

1-15-1985

The Commercialization of College Football: The Universities of Oklahoma and Georgia Learn an Antitrust Lesson in *NCAA v. Board of Regents*

Suzanne E. Rand

Follow this and additional works at: <https://digitalcommons.pepperdine.edu/plr>



Part of the [Antitrust and Trade Regulation Commons](#), and the [Entertainment, Arts, and Sports Law Commons](#)

Recommended Citation

Suzanne E. Rand *The Commercialization of College Football: The Universities of Oklahoma and Georgia Learn an Antitrust Lesson in NCAA v. Board of Regents*, 12 Pepp. L. Rev. Iss. 2 (1985)

Available at: <https://digitalcommons.pepperdine.edu/plr/vol12/iss2/4>

This Note is brought to you for free and open access by the Caruso School of Law at Pepperdine Digital Commons. It has been accepted for inclusion in Pepperdine Law Review by an authorized editor of Pepperdine Digital Commons. For more information, please contact bailey.berry@pepperdine.edu.

The Commercialization of College Football: The Universities of Oklahoma and Georgia Learn an Antitrust Lesson in *NCAA v. Board of Regents*

*The passage of the Sherman Act in 1890 culminated a period of social, economic, political and ideological growth. Fundamental to the Act was a commitment to consumer welfare and antipathy to trusts. The Act attempted to break up the large monopolies and their restraint of trade. In the process it gained central importance to federal antitrust policy. When the National Collegiate Athletic Association (NCAA) was formed fifteen years later, one of its goals was to regulate amateur sports. Three quarters of a century after its inception, the NCAA was held to have violated the Sherman Act in *NCAA v. Board of Regents*. The United States Supreme Court found the NCAA's college football television plan anticompetitive and affirmed relief granted in the lower courts enjoining the NCAA from further regulation of telecasts under the plan. The effect of the decision has been to create chaos among college football-playing universities. On the other hand, it has created excitement among college football fans.*

I. INTRODUCTION

Federal antitrust policy is largely centered around three statutes: the Sherman Act of 1890;¹ the Clayton Act;² and the Federal Trade Commission Act of 1914.³ The Sherman Act contains two major provisions.⁴ Violations of the Act may be enforced by the state through criminal proceedings,⁵ or may be enforced by private parties.⁶ Each provision has identical penalties but different emphasis. Section one

1. 15 U.S.C. §§ 1-7 (1976).

2. *Id.* §§ 12-27 (1976). President Franklin D. Roosevelt stated, "The Sherman and Clayton Acts have become as much a part of the American way of life as the due process clause of the Constitution." Letter from Franklin D. Roosevelt to Secretary of State Cordell Hull (September 6, 1944), reprinted in H. THORELLI, *THE FEDERAL ANTI-TRUST POLICY* iii (1955).

3. 15 U.S.C. §§ 41-58 (1976).

4. *Id.* §§ 1, 2. Section one states in pertinent part: "Every contract, combination . . . or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal." Section two states in pertinent part: "Every person who shall monopolize, or attempt to monopolize, or combine or conspire . . . to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a felony. . . ."

5. Criminal penalties may be severe. Corporations may pay up to one million dollars in penalties. Imprisonment for up to three years and fines up to one hundred thousand dollars may be imposed on individuals. 1 J. VON KALINOWSKI, *ANTITRUST LAW AND TRADE REGULATION* § 1.01 (Desk ed. 1984).

6. Private parties are given motivation to litigate by the liberal compensation under sections one and two. If successful, the party may be compensated in full for

focuses on unreasonable restraints of trade which could possibly lead to monopoly power. Section two focuses on the use of monopoly power.⁷

The controversy in *National Collegiate Athletic Association v. Board of Regents*⁸ centered on a relatively narrow issue of antitrust law. The question of whether section one of the Sherman Act⁹ was violated by the NCAA's college football telecast and cablecast regulations is one of relatively small impact on substantive law.¹⁰ The Court's holding that the NCAA's economic procedures violated the Sherman Act signaled a continued application of antitrust law to nonprofit and amateur associations.¹¹ Whereas the majority considered the NCAA a commercial industry thereby subject to trade regulation,¹² the dissent viewed the NCAA as an educational institution designed to promote amateurism. The holding of the case sent notice to amateur and nonprofit organizations to keep a close eye on their business practices.

II. THE LAW—HISTORICAL BACKGROUND

The Sherman Act embodies a philosophy that was directly influenced by public opinion of the 1890's.¹³ The antitrust policy formed in the period between 1890 and 1911 has changed from a negative *anti-trust* approach to a positive aim of instituting economic planning.¹⁴ Nevertheless, the current rationale in antitrust policy is the same as it was in the past; free enterprise must be enforced and markets must remain open and competitive.¹⁵

the cost of the lawsuit and reasonable attorney's fees. In addition, treble damages may be granted. *Id.*

7. Section two includes conduct which is generally a violation of section one *per se*, however, a section one violation does not always violate section two.

8. 104 S. Ct. 2948 (1984).

9. 15 U.S.C. § 1 (1976).

10. The Court found that the National Collegiate Athletic Association (NCAA) was the predominant organization of universities in the United States. Although there are other amateur athletic organizations in the United States, the Court's fact finding was limited to particular aspects of the NCAA's television plan and therefore will probably have no direct impact on amateur and nonprofit organizations. 104 S. Ct. at 2954.

11. *See, e.g.,* Goldfarb v. Virginia State Bar, 421 U.S. 773 (1975) (minimum fee schedule published by a county bar association and enforced by the state bar association violates section one of the Sherman Act); Comment, *Antitrust and Non Profit Entities*, 94 HARV. L. REV. 802 (1981).

12. 104 S. Ct. at 2961.

13. H. THORELLI, *supra* note 2, at 54.

14. A.D. NEALE & D. GOYER, *THE ANTITRUST LAWS OF THE UNITED STATES OF AMERICA* 16 (3d ed. 1980).

15. *Id.* at 441. *See* Northern Pac. Ry. v. United States, 356 U.S. 1, 4 (1958). For a general discussion of the development of antitrust policy, see R. BORK, *THE ANTITRUST PARADOX* (1978).

A. The Sherman Act

The Sherman Act is a vague, general statute.¹⁶ Its definition has been provided by a large body of decisions.¹⁷ If read literally the Act would invalidate most types of agreements, because most agreements concerning trade involve some type of restraint.¹⁸ In the landmark case of *Standard Oil Co. v. United States*,¹⁹ the Court construed section one as effective against *unreasonable* restraints of trade.

