NCAA Drug Testing: Finding a Constitutional Balance*

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*The author is grateful to his colleague, James B. Ford, whose article, "Drugs, Athletes and the NCAA: A Proposed Rule for Mandatory Drug Testing in College Athletics," 18 *John Marshall Law Review* 205 (Fall 1984), served as the initial introduction to the issues presented. The author also acknowledges Mr. Ford for bringing to the author's attention the case of *Odenheim v. Carlstadt-East Rutherford School District*, No. C-4305-85E (Chancery Division, Bergen County, New Jersey).
Reprinted, with permission, from the Spring 1986 issue of the *Sports Lawyers Newsletter*.

Recent revelations of increased drug use by professional and college athletes[1] have led to expanded attempts at all levels of sport to curb the abuses.[2] At the college level, the NCAA, at its January 1986 convention, authorized imposition of drug testing beginning during the 1986-87 playoff season.[3] Serious constitutional questions will be raised by any method employed to curb the abuses.[4] Recent decisions make it clear that a balance must be established between school officials' need to maintain control in their institutions and individuals' right to privacy.[5] As advisors to school officials and student athletes, we may be called upon to assist in answering complex questions in reaching an acceptable balance.

Questions recently addressed by the courts include: Has the crisis facing public school and legislative bodies, such as the NCAA, reached such a high level that strict adherence to constitutional protections afforded individuals may be relaxed? Does society's need for effective methods to deal with the present crisis in drug abuse outweigh students' legitimate expectations of privacy and personal security? Is it appropriate to utilize balancing tests to determine society's priorities, as opposed to strict compliance with established standards attendant to searches by government officials?[6]

These are only a few of the many complex questions facing the administrators, courts and legislative bodies which must design procedures to successfully meet the challenge of today's drug crisis. If the NCAA Executive Committee is to meet with any level of success in curbing drug abuse by student athletes, it must develop procedures which will survive constitutional challenge. Against this backdrop, this writing will focus on the present task of the NCAA's Executive Committee as it sets about developing procedures for the impending drug testing program. The two recent cases

discussed below may help to guide the development of those procedures.[7]

During the NCAA's recent convention, delegates approved Proposal No. 30. That proposal amends the NCAA Constitution and By-Laws to authorize drug testing of student athletes by member institutions. The amendments take effect August 1, 1986, with implementation of post-season drug testing to begin during the 1986-87 season. The stated intent of Proposal No. 30 is, in part, to authorize the Executive Committee to establish a drug testing program for NCAA championship and certified post-season football contests and to provide recommended guidelines for regular season drug testing by member institutions. Proposal No. 30 requires a student athlete, in conjunction with the annual signing of the "student athlete's statement," to consent to testing for drug use. The proposal further establishes the loss of post-season eligibility as a consequence of banned drug use by a student athlete. Amendments to Article 3, Sections 6 and 9-(i) of the NCAA Constitution, as well as amendments to By-Law Article 2 Section 2-(f) and Article 5 Section 2, implement the intent of Proposal No. 30. Executive Regulation 1-7-(b) provides an extensive list of "banned drugs," including both performance enhancement drugs and street drugs. The category of "street drugs" includes amphetamines, cocaine, heroin and marijuana.

As of this writing, the NCAA Executive Committee has yet to complete its work in developing the procedures for drug testing. It is also not yet known what form the "consent statement" will take. The statement must be signed annually. Failure to sign such a statement will result in ineligibility. To be eligible for competition, each student athlete must "agree" to be tested for the use of prohibited drugs.

Although drug testing procedures have not been finalized by the Executive Committee, a recent article in *The NCAA News*, which is set forth in question-and-answer format, provides additional insight into the NCAA's position.[8] According to the article, a national drug testing program is made necessary, in part, because a 1984 survey revealed that fewer than 90 of 518 responding institutions conducted drug testing of their student athletes. Further, the high cost, the lack of adequate testing facilities available to individual institutions, and "the need for uniformity to ensure fairness in competition" make national testing by the NCAA practical.[9]

The NCAA's position with respect to the positive test level of certain drugs and the reason for inclusion of other drugs on the banned list is not yet clearly defined. For instance, a question in the article regarding caffeine levels was followed by a response that the positive test level "is relatively high and would not reach that level from drinking a cola or a cup of coffee." Positive levels could only be reached through the ingestion of large doses of caffeine prior to competitions. Such action is assumed to be "a deliberate effort to enhance performance."[10]

Student athletes using prohibited drugs for legitimate medical purposes must be able to provide "adequate medical documentation" demonstrating a

medical condition that requires regular use of the banned substance. Assuming such documentation is produced, the student athlete would be granted an exception by the Executive Committee. The student athlete with a medical condition requiring the use of a banned drug would declare the use when signing his requisite annual statement.

