

NCAA PENALTIES: CORPORATE ACCOUNTABILITY FOR COACHES AND PRESIDENTS

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INTRODUCTION

Innocent student athletes missed tournament basketball last spring.¹ University presidents, trying to minimize damages after alleged violations of National Collegiate Athletic Association (“NCAA”) rules, voluntarily pulled entire teams out of tournament play.² The basketball programs of Fresno State University (“Fresno State”)³ and the University of Georgia (“Georgia”) both had their tournament play cancelled by their presidents.⁴ Guilty athletes were punished for violations, but often at the expense of their innocent teammates.⁵ The presidents and coaches, authority figures presumably accountable, were not truly penalized for their roles in the alleged violations.⁶ The authority figure closest to receiving a penalty is usually the coach. However, at Georgia this only resulted in a paid suspension of the men’s basketball coach, Jim Harrick, followed by Harrick’s resignation and a sizeable settlement on his salary.⁷ Even with Jim Harrick resigning from Georgia, he will probably not have too much trouble landing another lucrative contract with another university.⁸

The practice of penalizing an institution by suspending tournament play is the brainchild of the NCAA.⁹ The presidents of Georgia and Fresno State pulled their basketball programs out of tournament play in an effort to make a statement to the NCAA and maybe lessen NCAA penalties down the road.¹⁰ The NCAA’s enforcement structure encourages tough penalties for athletes, but fails to hold accountable the authority figures that are directly responsible for the integrity of the athletic programs.¹¹ The NCAA could foster integrity much more efficiently if a corporate accountability approach were utilized.¹²

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¹ Brian Skoloff, *Fresno State Not Allowed in WAC Tournament*, (March 4, 2003), at <http://www.collegesports.com/sports/m-baskbl/stories/030403acq.html> (last visited February 8, 2004).

² *Id.*

³ *Id.*

⁴ Dan Wetzel, *Harrick, Georgia, SEC Have Checkered Past*, (March 10, 2003), at <http://www.sportsline.com/collegebasketball/story/6243000> (last visited February 8, 2004).

⁵ *Id.*

⁶ Mark Schlabach, *Harrick Resigns Under Cloud of NCAA Investigation*, THE ATLANTA JOURNAL-CONSTITUTION (ajc.com), March 27, 2003, at <http://www.ajc.com/sports/content/sports/uga/0303/28harrick.html> (last visited February 8, 2004).

⁷ *Id.*

⁸ Wetzel, *supra* note 4.

⁹ NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, 2002-03 NCAA Div. I MANUAL at art. 19.4.2.2 (2002) [hereinafter NCAA MANUAL].

¹⁰ Andy Katz, *Sources: ADs Vote to Ban Fresno from WAC Tourney*, (March 3, 2003), at http://espn.go.com/nbc/columns/katz_andy/1517649.html (last visited February 8, 2004).

¹¹ Mark Eytcheson, *Controversy Surrounds Fresno State Basketball*, The Insiders.com, (November 25, 2002), at <http://fresnostate.theinsiders.com/2/78218.html> (last visited February 8, 2004).

¹² Model Penal Code § 2.07 (2001) (defining corporate accountability).

Part II of this comment will focus on the NCAA's mission and penalties for NCAA violations. The situations at Georgia and Fresno State will be used to emphasize problems with the penalties currently used in the NCAA. Part III will discuss how coaches and university presidents are responsible for adhering to NCAA regulations. The situations at Georgia and Fresno State will be used to shed light on this issue. Part IV will discuss the current status of court involvement in NCAA regulations. Part V will include a discussion of corporate accountability and its applicability to the NCAA's mission, regulations, and enforcement process. Part VI will provide a brief conclusion and offer suggestions on how corporately aimed penalties would comply with the mission of the NCAA.

