been more dated in origin. However, he said some allegations are so serious that they should be investigated, regardless of the time factor; further, a pattern of violations may be established involving the same individuals. The committee is aware of problems caused by delay in completing a case; the expanded enforcement staff has almost eliminated the backlog of cases, with a few major cases remaining in that category.

(b) "The NCAA should appoint an impartial and objective committee composed of knowledgeable persons not directly connected with the Association's enforcement program to conduct a constructive review of the current practices and procedures; and, if necessary, such committee should report its findings to the Subcommittee on Oversight and Investigations as well as to the NCAA Council." Mr. Wright said the Committee on Infractions welcomes anyone to look at the enforcement program but wondered if the House subcommittee itself--which has been investigating the Association and its enforcement program for months--does not constitute that type of "blue-ribbon" committee. The executive director reminded the Council that a committee of the type recommended (in fact, including at least one of the individuals suggested by a House subcommittee witness making this recommendation) had reviewed the program approximately three years earlier and had presented a number of suggested changes which had been adopted.

(c) "There should be established within the NCAA a committee to make a thorough review of the substantive NCAA rules now compiled in the constitution and bylaws with the goal of eliminating those rules which are no longer practical or enforceable." The Committee on Infractions agrees that such rules should be eliminated wherever possible but notes that it never will be feasible to expect the Association's legislation to be brief and simple. The executive director noted that the staff, under the supervision of the Constitution and Bylaws Committee, had completed a revision of the constitution and bylaws less than two years earlier.

(d) "Efforts of the enforcement program should be directed toward prevention of violations with increased educational efforts directed toward student-athletes, prospective student-athletes, coaches and representatives of the university's athletic interests." Mr. Wright reported that the committee agrees with increasing the Association's education efforts, and it was noted that several

efforts in this regard already are under way (e.g., increased appearances at conference meetings and similar sessions, the distribution of the Association's publication entitled A Guide for the College-Bound Student-Athlete, pertinent messages on NCAA telecasts and ever-increasing dissemination of information from the national office).

(e) "The NCAA enforcement program should be strengthened and expanded." Mr. Wright observed that this had been done over the past three years and that the effects of that expansion are being monitored to determine if additional growth is needed.

(f) "There should be a total abolition of rules or regulations restraining the ability of student-athletes' rights to contract" (sic). The Committee on Infractions is opposed to this suggestion.

(g) "The NCAA should assert jurisdiction over prospective student-athletes, at least insofar as giving an interpretation of the rules." Mr. Wright noted that there is no way for the Association to claim such jurisdiction, once again pointing out that the Association is composed of institutions rather than individuals. However, interpretations of NCAA regulations routinely are provided prospective student-athletes by the national office.

(h) "There should be a change in enforcement policy from one of punishment and retribution to one of correction." Mr. Wright stated that this is part of the enforcement procedure in that the involved institution is informed of the corrective actions it is expected to take; further, the majority of actions taken by the committee involve private, rather than public, penalties designed solely to correct, rather than punish, institutions.

(i) Though not included in the recommendations forwarded by the House subcommittee, members of the Council noted that the subcommittee hearings had included charges of "selective enforcement"; i.e., that there are certain major institutions which are not subject to the enforcement program. It was noted that the most effective means of rebutting this type of charge would result in loss of confidentiality afforded every institution investigated by the enforcement staff, but Mr. Hunt emphasized that the enforcement staff attempts to pursue every known instance in which an individual states that he knows of unpenalized violations at a member institution.

(7) An extended discussion took place.

It was VOTED

"That the officers be authorized to prepare an appropriate response to the House Subcommittee on Oversight and Investigations, based on the discussions held in this meeting."

ATTACHMENT C

16. Governmental Affairs Committee (Continued).

a. President Thompson and Mr. Sherman reviewed the Association's appearance before the House Subcommittee on Oversight and Investigations. Mr. Thompson

stated his belief that the NCAA testimony should be reported to the membership and that the Association should attempt to benefit from the experience. He also praised the staff and Association legal counsel for their work in preparing for the hearings.

(1) Mr. Sherman commented upon the hearings and said the Association is not doing enough to inform the general public about the operations of the enforcement program.

He also called the Council's attention to the executive director's memorandum of September 22, 1978, to the Executive Committee and the Council outlining the results of investigations into each charge that has been made alleging improprieties by the investigative staff. It was agreed that Mr. Sherman would write a letter to the NCAA News, in behalf of the Executive Committee's Subcommittee on Staff Evaluation, including the salient points of that memorandum, with the letter to be considered by the staff evaluation subcommittee in a telephone conference.

(2) Because of commitments made to the House subcommittee during the Association's testimony, and in a good-faith attempt to assure that the NCAA might benefit from information and suggestions developed during the subcommittee's investigation, the Council reviewed again the 46 recommendations made by witnesses during the hearings and forwarded to the Council by the House subcommittee. The Council's review of the recommendations during its August meeting was recorded on pages 54-63 of the minutes of that meeting, and that record was restudied by the Council. The 48 recommendations considered in August were reduced to 46 for this meeting, with three of them combined into one.

(a) Mr. Byers observed that the 46 recommendations had been offered by a total of 15 witnesses.

(b) A limitation on the time period in which alleged violations would be reviewed has been a policy of the Committee on Infractions but not recorded in the enforcement procedure. The chairman of the Committee on Infractions recommended that Enforcement Procedure 3 be amended to include that provision; i.e., that allegations included in a letter of official inquiry shall be limited to possible violations occurring within the four-year period immediately preceding the date of the preliminary inquiry. The only exception would be in cases where a pattern of willful violations on the part of the institution or the individual involved is determined within the four-year period, and the pattern was initiated earlier than that period, and when the eligibility of a current student-athlete might be affected by circumstances beyond the four-year period.

It was VOTED

"That the Council sponsor the proposed amendment to Enforcement Procedure 3."

(c) A witness had recommended that when new information is requested from either the institution or the investigative staff to assist the Committee on Infractions in arriving at its findings, both parties should be afforded an opportunity to be represented when such information is provided. The committee had noted that this had been its policy and that it does not consider ex parte information, but it agreed to amend the enforcement procedure to clarify that point.

(i) It was VOTED

"That the Council sponsor legislation to amend Enforcement Procedure 4-(b)-(1) and 12-(c)-(13) to clarify that policy; further, that it also be adopted as a policy for infractions hearings before the Council."

(ii) Members of the Council asked if detailed procedures regarding infractions hearings before the Council should be added to the printed enforcement procedure. The staff was directed to catalog such policies and procedures for consideration by the Council in its January 1979 meeting.

(d) Witnesses had recommended that a written transcript be provided of Committee on Infractions hearings. The committee has opposed that concept in the past on the basis that a written record could be obtained by an unauthorized individual; further, information from such a report could be made available to the news media, destroying the confidentiality assured each member institution in such hearings. The NCAA is purchasing more sophisticated tape-recording equipment to improve the quality of the taped proceedings, which can be heard in the NCAA national office by involved parties.

(i) The chairman of the Committee on Infractions suggested that if the Council wished to alter this policy, the following procedure might be considered on a trial basis: The involved institution could request, when it announces its intention to appeal to the Council, one copy of a written transcript, which would be prepared at the institution's expense and sent to its chief executive officer, who would be responsible for assuring its confidential handling. Violations of that confidentiality would make the institution subject to discipline by the Committee on Infractions.

(ii) It was VOTED

"That the present procedure be maintained."

(e) It had been suggested that specific standards of evidence be included in the printed enforcement procedure. The Council considered provisions regarding the quality of evidence as set forth in the Administrative Procedure Act, which governs Federal administrative agencies. Mr. Geraud suggested a standard requiring an NCAA hearing body to consider "any information that is relevant, credible and persuasive."

It was VOTED

"That the Council sponsor legislation to add in Enforcement Procedure 3 a statement regarding standards of evidence, pending advice from Association legal counsel and a study of appropriate references in established administrative law."

(f) A witness had recommended a published statement regarding the burden of proof in NCAA hearings. It was noted that such burden is shared by both the involved institution and the investigative staff, but that it might be appropriate to place such a statement in the printed procedure.

It was VOTED

"That the Council sponsor an amendment to Enforcement Procedure 3 in this regard, pending advice from legal counsel."

(g) Several recommendations had been made regarding the relationship between the Committee on Infractions and the investigative staff, with witnesses implying that some form of incestuous or collusive relationship exists. It was noted that this is not accurate in any regard, but that the Committee on Infractions is willing to adjust its procedures to eliminate any question in the minds of the membership.

(1) The Council reviewed a proposed amendment which would remove the Committee on Infractions from the role of reviewing the general scope of an infractions case prior to authorizing an official inquiry, assigning that task to the investigative staff. Members of the Council suggested the language should specify that the assistant executive director for enforcement, rather than the investigative staff as a whole, is responsible for the implementation of this policy. It was noted that checks and balances are available in the staff structure to prevent any abuses in this regard; e.g., the Committee on Infractions requires a full explanation if preliminary inquiries are closed and if frivolous official inquiries are initiated, the staff would have to answer to the committee. Further, the Council could ask for a report on all infractions procedures at any time, and the Subcommittee on Staff Evaluation would study any allegation of improper action by the staff.

[Mr. Berg left the meeting.]

It was VOTED

"That the Council sponsor legislation to amend Enforcement Procedure 3-(b), 12-(b) and 12-(c)-(1) to remove the committee from responsibility for initiating official inquiries."

(11) The Council considered proposed legislation to emphasize that the Committee on Infractions establishes investigative guidelines which are to be implemented by the investigative staff in conducting investigations.

It was VOTED

"That the Council sponsor legislation to amend Enforcement Procedure 1-(a) and 2-(b) and (c) regarding the establishment and implementation of investigative guidelines."

(h) The Council noted that it had been considering for several years the appropriate role of the Council in hearing appeals of Committee on Infractions decisions; i.e., whether such appeal hearings should include a review of any findings or penalties from the Committee on Infractions report or whether the hearings should be limited to determining if procedures were followed appropriately, the institution was treated fairly and the penalties were appropriate. It was observed that Association legal counsel favors the former, with several members of the Council on record as preferring the latter. A related consideration is the possibility of restricting more narrowly the individuals permitted to represent an institution in its appeal. Mr. Geraud stated the opinion that Enforcement Procedure 6 should be expanded to define more clearly the Council's role in hearing appeals.

It was VOTED

"That the staff be directed to prepare a revision of Enforcement Procedure 6, in consultation with legal counsel and Messrs. Scott and Geraud, for consideration in the January 1979 Council meeting."

(i) Congressman Santini of Nevada, a member of the House subcommittee, had suggested that the executive director should not be present when the Council hears an infractions appeal.

It was VOTED

"That the Council considers it both appropriate and highly desirable to have the executive director, as the Association's chief executive officer, present during all hearings before the Council."

(j) The Council reviewed the role of the investigative staff in reviewing information related to penalties in previous cases with the Committee on Infractions. It was emphasized that it is important to the committee to have key staff members, with the best available knowledge regarding the previous cases, in attendance at its meetings, and that the staff does not recommend penalties (and is not present when penalties are determined) but only reports on penalties assessed in similar cases. The statement was made for the record that the Council considers all members of the Committee on Infractions and the management staff of the enforcement department to be individuals of integrity and honesty.

It was VOTED

"That the Council reject suggestions that the investigative staff not be available to review penalties in previous cases with the Committee on Infractions if requested to do so."

(k) Several witnesses had recommended that the NCAA rule a student-athlete ineligible, rather than requiring the institution to do so; this point probably received as much attention in the subcommittee hearings as any other. Mr. Toner, chairman of the NCAA Eligibility Committee, noted that this requirement is a fundamental obligation of NCAA membership; that it is the institution's responsibility to provide its student-athletes due process in the area of eligibility and the NCAA's responsibility to give the institution and its student-athletes fair and equitable treatment in the appeal process. Noting that the chairman of the House subcommittee was intensely interested in this point, President Thompson suggested that some member or the Council itself may wish to submit an amendment at the 1979 Convention to let the membership choose the means by which student-athletes would be declared ineligible. It was pointed out, however, that member institutions must understand that each student-athlete is either eligible or ineligible under NCAA legislation. If he is ineligible, he must be declared ineligible. Then the Association's appeals process determines how much eligibility, if any, should be restored.

It was VOTED

"That the Council reject the proposed alteration of the Association's philosophy of institutional responsibility in regard to the application of eligibility rules."

(l) A witness had recommended that investigations of violations be conducted jointly and concurrently by the NCAA investigative staff and representatives of the involved institution. The NCAA staff had consulted with numerous state and Federal agencies involved in investigative activities, including the FBI and the Internal Revenue Service; every such agency disagreed with the suggestion and said

such joint investigative activity would be implausible. It was agreed that parallel investigations are possible and, in fact, desirable, but that joint investigations would serve only to delay and deter the determination of facts. It was noted further that the House subcommittee itself does not conduct joint or "cooperative" investigations.

It was VOTED

"That the Council reject the concept of joint investigations."

[The meeting recessed at 5:03 p.m.]

Wednesday, October 18

The meeting was called to order at 8:02 a.m. by the chairman, Mr. Thompson. Mr. Frank rejoined the meeting, and all other members were present except Mr. Berg.

16. Governmental Affairs Committee (Continued). The Council resumed its review of recommendations by witnesses in the House subcommittee hearings.

(m) It had been suggested that "all impractical rules" be deleted from the NCAA constitution and bylaws. Members of the Council observed that everyone agrees with the principle of removing any such content from NCAA legislation, and that ongoing efforts are made toward that end.

It was VOTED

"That the Constitution and Bylaws Committee review the NCAA Manual in this regard and submit any recommendations to the Council."

(n) It was agreed that a report of the Council's actions regarding the recommendations just reviewed would be submitted to the House subcommittee after the minutes of this meeting are completed.

ATTACHMENT D

The National Collegiate Athletic Association

President
J. Neils Thompson
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Executive Director
Walter Byers

Secretary-Treasurer
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November 22, 1978

The Honorable John E. Moss, Chairman
Subcommittee on Oversight and Investigations
U. S. House of Representatives
Washington, D. C. 20515

The Honorable Norman F. Lent
Subcommittee on Oversight and Investigations
U. S. House of Representatives
Washington, D. C. 20515

Gentlemen:

During our September 27, 1978, appearance before the House Subcommittee on Oversight and Investigations, it was noted that the NCAA Council had placed on its October meeting agenda a further review of certain recommendations made by previous witnesses before the subcommittee concerning the NCAA enforcement program. These recommendations were set forth in your August 8, 1978, letter (and enclosure) and included suggestions related to the conduct of NCAA investigations, Committee on Infractions hearings, sanctions imposed in infractions cases and Council appeal procedures.

The proposals initially were studied by the NCAA Council in its August 25, 1978, meeting, and the actions taken by the Council at that time in reference to these suggestions were reported to you during our September 27 testimony. In recognition of the Council's intent to give further consideration to these matters during its October meeting, Chairman Moss indicated that the House subcommittee would not file a report concerning its review of the NCAA enforcement program until the subcommittee had the opportunity to evaluate the Council's actions at its October meeting.

Accordingly, the purpose of this letter is to report in writing to you the results of the Council's review of the recommendations in question. To that end, we are enclosing copies of the pertinent portions of the minutes from the Council's August and October 1978 meetings. We will not attempt to reiterate in this letter the

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points of discussion concerning each proposal; however, the following is intended to summarize the Council's position in reference to these matters.

In reviewing the recommendations in your August 8 letter, the Council considered a total of 46 proposals (counting the alternatives listed under Section III-2 as one proposal). Of these 46 recommendations, it is the Council's position that more than one-half (a total of 25) either have been implemented in whole or in part under present NCAA procedures (19), are being proposed by the Council for consideration during the 1979 Convention (4), or at this time are undergoing further review by the Council, with a view toward possible action (2).

A. Those recommendations implemented (in whole or in part) include: II-5 (providing the opportunity for individuals who have been interviewed to review NCAA memorandums describing the particular interview); II-6 (assisting an institution in responding to an investigation); II-7 (permitting institutional representatives to be present during on-campus interviews with student-athletes); II-11 (making clear and specific allegations); III-4 (giving the opportunity to call key witnesses); III-5 (providing the work-sheet prepared by the enforcement staff to the institution and the Committee on Infractions only at the time at which the hearing commences); III-8 (placing responsibility on enforcement staff to present information establishing violation); IV-1 (establishing and implementing standard for penalties based on nature of the violations involved); IV-5, 7 and 9 (relating periods of ineligibility to the seriousness of the violations involved); IV-6 (providing an even application of NCAA regulations); V-4 (leaving the Eligibility Committee entirely free to restore eligibility without any penalty); VI-3 (establishing a committee to review NCAA regulations and recommend elimination of unnecessary rules); VI-4 (increasing educational efforts); VI-6 (strengthening and expanding the NCAA enforcement program); VI-9 (providing interpretations of NCAA rules to prospective student-athletes), and VI-10 (establishing an enforcement policy designed for correction of deficiencies).

Several of the recommendations are included in the Association's present enforcement procedures. The Council noted that, for the most part, the infractions cases which have been the focal point of the hearings before the subcommittee were processed some time ago and testimony by several witnesses dealt with policies which already had been revised at the time the witnesses appeared before the subcommittee.

It should be noted that NCAA partial implementation of some of these recommendations does not in all cases follow the apparent or stated intent of the recommending witness. For example, as to recommendation III-4, Committee on Infractions procedures permit the committee, in its discretion, to call "key" witnesses. It has not been the practice of the committee, nor is it the desire of the Council, however, to convert committee proceedings to an adversary hearing, involving introduction of most evidence by examination and cross-examination of "live" witnesses. So also, as to recommendations IV-5, 7 and 9, NCAA legislation requires that penalties against member institutions be commensurate with the nature and extent of violations of NCAA regulations. The Council is opposed, however, to a more detailed "schedule" of penalties -- in that such a schedule could not be constructed to take account of all relevant considerations. For a statement of the Council's current position on each of these recommendations, as well as all other recommendations discussed herein, reference must be made to the Council minutes attached to this letter.

B. Those recommendations being proposed by the Council for consideration during the 1979 Convention include: III-2 (separating the functions of the Committee on Infractions and the enforcement staff); III-6 (clarifying the procedure governing requests for new information); III-7 (describing standards of proof and evidence), and VI-1 (defining a time period for the review of alleged violations). Copies of the proposed amendments are enclosed for your review.

C. The two recommendations undergoing further review by the Council at this time are V-1 and V-5, both of which relate to Council appeal procedures for infractions cases. A further analysis of these procedures will be conducted during the Council's January 1979 meeting.

D. Of the additional 21 recommendations, eight are considered by the Council to be undesirable at this time, including: I-2 and II-8 (establishing an additional oversight committee); III-3 and V-3 (providing copies of verbatim transcripts of hearings to all parties involved); IV-2 and IV-8 (requiring the NCAA to declare student-athletes ineligible); IV-4 (reviewing with the institution additional information concerning penalties), and VI-2 (establishing an additional committee to review enforcement procedures). The reasons for the Council's position in regard to these suggestions are set forth in the minutes enclosed with this letter, as well as in the testimony and statements of individuals appearing before the subcommittee as NCAA witnesses on September 27 and 28, 1978.

E. The remaining 13 recommendations are considered by the Council to be clearly impracticable in light of the goals and purposes of the Association's enforcement program. In this regard, it is the Council's position that suggestions should not be implemented which would have the effect of weakening the efforts of the membership as a whole to enforce in a reasonable and constitutional manner the regulations adopted by majority vote of member institutions assembled during NCAA Conventions. The Council believes it is significant to note that the members of the Committee on Infractions also have considered these particular recommendations and do not support them.

Those recommendations considered by the Council to be clearly impracticable are: I-1, II-1, II-2, II-10 and VI-5 (conducting joint and simultaneous investigations with the involved member institution); II-3 (notifying every individual interviewed of his right to personal legal counsel during the interview);

53-337 O - 79 - 5

II-4 (permitting every individual interviewed to record the interview); II-9 (never granting immunity to an individual who knowingly was involved in serious violations); III-1 (permitting individuals involved in infractions cases who are not employed by or enrolled in the institution to participate in hearings with personal legal counsel); IV-10 (utilizing an arbitrator supplied by the American Arbitration Association to conduct institutional eligibility hearings); V-2 (permitting individuals to process eligibility and infractions appeals independently of the involved member institution); VI-7 (abolishing all regulations restraining a student-athlete's opportunity to contract), and VI-8 (eliminating the Association's legislation prohibiting extra benefits for student-athletes). Again, the reasons for the Council's position in regard to these suggestions and a description of current practices of the NCAA related to these points, are set forth in the minutes enclosed with this letter as well as in the testimony and statements of individuals appearing before the subcommittee as NCAA witnesses on September 27 and 28, 1978.

As noted during our testimony, the NCAA enforcement procedure is approved and adopted by the Council and the Association's member institutions assembled in annual Convention. The enforcement procedure is subject to continual review by the Committee on Infractions, the Council and the membership. For example, the Council in August 1971 directed an ad hoc committee to study the Association's enforcement procedures. After reviewing this committee's report, the Council voted during its October 1972 meeting to endorse amendments to revise enforcement procedures, including a restructuring of the responsibilities of the Committee on Infractions.

In the spring of 1974, a special committee on enforcement was appointed by the Council to study future NCAA enforcement goals and objectives. During its October 1974 meeting, the Council voted to propose amendments to increase the membership dues and provide for an assessment in the football television plan to finance an increased enforcement program. These proposals to revise the enforcement procedures and expand the enforcement program were adopted by the Association's membership.

The review of enforcement procedures was continued by the Council in its October 1976 and January 1977 meetings. In addition, the Committee on Infractions considered during its March 1977 meeting various methods of disseminating information to the membership concerning committee policies not specifically set forth in the Official Procedure Governing the NCAA Enforcement Program. These policies were codified and presented to the Council for review during its August 1977 meeting. Subsequently, these policies were reviewed and approved by the Association's membership during the 1978 NCAA Convention.

Thus, the Council has been and continues to be involved in an extensive review of the Association's enforcement program. Many of the recommendations set forth in your August 8 letter express thoughts which have been considered by various NCAA committees and the Council during past years. In this regard, we believe the House subcommittee has indicated its respect for the qualifications of the individuals serving as members of the Committee on Infractions who assisted in developing the current NCAA enforcement policies and procedures, and the Council wishes to note for the record that it has considered the views of those individuals in its review of the recommendations in question.

