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DUE PROCESS AND THE NCAA

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OF THE

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HOUSE OF REPRESENTATIVES

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DUE PROCESS AND THE NCAA

TUESDAY, SEPTEMBER 14, 2004

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON THE CONSTITUTION,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to call, at 9:30 a.m., in Room 2141, Rayburn House Office Building, Hon. Steve Chabot (Chair of the Subcommittee) presiding.

Mr. CHABOT. Committee will come to order.

We are going to try to move this hearing along today, because we have an 11 o'clock bill that is being taken up on the floor which many Members of the Judiciary Committee will be involved in. So we are going to move this testimony along today.

Mr. Scott, I was mentioning, at 11:00, we have this—this Committee has a bill that we are going to be involved with on the floor.

I want to thank all the Members for being here. I'm Steve Chabot, the Chairman of the Subcommittee on the Constitution.

The NCAA is a voluntary organization comprised of some 1,200 member schools from 50 States. Many of these member institutions are public colleges and universities. The NCAA's goal is, quote, to initiate, stimulate and improve intercollegiate athletic programs for student-athletes, unquote. To this end, the NCAA conducted 87 championships in 22 sports across three divisions in the 2002–2003 school year. That year, over 375,000 student-athletes competed in NCAA sports.

One way the NCAA serves to initiate, stimulate and improve intercollegiate athletics is by passing—and enforcing—rules to ensure the integrity of the sports experience. The rules, which are promulgated by its member institutions, govern, among other things, recruiting, amateurism and academics. The rules are published in each division's bylaws. The Division I bylaws for 2004–2005 consists of some 457 pages. The NCAA enforces these rules with its own paid professional staff and a voluntary Committee on Infractions, which is comprised of representatives from its member institutions.

The details of how the NCAA enforces its rules are quite complicated, and we are very fortunate to have Jo Potuto, Vice Chair of the NCAA's Committee on Infractions, here today to explain how the rules work in practice. In brief, infractions are divided into major and secondary violations, and the amount of procedure to which an institution, coach or student-athlete is entitled depends on the category of infraction in which the violation falls. Additionally, student-athletes who are found to be ineligible for any reason

are subject to the NCAA's reinstatement process if they want to regain their eligibility to play college athletics.

Let me state at the outset what this hearing is not about. It is not about the wisdom of any particular NCAA substantive rule. Nor is it about the NCAA's authority to enforce its rules. The NCAA provides a valuable function in policing collegiate athletics, and we are not here to relitigate any particular decision that the NCAA has made. This hearing is about fairness, particularly the fairness the NCAA displays in enforcing its rules. Merited or not, the NCAA has at least the perception of a fairness problem. Evidence of this is found in newspapers, such as stories regarding the NCAA's decision not to restore eligibility to Jeremy Bloom, who is with us today, and Mike Williams. It is found in courtrooms, where two former Alabama assistant coaches have sued the NCAA for alleged violations of procedural due process. It is also found in State legislatures, such as the State of Nevada, which passed statutes providing particular due process rights for NCAA investigations conducted within their States. And it is found in the NCAA's own 1991 study conducted by former Solicitor General Rex Lee, which proposed 11 recommendations the NCAA should undertake to improve fairness in its procedures.

It has been 13 years since Congress last examined the procedures that the NCAA uses to investigate and enforce its rules. In that time, the NCAA has made several changes, most notably the addition of a more robust appellate system for infraction cases, that have provided greater protections for member institutions, coaches and student-athletes. However, the NCAA has failed to take action on several recommendations of its own 1991 study, most notably, those relating to the hiring of independent judges to hear infractions cases and the opening of these proceedings to all. This hearing will examine those recommendations and the NCAA's decisions not to implement them. We will also examine the investigated individual's role in the process and their ability to participate fully in it. And we will examine the NCAA's restitution rule, which punishes member institutions in the event that student-athlete initiated litigation is ever resolved in favor of the NCAA.

I would like to thank Congressman Bachus for requesting this hearing and also Congressman Osborne for his interest in this area.

I am sure that many of us will look to Tom Osborne for guidance in this particular area as Congressman Osborne is uniquely qualified, having coached for 36 years the Nebraska Cornhuskers football team, I might note taking his team to a bowl every season and averaging 10 wins per season. So Congressman Osborne is someone we all look to around here when it comes to college athletics.

I would also like to thank the NCAA for their cooperation with our staff for this hearing and for their willingness to appear before the Subcommittee to discuss their procedures. Finally, I appreciate—we all appreciate our other witnesses' attendance here this morning, and we look forward to hearing from all of our witnesses. And I would now yield to the gentleman from New York, the Ranking Member of the Subcommittee, Mr. Nadler.

Mr. NADLER. Thank you, Mr. Chairman.

Mr. Chairman, I want to thank the witnesses for coming here on such short notice. I had not realized that issues involving the NCAA enforcement procedures is such an urgent matter. I had not realized that the procedures of the NCAA came within the jurisdiction of the Subcommittee on the Constitution.

Now due process does fall under the jurisdiction of this Subcommittee, but that is generally due process by the United States Government, not due process by a private organization, such as the NCAA. Perhaps, however, it does come under the jurisdiction of this Subcommittee, because I know in many communities college sports are the nearest thing we have to an established religion.

I would hope in the last few weeks of this Congress our Subcommittee will be able to make time for some other pressing issues that plainly implicate the constitutional rights of millions of Americans. For example, I know that our colleague, the gentleman from Virginia, has been working with the majority in this Committee for some time trying to get an oversight hearing on the extent to which the Department of Agriculture, despite a consent decree, is still violating the rights of African-American farmers and forcing some of them off their land.

I would also hope that we could take time from our busy schedule to examine whether citizens are being stripped of their right to vote.

I wouldn't even object if the Bush Justice Department could answer our questions from the March 2 oversight hearing on the Civil Rights Division or if we could get the overdue report from the privacy officer at the Department of Homeland Security, an office this Committee established.

I hope that the chairmen of this Subcommittee and of the Committee will agree to work with the minority on some of these issues, and perhaps we can agree that these are issues that deserve consideration and time before the playoffs.

I apologize to the witnesses before this Subcommittee. Unfortunately, in the crush of business at the end of this Congress, matters such as funding the Federal Government, reform of our intelligence agencies and other matters, I will not be able to stay for most of the hearing. I know this is an important issue to many sports fans. I have the testimony, it will receive my attention, but I apologize for not being able to stay for most of the hearing.

Mr. CHABOT. Thank you. I am not going to respond to everything you said, but relative to the issue of the black farmers, there is a hearing set for September 28.

Mr. NADLER. I am glad to hear it.

Mr. CHABOT. The gentleman from Alabama, Mr. Bachus, is recognized for the purpose of making an opening statement.

Mr. BACHUS. Thank you, Mr. Chairman.

If you go back to the Magna Carta, 1215, the principle of due process was first at least discussed openly in England and embodied in the Magna Carta. Over the next several hundred years, certain things became basically acceptable. One of those things was open hearings. When people were deprived of their freedom, their property, an open hearing was granted.

Some of you may have heard of the star chambers in England. Our NCAA representative teaches constitutional law at the Univer-

sity of Nebraska. The star chambers were originally—sessions were open to the public. However, under Charles I and other kings, they began to misuse their power, abused their power, and one of the first things they did was to take away the public hearings. They explained that away by saying it was expedient and saved time, and also it was too much trouble to allow the public to come in.

If you look at the Supreme Court decisions—and I have several which I will submit for the record—but the Supreme Court makes it clear that not only in criminal procedures but in civil procedures, that our citizens should enjoy due process. They talk about independent triers of the fact, public hearings, right to confront the witnesses and know the witnesses against you, that those should apply in all civil matters of importance as well as criminal matters.

How does that apply to the NCAA, a, quote, so-called volunteer organization? Well, first of all—and I have heard the Chairman and others talk about a voluntary organization. I think that anybody that has studied the NCAA readily realizes that the athletes are not members nor are they invited to be members, but the great number of decisions affect more athletes than anyone else. Athletes are not members, and they have no input, but they are controlled.

In fact, that is why the Harvard Business School said that the number one monopoly in America is not Microsoft, is not Wal-Mart, is not the West Coast Longshoremen's Union, not the post office, it is not even OPEC. They said it is the NCAA, which has total power and abuses that power. They also said this, that the NCAA—with the NCAA in charge, the student remains poor. With the NCAA in charge, the student remains poor. They talk about the NCAA trying to maintain the high ground but not doing a very good job of it.

And they pointed out, as did the NCAA—and this is maybe my last poor point and the main point of this hearing—the NCAA itself looked at their procedures. They assembled a Supreme Court judge, a solicitor general, former attorney general, several law school professors, and they studied how can we better improve our system of enforcement.

I am going to submit three articles from 1991 and 1992. They agree that two things they ought to do—and this was their own committee. They agreed they ought to have public, open hearings. And I can cite from Justice Marshall numerous—over 100 Supreme Court cases that talk about the importance of letting the sunshine in. And you will see the explanation of the witness for the NCAA and the reason that she gives for not having open hearings, which is a rather unusual reason. But they said that. They said they ought to have the right to confront witnesses and, most importantly—and the cases are very clear on this—an impartial trier of the fact.

Well, you know, these 1991 and 1992 articles say the NCAA is going to adopt those and going to take the pressure off of them from congressional hearings, court hearings, legislatures, the public, which has demanded these things. Guess what? They didn't do it. According to *USA Today*, the two most important reforms they have failed utterly to do. And who has been victimized by this? It is the student-athlete. You will hear from one of them today.

And I can tell you, the longer you study this, you realize that the NCAA and sometimes the member institutions trade off and those that lose are those without power, the coaches and, more often than the coaches, the athletes who are victimized by this system. Four hundred and eighty-five billion dollars a year in revenue goes into the system, yet the NCAA says it cannot afford to give due process, something that our common law tradition has been with us for hundreds of years. But that tradition is not in NCAA.

With that, Mr. Speaker, I yield back any time that I have.

But I also think that Tom Osborne does have one good suggestion here that he makes to this Committee and that is let's do something for the athletes. A lot of the problems with these cases is that the athletes are given scholarship money but not money to live on. And as the Harvard business school says and as the NCAA has said, most of these students are very poor and it is very hard for them to even pay for their cost of living. Yet the NCAA has really led the fight against a lot of things for athletes, including compensating them at least for their living expenses.

Mr. CHABOT. The gentleman's time has expired.

I would note that Congressman Osborne just entered the room. He missed all the flattering comments that I made about him, unfortunately. But, in any event, we are happy to see you here today.

Any minority Members who want to make a statement?

If not, any opening statements could be made part of the record.

We would like to turn to our witnesses for today's hearing. Our first witness is Jeremy Bloom, a U.S. Olympic skier and former University of Colorado football player. Mr. Bloom has been a member of the U.S. Olympic ski team since he was 15-years-old and represented the United States at the Salt Lake City Winter Olympics in 2002. He is the youngest person to win the world grand prix title and the first American to win a world championship gold medal in mogul skiing. Mr. Bloom is also a gifted football player and holds a number of receiving, punt return and kick return records at the University of Colorado.

Our second witness is Josephine Potuto, Vice Chair of the NCAA's Committee on Infractions and Richard H. Larson Professor of Law at the University of Nebraska College of Law. Ms. Potuto earned her Bachelor's degree from Rutgers Douglas College and her J.D. at the Rutgers College of Law in 1974. In 2003, Ms. Potuto was selected to be on the NCAA's Division I Management Council, the chief administrative and legislative body of Division I. She is in her sixth year as a member of the Division I Committee on Infractions and her second as committee Vice Chair. At the University of Nebraska, she teaches courses on constitutional, procedural and criminal law as well as a course in sports law.

Our third witness is Dr. B. David Ridpath, Assistant Professor of Sport Administration at Mississippi State University. Dr. Ridpath is the former compliance officer at Marshall University in West Virginia.

Our fourth and final witness was to be Gary R. Roberts, Deputy Dean and Director of the Sports Law Program at Tulane Law School. Unfortunately, because of Hurricane Ivan and the fact that it has veered close to New Orleans, Mr. Roberts had to cancel at

the last moment. He has submitted written testimony, however, which will be put into the record.

[The prepared statement of Mr. Roberts follows:]

PREPARED STATEMENT OF GARY R. ROBERTS

I want to thank the Subcommittee for allowing me to share my views on a matter of significance and importance to many of America's institutions of higher learning, to hundreds of athletic coaches and thousands of student-athletes at those institutions, and to millions of fans of the athletic teams of those institutions—the procedures that the National Collegiate Athletic Association (NCAA) should be required to employ in its enforcement processes.

By way of introduction, I have been involved in litigating, teaching, speaking, and writing about sports legal issues for about 28 years. Since 1983 I have been a professor of law teaching primarily sports law, antitrust, business enterprises, and labor law at Tulane Law School, where I founded and currently direct the nation's first sports law certificate program. I was from 1995–97 the president of the Sports Lawyers Association, a 1,100-member organization of lawyers who work for or represent sports industry clients, on whose board of directors I have served since 1986. I am also the editor-in-chief of the SLA's on-line monthly newsletter, *The Sports Lawyer.* I often speak at sports law conferences, have written several major law review articles and two book chapters on sports legal matters, and along with Professor Paul Weiler of Harvard Law School I have coauthored the leading sports law textbook and supplement used in American law schools, *Sports and the Law,* published by The West Group (formerly West Publishing Company), now in its third edition. I also regularly work with and am frequently cited by the print and broadcast media on sports legal issues, and I have authored several columns in publications of wide general circulation. This is the ninth time I have appeared before a congressional committee in the last 12 years on some aspect of sports, including college sports.

Perhaps even more relevant, I am and have been for 12 years Tulane University's faculty athletics representative. In this position, I am deeply involved in a wide range of matters involving the governance and operation of both Conference USA and the NCAA as well as Tulane's compliance with NCAA rules. I have over the years served on a variety of committees within both organizations, and currently I am a member of the NCAA's Division I Academics, Eligibility, and Compliance (AEC) Cabinet. I have also become quite familiar with the NCAA's enforcement procedures by having been involved in infractions cases involving Tulane University as well as by having represented clients before the NCAA Infractions Committee. Thus, I have a great deal of both academic knowledge of and practical experience with the NCAA enforcement process.

It must be emphasized, however, that while my positions described above give me a familiarity with, and a variety of perspectives on, the matter before the Subcommittee today, I speak here only as an individual. I am not authorized to speak for or to represent Tulane University, Conference USA, the NCAA, or the Sports Lawyers Association, and the views I express here are mine alone.

I should make one additional preliminary comment. My testimony today focuses only on the process and procedures employed by the NCAA to deal with alleged violations of NCAA rules by member institutions or their employees or "representatives"—the so-called enforcement process. This, however, is only one aspect of the NCAA's overall governance effort. Processes and procedures are followed in a number of other contexts that are also crucial to the operation of the NCAA, and these too can sometimes be very highly publicized and controversial. For example, there are mechanisms for NCAA member institutions to seek and to appeal staff interpretations of NCAA rules; to request waivers of initial or continuing-eligibility rules; to petition for the reinstatement of athletes who have lost their eligibility (like in the recent highly publicized cases of Division I-A football players Jeremy Bloom from the University of Colorado and Mike Williams from the University of Southern California); to review positive drug tests and to appeal penalties for doping violations; or to seek a waiver for extraordinary circumstances from any of the thousands of NCAA rules. The procedures for each of these types of proceedings differ, and each at one time or another has been criticized for being too rigid or unfair.

I refer the Subcommittee to an article in which I have summarized these various NCAA processes,[1] although some procedures described therein have since been modified. To study and critique each of these processes here would require more

[1] Roberts, *Resolution of Disputes In Intercollegiate Athletics,* 35 VALPO. U.L. Rev. 431 (2001).

time and space than is available. My understanding is that the Subcommittee's primary interest today is in the NCAA's enforcement process, and thus it is on that to which my attention is directed here. Nonetheless, many of my general comments and conclusions about the enforcement process are equally applicable to all or most of the other NCAA governance processes as well.

I. THE NCAA'S ENFORCEMENT SYSTEM AND PROCESSES: A SUMMARY OF CONCERNS

The NCAA's enforcement process and procedures for dealing with alleged institutional infractions of its rules are set forth in Articles 19 and 32 of its By-Laws. A brief summary of this system is useful to understand the peculiarities of how it works and what might trouble critics of that system. While almost all of the attention and criticism of the enforcement process relate to the way the system handles what are called "major infractions," it is important to understand that such major infractions constitute only a small percentage of the total violations of NCAA rules by member institutions, their staff members, or athletics "representatives."

The vast majority of what the NCAA rules define as "secondary infractions" (minor breaches that do not give a violating institution any competitive or recruiting advantage[2]) are initially discovered by the institution itself, self-reported to the school's conference and the NCAA enforcement staff, and resolved administratively with minor penalties like reprimanding the offending coach or making anyone who received a small impermissible benefit repay it. There are dozens of such "technical" infractions committed by every Division I institution every year, but they have little impact on the system and attract virtually no public attention. They also virtually never give rise to any legal issues or controversy.

The far more significant rules violations, the so-called "major infractions," however, often attract great public attention, involve significant consequences for the offending institution, and give rise to substantial factual and legal disputes. In this arena, so much is often at stake that there is today a cottage industry of lawyers who make a fine living doing nothing but representing member institutions in major infractions cases.

The process is commenced when the NCAA enforcement staff is made aware of a possible major rules violation.[3] This awareness may come from many sources, including the institution itself or the news media, but more often it comes either from a "tip" from someone affiliated with another institution or from an athlete involved in the violation who has had a falling out with the coach or school and "turns state's evidence" in retaliation.[4] Regardless of the source of the information, if the enforcement staff believes after some evaluation and effort to corroborate the information that there is sufficient suspicion to take the matter further (i.e., "reasonably reliable information" that a violation has been committed), it will notify the CEO of the suspected institution in what since last year is called a "Notice of Inquiry" (an NOI—see By-law Art. 32.5) and commence a more formal investigation (NCAA By-law Art. 32.2), frequently by dispatching an investigator to talk to potential witnesses and seek any documentation that might shed light on the allegations. It may also ask the target institution to investigate the situation and make a report of its own inter-

[2] *See* NCAA By-law 19.02.2.1 ("A secondary violation is a violation that is isolated or inadvertent in nature, provides or is intended to provide only a minimal recruiting, competitive or other advantage and does not include any significant recruiting inducement or extra benefit.") Such secondary infractions are today handled almost exclusively through the violating school's conference office, with the NCAA staff playing only a minimal oversight role.

[3] The NCAA Enforcement staff is today headed by David Price, Vice President for Enforcement Services. There are under Mr. Price four Enforcement "Directors," and below them another 16 associate or assistant directors. It is worth noting here that while I do not personally know everyone on the enforcement staff, I do know Mr. Price well. In my view he is an individual of strong character who strives mightily to carry out his responsibilities with integrity, fairness, and even-handedness. My experience with both him and the entire staff convinces me that there is little or no reason to believe that the enforcement staff pursues cases for any reason other than their reasonable belief that the information available to them indicates that their actions are required or appropriate under the NCAA's rules. I believe it would be wrong and unjustified to believe that the NCAA enforcement staff acts out of animus, bias, or any personal vendettas against any individuals or institutions in carrying out its duties.

[4] In this regard, the NCAA has created a limited immunity for athletes who may have been involved in a violation, often by being the recipient of some "extra benefit" from the institution. See NCAA By-law Art. 32.3.8—**Limited Immunity**. Under this provision, the enforcement staff may give an athlete who turns "state's evidence" against an institution a waiver from being declared ineligible for athletics participation as a result of the violation he/she reports. This sometimes results in the unseemly, yet often necessary, scenario of an athlete who took money or other inducements from an institution being allowed to transfer to another school and play while innocent coaches and student-athletes at the first institution end up being penalized (e.g., barred from post-season play) because their institution has been disciplined.

nal findings. Once the enforcement staff has made whatever inquiry it believes is appropriate, it will decide whether there is sufficient cause to issue a second notice of specific rules violations, called a "Notice of Allegations" (an "NOA"—see By-law Art. 32.6). It should be noted that this system of two notices at increasing levels of enforcement staff confidence in the validity of the accusations is new, having been adopted in 2003. Previously, a more thorough investigation was conducted before any formal notice was given to the institution, which, if the evidence warranted it, was then followed by an "official letter of inquiry" (OLI) to the target institution. While there is little experience with the new dual notice process, it appears that in this new system the Notice of Allegations is roughly the procedural equivalent of the old OLI—somewhat akin to a criminal indictment.

Of course, if an NOI, or in turn an NOA, is not issued, the matter is dropped, at least for the time being. If both an NOI and then an NOA are issued, the process becomes much more formal and significant.

An institution receiving an NOA is in trouble. I have asked various former members of the NCAA enforcement staff and the Infractions Committee if there has ever been an institution that after receiving an OLI (which appears to be the rough equivalent of the new NOA) was subsequently exonerated entirely. The response I have always received leads me to conclude that while it is theoretically possible for an institution to survive receipt of an NOA (previously an OLI) with complete exoneration, no one can ever remember it happening. And if it has, it was a freak occurrence. The reality is that any institution receiving an NOA will be found guilty of some violation. Thus, an institution given official notice of allegations (i.e., "indicted") by the NCAA enforcement staff is in a very different position than many criminal defendants in a public court. The ultimate goal for the institution is virtually never to seek exoneration, but rather to convince the Committee on Infractions to impose the lightest possible penalties, often by confessing guilt, blaming the violation on an "out of control" coach or booster with whom it has severed its relationship, and imposing some penalties on itself that it thinks will be enough to satisfy the Committee.

Once an institution has completed the required internal investigation and has submitted its written report, the institution is scheduled for a hearing before the Committee on Infractions. Each NCAA Division has its own committee (which is really a quasi-judicial tribunal, not a committee in the usual sense of that word). Of course, the cases receiving the most attention arise in Division I, whose ten-member committee today is chaired by Thomas E. Yeager, the commissioner of the Colonial Athletic Association.[5]

At the Committee on Infractions hearing, the institution is entitled to representation by legal counsel, as is any allegedly implicated current or former coach and/or student-athlete (what the NCAA calls an "involved individual"—see By-law Art. 32.1.5). The hearing is closed and no one is allowed in the hearing room except the NCAA enforcement staff, a few representatives of the accused institution and its lawyer,[6] and any involved individuals and their lawyers. In the interests of saving time, hearings are limited to a few hours on a single day. First, the staff makes its presentation to support its NOA, and then each "defendant" is allowed to present a position. No witnesses are allowed except the NCAA staff, individuals representing the institutions, and directly affected coaches and student-athletes. Thus, third persons making the accusations or those who the "defendants" claim could exonerate them are not permitted to appear or to present testimony. Neither are third parties who may be implicated in the NOA as participants in the violations. Indeed, no one gives "sworn testimony." "Testimony" of third parties is given to the committee only through hearsay (or often multiple hearsay) oral reports, written transcripts, and accompanying written statements. Thus, because most of the people with personal knowledge of the relevant facts are not permitted to attend, cross-examination of "witnesses" is not possible. Rules of evidence are not followed, and

[5] The current members of the Division I Committee on Infractions are Paul Dee, athletics director at the University of Miami; Gene Marsh, a law professor from the University of Alabama; Jerry Parkinson, dean of the law school at the University of Wyoming; Josephine Potuto, a law professor from the University of Nebraska; Eugene Smith, athletics director at Arizona State University; Andrea Myers, athletics director at Indiana State University; Thomas Yeager, the commissioner of the Colonial Athletic Association; and three practicing lawyers, Alfred Lechner, James Park, Jr., and Brian Halloran

[6] NCAA By-law Art. 32.8.6.2 provides: "At the time the institution appears before the committee, its representatives should include the institution's chief executive officer, the head coach of the sport in question, the institution's director of athletics, legal counsel, enrolled student-athletes whose eligibility could be affected . . . , and any other representatives whose attendance has been requested by the committee."

whatever the committee allows will be heard. In short, the proceeding is quite informal and haphazard by judicial standards.[7]

Another way in which the proceeding is unlike a normal judicial case is that the committee is not limited to finding violations that are alleged in the NOA. If during the course of the hearing, the committee finds evidence of violations not listed in the NOA, it may rule that such violations have been committed without the institution being given the opportunity to investigate or to prepare to rebut such alleged violations and without the individuals affected by the ruling being notified or consulted. This offers yet another reason why, unlike a criminal defendant, institutions might feel constrained from aggressively seeking to use all possible objections and tactics to avoid any penalties—even in the unlikely event it proves that the charges in the NOA are without merit, there can still be a price to pay, especially if the committee becomes put off by overaggressive posturing or believes that the institution does not display a sufficiently cooperative or contrite attitude.

After the hearing, the Committee on Infractions issues its written findings and imposes penalties. At this point the institution can either accept the decision and penalties of the Committee on Infractions or it may appeal to the five-member Infractions Appeals Committee, which in Division I is currently chaired by Terry Don Phillips, director of athletics at Clemson University.[8] Since its inception in the early 1990s, this committee has been surprisingly independent and assertive in reversing some Committee on Infractions findings and reducing penalties, although it has never exonerated an institution that the Infractions Committee has found to have committed one or more violations. This has undoubtedly had a significant influence on the Committee on Infractions, whose unfettered discretion is now subject to meaningful oversight and possible reversal.

The Infractions Appeals Committee's decision is final and unappealable to any further body within the structure of the NCAA (see By-law Arts. 32.11.4 & 32.11.5).

This NCAA enforcement process has come under much criticism, much of it understandable, yet generally unjustified. Examples of aspects of the enforcement process that have come under such criticism include the following:

- In almost every case, the incriminating evidence against the accused institution and individuals is presented to the Infractions Committee through narrative accounts by the enforcement staff, backed up by written transcripts of interviews and signed statements. The first-hand witnesses, including the "accusers," are not allowed to attend the hearing or to give testimony even if they want to, no matter how crucial their testimony is to the case. Thus, the accused institution and involved individuals have no ability to confront or to cross-examine the witnesses against them, or to present witnesses in their defense. Audio or video tape recordings of the interviews of first-hand witnesses are not allowed to be played at the hearing so voice inflection, body language, or even context cannot be evaluated by the Infractions Committee.
- Although the incriminating evidence against the accused institution and involved individuals is presented in an oral report by an enforcement staff investigator, counsel for the "defendants" do not have a right to ask questions directly of (i.e., cross-examine) even that investigator.
- Although there is a four-year statute of limitations (see By-law Art. 32.6.3), the exceptions to the rule effectively eviscerate it.[9] Thus, penalties are often handed down many years after the violation and frequently end up adversely

[7] *See generally* NCAA By-law Art. 19 & Administrative By-law, Art. 32. Generally, the Committee on Infractions is empowered to establish its own rules of evidence and procedure for the conduct of the hearing. *See* By-law Art. 32.8.7. Most of this procedure is not set forth in any published document and is subject to change at any time by the Committee, including during the conduct of a hearing itself.

[8] Current Members of the NCAA Division I Infractions Appeals Committee are Terry Don Phillips, athletics director at Clemson University; William Hoye, faculty athletics representative from Notre Dame University; Noel Ragsdale, a law professor at and the faculty athletics representative for the University of Southern California; Alan A. Ryan, Jr., in-house counsel for Harvard University; and Christopher Griffin, a practicing lawyer.

[9] These exceptions are: "(a) Allegations involving violations affecting the eligibility of a current student-athlete; (b) Allegations in a case . . . of willful violations on the part of the institution or individual involved, which . . . continued into the four-year period; and (c) Allegations that indicate a blatant disregard for the Association's fundamental recruiting, extra-benefit, academic or ethical-conduct regulations or that involve an effort to conceal the occurrence of the violation." NCAA By-law Art. 32.6.3. Suffice it to say that the great majority of major violations fall within one of these categories, especially since they invariably involve some type of willful violation and/or an effort to conceal the violation.

impacting primarily coaches and student-athletes who were not at the institution at the time of the violations and are innocent of any wrongdoing.

- The Committee on Infractions is allowed to find violations of rules and impose penalties even for transgressions that were not alleged in the NOA. Thus, institutions, coaches, or student-athletes can be found to have violated rules with serious adverse consequences even though they have been given no notice of any such charge against them and have not had any opportunity to investigate or to prepare a defense. I have no data as to how often this actually occurs, but the mere possibility that it might can and does at least occasionally deter "defendants" from defending the charges in the NOA as vigorously as they might.
- An institution's or a staff member's failure fully to self-report any violation that they knew or should have known about (i.e., to turn yourself in) and that the enforcement staff subsequently determines occurred is itself considered a breach of the rules that can compound the severity of the penalty imposed.[10] Thus, the notion embedded in the Fifth Amendment of the U.S. Constitution that a person does not have to incriminate himself is given no recognition in the NCAA enforcement process.
- A school that allows an athlete to play in an athletic contest pursuant to a court order requiring it to do so, but the athlete is later determined by the courts and the NCAA to have been ineligible, may still be penalized by the NCAA's Division I Management Council in any of a variety of substantial ways "in the interest of restitution and fairness to competing institutions."[11] This remarkable procedure, under which an institution can be severely penalized for doing only that which a court has ordered it to do, has nonetheless been employed on several occasions and has been found by the courts to be a lawful exercise of regulatory authority for a sports governing organization.[12]

Other examples could be cited. It is sufficient here simply to make the point that in many significant ways the NCAA enforcement process employs methods or procedures that seem quite at odds with basic rights of accused individuals or notions of fundamental fairness that Americans have come to take almost for granted—rights involving due process, equal protection, privacy, freedom from unreasonable searches and seizures, the right to confront one's accuser, the right not to be forced to incriminate oneself, and perhaps others. This fact, however, does not necessarily lead to any overall conclusion about the reasonableness of the NCAA's process or whether Congress or the courts should as a policy matter impose greater requirements on the NCAA. My own view, which I will expand on more in Part III of this statement, is that while the government should strongly encourage the NCAA to invest substantially more of its immense financial resources into creating a more substantial and more professional enforcement process, it would be unwise and do far more harm than good to impose traditional notions of fairness appropriate for the criminal justice system on the NCAA.

II. CURRENT LEGAL CONSTRAINTS ON THE NCAA'S ENFORCEMENT PROCESS

Prior to the early 1980s, the NCAA was generally considered to be a state actor and thus its rules and actions were subjected to judicial review under traditional constitutional standards. Usually, the NCAA was able successfully to persuade

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[10] NCAA By-law Art. 32.1.4 is captioned **"Cooperative Principle"** and states: "The cooperative principle imposes an affirmative obligation on each member institution to assist the NCAA enforcement staff in developing full information to determine whether a possible violation of NCAA legislation has occurred and the details thereof." Art. 32.2.1.2, captioned **"Self-Disclosure by an Institution,"** then provides: "Self-disclosure shall be considered in establishing penalties, and, if an institution uncovers a violation prior to its being reported to the NCAA and/or its conference, such disclosute shall be considered as a mitigating factor in determining the penalty."

[11] NCAA By-law Art. 19.7, captioned **"Restitution,"** provides: "If a student-athlete who is ineligible under the terms of the constitution, by-laws, or other legislation of the Association is permitted to participate in intercollegiate competition contrary to such NCAA legislation but in accordance with the terms of a court restraining order or injunction operative against the institution attended by such student-athlete or against the Association, or both, and said injunction is voluntarily vacated, stayed or reversed or it is finally determined by the courts that injunctive relief is not or was not justified, the Management Council may take any one or more of the following actions against such institution in the interest of restitution and fairness to competing institutions: [list of nine categories of penalties is omitted]."

[12] See, e.g., *NCAA* v. *Lasege,* 53 S.W.3d 77 (Ky. 2001). For recent cases upholding an identical rule of a state high school governing body, see *Indiana High Sch. Athletic Ass'n* v. *Martin,* 765 N.E.2d 1238 (Ind. 2002); *Indiana High Sch. Athletic Ass'n* v. *Reyes,* 694 N.E.2d 249 (Ind. 1997).

courts that its procedures were adequate under due process standards,[13] or that the rights being asserted by plaintiff athletes were not constitutionally protected property rights in the first place.[14] Occasionally, the courts found that eligibility to play college sports was a protected property right and that the NCAA had failed to meet constitutional safeguards,[15] but this was the exception. However, after the Supreme Court's "state action" trilogy in 1982,[16] the Fourth Circuit clearly reversed course in *Arlosoroff* v. *NCAA,* 746 F.2d 1019 (4th Cir. 1984), by holding the NCAA to be a private actor immune from constitutional attack in a case brought by a prospective student-athlete at Duke University, a private institution. But even after *Arlosoroff,* many still believed that this view was either an aberration or was limited to cases involving only private universities.

The Supreme Court put an end to this confusion in 1988 in the highly publicized case of *NCAA* v. *Tarkanian,* 488 U.S. 179 (1988). In a 5 to 4 decision written by Justice Stevens[17] in a case involving NCAA disciplinary action for numerous major infractions by University of Nevada at Las Vegas men's basketball coach Jerry Tarkanian, the Supreme Court held that the NCAA was not a state actor and thus was not subject to having its rules or decisions challenged for alleged violations of constitutional due process (and logically of equal protection, free speech, unreasonable searches and seizures, privacy, and all other rights provided for in the Bill of Rights of the U.S. Constitution). Because the case involved an employee of a state university, the scope of the *Tarkanian* ruling was sweeping, and since then it has been universally accepted that NCAA rules and conduct are beyond the reach of the U.S. Constitution.[18]

The Supreme Court reaffirmed this ruling in 2001 in Brentwood Academy v. Tennessee Secondary School Athletic Ass'n, 531 U.S. 288 (2001), another 5–4 decision,[19] even though ironically the majority there held that a state high school athletic association whose membership was 84% public high schools was a state actor and could be challenged for violating a member school's First Amendment free speech rights. Justice Thomas' dissent argued that "it [was] not difficult to imagine that application of the majority's entwinement test could change the result reached in [*Tarkanian*], so that the National Collegiate Athletic Association's actions could be found to be state action" (see id. at 314, fn.7). However, writing for the majority, Justice Souter expressly adopted the holding and reasoning in *Tarkanian*, distinguished the two cases, and reaffirmed that the NCAA was not a state actor and its actions not subject to constitutional review (see *id.* at 297–98). Thus, the narrow 5–4 holding in *Tarkanian* was expanded and entrenched since all nine justices in *Brentwood Academy* took the view that the result in *Tarkanian* was intact and correct.

In addition to being immune from attack under the U.S. Constitution, the NCAA is apparently also immune from state constitutional or statutory provisions establishing due process and other similar constitutional-like protections. Shortly after *Tarkanian*, at least four states (Nevada, Nebraska, Illinois, and Florida) adopted legislation that specifically required the NCAA to grant various degrees and types

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[13] See, e.g., Regents of the Univ. of Minnesota v. NCAA, 560 F.2d 352 (8th Cir. 1977); Howard Univ. v. NCAA, 510 F.2d 213 (D.C. Cir. 1975); Justice v. NCAA, 577 F.Supp. 356 (D.Ariz. 1983).

[14] See, e.g., Colorado Seminary v. NCAA, 417 F.Supp. 885 (D. Colo. 1976), aff'd, 570 F.2d 320 (10th Cir. 1978).

[15] See, e.g., Hall v. NCAA, 530 F.Supp. 104 (D.Minn. 1982).

[16] These decisions were in Rendell-Baker v. Kohn, 457 U.S. 830 (1982); Lugar v. Edmondson Oil Co., Inc., 457 U.S. 922 (1982); and Blum v. Yaretsky, 457 U.S. 991 (1982).

[17] In the majority were Justices Stevens, Blackmun, Rehnquist, Scalia, and Kennedy. Dissenting were Justices White, Brennan, Marshall, and O'Connor. Notable is that the division among the justices was not along normal ideological lines, with some "liberals" and "conservatives" on each side.

[18] It remains a legal mystery exactly what would happen if a coach were fired by a state university at the direction of the NCAA and then successfully established that the university, unquestionably a state actor subject to constitutional requirements, had violated his due process or other constitutional rights. If the court merely ordered damages to be paid, it would not be a conceptual problem. But if the court ordered the institution to rehire the coach, the school would be put between the proverbial rock and a hard place—being threatened with contempt of court if it did not reinstate the coach but with severe sanctions, possibly expulsion, by the NCAA if it did. This scenario has not yet played itself out so it is not clear what approach the courts would take.

[19] In the majority were Justices Souter, Stevens, Ginsberg, Breyer, and O'Connor. Dissenting were Justices Thomas, Rehnquist, Scalia, and Kennedy. Notable is that the division among the justices was sharply along normal ideological lines, with Justice O'Connor casting her frequent swing vote in this case with the "liberals" in the majority.

of due process to individuals and institutions accused of violating NCAA rules.[20] When in 1990 the NCAA received information that Jerry Tarkanian had again violated its rules and Tarkanian in turn demanded in a letter that he be given a number of procedural rights not provided for under the NCAA's rules, including access to a number of documents, the NCAA challenged the Nevada statute in a declaratory judgment action filed in Las Vegas. Both the District Court and in turn the Ninth Circuit, relying on several cases that had struck down state laws designed to regulate professional sports leagues,[21] held that it violated the Dormant Commerce Clause of Article II of the U.S. Constitution for a single state to attempt to set the standards for NCAA rules and procedures when those rules and procedures necessarily have to be applied uniformly nationwide, as most NCAA rules do due to the inherent nature of the athletic competition activity that it regulates. Accordingly, Nevada's statute (and of course the other states' as well, assuming their circuits would agree with this ruling) was held to be unconstitutional and could not be enforced against the NCAA.[22] See *NCAA* v. *Miller,* 795 F.Supp. 1476 (D. Nev. 1992), *aff'd,* 10 F.3d 633 (9th Cir. 1993).

Thus today, after *Tarkanian, Brentwood Academy,* and *Miller,* it seems reasonably clear that, except to the limited extent federal legislation might apply,[23] the NCAA's enforcement process and procedures are unconstrained by either federal constitutional or state law. Thus, the question for Congress to consider is whether it would be appropriate for new federal legislation to impose any procedural requirements on the NCAA, and if so, what those requirements should be.

III. THE IMPLICATIONS OF IMPOSING STRICTER PROCEDURAL REQUIREMENTS ON THE NCAA ENFORCEMENT PROCESS

In order fully to understand and appreciate the NCAA's process and procedures for enforcing its complex array of substantive rules governing eligibility, recruiting, academic standards, and amateurism (the "enforcement process"), it is first necessary to understand the larger culture in which those procedures exist and operate. The NCAA enforcement process is simply the mechanism for enforcing the substantive rules that govern intercollegiate athletics, and it can only be understood in the context of that underlying "law." The degree of difficulty of enforcing these rules cannot be overstated, in significant part because the idealized purpose and vision of intercollegiate athletics that the NCAA's substantive rules purport to preserve stand in stark contrast to the commercial market realities that dictate the priorities and create the behavioral incentives for those operating within this system. In other words, the market-driven commercial and psychic incentives for coaches, athletic administrators, boosters, and even university presidents and faculty to "cheat" are enormous. In such an environment, where the urges of so many within the system to violate the rules are great, yet the "law enforcement powers" of the entirely private organization entrusted with enforcing those rules are very limited, it requires extraordinary authority, vigilance, and aggressiveness to prevent wholesale disregard for the "law," chaos, and eventually the deterioration of the system itself.[24]

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[20] For a brief look at the differing approaches of the Nebraska and Nevada statutes, see Weiler & Roberts, *Sports and the Law* (3d ed.) at pp.757–58 (West Group 2004).

[21] See, e.g., cases holding that state antitrust laws cannot apply to professional sports leagues—*Flood* v. *Kuhn,* 407 U.S. 258, 284 (1972); *Partee* v. *San Diego Chargers Football Co.,* 34 Cal.3d 378, 194 Cal.Rptr. 367, 668 P.2d 674 (1983); *State of Wisconsin* v. *Milwaukee Braves,* 31 Wisc.2d 699, 144 N.W.2d 1 (1966); *Matuszak* v. *Houston Oilers,* 515 S.W.2d 725 (Tex.Ct.App. 1974); or holding that state labor laws cannot apply to professional sports leagues—*Hebert* v. *Los Angeles Raiders,* 2 Cal.Rptr.2d 489, 820 P.2d 999 (Cal.App. 1991).

[22] Interestingly, in the wake of a recent controversial investigation involving the University of Alabama's football program, the Collegiate Athletic Association Procedures Act was introduced in the Alabama House of Representatives in 2003. It would require that the NCAA provide due process to any Alabama institution accused of rules infractions and would give the Alabama state courts jurisdiction to review NCAA findings and penalties. Unless the Eleventh Circuit takes a different view of this issue than the Ninth Circuit did in Miller, this legislation, should it pass, would likely suffer the same fate as Nevada's did over a decade ago.

[23] So, for example, the NCAA arguably could, if threshold statutory elements are met, still be subject to the substantive requirements of the Americans With Disabilities Act, the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, or the antitrust laws, just to name a few. While the NCAA has been sued for alleged violations of all of these federal statutes in recent years, none of the cases remotely implicates the NCAA's process or procedures for dealing with alleged rule infractions by member institutions, and it is hard to imagine a case in which one would.

[24] There are many who would argue that the "system" of big-time intercollegiate athletics has become so corrupt, exploitive, and hypocritical that it is not worth protecting. Whatever the merits of that larger philosophical argument, it is not relevant to an assessment of the fairness of the enforcement process established for the purpose of preserving the system. One can only rea-

It should be noted that for purposes of my testimony today, I am specifically focusing on Division I-A football and Division I men's basketball. I am aware that the vast majority of college athletes do not play for NCAA Division I member schools, and that even in Division I the vast majority of athletes do not play I-A football or I men's basketball. But to a greater or lesser extent, the overwhelming majority of these thousands of student-athletes in all of their various sports roughly resemble the amateur ideal of the student-athlete that the NCAA is entrusted to preserve, and while there are still some psychic, reputational, and even financial incentives for coaches and others in these other sports and divisions to violate the rules, they exist at a much lower level with very little commercial or public influence. Thus, a great majority of the serious violations of NCAA rules, of the time and effort of the NCAA's enforcement staff, and the public and media attention on infractions occurs in the two sports of I-A football and I men's basketball. And it is not mere coincidence that these two enormously commercialized sports generate a huge percentage of intercollegiate athletic revenues. If it were not for I-A football and I men's basketball, the process and procedures that we are discussing today would be little noticed, would probably work well without controversy, and would draw no interest from Congress. So it is on I-A football and I men's basketball that I focus here.

As I have often said and written before, the intercollegiate sports "industry" is a peculiar animal. On the one hand, the statement of the NCAA's "Fundamental Policy" claims that:

> The competitive athletics programs of member institutions are designed to be a vital part of the educational system. A basic purpose of this Association is to maintain intercollegiate athletics as an integral part of the educational program and the athlete as an integral part of the student body and, by so doing, retain a clear line of demarcation between intercollegiate athletics and professional sports.[25]

On the other hand, multi-billion dollar television contracts for the Division I men's basketball tournament (known as "March Madness"), over $15 million payouts to each team participating in a Bowl Championship Series football game every year, and the frequent revelations of academic cheating, paying athletes and their families, using sex and drugs to recruit, criminal rap sheets, and illiterate "student"—athletes suggest a very different reality. Division I-A football and I men's basketball are big business, and the economic, morale, and public relations consequences for an institution of success or failure on the field or court are substantial. Winning head football and men's basketball coaches today routinely make millions of dollars,[26] whether or not most of their players fail to graduate, commit major crimes, or can even read or write. On the other hand, it is generally accepted and understood that a coach who loses too many games will soon find himself unemployed no matter how successful he is in running a "clean" program.

Thus, with so much at stake, there are enormous incentives for "revenue sport" coaches and others to do as much as possible to gain a competitive advantage, even if that means breaking an NCAA rule. There is no doubt that the incentives to cheat are great, the opportunities to cheat are numerous, the likelihood of getting caught appears to be fairly small, and every institution is suspicious that its competitors are "getting away with something" and thereby gaining some competitive advantage. It is this environment that the NCAA is charged with adopting and enforcing its complex set of rules designed to preserve the ideal of the amateur student-athlete. This is obviously no easy task.

The task is made even more difficult by the fact that the NCAA is a private organization, and thus it lacks the authority to employ important investigative and prosecutorial techniques available to public law enforcement and criminal justice authorities. It has no power to compel individuals to provide information. It cannot subpoena witnesses to attend depositions or hearings. It cannot hold individuals in contempt for not complying with its procedural rules or requests. It cannot impose fines or imprison individuals who violate the rules or lie. It cannot arrest or detain anyone. It cannot grant anyone immunity from criminal prosecution should his "testimony" reveal illegal activity. In short, as a purely private membership organiza-

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sonably assess the fairness and effectiveness of any process by evaluating it in terms of how it achieves the goals for which it was established, not whether the goals were legitimate in the first place.

[25] NCAA Constitution, Art. 1.3.1.

[26] A perfect example is in my home state of Louisiana. Because his team won the BCS national championship last year, LSU's football coach Nick Saban was rewarded by having his contract renegotiated so that he is now earning $2.3 million in 2004, with increases over the next several years to $3.0 million annually.

tion, the NCAA must rely entirely on the voluntary cooperation of those who have relevant information to provide that information, and its only "power" is the ability to withhold or condition the benefits of membership.

Thus, the NCAA enforcement process necessarily must try to carry out its mission in an environment in which the deck is heavily stacked against it. Furthermore, it is critical to recognize that, just like with any public criminal justice system, no process for ascertaining facts, determining guilt, and handing out punishment is perfect. Even with our criminal justice system and all of its constitutional protections for defendants, we often read about convicted "criminals" being released from prison, sometimes from death row, after many years of incarceration because new evidence has established their innocence. Over the years many people have been falsely accused and often convicted of crimes that they did not commit, just as many guilty individuals have escaped justice. Thus, it is pointless to ask if the NCAA's system is imperfect, for it inevitably is and will be. No matter how much power is entrusted to enforcement authorities and how few protections are given to the "accused," some who are guilty will escape; and no matter how many rights are guaranteed, some who are innocent will be unjustly accused and perhaps even found guilty. Rather, the appropriate question is how should the NCAA structure its process to minimize both the false positives (those wrongfully accused or found guilty) and the false negatives (those guilty of violations who escape punishment), and thereby deter further wrongdoing, while maintaining an acceptable balance between those two undesirable but inevitable dysfunctions.

In that context, I emphasize two points. First, like the Lee Commission over a decade ago,[27] I believe that there are things the NCAA can do to improve the fairness, or at least the appearance of fairness, of its enforcement system, provide greater procedural protections for institutions and involved individuals, and reduce the chances of a false positive without seriously undermining its ability to enforce its rules effectively and thereby deter even more rampant misconduct. This, however, would require that the NCAA invest additional resources in its enforcement system, as I will urge and explain shortly. But with billions of dollars flowing through Division I college athletics, the level of expenditure needed to upgrade the enforcement process to an appropriate level would be a relatively tiny investment in order to achieve fairness, justice, and public confidence in the system.

That said, however, I also am firmly convinced that while some of the procedures employed by the NCAA seem rather severe and out of step with traditional American notions of due process and fairness, in fact the NCAA's enforcement process is remarkably accurate. It seldom wrongfully accuses and even more rarely mistakenly "convicts." That is to say, there are very few false positives. There is occasionally controversy about whether a penalty imposed is inappropriately severe, but it is extremely rare that there is any serious doubt about whether a violation has been committed. I believe that this is true in part because the enforcement staff has little or no incentive to pursue false charges against anyone; if anything there is an opposite incentive not to pursue any but the most clear cases simply because of the public pressure and vilification that is often heaped on those who threaten popular athletic programs. Furthermore, often unlike public prosecutors, members of the enforcement staff are not in a position to use the process to build a reputation or career. They are generally young, notoriously poorly paid, have no axe to grind, and invariably toil anonymously and out of the public eye. There is almost no evidence, other than the occasional unsubstantiated accusations of undoubtedly "guilty" coaches who are desperately trying to save their privileged status and large incomes, suggesting that the enforcement staff has ever acted in anything but reasonably cau-

[27] In the wake of the *Tarkanian* and *Miller* cases, the NCAA came under a great deal of public criticism for the methods it used in the enforcement process, which in turn led NCAA Executive Director Dick Schultz in April 1991 to bring together a group of distinguished individuals, chaired by President Reagan's Solicitor General, Rex Lee, to study and make recommendations for improving the enforcement process. This Lee Commission issued its report on October 28, 1991, with eleven recommendations. Many of the recommendations have subsequently been adopted to a greater or lesser extent by the NCAA, for example (1) establishing a preliminary notice of impending investigation (the NOI), (2) establishing a summary disposition procedure in appropriate major infractions cases (see By-law Art. 32.7), (3) establishing an appellate body (now the Infractions Appeals Committee), and (4) expanding the extent to which decisions of the Committee on Infractions are publicly reported, and (5) establishing a conflict of interest policy for members of the enforcement staff (see By-law Art. 32.2.2.2). Other recommendations have either entirely or largely not been adopted, most notably (1) to establish a group of neutral former judges as hearing officers entrusted with resolving factual disputes before the Infractions Committee decides penalties, and (2) opening up the Infractions Committee hearings to the public except when highly confidential matters are being presented. See generally, *Report and Recommendations of the Special Committee to review the NCAA Enforcement and Infractions Process* (The *Lee Commission*), October 28, 1991 (on file in my office).

tious good faith. The staff, being generally young and frequently inexperienced, is certainly not perfect and can undoubtedly make mistakes, but the mistakes seem to be relatively few (far less than those made in our criminal justice system) and always made in good faith.

Given that there are very few "wrongful convictions," giving accused institutions and involved individuals more procedural protections would produce virtually no greater justice.[28] On the other hand, giving accused institutions and involved individuals significantly greater procedural rights in some forms might well enable many to escape "conviction" based on what we have come to think of as technicalities—factors not really having anything to do with the innocence or guilt of the defendant—which would in turn likely cause more to violate rules because of a greater sense of impunity. Thus, imposing more stringent procedural obligations on a small and generally inexperienced staff and on the all-volunteer Infractions Committee would likely do far more damage than good by increasing significantly the number of false negatives, and thereby encourage even more violations, while not reducing the essentially non-existent false positives. In a system in which the incentives and opportunities to cheat are already enormous, this shift in favor of more false negatives and a lesser deterrent against misconduct could have a serious adverse effect on the integrity of the college athletics industry (such as it is).

As an example, if the law were to require that accused institutions and individuals have the right to cross-examine those who provide evidence against them and preclude the use of hearsay evidence, it would severely diminish the ability of the system to find and to penalize violations. Witnesses with personal knowledge of violations are frequently young, poor, and unfamiliar with legal processes who would often decline to cooperate rather than be subjected to interrogation and inevitable public scrutiny.

Another example relates to the "Restitution Rule" under which the NCAA can penalize an institution for allowing an ineligible player to participate even if it did so under a court order. While this seems fundamentally unfair at first blush, on closer analysis its value becomes apparent. If an institution were not subject to penalties in such a situation, coaches could recruit a number of ineligible players, seek short-term injunctions just before important contests from local judges who often act out of partisan or parochial interests, and then allow the player to participate to the substantial competitive advantage of the team (and unfair disadvantage to its opponents), all without any fear of subsequent penalty when the appellate courts inevitably reverse the injunction. This has been the reasoning of the courts that have uniformly upheld the legality of the Restitution Rule—that the NCAA members voluntarily agreed to be subject to it and without it schools could easily obtain unfair competitive advantage through dishonorable means.[29] Thus the rule may seem unfair on the surface, but it is important to preventing a means for wholesale evasion of the NCAA's eligibility rules.

IV. Recommendations

In the final analysis, the most fundamental problem confronting the NCAA enforcement process is the inevitable one of trying to enforce a complex set of rules designed to preserve aspirations that are at odds with reality. Division I-A football and Division I men's basketball are businesses driven by commercial pressures and incentives. Winning is of great value and is rewarded; losing is problematic and is punished. Yet in every game one team must win and one must lose, so there will always be huge pressures on every institution to achieve the former and avoid the latter, even though inevitably there will always be losers and few champions. History teaches repeatedly that while "higher values" can be imposed by law up to a point, when market forces become great enough, law-breaking will become widespread and the laws will become increasingly difficult to enforce.[30] Therefore, the one clear way to reduce the cheating and to improve the fairness of the enforcement process is to reduce the commercial pressures that today drive Division I intercollegiate athletics and define its "win at all costs" culture. I could make several recommendations in this vein for "cleaning up" college sports, such as capping coaches'

[28] One might envision that giving accused institutions and individuals more leeway in presenting evidence and challenging the credibility of the evidence against them might result in the Infractions Committee imposing less severe penalties. Of course, whether that would be more or less appropriate would be a wholly subjective judgment and not susceptible to normative evaluation. Thus, I mention it only in passing here.

[29] See cases cited at n.12, *supra*.

[30] There is perhaps no better example of this phenomenon than the Eighteenth Amendment to the U.S. Constitution, which imposed a ban on the manufacture, sale, or consumption of alcoholic beverages. The market demand for such beverages was so enormous that the law simply could not be effectively enforced and it was repealed by the Twenty-First Amendment. Moral principles were eventually forced to give way to economic reality.

salaries, capping expenditures for recruiting or prohibiting recruiting altogether (as many high school associations do), limiting the revenues and number of TV appearances for a football or basketball team, and/or requiring athletic revenue to be widely shared among all schools in Division I. Such reforms, however, would be counter to the interests of the millions of fans who now "consume" college athletics as an entertainment product, and implementing them would require either direct government regulation or at least an antitrust exemption for the NCAA. But such sweeping reform of college sports is beyond the scope of this hearing and is likely politically unrealistic.

Focusing just on the NCAA's enforcement process, I would not recommend that Congress pass legislation imposing due process requirements, either generally or specifically, on the NCAA. Turning over the regulation of the NCAA enforcement process to courts that are unfamiliar with the peculiar culture of Division I athletics, courts that are invariably located in the very communities where passions in any particular case will run the highest, would only serve to undermine the NCAA's ability to enforce its rules and maintain some semblance of conformity with the values and mission of college sports. It would almost certainly greatly increase the number of rules violators who are able to escape detection and penalty while not decreasing the number of innocent institutions and individuals who are wrongfully accused and punished.

Nonetheless, I do believe that the enforcement process could be significantly improved in ways that would both result in more "convictions" of guilty parties while also enhancing fairness and the public's confidence in the integrity of intercollegiate athletics. But the key to these improvements is not specific legal mandates, but rather increasing the NCAA's investment in the process so as to create a larger, better, and more professional enforcement system. An enforcement staff of only 21 mostly young, inexperienced, and lowly paid investigators to police well over a thousand institutions employing tens of thousands of coaches who recruit hundreds of thousands of student-athletes, in a climate where there are substantial incentives to cheat, is grossly inadequate. Furthermore, the high rate of turnover among the staff, undoubtedly in part the result of relatively low compensation, diminishes its effectiveness. Were there to be a substantially larger and more stable and highly paid professional staff of experienced investigators, the likelihood of detecting violations would be greater, the confidence of everyone in the thoroughness and reliability of investigations would be greater, and the need to rely on "rats," to cut corners, and to employ questionable tactics would be greatly diminished.

Furthermore, I believe that both the Committee on Infractions and the Infractions Appeals Committee in Division I should be composed of paid professional jurists—not necessarily current or former public judges, but highly respected individuals with training in law and dispute resolution whose motives, knowledge, and skill could not reasonably be doubted. These two crucial committees are really adjudicatory "courts," not "committees" in any normal sense of that word, and staffing them with volunteers who come solely from within the NCAA system is not appropriate. Because the members of the Infractions Committee have limited amounts of time they can devote to this "volunteer" activity, hearings must be streamlined and cut shorter than they need to be or should be. And because the committee members are not trained or experienced adjudicators, implementing more complex procedural processes would be difficult for them to manage. There is no good reason why witnesses, especially crucial witnesses, who are willing to attend and testify at a hearing should be prevented from doing so, as they are now, other than that the proceedings would become longer and more complicated, taxing both the time and judicial skills of the volunteer judges. Other procedures employed during hearings seem designed solely to create efficiency, not a better result or more confidence in the fairness of the process, and could be improved if the "judges" were paid, experienced, properly trained, and available for however long was required. While I am unaware of any current or former member of either committee who has ever acted with any but the highest degree of integrity and good faith, this is not their primary job or even an important part of their professional careers. Without casting any aspersions on anyone who has served on either of these committees, the old adage that "you get what you pay for" seems particularly apt.

Thus, I would recommend that Congress urge and even pressure the NCAA to invest far greater resources into its enforcement process, including expanding the size and improving the compensation of the enforcement staff and establishing a "judiciary" of paid and properly trained "judges." The NCAA is and always has operated its enforcement process "on the cheap" despite having huge resources at its disposal, and the process predictably suffers as a result. Congress should use its influence to change this and to require the NCAA to make enforcement one of its highest priorities. If it does, the specific ways that the procedural rules could be made more

fair without sacrificing the effectiveness of the process would, I am convinced, naturally follow.

One final recommendation I would make is rather radical, but compelling. I believe Congress should fully explore and structure a mechanism for the NCAA enforcement staff to obtain search warrants and subpoenas from federal courts, which would enable it to obtain evidence and compel testimony from reluctant or unwilling individuals under penalty of perjury. Likewise, if witnesses could be compelled to appear and testify under oath before the Committee on Infractions, many of the impediments to providing institutions and involved individuals with greater procedural rights and protections would be greatly diminished since witnesses would not have to be coddled with promises of being insulated from exposure or cross-examination. If, as the mere fact that the Subcommittee is holding this hearing suggests, NCAA enforcement action can have substantial consequences that economically and psychologically affect a large segment of the general public, then public policy would be furthered by providing these basic law enforcement tools to those who are entrusted with enforcing the NCAA's rules.

V. Conclusion

While there are many aspects to the NCAA's enforcement of its rules that are often criticized for being unfair or that violate some traditional sense of due process or other fundamental rights of the "accused," I do not share that general criticism. There are indeed many specific procedures employed during the course of an NCAA infractions case that could make the process at least appear, if not actually be, more "fair," but in the end there is no evidence to suggest that the NCAA's enforcement system is fundamentally flawed or makes major mistakes. Wrongful convictions are extremely rare and the penalties assessed are remarkably predictable and consistent. In the cultural environment in which the enforcement process operates in Division I, most of the seemingly questionable measures and procedures employed can be quite reasonably justified. In I-A football and I men's basketball, the commercial incentives and opportunities to cheat are enormous, the likelihood of detection is slight, and proving violations can be quite difficult. To impose judicially enforceable due process or other strict procedural requirements on the enforcement staff or the Infractions Committee as they are constituted today would only be likely to diminish their ability to detect, "convict," and penalize violations that if allowed to become widespread and unpunished could undermine the entire structure of intercollegiate athletics. Furthermore, creating such a legal obligation would give all those found guilty of rules violations a guaranteed avenue of further appeal to the courts, which would impose both time and financial costs on the NCAA, undermine the effectiveness of its enforcement system, and further burden public courts that are already strained. If reducing the number of frivolous lawsuits is desirable, this would not be a way to achieve it.

Meaningful positive reform of the enforcement process would require much more than simply imposing "due process" or other simple-sounding requirements on the NCAA. The NCAA could and should be pressured to make a substantially increased investment of resources in its enforcement process. First the NCAA should greatly increase both the size and the compensation of its enforcement staff so as to enable a larger and more stable and experienced investigative staff more effectively to detect, pursue, and prove rule violations without resort to unnecessary short-cuts or questionable tactics. Second, the NCAA should establish in Division I a paid professional administrative "court" to replace the all-volunteer Committee on Infractions and Infractions Appeals Committee so that properly trained and experienced jurists could devote the necessary time, skill, energy, and attention to judging every case thoroughly and fairly. The NCAA has historically carried out its extraordinarily important enforcement function by devoting precious few of its enormous financial resources to it, and inevitably in this environment corners must be cut and the appearance of fairness compromised for the sake of efficiency. Congress should insist that the NCAA substantially increase its financial investment in and commitment to its enforcement process.

Finally, Congress should also consider establishing a mechanism for the NCAA enforcement staff and Infractions Committee to obtain warrants and subpoenas so that evidence could be obtained and testimony taken under penalty of perjury. Armed with such law enforcement tools, policed by a large and well paid investigative staff, and heard by a "court" of properly trained professional "judges," there is every reason to believe that the NCAA's enforcement process would be even more effective than it currently is at detecting and penalizing violations of its rules while maintaining an eminently fair and just (albeit inevitably imperfect) process.

Mr. CHABOT. I would also note that, without objection, all Members will have 5 legislative days to submit additional materials for

the hearing record; and it is the practice of this Committee to swear in all witnesses appearing before it. So if the witnesses would please stand and raise your right hand.

[Witnesses sworn.]

