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# COLLEGE PRESIDENTS AND THE NCAA PRESIDENTS' COMMISSION: ALL BARK AND NO BITE

LAURENCE M. ROSE\*

## I. INTRODUCTION

In December of 1989, Doug Weaver, athletics director at Michigan State, announced that he would retire on July 1, 1990. In accordance with established university policy to promote a national search for qualified athletic administrators, Michigan State President, John B. DiBiaggio, announced a search committee composed of members of the school's athletic council and the vice-president for finance. After advertising nationally and screening the candidates, the committee would interview the finalists and submit a recommendation to President DiBiaggio. If the candidate met the president's approval, the recommendation would be forwarded for formal approval to the school's Board of Trustees. The search was not expected to be complete until Spring 1990.

A few days later, before the advertising began, George Perles, the head football coach, openly indicated that he wanted to succeed Weaver. While it was not uncommon for a coach to become an athletic director, Perles wanted to retain his position as head coach. At that point only a handful of Division I-A universities had dual appointment athletic directors. Fresh in everyone's mind was the August 1989 resignation of Jim Valvano as athletics director at North Carolina State amid reports of a lack of supervision in the basketball program, where Valvano was also the head coach.

What made the Perles announcement even more dramatic was the fact that Perles had permitted himself to be considered for the head coaching position of the New York Jets of the NFL. While publicly saying that he was "not interested in using the Jets as a wedge,"<sup>1</sup> it was commonly known that the failure to obtain the director's position would influence Perles' decision. Joel Ferguson, a trustee known to be a supporter and confidant of Perles, announced that if Perles became athletic director, he would stay at Michigan State.

This was not the first time that Perles, head coach since 1983, had permitted himself to be considered for an NFL head coaching

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1. Lederman, *Michigan State President Clashes With Some Trustees on Whether Coach Should Direct All Sports Programs*, Chron. Higher Ed., Jan. 24, 1990, at A36, col.3.

position. In 1988, Perles received an offer from the Green Bay Packers and was actively considering the position. The Michigan State Board of Trustees, in the meantime, offered him a long term contract and a large annuity, and Perles turned down the Packers. Apparently these financial incentives were not enough to discourage Perles from considering the Jets' position just one year later.

Shortly after Perles' interest became known, President DiBiaggio publicly suggested that both the concept and timing of the issue of the dual position were inappropriate. As an administrator, President DiBiaggio felt that the athletic director could not effectively act as a security check on the football coach if the two positions were held simultaneously. Indicating that this concept is not unique to athletics, DiBiaggio noted, "I'd feel it was equally inappropriate for the dean of the medical school to be the vice-president for health affairs."<sup>2</sup>

Perhaps more important for a public university, DiBiaggio was also opposed to any shortening of the search process, which did not meet the university's affirmative action standards. Noting that time was not critical, DiBiaggio explained that Weaver was in the position until July 1, and Perles had not resigned as head coach.

The Board of Trustees, however, were worried about the Jets' recruiting of Perles and voted to shorten the search process in time for a final vote at the Board's February 2, 1990 meeting—about the same time that the Jets were expected to act. The Board's chairman, Larry Owen, was concerned that if Perles decided to leave without knowing the status of his candidacy, football recruiting would be dramatically hurt. Indeed, despite the fact that an athlete is committed by NCAA rules to the institution to which he signs a National Letter of Intent, trustee Ferguson said that it was Perles who the "parents and the kids are buying" not Michigan State.<sup>3</sup>

Not surprisingly, faculty and student leaders at Michigan State supported the recommendation of President DiBiaggio, placing the issue of institutional control in the forefront of the debate.