The Council wishes to report that other than Council proposals discussed above, only one amendment to the present NCAA enforcement procedures has been proposed by member institutions for consideration during the January 1979 NCAA Convention. This amendment is sponsored in part by the University of Denver and was drafted by Burton Brody, who appeared as a witness before the subcommittee and was party to seven of the recommendations in your August 8 letter. In addition, this amendment is sponsored by five institutions associated with the two conference commissioners who testified before the subcommittee, as well as by two other institutions. The Brody amendment embodies virtually every recommendation set forth in your August 8 letter and clearly represents an opportunity for each NCAA member institution to consider at the next Convention an alternative to the administrative enforcement procedure currently maintained by the Association.

As you emphasized in your August 8 letter, all of the 46 recommendations which the Council has been asked to review were made by certain witnesses appearing before the subcommittee. No such recommendations have been issued to date

by the subcommittee itself. In this regard, the Council is well aware that individuals (particularly legal counsel in adversary proceedings) often differ in their interpretations of the due process requirements which must be met to insure fundamental fairness to the accused, while preserving the rights of those who abide by applicable regulations to have those regulations enforced for all. The differences in opinions are dramatized when the due process concepts are related to administrative proceedings, such as those conducted by the NCAA.

Accordingly, we wish to report that although certain members of the subcommittee may not agree with each viewpoint described in the minutes attached to this letter, the Council diligently attempted to respond in good faith to each of the recommendations submitted to it.

Further, we share with members of the Council the opinion that the inquiry conducted by the House subcommittee has served a beneficial purpose in that the appropriate committees and agencies of this Association have been prompted to examine carefully all NCAA enforcement policies and procedures, and this has resulted in constructive actions designed to improve the program in the best interests of all of the Association's member institutions.

Sincerely,

J. Neils Thompson, President

Edgar A. Sherman, Secretary-Treasurer

JNT/EAS:koc
Enclosures
cc: NCAA Council

Mr. MOTTL. Mr. Chairman, is the hearing open to questions now?

Mr. ECKHARDT. Yes. I ought to recognize Mr. Mottl first because everybody else has made a preliminary statement.

Mr. MOTTL. Thank you, Mr. Chairman.

One of the subcommittee's recommendations urged the NCAA to require that all individuals subject to interview by the enforcement staff be advised in advance of the possibility of penalties resulting from the information they provide and, further, that they be advised of their right to counsel. It is my understanding that the association has gone so far as to provide that such a warning should be given by an NCAA investigator when he determines that the interview may develop information detrimental to the individual being interviewed.

My question is this, and this would be addressed to Mr. Flynn or his two associates: How does an investigator know in advance whether or not information provided in response to a question may be detrimental to the person interviewed?

Mr. FLYNN. I believe that chiefly has to do with the student athlete or with the employees that might be involved in coaching and also possibly administrators of the university. The university nor the NCAA would have any control of any outside people. Therefore, they would not be able to inflict any sanctions on them.

Professor Wright may answer better.

Mr. WRIGHT. Mr. Mottl, I, of course, have never been present when one of our investigators has been interviewing someone so I have to judge it by what I see reported in the hearings.

I think in most instances the investigator knows, "Am I asking X these questions to find out what somebody else did that may be a violation or am I asking him about something that might affect his own eligibility?"

Sometimes I suppose, in the course of conversation things will develop that our investigator has not anticipated. He may be interviewing an athlete at Texas A. & M. and asking, "Isn't it true that the coach of the University of Texas or one of their alumni made you a great offer if you would go there?" If that is true, it would not affect the young man's eligibility at all.

However, in the course of the conversation perhaps the young man will say, "Yes, Texas did make that offer but then Texas A. & M. topped the offer." At that point the young man's eligibility, at least for post-season competition, would be affected. At that point it would be the duty of the investigator to warn the young man as our rules provide.

The enforcement mechanism, to make sure that the investigators do what the rule requires, is with the committee. When we have a hearing and a member of the staff says, "I got this information from student athlete A," if the information has any incriminating quality the committee would inquire, "Did you give the student athlete the warning that our rules require?" If the answer is no, the committee would refuse to admit the evidence.

Mr. MOTTL. Professor Wright, what happens if the student athlete gives detrimental information about the institution where he is attending?

Mr. WRIGHT. It would depend on whether the detrimental information would have any effect on the student's own eligibility—if it

involves an inducement made to him to come to the university or it involves an extra benefit that he has received.

Mr. MOTTL. What provision do you make to exclude such detrimental information which may have been furnished by an individual who was not warned in advance of his rights?

Mr. WRIGHT. I do not recall that there has been an instance of that happening.

Mr. MOTTL. Have you ever asked how many times this has occurred, Professor Wright, in the investigations that have taken place by the NCAA?

Mr. WRIGHT. We have certainly asked, yes, "Was this young man warned before you put these questions to him?"

The answer has been, "Yes, he was."

Mr. MOTTL. Has this taken place many times?

Mr. WRIGHT. I would not say it has taken place many times, no.

Mr. MOTTL. I am disturbed about one instance involving a fine young man who was a constituent of mine by the name of Flip Saunders which came up during the subcommittee's hearings. Not only was the young student athlete not warned of his rights, but he was apparently led to believe that he was under no jeopardy at all.

Ultimately, of course, you know that violations found against Saunders were highly questionable and very minor in nature. They ultimately led to disastrous consequences to Saunders and the University of Minnesota.

Let me read a brief portion of Mr. Saunders' sworn testimony given to the subcommittee last year, if I may. This was under questioning by our very astute counsel and also the former subcommittee chairman. Mr. Moss was the former subcommittee chairman. This is Mr. Moss speaking at the time:

> I wonder, as long as we have about three students here, if they might be able to give us some story about their experiences. Have you had any experience relevant to the questions which have just been asked?

Mr. Saunders said:

> Yes, I had an experience with Mr. Bill Hunt, investigator for the NCAA. When I was being investigated during the investigation many times he told me that he did not know allegations that I had and, if I told him those were allegations, everything would be OK. In a sense he said, "If you tell the truth, nothing will happen to you and you won't lose your eligibility. But if we find out that you are lying, then something could happen to your eligibility."
>
> As it turned out, the three allegations that they did get were the three that I told them.

Then Mr. Mark Raabe asked: "Did Mr. Hunt on this occasion, when he began the interview, tell you that he had already contacted other persons and he already knew the story?"

Mr. Saunders said: "Yes, one of the tactics was that he said in his own words, 'We know everything that you have done, so tell us everything again.' "

Mr. Raabe asked: "Did he also tell you at one point that, 'We,' meaning the NCAA, 'were only looking at the institution and we're not concerned about individuals?' "

Mr. Saunders replied: "Yes, he said they were just looking at the whole program, the basketball program, and not the individuals themselves."

Mr. Raabe asked: "Would you disagree with that comment today? I guess you would."

Mr. Saunders said: "Now I would, yes."

Mr. Raabe asked: "Would you describe the interview with Mr. Hunt? Did he remain seated at a table across from you or how did the interview go?"

Mr. Saunders replied:

> I started out. He proceeded across from the table. During the investigation he would get up a lot and stand right over me and look down at me. That makes you a little bit intimidated. When I got out of the room, I got out of there and I didn't know what to expect. I didn't know how serious it was. When I got out, I called my parents. The only thing I wished was that I would have had legal counsel with me because you are in a bind when you are in there.

This was the testimony given at that time. Would you agree or would you not that this would be a bad practice, to mislead a student athlete about the potential consequences of the information he might provide during an interview?

Mr. WRIGHT. I think it would be a terrible practice.

Mr. MOTTL. What have you done to prevent this kind of thing from occurring in the future?

Mr. WRIGHT. I do not want to form a judgment on what Mr. Hunt did or did not do years ago. He was a witness before the subcommittee last fall. I do not believe he was asked about that. I, of course, was not there.

However, what we have done, and I think this is a point of some importance—this whole thing has been a process of development. As we have seen situations, we have tried to change and adapt to them.

The rule that our investigators must warn students was adopted as a formal part of the procedures in January of 1978. I am certain that the committee had adopted it as a guideline for the investigators at some point prior to that time, although I cannot give you the date. I am equally certain that it did not go back to the inception of the procedure in 1973.

However, as problems of this kind come to the attention of the committee, we say we are going to have to have safeguards to prevent any overreaching of these young men or whatever other procedural deficiency we find. We then amend the procedures if it is within the power of the committee to do it or we send on a recommendation to the council to ask the convention to make an amendment if it is something that only the convention can do. We have been constantly changing. When we see a problem that we think raises a question of fairness, we try to adjust our procedures so that it cannot possibly recur.

Mr. MOTTL. Mr. Wright, you are a knowledgeable and distinguished law professor, one of the great legal minds. Wouldn't you provide further assurance or recommend to the NCAA that they provide further assurance against any abuse in this area by requiring the warning in advance of the interview, thereby removing the discretion so easily abused from the hands of the investigator?

Mr. WRIGHT. I would not recommend that; no, sir. I think that investigators in even more weighty matters, where the standard of due process is higher than in our proceedings, do not do that. They do not do it for an obvious reason. An investigator is trying to

determine the facts. So long as he can do so without overreaching the rights of any individual, he does not want to say things that are going to make that individual reluctant to tell him the facts.

It is very hard when you are dealing with these young men to get them to talk in any event. Most of them prefer not to do so. They do not want to get involved.

The thing that worries me most about the enforcement procedure is the many violations that I think occur that we can never prove—sometimes we cannot even allege—simply because we are unable to get at the information.

In those instances where the investigator has no reason to believe that what he is going to hear is going to be detrimental to the young man or affect him adversely in any way, I think it would simply be a further factor that would intimidate the young man and make him feel, "I don't want to talk to this person at all," if he hears a warning of this sort.

Mr. MOTTL. We are dealing with young people here, Professor. I just think, in view of abuses that have been cited, it would certainly be beneficial for all of our society. On the whole your organization does a great job. I think this is one area where there should really be some major changes. I, speaking as one member of the committee, would hope that the NCAA certainly would reconsider its position in this area. I would feel a lot more comfortable about your organization.

Mr. FRANK. May I make one observation? I think it should be remembered that the association does not have any subpena powers in this connection. We do depend upon the cooperation, and it is certainly voluntary, on the part of the people from whom we are seeking information.

As Professor Wright indicated, I think at times if you confront them with the statement about right of counsel and self-incrimination, then it would impede the investigative process. The whole point I am making is that it is one of voluntary cooperation. This certainly was considered and discussed in detail by the NCAA council.

Mr. MOTTL. Mr. Chairman, I have one last question for Mr. Flynn: Has the subcommittee's oversight enhanced or inhibited your operation?

Mr. FLYNN. I think the investigation has been very beneficial to the fact that we did adopt six of the proposals and we have some others under consideration. I think it has been very beneficial to the NCAA.

Mr. MOTTL. Thank you very much.

Mr. WRIGHT. I would like to add to what Mr. Flynn said. I think exactly the same thing. I have the advantage of having been a member of the infractions committee at all relevant times. Even though we have tried on our own to make change wherever change was indicated, the look that the subcommittee took at what we were doing certainly caused us to reexamine a lot of things and produced changes which maybe we would have gotten to and maybe we would not have, or maybe they would have been slower in coming. Therefore, I quite agree with the president that it has had a beneficial effect.

Mr. ECKHARDT. Mr. Flynn, one of the major areas of concern of investigation in earlier hearings by this subcommittee had to do with the University of Nevada, Las Vegas, case with respect to Coach Tarkanian. I would like to reiterate a little background which I am sure you are familiar with.

There were certain alleged infractions that were found ultimately to be infractions by the committee on infractions. The matter was later appealed to the council, which upheld the committee on infractions in this case. The University of Nevada, Las Vegas, was placed on probation from August 23, 1977, for a period of 2 years, which would be about to run out at the present time.

One of the infractions, I suppose a major one, had to do with the finding by the committee on infractions that Coach Tarkanian induced a professor or teacher to give a passing grade to a student athlete. Is that generally a statement of what happened in that case?

Mr. FLYNN. Mr. Chairman, I was not on the council at that time. Mr. Frank was on the council. Professor Wright was the chairman of the committee. I think they could answer that question much better.

Mr. ECKHARDT. I am not trying to state the whole case or all of the facts.

Mr. FLYNN. I understand that. Professor Frank was there. Professor Wright could answer that direct question of yours.

Mr. ECKHARDT. Wasn't that about the case?

Mr. WRIGHT. Yes.

Mr. ECKHARDT. Subsequent to that, as I understand, the University of Nevada, Las Vegas, notified Coach Tarkanian that it was compelled under the order of the committee on infractions, upheld by the council, to suspend him. At that point Tarkanian brought a law case and got an injunction against the university to prevent his being suspended at that time. The university did not carry out the order; it was under the order of the court not to do so. Isn't that essentially true?

Mr. WRIGHT. That is correct.

Mr. ECKHARDT. Mr. Flynn, you are now chairman——

Mr. FLYNN. President.

Mr. ECKHARDT. Would you agree with the standard that Professor Wright stated in the minutes of certain of your meetings in discussion of this matter?

Mr. Wright expressed a position that the institution has conformed with the show-cause provisions inasmuch as the State court will not permit the institution to suspend its coach. He believes the only case for the association would be if it could be proven that the institution's attempt to suspend the coach was a "sham," but doubts the feasibility of that approach.

That seems a reasonable construction of what should be done. What is your feeling about that?

Mr. FLYNN. I think the institution has done as much as it can up to this time. If the restraining order is lifted, the enforcement regulations state, and I might read them, on page 154 of the manual:

Further, the institution shall be notified that should any of the penalties in the case be set aside for any reason other than by appropriate action of the association, the penalty shall be reconsidered by the NCAA.

To answer your question, I think the institution has done as much as they have been able to do up to this time because of the restraining order by the court.

Mr. ECKHARDT. Therefore, the only thing that would be left that they would be required to do, in case ultimately the court's injunction were removed and they were in a position to suspend Tarkanian, would be to comply with the order subsequently and at such time as they could comply with it.

Mr. FLYNN. That appears to be the case. At the end of the probation period it is reviewed again by the council. The probation period for Las Vegas would be up in August. Therefore, at the August meeting the council would review that particular case.

Mr. ECKHARDT. What if the injunction is not lifted?

Mr. FLYNN. Professor Wright could answer better than I. However, I do not think there is anything that the NCAA or the institution could do. They must abide by the court.

Mr. ECKHARDT. The institution has already suffered some penalty, has it not, by being on probation for 2 years?

Mr. FLYNN. They have.

Mr. ECKHARDT. Therefore, it would seem to me unfair to impose additional penalties or additional probation on the university when it has done all that it could do.

Mr. FLYNN. I think it is very questionable in my mind whether additional penalties would be imposed. However, again it would be up to the entire council to decide that.

Mr. ECKHARDT. As I understand the way these matters are ordinarily handled and have been handled in the past, the committee on infractions acts like a trial court, hears the evidence, makes a determination, and then that determination is subject to an appeal to the council, which acts more or less as the appellate court to review the action of its trial court, so to speak. In this particular case it upheld the trial court. Naturally the matter is still available for further action at such time as the injunction might be lifted.

I would assume, drawing this same analogy to a trial court, that ordinarily if it were found that the university did not comply with its order to discharge Tarkanian at such time as an injunction may be lifted, then the decision with respect to whatever additional penalties might be imposed on the University of Nevada for not complying with the original order would be imposed by the committee on infractions.

Mr. FLYNN. That is an interpretation. We did seek out legal counsel. It was interpreted and approved by the council that it could either go back to the infractions committee or, if it were appealed to the council, then it could go to the council and also go to the infractions committee.

It would be the decision of the council to decide whether it would go back to the infractions committee or whether it would come to the council and also the infractions committee. There are several possibilities.

The council did rule that it would come back to the council because it was appealed to the council.

Mr. ECKHARDT. Has it not ordinarily been the infractions committee that imposes such penalty on what really amounts to a violation on different and additional facts which may develop after

the original case? Here, of course, there was an order and an injunction and respect for the injunction that prevented carrying forth of the order.

As you point out, that was not a wrongful act in contempt, so to speak, of the council's decision. It was merely compliance by the university with the court order.

Of course, it would be another and different thing if the order were raised and additional facts would be available for consideration, and if the university could then suspend Tarkanian and did not do so. You would have to act on different circumstances. Presumably you would take action in this case against the university because it then could have complied with the original order but had not done so.

I would have thought that under your ordinary rules the committee on infractions would treat that matter on those new and additional facts.

Mr. FRANK. I would like to make one comment.

The council would deal with this matter on the basis that the case did get to the council; it was appealed to the council. Ordinarily the committee on infractions would make decisions if it did not get to the council. However, because the case was appealed to the council, then I think it is proper that the council might make the final decision in this particular case.

Mr. Chairman, I would like to make another point: When you say "additional penalties," I do not look upon the reconsideration as additional penalties, even though the university complied with, let's say, the directives from the NCAA. The point is that the university has served part of the penalties imposed, but this is the one part that has not been served, even though the university has acted in good faith.

I think we are at a point where we are dealing with that part of the penalty that has not been served by the university. I would not call it "additional penalties."

Mr. ECKHARDT. No, I wouldn't, either. The thing is if the order were eventually raised so that the university could suspend Tarkanian, it would not be an additional penalty on the university for it to be required to suspend him at such time as it were ready to do so.

What I am getting at is this: It seems to me it would be an additional penalty if the university were willing to comply with the order and it were given an additional probationary period in addition to having served 2 years under probation, which I understand is something of a disadvantage to the university. Having suspended Tarkanian, it would seem to me the university would have complied with all of the counts and should not be subject to any additional penalty over and beyond having served on probation and having ultimately been required to put into effect the order of the council. Would you agree with that?

Mr. FRANK. If an additional probationary period were instituted, then that would be an additional penalty.

Mr. ECKHARDT. If a further probationary period were applied?

Mr. FRANK. Yes.

Mr. ECKHARDT. I can understand that you might put the university on probation if it refused to suspend Tarkanian and might hold

the university on probation until it complied with your order. However, I cannot see that the university could have done anything other than what it was originally ordered to do in accordance with its best ability to do so. If it were put under probation for 2 years which was part of the determined penalty for that activity, it tried to suspend Tarkanian and the court enjoined it, and then as soon as the court's injunction were lifted it did in fact without violation of the court's order suspend Tarkanian, it seems to me it would not be subject to any further penalty.

Mr. FLYNN. There is nothing that says that they will be. It would have to be reviewed by the council in August. As I say, there is no indication or nothing that says that the council would impose further penalty. I would extremely doubt that they would.

Mr. ECKHARDT. I am rather interested in the fact it is indicated that the rule has in some manner been changed so as to call upon the council to review this question. That would be indicated in the council's own letter.

Mr. FLYNN. If I might, Mr. Chairman, it is a question of interpretation. The enforcement manual is not clear. It merely states that if the penalty be set aside for any reason other than appropriate action of the association, the penalty shall be reconsidered by the NCAA. It does not state just what body in the NCAA will reconsider it. Therefore, there had to be an interpretation: Will it be the infractions committee? Will it be the council? Will it be both?

The council did seek legal counsel and did act. As I say, it did come up with the wording—if you have the statement to the president of Las Vegas. Really I do not think we are making new rules.

I think right now the university is complying with the——

Mr. ECKHARDT. I would think so, too, from the facts I know.

On page 154 of your enforcement procedures it is stated, "In the event the committee imposes a penalty"—the committee being the committee on infractions, I suppose—"involving a probationary period, the institution shall be notified that after the penalty becomes effective, the NCAA investigative staff will review the athletic policies and practices of the institution prior to action by the committee"—that is, the committee on infractions—"to restore the institution to full rights and privileges of membership in the association; further, the institution shall be notified that should any of the penalties in the case be set aside for any reason other than by appropriate action of the association, the penalties shall be reconsidered by the NCAA."

At every place where the reference is made to the institution being restored to full rights and privileges the committee is mentioned as considering the termination of probation. Yet, in the letter from Mr. Walter Byers to Mr. Brock Dixon, president of the University of Nevada, Las Vegas, it is said:

> This is in reference to the infractions case involving the University of Nevada, Las Vegas, and is written at the direction of the NCAA council.
>
> As you know, effective August 23, 1977, the University of Nevada, Las Vegas, was placed on probation as a member of the National Collegiate Athletic Association for a period of two years. The penalty then imposed, as set forth in the NCAA Committee on Infractions' expanded Confidential Report No. 123(47), provided in part that prior to the expiration of the probation the NCAA shall review the athletic policies and practices of the university, and that if any of the penalties be set aside for any

reason other than appropriate action of the association the penalty shall be reconsidered by the NCAA.

I note here at the end of the probationary period the NCAA is to review, not the committee on infractions.

In this regard, the council has noted the failure to date of the university to effect a suspension of Coach Jerry Tarkanian's relationship with the institution's intercollegiate athletic program.

Mr. Byers knows why, does he not? Yet, there is no reference here to the injunction.

Accordingly, the council has scheduled a hearing in order to reconsider the penalty—

I would assume that must mean to reconsider whether the probationary period is sufficiently long—

in this case at 3 p.m. on August 16, 1979, at the Trade Winds Inn, Centerville, Massachusetts. You are requested to present to the council at the hearing a statement of the corrective actions taken by the university.

Mr. Byers knows, does he not, that the university has attempted to suspend Tarkanian and that they are presently under injunction not do so?

Mr. FLYNN. Mr. Chairman, if I might interrupt, we have been advised by legal counsel that the injunction has been lifted, that the higher court did sent it back to the lower court. That may be in error.

Mr. ECKHARDT. Is it your understanding that the case has been remanded to the lower court and that the lower court will further consider the matter, but pending the consideration the university is still under injunction? Or is it your understanding that the injunction has been lifted and that the university may, pending this proceeding, suspend Tarkanian?

It would seem to me a very, very strange proceeding if the higher court had remanded the matter and yet removed the protection of the status quo until an ultimate decision. That would be a very strange procedure from all of my experience in law.

Mr. FLYNN. I think Professor Wright agrees with you. However, our legal counsel has advised us. It was only yesterday that I talked to Professor Wright and he does not understand it, either. You are both very outstanding lawyers.