1. Elements of a Section One Violation²⁰

Four elements make up a civil violation of section one: "(1) At least two persons must act together. This requirement relates to the statutory language, 'contract, combination . . . or conspiracy.' (2) There must be a restraint of 'trade' or 'commerce.' (3) The trade or commerce must be among the several states or with foreign nations. (4) The restraint must be unreasonable."²¹

Section one does not regulate the activities of a single entity.²² Subentities need not have voluntarily participated in an unlawful

16. H. THORELLI, *supra* note 2, at 164. "The prohibitions of the Sherman Act were not stated in terms of precision or of crystal clarity and the Act itself does not define them." *Id.*

17. R. BORK, *supra* note 15, at 73-89.

18. *See supra* note 4 and accompanying text.

19. 221 U.S. 1 (1911). The Court reviewed the common law rules relating to restraints of trade and the legislative history of the Sherman Act. *Id.* at 10. It concluded that Congress did not intend to prohibit all contracts or even those contracts that caused insignificant restraints of trade. *Id.* at 63. The principle that unreasonable restraints of trade are the only kind prohibited by § 1 is a basic tenet of antitrust law. *See, e.g.,* National Soc'y of Professional Eng'rs v. United States, 435 U.S. 679, 687-90 (1978); Continental T.V., Inc. v. GTE Sylvania, Inc., 433 U.S. 36, 49-51 (1977); Chicago Bd. of Trade v. United States, 246 U.S. 231, 238 (1918).

20. The Court's holding in *NCAA* examined only section one of the Act.

21. 1 J. VON KALINSOWSKI, *supra* note 5, at § 3.02. In criminal cases the additional element of criminal intent must be present. *Id.*

22. *Id.* at § 3.02[1]. The "single entity" defense is commonly used. Whether the company is a single enterprise or separate entities may be either a question of law or fact. The seventh, eighth, and ninth circuits consider the question as one of fact. *See Oglilvie v. Fotomat Corp.*, 641 F.2d 581 (8th Cir. 1981); *Las Vegas Sun, Inc. v. Summa Corp.*, 610 F.2d 614, 617-18 (9th Cir. 1979), *cert. denied*, 447 U.S. 906 (1980); *Photovest Corp. v. Fotomat Corp.*, 606 F.2d 704, 726-27 (7th Cir. 1979), *cert. denied*, 445 U.S. 917 (1980). The third and fifth circuits hold the question as one of law. *See Columbia Metal Culvert Co. v. Kaiser Aluminum & Chem. Corp.*, 579 F.2d 20, 33-34 & n.49 (3d Cir.), *cert. denied*, 439 U.S. 876 (1978); *H & B Equipment Co. v. International Harvester Co.*, 577 F.2d 239, 244-45 (5th Cir. 1978). In *NCAA*, the Court found that the NCAA was not a single entity, thus signaling to other sports leagues that the single entity defense is not viable. 104 S. Ct. at 2958.

scheme or plan to challenge its legitimacy.²³ The terms “contract, combination or conspiracy” infer concerted action.²⁴ Concerted activity in “trade” and “commerce” has been broadly defined as all commercial activity which involves interstate or foreign commerce.²⁵ Transactions constitute interstate commerce if they are either actually in the flow of commerce or have an effect on the flow of commerce.²⁶ An unlawful restraint of interstate commerce is one that is unreasonable in light of the relevant market.²⁷ Under section one an unreasonable restraint may be determined by one of two approaches: the per se approach; or the rule of reason approach.²⁸

2. The Per Se and Rule of Reason Approaches

A restraint which is inherently anticompetitive is a per se violation of section one.²⁹ If found to exist, restraints such as horizontal price fixing, vertical price fixing, tying arrangements, horizontal division of markets, reciprocal dealing and boycotts are all presumed violations and no further proof of their unreasonableness is needed.³⁰ The per se approach has recently been limited in its application to traditional antitrust violations. Cases of first impression or new developments in a field should be considered under the rule of reason approach.³¹

A detailed restatement of the long-standing rule of reason approach³² was recently made in *National Society of Professional Engineers v. United States*.³³ The Court stated that reasonableness must be determined in light of the relevant economic market in which the

23. 1 J. VON KALINOWSKI, *supra* note 5, at § 3.02[1] & n.5.

24. *Id.* at § 3.02[2].

25. *Id.* at § 3.02[4]. Several areas of trade and commerce are exempt from the Act. Agriculture, insurance and labor have limited exemption. State action has restricted immunity, as does private lobbying, to stimulate legislation (otherwise known as the *Noerr-Pennington* doctrine). Banks and industries which are administratively regulated have limited exemption. Export associations may also have limited exemption. *Id.* at 3.02[4][a].

26. ABA ANTITRUST SECTION, ANTITRUST LAW DEVELOPMENTS 24-25 (2d ed. 1984).

27. 1 J. VON KALINOWSKI, *supra* note 5, at § 3.02[6].

28. *See* 356 U.S. at 5.

29. *Id.*

30. *See, e.g.*, *United States v. Topco Assocs., Inc.*, 405 U.S. 596 (1972) (horizontal division of markets held per se illegal); *Schwegmann Bros. v. Calvert Distillers Corp.*, 341 U.S. 384 (1951) (horizontal price fixing held per se illegal); *Kiefer-Stewart Co. v. Joseph E. Seagram & Sons*, 340 U.S. 211 (1951) (vertical price fixing held per se illegal); *United States v. Griffith*, 334 U.S. 100 (1948) (reciprocal dealing held per se illegal); *International Salt Co. v. United States*, 332 U.S. 392 (1947) (tying arrangements held per se illegal); *United States v. American Linseed Co.*, 262 U.S. 371 (1923) (combination to limit individual member's right to contract is a restraint of trade).

31. *Broadcast Music, Inc. v. CBS*, 441 U.S. 1 (1979). The position of the decision written by Justice White is consistent with his dissent in *NCAA*, 104 S. Ct. at 2971 (White, J., dissenting).