Just ten days after the first advertisement of the position, the Board of Trustees held an "emergency meeting," attended by over 300 faculty, students, and others.<sup>4</sup> Despite the vocal and pub-

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2. *Id.*

3. *Id.*

4. *Michigan State Trustees Ignore President's Objections, Name Football Coach to Direct Entire Sports Program*, Chron. Higher Ed., Jan. 31, 1990, at A36, col.2.

lic concerns, the trustees voted 5-3 to offer Perles the additional duties as athletic director, effective July 1, 1990. The meeting procedure was heavily criticized and resulted from intense lobbying, telephone calls, and private meetings that one East Lansing newspaper claimed violated Michigan's open-meetings law. The lobbying effort was so intense that the swing vote was cast by Kathy Wilbur, a trustee who was a top aide to a state senator. Despite previously indicating that a shortened timetable would undermine the quality of the search process, Wilbur was silent at the meeting prior to her voting in favor of the Perles' offer. After the meeting, Wilbur said that people ought not to see this as a vote for "athletics over academics"<sup>5</sup> but as a vote for "the stability of one program."<sup>6</sup> However, another trustee, Dean Pridgeon, felt that this "made the athletic director accountable only to the board"<sup>7</sup> not President DiBiaggio. "It puts the president in a position where he can't operate long without absolute control over the athletic department. If he decides to leave, we will not get a credible, responsible president to come in under those circumstances."<sup>8</sup>

Describing President DiBiaggio as a national leader in the reform effort, Robert Atwell, president of the American Council on Education, said, "This is a major setback for the whole thrust toward presidential control of collegiate sports."<sup>9</sup>

President DiBiaggio's leadership was severely compromised, according to many faculty and students. Even DiBiaggio could not suffer this blow in silence. "I've tried to view this as issue-oriented and not personal, but if it begins to look like it's not that way, I might have to reassess my position at Michigan State."<sup>10</sup>

This was not the only instance in recent times that a college president's activities in the athletics area have been the subject of trustees' concerns. At Oklahoma State University, a school then under NCAA sanctions for recruiting and other violations, President John Campbell personally reinstated seven football players who had flunked out. In February of 1990, the faculty passed a "no confidence" vote, and student groups urged his resignation. After a March 1990 special board meeting, which consumed almost nine hours, the Board of Regents ordered President Campbell to not become directly involved in the dismissal or readmis-

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5. *Id.* at A38, col. 5.

6. *Id.*

7. *Id.* at col.4.

8. *Id.*

9. *Id.* at A36, col.2.

10. *Id.* at A38, col.4.

sion of students. In noting that Campbell had violated university policy, the board determined that Campbell was "essentially well intentioned."<sup>11</sup> Despite the lack of faculty and student confidence, Campbell remains at Oklahoma State.

The fact is that college presidents are obligated by the NCAA to be in control of an institution's athletics program. Under its rules, the president has ultimate authority and responsibility over athletics. This principle of institutional responsibility is codified in the NCAA Manual and reflected in the acknowledgment that it is the duty of the president to designate the person who has the power to cast the school's ballot at NCAA meetings. In theory, then, college presidents can pass NCAA legislation which accomplishes academic-athletic goals, not merely athletic policies. Despite this voting power, many college presidents fail to attend NCAA meetings. For the January 1990 NCAA Annual Meeting, of the 802 active member institutions, 185 presidents were pre-registered as voting, alternative, or visiting delegates for their institution. Only 169 attended. This number was up from the 1989 meeting, when 153 presidents pre-registered and 137 actually attended. In 1991, a record 223 presidents attended, still not more than thirty per-cent of the membership.

A. Kenneth Pye, president of Southern Methodist University, a school that suffered the "death penalty" in football for repeated violations of NCAA rules, has noted that "In too many cases, presidents have not only delegated responsibility, they have abdicated it."<sup>12</sup> This delegation of responsibility, which could include voting authority at the NCAA meetings, has been described by Pye as "sometimes . . . like entrusting a chicken coop to the supervision of a wolf and a fox."<sup>13</sup>

The fact that these statements were made in early 1990 suggests something about the presidential reform movement and the effectiveness of the Presidents' Commission. The fact that these remarks were printed in the *NCAA NEWS* on February 15, 1990 indicates the widespread NCAA institutional response to the actions of presidents and the commission. The basic concept is that the presidents really are not in control, and there is only the illusion of control—an illusion that is perpetuated by the establish-

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11. Nicklin, *Oklahoma State Board Ignores Call for Ouster of Controversial President*, Chron. Higher Ed., Mar. 7, 1990, at A37, col.2.