Therefore, we are going to have to go back to our legal counsel. Our legal counsel has been asked not just once, but several times. They have said that the injunction has been lifted. That is why Mr. Byers did send the letter and told the university—he did not say, "because it has been lifted," but he implied, "Now just what are you going to do about it?"

Mr. ECKHARDT. It would be pretty easy to find out whether the injunction has been lifted or has not been lifted by someone inquiring of the judge as to whether or not the injunction is still binding.

Mr. WRIGHT. Mr. Chairman, as the president said, my understanding of the law is exactly the same as yours. Mr. Byers, who is not a lawyer, apparently has been told by NCAA counsel in Nevada that the injunction is no longer in effect. That was his understanding. This, I assume, was the understanding under which he wrote that letter.

He reported that yesterday when I met with the officers, and I was astonished. I told him I would want a very solid brief on Nevada law before I would believe that there could be such a weird result as the restraining order simply vanishing because the supreme court has said, "You failed to join an indispensable party."

I would assume that if the law is as I think it is and as you think it is, then this would be the response of President Dixon, that "We're still under an injunction." If that is so, I quite agree with the president that Nevada, Las Vegas is fully in compliance to the best of its ability with all that can be done under the penalty.

Mr. ECKHARDT. Let us suppose just for consideration here that the University of Nevada, Las Vegas is not presently under injunction, which I think would be a strange result. The case is still pending and it has been remanded. Let us suppose on remand the court ultimately holds that Coach Tarkanian was entitled to hold his job during this period of time. Certainly the court could so hold.

Suppose in the meantime the university has suspended Tarkanian and has failed to pay him his salary, and a considerable liability incurs on the part of the university. Perhaps Tarkanian has lost his opportunity for other jobs and has, of course, lost his salary, but the limitation on damages would not necessarily be just to loss of salary.

It would seem to be, even if the injunction were lifted, to be a mighty dangerous thing for the University of Nevada, Las Vegas to suspend Tarkanian. Would you not agree?

Mr. WRIGHT. I agree entirely.

Mr. ECKHARDT. It seems to me the technicality of whether the injunction is lifted or not does not remove the reasonableness of the university's not interfering with the status quo while the case is pending.

Mr. WRIGHT. That is right. I think that would be a different kind of cause. You satisfy a show-cause very easily when you say we cannot do it because a court of competent jurisdiction has told us not to do it. That is absolutely ironclad.

The university equally could come in in the situation you have hypothesized and say just what you have said: "Although we are not under an injunction, we would subject ourselves to tremendous liability if we were to discharge him at this moment. There is litigation pending even though there is no injunction."

Under the procedure the council has adopted, it would be for the council to determine whether that is an adequate showing of cause. I would think that it would be.

Mr. ECKHARDT. It goes on to say:

> You are requested to present to the council at the hearing a statement of the corrective actions taken by the university with respect to the violations set forth in the expanded confidential report, including information related to the current status of Mr. Tarkanian's involvement in the institution's intercollegiate athletic program and any action contemplated by the university in reference to that relationship.
>
> The council's hearing will be conducted in accordance with the provisions of Enforcement Procedure 12-(e)-(2)—

Section 12-(e)-(2) is the section from which I read—

> which have been expanded by the council to include the following language:
>
> "In such cases, any extension of penalties shall be by the Committee on Infractions after notice to the institution and hearing, provided that if such penalties have

been imposed following appeal to the council, any extension of continuation of penalties shall be by the council or by the Committee on Infractions after assignment to it by the council; and any extension of penalties by the Committee on Infractions shall be subject to appeal to the council."

Mr. Flynn, was this additional language added for this specific Nevada case or had it been added at an earlier time?

Mr. FLYNN. No, it had not been added at an earlier time. It was a question that we were presented with the situation.

Mr. ECKHARDT. This was tailormade for this case and for cases hereafter?

Mr. FLYNN. Hereafter, that is right.

May I just say one thing, Mr. Chairman? The NCAA penalty is not to fire Mr. Tarkanian; it is to remove him from the athletic department.

Mr. ECKHARDT. For 2 years.

Mr. FLYNN. Yes, for 2 years. He may be employed in some other part of the university.

Mr. ECKHARDT. But he is a coach, isn't he? That is his trade.

Mr. FLYNN. Yes.

Mr. ECKHARDT. He could not be in the athletic department. He could be in the Greek department if he knows Greek.

Mr. FLYNN. He might be in the physical education department.

Trying to give the advice and counsel that we received from our attorney—that is that it is up to Coach Tarkanian to enjoin the NCAA now—the last time the counsel talked to the NCAA he had not done that. Therefore, it is our opinion it is out there in limbo. It could continue forever in that particular case.

Among two legal scholars, I hesitate to even get involved in this, but I am trying to give you the advice and counsel that we received from our attorney—that now that the supreme court has sent it back, Tarkanian has to enjoin. He has to enjoin the NCAA.

Mr. ECKHARDT. I am not sure that is the case. I do not know precisely what the decision was. It would seem to me the action would be taken by the university and the appropriate procedure would be to enjoin the university from taking the action, although I would think that the ruling probably requires the joinder of the NCAA because it is a party in interest.

Mr. FLYNN. It is the action of Tarkanian. The suit is by Tarkanian, not by the university.

Mr. ECKHARDT. That is right, but the NCAA has not taken any action against Tarkanian. He has no contract rights with NCAA. NCAA is the active force that causes the defendant to take the action involved. Therefore, I assume the court decided to make him a necessary party to the proceeding. It seems to me appropriate.

I doubt that would require Tarkanian to serve an injunction against anyone other than the body with whom he has a contract. I do not know, but I think that is probably a quibble on my part, not yours.

Mr. FLYNN. It is my understanding that the supreme court did tell him that he would have to enjoin the NCAA.

Mr. ECKHARDT. It goes on to say:

In accordance with this procedure, the council will consider the university's position regarding the penalties in this case during the August 16 hearing. In this regard, it is requested that a copy of the university's written statement concerning this matter be forwarded to this office by August 3, 1979.

Thank you for your cooperation. Please contact our office if you have any questions concerning the procedures described in this letter.

Cordially,

WALTER BYERS.

Mr. Flynn, the thing that troubles me is this: In the same minutes from which I read, in which Mr. Wright expressed a position with which you and I both agree, I find this statement:

The executive director reviewed the situation created by institutions seeking State court action to thwart the rules of the association, noting that the two member institutions in the State of Nevada currently are operating in violation of NCAA rulings because of State court actions.

In the first place that seems to me to wrongly state the facts. It says, "The executive director reviewed the situation created by institutions seeking State court action to thwart the rules of the association." The institution did not seek State court action to thwart the association's activity. Coach Tarkanian sought to protect his rights in court, as I understand it.

Is there any evidence that you have that the University of Nevada was engaged in a collusive suit with Tarkanian to thwart the council's order? Do you have any evidence to that effect?

Mr. FLYNN. No, I do not.

Mr. ECKHARDT. The executive director seems to be of that impression.

He noted that in one of those cases, the use of an ineligible student athlete is involved; therefore, the restitution provisions of section 10 of the enforcement procedure may be effected eventually. In the other case, however, the institution is using a coach who should have been suspended for 2 years in accordance with the institution's infractions penalties; and no procedure comparable to the restitution provisions exists to rectify such a situation.

He specifically is referring to the Nevada case, as I read it. Then it says:

(1) In the latter case, arguments before the Nevada Supreme Court are not scheduled to be heard until December 12, 1979, approximately the same time the 2-year suspension penalty would have terminated, had it been applied. If the Nevada Supreme Court rules in the association's favor, the 2-year suspension of the coach may take effect at that time. If the court rules against the Association, it is possible that suspension of a coach will be unenforceable. If this were to be the case, a related consideration is whether the institution's penalties should be adjusted inasmuch as they were formulated as a balanced set of penalties.

When I read that and when I read the notice letter which does not even refer to the injunction, I cannot help but feel that at least from the standpoint of Mr. Walter Byers he intends to consider whether or not to extend probation to a longer time than 2 years even if the university has complied to the fullest extent of its ability but is under continuing injunction not to remove Tarkanian from that position.

Both you, Mr. Flynn, and you, Mr. Frank, say it would be wrong to do that because the university cannot be expected to do anything more than it can do under the injunction of the court. Yet, it would seem to me that Mr. Byers wants to consider additional penalties on the university even if the university is under the court order not to do what the council has commanded.

Mr. FRANK. My quick response is that it would not be proper for the NCAA to impose additional penalties as long as the institution is under the injunction. I believe our enforcement procedures, do

make provision for additional penalties. Whether they would be imposed or not is a separate question.

Mr. ECKHARDT. Well, I am glad to hear you say that, Mr. Frank. Do you agree with that, Mr. Flynn?

Mr. FLYNN. I do.

However, in your reading of that I did not get the impression that Mr. Byers was saying that if the court injunction were continued we would assess additional penalties. It seemed to me—and I might not have gotten it correctly—that he seemed to be saying if Coach Tarkanian was found innocent, then additional penalties might be imposed. I do not know if you got it that way or not, Charlie. That was part of the university penalty. I might have misinterpreted what you were saying, Mr. Chairman.

Mr. ECKHARDT. That pleases me, but it sounds somewhat like a line in The Lady's Not for Burning. The young lady is being propositioned and she says, "I sincerely hope I am beginning to misconstrue you."

I hope that I am beginning to misconstrue Mr. Byers.

Mr. SANTINI. Mr. Chairman, might I explore one further aspect of this?

Mr. ECKHARDT. Yes, Mr. Santini.

Mr. SANTINI. It seems to me, President Flynn, that also implicit in what you suggest—and I guess implicit in what Mr. Frank has suggested earlier as well—is this: If a State or Federal court, and I perceive this ultimately will proceed to a Federal court, determines that the NCAA did not deal fairly or deal as it should with Mr. Tarkanian, and tells the University of Nevada, "You cannot fire Coach Tarkanian" because of that fact, to then come back and say, "Well, the court has exonerated the coach and the court has instructed the university not to fire the coach," and then for the NCAA to punish the university further seems to me to totally frustrate a person's right to look to the courts for help where they feel that they have been wronged.

Mr. FLYNN. I do not think that would happen.

Mr. WRIGHT. I am stating a personal view. I am not speaking for the council. I do not know what the council will do.

However, I will cite an example that I put to my colleagues on the committee on infractions at our last meeting with regard to this. Suppose the court finds that the adverse determinations about Coach Tarkanian were made by a process that does not satisfy constitutional standards. Let us suppose the Supreme Court of the United States takes the case so that it is not merely a court of one State.

I would think it would be utterly outrageous if in that circumstance the council were to say, "Well, inasmuch as the penalty against Coach Tarkanian has fallen, we have to do something else against the University of Nevada at Las Vegas." We would have to say those things did not happen or at least we have no findings and therefore we should not have a penalty on them.

However, consider this. I remember a case a few years ago where a part of the penalty in the show-cause was that during the period of probation a coach was not to do any off-campus recruiting and was not to make any speeches to alumni groups. Let us suppose that coach had gone to court and the court had said, "Yes, the

83-237 O - 79 - 6

findings against the coach were soundly based, but saying he is not to make speeches to alumni groups is an impermissible interference with his first amendment rights.

In that instance I think we would say, "Of course, you cannot interfere with his first amendment rights but we will have to think of something else because we found, and the court has agreed we properly found, that the coach was guilty of violation. Therefore, there has to be a penalty against the institution that will reflect this violation. Inasmuch as this penalty turns out to be one that we have no power to impose, we have to substitute something else."

Mr. LENT. I have one question. Then we will proceed to the committee report.

Who will be the final arbiter here of whether or not the probation for this university is extended? Will it be Walter Byers or will it be the council?

Mr. FRANK. The council.

Mr. FLYNN. The council.

Mr. LENT. First of all, getting back to the question of the committee report and what actions have or have not been taken by the NCAA to implement that report, I want to commend the NCAA for taking the actions with respect to adopting a statute of limitations, making provision for legal and travel expenses of student athletes involved in enforcement proceedings, taking steps to separate the investigatory staff from the infractions committee, the provision of advanced guidance in eligibility questions, and so forth.

However, I would like to ask a few questions on those recommendations of the majority and to some degree approved or modified by the minority which the NCAA saw fit not to adopt. Perhaps I would like to address this question to Professor Wright.

Professor, are you comfortable with the evidentiary standards adopted by the NCAA at its convention in January?

Mr. WRIGHT. Yes, sir.

Mr. LENT. Are these standards consistent with other standards in administrative procedures?

Mr. WRIGHT. I am comfortable, Mr. Lent. I believe the minority report pointed out some examples in other areas of the law of evidentiary standards that are quite similar to what the convention adopted.

Mr. LENT. I think you adopted at your convention in January standards which are patterned after those contained in the Federal Administrative Procedure Act. Is that correct?

Mr. WRIGHT. I believe so, yes, sir.

Mr. LENT. Also, you patterned them to some degree on the Nevada Administrative Procedures Act. Is that correct?

Mr. WRIGHT. Yes, sir.

Mr. LENT. On the question of transcripts of official hearings of the committee on infractions, the minority members, you will recall, felt it would be acceptable to provide a single copy of the transcript to the president of an institution and leave him with the burden of protecting the confidentiality of that transcript. Why does the NCAA continue to oppose a limited distribution of the transcript?

Mr. WRIGHT. If you have had an opportunity to look at the meetings of the October council, the staff prepared with my assist-

ance a change in the rule that would have done essentially what the minority asked for—that is, provide one copy to the president of the institution with all sorts of restrictions in an effort to preserve confidentiality. I was not advocating it. I much prefer the situation in which there is no written transcript because my worries about confidentiality are very deep. However, I thought with those restrictions it was at least something that could be tried for a time. The council, for whatever reason—and I was not there—decided that it did not want to go even that far.

I have always thought that the issue of a written transcript has taken on an importance that it really does not deserve, but the necessity is much less great than some have suggested.

In hearings that we have heard in the past 2 years—that is, since the Oklahoma State hearing in June 1977—there have been three cases appealed. In none of those cases was there any issue whatever about the findings made by the committee on infractions. Two, the issue before the council was whether those findings justified the penalty. Third, it was a question of interpretation of NCAA legislation: Did the conduct which had been admitted and disclosed by the university constitute a violation? A transcript would have been of no value whatsoever.

Mr. ECKHARDT. Would the gentleman yield?

Mr. LENT. Yes.

Mr. ECKHARDT. I understand that the British Ministry for many, many years kept no minutes at all. All the discussions were simply preserved in the memories of the people. Of course, the memories of people get rid of the chaff and tend to preserve the main points. I think there is a lot to be said for that.

However, it would have been absolutely unconscionable if the Prime Minister had a tape recording of the proceedings and could refer to them at his convenience but the other members could not.

Essentially it seems to me that is what has happened. Persons affected by these proceedings have to go to some headquarters location and listen to the transcript. They may not jot it down.

Mr. WRIGHT. That is right.

Mr. ECKHARDT. A schoolmarm raps their knuckles if they pick up a pencil to make any written notes.

It seems to me one thing or the other ought to be done. There ought to be no transcript available to anyone or else if there is a transcript it should be somehow conveniently available with an opportunity for the persons affected to take notes from it.

Obviously the judges or the prosecutors are going to have access to that information. They are not going to be so disciplined.

Would you not agree that one or the other process ought to be put into effect?

Mr. WRIGHT. I do not understand, Mr. Chairman, that institutional representatives are not allowed to take notes.

Mr. ECKHARDT. Institutional representatives are not permitted to take notes.

Mr. WRIGHT. That is not my understanding. I believe when they come to listen to the tape recording they are allowed to take notes, yes.

Mr. ECKHARDT. What about persons affected by it, student athletes?

Mr. WRIGHT. A student athlete would be in exactly the same position as the institutional representative. He or his lawyer could listen to the tape——

Mr. ECKHARDT. And take notes?

Mr. WRIGHT. Yes.

Mr. ECKHARDT. But not take them out.

Mr. WRIGHT. Yes.

Mr. ECKHARDT. Yet, the transcript is continually available to the prosecutor. What is going to prevent him from taking notes? He really does not have to take notes because he can walk into the room and hear the tapes any time.

Mr. WRIGHT. He can. My understanding is that staff never listens to the tapes. They do not find them of any use in preparing for appeals. They do not need them. After all, they have been at the hearing and they have heard the evidence at that time.

Mr. ECKHARDT. That accentuates the advantage they have. After all, they have been at the hearing and they are in command of the facts. It seems to me the individual is at a considerable disadvantage under this process. I would certainly think that your organization would be amenable, on balance and in fairness.

I do not disagree with the minority's recommendation. That probably is a good compromise. It preserves the confidentiality to the best it can be done.

Mr. WRIGHT. I would not have assisted in the formulation of the proposal which the council rejected in October if I did not think it was something that we could live with. I have to say I do not think this is unfair to the institutions the way we presently do it, but we could do what we suggested to the council in October. If that would alleviate concerns about fairness, I would again urge my friends on the council to consider it.

Mr. ECKHARDT. The reason we are so interested in this is that it is not just a question which affects college sports; it also may affect careers of many young people. If it affects those careers adversely and unfairly, I still think, perhaps taking it with a grain of salt in this context, of what John Adams said defending the British soldiers in the Boston Massacre, "It is better to let a hundred guilty lose than to convict one innocent man." I suppose that is what our concern is here.

We are not dealing merely with the question of school discipline. In many instances we are dealing with the professional lives and careers of a great number of young people.

Incidentally, amongst minority groups frequently this is the most effective way for a competent, strong, and intelligent young man to get out of the ghetto.

Mr. LENT. I would like to reclaim my time, Mr. Chairman.

Isn't it precisely for the reason of protecting the reputation of the student athletes that you have this rule to preserve the confidentiality of the record?

Mr. FRANK. Yes.

Mr. LENT. Isn't it a fact that a great deal of derogatory hearsay and so forth may be developed during the hearing and incorporated into the transcript, so that news leaks to the media, for example, might take some of these statements out of context and literally

destroy the reputation of student athletes who are perfectly innocent?

Mr. FRANK. That is correct.

Again recalling the discussion among the council members, the overriding concern was the protection of individuals who might be involved in the case one way or the other. It should be pointed out that the NCAA does not release the names of individuals. One grave concern was maybe the selective release of information from these transcripts if they were in the hands of individual institutions.

Personally as a university president I do not feel I need the verbatim transcript. The availability of the tape recordings or the other information is sufficient.

We have hearings at our institution involving students and faculty members. We do use tape recordings and not verbatim transcripts. It is again for the protection of the individual. That was our concern.

Mr. LENT. Turning now to another area where the committee made a recommendation having to do with the right of witnesses before the council to participate with counsel in infraction cases, Professor Wright, in your opinion do former student athletes, those with no remaining eligibility, and representatives of an institution's athletic interest—that is, boosters—have a right in fairness to participate with counsel in infractions proceedings?

Mr. WRIGHT. I do not think so. We can do nothing whatever about the former student athlete. No penalty we can impose reaches the former student athlete or affects him adversely in any way.

With regard to the representative, a penalty merely deprives him of his ability to recruit for the institution. I do not believe that is a right that requires that he be heard through counsel before it is taken away. I believe if an institution wants to cut alumni out altogether that ought to be for the institution and not a matter of due process. It would endlessly delay and complicate the enforcement procedure, particularly if we let representatives come in. I do not think we would see many former student athletes, but the representatives are likely to be people of means who can afford to come to a hearing and to have a lawyer. What is already an onerous task would become much worse.

Mr. LENT. There was another recommendation which the NCAA chose not to adopt. That was the recommendation with respect to joint and parallel investigations.

From your experience adjudicating infractions questions, do you believe today that joint and parallel investigations are even practical or workable?

Mr. WRIGHT. I do not.

Mr. LENT. Would you elaborate on that?

Mr. WRIGHT. Yes.

I believe that from the vantage point of the NCAA determining what the facts are, from the vantage point also of the institution which has a vital concern in seeing how its athletic program is being run, it is far superior to have the present system in which there are two independent investigations—one made by our staff

and one made by those persons designated by the university to investigate on their behalf.

I felt somewhat heartened in this when the committee on infractions met in April. A very able young lawyer, a former clerk for Justice Stevens, representing an institution that has in fact not yet been heard by us, came with some procedural questions. He said:

> You will recall when we first received the official inquiry I did not like a bit the idea of separate investigations. I have now made the investigation and I now see why you do that. We feel a lot more comfortable at my institution knowing that we have gone out on our own and trod all the ground than if I had gone out with Jim Balaney and done the investigation.

Mr. Lent, we have made a change in our procedures only this spring that has some bearing on this. It may be we have not reported it yet to the council. It is something we have the power to do on our own. I do not think it is reflected in President Flynn's letter.

We have said to the staff, and this appears in the minutes of the April infractions committee meeting, that after the institution's response has come in, then a staff member should go out and meet with whoever is heading the investigation for the university and, to the extent feasible, see on what things there is agreement between what the NCAA has learned and the institution has learned as well as on what things there is disagreement and cases where it may be desirable to go back and reinterview.

We have already had a very striking instance of the utility of this. We very recently heard a case in which the charge was that the young man had been admitted to a coach's basketball camp without paying tuition, which would be a violation of our legislation. The institution in its response to the official inquiry said, "No, that is not so." They had a statement from the young man's father saying: "I paid the tuition to a secretary in the athletic department." They had an affidavit from the secretary in the athletic department saying, "Yes, I received the tuition from the young man's father."

Our investigator met with the investigator for the university and said: "We have different information. Why don't we talk to that secretary?" I believe what they ended up with was a conference telephone call in which they both talked with her.

The secretary said:

> What I put forth in that affidavit is not true. An assistant coach came by last December and said, "You have to make an affidavit that you received the tuition." I said, "I didn't receive the tuition." He said, "I know, but my job is at stake. To save my job, you have to give that affidavit."

Because we had gone back to the institution and because the institution at this final stage had participated and satisfied itself that this young woman was telling the truth, they quite agreed when they came before us: "Yes, our assistant coach did suborn a false affidavit."

If we had been under our older procedures, the way it would have occurred is that they would have come having an affidavit thinking they were clear on that. The staff would have said, "But we have talked to the young woman and she says it was a false affidavit suborned by the assistant coach." The institution quite

properly could have pled surprise and asked for a continuance to look into the matter. A great deal of time would have been wasted.