Mr. CHABOT. We do have a lighting system here, as you might have noted. There are two boxes on the desk there, and each witness is allowed 5 minutes to testify. When 4 minutes have gone by, a yellow light will come in and tell you that you have 1 minute to wrap up. When the red light comes up, we'd appreciate you wrapping up. We appreciate you trying to stay within the 5-minute rule. And then the Members of the panel will have 5 minutes to question each of the witnesses.

Mr. CHABOT. And we will begin with you, Mr. Bloom, if you would testify for 5 minutes.

TESTIMONY OF JEREMY BLOOM, U.S. OLYMPIC SKIER AND FORMER UNIVERSITY OF COLORADO FOOTBALL PLAYER

Mr. BLOOM. Distinguished Members, I'm honored to testify in front of you today. I'm a former student-athlete, and I intend to give you a perspective into personal experience with the current procedures and practices of the NCAA.

The current procedural system for a student-athlete to dispute interpretations of the NCAA bylaws is flawed. In the United States, when there is a conflict, a dispute or disagreement between two parties, fairness is ultimately judged by our peers or by impartial court proceedings. In the NCAA, the judgment of the dispute is formed exclusively within their organization by their own members. They are the judge, the jury and the executioner; and although they may be a voluntary organization for the institutions, they don't give the student-athlete much of a choice but to become a member. For instance, if any person decides to play professional football, they effectively must take part in the NCAA.

In the current system, a student-athlete must allow his or her university to plead the case of the student-athlete to the very members at the NCAA who disagree with them. It is not rational to believe that the procedures that are subject to bias can produce just and impartial decisions. When the NCAA does rule against a student-athlete, the student-athlete's ability to appeal their decision is flawed as well.

In my own experience, I argued my appeal with the NCAA's Reinstatement Appeals Committee. The NCAA states after 1999 their way of hearing appeals changed by appointing members to hear appeals from outside their NCAA memberships. This was not the case in my appeal. The committee was made up of five members, all of whom had direct NCAA administrative ties. Two were current members of the NCAA conferences, and the remaining three were current administrators at NCAA member institutions. I believe it is difficult to find impartiality with an appeals committee that is made up of members who have direct ties to those who were previously denied relief.

Secondly, NCAA restitution bylaw 19.7 falls far short of promoting impartiality at the court level. In brief, 19.7 above states that if a student-athlete is granted relief by a court and if at any time in the future that decision is reversed by a higher court, the

NCAA reserves the right not only to place sanctions on the player but reserves the right to impose financial as well as forfeiting penalties against the university for following the court order. In my experience, this restitution bylaw brought much concern to the judge who heard my case as well as spurred university officials to notify me that, even if I were granted injunctive relief by the court, that the university would not take the risk of allowing me to play for fear of possible sanctions.

In conclusion, I believe 19.7 is against public policy; and I believe it does not promote due process. The NCAA has had decades to institute necessary changes to their practices and procedures. It seems like any time a congressional body of any kind suggests changes to the NCAA, they always answer in a way that they are currently attempting to improve the system, but nothing ever changes. You are the only people in this country that can initiate change and oversight, and I encourage all of you to do so.

Thank you.

Mr. CHABOT. Thank you very much.

[The prepared statement of Mr. Bloom follows:]

PREPARED STATEMENT OF JEREMY BLOOM

Distinguished Committee Members,

My name is Jeremy Bloom and I am a 22 year old former NCAA student-athlete (effective August 24, 2004) from Loveland, Colorado and the defending World Champion in Moguls Skiing. I have been a professional skier and member of the U.S. Ski Team since I was 15. I represented the United States in the 2002 Olympic Games in February, 2002 in SLC. In 2002 at 19 years of age, I became the youngest person ever to win the World Grand Prix Title and the third ever American. I enrolled at the University of Colorado in the fall of 2002 and I currently hold a number of receiving, punt return and kick return records at the University of Colorado. I also hold the Big XII Championship Game record for the longest punt return. Additionally, I earned Freshman All-American honors in 2002 and All-Big XII honors in 2003. In 2003 I also became the first American to win a World Championship Gold Medal in Mogul Skiing. My cumulative GPA is a 3.0. On August 24th of this year the NCAA declared me ineligible and as a result I have lost the last 2 year of my football eligibility.

I submit to you my testimony today not to try and improve upon my own situation, nor to attempt to alter or change past injustices. Rather, I submit to you today to expose the injustice and hypocrisy of the NCAA in an effort to create change for the millions of student-athletes to come. My objective is to demonstrate to you today through my experiences with the NCAA, that the organization does not provide due process, as

defined in the U.S Constitution, to its student athletes. I intend to show to you that the NCAA enforces its by-laws governing student athletes in an arbitrary and capricious manner and that its process of resolving disputes with student athletes is prejudiced and partial.

NCAA BACKGROUND

In 2001, after I was offered a scholarship to the University of Colorado, but prior to my enrollment at the University, I began to inquire at the University Compliance office about the NCAA rules on competing as a professional in another sport, which I had been doing as a skier since 1998. The compliance officer informed me that NCAA by-laws allow a student-athlete to compete as a professional, but they do not allow a student-athlete to receive endorsements. Unfortunately, in my sport, skiing, the only way a professional skier can make money is through endorsements (there is nominal prize money if you win a World Cup event). The U.S Ski Team pays no salary, but it does fund a fraction of an athlete's training, provides a uniform, and covers in-season travel costs (only for A & B Team). All other equipment, training expenses, living expenses, insurance, food, travel, etc. is paid for by the athlete. It is customary for professional skiers to endorse ski equipment, resorts and other products to pay for these expenses. In this instance the two separate rules in the NCAA by-laws conflict with one another. Because of the contradiction in terms of

these NCAA by-laws, the University of Colorado Compliance Officer advised me that the only approach to resolve the situation was for the University to file a waiver on my behalf, essentially asking the NCAA to make an exception in my unique case. Ironically, while I was actually competing in the Olympic Games, the NCAA denied my waiver request.

Following the NCAA's denial of the waiver, I sought relief from the District Court of Colorado. Unfortunately, in part because of the NCAA rule 19.7 (which was referred to as 19.8 back in 2002), District Court Judge Hale ruled against my request for preliminary injunction. His judgment is attached.

Subsequently, due to my desire to play college football, I relinquished all of my endorsements and enrolled at the University of Colorado. During this time I submitted an Appeal to the Colorado State Court of Appeals. While I felt that I could sacrifice, in competitive terms, to be under-funded in 2003 and 2004, I was certain that with the Olympic Games looming only 2 years away that I could not afford to continue in this manner and have a chance to achieve my objective of winning an Olympic Gold Medal for my country in 2006. As a result, after playing football for the University of Colorado for two years while forfeiting all endorsement revenue, in January of 2004 I announced that I was beginning to except endorsements and planned to play football for the University of Colorado.

In March of 2004, I signed my first endorsement contracts since enrolling at the University of Colorado.

On April 7, 2004 the Colorado State Court of Appeals heard my case and six weeks later upheld the original ruling.

At this point, I believed my football career was essentially over. However, in the days leading up to my appeal being heard (on 4/7/04), information was brought forward that, until then, only the NCAA, the University of Iowa, Tim Dwight and Dwight's representative had available to them. This information established that in 1999 that Tim Dwight, a professional football player who had accepted promotional and endorsement monies related to his professional sport of football was reinstated by the NCAA and allowed to run track for the University of Iowa, and was allowed to keep those monies and arrangements. The Tim Dwight case is virtually identical to my own case. (I will cover the Dwight case in further detail later in this testimony in order to establish to the committee that the NCAA practices are prejudiced, unfair and arbitrary).

With this newly discovered information, the University of Colorado submitted a reinstatement request, on my behalf. The basis of the request was the precedence that had been set in the Tim Dwight case. Although Mr. Dwight's case was virtually identical to my case, the NCAA denied my request. The only rationale that the NCAA provided that I am aware of (because I have never been provided with one document from the NCAA during the entire administrative process within the NCAA system) in ruling for Mr. Dwight, while denying me, is that I "knowingly" violated the NCAA by-laws. Apparently, the NCAA believes that Mr. Dwight did not, although he provided my attorney with a signed affidavit that says that he did.

My final opportunity to gain reinstatement was to have the University of Colorado, on my behalf, appeal this decision. They did so, and I was allowed ten (10) minutes to state my case to the Reinstatement Appeals Committee. Like all of the NCAA committee's that made decisions on my eligibility, the Reinstatement Appeals Committee is solely made up of people that work directly for the NCAA or are directly affiliated with the NCAA. In the case of the five (5) members of the Reinstatement Appeals Committee: Two (2) representatives came from Conference's within the NCAA and three (3) representatives were from three separate NCAA member institutions (Universities). Needless to say, the make-up of this committee does not seem to promote impartiality. They ruled against me and officially ended my college football career.

One monumental and first time finding which Judge Hale established in the District Court, and which was later affirmed by the Colorado State Court of Appeals, is that a student-athlete is a third party beneficiary of the contract between the NCAA and it's member institutions.

Judge Hale's ruling states:

> *The NCAA has conceded its Constitution and By-Laws constitute a contract between it and its members which approximately 1,267. Mr. Bloom claims that he is a third party beneficiary of that contract. As a threshold matter I deem it appropriate to determine whether Mr. Bloom is a third party beneficiary of the Contract. If he is not, that is the end of the inquiry for the claimed breech of contract. I find that Mr. Bloom is a third party beneficiary to the contract between the NCAA and its members and CU in particular.*

NCAA ADMINISTRATIVE PROCESS FAILS ON THE BASIS OF IMPARTIALITY

The NCAA's administrative process as it relates to disputes with student-athletes has been constructed to be many things, but fair and impartial it certainly is not. This system is inherently biased and is designed to produce almost exclusively prejudiced results. The NCAA architecture is diametrically opposed to the one that our forefathers carefully and painstakingly crafted over two hundred years ago. The NCAA internal judicial process resembles more that of tyrannical regime than it does a democratic process. All student athletes are appointed, by virtue of NCAA rules, *sole and exclusive representation* during any proceedings within the NCAA administrative system by an NCAA member institution; in my case, the University of Colorado. Furthermore, every NCAA panel, committee and appeals committee member that reviewed and/or rendered a decision "on my behalf" was directly associated with the NCAA, a member institution, or one of its conferences. There is no independence within the NCAA administrative process; therefore there can be no impartiality.

The NCAA has consistently defended its position by claiming to be a voluntary club, which the U.S. Courts have demonstrated great reluctance to interfere upon. The NCAA may be correct in that it is a voluntary club with regards to the member institutions, however, student athletes, while third party beneficiaries to the contract between the NCAA and its voluntary members, are not voluntary members of the club. And, in fact, the NCAA does not operate as, nor remotely resemble, a voluntary club with regards to its student-athletes. In most instances it acts and operates as a well insulated and neatly protected monopoly. In the instance of football, like many other men's and women's sports, the NCAA is the only game in town. It is the minor league system for the NFL. If a young person aspires to play professional football in this country they have to, almost exclusively, go through the NCAA's college football system. While the Arena Football League has been established, comparing it to the NCAA would be like comparing Microsoft to Apple Computers. Furthermore, the Arena Football League gets the vast majority of its players from the NCAA ranks as well.

Unfortunately, it has proven to be virtually impossible for a student athlete to get relief or due process within the courts as well, as a result of the NCAA's restitution by-law, 19.7. Through this by-law the NCAA has effectively imposed partiality and prejudice even within the U.S. court system. NCAA by-law 19.7 states:

19.7 RESTITUTION

If a student-athlete who is ineligible under the terms of the constitution, bylaws or other legislation of the Association is permitted to participate in intercollegiate competition contrary to such NCAA legislation but in accordance with the terms of a court restraining order or injunction operative against the institution attended by such student-athlete or against the Association, or both, and said injunction is voluntarily vacated, stayed or reversed or it is finally determined by the courts that injunctive relief is not or was not justified, the Management Council may take any one or more of the following actions against such institution in the interest of restitution and fairness to competing institutions:

(a) Require that individual records and performances achieved during participation by such ineligible student-athlete shall be vacated or stricken;

(b) Require that team records and performances achieved during participation by such ineligible student-athlete shall be vacated or stricken;

(c) Require that team victories achieved during participation by such ineligible student-athlete shall be abrogated and the games or events forfeited to the opposing institutions;

(d) Require that individual awards earned during participation by such ineligible student-athlete shall be returned to the Association, the sponsor or the competing institution supplying same;

(e) Require that team awards earned during participation by such ineligible student-athlete shall be returned to the Association, the sponsor or the competing institution supplying same;

(f) Determine that the institution is ineligible for one or more NCAA championships in the sports and in the seasons in which such ineligible student-athlete participated;

(g) Determine that the institution is ineligible for invitational and postseason meets and tournaments in the sports and in the seasons in which such ineligible student-athlete participated;

(h) Require that the institution shall remit to the NCAA the institution's share of television receipts (other than the portion shared with other conference members) for appearing on any live television series or program if such ineligible student-athlete participates in the contest(s) selected for such telecast, or if the Management Council concludes that the institution would not have been selected for such telecast but for the participation of such ineligible student-athlete during the season of the telecast; any such funds thus remitted shall be devoted to the NCAA postgraduate scholarship program; and

(i) Require that the institution that has been represented in an NCAA championship by such a student-athlete shall be assessed a financial penalty as determined by the Committee on Infractions. (Revised: 4/26/01 effective 8/1/01)

This single by-law grants the NCAA absolute power. The NCAA is the only organization (that I am aware of) with the power to retroactively penalize a person, community, and/or member institution because they followed a court order. In practicality, by the time the NCAA exhausts a dispute through the U.S. Courts, always with a chance that a decision could be overturned on appeal at some point by the U.S. Supreme Court, a student athlete will have grown from a teenager to a young man or woman in their mid-twenties (possibly without ever competing). In my own proceedings the process took 2 years and I was only at the State Appeals Court level.

Here is the real affect on the judgment that was delivered in my own case at the district court level in Colorado. At that time the by-law was referred to as 19.8. Judge Hale wrote in his decision:

The harm to CU (University of Colorado) would be that an injunction mandating that they declare Mr. Bloom eligible and allow him to compete on the football team would risk the imposition of sanctions pursuant to by-law 19.8, which would allow the NCAA to impose sanctions if an injunction was erroneously granted. These sanctions could include: forfeiture of all victories, of all titles, TV revenue, as well as others; forfeiture of games would irreparably harm all of the member of the CU football team who would see their hard earned victories after great personal sacrifice nullified; the loss of revenues would harm all student athletes at CU who would find their various programs less economically viable; imposition of NCAA sanctions would harm CU's reputation; and sanctions would reduce the competitiveness of various sport teams at CU.

I find that the harm to CU and the NCAA is more far reaching, especially because it could harm other student athletes, than the harm to Mr. Bloom. Therefore, the public interest would not be served by an injunction.

These findings in no way diminish my belief that an accommodation without court involvement could have been reached without causing harm that would arise from an injunction

Clearly this by-law prohibits a student athlete the right to due process and is against public policy.

NCAA ADMINISTRATIVE PROCESS FAILS ON THE BASIS OF FAIRNESS

As I briefly described previously in the Background section of this testimony, The University of Iowa's Mr. Tim Dwight had a virtually identical situation to mine back in 1999 and one which would normally constitute precedence and be referred to as a basis for decisions in future cases like mine. However, as the NCAA has no oversight, no one to answer to, and is essentially self-governed and self-policed, the NCAA failed to even mention or cite this case, and when I requested information about his case via the NCAA administrative process, I was supplied with false, misleading and deceptive facts.

In 2001, following procedure, my agent, Andy Carroll, on my behalf inquired through the University of Colorado's Assistant Director of Compliance, Sherri McKelvey, and requested that she look into the Tim Dwight case, which we had been informed was similar to mine. Ms. McKelvey inquired to her colleague, Mr. Fred Mims, at the University of Iowa about the details of the case and was incorrectly informed that Mr. Dwight returned all of his endorsement money and ended his agreements in order to be reinstated. Ms McKelvey also inquired within the NCAA Administrative offices and was informed of the same thing. In an e-mail dated January 25, 2002 to Mr. Carroll, Ms. McKelvey wrote: "Nothing on Tim Dwight—he paid back all his endorsement money to get reinstated." The e-mail is attached. The NCAA never submitted to Ms. McKelvey the actual ruling in this case. Either due to systemic administrative failure, or through a conscious effort to mislead and suppress information in order to subvert my request, or just by insuffi-

cient effort or incompetence by my sole representative to the NCAA, I was delivered the false facts with regard to this case. As a result, this course of action was never really further pursued.

Not until much later, April 4 2004, was I able to attain the actual ruling and it was provided to me not by the NCAA but by Tim Dwight's agent. It is attached for your review. The rationale given by the NCAA is:

> *The staff informed the institution that it would not require repayment inasmuch as the SA's promotional monies related solely to his football participation.*

After the newly surfaced and accurate details of Tim Dwight's NCAA reinstatement was revealed to me by Tim Dwight's agent, the University of Colorado compliance office used this as the basis for my reinstatement request in August, 2004. The University of Colorado was of the understanding from the NCAA, that if I agreed to suspend my endorsement contracts while enrolled, that I may be reinstated. Just as the NCAA decided in the Tim Dwight case. In this instance the NCAA arbitrarily decided that my situation was different because I "willfully violated numerous NCAA bylaws." Apparently, the rationale was that Tim Dwight accidentally violated the rules and therefore was allowed to be reinstated.

Subsequent to this ruling, the University of Colorado issued the last and final appeal on by behalf (as per NCAA bylaws) to the NCAA (Sub) Committee on Student-Athlete Reinstatement. As part of this appeal, we provided a signed-written affidavit from Mr. Tim Dwight that states:

> *To: Whom is may concern*
>
> *The purpose of this statement is to clarify my thought process and actions during my time as a NCAA track athlete and professional football player.*
>
> *I want to make it clear that I "knowingly and willfully" accepted endorsement and appearance monies, which is considered a normal part of my salary as a professional football player, even though my intentions were to run track for the Univ. of Iowa after my first year as a professional athlete.*
>
> *Being "well aware" of the NCAA rules governing amateur athletes, it was my assumption that I "could" accept endorsement monies as a professional football player but not as an amateur track athlete. I had based my assumptions on the NCAA precedent that you can be a professional in one sport, and an amateur in another.*

The NCAA (Sub) Committee on Student-Athlete Reinstatement was unmoved by this new information and upheld the original subcommittee's ruling that I am ineligible.

SUMMARY

In summary, the courts have ruled that student athletes are in fact third party beneficiaries of the contract between the NCAA and the member institutions. As a result they do in fact have rights in the NCAA contract. I hope that I have effectively demonstrated from my experience that the present procedures and bylaws that exist under the NCAA strongly inhibit the student-athletes ability to receive a fair and impartial hearing within the NCAA or in the court. Given the fact that impartiality is a guaranteed right in the 5th and 14th amendment under due process, I do not believe that student-athletes receive due process in the present system that the NCAA currently has in place.

ATTACHMENTS [1]

JEREMY BLOOM v. NCAA AND UNIVERSITY OF COLORADO
CIVIL ACTION 02 CV 1249

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This is a lawsuit brought by Mr. Bloom against the NCAA for breach of contract in which he seeks injunctive and declaratory relief. The University of Colorado (CU) was joined by the Court as an involuntary party and directed to enter an appearance in this matter. CU has aligned itself in this case as an involuntary Defendant.

I have considered all of the testimony presented Aug 12 and 13, the deposition testimony of Gary Barnett, Dick Tharp, and Conan Smith. I have reviewed the various exhibits admitted into evidence during the course of these proceedings. I have digested the extensive briefs filed by the parties and read the cases cited by them. I have considered the oral arguments of counsel as well.

CU is an indispensable party for all of the reasons previously stated by the Court. The Injunctive relief sought by Mr. Bloom against the NCAA is also sought against CU to the extent it is necessary for complete and effective relief regarding the injunction sought by him.

I. Facts

It is uncontroverted that Mr. Bloom is a unique, gifted young man who wishes to play football for CU as a wide receiver/kick return specialist. He wishes to be able to compete for CU without losing other opportunities that are unique to him.

Mr. Bloom is the reigning World Cup champion in freestyle mogul skiing and was a representative of the Olympic Winter games in 2002. While in high school he was a member of the state champion football team from Loveland, Co., a track star, a skier, and a student with a 3.4 GPA.
His football ability led to his recruitment and offer of a scholarship by CU. He deferred enrollment in the fall of 2001 to pursue his Olympic dream with the support and encouragement of CU.
He is a model having been under contract with Tommy Hilfiger and has opportunities to be an on-camera performer that would result in substantial income. He wishes to continue his professional skiing career, his modeling career, and continue to seek professional employment with MTV, Nickelodeon, and others.

With the aid of CU he has sought waivers or legislative interpretations from the NCAA to allow him to continue with that which he has been doing and to further pursue the opportunities available to him. In large part the NCAA has said NO. This has led to the injunctive action he now pursues.

[1] Additional materials submitted by Jeremy Bloom were not of sufficient quality for reproduction but are on file with the Subcommittee on the Constitution.

II. Standard of Review

Injunctive relief is an extraordinary and drastic remedy. Mandatory injunctive relief is granted only in rare cases. *See Snyder v. Sullivan*, 705 P.2d 510, 514 (Co. 1985).

III. Merits

The NCAA has conceded its Constitution and By-Laws constitute a contract between it and its members which number approximately 1,267. Mr. Bloom claims that he is a third party beneficiary of that contract. As a threshold matter I deem it appropriate to determine whether Mr. Bloom. is a third party beneficiary of the Contract. If he is not, that is the end of the inquiry for the claimed breach of contract. I find that Mr. Bloom is a third party beneficiary to the contract between the NCAA and its members and CU in particular.

R.N. Robinson and Sons, Inc. v. Ground Improvement Techniques 31 F. Supp. 2d 881, 887 (D. Colo. 1998) sets forth the criteria to be applied in determining whether a person is a third party beneficiary of the contract. Robinson requires that the parties to the agreement—the NCAA and its members intended to benefit the person not a party to the contract and that the benefit is direct and not merely incidental to the contract. Here the intent to benefit student athletes is apparent from the terms of the contract and the surrounding circumstances.

The ways in which the contract benefits student athletes are too numerous to mention. However, the following illustrative examples clearly demonstrate that student athletes are direct third party beneficiary of the contract and able to bring suit in that capacity.

The contract in its by-laws imposes restrictions on eligibility to compete beginning with high school grades and test scores (the non and partial qualifiers) to eligibility to compete after commencement of college to a requirement of maintaining satisfactory grades and academic progress. These are designed to allow for graduation of the student athlete. Practice schedules are strictly limited to allow student athletes to be students. It requires that the student athlete be a full time student—this demonstrates the primacy of education for the benefit of the student athlete as opposed the primacy of sports. A student athlete is required to select a major course of study by his or her third year in college. All of these examples and numerous others are found in By-Law 14 that is 45 pages in length and includes complicated charts and figures. This series of by-laws is almost solely for the benefit of the student athlete as it relates to a primary purpose of the contract—the education of student athletes. Additionally the by-laws restrict the use of agents and prohibit compensation for participation in college sports. One benefit is to foster amateurism. The other is a direct benefit to student athletes which is to avoid their being exploited. In the NCAA Constitution at 2.10 the principle of competitive equity is set forth. This benefits the NCAA, its members, and student athletes. A direct benefit to the student athlete is to insure that they will compete on a level playing field.

Further, the evidence shows that the NCAA would cease to exist in its present form without student athletes. The quid pro quo between the NCAA and student athletes is that in exchange for an education and an opportunity to compete in amateur intercollegiate athletics, the student athletes will abide by all rules [TERMS OF THE

CONTRACT] of the NCAA and be hard working students and athletes who compete at a level that leads to substantial revenue for the NCAA and its members.

I find the authorities relied on by the NCAA to claim that the student athletes are not third party beneficiaries to the contract to be unpersuasive. Therefore, I find that Mr. Bloom is an intended third party beneficiary of the contract between the NCAA and its members.

Having made this finding it is necessary to rule on each factor plaintiff must prove in order to be entitled to a preliminary injunction.

I. THE DANGER OF REAL, IMMEDIATE AND IRREPARABLE INJURY TO PLAINTIFF

I find that Mr. Bloom has proven this *Rathke* factor. Without the injunctive relief requested Mr. Bloom will lose an opportunity to defend his world cup title in free style mogul skiing. He will be unable to obtain the customary income from professional skiing necessary to allow for activities such as coaching and other expenses to allow for a defense of his title. He will suffer other irreparable losses with regard to future modeling, television, and film opportunities. Clearly these existing opportunities are real and substantial as opposed to mere expectations or hopes. These opportunities cannot be realized without injunctive relief.

II. WHETHER PLAINTIFF HAS AN ADEQUATE LEGAL REMEDY

I find that Mr. Bloom has proven this *Rathke* factor. Mr. Bloom has no plain, speedy, or adequate remedy at law. Money damages are not available because such damages would be impossible to ascertain. Where money damages cannot be ascertained, injunctive relief is appropriate. *See Home Shopping Club v. Roberts Broadcasting*, 961 P.2d 558, 562 (Colo. App. 1998). His claim for alternative relief in the form of a declaratory judgment would take at least months to resolve. Therefore, I find that he does not have a speedy remedy at law.

III. WHETHER THE INJUNCTION WOULD PRESERVE THE STATUS QUO PRIOR TO A TRIAL ON THE MERITS

I find that Mr. Bloom has proven this *Rathke* factor. Preserving the status quo is primarily about the protection of Mr. Bloom's existing rights and opportunities. An injunction would allow Mr. Bloom to pursue his existing skiing career in exactly the same fashion as any other college student who did not fall within the purview of NCAA rules. It would allow him to pursue and maintain the modeling and entertainment industry interest that is at such a high level presently. I find that such interest by those industries is highly volatile and more likely than not transitory. That such interest may evaporate if this case takes months or years to resolve. I find such loss would be significant and would dramatically change the status quo.

IV. WHETHER THERE IS A RESONABLE PROBABILITY THAT PLAINTIFF WILL SUCCEED ON THE MERITS

I find that Mr. Bloom has not proven this *Rathke* factor. In order to find a probability that Mr. Bloom would succeed on the merits, I would have to find that: the

NCAA had breached the contract, that the by-laws were arbitrary and capricious or in violation of public policy, or that the by-laws were applied in an unfair, arbitrary or capricious manner.

Mr. Bloom is a third party beneficiary of the contract. However, it is unlikely that he can prove that the NCAA has breached that contract as to him. He claims that enforcement of the by-laws by the NCAA and the fact that CU will follow the NCAA interpretation and enforcement of those by-laws essentially causes CU to be an agent of the NCAA regarding the enforcement of the by-laws.

I find that the NCAA is enforcing the by-laws as written and/or as it interprets the by-laws at issue. CU is following the lead of the NCAA in that regard, as it is required to do so by the contract. I admit that I am less than clear on Mr. Bloom's breach of contract claim. My difficulty is that I am unable to find a breach of contract because the NCAA is not breaching the contract but taking action to enforce or otherwise implement the provisions of the contract embodied in the by-laws. From the evidence and in conforming the pleading to the evidence pursuant to C.R.C.P. 15 it appears that Mr. Bloom is claiming that the contract is being breached because certain provisions of the contract are internally inconsistent or are not rationally related to the overarching purpose of the contract. It is necessary for me to interpret the material provisions of the contract in their entirety. I must also harmonize and give effect to all material provisions of the contract so that some provisions are not rendered meaningless. *See USI Properties East, Inc. v. Simpson*, 938 P.2d 168, 173 (Colo. 1997) *Pepcol Mf'g Co. v. Denver Union Corp*, 687 P.2d 1310, 1313 (Co. 1984).

In construing the contract I must give effect to the intention of the parties. The parties to the contract are the NCAA and the member institutions, which include CU. As a third party beneficiary to this contract Mr. Bloom has no greater rights than those actually parties to the contract. As it relates to this lawsuit, the NCAA and the member-institutions intended that the applicable provisions would protect, promote and foster amateurism in intercollegiate athletics.

I think it is clear the NCAA rule making is designed to foster amateurism in intercollegiate sports. I find that this is not only a legitimate objective of the NCAA and its members, but one of the primary purposes that goes to the heart of the existence of the NCAA which has existed for that purpose since the early 1900's.

The by-laws, which consist of rules adopted by the membership of the NCAA, are not arbitrary and capricious. Rather, they are rationally related to one of the missions of the NCAA—namely to " ...retain a clear line of demarcation between intercollegiate athletics and professional sports." Constitution Article 1.3.1. Also see 2.9. The by-laws are designed to provide fair notice of what member institutions may or may not do and what student athletes may or may not do. In all material ways this has been accomplished based upon the testimony and exhibits relating to the waiver process. CU officials predicted little chance of success in the administrative process given the notice provided within the by-laws.

That which falls within the contract's definition of amateurism today is a far cry from the definition of amateurism when the NCAA was formed or even the definition until the mid 1980's. The landscape of amateurism was forever changed with the adoption of by-law 12.1.2 (what I consider to be the professional baseball exception) and

the case of *NCAA v. Bd of Regents* 468 U.S. 85 (1984) which allows virtually unlimited televising of football and basketball. Although it is interesting that Justice White a former CU great dissented in favor of limiting television, the fact remains that these two factors eroded and continue to erode the ideal of amateurism.

An analysis of the by-laws at issue further demonstrates why it is that Mr. Bloom is unlikely to succeed on the merits. By-law 12.1.2 allows a professional athlete in one sport to be an amateur in another. As mentioned this has most commonly applied to those who play baseball for a salary and compete in college football as amateurs. Professional baseball players are customarily compensated with a signing bonus and a salary. On the other hand, a professional skier such as Mr. Bloom. is customarily compensated in monetary terms with prize money and earnings from promotion or endorsements. It is the latter that the NCAA prohibits. It would appear that Mr. Bloom should be able to receive customary earnings from professional skiing just as a baseball player can receive customary earnings without being declared ineligible to play football for CU. If professional baseball players can receive a million dollars or more and play college football, why can't a professional skier receive thousands of dollars and play college football?

The answer, I think, lies in the NCAA's goal to foster and preserve the ideal of amateurism in fact and as an ideal. In an honest world where there is no attempt to avoid an ideal, there wouldn't be an impact on amateurism if Mr. Bloom was allowed to be compensated as is customary for professional skiers. However, sadly, it's naïve to think that we live in such a world. There are those who would be less than honest and seek profit for profits sake. There are those who would take the money to line their pockets, not to defend a world cup title. If Mr. Bloom was allowed to receive the income that is customary for professional skiers, it is not difficult to imagine that some in other professional sports would decide that in addition to direct monetary compensation, that endorsements or promotion of goods would become "customary". Therefore, I find a rational basis for the by-law and its interpretation. As much as I think that a resolution of this issue could be made in favor of Mr. Bloom, I may not substitute my judgment for that of the NCAA and its members.

I also disagree with Mr. Bloom's argument that the advertising/promotion policy underlying this rule is in conflict with a college athlete wearing clothing and equipment which displays, for example, the Nike swoosh. Although I find from all the facts and somewhat contrary to Mr. Berst's testimony that this does [redacted] constitute promotion of Nike products, I find this activity to have a rational basis. By allowing such activities, the members receive significant financial benefits from arrangements with those such as Nike. This financial benefit inures to the benefit of other sports programs, especially non-revenue sports. This benefit also inures to the benefit of each student athlete at the institution by improving the quality of the program.

By-law 12.5.2.3.4 restricts an amateur athlete from appearing in commercial films. Although the NCAA's position regarding Mr. Bloom is arguably difficult to square with the Autry interpretation, there are important distinctions: Autry was a drama major well into his course of study; Autry was not being compensated for appearing in the film; Autry had a defined and very small role in the film; and the other actors had an international reputation which demonstrated that the appearance of Autry in the film was not designed to impact the popularity of the film. On the other hand, Mr. Bloom would be the focus, the star, of any MTV or Nickelodeon show and would be compensated.

The commercial use of highlight films is not inconsistent with the prohibition in this by-law. Highlight films show footage of competitions previously captured on film or games that were televised. The fact that the NCAA, its members, or others properly authorized profit from such films does not demonstrate that this bylaw does not have a rational basis. In fact the players depicted remain amateurs because they are not paid for their appearance or paid for endorsements or promotion of products.

The next by-law at issue is 12.5.1.3 regarding Mr. Bloom's continuation of his modeling career as it relates to promotional appearances. Substantial questions were raised by the evidence regarding the applicability of 12.5.1.3(b) as it relates to the Tommy Hilfiger contract. Assuming that issue is resolved in favor of Mr. Bloom, I must determine whether there is a rational basis for this by-law. The NCAA takes the position that personal appearances as part of a modeling contract are fraught with the risk of the use of Mr. Bloom's football ability being or becoming a part of such appearance. I find that this is not unreasonable.

If those at a Tommy Hilfiger promotion recognized or learned that Mr. Bloom was a CU football player and began discussing a dazzling punt return he made for touchdown with him, it is inconceivable that this polite young man could reasonably be expected to ignore the conversation. It would be a conversation about his athleticism in football. Even if Mr. Bloom had no intent to endorse or promote Tommy Hilfiger clothing, that would be a practical effect of his presence at the promotion.

Given the potential risk and the various shades of gray within which such events could fall there is a rational basis for the black and white structure of the by-law that prohibits this activity by an amateur.

I have examined the administrative review process as it relates to all issues raised by Mr. Bloom. The waiver process and the legislative review process may not be ideal. Only the member institution can initiate the review process. Nevertheless a student athlete, here Mr. Bloom, had an ability to fully present his or her position through the member institution. Based on the evidence CU provided all of the information it had available from Mr. Bloom in support of his waiver requests and legislative interpretation request. These requests were made in good faith and actively pursued by CU even though as early as the early winter of 2001-2002 CU was less than optimistic that the requested relief would be granted. Also see D-Ex. 34. Dick Tharp, the AD, testified that he had no cause to question the administrative review process in Mr. Bloom's case. The NCAA even requested additional information from CU, which evidences that it was not acting arbitrarily or capriciously with regard to the relief requested on Mr. Bloom's behalf.

The NCAA is in fact overburdened by hundreds of administrative and waiver requests. However, there is no evidence that because of this heavy burden the NCAA gave less than full and thorough consideration of the requests made by CU on behalf of Mr. Bloom.

From all of the evidence I find that the NCAA has a structured and reasonable method for the adoption of legislation in the form of its bylaws. Such legislation is adopted in what I would characterize as a modified democratic process as testified to by Mr. Berst. There is an administrative review process. Given the framework of the NCAA and the large number of administrative requests made, I cannot find that the

administrative process was not at least minimally substantively rational and procedurally fair. See *Pinsker v. Pacific Coast Society of Orthodontist*, 526 P.2d 2253 (Cal. 1974).

Although the administrative process relating to this rule could have, and I think should have, allowed an accommodation to be reached as to Mr. Bloom's interest and the interest of the NCAA, the failure to do so was not arbitrary and capricious.

As much as I would like to, I cannot substitute my judgment for the judgment of the NCAA regarding the rule making and the administrative process by which it seeks to achieve its objectives. *See NCAA v. Lasege* 53 S.W. 3d 77 (Ky 2001). The eligibility by-laws at issue are rationally designed to achieve the NCAA objectives of amateurism and the success of student athletes. *Cole v. NCAA* 120 F. Supp. 2d 1060 (N.D. Ga. 2000). The administrative review process is substantively rational and procedurally fair. *Pinsker*.

I do not have the power nor background and experience to revise the by-laws. I think as a sports fan, not a judge, that the by-laws and their application by the NCAA have produced an unreasonable result given the unique facts of this case. This is an exceptionally unique case that is virtually certain to never occur again. Today Mr. Bloom stands alone when compared to the other more than 350,000 student athletes. Entities can respond to unique circumstances as the NCAA has or can see such a situation as a unique opportunity to take a positive, proactive student athlete friendly approach and still not undermine a primary and laudable objective relating to amateurism. Here the NCAA had an opportunity to recognize and support a world cup champion and an Olympic competitor by supporting his future success—by leaving doors open rather than closing them. A thoughtful and narrowly structured waiver based upon the unique circumstances of this case could have been granted. Such a waiver would have been a recognition by the NCAA that: Mr. Bloom is truly an amateur athlete in football with only dreams of even receiving playing time, and that his potential arises not from his football ability, but arises from the circumstances relating to obvious talent unrelated to his athleticism. I think that the NCAA is missing an opportunity to promote amateurism on the one hand, and the opportunity to support the personal and football & non-athletic growth of a student athlete on the other.

Mr. Bloom is the epitome of an amateur who wishes to live out his dream of playing college football for CU without abandoning the once-in-a-lifetime future opportunities he has. I would like to seem live out those dreams. I would like to be able to find a legal basis for me to be able to enjoin the NCAA. However, I cannot find a sound legal basis that would allow me to find that there is a probability that Mr. Bloom will succeed on the merits.

A further impediment to Mr. Bloom's probability of success on the merits is the NCAA's argument that that an injunction would run afoul of the Commerce Clause of the United States Constitution. I am unable to find a principled way to distinguish *NCAA v. Miller*, 10 F.3d 633, 640 (9th Cir. 1993), cert. denied, *Tarkanian v. NCAA*, 511 US 1033 (1994). I think that an injunction would probably not pass muster under the Commerce Clause and diminishes the likelihood of success on the merits even if my other analysis regarding the merits is erroneous.

V. WHETHER THE PUBLIC INTEREST WOULD BE SERVED BY THE INJUNCTION

I find that Mr. Bloom has not proven this *Rathke* factor. In balancing the public interest factor I find that the harm to Mr. Bloom would be the loss of his opportunity to defend his world cup title; the loss of an opportunity to further his modeling, TV, and film career, and the lack of an adequate remedy at law.

I find that the harm to the NCAA would be: an impairment of its ability to regulate nearly 350,000 student athletes; a risk of inconsistent decisions from the courts of various states; an undermining of the NCAA and its members by a court substituting its judgment for theirs; it would undermine public confidence in the competitive balance between colleges and universities; and it would further erode the ideal of amateurism.

The harm to CU would be that an injunction mandating that they declare Mr. Bloom eligible and allow him to compete on the football team would risk the imposition of sanctions pursuant to by-law 19.8, which would allow the NCAA to impose sanctions if an injunction was erroneously granted. These sanctions could include: forfeiture of all victories, of all titles, TV revenue, as well as others; forfeiture of games would irreparably harm all of the member of the CU football team who would see their hard earned victories after great personal sacrifice nullified; the loss of revenues would harm all student athletes at CU who would find their various programs less economically viable; imposition of NCAA sanctions would harm CU's reputation; and sanctions would reduce the competitiveness of various sports teams at CU.

I find that ~~because~~ the harm to CU and the NCAA is more far reaching, especially because it could harm other student athletes, than the harm to Mr. Bloom. Therefore, the public interest would not be served by an injunction.

These findings in no way diminish my belief that an accommodation without court involvement could have been reached without causing the harm that would arise from an injunction.

VI. WHETHER THE BALANCE OF EQUITIES FAVOR THE INJUNCTION

I find that Mr. Bloom has not proven this *Rathke* factor for all of the reason previously stated. I further find that for purposes of this case that this factor is subsumed within the fifth *Rathke* factor.

Therefore, the injunctive request by Mr. Bloom is denied. The NCAA & CU shall file either a C.R.C.P. 12 motion or answer within 20 days.

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From: "EGO Sports Management" <acarroll@allwest.net> Save Address
To: "Andrew J Carroll" <acarroll@egosports.net>
Subject: Fw: ADMINISTRATIVE REVIEW SUBCOMMITTEE
Date: Tue, 30 Jul 2002 12:02:23 -0600

---- Original Message ----
From: Sherri McKelvey
To: EGO Sports Management ; Mspencer@egosports.net
Sent: Friday, January 25, 2002 5:42 PM
Subject: ADMINISTRATIVE REVIEW SUBCOMMITTEE

Check out paragraphs 7 & 8. Nothing on Tim Dwight--he paid back all his endorsement money to get reinstated.

Sherri

Bloom ARS Waiver.doc (Binary attachment)

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19.5.2.8.1.3 No Imposition of New Penalty. If a hearing of the appeal is granted, the committee may reduce or eliminate any penalty but may not impose any new penalty. The committee's decision with respect to the penalty shall be final and conclusive for all purposes.

19.5.2.8.2 Reconsideration of Penalty. The institution shall be notified that should any portion of the penalty in the case be set aside for any reason other than by appropriate action of the Association, the penalty shall be reconsidered by the NCAA. In such cases, any extension or adjustment of a penalty shall be proposed by the Committee on Infractions after notice to the institution and hearing. Any such action by the committee shall be subject to appeal.

19.5.3 Discipline of Affiliated or Corresponding Member

19.5.3.1 Termination or Suspension. The membership of any affiliated or corresponding member failing to meet the conditions and obligations of membership or failing to support and adhere to the purposes and policies set forth in Constitution 1 may be terminated or suspended or the member otherwise may be disciplined through the following procedure:

(a) The Executive Committee by a two-thirds majority of its members present and voting, may take such action on its own initiative; or *(Adopted: 1/11/89)*

(b) The Committee on Infractions, by majority vote, may recommend such action to the Executive Committee, which may adopt the recommendation by a two-thirds vote of its members present and voting; and

(c) The affiliated or corresponding member shall be advised of the proposed action at least 30 days prior to any Committee on Infractions or Executive Committee meeting in which such action is considered and shall be provided the opportunity to appear at any such meeting.

19.5.4 Recommendation to Committee on Athletics Certification. The Committee on Infractions may recommend to the Committee on Athletics Certification that an institution's certification status be reviewed as a result of the institution's completed infractions case. *(Adopted: 1/16/93 effective 1/1/94)*

19.6 RIGHTS OF MEMBER TO APPEAL

19.6.1 Appeal of Secondary Violations. A member shall have the right to appeal actions taken by the vice-president of enforcement services in reference to secondary violations. To appeal, the member must submit written notice of appeal to the Committee on Infractions. The Committee on Infractions must receive the written notice of appeal and any supporting information within 30 days of the date the institution receives the enforcement staff's decision. *(Adopted: 1/16/93 effective 1/1/94)*

19.6.2 Appeal of Major Violations. A member shall have the right to give written notice of appeal of the committee's findings of major violations (subject to Bylaw 32.10.2), the penalty, or both to the Infractions Appeals Committee per Bylaw 19.2. *(Revised: 1/16/93, 1/10/95, 4/24/03)*

19.6.3 Appeal by an Institutional Staff Member. If any current or former institutional staff member participates in a hearing (either in person or through written presentation) before the Committee on Infractions and is involved in a finding of a violation against that individual, the individual shall be given the opportunity to appeal any of the findings in question (subject to the conditions of Bylaw 32.10.2) or the committee's decision to issue a show-cause order to the Infractions Appeals Committee. Under such circumstances, the individual and personal legal counsel may appear before the appeals committee at the time it considers the pertinent findings. *(Revised: 1/16/93, 1/10/95, 1/6/96, 4/24/03)*

19.6.4 Student-Athlete Appeal. If an institution concludes that continued application of the rule(s) would work an injustice on any student-athlete, an appeal shall be submitted to the Committee on Student-Athlete Reinstatement and promptly reviewed.

19.6.4.1 Obligation of Institution to Take Appropriate Action. When the committee (or the Infractions Appeals Committee per Bylaw 19.2) finds that there has been a violation of the constitution or bylaws affecting the eligibility of an individual student-athlete or student-athletes, the institution involved and its conference(s), if any, shall be notified of the violation and the name(s) of the student-athlete(s) involved, it being understood that if the institution fails to take appropriate action, the involved institution shall be cited to show cause under the Association's regular enforcement procedures why it should not be disciplined for a failure to abide by the conditions and obligations of membership (declaration of ineligibility) if it permits the student-athletes to compete. *(Revised: 1/10/95, 4/24/03)*

19.7 RESTITUTION

If a student-athlete who is ineligible under the terms of the constitution, bylaws or other legislation of the Association is permitted to participate in intercollegiate competition contrary to such NCAA legislation but in accordance with the terms of a court restraining order or injunction operative against the institution

attended by such student-athlete or against the Association, or both, and said injunction is voluntarily vacated, stayed or reversed or it is finally determined by the courts that injunctive relief is not or was not justified, the Management Council may take any one or more of the following actions against such institution in the interest of restitution and fairness to competing institutions:

(a) Require that individual records and performances achieved during participation by such ineligible student-athlete shall be vacated or stricken;

(b) Require that team records and performances achieved during participation by such ineligible student-athlete shall be vacated or stricken;

(c) Require that team victories achieved during participation by such ineligible student-athlete shall be abrogated and the games or events forfeited to the opposing institutions;

(d) Require that individual awards earned during participation by such ineligible student-athlete shall be returned to the Association, the sponsor or the competing institution supplying same;

(e) Require that team awards earned during participation by such ineligible student-athlete shall be returned to the Association, the sponsor or the competing institution supplying same;

(f) Determine that the institution is ineligible for one or more NCAA championships in the sports and in the seasons in which such ineligible student-athlete participated;

(g) Determine that the institution is ineligible for invitational and postseason meets and tournaments in the sports and in the seasons in which such ineligible student-athlete participated;

(h) Require that the institution shall remit to the NCAA the institution's share of television receipts (other than the portion shared with other conference members) for appearing on any live television series or program if such ineligible student-athlete participates in the contest(s) selected for such telecast, or if the Management Council concludes that the institution would not have been selected for such telecast but for the participation of such ineligible student-athlete during the season of the telecast; any such funds thus remitted shall be devoted to the NCAA postgraduate scholarship program; and

(i) Require that the institution that has been represented in an NCAA championship by such a student-athlete shall be assessed a financial penalty as determined by the Committee on Infractions. *(Revised: 4/26/01 effective 8/1/01)*

Mr. CHABOT. Ms. Potuto, you are recognized for 5 minutes.

TESTIMONY OF JO POTUTO, VICE CHAIR, NCAA COMMITTEE ON INFRACTIONS

Ms. POTUTO. Thank you, Mr. Chairman; and thank you Members of the Subcommittee. I will only highlight a few points here and otherwise rely on the written testimony that I submitted.

As the Chair indicated, I'm a professor of law at the University of Nebraska and hold a Chair in constitutional law. I'm here today in my capacity as the Vice Chair of the Division I Committee on Infractions.

The NCAA is a private association run by its member institutions through committees with separate and distinct functions that administer different NCAA bylaws. Staff from the member institutions and their conferences sit on these committees. NCAA staff do not.

Jeremy Bloom describes, although not accurately, the student-athlete appeals process. That process, the infractions process and the enforcement process are all three separate and distinct, with no overlap of function, membership or even of NCAA administrative staff support. Infractions and student-athlete reinstatement decisions are appealable to separate appeals committees, again with no overlap in membership.

The infractions committee decides cases where institutions are charged with major violations. It does not conduct investigations. It does not interview witnesses. Its decisions are based solely on the hearing record. The enforcement staff as well as the involved institutions, coaches and other individuals each choose what to include in that hearing record.

The committee is independent and impartial. It has two former judges—one State, one Federal. It always has had university professors as members, currently two and as many as five. Past members include law professors Charles Alan Wright, a former President of the American Law Institute and author of a multi-volume treatise on Federal practice; Frank Remmington, who was a member of the Supreme Court's standing committees for both civil and criminal procedure; and Jack Friedenthal, co-author of one of the most widely used civil procedure case books.

The committee also is savvy about intercollegiate athletics. Its membership deliberately includes athletics administrators. They have credibility with the member institutions because they understand the particular pressures of college athletics. That same athletics' experience and background also means they cannot be conned.

The rules, investigative and adjudicative processes are all there to ensure that student-athletes have fair and equal opportunities to compete. An even playing field means more than simply evenhanded and consistent application of rules on the field. It also includes evenhanded and consistent application of rules off the field.

As directed by the member institutions, the Committee on Infractions has two critical jobs, first, to provide parties a full and fair opportunity to be heard and to treat them the same way as others charged with major violations; second, to ensure the broader systemic interests of NCAA member institutions, to ensure they are

advanced. These include timely and efficient resolution of cases in a manner that safely applies NCAA legislation.

As all nine members of the current Supreme Court recently said, the NCAA is not a State actor. Even so, its enforcement, infractions, and hearing procedures meet due process standards. In fact, they parallel, if not exceed, those procedures provided by public institutions.

Certainly, it is important that all NCAA processes, infractions and student-athlete reinstatement included, both be fair and seem to be fair. The perception problem is fed in part by the natural inclination of those who suffer adverse findings and penalties to justify their conduct sometimes by misrepresenting what they did, sometimes by misrepresenting the process itself, sometimes by doing both.

As public officials, the Members of this Subcommittee know better than I do the potential for media reports to be inadvertently inaccurate or to create misconceptions by telling only part of the story. If there are misconceptions about the enforcement, infraction or student-athlete reinstatement processes, the remedy lies in better communication about how these processes work and then perhaps a more discerning and less uncritical reception of descriptions by interested and disappointed parties regarding these processes, not by fixing systems that ain't broke at the risk of breaking them.

Thank you.

Mr. CHABOT. Thank you very much.

[The prepared statement of Ms. Potuto follows:]

PREPARED STATEMENT OF JOSEPHINE (JO) R. POTUTO

I am Josephine (Jo) R. Potuto, the Richard H. Larson Professor of Law at the University of Nebraska-Lincoln College of Law. I am the vice chair of the NCAA Division I Committee on Infractions (COI) and in that capacity I submit this written testimony to the House Judiciary Committee's Subcommittee on the Constitution. I appreciate the opportunity provided by the subcommittee to discuss the NCAA infractions process as adopted by the NCAA member institutions. This process protects the interests of individuals and institutions charged with violations by assuring them a full and fair opportunity to be heard regarding alleged rules violations. At the same time, this process advances the broader, systemic interests of all NCAA institutions by providing a timely and efficient resolution of infractions matters in a manner that treats all institutions equally regarding the assessment of the severity of violations and the penalties to be imposed.

The NCAA is a private association comprised of approximately 1000 four-year colleges and universities (329 in Division I) that have joined together to provide and administer standardized rules governing the conduct of intercollegiate athletics programs. It is an association formed, organized, and run by these member institutions. All NCAA bylaws and rules, including the enforcement process and investigative procedures, have been adopted by the membership; the administration of these bylaws and rules (as well as waivers from their application) ultimately is vested in committees comprised of staff members from member institutions or their conferences.

NCAA BYLAWS

As adopted by the membership, NCAA bylaws regulate, among other things, recruiting, academic eligibility, financial aid, awards and benefits for student-athletes, competition and practice limitations, and amateurism issues. In the totality of their interrelationship, NCAA bylaws and regulations advance and preserve the collegiate model of competitive athletics. They are implemented with the prime objective to protect and enhance the educational and physical well-being of all student-athletes and they reflect considered judgment as to how best to balance a host of competing and legitimate interests, including the varying interests of different cohorts of student-athletes. NCAA bylaws and regulations also, and obviously, are intended to as-

sure that any competitive advantage realized by particular athletics programs, teams, or student-athletes is achieved through fair play, rules compliance, ethical conduct, and good sportsmanship, and not by willful violation, rules avoidance, evasion, or ignorance.

First and foremost among the responsibilities imposed by all member institutions on each member institution is that of institutional control of its athletics program to assure rules compliance, academic integrity, student-athlete well-being, and the promotion of the highest level of sportsmanship and ethical conduct. Institutional control, as adopted by the membership, locates the primary responsibility for rules compliance squarely on each institution and requires each institution both to self-police and to self-report when potential violations are uncovered. If we lived in a world where all institutions at all times had perfect ability and willingness to self-police AND where all institutions at all times had perfect trust and confidence in the self-policing of all other institutions AND where self-policing handled exclusively at the institutional level nonetheless achieved across all institutions a consistent approach to evaluation of the severity of violations and the appropriate penalties attendant on any such violations, THEN there would be need for neither NCAA enforcement staff nor the Committee on Infractions. In the real world, however, both are necessary to assure the integrity of the process and consistency of treatment among and between institutions. In the real and competitive world of intercollegiate athletics, moreover, both are necessary to provide a comfort level to each institution that all are being held to the same standard.

NCAA violations may be major or secondary. They may be committed by coaches or other institutional staff members or those acting at their behest, by individuals formally outside an athletics department but nonetheless sufficiently associated with it to be considered representatives of the program (boosters), and by prospective or enrolled student-athletes. The Committee on Infractions hears only those cases involving potential major violations in which there is potential institutional culpability. Institutions are responsible for the conduct of their staff members and for the conduct of student-athletes and others when such conduct is known, or in the appropriate exercise of oversight and monitoring should have been known, by the institution.

SEPARATE COMMITTEES; SEPARATE STAFFS; SEPARATE FUNCTIONS

The enforcement and student-athlete reinstatement processes are separate, perform different functions, and are handled by different NCAA committees. The enforcement and student-athlete reinstatement staffs are separate and comprised of different staff members. The student-athlete reinstatement staff reports to the vice-president for membership services, not the vice-president for enforcement. The membership and role of the COI is separate and distinct both from the enforcement staff and the enforcement process and the student-athlete reinstatement staff and from the student-athlete reinstatement process.

STUDENT-ATHLETE REINSTATEMENT PROCESS

If a violation occurs that affects a student-athlete's eligibility, it is the institution's responsibility to declare the student-athlete ineligible and, in the event restoration of eligibility is desired, to seek reinstatement through the NCAA student-athlete reinstatement process. In only about one percent of the cases is the violation so serious and the responsibility of the student-athlete so significant that reinstatement is not warranted. In the other 99 percent of these cases, a student-athlete's eligibility is fully reinstated or reinstated with conditions.

On commission of major and certain secondary violations a student-athlete is ineligible for competition from the time that an institution discovers the violation until the matter is resolved by the student-athlete reinstatement process. In cases where restoration of eligibility is desired, the process typically requires that the institution file a petition for reinstatement on behalf of the ineligible student-athlete, setting forth the facts and circumstances of the violation as determined by the institution. The student-athlete reinstatement staff has the authority to resolve reinstatement matters in order to expedite the process, and to entertain waivers. This authority may be exercised, however, only pursuant to national guidelines and precedent established by the Student-Athlete Reinstatement Committee and the 49-member Management Council. This process also provides a right of appeal to the Student-Athlete Reinstatement Committee. The Division I Student-Athlete Reinstatement Committee is composed of five individuals from various Division I institutions and conference offices.

The student-athlete reinstatement process provides for the evaluation of information submitted by an NCAA member institution on behalf of a prospective or en-

rolled student-athlete who has been involved in violations of NCAA regulations that affect eligibility. The institution submitting the reinstatement request is responsible for determining the facts of the case and what violations have occurred. Once a case reaches the reinstatement staff, an institution already has decided that NCAA violations were committed. The objective of the reinstatement staff review is to assess the degree of responsibility of the student-athletes and to determine appropriate conditions for reinstatement of eligibility, if any, pursuant to national standards established by NCAA member institutions, and the Management Councils and Student-Athlete Reinstatement Committees of Divisions I, II, and III. The reinstatement staff has no authority to make a finding of violations. Its sole authority is to determine if reinstatement is warranted, and under what conditions.

ENFORCEMENT PROCESS

It is the responsibility of the NCAA enforcement staff to conduct investigations of potential NCAA violations within the procedural and investigative parameters set forth by the membership and the COI (Bylaws 19 and 32) and to present to the COI cases the enforcement staff has determined to involve commission of major violations for which institutions are responsible. Specific enforcement staff responsibilities include collecting and validating information to determine the possible existence of a violation; classifying violations as major or secondary; tape recording or otherwise memorializing the substance of an interview; disclosing the purpose of a campus visit; permitting representation of counsel at interviews; providing institutions and individuals alleged to have committed major violations timely notice of an inquiry that includes a list of particulars relevant to the violation; providing timely disclosure of information relevant to an alleged violation; maintaining a custodial file of all information relevant to an investigation at a location convenient to institutions, individuals, and their counsels; conducting a pre-hearing conference independent of the COI to narrow the issues in dispute and to gain information leading to the possible amendment or withdrawal of allegations; and to provide an enforcement staff case summary for the COI hearing that sets forth the allegations, together with the facts and circumstances relied on to substantiate the allegations.

The enforcement process is cooperative, not adversarial. Although, obviously and necessarily, preparing an enforcement staff case summary and presenting a case to the COI entails a staff determination that there is sufficient information from which to believe that major violations were committed, nonetheless the enforcement staff is required to present exculpatory as well as inculpatory information and to present a balanced rendition that gives full sway to information indicating that violations either were not committed or cannot be proved to the evidentiary standard required by the COI. In addition, the enforcement staff has the general responsibility to assist institutions and individuals in their efforts to gather information relevant to alleged violations. Procedural protections include timely, and periodic, notice of the progress of an investigation; the right to assistance of counsel; access to all information relevant to a violation; and a statute of limitations that, with limited and specified exceptions, requires that any alleged violation presented to the COI must have been committed within four years before issuance of a notice that an investigation has been initiated.

COMMITTEE ON INFRACTIONS

A. In General. The hearing procedures adopted by the membership have produced an infractions process that most resembles a type of administrative hearing akin to those employed in hearings conducted at public universities. Self-enforcement and the cooperative principle are at the heart of the process. The enforcement and hearing processes have evolved over time in response to concerns raised by the membership and others that a better and more balanced process could be implemented. Among the changes have been the addition of public members to the COI, the creation of an Infractions Appeals Committee, the addition of a summary disposition process that avoids the costs in time and money attendant on a full hearing, the adoption of a formal conflict-of-interest policy for COI members, and the provision of a database of COI reports.

Other suggested changes have been considered. Among these have been recommendations that infractions hearings be public and that the hearing process be turned over to hearing officers. With regard to the use of hearing officers, the membership adopted bylaws permitting institutions and others appearing before the COI to request that a hearing officer, rather than the COI, hear the case. In the ten-plus years this option was available; only one request ever was made and, in that instance, came from an individual while the institution in the matter preferred a full hearing. Ultimately, the hearing officer option was eliminated, on unanimous

votes both of the NCAA Management Council and of the NCAA Board of Directors. With regard to public hearings, the NCAA, through its membership, has embraced the philosophical position that confidentiality is an important component of the process, both in the particular case and with regard to the overall interests of the membership. The cooperation of witnesses outside the athletics enterprise is often critical to building and proving a case. Many are willing to provide information and to be identified within the process both to institutions and individuals alleged to have committed violations but might be far less willing to provide information if subject to a full public disclosure. Further, the extreme public interest among media and fans might create difficulties in maintaining an appropriate hearing atmosphere.

B. Composition and Role. The Division I COI is comprised of eight members who adjudicate cases and two members who coordinate appeals to the Infractions Appeals Committee. The regulatory and adjudicative process by which the COI operates was adopted by the membership and at any time may be changed by the membership when, if, and how a majority of institutions believe change is needed. As is clear from the regulatory and adjudicative process currently in place, the membership has a concrete and particular conception of the infractions process and the role to be played by the COI. It has created a hearing body that (1) is independent of the NCAA enforcement staff; (2) understands and appreciates the various facets of administering an athletics program; (3) provides a full and fair opportunity to be heard by member institutions and staff members alleged to have committed major violations and provides equal treatment between and among member institutions and their staffs; (4) is committed to the proper application of the rules and bylaws adopted by the membership to govern intercollegiate athletics and the conduct and behaviors of institutions and their staffs, and (5) is mindful of the interests of the membership as a whole when adjudicating the facts of a particular infractions case.

1. Independence. Independence is assured by the status of COI members, by formal structures of separation, and by the clear demarcation of COI functions. COI members neither are employed by nor report to the NCAA national office. They are appointed by the Division I Management Council on recommendations from the various conferences. Their professional roles outside the NCAA are ones of high responsibility, typically embodying high-level administrative positions. The two public members of the COI, moreover, not only are not employed by the NCAA but they also are not employed by any member institution. As such they are independent both of the NCAA and also of the world of intercollegiate athletics as practiced on the campuses or in conference offices.

The COI does not investigate alleged major violations. It does not conduct pre-hearing witness interviews. It does not engage in pre-hearing fact-finding. It does not participate in pre-hearing conferences. It neither sees nor reviews correspondence between the enforcement staff and institutions or other interested parties. It neither sees nor reviews information surfaced by the enforcement staff, institution, coaches or staff members alleged to have committed major violations unless that information is made a formal part of the hearing record. NCAA staff liaisons to the COI work exclusively with the COI. They are not members of the enforcement staff. COI deliberations and case-relevant discussions are confidential within the COI.