12. *No Reform Measure Can Usurp CEO Responsibility*, NCAA NEWS, Feb. 4, 1990, at 4, col.2.

13. *Id.* at col.2.

ment of the Presidents' Commission and the continued controversy.

## II. HISTORY OF THE PRESIDENTS' COMMISSION

In the early 1980's, faced with what many felt was a crisis in integrity in college sports, a group of college presidents began to discuss ways for the heads of colleges to conform college athletics to the academic model. As the American Council on Education was discussing a Board of Presidents which could veto actions taken by the NCAA membership, the NCAA Council, composed of athletic officials and some presidents, developed a proposal to establish a Presidents' Commission. Some felt the NCAA proposal was designed to defuse the efforts to gain control by the presidents. At the January 1984 convention, the debate lasted for more than two hours. Since a constitutional amendment was involved, a two-thirds majority vote was necessary. In what some believe was a parliamentary maneuver, the vote on the ACE proposal came first and was defeated 313 to 328. Shortly thereafter, a vote was taken on the Council's proposal, and it was passed by voice vote with no counting of ballots. The NCAA Council's proposal stated that the purpose of the Presidents' Commission was to provide a forum for presidents and to provide representation for the views held by presidents and chancellors on major policy issues in college athletics. While the commission was permitted to study issues (via the NCAA's customary budget procedure), urge action, sponsor legislation, and call special meetings, it also was empowered to veto the hiring of the NCAA Executive Director. Nonetheless, some presidents felt that the co-opting of the chief executive officers had begun.

As a result of a survey undertaken by the Commission, a special convention was held in June, 1985, to review eight legislative proposals relating to "academic integrity," including a self-study program, an academic-reporting requirement, distinctions between "major" and "secondary" violations (including the "death penalty" for repeat violators), and a required annual financial audit of the athletic department.<sup>14</sup> Each of these proposals was well-founded and based upon the survey, and was overwhelmingly passed by more than 199 presidents and numerous other designated vice-presidents of the 791 member schools. The activity of the Special Convention was designed to enhance the role of the

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14. NCAA, 1989-90 NCAA PRESIDENTS COMMISSION HANDBOOK 4.

presidents. Dr. Marshall Criser, president of the University of Florida, felt that "[t]he ultimate responsibility must be assumed by the CEOs because we don't have enough NCAA cops to solve all of the problems."<sup>15</sup>

Even Walter Byers, then the NCAA Executive Director and one who rarely spoke publicly, was quoted as saying that presidential involvement was "a necessity because some university presidents have already lost control of their own schools' programs."<sup>16</sup> He went on to say that he felt that presidential involvement was not "merely a faddish interest among college presidents that will disappear in time."<sup>17</sup> Unfortunately, Byers may have been wrong in his prediction.

At the regular NCAA meeting in January, 1986, proposals regarding initial college eligibility, testing for street drugs, and limitations on basketball competition were passed. But issues regarding satisfactory academic progress, booster clubs, and special-admissions programs were ignored. Presidents were not publicly in attendance and the general consensus was that athletic directors were in control of the meeting. This view was reinforced by the release of a survey of 138 Division I presidents, which supported the view that the athletic directors actually controlled collegiate sports. Moreover, proposals to extend the hockey and basketball seasons were approved, despite the fact that the 1985 Convention had passed by 429-3 a moratorium on the extension of any sport's season. "If the moratorium is vacated, it's being vacated not by the commission, but by this convention,"<sup>18</sup> stated Indiana University president John Ryan, who was stepping down as the initial chair of the Presidents' Commission. One delegate stated after the vote, "A lot of ADs figure they've successfully waited out the presidents. . . . Unless the presidents fight back, NCAA reform is flat-ass dead in the water."<sup>19</sup>

At the Annual Meeting in January, 1987, the presidents were again relatively silent. The Presidents' Commission had proposed only one piece of legislation, which created the same minimum academic standard for initial eligibility in Division II as in Division I. The proposal was narrowly passed.

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15. Nightingale, *New Orleans: Taking A First Step Toward Reorganizing NCAA*, *Sporting News*, June 3, 1985, at 14, col.2.