32. The rule of reason was formulated in 1911 in *Standard Oil*, 221 U.S. at 1. *See supra* note 19.

33. 435 U.S. at 679, 689-90.

restraint occurred. Definition of the relevant market is a central issue on which a case may succeed or fail.³⁴ Violations which are per se illegal by definition are inherently unreasonable. If a case involves both sections one and two, a threshold finding under the per se or rule of reason approach of price fixing will probably be sufficient evidence of illegality so that further section two issues need not be pursued.³⁵

Price fixing agreements between competitors (horizontal), and by various entities in the chain of distribution (vertical), are unreasonable restraints.³⁶ Even if price fixing is proven, the Court will adopt the rule of reason approach if the case presents a novel situation and the market restraints exist for a procompetitive purpose.³⁷ Some markets would not exist without reasonable restraints.³⁸ Thus, instead of lobbying for exemption from the antitrust trade regulations, some industries may attempt to institute reasonable procompetitive restrictions. The holding of *NCAA v. Board of Regents* provides specific reasonableness guidelines which should be helpful to amateur and nonprofit institutions in determining what restraints they should maintain.³⁹

III. STATEMENT OF THE CASE

The petitioner, NCAA, is a nonprofit, self-regulatory organization.⁴⁰ It was created in response to abuses occurring in intercollegiate athletics near the turn of the century.⁴¹ Today it is made up of

34. 1 J. VON KALINOWSKI, *supra* note 5, at § 3.02[6][b].

35. 104 S. Ct. at 2957-60 & n.12.

36. Price fixing agreements of any kind, whether they fix minimum or maximum price are illegal. *See, e.g., Arizona v. Maricopa County Medical Soc'y*, 102 S. Ct. 2466 (1982).

37. *See Medical Arts Pharmacy of Stamford, Inc. v. Blue Cross & Blue Shield of Conn., Inc.*, 675 F.2d 502 (2d Cir. 1982).

38. 104 S. Ct. at 2961 ("what is critical is that this case involves an industry in which horizontal restraints on competition are essential if the product is to be available at all").

39. *Id.* at 2973 (White, J., dissenting).

40. The NCAA operates by a constitution and its bylaws, subject to amendment by its members. New policy is often made at annual meetings. When not in session, policy is made by 22 elected members. *Board of Regents of Univ. of Oklahoma v. NCAA*, 546 F. Supp. 1276, 1282 (1982). The purpose of the NCAA is to ensure student athletes and athletic programs remain "an integral part" of the overall educational program. *See CONSTITUTION AND INTERPRETATIONS OF THE NAT'L COLLEGIATE ATHLETIC ASS'N*, art. IV, § 3, *reprinted in* MANUAL OF THE NAT'L COLLEGIATE ATHLETIC ASS'N 22-23 (1977-78).

41. Note, *Tackling Intercollegiate Athletics: An Antitrust Analysis*, 87 YALE L. J. 655, 656 (1978) ("This period was marked by numerous abuses, including commercial-

some 775 public and private universities and more than 100 athletic conferences.⁴² The NCAA enforces extensive regulations, from rules of play to recruiting and the size of coaching staffs.⁴³ At issue in *NCAA v. Board of Regents* are the NCAA's telecast and cablecast rules.⁴⁴

The NCAA's television plans have consisted of the same basic features since 1951.⁴⁵ To develop a plan, a questionnaire was sent to the membership and the resulting plan was voted on by mail referendum. This procedure occurred annually until 1977. In 1977, the NCAA changed the process of formulating a plan to use "principles of negotiation,"⁴⁶ instead of consulting the membership for approval.

ism, excessive physical injury to student athletes, and cheating by some participating schools"). The abuses found today are much the same. See, e.g., *The Campus Pros*, L.A. Times, June 28, 1984, § 7 (Opinion), at 2, col. 1.

42. Brief for Petitioner at 2, 104 S. Ct. at 2954. In the 20 year period between 1950 and 1970, NCAA membership increased 128%. J. WEISTART, *THE LAW OF SPORTS* § 760 (1979).

43. Note, *supra* note 41, at 657-60. The NCAA Enforcement Program has broad authority to impose sanctions on its members. After notice and a hearing, a violator may face exclusion from specified NCAA championships and regular season play. Previous to the ruling discussed here (104 S. Ct. at 2948), the NCAA's broadest power was exclusion from television broadcasts. Where the NCAA has no authority to discipline, it enforces violations by threatening sanctions against the institution, thereby making the school discipline individual athletes and coaches. It has been argued that these sanctions constitute a concerted refusal to deal, and in the case of television, economic boycott. So far, the enforcement of the regulations has been upheld in the courts. Note, *supra* note 41, at 662-63.

44. The NCAA does not regulate the telecasts of any sport but football. College basketball is unregulated, as is college hockey, both of which are periodically televised. 546 F. Supp. at 1284.

45. "The 1951-1953 television plans were submitted to the Antitrust Division of the Department of Justice for review. The Department took the matter 'under study' . . . and, until this litigation, has apparently never taken the position that the NCAA's television plans were unlawful." 104 S. Ct. at 2973, n.1 (White, J., dissenting). Although television plans were in effect from 1951 on, it wasn't until 1971 that the NCAA gained formal power under the NCAA Constitution to regulate telecasts. By-law 11-3-(aa) was adopted in 1971, thereby granting the Association power to regulate telecasts, but not cablecasts. The NCAA television plan was designed to reduce the effects of telecasts on gate attendance. NCAA members were split into divisions, division I being the major athletic powers. Division I has two subdivisions, I-A and I-AA. Division I-A schools have major athletic programs, whereas the rest of the members in other divisions may not compete at all, or at varying levels. Division II and III institutions could televise whatever games they wished as long as they were not broadcast on a major network. The amount a team was paid varied per division, I-A being the highest priced. A "minimum aggregate price" was set for all of the games, which was divided among the schools per division ranking. The NCAA retained 8% for funding of its activities. 546 F. Supp. at 1289.

