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A BRIEF HISTORY OF THE NATIONAL COLLEGIATE ATHLETIC ASSOCIATION'S ROLE IN REGULATING INTERCOLLEGIATE ATHLETICS*

RODNEY K. SMITH**

I. INTRODUCTION

As one whose scholarship focuses on religious liberty and sport, I am often asked why I write in such seemingly disparate areas. My typical response is that given my interest in the role of religion in society, I certainly should be interested in sport, the religion of the American people. This response invariably engenders a slight smile and chuckle.[1] I fear that there is some truth to the statement. Although I do not have the statistics necessary to prove it, my impression is that as many adults are zealously devoted to "the game" on any given day as are devoted to a worship service at a religious institution. As a people, we seem almost fixated on sport and devote much space in newspapers and newscasts to sport, with little space being allocated to religion. Yet, the discourse regarding sport is generally just description of events occurring, and rarely peers more deeply into the ramifications of specific issues[2], or of the

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1. I often wonder whether the response is based on a feeling that I have said something cute, or whether it is founded in a deeper disquietude over the fact that I may just be right.

2. Sports sections are filled with description and occasional polemics over aspects of the role of sport in society, but that discourse rarely goes beyond the superficial as to specific issues raised. For example, commentators repeatedly argue that intercollegiate athletes should be "paid" without discussing in any depth the ramifications of their suggestions on the athletes and educational institutions. Marty Lang, *Pay-For-Play Versus NCAA*, *at* http://www.linkmag.com/link/Feb_Mar_99/990121cc1_sports.html (Feb.-Mar. 1999). Academics, who understand the need to study major phenomena that affect our culture in great depth, often shun the exploration of deeper ethical and moral issues related to sport. For example, once during lunch with a group of my faculty colleagues, a fellow faculty member asked me what I thought about "the game" that weekend. I responded that I did not watch the game. Almost aghast, he wondered out loud, "how can you teach sports law and not watch the game." As academics, like our journalistic counterparts, we are too often caught up in the anecdotal moment of

general issue of our virtually thoughtless zeal for sport in contemporary society. While I find this to be personally troubling, it is just such thoughtless zeal as to sport, and the desire to see one's team win at virtually any cost,[3] that contributes to the increasing regulation of athletics at virtually all levels.

Devotees of a given team, including coaches and fans alike, often strive mightily to find clever ways to unbalance the playing field in their team's favor through questionable recruiting techniques or other devices. This propensity to seek undue advantages in sport has made regulation of intercollegiate athletics a necessity in order to maintain even a semblance of a balanced playing field. Each new, creative way of bending the rules to create an undue advantage has necessarily led to the development of new rules and regulations.[4] In turn, the growth in the number of rules has required development of an extensive structure to ensure that the rules are enforced.

In this essay, I will briefly examine the historical development of the National Collegiate Athletic Association (hereinafter NCAA) and the regulation of intercollegiate athletics. I will also offer some general comments regarding the history and future of the regulation of intercollegiate athletics.

II. A Brief History of the National Collegiate Athletic Association

A. 1840–1910

The need for regulation of intercollegiate athletics in the United States has existed for at least a century and a half. One of the earliest interschool athletic events was a highbrow regatta between Harvard and Yale Universities, which was commercially sponsored by the then power-

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"the game," and rarely pause to reflect thoughtfully on the very ramifications of sport in our society. This is even more true when, as educational institutions, we have made an academic home for intercollegiate athletics.

3. This is reminiscent, in some ways, of the zeal of some religionists that has led them to conduct holy wars in order to prove that their religion is superior.