16. Nightingale, *Calling for Change in the NCAA*, *Sporting News*, June 24, 1985, at 12-13.

17. *Id.*

18. *Scorecard*, *SPORTS ILLUSTRATED*, Jan. 12, 1985, at 14, col.1.

19. *Id.*

Some presidents felt that the tide was turning against them. The Presidents' Commission then voted to flex its muscle and hold another special convention in June, 1987, to consider various "cost-containment" proposals and to begin a national forum to address and attempt to identify the proper role of intercollegiate athletics in American higher education.<sup>20</sup> One hundred and forty-seven Presidents attended of the 792 NCAA member institutions.

In the words of the NCAA's 1989-90 Presidents' Commission Handbook, "several of the Commission's recommendations regarding spring football practice and reductions in grants-in-aid in the various sports were not successful."<sup>21</sup> In fact, not only were the commission proposals defeated, but the convention approved a proposal to restore two basketball scholarships that had been removed at the January meeting. In addition, the Commission had wanted to complete studies regarding costs in order to have them considered at the 1988 annual meeting, but opponents lengthened the time to eighteen months. Thus, no "cost-containment" was accomplished at a meeting that cost the NCAA between \$500,000 and \$1.5 million.

What really became apparent at the 1987 special meeting was the open conflict between college presidents, which reflected their misperception of the balance in college athletics and their clear lack of preparation for the meeting.

Jim Delaney, then commissioner of the Ohio Valley Conference and now of the Big Ten, said "Dallas was a miscalculation. The presidents failed to recognize a terrific difference of opinion on these issues. Every one of the cost-containment proposals has broad philosophical underpinnings, and they didn't fully appreciate that. The debate should have come first."<sup>22</sup>

Ira Heyman, chancellor at University of California-Berkeley, recognized that the Presidents' Commission failure was avoidable. "Unless we can provide presidents with information they didn't presently have, in a way that is not arguable, they won't change their minds."<sup>23</sup>

President John Slaughter, chair of the Presidents' Commission, was also quoted as admitting, "what some delegates were saying all along—that the Presidents' Commission had not done a

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20. NCAA PRESIDENTS COMMISSION HANDBOOK at 4 (1989-90).

21. *Id.*

22. Lederman, *Rift Among Presidents Perils Drive to Reform Big-Time College Sports*, Chron. Higher Ed., Sept. 2, 1987, at A92, col.3.

23. *Id.* at A93, col.1.



very good job in lobbying for its initiatives, even among university presidents."<sup>24</sup>

The debate at the meeting also reflected a conflict between presidents, coaches, and athletic directors. Proposal 19 involved the reduction of Division I-A football scholarships from 95 to 90. The Presidents' Commission proposal was presented by University of Washington President William Gerberding in a manner so as to not "exaggerate" its importance.<sup>25</sup> It was opposed by Georgia Tech athletic director Homer C. Rice, the Division I-A Director of Athletics Association and the American Football Coaches Association, as well as University of Nebraska head football coach Tom Osborn and Penn States' Joe Paterno. Indeed, Paterno called the proposal, at best, a "band-aid" approach.<sup>26</sup> The proposal was then defeated 39-69.

Despite the momentum against it, the Presidents' Commission, through California State University President Harold H. Haak, placed before the convention a proposal to reduce the number of football coaches, relying on a survey of Division I-A presidents. The proposal was openly opposed by LaVell Edwards, Brigham Young University's head coach, and the American Football Coaches Association. Observing that the proposal was in trouble, University of Minnesota President Kenneth Keller moved to table the proposal until a study was completed for the 1988 convention. The proposal was tabled by voice vote.

Observing that the momentum had now actually shifted, the proposal to reverse the January vote and return the two basketball scholarships was brought up. It ultimately passed. The split among presidents was no more obvious than in the actions of Presidents' Commission Chairman Slaughter, who voted to increase the scholarships, stating that the Presidents' Commission's original reduction proposal "was a mistake."<sup>27</sup>

While some have criticized the defeat of the Presidents' Commission proposals as the result of insufficient information, Robert H. Atwell, President of the American Council on Education, believes it was due to poor planning and lack of willpower, which may have resulted from great pressure placed upon them by "vested interest."<sup>28</sup>

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24. Goodwin, *NCAA Session Rebuffs Presidents*, N.Y. Times, July 1, 1987, at B9, col.1.