2. Experience with the collegiate athletics enterprise. Membership on the COI, in its totality, reflects a breadth of expertise regarding aspects of intercollegiate athletics and intercollegiate life in general—and deliberately so. The current eight committee members who sit as the adjudicative body, for example, are, or have been, athletics directors, coaches, student-athletes, and a conference commissioner. Several handle or have handled compliance matters on campus and prepare or have prepared waiver requests on behalf of student-athletes. From the perspective of the institution or individuals appearing before the COI, this athletics experience assures a sensitive appreciation of the athletics enterprise and the particular pressures generated by college athletics. From the perspective of the membership as a whole, this athletics experience also assures that the COI will be able properly to evaluate claims that might seem persuasive or compelling to one with little or no knowledge of the athletics world. The faculty status of two COI members brings a faculty perspective to the table and a focused appreciation of the academic mission. With regard to sensitivity to due process concerns, the COI has as members two former judges (representing trial and appellate and state and federal court experience) and three additional lawyers, one of whom dealt with university administrative hearings in his role as general counsel at his university.

3. Full and Fair Hearing Opportunity and Equality of Treatment. In many, if not most, cases heard by the COI, there is substantial agreement regarding the facts between the institution and the enforcement staff. Typically the institution and enforcement staff have engaged in a cooperative effort to uncover a clear picture of

the circumstances surrounding potential violations. Often they participate at least in part in joint interviews. In these cases, as well as in cases in which there is substantial disagreement, institutions and individuals appearing before the COI have notice of the allegations charged against them and, in the enforcement case summary, a list of particulars regarding each allegation and the information relied on by the enforcement staff. At least some of this information will have been provided by the institutions during the investigation pursuant to the NCAA cooperative principle, which imposes an affirmative duty on member institutions to cooperate with the enforcement staff in investigating potential violations. Institutions and individuals also have ample pre-hearing opportunity to discuss the allegations with the enforcement staff; often these discussions lead to the withdrawal or amending of allegations. Moreover, the only alleged violations that the enforcement staff may present to the COI are those supported by sufficient information to warrant a conclusion that a violation has been committed.

Institutions, coaches, other staff members, and student-athletes who may be subject to imposition of a penalty have the right to appear, with counsel, at the COI hearing concerning their institution and to submit a written response. They also have available to them the complete file of information developed by the enforcement staff that is relevant to the case. They are entitled to submit interview transcripts or tapes, and any other documents they believe relevant to a full consideration of an alleged violation. Yet another aspect of the hearing process is that the COI may find a violation proved only if it is supported by information that is "credible, persuasive, and of a kind on which reasonably prudent people rely in the conduct of serious affairs." Not only do NCAA rules mandate the exclusion from COI consideration of any information provided by a source that is not identified to the COI, institution, and individuals, subject to a penalty, but the COI considers with particular care the credibility of individuals providing information, the internal consistency of that information, and any corroborative information. In thus exercising its adjudicative function, the COI frequently does not make findings of violations. The final aspect of the due process afforded institutions and individuals is the availability of an appeal to the Infractions Appeals Committee, both on the merits of any particular finding and on the penalties imposed.

In sum, then, the procedural protections afforded in the COI adjudicative process include (a) notice of the allegations; (b) a list of particulars regarding each allegation that includes the names of individuals providing information and a summary of the information on which the allegation is based; (c) an opportunity pre-hearing to discuss the substance of the allegations and to present information leading to the enforcement's staff's amendment or withdrawal of allegations; (d) access to all information relevant to an allegation; (e) an opportunity, and sufficient time, to provide exculpatory or explanatory information and a written response to the allegations; (f) a requirement that information provided to the COI must come from sources identified to the COI and to the institution and any individuals appearing before the COI; (g) representation by counsel at the hearing; (h) a full opportunity at the hearing to present one's case; (i) an independent fact-finder; (j) fact-finding based only on that information made part of the hearing record; (k) a finding of violation requiring a high burden of proof; (l) a written report by the COI that sets forth the grounds for its decision; and (m) the opportunity to appeal adverse findings or penalties to the Infractions Appeals Committee.

4. Proper application of rules and bylaws. Another function performed by the COI is to provide consistent, uniform, and informed application of NCAA bylaws and rules. While the NCAA interpretations process is designed to assure informed and uniform application of rules, by their nature these interpretations do not cover the world of potential issues. The student-athlete reinstatement process, as noted earlier, involves no fact-finding but relies instead on the rendition of the facts and circumstances as provided by an institution. The COI, by contrast, is in the unique position to evaluate rules and bylaws in the context of concrete factual situations. The COI takes seriously its responsibility to understand the thrust and significance of rules and bylaws as adopted by the membership and to assure their correct and fair application to the conduct and behaviors of institutions and their staffs.

5. Interests of the membership as a whole. There is a natural, perhaps inevitable, tension between the interests of an institution or individual involved in a particular infractions case and the interests of the membership as a whole. What might be the most pleasing resolution of a matter to an institution facing findings and penalties might be detrimental to the overall policy considerations and interests of the membership and, in fact, might be so perceived even by the particular institution once it is removed from the infractions process. The COI is ever mindful of the larger intercollegiate context into which its findings and reports must fit.

C. Practical Considerations. The jurisdictional authority of the COI runs to member institutions and their staffs. The COI has no subpoena power or other ability to compel cooperation by those outside institutions, including even family members of student-athletes or prospective student-athletes. While decisions by the COI undeniably may have an impact on individuals who are not institutional staff members—boosters, for example—the direct authority to compel cooperation and to impose sanctions is exercised only on member institutions.

Cases within the jurisdiction of the COI are initiated by information received by the enforcement staff from a number of sources, including media reports. While often the first information about potential violations is reported by the involved institution, on occasion a major case is initiated by information provided by an individual seeking to remain anonymous. This process is no different from a confidential informer used in a criminal case or a law firm's use of a private investigator to follow investigative leads that ultimately produce information relevant to a court proceeding. In each case, the confidential source's information serves only as a directional signal, leading investigators to individuals with information both concrete and relevant to a charge. It is that information, and those individuals, on which and on whom the COI relies in making its findings. The use of confidential source information is a necessary component of an effective enforcement system. Without such information, many fewer major infractions cases would be identified and the commission of many major violations would go undiscovered—to the detriment of all those institutions and individuals who act with integrity and in compliance with the rules. In recognition of the procedural fairness due institutions and individuals, however, NCAA procedures dictate that information provided by a confidential source may not be presented to the COI and may not be relied on by the COI in making its findings.

Although a private actor for purposes of formal imposition of the due process protections of the 14th amendment, the NCAA in its infractions process clearly meets and very likely exceeds applicable 14th amendment procedural protections. It is a truism that the process that is due varies according to context, with the highest end of procedural protections afforded to defendants in criminal cases. The test for what process constitutionally is due requires an evaluation of the substantive value of the interest maintained by the individual seeking additional procedural protections (in other words, whether there is a liberty or property interest at stake), an evaluation of the likelihood that, and the extent to which, provision of the additional procedural protection will advance or impede the truth-finding function and reduce or increase the risk of error in the decision-making, and an evaluation of the fiscal and administrative burdens of providing additional procedural protection.

Boosters are not subject to NCAA rules or bound by the cooperative principle. Nor do they have a due process liberty or property interest in the right to make financial or other contributions to an athletics program, to travel with athletics teams, to visit locker rooms, to stand on the sidelines at games, or to do a host of other things enjoyed by them—even when they conduct themselves appropriately and in compliance with NCAA rules and bylaws. Certainly, then, boosters have no due process liberty or property interest in their continued association with an athletics program when they are determined to have committed NCAA violations.

Institutions are subject to NCAA rules and are bound by the cooperative principle. They also are responsible for the actions of boosters and others associated with their athletics programs when they know, or in the appropriate exercise of institutional control and monitoring should have known, of booster rules-violative behavior. In any case in which the institution believes the booster to not be culpable, the institution has every interest in representing and defending the booster's interest before the COI. In these cases, booster interests will be reflected in the university's response in as full a rendition as the university chooses to make. In many cases, however, the institution independently and prior to hearing itself determines there is booster culpability and disassociates the booster from its athletics programs. In either case, the booster has no independent right to appear before the COI just as there is no independent, and cognizable, due process interest in maintaining his/her contact with the athletics program. While certainly procedural protections may extend beyond what is minimally required by due process, and while a right to appear would seem to promote booster interests, the impact on the truth-finding function and institutional and greater public policy considerations must be weighed in the balance. As to the latter interest, there might well be a detrimental impact reflected in hearing delays, potential obstructive conduct, and in the overall efficiency of the process. As to the former interest, it is doubtful that the truth-finding function will be improved as a booster has a full opportunity to present his/her case through an institution in any situation in which the institution supports the position of the booster. Moreover, big-time boosters are fully apprised of NCAA rules as they apply

to them. There are ample opportunities provided for instruction, including game day programs, periodic mailings to boosters, and in-person instructional sessions

CONCLUSION

I have attached to my testimony several documents that amplify and add depth and context to my remarks. Thank you very much for the opportunity to submit this testimony and attachments.

ATTACHMENT 1

NCAA Division I Committee on Infractions

The NCAA Division I Committee on Infractions is comprised of eight members who deliberate and decide infractions cases and two coordinators of appeals who processes appeals before the NCAA Infractions Appeals Committee. At least two members must come from the general public and the remaining members must be employed at Division I member institutions.

Gene Marsh, Chair. Marsh is the James M. Kidd, Sr., Professor of Law at the University of Alabama College of Law where he teaches Commercial Transactions and Consumer Protection Law and has also served as Director of the University Honors Program. Marsh was Alabama's Faculty Athletics Representative from1996 to 2003 and also served as a member of the Executive Committee of the Southeastern Conference. Marsh served three years with the U.S. Army's Presidential Honor Guard at Fort Meyer, Virginia. He received his B.S. and M.S. degrees from Ohio State University and his law degree from the College of Law at Washington and Lee University.

Paul Dee. Dee has been the Director of Athletics at the University of Miami since 1993 and for 12 years prior to that was the University's Vice-President and General Counsel. Dee is an active member of the Florida Bar Association and has chaired the Judicial Nominating Commission of the Third District Court of Appeals. Dee received his B.A. degree from the University of Florida and his M.Ed. and J.D. degrees from the College of Law at the University of Miami.

Alfred J. ("Jim") Lechner, Jr. Lechner, one of two COI members who represent the general public on the COI, was a United States District Judge for 15 years and prior to that was a New Jersey State Superior Court Judge. Lechner currently is a litigation partner, specializing in securities litigation and intellectual property, with the New Jersey law firm of Morgan, Lewis & Bockius. Lechner is a Lieutenant Colonel in the United States Marine Corps Reserve. He received his B.S. degree from Xavier University and his law degree from the College of Law at the University of Notre Dame.

Ted Leland. Leland has been the Jaquish & Kenninger Director of Athletics at Stanford University since 1991. He currently is a Distinguished Visiting Scholar at the Hoover Institution at Stanford and has taught Sports Psychology and the Philosophy of Sport at, among others, Stanford and Dartmouth College (where he also was the director of athletics). Leland served as co-chair of the United States Secretary of Education's Commission on Opportunity in Athletics and also served a two-year stint as the chair of the Division I Management Council. Leland has a BA and MA from the University of the Pacific and has a PhD from Stanford in education/sports psychology.

Andrea Myers. Myers is the athletics director at Indiana State University. Prior to that Myers was the University's Associate Athletics Director for Compliance. Myers was a head women's basketball coach for 22 years, 7 at Indiana state and 15 at Vincennes University. Myers has served on the NCAA Division I Management Council and the Division I Administrative Review Subcommittee. Myers received her B.S. and M.A. degrees from Indiana State.

James Park, Jr. Park, one of two COI members who represent the general public on the COI, is a former Kentucky state trial and appellate judge. He currently practices law in Lexington, Kentucky, with the law firm of Frost Brown Todd LLC. In the past Park has served as a special investigator in NCAA infractions cases. Park received his B.A. degree from Princeton University, his law degree from the College of Law at the University of Kentucky, and his master of laws degree from Yale University. He is a life member of the American Law Institute.

Josephine (Jo) R. Potuto. Potuto is the Richard H. Larson Professor of Constitutional Law at the University of Nebraska College of Law where she teaches Constitutional Law and Sports Law. Potuto is a member of the American Law Institute and a past member (1980 to 1997) of the U.S. District Court, D. Neb., Federal Practice Committee. Potuto was the project director and reporter (principal drafter) for the Uniform Law Commissioners (NCCUSL) Model Sentencing and Corrections Act as well as the reporter for the Nebraska Supreme Court Project to Draft Model Jury Instructions for Criminal Cases. Potuto has been Nebraska's faculty athletics representative since 1997; she currently serves on the Division I Management Council and the Division I Administrative Review Subcommittee. Potuto received her B.A.degree from Douglass College, her M.A. degree from Seton Hall University, and her J.D. degree from the College of Law at Rutgers University.

Tom Yeager. Yeager, the commissioner of the Colonial Conference since 1985, was the chair of the COI from 2001 to 2004. Between 1976 and 1985 Yeager was a member of the NCAA enforcement staff and also served as director of NCAA legislative services. Yeager is a past president of the University Commissioners Association and executive vice president of the Collegiate Commissioners Association. He has served on the NCAA Council and various other NCAA committees. He is a former collegiate gymnast who received his B.S. and M.Ed. degrees from Springfield College.

Jerry R. Parkinson. Parkinson, one of two coordinators of appeals for the COI, is the dean of the College of Law at the University of Wyoming where he teaches Criminal Procedure and Education Law. Before becoming the Wyoming Law Dean, Parkinson was a member of the faculty of the College of Law at the University of Oklahoma. Parkinson has served as a deputy United States Marshal. Among other things, Parkinson co-authored The Law of Student Expulsions and Suspensions (1999). Parkinson received a B.S. degree from Northern State College, an M.P.A. from the University of South Dakota, and his law degree from the College of Law at the University of Iowa.

Brian Halloran. Halloran, one of two coordinators of appeals for the COI, maintains a sophisticated national commercial law practice in Malibu California and is a developer and investor in renewable energy projects. In addition, Halloran is engaged in scholarly research in the area of gender equity participation in collegiate athletics under Title IX, with his wife, Professor Maureen Weston of the Pepperdine University School of law. Halloran is a Phi Beta Kappa graduate of the University of Colorado where he obtained his B.A. His law degree, Order of the Coif, is also from the University of Colorado.

Former Members. Former members of the COI include Fred Lacey and Phillip Tone, United States district judges; James Richardson, a state court judge in New Mexico; Charles Alan Wright, professor of law at the University of Texas College of Law, president of the American Law Institute, and co-author of a 54-volume treatise on federal practice; Roy Kramer, for 12 years the Commissioner of the Southeast Conference; and deans of the Colleges of Law at, among others, Arizona State University (Milton Shroeder); George Washington University (Jack Friedenthal); the University of Kentucky (Bill Mathews); the University of Oklahoma (David Swank); the University of Tennessee (Marilyn Yarbrough); the University of Washington (Harry Cross); and the University of Wisconsin (George Young and Frank Remington). Remington also served as the Reporter for the Advisory Committee on the Federal Rules of the United States Supreme Court and on the Standing Committee for the Federal Rules of Procedure, both civil and criminal.

ATTACHMENT 2

2.1 THE PRINCIPLE OF INSTITUTIONAL CONTROL AND RESPONSIBILITY

2.1.1 Responsibility for Control. [*] It is the responsibility of each member institution to control its intercollegiate athletics program in compliance with the rules and regulations of the Association. The institution's chief executive officer is responsible for the administration of all aspects of the athletics program, including approval of the budget and audit of all expenditures.

2.1.2 Scope of Responsibility. [*] The institution's responsibility for the conduct of its intercollegiate athletics program includes responsibility for the actions of its staff members and for the actions of any other individual or organization engaged in activities promoting the athletics interests of the institution.

2.8 THE PRINCIPLE OF RULES COMPLIANCE

2.8.1 Responsibility of Institution. [*] Each institution shall comply with all applicable rules and regulations of the Association in the conduct of its intercollegiate athletics programs. It shall monitor its programs to assure compliance and to identify and report to the Association instances in which compliance has not been achieved. In any such instance, the institution shall cooperate fully with the Association and shall take appropriate corrective actions. Members of an institution's staff, student-athletes, and other individuals and groups representing the institution's athletics interests shall comply with the applicable Association rules, and the member institution shall be responsible for such compliance.

ATTACHMENT 3

PRINCIPLES OF INSTITUTIONAL CONTROL
AS PREPARED BY THE NCAA DIVISION I COMMITTEE ON INFRACTIONS

A. "CONTROL" IS DEFINED IN COMMON-SENSE TERMS.

In determining whether there has been a lack of institutional control when a violation of NCAA rules has been found it is necessary to ascertain what formal institutional policies and procedures were in place at the time the violation of NCAA rules occurred and whether those policies and procedures, if adequate, were being monitored and enforced. It is important that policies and procedures be established so as to deter violations and not merely to discover their existence after they have taken place. In a case where proper procedures exist and are appropriately enforced, especially when they result in the prompt detection, investigation and reporting of the violations in question, there may be no lack of institutional control although the individual or individuals directly involved may be held responsible.

In a situation in which adequate institutional procedures exist, at least on paper, a practical, common-sense approach is appropriate in determining whether they are adequately monitored and enforced by a person in "control." Obviously, general institutional control is exercised by the chief executive officer of a member institution. However, it is rare that the chief executive officer will make decisions specifically affecting the operations of the institution's athletics program. Instead, the day-to-day duties of operation, including compliance with NCAA rules, will have been delegated to subordinates either by specific action or by the creation of appropriate job descriptions. Moreover, it is usually left to senior subordinates, such as the director of athletics, further to delegate various duties regarding compliance with NCAA rules.

In most institutions, especially those with large and varied athletics programs, such delegations are made to a number of individuals who are expected to exercise control over compliance with regard to specific aspects of the program. The specific obligations of such individuals should be in writing, and not merely an understanding among the senior officials of the university and the athletics department. Not only the director of athletics, but other officials in the athletics department, the faculty athletics representative, the head coaches and the other institutional administrators outside of the athletics department responsible for such matters as the certification of athletes for financial aid, practice and competition, are expected to assume a primary role in ensuring compliance. Even though specific action has been taken to place responsibility elsewhere, these individuals will be assumed to be operating on behalf of the institution with respect to those responsibilities that are logically within the scope of their positions. Their failure to control those matters so as to prevent violations of NCAA rules will be considered the result of a lack of institutional control.

B. VIOLATIONS THAT DO NOT RESULT FROM A LACK OF INSTITUTIONAL CONTROL.

An institution cannot be expected to control the actions of every individual who is in some way connected with its athletics program. The deliberate or inadvertent violation of a rule by an individual who is not in charge of compliance with rules that are violated will not be considered to be due to a lack of institutional control:

- if adequate compliance measures exist;
- if they are appropriately conveyed to those who need to be aware of them;
- if they are monitored to ensure that such measures are being followed; and
- if, on learning that a violation has occurred, the institution takes swift action.

C. ACTS THAT ARE LIKELY TO DEMONSTRATE A LACK OF INSTITUTIONAL CONTROL.

The following examples of a lack of institutional control are not exclusive, but they should provide important guidance to institutions as to the proper control of their NCAA compliance affairs.

1. A person with compliance responsibilities fails to establish a proper system for compliance or fails to monitor the operations of a compliance system appropriately.

When an individual is responsible for ensuring that a particular rule or set of rules is not violated, that person will be considered to be exercising institutional control. That individual must not only ensure that the rules are known by all who need to know them but must also make proper checks to ensure that the rules are being followed.

It is important for institutions to understand that the mere compilation and distribution of rules and regulations, along with written compliance procedures, is not sufficient if no one regularly checks on the actual operations of the system.

2. A person with compliance responsibilities does not take steps to alter the system of compliance when there are indications the system is not working.

If a system of control is in place, a single deviation by a member of the athletics staff or a representative of the institution's athletics interests will not be considered a lack of institutional control. However, if there are a number of violations, even if they all are minor, indicating that the compliance system is not operating effectively, the person(s) responsible cannot ignore the situation, but must take steps to correct the compliance system.

3. **A supervisor with overall responsibility for compliance, in assigning duties to subordinates, so divides responsibilities that, as a practical matter, no one is, or appears to be, directly in charge.**

The failure to designate who is responsible for ensuring compliance with NCAA rules is a serious breach of the obligations of a university athletics administrator. Individuals are unable to operate appropriately if they are uncertain of their duties and obligations. Moreover, those subordinates who are not in charge must know who is. They need to know the person or persons to whom they can turn for advice before taking an action that may be questionable. They also need to know to whom and how to report violations that come to their attention.

4. **Compliance duties are assigned to a subordinate who lacks sufficient authority to have the confidence or respect of others.**

A supervisor may be acting in good faith when assigning responsibility for compliance to an athletics department secretary, or a student intern, or to someone who does not have stature in the organization. Nevertheless, that very action often makes it appear that the institution is not serious about compliance. If coaches, alumni, boosters and others do not respect the person responsible, they may well ignore that individual. Violations that occur may then be considered the result of a lack of institutional control.

5. **The institution fails to make clear, by its words and its actions, that those personnel who willfully violate NCAA rules, or who are grossly negligent in applying those rules, will be disciplined and made subject to discharge.**

Any operating compliance system may be thwarted by an individual who acts secretly in violation of the rules or who fails to ascertain whether a questionable action is or is not permissible. If an institution does not make clear that individual violations of NCAA rules will result in disciplinary action against the involved individual, and if it does not actually discipline those who are found to have violated such rules, it has opened the door to permitting further violations. In such a case, future violations of an individual nature will constitute failures of institutional control.

6. **The institution fails to make clear that any individual involved in its intercollegiate athletics program has a duty to report any perceived violations of NCAA rules and can do so without fear of reprisals of any kind.**

   Compliance is everyone's obligation. Loyalty to one's coworkers, student-athletes, or athletics boosters cannot take precedence over loyalty to the institution and its commitment to comply with NCAA rules. There is a lack of institutional control if individuals are afraid to report violations because they have reason to fear that if they make such a report there will be negative consequences.

7. **A director of athletics or any other individual with compliance responsibilities fails to investigate or direct an investigation of a possible significant violation of NCAA rules or fails to report a violation properly.**

   When a director of athletics or any other individual with compliance responsibilities has been informed of, or learns that there exists a possible significant violation of NCAA rules, and then fails to ensure that the matter is properly investigated, there is a lack of institutional control. Similarly, if an actual violation of NCAA rules comes to the attention of the director of athletics or a person with compliance responsibilities and there is a failure to report the violation through appropriate institutional channels to a conference to which the institution belongs and to the NCAA, such failure constitutes a lack of institutional control.

8. **A head coach fails to create and maintain an atmosphere for compliance within the program the coach supervises or fails to monitor the activities of assistant coaches regarding compliance.**

   A head coach has special obligation to establish a spirit of compliance among the entire team, including assistant coaches, other staff and student-athletes. The head coach must generally observe the activities of assistant coaches and staff to determine if they are acting in compliance with NCAA rules. Too often, when assistant coaches are involved in a web of serious violations, head coaches profess ignorance, saying that they were too busy to know what was occurring and that they trusted their assistants. Such a failure by head coaches to control their teams, alone or with the assistance of a staff member with compliance responsibilities, is a lack of institutional control.

   This is not to imply that every violation by an assistant coach involves a lack of institutional control. If the head coach sets a proper tone of compliance and monitors the activities of all assistant coaches in the sport, the head coach cannot

be charged with the secretive activities of an assistant bent on violating NCAA rules.

D. COMPLIANCE MEASURES IN PLACE AT THE TIME OF VIOLATION AS A FACTOR IN DETERMINING WHETHER OR NOT THERE HAS BEEN A LACK OF INSTITUTIONAL CONTROL.

Institutions are eager to learn what measures can be taken to reduce the likelihood that in the event a violation does occur, it will result in a finding of a lack of institutional control. The following are some of the steps that assist an institution in avoiding such a finding. It must be emphasized, however, that the presence of such measures are not a guarantee against such a finding. The way in which the measures are carried out and the attitude toward compliance within the institution are vital factors.

1. The NCAA rules applicable to each operation are readily available to those persons involved in that operation.

Those individuals involved in recruiting activities should have ready access to the recruiting rules, and those university staff members engaged in determining eligibility for financial aid, practice and competition should have ready access to the NCAA rules governing those matters.

2. Appropriate forms are provided to persons involved in specific operations to ensure that they will properly follow NCAA rules.

With respect to certain operations, specific forms or checklists can be of great help in assuring compliance with NCAA rules. Clerical employees may find the rules themselves daunting. But if they can follow a form, many problems can be obviated. This is certainly true with regard to such matters as ensuring that student-athletes do not receive excessive financial aid individually or by sport, that initial eligibility standards are met, and that continuing eligibility standards are properly enforced.

3. A procedure is established for timely communication among various university offices regarding determinations that affect compliance with NCAA rules.

For example, there should be a method of direct communication between the registrar and the department of athletics so that the latter learns at once if an enrolled student-athlete drops a course that brings that student-athlete below the required number of units for eligibility to participate.

4. **Meaningful compliance education programs are provided for personnel engaged in athletically related operations.**

It is important that new personnel, both coaches and administrative staff members, receive training regarding NCAA rules that are relevant to their positions shortly after beginning employment. The institution should also continue to educate its staff by conducting compliance sessions on a regular basis for all involved personnel as refresher courses, with an emphasis on changes in NCAA rules. Not infrequently, persons who have been involved in intercollegiate athletics for many years and who violate long-standing rules attempt to excuse their actions on the grounds that they were unaware that their activities constituted a violation. On occasion such personnel rely on long outdated interpretations of legislation that have been eliminated or dramatically altered for a number of years.

Obviously the nature and strength of the compliance education program is of significance. Educational programs run by the NCAA and by various conference offices may, because of the expertise of those involved, be superior to training by in-house personnel.

5. **Informational and educational programs are established to inform athletics boosters of the limitations on their activities under NCAA rules and of the penalties that can arise if they are responsible for rule violations.**

Distribution of rules education materials (e.g. brochures and articles) to season ticket holders is significant as are special programs for booster organizations.

6. **Informational and educational programs are established for student-athletes regarding the rules that they must follow.**

All institutions conduct information sessions for student-athletes and obtain the required signed statements from each. However, the extent to which these are truly informative and are taken seriously varies. The extent to which these sessions are made important by the institution is a significant factor.

7. **An internal monitoring system is in place to ensure compliance with NCAA rules.**

It is of significance if, on a regular basis, a person (or persons) charged with monitoring compliance frequently checks operations throughout the athletics department and related departments of the university. Such a person should make certain that required forms are being utilized and utilized properly. A compliance person should speak with all coaches frequently and regularly to find out if they have any concerns or questions about what they can or cannot do or what they have already done. A compliance person should be aware of what actions have been taken with regard to a variety of areas, including recruitment, awarding of financial aid, practice requirements and travel arrangements. From time to time the compliance person should meet with student-athletes in the various sports to see if any problems exist. All potential violations must be reported and an investigation must ensue in accordance with appropriate institutional procedures.

Other internal monitoring measures are also of significance, including one-on-one meetings between coaches and the athletics director, and meetings of university committees on athletics in which student-athletes and others are involved.

8. An external audit of athletics compliance is undertaken at reasonable intervals.

An important control exists if an independent university or outside unit undertakes audits of the athletics enterprise to determine if there have been violations of NCAA rules and to suggest changes in operating methods and procedures wherever such action could eliminate the danger of future violations.

9. The chief executive officer and other senior administrators make clear that they demand compliance with NCAA rules and that they will not tolerate those who deliberately violate the rules or do so through gross negligence.

It is an important factor when the senior administrators in an institution by word and, when necessary, by action make clear that compliance is vital. The pressure to run a winning program must not overcome the dedication of the institution to ethical conduct in all aspects of its athletics program and to compliance with NCAA regulations.

10. The institution and its staff members have a long history of self-detecting, self-reporting and self-investigating all potential violations.

BYLAW, ARTICLE 19

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19.01 GENERAL PRINCIPLES

19.01.1 Mission of NCAA Enforcement Program. It shall be the mission of the NCAA enforcement program to eliminate violations of NCAA rules and impose appropriate penalties should violations occur. The program is committed to fairness of procedures and the timely and equitable resolution of infractions cases. The achievement of these objectives is essential to the conduct of a viable and effective enforcement program. Further, an important consideration in imposing penalties is to provide fairness to uninvolved student-athletes, coaches, administrators, competitors and other institutions. *(Adopted: 1/11/94)*

19.01.2 Exemplary Conduct. Individuals employed by or associated with member institutions for the administration, the conduct or the coaching of intercollegiate athletics are, in the final analysis, teachers of young people. Their responsibility is an affirmative one, and they must do more than avoid improper conduct or questionable acts. Their own moral values must be so certain and positive that those younger and more pliable will be influenced by a fine example. Much more is expected of them than of the less critically placed citizen.

19.01.3 Responsibility to Cooperate. All representatives of member institutions shall cooperate fully with the NCAA enforcement staff, Committee on Infractions, Infractions Appeals Committee and Management Council to further the objectives of the Association and its enforcement program. The enforcement policies and procedures are an essential part of the intercollegiate athletics program of each member institution and require full and complete disclosure by all institutional representatives of any relevant information requested by the NCAA enforcement staff, Committee on Infractions or Infractions Appeals Committee during the course of an inquiry.

19.01.4 Violations by Institutional Staff Members. Institutional staff members found in violation of NCAA regulations shall be subject to disciplinary or corrective action as set forth in the provisions of the NCAA enforcement procedures, whether such violations occurred at the certifying institution or during the individual's previous employment at another member institution.

19.01.5 Nature of Penalty Structure. As a guiding principle, a penalty imposed under NCAA enforcement policies and procedures should be broad and severe if the violation or violations reflect a general disregard for the governing rules; in those instances in which the violation or violations are isolated and of relative insignificance, then the NCAA penalty shall be specific and limited. Previous violations of NCAA legislation shall be a contributing factor in determining the degree of penalty.

19.02 DEFINITIONS AND APPLICATIONS

19.02.1 Show-Cause Order. A show-cause order is one that requires a member institution to demonstrate to the satisfaction of the Committee on Infractions (or the Infractions Appeals Committee per Bylaw 19.2) why it should not be subject to a penalty (or additional penalty) for not taking appropriate disciplinary or corrective action against an institutional staff member or representative of the institution's athletics interests identified by the committee as having been involved in a violation of NCAA regulations that has been found by the committee. *(Revised: 1/10/95, 4/24/03)*

19.02.2 Types of Violations

19.02.2.1 Violation, Secondary. A secondary violation is a violation that is isolated or inadvertant in nature, provides or is intended to provide only a minimal recruiting, competitive or other advantage and does not include any significant recruiting inducement or extra benefit. Multiple secondary violations by a member institution may collectively be considered as a major violation. *(Revised: 1/11/94)*

19.02.2.2 Violation, Major. All violations other than secondary violations are major violations, specifically including those that provide an extensive recruiting or competitive advantage. *(Revised: 1/11/94)*

19.02.3 New Evidence. New evidence is evidence that could not reasonably be ascertained prior to the Committee on Infractions hearing. *(Adopted: 1/6/96)*

19.1 COMMITTEE ON INFRACTIONS

The Management Council shall appoint a Committee on Infractions, which shall be responsible for administration of the NCAA enforcement program.

19.1.1 Composition of Committee. The committee shall be composed of ten members, seven of whom shall be at present or previously on the staff of an active member institution or member conference of the Association, no more than three and no less than two of whom shall be from the general public and shall not be associated with a collegiate institution, conference, or professional or similar sports organization, or represent coaches or athletes in any capacity. One of the members shall serve as chair and one member shall serve as vice-chair. Two members shall be elected as coordinators of appeals, one of whom may be a public member. Two positions shall be allocated for men, two allocated for women and six unallocated. There shall be no subdivision restrictions except that all nonpublic members may not be from the same subdivision; however, the coordinators of appeals shall not be considered in determining whether such a requirement is satisfied. *(Revised: 1/16/93, 10/27/98, 10/28/99, 1/11/00, 11/1/01, 11/31/02)*

19.1.1.1 Quorum. Four members present and voting shall constitute a quorum for conduct of committee business, it being understood that the chair shall make a special effort to have full committee attendance when major infractions cases involving violations are to be considered.

19.1.1.2 Temporary Substitutes. If it appears that one or more members of the committee will be unable to participate in the hearing of a case, the chair may request the Management Council to designate a former member or members of the committee to rejoin the committee for purposes of the consideration and disposition of that case.

19.1.1.3 Term of Office. A member shall serve a three-year term, which shall commence on the first day of September following the member's election. A member may be reappointed but shall not serve more than nine years on the committee, with the exception of the position of coordinator of appeals, which may be filled by a former member of the committee who had previously served nine years. In such instances, a minimum period of three years must have elapsed between the date the committee member previously relinquished duties with the committee and reappointment to the committee as the coordinator of appeals. As with a regular member of the committee, the coordinator of appeals shall serve a three-year term, which commences on the first day of September following the coordinator of appeal's selection. The coordinator of appeals may be reappointed but shall not serve more than nine years on the committee in that capacity. *(Adopted: 1/11/00)*

19.1.1.4 Duties of the Coordinators of Appeals. The coordinators of appeals shall be responsible for processing appeals to infraction cases on behalf of the committee. The coordinators of appeals will be present during institutional hearings before the committee and during subsequent committee deliberations, but will not be active participants in either. The coordinators of appeals shall represent the committee in proceedings before the Infractions Appeals Committee. *(Adopted: 10/28/99, Revised: 10/31/02)*

19.1.2 Authority of Committee. Disciplinary or corrective actions other than suspension or termination of membership may be effected by members of the Committee on Infractions present and voting at any duly called meeting thereof, provided the call of such a meeting shall have contained notice of the situation presenting the disciplinary problem. Actions of the committee in cases involving major violations, however, shall be subject to review by the Infractions Appeals Committee per Bylaw 19.2, on appeal. *(Revised: 1/16/93, 1/10/95, 4/24/03)*

19.1.2.1 Authority of Vice President for Enforcement. Upon review of information developed by the enforcement staff or self-reported by the member institution, the vice-president for enforcement services shall identify the charges as involving alleged major or secondary violations, or multiple secondary violations that should be viewed as a major violation. Disciplinary or corrective actions in the case of secondary violations may be effected by the vice-president for enforcement services. Said actions shall be taken in accordance with the provisions of the enforcement policies and procedures and shall be subject to review by the committee upon appeal. *(Revised: 4/24/03)*

19.1.2.2 Authority of Committee Chair. In the interim between meetings of the committee, the chair shall be empowered to act on behalf of the committee, subject to committee approval at its next meeting. If at any time, at a meeting or between meetings, the chair is unavailable to act as such, the vice-chair is empowered to exercise the functions of the chair. *(Revised: 11/1/01)*

19.1.2.3 Authority of Infractions Appeals Committee. The Infractions Appeals Committee per Bylaw 19.2, shall hear and act upon an institution's or involved individuals appeal of the findings and/or penalties of major violations by the Committee on Infractions. *(Revised: 1/16/93, 1/10/95, 4/24/03)*

19.1.3 Duties of Committee. The duties of the Committee on Infractions shall be as follows: *(Revised: 4/24/03)*

(a) Consider complaints that may be filed with the Association charging the failure of any member to maintain the academic or athletics standards required for membership or the failure of any member to meet the conditions and obligations of membership in the Association;

(b) Formulate and revise, in accordance with the requirements of Bylaw 19.3, a statement of its established operating policies and procedures, including investigative guidelines (see Bylaw 32);

(c) Determine facts related to alleged violations and find violations of NCAA rules and requirements;

(d) Impose an appropriate penalty or show-cause requirement on a member found to be involved in a major violation (or, upon appeal, on a member found to be involved in a secondary violation), or recommend to the Board of Directors suspension or termination of membership; and

(e) Carry out any other duties directly related to the administration of the Association's enforcement program.

19.2 APPEALS COMMITTEES

19.2.1 Infractions Appeals Committee. The Management Council shall appoint an Infractions Appeals Committee, which shall hear and act upon appeals of the findings of major violations by the Committee on Infractions involving member institutions. *(Adopted: 1/16/93, Revised: 1/10/95)*

19.2.1.1 Composition of Committee. The committee shall be composed of five members. At least one member shall be from the general public and shall not be connected with a collegiate institution, conference, or professional or similar sports organization, or represent coaches or athletes in any capacity. The remaining members shall presently or previously be on the staff of an active member institution or member conference, but shall not serve presently on the Board of Directors. There shall be no subdivision restrictions except that all nonpublic members may not be from the same subdivision. *(Adopted: 1/16/93, Revised: 10/27/98)*

19.2.1.1.1 Temporary Substitutes. If it appears that one or more of the committee will be unable to participate in the hearing of a case, the chair may request the Management Council to designate a former member or members of the committee to rejoin the committee for purposes of consideration and disposition of that case. *(Adopted: 4/22/98)*

19.2.1.2 Term of Office. A member shall serve a three-year term, which shall commence on the first day of September following the member's election. A member may be reappointed but shall not serve more than nine years on the committee. *(Adopted: 1/9/96)*

19.2.1.3 Authority and Duties of Committee. The committee shall hear and act upon appeals of the findings of major violations by the Committee on Infractions involving member institutions (see Bylaws 32.107 and 32.11). The committee may establish or amend enforcement policies and procedures set forth in Bylaws 32.107 and 32.11 that relate directly to the infractions appeals process, subject to review and approval by the Management Council. *(Adopted: 1/16/93, Revised: 1/10/95, 1/14/97)*

19.2.1.3.1 Notification to Membership. To the extent that the infractions appeals policies and procedures are revised, any member institution involved in the processing of an infractions appeals case shall be notified immediately of the change and the general membership shall be advised through The NCAA News. *(Adopted: 1/14/97)*

19.2.1.3.2 Review by Convention. Policies and procedures established by the Infractions Appeals Committee, per Bylaw 19.2.1.3, are subject to review and approval by the Management Council (see Constitution 5.2.3.3). *(Adopted: 1/14/97; Revised: 4/24/03)*

19.3 ESTABLISHMENT AND REVISION OF ENFORCEMENT POLICIES AND PROCEDURES

19.3.1 Amendment by Committee and Approval by Management Council. The Committee on Infractions may establish or amend the policies and procedures in regard to issues other than those concerning institutional penalties, restitution, and committee duties and structure. A member institution shall be provided notice of alleged NCAA rules violations for which it is charged before any penalty is imposed, as well as the opportunity to appear before the committee and the opportunity to appeal the committee's findings of major violations or penalties (see Bylaws 19.4 and 19.5). The policies and procedures governing the administration of the Association's enforcement program, as set forth in Bylaw 32, are subject to review and approval by the Management Council at its next regularly scheduled meeting.

19.3.1.1 Notification to Membership. To the extent that the enforcement policies and procedures are revised, any member institution involved in the processing of an infractions case shall be notified immediately of the change and the general membership shall be advised through The NCAA News.

19.3.1.2 Review by Management Council. Policies and procedures established by the Committee on Infractions, per Bylaw 19.3.1, are subject to review and approval in accordance with the legislative process. *(Revised: 4/24/03)*

19.3.2 Amendment to Enforcement Procedures. The enforcement policies and procedures set forth in Bylaw 32 may be amended in accordance with the legislative process. *(Revised: 4/24/03)*

19.4 NOTICE OF CHARGES AND OPPORTUNITY TO APPEAR

19.4.1 For Major Violations. A member under investigation for major violations shall be given the following:

(a) Notice of any specific charges against it and the facts upon which such charges are based; and

(b) An opportunity to appear before the Committee on Infractions (or the Infractions Appeals Committee per Bylaw 19.2) to answer such charges by the production of evidence (see Bylaw 19.6.2). *(Revised: 1/16/93, 1/10/95, 4/24/03)*

19.4.2 For Secondary Violations. A member under investigation for secondary violations shall be given the following:

(a) Notice of any specific charges against it and the facts upon which such charges are based; and

(b) An opportunity to provide a written response to the vice-president for enforcement services (or to appear before the Committee on Infractions upon appeal) to answer such charges by the production of evidence (see Bylaw 19.6.1).

19.4.3 New Findings. When an institution and involved individual appears before the committee to discuss a response to the notice of allegations, the hearing shall be directed toward the general scope of the notice of allegations but shall not preclude the committee from finding any violation resulting from information developed or discussed during the hearing. *(Revised: 4/24/03)*

19.5 PENALTIES

19.5.1 Penalties for Secondary Violations. The vice-president for enforcement services, upon approval by the chair or another member of the Committee on Infractions designated by the chair, or the committee may determine that no penalty is warranted in a secondary case, that an institutional- or conference-determined penalty is satisfactory or, if appropriate, impose a penalty. Among the disciplinary measures are: *(Revised: 1/11/94)*

(a) Termination of the recruitment of a prospect by the institution or, if the prospect enrolls (or has enrolled) in the institution, permanent ineligibility to represent the institution in intercollegiate competition (unless eligibility is restored by the Committee on Student-Athlete Reinstatement upon appeal);

(b) Forfeiture of contests in which an ineligible student-athlete participated;

(c) Prohibition of the head coach or other staff members in the involved sport from participating in any off-campus recruiting activities for up to one year; *(Revised: 1/11/94)*

(d) An institutional fine for each violation, with the monetary penalty ranging in total from $500 to $5,000, except when an ineligible student-athlete participates in an NCAA championship or other postseason competition, in which case the $5,000 limit shall not apply; *(Revised: 4/26/01 effective 8/1/01)*

(e) A limited reduction in the number of financial aid awards that may be awarded during a specified period in the sport involved to the maximum extent of 20 percent of the maximum number of awards normally permissible in that sport;

(f) Institutional recertification that its current athletics policies and practices conform to all requirements of NCAA regulations;

(g) Suspension of the head coach or other staff members for one or more competitions; *(Adopted: 1/11/94)*

(h) Public reprimand (to be invoked only in situations where the Committee on Infractions or the vice-president for enforcement services, upon approval by the committee, determines that a penalty, in addition to any institutional- or conference-determined penalty, is warranted); and *(Adopted: 1/11/94)*

(i) Requirement that a member institution that has been found in violation, or that has an athletics department staff member who has been found in violation of the provisions of NCAA legislation while representing another institution, show cause why a penalty or an additional penalty should not be

imposed if it does not take appropriate disciplinary or corrective action against the athletics department personnel involved, any other institutional employee if the circumstances warrant or representatives of the institution's athletics interests. *(Adopted: 1/11/94)*

19.5.2 Penalties for Major Violations

19.5.2.1 Presumptive Penalty. The presumptive penalty for a major violation, subject to exceptions authorized by the Committee on Infractions on the basis of specifically stated reasons, shall include all of the following:

(a) A two-year probationary period (including a periodic in-person monitoring system and written institutional reports);

(b) The reduction in the number of expense-paid recruiting visits to the institution in the involved sport for one recruiting year; *(Revised: 1/11/94)*

(c) A requirement that all coaching staff members in the sport be prohibited from engaging in any off-campus recruiting activities for u p to one recruiting year; *(Revised: 1/11/94)*

(d) A requirement that all institutional staff members determined by the committee knowingly to have engaged in or condoned a major violation be subject to: *(Adopted: 1/11/94)*

(1) Termination of employment;

(2) Suspension without pay for at least one year;

(3) Reassignment of duties within the institution to a position that does not include contact with prospective or enrolled student-athletes or representatives of the institution's athletics interests for at least one year; or

(4) Other disciplinary action approved by the committee.

(e) A reduction in the number of financial aid awards; *(Adopted: 1/11/94)*

(f) Sanctions precluding postseason competition in the sport, particularly in those cases in which: *(Revised: 1/11/94)*

(1) Involved individuals remain active in the program; *(Adopted: 1/11/94)*

(2) A significant competitive advantage results from the violation(s); or *(Adopted: 1/11/94)*

(3) The violation(s) reflect a lack of institutional control. *(Adopted: 1/11/94)*

(g) Institutional recertification that the current athletics policies and practices conform to all requirements of NCAA regulations.

19.5.2.2 Disciplinary Measures. In addition to those penalties prescribed for secondary violations, among the disciplinary measures, singly or in combination, that may be adopted by the committee (or the Infractions Appeals Committee per Bylaw 19.2) and imposed against an institution for major violations are: *(Revised: 1/16/93, 1/11/94, 1/10/95, 4/24/03)*

(a) Public reprimand and censure; *(Revised: 1/11/94)*

(b) Probation for at least one year; *(Revised: 1/11/94)*

(c) A reduction in the number of financial aid awards (as defined in Bylaw 15.02.4.1) that may be awarded during a specified period;

(d) Prohibition against the recruitment of prospective student-athletes for a sport or sports for a specified period;

(e) One or more of the following penalties: *(Revised: 4/26/01 effective 8/1/01)*

(1) Individual records and performances shall be vacated or stricken; or *(Revised: 1/11/94)*

(2) Team records and performances shall be vacated or stricken; or *(Adopted: 1/11/94)*

(3) Individual or team awards shall be returned to the Association.

(f) A financial penalty; *(Adopted: 4/26/01 effective 8/1/01)*

(g) Ineligibility for any television programs involving coverage of the institution's intercollegiate athletics team or teams in the sport or sports in which the violations occurred; *(Revised: 1/10/92)*

(h) Ineligibility for invitational and postseason meets and tournaments;

(i) Ineligibility for one or more NCAA championship events;

(j) Prohibition against an intercollegiate sports team or teams participating against outside competition for a specified period;

(k) Ineligibility of the member to vote or its personnel to serve on committees of the Association, or both;

(l) Requirement that a member institution that has been found in violation, or that has an athletics department staff member who has been found in violation of the provisions of NCAA legislation while representing another institution, show cause why:

(1) A penalty or an additional penalty should not be imposed if, in the opinion of the committee (or the Infractions Appeals Committee per Bylaw 19.2), it does not take appropriate disciplinary or corrective action against athletics department personnel involved in the infractions case, any other institutional employee if the circumstances warrant or representatives of the institution's athletics interests; or *(Revised: 1/10/95, 4/24/03)*

(2) A recommendation should not be made to the membership that the institution's membership in the Association be suspended or terminated if, in the opinion of the committee (or the Infractions Appeals Committee per Bylaw 19.2), it does not take appropriate disciplinary or corrective action against the head coach of the sport involved, any other institutional employee if the circumstances warrant or representatives of the institution's athletics interests. *(Revised: 1/10/95, 4/24/03)*

(3) "Appropriate disciplinary or corrective action" as specified in subparagraphs (1) and (2) above may include, for example, termination of the coaching contract of the head coach and any assistants involved; suspension or termination of the employment status of any other institutional employee who may be involved; severance of relations with any representative of the institution's athletics interests who may be involved; the debarment of the head or assistant coach from any coaching, recruiting or speaking engagements for a specified period; and the prohibition of all recruiting in a specified sport for a specified period.

(4) The nature and extent of such action shall be the determination of the institution after due notice and hearing to the individuals concerned, but the determination of whether or not the action is appropriate in the fulfillment of NCAA policies and principles, and its resulting effect on any institutional penalty, shall be solely that of the committee (or the Infractions Appeals Committee per Bylaw 19.2). *(Revised: 1/10/95, 4/24/03)*

(5) Where this requirement is made, the institution shall show cause or, in the alternative, shall show the appropriate disciplinary or corrective action taken, in writing, to the committee (or the Infractions Appeals Committee per Bylaw 19.2) within 15 days thereafter. The committee (or the Infractions Appeals Committee per Bylaw 19.2) may, without further hearing, determine on the basis of such writing whether or not in its opinion appropriate disciplinary or corrective action has been taken and may impose a penalty or additional penalty; take no further action, or, by notice to the institution, conduct a further hearing at a later date before making a final determination. *(Revised: 1/10/95, 4/24/03)*

19.5.2.2.1 Opportunity to Appear. In the event the committee considers additional penalties to be imposed upon an institution in accordance with Bylaw 19.5.2.2-(l) above, the involved institution shall be provided the opportunity to appear before the committee; further, the institution shall be provided the opportunity to appeal (per Bylaw 19.6.2) any additional penalty imposed by the committee.

19.5.2.3 Repeat Violators

19.5.2.3.1 Time Period. An institution shall be considered a "repeat" violator if the Committee on Infractions finds that a major violation has occurred within five years of the starting date of a major penalty. For this provision to apply, at least one major violation must have occurred within five years after the starting date of the penalties in the previous case. It shall not be necessary that the Committee on Infractions' hearing be conducted or its report issued within the five-year period. *(Revised: 1/14/97 effective 8/1/97)*

19.5.2.3.2 Repeat—Violator Penalties. In addition to the penalties identified for a major violation, the minimum penalty for a repeat violator, subject to exceptions authorized by the Committee on Infractions on the basis of specifically stated reasons, may include any or all of the following: *(Revised: 1/11/94)*

(a) The prohibition of some or all outside competition in the sport involved in the latest major violation for one or two sports seasons and the prohibition of all coaching staff members in that sport from involvement directly or indirectly in any coaching activities at the institution during that period;

(b) The elimination of all initial grants-in-aid and all recruiting activities in the sport involved in the latest major violation in question for a two-year period;

(c) The requirement that all institutional staff members serving on the Board of Directors, Management Council, Executive Committee or other committees of the Association resign those positions, it being understood that all institutional representatives shall be ineligible to serve on any NCAA committee for a period of four years; and

(d) The requirement that the institution relinquish its voting privilege in the Association for a four-year period.

19.5.2.4 Probationary Periods

19.5.2.4.1 Conditions of Probation. The committee (or the Infractions Appeals Committee per Bylaw 19.2) may identify possible conditions that an institution must satisfy during a probationary period. Such conditions shall be designed on a case-by-case basis to focus on the institution's administrative weaknesses detected in the case and shall include, but not be limited to, written reports from the institution pertaining to areas of concern to the committee (or the Infractions Appeals Committee), in-person reviews of the institution's athletics policies and practices by the NCAA administrator for the Committee on Infractions, implementation of educational or deterrent programs, and audits for specific programs or teams. If the institution fails to satisfy such conditions, the committee (or the Infractions Appeals Committee per Bylaw 19.2) may reconsider the penalties in the case and may extend the probationary period and/or impose additional sanctions. *(Revised: 1/10/95, 4/24/03)*

19.5.2.4.2 Review Prior to Restoration of Membership Rights and Privileges. In the event the committee imposes a penalty involving a probationary period, the institution shall be notified that after the penalty becomes effective, the NCAA director for the Committee on Infractions will review the athletics policies and practices of the institution prior to action by the committee to restore the institution to full rights and privileges of membership in the Association. *(Revised: 1/10/95)*

19.5.2.5 Television Appearance Limitations. In some instances, an institution is rendered ineligible to appear on television programs. When an institution is banned from such television programs, the penalty shall specify that the institution may not enter into any contracts or agreements for such appearances until the institution's probationary status has been terminated and it has been restored to full rights and privileges of membership. *(Revised: 1/10/92)*

19.5.2.5.1 Closed-Circuit Telecast Exception. The Management Council is authorized to permit a closed-circuit telecast, limited to the campus of the opponent of the ineligible institution, it being understood that no rights fee is to be paid to the ineligible institution.

19.5.2.6 Disassociation of Representatives of Athletics Interests. The dissassociation of relations with a representative of an institution's athletics interests may be imposed on a permanent basis, for the duration of the applicable probationary period or for another specified period of time. When an institution is required to show cause why a representative of the institution's athletics interests should not be disassociated from its athletics program, such disassociation shall require that the institution:

(a) Refrain from accepting any assistance from the individual that would aid in the recruitment of prospective student-athletes or the support of enrolled student-athletes;

(b) Not accept financial assistance for the institution's athletics program from the individual;

(c) Ensure that no athletics benefit or privilege be provided to the individual that is not generally available to the public at large; and

(d) Take such other actions against the individual that the institution determines to be within its authority to eliminate the involvement of the individual in the institution's athletics program.

19.5.2.7 Notification to Regional Accrediting Agency. When an institution has been found to be in violation of NCAA requirements, and the report reflects academic violations or questionable academic procedures, the president shall be authorized to forward a copy of the report to the appropriate regional accrediting agency.

19.5.2.8 Review of Penalty

19.5.2.8.1 Newly Discovered Evidence or Prejudicial Error. When a penalty has been imposed and publicly announced and the appeal opportunity has been exhausted, there shall be no review of the penalty except upon a showing of newly discovered evidence (per Bylaw 19.02.3) that is directly related the findings in the case or that there was prejudicial error in the procedure that was followed in the processing of the case by the committee. *(Revised: 1/9/96)*

19.5.2.8.1.1 Review Process. Any institution that initiates such a review shall be required to submit a brief of its appeal to the committee and to furnish sufficient copies of the brief for distribution to all members of the committee. The committee shall review the brief and decide by majority vote whether it shall grant a hearing of the appeal.

19.5.2.8.1.2 Institution or Conference Discipline as New Evidence. Disciplinary measures imposed by the institution or its conference, subsequent to the NCAA's action, may be considered to be "newly discovered evidence" for the purposes of this section.

19.5.2.8.1.3 No Imposition of New Penalty. If a hearing of the appeal is granted, the committee may reduce or eliminate any penalty but may not impose any new penalty. The committee's decision with respect to the penalty shall be final and conclusive for all purposes.

19.5.2.8.2 Reconsideration of Penalty. The institution shall be notified that should any portion of the penalty in the case be set aside for any reason other than by appropriate action of the Association, the penalty shall be reconsidered by the NCAA. In such cases, any extension or adjustment of a penalty shall be proposed by the Committee on Infractions after notice to the institution and hearing. Any such action by the committee shall be subject to appeal.

19.5.3 Discipline of Affiliated or Corresponding Member

19.5.3.1 Termination or Suspension. The membership of any affiliated or corresponding member failing to meet the conditions and obligations of membership or failing to support and adhere to the purposes and policies set forth in Constitution 1 may be terminated or suspended or the member otherwise may be disciplined through the following procedure:

(a) The Executive Committee by a two-thirds majority of its members present and voting, may take such action on its own initiative; or *(Adopted: 1/11/89)*

(b) The Committee on Infractions, by majority vote, may recommend such action to the Executive Committee, which may adopt the recommendation by a two-thirds vote of its members present and voting; and

(c) The affiliated or corresponding member shall be advised of the proposed action at least 30 days prior to any Committee on Infractions or Executive Committee meeting in which such action is considered and shall be provided the opportunity to appear at any such meeting.

19.5.4 Recommendation to Committee on Athletics Certification. The Committee on Infractions may recommend to the Committee on Athletics Certification that an institution's certification status be reviewed as a result of the institution's completed infractions case. *(Adopted: 1/16/93 effective 1/1/94)*

19.6 RIGHTS OF MEMBER TO APPEAL

19.6.1 Appeal of Secondary Violations. A member shall have the right to appeal actions taken by the vice-president of enforcement services in reference to secondary violations. To appeal, the member must submit written notice of appeal to the Committee on Infractions. The Committee on Infractions must receive the written notice of appeal and any supporting information within 30 days of the date the institution receives the enforcement staff's decision. *(Adopted: 1/16/93 effective 1/1/94)*

19.6.2 Appeal of Major Violations. A member shall have the right to give written notice of appeal of the committee's findings of major violations (subject to Bylaw 32.10.2), the penalty, or both to the Infractions Appeals Committee per Bylaw 19.2. *(Revised: 1/16/93, 1/10/95, 4/24/03)*

19.6.3 Appeal by an Institutional Staff Member. If any current or former institutional staff member participates in a hearing (either in person or through written presentation) before the Committee on Infractions and is involved in a finding of a violation against that individual, the individual shall be given the opportunity to appeal any of the findings in question (subject to the conditions of Bylaw 32.10.2) or the committee's decision to issue a show-cause order to the Infractions Appeals Committee. Under such circumstances, the individual and personal legal counsel may appear before the appeals committee at the time it considers the pertinent findings. *(Revised: 1/16/93, 1/10/95, 1/6/96, 4/24/03)*

19.6.4 Student-Athlete Appeal. If an institution concludes that continued application of the rule(s) would work an injustice on any student-athlete, an appeal shall be submitted to the Committee on Student-Athlete Reinstatement and promptly reviewed.

19.6.4.1 Obligation of Institution to Take Appropriate Action. When the committee (or the Infractions Appeals Committee per Bylaw 19.2) finds that there has been a violation of the constitution or bylaws affecting the eligibility of an individual student-athlete or student-athletes, the institution involved and its conference(s), if any, shall be notified of the violation and the name(s) of the student-athlete(s) involved, it being understood that if the institution fails to take appropriate action, the involved institution shall be cited to show cause under the Association's regular enforcement procedures why it should not be disciplined for a failure to abide by the conditions and obligations of membership (declaration of ineligibility) if it permits the student-athletes to compete. *(Revised: 1/10/95, 4/24/03)*

19.7 RESTITUTION

If a student-athlete who is ineligible under the terms of the constitution, bylaws or other legislation of the Association is permitted to participate in intercollegiate competition contrary to such NCAA legislation but in accordance with the terms of a court restraining order or injunction operative against the institution

attended by such student-athlete or against the Association, or both, and said injunction is voluntarily vacated, stayed or reversed or it is finally determined by the courts that injunctive relief is not or was not justified, the Management Council may take any one or more of the following actions against such institution in the interest of restitution and fairness to competing institutions:

(a) Require that individual records and performances achieved during participation by such ineligible student-athlete shall be vacated or stricken;

(b) Require that team records and performances achieved during participation by such ineligible student-athlete shall be vacated or stricken;

(c) Require that team victories achieved during participation by such ineligible student-athlete shall be abrogated and the games or events forfeited to the opposing institutions;

(d) Require that individual awards earned during participation by such ineligible student-athlete shall be returned to the Association, the sponsor or the competing institution supplying same;

(e) Require that team awards earned during participation by such ineligible student-athlete shall be returned to the Association, the sponsor or the competing institution supplying same;

(f) Determine that the institution is ineligible for one or more NCAA championships in the sports and in the seasons in which such ineligible student-athlete participated;

(g) Determine that the institution is ineligible for invitational and postseason meets and tournaments in the sports and in the seasons in which such ineligible student-athlete participated;

(h) Require that the institution shall remit to the NCAA the institution's share of television receipts (other than the portion shared with other conference members) for appearing on any live television series or program if such ineligible student-athlete participates in the contest(s) selected for such telecast, or if the Management Council concludes that the institution would not have been selected for such telecast but for the participation of such ineligible student-athlete during the season of the telecast; any such funds thus remitted shall be devoted to the NCAA postgraduate scholarship program; and

(i) Require that the institution that has been represented in an NCAA championship by such a student-athlete shall be assessed a financial penalty as determined by the Committee on Infractions. *(Revised: 4/26/01 effective 8/1/01)*

ADMINISTRATIVE BYLAW, ARTICLE 32

Enforcement Policies and Procedures

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32.1 COMMITTEE ON INFRACTIONS — SPECIAL OPERATING RULES

32.1.1 Confidentiality. The Committee on Infractions, the Infractions Appeals Committee per Bylaw 19.2 and the enforcement staff shall treat all cases before them as confidential until they have been announced in accordance with the prescribed procedures. *(Revised: 1/11/94, 4/24/03)*

32.1.2 Public Announcements. The enforcement staff shall not confirm or deny the existence of an infractions case prior to complete resolution of the case through normal NCAA enforcement procedures. However, if the involved institution makes a public announcement concerning a case, the enforcement staff may confirm the information made public and may correct erroneous or incomplete information about the investigation that has been made public by the institution or an involved individual. *(Revised: 4/24/03)*

32.1.3 Conflict of Interest. Any member of the Committee on Infractions or the Infractions Appeals Committee shall neither appear at the hearing nor participate on the committee when the member is directly connected with an institution under investigation or has a personal, professional or institutional affiliation that reasonably would result in the appearance of prejudice. It is the responsibility of the committee member, members of the Infractions Appeals Committee per Bylaw 19.2 to remove himself or herself if a conflict exists. Objections to the participation of a committee member or the Infractions Appeals Committee member per Bylaw 19.2 should be raised as soon as recognized, but will not be considered unless raised at least one week in advance of the affected hearing. *(Revised: 1/16/93, 1/11/94, 4/24/03)*

32.1.4 Cooperative Principle. The cooperative principle imposes an affirmative obligation on each member institution to assist the NCAA enforcement staff in developing full information to determine whether a possible violation of NCAA legislation has occurred and the details thereof. An important element of the cooperative principle requires that all individuals who are subject to NCAA rules protect the integrity of an investigation. A failure to do so may be a violation of the principles of ethical conduct. The NCAA enforcement staff will usually share information with the institution during an investigation; however, it is understood that the staff, to protect the integrity of the investigation, may not in all instances be able to share information with the institution. *(Adopted: 1/12/99)*

32.1.5 Definition of Involved Individual. Involved individuals are former or current student-athletes and former or current institutional staff members who have received notice of their involvement in alleged violations through a notice of allegations and have been asked to respond in writing to the allegations and appear in person to discuss their involvement in a hearing before the NCAA Division I Committee on Infractions. *(Adopted: 4/24/03)*

See Figures 32-1 and 32-2, Pages 451-452, for the processing of a typical infractions case.