II. THE NCAA MISSION AND PENALTIES

A. *The NCAA Mission*

The NCAA was formed in order to “maintain intercollegiate athletics as an integral part of the educational program and the athlete as an integral part of the student body and, by so doing, retain a clear line of demarcation between intercollegiate athletics and professional sports.”¹³ This quote from the NCAA's constitution is better known as the goal of “amateurism.”¹⁴ “Amateurism” is embodied in the efforts of the NCAA to foster a non-professional atmosphere with athletics being part of the student athlete's education.¹⁵ Maintaining “amateurism” is the most significant part of the NCAA's mission.¹⁶ The NCAA sees itself as part of higher education and works to maintain an educational role.¹⁷ The NCAA also focuses on maintaining a “level playing field” where all teams within a division can be competitive.¹⁸ However, “amateurism” is the ultimate focus of the NCAA's mission with the latter goals serving to advance the goal of “amateurism.”¹⁹

The NCAA's constitution does not provide the entire agenda of the NCAA, which is also affected by the big business of college sports.²⁰ Multi-billion dollar television contracts for the NCAA men's basketball tournament and bowl games are just two of the ways the NCAA creates revenue.²¹ This revenue raises the competitive stakes for colleges and universities who can receive payouts in the millions of dollars from the NCAA for participating in NCAA tournaments or bowl games.²² With multi-million dollar payouts on the line, the motivation for institutions to cut corners in efforts to become competitive has greatly increased.²³ In response, the NCAA has grown into a major regulatory body with a 400 page plus rules manual.²⁴ Maintaining “amateurism” is much more complicated in the high stakes world of today's college

¹³ 2002-03 NCAA Manual, Const., art. 1.3.1 (2002).

¹⁴ Gary R. Roberts, *Resolution of Disputes in Intercollegiate Athletics*, 35 VAL. U. L. REV. 431, 432 (2001) (discussing the mission of the NCAA).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ 2002-03 NCAA Manual, Const., art. 1.3.1 (2002).

²⁰ Roberts, *supra* note 14 (discussing the affect of large contracts on the NCAA).

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ Kevin E. Broyles, *NCAA Regulation of Intercollegiate Athletics: Time for a New Game Plan*, 46 ALA. L. REV. 487, 490-510 (1995) (discussing problems with NCAA regulation procedures).

sports.²⁵ The NCAA now acts as investigator, prosecutor and adjudicator to enforce the many new rules it has passed in an effort to discourage violations and maintain “amateurism.”²⁶

B. NCAA Penalties

There are numerous penalty options listed in the NCAA Manual, but most focus on penalizing the institution as opposed to individuals.²⁷ Ineligibility for NCAA tournaments, ineligibility for invitational and postseason play and prohibition of season competition are just three penalties the NCAA can employ for violations.²⁸ The NCAA requires minimum penalties to be assessed for violations.²⁹ Among the minimum penalties is preclusion from one year of postseason play.³⁰ Although NCAA penalties generally focus on institutions, there are penalty options specifically referring to staff and coaches.³¹ The NCAA does not directly penalize the staff or coaches of an institution, but does promise further institutional penalties if the institution does not suitably penalize its own personnel.³² The NCAA Manual defines suitable penalties for institutional personnel as termination, suspension or reassignment.³³ The NCAA places a burden on the institutions to show that they have properly penalized their personnel and reserves the right to determine if a penalty is suitable in each situation.³⁴ Punishment for institutional personnel is part of the minimum penalty package.³⁵ Penalties addressing the accountability of university presidents are missing, however.³⁶

C. Georgia and Fresno State: Problems with NCAA Penalties

There are two problems with NCAA penalties.³⁷ First, NCAA penalties do not guarantee that the guilty parties receive punishment and often punish innocent parties.³⁸ Second, NCAA penalties do not sufficiently hold authority figures accountable.³⁹

²⁵ Roberts, *supra* note 14 (discussing the affect of large contracts on the NCAA).

²⁶ Broyles, *supra* note 24, at 491-498 (discussing the NCAA regulatory structure).

²⁷ 2002-03 NCAA Manual, art. 19.4.2.1 (2002).

²⁸ *Id.* Other possible penalties include: probation of an institution, reprimand and censure of an institution, ineligibility for television spots, ineligibility to vote and serve on NCAA committees, prohibition of recruitment, reduction of financial aid awards for recruitment, return of monetary rewards to NCAA, vacation of team or individual records, requiring the institution to recertify with NCAA, and revoking membership of an institution.

²⁹ 2002-03 NCAA Manual, art. 19.4.2.2 (2002).