46. 546 F. Supp. at 1283-84. The "principles of negotiation" were the same as the original controls imposed by the 1951 plan. NCAA members were allowed only a limited number of appearances over a certain time period. Certain "exception telecasts" were allowed if approved by the NCAA. The plan also included a "supplementary series" of games. In summary, the plan granted exclusive rights to the broadcaster because it limited the amount of games televised and it limited the amount of games any one school could televise. No member could sell its television rights except under the NCAA plan. *Id.*

The new television plan granted the American Broadcasting Company (ABC) exclusive rights to telecasts for the 1978-1981 seasons.⁴⁷

A number of athletic conferences are members of the NCAA. One of them, the College Football Association (CFA), formed in 1977, consists of schools from five major football playing conferences, including the respondents, Oklahoma and Georgia.⁴⁸ Initially the CFA's purpose was to lobby for the interests of its schools at NCAA annual meetings. Because all 785 NCAA members have an equal vote on football regulation and telecast issues, the CFA did not feel its interests were well represented. Dissatisfaction with the NCAA structure led to CFA investigation into its own broadcasting contracts.⁴⁹ The CFA and the NCAA both negotiated with television companies in anticipation of the end of the 1978-1981 contract with ABC. The NCAA responded by issuing an "official interpretation" of its bylaws stating that it had exclusive telecast and cablecast rights over its member institutions.⁵⁰

In 1981, the CFA contracted with NBC for the exclusive right to televise CFA games.⁵¹ The NCAA reacted by making it known that sanctions would be imposed on the CFA schools if they did not conform to the NCAA television plan.⁵² The CFA initiated this suit in the federal district court to enjoin the NCAA from imposing sanctions on the CFA and attempting to nullify the NBC contract. Injunctive relief was granted in September of 1981. Meanwhile, the CFA and NCAA continued the dispute at the 1982 annual convention and a special convention. The membership of the NCAA responded to the CFA action by reaffirming the NCAA's exclusive television rights and ratifying the proposed television plan for 1982-1985.⁵³

47. *Id.* at 1283. In 1978, ABC paid a "minimum aggregate fee" of 29 million dollars. The method of determining the minimum aggregate fee is unclear. Thomas Hansen, NCAA Television Program Director, "suggested" the minimum amount to ABC. To figure out prices per broadcast he "worked out various combinations" until the prices, when multiplied, equaled the aggregate. *Id.* at 1289.

48. *Id.* at 1285. Most CFA members are Division I-A schools. Division I contains 275 schools, and less than 190 of them play football. *Id.*

49. *Id.* at 1286.

50. *Id.* The "official interpretation" was adopted by a vote of all NCAA members at the 1982 annual convention. *Id.*

51. *Id.* The CFA-NBC plan was an adoption of the same type of plan the NCAA had used. It provided for a limited number of appearances and a minimum aggregate fee. The difference between the CFA agreement and the NCAA agreement was the larger amount of money and more liberal appearance schedule. *Id.*

52. *Id.* Several high-ranking NCAA officials made it clear that sanctions would be swift and might affect the school's entire athletic program, not just football. *Id.*

53. *Id.* at 1287. The 1982-1985 television plan is the one at issue in *NCAA*. The

A. *The Decision of the District Court*

After a long trial, the federal district court held the NCAA television plan violated the Sherman Act.⁵⁴ The district court issued many findings of fact, all of them adverse to the NCAA. The court also held the NCAA had violated section one of the Sherman Act under both the per se and rule of reason approach. Under section two of the Act, the court held that the NCAA had participated in boycotts and monopolization. The district court rejected the NCAA's justification of the plan and concluded that the NCAA was a "classic cartel . . . [with] almost absolute control over the supply of college football" ⁵⁵ The court enumerated the NCAA's restraints as: 1) price fixing; 2) exclusivity contracts which equaled a group boycott; 3) the threat of sanctions against its own subentities which equaled a threatened boycott; and 4) an artificial limit placed on the number of games televised.⁵⁶ The district court maintained a strictly commercial viewpoint through the decision.⁵⁷ It stated that "the Court's duty is to restore competition to this monopolized industry Congress has determined that free competition will yield this result and that therefore competition shall be the rule of commerce in our nation."⁵⁸

B. *The Decision of the Court of Appeals*

The court of appeals affirmed the district court's findings of fact

CFA-NBC plan was never consummated. The majority of the CFA schools decided to stay with the NCAA plan. 546 F. Supp. at 1287.

54. 546 F. Supp. at 1276. The court's decision was a lengthy 52 pages.

55. *Id.* at 1300-01.

56. *Id.* at 1281-82.

57. *Id.* Sometimes judges are good economists and sometimes they are not. Accordingly, fact finding which is inexorably linked with a particular economic perspective (or lack of one) may be suspect. As Judge Bork has stated, most judges are poor economists and many "[c]ooperative ventures . . . are outlawed through a misapplication of the sound policy against price fixing and market division The Court has done these things, moreover, on demonstrably erroneous notions of the economics that guide the law." R. BORK, *supra* note 15, at 4.

Judge Burciaga attempted to analyze a complex factual situation without ever stating the economic theory he was relying on. Some of his analysis is clearly circular. Discussing horizontal controls, Judge Burciaga wrote: "[T]he networks are actually paying the large fees because the NCAA agrees to limit production. If the NCAA would not agree to limit production, the networks would not pay so large a fee." 546 F. Supp. at 1294. The first statement is a positive statement, yet clearly a conclusion. The second statement only restates the first dispositively and does not provide any support for the conclusion. Judge Burciaga went on to write:

It is clear from the evidence that were it not for the NCAA controls, many more college football games would be televised. This is particularly true at the local level . . . and the evidence is clear that local broadcasts of college football would occur far more frequently were it not for the NCAA controls.

Id. at 1294. Circular reasoning is a good indicator of a lack of argumentative basis. Judge Burciaga has concluded that an open market is best for college football, but he has no economic basis to support his reasoning.

58. 546 F. Supp. at 1328.

and law.⁵⁹ It found the district court's complex factual analysis correct and did not agree with the NCAA that certain facts were erroneous. The appellate court agreed that the NCAA had violated the Sherman Act under both the per se rule and the rule of reason. However, it did not affirm the district court's findings of section two violations. The court did not find a boycott or monopolization. The appellate court also limited the scope of the original injunction and remanded the injunction order to the district court for reconsideration.⁶⁰

Although the majority did not find any of NCAA's justifications for its controls compelling, the dissent presented an issue which is basic to the controversy in this case. The dissent's view was similar to the majority of the NCAA's voting members. The dissent argued that the majority's view of intercollegiate football "not only as a business, but as a 'pot of gold' business for those colleges and universities which have consistently recruited top athletes in keeping with their institutional priority of attaining athletic excellence," was erroneous.⁶¹ The dissent found that the NCAA had not violated the Sherman Act, and that under the rule of reason the NCAA controls were procompetitive.⁶²

C. *The Decision of the United States Supreme Court*

Recognizing that this case involved a novel situation for the application of the Sherman Act,⁶³ Justice White stayed the judgment of the court of appeals.⁶⁴ The Supreme Court granted the writ of certiorari,⁶⁵ and on June 27, 1984, affirmed the appellate court's decision holding that the NCAA's television plan violated section one of the Sherman Act.⁶⁶

59. Board of Regents v. NCAA, 707 F.2d 1147 (10th Cir. 1983).

60. *Id.* at 1147-62.