32.2 PRELIMINARY REVIEW OF INFORMATION

32.2.1 Enforcement Staff to Receive Complaints and Conduct Investigations. It is a responsibility of the NCAA enforcement staff to conduct investigations relative to a member institution's failure to comply with NCAA legislation or to meet the conditions and obligations of membership. Information that an institution failed to meet these obligations shall be provided to the enforcement staff and, if received by the committee or Association's president, will be channeled to the enforcement staff. *(Revised: 4/24/03)*

32.2.1.1 Staff Initiation of Investigation. The enforcement staff may initiate an investigation on its own motion when it receives information that an institution is or has been in violation of NCAA legislation. *(Revised: 4/24/03)*

32.2.1.2 Self-Disclosure by an Institution. Self-disclosure shall be considered in establishing penalties, and, if an institution uncovers a violation prior to its being reported to the NCAA and/or its conference, such disclosure shall be considered as a mitigating factor in determining the penalty. *(Revised: 10/12/94)*

32.2.2 Investigative Guidelines. The Committee on Infractions shall provide general guidance to the enforcement staff through approved and established investigative and procedural guidelines.

32.2.2.1 Initial Enforcement Staff Responsibilities. The enforcement staff is responsible for evaluating information reported to the NCAA office to determine whether the possible violation should be handled by correspondence with the involved institution or its conference, or whether the enforcement staff should conduct its own in-person inquiries.

32.2.2.1.1 Basic Information Gathering. The enforcement staff has a responsibility to gather basic information regarding possible violations and, in doing so, may contact individuals to solicit information. If information indicating a potential NCAA violation believed to be reliable is developed, the procedures provided in Bylaw 32.5 (Notice of Inquiry) are undertaken. *(Revised: 4/24/03)*

32.2.2.1.2 Identification of Major/Secondary Violation. The enforcement staff shall identify information developed by it or self-reported by the member institution as alleged major or secondary violations (as defined in Bylaw 19.02.2). *(Adopted: 4/24/03)*

32.2.2.1.3 Matters Handled by Correspondence. Matters that clearly are secondary in nature should be handled promptly by correspondence with the involved institution. *(Revised: 4/24/03)*

32.2.2.2 Conflict of Interest. Any enforcement staff member with a personal relationship or institutional affiliation that reasonably would result in the appearance of prejudice should refrain from participating in any manner in the processing of the involved institution's or individual's infractions case. *(Adopted: 1/16/93)*

32.3 INVESTIGATIVE PROCEDURES

32.3.1 Conformance with Procedures. Investigations by the enforcement staff shall be conducted in accordance with the operating policies, procedures and investigative guidelines established by the Committee on Infractions, Management Council and membership in accordance with Bylaw 19.

32.3.1.1 Consultation with Committee. If questions arise concerning investigative procedures during the course of an investigation, the chair (or the full committee, if necessary) may be consulted by the enforcement staff. *(Adopted: 4/24/03)*

32.3.2 Timely Process. The enforcement staff shall make reasonable efforts to process infractions matters in a timely manner. *(Revised: 4/24/03)*

32.3.3 Conflict of Interest. Any enforcement staff member who has or had a personal relationship or institutional affiliation that reasonably would result in the appearance of prejudice should refrain from participating in any manner in the processing of the involved institution's or individual's infractions case. *(Adopted: 4/24/03)*

32.3.4 Interviews with Member Institution. The athletics director or other appropriate official of an institution shall be contacted by the enforcement staff in order to schedule interviews on the institution's campus with enrolled student-athletes, coaching staff members or other institutional staff member with athletically related responsibilities or oversight who are involved in possible violations at the institution. *(Revised: 4/24/03)*

32.3.4.1 Presence of Institutional Representative During Interview. If an interview with an enrolled student-athlete or athletics department staff member is conducted on the campus of a member institution, an institutional representative(s) (as designated by the institution) will be permitted to be present during the interview, provided the subject matter to be discussed in the interview relates directly to the individual's institution or could affect the individual's eligibility or employment at the institution. If the investigator wishes to discuss information with a student-athlete or staff member that is related solely to institutions other than the one in which the student-athlete is enrolled or staff member is employed and that would not reasonably affect the student's eligibility or the staff member's employment, the institutional representative shall not be present during that portion of the interview. In such a situation (after the institutional representative has departed), any information inadvertently reported by the student-athlete or the staff member that is related to his or her own institution shall not be utilized against the student-athlete, staff member or that institution. *(Revised: 4/24/03)*

32.3.4.2 Conflict with Academic Schedule. If possible, interviews should be conducted without disrupting the normally scheduled academic activities of the student-athlete. *(Revised: 4/24/03)*

32.3.5 Proper Identification of NCAA Staff Member. In no case shall an enforcement staff member misrepresent the staff member's identity or title.

32.3.6 Representation by Legal Counsel. When an enforcement staff member conducts an interview that may develop information detrimental to the interests of the individual being questioned, that individual may be represented by personal legal counsel throughout the interview.

32.3.7 Disclosure of Purpose of Interview. When an enforcement representative requests information that could be detrimental to the interests of the student-athlete or institutional employee being interviewed, that individual shall be advised that the purpose of the interview is to determine whether the individual has been involved directly or indirectly in any violation of NCAA legislation. Prior to an interview arranged or initiated by the enforcement staff, a student-athlete or staff member shall be advised that if the individual has violated the NCAA's ethical conduct legislation such an allegation may be forthcoming based upon the individual's: *(Revised: 4/24/03)*

(a) Involvement in violations;

(b) Refusal to furnish information relevant to investigation of a possible violation when requested by the NCAA or by the institution; or

(c) Provision of false or misleading information to the NCAA, conference or institution concerning the individual's knowledge of or involvement in a violation.

32.3.8 Limited Immunity. At the request of the enforcement staff, the committee may grant limited immunity to a student-athlete who provides information when such individual otherwise might be declared ineligible for intercollegiate competition based on the information that he or she reports and an institutional employee with responsibilities related to athletics when such an individual otherwise would be subject to disciplinary action as described in Bylaws 19.5.1-(c) and 19.5.2.2-(l) based upon the information that individual reports. Such immunity shall not apply to the individual's involvement in violations of NCAA regulations not reported or to future involvement in violations of NCAA legislation by the individual or to any actions that an institution imposes. In any case, such immunity shall not be granted unless the individual provides information not otherwise available to the enforcement staff. *(Revised: 10/12/94, 4/24/03)*

32.3.9 Interview Record. Whenever possible, interviews conducted by the enforcement staff shall be recorded through the use of a mechanical device and both the enforcement staff and the individual being interviewed may record the interview. The individual may receive a copy of the recording at minimal cost. *(Revised: 8/2/91, 10/12/94)*

32.3.9.1 Tape Recordings. It is preferable that an interview conducted by the enforcement staff be recorded through the use of a mechanical device. However, if a witness objects to be tape recorded or the enforcement staff believes the use of a recording device would have an inhibiting effect upon the witness, a written statement of the substance of the interview shall be prepared per Bylaw 32.3.9.1.2

32.3.9.1.1 Access to Tape Recordings. Both the enforcement staff and the individual being interviewed may record the interview or the individual may receive a copy of the recording, subject to the confidentiality provisions of Bylaw 32.3.9.2. Copies of recorded interview summaries and any report prepared by the enforcement staff are confidential and shall not be provided to individuals (and their institutions) who may be involved in reporting information during the processing of an infractions case except as set forth in Bylaw 32.6.4. *(Revised: 4/24/03)*

32.3.9.1.2 Institutional Recording of an Interview. Interviews conducted in accordance with Bylaw 32.3.4.1 or jointly with the enforcement staff at any location, may be recorded by the institution under inquiry. Institutional recordings of NCAA interviews under any other circumstances must be approved by the Committee on Infractions. *(Adopted: 10/12/94)*

32.3.9.1.3 Use of Court Reporters. Institutional representatives or individuals being interviewed may use a court reporter to transcribe and interview subject to the following conditions. The institution or individual shall:

(a) Pay the court reporter's fees;

(b) Provide a copy of the transcript to the enforcement staff at no charge; and

(c) Agree that the confidentiality standards of Bylaw 32.3.9.1.4 apply.

An institutional representative or individual who chooses to utilize a court reporter shall submit a written notice of agreement with the required conditions to the enforcement staff prior to the interview on a form approved by the Committee on Infractions. If the enforcement staff chooses to use a court reporter, the NCAA will pay all costs of the reporter. A copy of the transcript prepared by the court reporter for the enforcement staff shall be made available to the institution and the involved individuals. *(Adopted: 4/24/03)*

32.3.9.1.4 Statement of Confidentiality. Individuals and institutional representatives shall be required to agree not to release tape recordings or interview transcripts to a third party. A statement of confidentiality shall be signed or recorded prior to an interview. Failure to enter into such an agreement would preclude the individual or institutional representative from recording or transcribing the interview. *(Adopted: 4/23/03)*

32.3.9.2 Non-Recorded Interviews. When an interview is not tape recorded or in circumstances when the recording device malfunctions, the enforcement staff shall prepare a written summary of the information and attempt to obtain a signed affirmation of its accuracy from the interviewee. The interviewee shall be permitted to make additions or corrections to the memorandum before affirming its accuracy. However, testimony as to the substance of an unrecorded interview for which a signed affirmation was not obtained may nevertheless be considered by an Infractions Committee to the extent the committee determines the testimony to be reliable. *(Revised: 4/24/03)*

32.3.9.2.1 Confidentiality of Non-Recorded Interview Documents. Copies of non-recorded interview summaries and any report prepared by the enforcement staff are confidential and shall not be provided to individuals (or their institutions) who may be involved in reporting information during the processing of an infractions case except as set forth in Bylaws 32.3.10 and 32.6.4. *(Revised: 4/24/03)*

32.3.9.3 Handwritten Notes. It shall be permissible for all individuals involved in interviews conducted by the enforcement staff to take handwritten notes of the proceedings. *(Adopted: 4/23/03)*

32.3.10 Enforcement Staff's Responsibility to Maintain a Case File and Access to Information to be Used in Presentation of Case. Copies of tape-recorded interviews, all interviews summaries and/or interview transcripts and other evidentiary information pertinent to an infractions case, shall be retained on file at the national office. Information to be used in the presentation of a case by the enforcement staff may be reviewed in the national office or at the site of a custodial agent in accordance with the provisions of Bylaw 32.6.4. *(Revised: 4/24/03)*

32.3.11 Corroboration or Refutation of Information. The enforcement staff shall attempt to develop any information that would corroborate or refute alleged violations of NCAA legislation reported in previous interviews.

32.3.12 Failure to Cooperate. In the event that a representative of a member institution refuses to submit relevant information to the committee or the enforcement staff upon request, a notice of inquiry may be filed with the institution alleging a violation of the cooperative principles of the NCAA bylaws and enforcement procedures. Institutional representatives and the involved individual may be requested to appear before the committee at the time the allegation is considered. *(Revised: 4/24/03)*

32.3.13 Authorization of Meeting with Chief Executive Officer. The enforcement staff may meet personally with the chief executive officer or a designated representative of the involved institution to discuss the allegations investigated and information developed by the NCAA in a case that has been terminated. *(Revised: 4/24/03)*

32.4 PROCESSING INFORMATION FOR SECONDARY VIOLATIONS

32.4.1 Authority of Conference Commissioners. Selected secondary violations that have been identified by the Committee on Infractions, and for which specific disciplinary or corrective actions have been prescribed by the Committee on Infractions, shall be processed by the member institution's conference when such violations occur for the first time in a particular sport. Any violations processed and penalties imposed by the conference commissioner shall be reported to the NCAA enforcement staff on a quarterly basis. If an institution believes that a case warrants action that is less than the prescribed penalty, it may request further review by the vice president for enforcement services. *(Adopted: 10/21/97 effective 1/1/98; Revised: 4/24/03)*

32.4.2 Review of Institutional or Conference Actions or Penalties in Secondary Cases. If the Committee on Infractions or the enforcement staff, after review of institutional or conference action taken in connection with a rules infraction in secondary cases, concludes that the corrective or punitive measures taken by the institution or conference are sufficient, the committee or the enforcement staff, may accept the self-imposed measures and take no further action. Failure to fully implement the self-imposed measures may subject the institution to further disciplinary action by the NCAA. *(Revised: 10/12/94, 4/24/03)*

32.4.2.1 Insufficient Actions. If the institutional or conference actions appear to be insufficient, the enforcement staff shall notify the institution of additional penalties in a secondary case. *(Revised: 10/12/94, 4/24/03)*

32.4.3 Action Taken by Enforcement Staff (Non Institution or Conference). If the enforcement staff, after reviewing the information that has been developed and after consulting with the member institution involved, determines that a secondary violation has occurred, the enforcement staff may determine that no penalty is warranted or impose an appropriate penalty (see Bylaw 19.6.1). *(Revised: 4/24/03)*

32.4.4 Appeal of Secondary Cases. An institution may appeal penalties imposed by the enforcement staff for a secondary violation by submitting a written notice of appeal to the Committee on Infractions. The committee must receive the written notice of appeal and any supporting information within 30 days of the date the institution receives the enforcement staff's decision. An institution may request the opportunity to appear in person or through participation in a telephone conference call. If no such request is made, or if the request is denied, the committee will review the institution's appeal on the basis of the written record. *(Adopted: 1/12/99, Revised: 4/24/03)*

32.5 NOTICE OF INQUIRY

32.5.1 Notice to Institution. If the enforcement staff has developed reasonably reliable information indicating that an institution has been in violations of the Association's governing legislation that requires further in-person investigation, the enforcement staff shall provide a notice of inquiry in writing to the chief executive officer. Such notification shall advise the chief executive officer that the enforcement staff will engage in an investigation, that the investigation will be conducted under the direction of the vice-president for enforcement services and that members of the enforcement staff if requested, shall meet in person with the chief executive officer to discuss the nature and details of the investigation, and the type of charges that appear to be involved. The notice of inquiry shall state that if the investigation develops significant information of a possible major violation, notice of allegations will be produced in accordance with the provisions of Bylaw 32.6, or, in the alternative, the institution will be notified that the matter has been concluded. To the extent possible, the notice of inquiry also shall contain the following information: *(Adopted: 4/24/03)*

(a) The involved sport;

(b) The approximate time period during which the alleged violations occurred;

(c) The identity of involved individuals;

(d) An approximate time frame for the investigation;

(e) A statement indicating that the institution and involved individuals may be represented by legal counsel at all stages of the proceedings;

(f) A statement requesting that the individuals associated with the institution not discuss the case prior to interviews by the enforcement staff and institution except for reasonable campus communications not intended to impede the investigation of the allegations and except for consultation with legal counsel;

(g) A statement indicating that other facts may be developed during the course of the investigation that may relate to additional violations; and

(h) A statement regarding the obligation of the institution to cooperate in the case.

32.5.1.1 Status Notification within Six Months. The enforcement staff shall inform the involved institution of the general status of the inquiry within six months of the date after the chief executive officer receives the notice of inquiry from the enforcement staff. *(Adopted: 4/24/03)*

32.5.1.2 Review after One Year. If the inquiry has not been processed to conclusion within one year of the date that the chief executive officer receives the notice of inquiry from the enforcement staff, the staff shall review the status of the case with the Committee on Infractions. The committee shall determine whether further investigation is warranted, and its decision shall be forwarded to the involved institution in writing. If the investigation is continued, additional status reports shall be provided to the institution in writing at least every six months thereafter, until the matter is concluded. *(Adopted: 4/24/03)*

32.5.2 Termination of Investigation. The enforcement staff shall terminate the investigation related to any notice of inquiry in which information is developed that does not appear to be of sufficient substance or reliability to warrant a notice of allegations, it being understood that the committee shall review each such decision. *(Adopted: 4/24/03)*

32.6 NOTICE OF ALLEGATIONS

32.6.1 Notice to Chief Executive Officer. When the enforcement staff determines that there is sufficient information to warrant, it shall issue a cover letter and notice of allegations to the chief executive officer of the member institution involved (with copies to the faculty athletics representative and the athletics director of the member and to the executive officer of the conference of which the institution is a member). *(Revised: 4/24/03)*

32.6.1.1 Contents of the Notice of Allegations Cover Letter. The cover letter accompanying each notice of allegation shall: *(Adopted: 4/24/03)*

(a) Inform the chief executive officer of the matter under inquiry and request the cooperation of the institution in obtaining all the pertinent facts and provide specific information on how to investigate the allegation.

(b) Request the chief executive officer to respond to the allegations and to provide all relevant information which the institution has or may reasonably obtain, including information uncovered related to new violations. The responsibility to provide information continues until the case has been concluded.

(c) Request the chief executive officer and other institutional staff to appear before the committee at a time and place determined by the committee.

(d) Inform the chief executive officer that if the institution fails to appear after having been requested to do so, it may not appeal the committee's findings of fact and violations, or the resultant penalty.

(e) Direct the institution to provide any present or former institutional staff member(s) who were notified in writing of an allegation in which they were named by the enforcement staff as noted in Bylaw 32.6.2, any present or former student-athletes whose eligibility could be affected based on involvement in an alleged violation, the opportunity to submit in writing any information the individual desires that is relevant to the allegation in question.

(f) Inform the chief executive officer that the enforcement staff's primary investigator in the case will be available to discuss the development of its response and assist in locating various individuals who have, or may have, important information regarding the allegations.

32.6.1.1.1 Enforcement Staff Basis for Allegation. The enforcement staff shall allege a violation when it believes there is sufficient information to conclude that the committee on infractions could make a finding. *(Adopted: 4/24/03)*

32.6.1.2 Contents of Notice of Allegations. The notice shall list the NCAA regulations alleged to have been violated, as well as the details of each allegation. *(Adopted: 4/24/03)*

32.6.2 Notification by Enforcement Staff. The enforcement staff shall notify athletics department staff members and student-athletes at member institutions (including the institution under inquiry) whose employment or eligibility could be affected, of the allegations in a notice of allegations in which they are named. A copy of such notification shall be forwarded to the chief executive officer of the institution that employs the staff member or in which the student is enrolled. All such individuals may submit responses to the Committee on Infractions, and the institution under inquiry shall provide a copy of pertinent portions of its response to each individual who will attend the committee's hearing in the case. Involved individuals who have submitted a response must also share their response with the involved institutions or other involved individuals as necessary. The enforcement staff shall notify those athletics department staff members named in the notice of allegation who may be subject to the show-cause requirements from the committee if violations are found in which they are named. *(Adopted: 4/24/03)*

32.6.3 Statute of Limitations. Allegations included in notice of allegations shall be limited to possible violations occurring not earlier than four years before the date the notice of inquiry is forwarded to the institution or the date the institution notifies (or, if earlier, should have notified) the enforcement staff of its inquiries into the matter. However, the following shall not be subject to the four-year limitation: *(Revised: 10/12/94, 4/24/03)*

(a) Allegations involving violations affecting the eligibility of a current student-athlete;

(b) Allegations in a case in which information is developed to indicate a pattern of willful violations on the part of the institution or individual involved, which began before but continued into the four-year period; and

(c) Allegations that indicate a blatant disregard for the Association's fundamental recruiting, extra-benefit, academic or ethical-conduct regulations or that involve an effort to conceal the occurrence of the violation. In such cases, the enforcement staff shall have a one-year period after the date information concerning the matter becomes available to the NCAA to investigate and submit to the institution an official inquiry concerning the matter.

32.6.4 Disclosure of Information. Within 30 days of the date that the notice of allegations has been forwarded to the member institution, the enforcement staff shall make available to the member institution and to the involved individuals reasonable access to all pertinent evidentiary materials as described in Bylaw 32.3.10. Requests for access to such evidentiary materials shall be delivered to the enforcement staff. The staff shall be responsible for maintaining custody of all of the evidentiary materials. The staff shall provide access to these materials at the NCAA national office or at custodial sites reasonably near the involved institution or the involved individuals. If information is developed subsequent to the 30-day period, the enforcement staff shall notify the involved institution and involved individuals of its availability. Requests for access to the new information shall be delivered to the enforcement staff. The staff shall be responsible for maintaining custody at the national office or a custodian. *(Adopted: 1/16/93, Revised: 10/12/94, 4/24/03)*

32.6.5 Deadline for Institutional Response. The institution's response to the notice of allegations shall be on file with members of the committee and the enforcement department within 90 days of the institution's receipt of the notice, unless the committee grants an extension. An institution or involved

individual may not submit additional documentary evidence (in addition to its initial response) at that meeting without prior authorization from the committee (see Bylaw 32.6.8 for additional instructions regarding information submitted to the Committee on Infractions). *(Revised: 1/16/93, 4/24/03)*

32.6.6 Prehearing Conference. Within 30 days of an institution's submission of its written response to notice of allegations, in a case involving an alleged major violation, the enforcement staff shall consult with institutional representatives and other involved individuals who will attend the hearing in order to clarify the issues to be discussed in the case during the hearing, make suggestions regarding additional investigation or interviews that should be conducted by the institution to supplement its response and identify allegations that the staff intends to withdraw. The enforcement staff shall conduct independent prehearings with the institution and/or any involved individuals, unless mutually agreed by all parties to do otherwise. *(Revised: 1/16/93, 10/12/94, 4/24/03)*

32.6.6.1 Extension. The committee may approve additional time for representatives of the involved individuals and institution and the enforcement staff to conduct such prehearing conferences. *(Adopted: 1/16/93)*

32.6.7 NCAA Enforcement Staff Summary Case Statement. The enforcement staff shall prepare a summary statement of the case that indicates the status of each allegation and identifies the individuals upon whom and the information upon which the staff will rely in presenting the case. Within 14 days prior to the hearing, the staff summary shall be provided to the members of the Committee on Infractions and to representatives of the institution and involved individuals will be provided those portions of the summary in which they are identified as at risk. The committee may waive this 14-day period for good cause shown. *(Adopted: 10/12/94, 4/24/03)*

32.6.8 Deadline for Submission of Written Material. Unless specifically approved by the Committee on Infractions for good cause shown, all written material to be considered by the committee at the infractions hearing must be received by the committee, enforcement staff, institution and any involved individuals attending the hearing not later than 10 days prior to the date of the hearing. Evidence may be submitted at the hearing; but subject to the limitations set forth in Bylaw 32.8.7.4. *(Revised: 4/24/03)*

32.7 SUMMARY DISPOSITION AND EXPEDITED HEARING

32.7.1 Summary Disposition Election. In major infractions cases, member institutions and involved individuals may elect to process the case through the summary disposition procedures specified below. If the institution is subject to the repeat-violator legislation as indicated in Bylaw 19.5.2.3, the summary disposition process shall not be utilizied. *(Adopted: 1/16/93, Revised: 4/22/98)*

32.7.1.1 Thorough Investigation. The Committee on Infractions shall determine that a thorough investigation of possible violations of NCAA legislation has been conducted. The investigation may be conducted by the NCAA enforcement staff and/or the institution, but the enforcement staff must agree that a complete and thorough investigation has been conducted and that the institution fully cooperated in the process. *(Adopted: 1/16/93)*

32.7.1.2 Written Report. The institution, involved individuals and the NCAA enforcement staff shall submit a written report setting forth: *(Adopted: 1/16/93)*

(a) The proposed findings of fact;

(b) A summary of information on which the findings are based;

(c) A stipulation that the proposed findings are substantially correct;

(d) The findings that are violations of NCAA legislation; and

(e) A statement of unresolved issues that are not considered substantial enough to affect the outcome of the case.

32.7.1.3 Proposed Penalties. The institution and involved individuals shall submit proposed penalties within the guidelines set forth in the penalty structure for major violations specified in Bylaw 19.5.2. The institution and involved individuals also may submit a statement regarding mitigating factors. *(Adopted: 1/16/93)*

32.7.1.4 Committee on Infractions Review. The Committee on Infractions shall consider the case during its next scheduled meeting. *(Adopted: 1/16/93)*

32.7.1.4.1 Approval of Findings and Penalties. If the agreed-upon findings and proposed penalties are approved, the committee shall prepare a written report, forward it to the institution and involved individuals and publicly announce the resolution of the case under the provisions of Bylaw 32.9. *(Adopted: 1/16/93)*

32.7.1.4.2 Findings Not Approved. If the committee does not approve the findings, the hearing process set forth in Bylaw 32.8 shall be followed. At the conclusion of the hearing process, the committee shall prepare a written report, forward it to the institution and involved individ-

uals and publicly announce the committee's decision under the provisions of Bylaw 32.9. If, following the committee's announcement of its decision in the case, the institution and/or the involved parties do not agree to the findings made by the committee, the institution and/or the involved parties will have the right to appeal those penalties to the NCAA Division I Infractions Appeals Committee in accordance with Bylaws 32.10 and 32.11. *(Adopted: 1/16/93)*

32.7.1.4.3 Penalties Not Approved. If the committee accepts the agreed-upon findings but does not approve the proposed penalties, the institution and involved individuals may elect to participate in an expedited hearing. Expedited hearings shall be conducted based on the findings submitted, and the institution and involved individuals may present additional information regarding the uniqueness of the case and mitigating factors. If the institution or the involved individuals decline to participate in an expedited hearing, a hearing regarding the alleged violations shall be conducted under the provisions of Bylaw 32.8. At the conclusion of the hearing process, the committee shall prepare a written report, forward it to the institution and involved individuals and publicly announce the committee's decision under the provisions of Bylaw 32.9. If, following the committee's announcement of its decision in the case, the institution and/or the involved parties do not agree to the additional penalties imposed, the institution and/or the involved parties will have the right to appeal those penalties to the NCAA Division I Infractions Appeals Committee in accordance with Bylaws 32.10 and 32.11. *(Adopted: 1/16/93)*

32.7.1.4.4 Additional Information. The committee may contact jointly the institution, enforcement staff and other involved parties for additional information or clarification prior to accepting or rejecting the proposed findings.

32.7.1.4.5 Authority to Amend Findings. The committee has the authority to make editorial or nonsubstantive changes in the proposed findings as long as these changes do not affect the substance of the findings.

32.8 COMMITTEE ON INFRACTIONS HEARINGS

32.8.1 Committee Authority. The Committee on Infractions shall hold a hearing to determine the existence of the alleged violation of NCAA regulations and to impose any appropriate penalties. *(Adopted: 4/24/03)*

32.8.2 Determination of Meeting Date. The Committee on Infractions shall set the dates and times for all hearings before the committee. The committee shall notify all relevant parties of the hearing date and site. *(Adopted: 4/24/03)*

32.8.3 Limitations on Presentation of Staff Evidence. In major cases requiring an institutional hearing before the committee or when processing a case through means of a summary disposition, specific information and evidence developed by the staff related to alleged violations of NCAA regulations shall not be presented to the committee prior to the institution's appearance, except as provided in these procedures. *(Adopted: 4/24/03)*

32.8.4 Obligation to Provide Full Information. At any appearance before the Committee on Infractions, the involved member institution and the enforcement staff, to the extent reasonably possible, have the obligation to ensure that the committee has benefit of full information concerning each allegation, whether such information corroborates or refutes an allegation. *(Adopted: 4/24/03)*

32.8.5 Notification of Hearing Procedures. An institution and involved individuals shall be advised in writing prior to an appearance before the committee of the general procedures to be followed during the hearing. Such notification shall contain a specific reference to Bylaw 32.8 and shall indicate that, as a general rule, the discussion during the hearing will follow the numbering of the allegations in the official inquiry. *(Adopted: 4/24/03)*

32.8.6 Appearance of Individuals at Hearings

32.8.6.1 Request for Specific Individuals. Institutional officials, staff members or enrolled student-athletes who are specifically requested to appear before the committee at an institutional hearing are expected to appear in person and may be accompanied by personal legal counsel. The committee also may request that former institutional staff members appear at a hearing. Such individuals also are expected to appear in person and may be accompanied by personal legal counsel. Failure to attend may result in a violation of this bylaw in a show-cause action by the committee.

32.8.6.2 Attendance at Hearings. At the time the institution appears before the committee, its representatives should include the institution's chief executive officer, the head coach of the sport in question, the institution's director of athletics, legal counsel, enrolled student-athletes whose eligibility could be affected by information presented at the hearing and any other representatives whose attendance has been requested by the committee. Additional individuals may be included

among the institution's party only if specifically approved to be present by the committee. An individual who appears before the committee may appear with personal legal counsel. *(Revised: 4/24/03)*

32.8.6.3 Exclusion of Individuals from Hearings

32.8.6.3.1 Exclusions Requested by the Institution. At the request of the institution, the committee may exclude an individual from certain portions of the hearing when the matters to be discussed are not those in which the individual is at risk. When an individual is excluded from the hearing room for a period of time, it shall be with the understanding that matters discussed in the hearing during that time will not relate to that individual. *(Revised: 4/24/03)*

32.8.6.3.2 Limited Attendance of Student-Athletes. Any student-athlete (and personal legal counsel) included among the institution's representatives may attend the hearing only during the discussion of the allegations in which the student-athlete is involved.

32.8.6.4 Representation of Member Conference. The executive officer or other representative of a member conference's executive office may attend an institutional hearing involving a conference member. *(Revised: 4/24/03)*

32.8.6.5 Prohibited Attendee. A member of the committee or the Infractions Appeals Committee who is prohibited under the provisions of Bylaw 32.1.3 from participating in any NCAA proceedings may not attend a Committee on Infractions hearing involving the member's institution unless specifically requested by the committee to be present as a witness.

32.8.6.6 Designation of Presentation Coordinators. The chair shall request each institution appearing before the committee to select one person to coordinate institutional responses during the hearing. In addition, one individual from the enforcement staff will be responsible for coordinating the presentation of the enforcement staff.

32.8.7 Hearing Procedures. The exact procedure to be followed in the conduct of the hearing will be determined by the committee.

32.8.7.1 Opening and Closing Statements. At the outset of the hearing, a representative of the institution shall make an opening statement, followed by an opening statement from any involved individual and by a representative of the enforcement staff. The contents of such a statement should not relate to the substance of the specific items contained in the official inquiry. Statements concerning the nature or theory of the case are encouraged. An institutional representative and involved individuals also may make a closing statement at the conclusion of the hearing, followed by a closing statement by a representative of the enforcement staff. *(Revised: 4/24/03)*

32.8.7.2 Staff Presentation. During the hearing, the enforcement staff first shall present the information that its investigation has developed.

32.8.7.3 Institutional or Involved Individual's Presentation. The member institution and involved individual then will present their explanation of the alleged violations and any other arguments or information deemed appropriate in the committee's consideration of the case. *(Revised: 4/24/03)*

32.8.7.4 Type of Information. Any oral or documentary information may be received, but the committee may exclude information that it determines to be irrelevant, immaterial or unduly repetitious.

32.8.7.4.1 Information from Confidential Sources. In presenting information and evidence for consideration by the committee during an institutional hearing, the enforcement staff shall present only information that can be attributed to individuals who are willing to be identified. Information obtained from individuals not wishing to be identified shall not be relied upon by the committee in making findings of violations. Such confidential sources shall not be identified to either the Committee on Infractions or the institution.

32.8.7.4.2 Information Concerning Mitigating Factors. Institutional, conference and enforcement staff representatives and any involved individuals are encouraged to present all relevant information concerning mitigating or other factors that should be considered in arriving at appropriate penalties. *(Revised: 4/24/03)*

32.8.7.5 Scope of Inquiry. If a member institution appears before the committee to discuss its response to the official inquiry, the hearing shall be directed toward the allegations set forth in the notice of allegations but shall not preclude the committee from finding any violation resulting from information developed or discussed during the hearing. *(Revised: 4/24/03)*

32.8.7.6 Committee Questioning. The committee, at the discretion of any of its members, shall question representatives of the member institution or the enforcement staff, as well as any other persons appearing before it, in order to determine the facts of the case. Further, under the direction of the committee, questions and information may be exchanged between and among all parties participating in the hearing.

32.8.7.7 Recording of Proceedings. The proceedings of institutional hearings shall be recorded by a court reporter (unless otherwise agreed) and shall be tape-recorded by the committee. No additional verbatim recording of these proceedings will be permitted by the committee. The Committee on Infractions shall maintain custody of the tape recordings and any transcriptions. In the event of an appeal, a transcript of the hearing proceedings shall be reproduced and submitted to the Infractions Appeals Committee and made available for review at the NCAA national office or at custodial sites reasonably near the institution and involved individuals. [Note: Involved individuals only will receive portions of the hearing transcripts in which they were in attendance at the hearing.] *(Revised: 1/16/93, 4/24/03)*

32.8.8 Posthearing Committee Deliberations. After all presentations have been made and the hearing has been concluded, the committee shall excuse all others from the hearing, and the committee shall make its determinations of fact and violation in private.

32.8.8.1 Request for New Information. In arriving at its determinations, the committee may request additional information from any appropriate source, including the member institution or the enforcement staff. In the event that new information is requested from either the institution or the enforcement staff to assist the committee in arriving at findings of violations, both parties will be afforded an opportunity to be represented at the time such information is provided to the committee.

32.8.8.2 Basis of Findings. The committee shall base its findings on information presented to it that it determines to be credible, persuasive and of a kind on which reasonably prudent persons rely in the conduct of serious affairs.

32.8.8.3 Imposition of Penalty. If the committee determines that there has been a violation, it shall impose an appropriate penalty (see Bylaw 19.4); or it may recommend to the Board of Directors suspension or termination of membership in an appropriate case. *(Revised: 4/24/03)*

32.8.8.4 Voting Requirements. The finding of a violation or the imposition of a penalty or recommended action shall be by majority vote of the members of the committee present and voting. If fewer than eight members are present, any committee action requires a favorable vote of at least four committee members. *(Revised: 10/12/94)*

32.9 NOTIFICATION OF COMMITTEE ACTION

32.9.1 Infractions Report. The committee, without prior public announcement, shall be obligated to submit promptly an infractions report, which sets forth its findings and penalty to be imposed, to the chief executive officer of the member institution (with copies to those individuals receiving copies of the notice of allegations). The following procedures shall apply to the infractions report: *(Revised: 4/24/03)*

(a) Subsequent to an institutional hearing, the Committee on Infractions shall prepare and approve the final infractions report; *(Revised: 10/12/94)*

(b) The infractions report(s) of the Committee on Infractions and the Infractions Appeals Committee shall contain a consolidated statement of all penalties, corrective actions, requirements, and other conditions and obligations of membership imposed upon a member institution found in violation of NCAA legislation. The statement of such actions shall include, but not be limited to, the penalties imposed upon the institution, eligibility rules to be applied, applicable executive regulations, the adjustment of individual and team standings in NCAA championship events, and the request for the return of any awards and net receipts received for participation in an NCAA championship; and *(Revised: 10/12/94, 4/24/03)*

(c) The committee's infractions report shall be sent to the chief executive officer of the involved institution and any involved individuals under the chair's signature or under the signature of a committee member selected to act for the chair. The report shall be sent by overnight mail service, and the committee's administrator shall confirm receipt by the institution and involved individuals in order that the 15-day appeal period applicable to this report may be established. *(Revised: 10/12/94)*

32.9.2 Release to Media. Once the infractions report has been received by the institution, the report, with names of individuals deleted, shall be made available to the national wire services and other media outlets.

32.9.2.1 Public Comment Prior to Release. The committee's public announcement related to an infractions case shall be made available to the national wire services and other media outlets. In this regard, the involved institution and/or any involved individuals shall be advised of the text of the announcement prior to its release and shall be requested not to comment publicly concerning the case prior to the time the NCAA's public announcement is released. *(Revised: 4/24/03)*

32.9.2.2 Public Announcement and Comment at Release. The chair or a member of the Committee on Infractions shall make the committee's public announcement related to major infractions when the committee determines that an announcement is warranted in addition to distribution of the written report. *(Adopted: 1/16/93)*

32.10 APPEAL PROCEDURE

32.10.1 Written Notice of Appeal. To be considered by the appropriate appeals committee, the member institution's written notice of appeal of the Committee on Infractions' findings (subject to the conditions of Bylaw 32.10.2) or the penalty, or both, shall be received by the NCAA president not later than 15 calendar days from the date of the public release of the committee's report. The member's notice of appeal shall contain a statement of the date of the public release of the committee's report and a statement indicating whether the institution desires to submit its appeal in writing only or whether the institution will be represented before the Infractions Appeals Committee at the time the appeal is considered. *(Revised: 1/16/93, 1/10/95, 4/26/95, 4/24/03)*

32.10.2 Bases for Granting an Appeal. A penalty determined by the Committee on Infractions may be set aside on appeal if the Infractions Appeals Committee determines that the penalty is excessive or inappropriate based on all the evidence and circumstances. Determinations of fact and violations arrived at by the Committee on Infractions shall not be set aside on appeal, except upon a showing that: *(Revised: 1/10/95, 4/24/03)*

(a) The Committee on Infractions finding clearly is contrary to the evidence presented to the committee; *(Revised: 4/24/03)*

(b) The facts found by the Committee on Infractions do not constitute a violation of the Association's rules; or *(Revised: 4/24/03)*

(c) A procedural error affected the reliability of the information that was utilized to support the Committee on Infractions' finding. *(Revised: 4/24/03)*

32.10.3 Appeal by an Individual Staff Member. Any current or former institutional staff member who participates in a hearing (either in person or through written presentation) before the Committee on Infractions and is involved in a finding of a violation and who exercises the opportunity to appeal any of the findings in question (subject to the conditions of Bylaw 32.10.2) or the committee's decision to issue a show-cause order must submit a written notice of appeal to the NCAA president not later than 15 calendar days from the date of the public release of the committee's report. The individual and personal legal counsel may appear before the Infractions Appeals Committee at the time it considers the pertinent findings. The Committee on Infractions will notify all individuals directly of the appeal opportunity. *(Revised: 1/16/93, 1/10/95, 4/26/95, 1/6/96, 4/24/03)*

32.10.4 Report to Infractions Appeals Committee. The committee shall forward a report of the case to the Infractions Appeals Committee at the time of public announcement. *(Revised: 1/16/93, 1/10/95, 4/24/03)*

32.10.5 Committee on Infractions' Response to an Appeal. The Committee on Infractions shall submit a response to the Infractions Appeals Committee on each case that has been appealed. This response shall include: *(Revised: 1/16/93, 10/12/94, 1/10/98, 4/11/01, 4/24/03)*

(a) A statement of the origin of the case;

(b) The violations of the NCAA Constitution and bylaws, as determined by the committee; *(Revised: 10/12/94)*

(c) Disciplinary or corrective actions taken by the institution or conference or any other agency involved in the particular incident;

(d) A statement of the committee's proposed penalties;

(e) The issues raised in the appeal;

(f) The committee's responses to the issues raised in the appeal; and

(g) An attachment to the response will be a transcript of any hearing conducted by the Committee on Infractions. *(Adopted: 10/12/94)*

32.10.6 Response to Institution and Media. A copy of the Committee on Infractions' response to the Infractions Appeals Committee (as described in Bylaw 32.10.5) shall be provided to the institution prior to the time of its appearance before the Infractions Appeals Committee. Any press release regarding the response shall meet the requirements of Bylaw 32.9.2. *(Revised: 10/18/89, 1/16/93, 4/20/94, 1/10/95, 1/10/98, 4/24/03)*

32.10.7 New Evidence. If an institution (or involved party) appeals findings of major violations or penalties, a showing of new evidence directly related to the findings in the case that is discovered during the appeals process shall be referred back to the Committee on Infractions for its review (see Bylaw 19.02.3). *(Adopted: 1/6/96)*

32.11 APPEAL HEARINGS

32.11.1 Hearing Procedures. In its appeal to the Infractions Appeals Committee, an institution or current or former staff member may challenge the Committee on Infractions' findings of fact or penalties, or both, according to the following hearing procedures: *(Revised: 1/16/93, 1/10/95, 4/24/03)*

(a) If the institution elects to be represented in person before the Infractions Appeals Committee, the institution shall be permitted a reasonable time to make its oral presentation to supplement the institution's written appeal. The chair or another member of the Committee on Infractions then shall be permitted a reasonable time to present orally the committee's report. The period of time for the presentation by the institution and the Committee on Infractions shall be left to the discretion of the chair of the Infractions Appeals Committee; *(Revised: 1/10/95, 4/24/03)*

(b) If the member institution elects to appeal in writing only, the Committee on Infractions' written report shall be considered without an appearance by a committee representative; and

(c) The Infractions Appeals Committee then shall act upon the member's appeal, by majority vote of the members of the Infractions Appeals Committee present and voting, and may accept the Committee on Infractions' findings and penalty or alter either one or both. *(Revised: 8/2/91, 1/10/95, 1/6/96, 4/24/03)*

32.11.2 Consideration by Infractions Appeals Committee. The Infractions Appeals Committee shall consider the statements and evidence presented and, at the discretion of any of its members, may question representatives of the member institution or the Committee on Infractions, as well as any other persons appearing before it, in order to determine the facts related to the appeal. Further, under the direction of the Infractions Appeals Committee, questions and information may be exchanged between and among all parties participating in the hearing. *(Revised: 1/16/93, 1/10/95, 4/24/03)*

32.11.3 Infractions Appeals Committee—Determination of Hearing Procedures. The procedure to be followed in the conduct of the hearing will be determined by the Infractions Appeals Committee. However, the operating policies and procedures governing the determination of the individuals who may participate in the hearing, as well as the policies and procedures defining the committee's or appropriate Management Council's standards for consideration of information and determination of findings and penalties, shall be consistent with the established policies and procedures related to these matters that apply to hearings conducted by the Committee on Infractions. *(Revised: 1/16/93, 1/10/95, 4/24/03)*

32.11.4 Decision Final. Any decision in an infractions case by the Infractions Appeals Committee shall be considered final. *(Revised: 1/16/93, 1/10/95, 4/24/03)*

32.11.5 No Further Review. Determinations of fact and violations arrived at in the foregoing manner by the Committee on Infractions or by the Infractions Appeals Committee, on appeal, shall be final, binding and conclusive and shall not be subject to further review by the Management Council or any other authority. *(Revised: 1/16/93, 1/10/95, 4/24/03)*

FIGURE 32-1
Processing of a Typical NCAA Infractions Case

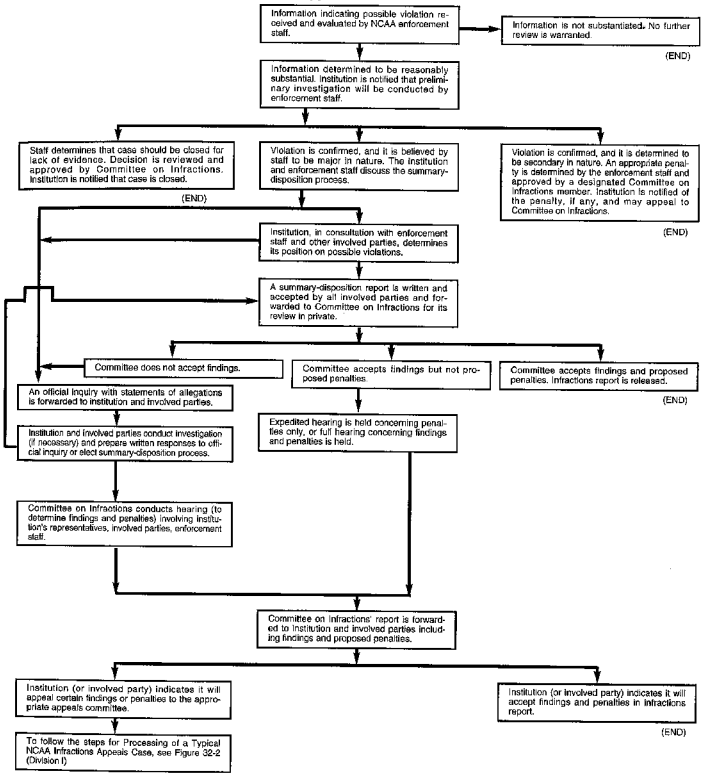
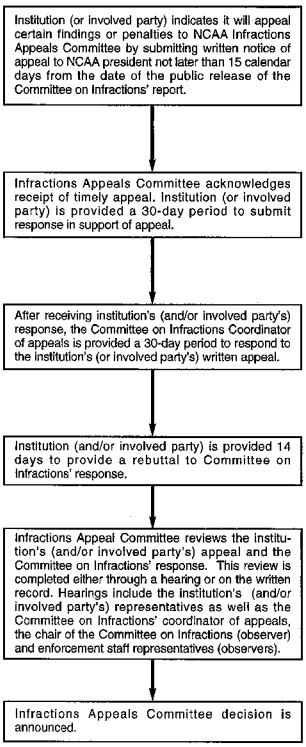


FIGURE 32-2
Processing of a Typical NCAA Infractions Appeals Case



(END)

ATTACHMENT 6

ACTIONS ON RECOMMENDATIONS OF THE SPECIAL COMMITTEE TO REVIEW THE NCAA ENFORCEMENT AND INFRACTIONS PROCESS

1. **Initial Notice**. Enhance the adequacy of the initial notice of an impending investigation and assure a personal visit by the enforcement staff with the institution's chief executive officer. Action: Adopted through additions to the notice of inquiry process.

2. **Summary Disposition**. Establish a "summary disposition" procedure for treating major violations at a reasonably early stage in the investigation. Action: Adopted.

3. **Witness Statements**.

   a. Liberalize the use of tape-recordings and the availability of such recordings to involved parties. Action: Adopted.

   b. Permit a witness to appear in person at any hearing at which the witnesses' statements are to be used. Actions: The authority of the Committee on Infractions (COI) was expanded to compel the attendance of persons who are at member institutions when such appearances would be useful. The COI did not support a general opportunity for all persons whose statements will be used by any party to appear at the hearing, and the special committee's recommendation was not adopted. The COI supported the special committee's interest in providing access to witness statements, tapes or transcripts to use in preparation for a hearing, and believed such access should be as convenient as possible to the parties who need to utilize them, but it firmly believes custody of these materials should remain under the control of the NCAA.

   c. Empower the hearing officer to authorize a "protective order" to allow certain information to be retained by the enforcement staff in appropriate cases. Action: The COI opposed the recommendation on the basis that the absence of any authority in the enforcement process over individuals not currently employees or students at any member institution makes it unlikely that a "protective order" could be enforced in any meaningful way.

4. **Hearing Officers**. Use former judges or other eminent legal authorities as hearing officers in cases involving major violations and not resolved in the "summary disposition" process. Action: The COI expressed its belief that the judicature of major infractions cases by a committee whose members are drawn from peer institutions serves several important interests of the Association. The COI believed that the adoption of the hearing-officer proposal would unavoidably change the enforcement process toward a litigation model where the process would be more adversarial and costly to all who participate. As an alternative, legislation was adopted to permit the COI to refer a case, or any part thereof, involving disputed facts to a hearing officer when discussion before the COI would be protracted and counterproductive or use of a hearing officer would be an aid in resolving facts that are before the committee's consideration. In addition, the COI was expanded to

include special public members, and two former judges currently sit on the committee. The hearing officer was never utilized, and the position was eliminated in 2003.

5. **Open Hearings**. All hearings in the NCAA infractions process (with the exception of deliberations) be open, unless the hearing officer determines that a portion or portions of the proceedings in the interest of privacy, fact-finding and justice should be kept confidential for good cause shown. Action: The COI believed this recommendation could cause serious damage to the effectiveness of the enforcement program and unnecessary exposure to the individuals who would be detrimentally affected by the negative publicity about them. The Council decided not to propose legislation that would implement open hearings.

6. **Hearing Transcripts.** Provide transcripts of all infractions hearings to appropriate involved parties. Action: The COI opposed the recommendation consistent with its concerns about open hearings and the control of tape-recordings or transcripts of interviews.

7. **Appeals Process**. Refine and enhance the role of the Committee on Infractions and establish a limited appellate process beyond that committee, including a newly created special review body. Action: An Infractions Appeals Committee was created in 1993 separate from the COI. It has its own staff separate from the enforcement staff and COI.

8. **Conflict-of-Interest Policy**. Adopt a formal conflict-of-interest policy. Action: Formal conflict-of-interest statements have been adopted for the enforcement staff, COI and Infractions Appeals Committee.

9. **Public Reporting of Infractions Cases**. Expand the public reporting of infractions cases. Action: The infractions report has been expanded significantly, and the announcement of decisions is now made by the chair of the committee rather than the enforcement staff.

10. **Compilation of Previous Committee Decisions**. Make available a compilation of previous committee decisions. Action: All previous decisions of the committee are available to the public on the NCAA Web site.

11. **Structure and Procedures of the Enforcement Staff**. Study the structure and procedures of the enforcement staff. Action: The structure and procedures of the enforcement staff are regularly reviewed and amended by the committee. Bylaw 32, which sets forth the enforcement policies and procedures of the Association, underwent a major revision in 2003 after a lengthy review by the committee. The enforcement staff was significantly expanded in 2004 and a plan has been adopted to expedite the processing of major infractions cases without affecting the quality of the investigations.

ATTACHMENT 7

NCAA STUDENT-ATHLETE REINSTATEMENT COMMITTEE POLICIES AND PROCEDURES

(Including Reinstatement Requests, Waivers and Extension Requests)

The student-athlete reinstatement process provides for the evaluation of institutional self-reports submitted on behalf of student-athletes/prospective student-athletes who have been involved in a violation of NCAA regulations that affect their eligibility in order to assess the student-athlete(s)'/prospective student-athlete(s)' responsibility and to determine appropriate conditions for reinstatement of eligibility. This process also provides for a review of institutional requests for various waivers for which the Student-Athlete Reinstatement Committees have the authority to act. Decisions for both reinstatement requests and other waiver requests are based upon national standards established by the membership, the Management Councils and the Student-Athlete Reinstatement Committees, and are applied by the student-athlete reinstatement staff.

Initial Staff Decision - Reinstatement Requests

1. When a member institution determines that a prospective or enrolled student-athlete has been involved in a violation of NCAA rules, it is obligated under NCAA Bylaw 14.11.1 to declare the individual ineligible and withhold the student-athlete from all intercollegiate competition. The Student-Athlete Reinstatement Committees process reinstatement requests for violations of Bylaw 10 (Ethical Conduct), Bylaw 12 (Amateurism), Bylaw 13 (Recruiting), Bylaw 14 (Eligibility), Bylaw 15 (Financial Aid), Bylaw 16 (Extra Benefits) and Bylaw 18 (Drug Testing). If necessary, an institution should contact the NCAA membership services staff to obtain an interpretation concerning the appropriate application of the legislation.

2. If an individual is ineligible under NCAA legislation and the institution believes the circumstances warrant requesting reinstatement of eligibility, it may submit a request for reinstatement to the NCAA student-athlete reinstatement lead administrator. If the institution requires an immediate decision (e.g., because of pending competition), it should be noted in its request. The request for reinstatement shall include a statement that a violation has taken place; a statement indicating that the institution has declared the involved prospective student-athlete or student-athlete ineligible and is requesting reinstatement of eligibility; a description of the violation, including the rule citation and amount or value of any benefit received; the identity of all coaches, prospective student-athletes or student-athletes and other individuals involved in the violation; the means by which the institution became aware of the violation; the reason(s) the violation occurred; the involved prospective student-athlete's or student-athlete's knowledge of the rule in question; a list of corrective or disciplinary actions taken by the institution or conference; a statement describing factors, if any, that might mitigate the violation; and supporting documentation.

The institution is responsible for developing complete, accurate and thorough information prior to submitting an appeal to the Student-Athlete Reinstatement Committee.

3. After a request for reinstatement is received by the national office, it is assigned to a student-athlete reinstatement staff member, who reviews the request and may obtain additional information prior to reaching a decision. While the student-athlete reinstatement staff may gather additional information relevant to the reinstatement request, its primary purpose is to ensure that the facts are developed. Its primary function is not to act as a fact-finding body. The institution primarily is responsible for gathering the facts necessary to process a reinstatement request.

   If the reinstatement request involves an agent or gambling violation, the reinstatement staff will provide a copy of the institution's report to the agents, gambling and amateurism (AGA) staff of enforcement services. If the AGA staff agrees that the report appears complete, the reinstatement staff will continue with its process. If the AGA staff determines that the report appears incomplete, the AGA staff may conduct additional follow up with the institution to ensure that all relevant facts are included in the request before the reinstatement staff issues a decision.

   If the reinstatement request involves an amateurism violation self-reported by the institution, the reinstatement staff may provide a copy of the institution's report to the AGA staff to ensure accuracy and a complete representation of the facts. Also, if the staff determines that in-depth follow up is warranted, the reinstatement staff will notify the institution of the concerns related to the facts as reported and indicate that additional follow up appears to be needed. The AGA staff and the reinstatement staff will work jointly to conduct the needed follow up to develop the set of facts.

   If the reinstatement request involves an amateurism case that was initiated by the AGA staff through investigative efforts, the reinstatement staff will provide a copy of the institution's report to the AGA staff to ensure accuracy and a complete representation of the relevant facts. If the AGA staff determines that relevant facts need to be added to the institution's report, the AGA staff will contact the institution to discuss the report and establish a set of agreed-upon facts upon which the reinstatement staff will base its decision.

   If the reinstatement staff notifies the institution that the report appears to be incomplete, but the institution determines that the facts are complete as reported, then the reinstatement staff will make a decision based on the reported facts. If the concerns are substantiated with facts, then the institution could be subject to the enforcement process, and the reinstatement decision could be voided.

If the reinstatement request involves a violation connected to a major infractions case, the reinstatement staff will provide a copy of the report to the major enforcement staff members involved in the case. If the enforcement staff determines that the report appears complete, then the reinstatement staff will process the case. If the enforcement staff determines that the report appears incomplete, the reinstatement staff and major enforcement staff may conduct a follow up with the institution specific to the concerns related to the facts. If the institution agrees that the report needs to be developed, the major enforcement and/or reinstatement staff will assist with that investigative process. However, if the institution determines that the report is complete, then the reinstatement staff will make a decision based on the institution's set of facts. If the staff's concerns are substantiated, then the institution could be subject to the enforcement process, and the reinstatement decision could be voided.

4. Bylaws 21.6.6.2.3.2.3.1-(a) (Division I), 21.7.6.4.2.2(Division II), and 21.8.6.3.4 (Division III) authorizes the NCAA student-athlete reinstatement staff to act on behalf of the three Student-Athlete Reinstatement Committees to apply the eligibility rules of the Association. The student-athlete reinstatement lead administrator shall provide oversight and consultation when necessary regarding the eligibility decisions of the staff.

5. After the student-athlete reinstatement staff has reviewed the institution's request and has completed its research, the staff may reinstate eligibility immediately, may impose appropriate conditions for reinstatement of eligibility or may conclude that eligibility should not be reinstated. If the reinstatement condition requires repayment and the institution and student-athlete choose to enter into a repayment plan, failure to satisfy that repayment plan by the student-athlete after competing under the plan may result in the staff not entering into repayment plans with that institution for a four-year period. Repayment of an impermissible benefit must be made to the source (if it is the institution) or a charity of the student-athlete's choice. The institution may be notified verbally of the result, if necessary, and all decisions shall be confirmed in writing. The following individuals will receive copies of the decision: the director of athletics, the faculty athletics representative, the senior woman administrator, the conference commissioner, if applicable, and the institutional staff member who submitted the request, if not one of the aforementioned persons. The division committees also shall be apprised in writing of all staff decisions that deviate from case precedent within its division regardless of whether the decision is appealed to the division committee.

6. An institution may ask the staff to reconsider its decision if the institution obtains new information related to the original case (e.g., same transaction, occurrence or series of events). The institution shall submit the information to the NCAA staff who will re-open the case and make a decision based on the new set of facts.

7. For decisions that involve withholding from competition as a condition, the student-athlete must fulfill the reinstatement condition when he or she is otherwise eligible and during one of his or her four seasons of competition.

   The competitions used to fulfill a reinstatement condition must be applied as follows:

   - Team sports – the contests must be among those considered for team selection to the NCAA championship;
   - Individual sports with separate team championship – the dates of competition must be among those considered for team selection to the NCAA championship;
   - Individual sports without a separate team championship – the date of competition must be among those used to qualify for the NCAA championship.
   - Sports without an NCAA championship – the date must be regularly scheduled.

   (Please note scrimmage or exhibition contests may not be used to fulfill a reinstatement condition. In addition, if the next contest in the institution's schedule is part of the NCAA championship or other postseason competition, then the student-athlete must be withheld from those contests.) Also, a student-athlete must fulfill a reinstatement condition when he or she is medically cleared to play by the institution.

8. The student-athlete reinstatement lead administrator and the vice-president for membership services have the authority to stay a decision if the following conditions are met: (1) the institution and student-athlete first become aware of the violation within 48 hours of the competition, (2) and case precedent is unclear whether withholding from competition as a condition for reinstatement is warranted. If the staff does grant a stay, the student-athlete will be eligible for competition until the committee's first available opportunity for an appeal call.

Initial Staff Decision - Other Waivers/Extension Requests

1. The Student-Athlete Reinstatement Committees have the authority to process six types of waivers: Bylaws 14.2.1, 14.2.2 and 30.6.1 (Five-year/10-semester waiver), Bylaw 14.2.1.5 (Athletics Activity Waiver); Bylaw 14.2.4 – Division I, Bylaw 14.2.5 - Division II and III, (Hardship Waiver) (independent institutions only); Bylaws 14.2.5 – Division I and Bylaw 14.2.6 – Divisions II and III (Season-of Competition Waiver – Competition While Ineligible); Bylaw 14.2.6 – Division I and Bylaw 14.2.7 – Divisions II and III (Season-of-Competition Waiver – Competition While Eligible). [The committees will not review an extension request if the Administrative Review Subcommittee has already reviewed a request to waive an exception under Bylaw 14.2.1.1 (Determining the Start of the Five-Year Period - Division I) or Bylaw 14.2.2.1 (Utilization of Semester or Quarter - Divisions II and III) for the involved student-athlete.]

2. For an institution submitting an extension request, a checklist and table have been created to assist the institution in submitting all appropriate and necessary information. These materials can be found on the NCAA Web site or can be sent to the institution via facsimile by the student-athlete reinstatement staff. For waivers other than extension requests, the institution should submit a cover letter explaining its request, a detailed description of the student-athlete's circumstances, an indication of the specific bylaw the institution believes is applicable and appropriate supporting documentation. Only written materials will be reviewed by the staff and committee. X-rays, photographs, etc. will not be considered.

3. After an institution submits its request, it is assigned to a staff member for review. The staff may request that the institution gather and submit additional information in an effort to meet the standards set by the legislative criteria. Once all materials relevant to the institution's request have been submitted, the staff will make a decision on behalf of the division Student-Athlete Reinstatement Committee.

4. An institution may ask the staff to reconsider its decision if the institution obtains new information related to the original case (e.g., same transaction, occurrence or series of events). The institution shall submit the information to the NCAA staff who will re-open the case and make a decision based on the new set of facts.

Appealing Staff Decisions to the Student-Athlete Reinstatement Committee

1. Once an institution has received written notice of the staff's decision, it may appeal this decision to the Student-Athlete Reinstatement Committee for the division in which the institution holds membership. The division committee's consideration of

an appeal is the committee's first review of the institution's request, and its decision is final, binding and shall not be subject to review by the NCAA Management Council or any other authority.

2. An institution's full written appeal including the required form shall be submitted to the student-athlete reinstatement lead administrator within 30 calendar days from the date on the initial staff decision letter. An appeal request submitted after the 30-day appeal period will not be processed. Exceptions to this policy may be granted by the division chair when an institution is able to demonstrate in writing that exceptional circumstances caused the institution's appeal to be submitted beyond the 30-day appeal period. The institution's written appeal of the staff's decision shall be submitted by the chief executive officer (or individual designated by the chief executive officer), faculty athletics representative, senior woman administrator or director of athletics. The institution is required to state in its written appeal the reasons it believes the initial staff decision was incorrect and should be modified or overturned. The committee requires a minimum of 48 hours to review documentation prior to a teleconference or prior to rendering a decision for a paper review. Exceptions to this policy can be made if the student-athlete reinstatement lead administrator and the committee chair determine that the urgency of the case warrants immediate consideration, and the committee is able to thoroughly review the documentation prior to the call, or in the case of a paper review, prior to issuing a decision.

3. For all appeals handled by the Student-Athlete Reinstatement Committee, all factual disputes must be resolved prior to the division committee reviewing the matter. Prior to consideration of the matter, the staff will send copies of the institution's request and the information upon which the staff based its decision to the members of the division committee. The institution will receive a copy of the same information. The staff shall provide the institution and division committee with a copy of applicable case precedent prior to the division committee's consideration of the matter.