4. National Collegiate Athletic Association, 2000-01 NCAA Division I Manual (2000) [hereinafter Manual]. Including the index, the Manual is 479 pages long, with small print. These rules are in large measure a reflection of efforts to curtail the creativity of devotees of a particular team to find ways to gain an advantage over another institution. Each time a new way of creating an unfair advantage is concocted in the head of a coach or other devotee of a given team, a new rule is spawned to deal with that excess. In turn, as rules proliferate, an increasingly complex structure for enforcing the rules is necessitated.

ful Elkins Railroad Line.[5] Harvard University sought to gain an undue advantage over its academic rival Yale by obtaining the services of a coxswain who was not a student.[6] Thus, the commercialization and propensity to seek unfair advantages existed virtually from the beginning of organized intercollegiate athletics in the United States. The problem of cheating, which was no doubt compounded by the increasing commercialization of sport, was a matter of concern.[7] Initially, these concerns led institutions to move the athletic teams from student control to faculty oversight.[8] Nevertheless, by the latter part of the nineteenth century, two leading university presidents were voicing their fears that intercollegiate athletics were out of control.[9] President Eliot at Harvard was very concerned about the impact that commercialization of intercollegiate athletics was having, and charged that "lofty gate receipts from college athletics had turned amateur contests into major commercial spectacles."[10] In the same year, President Walker of the Massachusetts Institute of Technology bemoaned the fact that intercollegiate athletics had lost its academic moorings and opined that "[i]f the movement shall continue at the same rate, it will soon be fairly a question whether the letters B.A. stand more for Bachelor of Arts or Bachelor of Athletics."[11] In turn, recognizing the difficulty of overseeing intercollegiate athletics at the institutional level, whether through the faculty or the student governance, conferences were being created both to facilitate the playing of a schedule of games and to provide a modicum of regulation at a broader level.[12]

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5. These regatta, which were student run for the most part, were among the first intercollegiate athletic events.

6. Rodney K. Smith, *The National Collegiate Athletic Association's Death Penalty: How Educators Punish Themselves and Others*, 62 IND. L.J. 985, 988-89 (1987) [hereinafter Smith, *Death Penalty*]; Rodney K. Smith, *Little Ado About Something: Playing Games With the Reform of Big-Time Athletics*, 20 CAP. U. L. REV. 567, 569-70 (1991) [hereinafter Smith, *Little Ado*].

7. The commercialization of intercollegiate athletics, with the payment of star athletes, was rather firmly entrenched by the latter part of the 19th Century. For example, it is reported that Hogan, a successful student-athlete at Yale at that time, was compensated with: (1) a suite of rooms in the dorm; (2) free meals at the University club; (3) a one-hundred dollar scholarship; (4) the profits from the sale of programs; (5) an agency arrangement with the American Tobacco Company, under which he received a commission on cigarettes sold in New Haven; and (6) a ten-day paid vacation to Cuba. *See* Smith, *Death Penalty*, *supra* note 6, at 989.

8. *Id.* at 989-90.

9. Smith, *Little Ado*, *supra* note 6, at 570.

10. *Id.*

11. *Id.*

12. Smith, *Death Penalty*, *supra* note 6, at 990.

Despite the shift from student control to faculty oversight and some conference regulation, intercollegiate athletics remained under-regulated and a source of substantial concern.[13] Rising concerns regarding the need to control the excesses of intercollegiate athletics were compounded by the fact that in 1905 alone, there were over eighteen deaths and one hundred major injuries in intercollegiate football.[14] National attention was turned to intercollegiate athletics when President Roosevelt called for a White House conference to review football rules.[15] President Roosevelt invited officials from the major football programs to participate.[16] Deaths and injuries in football persisted, however, and Chancellor Henry MacCracken of New York University called for a national meeting of representatives of the nation's major intercollegiate football programs to determine whether football could be regulated or had to be abolished at the intercollegiate level.[17] Representatives of many major intercollegiate football programs accepted Chancellor MacCracken's invitation and ultimately formed a Rules Committee.[18] President Roosevelt then sought to have participants in the White House conference meet with the new Rules Committee.[19] This combined effort on the part of educators and the White House eventually led to a concerted effort to reform intercollegiate football rules, resulting in the formation of the Intercollegiate Athletic Association (hereinafter IAA), with sixty-two original members.[20] In 1910, the IAA was renamed the NCAA.[21] Initially, the NCAA was formed to formulate rules that could be applied to the various intercollegiate sports.[22]