Inadvertent use of banned substances would be prevented through a major effort to educate student athletes, physicians treating student athletes, athletic trainers and coaches. Moreover, it is believed that drug levels in urine specimens resulting from inadvertent or "normal therapeutic" use would be relatively low, and automatic positive tests would not result. Additionally, suitable alternatives to banned drugs are believed to be available for normal therapeutic use.[11]

Any student athlete who "tests positive" in accordance with drug testing methods authorized by the Executive Committee will be declared ineligible and remain ineligible for post-season competition for a *minimum* of 90 days after the test date. If the student athlete tests positive after being restored to eligibility, "he or she shall be charged with the loss of one season of post-season eligibility in all sports and shall remain ineligible for post-season competition *at least* through the succeeding academic year."[12]

Drug testing (estimated first year cost: $310,000) will be conducted at most, if not at all, NCAA national championship and "certified" post-season football contests. The Special Committee on National Drug Testing Policy recommended to the NCAA Executive Committee the imposition of a pattern for testing place finishers, as well as other participants, on a random basis at the conclusion of the individual/team championships; the team sport student athletes would be selected at random or on the basis of playing time and position prior to or during the championship.[13]

Although the NCAA has taken the position that drug testing will be limited to post-season events only, Proposal No. 30 authorizes the NCAA to provide guidelines for drug testing by member institutions during the regular season. Student athletes testing positive will be declared ineligible for post-season participation pursuant to the NCAA's regular eligibility procedures. This procedure further requires that the member institution rather than the NCAA declare the student-athlete ineligible.[14]

Because championship events and post-season competitions are "closed," the NCAA does not believe championship and post-season drug testing, or any resulting determinations of ineligibility for that matter, will interfere with constitutionally protected individual rights.[15] This position, however, may lack authoritative support.[16] The Supreme Court's decision in *New Jersey v. T.L.O.* and the recent trial court decision in *Odenheim v. Carlstadt-East Rutherford Regional School District*, if upheld and followed, may undermine the NCAA's position.

The Fourth Amendment to the United States Constitution protects the security of the people "in their persons, houses, papers and effects" against

"unreasonable searches and seizures."[17] The Fourth Amendment is made applicable to the state through the Fourteenth Amendment.[18] As applied to the states, the Fourteenth Amendment protects citizens from the state and all of its creatures—boards of education not excepted. State creatures such as boards of education "have important, delicate and highly discretionary functions, but none that they may not perform within the limits of the Bill of Rights."[19] Although in 1942 [20] the Supreme Court recognized that state action "must be tempered by respect for students' fundamental Constitutional rights,"[21] only recently have students' rights truly been recognized and protected.[22] Since the Supreme Court's landmark decision in *Tinker v. Des Moines Independent Community School District*,[23] courts have struggled to determine the scope of recognition and protection to be afforded student rights.[24] Most recently, the Supreme Court in *New Jersey v. T.L.O.* limited the extent of Fourth Amendment protection in the school setting.

On January 15, 1985, the Supreme Court reached its decision in *T.L.O.* and found the Fourth Amendment applicable to actions of public school officials. However, the Court determined that, "in balance," strict compliance with Fourth Amendment warrant and probable cause requirements was not mandated.[25]

Citing *Goss v. Lopez*,[26] the court concluded that maintaining security and order in schools "requires a certain degree of flexibility in disciplinary procedures."[27] This flexibility, however, must be balanced with students' constitutionally protected rights. The Court explained: "On one side of the balance are arrayed the individual's legitimate expectations of privacy and personal security; on the other, the government's need to effective methods to deal with breaches of public order."[28]