³⁰ *Id.* Other minimum penalties include: two years of probation for the institution, one year of prohibition of expense-paid recruiting visits for the sport being penalized, prohibition of off-campus recruitment activities of all staff or coaches in the penalized sport for one year, television sanctions for one year in the penalized sport, requirement that institution terminate, suspend or reassign all guilty staff or coaches, and recertification of the institution with NCAA.

³¹ 2002-03 NCAA Manual, art. 19.4.2.1 (2002).

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ 2002-03 NCAA Manual, art. 19.4.2.2 (2002).

³⁶ 2002-03 NCAA Manual, art. 19.4.2.1 (2002).

³⁷ Eytcheson, *supra* note 11.

³⁸ *Id.*

³⁹ *Id.*

Georgia's and Fresno State's basketball programs were accused of NCAA violations during the 2002-03 season.⁴⁰ The NCAA ultimately conducted investigations into both programs, but the presidents of both schools already penalized their programs by pulling the teams out of any post-season play.⁴¹ Three Georgia players allegedly received phony grades without ever attending class.⁴² Three Fresno State players allegedly had "17 pieces of course work" completed by another student.⁴³ The alleged violations involved less than half of Georgia's current players, but the entire team missed the regional tournament and what would have been a guaranteed trip to the NCAA tournament.⁴⁴ The Fresno State violations were alleged to have occurred in 2000 and involved none of the 2002-03 roster, but the team was still barred from post-season play.⁴⁵ Penalties that prohibit participation of an entire team definitely punish the innocent along with the guilty and sometimes only the innocent.⁴⁶ Prohibition of team play punishes the program and institution by refusing them the chance to earn the payouts available in post-season play,⁴⁷ but also unfairly hurts innocent staff and athletes in the program.⁴⁸ Results, such as those just mentioned, are unfair and call for the NCAA to reform its penalty process.⁴⁹

The second problem with NCAA penalties, a lack of accountability for authority figures, is emphasized by the absence of penalties for institution presidents.⁵⁰ The situations at Georgia and Fresno State are examples of misallocated penalties.⁵¹ Georgia's president, Michael Adams, approved a class by the title of "Coaching Strategies in Basketball" for the curriculum.⁵² The class was taught by assistant coach Jim Harrick Jr., the son of head coach Jim Harrick.⁵³ The class was less than academic and student athletes received high grades without ever attending class.⁵⁴ Adams ignored Harrick's questionable employment record and focused on Harrick's impressive win record when he hired Harrick in 1999.⁵⁵ Adams disregarded Georgia's bias policies and allowed Harrick to hire his son as assistant coach.⁵⁶ Although Adams created the hazardous situation at Georgia by hiring a coach with a dubious history and bending the rules, it was the players who were penalized.⁵⁷

⁴⁰ Andy Katz, *NCAA Sends Message to Violators... Via Michigan*, (May 8, 2003), at http://espn.go.com/ncb/columns/katz_andy/1551123.html (last visited February 8, 2004).

⁴¹ *Id.*

⁴² Jack Carey, *Georgia Fires Jim Harrick Jr.; Dad Awaits Fate*, USA TODAY, (March 6, 2003), available at http://www.usatoday.com/sports/college/mensbasketball/sec/2003-03-05-georgia-harrick-jr_x.htm (last visited February 8, 2004).

⁴³ Skoloff, *supra* note 1.

⁴⁴ Carey, *supra* note 42.

⁴⁵ Skoloff, *supra* note 1.

⁴⁶ Eytcheson, *supra* note 11.

⁴⁷ 2002-03 NCAA Manual, art. 19.4.2.1 (2002).

⁴⁸ Eytcheson, *supra* note 11.

⁴⁹ *Id.*

⁵⁰ 2002-03 NCAA Manual, art. 19.4.2.1 (2002).

⁵¹ The penalties were self-administered at Georgia and Fresno State, but it is clear there was an effort to reflect standard NCAA penalties.

Id.

⁵² Carey, *supra* note 42.

⁵³ Carey, *supra* note 42.

⁵⁴ *Id.*

⁵⁵ Wetzel, *supra* note 4 (discussing Harrick's resignation from the University of Rhode Island amid accusations of sexual harassment and grade tampering, and prior recruiting indiscretions and expense account fraud at UCLA which resulted in Harrick being fired).

⁵⁶ Carey, *supra* note 42.