In the years prior to the formation of the NCAA, schools wrestled with the same issues that we face today: the extreme pressure to win, which is compounded by the commercialization of sport, and the need for regulations and a regulatory body to ensure fairness and safety.[23] In terms of regulation, between 1840 and 1910, there was a movement from

13. *Id.*
14. *Id.*
15. GEORGE W. SCHUBERT ET AL., SPORTS LAW 1 (1986); Smith, *Death Penalty, supra* note 6, at 990.
16. Smith, *Death Penalty, supra* note 6, at 990.
17. *Id.*
18. *Id.*
19. *Id.*
20. *Id.* at 991; SCHUBERT, *supra* note 15, at 2.
21. *Id.*
22. *Id.*
23. Smith, *Little Ado, supra* note 6, at 571.

loose student control of athletics to faculty oversight, from faculty oversight to the creation of conferences, and, ultimately, to the development of a national entity for governance purposes.[24]

B. 1910–1970

In its early years, the NCAA did not play a major role in governing intercollegiate athletics.[25] It did begin to stretch beyond merely making rules for football and other games played, to the creation of a national championship event in various sports.[26] Indeed, students, with some faculty oversight, continued to be the major force in running intercollegiate athletics.[27] By the 1920s, however, intercollegiate athletics were quickly becoming an integral part of higher education in the United States.[28] Public interest in sport at the intercollegiate level, which had always been high, continued to increase in intensity, particularly as successful and entertaining programs developed, and also with increasing access to higher education on the part of students from all segments of society.[29]

With this growing interest in intercollegiate sports and attendant increases in commercialization, outside attention again focused on governance and related issues.[30] In 1929, the highly respected Carnegie Foundation for the Advancement of Education issued a significant report regarding intercollegiate athletics and made the following finding:

> [A] change of values is needed in a field that is sodden with the commercial and the material and the vested interests that these forces have created. Commercialism in college athletics must be diminished and college sport must rise to a point where it is esteemed primarily and sincerely for the opportunities it affords to mature youth.[31]

The Carnegie Report, echoing themes that appear ever so relevant in the year 2000, concluded that college presidents could reclaim the integrity of sport.[32] College administrators "could change the policies permitting

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24. Smith, *Death Penalty, supra* note 6, at 989-91.
25. *Id.* at 991.
26. *Id.*
27. *Id.*
28. *Id.*
29. *Id.*
30. *Id.*
31. *Id.*
32. *Id.*

commercialized and professionalized athletics that boards of trustees had previously sanctioned."[33]

While the NCAA made some minor attempts to restructure rules to increase integrity in the governance of intercollegiate athletics, those efforts were insufficient to keep pace with the growing commercialization of, and interest in, intercollegiate athletics.[34] Recruitment of athletes was not new, but the rising desire to win, with all its commercial ramifications, contributed to recruitment being raised to new heights.[35] Red Grange, for example, is often given credit for "starting the competition for football talent through . . . recruiting."[36] Public interest in intercollegiate athletics continued to increase with support from the federal government during the 1930s. The capacity of the NCAA to regulate excesses was not equal to the daunting task presented by the growth of, interest in, and commercialization of sport.[37]

After World War II, with a dramatic increase in access to higher education on the part of all segments of society, largely through government support for returning military personnel to attend college, public interest expanded even more dramatically than it had in the past.[38] Increased interest, not surprisingly, led to even greater commercialization of intercollegiate athletics. With the advent of television, the presence of radios in the vast majority of homes in the United States, and the broadcasting of major sporting events, these pressures further intensified.[39] More colleges and universities started athletic programs, while others expanded existing programs, in an effort to respond to increasing interest in intercollegiate athletics. These factors, coupled with a series of gambling scandals and recruiting excesses, caused the NCAA to promulgate additional rules, resulting in an expansion of its governance authority.[40]