I think the new procedure is going to be helpful, although it is something that is very new that we are trying this spring for the first time.

Mr. LENT. Another recommendation that the NCAA apparently chose not to follow was the recommendation by the majority of this committee that it be the NCAA, rather than the institution of the student athlete, that would make the finding of eligibility violation.

Can you tell us why the NCAA insists on declaring ineligibility at the institutional level rather than the NCAA making the declaration?

Mr. WRIGHT. Because we think this is something that would fundamentally change the whole nature of the governance of intercollegiate athletics if the NCAA were in the business of declaring individuals ineligible.

When I submitted to the subcommittee last summer my prepared statement prior to our hearing in the fall, I said that I was confident that the great bulk of declarations of ineligibility by institutions are cases that never come to the infractions committee. The institution sees a rule has been violated and it immediately, as our legislation says it should, declares the young man ineligible. Then if it thinks there are extenuating circumstances, it goes to the committee on eligibility.

I was very pleased when Mr. Toner subsequently submitted his statement to the subcommittee. My hunch as to what the fact is has proven to be the fact. Most of the enforcement of NCAA legislation in terms of declaring people ineligible is in fact done by the institution. That is the way I think it ought to be. I wish it all came from the institutions. I wish we did not have to have a committee on infractions.

I think the moment the committee on infractions and the NCAA say, "We will do it. We will declare people ineligible," the temptation is going to be awfully strong for the faculty representative of the athletic council at the institution to say, "We're not going to declare our people ineligible any longer. It's very unpopular and we get a bad press. We will let those bad guys at the NCAA do it."

I think you would have much less self enforcement of the rules.

Mr. LUKEN. Would the gentleman yield?

Mr. LENT. I think my time is about to expire. I did want to ask one final question.

Mr. LUKEN. Your time expired 15 minutes ago.

Mr. LENT. I think the time on the minority side of the aisle is rather short.

Mr. LUKEN. I only wanted to ask a little question.

Mr. LENT. Professor Wright, on the face of it, it seems harsh to require findings of ineligibility in cases of so-called minor infractions. Can you tell why the NCAA chose to oppose the subcommittee's recommendation to define major and minor violations and as a consequence major and minor penalties? What recourse is available to a student athlete if his eligibility is taken away due to acceptance of what might be considered a trivial extra benefit?

Mr. WRIGHT. His recourse is the subcommittee on eligibility, a committee entirely independent of the infractions committee. I

have no idea even how it works except what I read in the statement by Mr. Toner.

I think it shows that the subcommittee on eligibility is keenly attuned to this sort of thing. Where the young man has in fact received something minor, his eligibility would be restored with little or no penalty.

Mr. LENT. And you chose not to try to categorize misdemeanors versus felonies, major versus minor? Why did you find that to be good practice?

Mr. WRIGHT. Because we think that is an invitation to universities—if you set in advance a minor penalty for this, institutions will think they might as well run the risk on that. In fact, in the cases that come before us you get a mixture—you get major violations, minor violations, mitigating factors, self-disclosure, corrective actions, and the penalty has to be adjusted to all of those.

Mr. LENT. Thank you, Mr. Chairman.

Mr. ECKHARDT. Mr. Santini?

Mr. SANTINI. Thank you, Mr. Chairman.

I will be happy to yield to my friend from Ohio who had a question he wanted to follow up with.

Mr. LUKEN. My sense of timing has been destroyed. I will wait.

Mr. SANTINI. I would like to examine some of the points of difference in terms of the immediate response of the council to the recommendations of the committee. I commend you for those that either in whole or part have been adopted. However, I am concerned that some substantive change recommendations made by the committee, and joined in by the minority, have not been adopted.

The first one I would like you to consider is the evidentiary standard. Now this is in the category of one of those recommendations by the committee which in my judgment has been adopted in part. I think it is the perception of the council that it has been adopted in whole. Let us examine it.

You now allow all credible evidence to be introduced so that someone feeling that an individual allegation of infraction is erroneous is now greeted with the proposition that the person knows that all evidence deemed by the committee on infractions to be credible will be admitted. To my mind that suggests several more problems.

I think this is exemplified perhaps by the Munford infraction in the UNLV case. On the one hand, you had the investigator's past recollection recorded notes. On the other hand, you had a sworn affidavit of the instructor, the sworn affidavit of a student athlete, a letter from a classmate, the signed statement of another classmate, and a statement of the university attorney of his recollection.

It would seem in that instance on the one hand you had several significant pieces of evidence of higher order. On the other hand, you had investigator notes with past recollection recorded.

Professor Wright, I recall that we discussed this particular allegation during our hearings last fall. You found against the violation. You went on to state, "I do not believe that a finding would have been made in that episode if that case were to come before us today. We can handle this now."

Given the new evidentiary standard, can you tell me how that is going to change the mistake that occurred—at least in my judgment and I gather in yours—in the finding of the Munford allegation 4 or 3 years ago?

Mr. WRIGHT. I do not think that the new evidentiary standard in itself is why we could handle that now, as I said last fall. I think the new evidentiary standard is very helpful. It responds to several other things that were said at page 34 of the majority report. I think it does make it clear where the burden of proof lies. Institutions are presumed innocent until proven guilty by clear and convincing evidence.

How you resolve conflicts in the evidence, we can use words in the new standards but verbal standards for resolving conflicting evidence I think are not very helpful. It is the attitude the finder of fact takes in applying the standard, whatever it may be.

The reason I think we could handle the Munford case better now than we did before is that the committee has become more experienced and sharpened on the question of what different kinds of conflicts in evidence we have and has learned to distinguish between the one-on-one case and the two-on-one case and the one-and-a-half-on-one-half case, to use terms that we now throw around every time we are sitting by ourselves deliberating findings.

For me the Munford case was a case of one on one. Munford said, "Not only did I not do this, but I never told MacMinimim that I did it." MacMinimim said, "Munford told me that he did it."

I thought it was a case of one on one. On that state of the record, I cannot make a finding whether it happened or not.

As I recall what some of my colleagues said when we had the other hearing, they believed that there was other corroborative evidence that satisfied them.

My basic point in response to your question is that we have focused on what we do in the case of conflicting evidence. We now identify them and see that this is what this is.

Mr. SANTINI. It seems to me you must prepare an evidentiary standard to deal with the tough cases. In my judgment, if there is ever an instance in which the NCAA got overly exuberant in its investigative enthusiasm and its punishment prerogatives, it was UNLV. A lot of factors contributed to that. I think I understand some of those factors better today than I did when we initiated this endeavor 2 years ago.

It seems to me difficult for someone coming up against a tough case, given this kind of evidentiary standard that allows all credible evidence to be introduced, to prepare the evidence on the other side of the issue. There is almost virtually nothing as to whether affidavits or lie detector tests are included. It seems to be unnecessarily vague and subjective. It says in essence, "We'll consider that evidence that we like or that we consider to have credibility." That is the vaguest of standards when you have no other precedence, no other rules, and nothing else to support it or reinforce it.

It was extracted out of context of administrative law. It was extracted out of context from a series of rules and regulations, a series of precedents, that would tell someone trying to prepare facts on the other side of the issue what would be expected and what would not.

It seems to me the proposal of the majority that you assign some kind of weight that you are giving. If you are going to exclude lie detector examination evidence, so state so that they do not waste a lot of time trying to pursue it and present it, which was attempted in this case.

If you feel that affidavits have a certain evidentiary standard or right, give them that. If you feel that a one-on-one proposition is insufficient as you have defined it to support a finding of infraction, it seems to me perhaps appropriate to say so.

I think much more guidance and much more direction should be afforded for those tough cases in which people and institutions truly feel that they have been wronged and infringed upon, at least in part by some of the evidentiary-gathering process or by some of the findings processes.

In wrapup I would ask: How would you like to go into court with this kind of guidance and that alone serving as your foundation for a presentation of your case? Would you feel yourself foundering at all?

Mr. WRI[redacted] No, I do not think that I would. I think this in effect wha[redacted]onfront when we go into court. We do have rules that are mo[redacted]restrictive as to the kind of evidence that will be admitted. However, I am not aware, either in court systems or administrative systems, of rules that define the weight that the factfinder is going to give to evidence of various categories.

I honestly do not see how that could usefully be done. There are so many variations. The one-on-one situation, I would not make a finding. I do not think any of my colleagues today would.

Yet, a very common variation, we have allegation No. 12 perhaps, strictly one on one. A student athlete says, "The coach promised me this." The coach says, "I never made any such promise." Allegation 13 is that the coach performed. The coach did give a new set of furniture to the young man when he got there.

Let us suppose that is established. There are records that the coach went to the furniture store and paid for the furniture and it was delivered to the student athlete's place.

If we find on allegation 13 that the coach's denial is untrue, we are then going to say allegation 12 is no longer one on one because now in this other allegation we have had corroboration of the student athlete in refutation of the coach. The performance of the promise tends to support the fact that the promise was made.

Mr. Santini, I do not see how we can possibly write that into a rule. However, you and I have discussed privately and I would like to put on the record something I alluded to briefly last fall that is of real concern today. At the April or May meeting—I have forgotten which one—the committee instructed the staff to get to work on this.

I am deeply concerned by the problem of the institution which receives official inquiry and hasn't the slightest idea how to go about preparing a response or how to go about preparing for the hearing. In most instances it is a once-in-a-lifetime experience for the institution. It does not know what to do.

The university may have a lawyer. In most cases, university lawyers handle real estate transactions and things of that sort.

They are not expert on NCAA legislation or the kind of procedure that we have.

A couple of years ago we did take one step because we were concerned about that. We said that from the time the official inquiry is sent—and this is in the manual—the primary investigator shall be available to the institution to assist it. That is a step in the right direction. However, it is not far enough in the right direction.

I think what is needed is some sort of manual building on the experience of the infractions committee and those who have appeared before us in the past. There are some institutions that have done a splendid job. It could tell the university president who wants to do the right thing and does not know how to go about doing it how to go about responding to this sort of thing, what is the best way. Should you retain outside counsel?

Mr. SANTINI. Pausing at that point, if you do not want to elaborate in terms of a rules change for evidentiary standard, could this kind of informative document include an identification of the kinds of evidence that will be accepted and the kinds of evidence that will not be accepted?

Mr. WRIGHT. I cannot remember the committee ever not accepting any evidence. We simply let everything in. The question then is what weight we give to it. In some instances, at least, it could.

For example, I know a number of attorneys come before us and they are very happy because all of their evidence is in the form of affidavits. The committee's view consistently—and I think it reflects what Congress did a couple of years ago when it adopted a statute on this subject—is that no magic is attached to the fact that a notary public has put a seal on something. We give no more weight to a statement because it is in affidavit form than a simple signed statement. I thihk it would be helpful and save the universities a lot of trouble for us to say that.

Mr. SANTINI. I concur. I hope you might be able to put together some kind of course-of-action direction manual for the institution affected so that it might have a better ability to try to figure out where to start and where to go when there is an official inquiry.

Mr. WRIGHT. I asked Mr. Hunt yesterday, and he told me the staff is at work on that and hopes to have something to the infractions committee fairly soon. We at least have the process started. How good the manual will be, we do not know until we see it but we are going to try

Mr. FRANK. I would like to make one comment on the affidavit from a layman's point of view, having sat through many of the hearings and the one to which you refer.

I really was troubled with the affidavits and gave great credibility and great weight to such a document. On the other hand, I had to weigh that against what was reported. After sitting through two or three of the hearings involving institutions, after great pain and great analysis, I had to reach the conclusion that there was nothing sacred about an affidavit. Individuals can be untruthful in affidavits. It did boil down to a question of one-on-one and who you believed.

I think I, along with other members of the council, extended ourselves to determine the truth of the statements that were made. Then you just have to make a judgment.

Mr. SANTINI. I am not wishing to quarrel with any individual credibility evaluations. I rather think the characterization of Munford would come closer to something like 6, 7, 8, 9, or 10 on 1.

Mr. WRIGHT. It wasn't that, Mr. Santini, at the committee on infractions stage. A good deal of additional material was submitted to the council on its appeal which the committee on infractions did not have.

Mr. FRANK. That is true.

Mr. SANTINI. When we come into the realm of lie detector examinations, realizing their infirmity and that they are not total answers; when statements are made to the effect that they are only right 83 percent of the time and therefore should not be given any more weight than a fact recollection, recorded statement, or any other evidence; it seems to me not only to fly in the face of scientific deduction, but also, in the balance of things, it does not give sufficient weight to evidence of a lie detector examination. It almost amounts to discounting it. I do not think it deserves that, either.

You and the chairman had a colloquy about lie detector evidence in the past.

Mr. Frank, I would appreciate your thoughts about the use of lie detector evidence.

Mr. FRANK. I do not have too many thoughts on the topic. I think I would probably concur with what Professor Wright said. The infractions committee will accept any evidence that is submitted to it.

Mr. SANTINI. The transcript issue is going to continue to be of particular concern to the council and the committee on infractions as well as to those in tough cases in which there are genuine evidence differences. I would come down strong on at least urging the council to adopt the recommendation of the minority.

If you had an opportunity to talk to representatives of institutions who have been faced with the situation of being notified that they have been found in violation of specific infractions at a hearing that occurred in some distant motel or hotel site, you would know the institution or person is trying to figure out what happened at that hearing.

Then the institution is told, "If you are really interested in finding out what happened here, come on back to Shawnee, Mich., sit in the enclosed portal, and you can take highlight notes but you cannot take verbatim notes and you cannot have a copy of them. This is being done to protect confidentiality and this is for your own good, institution."

The institution says:

> But I don't need protection I need help. Please let me have a copy of the transcript We can then determine which of those infractions are ones to which we accede and which of those we feel we would take factual difference with, as well as what evidence you relied on to arrive at that conclusion.

The minority's recommendation, it seems to me, gives you an absolute assurance of those concerns that you have about confidentiality and protecting the reputation of athletes.

If the university violates that confidentiality, given that inducement and the prospect of an additional allegation of infraction, you will have a rather substantial guarantee of confidentiality.

It is so particularly frustrating to those who feel that they have been wronged to try to deal with the vague vacuum of a tape to understand what happened at the hearing at which they were wronged.

It seems to me almost all other bodies of dispute resolution in the United States of America make copies of their proceedings available. In those situations there are prospects for violation of confidentiality or prospects for bent or injured reputations. However, each and every one of those factfinding entities has seen fit to realize that the transcript is the essential element of finding out what happened at the hearing.

If you want to remove the aura of star-chamber-type proceedings which is created when someone comes up against a situation of saying, "If you want to find out what happened in there, come back here and listen to our tapes," then it would seem to me more reasonable to at least adopt the transcript proposal that the minority has made.

Mr. Flynn, I would appreciate your answer or thoughts on that.

Mr. FLYNN. I think Professor Wright could answer it better, but let me attempt to respond.

I have heard everything you have said. It comes down to a matter of opinion. You must remember that the council is made up of presidents of universities, faculty members of universities, and very few athletic directors.

It has been discussed at least at three council meetings. They just feel that the confidentiality is extremely important. They feel that reputations of student athletes and reputations of people who submit affidavits, whether it be pro or con, also would be injured.

I get a feeling the presidents on the council and the faculty people do not feel that document can be kept by the president. He has so many things to do. That is one of his documents. President Frank could speak to this better than I can. How are you able to keep it?

You say you perhaps have an infractions committee if the confidentiality is broken. Of course, they could say that the NCAA broke it. Then it is a question of who in the president's office gave out the information. It gets involved.

I can understand your view. I can understand the views of the council. That is just the way they stand right now.

Maybe Professor Wright might wish to comment.

Mr. SANTINI. As long as there is no public documentation or sharing of the transcript of the infractions committee proceedings, you will remain perpetually vulnerable to the allegation of the star-chamber-type hearing which is closed and isolated.

I would like to move to the issue of the joint and parallel investigation. One of the premises of the NCAA in its enforcement procedures is the so-called cooperative spirit of the universities and the NCAA. The recommendation of the majority that a joint and parallel investigation is a logical way to proceed makes a whole lot of sense to me.

I think it would end many of the disputes of evidence which are presented. It would greatly reduce the time and expense of conducting the investigation by the institution.

The response which has been offered is that it would not be practicable or workable. I think we have, at least in small part, some institutional intransigence here.

It is apparently a successful procedure, as testified to by Dickie Holmes of the Missouri Valley Conference. Do you have any information that this joint and parallel investigation procedure of the Missouri Valley Conference is not practicable or workable, Mr. Flynn?

Mr. FLYNN. I do not, no.

Mr. SANTINI. Professor Wright?

Mr. WRIGHT. I do not want to speak particularly about that conference, but we have a great body of experience that conference investigations are far less complete than NCAA investigations. Time and again a conference investigates a matter, reports it to us, and our people go out and we find a great deal that the conference investigators did not come up with.

I believe that to have been true in the case arising from the Missouri Valley Conference, but I am not even sure at the moment which institutions are members of that conference. Therefore, I would not want to represent that as a fact.

Mr. SANTINI. What I perceive, at least in part, is that there is an NCAA-institutional thought process that says, "We have always done it this way. This is the only way it can be done." I would suggest that others are not doing it that way and appear to be doing it successfully.

I think your counterpart in the women's athletic organization has these kinds of national joint and parallel procedures. They feel it works very well. Dickie Holmes felt the Missouri Valley Conference procedure worked very well.

I think inevitably if you are dealing in a cooperative spirit—and I do not know that you can have it both ways—you cannot presume the university to be intransigent or offensive or disposed to not cooperate at the first instance. You say in your manual that you presume them to be cooperative.

I think you would agree in most of your experiences that four out of five universities are conscientiously devoted to trying to dig out all the facts and figures. If they could work together with you instead of working in an adversarial situation, you would accomplish a lot more in the long run with most of those universities.

If you get yourself in an investigatory situation where you have universities not cooperating, you cut it off and revert to the existing procedures. You have a shrewd, dedicated investigative team there that will be able to perceive almost immediately if somebody is trying to hide evidence or trying to collect evidence. I think it makes difference.

Finally, I would like to discuss the UNLV case. When was this new rule adopted to which the chairman referred?

Mr. FRANK. It was at the council meeting this past June.

Mr. SANTINI. That rule was adopted specifically to respond to the UNLV-UNR case. Is that correct?

Mr. FLYNN. That was the case that was under consideration, but reading the handbook it seems as though we interpret the NCAA. Who is the NCAA? We felt an interpretation had to be made. I think a very-broad interpretation was made.

Actually if it is an appeal to the council, the council can hear it or the infractions committee can hear it or both can hear it.

Mr. SANTINI. That has never been done before?

Mr. FLYNN. It has never been done before, to my knowledge.

Mr. SANTINI. Mr. Chairman, do we have a copy of the minutes of that June meeting?

Mr. MCLAIN. No.

Mr. SANTINI. Can you provide that?

Mr. FLYNN. I do not have them. Your counsel asked for that late yesterday, and there was nobody that had brought the minutes of that particular meeting. It was a special meeting because the court had handed the case back to the lower court just about the time of our meeting. Therefore, we did have a special meeting to decide and to make an official interpretation on that.

Mr. SANTINI. Was Mr. Byers at that special meeting in June?

Mr. FLYNN. He was.

Mr. SANTINI. Did he participate in the decisionmaking as to whether or not there would be a rule change to anticipate the UNLV case?

Mr. FLYNN. He participated in getting legal counsel as to what the official interpretation should be. That official interpretation was presented to the council, and the council did approve it.

Mr. SANTINI. Mr. Chairman, I would move by unanimous consent to request that a copy of those minutes be submitted for evaluation at this point in the record as soon as Mr. Flynn is able to secure them.

Mr. ECKHARDT. You can supply them?

Mr. FLYNN. We will supply them.

Mr. ECKHARDT. Without objection, the record will be held open for that purpose.

[The minutes referred to follow:]

MINUTES OF THE

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION

COUNCIL

Marriott Hotel, New Orleans, Louisiana — June 14, 1979

Those in attendance were:

John L. Toner, University of Connecticut
Olav B. Kollevoll, Lafayette College
Charley Scott, University of Alabama
Fred Picard, Ohio University
Vido A. Stabben, Southwest Missouri St. U.
Kenneth W. Herrick, Texas Christian Univ.
Joseph N. Geraud, University of Wyoming
John R. Davis, Oregon State University
Sherwood O. Berg, South Dakota State Univ.
Jack Chellman, Indiana U. of Pennsylvania
Chalmer G. Hixson, Wayne State University
Edward W. Malan, Pomona-Pitzer Colleges
Arthur J. McAfee Jr., Morehouse College
John Pont, Northwestern University
Robert F. Riedel, State Univ. Col., Geneseo
James P. Sullivan, Boston State College
William J. Flynn, Boston College, president
James Frank, Lincoln University (Missouri), secretary-treasurer
Walter Byers, executive director
Ted C. Tow, recording secretary

Thursday, June 14

The meeting was called to order at 4:46 p.m. by the chairman, Mr. Flynn. All members were present.

1. Enforcement Procedure. The purpose of the special meeting of the Council was to consider the provisions of Enforcement Procedure 12-(e)-(2) as they relate to the infractions case involving the University of Nevada, Las Vegas.

   a. It was noted that those provisions specify the NCAA shall reconsider the penalties in an infractions case if any of the penalties are set aside for any reason other than by appropriate action of the NCAA. In the UNLV case, the show-cause provision calling for appropriate disciplinary and corrective action regarding the institution's head basketball coach had been set aside by a Nevada state court. Recently, the Nevada Supreme Court had reversed the lower court and remanded the case to it, noting that the NCAA was an indispensable party and had not been enjoined. To date, there has been no action to refile the case in the lower court and thus there is no outstanding court order; therefore, the status of the institution's suspending its basketball coach should be reconsidered.

   b. It was recommended that the Council adopt language to explain in Enforcement Procedure 12-(e)-(2) how the specified reconsideration is to take place in any case.

      (1). It was VOTED

      "That Enforcement Procedure 12-(e)-(2) be expanded by adding the following at the end of that paragraph: 'In such cases, any extension

of penalties shall be by the Committee on Infractions after notice to the institution and hearing, provided that if such penalties have been imposed following appeal to the Council, any extension or continuation of penalties shall be by the Council or by the Committee on Infractions after assignment to it by the Council; and any extension of penalties by the Committee on Infractions shall be subject to appeal to the Council.'"