25. NCAA Sixth Special Convention Proceeding at 86 (1987).

26. Actual quote from debate at the NCAA's Sixth Special Convention (1987).

27. Goodwin, *Presidents Fumble Athletic Reform Bid*, N.Y. Times, July 2, 1987, at B7, col.1.

28. Lederman, *supra* note 22, at A94, col.1.

"There are presidents whose institutions are so deeply involved in athletics that their own institutional and personal futures hang in the balance. They feel they must resist such change because athletics are bigger than they are," said Ernest L. Boyer, President of the Carnegie Foundation for the Advancement of Teaching.<sup>29</sup>

At the next annual meeting, in January of 1988, the Presidents' Commission did not sponsor any legislation, and accordingly, no vote of confidence was taken. However, at the 1989 Annual Meeting, the Presidents' Commission proposed financial aid restrictions for certain Division I and II sports. One hundred and thirty-seven presidents attended out of the 800 member institutions. After considerable debate, the measure was withdrawn in favor of the establishment of a Special Committee on Cost Reduction. Again, the presidents' proposal was thwarted.

In October of 1989, the Presidents' Commission met to begin its planning for the 1990 annual meeting. It developed proposals shortening the basketball season and spring football practice, granting need-based financial aid to academically deficient athletes, and requiring the reporting of graduation rates. Martin Mas-sengale, Chancellor of the University of Nebraska and Chair of the Presidents' Commission, believed that the graduation rate data proposal was necessary in order to preclude "further need for federal legislation" as proposed by Senator Bill Bradley and Representative Tom McMillen.<sup>30</sup>

The Commission proposals reflected the continuing desire for the presidents to take control. "Since our formation, there has been a persistent effort among the presidents to sort out what the major issues are,"<sup>31</sup> said Lattie Coor, then president of the University of Vermont and now of Arizona State. "We've taken these on, one after another. [Our] meeting is another important step in an ongoing process that illustrates that the presidents will continue to assert themselves."<sup>32</sup>

But the presidents' proposals drew quick opposition. "They tend to want quick answers and you don't solve the complexities of intercollegiate athletics,"<sup>33</sup> said Jim Delaney, Commissioner of the Big Ten. "Yes, presidents are involved, but the truth is, they really

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29. *Id.* at col.2.

30. *The Presidents Respond*, SPORTS ILLUSTRATED, Oct. 16, 1989, at 26, col.2.

31. Rhoden, *Groups to Consider Proposals to NCAA*, N.Y. Times, Oct. 3, 1989, at B13, col.1.

32. *Id.* at col.3.

33. *Id.*

don't have time to be involved."<sup>34</sup>

Bo Schembechler, University of Michigan athletic director and head football coach, put it more explicitly. "Unfortunately, you're dealing with people who don't understand. We're trying to straddle the fence here because you still want me to put 100,000 in the stadium and the reason you want me to do it is because you're not going to help me financially at all."<sup>35</sup> Schembechler later resigned his positions to become Detroit Tigers president. In some parting shots, he said, "In the next five years, school presidents will completely confuse intercollegiate athletics directors then they'll dump it back to athletics directors and say, 'You straighten this out.' About 2000, it may be back on track."<sup>36</sup>

This public debate previewed the 1990 Annual Meeting. James J. Whalen, President of Ithaca College and former member of the commission, stated that if the graduation rate and season limiting proposals were to fail, "we can't be a credible group."<sup>37</sup> As a result, the commission began an attempt to get many college presidents to attend the 1990 Annual Meeting. The recruitment efforts were successful. Of the 802 member schools, 169 presidents were in attendance and other president-picked delegates were ready to vote.