In 1948, the NCAA enacted the so-called "Sanity Code," which was designed to "alleviate the proliferation of exploitive practices in the recruitment of student-athletes."[41] To enforce the rules in the Sanity Code, the NCAA created the Constitutional Compliance Committee to interpret rules and investigate possible violations.[42] Neither the Sanity

33. *Id.*
34. *Id.* at 991-92.
35. *Id.* at 992.
36. *Id.*
37. *Id.*
38. *Id.*
39. *Id.* at 992.
40. *Id.*
41. *Id.*
42. *Id.*

Code with its rules, nor the Constitutional Compliance Committee with its enforcement responsibility, were successful because their only sanction was expulsion, which was so severe that it rendered the Committee impotent and the rules ineffectual.[43] Recognizing this, the NCAA repealed the Sanity Code in 1951, replacing the Constitutional Compliance Committee with the Committee on Infractions, which was given broader sanctioning authority.[44] Thus, in 1951, the NCAA began to exercise more earnestly the authority which it had been given by its members.[45]

Two other factors are worth noting in the 1950s: (1) Walter Byers became Executive Director of the NCAA, and contributed to strengthening the NCAA, and its enforcement division, over the coming years to televise intercollegiate football; and (2) the NCAA negotiated its first contract valued in excess of one million dollars, opening the door to increasingly lucrative television contracts in the future.[46] The NCAA was entering a new era, in which its enforcement authority had been increased, a strong individual had been hired as executive director, and revenues from television were beginning to provide it with the wherewithal to strengthen its capacity in enforcing the rules that were being promulgated.[47] Through the 1950s and 1960s, the NCAA's enforcement capacity increased annually.[48]

C. 1971–1983

By 1971, as its enforcement capacity had grown yearly in response to new excesses arising from increased interest and commercialization, the NCAA was beginning to be criticized for alleged unfairness in the exercise of its enhanced enforcement authority.[49] Responding to these criticisms, the NCAA formed a committee to study the enforcement process, and ultimately, in 1973, adopted recommendations developed by that committee designed to divide the prosecutorial and investigative roles of the Committee on Infractions.[50] In the early 1970s, as well, the membership of the NCAA decided to create divisions, whereby schools would be placed in divisions that would better reflect their competitive capacity.[51]

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43. *Id.* at 992-93.
44. *Id.* at 993.
45. *Id.*
46. *Id.*
47. *Id.*
48. *Id.*
49. *Id.* at 992.
50. *Id.* at 994.
51. *Id.* at 993.

Despite these efforts, however, by 1976, when the NCAA was given additional authority to enforce the rules by penalizing schools directly, and, as a result, athletes, coaches, and administrators indirectly, criticism of the NCAA's enforcement authority grew even more widespread.[52] Indeed, in 1978, the United States House of Representatives Subcommittee on Oversight and Investigation held hearings to investigate the alleged unfairness of the NCAA's enforcement processes.[53] Once again, the NCAA responded by adopting changes in its rules designed to address many of the criticisms made during the course of the hearings.[54] While concerns were somewhat abated, the NCAA's enforcement processes continued to be the source of substantial criticism through the 1970s and 1980s.[55]

The NCAA found itself caught between two critiques. On the one hand, it was criticized for responding inadequately to the increased commercialization of intercollegiate athletics, with all its attendant excesses; while on the other hand, it was criticized for unfairly exercising its regulatory authority.[56] Another factor began to have a major impact as well. University and college presidents were becoming more directly concerned with the operation of the NCAA for two major reasons: (1) as enrollments were beginning to drop, and expenses were increasing in athletics and elsewhere, presidents began, with some ambivalence, to see athletics as an expense, and as a potential revenue and public relations source; and (2) they personally came to understand that their reputations as presidents were often tied to the success of the athletic program and they were, therefore, becoming even more fearful of the NCAA's enforcement authority.[57]

D. 1984–1999

In difficult economic times for higher education in the 1980s, university presidents increasingly found themselves caught between the pressures applied by influential members of boards of trustees and alumni, who often demanded winning athletic programs, and faculty and educators, who feared the rising commercialization of athletics and its impact