(2) It was, VOTED

"That consideration of penalties in the UNLV case shall be handled by the Council, based on the policy just adopted and in view of the fact that the Committee on Infractions will not meet until after the Council's meeting of August 15-17, 1979."

c. The Council was reminded that the institution is aware of the provisions of Enforcement Procedure 12-(e)-(2) inasmuch as it was notified thereof in both the case report and the eventual press release. It was noted, however, that the Association has not been informed of the current status of the coach's suspension in view of the Nevada Supreme Court action.

d. It was VOTED

"That a letter be sent to the University of Nevada, Las Vegas, in the name of the Council, asking the current status of the institution's head basketball coach and the institution's intentions in that regard; further, that the letter should remind the institution of the provisions of Enforcement Procedure 12-(e)-(2), cite the newly adopted Council explanation of the reconsideration procedure and advise the institution that it is entitled to submit a written presentation and to appear before the Council."

e. It was agreed that the Committee on Infractions also will be invited to submit a written presentation and to appear during the institution's hearing before the Council, if such hearing is requested by the institution.

2. House Subcommittee. President Flynn reported that he had written Congressman Bob Eckhardt, new chairman of the House Subcommittee on Oversight and Investigations, suggesting that the NCAA officers and the chairman of the Committee on Infractions meet with Mr. Eckhardt to review the Council's April response to the majority and minority recommendations of the subcommittee. Mr. Eckhardt had responded by asking for an immediate response in writing and stating that the NCAA representatives should appear before the entire subcommittee in a public hearing July 12, 1979.

3. President Flynn declared the meeting adjourned at 5:15 p.m.

The National Collegiate Athletic Association
Mission, Kansas TCT:pt June 22, 1979

53-237 O - 79 - 7

Mr. SANTINI. President Flynn, I hope you can perceive without much imagination or with the sensitivity of this particular Congressman what it looks like to us. It appears in the February meeting in an exchange of viewpoints among Mr. Wright, the executive director, and Mr. Byers that Mr. Wright tells Mr. Byers, "Well, under the existing law unless you can prove collusion, you cannot impose additional punishment on an institution because a player or a coach sought relief in court."

Then at the next meeting in June in comes Mr. Byers and the rule is changed apparently to create the latitude for potentially more punishment.

Mr. WRIGHT. May I just correct one matter of fact?

The chairman read my views on it. It is from a spring 1978 council meeting. Therefore, it is not the next meeting. More than a year had elapsed between the two events.

Mr. SANTINI. Excuse me. It was April 24 to 26.

Mr. FLYNN. I do not think there was any intention in the official interpretation to make it permissible to add further punishment. I do not think that entered into the situation whatsoever. It did not enter into my mind: I do not believe it entered into the minds of any of the other members of the council. It was a question of who was going to handle it. That was what it got down to.

Mr. SANTINI. Again, from an outsider's perspective, from someone looking at this and trying to understand what is going on, it appears a very devious plot is in process here.

Mr. FLYNN. There really isn't.

Mr. SANTINI. President Flynn, this July 7, 1979, letter was submitted reluctantly and on my demand yesterday when all of us were going into orbit about this continuation of evil design that appeared to be in process here.

What appeared to be going on was that in some way, shape or form, even if a judicial body were to determine that the NCAA was wrong in the handling of Coach Tarkanian's case, he was going to be punished and the university was going to be punished willy-nilly.

I am pleased to hear your assurances that assuming a court determination that the discharge of Coach Tarkanian would be inappropriate, that would not be a basis for saying, "Now we will have to go levy some more punishment on the University of Nevada."

Mr. FLYNN. That is my personal opinion.

Mr. FRANK. I would support that.

Mr. Santini, I would just like to make another observation.

The motivation for the July 7 letter, as Mr. Flynn has pointed out, was prompted by two things. No. 1 was an adherence to the rules and regulations of the association and the fact the probationary period was coming to an end. No. 2 was the need for interpretation of this section on page 154. To us it was vague.

When you say "to be reconsidered by the NCAA," we had to determine which body was going to make a determination. That was the sole motivation for the interpretation that was approved by the council at the June meeting.

Mr. SANTINI. When you combine all the elements and circumstances of UNLV's case, it has many novel elements, including ex

parte hearings by the council on punishment and many other circumstances that do not occur typically in council conduct in other cases.

I think this looks like another novel episode in the ongoing series of the UNLV case. When the letter comes from the executive director rather than from the president or the council, it goes back to the fundamentals of apprehension and suspicion that many outsiders feel about what goes on inside of NCAA, that Walter Byers is in fact manipulating, guiding, directing, and inspiring the whole operation.

As we have shared conversationally, the infractions committee comes together three or four times a year. The council comes together three or four times a year, hears cases, and disbands. However, in the reality of it, Mr. Byers is the body and soul of all the fundamental decisionmaking within the NCAA.

Mr. ECKHARDT. Would the gentleman yield at that point?

Mr. SANTINI. Yes.

Mr. ECKHARDT. I do not find this so ambiguous because although NCAA is referred to in (2), (3) again refers to the infractions committee.

It says: "In the event the committee considers additional penalties to be imposed"—it does not say the council—"upon an institution in accordance with the procedures outlined in section 7(b)(12), the involved institution shall be provided the opportunity to appear before the committee."

All through this thing, as I said before, the reference to hearings and determinations initially with respect to infractions is in the committee. I would assume that was intentionally done.

The council is both an administrative body and a somewhat quasi-legislative body, whereas the committee on infractions is largely judicial.

For example, there are some instances in which penalties imposed for violations include the forfeiture of certain fees and money from the athlete to the council, which I assume goes into the council's general revenues.

Mr. FLYNN. I lost that one. Give me that one again. I lost that one.

Mr. ECKHARDT. That is in Section 10: Fees From the Institution.

The institution submits to the NCAA the institution's share of the television receipts for appearing in international or regional telecasts of NCAA football where the council concludes that the institution would not have been selected for such telecast but for the participation of such ineligible student athlete, et cetera. Those are the certain fees that go to the NCAA and which are forfeited by the institution.

Mr. FLYNN. If they go into a conference, if my memory serves me correctly, generally conferences share their television receipts. I believe the part that the institution would receive would be forfeited, but most of it would go to the other members of the conference.

Mr. ECKHARDT. But at least some of the money that would otherwise go to the institution goes to NCAA.

It reminds me of the Texas justice of the peace who had his office financed by the penalties which he imposed.

Mr. FLYNN. I do not think we are that hard up yet.

Mr. ECKHARDT. I do not think you are trying to do that. That is what I am pointing out. It seems you are separating judicial functions to the best of your ability, or have been doing so, and that is spelled out in (e) (2) and (3). However, this provision about carrying this case to the council seems to me to run contrary to what had been the previous rule, which I do not find ambiguous.

Mr. FRANK. Mr. Chairman, I am fully cognizant of the point you are making about reference to the committee. I am looking at 12(2). It says: "First of all the staff will review the athletic policies of the institution prior to action by the committee to restore the institution to full rights."

The council is more than an administrative body because cases do come before the council.

Mr. ECKHARDT. As an appellate body.

Mr. FRANK. That is true.

Mr. ECKHARDT. But not in the first instance. Then with respect to considering penalties (3) says: "In the event the committee considers additional penalties to be imposed upon an institution, in accordance with the procedures"——

Mr. FRANK. I can only report the thinking of the council at that time. It is because it had come to the council on an appeal basis that the council was the proper body to act in this case.

Mr. SANTINI. Mr. Frank and President Flynn, many cases had come to the council previous to the UNLV case. Some of those cases involved legal action as well. At no point in the past history of the NCAA did it see fit to try to go in and modify 21(e)(2), or whatever the rule is to which you are referring now. Suddenly something immediate seemed to prompt the necessity of amending that rule to include the council as well.

What was different in June that prompted that change that was not any different in the past 10 years?

Mr. FLYNN. I do not think it has come up. I could not perceive—and I do not think it has ever happened—that the council would increase the penalty. I believe it would definitely go back to the infractions committee. Professor Wright could tell me whether or not I am right. I think the council would hear this case.

I do not think they are anticipating that there would be additional penalties. However, it says there that it can go to the council or the infractions committee. I would not conceive that the council would add additional penalties.

Mr. ECKHARDT. Would the gentleman yield at this point?

Mr. SANTINI. Certainly.

Mr. ECKHARDT. I understand that, but there is a very material change here. The authority now to make additional penalties, as I read it—and again I sincerely hope I am beginning to misconstrue this thing—seems to provide that either the council or the committee may act upon the matter if the matter has gone to the appellate stage. They may act on it initially. That very substantially changes the right of an institution under existing provision because under existing provision there is only reference to the committee considering additional penalties. You get your first shot before the committee. I think that is an advantage because the committee is used to dealing with adjudicatory matters.

Second, (3) provides that if you lose before the committee, then you are entitled to appeal to the council.

This would give you only one shot. That would be to the council, which may not be such a sensitive body with respect to accepting evidence in the first place. Second, in effect it would deprive you of an appeal. It would be a final decision by the council acting ab initio. At least that would seem to me to be permitted under this change in the language.

For that reason it seems to me this change in the language very distinctly lessens the right of the institution. I think that is one reason Mr. Santini is wondering why this was done immediately pending the removal of the University of Nevada, Las Vegas from probation, particularly in light of the rather adverse view that I read out of the minutes that Mr. Byers seems to have respecting the area of possible additional penalties.

Mr. FLYNN. I would say this was done because it is presumed that there may be an extension of the penalty, but not an increasing of the penalty. As I said before, it does say that an extension or continuation of the penalty shall be by the council or by the committee on infractions.

Mr. ECKHARDT. But extension of probation is an additional penalty, particularly if the extension of probation is during a period of time when the university cannot do anything about Mr. Tarkanian's status.

Mr. FLYNN. We agree that if the university cannot do anything about it, there certainly is no penalty that could be assessed against the university.

Mr. ECKHARDT. I have intruded enough on your time, Mr. Santini.

Mr. SANTINI. Not at all. You have made an important contribution.

President Flynn, what do you define as the difference between an extension of a penalty or an increase of a penalty?

Mr. FLYNN. If the court does lift the right to the NCAA, they are going to say that Coach Tarkanian will have to serve 2 years not coaching. That I think would be extending the penalty as it was because it was interrupted.

Mr. SANTINI. Therefore, any kind of new punishment in your judgment would be an increase in punishment?

Mr. FLYNN. That is right. In my opinion it would go back to the infractions committee.

Mr. SANTINI. That would go back to the infractions committee.

Mr. FLYNN. Right. That is my opinion. I am speaking for myself.

Mr. SANTINI. In April of last year an exchange of viewpoints suggested that Professor Wright did not think increased punishment was appropriate. Then along comes this rule change. It appears in part to be an end run on the infractions committee to permit the council to do what the infractions committee might not be inclined to do.

Mr. FLYNN. That is not intended by the council at all.

Mr. FRANK. I again am looking at the paragraph at which everybody is looking. Of course, it states, "Any extension of continuation of penalty shall be by the council or by the committee." I believe

your concern is that the council should not be dealing with this at this point.

Mr. ECKHARDT. That is right. That is the point. I know you are honorable men. I know what you are saying. You are saying if there is an extension of the penalty you would leave that to the council. I think your only intent with respect to broadening this question was to permit the committee to treat the matter and say this is over, this is satisfied, this is the end of it. If the council does not decide that way and they intend to consider additional penalties, they would submit the matter back to the committee. I think that is the intent.

Mr. FLYNN. That is it.

Mr. ECKHARDT. But I do not think that is what the language says. I think the language would give jurisdiction for the whole question of increasing infractions or recognizing termination of the case and termination of the probation to the council as well as to the committee.

Of course, it is not our business to write your rules. However, I would merely suggest if you want to do what you suggest you want to do, it seems to me perfectly logical to permit the council to review the matter and recognize that the institution has done everything that it can do under the circumstances and that the question is now at an end. It seems to me you ought to make it that way so that the appellate body is only recognizing a termination of the situation and not bringing to itself the right to deal with new evidence and new infractions based on new circumstances. For instance, there would be the circumstance of injunction terminating and the institution not removing Tarkanian from his position.

Mr. FLYNN. I understand clearly. I will bring your concern back to the council.

Mr. SANTINI. In terms of writing that rule or regulation, who did write the proposed rule or regulation change?

Mr. FLYNN. It was written by NCAA counsel and approved by the council.

Mr. SANTINI. May I ask which council meeting?

Mr. WRIGHT. By counsel he means lawyer.

Mr. FLYNN. I mean a lawyer for the NCAA.

Mr. ECKHARDT. Written by c-o-u-n-s-e-l and approved by c-o-u-n-c-i-l.

Mr. WRIGHT. I was gotten out of bed in a 15th-century inn in Devon and read this draft the night before it was to go before the council. I expressed very much the view you have expressed. I thought it ought to say all these matters go to the committee on infractions in the first instance. I assume my view was communicated to the council and they found it unpersuasive. To that extent, I did agree with you and not with council.

On the other hand, I agree with the council and not with you in that we on the committee did think it was ambiguous who does have power to act. We thought there was need for some clarification. I wanted a different clarification than the council adopted, but we did not think the language in the manual really spoke to the present situation.

Mr. FRANK. That was really the motivation for this paragraph.

Mr. SANTINI. Given the extraordinary circumstances surrounding the NCAA and UNLV, it did seem that when the July 7, 1979, letter arrived, it was the culmination of the ultimate plot to attempt to further punish, sanction, or otherwise execute some kind of vindicative design because Coach Tarkanian went to court and sought help and relief through the judicial system.

Mr. FLYNN. I think that is his right. That is his right to do that.

Mr. SANTINI. Thank you, gentlemen. I appreciate your views and contributions. I am always enlightened by your testimony.

Mr. ECKHARDT. Mr. Luken, you have shown remarkable patience. I am glad to recognize you at this time.

Mr. LUKEN. I have absorbed all of it, Mr. Chairman.

I want to say that UNLV is not the only one that feels slightly wronged by the NCAA, to use the description of my friend from Nevada.

As I have listened to this and as I have listened to a good part of it over the past year or so, I do not know whether we are going to cure the rules unless we turn them upside down. As I see it, the NCAA has adopted, as you gentlemen have reflected here today, a paternalistic approach. Your implacable opposition to the warnings, and the transcripts, to the major and minor infraction definitions, unbending and unyielding, shows the sort of benevolent despotism in your approach and the approach of the NCAA in these matters.

I would just like to go into another case eventually. However, first I would like to ask Mr. Wright about the question of the individual athlete's rights to a hearing in the sense of appearance. I think you have made statements on that, have you not?

Mr. WRIGHT. I probably have.

Mr. LUKEN. You filed a statement with the committee. I just asked counsel, and we were not clear. Maybe you gentleman can enlighten me.

What is the current status? Has there been any change in the regulations or bylaws as far as that is concerned? What rights does the athlete have?

Mr. WRIGHT. A student athlete is required to be notified of all charges in which he is named and advised that he has the right to be present and to be represented by counsel. The council adopted last January, I think, an interpretation that he may be provided with legal assistance and travel expenses to hearings. These are not prohibited extra benefits.

Mr. LUKEN. Having established that, I do want to ask some questions about the University of Cincinnati situation. As a preliminary on the general University of Cincinnati situation, the prime investigator in that case was one Brent Clark. Is that right?

Mr. WRIGHT. Originally, but the effective investigation was done I think by Tom Yeager, but I am not sure.

Mr. LUKEN. Do you mean you disregarded everything that Brent Clark did?

Mr. WRIGHT. No.

Mr. LUKEN. If you did not disregard it, then you regarded it. This committee has completely discredited Brent Clark.

Mr. WRIGHT. Oh, we did not accept anything from Mr. Clark as credible. The only evidence that we had is the evidence that was

brought in by the new investigator—and I cannot remember if it was Yeager or not—who went back and——

Mr. LUKEN. Did you disregard it or didn't you disregard it?

Mr. WRIGHT. We, the Committee on Infractions, never heard what Mr. Clark had found. The NCAA obviously had in its files the memoranda from Clark. They were used, I assume, by the new investigator on where to go and all that, but nothing from Mr. Clark was presented in evidence to us.

Mr. LUKEN. But the investigators may have used it in their conclusions developed upon that.

Mr. WRIGHT. They do not report conclusions to us, Mr. Luken. They report facts. They were not telling us that Brent Clark found this as a fact. He was saying, "I went out and investigated and I found these to be the facts."

The truth is Mr. Clark had done a very ineffective job.

Mr. LUKEN. Didn't they report the substance of Brent Clark's interviews?

Mr. WRIGHT. I do not recall that they did, but I do not want to say that they did not. I do not remember that we had anything from Brent Clark. I remember being told that what turned out to be the key piece of evidence in the Cincinnati case was one that Mr. Clark did not have the initiative to hunt for and that the subsequent investigator hunted for and found, the canceled check or the smoking check as it became referred to in our deliberations.

Mr. LUKEN. I had occasion to review that file of Mr. Clark about a year ago. The file was substantially that of Mr. Clark's investigation. I assume that any investigation that succeeded must have built upon it or incorporated it.

Mr. WRIGHT. I think only in the sense of using that as a guide to where the investigator went to hunt for information.

Mr. LUKEN. As to the subsequent case of LaSalle Thompson, are you familiar with that?

Mr. WRIGHT. Yes.

Mr. LUKEN. LaSalle Thompson is not yet in college so he is not a currently enrolled athlete. LaSalle Thompson is a local Cincinnati product who announced his intention to go to the University of Cincinnati before and after the action of the NCAA. Are you aware of that?

Mr. WRIGHT. No.

Mr. LUKEN. Do you mean that the NCAA Enforcement Division is not aware of what the subject of their investigation is doing in press conferences?

Mr. WRIGHT. The only time that we had a hearing in which LaSalle Thompson's name came up was either late October or the beginning of November of last year. We were not informed that he had announced his intention to go, if indeed he had at that point.

Mr. LUKEN. What kind of a hearing did you have about LaSalle Thompson?

Mr. WRIGHT. We had a hearing in which the University of Cincinnati responded very well to the official inquiry of——

Mr. LUKEN. You mean they gave you the incriminating evidence. That is what you mean by very well. That is exactly what I am talking about with this approach.

Mr. WRIGHT. I mean they went out and made an independent investigation. They demonstrated by what they brought back that they were trying to find the facts and were not trying to hide anything.

Mr. LUKEN. They found incriminating evidence. That in your opinion is a successful investigation. What if they had found none? Would you then say it was not a very successful investigation?

Mr. WRIGHT. No. I would say it would be a splendid investigation if it is a good faith investigation to find facts.

Mr. LUKEN. The test is did it bring in enough to convict.

Mr. WRIGHT. No, that is not the test, sir.

Mr. LUKEN. In this case it brought in additional evidence, didn't it?

Mr. WRIGHT. It brought in additional evidence, as very frequently happens.

Mr. LUKEN. With reference to LaSalle Thompson.

Mr. WRIGHT. Yes.

Mr. LUKEN. That he had received a gift.

Mr. WRIGHT. Yes.

Mr. LUKEN. And that turned out to be wrong.

Mr. WRIGHT. I do not know whether it is wrong.

Mr. LUKEN. Subsequently it was changed that it was a small amount of credit that was extended.

Mr. WRIGHT. I think that is Pat Cummings you are talking about, not LaSalle Thompson.

Mr. LUKEN. No, I am talking about LaSalle Thompson. The facts are very well known. It was $195 worth of credit in clothing, not a gift of trousers, as was indicated by the university. The university did not have its facts right in the first place nor probably in the second place. Did the NCAA accept those facts?

Mr. WRIGHT. We accepted the facts that the university presented.

Mr. LUKEN. Did LaSalle Thompson ever have an opportunity for a hearing?

Mr. WRIGHT. No.

Mr. LUKEN. He did not have an opportunity for a hearing?

Mr. WRIGHT. Not before the infractions committee. He had the opportunity for a hearing before the eligibility committee.

Mr. LUKEN. How did he have such an opportunity for a hearing? Was he given the notes?

Mr. WRIGHT. I have no idea, Mr. Luken, how the eligibility committee works. However, I know the rules provide and I know the students do participate in appeals with regard to eligibility.

Mr. LUKEN. You mean currently enrolled athletes? This is not a currently enrolled athlete.

Mr. WRIGHT. The appeal of LaSalle Thompson is whether or not the rule should apply that he would be ineligible for pre-season competition if he went to the University of Cincinnati. He did have a right to be heard on that.

Mr. LUKEN. The university now has an appeal pending, does it not?

Mr. WRIGHT. I have no idea. We are not informed of what the eligibility committee is doing. Other than what I read in the newspapers, I do not know.

Mr. LUKEN. In this particular case the timing would be such that if he exercised his appeal his choice between the University of Cincinnati and the University of Texas, which were his choices, might be impaired.

Mr. WRIGHT. No.

Mr. LUKEN. I do not know how these things work but whatever inducements the University of Texas may have offered might not be forever. How do these things work? There is a certain time for these grants-in-aid, is there not?

Mr. WRIGHT. They are 1-year grants-in-aid, yes.

Mr. LUKEN. I never hear of athletes accepting in September. It is usually around this time of the year or a few months ago. Is that right?

Mr. WRIGHT. Well, there is some date when it is legal to make the offer. I do not even know what it is in basketball.

Mr. LUKEN. Therefore, as a practical matter, the hot prospects have all indicated their intention by now?

Mr. WRIGHT. Oh, yes, they have signed up.

Mr. LUKEN. That is what I am talking about.

Mr. WRIGHT. Yes.

Mr. LUKEN. If he had a deal pending, he would not be able to take advantage of that as the others have.

In any event, he has not had the opportunity for a hearing. At least we have not seen that he has.

Mr. WRIGHT. My understanding is that he has.

Mr. LUKEN. You do not know that he has. His attorney told me last night that he had not.

Mr. WRIGHT. I cannot tell you at all how the eligibility committee works. All I know is what I read in the papers.

Mr. LUKEN. I have not followed it that closely. How does it get to the eligibility committee?

Mr. WRIGHT. In this instance the university reported that inadvertently they had been present when a violation occurred with regard to prospective athlete LaSalle Thompson. They said it was a violation, "Here's what our man heard. He happened to be in the store at the time."