T.L.O., a female student, was taken to the high school principal's office after allegedly violating the school rule prohibiting smoking in the bathroom. T.L.O. denied the infraction. The vice-principal conducted a search of T.L.O.'s purse for cigarettes. During the search, the vice-principal found a small amount of marijuana, a pipe, a number of empty plastic bags, a substantial quantity of money and two letters implicating T.L.O. in drug dealing. Delinquency charges were brought in Juvenile Court. T.L.O.'s motion to suppress was denied. The state court found that the Fourth Amendment applied to searches by school officials but determined the search to be reasonable. T.L.O. was adjudged delinquent. The Appellate Division affirmed the trial court's finding, but the New Jersey Supreme Court reversed, ordered the suppression of the evidence found in T.L.O.'s purse and holding that the search was unreasonable. *Certiorari* was granted the the New Jersey Supreme Court's decision was reversed.[29]

The Supreme Court rejected the state's argument that Fourth Amendment protections apply only to police action. The Court explained that the basic purpose of the Amendment "is to safeguard the privacy and security of individuals against arbitrary invasions by governmental officials."[30] It further found that the Amendment applies equally in civil and criminal cases.[31] School officials, in carrying out searches and other disciplinary functions, act as representatives of the state, not merely as surrogate parents. School officials cannot, therefore claim parental immunity from the strictures of the Fourth Amendment.

The Supreme Court concluded that the school setting required some modification of the level of suspicion of illicit activity needed to justify a search. Therefore, the Court found no need for strict adherence by school officials to the Fourth Amendment warrant and probably cause requirements. The legality of a search in the school setting "depends simply on the reasonableness, under all circumstances of the search.[32] Reasonableness depends on whether the intrusive act was justified at its inception and whether the search as conducted was reasonably related in scope to circumstances justifying the initial interference. To prove that the intrusive act was justified at its inception, it must be shown that reasonable grounds existed for suspecting that a search would reveal evidence indicating that the student had violated or was violating either the law or the rules of the school."[33]

The Supreme Court concluded that the vice-principal's suspicion that T.L.O. possessed cigarettes in her purse "was not an inchoate and unparticularized suspicion or hunch."[34] Explaining that sufficient probability rather than absolute certainty was the touchstone of reasonableness under the Fourth Amendment, the Court found the search to be reasonable.[35]

Since *T.L.O.* was decided, the need to balance the interests of students and school officials has once again been presented to a court. On December 9, 1985, in *Odenheim v. Carlstadt East-Rutherford School District*, a New Jersey chancellor relied upon *T.L.O.* when finding unconstitutional the Board of Education's new drug testing rule. The Board had adopted Policy No. 5141.3 in its Policy Manual. The new policy, entitled "Comprehensive Medical Examinations," required annual physicals of all students enrolled or to be enrolled in the district. The physical examination was designed to identify the extent of any physical defects, illness or communicable disease and to determine fitness for school-sponsored health safety, sport and/or physical education courses required by law. The policy's stated purpose further provided that the examination "will help to identify any drug and alcohol use by the pupils." This detection would enable the Board to enter the student into appropriate rehabilitation programs. Failure of a student to submit to or complete the test would result in exclusion from class.

A group of students and parents brought suit to preclude the Board from testing any urine samples for the presence of drugs or alcohol. On August 13, 1985, a temporary restraining order was entered restricting testing, as urged by students and parents. On September 3, 1985, the court converted the temporary restraining order into a preliminary injunction. The matter was

set for trial.

At trial the Board argued that no intrusive deprivation of privacy occurred, since the test was conducted for legitimate, traditional medical reasons. The Board considered drug use and/or alcohol use as illnesses. The Board further argued that the policy was beyond the parameters of the Fourth Amendment because (1) state policy required physical examinations to ensure fitness; (2) student files would be maintained as confidential; and (3) the exclusion sanction was distinguished from suspension or expulsion under state law.

On December 9, 1985, the chancellor issued his written finding. Citing the Supreme Court's *T.L.O.* reasonableness standards, the chancellor found that the Board's drug testing policy was not reasonably related in scope to the circumstances which initially justified the interference with students' privacy expectations. The evidence[36] did not establish a reasonable justification for the Board's initial interference with students' rights. The court further found unacceptable the Board's attempt to distinguish the "exclusion" sanction from suspension or expulsion. The court stated, "[The Board's] policy is an attempt to control student discipline under the guise of a medical procedure, thereby circumventing strict due process requirements." Such a position, the court concluded, failed to pass constitutional muster.

A notice of appeal has been filed by the Board in *Odenheim*. Review is pending. If the chancellor's determination is upheld, successful challenges to similar drug testing procedures may follow.