The legislation regarding the reporting of graduation rates easily passed. With the possibility of federal legislation and intervention, the measure was approved in Division I by a vote of 320 to 4. William Tucker, Chancellor of Texas Christian University, in support of the measure, recognized that "if it is done for us, shall we say, it will be done to us."<sup>38</sup>

Similarly, the convention passed the proposal to permit colleges to provide need-based non-athletic aid to athletes who fail to meet initial eligibility requirements, by a vote of 258-66. The debate, however, previewed the upcoming schism, as there were three different positions taken by the debaters. Edward Fort, Chancellor of North Carolina A&T, was pleased, noting "Life is a bowl of compromises."<sup>39</sup>

Then the debate began on the proposal to shorten the basketball season and reduce spring football practice opportunities. At

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34. *Id.*

35. Rhoden, *College Presidents Prepare to Police Sports*, N.Y. Times, Nov. 5, 1989, § 4, at 24, col.4.

36. U.S.A. Today, Jan. 22, 1990.

37. NCAA NEWS, Dec. 27, 1989, at 4, col.3.

38. *Rules changes adopted*, Chron. Higher Ed., Jan. 17, 1990, at A1, A37, col.1.

39. *Id.*

the outset, the battle lines were drawn. A motion was made to defer for study the entire proposal. After intense debate, the deferral motion was defeated, but only by a 20 vote margin, 383-363. The presidents breathed a sigh of relief. Some even felt that victory was in hand. The Presidents' Commission Chair, Nebraska's Martin Massengale, even left the meeting to fly to Chicago. But others began twisting arms and votes during the lunch break. Athletic directors were concerned about the impact on finances. Tennessee's Doug Dickey complained, "We're talking about significant dollars here."<sup>40</sup>

Acting with parliamentary maneuvering, the opponents of season-shortening submitted a proposal to delay action on the Presidents' Commission proposal and refer it to the NCAA Council. With many presidents out of the room, the motion to refer passed 170 to 150 on a roll call vote. During the debate, the Presidents' Commission was strongly criticized. Donna Lopiano, women's AD at University of Texas, said, "The Presidents' Commission needs to do what it does best, and that is to macro-manage. Leave the micro-management to the various expert groups. We will bring back solutions."<sup>41</sup>

Many presidents were angry and upset. Thomas Hearn of Wake Forest threatened to resign from the commission, noting that "any of us who have spent two years working to get these proposals have to be disappointed."<sup>42</sup> Moreover, Hearn said that the failure to act decisively on the proposal was "morally unacceptable."<sup>43</sup>

Then the remaining presidents began to act. Hearn, University of New Orleans President Gregory O'Brien, and Arizona State's Lattie Coor began to arm-twist representatives who they believed voted against the desires of the respective presidents. After over an hour, when it seemed that some votes could be changed, such as five members of the Eastern College Athletic Conference (Coor was formerly at the University of Vermont) and four members of the American South Conference (where New Orleans belongs), a motion to reconsider the referral vote was made by Coor. The debate was fast and furious.

Lieutenant General Dave R. Palmer of West Point urged the

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40. *Id.* at A36, col.2.

41. Rhoden, *Harmony and Dissonance as NCAA Meets*, N.Y. Times, Jan. 12, 1990, at A28, col.2.

42. Chron. Higher Ed., *supra* note 38, at A36, col.3.

43. *Id.*

reconsideration motion, noting that the NCAA needed "to make a mark on the wall. . . . Delay is the deadliest form of denial."<sup>44</sup>

Finally, after some more minor votes and some compromises, the motion to reconsider was passed, and the final vote to adopt succeeded, 165-156. The vote was seen as a vote of confidence of the Presidents' Commission. "To be blunt, the presidents needed a win in Dallas. Our credibility within the NCAA was at stake. We were better organized than ever before and we had to be. The margin of passage for the reforms was earned only after the most intensive lobbying efforts I have ever seen,"<sup>45</sup> wrote Mansfield University of Pennsylvania President and Commission member Rodney C. Kelchner, in the *NCAA News*. "We've been on the sidelines too long."<sup>46</sup>