4. There are two different types of appeals processed by the Student-Athlete Reinstatement Committee.

   a. Reinstatement of Eligibility Appeals. After receiving the institution's appeal, the staff will schedule a teleconference with the appropriate division committee and will advise the institution of the date and time of the hearing. Appeals for reinstatement of eligibility to the division committee are conducted by teleconference call, unless the staff and institution agree that a paper review would be effective. If any member of the committee determines that a

teleconference is essential in order to make a decision, that member may contact the chair with the request, and a teleconference shall be conducted.

b. Waivers and Extension Request Appeals. The institution's written appeal should include all materials the institution wishes to be considered by the division committee during its review. The prospective or enrolled student-athlete shall submit a statement and/or information with the institution's request as part of the appeal. Information submitted subsequent to this request for appeal shall not be considered by the committee in its review of the matter, unless the information is newly available to both the student-athlete and the institution or newly existent to both the student-athlete and the institution. This request for appeal shall include a statement indicating whether the institution prefers the committee to conduct the appeal through either a review of the written documentation and correspondence or through a teleconference call. If a teleconference is requested by the institution, it must present sufficient rationale that a teleconference call is essential for the committee to reach a decision in the case. After reviewing the entire case file, the chair of the division committee shall have the authority to determine whether a teleconference call is warranted.

(1) If the chair determines that a review of the written documentation and correspondence should be used to process the appeal, the staff shall send copies of the documentation and correspondence relevant to the case to the division committee and the institution. Upon receipt of the case materials, if any member of the division committee determines that a teleconference is essential in order to make a decision, that member may contact the chair with the request and a teleconference shall be conducted.

(2) The division committee shall determine, by a majority, whether to uphold or modify the staff's decision. Each member shall contact the chair with his or her vote and the chair will determine whether the majority requirement has been met. The chair of the division committee shall communicate this decision to the student-athlete reinstatement lead administrator. A member of the staff shall then contact the institution with the committee's decision.

5. All committee materials as well as the appeal proceedings are confidential. Institutional representatives and other participants on the call shall maintain the confidentiality of the information discussed as well as the identity of the participants.

6. For all appeals conducted by teleconference call, at least one of the following institutional representatives must participate in the hearing: chief executive officer (or individual designated by the chief executive officer), faculty athletics representative, senior woman administrator or director of athletics. In addition, other institutional representatives, including the institution's legal counsel and student-athlete's or prospective student-athlete's legal counsel, may participate. The involved prospective student-athlete or student-athlete is required to participate in this hearing. The teleconference will not proceed if the involved prospective student-athlete or student-athlete is unable to participate in the hearing. The student-athlete reinstatement lead administrator and/or the student-athlete reinstatement representative(s) who handled the case also shall participate on the call. Also, any members of the enforcement services staff involved in the case may participate on the call.

   a. Once all parties participating in the hearing have been introduced, the staff has 10 minutes to describe the facts of the appeal, the applicable precedent and the rationale for the staff's decision. The institution has 10 minutes, and the involved prospective student-athlete or student-athlete has 10 minutes to describe the case and explain the reasons for requesting that the staff's decision be overturned or modified. All participants on the call may ask questions of any other participant. Once all questions have been answered, the call will conclude with the staff, institution and student-athlete each providing a closing statement not to exceed five minutes.

   b. The division committee has the authority not to render a decision, if it has questions the committee believes the institution reasonably can and should answer prior to a decision by the committee.

   c. When the hearing has concluded, the institutional representatives, the involved prospective student-athlete or student-athlete, legal counsel and the staff shall leave the call. It is the responsibility of the student-athlete reinstatement lead administrator to ensure that the tape recording is terminated at that time and all parties except the committee leave the call at the end of the hearing prior to the committee's deliberations. The division committee members shall deliberate in private and reach a decision by majority vote. The chair then shall notify the student-athlete reinstatement lead administrator with the committee's conclusion, and the lead administrator or student-athlete reinstatement representative primarily responsible for processing the case shall notify the institution of the result. The decision by the division committee is considered final with no other appeal opportunity, and written confirmation of the decision shall be provided by the staff. The division committee may affirm

or modify the staff's decision but may not impose more stringent conditions for restoration than the staff decision.

7. Subsequent to the division committee's decision, an institution may ask the staff to reconsider its decision if it obtains newly discovered, nonrepetitive information that existed at the time of the decision but was not available to the institution and the student-athlete. If the institution receives new information that did not exist when the case was originally submitted, it shall submit the new information to the NCAA staff. If the new information standard is met, the staff will reconsider the case. If the staff does not amend its decision, the division committee chair, upon the institution's request, shall review the new information and may grant a new hearing only after concluding, upon review of the written materials, that the new information is of such importance as to make a different result reasonably probable. If a new hearing is granted by the chair, the chair will determine whether the hearing will be a teleconference or a paper review. Subsequent to this determination, all case materials will then be compiled by the staff and sent to the division committee for their review. If the case is to be treated through a paper review opportunity, any member of the division committee, after reviewing the case materials, may request that the chair conduct a teleconference if that committee member believes a conference call is essential in order to make a decision in the case. New teleconference hearings or paper review opportunities shall not be granted solely on the basis of factual occurrences after the initial decision by the division committee.

General Student-Athlete Reinstatement Committee Policies

1. **Authority of the Chair**. Each division committee has a chair who is selected by the committee and subject to approval by the Management Council. The division committee chair may terminate a hearing at any time if the information is repetitive in nature, substantive new information is introduced, the institution does not believe the facts constitute a violation of NCAA rules or the parties do not stipulate the facts of the case. Individuals who wish to participate in a hearing but are not among the designated participants (institutional representatives, the prospective or enrolled student-athlete and legal counsel) may do so upon approval from the division committee chair.

2. **Confidentiality**. The vice-president for membership services, the student-athlete reinstatement lead administrator and the director of public affairs may confirm whether an eligibility reinstatement request has been submitted, whether a decision has been reached and what that decision is in a particular case. The staff's release of information shall always comport with federal law (i.e., Federal Educational Rights and Privacy Act). The vice-president and the student-athlete reinstatement lead

administrator have the discretion to prepare a press release on behalf of the NCAA when appropriate.

3. **Ex Parte Communications**. Members of the committee shall not discuss a pending request for reinstatement or a pending appeal with the student-athlete reinstatement staff, institutional representatives, the prospective or enrolled student-athlete, or his or her legal counsel without all parties having the opportunity to participate. The staff may contact division committee members to arrange a teleconference or a paper review of an institution's appeal. When an institution requests reconsideration of a division committee's decision, the staff may contact the chair of the division committee to provide the information submitted by the institution and the staff's evaluation of it. The staff may also contact the chairs of the division committees regarding procedural matters relevant to processing an institution's appeal. Further, the division committee chairs may contact the staff to request that additional information about the case be obtained.

4. **Quorum**. A quorum for committee review of appeals shall be three members. If the designated division committee chair cannot participate in the review, he or she will appoint a presiding chair who is from the same division committee. If it is not possible to have the entire division committee hear or review the appeal, and it is necessary to do so without delay, the proceeding or review may take place with less than a full committee as long as the quorum requirements are met.

5. **Recusal**. A committee member or student-athlete reinstatement staff member shall recuse himself or herself from participating in proceedings (e.g., representing his/her institution or deliberating as a committee member) connected with a reinstatement case when he or she is directly connected with the involved institution, including, but not limited to, a member of the committee member's institution or institution's conference. A committee or staff member with a personal relationship or institutional affiliation that reasonably would result in the appearance of bias or prejudice should refrain from participating in any manner in the processing of a reinstatement appeal or waiver/extension request appeal. It is the responsibility of the committee or staff member to remove himself or herself if a conflict exists. Institutional objections to a committee or staff member participating in a review of a case should be raised with and resolved by the chair or the most senior member of the committee as soon as recognized but will not be considered unless the concern is raised prior to the scheduled hearing. Exceptions to the recusal policy may be granted by the chair or most senior member of the committee due to time constraints.

6. **Revision of Procedures**. The committee has the authority to revise the procedures governing reinstatement requests, waivers and extension requests, as well as the applicable appeal procedures for each, at any time, subject to Management Council or A/E/C approval.

7. **Voting**. In order for the committee to take action, a majority vote (for reinstatement appeals and waiver/extension request appeals) of those members who have agreed to hear or review the appeal is required. In the event of a tie vote, the initial decision of the staff shall be considered to have been upheld, and the institution's appeal shall be denied. Vote tallies of decisions are private and will not be provided to the media or the involved institution.

8. **Taping**. Each teleconference appeal shall be tape-recorded; however, the committee's deliberations subsequent to the hearing shall not be tape recorded. Copies of the recordings shall be maintained by the student-athlete reinstatement lead administrator for a seven-year period. The chairs of the division committees who hear the appeal have the authority to instruct the student-athlete reinstatement lead administrator to forward a copy of the tape or a transcript of the proceedings to any other NCAA committee that has a legitimate purpose for requesting access to the proceedings.

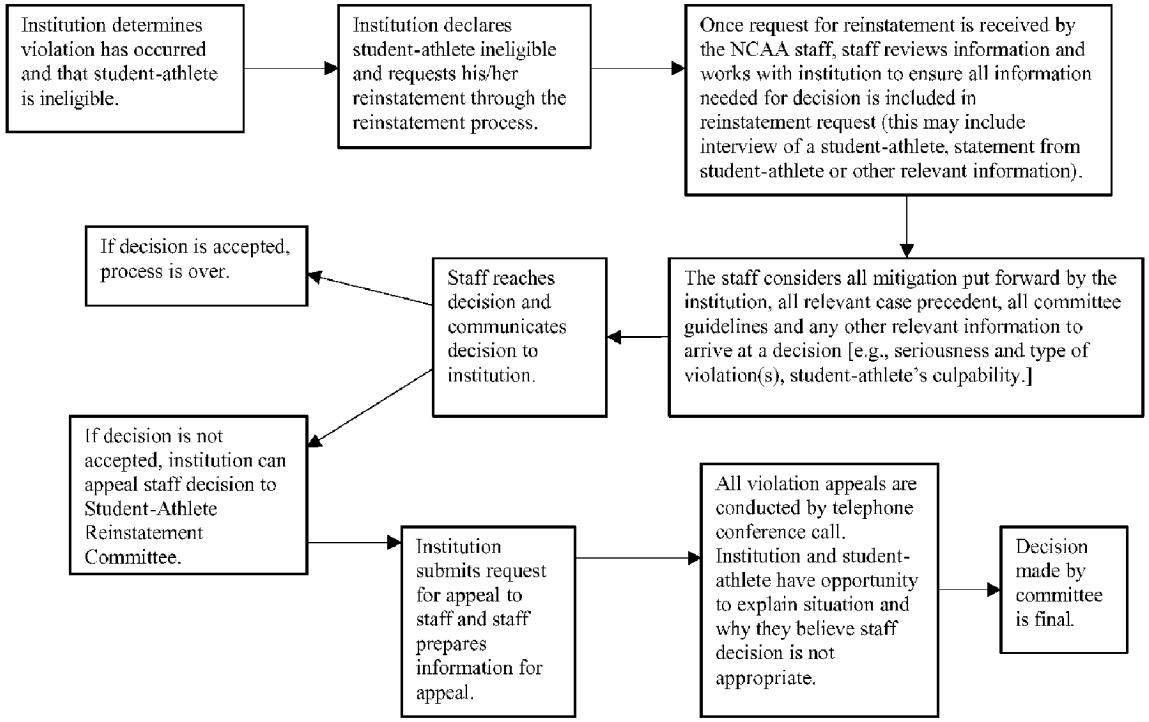
9. **Flow of Information.** All materials relevant to the consideration of a reinstatement request, waiver or extension request, or an appeal to the committee shall be submitted to the staff through the institution by institutional officials. The involved student-athlete or prospective student-athlete, as well as his or her legal counsel, shall work through the institution in preparing and submitting its request or appeal. Information submitted directly to the staff shall be sent to the institution for it to determine whether the information should be included in its request or appeal. It is the responsibility of the institution to advise the prospective student-athlete or student-athlete of the reinstatement process, which includes explaining the staff's and committee's decision.

10. **Publication of Decisions.** All actions on behalf of or by the committee shall be reported to the NCAA membership via the Web site on a regular basis in a manner that does not identify the names of the institutions or the student-athletes.

11. **Archiving Case Precedent.** The committee has the ability to archive cases based on a change in committee philosophy (with appropriate notice given to the membership) or based on the decision date of a case (i.e., cases decided prior to a given date are designated as archived). The archived cases serve only as a historical resource to the membership and staff.

ATTACHMENT 8

STUDENT-ATHLETE REINSTATEMENT PROCESS



NCAA/09/10/04/snj

ATTACHMENT 9

Frequently Asked Questions about the NCAA Enforcement Process

Q: What is the mission of the NCAA enforcement program?

It is the mission of the NCAA enforcement program to reduce violations of NCAA legislation and impose appropriate penalties if violations occurred. The program is committed to the fairness of procedures and the timely and equitable resolution of infractions cases. The achievement of these objectives is essential to the conduct of a viable and effective enforcement program. Further, an important consideration in imposing penalties is to provide fairness to uninvolved student-athletes, coaches, administrators, competitors and other institutions.

The NCAA is an association of colleges and universities, and legislation is created by the members for the members. The enforcement process is an integral part of the process to ensure integrity and fair play among the members. One of the fundamental principles of the enforcement process is to ensure that those institutions that are abiding by NCAA legislation are not disadvantaged by its commitment to rules compliance.

The specific mission of the NCAA enforcement staff is to act as a means of accountability for member institutions by seeking out and processing information relating to possible major and secondary violations of NCAA legislation in accordance with the policies and procedures enacted by the NCAA membership.

Q. How is the enforcement staff organized?

The NCAA enforcement staff is headed by the NCAA's vice-president for enforcement services. Six directors of enforcement and a director for agent, gambling and amateurism activities assist the vice-president. The directors of major enforcement supervise 20 assistant directors (field investigators). A separate staff processes secondary infractions cases. The director of agent, gambling and amateurism activities supervises two investigators and a basketball certification coordinator.

Q. How does the process work?

The enforcement staff may initiate an investigation of a member institution's athletics program only when it has reasonable cause to believe that the institution may have violated NCAA rules. A determination is made regarding whether the possible violation(s) should be reviewed by correspondence with the involved institution (or its conference) or whether the enforcement staff should conduct its own in-person inquiries. When reasonably reliable information has been obtained indicating that an intentional violation has occurred, that a significant competitive or recruiting advantage may have been gained, or that false or misleading information may have been reported to the institution or to the enforcement staff, the enforcement staff will undertake a review of the information in order to determine its credibility. At that time, the involved NCAA member institution is informed of the enforcement staff's inquiry by a notice of inquiry to the institution's chief executive officer (CEO). The review of this information generally entails the use of an enforcement representative (investigator) to conduct in-person interviews.

The notice of inquiry shall advise the CEO that the enforcement staff will be undertaking an investigation and, whenever possible, shall indicate the nature of the potential violations (including the involved sport), the approximate time period in which the alleged violations occurred, the identities of the involved individuals, the approximate time frame for the investigation and an indication that other facts may be developed during the course of the investigation that may relate to additional violations. The enforcement staff does not publicly release the notice of inquiry. The member institution has the discretion to determine whether it wishes to release the notice of inquiry.

The enforcement staff shall conduct the investigation for a reasonable period of time to determine whether adequate information exists indicating that major violations of NCAA legislation occurred. If this is the case, then a notice of allegations is sent to the institution's CEO. The notice of allegations contains specific allegations against an institution. During the period of the investigation, the enforcement staff shall inform the involved institution of the general status of the notice of allegations not later than six months after the date of the notice of inquiry. If the investigation is not processed to conclusion within one year of the date of the notice of inquiry, the enforcement staff shall review the general status of the case with the NCAA Committee on Infractions. The committee shall determine whether further investigation is warranted, and its decision shall be forwarded to the involved institution in writing. If the investigation is continued, additional status reports should be provided to the institution in writing at least every six months thereafter until the matter is concluded.

If the enforcement staff believes that the available information does not warrant further review during the inquiry, the enforcement staff will notify the institution in writing that the enforcement staff does not intend to review the information further. As indicated above, if the enforcement staff believes the information indicates that violations occurred, a notice of allegations is sent to the institution.

The notice of allegations notifies the institution and all involved parties (coaches, other involved individuals, etc) of the alleged violations of NCAA legislation uncovered during the course of the inquiry. The institution and involved parties have 90 days to respond to the allegations, but may request additional time if needed.

Once all parties have responded to the allegations brought by the enforcement staff, a hearing date is set before the Committee on Infractions (the NCAA administrative body charged with the task of adjudicating infractions cases). Four to six weeks prior to the hearing date, a prehearing conference is conducted with the institution and other involved parties. During this conference, all questions regarding the allegations are discussed to preclude the introduction of new information on the day of the hearing.

Prior to the hearing, the enforcement staff drafts a document called the enforcement staff case summary. The case summary documents the allegations, the position of the involved parties for each allegation, the remaining issues, if any, the identity of individuals involved in the case, and any other pertinent information. The case summary is distributed to the involved parties and the Committee on Infractions no later than two weeks prior to the hearing date.

The Division I Committee on Infractions meets approximately six times per year with each meeting typically consisting of two to three days, during a weekend. The Divisions II and III Committees on Infractions meet on an as needed basis, simply because there are fewer infractions cases in these divisions. The number of institutions appearing at each hearing depends upon the length of each case and the amount of other business that the committee has to conduct. An institution's appearance before the committee may be all or a portion of one day or several days depending upon the complexity of the case.

At the hearing, the institution generally is represented by its chief executive officer, faculty athletics representative, the director of athletics and the current or former head coach of the involved sport. It is common for other institutional officials to attend, such as the compliance coordinator and the university's legal counsel. The enforcement staff usually is represented by the assistant director of enforcement who conducted the fieldwork in the inquiry; the director of enforcement who oversaw the processing of the case and the vice-president for enforcement services. Other staff members also may be present who have played a secondary role in the processing of the case or who are present for other cases before the committee. Current or former athletics department staff members (including coaching staff members) may be present with legal counsel if the individual is named in a finding. Student-athletes with current eligibility also may be present as well.

The chair of the committee opens the hearing with general background information concerning the process to be followed during the hearing. Opening statements from the institution, the enforcement staff or other involved parties then are presented. Following the opening statements, the enforcement staff begins a presentation on specifics of an allegation. After the conclusion of the enforcement staff's presentation, the institution and other involved parties also make their presentations. The Committee on Infractions may ask questions of the enforcement staff, the institution or other involved parties. After a thorough discussion of that allegation, the next allegation is discussed.

Following a discussion of the allegations, closing statements by all involved parties are provided. After the hearing is concluded, the Committee on Infractions deliberates in private to determine what, if any, findings should be made and what, if any, penalties should be assessed. The deliberations usually occur during the hearing weekend and, if necessary, via telephone conference call in the days following the hearing. The information upon which violations are found must be credible, persuasive and of a nature that reasonably prudent persons would rely upon in the conduct of serious affairs. Penalties can include probationary periods, bans on postseason competition and reductions of athletics scholarships. Restrictions on the athletically related duties of individual coaches may be imposed, if warranted.

One of the members of the committee is assigned to write the infractions report which documents the specific findings made and penalties imposed by the committee. The report also includes the rationale used in making its decisions. The release of these reports is approximately six to eight weeks following the institution's appearance. The public affairs staff at the NCAA will alert the media of the impending infractions report, the morning of the release. The involved institution and any involved individuals receive a copy of the infractions report the day prior to the public release. The chair (or other designated member) of the Committee on Infractions will

conduct a telephone press conference to announce the results of the committee's decision in that case. A public infractions report detailing the specific findings and penalties in the case, but with the names of all involved parties redacted, is also released at that time. The committee makes no statement concerning the case until it issues its report.

Institutions and involved individuals have the option to appeal findings and penalties to the Infractions Appeals Committee.

Q. Do all NCAA infractions cases result in an in-person hearing before the Committee on Infractions?

No. If, after an investigation has concluded, and all parties are in agreement regarding the facts surrounding allegations and appropriate penalties, there is an additional option that may be exercised. Called summary disposition, this process allows for information to be presented to the Committee on Infractions without a hearing.

The summary disposition process is a cooperative endeavor among an institution, individuals involved in possible findings of violation and the NCAA enforcement staff. The parties prepare a report that describes the violations of NCAA legislation, and the institution and the involved individuals propose penalties. The Committee on Infractions will review this report during private deliberations and determine whether to accept the findings and the penalties or to go to an expedited hearing.

The summary disposition process includes several major elements. Initially, a complete and thorough investigation must have been undertaken by the institution, the enforcement staff or both. Full cooperation by the institution and all parties must be present for the process to be utilized. Further, an agreement must exist among the institution, the enforcement staff and the involved individuals on the facts involving each acknowledged violation and that these facts constitute violations of NCAA legislation. The institution and the enforcement staff also must agree that the case is major in nature. An institution that is subject to the repeat-violator provisions cannot utilize the summary disposition process. The report also must contain a list of penalties proposed by the institution that are consistent with the presumptive penalties for major violations as listed in NCAA Bylaw 19.5.2.1.

Generally, if an involved individual (current or former coaching staff member or student-athlete) does not agree with the facts or does not believe these facts constitute a violation, the summary disposition process cannot be utilized since the premise of the report is that there is an agreement on the facts and that the facts constitute a violation of NCAA legislation.

The report generally includes a case chronology detailing important dates of the investigation; background information on the institution; an overview of the findings in the report; the overall positions of the enforcement staff, the institution and the involved individuals on the infractions case; an overview of the institution's and the enforcement staff's investigations; signed agreements by the enforcement staff, the institution and the involved parties acknowledging the facts in the case and that these facts constitute a violation; a detailed narrative for each finding of violation; and the institution's suggested corrective actions and penalties.

The Committee on Infractions generally will review the summary disposition report during its regularly scheduled meetings. The committee can accept the findings and penalties, accept the findings but not the penalties, or not accept the findings or the penalties. It is common for the committee to request additional information of an institution upon its initial review of the report. In such cases, the committee may defer the decision on accepting of the findings until further information is obtained, usually during the committee's next regularly scheduled meeting. The committee also may accept the findings but not the penalty and inform the institution of the committee's belief on what additional penalties should be imposed by the institution. In such cases, the institution generally imposes those additional penalties, and the committee then will accept the institution's proposed penalties.

If the committee accepts the findings but not the penalties that the institution proposed (or that the committee recommended in response to the institution's initial penalties), an expedited in-person hearing is held. During the expedited hearing, the findings in the report have been accepted, and the hearing focuses only on the penalties in question. The hearing is not intended as an opportunity for the parties to negotiate with the committee or to discuss the findings. Rather, the purpose of this hearing is for the institution or involved individuals to further explain the rationale for the recommended penalties and for the committee to ask questions and seek clarification. After the expedited hearing, the institution or the involved individuals may appeal the penalties to the NCAA Infractions Appeals Committee.

At any point in the process, the enforcement staff could issue a notice of allegations if it appears that the institution and the enforcement staff cannot agree on findings or if the Committee on Infractions does not accept the findings or penalty.

The summary disposition process can also be utilized if, after a notice of allegations is issued by the enforcement staff, an agreement by the institution, the involved parties and the enforcement staff on the findings of violation and the penalties to be imposed.

If the committee accepts the findings and penalties in the report, the committee prepares an infractions report. The issuing of the report usually takes between three and five weeks. The institution is informed of any nonsubstantive changes made in the findings by the committee, and a release date is set for the committee's public infractions report concerning the case. As with normally processed infractions cases, the institution or the public affairs staff at the NCAA will notify the media the morning of the release of the infractions report. The chair (or other designated member) of the Committee on Infractions will conduct a telephonic press conference to announce the results of the committee's review of the summary-disposition report. A public infractions report detailing the specific findings and penalties in the case also is released at that time. The committee makes no announcements concerning the case until it issues its report.

Q. What is the difference between the enforcement staff and NCAA Committee on Infractions?

The Committee on Infractions is an independent body composed of individuals from NCAA member institutions and the general public. Each Division (I, II, and III) has its own Committee on Infractions. These committees have the authority to determine what (if any) findings should be made and what (if any) penalties should be assessed upon a member institution as a result of involvement in major violations of NCAA legislation.

The Division I Committee has 10 members composed of seven individuals from NCAA member institutions and three from the general public. At least two of the members must be women. Two of the 10 members serve as the coordinators of appeals. These two individuals do not participate in the committee's decisions but they do attend the hearings and are present during the deliberations. The coordinators of appeals' sole responsibility are to represent the committee on any matters appealed to the Division I Infractions Appeals Committee.

The Division II Committee is composed of six individuals including five members from the respective divisional membership and one from the general public. At least one of these members must be a woman. One of the members of the committee is a liaison from the Division II President's Council and does not have a vote in the committee's decisions.

The Division III Committee is composed of five individuals which include four members from the respective divisional memberships and one member from the general public. At least one of these members must be a woman.

Q. What types of background do most NCAA investigators have?

The majority of the enforcement staff has an advanced degree (about two-thirds of the staff have law degrees) and/or have coached or participated on the intercollegiate level.

Q. How do investigations begin?

Investigations begin in a variety of ways; either through proactive or reactive efforts on the part of the enforcement staff. From a reactive standpoint, high school and college coaches, often anonymously or as non-attributable sources, contact the NCAA staff to report potential violations at NCAA institutions. Investigative reports published in newspapers, magazines or on television sometimes lead to investigations. Student-athletes occasionally contact the NCAA to report violations. In many cases, institutions will discover violations and self-report them to the enforcement staff, leading to full-scale investigations. On occasion an investigation will result from members of the general public contacting the NCAA to report potential violations.

Proactive efforts include interviewing highly recruited prospects and student-athletes who have transferred from member institutions, or attending high school or two-year college all-star games or other events where collegiate coaches may be in attendance. Upon receipt of information concerning a possible violation, the information is evaluated by a director of enforcement. If the information relates to secondary (minor) infractions, it may be forwarded to the institution or conference for review or, if of a more serious nature, assigned to an enforcement representative for follow-up.

Information relating to potential violations is received via telephone, letter, in person and, in recent years, Internet e-mail.

If you wish to report potential NCAA violations you can contact the NCAA enforcement staff through the following means:

Telephone: 317/917-6222
e-mail: **Enforcement Staff**

U.S. MAIL:
NCAA
Enforcement Staff
P.O.Box 6222
Indianapolis, IN 46206-6222

Q. Generally speaking, how are cases investigated?

There is no single way to investigate cases, since each has it own unique set of individuals, issues and circumstances surrounding the genesis of the case.

In general, however, there are certain common denominators in each case. Preliminary information is given to a director of enforcement who, after reviewing the available information, assigns it to one or more of the investigators under his/her charge. Of common relevance is the fact that an effort is made by the enforcement staff to tape-record all interviews.

In most instances, at the start of a case, efforts are made to speak with the source(s) who originally reported information. The enforcement staff will request that these individuals submit to a taped interview "on the record" (i.e. provide their names). If a source does not provide a name, then the information cannot be used by the enforcement staff to help prove that a violation occurred. The information provided, however, can be used to direct the enforcement staff to other individuals who may have knowledge of violations and who could be attributable sources.

Usually the enforcement staff will attempt to gather as much corroborative information from the "periphery" of a case, before attempting to interview individuals directly involved with potential violations. By doing this, the enforcement staff seeks to minimize the possibility that person(s) directly involved in potential violations could, by contacting individuals who could collaborate the occurrence of violations, compromise the integrity of the case by orchestrating information reported to the enforcement staff.

When interviews are conducted on campus with enrolled student-athletes, institutional representatives are required to be present during the interviews. Depending upon the circumstances, institutional representatives may also be present for interviews of individuals other than student-athletes. Any individual interviewed by the enforcement staff has the option of having legal counsel present during the interview. All interviews are either transcribed or summarized in memorandums. In many cases, information such as long-distance telephone records, bank records and academic transcripts are reviewed during the processing of a case.

Once the enforcement staff has gathered enough information to proceed with allegations of NCAA rules violations, the process unfolds in accordance with the procedures described previously.

Q. Why does it appear that the NCAA is so harsh in the enforcement of its rules?

The NCAA is a voluntary membership organization of colleges and universities that participate in intercollegiate athletics. As previously indicated, the primary purpose of the Association is to maintain intercollegiate athletics as an integral part of the educational program and the athlete as an integral part of the student body.

Through a legislative process, NCAA member colleges and universities formulate rules of play, recruiting and administration of NCAA-sponsored sports, to include provisions designed to enforce these rules and regulations.

It is the expectation of the NCAA that all student-athletes, coaches and athletic personnel will deport themselves with honesty and sportsmanship at all times so that intercollegiate athletics as a whole, their institutions and they, as individuals, shall represent the honor and dignity of fair play and the generally recognized high standards associated with wholesome competitive sports.

The enforcement process is designed to provide a timely, fair and equitable resolution of infractions cases in order to uphold the high standards set for NCAA member institutions, their student-athletes, coaches and athletic administrators in the conduct of intercollegiate athletics.

Q. What is the "death penalty?"

The repeat-violator legislation (so called "death penalty") is applicable to an institution if, within a five-year period, the following conditions exist: (a) following the announcement of the major case, a major violation occurs, and (b) the second violation occurred within five years of the starting date of the penalty accessed in the first case. The second major case does not have to be in the same sport as the previous case to affect the second sport.

The minimum penalties for repeat violators of legislation, subject to exemptions authorized by the committee on the basis of specifically stated reasons, may include any or all of the following:

a. the prohibition of some or all outside competition in the sport involved in the latest major violation for one or two sports seasons and the prohibition of all coaching staff members in that sport from involvement directly or indirectly in any coaching activities at the institution during that period;
b. the elimination of all initial grants-in-aid and recruiting activities in the sport involved in the latest major violation in question for a two-year period;
c. the requirement that all institutional staff members serving on the NCAA Board of Directors Management Council, Executive Committee or other committees of the Association resign their positions, it being understood that all institutional representatives shall be ineligible to serve on any NCAA committee for a period of four years; and

d. the requirement that the institution relinquish its voting privilege in the Association for a four-year period.

Q. Does the NCAA enforcement process allow for due-process protection guaranteed by the Constitution in traditional legal proceedings?

NCAA enforcement regulations and eligibility procedures contain a multitude of traditional due-process protections. Some of the most important are the following:

- The institution is formally advised of any notice of inquiry into its athletics policies and practices.
- The institution's representative may be present at all on-campus interviews of enrolled student-athletes or athletics department staff members.
- Throughout the entire process, individuals and institutions are entitled to be represented by legal counsel.
- NCAA interviews are tape-recorded unless the person interviewed objects.
- There is, in general, a four-year statute of limitations concerning alleged violations that may be processed.
- If, after preliminary investigation, the NCAA enforcement staff determines that an allegation or complaint warrants a notice of allegations letter, the institution's chief executive officer is advised formally of such inquiry, including the details of each allegation.
- The institution and involved individuals are advised of all witnesses and information upon which the staff intends to rely and has the right to interview those witnesses.
- Institutions are required to advise potentially affected student-athletes or institutional staff members of allegations related to them, and to provide such individuals with the opportunity to submit information, to be represented by personal legal counsel and to participate in hearings.
- Information from confidential sources may not be considered.
- The proceedings of the Committee on Infractions are tape-recorded, and a court reporter records and transcribes the hearings.
- The burden of proving allegations rests with the NCAA.
- Eligibility appeals decisions are expedited to avoid inappropriate loss of game time for affected student-athletes.

Although the United States Supreme Court determined that the NCAA is not a "state actor" and therefore is not subject to the due-process clause of the Federal Constitution, the NCAA membership believes its procedure provides a meaningful and fair opportunity for institutions and involved individuals to be involved in these processes.

Q. Why does it appear that the NCAA enforcement process and resultant penalties punishes innocent student-athletes?

The penalty structure was established based upon the NCAA being composed of member institutions rather than individuals. Accordingly, the focus of the penalties is to ensure that there is sufficient deterrent so that the respective institutions will establish an environment which will preclude future violations. Unfortunately, some sanctions, such as a ban on postseason competition, while serving as a deterrent for institutions, also negatively affect innocent student-athletes. In light of this, a committee was formed in 1992 with the express purpose of reviewing the penalty structure. This committee added language to the enforcement procedures which, in effect, states that the interests of innocent individuals should be taken into account when imposing penalties. In part, as a result of this committee's actions, a ban on television appearances was removed from the list of presumptive penalties to be imposed in major infractions cases. However, the simple fact is that the punitive nature of NCAA-imposed sanctions make it unavoidable that the penalties imposed on institutions as a result of their involvement in major infractions will have some negative impact on innocent student-athletes.

Q. Are there means to punish coaches and boosters who are involved in NCAA infractions cases?

Yes. If a current or former athletics department staff member (such as a coach) or a representative of the institution's athletics interests (booster) is found by the NCAA Committee on Infractions to have violated NCAA legislation, the committee may require action through the member institution that could affect the athletically related duties or the athletics involvement of that individual at an NCAA member institution. Under the provisions of NCAA Bylaw 19.02.1 (a show-cause order), the Committee on Infractions has the authority to request the institution to take certain action against such individuals. If the institution elects not to take any action or the action recommended by the committee, the committee has the authority to further penalize the institution.

If an athletics department staff member is found to have been involved in a significant violation, the committee could require that the institution take certain disciplinary actions against the individual that could affect the individual's athletically related duties at the institution. If the individual is employed at a second NCAA member institution, the committee may request the second member institution to take such actions, even though the second institution was not involved in the violations.

If the involved staff member no longer is employed at an NCAA member institution, the committee may require that if a member institution employs (or intends to employ) such an individual in an athletically related capacity, that institution and the individual be required to appear before the Committee on Infractions to determine what, if any, limitations should be imposed upon that individual by the member institution that is hiring the individual. The committee may elect to take no action or issue a show-cause order against the institution to take certain action against the individual it intends to employ.

A show cause order against an individual may be imposed for a violation in a secondary or a major case.

If a representative of the institution's athletics interests (booster) is named in a violation, the committee may apply a show cause requirement that often requires that the institution disassociate that individual from its athletics program. This disassociation may be imposed on a permanent basis, for the duration of the applicable probationary period or for another specified period. This disassociation may require that the institution refrain from accepting any assistance from the individual that would aid in the recruitment of prospects or the support of enrolled student-athletes; decline financial assistance for the institution's athletics program from the individual; ensure that no athletics benefit or privilege be provided to the individual that generally is not available to the public; and take other such actions against the individual that the institution deems to be within its authority to eliminate the involvement of the individual in the athletics program.

Q. Does the NCAA enforcement process allow for immunity for involved coaches and student-athletes?

Yes. A provision of "limited immunity" is offered to student-athletes and coaches who may have information important to the processing of an infractions case. It is essential to understand that the application of immunity is very restricted. Limited immunity is not "a plea bargain" nor a quid pro quo arrangement. "Limited immunity" is offered only when certain criteria have been met. That criteria includes the understanding that the enforcement staff did not have certain information and it was of such a nature that the enforcement could not have developed it without the cooperation of the individual for whom the immunity is being considered. Further, the individual must provide the information voluntarily and the granting of the immunity is limited to information about a particular infraction or infractions. In other words, the provision of information by an individual does not exonerate that individual from sanctions which may be imposed if he or she is later found to have been involved in other violations separate from the potential violations for which the individual is being provided immunity; hence the term "limited immunity."

In the case of student-athletes, "limited immunity" refers to exemption from penalties associated with loss of eligibility for competition. With regard to coaches, "limited immunity" refers to exemption from possible restrictions in athletics-related duties imposed by the Committee on Infractions (see earlier question relating to the punishment of coaches).

Since the NCAA does not have subpoena authority and other legal powers, its ability to obtain information is often curtailed. Limited immunity is one of the tools used by Association to compensate for this restriction.

Q. Why does it appear that NCAA investigations take so long?

There are a number of reasons for this. The standard of proof is very high for NCAA infractions cases and there must be a reasonable expectation of a finding by the Committee on Infractions in order for the enforcement staff to proceed with an allegation of NCAA rules violations. As a result, the enforcement staff must take the time to obtain complete information from not only individual(s) directly involved in the rules violation (or who have direct knowledge), but sources which can corroborate the information as well. Additionally, much time and effort is spent in

evaluating both sides of a case, in order to determine which side is the most credible. The time to take to process a case is often lengthened by the fact the schedules of involved individuals (and sometimes their attorneys) must be accommodated in order for the enforcement staff to conduct an interview. Moreover, it occasionally takes a great deal of time to locate such individuals. Further, in order to properly evaluate information, it is sometimes necessary to interview individuals in a particular order. If there is a delay in interviewing a particular person, this may have a "ripple effect" and result in delaying the interviews of others. In many instances, information is developed during a case which leads to the discovery of additional possible infractions, which broadens the scope of an investigation, necessitating more time to fully explore these additional issues. Finally, institutions frequently lengthen the process by requesting additional time to respond to allegations of NCAA violations made by the enforcement staff.

Updated 3/25/04

ATTACHMENT 10

STUDENT-ATHLETE REINSTATEMENT PROCESS
FREQUENTLY ASKED QUESTIONS

1. What is the process for reinstatement of a student-athlete's eligibility?

The student-athlete reinstatement process provides for the evaluation of information submitted by an NCAA member institution on behalf of student-athletes/prospective student-athletes who have been involved in violations of NCAA regulations that affect their eligibility. The objective of the review is to assess the responsibility of the student-athletes/prospective student-athletes and to determine appropriate conditions for reinstatement of eligibility under national standards established by the NCAA membership, Management Councils (Divisions I, II and III) and Student-Athlete Reinstatement Committees (Divisions I, II and III).

2. Who makes the decisions on reinstatement cases?

The NCAA student-athlete reinstatement staff issues initial decisions in all cases. Staff decisions may be appealed to the Student-Athlete Reinstatement Committee. The reinstatement committee has the authority to amend a decision or lessen a penalty imposed by the staff, but it does not have the authority to increase the penalty. The student-athlete reinstatement committee is made up of individuals on member institutions' campuses or conference offices. The staff meets with the committee regularly to discuss philosophy, process, policies and guidelines for processing cases. In addition, the committee reviews all cases where the staff deviates from precedent.

3. Does the staff have any interaction with the committee on a particular case?

The staff has been given the authority to act on behalf of the committee and issue decisions on all reinstatement requests. The staff does not communicate with the committee when a case is received in the NCAA national office. If the institution wishes to appeal the staff decision, the committee receives a copy of all materials submitted and a teleconference is arranged. Staff and institution present case to committee. The staff and committee do not have any exparte communication regarding a specific case.

4. To whom does the committee report, and who has authority over policies and decisions?

In Division I, the committee reports to the NCAA Division I Academics/ Eligibility/Compliance Cabinet and, thus, all general policies or guidelines for processing of cases are submitted in reports to the cabinet. The cabinet and Management Council can assist the committee in setting policy and guidelines. However, actual case decisions are not able to be appealed beyond the committee.

5. How does the process work?

- Institution determines that a prospective or enrolled student-athlete was involved in a violation that affects eligibility.
- Institution declares student-athletes/prospective student-athlete ineligible.
- Institution investigates situation and gathers facts (student-athlete reinstatement staff is not investigative in nature, and it is the institution's responsibility to determine the facts of each case).
- Institution submits eligibility-reinstatement request to student-athlete reinstatement staff.
- Staff reviews request, focusing on the student-athlete's/prospective student-athlete's responsibility, culpability, seriousness and type of violation(s).
- Staff reviews precedent with similar facts to determine what conditions for reinstatement should be imposed, if any. The student-athlete reinstatement staff attempts to put the individual back in the position in which he or she would have been had the violation not occurred.
- Staff, on behalf of the Student-Athlete Reinstatement Committees, can do one of three things:

  (1) Reinstate eligibility without conditions;

  (2) Reinstate eligibility with conditions (withholding/repayment); or

  (3) Not reinstate eligibility at that institution or at any institution.

6. How long does the reinstatement process take?

The length of time a case may take to process varies greatly on the complexity of the case. Often a case that involves serious, complex violations of NCAA regulations will require extensive follow-up. Once all information is received at the national office, it takes approximately a week for the staff to render an initial decision. The staff is also aware of competition dates and strives to render decisions prior to the next date of competition whenever possible.

7. Who can request reinstatement?

An NCAA member institution must request reinstatement on behalf of a student-athlete. A student-athlete himself or herself cannot request reinstatement. Reinstatement requests are processed on behalf of member institutions since member institutions are responsible

for certifying the eligibility of student-athletes who compete on their individual campuses.

8. Can a student-athlete be represented by legal counsel?

A student-athlete may be represented by legal counsel during the reinstatement process. It is not required, and the process can be navigated without legal counsel; however, if a student-athlete wishes to have legal counsel, reinstatement policies allow for their participation.

9. How many cases are processed a year? What percentage results in the student-athlete being reinstated?

During the 2003-04 academic year, the reinstatement staff processed approximately 1500 reinstatement requests and 400 waiver requests (the reinstatement staff and committee are also responsible for processing several of the Association's waivers). In Division I, 1100 reinstatement requests were processed. Of the 1500 reinstatement requests processed, 99 percent resulted in the student-athlete being reinstated (some may require a condition).

Mr. CHABOT. Dr. Ridpath.

TESTIMONY OF B. DAVID RIDPATH, ASSISTANT PROFESSOR, SPORT ADMINISTRATION, MISSISSIPPI STATE UNIVERSITY

Mr. RIDPATH. Thank you, Mr. Chairman.

I'm truly honored to be before this Committee today. As a parent of young children and a former military officer, very little intimidates me, but I must admit I'm a little shaky being here. I found out just late yesterday I needed to get here from Mississippi to Washington, D.C., and managed to pull that off with the assistance of Congressman Bachus' office; and I do appreciate that.

Let me start out by saying, I cannot disagree with Ms. Potuto more; and I think I'm going to detail that in my testimony. You will hear differing opinions through written testimony and what you have heard today on the enforcement and infractions process and the monopolizing-cartel-like power of the NCAA and the NCAA national office.

There are facts and opinions on all sides of these issues, but let me address these issues from the perspective of a person who has been through two major infractions investigations and who is a person who once vigorously defended the very processes that Ms. Potuto just defended. But I'm also a person who has had my career and reputation ruined by this patently unconstitutional and unfair process.

This is not a process that truly punishes the rule breakers. It is a process that can ruin careers and trample rights all at the same time. It is simply a process that is unAmerican and threatens the very foundation of higher education in America.

I represent today many people who have been unfairly targeted and blamed to protect the true rule breakers. There are many scapegoats out there just so the tax-free, money-making enterprise of college sports can keep running with the facade that somehow the NCAA is actually policing itself. It is an insider's game, just like the old fox guarding the hen house, and they are getting away with it.

In brief, I'm a former distinguished military graduate from Colorado State University, and I served this country honorably for almost 12 years. I'm a man of principle and integrity. I left the stability of a distinguished military career to pursue my dream of working in college athletics. I never had my integrity, my competency or my abilities questioned until confronted by this process and the NCAA investigators and Members of the Committee on Infractions. My treatment and the treatment of others by the NCAA and the NCAA Committee on Infractions was unprofessional, caustic, adversarial and completely out of line without any remedy of fairness, due process and constitutional protection.

My story is this: I was hired at Marshall University in 1997 as Assistant Athletic Director For Compliance. I was hired to clean up the compliance program that was in disarray. I did that, and I did more, and in the process of cleaning up the mess, I discovered violations that had existed in the athletic program, which I reported, as per rules, to the MidAmerican Conference and the NCAA.

The NCAA launched an investigation into our athletic program. One of the major violations concerned an illegal employment

scheme for football and men's basketball athletes. The employment program had been going at Marshall University for almost 7 years prior to my arrival and had been covered up by various administrators and coaches, who, incidentally, still work in college athletics throughout.

It was a scheme that I did not know or was told about. It was a coverup. To make a long story short, I was blamed and held publicly at fault for these intentional violations committed by others in the public NCAA infractions report. I had made an inadvertent, isolated and very minor mistake regarding athlete employment in a totally unrelated matter.

While I still vehemently disagree with the NCAA's interpretation of that specific issue, it is what it is, a minor violation. Unfortunately, the NCAA investigative staff and the Committee on Infractions bootstrapped this violation, in collusion with the institution, to scapegoat me and blame me for violations that I had nothing to do with and had no power to prevent. Although I did everything required by NCAA rules, told the truth throughout the investigation, my career and reputation were in tatters, while those who started the program maintained the program and covered up the program are still working in college athletics today.

What is wrong with this picture—and it is not just me. College athletics is a very seductive business that has forced good people to do bad things and bad people to do worse things. There is so much money and power involved, particularly with highly paid coaches, that many institutions will do whatever they can to protect what Ms. Potuto so eloquently calls the "vital interests" and the Committee on Infractions plays a role in protecting that vital interest, but it is not fairness and due process, it is protecting the money-making machine. In short, don't bite the hand that feeds you. Thus, politically expendable individuals are often left holding the bag, with literally no recourse against one of the strongest monopolies in the world.

Fighting back against this un-American process has been taxing on my family. I have had to start and create a whole new professional career for myself. But I reflect back on one simple piece of advice, "Do the right thing," and now the right thing is not being done, and I must do whatever I can to make changes. The NCAA is not omnipotent. They can and do make mistakes. They do have unfair and archaic practices, and there are many things that need to be done to right the ship.

I truly believe that the only thing that can correct over 100 years of failed reform and change a process that continues under a shroud of secrecy, that can destroy lives and careers with impunity, is Government intervention and that is why I'm here today.

I thank the Committee for the time, and I thank Congressman Bachus for having the courage to pursue this important matter. I urge the Committee to take whatever steps are necessary to reform this process and protect those with integrity and ensure their constitutional rights are protected.

I end today with a quote from a politician, former Governor Frank Keating of Oklahoma. In his resignation from the National Labor Review Board studying the recent clergy sex abuse crisis, he said, "to suppress names of offending clerics, to deny, to obfuscate

and to explain away, that's the model of the criminal organization, not my church." Unfortunately, the NCAA is operating like this criminal organization specifically in its enforcement and infractions process which operates in the same way.

I thank you again for the time today to tell my story and I'll submit further documentation and statements which I was not able to do because of the short notice.

Mr. CHABOT. Thank you very much, Dr. Ridpath.

[The prepared statement of Mr. Ridpath follows:]

PREPARED STATEMENT OF B. DAVID RIDPATH

Chairman Chabot, Congressman Sensenbrenner, distinguished members, ladies and gentlemen,

My name is Dr. Bradley David Ridpath, Assistant Professor of Sport Administration at Mississippi State University. I am also Associate Director of The Drake Group a national consortium of faculty and higher education administrators committed to intercollegiate athletic reform. I am profoundly honored to be before this committee today, as a parent of young children and as a former US Army Field Artillery officer, very little intimidates me, but I must admit that being here on Capitol Hill is a very incredible experience and I do hope that my testimony today is helpful as this committee addresses this very important matter.

You have heard and will hear differing opinions on the NCAA Enforcement and Infractions process and the monopolizing cartel like power of the NCAA and the NCAA national office. There will be facts and opinions from all sides on these issues, but let me address these issues from a perspective of a person who has been through two NCAA investigations and as a person who has had his reputation and career ruined by patently unfair process that exists now. I cannot disagree more strongly with Ms. Potuto. This is not a process that truly punishes the rule breakers. It is a process that can ruin careers and trample rights all at the same time. It is simply a process that is un-American and it threatens the very foundation of higher education in America.

I represent many people who have been unfairly targeted and blamed to protect the true rule breakers. There are many scapegoats out there—just so the tax free money making machine of college sport can keep running with the facade that somehow the NCAA is policing itself. In reality its primary mission is to protect the billions of dollars at stake. It is an insider's game, just like the fox guarding the henhouse—and they are getting away with it.

In brief, I am a former distinguished military graduate from Colorado State University and served this country for almost 12 years in the Army and National Guard. I am a man of principle and integrity. I left the stability of a distinguished military career to pursue a dream of working in college athletics. I served honorably at three schools including at Marshall University. I never had my integrity questioned, my competency questioned, or my abilities questioned until confronted by this process while at Marshall. My treatment, and the treatment of others, by NCAA investigators and the NCAA Committee on Infractions was unprofessional, caustic, adversarial, and completely out of line with any remnant of fairness, due process and constitutional protection.

I was hired at Marshall University in 1997 as Assistant Athletic Director for Compliance and Student Services. I was hired by Marshall to clean up a rules compliance program in

Disarray. I did that job and more. In the process of cleaning up the mess, I discovered several minor violations, and two major violations, which I reported to the Mid American Conference and the NCAA. The NCAA launched an investigation into our athletic program. One of the major violations was an illegal employment scheme for football and men's basketball athletes. This employment program had been going on at Marshall University for almost seven years prior to my arrival and had been covered up by various administrators and coaches throughout. It was a scheme that I did not know or was told about. To make a very long story short, I was blamed and held publicly at fault for these intentional violations, by others, in the NCAA Infractions Report. I had made an inadvertent, isolated, and minor mistake regarding athlete employment in a totally unrelated matter. While I still vehemently disagree with the NCAA's interpretation of this issue, it is what it is, a minor violation. The NCAA investigators and the Committee bootstrapped this unrelated violation in collusion with the institution to scapegoat me and blame me for violations I had nothing to do with. Although I did everything required by NCAA rules and told the

truth throughout the investigation, my career and reputation were in tatters, while those who actually started the program, maintained the program, and covered up the program are still working in college athletics today. What is wrong with this picture? I will tell you.

College athletics is a very seductive business that has forced good people to do bad things and bad people to do worse things. There is so much money and power involved, particularly with highly paid coaches, that most institutions will do whatever they can to protect what they perceive to be a vital interest—often the Committee on Infractions plays the same tune. In short, don't bite the hand that feeds you. Thus, politically expendable individuals are often left held holding the bag with literally no recourse against one of the strongest monopolies in the world. Fighting back against this un American process has been taxing on my family, but I reflect back to simple advice—Do the Right Thing—and right now the right thing is not being done and I must do whatever I can to make sure it changes.

The NCAA is not omnipotent. They can and do make mistakes, they do have unfair and archaic practices, and there are many things that need to be done to right the ship. I truly believe the only thing that can correct over 100 years of failed reform, and change a process that continues under a shroud of secrecy that can destroy lives and careers with impunity is government intervention—that is why I am here today. I thank the committee for the time today and I especially thank Congressman Bachus for having the courage to pursue this important matter. I urge this committee to take whatever steps necessary to reform this process to protect those with integrity and insure their constitutional rights are protected.

I close today with a quote by a politician most of us know—Frank Keating former governor of Oklahoma. In his resignation from the national lay review board studying the recent clergy sex abuse crisis he said, "to suppress names of offending clerics, to deny, to obfuscate, and to explain away—that is a model of a criminal organization, not my church. Unfortunately the NCAA, specifically in its enforcement and infractions process operates in the same way.

Thank you for the time today to tell my story

Thank you

Mr. CHABOT. The Members of the panel will now have 5 minutes each to ask questions, and I'll begin—I recognize myself for 5 minutes.

In your written testimony, you state that you were given 10 minutes to put forth your side of the story to the NCAA's committee on student-athlete reinstatement. Was this your first opportunity to speak directly to the NCAA? And, if so, do you feel you would have benefited from an opportunity to personally state your reasons for reinstatement earlier in the process? And did you attempt to speak to the NCAA on your own? And, if so, what was the outcome of that?

Mr. BLOOM. That was my first opportunity. And back in 2002 after the Olympics, when I started this process and wanted to help the NCAA understand a different breed of two sport athletes, I requested to have a meeting with them, speak with them. I was denied the right to meet with Mr. Brand, the President, or any of the members, to speak with them directly. I had to allow the University of Colorado to represent me in my dispute with them.

I believe this situation would have never gone to the court, would have never taken this long if I had the opportunity to a public hearing with the NCAA members, with an impartial governing body making the decision.

Mr. CHABOT. Ms. Potuto, would you please share with us your views on the Lee committee recommendations and whether the NCAA's membership has gone far enough in adopting those recommendations.

Ms. POTUTO. Yes, Mr. Chairman. The Lee Commission had a number of recommendations, most of which were adopted by the NCAA member institutions. In fact, the particular proposal for an

independent hearing officer was also adopted by the member institutions.

Having said that, in the several years in which that particular option was available to member institutions and individuals, it was only requested once by an individual and, in that instance, the institution opposed the use of a hearing officer.

As I said in my opening remarks, it is critical to the process to have people adjudicating cases who know what happens behind the scenes, can understand a proposed penalty that, in fact, isn't a penalty, can appreciate and give credibility because they have been there. It is not a situation in which it is a body where no one has walked a mile in the shoes of the people who appeared before it.

Mr. CHABOT. Dr. Ridpath, taking into consideration the testimony that you gave us just a few moments ago, what suggestions would you recommend for changing the process to make it fair, both to institutions but especially the student-athletes and the coaches and everybody involved?

Mr. RIDPATH. There are several. I recently wrote a letter to the editor to the NCAA News suggesting some things that needed improvement.

One is one that has been discussed today, and that is opening up the infractions and hearings process to the public, making those hearing transcripts public, letting the media participate in that. Do not do something behind closed doors. It is the shroud of secrecy that makes it appear like something wrong is going on.

I also feel the Committee on Infractions, although Ms. Potuto has stated that she feels it's a fair and impartial jury, that is not the case. There are athletic directors on that committee. There are faculty athletic reps. They get perks for being part of that committee and know several of the people that they sometimes are even investigating or adjudicating. And these individuals, they have used this bully pulpit to settle old scores and/or cast chips in.

I state my number two, after public hearing, is an independent Committee on Infractions, not anybody from member institutions. I respect the fact that they have people like Frederick Lacey on the committee, but that does not take away the conflict of interest.

The other thing is everybody who is involved in an NCAA investigation—I use my situation as a clear example—need due process and their constitutional rights protected, that if an institution makes someone a corrective action for some woebegone reason, that the NCAA needs to know, if they are as experienced as Ms. Potuto is claiming—I do dispute that—to know what really goes on behind closed doors and know that they are scapegoating the lowest common denominator, they do not have to accept that as a corrective action. The fact that they do, they are as complicit in, really, the false policies of this committee.

Those are three initial ones that I can think of, Mr. Chairman.

Mr. CHABOT. Thank you very much, and my time has expired.

Is the gentleman from New York here?

The gentleman from Virginia, Mr. Scott, is recognized for 5 minutes.

Mr. SCOTT. Thank you, Mr. Chairman.

I had an inquiry about a scheduling for preseason games. Did the NCAA make a decision on preseason games especially affecting Hispanic universities?

Ms. POTUTO. Congressman, the NCAA national office could answer that question. The Committee on Infractions doesn't deal with that, and anything I'd say would be from what I would get from the public record also. So I think—there are people here from the NCAA that could address that for you now or after the hearing.

Mr. SCOTT. I guess the problem with this whole subject is, if there is a disagreement, who gets to make the final decision? And we have heard Mr. Ridpath refer to it as a cartel. A lot of the Little League and all kinds of leagues have a commissioner who has final authority on everything, and his decision is final, and that's it, and everybody has agreed to that process. Should schools, Mr. Ridpath, be able to agree to be bound by the NCAA, even if it is a cartel?

Mr. RIDPATH. It's the only game in town right now. It would be tough to go elsewhere, although I do think that needs to be studied.

You talk, Mr. Scott, about who is the final decisionmaker. You mentioned the term commissioner. I do often sometimes chuckle at that even in professional leagues where commissioners actually work for the owners.

I had a very distinguished athletic director tell me about the current president of the NCAA, Dr. Myles Brand, saying very clearly to me, and he said to me, "Dave, he works for us." Now while he might be trying to do some good things, the bottom line is he works for the constituency that wants to make the money, and that's where the conflict arises.

Mr. SCOTT. Who should be—if it's not the NCAA as the final arbiter, who should be able to have the final decision?

Mr. RIDPATH. I truly believe it is time for faculty to take charge of their own institutions.

I'm associate director of a national consortium of faculty and staff for intercollegiate athletic reform collegiate called the Drake Group. And I do believe once faculty take control and enforce academic standards on their campuses, it will almost eliminate the need to have an NCAA governing body because those standards will be enforced by tenured faculty at their institutions, and many of the problems we have today will evaporate.

Mr. SCOTT. You asked us to do the right thing. And maybe Harry Truman said, doing the right thing is easy. Figuring out what the right thing is is the hard part. What is the right thing for Congress to do?

Mr. RIDPATH. What I would like Congress to do and specifically—there are many other things, and I know I'm off on a little tangential area here talking about athletic reform. Specifically, on the NCAA infractions and enforcement process, break down the shroud of secrecy, bring true independent oversight to that committee and guarantee fairness and due process for all.

Mr. SCOTT. And exactly how do we—do we pass a statute? What statute would we pass to require the NCAA to adopt specific rules and regulations? And how are we assured that they actually follow them?

Mr. RIDPATH. To be totally—not quite sure I can answer that question, sir, in that I'm not quite sure what Congress can do, and

that's why I'm here today, to look at different proposals. I don't know what type of law can be enacted or what type of oversight can be done on an independent organization, but I do think on a voluntary organization, quote, unquote, the Congress needs to look at and explore situations and potential statutes and legislation that can actually give a check and balance to a process that right now has absolute power and has no check and balance in place.

Mr. SCOTT. Ms. Potuto, you have an anti-trust exemption, is that right?

Ms. POTUTO. There is no anti-trust exemption.

Mr. SCOTT. The NCAA doesn't have an exemption under the anti-trust laws?

Ms. POTUTO. I don't believe so.

Mr. SCOTT. No further questions.

Mr. CHABOT. The gentleman's time has expired.

The gentleman from Iowa, Mr. King, is recognized for 5 minutes.

Mr. KING. I point out, since the Chair has identified me as the gentleman from Iowa, my focus does come on the Tim Dwight case; and I'd ask one short question of Mr. Bloom. In your written testimony, to your knowledge at least, there is not a distinction between the Tim Dwight case and your case. And since those decisions came down exactly opposite, could you inform this Committee as to why you believe those decisions were opposite to one another?

Mr. BLOOM. I have no idea, and no one holds them responsible to explain.

Tim Dwight was a junior at Iowa. He went pro in football, signed endorsement deals his junior season, filed for reinstatement his senior year to return to Iowa to run amateur track. The NCAA allowed him to do so and stated that his football ability was the reason for those endorsements.

I'm a professional skier on the Olympic level. I must have endorsements to travel the country. I did the same thing—the University of Colorado filed for the identical reinstatement request as the University of Iowa did. I was denied; he was allowed. I have no explanation. They didn't talk to me. I have no paperwork, nothing.

Mr. KING. Thank you, Mr. Bloom.

I yield the balance of my time to the gentleman from Alabama, Mr. Bachus.

Mr. BACHUS. Professor Potuto, you—in your statement, you stress timely and efficient resolution as one reason for not—I think you have in the past—for not having open hearings or public hearings. Is that one of the considerations?

Ms. POTUTO. Yes.

Mr. BACHUS. Now I notice this instance on the cost of it, not having public hearings and not having people allowed to confront the witnesses against them and that thing. You took the same tact I think in opposing Title IX, the continuation of Title IX as it related to women's participation in athletics, is that correct?

Ms. POTUTO. Congressman, I'm not sure I understand what the reference is.

Mr. BACHUS. Well, I'm reading an article, "Cost of Title IX Now Outweigh Benefits," by Josephine Potuto.

Ms. POTUTO. Yes.

Mr. BACHUS. You say, the costs of implementation of Title IX are heavy and outweigh the benefits they have produced.

Ms. POTUTO. I did say that, but I wasn't referring to economic costs, Congressman. I was referring to the impact on male student-athletes who are interested in competing even without scholarship.

Mr. BACHUS. It said costs, and I wonder what that meant. I appreciate that. But you are opposed to the continuation even though you realize they brought about a sea change in respect to women's opportunities——

Ms. POTUTO. I'm not opposed to the continuation of Title IX, Congressman. I support a relook and adjustment to reflect the equities and interests of both genders.

Mr. BACHUS. You have changed—at this time, you are not for the continuation?

Ms. POTUTO. I have never said in any written or public statement that I'm not for the continuation of Title IX.

Mr. BACHUS. In your statement, when you talk about the reason for not having public hearings, you mention the reason not to have public hearings on page 8: "Extreme public interest among media and fans might create difficulties in maintaining an appropriate hearing atmosphere."

Ms. POTUTO. That's right.

Mr. BACHUS. One reason not to have open public hearings is extreme public interest?

Ms. POTUTO. It is. It's not the only reason, probably not the dominant reason, but it is certainly one reason.

Mr. BACHUS. One reason not to have an open hearing is the public's interest in the hearing?

Ms. POTUTO. The public's extreme interest in a hearing that can not only affect the atmosphere of the hearing but may well have an impact on those individuals who are not associated with institutions who come forward with probative information and then are thrust in a media circus and held up to scorn and pressure in their own home communities.

Mr. BACHUS. You are aware—you teach constitutional law and are aware of the number of cases and philosophy that public awareness, public interest should be encouraged and that actually it has a cleansing—sunshine laws effect on hearings?