What lessons may be drawn from *T.L.O.* and *Odenheim* which will assist the NCAA Executive Committee in developing procedures which will "pass constitutional muster?" Clearly many unanswered questions must be addressed. Some of the questions to be answered include: What expectation of privacy is reasonable for college students and student athletes to rely upon? Does the more intrusive nature of drug testing shift the balance established in *T.L.O.?* Are the present NCAA eligibility procedures sufficient to meet constitutional tests? By signing the annual student statement, will student athletes effectively waive their Fourth Amendment rights?

College students clearly enjoy the security of the same constitutional protection afforded the general public.[37] The fact that individuals are not compelled by state law to attend college does not diminish the constitutional protection available to such individuals. In the concurring opinion in *T.L.O.*, however, Justice Powell agreed with the court's conclusion that individuals compelled to attend school have a lesser expectation of privacy than members of the population generally.[38] Justice Powell asserted that the relationship between students and school authorities does not compare with the adversarial relationship which exists between police officers and criminal suspects. It is questionable whether the same could be said of the relationship between collegiate student athletes and the Enforcement Committee of the NCAA. It cannot be denied that in the latter situation, an adversarial relationship exists.

Can individuals who voluntarily participate[39] in intercollegiate athletics expect the same degree of privacy as high school students whose attendance is compelled? Has that individual assumed the risk of lesser constitutional security by his voluntary participation?[40] Are the consent and assumption of risk "voluntary?"[41] The answers to these questions must be drawn from an analysis of the facts of each case. The well-established two-step test to determine one's expectation of privacy must be met.[42] The first test is subjective: Has the individual by his or her conduct exhibited an actual expectation of privacy? The second test is objective: Is the expectation recognized as reasonable by society?[43]

It cannot be denied that nothing is more intrusive than searches by state officials which are accomplished by the withdrawal of bodily fluids. In such instances, both the subjective and objective tests of *Katz* are met. Close scrutiny of that action is therefore warranted. A clearly compelling state interest must be shown to justify the search.

Can the NCAA show a compelling interest in testing for drug use? What reasonable justification exists to support the initial intrusion of a drug test?[44] Is there a distinction to be made between testing for the use of "performance enhancement" drugs and the use of "street drugs?" One commentator asserts that the NCAA is justified, as is the International Olympic Committee, in precluding the use of "performance enhancement" drugs.[45] Testing student athletes for the use of "street drugs," however, may be much more difficult, if not impossible, for the NCAA to justify.[46]

Assuming the NCAA drug testing policy is found to be constitutional, the procedures implementing that policy must also be constitutional.[47] The NCAA has indicated that its drug testing program is governed by the regular NCAA eligibility procedures.[48] The NCAA's enforcement procedures have been criticized as lacking fundamental procedural due process safeguards.[49] Chief among the criticisms has been the lack of any effective student contribution to the rule-making process and the lack of effective means for a student athlete to rebut charges of rules violations. Minimum due process requirements entitle an individual to notice and a hearing.[50] It is assumed by the NCAA, without justification, that where rules violations are suspected and investigated, the NCAA member institution will safeguard the student athlete's interests. However, practical experience has shown this assumption to be baseless.[51] The absence of effective means for student athletes to confront accusers and rebut evidence *after* being declared ineligible may be the most serious criticism directed against present NCAA procedures. As the Executive Committee prepares procedures for drug testing, meeting this criticism should be a priority.[52]

The NCAA will likely defend any constitutional challenge to the drug testing program by asserting a participant's consent to testing. Although a complete analysis of the issue is beyond the scope of this article[53] it is

questionable whether the participant's consent can generally be deemed to be knowing and voluntary.[54]

The NCAA Executive Committee is presently faced with a difficult task. Despite the requirements of the procedural safeguards enacted by the NCAA, a constitutional challenge to the drug testing program is inevitable. To successfully defend the challenge and meet its goal of combating drug use, the NCAA must revise its attitude toward student athletes' rights. A representative voice which protects the interests of participants is needed. Several alternatives are available to meet this need. Oversight panels could be created by member institutions with the authorization of the NCAA. These panels would advise student athletes and protect their interests. A precedent for these panels may be found in the NCAA career counseling panels now in place at many member institutions.[55]

If the panels prove unworkable, the NCAA could utilize and expand upon its new Rule 3-1(h)(4), which permits member institutions to employ outside professionals. Moreover, the NCAA could authorize member institutions to solicit the participation of local bar associations. Regardless of the choice made, the NCAA Executive Committee's attention to effective protection of student athletes' constitutional rights is clearly warranted.