⁵⁷ Wetzel, *supra* note 4.

The lack of accountability for authority figures is also emphasized by NCAA penalties for coaches that often result in termination, but do not prohibit coaches from signing new contracts with other schools.⁵⁸ John Welty, Fresno State president, hired Jerry Tarkanian as men's basketball coach despite Tarkanian's controversial history.⁵⁹ Welty knew that Tarkanian was one the most controversial basketball coaches in the NCAA, but he also knew that Tarkanian's teams made it to the NCAA tournament on a regular basis.⁶⁰ Tarkanian is gone and Fresno State is dealing with academic violations that occurred prior to Tarkanian's retirement.⁶¹ Tarkanian retired not long after Fresno State and the NCAA started a joint investigation into academic fraud violations.⁶² Jim Harrick resigned from Georgia with a \$250,000 contract settlement.⁶³ However, there is nothing to stop a Tarkanian or a Harrick from being hired by another program just as Harrick was hired by Georgia despite being fired from UCLA for ethical issues.⁶⁴ The NCAA encourages termination of guilty coaches, but does nothing to prevent another institution from hiring those coaches.⁶⁵ Coaches are directly responsible for orchestrating their program's adherence to NCAA rules, but the players are the ones left behind and penalized while coaches are allowed to search for another lucrative contract.⁶⁶

III. INVOLVEMENT OF PRESIDENTS AND COACHES

A. *Involvement*

Coaches and institution presidents shoulder much of the responsibility regarding NCAA regulations.⁶⁷ There is no question that coaches are directly involved in issues relating to NCAA adherence. Additionally, institution presidents have also become intricately involved in supervising their athletic programs.⁶⁸ In the mid 1980's, institution presidents formed the Presidents Commission in response to mounting problems in college sports and the NCAA.⁶⁹ By the mid 1990's institution presidents had changed the structure of the NCAA with the addition of the Executive Committee and the Board of Directors for each division.⁷⁰ These governing bodies largely control the NCAA and both include institution presidents.⁷¹ As a result, institution presidents are closely involved with athletic programs and with the NCAA.⁷²

⁵⁸ 2002-03 NCAA Manual, art. 19.4.2.1 (2002).

⁵⁹ Eytcheson, *supra* note 11.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ Schlabach, *supra* note 6.

⁶⁴ Wetzel, *supra* note 4.

⁶⁵ 2002-03 NCAA Manual, art. 19.4.2.1 (2002).

⁶⁶ Wetzel, *supra* note 4.

⁶⁷ Rodney K. Smith, *A Brief History of the National Collegiate Athletic Association's Role in Regulating Intercollegiate Athletics*, 11 MARQ. SPORTS L. REV. 9, 16-17 (2000) (discussing the increasing role of institution presidents in the NCAA).

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

As noted above, the presidents of Georgia and Fresno State made questionable hiring decisions when they hired Jim Harrick and Jerry Tarkanian.⁷³ Georgia president, Michael Adams, certified a phony class for the curriculum.⁷⁴ Adams also relaxed Georgia's bias policies allowing Harrick to hire his son, who taught the phony class.⁷⁵ NCAA presidents and coaches are in a position to act as guardians of integrity and ensure adherence to NCAA rules.⁷⁶ This causes one to question why institution presidents are not held accountable when athletic programs violate NCAA rules.⁷⁷ St. Bonaventure University's board of trustees requested the resignation of President Robert Wickenheiser upon evidence that Wickenheiser approved admission of a student athlete who had a welding certificate instead of an actual degree.⁷⁸ The action taken against Wickenheiser is fair and effective, but is not the norm and is not encouraged by the NCAA.⁷⁹

B. Conflict of Interests

Institution presidents are responsible for their institutions' compliance with NCAA rules, but the institution presidents also serve on the NCAA's most powerful governing bodies, the Executive Committee and the Board of Directors.⁸⁰ This creates a conflict of interests as the institution presidents operate the organization that monitors their compliance.⁸¹ Conflicting interests are also apparent in the conflicting functions that institution presidents perform.⁸² Institution presidents are expected to make their institutions and athletic programs profitable, which conflicts with their role of supervising adherence with NCAA rules.⁸³ Conflicting interests when coupled with penalties that ignore the most responsible authority figures raise serious questions about the effectiveness of NCAA penalty options.⁸⁴

IV. COURT INVOLVEMENT

Before 1982, the courts generally held that the NCAA engaged in state action and was thus accountable to constitutional scrutiny and judicial oversight.⁸⁵ However, in 1982 the Supreme Court handed down three decisions that significantly altered the state action analysis

⁷³ Wetzell, *supra* note 4.