But the battle lines were now drawn for the future. Presidents began a campaign to assert institutional control over athletics, while athletic directors urged presidents to stay out of what the ADs feel is the day-to-day operation of departments. "Presidents drive me up the wall," said Texas' Lopiano.<sup>47</sup> "They come in two days, three or four times a year, and they think they understand what's happening to this world called athletics. They do not. The presidents act as if they can come in, fix this, and leave."<sup>48</sup>

The Task Force on Intercollegiate Athletics, a special committee of the Irvine Group composed of retired presidents, recently concluded that the current presidents have been "less attentive than they might have been,"<sup>49</sup> while the NCAA "decision-making structure is dominated by athletic directors and faculty representatives, all honorable people, but unlikely to be advocates for change."<sup>50</sup> The Task Force continued, "The N.C.A.A. governance system makes it difficult for presidents to develop a consensus on what needs to be done. The decision-making process then makes it exceedingly difficult to accomplish the objectives of any consensus, so difficult that effective reform is unlikely to be sustained without fundamental alternation in that process."<sup>51</sup>

After the 1990 meeting, the goal of cost-cutting was adopted

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44. *Id.* at col.5.

45. Kelchner, *College Presidents Finally Get Off the Sidelines*, NCAA NEWS, Feb. 14, 1990, at 5, col.2.

46. *Id.* at col.5.

47. Rhoden, *Who's In Charge of Athletics*, N.Y. Times, Feb. 4, 1990, § 5, at 4, col.4.

48. *Id.*

49. *The Crisis in Intercollegiate Athletics, a Report by a Panel of Retired College Presidents*, Chron. Higher Ed., Mar. 7, 1990, at A38, col.1.

50. *Id.* at col.2.

51. *Id.*

by athletic directors and conferences. Some insiders believe that such an approach is again likely to co-opt the strength of the presidents asserted at the 1990 convention. Indeed, when the commissioners proposed a package of reforms in April, 1990, Thomas Hearn, President of Wake Forest, stated that he felt the proposals were the "single most promising thing that's happened since I've been on the presidents' commission."<sup>52</sup> But the Big Ten's commissioner, Jim Delaney, put it differently: "We've put together a package—the question now is whether others will be able to break it down and pick it apart."<sup>53</sup>

Inroads were suggested on the success of the Presidents' Commission at the 1990 meeting. "The 1991 convention is going to be a doozy," said Syracuse's AD Jake Crouthamel.<sup>54</sup> Recently a group of coaches appeared before the Knight Commission on Intercollegiate Athletics, asking that college presidents consult with them during the decision-making process. But again the willingness to work together is tempered with special-interest. During the presentation, the coaches recommended that the length of the basketball season be restored back to the pre-1990 convention level, although legislation introduced at the 1991 convention to reverse the presidents' success was defeated by the membership.

At the 1991 convention, over 110 proposals were up for vote. The Presidents appeared in record number (223) and reaped the benefits of massive lobbying efforts. Some insiders said, on the other hand, that the presidents' efforts had become institutionalized and reactive, rather than prospective and planned. Many cost-cutting proposals were backed by a special non-presidential NCAA cost-reduction committee. Confronted by massive budget crunches at their universities, college officials welcomed methods to reduce athletic spending. Suggesting that money saved by reducing athletic spending could be used for scholarships for disadvantaged students, Thomas K. Hearn, Jr., President of Wake Forest University stated, "Why is it that the students we are always so concerned about are those that are 6-foot-9 and have soft jump shots. Let's do something about educational opportunity for all students."<sup>55</sup> Yet athletic directors and coaches bemoaned the loss of scholarships to players and revenue from basketball games.

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52. Lederman, *Early Reports Show Widespread Backing for New Reform Plan*, Chron. Higher Ed., Apr. 18, 1990, at A37, col.2.

53. *Id.* at col.3.

54. *Reformers Eye 1991 Convention; Drug Tests Toughened; New Help for Athletes Passed and Proposed; the Big 12?*, CHRON. HIGHER ED., Jan. 17, 1990, at A36, col.1.