52. *Id.* at 994.
53. *Id.*
54. *Id.*
55. *Id.* at 995.
56. *Id.*
57. *Id.* at 995-96.

on academic values.[58] Many presidents were determined to take an active, collective role in the governance of the NCAA, so they formed the influential Presidents Commission in response to these pressures.[59] In 1984, the Presidents Commission began to assert its authority, and by 1985, it took dramatic action by exercising their authority to call a special convention to be held in June of 1985.[60] This quick assertion of power led one sports writer to conclude that "There is no doubt who is running college sports. It's the college presidents."[61]

The presidents initially were involved in a number of efforts to change the rules, particularly in the interest of cost containment.[62] These efforts were not all successful.[63] Over time, however, the presidents were gaining a better understanding of the workings of the NCAA, and they were beginning to take far more interest in the actual governance of intercollegiate athletics.[64] A little over a decade later, the presidents' involvement grew to the extent that they had changed the very governance structure of the NCAA, with the addition of an Executive Committee and a Board of Directors for the various divisions, both of which are made up of presidents or chief executive officers.[65]

In *NCAA v. Tarkanian*[66], in a 5-4 decision, the United States Supreme Court held that the NCAA was not a state actor, freeing the NCAA from defending against due process allegations brought by Coach Jerry Tarkanian.[67] Despite this victory, concerns persisted regarding due process in the NCAA's enforcement processes. In time, the presidents decided to take action in reforming the enforcement process.[68] The presidents were involved in forming a Special Committee to Review the NCAA Enforcement and Infractions Process,[69] and supported the naming of one of their own, President Rex E. Lee of Brigham

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58. *Id.* at 995; Rodney K. Smith, *Reforming Intercollegiate Athletics: A Critique of the Presidents Commission's Role in the N.C.A.A.'s Sixth Special Convention*, 64 N.D. L. REV. 423, 427 (1988).

59. Smith, *Death Penalty, supra* note 6, at 996-97.

60. Smith, *supra* note 58, at 428-30.

61. Smith, *Death Penalty, supra* note 6, at 997.

62. Smith, *supra* note 58, at 428.

63. *Id.*

64. *Id.*

65. MANUAL, *supra* note 4, at 22-23.

66. 488 U.S. 179 (1988).

67. *Id.* at 199.

68. NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, REPORT AND RECOMMENDATIONS OF THE SPECIAL COMMITTEE TO REVIEW THE NCAA ENFORCEMENT AND INFRACTIONS PROCESS, Oct. 28, 1991, at 1 [hereinafter REPORT AND RECOMMENDATIONS].

69. The Committee was charged as follows:

Young University, as Chairman.[70] This distinguished committee, which included other luminaries such as former Chief Justice of the United States Supreme Court Warren E. Burger, issued a report in 1991.[71] The Committee made the following basic recommendations: (1) "Enhance the adequacy of the initial notice of an impending investigation and assure a personal visit by the enforcement staff with the institution's chief executive officer;"[72] (2) "Establish a 'summary disposition' procedure for treating major violations at a reasonably early stage in the investigation;"[73] (3) "Liberalize the use of tape recordings and the availability of such recordings to involved parties;"[74] (4) "Use former judges or other eminent legal authorities as hearing officers in cases involving major violations and not resolved in the 'summary disposition' process;"[75] (5) "Hearings should be open to the greatest extent possible;"[76] (6) "Provide transcripts of all infractions hearings to appropriate involved parties;"[77] (7) "Refine and enhance the role of the Committee on Infractions and establish a limited appellate process beyond that committee;"[78] (8) "Adopt a formal conflict-of-interest policy;"[79] (9) "Expand the public reporting of infractions cases;"[80] (10) "Make available a com-

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

70. *Id.*

71. *Id.*

72. *Id.* at 3. This recommendation certainly reflected a concern on the part of chief executive officers that they were not sufficiently involved in the enforcement process, when an institution was being investigated.

73. *Id.* at 4. Again, in this area, the recommendation called upon the staff to "share with the chief executive officer its information regarding rules violations" at an early stage. *Id.* at 5.