The committee on infractions found a violation. That is the termination of our function with regard to the case.

The only effect that has on a prospective student athlete is with regard to post-season competition. Plainly it is going to be a disadvantage to Thompson if at the University of Cincinnati he cannot participate in post-season games and in some other institution he can.

Therefore, he has the right to go to the eligibility committee and say, "Please rule that I did not do anything wilfully wrong in this case. Therefore, my eligibility to compete in pro-season competition will not be affected if I go to the University of Cincinnati."

Whether he took advantage of that right, I have no information.

Mr. LUKEN. As a prospective athlete?

Mr. WRIGHT. Yes.

Mr. LUKEN. He does not have to be currently enrolled?

Mr. WRIGHT. I do not understand that he does.

Mr. LUKEN. But you are not sure?

Mr. ECKHARDT. Will the gentleman yield for a minute?

Mr. LUKEN. Where is the rule?

Mr. ECKHARDT. Isn't it true that if the infractions committee finds that a benefit has been given to a student athlete, no matter how much the benefit is or how small it may be, the penalty is automatic with respect to eligibility?

Mr. WRIGHT. Yes.

Mr. ECKHARDT. Then an appeal may be made to the subcommittee on eligibility appeals which may lessen the penalty?

Mr. WRIGHT. That is correct.

Mr. Luken's questions are very good questions because this is the first and only time that I know of that we have had an allegation involving someone who is not a student athlete somewhere. Ordinarily the time lag in our proceedings is such that when something comes before us the student either has signed up with the place that offered him the inducement or he has signed up some place else.

This highlighted a present deficiency. I made a point several hours ago that we constantly learn by doing.

What do you do about a person who is not yet enrolled anywhere who is named in the evidence before us? He is not given notice as a student athlete is. It can have an effect on him. Therefore, the committee's vote was that if it ever occurs again—and I do not expect it to happen in my lifetime—under those circumstances the prospective student athlete should be notified of his right to be present with counsel before the infractions committee.

Mr. LUKEN. He says and his attorney says that he has not received any notice, that he is unaware of it. You say he should have. I would like at least to get a report and hold the record open to be advised as to just how LaSalle Thompson was notified of that right and the timing of notification.

Mr. WRIGHT. We have in the room Mr. Hunt and Mr. Berst, who perhaps could answer Mr. Luken's question right now.

Mr. VENTO.[1] Would the gentleman yield?

Mr. LUKEN. Yes, as long as we get the answer to the question.

Mr. VENTO. I want to point out that there are also other problems with respect to prospective athletes. The *Reed Larson* case is a well-known case that has been discussed extensively at preceding hearings that dealt with a different type problem. He had signed a contract with a lawyer and he was under age. I do not remember all the details.

However, the point is it was dealing with the same type of problem with respect to athletes that did not come under the same applicability in terms of rules.

Maybe Mr. Wright was not familiar with that case or had not dealt with it. This is not necessarily the only time that this has been at issue. You have to deal with this type of problem.

Mr. ECKHARDT. We had better have Mr. Hunt and Mr. Berst come forward.

Mr. HUNT. I do not think you need Mr. Berst if that is all right.

Mr. ECKHARDT. All right.

Mr. Hunt, do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

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[1] Hon. Bruce F. Vento, a Representative in Congress from the State of Minnesota. Mr. Vento is sitting with the subcommittee as an interested party.

Mr. HUNT. Yes, sir.

Mr. ECKHARDT. You may be seated.

Perhaps you can answer the question that Mr. Luken has raised.

Mr. HUNT. I will do the best I can, sir.

Although I used to be, I am not the staff liaison with the eligibility committee anymore. The staff member who is, is Steve Morgan of our office.

Mr. LUKEN. You are Mr. Hunt?

Mr. HUNT. Yes, sir.

As head of the enforcement department, that work comes within the area of our department. I have talked with Steve about this particular case. I can recite to you what my understanding of the facts is from the point where we had the committee on infractions hearing.

Mr. LUKEN. I think we should hear what your understanding is, but then I think we should hear the facts, the documented facts, afterwards.

Mr. HUNT. Yes, sir.

As Mr. Wright indicated, the disclosure of information at the hearing about a prospective student athlete was an unusual occurrence. I believe it is unique in my experience, although I am not certain of that because I have not researched it.

When that information was reported in good faith by the university, the committee on infractions eventually determined to make a finding of a violation. As the chairman, Mr. Eckhardt, indicated in his questioning, that automatically brought about the application of the rule. In this particular instance the rule is a post-season eligibility rule that has to do with representing an institution in NCAA championship events.

Mr. LUKEN. For all practical intents and purposes, in the case of a prospective student with considerable talents that would mean that he would not go that school? Isn't that your experience?

Mr. HUNT. Well, I have not encountered many cases like this, but I would concur with your thought, yes, sir.

In due course the committee on infractions issued a confidential report that listed the findings in the case and gave the University of Cincinnati, as any other member institution would have, the opportunity to appeal that particular finding to the council if they disagreed with that finding.

The University of Cincinnati accepted the finding, which made it final. That put everyone in a situation where the rule was applicable to the young man. In this particular case, because it is a recruiting violation, it applies to the eligibility of the institution involved in the violation.

Mr. LUKEN. Therefore, he received no rights just because the university disposed of his rights?

Mr. HUNT. Well, I don't——

Mr. LUKEN. That is what you just said. The university accepted the penalty and therefore he has no rights. That is what you just said.

Mr. HUNT. What I do not know is any discourse, dialog, or conversation that the university had with him or with his attorneys.

Mr. LUKEN. My God, we are really not dealing in that area, are we? Are you really handling cases on the basis you do not know what conversations they may have had? If you did know, would you consider that was granting him some kind of rights—your understanding of some conversation that they may have had?

I think I have described this wrong. It is not benevolent despotism; it is just despotism.

Mr. HUNT. Now we are talking here about a university that presumably would want to recruit the young man, given the caliber of player involved and his interest in the university.

Mr. LUKEN. There is no doubt the university wanted the young man, but I am talking about the young man and his rights and his ability in this case to choose the school that he had publicly announced before and after the investigation that he wanted to go to, which was the local school.

Mr. HUNT. If I may, I honestly cannot follow this logically when you refer to despotism and you are talking about a university doing something to a young man that the university wants to recruit. Are you taking the position that Cincinnati would try to hurt LaSalle Thompson?

Mr. LUKEN. I am talking about your system. The university decided, as far as the university is concerned, that they were not going to appeal it or that they were going to accept it.

I am asking you what right you gave to this young man for an appearance.

Mr. HUNT. I can speak to that as we progress here. Mr. Wright has already spoken to it at the initial level.

Mr. LUKEN. He said it was his understanding. Now we want to know what actually happened.

Mr. HUNT. I think he spoke directly to the issue of the committee on infractions and what happened in that particular situation, and the fact that we encounter situations and obviously will continue to do so in the course of enforcement that have not occurred before.

It is conceivable to me—and Mr. Wright concedes to this—that in a situation like this now the committee might want to invite the young man back to the committee on infractions alone for a separate hearing when information is divulged, if that is what you are talking about. I thought you were past that and talking about the eligibility procedure.

Mr. ECKHARDT. Will the gentleman yield?

Mr. LUKEN. Yes.

Mr. ECKHARDT. Can anybody tell me whether the young man was notified at any given stage of this proceeding and whether he did in fact appear or did not appear?

Mr. HUNT. At this point the university determined to process an appeal on behalf of this young man.

Mr. ECKHARDT. Yes, but before the appeal did he know that this matter was in process before he was declared by the infractions committee to have engaged in an infraction. I understand there was testimony against him, the university was consulted, and their information was taken. However, was he ever called in?

Mr. LUKEN. Mr. Chairman, the university produced the only information with reference to him.

Mr. ECKHARDT. He never did appear?

Mr. LUKEN. I do not think so. That is what I was told.

Mr. ECKHARDT. Was he given an opportunity to appear?

Mr. HUNT. Are you talking about the initial hearing of infractions?

Mr. ECKHARDT. Yes.

Mr. HUNT. That is what Mr. Wright was speaking to. This was a situation where to my knowledge for the first time we are at a hearing and there is absolutely no way that comes to my mind at this moment where we would be in a position to invite the young man to the hearing when the university comes in and discloses the information at the hearing about him.

Mr. LUKEN. If that is the case, it seems to me if you really are sensitive to his rights and concerned about the young man, then you ought to stop right there and invite him. I take it you did not do that. Did you, Mr. Wright?

Mr. WRIGHT. We did not.

Mr. LUKEN. What are you going to do about it now that this has been brought to your attention that this was injustice?

Mr. WRIGHT. I am still hoping Mr. Hunt will have a chance to explain what happened in the eligibility committee, which is the only place where his rights are at stake.

Mr. LUKEN. Sir, I think the chairman has forcefully brought out—and I think the committee has indicated—that we would not necessarily agree with that statement. Once the infractions committee has determined there is a violation, his rights have already been disposed of in a large measure. The chairman just brought that out in his questioning.

Mr. WRIGHT. I am sorry, sir, I respectfully disagree. His right that is at stake is the right to participate in post-season competition. That is a right that is up to the eligibility committee.

Mr. LUKEN. As the chairman just pointed out in questioning of you, the only thing the eligibility committee can do is to set the penalty. They have to accept the decision that a violation occurred. Is that correct?

Mr. WRIGHT. That is correct.

Mr. LUKEN. Sir, I do not understand you. We are talking about his having a right to appear before the violation is determined.

Mr. WRIGHT. I agree with you that he should.

Mr. LUKEN. Let's back it up. Shall we do that?

Mr. WRIGHT. I said a few moments ago that this was the first time this had happened and that we decided subsequently that if it ever again happens that we have a student who is not yet enrolled that we ought to get that person in.

We did something very comfortable.

Mr. LUKEN. Can you back it up in this case?

Mr. WRIGHT. Well——

Mr. LUKEN. Can we take him back from the University of Texas and give him back to the University of Cincinnati?

Mr. WRIGHT. I want to refer to what we did in the University of Cincinnati case involving a different student athlete about whom we knew nothing, Pat Cummings. The university came in and reported facts about him.

Mr. LUKEN. I did not ask you about Pat Cummings. I do not know what that has to do with this.

Mr. WRIGHT. I think it does show that the committee is not a despot. Pat Cummings——

Mr. LUKEN. Sir, I do not want to know about Pat Cummings. We are having enough trouble getting the facts in this case. The chairman can rule on this but, as far as I am concerned, I do not think we ought to change the subject.

Mr. WRIGHT. I am prepared to stay with this case.

Mr. VENTO. Would the gentleman yield for a moment?

Mr. LUKEN. I yield to the gentleman.

Mr. VENTO. In the first instance the infractions committee you mentioned now has a policy providing the opportunity for student athletes to appeal. That is a change, is it not?

If you recall, Mr. Wright, my greatest knowledge happens to be the case at Minnesota where Flip Saunders could not appeal either.

Mr. WRIGHT. That was changed several years ago. It is not recent but it is since the Minnesota case.

Mr. VENTO. Now it is the policy that they can appear. The *Reed Larson* case is somewhat different. However, one of the problems here, as Mr. Hunt pointed out, is that the institution brings in an action, and then there is some sort of investigation. Is that correct?

Mr. WRIGHT. Ordinarily there would not be if the institution brings it in and says, "Here are the facts. These are violations." Sometimes we might say, "As a matter of law you are wrong. The facts do not amount to a violation."

Mr. VENTO. The university, of course, has a limited number of grants-in-aid they give out. In all due respect, they may want an athlete but they also want a determination because of the time frame which, as the gentleman from Ohio has pointed out, is a problem.

If the university, in this case Cincinnati, had not appealed to the eligibility committee, do you know what the status of that student would then be in this case? They have appealed so I guess it is moot, but would he be able to appeal himself?

Mr. WRIGHT. I do not know. Mr. Hunt can answer that.

Mr. HUNT. It is true that this is important in the situation that you discussed on several occasions with reference to these hearings. We have a policy now with the eligibility committee that if you have a situation involving a prospective student athlete and his alleged improper recruitment by a particular institution, then the eligibility committee will process the case prior to his enrollment and give him the opportunity to know whether or not he would be eligible for post-season competition at that particular institution.

We would volunteer the information to you that we still have the possible difficulties in regard to a case such as the *Reed Larson* case because it does not involve a recruiting rule and it involves the amateur rule. Therefore, that particular student athlete could attend any number of institutions. You could have multiple appeals. You could have possible questions of validity of the information related to an appeal such as that. However, they will give advisory opinions in a case such as that.

Mr. VENTO. I appreciate that is a problem. It is a problem that has occurred before. I think it is somewhat different. In the same context he had not appeared before the infractions committee.

Can a student athlete then appeal on his own volition to the eligibility committee? Can a nonstudent athlete appeal to the eligibility committee? If the University of Cincinnati had not signed this appeal, could LaSalle on his own volition then have appealed to the eligibility committee?

Mr. HUNT. In conjunction with that particular rule, because those are the facts we are talking about, I acknowledge to you that the scope of a hearing that occurs before a student athlete is enrolled in an institution is limited to the recruiting violation as it may affect his eligibility at a particular institution. In cases such as that in every case that has come up to date you have the institution involved as a matter of course because they are involved in the violation. Therefore, if that question arose where a man wanted to appeal independently of the institution, I presume that it would be processed. I can tell you because there has never been a request. The institution is always involved because they are involved in the violation of the legislation.

Mr. VENTO. You cannot really say for certain?

Mr. LUKEN. If you cannot say for certain, how can LaSalle's attorney or he say for certain?

Mr. HUNT. Their appeal has been processed by the University of Cincinnati. I never got to that. That was the second stage.

Mr. LUKEN. UC's appeal.

Mr. HUNT. Yes, and we notified the University of Cincinnati in writing that LaSalle Thompson and his legal counsel could be involved in the eligibility appeal. Steve Morgan of our staff expressed some surprise to me that when the appeal was actually processed apparently LaSalle Thompson chose not to participate. He has two lawyers who appear on television, and there has been wide publicity. They did participate in the hearing.

Mr. LUKEN. They appear on television with him.

Mr. HUNT. Yes. That is neither here nor there.

Mr. LUKEN. It may be. It rounds out the picture.

Mr. HUNT. Yes.

Mr. LUKEN. Two lawyers appearing by themselves or with him.

Mr. SANTINI. Would the gentleman yield?

Mr. LUKEN. Yes.

Mr. SANTINI. Did I understand you, Professor Wright, to say that the rules have been changed to assure that this kind of finding of guilty in absentia could not occur even for somebody who was in the prestudent category?

Mr. WRIGHT. The committee on infractions decided that either at our April or May meeting. I have forgotten which it was. If we ever get a LaSalle Thompson case again, we will do what we did in the Pat Cummings case, about which I am eager to talk and about which Mr. Luken does not want me to talk.

May I explain what happened in the Pat Cummings case?

Mr. SANTINI. Have the rules been changed to insure that this kind of finding of guilty in absentia could not occur again?

Mr. WRIGHT. Yes. The rule is one we adopt for ourselves and one that we have the power to adopt for ourselves.

Mr. SANTINI. Has that rule been adopted?

Mr. WRIGHT. Yes.

Mr. SANTINI. Do you happen to recall——

Mr. WRIGHT. It is either our April or May minutes. I do not know which of those two meetings.

Mr. SANTINI. I thank the gentleman for yielding.

Mr. ECKHARDT. Would the gentleman yield?

Mr. LUKEN. Yes.

Mr. ECKHARDT. I understand that there are really three levels, three tribunals so to speak, that would be involved in a case such as this. There is a question of whether the infraction occurred, as for instance an infraction dealing with a benefit to student athletes. Say that question comes up. Of course, the university is a party to that. From now on you intend to notify the student that the student might become a party to it. Is that right?

Mr. WRIGHT. Yes.

Mr. ECKHARDT. Then if the infraction is found by the committee to exist, an appeal may be made to the council. Is that correct?

Mr. WRIGHT. That is correct.

Mr. ECKHARDT. May the student appeal to the council as well as the institution?

Mr. WRIGHT. Under existing legislation he may not. However, the committee on infractions has advised the council that the rule on appeal to the council ought to be changed not particularly for student athletes, although they obviously would have to be included, but we have been more concerned about the former coach. He has a right to appear at our hearing and be represented by counsel. He has no right to appeal.

We had a situation in which an institution and its former coach were at odds. As it turned out, we exonerated the former coach, so the matter became moot. However, we immediately became concerned. Suppose we had found the former coach guilty. He would have no right to appeal on his own. Therefore, we have advised the council that we would like the legislation changed next January. If that situation should arise in the interim, even though our legislation does not permit it, we believe the council should entertain an appeal by the former coach. The same thing would apply to the student athlete.

Mr. ECKHARDT. Actually LaSalle Thompson, for instance, when he is determined to have received a benefit, the penalty is automatic. The authority for him to appear, if he has authority to appear, before the eligibility committee is one more of grace than of right. The eligibility committee says:

> Look, you violated this, but this may be a minor matter. There was a little credit granted, not actual cash, but that may be considered a benefit. We do not feel under the circumstances that should hurt your eligibility.

If that is a kind of grace, an appeal only at that level may be rather poor assurance that the student athlete will be in on the situation at the time when he can insist that in fact he did not do the act which he is alleged to have done.

Mr. WRIGHT. I agree with you.

Mr. LUKEN. As a matter of fact, the facts in the instant case which I am quite certain the student might bring forth are that the agent, or whatever he is called—well, there are several facts.

One is there was a new regime at the university which had disowned or disavowed any such agent or person identified as representative, which according to your rules the university cannot

83-237 O - 79 - 8

do. I point out article I of the bylaws and interpretations that once a person is identified as a representative, it is presumed he retains that identity.

This person who was a representative was a shirttail relation of the prospective athlete's mother who was known as an old friend. It was a 60-day credit—as a matter of fact, paid almost on time.

However, the university garbled the facts when they first turned it over. There is just no assurance here that this case was decided on the facts. Under that situation for a decision to be made dispositive of this prospective athlete's rights without an opportunity, it seems to me I would be concerned if I were on the infractions committee. I would be in a hurry to reopen it.

Mr. WRIGHT. This is why we were concerned enough in April or May to adopt a new procedure for this kind of heretofore unprecedented situation.

Mr. LUKEN. Meanwhile, LaSalle Thompson was sacrificed on the altar of what? He is just a casualty, one of the trees in the forest that did not survive? Is that what you are saying?

Mr. WRIGHT. We rely on the eligibility committee to give relief where relief is needed.

Mr. LUKEN. Because the system has been accurately described, I assume, that the infractions committee makes the determination as to whether or not there is a violation and the eligibility committee acts upon that finding, I find that a rather cavalier statement.

Mr. VENTO. There is not even certainty that an individual student athlete can, on his own initiative, make an appeal to the eligibility committee based on the status of where we are right now.

Mr. WRIGHT. That is correct.

Mr. VENTO. You are relying on somewhat of an uncertainty.

The university in this case brought the evidence in. I do not know what their motive was—to get it cleared up one way or the other so they know what to do with the grant. If this satisfied them, they could have turned around and given that grant to someone else. There are a lot of athletes who may not merit that particular type of appeal.

Mr. SANTINI. Worse yet, in the context of the situation where the individual athlete affected has not been afforded the opportunity to present his side of the issue, you have a sort of self-serving, negative disposition of the university potentially selling out the athlete in that situation, hopefully to receive a more positive response from the infractions committee or the council in regard to all the other cases.

Mr. LUKEN. Or to avoid further retribution.

Mr. VENTO. Admittedly, when the university brings this to the infractions committee with no investigation on their own volition in those circumstances, which is understandable, I think it does weigh in on the other side of where good intentions on your part might find you.

Mr. HUNT. Mr. Vento, may I speak to that?

Mr. VENTO. The gentleman from Ohio has the time.

Mr. LUKEN. As far as I am concerned, you may speak to that.

Mr. HUNT. I appreciate your concern. I believe that, according to what Mr. Wright has said, the particular concern that just arose

has been addressed by the committee on infractions in a way that at least approaches being appropriate.

I would like to say that I do not concur, if I may say this, with the theory that the University of Cincinnati would "sell out" LaSalle Thompson or give in in some way and not make their best efforts to represent his interest. It is difficult to believe, in light of all the publicity that has been given to this and all the interest in Cincinnati in having a 6-foot, 9-inch basketball player, that they would make an effort to render him ineligible and not make their best effort to serve in his interest.

Mr. LUKEN. Sir, that is exactly what I started out my portion of this hearing with. It is difficult for you to imagine the University of Cincinnati would not vigorously and assiduously defend him. Therefore, you assume they are going to do it and, if they do not, tough luck as far as LaSalle is concerned. You are in my opinion wrong.

You should not dispose of the rights of that individual on the assumption that the University of Cincinnati is going to represent him. He should be given that opportunity. That is where you are paternalistic and despotic in my opinion, and I think that is terribly wrong.

Mr. WRIGHT. That is where we agree with you, Mr. Luken.

Mr. LUKEN. I know you are sincere and well meaning. I am not questioning that. I just think you are wrong.

Mr. HUNT. I appreciate that point.

Mr. ECKHARDT. Have you come around to that view now that Mr. Luken is expressing?

Mr. WRIGHT. We agree entirely with what Mr. Luken has said, yes. As we now can see, this was a defect in our procedure. We are going to see that it does not happen again.

Mr. ECKHARDT. May I have one more moment of your time?

Mr. LUKEN. Yes.

Mr. ECKHARDT. There is another question that arises in my mind. Your committee is one that is used to hearing questions of rights and determining facts. Frequently these facts are very complex, a question of whether or not an extension of credit or a question of whether or not a very minor benefit is involved. It is taken away from your committee to make a determination other than removal of eligibility.

In our previous discussion with you in this subcommittee—and I was not on it at that time—we raised a question as to whether or not there ought to be some opportunity on the part of the infractions committee to consider a type of minor infraction as not resulting in automatic penalty.

For instance, there was the case of Larry Gillard of Mississippi State and a $12 discount on a purchase of clothes that cost him his eligibility. If you found there was a $12 discount, I suppose you are bound to hold him ineligible under the standards you are describing here, assuming you decide that is a benefit extended to Gillard and extended by a prohibited source.