Ms. POTUTO. Yes. And I'm also aware public institutions, when they are looking at disciplinary actions against faculty, dismissals, promotions in tenured positions——

Mr. BACHUS. Well, we're not talking about that here.

Let's say an athlete, and the athlete wanted to appear before the committee, wasn't even allowed, but had he been, these are private hearings? What if the athlete or the coach under investigation says, "I want a public hearing"?

Ms. POTUTO. First, if we are talking about the Committee on Infractions, there may be several different individuals in addition to the institution that all have varying interests as to what they want. Mr. Ridpath talks about an impact on his reputation. I do not see that a public hearing would alleviate that impact. If we are talking about a student-athlete, I'm not in the best position to describe the process as it affects Jeremy Bloom. We have here a member of the student-athlete reinstatement staff that dealt with

it that can give particular information and I think challenge the information that Mr. Bloom describes in terms of the processes available to him and his opportunity to participate fully and at several stages in the process and, I might add, before several committees.

Mr. CHABOT. The gentleman's time has expired.

The gentleman from Tennessee, Mr. Jenkins, is recognized for 5 minutes.

Mr. JENKINS. Professor, I have a poor copy of the judge's ruling in the District Court of Colorado, and it appears to be incomplete. But what was the basis of the judge's ruling in that case? And why was Mr. Bloom denied?

Ms. POTUTO. That is a student-athlete reinstatement issue. I can't tell you that I have recently read that particular opinion so I can share with you the particulars. But, having said that, the judge, as I recall that opinion, upheld the NCAA's opportunity to self police and to administer its programs as a private institution. It granted Jeremy a status before the court in order to reach the merits and then found that there were no substantive, procedural issues and that fundamental fairness was provided.

Mr. JENKINS. Have the courts across the land ever in any cases found that the student-athlete had rights and they have proceeded to enforce those rights?

Ms. POTUTO. Not that I'm aware of. As you well know, Mr. Congressman, in order to reach due process issues as a legal constitutional principle, the individual challenging has to have a substantive property or liberty interest. The opportunity to play intercollegiate athletics does not rise to that level.

In Mr. Bloom's written statements, he talks about the deprivation he is suffering because the college athletics are a minor league for the pros. Well, I would dispute whether any intercollegiate program sees itself as simply or even partly training athletes to be professionals, although that may well be a side effect of playing intercollegiate athletics.

Mr. JENKINS. This may be a question that may be appropriately addressed to Mr. Bloom. But from Mr. Bloom's testimony, it states on the second page, in January of 2004, I announced that I was beginning to—it says, except, e-x-c-e-p-t. I assume that means to accept endorsements and planned to play football for the University of Colorado. And maybe Mr. Bloom—Mr. Bloom, did you make that decision on your own, with full knowledge of what the rules were?

Mr. BLOOM. Yes, I did. In 2004, I spent two seasons foregoing any type of money coming in from companies; and the NCAA does allow me to receive prize money, which if you did win every competition in a year you are not going to be able to——

Mr. JENKINS. You set out to be rebellious and a pioneer and to challenge this rule that you knew very well that was very clear, is that correct?

Mr. BLOOM. I don't believe I set out as a pioneer. I set out as an athlete who has dreamed every day since I was 5 years old of winning a gold medal in skiing. And when my career was put in jeopardy because of the restrictions placed by the NCAA, I was put in no other positions to accept endorsements and keep my ski career alive.

Mr. JENKINS. If you had made the decision not to accept endorsements, you would not be here today, and there would be no difficulty with respect to your future for you?

Mr. BLOOM. I would not be here today. I would be with the University of Colorado football team, and I would be retiring from the sport of freestyle skiing.

Mr. JENKINS. Dr. Ridpath, I was unclear after Mr. Bachus' questions about—you asked us clearly to intervene and you outlined, after Mr. Scott's questions, some of the things you would want us to do. Now, you know, you are kind of bucking the trend, too. Most people come up here to the Hill and they ask the Congress to keep our nose out of their business. And are you sure now that you want us to intervene and to do the things that you would ask of us to do now and get into this?

Mr. RIDPATH. I'm absolutely convinced, and it is not just me, but it's the Drake Group, of which I'm a member of the coalition. Several outside groups that have reviewed intercollegiate athletic policies and procedures, we are at the level right now that Government intervention is the only way to stop this train.

Mr. JENKINS. What about your suggestion that it is time for the schools themselves to take control of this?

Mr. CHABOT. Gentleman's time has expired.

Mr. RIDPATH. I wanted to say the only people that have the power to enforce true academic standards, true standards that enforce real college students, students like Jeremy Bloom are the faculty—and right now the faculty are completely out of the process. The only faculty that are involved are ones who have a vested interest in athletics.

Throwing sunshine in the process, to respond directly to Ms. Potuto, would have absolutely ameliorated my process because it would have exposed how the committee acted. They are unprofessional, caustic, and have an adversarial attitude and how I was completely railroaded, I don't think they would have acted that way if it was a public hearing.

[10:35 a.m.]

Mr. CHABOT. The gentleman's time has expired.

The gentleman from Alabama.

Mr. JENKINS. Mr. Chairman, I believe the lady would like to respond to that. Would it be all right if she takes the time to——

Mr. CHABOT. I will give the gentlemen an additional minute and let the gentlelady——

Ms. POTUTO. Thank you. And I would also like to add and emphasize that with regard to Mr. Bloom's particular situation, there is a member from the NCAA staff that is fully prepared to make that record clear and to correct several misstatements from Mr. Bloom.

But, to get to Mr. Ridpath, the Committee hearing before Mr. Ridpath had no allegations against him. In fact, he was named in an allegation that the enforcement staff dropped before the hearing. He was not named in the public report. There was no finding in the case made against him.

He was reassigned by his employer to another responsibility in the university before the infractions report ever issued. So that—and I would direct the Committee's attention to that report if any-

body thinks that Mr. Ridpath was unfairly characterized with regard to his compliance responsibilities. I stand by that report, and I would be delighted if you read that report.

Mr. CHABOT. We are not going to get sidetracked on this particular case here. So the gentleman from Alabama is recognized. If he wants to delve into that, he is certainly welcome to do that on his 5 minutes.

Mr. BACHUS. Professor, I am sort of struck by your definition of—that participation in college athletics doesn't rise—that activity doesn't rise to the level that ought to be protected by the constitutional rights of due process.

Ms. POTUTO. It's not my reading of that. It's, I think, the reading of all, or virtually all, courts that have looked at it. And I might add that the fact that it doesn't rise to a constitutionally protected interest, the fact that nine members of the current Supreme Court says the NCAA is not a state actor and doesn't need procedural due process does not mean that we don't provide it.

There are a number—I heard—Mr. Congressman, I heard you before say persons who are alleged to have violated have no right to confront their witnesses. Anybody who appears at that hearing has the right, and I can cite you the bylaw provision, to ask questions of any individual or party at that hearing.

Mr. BACHUS. So anyone charged with an offense has the right to appear at the hearing and cross-examine all of the witnesses?

Ms. POTUTO. I don't know, cross-examining might not be the correct term for it, but certainly the right to inquire of anyone else who appears. And, yes——

Mr. BACHUS. To talk—to question the witness?

Ms. POTUTO. Of course. And anybody——

Mr. BACHUS. Well, all right. Well, I was under the——

Ms. POTUTO.—with a violation clearly has the right to appear before the——

Mr. BACHUS. I was under the misunderstanding that you didn't allow people to confront the witnesses.

Ms. POTUTO. We do. And I can give you the bylaw provisions.

Mr. BACHUS. Let me say this. You have talked about the Supreme Court decision. Now, the Supreme Court decision said you are not a state actor. It certainly didn't give you a license to disregard peoples' constitutional rights, to mistreat people, to abuse people.

And, in fact—and also it did not say that the participation in college athletics was not something that was not a constitutional right. In fact, I will give you several cites that actually say that property—you know, guarantee of life, liberty and property includes the right of travel, the right of enjoyment of occupation, the right to practice a profession, the right to raise a family, a right to——

Ms. POTUTO. But not the right to play an intercollegiate sport supported by scholarship at a university.

Mr. BACHUS. Is that right?

Ms. POTUTO. Congressman, that doesn't mean that the NCAA or the member institutions would not be vigorous in providing procedural rights. I teach constitutional law——

Mr. BACHUS. In fact, I thought the NCAA was formed in 1905 to protect and promote the interests of college athletics——

Ms. POTUTO. Precisely.

Mr. BACHUS. —and to encourage participation in it, not to wall it off.

Ms. POTUTO. Precisely. And I teach constitutional law. I am certainly a fan of intercollegiate athletics, both men and women, both revenue and nonrevenue. But I value my professional interests in the Constitution and in civil liberties generally and my integrity as an individual much more than the opportunity to sit at a Nebraska volleyball game or to watch swimmers or to watch a Nebraska football game.

Mr. BACHUS. Now, let me ask you this: Do you agree with Justice Marshall when she says, just as in criminal cases, an impartial decision-maker is essential to the rights in a civil proceeding. This neutrality helps to guarantee that life, liberty, and property will not be taken on the basis of an erroneous or distorted concept of the fact of the law. At the same time, it preserves both the appearance and reality of fairness by ensuring that no person will be deprived of his interest in the absence of proceeding in which he may present his case with the assurance that the arbiter is not predisposed or influenced against him.

Now, the finders of fact are all under the regulation and the power of the NCAA, which is the body bringing that action against him, right?

Ms. POTUTO. Well, but the NCAA doesn't pay my salary. In fact, when I go to an infractions hearing, I go through major grief because of where Lincoln, Nebraska, is located.

Mr. BACHUS. You are not representing to this Congress—in fact, the Lee Commission recommended an independent arbiter of the facts, and the NCAA has rejected that.

Ms. POTUTO. That is not quite accurate.

Mr. BACHUS. But you are not representing to us that you all go out and get independent hearing officers, independent arbiters of the fact, are you?

Ms. POTUTO. No. And what I would say is due process requires a balancing of several interests. Of course, the interests of the individual who is subject to a penalty is of primary interest, but so are the interests in efficiency and fairness, uniformity of treatment.

Mr. BACHUS. Cost. In other words, efficiency, cost?

Ms. POTUTO. Certainly we can have a different system for intercollegiate athletics that balanced those rights more, but at the cost of other interests. And we all know that the law of unforeseen consequences sits out there as a looming presence when we start making substantial changes to a process. Professor Roberts, in his written testimony——

Mr. BACHUS. Let me close by saying that I appreciate that, but I would hope the NCAA would look at who generates the revenue. It is the student athletes.

Mr. CHABOT. The gentleman's time has expired.

The gentleman from Indiana, Mr. Hostettler, is recognized for 5 minutes. It is my understanding that we are going to have votes on the floor relatively soon, so I want us to keep it moving along.

Mr. HOSTETTLER. I thank the Chairman.

Dr. Ridpath, I have one question about your—following on Mr. Jenkins' line of questioning with regard to a new mode of regulating college athletics, and that is turning this—the situation over to the school faculty. How would that work?

The reason I ask is because that would be a voluntary environment. I assume that colleges would voluntarily enter into a new covenant, new compact, to regulate themselves. But they would do it—as opposed to the regime now—they would do it through school faculty.

How would school faculty not bring into the situation a similar bias that is claimed now with regard to the NCAA?

Mr. RIDPATH. Thank you, Mr. Hostettler. I would direct you to the Website www.thegreatgroup.org that details—and I will submit this afterward—but details our seven-point plan to solving the majority of the ills that confront college athletics today with the faculty as the driving force.

It would be incumbent upon individual faculty senates to adopt these proposals. These proposals would ensure that college students are playing college sports. This would ensure that college students—that college athletes are treated as college students. This would ensure that there is no multi-million-dollar academic eligibility mill to keep not just kids who might be academically unprepared to go to college. I think somebody who wants to go to college is the key, but I can strongly disagree with Ms. Potuto. There are several kids, many kids, hundreds of kids, who come to college to go pro, and that is the only avenue right now they have to go pro.

Enforcing the great group standards will finally break down the dirty little secret that the NFL and the NBA and the NCAA have right now of forming minor leagues, giving these other kids who have no desire to go to college another place to go. Then, therefore, you have college students who are interested in going to college playing college sports.

Again, I would direct you to the Website and our seven-point plan, but I do believe that it is foolproof.

Mr. HOSTETTLER. For the record today, and this may be unfair as an example, but are you saying that Colorado University professors, faculty, would determine, for example, if Jeremy Bloom could play college football at Colorado University?

Mr. RIDPATH. Absolutely. Eligibility decisions at an institution should be the decision of the institution that fits the academic profile. There is no reason, absolutely no logical reason, that Jeremy Bloom was not suited up for the Washington State game last week.

Mr. HOSTETTLER. And I am just wondering, do you think that that—I mean, if a university will determine its own eligibility requirements, because that is what you are saying, essentially get rid of the NCAA rules as they are now and say if a particular college wants a particular athlete to play, then that college would determine if that athlete could play and defend a national championship or whatever?

Mr. RIDPATH. Certainly we advocate, of course, a 2.0 grade point average and meeting admission standards as the academic profile of the incoming class, not bringing someone in who has no interest in playing—interest in going to school, coming in with a 12 ACT score and basically warehoused for a year.

Mr. HOSTETTLER. If that were the qualifications of the university, that would be what they would do?

Mr. RIDPATH. If that was the qualification of the university. But I don't know too many that do that.

Mr. HOSTETTLER. Not today?

Mr. RIDPATH. There are rare exceptions, but they do for athletes, yes.

Mr. HOSTETTLER. And secondly, Dr. Potuto, if I could ask a question with regard to the situation between Tim Dwight and Jeremy Bloom. And all I am concerned about is the substantive difference, because, if I understand it right, with regard to NCAA rules, an amateur—an athlete can be amateur status in one sport and be a professional in another sport.

And could you just give me the substantive differences? I am not concerned about what you think about his testimony today or anything like that. I just want to know the substantive differences between Tim Dwight being a professional football and an amateur track athlete and Jeremy Bloom being a professional skier and an amateur football player. What is the difference?

Ms. POTUTO. Congressman, I certainly could do it, but I think Ms. Strawley is in a better position to respond.

Mr. HOSTETTLER. That would be fine. And, Ms. Strawley, your name for the record as well as were you also involved in the Tim Dwight case?

Ms. STRAWLEY. Certainly. My name is Jennifer Strawley, and I am the director of membership services and student athlete reinstatement.

I was not actually involved in the Tim Dwight case in 1999. However, the differences between the cases are, in Tim's situation he asked forgiveness for what was reported as an unintentional violation of NCAA rules. In Jeremy's case, he went through, asked for interpretation of the rules, sought waivers on behalf of our rules through two separate committees, and then, under his own admission, knowingly committed willful violations of NCAA rules. Jeremy has referenced in his statement that——

Mr. HOSTETTLER. Let me—my time has run out. So I asked for substantive differences between the two. You have given me procedural differences with regard to asking forgiveness as opposed to asking permission. But what are the subjective differences, if the—if the Chairman will——

Mr. CHABOT. And the gentleman's time has expired. But if you can respond to the question.

Ms. STRAWLEY. The substantive difference is a willful violation of NCAA rules, and a knowing commitment of a violation of NCAA rules, when, in fact, he knew it was against the rules to engage in that activity.

Mr. HOSTETTLER. I thank the Chairman.

Mr. CHABOT. Thank you.

The gentleman from Florida, Mr. Feeney, is recognized for 5 minutes.

Mr. FEENEY. One of the things I love about college athletics is the passion and the intensity—I specifically love Big 10 football and SEC football. I am from Florida. This is the first time that the ACC—right, my friend, Congressman Forbes wants me to remind

how intense that competition is. First time I am aware of it spilling over into the United States Judiciary Committee, though.

I guess I start with the initial bias that I absolutely believe that there are unfair decisions probably made by the NCAA from time to time, just like the United States Supreme Court made a horrible decision in the *Dred Scott* case and has made other decisions that I think are horrible and offensive. I think any judicial body is going to be imperfect, but the question is whether or not Congress ought to act.

Another bias I have is that I doubt there is any situation that Congress can't make worse if it is not careful. And one of the things I would like to do is put pressure on the NCAA to find ways to be more responsive if there are serious problems with the way that it enforces its rules.

But that is sort of where my bias is. I am not here to defend individual decisions that may have been very much wrong.

One of the things that I would like to ask, you know, Dr. Ridpath. You say that the NCAA is a cartel and a monopoly, and obviously they have had a great deal of power. If I want to play college athletics, as a practical matter, on a very competitive high level, I don't have any choice but to play by the NCAA rules, like it or not.

So I do agree with your contention that they have an awesome amount of power. But there are other options for me. If I happen to be a very skilled hockey player, hockey players get drafted at 16, 17, 18 years old. The same thing with baseball players. A talented football player, 99 times out of 100, maybe more, goes through the college programs first. But that may be a little bit of an exception. But in basketball we have got people from the time that Mr. Dawkins was drafted at what, 17, 18 years out of high school.

So this is not the only outlet for a talented athlete like Mr. Bloom himself who is actually demonstrably skilled in more than one sport. If he didn't like the NCAA rules, he clearly had options.

And I would ask you whether this is really a monopoly or cartel that keeps people out of a pursuit that they want to pursue, but more importantly livelihood, which would be a problem, in my view.

Mr. RIDPATH. I would say on the surface what you are saying seems very logical. But, again, facts are stubborn things. Yes, hockey players can go pro at a very young age. Baseball players can. Other sports can. They don't generate the revenue that football and men's basketball does.

The NCAA and NFL are in collusion to make sure that kids cannot participate in the NFL until 3 years after they graduate from high school, and the NBA is going to try to pursue that same rule. Why? The NCAA wants to keep the best players and generate that revenue which is their main, vital interest, generate the revenue to pay those salaries.

Mr. FEENEY. Thank you. And now you have, in my view, implemented—or you have implicated the potential for an individual constitutional right, denying somebody the right to make a living is a very different question than what we are doing here.

Ms. Potuto, I would like to ask you about whether or not—because one of the issues is whether these hearings ought to be more

open. Now, this is a private, voluntary association, according to U.S. Supreme Court decisions. I think most of us are biased in favor of openness. I would like to be a voyeur at a lot of key decisions that are made.

Does the Buckley amendment have an implications that would prohibit, at times, when students are involved, publicizing proceedings?

Ms. POTUTO. There may well very be privacy interests both in State and Federal law. The Buckley amendment, I believe, goes to records particularly. But there are interests like that replete in those hearings. I assume one of the prime reasons by which you have the hearings, in terms of termination and student athlete disciplinary proceedings, are in private and held to be confidential.

Mr. FEENEY. Well, and you outline some of the practical problems with—you know, the 14th amendment, as I understand it, does not apply to private or voluntary organizations. It does not apply to the NCAA, so long as it is, in fact, a voluntary, private association, and not a state actor.

One of the practical effects, if a Supreme Court, or if Congress would mandate this, for example, but if the Supreme Court says that the 14th amendment does apply to due process, substantive and procedural concerns, what does it mean for the practical implications for the recruiting process, academic eligibility, financial aid, competition and practice limitations? Are we going to have lawyers on behalf of students go in and say that it is too hot to practice, for example?

Have you thought through some of the potential concerns with guaranteeing due process for every decision that an institution or the NCAA makes?

Ms. POTUTO. Of course. And as a professor of a law school whose salary depends on students going to law school, it is an attractive proposition to create more processes which need more lawyers.

In fact, even if the—the Congress were to determine or to declare that the NCAA is a state actor, none of the processes that currently are being engaged in I think would have to change, because I think the NCAA committees exceed what procedural due process requires.

Now, but to get to the heart of the question, which is, were additional procedures put in place, would it change the dimensions, make it more formal? Certainly. You put a lawyer in the mix, and you always have a more formal hearing. Rules of evidence are created not to expand the information that can be provided to a hearing officer, but to restrict the information that can be provided.

It is a highly competitive world, obviously. My Congressman can certainly speak to this much more eloquently than I. The notion that an individual school, run by faculty, and I am a chaired professor with tenure of my faculty, and can do so in a way that would make institutions fielding teams that compete with teams from Nebraska feel confident that we are all applying the rules in the same way and in the same fashion, it is one of the more interesting notions I think I have encountered in a long time.

Recruiting is a highly competitive business. One of the interests that institutions and individuals have before the committee is getting it done quickly. If you are subject to an infractions case at a

major university, your ability to recruit is substantially affected. And I assume that every other competing coach in the country is going to say to a prospect, you don't want to go there, you are not going to be able to go to a bowl. They are not going to field a competitive team because there are going to be scholarship losses.

That is the world that this is. It is not a world of 200 or 150 autonomously operating institutions and athletics programs that don't have to deal with each other on a playing field.

Mr. CHABOT. The gentleman's time has expired. I was waiting for you to catch your breath there, but I don't think you breathed through that statement.

Ms. POTUTO. I am from the New York metropolitan area. You don't breathe.

Mr. CHABOT. That explains it.

And we have saved our best for last here. The gentleman from Virginia Mr. Forbes is recognized for 5 minutes. I believe he will be the last questioner unless another Member would show up.

Mr. FORBES. Thank you, Mr. Chairman. And I thank you for calling this hearing. And thank all of you for being here.

I think, as Congressman Feeney mentioned, we all recognize that all of you are here with good intentions and good motives. We appreciate the good work that the NCAA does, and we also recognize that regardless of good intentions, sometimes decisions can go awry. The difficulty for us is when those decisions go awry, they can have enormous impact.

Mr. Bloom has testified that he has perhaps lost a college career and perhaps more. Mr. Ridpath feels his reputation has been lost. And one of the questions, Ms. Potuto, that my colleague from Virginia raised a little bit earlier was in regard to the Hispanic College Fund football game and that cancellation. I know you indicated that you couldn't respond to that, but the problem we have is sometimes perception becomes reality, and individuals look at something, and it is very, very arbitrary. We have kind of had a system here we have had today of having people slide up to the table to testify, which is fine, because we just want to get the information out. But you alluded earlier to—I think when you were talking to Congressman Scott, that perhaps there was another representative of the NCAA here that had some information regarding that Hispanic College Fund football game and its cancellation.

If they are not, or not prepared to testify, I would just ask if they could submit for the record an explanation so that we can look at that cancellation, because as we indicated, they have some harsh consequences. That game, the cancellation of it, cost about $2 million to that college fund, which helps a lot of individuals and Virginia Tech.

And if you are prepared to respond to that, fine, but if not, if you could submit it for the record, that would be——

Ms. POTUTO. Yes, sir, Mr. Congressman. As a member institution that runs the organization, I will say as the NCAA's employer and boss that they will certainly provide that information to the Subcommittee.

Mr. FORBES. Thank you.

[The information referred to follows:]

September 22, 2004

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VIA OVERNIGHT MAIL

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U. S. House of Representatives
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Washington, D.C. 20515

The Honorable Robert Scott
U. S. House of Representatives
2464 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressmen Forbes and Scott:

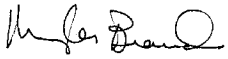
In the September 14, 2004, hearing regarding the NCAA's infractions and reinstatement processes, information was requested regarding the status of the Hispanic Football Classic, a preseason football game put on by the Hispanic College Fund (HCF). That information is as follows:

> In January 1999, the Division I-A members of the NCAA passed legislation to eliminate exemptions to play preseason football games after the 2002 season. This action was taken, in part, due to the limited number of schools that participated in such games and the perceived competitive advantage gained through a longer practice period and an extra game for some schools. The Black Coaches Association (BCA) Football Classic was permitted to continue in 2003 and 2004 based on its television contract that was in place prior to the adoption of this legislation. None of the other preseason football games, including the HCF, had such a contract. In fact, I believe 2001 was the first year for the Hispanic Football Classic, a time when the NCAA had announced the rules change to be implemented in 2002.
>
> NCAA rules permit the HCF to continue to sponsor a football event. However, the contest must occur during the regular football season and the participating schools must count it toward their regular season total of permissible games.

The HCF has unsuccessfully challenged this rule change in court. In June 2004, the Superior Court of Marion County, Indiana, dismissed HCF's lawsuit saying the pleadings clearly entitled the NCAA to judgment. The court said HCF had not alleged any fraud or illegality by the NCAA in passing this rule, and so the court would not second guess the NCAA's interpretation or application of its own rules. An appeal of that decision by HCF is now pending in the Indiana Court of Appeals. The lower court's decision is based on long- settled law regarding the rights of private associations, so it is likely to be affirmed.

I trust this information is responsive to your questions about the NCAA rules on this subject.

Sincerely,



Myles Brand
President

MB:dby

cc: Selected NCAA Staff Members

Mr. FORBES. And thank you, Mr. Chairman. That is all the questions I have.

Mr. CHABOT. Thank you very much. I believe that concludes the questions.

Mr. BACHUS. Mr. Chairman, I would ask for a point of personal privilege.

Mr. CHABOT. If the gentleman would state his point.

Mr. BACHUS. Mr. Chairman, I have said all along that my purpose here was to get the NCAA to adopt its own recommendations of its own committee, and that was the Lee Committee, and that my interest in these hearings was to student athletes and due process.

Despite this, the NCAA has made calls. They have told Members—they have—they have brought up the Auburn and Alabama cases. They have brought them up. And then they have said that I was bringing them up. They have said that to—and I wasn't able to prove that until yesterday when they actually put up on their Website a description of this hearing today. And most of that description on the Website is about the Alabama and Auburn cases, which I consider highly inappropriate.

You know, they are asking assurances that it not be about that, saying I am bringing it up. When I don't bring it up, they bring it up and put it on their Website in an attempt to poison the atmosphere here today.

It is a—and I think it shows a pattern. When we walked in this room today, two representatives of the NCAA—and would the gentleman on the second row, I am pointing at—would you identify yourself for the record?

Mr. LENNON. Kevin Lennon, vice president for membership services of the NCAA.

Mr. BACHUS. Now, he and another gentleman came up to our witness, and I am sure—I don't know if the witness felt intimidated—I did—because he said to him, "Okay, what are you doing? Are you testifying? Where are you, at Mississippi State?" He said, "yeah." Called somebody else over there and said, "Now he is with Mississippi State right now."

And the word "Mississippi State" was said four times within about 1 minute. Mississippi State. Mississippi State. I don't see the reason that it—that that had to be hit four times.

It is very hard to get witnesses here. The NCAA made several calls about Mr. Bloom asking that he not testify. I tell you, it just proves my case that we need a little openness and sunshine in these hearings, and that we do not need people that are being regulated by the NCAA and subject to discipline by the NCAA making the decisions, because it is a very coercive atmosphere.

And I simply said, "Let's have public hearings. Let's have an independent trier of the fact," which is nothing more than the NCAA actually said in 1992. I have the articles. The head guy at the NCAA said, we are going to do these things. These need to be done. They are long overdue. And then they didn't do them because the pressure backed off.

And I have never advocated, and that—no one have any innuendo that I advocated that I think Congress ought to come in and run amateur athletics. I have never said that, and I have never in-

timated that. I have simply hoped that the NCAA will take the steps that they assured the American people publicly back in 1991 and 1992, the two things they said that they would do.

And also look at Tom Osborne's testimony here this morning where he actually almost puts athletes—this body is for the interest of athletes, but they almost put athletes in an impossible situation where they pay for the cost of the scholarship, but they don't pay them their cost of living. And most of them come from poor families. They don't do that. Why, I don't know. Maybe it is to save money so there is more money for the organization and less for the student, but it is the student that generates this revenue.

And I would say to them, look at Tom Osborne's testimony today and his suggestion that you ought to compensate for the cost of attendance rather than the cost of education. It would clean up the system to a great extent. It would help student athletes. They can't have part-time jobs, at least at the major institutions, because of the demands on their time.

But I yield back the balance of my time. But I am very sorry that the NCAA saw fit, after they got my assurance and the Chairman's assurance and Members of this Committee, I told them that I would not bring up Alabama and Auburn, that they poison the well by including that on their Website. And I think that was very inappropriate, because this—you know, they said that they didn't want it to be about those cases. I said it wasn't going to be about those cases. So they put it on their Website and go into those cases.

Mr. CHABOT. The gentleman has stated his point of privilege.

To be fair, does Ms. Potuto wish to make any statement? You don't have to, but if you would like to——

Ms. POTUTO. There is nothing I know about this. So I couldn't—if you want a statement, I am sure there may be somebody here who does, but I certainly don't.

Mr. CHABOT. If you would like to submit something in writing for the record, you are free to do that.

Ms. POTUTO. I think we will. And thank you very much.

Mr. CHABOT. I would also note that Congressman Osborne's wasn't made orally here, but it will be made part of the record.

Mr. BACHUS. Mr. Chairman, I would ask Mr. Bloom, because my understanding that Mr. Dwight submitted an affidavit that he knew the rules when he broke them, and he is actually—I think the witness from the NCAA has intimated that he has given false testimony. He certainly——

Mr. CHABOT. If any of the witnesses want to make supplementary statements or additions, they can do that in writing within—it is 3 days or 5 days? Within 5 days.

Mr. BACHUS. And I think to correct the record, he should at least offer information to correct some of that.

Mr. CHABOT. So if any witness wants to supplement their testimony, they can do so within 5 days, and that will be made a part of the record.

I want to thank all three of the witnesses for their very sometimes impassioned testimony here this morning. And this is part of our oversight process. And as we had said in opening statements, the last time that Congress looked at this was 13 years ago, and I think it is appropriate for us to do this. Relative to any future

action, of course, we can't say with any certainty where this might go, but we do very much appreciate the testimony of all of the witnesses here this morning. And if there is no further business to come before the Committee, we are adjourned. Thank you.

[Whereupon, at 11:05 a.m., the Subcommittee was adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

PREPARED STATEMENT OF THE HONORABLE TOM OSBORNE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEBRASKA

Thank you, Chairman Chabot, Ranking Member Nadler, and Members of the Committee. I appreciate the opportunity to participate in this hearing on "Due Process and the NCAA." I am not an expert on the NCAA or its enforcement process. However, I would like to provide a prospective from my 36 years of coaching and working with the NCAA.

Although the NCAA rule book is thick, the policies are created by the member institutions for the member institutions. Enforcement of the rules is necessary to ensure that no team has an unfair competitive advantage. As with any policing authority, investigations into alleged misconduct create a difficult situation for those involved.

Every NCAA institution is very concerned with complying with NCAA rules. Most schools have a compliance coordinator whose only job is to keep track of the rules and make sure that every coach knows and complies with the rules. However, there will always be a small percentage of those who deliberately break the rules or inadvertently violate a rule unknowingly. The more high profile a school's athletic program, the more notoriety it will receive when a major violation occurs. Fortunately, in recent years, the NCAA has designated violations as being of primary and secondary importance. This has enabled schools that have committed minor, inadvertent violations to receive lesser punishment than those who knowingly commit major violations.

A common misconception is that the NCAA is a separate authority that governs college athletics. However, the NCAA is a voluntary organization composed of member institutions that are involved in its self-governance. It is certainly appropriate for Congress to conduct hearings to gain a better understanding of the NCAA. However, I believe that the NCAA is best situated to understand its governance needs.

A critical part of that governance process is for the NCAA to continually reevaluate its policies, including the rights of the student athletes, coaches, and institutions. For example, many involved in athletics, myself included, believe that athletic scholarships should compensate for the cost of attendance rather than the cost of the education. This would help student athletes, who cannot hold part-time jobs like the majority of their peers, pay for additional costs such as transportation, health care, clothing, food, and entertainment.

Not unlike Congress, the NCAA strives to create policies that it believes are in the best interest of those it represents. But occasionally, these policies must be reviewed and updated to reflect the current environment and situations that may not have been considered in the past. I am hopeful that this hearing will foster a continued dialogue between the NCAA and the member institutions to ensure the rights of all parties, particularly the student athletes.

Again, thank you, Mr. Chairman, for holding this informative hearing and I appreciate the opportunity to take part in it.

PREPARED STATEMENT OF B. DAVID RIDPATH

I again, like the other witnesses, want to express my thanks to Congressman Spencer Bachus, and this subcommittee for the opportunity to discuss improvements to the NCAA Infractions and Enforcement Process. By way of background information, I am currently an Assistant Professor of Sport Administration at The Mississippi State University, the Associate Director of an Intercollegiate Athletic reform

group know formally as The Drake Group *(www.thedrakegroup.org)*, and a member of the Academic Requirements sub-committee of the Coalition on Intercollegiate Athletics. I am uniquely qualified to be a critic of this process in that I have spent the bulk of my athletic and academic career researching and analyzing this process, along with other avenues of academic reform. In addition, I have spent several years involved in intercollegiate and amateur athletics as an athlete, coach, and administrator. Most recently I was Assistant Athletic Director for Compliance and Student Services at Marshall University, prior to that I worked in several athletic positions at Weber State University, before Weber State, I was assistant wrestling coach at Ohio University, where I also received my masters degree in Sports Administration and Facility Management. I also spent time working in the athletic departments of Augusta State University (GA) and Colorado State University in several different capacities. I have degrees from Colorado State University (BA, 1990), Ohio University (MSA, 1995), and a doctorate from West Virginia University (Ed.D. 2002). Currently I consider myself a scholar of intercollegiate athletic reform, as it is my primary research area. I am often asked to comment and am frequently cited by national media outlets on sports reform and enforcement and infractions matters. I am a published author on several sports reform topics. Most importantly, I am a former vigorous supporter of this process. It was not until I experienced this patently unfair process up close and personal that my opinion changed.

While I have a great connection to research of intercollegiate athletics, NCAA governance, and the enforcement program, my personal expertise on the NCAA enforcement and infractions process primarily revolves around being involved in two major infractions cases at two different universities along with working for over eight years in NCAA compliance at two NCAA Division I institutions. In addition, I am a plaintiff in a lawsuit against my former employer, Marshall University, regarding my treatment during a major NCAA investigation of its athletic program, and the subsequent naming of me as a corrective action in response to that investigation. In short, I was blamed for the major violations and was the only person at the university to lose my job and career as a result. This specific issue is discussed more in depth in my oral statement.

My intent today is to not delve into my pending litigation and for legal reasons I cannot. Like Gary Roberts, I want to emphasize that my comments orally and in writing are mine and mine alone. They do not reflect any opinion, one way or the other, of my current or former employers, The Drake Group, or the Coalition on Intercollegiate Athletics. Nor are these comments in any way pertinent to my lawsuit in that I only will address procedural issues, problems, and potential solutions to the NCAA infractions and enforcement process and my experiences with that process.

I have included several attachments that I would like attached for the record as I will refer them in this missive or they were referred to in my oral testimony. I respectfully submit the following attachments:

1. My oral statement of September 15, 2004 [1]
2. Letter to Editor, NCAA News, July 5, 2004 entitled "Intervention Looms Unless Changes Made." Written by Dr. B. David Ridpath
3. Link to The Drake Group Website *www.thedrakegroup.com*
4. Link to Article "The Faculty Driven Movement to Reform Big Time College Sports," and "Reclaiming Academic Primacy in Higher Education," By Frank Splitt, McCormick Faculty Fellow, McCormick School of Engineering and Applied Science, Northwestern University. *http://www.ece.northwestern.edu/EXTERNAL/Splitt*
5. The Marshall University NCAA Public Infractions Report dated December 21, 2001. This is included for general knowledge and gives insight into the decision making process of the Committee on Infractions. Ms. Potuto stated that she felt this report was accurate, she stands by it, and she would be delighted if the committee read the report. I too would be delighted if the committee read the report. Potuto claims that I am not unfairly characterized in the report. Her comments are misleading, self-serving, and quite frankly, inaccurate. This report does not tell the entire story and it is sanitized to benefit the Committee and the institution involved. My statements in this report will explain how situations like mine can and do often happen.

Gary Roberts and Potuto have done an excellent job describing the purpose and origins of the NCAA, along with a through explanation of how the enforcement and

[1] This statement is not reprinted here but appears earlier in the record of this hearing.

infractions process works. Thus I will not reinvent the wheel here. I also have the advantage of already testifying so I can refer to my opening statement and oral and written statements by others. My opening statement is clear on my feeling towards this process, and I have significant disagreements with Ms. Potuto and Mr. Roberts on the effectiveness and fairness of it. Still there are many points of agreement and my intent is to not restate my oral presentation. I will respond to Potuto and Roberts' oral and written statements with agreement and/or disagreement and propose my thoughts and solutions.

I. IS THE CURRENT SYSTEM BROKEN?

My first disagreement with both individuals is one that pervades both of their written statements and to a greater extent, Potuto's oral statement. The feeling conveyed is this process is either not broken at all (Potuto) or just slightly broken (Roberts). I believe the system is broken in that while many on the enforcement staff and Committee on Infractions strive to do the right thing, they are fighting a losing battle against the financial and winning realities of college athletics. The insatiable desire to win, generate revenue, and build the best faculties directly competes with trying to enforce a litany of rules and regulations. Roberts correctly states that the "commercial market realities dictate the priorities and behavioral incentives for those operating within this system." In layman's terms you must win to keep your high paying job and if you win you make money and friends. To that end, the incentive to cheat and get a competitive advantage is often too large to ignore and cheating is usually the result. Many can get away with cheating in intercollegiate athletics, but most do get caught, but only because someone else will turn them in. This is when the dirty little game and deal making starts. Some institutions, The Committee on Infractions (COI), and the enforcement staff have mastered the art of ways to feign discipline and sanctioning while eliminating the chance to appeal any finding by individuals who may be blamed erroneously for violations. The often-used method is one of an institution blaming someone and making them responsible, but since it is the institution pointing blame, the COI can wash their hands of it, thus a potentially innocent individual has no standing to appeal this finding. How convenient!!

Big time college athletics are driven by revenue. Individual institutions are driven by that revenue and prestige of a successful men's NCAA Division I basketball team or football team. Communities and boosters often identify with larger than life football coaches and major boosters stand at the ready to bankroll the programs in an ever-increasing athletics arms race for the best coach, facilities, and athletes. The desire to protect that base, money, and key personnel push institutions into what I will call is the "situational manipulation" of the infractions and enforcement process. The Committee on Infractions is as complicit in this sleight of hand lest they damage their own opportunities at a piece of the money pie since most of the COI members are from member institutions. Many of these committee members have been involved in several major infractions cases themselves. Yet these self-proclaimed master's of intercollegiate athletic moral authority sit in judgment of others charged with infractions. As I said in my oral statement, it is the fox guarding the henhouse. In other words don't bite the hand that feeds you. It simply doesn't pass the logic test to investigate yourself, conduct a hearing, and then pass out penalties.

Due to this strange arrangement of trying to protect integrity while generating revenue and winning, institutions go into the mode of trying to minimize the violations and protect vital interests. These vital interests usually are money and highly paid, extremely popular personnel. Then the blame game starts and it usually starts at the lowest common denominator. The scapegoating of lesser individuals begins. Typically, the first person protected and saved in an infractions investigation will be the head coach or highly paid administrator. The recent University of Missouri scandal is a typical case of what usually takes place. At Missouri head men's basketball coach Quin Snyder went before the public to express remorse for his actions and promised to do better from now on. Tears were shed, apologies were given, and the all-important contriteness was on full display for the almighty enforcement staff and COI that simply does not tolerate any challenge to its arcane procedures. Behind the scenes an institution is usually preparing to dismiss assistant coaches and administrators to insure they are giving the NCAA the desired pound of flesh to perpetuate the facade that the NCAA is actually policing itself. I guess somebody has to be the fall guy.

Ms. Potuto claims this does not happen, and that the COI cannot be conned because of their breadth and depth of knowledge on intercollegiate athletics. Maybe they are not being conned per se, but they are letting it happen and I cite the Missouri case as just one of many examples where high profile coaches have been

spared just so someone politically expendable can get the boot. That is a tired excuse and it is time that the NCAA stops these false positives because it is obviously going on. This is simply a way to efficiently finish the case on the cheap and give the image that the bad guys have been handled properly while the moneymakers are still going strong. Typically no fall guy will fight back because they are warned that their career will be over. They are told to hang in there and someone will hire them again. So even the fall guys, while disappointed and hurt at the betrayal, will march in lock step and be a good soldier so they can one day be back in the seductive game. Thus the secret little game continues because no one usually fights back. However, I decided to fight back along with others like Jeremy Bloom, Ronnie Cottrell, and Ivy Williams to stop this un-American process. While the system is broken there are things that can be done to fix it. I will detail my proposals for improvement at the end of this statement.

II. IS IT REALLY A COOPERATIVE AND COLLEGIAL PROCESS

I directly disagree with Roberts's contention that David Price, current NCAA Vice President for Enforcement, and his investigative staff are people who "do not act out of animus, bias, or any personal vendettas." This is a point I made very strongly in my oral statement. In my direct and indirect experience "in the trenches" of college athletics for almost 20 years, my experience has been exactly the opposite. In what is supposed to be a cooperative and collegial process in reality could not be more adversarial and caustic. The enforcement staff is made up of mostly very inexperienced, low paid investigators who have an overwhelming amount of work. Many of them are thrust in hostile situations with the mantra to vigorously and sometimes viciously put down any type of resistance or defense to charges by the NCAA. Many times institutions just acquiesce to this pressure and put up little or no defense, lest they get blackballed by the investigators or the Committee itself for being uncooperative. The scales are heavily tipped in the enforcement staffs' favor and it simply is not fair or constitutional when you are not allowed to provide an effective defense. There is a better way.

To be fair, it is very difficult to really get to the bottom of things when you have limited power and the institutions are doing anything to protect their interests. Still, I believe the mistakes the enforcement staff and COI make are far more numerous that Potuto and Roberts state and many times I believe it is intentional. This intentional behavior is based on previous relationships, power of those getting investigated, potential vendettas, and quid pro quo. Examples like this add to the dysfunctional and imperfect nature of the process. Due to that I do not believe the process is remarkably accurate as Roberts attests. I only think it is reasonably accurate and I strongly believe that enforcement and the COI have tremendous incentive to pursue false or trumped up charges to protect the very aforementioned interests. Since the Committee is primarily made up of institutional staff members, the conflict of interest and potential for tampering is to much too high to ignore and it is ludicrous to think that it has never happened.

III. RECOMMENDATIONS

Interestingly enough, my recommendations are remarkably similar to Roberts and what was proposed in the 1991 Lee Report. In is even more puzzling why these recommendations have not been adopted because they could dramatically increase the accuracy of this process. I fully agree with Roberts that the enforcement process is at odds with the reality of commercialized college sport and the insatiable drive to win games and generate revenue. I am not certain that government legislation is absolutely necessary to force a change in enforcement and infractions, but I do know it will take acute pressure from the government to force change. At this time I cannot recommend what act or statute needs to be enacted. I do hope that pressure enough will induce change. The only time the NCAA has examined its procedures and instituted effective change was by government intervention. From Teddy Roosevelt to the Lee Report, it took strong government action to accomplish change. Consequently, my first recommendation for change is for this sub-committee to keep the pressure on the NCAA establishment and force meaningful change that will protect people with integrity who value education over commercialized athletic success.

I heartily endorse Representative Spencer Bachus' of Alabama efforts to finally lift the "shroud of secrecy" on this patently unfair and unconstitutional process. The old saying is true, "If you cannot regulate yourselves, then the government will." Perhaps this is an area where government intervention absolutely needs to happen, and probably will, unless changes are made.

In this area, the NCAA has been literally begging for a congressional inquiry for over a decade. Institutions and affected individuals are not going to stand for the

process as is. Sunshine is desperately needed on the process and the NCAA is so knee deep in litigation challenging it that it can no longer go unnoticed. There have been significant changes regarding NCAA enforcement since Congress last reviewed it in the 1991 spawning from the Lee Report. Some of the more notable changes included the creation of the Infractions Appeals Committee, tape recording interviews, and putting outside of the association individuals on the Committee on Infractions and the Infractions Appeals Committee. Even with these developments, there are still significant changes that must happen to ensure this process operates with integrity and respect for all individuals and institutions.

Granted, the enforcement and infractions process is grounded in administrative law, not constitutional law. However, when dealing with institutions, reputations, and careers, constitutional due process and protections must apply or the government must make sure it happens. It cannot be reduced to blood sport when talking about someone's life and career. This is unfortunately usually done just to satisfy those who want a fall guy, while the one's really responsible continue to flaunt the integrity of higher education by cheating just win games.

It is an issue of fundamental fairness that all are guaranteed as citizens of America. The specter of NCAA investigations and sanctions can have far reaching negative effects on individuals and institutions involved. Therefore, past allegations and proven facts concerning the enforcement process including potential conflict of interest, use of secret witnesses, manufacturing evidence, and threatening employees of member schools during NCAA investigations and hearings are not keeping with the high values and integrity of intercollegiate athletics. A process that investigates itself presents on its face a major conflict of interest especially in the high stakes world of college sports. It is time to change it to provide fairness for everyone involved, including the enforcement staff and COI.

I believe that I convey workable solutions to a problem that has gone on far too long and one that needs to be fixed for college sports to survive in some semblance of an educational activity. The process as is does not allow for the real violations or violators to be uncovered. It is a mere facade to make believe that true enforcement is happening. However, it can be fixed. There are several modest and simple proposals that can upgrade this process, provide fundamental fairness, due process, and ensure that the bad actors that deserve to be punished are punished. Some of the suggestions for improvement I respectfully submit to the Constitutional Sub-Committee are:

1. Create an independent, fully trained and compensated, and engaged COI, and Appeals Committee of athletic, faculty, and public officials with an independent administrative staff. No one currently at a member institution should ever serve on this committee. Conflicts of interest must be monitored closely and eliminated. As Roberts' states volunteers that come solely from the NCAA system is inappropriate. His idea of professional jurists is an excellent one and should be immediately enacted. This is also one of the most important recommendations from the Lee Report.
2. Create an independent oversight/ethics board to review process and assess grievances. Specifically govern oversight and training of the Enforcement and Student Athlete Reinstatement Staff. Respond to complaints of inappropriate behavior, vendettas, and questionable investigative tactics by NCAA investigators and the COI. I strongly disagree with Potuto that the investigative staff and COI are "separate and independent." The investigators have a cozy relationship with the COI and work directly with the Administrator of the COI, who works in the same national office. It is ludicrous to think that the committee would question the tactics of investigators that they interact with all of the time.
3. Ban the use of secret witnesses. Everyone must have a right to face their accuser and talk to all witnesses.
4. Explore ways to give the NCAA enforcement staff subpoena power to hold people in the investigation accountable for what they say under oath. In the current process there is no real penalty for lying especially when an institution wants to protect an individual.
5. Adopt constitutional rules of evidence and procedures. Such as disclosing all information, witnesses, and other evidence in the true spirit of cooperation. The cooperative simply does not exist now. It is cooperate and acquiesce—or else. If you challenge anything or put up a vigorous defense, an individual or institution is in danger of being sanctioned for not cooperating. Hardly in line with American and Constitutional values.

6. Make all hearings public, open to the media, to include public disclosure of hearing transcripts. If the NCAA feels they are doing it right, a little "sunshine" will just add needed credibility to what is now nothing more than a cloak and dagger ultra secretive process. Potuto's contention that public hearings would damage the process and hurt individuals is simply a smokescreen to protect the "on the cheap" get it done quick process that exists now.
7. Have the intestinal fortitude to sanction those who deserve to be sanctioned. Eliminate the commonly accepted practice on "institutional scapegoating" of politically expendable individuals that gives the appearance something has been done to correct problem. Subpoena power can release the enforcement staff from relying so much on the institution for information, which may in fact be sanitized and manipulated.
8. If an individual is made a corrective action by an institution regarding NCAA violations by the institution involved, new procedures should be enacted allowing that individual(s) appeal rights IF the NCAA accepts the sanction as its own. It must no longer be used as a convenient place for the COI or institution to place a scapegoat.

Dr. Myles Brand, the current President of the NCAA, is a mover and a shaker to say the least. While I may not agree with many of the reforms he has championed, it is encouraging to see the effort to slow down this train of abuses in intercollegiate athletics. In a recent New York Times editorial, Dr. Brand took aim at critics of his academic incentive/disincentive plan. He stated that the bar has been raised and that if anyone cheats via academic improprieties the "NCAA will nail you." He proudly talked about increasing the number of investigators on the enforcement staff implying that increased numbers of investigators are the panacea to problems in college athletics. While I agree the NCAA must not perform enforcement procedures on the cheap, it must fix the system and the culture, and then spend the needed money, which is plentiful within the association, on implementing these proposals.

I do not share the optimism that Potuto and to a lesser extent Roberts have. I believe there are many more false positives and wrongful convictions via institutionalized scapegoating and sanctioned situational morality i.e. what some people do is permissible but what others do is not—even if it is the same thing. It is time to administer justice in a fair and equitable manner that ensures all, even the lowest common denominators, are protected under the constitution. I fully realize that nothing is ever perfect (although Potuto refuses to believe there is even the slightest flaw. She claims there is only miscommunication), but the current process is far from acceptable or even reasonable.

My modest proposals will go a long way to ensuring integrity of the process and the fundamental fairness that all Americans are guaranteed under the Constitution. Dr. Brand, you have been brave to rock the boat with some of your reforms, are you ready to lead the effort on serious reform efforts on this important topic, before the government does it for you?

Intervention looms unless changes made

The upcoming House Judiciary Subcommittee hearings to investigate actions of the NCAA, specifically its enforcement and infractions process, is a great step in reforming college athletics. As a former intercollegiate athletics coach and athletics administrator, I endorse such an external review. This is an area where government intervention will happen unless immediate changes are made.

There have been significant and positive changes regarding NCAA enforcement since Congress last reviewed it in the 1980s. Some of the notable changes include the creation of the Infractions Appeals Committee, tape-recorded interviews, and placing people outside the NCAA on the Committee on Infractions and the Infractions Appeals Committee.

Even with these needed developments, however, more is needed to insure fundamental fairness for all involved.

Granted, the enforcement and infractions process is grounded in administrative law, not Constitutional law. However, when dealing with institutions, reputations and careers, Constitutional due process and protections must apply. It is an issue of fundamental fairness that is guaranteed for all American citizens.

I have been approached to testify at the upcoming hearings to give my views on this process. As a person who has personally been involved in two major infractions investigations and as a scholar of intercollegiate athletics, I believe that I can convey workable solutions to Congress. There are several modest and simple proposals that can upgrade the enforcement process:

- Create an independent, full-time Committee on Infractions and Appeals Committee with administrative staff to eliminate perceived conflicts of interest. With all that is at stake, investigating yourself does not pass Constitutional muster.

- Create an independent oversight/ethics board to review process and assess grievances put forth by anyone involved in an investigation.

- Ban the use of secret witnesses. Everyone must have a right to face their accuser and talk to all witnesses.

- Explore ways to give the NCAA enforcement staff subpoena power and ability to depose individuals under oath.

- Adopt NCAA Constitutional rules of evidence and procedures, including disclosing all information, witnesses, and other evidence in the true spirit of cooperation.

- Make all hearings public and open to the media to include public disclosure of hearing transcripts.

These are very simple proposals that immediately lend needed credibility to a process that is continually criticized for its alleged unfairness.

The NCAA already has progressed through academic reform; enforcement is another area that needs attention. If the NCAA does not address it, the government may have to.

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Mississippi State University

Public Infraction Report

FOR RELEASE:
December 21, 2001
10 a.m. Eastern time

CONTACT:
Thomas E. Yeager, chair
NCAA Division I
Committee on Infractions
Colonial Athletic Association

MARSHALL UNIVERSITY
PUBLIC INFRACTIONS REPORT

I. INTRODUCTION.

On September 22, 2001, representatives from Marshall University appeared before the Division I Committee on Infractions to address allegations of NCAA violations in the university?s athletics program. Marshall is a Division I-A institution and a member of the Mid-American Conference. The university has an enrollment of approximately 16,000 students and sponsors eight men's and eight women's intercollegiate sports. The university had previous major infractions cases in 1990 (nonqualifiers in men?s basketball) and 1969 (football).

This case involved impermissible employment of academic nonqualifiers at rates four times the prevailing wage, academic fraud and a lack of institutional control. Although the letter of official inquiry cited the university for failing to monitor student-athlete employment, the committee concluded that the information originally submitted to it by the university and enforcement staff, together with information provided at the hearing, warranted a finding of lack of institutional control. Prior to the conclusion of the hearing, the university specifically
was informed that the committee thought such a finding possible and was invited to respond. The university responded briefly at the hearing and then subsequently in a written submission from the president. These responses were considered by the committee in making its finding.

There was little or no dispute over the facts in this case or that the case involved impermissible extra benefits, exceeding grant-in-aid limits in football and men's basketball and a failure to monitor the employment of nonqualifiers. The two areas of dispute were whether the totality of circumstances involving nonqualifier employment rose to the level of a lack of institutional control and whether providing advance copies of an examination to football student-athletes by an assistant professor (who was also a volunteer flexibility coach) would constitute knowing involvement in arranging

fraudulent academic credit.

II. FINDINGS OF VIOLATIONS OF NCAA LEGISLATION.

A. IMPERMISSIBLE EMPLOYMENT OF ACADEMIC NONQUALIFIERS. [NCAA Bylaws 12.4.1; 14.3.2.2.1, 15.01.1, 15.01.5, 15.02.4.1-(c), 15.5.5.1, 15.5.5.3.1, 16.02.3 and 16.12.2.1]

Beginning in fall 1993 and continuing through February 2000 the university arranged with a representative of the university?s athletics interests (hereinafter referred to as the ?athletics representative") employment for football and men's basketball nonqualifiers during their initial year of enrollment. The university reported that between fall semester 1996 and spring semester 2000 it admitted 65 nonqualifiers in the sport of football and also admitted nonqualifiers in basketball. Most of them were recruited. Specifically:

1. Beginning in November 1996 at least 21 football nonqualifiers and two men?s basketball nonqualifiers were employed by the athletics representative at a local business operated by him, and paid with wages through a second business which was owned by the athletics representative. The young men performed janitorial duties during an eight-hour period on Saturdays and were paid $200 per day ($25 an hour) for work other employees were paid from $4.50 to $6 an hour. The employment of these nonqualifiers was coordinated between an assistant football coach (hereinafter referred to as the ?assistant football coach") and a supervisor at the business.

Provided in the following graph is a breakdown of available information regarding student-athlete employment showing the period of employment, reported income and number of checks received.

1996-97 Academic Year

Student-athlete	Sport	Period of Employment	Checks Issued	Total Income
Student-athlete 1	FB	January - June 97	4	$ 800
Student-athlete 2	FB	November 96 - April 97	6	$ 1,200
Student-athlete 3	FB	November 96 - February 97	5	$ 1,000

1997-98 Academic Year

Student-athlete	Sport	Period of Employment	Checks Issued	Total Income
Student-athlete 4	FB	September 97 - February 98	5	$ 1,000

Student-athlete 5	FB	September 97 - May 98	11	$ 2,200
Student-athlete 6	FB	September 97 - May 98	9	$ 1,800

1998-99 Academic Year

Student-athlete	Sport	Period of Employment	Checks Issued	Total Income
Student-athlete 7	FB	August 98 - March 99	3	$ 600
Student-athlete 8	FB	September 98 - May 99	13	$ 2,600
Student-athlete 9	FB	August 98 - May 99	8	$ 1,600
Student-athlete 10	FB	August 98 - February 99	4	$ 800
Student-athlete 11	FB	September 98 - March 99	2	$ 400
Student-athlete 12	FB	September 98 - April 99	2	$ 400
Student-athlete 13	MBB	September 98 - April 99	6	$ 1,200

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1999-00 Academic Year

Student-athlete	Sport	Period of Employment	Checks Issued	Total Income
Student-athlete 14	FB	August - September 99	2	$ 400
Student-athlete 15	FB	August 99 - February 00	6	$ 1,200
Student-athlete 16	FB	September - October 99	3	$ 600
Student-athlete 17	FB	October 99	1	$ 200
Student-athlete 18	FB	October 99 - February 00	5	$ 1,000
Student-athlete 19	MBB	September 99 - February 00	5	$ 1,000
Student-athlete 20	FB	September 99 - January 00	5	$ 1,000
Student-athlete 21	FB	September 99 - February 00	4	$ 800
Student-athlete 22	FB	September 99 - January 00	4	$ 800
Student-athlete 23	FB	September 99 - January 00	2	$ 400

2. 2. On December 3, 1999, in their initial year of enrollment, four football nonqualifiers were employed and paid $50 by a national cable television sports channel that was broadcasting a home football game on the institution's campus. Their employment was facilitated by athletics department staff.

3. 3. As a result of these employment earnings, the university exceeded the maximum grant-in-aid limits in football by three initial and three overall grants in 1997-98; six initial and five overall grants in 1998-99 and two initial and seven overall grants in 1999-00.

4. 4. As a result of these employment earnings, the university exceeded the maximum grant-in-aid limits in men's basketball by one grant in 1998-99 and one grant in 1999-00.

Committee Rationale

Regarding Findings II-A-1 and II-A-2, the committee, the university, the enforcement staff and the involved coaches were in substantial agreement with the facts and that violations of NCAA legislation occurred.

With specific reference to Finding II-A-1 relating to the employment of nonqualifiers at the athletics representative?s business, the committee had several areas of concern, some of which are discussed more fully in Finding II-C. In brief, committee concerns included the large number of nonqualifiers admitted at the university; the pervasive and impermissible involvement of the football program in assuring their employment coupled with the ceding of any responsibility to assure payment of a prevailing wage (thus leading to a separate and additional violation); the failure of compliance and other institutional staff members to understand a basic NCAA bylaw principle that countable financial aid includes employment arranged by an athletics department; the failure of compliance and other institutional staff members to understand a basic NCAA bylaw principle prohibiting institutionally arranged nonqualifier employment in the first year of enrollment; the absence of any policies or procedures to monitor student-athlete employment prior to 1998; the failure to monitor student-athlete employment prior to 1998; the post-1998 failure to monitor nonqualifier employment that the university thought was permissible even though employment policies were established; the significant competitive advantage gained by the university through the employment of nonqualifiers; the limited nature of the inquiry undertaken by the university both when it first was informed that nonqualifier employment was a violation and subsequently; and the repetitive self-reports, each correcting a prior self-report, necessitated by this limited inquiry.

1. 1. Nonqualifiers. From 1996 to 2000 the university admitted at least 65 nonqualifiers in the sport of football, most of whom were recruited, and also recruited nonqualifiers in men?s basketball. As nonqualifers, these student-athletes were barred by NCAA legislation from receiving institutionally administered financial aid which includes employment arranged by the university with representatives of the university?s athletics interests. The committee believed that these circumstances warranted close attention and monitoring of these nonqualifiers as well as special attention to legislation affecting them. Instead, the university facilitated their employment in direct violation of clear NCAA bylaws delineating both that employment arrangements by an institution count as institutionally administered financial aid and that nonqualifiers are barred from receiving such aid in their first year of enrollment.

2. Pervasive Institutional Involvement. There was widespread knowledge and active involvement of university athletics staff, particularly in football, in the impermissible employment of nonqualifiers, including identification of the athletics representative as receptive to hiring student-athletes. This involvement preceded the tenure of the current head football coach (hereinafter referred to as ?head football coach?) and continued throughout his tenure until February 2000. In its April 6, 2000, first corrected self-report, the university reported that the athletics director at the time took the head football coach to the athletics representative?s business and introduced the coach to the athletics representative. The head football coach reported that the purpose of the visit was to familiarize him with the business as a place where student-athletes, including nonqualifiers, worked while attending the university. The involvement of the football program in this nonqualifier employment included assigning to the assistant football coach the specific responsibility to coordinate nonqualifier employment at the athletics representative?s business. During the academic year the assistant football coach designated those nonqualifiers (most typically a group of four) who would work on the succeeding weekend and would post their names on his office door. He reported that in designating nonqualifiers for work he attempted to spread the work around and to assist those having particular financial problems. He also reported that at times football nonqualifiers would solicit him for work and at times the employment supervisor would report dissatisfaction with the work of a particular nonqualifier and direct that the nonqualifier should not again be sent to work at the business. Notwithstanding his administration of the employment selection process, and particularly telling to the committee, neither the assistant football coach nor any other institutional staff member was involved either in documenting hours worked and wages paid or in any other way assuring that the employment program met NCAA bylaws. As a consequence, the university failed twice, first by arranging for impermissible nonqualifier employment and then by failing to monitor what it believed to be permissible employment. Further evidence of institutional knowledge and involvement was that paychecks for weekend work were left at the football office for nonqualifiers to pick up.

3. Substantial Competitive Advantage. Employment wages, even at a prevailing wage, would have provided competitive advantage to the university as these wages still would have assisted these nonqualifiers, many with financial problems, to meet their obligations and expenses and remain at the university. Payment of wages that were at least four times the prevailing wage provided considerably greater assistance to these nonqualifiers and doubtless was a principle reason that at least some of them were able to complete their first year of enrollment. As one nonqualifier wrote to the NCAA student-athlete reinstatement staff, ?Due to this financial support, I was able to get through school for the year, without this support, I would not have made it.? This improper financial aid resulted in the overawarding of football grants and thus exceeding the limits on counters by a total of 15 over the course of the 1997-98 through 1999-00 academic years and an overawarding of men?s basketball grants and thus exceeding the limits on counters by a total of two over the course of the

1998-99 and 1999-00 academic years. While the competitive advantage clearly was substantial, its magnitude is unknown as the university?s failure to monitor the program and keep records left it unable to approximate with confidence its precise scope and, therefore, equally unable to articulate the extent of the competitive advantage.