61. *Id.* at 1165 (Barrett, J., dissenting).

62. *Id.* at 1162-68 (Barrett, J., dissenting).

63. See, e.g., *Medical Arts Pharmacy of Stamford*, 675 F.2d at 502.

64. 104 S. Ct. at 2948.

65. *Id.*

66. *Id.* The 1982-1985 television plan provided for a minimum aggregate fee of \$131,750,000.00 per network per four years. Except for the differences between prices based on division status, the prices were set per game. There were "appearance requirements" which limited the number of appearances per school. Turner Broadcasting System (TBS) also had an exclusive cablecast contract for a minimum aggregate fee for a two year period of \$17,696,000.00. In 1981, a national telecast was worth \$600,000.00 and in 1980, a regional telecast was worth \$426,779.00. *Id.* at 2956-57 & nn. 9-10.

IV. ANALYSIS

The Supreme Court did not review the issue of section two violations. The petitioner did not raise two other issues previously reviewed: that the district court's fact finding was clearly erroneous, and that the respondents did not suffer the type of injury that anti-trust laws protect. The Court's analysis was primarily concerned with which rule was to be applied to this somewhat unique case.⁶⁷

A. Statutory Construction

The major substantive legal issue in this case was whether the Court should use the per se approach or the rule of reason. The Court stated that the test to determine whether the per se rule should be applied is, "when the practice facially appears to be one that would always or almost always tend to restrict competition and decrease output."⁶⁸ The Court agreed with the lower court's findings that the NCAA restraints were per se violations, but refrained from applying the per se rule.⁶⁹

The Court strategically did not preclude the possibility that the per se rule could have been, and in the future could be, applied in similar cases. The Court stated that, "Our analysis of this case under the Rule of Reason, of course, does not change the ultimate focus of our inquiry. Both per se rules and the Rule of Reason are employed 'to form a judgment about the competitive significance of the restraint.'"⁷⁰ The Court stressed that the Sherman Act necessitated an inquiry into "whether or not the challenged restraint enhances competition."⁷¹ This inquiry was then made under the rule of reason.

The Court applied the rule of reason because the NCAA structure was a novel type of industry and thus merited further discussion of NCAA controls in light of the relevant market.⁷² The NCAA practices were considered on two bases: "1) on the nature or character of the contracts, or 2) on surrounding circumstances giving rise to the inference or presumption that they were intended to restrain trade and enhance prices."⁷³ Therefore, the Court allowed itself to discuss

67. *Id.* at 2959-67.

68. *Id.* at 2960 (quoting *Broadcast Music*, 441 U.S. at 19-20).

69. 104 S. Ct. at 2960.

70. *Id.* at 2962 (citing *National Soc'y of Professional Eng'rs*, 435 U.S. at 692) (emphasis omitted).

71. 104 S. Ct. at 2962. *See, e.g.,* *Jefferson Parish Hosp. Dist. No. 2 v. Hyde*, 104 S. Ct. 1551 (1984).

72. 104 S. Ct. at 2961 ("what is critical is that this case involves an industry in which horizontal restraints on competition are essential if the product is to be available at all"). *See supra* note 11.

73. 104 S. Ct. at 2962. Although it has been in existence for over 70 years, the rule of reason is not based on a set of clearly determinable standards. Under the rule of reason the plaintiff must show the practices are unreasonable; the defendant is not re-

the NCAA's justifications of its practices, even though it could not review the factual basis upon which the NCAA regulations were held illegal.⁷⁴

B. Application of the Rule of Reason

Having stated that its basic focus was whether or not the challenged restraints enhanced competition, the Court restricted its reasonableness analysis to economic factors.⁷⁵ The Court recognized that the NCAA practices, when viewed in the framework of traditional business markets, were per se violations, but allowed the application of the rule of reason due to the uniqueness of the college football market.⁷⁶ The rule of reason exists, as the Court recognized, to allow for justifications for the restrictive practices to be presented. However, in this case, the NCAA justifications are inherently tied to purely noncommercial benefits, such as the preservation of amateurism and educational standards. By limiting its discussion to the NCAA trade restraints versus the NCAA's commercial justifications for the restraints, the Court precluded its analysis from truly testing the long range effect of the restrictions. Because the NCAA is not a purely commercial entity, an analysis of it in terms of strict economic policy considerations does not effectively utilize the balancing test provided by the reasonableness standard.⁷⁷ The rule of reason was used because the Court implicitly realized that NCAA could not be considered a true industry. Once the Court allowed itself to use the reasonableness standard, it ignored the very factors which compelled

quired to show its own practices are reasonable. ABA ANTITRUST SECTION, ANTITRUST LAW DEVELOPMENTS 15 (2d ed. 1984).

74. 104 S. Ct. at 2959 n.15 ("In accord with our usual practice, we must now accord great weight to a finding of fact which has been made by a district court and approved by a court of appeals"). See *supra* note 56. See, e.g., *Rogers v. Lodge*, 458 U.S. 613, 622-23 (1982).

75. 104 S. Ct. at 2963-70. The dissent noted that "[t]he Court of Appeals, like the District Court, flatly refused to consider what it termed 'noneconomic' justifications This view was mistaken" *Id.* at 2978. The lower courts interpreted the Court's decision in *National Soc'y of Professional Eng'rs*, 435 U.S. at 679, as precluding analysis of the NCAA's noneconomic goals. 104 S. Ct. at 2978.

76. 104 S. Ct. at 2967. See *supra* note 72.

77. The CFA's argument that, "[n]either the issue nor the answer changes simply because the question arises in the context of intercollegiate athletics," seems to have been adopted by the Court. Brief for Respondent at 12, 104 S. Ct. at 2948. However, the dissent and other commentators have stressed that the Court's previous decisions do not preclude the use of noneconomic justifications when applying the rule of reason. See *supra* note 72. See Note, *supra* note 41, at 655 ("[NCAA] differs from ordinary cartels").

the use of the standard.⁷⁸ Instead, it turned to commercial justifications which, because they are inherently linked to findings of fact that have already been determined in the lower courts, truly required no further review.