⁷⁴ Carey, *supra* note 42.

⁷⁵ *Id.*

⁷⁶ Smith, *supra* note 67 (discussing the increasing role of institution presidents in the NCAA).

⁷⁷ Eytcheson, *supra* note 11.

⁷⁸ Katz, *supra* note 40.

⁷⁹ Eytcheson, *supra* note 11.

⁸⁰ Smith, *supra* note 67 (discussing the increasing role of institution presidents in the NCAA).

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

⁸⁴ Eytcheson, *supra* note 11.

⁸⁵ Hennessey v. NCAA, 564 F.2d 1136 (5th Cir. 1977); Associated Students v. NCAA, 493 F.2d 1251 (9th Cir. 1974); Regents of Univ. of Minn. v. NCAA, 422 F. Supp. 1158 (D. Minn. 1976), rev'd, 560 F.2d 352 (8th Cir. 1977), cert. dismissed, 434 U.S. 978 (1977); Pavey v. University of Alaska, 490 F. Supp. 1011 (D. Alaska 1980); Colorado Seminary v. NCAA, 417 F. Supp. 885 (D. Colo. 1976), aff'd, 570 F.2d 320 (10th Cir. 1978); Parish, 361 F. Supp. 1214 (W.D. La. 1973), aff'd in part, 506 F.2d 1028 (5th Cir. 1975); Howard Univ., 367 F. Supp. 926, aff'd, 510 F.2d 213 (D.C. Cir. 1975).

for the NCAA.⁸⁶ Following the Supreme Court's redefined stance on state action, the courts began to classify the NCAA as a private actor and greatly curtailed constitutional scrutiny and judicial oversight for the NCAA.⁸⁷ The courts have also held that antitrust laws do not apply to the NCAA.⁸⁸ In *National Collegiate Athletic Ass'n v. Bd. Of Regents of the Univ. of Okla.*⁸⁹ the Supreme Court noted that it is rational to assume the regulations of the NCAA promote competition rather than stifle it because the public interest in college sports is increased by the NCAA's controls on commercialism.⁹⁰ Currently there is general legal deference to the NCAA's structure and procedures.⁹¹ The deference by the courts will probably continue until the courts' perception of the NCAA as private and integral part of higher education changes.⁹² Meanwhile, the NCAA will have to struggle with effectively governing itself and its member institutions without direction from the legal system.⁹³

V. CORPORATE ACCOUNTABILITY: APPLICABILITY TO THE NCAA

A. Corporate Accountability

Corporate accountability is a widely accepted legal doctrine that allows corporations to be held accountable for crimes that were committed by employees of the corporation.⁹⁴ The corporate accountability doctrine (the "doctrine") also provides accountability for chief operating officers and presidents of corporations for crimes committed under their supervision.⁹⁵ The Model Penal Code lists three tiers of corporate accountability with different components in each tier, but the theory behind the doctrine is the key for NCAA purposes.⁹⁶ The basis for corporate accountability is the belief that the management figures will become motivated to exercise due diligence in efforts to avoid criminal behavior of their employees if the management figures can be held personally accountable.⁹⁷ If the NCAA hopes to motivate coaches and institution presidents to exercise due diligence, then the NCAA penalties need to have a corporate aim.⁹⁸

⁸⁶ *Lugar v. Edmondson Oil Co., Inc.*, 457 U.S. 922 (1982); *Blum v. Yaretsky*, 457 U.S. 991 (1982); *Rendell-Baker v. Kohn*, 457 U.S. 830 (1982).

⁸⁷ See, e.g., *Arlosoroff v. National Collegiate Athletic Ass'n*, 746 F.2d 1019, 1021 (4th Cir. 1984); *McCormack v. NCAA*, 845 F.2d 1338, 1346 (5th Cir. 1988); *Graham v. NCAA*, 804 F.2d 953, 958 (6th Cir. 1986); *McHale v. Cornell Univ.*, 620 F. Supp. 67, 69 (N.D.N.Y. 1985); *National Collegiate Athletic Ass'n v. Tarkanian*, 488 U.S. 179, 199 (1988).