The head football coach reported that employment of nonqualifiers by the athletics representative was an established practice by the time he took over as head football coach in 1996. The assistant football coach joined the athletics department at approximately the same time as the head coach and confirmed the pre-existing nature of the employment program. As he put it, ?I never at any time felt like that this was something that had been added or that this was something new.? The head football coach further reported that from fall 1996 to February 2000, all football nonqualifiers had the opportunity to work at the athletics representative?s business. The assistant football coach confirmed that most football nonqualifiers were assigned work by him at the athletics representative?s business. Of the 65 football nonqualifiers who attended the university during this period, however, only 21 were identified as having worked at the business. Of the approximately 40 football nonqualifiers enrolled at the university from fall 1996 to spring 1998, payroll checks were produced for only six. By comparison, of the approximately 25 football nonqualifiers enrolled at the university at some point from fall 1998 to the termination of the program in February 2000, payroll checks were produced for 15. The discrepancy in the available data for the academic years 1996 to 1998 as compared to 1998 to 2000 likely is due to the fact that the information provided to the NCAA by the institution may have been limited to those nonqualifiers still active on squad lists in February 2000, thereby understating the number of nonqualifiers who worked at the athletics representative?s business between 1996 and 1998. The discrepancy in total number of nonqualifiers reported to have been employed as compared to total number of nonqualifiers likely is due to the fact that the athletics representative and his staff apparently had insufficient documentation, repeatedly delayed in responding to university requests, and then frequently supplied information that was inadequate and inaccurate with regard to the names of student-athletes employed at the business, the wages paid, actual days and number of days worked, and method of payment. This problem was compounded by the fact that different information was supplied by different staff and the fact that, as information developed and follow-up questions were asked, the athletics representative provided information that contradicted what earlier was supplied.

In reference to Finding II-A-2, impermissible employment of nonqualifiers by a cable television sports network, the university agreed with the facts and that they constituted a violation of NCAA legislation. The evidence adduced showed that, among other things, the student-athletes pulled cable, hauled camera equipment, brought food to crewmembers in the control vehicle, and held set microphones.

B. UNETHICAL CONDUCT ? ACADEMIC FRAUD; IMPERMISSIBLE EXTRA BENEFIT. [NCAA Bylaws 10.1, 10.1-(b), 10.1-(c), 16.02.3 and 16.12.2.1.]

Some time prior to May 3, 1999, an assistant professor in the Health, Physical Education, Recreation Department (HPER) who also was a volunteer flexibility coach for the athletics program (hereinafter referred to as ?the assistant professor?) engaged in academic fraud and acted contrary to the principles of ethical conduct when he knowingly provided copies of the final examination in PE 201 (Scientific Foundations of Physical Education) to football student-athletes in advance of the administration of the final examination. As a result of his actions, at least seven football student-athletes received a copy, either in whole or in part, of the final examination prior to administration of the exam, resulting in an extra benefit that rendered them ineligible.

Committee Rationale

With reference to Finding II-B, providing football student-athletes an advance copy of the PE 201 exam, the committee, the institution and the enforcement staff were in substantial agreement with the facts and that violations of NCAA extra benefit legislation occurred. The institution disagreed that the facts constituted academic fraud. The assistant professor equivocated and was inconsistent regarding what transpired and his culpability. His final position was to disagree with the facts as found and to disagree that he acted unethically or perpetrated academic fraud.

The committee concluded that the facts and circumstances clearly demonstrated unethical conduct, academic fraud, and the provision of extra benefits. There was substantial evidence showing that the assistant professor distributed the PE 201examination to football student-athletes, much of it coming from the assistant professor himself. There also was evidence that the assistant professor called the exam a ?study guide? when he provided it to football student-athletes and thus they were not alerted to the fact that it was the actual exam.
[Note: Although the committee accepts this rendition of the facts, the committee notes that it is not entirely clear this is what transpired. The assistant professor was described as someone who enjoyed interacting with student-athletes and for whom their welfare was his predominant focus. The assistant director for compliance and student services (hereinafter referred to as the ?compliance director?) began his interview with the assistant professor by telling him that there were NCAA violations affecting student-athlete eligibility and that these violations would have much more serious consequence for the student-athletes if they not only made use of the ?study guide? but knew that it was the actual exam. While the evidence did not show an improper motive, the committee notes its serious concern that interviews conducted in this fashion can become result-driven and susceptible to ?coaching? answers.]

Evidence that the exam was provided to football student-athletes comes from two

interviews with the assistant professor. On July 9, 1999, the assistant professor went to the head football coach?s home and admitted giving the so-called study guide to football student-athletes. At a July 13, 1999, meeting between institutional officials and the assistant professor and his legal counsel, the assistant professor again acknowledged providing a ?study guide? that had the same questions as the final exam. Additional evidence substantiating advance provision of the exam came from a graduate assistant (hereinafter referred to as the ?graduate assistant?). The graduate assistant reported that she wrote half of the PE 201 exam and that the assistant professor wrote the other half. The graduate assistant also reported that on the night before administration of the exam she saw a copy of the exam in the hands of a student-athlete. The graduate assistant described efforts she undertook both to revise the PE 201 exam and to report her concerns that exam security had been compromised. Further corroboration was provided by student-athletes and others who either saw the ?study guide? before administration of the exam or were present when the graduate assistant attempted to ameliorate the situation by confiscating the exam. In a subsequent interview with the enforcement staff, and while attempting to recant his prior admissions, the assistant professor stated that he would not question the veracity of the graduate assistant.

Although the university agreed that an advance copy of the PE 201 exam was distributed to football student-athletes and that, in consequence, they received an extra benefit, the university disagreed that this constituted the arrangement of fraudulent academic credit. According to the university, fraudulent academic credit is determined by result and, therefore, providing an advance copy of an exam does not constitute arranging for academic credit in a situation such as this where the assistant professor neither told the football student-athletes that the ?study guide? was the actual exam nor could be certain that the student-athletes would use it to achieve a better grade.

The committee concluded that the assistant professor arranged for fraudulent academic credit as defined in NCAA Bylaw 10.1-(b) because he made advance copies of the final examination available to football student-athletes, and only to football student-athletes, with the intent and the presumption that they would use the study guide and benefit thereby. He himself described his motivation and expectation in providing the exam as done to ?help them bring their grades up.? In so acting, the assistant professor set in motion a chain of events that not only resulted in academic fraud but explicitly was designed to do so.

One consequence of the fraud was that the exam was rendered incapable of measuring or testing with any certainty the football student-athletes? knowledge of the subject matter. Moreover, the fraud eliminated the ability to make comparative assessments of student achievement in the class and disadvantaged students who did not have advance opportunity to review the exam. In this case, once it was known that exam security was breached, the assistant professor adjusted his grading and apparently ?corrected? the problem. Although it is not entirely clear, it appears that the assistant professor responded by giving the same grade of ?A? to all students in PE 201. At a minimum, therefore, students at the top of the class had their course work and achievement devalued by receiving grades no better than those students in jeopardy of failing and conversely,

student-athletes in jeopardy of failing were able to pass the course without demonstrating that their work merited a passing grade. Among these students were those football student-athletes whose class progress had been of such concern to the assistant professor that he provided them with advance copies of the exam.

The evidence is not clear whether the ?study guide? exam was actually the exam administered to all students, without editing by the graduate assistant. Further, there were three separate exam dates for PE 201. Nonetheless, when the assistant professor provided advance copies, he acted with knowledge that the football student-athletes who had it would be involved in the academic fraud either because on receipt they identified it as the exam or because they would have done so once they sat for the exam. The committee rejected the university?s argument that academic fraud is contingent on proof that an instructor knew that an advance copy of an exam would be used. The committee believes that not only does such a standard too easily absolve from responsibility an instructor who intends to provide illicit help and follows through on that intent, but also, it absolves him based simply on the fortuity that his desired outcome failed because the student-athletes did not make use of the illicit help. The committee similarly rejected a second university argument -- that an instructor?s academic fraud is contingent on a student-athlete?s knowledge of the improper assistance. The committee believes that a student?s state of mind is relevant to determining whether the student engaged in academic fraud, not whether the instructor did.

C. LACK OF INSTITUTIONAL CONTROL. [NCAA Constitution 2.5, 2.8.1 and 6.01]

Regarding Finding II-C, before conclusion of the hearing the committee notified the university that it was considering a finding of lack of institutional control and invited the university to respond at a later hearing or through written submission. The university responded briefly at the hearing and then responded in greater detail in a letter from the president. On the basis of all the evidence in the record, including important information provided at the hearing and after careful consideration of the university?s responses, the committee concluded that a finding of lack of institutional control was appropriate in this case.

The scope and nature of violations documented both here in Finding II-C, and in Finding II-A as well, demonstrated a lack of institutional control in the administration of the university?s athletics programs and specifically in its compliance oversight of nonqualifiers and of student-athlete employment. As the committee wrote in its *Principles of Institutional Control* document, institutional control has several components. Among them are (1) whether and what formal institutional policies and procedures were in place at the time of the violation; (2) whether these policies were adequately communicated to institutional staff; (3) whether there is adequate monitoring to assure that the policies and procedures are understood and followed; and (4) whether and how a university responds when it learns of possible violations, including the scope and intensity of its

internal investigation. The committee concluded that the university was deficient in all of these responsibilities. There is no dispute that the university had no policies and procedures and no monitoring of student-athlete employment prior to fall 1998 and there can be no dispute that in the period prior to 1998 there was no institutional control of student-athlete employment. The scope, nature, and duration of violations in the university?s employment program were serious, beginning no later than 1993 and ending only when an NCAA investigation alerted the university that there was a problem. There was a very substantial competitive advantage arising out of this lack of control. Moreover, the lack of understanding of basic NCAA financial aid and nonqualifier legislation is inexplicable. An additional instance showing lack of institutional control is found in the failure to monitor nonqualifier employment after 1998. Either the requirements of the program then in place were not communicated, and therefore show a failure in a critical component of a compliance program, or they were communicated and yet ignored, a separate, and equally critical, failure. Moreover, the passive compliance program administered by the compliance director vested unreviewed responsibility in institutional staff. All these failures led to a continuation of impermissible employment even after 1998. While the committee acknowledges that the failure to understand NCAA bylaws would have led to continued employment of nonqualifiers even had appropriate compliance oversight and monitoring been conducted, the committee notes that such monitoring and oversight at least could have uncovered that four times the prevailing wage was being paid. Finally, the university?s response to information about the violation was inadequate. No independent corroboration of the athletics representative?s information was sought. No questions were asked of student-athletes at any time even though they were asked to sign statements prepared by the compliance director purporting to describe their employment for purposes of an NCAA self-report. Information as to wages, suspicious in itself, was accepted at face value. Efforts by other institutional staff to target the violation and deal with it were disapproved.

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Committee Rationale

The committee concluded that the university failed in all aspects of institutional control with regard to employment of student-athletes. Specifically:

1. Monitoring. The evidence clearly demonstrated, and the university properly conceded, that there was a failure to monitor nonqualifier employment. Some of this evidence is set forth in Finding II-A. It is uncontested that prior to 1998 there was no system in place to monitor student-athlete employment. There was no written policy. There were no stated procedures. There was no education. There was no monitoring. The compliance director reported that shortly after his arrival at the university in November 1997 he initiated a system and developed employment-reporting forms. From 1998, therefore, there was an employment compliance system technically in place, but it was a system that failed. There was

little or no communication between the compliance office and the football coaches, with the result that the compliance director did not know that nonqualifiers were working for the athletics representative. At the hearing the compliance director stated that he spoke to the coaches about their obligation to report student-athlete employment, including nonqualifier employment. In attendance were both the head football coach and head men?s basketball coach. Neither recalled any information specific to nonqualifiers. The compliance director described his compliance philosophy as disseminating compliance information and procedures and charging coaches with the responsibility to identify and report. With regard to student-athlete employment, he reported that the coaches had the responsibility to alert him when a student-athlete was working and to direct the student-athlete to him so that the appropriate forms could be completed. While the committee emphatically agrees that rules compliance is a responsibility of all institutional staff, the committee disagrees that a fully functioning compliance program can operate without the active involvement of the compliance office to assure that procedures are understood and followed. The university argued that the failure of the employment monitoring system put in place in 1998 was due to the failure of coaches to follow through on their responsibilities. To the extent that they were informed about the obligation to report nonqualifier employment, the committee agrees that their failure contributed to the compliance breakdown. But theirs is by no means the sole responsibility. The evidence indicated (despite assertions to the contrary by the former athletics director) that prior to 1998, there was no system in place to monitor student-athlete employment. Therefore, no argument can be made that university exercised institutional control prior to 1998.

2. Policies and Procedures in Place. As already noted, prior to 1998 there was no system in place to monitor student-athlete employment and there therefore can be no argument that the university exercised institutional control. From 1998 on, the university had a formal, written policy. But the evidence demonstrates that the policy failed. First and foremost, establishment of this policy did not include knowledge and understanding of basic NCAA bylaws. It is a truism that there can be no monitoring, no effective education, and no control of particular conduct if there is no awareness that the conduct is impermissible. No one at the university, including the compliance director, knew that the employment by the athletics representative of nonqualifiers was impermissible. Beginning with the 1998-99 academic year, NCAA legislation permitted student-athletes to earn up to $2000 over a full grant-in-aid. This issue received a great deal of attention within the NCAA and in the media and was a subject at annual NCAA Regional Compliance Seminars. Yet even during this period of heightened attention to student-athlete employment, nonqualifiers, selected to work by the assistant football coach, were employed at the athletics representative?s business.

3. Communication of Policies. A compounding problem was that the compliance director had no knowledge that nonqualifers were working at the athletics representative?s business as he relied on the coaching staffs to report to him and

made no affirmative effort to assure compliance. It is evident that there was a failure of communication between coaches and the compliance office with regard to nonqualifier employment. It was explained that coaches and teams were briefed at the beginning of each academic year about the employment procedures, and the head and assistant football coaches confirmed that they knew that institutional employment procedures required institutional tracking of student-athlete employment. Both also reported that they assumed the compliance office was monitoring nonqualifier employment. Based on the substantial numbers of nonqualifiers who were identified as having worked at the business, the educational efforts reported as undertaken by the compliance office and the coaches? familiarity with the student-athlete employment program process, it is difficult to understand how a communications breakdown of this magnitude occurred, one in which the coaches assumed that the compliance office was monitoring nonqualifier employment and the compliance director had no knowledge that nonqualifiers were working. The consequence of this breakdown was that a football-administered employment program went unreported and unmonitored and, therefore, that there was no more oversight or supervision of nonqualifier employment after 1998, when an employment program was in place, than there was oversight or supervision prior to 1998, when there was no such program.

4. 4. University Investigative Response. The committee was quite troubled by the lack of due diligence and failure of the compliance program to undertake adequate inquiry when expressions of concern were raised about aspects of nonqualifier employment and the failure of the university to undertake adequate response even after potential problems clearly were identified and even in the context of an NCAA investigation with the heightened scrutiny that entails. The football staff had some concern that nonqualifier wages were too high, so much so that the head football coach inquired of the athletics representative and also reported that he ?checked it out a couple of times? with the compliance director. There was no follow-up. In October 1999, the associate athletics director and senior woman administrator raised the issue of nonqualifier employment with an assistant athletics director when she learned that nonqualifiers had been hired by a national cable sports channel (Finding II-A-2). The assistant athletics director assured her that he had obtained clearance from the compliance director. The senior woman administrator continued to be concerned and at her request the assistant athletics administrator again made inquiry of the compliance director and again received assurance that such employment was permissible. The committee was even more troubled by the limited scope and lack of intensity of the investigation conducted when the university had concrete information that there was a problem with nonqualifier employment. The university?s first inkling of a problem occurred when it learned that the enforcement staff was coming to campus. At that point, the senior woman administrator asked a source outside the university about the permissibility of nonqualifier employment and was told such employment was impermissible. When she shared this information with the compliance director his response was to chastise her for circumventing reporting

channels and initially refused to seek an interpretation from the NCAA. [Note: the compliance officer ultimately obtained an interpretation that violations did occur.] While the committee understands and supports efforts by an administrator to manage his program without officious interference from others, in this case the senior woman administrator was acting appropriately to protect the interests of the university, and the committee finds her efforts commendable. On February 9, 2000, the university filed its first self-report with regard to nonqualifier employment. These inaccuracies reflected the failure of the compliance director to conduct any investigation or to interview any student-athletes. This report and additional information e-mailed to the enforcement staff shortly after the submission of the report indicated that the student-athletes worked 20 hours per week during evenings and weekends and were paid between $4.75 and $6.50 per hour. In other words, the university?s self-report acknowledged that the employment itself was improper, but the rate of pay was appropriate. These inaccuracies led to two subsequent self-reports, each correcting the one immediately prior to it.

The February 9, 2000, self-report itself is evidence of institutional failure to assess the seriousness of the long-running impermissible nonqualifier employment program. In the self report the university ?reluctantly acknowledged? the violation and characterized it as secondary. Subsequently, and only because the NCAA visit precipitated a concern, the university conducted further inquiry into nonqualifier employment by the athletics representative. Yet that investigation also was too limited in scope. Again, no student-athletes were interviewed. Again, information from the athletics representative was accepted at face value. The evidence showed that the university exerted at best minimal effort independently to corroborate information provided by the athletics representative and accepted unquestioningly wage figures he provided. The committee also was concerned by the compliance director?s approach to NCAA rules interpretations. As he stated at the hearing, ?We make interpretations based upon the best interests of Marshall University and I don't care what other people are doing.?

On April 16, 2000, the university amended its February self-report to indicate a rate of $12.50 per hour rather than the $4.75-$6.50 rate previously reported. The $12.50 per hour wage still should have raised questions given that the work, according to the athletics representative, entailed ?jobs where we didn?t have to teach them anything, you know, shred metal, shred paper, sweep, clean up.? The athletics representative also described the employment as ?general flunky cleaning type work.? Further, the representative reported that student-athletes were paid in cash and that no tax forms such as 1099s and/or W-2s were available to document the nonqualifiers wages.

Finally, on June 21, 2000, the university amended its April report to indicate a rate of $25.00 per hour rather than the $12.50 rate reported in June. Contrary to the university?s description in its June 2001 self-report, moreover, there was no ?joint NCAA-University inquiry? that developed the new information. Instead,

the enforcement staff independently developed the information based on interviews it conducted in November 2000 with two transfer student-athletes. Both were former nonqualifiers at the university who reported that they were paid $200 per day for an eight-hour shift at the athletics representative?s business. Had the enforcement staff failed to pursue its investigation, the university would never have filed its June 21, 2001, self-report because it never would have learned of the erroneous wage information provided in the February 9, 2000, self-report. This record of institutional response is hardly evidence of a university in charge and acting affirmatively to uncover and eliminate violations and compares quite unfavorably with the record of numerous other institutions that have appeared before the committee, institutions that vigorously and aggressively pursued an investigation once they learned of problems in their programs.

In sum, the committee concluded that there was a failure of institutional control in the multiple institutional delinquencies set forth above and in Finding II-A-1

III. COMMITTEE ON INFRACTIONS PENALTIES.

For the reasons set forth in Parts I and II of this report, the Committee on Infractions found that this case involved several major violations of NCAA legislation.

A. CORRECTIVE ACTIONS TAKEN AND PENALTIES SELF-IMPOSED BY THE UNIVERSITY.

In determining the appropriate penalties to impose, the committee considered the institution's self-imposed corrective actions and penalties. Among the actions the university has taken or will take are the following:

1. In February 2000, after the impermissibility of employment for nonqualifiers was discovered by the institution, the university took the following corrective actions:

    a. Immediately released all current nonqualifiers from their current jobs in the event that it was established that the athletic department facilitated their employment;

    b. In compliance with NCAA Bylaws 15.01.5 and 15.02.4.1-(c), the university ended all employment assistance and offers of employment assistance to all nonqualifiers;

    c. Reduced the number of nonqualifiers that the football and men?s basketball programs are allowed to recruit. In 2001 in the sport of football, there will be eight nonqualifiers and in the sport of football in 2002 and thereafter there will be a total of six

nonqualifiers. In men?s basketball beginning with the 2000 season there will a limit of only one nonqualifier; [Note: After July 2001, it was determined immediately to suspend for a two-year period the recruitment of all nonqualifiers in the football and men?s basketball programs after their respective 2001 seasons.]

d. Scheduled rules education sessions with athletic department members and coaching staffs to ensure that all personnel have a working knowledge of rules related to employment of student-athletes and monitoring efforts associated with employment;

e. Declared all listed student-athletes immediately ineligible upon completion of the internal review dated February 7, 2000, and sought their immediate restoration through NCAA student-athlete reinstatement process; and

f. Required the university student-athlete employment coordinator to attend the 2000 NCAA Regional Compliance Seminar.

g. Created a new position of assistant compliance director to assist the director of compliance.

2. In July 2001, after extra benefit violations were discovered, the university took the following corrective actions:

a. Discontinued the recruitment of nonqualifiers in all sports at the university for a period of two years commencing with the 2002-03 academic year;

b. Placed a two-year moratorium on employment for all student-athletes at the athletics representative?s business;

c. Reduced grants-in-aid in the sport of football by two grants-in-aid in 2002-03 and by one grant-in-aid in 2003-04; [The university also proposed reducing by one the 12 allowable official recruiting visits in men?s basketball for the academic years 2002-03 and year 2003-04. The committee considered this penalty meaningless as the institution averaged only eight visits in men?s basketball during the past four years.]

d. Disassociated the athletics representative per NCAA Bylaw 19.6.2.6 for a period of two years commencing in the 2001-02 academic year;

e. Fined the athletics representative in an amount equal to all legal costs and internal costs incurred by the university as a result of his

involvement in violations of NCAA legislation;

f. As required by NCAA legislation immediately declared ineligible all involved student-athletes and requested their immediate restoration through NCAA student-athlete reinstatement procedures;

g. Imposed a two-year probationary period (including a written report to be submitted to the committee at the end of the probationary period);

h. Required the following individuals to attend an NCAA Regional Compliance Seminar in 2002 and in 2003: the entire football and men?s basketball coaching staffs, athletic director, senior women?s administrator, assistant athletic director of operations, faculty athletics representative, associate athletic director of business, and the compliance staff;

i. Required the assistant athletic director for compliance to conduct a presentation to the MAC compliance coordinators about NCAA rules governing student-athlete employment and to attend and conduct an annual compliance presentation concerning NCAA rules to the following Marshall University groups:

? Big Green Scholarship Foundation Executive Committee and Board
? As many sub and branch boosters clubs as possible
? New Faculty Orientation
? Dean?s Council
? Associate Dean?s Council
? Faculty Athletic Committee
? President?s Athletic Committee
? HELP (Higher Education Learning Program) Program

j. Produced and distributed an educational brochure to all representatives of the university?s athletics interests (i.e., booster clubs, season ticket holders and corporate sponsors). This will serve as a guide for representatives of the university?s athletics interests pertaining to NCAA recruiting and extra benefits legislation. In addition, the assistant director of athletics of compliance will continue to speak annually at the functions held by various booster groups in conjunction with athletic contests. The men?s basketball game program and football game programs have been updated throughout the season to include compliance tips for prospective student-athletes and representatives of the

university?s athletics interests;

k. Realigned compliance responsibilities on a sport specific basis between the compliance director and assistant compliance director so that the compliance director is in charge of all compliance responsibilities, including employment for the following sports: football, men?s and women?s basketball, baseball, men?s soccer, golf and cheerleading. The assistant compliance director has compliance responsibilities for the remaining sport; women's soccer, volleyball, softball, tennis, men's and women's indoor and outdoor track and cross-country;

l. Implemented a zero tolerance policy for NCAA rules violations;

m. m. Established an Interim Compliance Committee to review the decisions of the Compliance Office;

n. Subsequent to the September 22 hearing before the committee on infractions, transferred the compliance director from athletics to another department at the university.

In addition, the university president issued letters of reprimand to the senior vice president for operations who supervises the department of athletics, the director of athletics, the faculty athletics representative, the assistant director of athletics, the head football coach and the head men?s basketball coach.

Finally, the Mid-American Conference (MAC) has undertaken to create preventive model protocols on nonqualifiers and transfer student-athletes. The conference has contracted with an outside consultant with recognized experience in the field to develop ?model protocols? in designated ?high traffic? compliance areas for distribution to all 13 conference member institutions. Those areas are as follows: (a) issues related to nonqualifier student--athletes, (b) issues related to transfer student-athletes, and (c) issues related to student-athlete employment;

B. ADDITIONAL PENALTIES IMPOSED BY THE COMMITTEE ON INFRACTIONS.

With one exception, the Committee on Infractions agreed with and approved of the actions taken by the university, but it imposed additional penalties because of the serious nature of the violations in the case, including a lack of institutional control. The committee reviewed the presumptive penalties listed in Bylaw 19.6.2.1and imposed all those penalties that would have direct impact on those athletics department programs and activities that produced the infractions found

by the committee. The penalties include:

1. The university will be publicly reprimanded and censured.

2. The university will be placed on four years of probation beginning December 21, 2001.

3. The university will reduce the number of initial counters available in football by five in each of the 2002-03, 2003-04 and 2004-05 academic years. This limits the institution to 20 initial football counters during each of those three academic years under current legislation. [The committee noted that the institution has averaged 23 initial football counters during the past four years.]

4. The university shall further reduce the total number of football counters available under Bylaw 15.5.5.1 to 80 during each of the 2002-03, 2003-04 and 2004-05 academic years. [Note 1: The institution self-imposed a limit of 83 counters in 2002-03 and 84 in 2003-04. The institution has averaged 84 football counters during the past four years.] [Note 2: The decision to reduce the institution?s counters in football by a total of 15 over three years was based upon information submitted by the university in which it was documented that Marshall over awarded football grants by at least a total of 15 over the course of the 1997-98 through 1999-00 academic years. This overage resulted from inclusion in the calculation of athletically related financial aid the wages paid to nonqualifers who worked for the athletics representative.]

5. 5. The university shall reduce the number of total counters in men?s basketball by one during both the 2002-03 and 2003-04 academic years, which will limit the institution to 12 counters each of those two years available under Bylaw 15.5.4.1. [Note 1: the institution has averaged 13 counters in men?s basketball during the past four years. Note 2: The decision to reduce the institution?s counters in men?s basketball by a total of two over two years was based upon information submitted by the university in which it was documented that Marshall over awarded men?s basketball grants by at least a total of two over the course of the 1998-99 and 1999-00 academic years. This overage resulted from inclusion in the calculation of athletically related financial aid the wages paid to nonqualifers who worked for the athletics representative.]

6. 6. The former volunteer flexibility coach will be informed in writing by the NCAA that, due to his involvement in certain violations of NCAA legislation found in this case, if he seeks employment or affiliation in an athletically related position at an NCAA member institution during the period of time commencing with the date this report was released, December 21, 2001, and concluding on December 20, 2003, he and the

involved institution shall be requested to appear before the Division I Committee on Infractions to consider whether the member institution should be subject to the show-cause procedures of Bylaw 19.6.2.2-(l), which could limit the coach's athletically related duties at the new institution for a designated period.

7. 7. The university shall show-cause why it should not be penalized further if it fails to disassociate the athletics representative from its athletics program for a period of five years from the date of this report, based upon his failure to provide complete and accurate records and his refusal fully to cooperate with the investigation as set forth in the rationale section under Finding II-A-1. This disassociation includes all businesses owned or operated by the athletics representative. [Note: The university proposed a two-year period of disassociation. The disassociation shall include:

   a. a. Refraining from accepting any assistance from him, including aid in the recruitment of prospective student-athletes; the support of enrolled student-athletes to include the provision of employment at his place of business; or providing benefits for athletics department personnel.

   b. b. Refusing his financial assistance or contributions (in cash or in kind) to the university?s athletics program.

   c. c. Ensuring that no athletics benefits or privileges, including preferential tickets, are provided to him, either directly or indirectly, that are unavailable to the public at large; and

   d. d. Implementing other actions that the university determines to be within its authority to elimi-nate his in-volvement in the university?s athlet-ics program.

8. 8. During this period of probation, the institution shall:

   a. Continue to develop and implement a comprehensive educational program on NCAA legislation, including seminars and testing, to instruct the coaches, the faculty athletics representative, all athletics department personnel and all university staff members with responsibility for the certification of student-athletes for admission, retention, financial aid or competition;

   b. Submit a preliminary report to the director of the NCAA infractions committees by January 30, 2002, setting forth a schedule for establishing this compliance and educational program; and

c. File with the committee's director annual compliance reports indicating the progress made with this program by September 15 of each year during the probationary period. Particular emphasis should be placed on the proper application of legislation relating to academic integrity and the employment of student-athletes and prospects. The reports must also include documentation of the university's compliance with the penalties (adopted and) imposed by the committee.

9. At the conclusion of the probationary period, the institution's president shall recertify in a letter to the committee that all of the university's current athletics policies and practices conform to all requirements of NCAA regulations.

As required by NCAA legislation for any institution involved in a major infractions case, Marshall shall be subject to the pro-visions of NCAA Bylaw 19.6.2.3, concerning repeat violators, for a five-year pe-riod beginning on the effective date of the penalties in this case, December 21, 2001.

Should Marshall or the individual involved appeal either the findings of viola-tions or penalties in this case to the NCAA Infractions Appeals Committee, the Com-mittee on Infractions will submit a response to the members of the appeals committee. This response may include addi-tional information in accordance with Bylaw 32.10.5. A copy of the report would be provided to the institution prior to the institution's appearance before the appeals committee.

The Committee on Infractions wishes to advise the institution that it should take every precaution to ensure that the terms of the penalties are observed. The committee will monitor the penalties during their effective periods, and any action contrary to the terms of any of the penalties or any additional violations shall be considered grounds for extending the institution's probationary period, as well as imposing more severe sanctions in this case.

Should any portion of any of the penalties in this case be set aside for any reason other than by appropriate action of the Association, the penal-ties shall be reconsidered by the Committee on Infractions. Should any actions by NCAA legislative bodies directly or indirectly modify any provision of these penalties or the effect of the penalties, the committee reserves the right to review and reconsider the penalties.

NCAA COMMITTEE ON INFRACTIONS

Paul T. Dee
Frederick B. Lacey
Gene A. Marsh
Andrea Myers
James Park Jr.
Josephine R. Potuto
Thomas E. Yeager, chair

APPENDIX

CASE CHRONOLOGY.

1999

July 2 ? The director of a student-athlete program reported to the assistant athletics director for compliance and student services that the PE201 instructor had provided a copy of the final examination to football student-athletes in PE201 in May 1999.

July 6-9 ? The institution conducted an investigation into the final examination administered in PE201.

July 9 ? The PE201 instructor admitted to the head football coach that he provided copies of the final examination to the football student-athletes enrolled in PE201.

July 13 ? In the presence of former legal counsel, the PE201 instructor admitted to the vice-president for executive affairs and general counsel and the assistant athletics director for compliance and student services that he provided copies of the final examination to football student-athletes.

August 24 ? The institution submitted its self-report regarding the PE201 final examination to the Mid-American Conference (MAC).

September 28 ? The MAC requested additional information from the institution.

October 18 ? The institution submitted additional information to the MAC.

October 21 ? The institution submitted its self-report regarding the PE201 final examination to the NCAA as a secondary infraction.

November 4 ? The NCAA enforcement staff requested additional information from the institution.

November 30 ? The institution submitted additional information to the enforcement staff.

2000

February 9 ? The institution submitted its self-report regarding the employment of nonqualifiers to the MAC and enforcement staff.

February 14 ? The enforcement staff hand-delivered a copy of the letter of preliminary inquiry to the president of the institution.

April 6 ? The institution submitted its ?self-report, change 1? regarding the employment of nonqualifiers to the enforcement staff and indicated that the nonqualifiers worked at

the business and were paid $12.50 per hour.

May 1 ? The institution submitted its ?additional information on reinstatement case? regarding the employment of nonqualifiers to the enforcement staff.

August 8 ? The enforcement staff sent a status of the inquiry letter to the president of the institution.

November ? The enforcement staff interviewed two transfer student-athletes and former nonqualifiers who reported earning $200 per day at the business.

2001

January 4 ? The enforcement staff requested employment records from a representative of the institution?s athletics interests.

February 5 ? The enforcement staff sent a status of the inquiry letter to the president of the institution.

April 20 ? The representative of the institution's athletics interests reported that he had no employment records for the nonqualifiers.

July 23 ? The enforcement staff issued letters of official inquiry to the president of the institution and the PE201 instructor.

August ? The response date was changed from October 5 to August 30.

On or about August 27 ? Counsel for the PE201 instructor advised the NCAA that he could not respond by August 30.

September 6 ? The institution submitted its response to the letter of official inquiry.
September 11 ? The PE201 instructor's counsel advised that he would attempt to submit his client?s response by September 12. A prehearing conference is conducted with the institution and the enforcement staff.

September 13 ? As of the date of the case summary, the PE201 instructor's response had not been submitted.

September 14 ? The PE201 instructor's response submitted.

September 22 ? The institution appeared before the NCAA Division I Committee on Infractions.

December 21 ? Infractions Report No. 191 is released.

SUBMISSIONS FROM THE HONORABLE SPENCER BACHUS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ALABAMA

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Proposal Would Give Players Fifth Year

NCAA football players could have five seasons of eligibility and would be allowed to transfer once without penalty if two new proposals are approved next year.

The NCAA's Championships/Competition Cabinet forwarded both measures for consideration during a two-day meeting that ended Wednesday in Indianapolis. The committee also approved a proposal that would permit Division I-A schools to again add a 12th football game starting in 2006.

If passed by the board of directors, schools would receive an annual exemption for one game. Schools were awarded those exemptions each of the past two seasons. They were not available to most schools this year.

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December 18, 2003

Ms. Julie Roe
NCAA
Director, Student-Athlete Reinstatement
P.O. Box 6222
Indianapolis, IN 46206

Sent via Airborne to
One NCAA Plaza
700 Washington St.
Faxed to 317 917-6622

Dear Julie:

Please accept this letter and the accompanying materials as a request for a five-year/10-semester extension for Mr. Gary M. Godsey, a football student-athlete currently enrolled in his fifth year at the University of Notre Dame.

In brief, Gary Godsey is a young man who enrolled at Notre Dame in the fall of 1999 with dreams of earning a Notre Dame business degree, leading the Irish to victory on the football field as a quarterback, and performing well enough in the classroom and on the field to secure his future both as an NFL prospect as well as a future professional in the business world. His plan has followed form on the academic side. Gary received his undergraduate degree in business in May 2003. At the time of this writing, he is on track to receive his master's degree in applied psychology in December 2004.

It is the football side of Gary's dream that has not gone according to plan. Initially redshirted in 1999 by then-head coach Bob Davie, Gary got his chance at quarterback in 2000 when the starter was sidelined by injury. After two games as the starter, Godsey was replaced, and saw limited action for the next five games, before being asked to make the ultimate team sacrifice. After the

Air Force game in 2000, Gary was asked to move to tight end, a position he had played on a part-time basis in high school. He saw action at tight end for the remaining three games of the season, including the 2001 Fiesta Bowl.

After serving as the back-up tight end in 2001, Godsey entered the 2002 season as the established starter at the tight end position. He started and played in all 13 Irish games in 2002 before suffering a painful and anguishing (physically as well as mentally) ACL tear in the first quarter of the Gator Bowl on January 1, 2003. After undergoing surgery and enduring arduous rehabilitation throughout the winter and spring of 2003, Gary arrived at pre-season camp prepared to lead the Irish on the field and with determination to showcase his NFL-caliber tight end capabilities. But on August 13, 2003, Gary suffered an ACL injury to the exact same knee that had been injured (and surgically prepared) just eight months before. After numerous examinations, diagnostic tests, and doctor consultations, it was determined that Gary could not play football (in any capacity) in 2003, and that additional surgery was necessary to, yet again, repair his left ACL.

As you will see from the "Analysis of Extension Request," we recognize that Mr. Godsey does not meet the Bylaw 30.6.1.1 standard criteria for the granting of an additional year of eligibility. However, as provided for in the legislation, we do believe strongly that Gary Godsey's case presents evidence that his case is extraordinary and that denial of the additional year would create unnecessary hardship and anguish for Gary and his family.

Repeated Injury and Mental Anguish

Entering the 2002 football season, Gary Godsey was a young man who had sacrificed much for the good of his college football team. As written in his own letter, he had done whatever was asked of him, including gaining (or losing) large amounts of weight in order to play any position that the coaching staff thought would most benefit the team and the program. This obviously came at great personal sacrifice.

The initial injury in the Gator Bowl was painful enough, physically as well as mentally. As Dr. Yergler's letter attests, Gary underwent a "prolonged, painful and arduous rehabilitation." However, it was the rupture of the reconstructed ACL on August 13, 2003, that has caused the greatest physical and emotional pain for Gary. The prospect of playing in the 2003 season is what motivated Gary so diligently to pursue his rehabilitation during the long months between January and August. The thought now of never having the chance to return to the field in Notre Dame Stadium, and having no purposeful reason to rehabilitate the knee adequately, has presented Gary and his family with some significant emotional challenges.

At this point Gary is holding on to the possibility that his unique circumstances will indeed provide him the opportunity to return next year to complete his fourth and final year of eligibility. Without that possibility, Gary may indeed lack the kind of motivation necessary for pursuing his rehabilitation at the appropriate level. This would certainly affect his ability to

perform at a level acceptable for a professional football career, but may also have an impact on the stability of his knee merely for everyday life.

Family History

Adding to the extraordinary nature of this case is the existence of some family history in regards to this very same injury.

As indicated in Dr. Xerogeanes's letter, Gary is the fourth member of the Godsey family to have suffered this same injury to the very same (left) knee. Although there is some evidence that this type of injury does have familial pattern tendencies, the psychological impact of Gary having experienced two of his brother's football careers interrupted by this injury and then seeing his own career and life impacted by the same injury to the same knee, has been excruciatingly painful.

It is extremely difficult to examine this case without finding the repeat nature of this injury in the Godsey family to be extraordinary. This injury has indeed caused extreme hardship within the Godsey family. At this time, they are facing the possibility that this injury has effectively ended their youngest son's career.

Professional Aspirations

Finally, in 2002 Gary Godsey was emerging as a highly skilled tight end. He was beginning to draw attention and "looks" from the numerous professional scouts who had visited Notre Dame to check out Gary's more highly celebrated teammates (seven of his class of 2003 classmates are currently on NFL rosters). Going into the 2003 season he knew that he needed to have a strong showing at tight end in order to solidify his standing with the NFL scouts and make his dream come true to play at the professional level.

Obviously, the second injury prevented Gary from showcasing his talents as a fifth-year senior. Although some pundits still project him as a "camp invitee" (see attached *Blue and Gold* article) with hopes of a free-agent signing, Gary clearly hopes to secure an additional year in order to have the opportunity to show his talents on the competitive playing field as well as remove any doubt that NFL scouts may have regarding his injuries.

To deny Mr. Godsey a sixth year would realistically be denying him a legitimate opportunity to pursue a professional football career.

In closing, no letter regarding Gary Godsey would be complete without mention of his high character and humanity. Succinctly put, Gary Godsey represents everything that is right about intercollegiate athletics today. He has been a solid, diligent student, who has chosen to pursue an advanced degree with his fifth (and hopefully, subsequent sixth) year, rather than take the easy route of merely spreading out his undergraduate degree. He has been a model citizen on the

Notre Dame campus, always urging his teammates to act in a manner befitting their role as Notre Dame ambassadors. Finally, he has always been the consummate team player.

Gary Godsey is one of those young men to whom you always want to see good things happen. It is our sincere belief that, although the factual basis of Gary's appeal does not meet the standard criteria for a five-year/10-semester extension, he and his family have suffered through some extreme hardships, and that he is exactly the kind of young man that the membership envisioned should be rewarded with an extension when this legislation was originally put in place.

As always, we appreciate the time and attention that you and your staff will devote to this matter. Should you require any additional information, please do not hesitate to contact me.

Sincerely,

Sandy Barbour
Deputy Director of Athletics

cc: Kevin M. White
Fernand N. Dutile
Michael J. Karwoski

Attachments:

Chart for Analysis of Extension Request
Letter from Gary M. Godsey
Letter from Dr. Willard G. Yergler, M.D.
Letter from Dr. John Xerogeanes
Operative Report from 1/16/03 surgery (Yergler)
Operative Notes from 9/9/03 surgery (Xerogeanes)
Notre Dame Athletic Training Room Notes regarding Gary M. Godsey
Transcript of Academic work for Gary M. Godsey
Blue & Gold Article (Dec. 8, 2003) "Pros and Cons"

Chart for Analysis of Extension Requests

Gary M. Godsey – University of Notre Dame

Year/Term	Institution Name	Sport	Was S-A otherwise eligible for participation pursuant to NCAA, conference, institutional rules and regulations?	Competed?	Reason(s) S-A did not compete
1999-2000	Notre Dame	Football	Yes	No	Redshirted by coaching staff
2000-2001	Notre Dame	Football	Yes	Yes	Not applicable
2001-2002	Notre Dame	Football	Yes	Yes	Not applicable
2002-2003	Notre Dame	Football	Yes	Yes*	*Suffered severe injury to left ACL during first quarter of 2003 Gator Bowl
2003-2004	Notre Dame	Football	Yes	No	Sustained repeat injury to left ACL; medically unable to participate in football

List at least two seasons in which the institution believes the S-A was deprived of a participation opportunity pursuant to Bylaw 30.6.1.1	State specific bylaw within 30.6.1 that applies to S-A's circumstances that prevented S-A from participating.	For physical or mental circumstances, is medical documentation contemporaneous (at the time of injury or illness)? If so, where was the documentation obtained?	Does the institution believe S-A's circumstances meet Bylaw 30.6.1.1 criteria? If so, reason(s) why. (If not, does the institution believe the S-A's circumstances should be considered an extraordinary or extreme hardship case? If so, why?
2003-2004	30.6.1(a)	Yes, doctors' notes, patient records	Yes, medical documentation indicates that student-athlete was unable to participate in football, as required in the bylaw.
1999-2000	Not applicable; redshirt year	Not applicable	Circumstances do not meet Bylaw 30.6.1 criteria. Institution believes that student-athlete's circumstances would create an extreme and unnecessary hardship for this young man. Please see institution's letter of support for documentation.

To: NCCA DIVISION-I COMMITTEE ON STUDENT-ATHLETE REINSTATEMEN

From: Gary Michael Godsey

RE: APPLICATION FOR 6th YEAR OF ELIGIBILITY

Dear Sir/Maam's:

The purpose of this letter is to outline my reasons for seeking a sixth year of eligibility from the NCAA as well as personally thank the Committee in advance for taking the time to consider my particular circumstances. Hopefully, by the time you review my academic and athletic records and achievements, the Committee will be persuaded to grant me an additional year of eligibility to continue to pursue my dreams both in the classroom and on the football field.

Since entering high school, it has been my desire to receive a degree at the University of Notre Dame. With the help of family, faculty, and the coaching staff, and under the guidance of the NCAA, I am proud to report that I have been able to achieve this underlying goal. More importantly, as I became involved in the rigorous academic structure at Notre Dame, I began to set my academic sights a bit higher than the average collegiate student-athlete. When the undergraduate degree became firmly within my grasp, my thoughts and desires immediately turned towards obtaining an advanced degre and I did everything within my power to graduate in a timely manner and so as to afford myself the best opportunity to seek additional schooling. As of the date of this letter, I am also pleased to announce that I am actively seeking my masters degree from the University and am on pace to graduate with a masters degree in Applied Psychology afte the Fall of 2004.

From an academic standpoint, it should be obvious that I have gone above and beyond the mere eligibility requirements as set forth by the NCAA. I am extremely grateful for the opportunities the NCAA and the University of Notre Dame have given me. Despite the injuries and physical setbacks as described below, I have been able to maintain a level of academic achievement which, I would hope, both the NCAA and the University of Notre Dame would want to use as an positive example for future student-athletes. It is also my prayer that the NCAA would find that these warrant the exercising of their discretion to grant me a sixth year of eligibility as I have exceeded the academic expectations of the NCAA but have been deprived of an opportunity to fulfill team and personal athletic goals due to extraordinary physical injuries.

My purpose for enrollment at the University of Notre Dame was twofold. Although I was first and foremost interested in obtaining the degree, I have also always dreamed of playing football for the Fighting Irish. As both current and former coaching staffs will attest, I have dedicated the past four years to becoming the best football player and representative for this University. When Notre Dame needed me to change position and/or endure drastic gains and losses in weight and strength, I was willing and happy to do so. Put simply, I have done everything within my control to both make myself a

leader on the football field and further another personal goal of playing football at the professional level. I had looked forward to leading the team onto the field in my final, senior year through applying all of things I had learned in my Notre Dame experience. However, what has taken place since my initial ACL injury in the bowl game last year has been a nightmare, to say the least.

While others were enjoying Christmas Break and celebrating a successful season, I was left enduring the thoughts of an arduous rehabilitation process. Upon returning from break, I immediately underwent surgery and focused every ounce of strength on remaining positive and working tirelessly toward fulfilling my remaining athletic goals. I was unable to participate in any type of drills with the team but hard work and dedication appeared to have paid off in that I was cleared to begin fall practice with my teammates. The thrill of overcoming this obstacle was met almost immediately with the inconsolable mental and physical agony of reinjuring the same knee in the same manner. Hearing from numerous doctors that this is such a rare reoccurrence does nothing to make the pain and uncertainty disappear. I am constantly haunted by the fact that, despite I have done everything possible in the classroom and on the field, extraordinary circumstances beyond my control have left my dreams unfulfilled. I can not put into words the feeling of watching my teammates moving forward without me and, although it is difficult to remain positive, one of the few remaining things that keeps me going to class, lifting weights, rehabbing, and standing on the sidelines at home games is the hope that the NCAA will grant me another year of athletic eligibility so that I successfully accomplish those goals I have set for myself.

With the forgoing in mind, it is my request that the NCAA grant my petition for a sixth year of athletic eligibility. It is my understanding that the nature of my injuries would be extraordinary so as to warrant the exercise of discretion. If given the opportunity, I can assure you that I will continue to be a model student-athlete and exceed the academic standards of both the NCAA and the University of Notre Dame. Likewise, your granting of this sixth year will allow me to pursue the lofty academic and athletic standards I have set for myself. Thank you again for your time in consideration of this request and, should you have any questions or concerns, please feel free to contact me at any time.

Sincerely,

Gary Michael Godsey

SBO

December 8, 2003

Sandra Barbour
Assistant Athletic Director
University of Notre Dame
Notre Dame, IN 46556

ORTHOPAEDIC SURGERY
Willard G. Yergler, M.D.
David L. Bankoff, M.D.
Frederick J. Ferlic, M.D.
Michael Keibel, M.D.
Robert E. Clemency, Jr., M.D.
Michael A. Yergler, M.D.
Henry Kim, M.D.
Christopher R. Balint, D.O.

SPINE SURGERY
Henry W. DeLeeuw, M.D.

HAND SURGERY
John H. Mahon, M.D.
Randolph J. Ferlic, M.D.

PODIATRY
Matthew W. Dirnon, D.P.M.
Jeffrey T. Biever, D.P.M.

FOUNDING ASSOCIATES
Leslie M. Bodnar, M.D.
Martin L. Troyer, M.D.

RE: GARY GODSEY

Dear Ms. Barbour:

I am writing this letter to request an additional year of football eligibility for Mr. Gary Godsc Gary is a 5th year scholarship athlete who plays tight end for the University of Notre Dame Football Team. On January 1, 2003 he was competing in the Gator Bowl in Jacksonville, Florida. While going out for a pass, he planted his left leg and as he pivoted, the knee collaps He sustained a complete rupture of his anterior cruciate ligament. Because of pain and instability, he underwent anterior cruciate ligament reconstruction with graft on January 6, 2003. Following the major reconstruction of the knee, Gary was on crutches for the first few weeks and then worked diligently over the next six months to rehabilitate his left leg in order return to playing college football. This is a prolonged, painful and arduous rehabilitation program. Gary diligently and faithfully worked with the leg in order to be able to participate the University of Notre Dame Football Program in the fall of 2003. By July, he had rehabilitated his leg and knee to the point it was felt that he was able to return to the Universi of Notre Dame Football Team at the beginning of fall football practice. His strength was normal and the knee was stable. His knee was protected with an ACL brace.

Football practice began in the first week of August of 2003. During two-a-days, Gary was progressing nicely until he again planted his left foot, twisted and the knee collapsed as it ha done on January 1st. The knee was painful and he had immediate swelling in the knee. MRI confirmed the diagnosis that he had ruptured the reconstructed anterior cruciate ligament gra Obviously Gary was quite distressed with the bad luck of having re-injured his reconstructed knee that he had spent six months of hard work rehabilitating. Faced with the prospects of having to undergo another reconstruction and the prolonged rehabilitation, Gary obviously w quite depressed. The anterior cruciate ligament was again reconstructed and he is now undergoing vigorous rehabilitation. It is his hope that he will be granted one more year of eligibility and it is this hope that it is encouraging him to maximize his rehabilitation. I feel extremely important to his mental and physical wellness that the prospect of his being able to return to one more year of college football is his goal. The ability for him to display his abili to come back from this adversity and possibly to show enough talent to be a NFL candidate a extremely important to him. Please give him every possible consideration for an additional y of eligibility.

Sincerely yours,

Willard G. Yergler, M.D.

WGY/clh

SOUTH BEND ORTHOPAEDICS
SPORTS MEDICINE

www.sbortho.com
South Bend Orthopaedic Associates • 53980 Carmichael Drive
South Bend, Indiana 46635 • Phone: 574.247.8441 or 800.424.0367

EMORY HEALTHCARE

THE EMORY CLINIC, INC.
SPORTS MEDICINE CENTER

2165 North Decatur Road
Decatur, Georgia 30033
Phone 404/778-4325
Fax 404/778-7266

December 17, 2003

RE: Gary Godsey

To Whom It May Concern:

Gary Godsey is a collegiate football player at the University of Notre Dame. He suffered an anterior cruciate ligament injury on January 1, 2003; he had ligament reconstruction on January 16, 2003. After surgery, Gary underwent extensive rehabilitation and was given a full medical release on August 1, 2003, at which time he started fall practice with the team on August 10th. Shortly after on August 13th, he was participating in a routine team practice drill and unfortunately suffered an injury to his repaired knee.

I examined Gary and reviewed his MRI on August 21, 2003. Both the MRI interpretation and my examination were consistent with a repeat anterior cruciate ligament disruption. At that time, Gary was directed to undergo extensive rehabilitation. On re-examination, he had grossly positive physical exam findings and failed functional testing of his knee. Gary underwent a second anterior cruciate reconstruction on September 9, 2003. This was a much more complex and debilitating surgery that required harvesting a patella tendon graft from his good knee and using it to reconstruct his deficient knee. Gary is once again rehabilitating his knee.

From my experience as an orthopaedic surgeon and team physician, a collegiate football player cannot safely return to competition with an anterior cruciate ligament tear and functional instability of his knee. Knee bracing will not allow the knee to function normally. In order to return to play, the ligament must be reconstructed and the patient undergo 6 – 8 months of rehabilitation. Thus, the standard of care after an ACL reconstruction failure is to recommend revision ACL reconstruction.

A re-injury to a previously reconstructed anterior cruciate ligament is rare. Roughly 3% of all ACLs that are reconstructed suffer a re-injury of the ligament. In Gary's case, his family history likely predisposed him to anterior cruciate ligament injury, as his two brothers and father have all suffered left sided anterior cruciate ligament tears.

© Woodruff Health Sciences Center

In my opinion, I feel that with proper rehabilitation, within 8 months Gary will be able to safely return to collegiate football. If you have any questions, please do not hesitate to contact me.

Sincerely,

John W. Xerogeanes, M.D.
Chief, Sports Medicine
Assistant Professor of Orthopaedic Surgery
Head Orthopaedist and Team Physician for
Georgia Tech and Emory University

ALLIED PHYSICIANS
SURGERY CENTER AND RECOVERY SUITES

OPERATIVE REPORT

NAME: Godsey, Gary CHART #: 19849

DATE OF SURGERY: 1/16/03

PHYSICIAN: Willard Yergler, M.D.

PREOPERATIVE DIAGNOSIS: Ruptured anterior cruciate ligament of the left knee.

POSTOPERATIVE DIAGNOSIS: Same.

PROCEDURE PERFORMED: Anterior cruciate reconstruction with graft.

PROCEDURE: The patient brought to the OR and given general anesthetic while supine on the operating table. The left knee was prepped and draped in the usual manner and the tourniquet inflated. Arthroscopy was performed through anteromedial and anterolateral puncture wounds. The knee was well visualized. The knee was first irrigated of 50 cc to 60 cc of serosanguinous fluid. The medial compartment was examined first. The meniscus appeared to be intact. A probe was inserted. The posterior horn was found to have some minimal loosening. The anterior cruciate was obviously ruptured in the intercondylar notch. The lateral compartment was probed. The meniscus was intact. The joint surfaces were smooth.

The patella, suprapatellar pouch and medial and lateral sulci were all normal. The instruments were removed. The reconstruction performed in the following manner.

A 2.5 inch incision made along the medial border of the patellar tendon and carried down through the subcutaneous tissue. Patellar tendon sheath was incised. The patellar tendon graft 11 mm in diameter was harvested using an oscillating saw and removed bone proximally and distally. An excellent graft was obtained.

The periosteum was incised and elevated over the anterior medial and proximal tibia. Mini arthrotomy incision was made along the medial border of the patellar tendon. A portion of the fat pad was excised for visualization. A notchplasty was performed using small osteotome and mallet until adequate space was present. A guide pin was then placed through the anteromedial and proximal tibia and brought out in the intercondylar notch at the desired position. An 11 mm cannulated drill placed over the guide pin and a tunnel was created. A guide pin was placed in the intercondylar notch and brought out through the lateral epicondylar region. A 1.5 inch incision was made laterally over the end of the pin and the iliotibial band was incised longitudinally. Vastus lateralis was resected anteriorly. The 11 mm cannulated drill was then placed over the guide pin. The tunnel was drilled from outside in. The area was thoroughly irrigated of all debris.

The patellar tendon graft was then passed across the knee joint and tied over buttons proximally and distally. A nice snug repair was obtained. The knee was checked for stability and found to

PAGE TWO
OUTPATIENT OPERATIVE REPORT
Godsey, Gary 19849
1/16/03

have negative anterior drawer and Lachman at 100°, 80°, 40°, 60° and 20° of extension. He had nice smooth excursion of the graft. The wounds were then closed with 0 and 2-0 Vicryl and approximated staples.

Sterile dressings were applied. He tolerated the procedure well.

Final Progress Note:

Discharge/Dismissal Diagnosis is the same as the Postoperative Diagnosis on the operative report.

Discharge instructions have been given to the patient as documented in the Physician Discharge Instruction sheet.

PHYSICIAN SIGNATURE: _____
Willard Yergler, M.D.

D: 1/16/03
T: 1/16/03
WY/ls/5902

THE EMORY CLINIC
AMBULATORY SURGERY CENTER
OPERATIVE NOTE

Patient Name:	**Godsey, Gary**
Patient MRN:	**18273193**
Date of Service:	**09/09/03**
DOB:	**03/16/1981**
Document Type:	**Operative Note**
Doctor No.:	**04410**
Attending MD:	**John W. Xerogeanes**
Referring MD:	

PREOPERATIVE DIAGNOSIS: LEFT ANTERIOR CRUCIATE LIGAMENT INJURY (RUPTURE OF PREVIOUS ANTERIOR CRUCIATE LIGAMENT RECONSTRUCTION).

POSTOPERATIVE DIAGNOSIS: LEFT ANTERIOR CRUCIATE LIGAMENT INJURY (RUPTURE OF PREVIOUS ANTERIOR CRUCIATE LIGAMENT RECONSTRUCTION).

OPERATION PERFORMED:
1. REVISION ANTERIOR CRUCIATE LIGAMENT RECONSTRUCTION USING BONE-PATELLA-TENDON-BONE AUTOGRAFT.
2. DEBRIDEMENT OF SCAR TISSUE, SIGNIFICANT.
3. BONE-PATELLA-TENDON-BONE HARVEST, RIGHT KNEE.

JUSTIFICATION FOR PROCEDURE PERFORMED:

Procedure #1: The patient is a high-level intercollegiate athlete who had an ACL tear last year. It was reconstructed in January. The patient re-injured it at the beginning of this season. An MRI showed that the patient retore his graft and he had true instability of his knee. This was a revision operation, which required removal of the previous graft. It was also highly technical because of having to drill separate tunnels to not coincide with the original tunnels and make sure that we had good areas of fixation. It also required removal of significant amounts of scar tissue from the anterior portion of the knee.

Procedure #2: The patient had a large amount of scar tissue preventing full extension in the anterior aspect of his knee. This was separate from the ACL procedure. This needed to be removed to allow full extension and to separate the patella fat pad from the ACL remnant graft.

Procedure #3: The patient had a previous reconstruction using his left bone-patella-tendon-bone harvest. Thus we needed to use a separate incision on the opposite knee in order to procure his own tissue to give him the best chance of healing and returning to play.

SURGEON: JOHN W. XEROGEANES, MD
ASSISTANT: WILLIAM KIMMERLY, MD

ANESTHESIA: GENERAL.

TOTAL TOURNIQUET TIME:
1. RIGHT LEG 20 MINUTES.
2. LEFT LEG 1 HOUR 20 MINUTES.

COMPLICATIONS: NONE.

ANTIBIOTICS: ONE-GRAM ANCEF.

IMPLANTS AND SIZES:
A 7 x 20 Linvatec BioScrew was used for femoral fixation. An AO post and washer was used for tibial fixation.

EXAMINATION UNDER ANESTHESIA:
The patient came to about 3 degrees shy of full extension on the left leg compared to the right leg where he had full flexion. He had a 1 to 2+ Lachman but with an endpoint he had a grade 2 pivot shift.

FINDINGS:
1. The patient had a partially torn anterior cruciate ligament graft. There was also a very vertical segment of the graft that had abnormal mechanics.
2. The patient had a large amount of scar tissue in the anterior interval in the anterior portion of the knee impinging when the knee came to full extension.
3. The patient had a good looking medial compartment with pristine chondral surfaces. The anterior horn of the medial meniscus had some previous abrasion but it now healed over.
4. The patient had a very good looking lateral compartment and trochlear groove.

INDICATIONS FOR PROCEDURE:
The patient is a 22-year-old athlete status post previous anterior cruciate ligament reconstruction. He has re-injured his knee causing rupture of his previous graft. He presents today for revision. The risks and benefits of the procedure were discussed in depth with the patient. The risks of surgery including loss of limb and life, damage to nerves and vessels, residual pain and numbness, stiffness and instability, blood clots, infection and the possible need for blood transfusions and subsequent operations were explicitly explained and understood.

SUMMARY OF PROCEDURE:
The patient was brought to the OR and anesthesia was administered. Exam under anesthesia was performed with the above findings noted. A tourniquet was placed on the operative leg. The knee was then prepped and draped in a sterile manner. The knee joint was injected with the lidocaine and Marcaine with epinephrine mixture, as were the superior-lateral, anterior-lateral, and anterior-medial portals. After placement of the superior-lateral cannula, inflow was initiated. The anterior-lateral portal was made and diagnostic arthroscopy was performed. The following areas were examined in order: patellofemoral joint, suprapatellar pouch, medial gutter, and posterior medial joint, lateral gutter, and posterior lateral joint, ACL, and PCL. The anterior -medial portal was then made under direct vision, and the medial compartment examined. All portions of the medial meniscus were probed. The lateral compartment and meniscus were then examined in a like fashion. Lastly, patellofemoral tracking was examined from 0 to 90 degrees of knee flexion. We then placed a shaver in the medial portal and took extensive time removing the large amount of scar tissue that went between the graft and the patient's fat pad. After this was removed we evaluated the graft. The graft was partially torn approximately 60% and 40% remained intact but it was very vertical in nature and thus was giving him stability in terms of a Lachman but not helping on the pivot shift. The rest of the graft was removed with the shaver. Please note that there was a large portion of bone in one part near the proximal tunnel, which was probably part of the bone plug that was partially in the notch. We used a shaver to remove this. We removed the soft tissue and used a grasper to pull the piece of bone out and then we used box curet and an aggressive shaver to take the soft tissue from the notch. We then used a burr to widen the notch so we could get a better look. We found the original ACL origin in the over-the-top position. We then identified where the reconstructive graft was placed. We had at least 2 cm between the posterior wall and the femoral graft. We then used a shaver to remove the tissue over the tibial portion of the graft. We then used a burr to take out the large tibial spine and we were ready for implantation.