However, don't you feel that there ought to be something done about that? I think in your testimony before the subcommittee last September, Mr. Wright, you indicated that if one puts these things in context they are justifiable in that when minor violations are

charged and found only when they appear as part of a larger case in which there are serious violations alleged, then there ought to be a bit more flexibility.

You go on to state: "If the only violation at Minnesota of which the staff was aware had been the bookbag, I would hope and expect that the staff would have treated the matter with benign neglect." But it would be a lot better if you did not have to treat it with benign neglect. It would be better if you used your good judgment with respect to whether or not eligibility should be withdrawn, it would seem to me.

Mr. WRIGHT. Under the system that we have, Mr. Eckhardt, we counted on the eligibility committee to take care of that. In the Minnesota case we actually did not make any finding on the Jolly Green Giant bookbag. Even if we had, it would not have affected the penalty.

We determine an institutional penalty. It is then true, as you say, that the finding of violation automatically triggers a determination of ineligibility. However, under the structure the NCAA has created that is for an entirely different group to look at this and say a person ought not to lose a minute's eligibility because of something so minor as that.

Perhaps we ought not have this bifurcation but, as long as we have had it, the committee on infractions has felt that it is our job to determine was there a violation or not and not to let the question of eligibility influence us at all.

Mr. SANTINI. My good friend, Professor Wright, does this not postulate in this case, the earlier Minnesota case that was discussed, and others that we have looked at the very fundamental question of determinations of eligibility? You and I share differing viewpoints on that, as does the council, at least the majority.

We have this fiction or facade or you believe very legitimate administrative procedure that compels the university to make the eligibility determination, rather than the NCAA.

Representatives of your female counterpart organization say that it is just nonsense, that it is not necessary, that it happen. Nonsense may be an overstatement. They say it is not necessary.

Mr. FLYNN. They do not have any infractions.

Mr. SANTINI. But they are willing to be innovative. They do not have the the encumbrances of the masculine bastion that compels adherence to doing it this way because we have always done it this way and that to change it and have the NCAA determine eligibility would cause an upheaval that would bring down the entire administrative structure of the NCAA. I do not believe it. I believe it will save you problems in the long run.

Mr. FLYNN. May I speak to that?

Mr. SANTINI. Certainly.

Mr. FLYNN. I understand what you are saying, but I do not know whether you really understand the eligibility of the NCAA. I meet with every squad at Boston College. I must do that. I must explain to them. I must ask them, "Is there anybody here who has been in school more than 5 years?" Then I determine whether or not the individual is eligible.

At the same time, at many institutions there are inseason rules, ECAC rules, eligibility rules, and they may be more lenient or

more strict than the NCAA rules. Therefore, the institution is the one that enforces the NCAA eligibility rules. They enforce the ECAC rules. There are institutions that are members of the NAIA and the NCAA My institution is also a member of the AIAW.

Each institution has many eligibility rules with which they have to comply. The rules you are talking about are very few.

I agree that if I were in an infraction case I would like to have the NCAA make that. It would be much easier for me. There is no doubt about it. It would be much easier.

However, the majority, 95 or 97 percent, of the eligibility questions are not difficult. They are made by the athletic director or they are made by the faculty representative of that institution.

As I say, you have division 1, 2, and 3. They have different eligibility rules. One university may have a football team in division 3 and all of the rest are in division 1.

If the NCAA was going to make all of the eligibility determinations, we would need a lot more help. I think what you are really saying is that you only want the NCAA to make the ruling when they determine that the boy is ineligible.

Mr. SANTINI. I do not see that we necessarily have to abandon all these other eligibility determinations by universities or conferences. I think those can be ongoing.

I suggest to you, President Flynn, that it would seem to be far more reasonable and rational in the long run and in the NCAA's best interest that you be the entity where you feel it is your infraction you are pursuing or enforcing, or it is your eligibility determination, that you take the universities out of the indefensible posture of having to look out for the university's interest on the one hand and presumptively the incoming athlete, the athletes there at the University of Minnesota or Michigan State, or the coach that is there.

The university may feel it is not in their best interest to do it, but they are the entity that is supposed to be enforcing a punishment with which they may not agree. They are the entity that is supposed to be making a factfinding that would be at odds or at issue with yours. It is unrealistic or even surrealistic.

You have this thing floating out there that says, "University, you are really doing it all." However, in truth and substantive fact the NCAA is the moving force or the determining entity, not the university. The university is caught up in it.

Mr. FLYNN. I understand what you are saying. The difference of opinion is that the NCAA feels they are represented by institutions, the institutions are members, the students are members of the institutions, and they have no jurisdiction over the students.

I understand clearly what you are saying. Fundamentally you feel that the NCAA is really making them ineligible but requiring the institution to make them ineligible. I understand that clearly.

Mr. ECKHARDT. I think Mr. Luken's time has disappeared in a whirlwind of colloquy.

Mr. LUKEN. I want to make two points. One is with reference to the University of Cincinnati in general. I am just afraid that the fruit of the poison tree doctrine should have applied with reference to Brent Clark's investigation. I cannot believe that this whole investigation was not based on his biased approach.

Second, I think we do have a problem with a system that has been demonstrated here. The particular facts in this case which might be brought out, there was no opportunity for the athlete to bring them out and present his case.

I still would hope that the NCAA would review the matter or at least review the decision in the matter of LaSalle Thompson.

Mr. ECKHARDT. Mr. Vento, you have been extremely patient.

Mr. VENTO. Thank you, Mr. Chairman.

I will be brief. I realize this has been a long morning. A lot of the points that I initially had have been addressed. The witnesses and everyone else have been very patient.

Mr. Flynn, have you personally signed these letters that I have before me?

Mr. FLYNN. No. I have seen them. I have copies of them that I approved.

Mr. VENTO. I do not mean to imply that you did not approve them, but they were prepared by staff.

Mr. FLYNN. They were prepared and approved by me, right.

Mr. VENTO. Prepared and approved?

Mr. FLYNN. Well, I have copies of them. I did make some changes in them, yes.

Mr. VENTO. My interest flows largely to some of the process that exists. One of the concerns is what I would characterize as a gag rule. When University of Minnesota official, Dr. Kegler, had made some statements about requesting the NCAA process, he was then charged with, or threatened to be charged with, unsportsmanlike conduct.

Is that still that dubious?

Mr. FLYNN. No; it is not. The institution may make whatever statement they decide. However, when the final public release is going to be made, we do furnish that to the institution and we ask them not to make any statements until it has been publicized.

Mr. VENTO. Therefore, they can now make statements and you do not use the unsportsmanlike conduct issue?

Mr. FLYNN. That is correct.

Mr. VENTO. On the same issue, Dr. Kegler produced a letter he received from Dr. Reynolds for speaking out. Dr. Reynolds, in subsequent appearance before this committee, indicated that he had not seen that prior to its being sent out to Dr. Kegler. He said it was sent out without his permission.

Has that particular problem been corrected or not? Do you now safeguard that?

Mr. FLYNN. I would hope that no letter would be sent out without approval, unsigned or not.

Mr. VENTO. Could you give us an example of what special steps the NCAA has taken, or will take, to provide oversight over staff actions? Is there anything special that has been done?

Mr. FLYNN. I think Secretary-Treasurer Frank could address that because he is chairman of that committee.

Mr. FRANK. The system is that the executive director is responsible for monitoring the performance of all staff members. He makes a report to the subcommittee of the executive committee on staff evaluation. This has always been the system. We think it is a good system. That is what we use now.

Mr. VENTO. It has a few flaws I think, based on the work of this oversight subcommittee, which we brought to your attention and which were admitted by Dr. Reynolds. I hope they will be addressed.

One of the problems that we had with the University of Minnesota investigation, irrespective of what the merits of the charges were, was the fact they were not really informed of all the charges against them. Then under the procedure they were required to go forth with an investigation with a list of some of the charges against them, but not all of the charges.

Has that issue been addressed?

Mr. FLYNN. I think we spoke to that today.

Mr. VENTO. I do not want a long answer.

Mr. FLYNN. Professor Wright has spoken to that. It has been corrected.

Mr. VENTO. You feel it has been corrected.

Then a member institution will be provided all the evidence against it? That was also a problem.

We had an extreme instance where one of the statements of evidence was from a deceased person. Therefore, it was not possible to check that out.

Has that particular problem been addressed?

Mr. WRIGHT. I thought we addressed that in the Minnesota case where the full letter shows that Mr. Brown at our direction communicated to the institution what it was that the deceased mother had said, which allegations by number were identifed of which she was the source, and the substance of her information.

Mr. VENTO. I think the problem was that the evidence is that the University of Minnesota never received that letter. That is their sworn testimony before this committee. I guess that is your impression.

I think we had a round about this a little while back. I want to make clear that they never received that letter. They testified before this committee they have not received that letter.

What role do the members of the infractions committee play with regard to previous violations by the university? What role does that play in terms of determining the penalty?

Mr. WRIGHT. It is one of the factors we are directed to look to.

Mr. VENTO. It is one of the factors you are directed to look to. In fact, the university is a dynamic community, isn't it? You have a 25- or 20-percent shift in students, faculty, and so forth.

Mr. WRIGHT. We had a recent case. I believe our press release says that although this university has been found guilty of violations before, that was many years ago and entirely different people are at the helm. Therefore, we did not think we needed to put anything extra in the penalty because of the earlier violations. I believe that is in the press release with regard to Auburn University.

Mr. VENTO. I am pleased to hear that. I think there were a lot of problems that I had with that. There is so little that an institution sometimes controls.

I tend to agree with the gentleman from Nevada's solution in terms of your suggestion of declaration of ineligibility. I think it is a rather weak argument to suggest that the only way you can be

certain a university will be responsible—in other words, transfer the entire responsibility to you for an investigation of the actions—is to leave them the power to declare ineligibility. There is nothing wrong with leaving them with that power.

However, I suspect one of the reasons you have attempted to avoid the particular responsibility is that it also keeps you out of conflict with regard to court determinations. In other words, if is the university that has to face the court cases. In my humble opinion I suspect that is the reason you avoid that particular problem.

Mr. WRIGHT. In honesty, I have never heard that advanced as the reason for staying with our present procedure. I have had many discussions with my colleagues and others, and nobody has ever said we do it for that reason.

Mr. VENTO. It does have that particular effect, though.

Mr. WRIGHT. I think that is negative from our point of view. I would like to see the NCAA defending the suits brought by students, rather than having to rely on university counsel who may not be as vigorous as we would be in defending what the committee on infractions has done.

Mr. SANTINI. There was a generous invitation extended by the University of Nevada to welcome the NCAA as a party in the suit. The NCAA declined. That is why the Nevada Supreme Court sent it down and said, "NCAA, you participate in that suit."

Mr. WRIGHT. Mr. Santini, I rejoice in what the Nevada Supreme Court did. I made the point all along that I have nothing to say and I offer no advice on how the NCAA handles its litigation. If I had been the NCAA, I would have been wanting to be in that suit from the beginning. I am glad the Nevada Supreme Court said that we had to be there.

Mr. VENTO. It has the obvious effect of putting in conflict in terms of communication between the student and the institution as opposed to the those who have a right of suit against the NCAA.

We talked about the student athlete who is not in the institution. What about the athlete who is no longer in the institution from the other side? Have we adequately covered that particular instance? Others may have an interest in the case. Their reputation may be affected and so forth.

It seemed to me that was also a major concern in the sense there seemed to be some loopholes here that you attempted to tighten recently. I hope that you would not find the loopholes at the top end of the athlete or coach's experience escaping your close purview.

Mr. WRIGHT. I hope that we haven't. I believe the council addressed that on page 48 of the April 1979 minutes, the case of the former student athlete with remaining eligibility. It says he should be given the same rights as the currently enrolled student athlete. That is the council's position, and that is our position.

Mr. VENTO. With respect to coaches——

Mr. WRIGHT. We already have the rules with respect to former coaches.

Mr. VENTO. Thank you.

Mr. ECKHARDT. Without objection, we will admit into the record at this time documents that have been referred to and additional

letters that have been supplied to the committee concerning this matter.

[The documents referred to follow:]

The National Collegiate Athletic Association

July 7, 1979

Confidential

Mr. Brock Dixon
President
University of Nevada
Las Vegas, Nevada 89154

Dear President Dixon:

This is in reference to the infractions case involving the University of Nevada, Las Vegas, and is written at the direction of the NCAA Council.

As you know, effective August 23, 1977, the University of Nevada, Las Vegas, was placed on probation as a member of the National Collegiate Athletic Association for a period of two years. The penalty then imposed, as set forth in the NCAA Committee on Infractions' expanded Confidential Report No. 123 (47), provided in part that prior to the expiration of the probation the NCAA shall review the athletic policies and practices of the university, and that if any of the penalties be set aside for any reason other than appropriate action of the Association the penalty shall be reconsidered by the NCAA.

In this regard, the Council has noted the failure to date of the university to effect a suspension of coach Jerry Tarkanian's relationship with the institution's intercollegiate athletic program. Accordingly, the Council has scheduled a hearing in order to reconsider the penalty in this case at 3 p.m on August 16, 1979, at the Trade Winds Inn, Centerville, Massachusetts. You are requested to present to the Council at the hearing a statement of the corrective actions taken by the university with respect to the violations set forth in the expanded confidential report, including information related to the current status of Mr. Tarkanian's involvement in the institution's intercollegiate athletic program and any action contemplated by the university in reference to that relationship.

Mr. Brock Dixon
July 7, 1979
Page No. 2

The Council's hearing will be conducted in accordance with the provisions of Enforcement Procedure 12-(c)-(2), which have been expanded by the Council to include the following language:

> "In such cases, any extension of penalties shall be by the Committee on Infractions after notice to the institution and hearing, provided that if such penalties have been imposed following appeal to the Council, any extension or continuation of penalties shall be by the Council or by the Committee on Infractions after assignment to it by the Council; and any extension of penalties by the Committee on Infractions shall be subject to appeal to the Council."

In accordance with this procedure, the Council will consider the university's position regarding the penalties in this case during the August 16 hearing. In this regard, it is requested that a copy of the university's written statement concerning this matter be forwarded to this office by August 3, 1979.

Thank you for your cooperation. Please contact our office if you have any questions concerning the procedures described in this letter.

Cordially,

Walter Byers

WB:hch
cc: Mr. Leonard Goodall
NCAA Council

Universities and Colleges," a study undertaken by the Association every five years since 1957. Also, the committee reviewed the executive director's letter of April 12, 1978, to the officers, highlighting the survey. It was the sense of the meeting that the survey should be the subject of a feature in a forthcoming issue of the NCAA News.

Council at Kansas City, Missouri
April 24-26, 1978

1. Attendance. Those in attendance were John Toner, Connecticut; Raymond Whispell, Muhlenberg; Charles Scott, Alabama; Fred Picard, Ohio; James Frank, Lincoln (Missouri); Kenneth Herrick, Texas Christian; Joseph Geraud, Wyoming; Edward Betz, Pacific; Sherwood Berg, South Dakota State; John Chellman, Indiana (Pennsylvania); Cecil Coleman, Illinois-Champaign; Chalmer Hixson, Wayne State; Olav Kollevoll, Lafayette; Edward Malan, Pomona-Pitzer; Arthur McAfee Jr., Morehouse; James Sullivan, Boston State; Neils Thompson, Texas-Austin, *president;* Edgar Sherman, Muskingum, *secretary-treasurer;* Walter Byers, exec. dir.; Ted Tow, rec. sec.; Wiles Hallock, Collegiate Commissioners Assn.; Ervin Delman, College Divisions Commissioners Assn.

2. Officers' Report on Interim Actions and Other Matters. Acting for the Council, the officers:

(a) Issued the following interpretations:

(1) Concluded that the eligibility of a student-athlete is not jeopardized under the provisions of Constitution 3-1-(e) if the brand name or trademark of a manufacturer appears on the apparel or equipment he uses, as long as the brand name or trademark is nothing more than the normal label used by the manufacturer on all such items produced for sale to any purchaser and as long as the manufacturer does not utilize the student-athlete's name or picture to advertise, recommend or promote the sale or use of the product.

(2) Agreed that based upon information submitted by Vanderbilt University the provisions of Cases No. 121 and No. 124 would permit the institution's baseball coach to continue as a member of a partnership which leases a baseball stadium and owns a minor-league professional baseball team, inasmuch as the coach serves only in stadium management capacities and is involved in no way in the operation of the professional team or in scouting or evaluating players for that team.

(3) Ruled that the provisions of Constitution 3-9-(c) and Case No. 140 are applicable in the case of a student-athlete who participated in outside, organized basketball competition after being academically dismissed from his institution, noting that the fact the student-athlete was not enrolled at the time Case No. 140 was circularized to the membership does not release the institution from its obligation to apply the interpretation.

(4) Concluded that a prospective student who contacts an institution by mail or telephone or in person, without being contacted by the institution or a representative of its athletic interests, would not be

considered to have been recruited by the institution (per O.I. 1, O.I. 100 and O.I. 101) if he is given a press guide which is available upon request to any prospective student without charge or if he is permitted to observe the institution's team practice, if no special arrangements are made and if that practice is open to any person who wishes to attend; however, discussion by an athletic representative of the institution's history or philosophy regarding the student's sport would be considered solicitation of his enrollment per O.I. 101.

(5) Ruled that a student-athlete who was recruited and receives financial aid not related in any degree to his athletic ability, and who therefore becomes countable in the Bylaw 5 financial aid limitations when he first engages in intercollegiate competition related to the varsity program in his sport (per O.I. 501), does not have to be counted the next year if he fails to make the team in his sport for that year; however, the student-athlete could not participate again in intercollegiate athletics without the institution being required to count the financial assistance against the Bylaw 5 limitation in the sport in question during each academic year the financial aid was received.

(6) Approved a recommendation of the Skiing Committee that a memorandum be sent to member institutions sponsoring intercollegiate skiing to explain the new provisions of Constitution 3-1-(a)-(3) permitting broken-time payments authorized by the U.S. Olympic Committee, inasmuch as the committee believes the traditional concept of broken-time payments in the sport of skiing differs from that now permissible under NCAA regulations.

(7) Concluded that no more than six football players from any single institution may be included on an NCAA all-star football team to participate against a Mexican team in December 1978.

(8) Agreed that the 1978 Convention's adoption of proposal Nos. 142 and 143 will mean that a female student-athlete now is eligible to be nominated for an NCAA postgraduate scholarship only if she is a participant in a varsity sport which meets the definitions of O.I. 12.

(9) Concluded that the provisions of Constitution 3-1-(g)-(3) and (5) would not relate to the reimbursement of expenses incurred by student-athletes as a result of their participation in the NCAA Volunteers for Youth program, inasmuch as the opportunity to participate in the program is available to any student and the reimbursement of expenses is not based in any way on athletic ability.

(10) Agreed that a junior college is a collegiate institution for purposes of the provisions of Constitution 3-1-(b)-(2) and therefore those provisions would be applicable to a junior college student who wishes to try out with a professional soccer team during the academic year; further, the provisions of Case No. 2 stipulate in part that the provisions of Constitution 3-1-(b) would apply to a student-athlete prior to his enrollment in a member institution.

(11) Concluded that an allied member which is committed to conducting six conference championships during a given academic year is eligible under the provisions of Bylaw 4-7 and O.I. 401 to apply for automatic qualification in an NCAA championship to be held during that same academic year.

subunits of the Council to study specific portions of a case being appealed had been effective in the Oklahoma State University case and may diminish the concerns of some Council members regarding the appeal procedure.

(vii) Messrs. Frank and Scott emphasized that their suggestions were offered only to study the procedures in order to ease the burden of appeals on the Council's meeting time and were not intended to imply criticism of the work of the Committee on Infractions.

(c) The meeting turned its attention to the relationship between the enforcement staff and the Committee on Infractions and the feasibility of establishing some form of accountability mechanism, a topic initially reviewed by the Council in its October 1976 meeting.

(1) Mr. Cross reviewed the development of the investigative function from the days when the committee supervised the investigative staff, served in a "prosecutorial" role and recommended penalties, with the Council serving as the hearing tribunal. The procedures were changed to separate the functions, with the investigative staff expanded and the Committee on Infractions overseeing the investigative process in a general way and serving as the initial hearing tribunal. He noted that it had been predicted at the time of that change that the increased investigative activity would result in an increase in cases and, ultimately, in criticisms from those found guilty of violations.

(2) It was noted the executive director currently is responsible for investigating complaints regarding activities of the investigators. Mr. Byers said the number of such complaints has been minuscule considering the size of the staff and the number of investigations conducted. He reported that he had investigated only four complaints, one referred by the committee itself, one submitted by an institution and two resulting from reports in the news media.

(3) Mr. Scott stated that he believes the present system is satisfactory inasmuch as the executive director is responsible to the Executive Committee, it to the Council and the Council to the membership and, thus, the membership does control actions regarding investigative activity.

(4) Mr. Wright agreed that complaints by institutions were rare and that most institutions praised and complimented the work of the investigators during appearances before the Committee on Infractions. He explained that the committee refers any complaint about an investigator to the executive director unless the charge is that the investigator's report is not accurate. In the latter case, the committee hears both sides of the issue and makes its decision. Mr. Wright does not believe an independent evaluation board would be feasible in such cases inasmuch as disagreement could result between the board and the committee in regard to the evaluation of evidence in an infractions case.

(5) It was noted that elimination of the committee's supervisory role over investigators, as suggested by some, would, in effect, put the enforcement staff in the position of deciding whether or not to send a letter of official inquiry in an infractions case, rather than the committee.

(d) The executive director reviewed several questions regarding the enforcement procedures which had been raised by witnesses in the hearings being conducted by the House Subcommittee on Oversight and Investigations. One of these dealt with the relationship between the staff and the Committee on Infractions, as discussed above. Another question concerned whether the institution should declare a student-athlete ineligible, as provided in O.I. 11, or whether the NCAA itself should make that declaration.

(1) The Association's position in regard to the latter question has been that the NCAA is composed of member institutions, and it is an institution's obligation to apply the rules of the Association and therefore to declare its student-athlete ineligible in appropriate cases. Further, this procedure does not adversely affect due process for the student-athlete because the institution's own hearing may develop evidence which will result in restoration of the student-athlete's eligibility, all or in part.

(2) Mr. Matthews stated that the "true dilemma" in the due process question is the basis on which the institution's campus hearing board reaches its findings; i.e., does that local board consider all appropriate information in the case?