74. *Id.* at 5.

75. *Id.* at 6.

76. *Id.*

77. *Id.* at 7.

78. *Id.* at 7. This recommendation was adopted, with the creation of the Infractions Appeals Committee, a five-member committee, that hears appeals from the Committee on Infractions, and has been developing appellate case law or jurisprudence.

79. *Id.* at 8.

80. *Id.*

pilation of previous committee decisions;"[81] and (11) "Study the structure and procedures of the enforcement staff."[82] These recommendations have been taken seriously, and, as implemented, are helping to improve the enforcement processes.

During this time period, there were a number of additional developments that had an impact on the role of the NCAA in fulfilling its enforcement and governance of responsibilities. Even in a short history, like this one, a few of those developments are noteworthy.

As the role of television and the revenue it brings to intercollegiate athletics has grown in magnitude, the desire for an increasing share of those dollars has become intense. The first television event in the 1950s was a college football game, and the televising of college football games remained under the NCAA's control for a number of years.[83] In time, however, a group of powerful intercollegiate football programs were determined to challenge the NCAA's handling of the televising of games involving their schools.[84] In *NCAA v. Board of Regents*[85], the United States Supreme Court held that the NCAA had violated antitrust laws.[86] This provided an opening for those schools, and the bowls that would ultimately court them, to directly reap the revenues from the televising of their football games.[87] This shift has effectively created a new division in football called the College Football Association, which is made up of the football powerhouses in Division I.[88] Because these schools have been able to funnel more television revenues in their direction, which has led to increases in other forms of revenue, they have gained access to resources that have unbalanced the playing field in football and other sports.[89]

Another matter that has dramatically impacted intercollegiate athletics during the past two decades is Title IX, with its call for gender equity

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81. *Id.* This provision, together with the developing appellate case law, will make for a jurisprudence of enforcement that will warrant study in the future. It will also help establish the fairness or equality of treatment that characterizes the rule of law.

82. *Id.*

83. SCHUBERT, *supra* note 15, at 2.

84. *Id.*

85. 468 U.S. 85 (1984).

86. *Id.* at 113, 120.

87. SCHUBERT, *supra* note 15, at 57-58.

88. *Id.* at 58.

89. It is clear that the membership of the College Football Association has been able to use those additional revenues to enhance their entire athletics program, giving them a competitive edge.

in intercollegiate athletics.[90] With some emphasis on proportionality in opportunities and equity in expenditures for coaches and other purposes in women's sports, new opportunities have been made available for women in intercollegiate athletics.[91] The cost of these expanded opportunities have been high, however, particularly given that few institutions have women's teams that generate sufficient revenue to cover the cost of these added programs.[92] This increase in net expenses has placed significant pressure on intercollegiate athletic programs, particularly given that the presidents are cost-containment conscious, desiring that athletic programs be self-sufficient.[93] Revenue producing male sports, therefore, have to bear the weight of funding women's sports.[94] This, in turn, raises racial equity concerns because most of the revenue producing male sports are made up predominantly of male student-athletes of color,[95] who are expected to deliver a product that will not only produce sufficient revenue to cover its own expenses, but also a substantial portion of the costs of gender equity and male sports that are not revenue producing.[96]

The gender equity and television issues have been largely economic in their impact, but they do indirectly impact the role of the NCAA in governance. Since football funding has been diverted from the NCAA to the football powerhouses, the NCAA for the most part has had to rely even more heavily on its revenue from the lucrative television contract for the Division I basketball championship.[97] Heavy reliance on this funding source raises racial equity issues, since student-athletes of color, particularly African-American athletes, are the source of those revenues.[98] Thus, the very governance costs of the NCAA are covered predominantly by the efforts of these student-athletes of color.[99] This inequity is exacerbated by the fact that schools and conferences rely heavily on revenues from the basketball tournament to fund their own institutional and conference needs.[100]

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90. Rodney K. Smith, *When Ignorance is Not Bliss: In Search of Racial and Gender Equity in Intercollegiate Athletics*, 61 MO. L. REV. 329, 367 (1996).
91. *Id.* at 355.
92. *Id.* at 368.
93. *Id.* at 359-60.
94. *Id.* at 368.
95. *Id.* at 369-70.
96. *Id.* at 370.
97. *Id.* at 348.
98. *Id.* at 349.
99. *Id.*
100. *Id.* at 369-70.