The Executive Committee and its advisors must look to recent cases, such as *T.L.O.* and *Odenheim* for guidance as drug testing programs and procedures for implementing those programs are developed. Even though these cases appear to raise more questions than they answer, it is imperative that their reasonableness standards be met. If the NCAA drug testing program itself is reasonably related to a legitimate purpose of the organization and if the procedures adopted are designed to safeguard a targeted individual's constitutional rights, then the objective of curbing drug abuse in collegiate sports may be met.

FOOTNOTES

1. The authors of "Public School Searches and the Fourth Amendment," 11 *Journal of Law & Education* 41 (1982), point out that revelations of increased drug abuse are, unfortunately, not a recent problem, but recurring.

2. On the professional level, see *Sports Industry News*, February 5, 1986, at 42, regarding professional baseball drug plan and the voluntary testing plan worked out between the Baltimore Orioles and agent, Ron Shapiro; see also, "Baseball Belts Drug Abuse: Ueberroth Suspends 11—But Gives Them a Way Out," *Chicago Tribune*, March 1, 1986; at the collegiate level, regarding enactment of the 1984 NCAA drug testing program, see Ford, at 205-207, n.7; on the high school level, see "Drug Testing Policy Adopted by Carlstadt-East Rutherford Regional Board of Education Policy No. 5141.3," discussed in *Odenheim*.

3. For a history of the NCAA drug testing rule, see Ford, above; *Odenheim*.

4. See, generally, Goldberger, "Consent Expectations of Privacy and the Meaning of Searches in the Fourth Amendment," 75 *Journal of Criminal Law and Criminology*, 319 (1984); Note, "From Private Places to Personal Privacy: A Post-Katz Study of Fourth Amendment Protections," 43 *N.Y.U. Law Review* 1968

5. *New Jersey v. T.L.O.*, ___ U.S. ___, 105 S. Ct. 733 (1985); *Odenheim*.

6. T.L.O.; *Odenheim*

7. T.L.O.; *Odenheim*

8. "Questions and Answers Concerning Association's Drug-Testing Proposal," *The NCAA News*, January 8, 1986 (hereinafter cited as "Article").

9. Article, at p.1.

10. Article, at p.3.

11. Article, at p.3.

12. Article, at p.16. Emphasis added.

13. Article, at p.16.

14. This procedure has been criticized. See, Weistart, "Legal Accountability in the NCAA," 10 *Journal of College and University Law* 167. There appears, at this time, to be an inconsistency between the appeals process, as set forth in the text of Proposal No. 30 and as explained in *The NCAA News* article. Proposal No. 30 allows the certifying institution to appeal to the Eligibility Committee if the institution concludes that circumstances warrant restoration of eligibility. However, the article indicates that, once declared ineligible, the student athlete will be provided the opportunity for a hearing before the NCAA Eligibility Committee, which will review each appeal on a case-by-case basis.

15. Article, at p.3.

16. T.L.O.; *Odenheim*.

17. "The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated; and no warrants shall issue, but upon probable cause, supported by oath or after affirmation, and particularly describing the place to be searched, and the person or things to be seized." *U.S. Constitution*, Amend. IV. For a detailed historical analysis of the Fourth Amendment, see Goldberger, "Consent, Expectations of Privacy and the Meaning of Searches and the Fourth Amendment," 75 *Journal of Criminal Law and Criminology* 319 (1984).

18. *U.S. Constitution*, Amend. XIV.

19. Comment: "Public Universities and Due Process of Law: Student's Protection Against Unreasonable Search and Seizure," 17 *U. Kansas Law Review* 512, quoting *W. Va. State Board of Education v. Barnette*, 319 U.S. 624, 637 (1943). It has long been established, although criticized, that the NCAA is a "state creature." See, Ford, at 213-217.

20. *W. Va. State Board of Education v. Barnette*, 319 U.S. 624 (1942).

21. Bible, "The College Dormitory Student and the Fourth Amendment—A Sham or A Safeguard?" 4 *U. of San Fran. Law Review* 49, 51.

22. Bible, at 51, citing *Tinker v. Des Moines Independent Community School District*, 89 Supreme Court 733 (1969).

23. 89 Supreme Court 733 (1969).

24. Bible, at n.9; Buss, "The Fourth Amendment and Searches of Students at Public Schools," 59 *Iowa Law Review* 739.

25. T.L.O., at 743.

26. 419 U.S. 565, 95 S. Ct. 729, 42 Law Ed. 2d 725 (1975).