⁸⁸ See, e.g., *National Collegiate Athletic Ass'n v. Bd. of Regents of the Univ. of Okla.*, 468 U.S. 85 (1984); *Smith v. National Collegiate Athletic Ass'n*, 139 F.3d 180 (3^d Cir. 1998); *Banks v. National Collegiate Athletic Ass'n*, 977 F.2d 1081 (7th Cir. 1992).

⁸⁹ 468 U.S. 85, 117 (1984).

⁹⁰ *Id.*

⁹¹ *Roberts*, *supra* note 14 (discussing court involvement with the NCAA).

⁹² *Id.*

⁹³ *Id.*

⁹⁴ Model Penal Code § 2.07 (2001).

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Wetzel*, *supra* note 4.

B. Applicability to the NCAA

As noted above, the mission of the NCAA is dominated by a commitment to “amateurism.”⁹⁹ The NCAA generates billions of dollars in revenue on a yearly basis that is shared among member institutions.¹⁰⁰ The penalty process in the NCAA lacks effective corporate punishment,¹⁰¹ which has fostered a proliferation of profit-motivated decisions by coaches and institution presidents.¹⁰² It seems that using a corporate accountability approach to enforce NCAA rules is appropriate for three reasons. First, corporate accountability is applicable to the NCAA’s mission of “amateurism.” Second, the NCAA has become a for-profit organization and needs corporate penalties to balance the conflict of interests this has created. Lastly, a corporate accountability approach would create penalties for authority figures and institutions that are not currently available.

Holding authority figures accountable via corporate penalties will ultimately facilitate the mission of the NCAA. The focus of the NCAA mission is to “maintain intercollegiate athletics as an integral part of the educational program and the athlete as an integral part of the student body and, by so doing, retain a clear line of demarcation between intercollegiate athletics and professional sports,” or to maintain “amateurism.”¹⁰³ The function of athletics as part of a student athlete’s education is a major component of “amateurism.”¹⁰⁴ Corporate accountability would place liability for following NCAA rules on the shoulders of the coaches and institution presidents. These same shoulders bear the burden of maintaining integrity, academic and otherwise, in athletic programs. Institution presidents and coaches are in an excellent position to prevent NCAA violations. “Amateurism” would be facilitated by increasing the motivation of the people with most power to influence adherence to NCAA rules.

The second point of applicability is that the NCAA has become a for-profit corporation which has introduced a conflict of interests into higher education.¹⁰⁵ The NCAA creates billions of dollars in revenue each year via television contracts for NCAA events.¹⁰⁶ Payouts in the millions of dollars are given to member institutions that compete in NCAA tournaments and bowl games.¹⁰⁷ The big business of college sports and the academic mission of higher education do not compliment one another. The former dictates finding the surest way to make money and the latter emphasizes academic excellence. Institution presidents are caught in the middle of this conflict.

The structure of the NCAA is similar to that of a corporation.¹⁰⁸ The NCAA is governed by the NCAA Council,¹⁰⁹ which entails a president, secretary-treasurer, and forty-four institutional representatives.¹¹⁰ The NCAA Council has power to make NCAA policy and interpret the constitution and bylaws of the NCAA.¹¹¹ The NCAA Council also supervises the

⁹⁹ Roberts, *supra* note 14 (discussing the mission of the NCAA).

¹⁰⁰ *Id.*

¹⁰¹ 2002-03 NCAA Manual, art. 19.4.2.1 (2002).

¹⁰² Katz, *supra* note 40.

¹⁰³ 2002-03 NCAA Manual, Const., art. 1.3.1 (2002).

¹⁰⁴ Roberts, *supra* note 14 (discussing the mission of the NCAA).

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ Broyles, *supra* note 24 (discussing problems with NCAA regulatory procedures).

¹⁰⁹ 2002-03 NCAA Manual, Const., art. 4.1.3 (2002).

¹¹⁰ 2002-03 NCAA Manual, Const., art. 4.4.1 (2002).

¹¹¹ 2002-03 NCAA Manual, Const., art. 4.1.3 (2002).