The Court found that the television plan failed the rule of reason. The plan raised price and reduced output. The NCAA did not sustain its burden of establishing that the plan's anticompetitive effects were justified.⁷⁹ The NCAA argued that it had no market power and therefore no ability to control supply and demand. This presented two issues, one legal and one factual. Because the district court had previously determined that output and price were controlled by the NCAA, the factual question had already been examined.⁸⁰ However, the Court went on to define the substantive requirements the NCAA failed to meet. The Court stated: "We have never required proof of market power in such a case. This naked restraint on price and output requires some *competitive justification* even in the absence of a detailed market analysis."⁸¹ Again the Court precluded the rule of reason from full application.

First, it does not require an exclusive market analysis. Because market power is a factor in determining reasonableness of control and can only be determined by an extensive market analysis, lack of such analysis would lead to a determination that "the practice facially appears to be one that would always or almost always tend to restrict competition and decrease output."⁸² This was the Court's definition of the *per se* rule. The Court did, in fact, apply a *per se* test under the guise of the rule of reason.

The Court, nevertheless, considered the NCAA's justifications. Again, any commercial justification given by the NCAA was tied to fact finding which had previously been determined adverse to the NCAA. Therefore, it is not surprising that the Court did not find any of the justifications compelling. The NCAA argued that its television plan was a joint venture and therefore procompetitive.⁸³ The Court held that because the district court's finding "that the NCAA's television [plan] *reduces* the volume of television rights sold," the

78. For a general discussion of the applicability of the rule of reason to NCAA practices, see J. WEISTART, *supra* note 42, at § 5.12(c). "[M]ost NCAA regulations will be evaluated under a rule of reason standard which allows judicial deference to be paid to the noncommercial goals . . . the professed justification will be related to the desirability of promoting and protecting a system of educationally related amateur athletics." *Id.* at § 5.12.

79. 104 S. Ct. at 2967. *But see supra* note 73.

80. 546 F. Supp. at 1294.

81. 104 S. Ct. at 2965 (emphasis added) (footnote omitted).

82. *Id.* at 2960 (quoting *Broadcast Music*, 441 U.S. at 19-20).

83. 104 S. Ct. at 2967.

"NCAA's efficiency justification is not supported by the record."⁸⁴ The Court next considered the NCAA's assertion that the television plan protects live attendance. The Court noted that "the District Court found no evidence to support that theory."⁸⁵

Finally, the Court rejected the NCAA's assertion that its controls maintained a competitive balance among the football teams. The Court stated:

It is reasonable to assume that most of the regulatory controls of the NCAA are justifiable means of fostering competition among amateur athletic teams and therefore procompetitive because they enhance public interest in intercollegiate athletics. The specific restraints on football telecasts that are challenged in this case do not, however, fit into the same mold as do rules defining the conditions of the contest, the eligibility of participants, or the manner in which members of a joint enterprise shall share the responsibilities and the benefits of the total venture.⁸⁶

The Court's rationale for differentiating the types of regulations promulgated by the NCAA to preserve competitive balance was that they did not "fit into the same mold" of other regulations.⁸⁷ This reasoning and the reasoning supporting the determination to apply the rule of reason is opaque and unsupported. All of the NCAA's regulatory controls, if viewed in a purely commercial way, have economic effects. Many facets of football are limited, as is compensation for athletes.⁸⁸ The differences between fixing athletic compensation and fixing a telecast price is one of monetary value, not economic effect. The Court's reasoning that one regulation does not "fit into the same mold" of another is not particularly helpful.

The Court considered one type of regulation procompetitive "because [it] enhance[s] public interest in intercollegiate athletics."⁸⁹ Procompetitiveness, however, had been previously defined by the Court as rendering the relevant market more efficient.⁹⁰ The Court refrained from any mention of noncommercial factors such as public interest.⁹¹ Here the Court used public interest to help support its differentiation argument. To say one thing is different than another by using criteria inconsistent with the criteria used in the previous finding creates a fallacious argument. This type of reasoning may be due

84. *Id.* at 2968 (emphasis in original). Thus, the plan was not necessary to enable the NCAA to use an attractive package sale to pierce the market.

85. *Id.* at 2968 & n.56.

86. *Id.* at 2969.

87. See *supra* notes 77-78 and accompanying text.

88. See, e.g., J. WEISTART, *supra* note 42, at § 5.12.

89. 104 S. Ct. at 2969.

90. *Id.* at 2961.

91. See *supra* note 75.

to the fact that the Court was trying to analyze what it has termed a unique product as if it were in the normal realm of commerce. Its reasoning was therefore occasionally irreconcilable with the basic tenets it follows.

C. Dissent

Justice White⁹² began his dissent by stating that the majority's main error was "treating intercollegiate athletics under the NCAA's control as a purely commercial venture in which colleges and universities participate solely, or even primarily, in the pursuit of profits."⁹³ The dissent, unlike the majority, did not need to use convoluted reasoning to distinguish one regulation from another because it found no basis to differentiate between them. Justice White aptly stated the basic dilemma of the Court's holding. The true problem was that "the Court trap[ped] itself in commercial antitrust rhetoric and ideology and ignore[d] the context in which the restraints have been imposed."⁹⁴ The relevant market to be examined (as restated in the words of appellate court Judge Barrett) is not a market of "purely competitive commercialism" in which the NCAA's education goals should be subjugated.⁹⁵

Justice White disputed both the lower court's factual and legal holdings. When examining the district court's market analysis Justice White agreed with the NCAA's measure of market output.⁹⁶ The NCAA determined output to be total games televised. Justice White made the parallel argument concerning the definition of the relevant market. Whereas the NCAA argued the market was all television entertainment, the district court determined the market to be televised college football.

The district court's ruling was based on the premise that, once de-regulated, an open market will produce greater output.⁹⁷ Justice

92. Justice Rehnquist joined Justice White's dissenting opinion. 104 S. Ct. at 2971 (White, J., dissenting). Justice White was himself a former All-American halfback (and a Rhodes Scholar).

93. *Id.* at 2971.

94. *Id.* at 2974.

95. *Id.* at 2977. Justice White noted that the majority did not completely preclude noneconomic factors from its analysis. The majority at one point discussed public interest. See *supra* note 86 and accompanying text. The dissent criticized the majority's discussion of public interest because "[b]roadly read, these statements suggest that noneconomic values like the promotion of amateurism and fundamental educational objectives could not save the television plan from condemnation under the Sherman Act." *Id.* at 2978. This is misleading because the statements were "made in response to 'public interest' justifications proffered in defense of a ban on competitive bidding imposed by practitioners engaged in standard, profit-motivated commercial activities." *Id.*

96. 104 S. Ct. at 2975.

