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## NCAA erred in its involvement in Penn State (essay)

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As the lurid details of the events that have catapulted Pennsylvania State University into the headlines have emerged, the rush to impose consequences has seemingly overwhelmed good sense and thoughtful, deliberative reaction. The National Collegiate Athletic Association's imposition of penalties -- taking away victories earned on the football field, banning post season bowl participation, loss of athletic scholarships, and a fine of \$60 million -- seem, with one exception, to miss what ought to be the targets of everyone's understandable wrath.

In addition, there are serious questions about how and why the NCAA has chosen to assert jurisdiction over these matters, and what precedent this establishes for future events involving NCAA member schools.

First, the wrongdoers. From all the evidence assembled and made public, Jerry Sandusky has been convicted by a jury and will undoubtedly spend the balance of his days in prison. Former President Graham Spanier and the two administrators implicated in the cover-up of the Sandusky crimes have been fired. Two, and possibly all three, face criminal prosecution, as well. Coach Paterno has died. With the exception of the taking away of victories from the team, which officially denies Paterno and his family the distinction of being the football coach with the most victories of any in history, none of the other penalties imposed affect any of the individuals involved in the events.

Second, the victims. While the actual victims of the horrendous crimes have the satisfaction of Sandusky's conviction, and will be entitled to civil remedies against the individual wrongdoers, and very likely the university, the NCAA punishment does nothing to

compensate the children or their families. The money penalties are going to establish a new charitable enterprise to focus attention on child abuse, a worthy cause, but will do nothing to help the victims associated with this tragedy.

Third, the new victims. The NCAA sanctions affecting bowl games and athletic scholarships will now affect athletes who have done absolutely nothing wrong. And the financial sanctions risk impacting the entire student body and faculty at Penn State. While the NCAA has gotten most of the headlines, the Big Ten Conference imposed its own sanctions on Penn State, including its annual share of television revenue for four years. In combination with the NCAA fine, the university will lose \$73 million. Add to that sum the expected funds necessary to resolve civil cases that the crime victims will be entitled to receive, plus litigation costs, and the sums involved could, according to one of the trustees, approach \$500 million. There is the further concern that liability insurance carriers could decline coverage of legal claims if it is shown the wrongdoing by Penn State officials was intentional. Typically, coverage is limited to acts of negligence.

With the athletic program hobbled by the sanctions and loss of television revenue, funding the payment of these matters will likely require that either students, through tuition hikes and/or fees, or taxpayers be required to pay up. And as this all plays out, is there any doubt students who might ordinarily choose to attend Penn State will go elsewhere, and a superb faculty, assembled over decades, will slowly but surely drift away to other institutions where resources will not be drained paying for the sins of five people long gone from the institution?

Obviously, not all of these potential consequences are due to the NCAA and Big Ten conference. But the piling on, without a clearly defined purpose and questionable subject matter jurisdiction, is unnecessary, at best, and sadly misdirected.

There is no evidence that the events in any way involved intercollegiate competition, improperly recruiting athletes, providing improper benefits to athletes or any other rule in the NCAA's micromanaging of competition-related conduct. The use of the notion of "institutional control" as the basis for the NCAA's jurisdiction in this instance can now be used to assert NCAA sanctions in any event that involves a university and its athletic program employees and students. This seems significantly beyond the legitimate jurisdiction of, and purpose for, the NCAA.

While public universities have been experiencing reductions of state financial support for many years, few if any could withstand the dimension of the impacts that are being imposed, without serious consequences to the academic mission of the institution.

So what has the NCAA really accomplished? With the exception of the Paterno victory reduction (which seems entirely appropriate), its sanctions miss the wrongdoers, miss the crime victims, and in a sense, create a new category of victims (students, faculty, taxpayers and the academic vitality of the university).

The precedent being set raises, in my mind, serious questions about the future. One example: what if the tragic shooting events several years ago at Virginia Tech involved either an athlete or former employee of the athletic department, and as an evaluation later determined, the school had not undertaken sufficient steps to warn other students of the danger as events unfolded. Would such circumstances call for NCAA sanctions over and above the criminal and civil justice responses? After all, the crimes would

have been related to the athletic department, and the university's "institutional control" was found to be inadequate.

The NCAA's actions in this instance, leaving aside any arguments about due process, feel more like politicians, each trying to one up each other offering competing, kneejerk legislative proposals in response to the world's latest tragedy, rather than the thoughtful, effective, and properly targeted sanctions expected of respected educators.

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