55. Chron. Higher Ed., Jan. 16, 1991, at A39, col.2.

Donna Lopiano, director of women's athletics at the University of Texas at Austin, said, "To further diminish opportunities for female athletes when they aren't close to the men in the first place is unwise and unfair."<sup>56</sup>

Although the action taken in the 1991 convention shows that the muscle of the Presidents' Commission is possible, many believe that most of the work regarding true reform of intercollegiate athletics, academic standards, remains to be done. Indeed, if the past is a prediction of the debate, the broad presidential consensus reached at the 1991 convention may fall apart before the 1992 meeting. When last debated, academic differences between schools kept an agreement from being reached on nationwide minimum grade point averages.

In summing up the 1991 convention, Chancellor William E. Davis of Louisiana State University said, "I don't think the presidents are really interested in what's best for students or for the institutions. They're just interested in showing who's boss."<sup>57</sup> But no president will allow the group to be the boss of his institution and dictate what is satisfactory academic/athletic progress of his school.

Do the presidents have control over athletics? Miami AD Sam Jankovich says, "We have our differences, but I honestly believe that presidents have the control and power they need."<sup>58</sup> Others disagree. The Task Force on Intercollegiate Athletics recommended that true control cannot occur within the current NCAA structure. Specifically, it suggests:

1. Strengthening the role of the presidents and chancellors within the N.C.A.A., providing them with greater authority, and considering a reduction in the size of the Presidents' Commission (currently 44 members).
2. Considering delegating to the Commission the responsibility for setting academic standards.
3. Supporting the Presidents' Commission with a full-time, independent staff to be hired by the Commission and to report to the Commission.<sup>59</sup>

In the enforcement arena, presidents are now being prodded by the introduction by some state legislatures of proposals to pro-

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56. *Id.* at A38, col.4.

57. *Id.* at A39, col.5.

58. Batard, *ADs Back Stipends, Re-Entry*, Miami Herald, June 13, 1990, at 6C, col.2.

59. Chron. Higher Ed., *supra* note 49, at A38, col.5.

vide due process to NCAA schools during the infractions process. Just like the NCAA presidents responded to the possible governmental requirement of graduation rate information, so can they provide reform to the process of investigating, processing, and resolving infractions. But will they?

Wilford Bailey, former NCAA and Auburn president, noted that criticism of the close relationship between the enforcement staff and the infractions committee was "to a degree justified."<sup>60</sup> He recommended to Steve Morgan, assistant executive director for enforcement, that presidents who were involved in the infractions process be asked to critique the process. He specifically mentioned Florida president, Marshall Criser. Criser was never contacted, nor did Bailey recommend legislation to accomplish the result.

President Dennis Murray of Marist was very critical of the process of investigating and processing infractions. "The *NCAA Manual* says this is supposed to be a cooperative venture between the college and the infractions staff to seek the truth. But the only truth they wanted to seek was what we did. They never wanted to deal with their errors."<sup>61</sup> No proposed legislation to change the process was suggested by Marist officials.

"At the first hearing, we were not really being heard by the infractions committee, but by the enforcement staff," says Cleveland president, Walter Waetjen.<sup>62</sup> "If you look at where the locus of power was, it was in that staff. I felt that increasingly as the hearing went on."<sup>63</sup> Cleveland State made no proposals for change, nor did Waetjen, an original member of the Presidents' Commission.

At the 1991 convention, Executive Director Dick Schultz mainstreamed the infractions/enforcement controversy by suggesting that if the NCAA doesn't reform the process, the outside arena will. He suggested a special subcommittee of the NCAA Council be formed to study the process. Yet, D. Alan Williams, Chair of the Committee on Infractions, noted, "I would be quite surprised if it resulted in radical change."<sup>64</sup>

The bottom line is that the presidents and the Presidents' Commission have the power to effect rules changes in the enforce-

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60. Yaeger, *Undue Process: The NCAA's Injustice for All* at 153 (1991).

61. *Id.* at 35.

62. *Id.* at 151.

63. *Id.*

64. Chron. Higher Ed., Jan. 16, 1991, A39, col.2.



ment/infractions process. Can they exercise that power? If it is exercised, will it be reversed by the following year's convention? The fact that these questions cannot be answered show that the NCAA's tail is wagging the university dog.