27. T.L.O., at 743.

28. T.L.O., at 741. Relevant questions which are beyond the scope of this writing include the age at which constitutional rights of an individual attach and whether the legitimate interests of school officials is truly equal to the privacy interests of the individual. Some authors suggest that the balance depends upon the level of intrusion. See Trosch, "Public School Searches and the Fourth Amendment," 11 *Journal of Law and Education* 41.

29. T.L.O., at 736-38.

30. T.L.O., at 740.

31. T.L.O., at 740.

32. T.L.O., at 743-44.

33. T.L.O., at 744; *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 Law Ed.2d 889 (1968). An issue not decided by the court and beyond the scope of this writing was whether individualized suspicion was an essential element to the reasonableness standard adopted for searches by school authorities. See, T.L.O., at n.8.

34. T.L.O., at 746.

35. ----

36. At trial, the party stipulated that the student population of defendant high school was 520 between September 1984 and June 1985; of the 520 students, 28 either made inquiry or were referred to assistant counselors. Five hundred sixteen students were enrolled for the current year, of which 11, to date (December 9, 1985), were referred to assistant counselors.

37. *Dixon v. Alabama State Board of Ed.*, 294 F.2d 150 (5th Cir. 1961), cert. denied, 368 U.S. 930 (1961). See, generally, Bible, "The College Dormitory Student and The Fourth Amendment—A Sham or Safeguard?" 4 *U. of San Fran. Law Review* 49 (1969).

38. *T.L.O.*, at 747.

39. The question must be asked: Are scholarship students volunteers?

40. See, generally, Greenberger, "Consent and Expectations of Privacy and the Meaning of 'Searches' in the Fourth Amendment," 75 *Journal of Criminal Law and Criminology* 319 (1984). One commentator has suggested that application of contract law theory to the relationship between NCAA, member institutions and athletes may be appropriate.

41. Bible, "The College Dormitory Student and The Fourth Amendment—A Sham or Safeguard?" 4 *U. of San Fran. Law Review* 49 (1969).

42. *Katz v. United States*, 386 U.S. 347 (1967) (J. Harlan concurring).

43. *Alinovi v. Worchester*, Student Committee, 766 F.2d 660, 667 (1985). Justice Harlan's concurrence was adopted by the court in *Smith v. Maryland*, 442 U.S. 735 (1979).

44. See Weistart, "Legal Accountability in the NCAA," 10 *Journal of College and University Law* 167 (1983-84).

45. See Ford, at n.3, above.

46. Certainly a compelling argument could be made that a showing of individualized suspicion is required. In T.L.O., although not decided, the court implied that such a showing would be necessary when it stated that under ordinary circumstances, a search will be justified at its inception when there are reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or school rule. (T.L.O., at 744.)

47. T.L.O., at 744.

48. Article, at 3.

49. See Weistart; Remington, "NCAA Enforcement Procedures, Including the Role of the Committee on Infractions," 10 *Journal of College and University Law* 1981 (1983-84); Gaona, "The National Collegiate Athletic Association: Fundamental Fairness and The Enforcement Program," 23 *Ariz. L. Rev.* 1065 (1981); "House Committee on Oversight and Investigations By the NCAA," 95th Congress, 2d. Session (1978).

50. See Dixon; see, also, *Camara v. Municipal Court*, 387 U.S. 523, 87 S. Ct. 1727, 18 Law.Ed.2d 930 (1976).

51. See Remington; see, also, Weistart. Marquette University, prior to its participation in the NCAA basketball tournament, was directed to declare ineligible one of its student athletes for failure to sign the annual statement indicating compliance with the rule precluding contact with professional agents; Marquette refused to do so. The NCAA declared Marquette's entire athletic program ineligible. Ironically, the next day the student athlete signed the statement.

52. One suggestion of the Congressional Committee of the 95th Congress (n.49, above) was the formation of an oversight committee empowered to safeguard student athletes' rights. This suggestion is meritorious.

53. See Goldberger.

54. See Goldberger; see also Bible. Among other issues which could be raised, one could argue that the annual statement is unenforceable under a contract of adhesion theory.

55. The career counseling panels authorized by the NCAA and established at many member institutions permits institution employees outside of the athletic department to provide counseling and advice to student athletes, in anticipation of professional careers.