(3) Mr. Reynolds emphasized that the NCAA is an association of institutions, not individual staff members or student-athletes; and the institution is obligated to exercise control over the individuals representing it.

(4) Mr. Frank asked the committee to comment on the charge that it makes decisions on "hearsay" evidence developed by the staff. Mr. Cross explained that the legal question regarding "hearsay" evidence is not necessarily whether or not it should be heard at all, but what weight it carries in the case. Mr. Matthews and Mr. Wright reminded the Council that the Association's enforcement procedures do not include the power of subpoena, and any procedure requiring the committee to hear evidence directly from witnesses would be unsatisfactory without that power. Mr. Sawyer pointed out that the institutional evidence presented is often in the same form as that presented by the staff.

(e) The executive director reviewed the situation created by institutions seeking state court action to thwart the rules of the Association, noting that the two member institutions in the state of Nevada currently are operating in violation of NCAA rulings because of state court actions. He noted that in one of those cases, the use of an ineligible student-athlete is involved; therefore, the restitution provisions of Section 10 of the enforcement procedure may be effected eventually. In the other case, however, the institution is using a coach who should have been suspended for two years in accordance with the institution's infractions penalties; and no procedure comparable to the restitution provisions exists to rectify such a situation.

(1) In the latter case, arguments before the Nevada Supreme Court are not scheduled to be heard until December 12, 1979, approximately the same time the two-year suspension penalty would have terminated, had it been applied. If the Nevada Supreme Court rules in the Association's favor, the two-year suspension of the coach may take

effect at that time. If the court rules against the Association, it is possible that suspension of a coach will be unenforceable. If this were to be the case, a related consideration is whether the institution's penalties should be adjusted inasmuch as they were formulated as a balanced set of penalties.

(2) Mr. Wright expressed the position that the institution has conformed to the show-cause provisions inasmuch as the state court will not permit the institution to suspend its coach. He believes the only case for the Association would be if it could be proven that the institution's attempt to suspend the coach was a "sham," but doubts the feasibility of that approach.

(3) Mr. Matthews stated that an adverse decision in the Nevada Supreme Court would deal only with the suspension penalty in that specific case and would not necessarily prevent the Association from applying a similar penalty in other cases.

(4) There was disagreement with the practicality of that position. Some stated that the Association should eliminate the penalty provision if it cannot be applied evenly.

(f) The joint meeting turned to consideration of the use of telephone recording mechanisms by the enforcement staff.

(1) The practice had been to record, from time to time, interviews as a means of facilitating note taking. The implication in the October 1978 Council meeting minutes, when this question first was raised, was that recording of telephone conversations had been curtailed. That information did not reflect infrequent instances in which a call was recorded without advising the other party in "self-protection" instances (e.g., when the other party had made conflicting comments in previous interviews). Thus, since 1975, the practice, with few known exceptions, has been not to record a telephone conversation unless the other party had been advised.

(2) The enforcement staff has recommended to the Committee on Infractions, as part of a new "Enforcement Conduct Manual," that the staff be required to ask the other party for permission to record a telephone call with no exceptions. The committee will review the contents of the new manual in its next meeting.

(3) Mr. Wright stated that he knows of no law preventing "self-protection" taping without advising the other party when the action is primarily to protect the individual taping the call rather than to obtain information to use against the other party.

(g) In closing the joint meeting, President Thompson gave Council members the opportunity to offer any additional questions, suggestions or criticisms regarding Committee on Infractions procedures. None was forthcoming. Mr. Reynolds then emphasized that the enforcement procedure is and has been a changing, dynamic process, with continuing improvements and refinements through the years. President Thompson reemphasized that the vast majority of institutions involved in those procedures were not critical of the process in any way.

4. Appeal of Interpretation. Robert C. James, commissioner of the Atlantic Coast Conference, appeared before the Council to present an appeal on behalf of the University of North Carolina, Chapel Hill. The

officers had ruled in December 1977, and the Council had accepted the ruling in its January 8-12, 1978, meeting that the provisions of Constitution 2-2-(a) and Constitution 3-1-(b) would prohibit that institution from accepting funds from a professional baseball organization earmarked for improvement of the institution's baseball facilities.

(a) Mr. James presented background information, noting that the owner of the baseball team and the institution's baseball coach were friends, the owner's daughter is enrolled at the institution and the professional team played the institution's team in an exhibition game in 1977. He reported that no former players at the institution are playing in the professional team's organization, and the institution would use the donated funds for baseball facilities and not for recruitment or athletic grants.

(b) Members of the Council noted the appropriate case references (Cases No. 1 and 23) and pointed out that the Association's traditional position is that the student-athlete benefits at least indirectly from receipt of such donations because while the funds are not used directly for athletic grants, they free other funds to be used for that purpose.

(c) Other members asked about documented instances in which professional organizations have rented college facilities and paid to improve them. The executive director noted the difference between facility rentals and receipt of direct cash donations earmarked for a specific sport.

The Council voted that the circumstances represent a clear contradiction of Association legislation and that the appeal be denied.

5. Executive Committee. (a) The committee recommended that the Association's program of grants to improve officiating be limited to allied or affiliated organizations, excluding nonmember agencies.

The Council voted that the recommendation be approved.

(b) The successful initiation of international all-star competition with Mexico was discussed in detail. It was noted that except for the volleyball all-star team and some participants in gymnastics, all teams had been selected from Division II or III by NCAA sports committees in an effort to provide an appropriate level of competition for the Mexican teams. It was the sense of the Council that this procedure was not made clear to all members and that more emphasis should be placed on the selection philosophy in the future.

6. Committee Reports. (a) *Volunteers for Youth.* Mr. Coleman, chairman, reported that 1,400 student-athletes and 1,000 junior high school students had been involved in the program in its initial year, and that the committee was appreciative of assistance received from the Executive Committee and the NCAA staff. The committee hopes to retain one of the current national directors of the program to serve full-time in coordinating four new national directors for 1978-79.

(b) *Division I Steering.* Mr. Scott, chairman, reviewed the minutes of the committee's April 10-11, 1978, meeting.

(1) It was suggested that the Council consider placing more proposals in the legislative consent packages, sending a mailing to all chief

(12) At the conclusion of the hearing, the institutional representatives and the NCAA enforcement staff will be dismissed in order that the committee may deliberate in private to determine findings of violations and penalties to be imposed, if any.

(13) In arriving at its determinations, the committee may request additional information from any appropriate source, including the institution or the investigative staff. In the event new information is requested from either the institution or the investigative staff to assist the committee in arriving at findings of violations, both parties will be afforded an opportunity to be represented at the time such information is provided the committee.

(d) Confidential Reports—The following procedures shall apply to confidential reports.

(1) Subsequent to an institutional hearing, the enforcement staff may be authorized to draft the committee's confidential report of the findings of violations and penalties determined by the committee. Further, the staff may be authorized to draft the committee's expanded confidential report to the NCAA Council upon appeal of any of the committee's findings or penalties. The confidential reports shall reflect accurately the committee's actions and the reasons therefor and are subject to the approval of the chairman (and, if necessary, the full committee).

(2) The committee's confidential report (as described in Section 5) shall be forwarded to the involved institution under the chairman's signature or under the signature of a committee member selected to act for the chairman. Further, the report shall be sent by certified mail, return receipt requested, in order that the 15-day appeal period applicable to this report may be established.

(3) In the event an institution appeals any of the Committee on Infractions' findings of violations or penalties to the NCAA Council, a copy of the committee's expanded confidential report to the Council (as described in Section 6) shall be provided the institution prior to the time of its appearance before the Council.

(e) Penalties—The following procedures shall apply to penalties.

(1) Once the committee has made its findings of violations in an infractions case but prior to its determination of the penalties to be imposed, information may be obtained from the enforcement staff concerning penalties imposed in previous cases involving findings similar in number and significance.

(2) In the event the committee imposes a penalty involving a probationary period, the institution shall be notified that after the penalty becomes effective, the NCAA investigative staff will review the athletic policies and practices of the institution prior to action by the committee to restore the institution to full rights and privileges of membership in the Association; further, the institution shall be notified that should any of the penalties in the case be set aside for any reason other than by appropriate action of the Association, the penalties shall be reconsidered by the NCAA.

(3) In the event the committee considers additional penalties to be imposed upon an institution in accordance with the pro-

cedures outlined in Section 7-(b)-(12), the involved institution shall be provided the opportunity to appear before the committee; further, the institution will be provided the opportunity to appeal any additional penalties imposed by the committee to the NCAA Council.

(f) Press Releases—The enforcement staff shall draft the committee's press release related to an infractions case involving a public penalty.

(1) The press release shall reflect accurately the committee's thinking and shall be subject to the approval of the chairman (and, if necessary, the full committee). Further, the most serious and significant findings of violations of NCAA legislation shall appear at the beginning of the summary of violations in the release.

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

THE UNIVERSITY OF TEXAS AT AUSTIN
SCHOOL OF LAW
2500 Red River
AUSTIN, TEXAS 78705

July 13, 1979

The Honorable Robert C. Eckhardt
Chairman
Subcommittee on Oversight and Investigations
House of Representatives
Washington, D. C. 20515

Dear Chairman Eckhardt:

At the conclusion of yesterday's hearing on Enforcement Program of the National Collegiate Athletic Association, you indicated that the record would be held open for inclusion of further materials referred to during the hearing.

This letter hardly fits the category you described. I think that anyone reading the record of the hearing may be intrigued by my statement several times that I would like to talk about "the Pat Cummings matter." Since an opportunity never arose in which I was permitted to discuss that matter, the reader of the record may wonder what was meant by the reference, and thus you may think it worthwhile to include this as a part of the record. If you do not, however, at least I will have the satisfaction of having said what I wanted to say yesterday but was unable to do so.

During the hearing last November before the Committee on Infractions involving the University of Cincinnati, material presented by the university described transactions involving the purchase of clothing for two persons who had not been named in the Official Inquiry: prospective student LaSalle Thompson and student-athlete Pat Cummings. The information presented by the University concerning Thompson showed what appeared to be a clear violation of the recruiting rules and the university did not challenge this. The information concerning Cummings showed an arguable violation of the extra benefit rule, but a committee appointed by the university had examined the matter and concluded that the facts did not amount to a violation of NCAA legislation.

The Committee on Infractions, as was fully developed at the hearing, found a violation in the Thompson episode. With regard to Cummings, however, it was troubled about how to proceed. If Cummings had been named in an allegation, the university would have been required to read the allegation to him and notify him that he and his legal counsel had the right to appear before the Committee on Infractions. Because Cummings had not been named in an allegation, he had not been informed that he had this right. Accordingly the Committee concluded it could not make a decision on the Cummings matter at that time. It made findings on all

other matters in the Cincinnati case, but advised the university that at the next meeting in December the Committee would consider the Cummings episode and that Cummings should be advised of his right to be present and to have counsel.

This procedure was followed. Although Cummings did not exercise his right to be present, either in person or by counsel, representatives of the university appeared at the December meeting and argued that the transaction involving Cummings was not a violation. The Committee disagreed, and its finding that a violation had occurred was subsequently affirmed by the Council of the NCAA.

I thought yesterday -- and still think -- that to discuss LaSalle Thompson without discussing Pat Cummings is to provide a new illustration of Thomas Reed Powell's observation that the legal mind is a mind that can think of one thing that is inseparably related to another without thinking of the thing to which it is related. The Thompson episode was offered as showing that the Committee is not sensitive to the rights of the young men involved. I submit that the handling of the Cummings matter shows that the Committee is quite sensitive to these rights. Although there is nothing in our stated procedures that covers the case of a student-athlete not named in any allegations who appears, from evidence at the hearing, to have been a party to an arguable violation, the Committee was unwilling to make a finding involving Cummings when he had been given no opportunity to appear in hiw own behalf, and improvised a procedure to protect the young man and give him that opportunity.

The Committee did not do the same thing with regard to Thompson. In part this was for the reason I stated yesterday. We do not ordinarily have anything before us concerning prospective student-athletes. The time required for NCAA procedures is such that recruits are enrolled in some institution by the time that we hear a case involving their recruiting. It was only the happenstance that an investigator for the university, looking into other matters, was in the store when the clothing was purchased for Thompson and that the university reported this to us at our previously-scheduled hearing that brought the matter to us at such an early stage. I doubt if such circumstances will recur -- but the Committee is now alert to the problem and agreed, at our April or May meeting, that a young man in this situation should be advised of his right to appenr and be heard.

There is, however, another factor that led the Committee to treat the Thompson and Cummings matters differently. With regard to Thompson, the facts presented by the university showed an undisputed violation. With regard to Cummings, the university had concluded that the facts did not amount to a violation. Thus it was the perception of the Committee that with regard to Cummings there was an issue for the Committee to resolve. With regard to Thompson, it did not appear that there was any issue.

The Committee at every one of its meetings deals with numerous cases in which institutions report that a violation of NCAA legislation has occurred and the corrective or diciplinary actions they have taken, which frequently include declaring a young man ineligible. These cases are then quickly disposed of without hearing, with the Committee either exercising its discretion under § 7(e) of the Enforcment Procedure to take no further action, or issuing ad admonition or a private reprimand to the institution as the case may seem to warrant. If the Committee believes that the violations may have been more sweeping than the institution has reported or that the case may require a penalty more serious than a private reprimand, the Committee may order that the matter be put down for a hearing. The Committee, however, has never supposed that in these cases it need go behind the determination by the institution that there was a violation. If it is indeed the obligation of the Committee on Infractions to protect young men from their own university, and to make an independent determination of violation when the institution has conceded a violation, a long step will have been taken away from institutional responsibility for the conduct of their own athletic programs and the work of the Committee on Infractions will be greatly multiplied.

Sincerely,

Charles Alan Wright

cc: Rep. Jim Santini
Rep. Ronald M. Motti
Rep. Thomas A. Luken
Rep. Bruce F. Vento
Rep. Norman F. Lent
Mr. William J. Flynn
Mr. James Frank
Mr. William B. Hunt
NCAA Committee on Infractions

CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS
OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE
WASHINGTON, D.C. 20515

March 6, 1979

Mr. William J. Flynn
President
National Collegiate Athletic
Association
Boston College
Chestnut Hill, Massachusetts 02167

Dear Mr. Flynn:

Let me first offer congratulations to you on your election to the Presidency of the National Collegiate Athletic Association (NCAA). The members of the Association have a number of difficult issues to face in the year ahead and good leadership will be essential.

As you are no doubt aware, the Subcommittee completed a lengthy investigation of the NCAA's enforcement program late last year and issued its report immediately prior to your convention last month. It was therefore impossible for Council or the convention delegates to consider the many recommendations contained in the report. On the eve of the convention, however, Congressmen Santini and Lent, as well as members of the Subcommittee staff, were assured by President Thompson and other NCAA officials that the current Council would review thoroughly the recommendations of the Subcommittee with an eye toward future reform of the enforcement process.

I am well aware that the Association amended certain provisions of the enforcement policies during the recent convention, yet those changes were partial and incomplete, and moreover, lacked the substantive reform envisioned by this Subcommittee. I will expect that those recommendations upon which the Association did not act, will receive the full and careful consideration of the NCAA Council when it next meets, and ultimately, of the membership itself in those instances where convention action will be necessary.

Please be advised that this Subcommittee will expect a full report from you based upon the Council's consideration of the recommendations in our report. An initial reporting should

probably be in the form of a hearing before the Subcommittee later this spring. I will remain in contact with you as that time nears.

Sincerely,

Bob Eckhardt

Bob Eckhardt
Chairman
Subcommittee on
Oversight and Investigations

The National Collegiate Athletic Association

President
WILLIAM J. FLYNN
Boston College
Chestnut Hill, Massachusetts 02167

Executive Director
WALTER BYERS

Secretary-Treasurer
JAMES FRANK
Lincoln University
Jefferson City, Missouri 65101

March 19, 1979

The Honorable Bob Eckhardt, Chairman
Subcommittee on Oversight and Investigations
U. S. House of Representatives
Washington, D. C. 20515

Dear Congressman Eckhardt:

This will acknowledge your March 6 letter.

Thank you for your complimentary comments concerning my election as president of this Association and, in turn, may I reciprocate by congratulating you upon your designation as chairman of the House Subcommittee on Oversight and Investigations.

I am pleased to hear from you and you may rest assured that when the NCAA Council meets April 23-25, it will review the full report of the 1978 House subcommittee and, following that meeting, I will write you in detail as to the Council's views on the several subjects contained therein.

Cordially yours,

William J. Flynn

William J. Flynn
President

WJF:lls

cc: Mr. James Frank
NCAA Council

CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS
OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE
WASHINGTON, D.C. 20515

June 6, 1979

Mr. William J. Flynn
President
The National Collegiate Athletic
Association
Boston College
Chestnut Hill, Massachusetts 02167

Dear Mr. Flynn:

Thank you for your letter of May 25, 1979 indicating that the 1979 NCAA Council has reviewed the Subcommittee's report on the NCAA Enforcement Program. I appreciate your offer to meet with me in Washington on July 12 to discuss your report on this matter. When I wrote you last, on March 6, I suggested that a hearing would be the most appropriate forum for you to report to the Subcommittee. I still hold that view.

This is a subject of interest not only to me but to other Members of the Subcommittee who should be given the opportunity to discuss with you the action taken by the Council. Additionally, I think it important that our consideration of this matter continue to be on the public record. I agree that Professor Wright should play a role in any discussion on this subject and as such we will accommodate the date of July 12 on which a hearing will be scheduled to hear you, President Frank and Professor Wright. I will advise you later as to the exact time and place of the hearing.

Since you have stated that you have at hand a complete report on this matter, I request that you provide that report to the Subcommittee at this time for our consideration.

Your cooperation is appreciated.

Sincerely,

Bob Eckhardt
Chairman
Subcommittee on
Oversight and Investigations

cc: Mr. James Frank
Mr. Charles Alan Wright
Mr. Walter Byers

The National Collegiate Athletic Association

President
WILLIAM J. FLYNN
Boston College
Chestnut Hill, Massachusetts 02167

Executive Director
WALTER BYERS

Secretary-Treasurer
JAMES FRANK
Lincoln University
Jefferson City, Missouri 65101

May 25, 1979

RECEIVED
MAY 31 1979
BOB ECKHARDT, M.C.

Honorable Bob Eckhardt
U. S. House of Representatives
Room 1741
Washington, D. C. 20515

Dear Congressman Eckhardt:

As indicated in my March 19 letter to you, the 1979 NCAA Council last month reviewed in detail the report of the House Subcommittee on Oversight and Investigations as to the NCAA and its enforcement program.

I have at hand a complete report to you on this matter. Prior to sending it to you, however, I thought I would write this preliminary letter to suggest that the secretary-treasurer of the Association, President James Frank of Lincoln University, and the chairman of the Committee on Infractions, Professor Charles Alan Wright of the University of Texas, Austin, accompany me to meet with you, personally, at which time I would hand deliver the report to you and we could personally discuss the various aspects of the NCAA Council's consideration of the House Subcommittee recommendations, and answer in detail any questions you may have.

Professor Wright will be in England during the month of June and, thus, we are prompted to propose that we meet with you in Washington, D.C., or another site of your choice, Thursday, July 12.

YES —
NO —

Please let me know whether the suggestion of a personal meeting merits your approval and, if so, whether the suggested date is satisfactory or you would prefer a different one.

Sincerely,

Walter Byers

WB:mk

cc: Mr. James Frank
Mr. Charles Alan Wright

O-I

The National Collegiate Athletic Association

President
WILLIAM J. FLYNN
Boston College
Chestnut Hill, Massachusetts 02167

Executive Director
WALTER BYERS

Secretary-Treasurer
JAMES FRANK
Lincoln University
Jefferson City, Missouri 65101

CORRECTED ORIGINAL

May 25, 1979
(Corrected letter
mailed June 4, 1979)

The Honorable Bob Eckhardt
U. S. House of Representatives
LHOB, Room 2741
Washington, D. C. 20515

Dear Congressman Eckhardt:

As indicated in my March 19 letter to you, the 1979 NCAA Council last month reviewed in detail the report of the House Subcommittee on Oversight and Investigations as to the NCAA and its enforcement program.

I have at hand a complete report to you on this matter. Prior to sending it to you, however, I thought I would write this preliminary letter to suggest that the secretary-treasurer of the Association, President James Frank of Lincoln University, and the chairman of the Committee on Infractions, Professor Charles Alan Wright of the University of Texas, Austin, accompany me to meet with you, personally, at which time I would hand deliver the report to you and we could personally discuss the various aspects of the NCAA Council's consideration of the House subcommittee recommendations and answer in detail any questions you may have.

Professor Wright will be in England during the month of June and, thus, we are prompted to propose that we meet with you in Washington, D. C., or another site of your choice, Thursday, July 12.

Please let me know whether the suggestion of a personal meeting merits your approval and, if so, whether the suggested date is satisfactory or you would prefer a different one.

Sincerely,

William J. Flynn
President

WJF:lls

cc: Mr. James Frank
Mr. Charles Alan Wright

Frances
This request is being taken care of with hearings.
J.

National Office U. S. Highway 50 and Nall Avenue • Mission, Kansas
Mailing Address P.O. Box 1906 • Shawnee Mission, Kansas 66222 • Telephone 913/384-3220

Mr. ECKHARDT. Gentlemen, I thank you for your testimony here. Mr. Flynn, I note in your letter of June 22 you state:

> It is the hope of each member of the NCAA council that you will concur in our judgment that by any reasonable standard the House subcommittee's inquiry has accomplished its legitimate purposes.

I think that is correct. I think your organization and you, yourself, in your testimony here today, as well as many others, have indicated that the inquiry has had a salubrious effect in general. Of course, our Subcommittee on Oversight and Investigations has a rather continuing function. We will continue watching with interest what your organization does. Some of the procedural matters may come under inquiry. The reforms that you say will be put into effect have not yet had an opportunity to be tested. The process has not yet been perfected, which you would admit. Therefore, we will watch this with concern.

We have devoted a good deal of time to these hearings. We do not intend to occupy any more time unless it appears necessary. However, we will be most interested in the future of your organization and its applications of its rules to universities and colleges.

Thank you very much.

Mr. FLYNN. Mr. Chairman, thank you. It has been very helpful. We appreciate it very much.

[Whereupon, at 1:32 p.m., the hearing adjourned.]

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