97. *Id.* See *supra* note 57.

White's analysis showed that this is only true if output equals televised games. The district court itself stated that total viewership will probably decline as less games are televised nationally and more games are televised locally and regionally.⁹⁸ The central question can be posed as whether "consumer welfare" is better served when more games are televised but less people see them, or when less games are televised and more people see them. Again, basic definitions provide different answers. Because the majority and the lower courts used purely commercial definitions, an economic benefit, that is, more product (televised games) at less cost (per game), is the most efficient, and therefore the most procompetitive. Under the dissenting opinion and the NCAA view, the benefit was measured in both commercial and educational goals. Therefore, more product (viewership) at less cost (no loss of amateurism by setting a minimum fee and then redistributing the money among all the schools), is the most procompetitive approach.

Justice White also found the district court's (and majority opinion's) rulings on the prices paid for particular games under the minimum aggregate fee "erroneous as a matter of law."⁹⁹ In Justice White's opinion, the minimum aggregate fee is a justifiable aspect of maintaining competitive balance. Justice White found the NCAA's "redistribution" of funds wholly necessary.¹⁰⁰ However, he did not address the manner in which the redistribution occurs. The respondents would undoubtedly agree that redistribution was fair if an Oklahoma-USC game did not pay the same as a Citadel-Appalachian State game.¹⁰¹ The majority argument that a free market would provide equitable prices should have been discussed here. Justice White found the district court's emphasis on prices paid per game erroneous, but he did not discuss the equity or inequity of the "redistribution" of the fees paid per game as described above, stating "this aspect of the plan should be of little concern."¹⁰² It was this concern specifically, if any, which created the lawsuit.¹⁰³ If Oklahoma and Georgia had not felt that they were being paid too little per game, they would never have brought this lawsuit.

98. 546 F. Supp. at 1307.

99. 104 S. Ct. at 2976 (White, J., dissenting).

100. *Id.*

101. *See* 546 F. Supp. at 1293.

102. 104 S. Ct. at 2976 (White, J., dissenting). *See supra* note 47.

103. *See* 546 F. Supp. at 1282 ("Football is the only sport sponsored by Oklahoma which actually generates revenue As a result, Oklahoma seeks to maximize its revenues from football television").

The dissent provided the NCAA with guidelines for its future television plan. "[T]he NCAA may not limit the number of games that are broadcast . . . and . . . it may not contract for an overall price"104 Justice White emphasized that the majority did not disallow: 1) NCAA requirements to pool compensation and redistribute it among NCAA members; 2) limitation of the number of times any member may have its game televised; and 3) NCAA enforcement of blackout rules to avoid direct competition among games.¹⁰⁵ Consequently, if the NCAA does not set a minimum aggregate price for its games as a package, and if it does not set a limit on the amount of games it will sell, it should be able to continue regulating college football telecasts.

V. THE PRACTICAL IMPACT

The focus of the Sherman Act is to provide for consumer welfare.¹⁰⁶ Perhaps the only beneficial effect of the holding in this case has been to provide more football coverage on television and cable networks.¹⁰⁷ Whether more viewers are being exposed to televised games is questionable. More local and regional games are being televised and network coverage remains about the same. Cablecasts have increased, and even the Public Broadcasting System is televising Ivy League games.¹⁰⁸ To truly measure the impact of the holding it is necessary to look individually at the groups involved.

A. *The NCAA*

The Supreme Court ruling eradicated the NCAA's major source of funding.¹⁰⁹ At the time of the holding, the NCAA stood to lose five million dollars. But perhaps more importantly, the NCAA lost its most powerful punitive tool.¹¹⁰ Losing the ability to regulate football

104. 104 S. Ct. at 2974 (White, J., dissenting).

105. *Id.* These requirements largely conform to the requirements placed on professional football. Professional football is allowed to blackout games in certain areas. See J. WEISTART, *supra* note 42, at § 5.

106. See H. THORELLI, *supra* note 2, at 164.

107. Taaffe, *A Supremely Unsettled Smorgasbord*, SPORTS ILLUS., Sept. 5, 1984, at 150.

108. *Id.*

109. Taaffe, *The Supreme Court's TV Ruling: Will the Viewer Benefit Most?*, SPORTS ILLUS., July 9, 1984, at 9 ("[T]he Supreme Court killed a four-year 263.5 million [dollar] deal the NCAA signed in 1982 with ABC and CBS, as well as a two-year 11.1 million [dollar] arrangement signed last May with ESPN").

110. L.A. Daily J., July 11, 1984, at 4, col. 1 ("the main restraint on exploitative recruiting and betrayal of academic standards—the banishment from television—will disappear"). This has already been the case concerning the University of Southern California. The NCAA gave USC one of the most severe penalties in its history. USC's offenses included selling athletes' complimentary tickets for them and then compensating the players. USC announced it would defy the television ban imposed under the NCAA television plan because the plan had been invalidated by the Court's

telecasts also means no coherent national plan. Among the benefits of a national plan are coordination between the football conferences, individual schools and balanced nationwide coverage.¹¹¹ The benefits of allowing the NCAA to supply a national plan are the existing NCAA structure and its predominance in amateur athletics.

Overall, the NCAA's regulatory program has been severely undermined. Because the Court did not consider the NCAA's attempts to preserve amateurism and educational goals, it sent a message that college football is a professional industry. With this type of sanction by the courts, the colleges with major athletic programs will feel free to challenge any economic infringement by the NCAA.¹¹² Now that the universities control their own purse strings, their adherence to a plan such as the NCAA's to preserve amateurism and educational priorities is doubtful.

B. The Universities

The Supreme Court's deregulation of college football telecasts has had the most profound effect on the universities. The respondents, Oklahoma and Georgia, are exemplary of the larger, major football playing powers. The respondents undoubtedly believed they would make much more money without the NCAA plan, but this has yet to occur. Ratings have dropped and the networks are paying less. Local and regional broadcasts have greatly increased the number of games being televised, but this revenue is less than the amount the schools are losing per game from the low network prices. One commentator has stated that the major schools are making about the same amount they made under the NCAA plan.¹¹³

If the major schools are making the same amount in an independent structure which does not redistribute revenue to smaller schools, then logically the smaller schools are making less. For smaller schools the result has been a chaotic scrambling for air time. Schools have been televised about fifty percent more, but have received ap-

holding. The ban cost USC \$600,000 for the 1983 season. Crowe, *USC to Defy NCAA Football TV Ban*, L.A. Times, June 30, 1984, § 3, at 1, col. 1.