Generally, developments during the past two decades have focused on governance and economic issues.[101] There have been some efforts, however, to enhance academic integrity and revitalize the role of faculty and students in overseeing intercollegiate athletics.[102] Of particular note in this regard has been the implementation of the certification process for intercollegiate athletic programs.[103] The certification process involves faculty, students (particularly student-athletes), and staff from an institution in preparing an in-depth self-study, including substantial institutional data in the form of required appendices.[104] The study covers the following areas: Governance and Rules Compliance, Academic Integrity, Fiscal Integrity, and Commitment to Equity.[105] This process helps institutions focus on academic values and related issues.[106] These efforts also provide the chief executive officers with additional information and a potentially enhanced role in intercollegiate athletics at the campus level.[107]

The past two decades have been active ones for the NCAA. With meteoric rises in television and related revenues, the commercialization of intercollegiate athletics has continued to grow at a pace that places significant strain on institutions and the NCAA. These commercial pressures, together with increasing costs related to non-revenue producing sports, costly gender equity requirements, and other resource demands (e.g., new facilities), make it challenging to maintain a viable enforcement process and a balanced playing field.

III. THE FUTURE

Over the past 150 years, the desire to win at virtually any cost, combined with the increases in public interest in intercollegiate athletics, in a consumer sense, have led inexorably to a highly commercialized world of intercollegiate athletics.[108] These factors have created new incentives for universities and conferences to find new ways to obtain an advantage over their competitors. This desire to gain an unfair competitive advantage has necessarily led to an expansion in rules and regulations. This

101. Smith, *Little Ado*, *supra* note 6, at 573.
102. Smith, *Death Penalty*, *supra* note 6, at 1058.
103. This certification process has been in place for a number of years and is becoming institutionalized. Smith, *Little Ado*, *supra* note 6, at 573.
104. *Id.* at 573-74.
105. *Id.*
106. *Id.* at 576.
107. *Id.*
108. Smith, *Death Penalty*, *supra* note 6, at 991.

proliferation of rules and the development of increasingly sophisticated regulatory systems necessary to enforce those rules, together with the importance that attaches to enforcement decisions, both economically and in terms of an institution's reputation (and derivatively its chief executive officer's career), places great strain on the capacity of the NCAA to govern intercollegiate athletics. This strain is unlikely to dissipate in the future because the pressures that have created the strain do not appear to be susceptible, in a practical sense, to amelioration. Indeed, the one certainty in the future of the NCAA is the likelihood that big-time intercollegiate athletics will be engaged in the same point-counterpoint that has characterized its history; increased commercialization and public pressure leading to more sophisticated rules and regulatory systems.

As rules and regulatory systems continue along the road of increased sophistication, the NCAA will more closely resemble its industry counterparts. It will develop an enforcement system that is more legalistic in its nature, as regulatory proliferation leads to increasing demands for fairness. In such a milieu, chief executive officers will have to take their responsibilities for intercollegiate athletics even more seriously.[109] It can be hoped, as well, that their involvement, and the increased involvement on the part of faculty and staff, through the certification process and otherwise, will lead to a more responsible system in terms of the maintenance of academic values. If the NCAA and those who lead at the institutional and conference levels are unable to maintain academic values in the face of economics and related pressures, the government may be less than a proverbial step away.[110]

109. It can be anticipated, as well, that chief executive officers will be held increasingly accountable for rules violations at their institutions.

110. Just as the government (the legislative and judicial branches) became involved at the turn of the century and again in the 1970s, it is likely that similar oversight will occur in the future. With increased formalization of regulatory processes, the judiciary may well become more involved.