Infractions Appeals Committee, which gives it final discretion in dealing with violations of member institutions.¹¹² The NCAA Council acts as a “board of directors” for the NCAA.¹¹³ The member institutions of the NCAA are also usually structured like corporations. The NCAA generates a tremendous amount of revenue from which its member institutions can profit. The NCAA and its member institutions are organized and controlled like corporations, from the top down. Considering these facts it is hard to see the NCAA as anything but a corporation.

The last point of applicability is that a corporate accountability approach would create penalty options that do not currently exist for the NCAA. Corporate accountability would widen the spectrum of NCAA punishment to include individuals. The institution presidents and coaches who might be tempted to cut corners or look the other way when faced with NCAA violations would think twice if they could be individually punished. Currently the NCAA does not motivate presidents or coaches to ensure that their programs adhere to NCAA rules. A corporate accountability approach would require the people at the top do everything they could, within reason, to ensure adherence. Corporate accountability would make it the duty of presidents and coaches to know what is happening in their programs.

C. Suggestions for Corporately Aimed Penalties

As noted above, there are two major problems with current NCAA penalties: too many innocent parties are punished, and authority figures are not deterred from committing violations. Some simple changes to the NCAA penalty options could address both problems. The first change the NCAA should consider is to stop using prohibition of season or post-season play. The only time a team should be allowed to quit playing is when they cannot field a full team. Prohibition of play is the penalty that tends to penalize innocent parties more than any other penalty. Prohibition of play serves the purpose of penalizing the institution by taking away any chance of post-season payouts, but the NCAA could fine institutions an amount that would equal or outweigh any payouts the institutions might earn from post-season play.

Second, the NCAA could encourage penalties focused on institution presidents and coaches. The NCAA is not allowed to penalize individuals at member institutions since it has been recognized as a private entity.¹¹⁴ The NCAA could however, require the member institutions to punish presidents and coaches more severely. More severe penalties could include fines directed at presidents, coaches or any authority figure involved in a violation. It makes sense to use monetary fines to oppose the monetary incentive to violate NCAA rules. For coaches specifically, there could be a two or three-strike rule that would prevent coaches who consistently had run programs with violations from continuing their careers in NCAA institutions.

The last change the NCAA should consider is organizational. The NCAA should replace institution presidents on NCAA governing bodies with unbiased leadership. This would alleviate the above-mentioned conflict of interests for institution presidents who also work for the NCAA.

The mission of “amateurism” will be best served if the NCAA applies effective regulations and penalties to its member institutions. NCAA penalties currently discount a key factor of compliance. The key factor is the accountability of authority figures within each member institution. The NCAA has been criticized of imitating discipline and being motivated

¹¹² *Id.*

¹¹³ Broyles, *supra* note 24 (discussing problems with NCAA regulatory procedures).

¹¹⁴ *National Collegiate Athletic Association v. Tarkanian*, 488 U.S. 179, 195-196 (1988).

to achieve integrity in college sports only for commercial reasons.¹¹⁵ The best way for the NCAA to change these perceptions and support the NCAA mission is to implement the substantial reforms noted above.

VI. CONCLUSION

Georgia and Fresno State basketball players missed the post-season last year. Jim Harrick, Georgia's coach, and Jerry Tarkanian, Fresno State's coach, are no longer running the basketball programs that they left in disorder less than a year ago. Both coaches are retired for the time being. Michael Adams, president of Georgia, and John Welty, president of Fresno State, have not and will not receive penalties under the current NCAA penalty options.

The NCAA will continue to generate revenue in the billions of dollars and all the member institutions of the NCAA will continue to compete for millions of dollars in payouts. As commercialism increases and profits rise, the motivation to defraud the system will also increase. In a commercially competitive atmosphere, the NCAA's mission of "amateurism" will always be in jeopardy unless the NCAA introduces reforms to safeguard it. The NCAA must initiate any change, since the courts are currently deferring to the NCAA's. Corporate accountability offers a suitable path for NCAA reform by effectively penalizing authority figures. If the NCAA hopes to restore and maintain purity in collegiate athletics, it will have to refocus its penalty process to include and effectively deter institution presidents and coaches.

¹¹⁵ Eytcheson, *supra* note 11.