111. The holding created such chaos among the schools, "that by the week's end the 105 colleges in Division I-A were attempting to cede back some of their new freedom to an umbrella group that would serve as their bargaining agent: either the NCAA again, or the College Football Association" Crowe, *supra* note 110, § 3, at 1, col. 1.

112. See *supra* note 110 and accompanying text.

113. Cooper, *Smaller Schools See No Dollars or Sense*, L.A. Times, June 28, 1984, § 3, at 14, col. 1.

proximately fifty percent less revenue.¹¹⁴ This may have a major effect on the schools' athletic programs. While the major football schools are building "super conferences," the smaller schools will be cutting some sports altogether.

Of course, the athletes now have a much greater influence over a team's success, directly and indirectly. A star player means winning and winning means entertainment value, *i.e.*, dollars. When an individual player has that much clout, recruiting players becomes both essential and expensive.¹¹⁵ Coaches have not been particularly diligent about educational values in the past, and it is doubtful they will be more diligent now that the NCAA standards have been emasculated.¹¹⁶ College football may have become minor league football, where players are groomed for the NFL or USFL.

C. *The Broadcasting Companies*

The broadcasters were the big winners as a result of the Court's holding. ABC and CBS last year paid sixty-two and a half million dollars, this year they will pay twenty million.¹¹⁷ It is largely the lack of exclusivity and the increased supply which has driven the price down. Ratings have also been dropping; therefore, the networks can be choosy over which teams they will broadcast. The major networks help to perpetuate the "super football powers" like Oklahoma and Georgia. The cablecasters have entered the market with a flourish, as has PBS. All of the broadcasters anticipate profits this year whereas, in the past, under the NCAA plan, the major networks lost seven million dollars annually.¹¹⁸

VI. THE LEGAL IMPACT

Clyde Murchmore, counsel for the University of Oklahoma,

114. Taaffe, *supra* note 107, at 151.

115. A good example of the clout players carry is the effect Boston College's Heisman trophy winner Doug Flutie has had on the team's television coverage and ranking. "Flutie, who in three years has brought the Eagles out of the dark ages in football . . . will be on national T.V. at least three times Last season four regular-season TV appearances earned Boston College 1,585,000 [dollars]." *Id.* Boston College was ranked in the top 15 schools this year, with Flutie a senior. Next year's rankings and television revenue should be quite a bit lower.

116. L.A. Daily J., July 11, 1984, at 4, col. 1.

[S]tatistics indicate that far too many students who participate in college athletics, especially football and basketball, never graduate—a sign that too many coaches are less concerned with educating student athletes than they are with providing a "good product for the marketplace," to quote the revealing phrase that a University of Oklahoma attorney used after the Supreme Court's ruling.

Id.

117. Taaffe, *supra* note 107, at 151.

118. *Id.*

warned the CFA that under the holding "there is no plan you enter into that comes with an absolute signed, sealed and delivered guarantee that the courts aren't going to fuss with it."¹¹⁹ The major relevance this case has is in its application to sports leagues and possibly other nonprofit organizations with similar structures. First, the court viewed the NCAA as a cartel. Therefore, the single entity defense is largely unpersuasive for other sports leagues. Second, the Court applied the rule of reason which means a more lenient view of cooperative economic regulation. Third, the rule of reason allows justifications for the regulations to be made. If a league's regulations are proven to be procompetitive they will be allowed. The idea that a restriction may be procompetitive is one that will largely influence future cases. The Court defined procompetitive as promoting efficiency, therefore, the definition of what practices are efficient will be central to future antitrust policy.¹²⁰

VII. CONCLUSION

This case has not yet ended.¹²¹ The NCAA has been remanded to the district court and is attempting to have a new plan approved. If Judge Burciaga of the district court hands down another adverse decision, the NCAA could possibly appeal the new decision, claiming the new plan conforms to the Supreme Court guidelines. Consider-

119. L.A. Times, June 29, 1984, § 3, at 12, col. 1. The irony in the statement is apparent. Oklahoma and Georgia may be free of the NCAA, but they now face their own antitrust problems. Some organization has occurred since the chaotic situation in June. The major football conferences have signed with football television "packagers" who then sell their rights to the national and local networks. Because there are five or six different packagers, there is no coordination among them concerning intra-conference games. For example, UCLA, USC, the Pacific 10 and the Big Ten conferences had filed suit against ABC, ESPN, the CFA, Nebraska and Notre Dame, because UCLA had assured its network, CBS, that CBS would be televising the Nebraska-UCLA game. The problem centered on the fact that CFA teams had sold exclusive rights to ABC and ESPN. L.A. Times, Sept. 11, 1984, § 3, at 3, col. 4. The issue was settled out of court.

120. For a general discussion of efficiency, how it is analyzed and its future role in antitrust policy, see R. BORK, *supra* note 15.

121. Telephone interview with Jack Waters, Director of Marketing and Promotion, NCAA (Sept. 7, 1984). The NCAA filed a motion to modify the injunction on July 3, 1984, in Oklahoma District Court under Judge Burciaga. On September 1, a joint conference was held with counsel for the NCAA, University of Oklahoma and University of Georgia. On November 2, Judge Burciaga issued a clarification of the original injunction order. He affirmed the NCAA's ability to use the restriction of television rights as a punitive tool. It is still unclear how the NCAA may control television rights economically. Because economic control has not been settled, the ability to use the restriction of television appearances as punishment has no effect. L.A. Times, Nov. 3, 1984, § 3, at 2, col. 1.

ing the district court's previous holding, the NCAA has a long battle ahead.

Promoting amateurism seems contrary to the American capitalistic ideal. But some cases call for a long steady look at professionalism before it is thrust upon them. Universities have within their halls many potential money-making resources, from sports to scientific research. Even though fear of commercialism seems old fashioned, it is altruistic. Universities must aim to provide a solid educational base for their students. Ostensibly, students go to school for an education, not for national network coverage and a million dollar professional football contract. College sports teams should not be training grounds for super athletes just as universities should not operate as commercial industries. Nevertheless, the reality exists that sometimes money is the name of the game.

SUZANNE E. RAND