Attention was then turned to the right knee. A tourniquet was placed and the right knee was then prepped and draped in a sterile manner. The right leg was exsanguinated with an Ace bandage and the tourniquet inflated to 300 mmHg. A 4 cm incision was marked from the inferior patella to the tibial tubercle, and injected with the lidocaine and Marcaine with epinephrine mixture. An incision was made through the skin. The soft tissue was mobilized bluntly. The paratenon was incised and divided from the tendon. The middle third of the patella tendon was identified and incised using a double-bladed scalpel. An 18 mm patellar bone plug and a 20 mm tibial bone plug were marked and

cut using an oscillating saw. Two small drill holes were placed in the distal and proximal bone plug. A curved osteotome was used to remove the bone plugs and the graft was brought to the back table. The tendon defect closed loosely with 0 Vicryl. The graft was prepared on the back table. All fat was removed from the tendon and the bone plugs were cylindrically shaped to match the diameter of the tendon. Two #5 Ethibond sutures were placed through each end of the graft. The bone tendon junction on the patella end of the graft was colored with the ink marker. The graft was then sized and placed in saline. The residual bone was used to bone graft the patella defect and the tibial defect. The paratenon was then closed using
2-0 Vicryl.

We then came back to the left knee and placed the ACL guide set at approximately 52 degrees (the graft was approximately 45 degrees of tendinous distance). We then placed our tibial guide wire up through the graft, after making a 1 cm incision in the tibial skin. This was at a point of equal distance between the anterior and posterior border of the medial tibia. We then made sure that this exit point was just anterior to the posterior aspect of the anterior horn of the lateral meniscus, approximately 7 mm in front of the PCL and about 6 mm lateral to the lateral most aspect of the medial femoral condyle. Please note that this was well posterior to where the previous ACL graft was placed. We then used an 8 mm drill to drill the tibial tunnel. We then sequentially dilated this up to approximately 10 mm. We then used a 6 mm over-the-top guide – this was approximately at the 1:30 to 2 o'clock position. We then flexed the knee and drilled the wire. We then used a 9 mm drill to drill the tunnel. We made sure we had approximately a 1.0 mm left posterior wall. We then dilated up to 10 mm. We had good bone circumferentially, again this was well posterior to the original femoral tunnel. We then used a curet to make and anterior lip of the femoral tunnel. We then placed a 2-pin passer up through the tibial tunnel and out the anterolateral tibia. We made an auxiliary medial portal and placed a guide wire in. We then pulled the graft into the wound. We made sure that the bone plug was set very nicely in the femoral tunnel and that it did not protrude into the knee from the tibial tunnel. We then hyperflexed the knee, put the table in Trendelenburg and put a 7 x 20 Linvatec BioScrew to hold the femoral portion in place. We then put the knee through an aggressive range of motion. We easily had full extension and full flexion. There was no impingement of the graft at all. We then put the leg at full extension and tied the tibial bone plug over a post. This was done because the tibial bone plug was more than a centimeter in the tibial tunnel. I felt that tying it over a post was safer than placing an interference screw when I was unsure of the true strength of that portion of the tibia. We then tested the knee with a Lachman at 30 degrees and it was found to be perfect. There was no translation at all. We then looked back in the knee and made sure we could hyperflex and extend the knee and make sure there was no impingement. Please note that for closing we used 2-0 Vicryl, 4-0 Monocryl, and Steri-Strips. For the right knee we used 2-0 Vicryl, 4-0 Monocryl and Steri-Strips.

Please note that I, John Xerogeanes, attending for the case, was present for the entire case and performed the entire procedure.

DICTATED BY: _____
JOHN W. XEROGEANES, MD

SIGNATURE: _____
JOHN W. XEROGEANES, MD

JWX/ldn001/08506
Dictated: September 9, 2003
Transcribed: September 10, 2003

February 5, 2004

NCAA
Indianapolis, In

Members of NCAA committee

I am writing this note in the middle of the night, as I am unable to sleep. I don't sleep well anymore, as I am so concerned about my son Gary's attitude/"well-being" while he's so far away at Notre Dame, with no family members around, and the whole family waits for the NCAA decision on Gary's eligibility. I can only believe that the NCAA will understand that Gary and his other six family members are placing all of their hope, in your hands, to overcome the tragedy that has happened to Gary, and the Godsey family, because of these unexplained knee injuries.

For whatever reason, all three sons plus myself, have torn their left ACL. It has affected all of us in a different way, but especially Gary, who re-tore his left ACL on the third day of fall practice, without pads. George, his older brother, whom I was with when the call came to me that Gary was injured, immediately grabbed the phone and told Gary that there was "no way", as he had been told by doctors that there was a 3% chance of re-injury after surgery, and even then....it had to be a major football collision. From that minute till now, we have had total disbelief, and the family has spent all of our efforts on trying to keep Gary "out of the extreme dumps", and we sincerely need your help.

Gary spent his entire life preparing to go to Notre Dame. He wanted to go to Notre Dame since diapers, and even though I knew it was a long shot, and I didn't really care for Notre Dame, the family supported him. As a high school athlete, I had my dreams of playing college sports taken away by a knee injury, but I have remained a football fan, and have seen all three boys suffer thru left knee injuries. The family has suffered the pain with each boy, and each boy has suffered and re-lived their own injury with each subsequent injury.

When Gary tore the knee for the first time at the '03 Gator Bowl, his brother George maneuvered his way onto the field (George had played there before), and actually relayed the bad news by cell phone to us in the stands. George could hardly get the words out of his mouth, and made a cut sign with his hands, as we were watching from the stands. As I left my seat to get to the locker room, I glanced down to see my wife and oldest daughter Gloria crying, and oldest son Greg, also with tears in his eyes, telling the two

women that he would have surgery, re-hab, and be fine. Gary was extremely upset, but his brother George was giving the same advice. George's birthday is Jan 1, and we always try and celebrate, with bowl season over, but '03 was miserable, along with the rest of the holidays.

Gary worked his fanny off after surgery in January, because he wanted to wear that Notre Dame #14, and to show his brothers that he too could come back from surgery. When he re-tore the ACL, I really can't put into words the devastation that Gary experienced, and the effect on the Godseys. I was trying to keep everyone calm, but I was "out there" along with everyone in the family. After the injury, I immediately went to South Bend to check on Gary, because he would not return calls and was totally withdrawn. Two things happened on that trip: 1) Kevin White told me that Notre Dame would support Gary in his appeal for an extra year, and 2) Coach Willingham told me he would do whatever he could for Gary, and even insisted on Gary going to dinner with his brother Greg, and me. Gary went to dinner, and we encouraged him to continue school, stay involved with the team, and it would "work out". I made three total trips in August, and two in September, to keep Gary focused on God, his family support, his team, the Notre Dame support, and to "hope" the NCAA would understand. You can only imagine, before surgery, how many times I answered "why me?", and to understand why the doctor had to cut the good knee to repair the bad knee, so now it was two knee surgeries. Gary has fought thru three knee surgeries and two total re-habs in the past year, and I am begging that you give this kid a break, so that he can move on and reach his goal. Please don't deny him, because neither he nor his family will survive a negative decision.

God has blessed my wife and I with five children. Gloria is a lawyer in West Palm. Greg is a lawyer in Atlanta. Greta is an MBA in Chicago. George has a Masters in engineering in Atlanta. With a positive decision from the NCAA, Gary will have a masters degree from Notre Dame. Gary has done everything that Notre Dame, and the NCAA could possibly ask…he's stayed out of trouble, graduated in four years, but he must close his football career in a positive manner.

In the past year, I have noticed a change in Gary. He has become withdrawn from his family, and his friends. He lives by himself. He doesn't call home, like in the past. When he was home during Christmas, he was not his "happy self". (he did not come home because of surgeries/re-hab the entire year) Everyone in the family tries to cheer him up, but without success. I owe so much to Notre Dame, because Gary knows the history of even a "redshirt" year at the school, and I really believe that their support has meant more than anything I could do.

Because of the closeness in age between George and Gary, I can't begin to explain what these injuries have done to these two boys. Greg had his surgery while the younger two boys were in grade school, so his injury affected the rest of the family more than the two younger boys, but the injuries to George and Gary have been brutal to the whole family. Gary saw George's pro career get eliminated, after a stellar college career, for no other reason than a left knee. Now George sees the possibility of Gary never even finishing his career at Notre Dame, and he is having a real tough time with these thoughts. I can't keep Gary up, so how do I even attempt George or for that matter Barbara, Gloria, Greg, or Greta. I'll admit I'm so depressed, I can't sleep!!

The misfortune of re-tearing a torn ACL, and having to operate on both knees is bad enough. How would you like to live with the fact that as a parent, who has encouraged all five kids to live their dreams, and that things will "work out", to know that I have passed some genetic fluke of the left knee onto my kids, which is shortchanging their goals. I can't do anything about this fluke; all I can do is beg the NCAA. Both Barbara and I, and all of the kids keep telling Gary about stories of a "kinder and gentler" NCAA that we read about in the paper, and that things will work out! You control not only Gary's future, but all of our beliefs in the system. We have no where to turn. We have Notre Dame's support, but we need you're approval. Please don't say "no"!!!

In closing, I want to say thank you for reading this letter as I'm sure that you are a busy person. In advance, I want to thank you for your consideration of Gary Godsey. You're decision that you are about to make, will affect this kid for a lifetime.....Please think long and hard, and please give maximum consideration to these "unheard of" circumstances.

Sincerely,

John Godsey

Gary Godsey

Gary, Godsey played college football at Notre Dame, where as a senior, he started on a team that finished the 2002 season with a 10-3 record. In January 2003, this team was invited to play in the Gator Bowl, and during the game, Gary tore his ACL. With one year of eligibility remaining, he returned to Notre Dame to undergo rehabilitation on the injury so that he could play in the 2003 season. On the third day of practice in August of 2003, he retore the ACL and would thus have to sit out his remaining year. The family appealed to the NCAA to grant Gary a sixth year of eligibility based on the following arguments:

- There is only a 3% chance of retearing the same ACL
- In the history of college football, there has never been a retear of the same ACL
- John Godsey's other 3 sons also have torn their ACL
- Notre Dame has never given another year of eligibility to a player

Upon reviewing Gary's case, the NCAA denied his request for a sixth year. The family appealed that decision to the Committee on Appeals, and again he was denied. The family had asked for a phone conference with the committee to discuss the case, but they were denied even this.

Based on conversations with the NCAA, officials at Notre Dame were convinced that the NCAA was changing its policies regarding eligibility and that these changes would enable Gary to play another year. These officials therefore urged Gary to stay at school and not make himself eligible for the NFL draft. Conversations with the NCAA and Notre Dame even revealed that NCAA President Myles Brand was "100% behind" Gary's case. After waiting 30 days, the NCAA could not reach a decision on these changes, and Gary missed the NFL draft. His case was turned down yet again.

Stetson University

While at Stetson University, Mr. Murray Arnold, head basketball coach, kicked a player off the team for illegal drug use. The NCAA sent an investigator, Christie Sexton, down to assess the situation. In a taped meeting on November 28, 2000, Mr. Arnold's attorney raised several objections to Ms. Sexton's questions regarding the matter. Ms. Sexton responded in a very threatening and intimidating manner, and told Mr. Arnold and his attorney, on tape, that the NCAA had the power to do as it wishes. This is another blatant lack of due process by the NCAA. Interestingly, after receiving the official transcript of the interview, Ms. Sexton's comments were deleted.

On December 27, 2000, Mr. Arnold retired from coaching due to his wife's health problems. The NCAA then issued a press release claiming that his retirement was punishment enough for the school.

COPY

IN THE CIRCUIT COURT
OF MONTGOMERY COUNTY, ALABAMA

RONALD W. COTTRELL,	*	
	*	
Plaintiff,	*	
	*	
vs.	*	Case Number: CV 2002-3565-R
	*	
NATIONAL COLLEGIATE ATHLETIC ASSOCIATION; THOMAS E. YEAGER, et al.,	*	
	*	
	*	
Defendants.	*	

AFFIDAVIT OF MURRAY ARNOLD

I, Murray Arnold, being first duly sworn, depose and say on oath as follows:

1. My name is Murray Arnold and I am over the age of nineteen years and I am a resident of DeLand, Florida.

2. I recently retired as head basketball coach for Stetson University in Florida and have coached for forty-three (43) years, including three NCAA Division I colleges and on the professional level with the Chicago Bulls.

3. I read in the news media about a lawsuit filed against the NCAA and others by former Alabama recruiting Coach Ronnie Cottrell. I contacted Ronnie Cottrell regarding his suit on my on initiative, without any invitation by Coach Cottrell or any of his agents, after reading about it in the newspapers and on the website.

4. The NCAA abusively uses its website to announce Infractions and Appeals Committee rulings designed to decimate by innuendo the character and reputations of its victims. Specifically, in the Alabama case it refers to assistant coach A

(Ronnie Cottrell) avoidance of a "Show Cause Order". The Infractions Committee's determination has resulted in punishment to Cottrell tantamount to the imposition of such an order. It arrogantly self imposes the Committee's enforcement negligence and disregard for its primary function.

5. In the Stetson (Arnold Case M 178), at his May 9, 2002, Infractions Ruling Press Conference, Chairman Tom Yeager, when questioned by Bob Pockrass of the Daytona Beach News Journal, specified that "Arnold was not subjected to a Show Cause Order or any NCAA sanctions because of his December 27, 2000 retirement." Yeager's response clearly implied that the NCAA decision regarding Arnold's culpability was a product of Arnold's status and situation rather than an acknowledgment of the degree of his involvement.

6. Both Ronnie Cottrell and I have suffered significant and lasting personal damages as a result of undocumented and unsubstantiated accusations perpetrated permanently and publicly by the NCAA. Prevention of professional employment for Cottrell and massive impugnment of my life long reputation are clearly direct results of the NCAA wanton and reckless behavior.

7. Refusal by the NCAA to produce transcripts of their proceedings to verify the website citations against Coach Cottrell and myself are an abusive and unacceptable perversion of the NCAA's claim to due process immunity.

8. During my taped interview with the NCAA Enforcement Committee on November 28, 2000 on campus at Stetson University, my attorney objected to questions asked by NCAA representatives, whereupon Christie Sexton, NCAA Enforcement Officer, aggressively threatened and told us that the NCAA had total immunity from

providing due process to me or anyone during any of these interviews and no one could require them to do so.

9. In that this was an official part of NCAA investigation and in that my career could be ruined by these false allegations lodged against me, I was allowed to record the conversation. After I received the transcript of their official interview, I saw that the transcript had been altered and these threats by Ms. Sexton had been deleted.

10. It is my understanding that Coach Cottrell was told by Rich Hilliard, the alleged attorney for the University of Alabama, that the NCAA recorded interviews were not official NCAA proceedings. If that is the case then that statement by Mr. Hilliard is laughable because they used these interviews as an evidentiary base for their subsequent findings and sanctions.

11. I am of the opinion that the NCAA never read and/or studied over 11 bound books, 100 tapes and thousands of pages of evidence that would have exonerated me. I have been told that the NCAA Committee on Appeals never read the documented evidence, in particular the final brief submitted by Robert T. Cummingham, Attorney at Law, filed on behalf of the University of Alabama. This is totally consistent with what happened to me.

12. I am of the opinion that someone, somewhere, needs to stop the NCAA from their outrageous and unconstitutional tactics by denying due process to individuals such as myself and Coach Cottrell by destroying our careers with false allegations and disallowing us to confront the "secret witnesses" that allegedly have and use as a tool in destroying our careers.

Further the affiant saith not.

Murray Arnold

SWORN TO AND SUBSCRIBED BEFORE ME on this 3rd day of February 2003, witness my hand and official seal of office.

Notary Public
My commission expires September 11, 2006

11519-001
#6085

Blatant Abuses of Power by NCAA

Secret Witnesses
The investigators at the NCAA take statements from certain 'confidential sources' when looking into possible violations at member schools. The credibility of these sources is not checked, and the result is often rumors taken as fact by these investigators. Such was the case during the Alabama investigation.
The NCAA's case against Alabama relied entirely on several witnesses who provided information regarding alleged recruiting violations with the football program. The program was found guilty based on these accusations and was issued severe sanctions as a result. In return for their accusations, the NCAA provided protection to these witnesses by labeling them "confidential sources" and concealing their identity. In doing so, the NCAA denied the school basic due process as this prevented University of Alabama officials and others involved the right to face their accusers and cross examine them in efforts to question their credibility and motives.
Only through the efforts of Jim Neal, a former Watergate attorney and now counsel to Logan Young in his federal trial relating to the matter, were documents released identifying these "secret" witness, one of which being Tennessee Head Football Coach Phillip Fulmer, an obvious rival to the University of Alabama.

Manufactured Evidence
Alabama was charged with providing a car to a former player (Travis Carroll) by Mr. James Johnson, who owns a car dealership in Georgia. In his deposition, Mr. Johnson refutes this charge by pointing to evidence that he, in fact, agreed to sell the car to the player and later repossessed the vehicle when payments were not received. Evidence also shows that the mileage on the vehicle was changed by the NCAA in the official investigation of the matter to make the car appear to be in better condition than it was. The former player, Carroll, has since admitted these claims were false, yet it was a major contributor to the penalty Alabama received.

Recordings
When interviewing witnesses, the investigators are known to use tape recorders, but will turn them on and off in order to receive the testimony they want.
In the case of Stetson University, Coach Murray Arnold kicked a player off the team for illegal drug use. The NCAA sent an investigator, Christie Sexton, down to assess the situation. In a taped meeting on November 28, 2000, Mr. Arnold's attorney raised several objections to Ms. Sexton's questions regarding the matter. Ms. Sexton responded in a very threatening and intimidating manner, and told Mr. Arnold and his attorney, on tape, that the NCAA had the power to do as it wishes. Interestingly, after receiving the official transcript of the interview, Ms. Sexton's comments were deleted.

Conflict of Interest

The NCAA has a conflict of interest rule in their bylaws, yet in the case at Auburn, clearly did not abide by it.

Cliff Ellis, former Head Basketball Coach at Auburn, and Dave Didion, the compliance director at Auburn, did not often agree on things, and it was often expressed that the two in fact hated each other. Ultimately, Mr. Didion was fired from Auburn and the NCAA hired him as an investigator to look into the alleged violations of the Auburn basketball program. The NCAA was notified of this obvious conflict of interest, and Mr. Didion was removed from the case. However, soon after, Mr. Didion was sent back to Auburn to conduct further interviews in the NCAA's case against Auburn.

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August 20, 2004

To: Whom it may concern

The purpose of this statement is to clarify my thought process and actions during my time as a NCAA track athlete and a professional football player.

I want to make it clear that I "knowingly and willfully" accepted endorsement and appearance monies, which is considered a normal part of my salary as a professional football player, even though my intentions were to run track for the Univ. of Iowa after my first year as a professional athlete.

Being "well aware" of the NCAA rules governing amateur athletes, it was my assumption that I "could" accept endorsement monies as a professional football player but not as an amateur track athlete. I had based my assumptions on the NCAA precedent that you can be a professional in one sport, and an amateur in another.

I know there have been numerous cases of college football players, such as Ricky Williams of the University of Texas, accepting endorsements and even signing bonuses in one sport, such as baseball, and still being allowed to participate in his amateur sport of college football the following year(s).

I do appreciate the ruling by the NCAA in 1999, allowing me to represent the University of Iowa in track, while pursuing my career and dream of being a pro football player.

Respectfully,

Tim Dwight

8/20/04

1 of 1 DOCUMENT

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The Associated Press State & Local Wire

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April 6, 2004, Tuesday, BC cycle

SECTION: Sports News

LENGTH: 657 words

HEADLINE: Colorado **receiver takes endorsement case** against NCAA to appeals court

BYLINE: By JON SARCHE, Associated Press Writer

DATELINE: DENVER

BODY:

University of Colorado receiver and world champion skier Jeremy Bloom takes his high-profile case against the NCAA back to court on Wednesday.

The 22-year-old Bloom wants a three-judge panel of the Colorado Court of Appeals to force the NCAA to allow him to play football and accept endorsements for his freestyle skiing career at the same time.

The NCAA says its rules allow student-athletes to earn a salary as a professional athlete in a different sport, but clearly prohibit earning any endorsement money.

"They may not consider that income, but I ensure you that Lance Armstrong calls that income, that Tiger Woods calls that income, that Serena Williams calls that income and that they report it on their tax returns," Bloom's attorney Peter Rush said Tuesday. "Getting payments to cover your expenses from a ski team for four months of the year is not income."

A state district judge in 2002 rejected Bloom's request to force the NCAA to allow him to earn endorsement money while playing football until his lawsuit was decided. Bloom also announced in January that he would play football this fall and accept skiing endorsements - an admitted attempt to force the NCAA to change its position or bar him from playing for the Buffaloes.

"I'm not trying to get rich here. I want to be able to ski and have the resources any other skier in the world has, and the NCAA is stopping that," Bloom said. "I couldn't remain under the NCAA guidelines any longer because I'm running out of resources and running out of time" until qualifications for the 2006 Winter Olympics in Turin, Italy, begin in November.

Since January, Bloom has signed endorsement contracts with two companies that sponsor the U.S. ski team,

said his father and manager, Larry Bloom.

He is not enrolled at Colorado this semester and isn't participating in spring football drills, but he plans to re-enroll in the summer, take classes and play football, Larry Bloom said.

NCAA spokesman Jeff Howard said the association's rules allow Bloom to keep prize money and any stipends from the U.S. ski team. But endorsement income is a different matter, and allowing Bloom to accept it would give him and the university an unfair advantage, Howard said.

"Jeremy Bloom is a unique individual and we really want him to pursue his dreams in both sports, but the association would like to see him wait until his eligibility is done before he capitalizes on endorsements," Howard said.

However, Bloom's father said his son needs endorsement income to continue to ski on the World Cup freestyle circuit.

"We think it's discriminatory to say you can make millions of dollars in a salary, but if the income of your bona fide sport is endorsement-based you can't do it," he said. "We think that's ludicrous."

University officials said they support Jeremy Bloom's efforts, but are forced to side with the NCAA to avoid the possibility of sanctions that could risk other student-athletes' eligibility.

"We hope the NCAA finds a way in the rules to let him play in the fall," said David Hansburg, director of football operations. "He has two passions. It's hard to see them potentially come into conflict."

University counsel Joanne McDevitt did not return a call.

Earlier this week, Bloom's attorneys filed an affidavit from San Diego Chargers wide receiver Tim Dwight in support of Bloom's efforts.

Dwight said the NCAA allowed him to run track for the University of Iowa and keep money from endorsements he made while playing for the Atlanta Falcons, setting a precedent that should be followed in Bloom's case.

Howard said the cases are different because Dwight was seeking reinstatement to NCAA eligibility and stopped accepting endorsement money when the reinstatement process began.

Dwight's affidavit will not be considered by the state Appeals Court because it was filed too late, but could become part of the overall lawsuit, Rush said.

GRAPHIC: AP Photo DX102

LOAD-DATE: April 7, 2004

The NCAA News
News & Features

The NCAA News -- July 19, 2004

Opinions

Postseason football

Kevin Weiberg, commissioner
Big 12 Conference
The Associated Press

On establishing a new formula for determining participants in the Bowl Championship Series title game:

"We're proceeding in a deliberate fashion because ... the poll has been a subject of a lot of controversy and we want to make sure that by making changes we're not creating different types of problems from perhaps what we had in the past. We want to receive some assurance that the changes that we may have in mind are sound from a mathematical standpoint."

Professional draft

David Ridpath, associate director
The Drake Group
Indianapolis Star

On draft restrictions in the National Football League and a proposed restriction in the National Basketball Association:

"Where is the outrage over minor-league baseball? There is none because it doesn't generate the revenue football and basketball do. No one complains when those students leave. No one complains over lack of an age restriction."

Dick Vitale, college basketball commentator
espn.com
On eight of the first 19 NBA draft picks being fresh out of high school:

"I fault the system, not these young men, for the influx of high-schoolers in the NBA. These guys are not ready for the rigors of an 82-game schedule or the pressure of the pro lifestyle. They have not had enough time to mature and they are missing out on enjoying the great time of college life. Instead of being the big men on campus, they are often riding the pine in the NBA, not getting much of a chance to improve their game.

"I learned first-hand as a coach in the NBA that it's very different in terms of practice time to

work on aspects of the game with these young men. Due to travel and the long schedule, the pros have more shoot-arounds and less time to actually work on improving. ...

"For now, the NBA has very few impact players from the draft. At least one thing, despite the loss of all of these high-school stars, the college ranks are very strong when you judge the returning talent. College basketball is very healthy, thank you."

Basketball camps

Howard Garfinkel, founder
Five Star Basketball Camp
Newsweek

On increasing importance of "exposure camps" sponsored by athletics shoe companies:

"It's hard getting the great players today to work on their game in the summer. They don't think they have to get better; all they have to do is stay the same and they'll go in the NBA. That's their mind-set."

Integrating athletics

Damon Evans, director of athletics
University of Georgia
Columbus (Georgia) Ledger-Enquirer

"I think (the athletics department) needs to become more a part of the university. I think people need to remember we are part of the University of Georgia. You can't have the athletics department without the university. Instead of having this fear of what's going to take place if we become more a part of campus, they need to see how this can benefit us overall. It can be done, and why not utilize those resources from the academic side of things to help us grow athletically and vice versa. ...

"If we do what we're supposed to do on our side and work with the academic community, that will make things that much better. We can't be split and then say, 'We need some help with these kids.' We need the academic side to understand what we're about. We can't mess around."

Division I Baseball Championship

Bob Todd, head baseball coach
Ohio State University
Deseret Morning News

"Twenty percent of the country controls the national championship. It's not fair. It's time we make a stand. I feel a heavy burden in that I represent 80 percent of the country."

WILCOX & OGDEN, P.C.

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April 5, 2004

VIA HAND-DELIVERY

Clerk, Colorado Court of Appeals
Colorado State Judicial Building
2 E. 14th Avenue, 3rd Floor
Denver, Colorado 80203

Re: *Jeremy Bloom v. National Collegiate Athletic Association, et al.*
Case No. 02CA2302

Dear Clerk:

Attached are the original and five copies of the Plaintiff's Supplemental Citation of Authority. Since the case is set for argument on Wednesday, April 7th, I would appreciate it if you would deliver copies to Judges Vogt, Dailey, and Russell as quickly as possible.

Thank you.

Sincerely,

WILCOX & OGDEN, P.C.

Ralph Ogden

RO/kb
Enclosure

cc: James C. Smittkamp, Esq.
22 pages
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COURT OF APPEALS, STATE OF COLORADO Colorado Court of Appeals, 2 E. 14th Ave., Denver, CO 80203 Plaintiff-Appellant: JEREMY BLOOM, Defendants-Appellees: NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, an unincorporated association, and THE REGENTS OF THE UNIVERSITY OF COLORADO, a body corporate.	FILED APR - 5 2004 Clerk, Colorado Court of Appeals ▲ COURT USE ONLY ▲
Ralph Ogden, #13623 WILCOX & OGDEN, P.C. 1750 Gilpin Street Denver, Colorado 80218 Phone No.: 303-399-5005 Fax No.: 303-399-5605 James C. Smittkamp, #10354 Peter J. Walters, #14348 SMITTKAMP & WALTERS, LLC 75 Manhattan Drive, Suite 106 Boulder, Colorado 80303 Phone No.: 303-494-4244 Fax No.: 303-494-3133 Peter G. Rush, #6201010 (IL), #6634-49(IN) BELL, BOYD & LLOYD LLC 70 West Madison Street, Suite 3000 Chicago, Illinois 60602 Phone No.: 312-372-1121 Fax No.: 312-827-8000 Attorneys for the Plaintiff-Appellant	Case No.: 02CA2302 Appeal from the Denial of a Motion for Preliminary Injunction by the District Court for the County of Boulder, Division 2 Case Number: 02CV1249 The Honorable Daniel C. Hale, Presiding

PLAINTIFF'S SUPPLEMENTAL CITATION OF AUTHORITY

Attached hereto is a copy of the April 6, 1999, decision by the National Collegiate Athletic Association in the case of Timothy Dwight. (Exhibit 1) In it, the NCAA determined

that Mr. Dwight did **not** forfeit his amateur status in intercollegiate track even though he had received and kept income from endorsements earned as a professional football player. This decision was not previously disclosed by the NCAA. It is precisely the decision which Jeremy Bloom seeks in this case.

In both this Court and in the district court, the NCAA has denied that any decision of this nature was ever made. Indeed, it has told both courts that the endorsement rule prohibits a person such as Mr. Bloom, who is an amateur in one sport and a professional in another, from receiving any endorsement income of any kind, including any such income which results from his professional status in his non-collegiate sport. So, too, has the University of Colorado.

The position taken by the NCAA in Mr. Bloom's case is thus unequivocally refuted by the decision it made in Mr. Dwight's case.

The NCAA's Answer Brief was filed with the Clerk on October 15, 2003. It contains the following statements:

> Member Institutions debated and adopted a bylaw providing that a student-athlete is ineligible for intercollegiate competition if he or she endorses a commercial product or service.
>
> * * * * *
>
> The endorsement rule has never been interpreted on a sport-specific basis. . . . . For example, if a professional baseball player also plays college basketball, the membership prohibits commercial endorsements even if those endorsements are related to the non-amateur sports.
>
> * * * * *

> The rule [Section 12.5.2] has never been interpreted on a sport-by-sport basis.
>
> * * * * *
>
> CU knew the NCAA did not interpret the endorsement prohibition on a sport-by-sport basis.
>
> * * * * *
>
> . . . . it is impossible to distinguish between a student-athlete's market influence in his/her amateur sport and his/her professional sport.
>
> * * * * *
>
> Bylaw interpretations are available to the public through *The NCAA News*, a periodical published bi-weekly and accessible on-line.
>
> * * * * *
>
> Instead, he elicited testimony that the NCAA's decisions were consistent with decisions in prior cases (Tim Dwight and Darnell Autry).

NCAA Answer Brief at pages 18, 6, 18, 10, 7, 4, and 27. (citations omitted).

The University of Colorado's Answer Brief was filed on September 13, 2003. It mirrors these representations:

> Bylaw 12.5.2.1 prohibits a student-athlete from accepting remuneration for promoting or endorsing any commercial product or service.
>
> * * * * *
>
> However, Bylaw 12.1.2 does not create an exception to the endorsement rule. That is, Bylaw 12.5.2.1 precludes all student-athletes – even those who participate in non-collegiate sports – from engaging in commercial endorsements, regardless of which sport gave rise to the endorsement.
>
> * * * * *

> Mr. Mallonee testified that the endorsement rule is consistently applied on a non-sport specific basis.

CU Answer Brief at pages 3, 11-12.

In the Spring of 1999, Tim Dwight was a paid professional football player with the Atlanta Falcons. The NCAA declared him ineligible to run track as an amateur for the University of Iowa because he had been paid more than $14,000 for various promotions and endorsements in Atlanta. It cited the endorsement by-law, section 12.5.2.1, as the basis for its initial decision. (Affidavit of Tim Dwight at ¶ 2 and 4 and Affidavit of John Bechta, ¶ 4, attached as Exhibits 2 and 3 respectively)

Mr. Dwight argued in response that he should not be deemed ineligible because his promotions and endorsements related to his professional sport of football and not to his amateur sport of track. Dwight Affidavit at ¶ 5, Bechta Affidavit at ¶ 5. This is the same position taken by Mr. Bloom in the case at bar. It is a position which the NCAA has vehemently opposed for the last two years.

On or about April 6, 1999, the NCAA reinstated Mr. Dwight and declared him eligible to run track as an amateur on the University of Iowa track team, notwithstanding the endorsement income which he earned as a professional football player. According to the "cover letter and database printout [which] serve as written confirmation of the NCAA's decision for the case(s)," Mr. Dwight was reinstated under "MTR 12.5.2.1-(a)". The written confirmation stated this as the NCAA's "Rationale" for the reinstatement:

> The Staff informed the institution [Iowa] that it would not require repayment [of the monies earned] inasmuch as the SA's [Student-Athlete's] promotional

activities related solely to his football participation.

Dwight Affidavit at ¶ 7, Bechta Affidavit at ¶ 7.

Other than some money Mr. Dwight returned for being paid in Iowa City, Iowa, to autograph pictures of himself wearing his Iowa college football uniform, Mr. Dwight kept all of his endorsement money and retained all of his endorsement relationships while competing as an amateur in track for the University of Iowa. Dwight Affidavit at ¶ 9; Bechta Affidavit at ¶ 9.

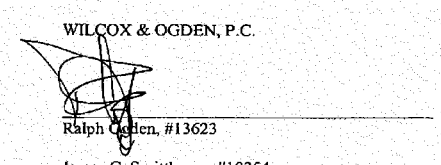
Counsel for Mr. Bloom have searched *The NCAA News* around the time of the NCAA's interpretation of Rule 12.5.2.1 in Mr. Dwight's case, but was unable to find any.

Because this decision utterly contradicts the testimony of the NCAA's own witnesses and the representations of its own attorneys and the attorneys for the University, counsel believes it is of great significance to the issues present in Mr. Bloom's case.

The decision came to Mr. Rush's attention for the first time on Friday, April 2nd, at about 1:00 p.m. Mountain Standard Time, when he received a voice mail message. Later that same day, Mr. Rush spoke with the person who left the message and subsequently received a faxed copy of the decision. Counsel have filed this supplemental authority on the next business day after receiving confirmation of the decision from Mr. Dwight and his agent.

Respectfully submitted,

WILCOX & OGDEN, P.C.



Ralph Ogden, #13623

James C. Smittkamp, #10354
Peter J. Walters, #14348
SMITTKAMP & WALTERS, LLC

Peter G. Rush, #6201010 (IL), #6634-49(IN)
BELL, BOYD & LLOYD LLC

ATTORNEYS FOR PLAINTIFF-APPELLANT

Apr 05 04 08:53a p.8
RECEIVED: 11-18-99; 8:49; => MEN'S STUDENT SERV.; #2
APR 08 '99 09:50AM P.2/3

THE NATIONAL COLLEGIATE ATHLETIC ASSOCIATION

6201 College Boulevard • Overland Park, Kansas 66211-2422 • Telephone 913/339-1906

Director of Athletics
Faculty Athletics Representative
Senior Woman Administrator
Conference Commissioner

This cover letter and database printout serve as written confirmation of the NCAA's decision for the case(s) enclosed. Copies of this case, with cover letter, have been sent to the persons named above, as well as the insitutional staff member who submitted the request.

If the institution wishes to appeal this decision to the appropriate division specific NCAA (Sub)Committee on Student-Athlete Reinstatement, it may do so by submitting a written request for appeal, and all supporting documentation, to this office within 30 calendar days from the date of this letter. Please note that the institution's request must include its basis for appealing the staff's initial decision, including any mitigating factors the institution intends to introduce during the appeal call. The institution's chief executive officer, faculty athletics representative, senior woman administrator or director of athletics must submit the appeal. One of these representatives, as well as the involved student-athlete, must participate on the call. This review by the (Sub)Committee on Student-Athlete Reinstatement is the only appeal opportunity available to the institution, and its decision is final.

If you have questions regarding the processing of the case(s), please contact the student-athlete reinstatement representative whose signature is below, or the director of student-athlete reinstatement.

Your assistance in processing the case(s) is appreciated.

Lisa A. Dehon 4-7-99
Lisa A. Dehon Date
Student-Athlete Reinstatement
Representative

LAD:pc

Equal Opportunity /Affirmative Action Employer

NCAA EXECUTIVE COMMITTEE CHAIR
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President
Washington State University
French Administration Building, Room 42
Pullman, Washington 99164-1048

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Chancellor
Syracuse University
300 Administration Building
Syracuse, New York 13244-1100

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Grand Valley State University
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Allendale, Michigan 49401-9468

DIVISION III PRESIDENTS COUNCIL CHAIR
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President
Millikin University
1184 West Main
Decatur, Illinois 62522-2084

PRESIDENT
CEDRIC W. DEMPSEY

EXHIBIT 1

Thursday, April 08, 1999

Eligibility Cases

Page: 1

NCAA Staff	School name	Student Athlete	Decision date	Div	Sport	Citation	Facts	NCAA Eligibility action	NCAA action regarding institutional responsibility	Institutional/ Conference action	Rationale
Dehon	University of Iowa	Tim Dwight	4/8/99	I	MTR	12.3.2.1-(a)	The SA, a professional in the sport of football, engaged in various promotional activities related to his football participation.	Eligibility reinstated.	Secondary violation; no further action.	The institution required the SA to repay the monies earned ($14,097) and issued cease and desist letters to the involved parties.	The staff informed the institution that it would not require repayment inasmuch as the SA's promotional activities related solely to his football participation.

COURT OF APPEALS, STATE OF COLORADO Colorado Court of Appeals, 2 E. 14th Ave., Denver, CO 80203 Plaintiff-Appellant: JEREMY BLOOM v. Defendants- Appellees: NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, an unincorporated association, and THE REGENTS OF THE UNIVERSITY OF COLORADO, a body corporate	Δ COURT USE ONLY Δ Case No.: 02CA2302 Appeal from the Denial of a Preliminary Injunction by the District Court for Boulder County, Division 2 Case No. 02CV1249 The Honorable Daniel C. Hale, Presiding
Ralph Ogden, #13623 WILCOX & OGDEN, P.C. 1750 Gilpin Street Denver, CO 80218 Phone Number: 303-399-5005 Fax Number: 303-399-5605 James C. Smittkamp, #10354 Peter J. Walters, #14348 SMITTKAMP & WALTERS, LLC 75 Manhattan Drive, Suite 106 Boulder, CO 80303 Phone Number: 303-494-4244 Fax Number: 303-494-3133 Peter G. Rush, #6201818 (IL), #6634-49 (IN) BELL, BOYD & LLOYD LLC 70 West Madison Street, Suite 3000 Chicago, IL 60602 Phone Number: 312-372-1121 Fax Number: 312-827-8005 Attorneys for Plaintiff-Appellant	

AFFIDAVIT OF JOHN BECHTA

374661/02/1

EXHIBIT 2

COMES NOW

I, John Bechta, being over the age of 18 and being duly sworn, state as follows:

1. I am certified and license contract advisor of the National Football League Players Association ("NFLPA"), and have been so for more than 17 years. I have never been reprimanded, disciplined or sanctioned in connection with my work as a contract advisor to professional football players. I am, and have been since 1997, the contract advisor for a professional football player named Tim Dwight.

2. After Tim Dwight became a paid professional football player, he engaged in and was paid for a variety of promotional activities in which, among other things, he was paid to sign autographs, endorse a car dealer in Atlanta, Georgia and to make appearances on behalf of various commercial entities. Tim was paid more than $14,000 for these promotions and endorsements prior to the Spring of 1999. The money Tim was paid for these endorsements and promotions was over and above the salary and signing bonus he had been paid by the Atlanta Falcons.

3. After Tim had been paid for these promotions and endorsements, he sought to return to the University of Iowa to compete as an amateur in the sport of track.

4. Initially, the National Collegiate Athletic Association ("NCAA") declared Tim was no longer eligible to run track as an amateur because he had engaged in endorsements and promotional activities. The rule the NCAA cited to find in declaring Tim not eligible to compete in track at Iowa as an amateur was 12.5.2.1. We sought to have Tim reinstated so that he could compete as an amateur in the sport of track.

5. In seeking to have Tim reinstated to be eligible to run track as an amateur, we argued to the NCAA that Tim was not ineligible to run track because the promotions and endorsements he had been paid for related to his professional sport of football, not his amateur sport of track.

6. On April 8, 1999, I was advised by the University of Iowa that Tim had been reinstated and was eligible to run track for the University of Iowa. With the exception of some monies earned for autographing pictures of Tim in a University of Iowa football uniform during the 1999 track season, neither Tim nor I ever repaid or returned any of the endorsement or promotional money he received before he ran track for Iowa in the Spring of 1999.

7. On April 8, 1999, I received by facsimile the attached letter from the NCAA along with the attached database printout. According to that printout, the rationale offer by the Staff of NCAA for reinstating Tim was as follows:

> The staff informed the institution that it would not require repayment inasmuch as the SA's [student-athlete's] promotional activities related solely to his football participation.

Attached hereto as Exhibit A is a true and correct copy of the NCAA letter and database printout that I received reinstating Tim on April 8, 1999.

8. Tim thereafter competed as an amateur in track for the University of Iowa during the Spring semester of 1999. To this day, neither I nor Tim have ever returned one penny of the money Tim was paid by the sponsors for his endorsements or other promotional activities prior to the Spring of 1999.

9. No one required Tim to give up any of his promotional or endorsement opportunities in order to run track for the University of Iowa as an amateur during the Spring of 1999. After January 1, 1999, and throughout the Spring of 1999, he continued to drive the complimentary automobile provided to him by the automobile dealership in Atlanta that he was endorsing. Throughout that period, he also maintained other endorsement and promotional arrangements, including one with a ~~radio~~ TV station on which he periodically appear on the air for pay. During that time, he also made paid appearances on behalf of companies or organizations Fall of 1999.

FURTHER AFFIANT SAYETH NAUGHT.

John Bechta

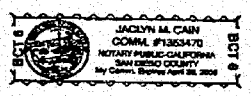
STATE OF CALIFORNIA }
} SS
COUNTY OF SAN DIEGO }

SUBSCRIBED AND SWORN to before me, a notary public, on this 3rd day of April, 2004, by John Bechta.

Witness my hand and seal.

My Commission expires: 4-25-06

Notary Public



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APR 08 '99 09:50AM P.2/3

THE NATIONAL COLLEGIATE ATHLETIC ASSOCIATION

6201 College Boulevard • Overland Park, Kansas 66211-2422 • Telephone 913/339-1906

Director of Athletics
Faculty Athletics Representative
Senior Woman Administrator
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If the institution wishes to appeal this decision to the appropriate division specific NCAA (Sub)Committee on Student-Athlete Reinstatement, it may do so by submitting a written request for appeal, and all supporting documentation, to this office within 30 calendar days from the date of this letter. Please note that the institution's request must include its basis for appealing the staff's initial decision, including any mitigating factors the institution intends to introduce during the appeal call. The institution's chief executive officer, faculty athletics representative, senior woman administrator or director of athletics must submit the appeal. One of these representatives, as well as the involved student-athlete, must participate on the call. This review by the (Sub)Committee on Student-Athlete Reinstatement is the only appeal opportunity available to the institution, and its decision is final.

If you have questions regarding the processing of the case(s), please contact the student-athlete reinstatement representative whose signature is below, or the director of student-athlete reinstatement.

Your assistance in processing the case(s) is appreciated.

Lisa A. Dehon 4-7-99
Lisa A. Dehon Date
Student-Athlete Reinstatement
Representative

LAD:pc

Equal Opportunity /Affirmative Action Employer

NCAA EXECUTIVE COMMITTEE CHAIR
SAMUEL H. SMITH
President
Washington State University
Fourth Administration Building, Room 422
Pullman, Washington 99164-1019

DIVISION I BOARD OF DIRECTORS CHAIR
KENNETH A. SHAW
Chancellor
Syracuse University
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Syracuse, New York 13244-1100

DIVISION II PRESIDENTS COUNCIL CHAIR
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President
Grand Valley State University
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Allendale, Michigan 49401-9403

DIVISION III PRESIDENTS COUNCIL CHAIR
CURTIS L. McCRAY
President
Millikan University
1184 West Main
Decatur, Illinois 62522-2084

PRESIDENT
CHRIS W. DESPEY

Thursday, April 08, 1999

Eligibility Cases

NCAA Staff	School name	Student Athlete	Decision date	Div	Sport	Citation	Facts	NCAA Eligibility action	NCAA action regarding institutional responsibility	Institutional/ Conference action	Rationale
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COURT OF APPEALS, STATE OF COLORADO Colorado Court of Appeals, 2 E. 14th Ave., Denver, CO 80203	
Plaintiff-Appellant: JEREMY BLOOM v. Defendants- Appellees: NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, an unincorporated association, and THE REGENTS OF THE UNIVERSITY OF COLORADO, a body corporate	Δ COURT USE ONLY Δ Case No.: 02CA2302 Appeal from the Denial of a Preliminary Injunction by the District Court for Boulder County, Division 2 Case No. 02CV1249 The Honorable Daniel C. Hale, Presiding
Ralph Ogden, #13623 WILCOX & OGDEN, P.C. 1750 Gilpin Street Denver, CO 80218 Phone Number: 303-399-5005 Fax Number: 303-399-5605 James C. Smittkamp, #10354 Peter J. Walters, #14348 SMITTKAMP & WALTERS, LLC 75 Manhattan Drive, Suite 106 Boulder, CO 80303 Phone Number: 303-494-4244 Fax Number: 303-494-3133 Peter G. Rush, #6201818 (IL), #6634-49 (IN) BELL, BOYD & LLOYD LLC 70 West Madison Street, Suite 3000 Chicago, IL 60602 Phone Number: 312-372-1121 Fax Number: 312-827-8005 Attorneys for Plaintiff-Appellant	

AFFIDAVIT OF TIM DWIGHT

174666/E/1

EXHIBIT 3

COMES NOW

I, Tim Dwight, being over the age of 18 and being duly sworn, state as follows:

1. I am a professional football player currently under contract with the San Diego Chargers. I have been a paid professional football player for six full seasons. I played college football as a student-athlete at the University of Iowa. Upon deciding to become a professional football player after the end of my college football season in 1997, I chose John Bechta to be my contract advisor. Mr. Bechta is the only contract advisor I have ever had with respect to professional football.

2. After I became a paid professional football player, I engaged in and was paid for a variety of promotional activities including, among other things, to sign autographs and autograph cards, endorse a car dealer in Atlanta, Georgia and to make appearances on behalf of various commercial entities and businesses. I was paid more than $14,000 for these promotions and endorsements prior to the Spring of 1999. The money I was paid for these endorsements and promotions was over and above the salary and signing bonus I had been paid by the Atlanta Falcons.

3. After I had been paid for these promotions and endorsements, I sought to return to the University of Iowa to compete as an amateur in the sport of track.

4. Initially, the National Collegiate Athletic Association ("NCAA") said I was no longer eligible to run track at Iowa as an amateur because I had been paid for engaging in promotions and endorsements after becoming a professional football player. The rule the NCAA cited in declaring me not eligible to compete in track at Iowa as an amateur was 12.5.2.1. With

the help of Mr. Bechta and an attorney, we sought to have me reinstated as eligible so that I could compete as an amateur in the sport of track.

5. In seeking to have me reinstated to be eligible to run track as an amateur, we argued to the NCAA that I should be eligible because the promotions and endorsements I had been paid for related to my professional sport of football, not my amateur sport of track.

6. On April 8, 1999, I learned that I had been reinstated and was eligible to run track for the University of Iowa as an amateur. With the exception some monies I earned for signing pictures in Iowa city, of me in a Iowa collegiate football uniform, neither I nor anyone else on my behalf ever repaid, or returned any of the endorsement or promotional money that I had been paid prior to running track at Iowa in the Spring of 1999.

7. I have seen a facsimile letter Mr. Bechta received on April 8, 1999 which included an NCAA database printout. According to that printout, the rationale offer by the Staff of NCAA for reinstating me to be an eligible amateur to run track was as follows:

> The staff informed the institution that it would not require repayment inasmuch as the SA's [student-athlete's] promotional activities related solely to his football participation.

Attached hereto as Exhibit A is a true and correct copy of the NCAA letter and database printout that I saw on or about April 8, 1999

8. After April 8, 1999, I competed in several NCAA events as an amateur track athlete for the University of Iowa during the Spring semester of 1999. To this day, neither I nor anyone on my behalf has ever returned one penny of the remuneration I was paid by the sponsors for my endorsements and other promotional activities before I competed as an amateur on Iowa's track team in the Spring of 1999.

9. No one required me to give up any of my promotional or endorsement opportunities in order to run track for the University of Iowa as an amateur during the Spring of 1999. After January 1, 1999, and throughout the Spring of 1999, I continued to drive the complimentary automobile provided to me by the automobile dealership in Atlanta that I was endorsing. Throughout that period, I also maintained other endorsement and promotional arrangements, including one with a radio station on which I periodically appear on the air for pay. During that time, I also made paid appearances on behalf of companies or organizations.

FURTHER AFFIANT SAYETH NAUGHT.

Tim Dwight

374666/E/1

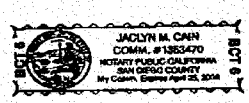
STATE OF CALIFORNIA }
} SS
COUNTY OF SAN DIEGO }

SUBSCRIBED AND SWORN to before me, a notary public, on this 3rd day of April, 2004, by Tim Dwight

Witness my hand and seal.

My Commission expires: 4.25.06

Notary Public



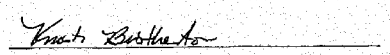
CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of April, 2004, a true and correct copy of the foregoing **PLAINTIFF'S SUPPLEMENTAL CITATION OF AUTHORITY** was served by facsimile transmission to:

Linda J. Salfrank, Esq.
Jonathan F. Duncan, Esq.
Spencer Fane Britt & Browne, LLP
1000 Walnut Street, #1400
Kansas City, MO 64106-2140
Fax No. 816-474-3216

Colin Harris, Esq.
Dennis J. Baarlaer, Esq.
Holme, Roberts and Owen, LLP
1801 13th Street, Suite 300
Boulder, CO 80302-5259
Fax No. 303-444-1063

JoAnne M. McDevitt, Esq.
Michael W. Schreiner, Esq.
David P. Temple, Esq.
Jeremy R. Hueth, Esq.
Office of University Counsel University of Colorado
1380 Lawrence Street, Suite 1325
Denver, CO 80204
Fax No. 303-825-7630



Bloom Loses Injunction Bid Against NCAA
By STEVEN K. PAULSON, Associated Press Writer
May 6, 2004, 14:08

Email this a
Printer friendly

DENVER - Colorado receiver Jeremy Bloom lost a bid for an injunction against the NCAA on Thursday, leaving the organization with the final say on whether he may play football while collecting endorsement money as a pro skier.

The Colorado Court of Appeals agreed with a lower court that Bloom failed to show he would probably win his case or that the NCAA was inconsistent in applying its rules.

"We recognize that, like many others involved in individual professional sports such as golf, tennis and boxing, professional skiers obtain much of their income from sponsors," the court said. "We note, however, that none of the NCAA's bylaws mentions, much less explicitly establishes, a right to receive 'customary income' for a sport."

The court added that "although student-athletes have the right to be professional athletes, they do not have the right to simultaneously engage in endorsement or paid media activity and maintain their eligibility to participate in amateur competition."

Bloom's attorney, Peter Rush, said the decision does not preclude a trial. He said previous NCAA rulings are inconsistent with its current stance in Bloom's case.

"It is still my intention to play college football," Bloom said in a statement. "It is the NCAA's responsibility to determine if I will be eligible for collegiate competition next fall."

Jeremy Bloom from USA is airborne during the Men's Moguls Freestyle Fis World Cup in Spindleruv Mlyn, Czech Republic, Sunday Feb. 2004. Bloom lost a bid for an injunction against NCAA on Thursday, May 6, 2004 leaving the organization with the final say on whether he ma play football while collecting endorsement mone a pro skier. (AP Photo / Petr David Josek)

The NCAA did not return calls, but the organization has said its rules clearly prohibit earning endorsement money, though athletes can earn a salary as a professional athlete in a different sp

"I believe I should have the right to be a professional in the sport of freestyle skiing, as well as amateur in the sport of football," Bloom said. "The NCAA needs to evaluate the growing numl of athletes competing in alternative sports such as the Summer X Games and the Olympics. It i hope that the NCAA will realize it is unfair to exclude all of us from college competition.

Rush has filed an affidavit from San Diego Chargers wide receiver Tim Dwight in support of Bloom. Dwight said the NCAA allowed him to run track at Iowa and keep money from endorsements he made while playing for the Atlanta Falcons.

The NCAA said the cases are different because Dwight stopped accepting endorsement money when an NCAA reinstatement process began.

School officials said they continue to support Bloom.

"We're disappointed for him, and hopefully something can still be done to keep his dreams of c both alive," interim coach Brian Cabral said.

Before enrolling at Colorado, Bloom competed in professional skiing, becoming a World Cup champion in freestyle moguls. He appeared on MTV, agreed to endorse ski equipment and he contracted to model clothing for Tommy Hilfiger.

The university, on Bloom's behalf, requested waivers of NCAA rules restricting student-athlete endorsement and media activities. The NCAA denied the school's requests, and Bloom droppe endorsement, modeling and media activities to play football for Colorado in 2002.

But he also filed a lawsuit and sought an injunction, claiming his endorsement activities were necessary to support his pro skiing career permitted by NCAA rules.

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Top of Page

STATE OF CALIFORNIA }

} SS

COUNTY OF SAN DIEGO }

AFFIDAVIT OF TIM DWIGHT

COMES NOW

I, Tim Dwight, being over the age of 18 and state as follows:

1. I am a professional football player. I played college football at the University of Iowa. Upon deciding to become a professional football player after the end of my college football career in 1997, I chose Jack Bechta to be my contract advisor.

2. After I became a paid professional football player and was paid several thousand dollars for promotions and/or endorsements, I sought reinstatement to participate as an amateur in the NCAA sport of track on behalf of the University of Iowa. I obtained that reinstatement and participated as an amateur in the sport of track in the Spring of 1999 on behalf of the University of Iowa.

3. At no time during the reinstatement process or thereafter did the NCAA inquire whether I had acted intentionally in accepting the monies for my promotional and/or endorsement activities. That issue was apparently irrelevant to the NCAA when it determined I should be reinstated as an amateur in track. Had the NCAA inquired into my intent, it would have learned that I acted intentionally in accepting monies for my promotional and/or endorsement activities, and that at the time I accepted such monies, I was fully aware and knowledgeable of the NCAA rules that bar student-athletes from accepting money for their promotional and/or endorsement activities.

Pursuant to 28 U.S.C. § 1746, I state under penalty of perjury that the foregoing is true and correct.

Executed on September 22, 2004.

Tim Dwight

Lawrence, JW

From: Rush, Peter [PRush@bellboyd.com]
Sent: Tuesday, September 21, 2004 5:35 PM
To: [redacted]
Cc: Jbuff2006@aol.com
Subject: Certain Trial Testimony

John -

At the trial, the NCAA's lawyer (Colin Harris) questioned an NCAA official (Steve Mallonee) after Mr. Mallonee was sworn. Mr. Mallonee first swore that he investigated "a waiver situation involving Tim Dwight." The NCAA then asked Mr. Mallonee the following questions and he gave the following answers:

Q: You were investigating that situation for what reason?

A: To see how he [Dwight] regained his eligibility in order to run track after playing professional football.

Q: He had to give up his endorsements, is that correct?

A: Yes it is.

Page 75, August 13, 2002..

Later, when I questioned Mr. Mallonee, it went like this:

Q: And didn't you testify in your deposition you weren't sure whether they [the NCAA] made him pay back all of his endorsement money?

A: There was one question left unanswered. I didn't know one way or the other.

Page 80, August 13, 2002.

Neither Mallonee nor the NCAA told the Court (much less Jeremy) that the NCAA explicitly ruled in writing that

"the [NCAA] Staff informed the institution that it would not require repayment inasmuch as the SA's promotional activities related solely to his football participation."

It defies common sense to claim the NCAA "investigated" the Tim Dwight case but never discovered what it ruled.

I will fax you those transcript pages.

Peter G. Rush
Bell, Boyd & Lloyd LLC
70 West Madison Street
Suite 3000
Chicago, IL 60602-4207

Direct Phone: [redacted]
Direct Fax: [redacted]

24 athletic ability; correct?
25 A. Yes.

1 Q. If he allows himself to William Morris to be
2 presented as an Olympian and to capitalize financially
3 on his athletic ability, the cycle is of his own
4 making; is that correct?
5 A. If he permits that to be used in getting
6 jobs, yes.
7 Q. Did you ever have an opportunity to
8 investigate a waiver situation involving a Tim Dwight?
9 A. Yes.
10 Q. You were investigating that situation for
11 what reason?
12 A. To see how he regained his eligibility in
13 order to run track after playing professional
14 football.
15 Q. He had to give up his endorsements; is that
16 correct?
17 A. Yes, it is.
18 Q. Jeremy doesn't want to give up his
19 endorsements; is that correct?
20 A. No, he doesn't.
21 Q. With respect to the the Darnell Autry
22 situation, what exhibit was it that contained that
23 interpretation? Could you pull that out?
24 A. Maybe.
25 THE COURT: Why don't you give me Exhibit 4

5 WITNESS: Yes.
6 THE COURT: That Coke is working on you. Do
7 you need a break?
8 WITNESS: I'm all set. Thank you.
9 REDIRECT EXAMINATION
10 BY MR. RUSH:
11 Q. Did they ask Tim Dwight to give up his
12 salary?
13 A. No.
14 Q. Did they ask him to give up his signing
15 bonus?
16 A. No.
17 Q. Did they ask him to give up his trainers?
18 A. Not that I am aware of.
19 Q. Coaches?
20 A. No.
21 Q. His traveling expenses?
22 A. No.
23 Q. Do you think Tim Dwight was able to be a pro
24 after giving up his endorsement?
25 A. In professional football, probably, yeah.

1 Q. And didn't you testify in your deposition
2 that you weren't sure they made him pay back all of his
3 endorsement money; is that right?
4 A. There was one question left unanswered. I
5 didn't know one way or the other.
6 Q. You'll you read the entire deposition of
7 Conan Smith, I take it, in this investigation that the

P.O. Box 6222
Indianapolis, Indiana 46206
Telephone: 317/917-6222

Shipping/Overnight Address:
1802 Alonzo Watford Sr. Drive
Indianapolis, Indiana 46202

www.ncaa.org

September 22, 2004

The Honorable Steve Chabot
House of Representatives
Judiciary Subcommittee on the Constitution
2138 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Chabot:

As follow-up to the testimony before the Judiciary Subcommittee on the Constitution of the House of Representatives, the NCAA submits the attached documentation as clarification to the student-athlete reinstatement process and the case involving Jeremy Bloom. As mentioned during the testimony, the reinstatement process is completely separate of the NCAA enforcement process. The process provides an avenue for student-athletes who have violated NCAA regulations to have their eligibility reinstated.

In addition to the information regarding the reinstatement process and Jeremy, included within this information is a letter regarding the Hispanic Bowl.

Thank you for the opportunity to provide information regarding the NCAA.

Sincerely,

Kevin Lennon
Vice-President for Membership Services

KCL:snj

Enclosure

Jeremy Bloom Reinstatement Decision
Question and Answers

1. What is the NCAA, and who makes the decisions in these cases?

The NCAA is a private association comprised of approximately 1000 colleges and universities that together provide and administer standardized rules governing the conduct of intercollegiate athletics programs. It is an organization formed, organized and run by its member institutions. All NCAA bylaws have been adopted by the NCAA institutions. The national office staff conducts the daily business on behalf of its members; however, ultimately, the decisions and policies are vested in the committees that compose the governance structure.

2. What is the NCAA's position on endorsements?

Although one can clearly separate that a football student-athlete who is receiving a baseball salary from the New York Yankees is receiving the money from the Yankees for baseball, the line for accepting endorsement money is not as clear. This can be illustrated through the Jeremy Bloom case, in that, at least one of the companies that Jeremy entered into an agreement with noted that his appeal is as a two-sport athlete. Although Jeremy argued that endorsements are the customary salary for professional skiers, neither the NCAA membership nor the Colorado courts have accepted this position. While it is clear that endorsements result from–among other sources–an individual's athletics fame, endorsements constitute a stand-alone business unrelated to salary for performance and where no clear line of separation between sports exists.

Violations of NCAA amateurism legislation are among the most serious violations of NCAA legislation, in that, this is the principle that separates collegiate sports from professional athletics. The NCAA member institutions have both a long and recent history of supporting the bylaws that prohibit endorsements by current student-athletes. Within the last few years the NCAA Division I membership conducted a thoughtful and thorough review of its amateurism legislation. After careful consideration by the membership, the Division I membership determined that no significant changes should be made to NCAA amateurism legislation. Even the suggested changes that were defeated by the membership did not include activities as broad as Jeremy has requested, and the proposals did not include changes to endorsement legislation.

3. What kind of endorsements was Mr. Bloom receiving?

Jeremy had contractual agreements with Under Armor and Bolle for which he received compensation. In addition, he engaged in photo shoots with Abercrombie & Fitch and Equinox Gym for which he received compensation. Contrary to media reports, Jeremy did not confine his endorsement agreements to skiing equipment and, in fact, he was contracted to represent athletics and general apparel companies as well as a national fitness

chain. In addition, it has been reported that at least one of the companies Jeremy agreed to represent acknowledged that his appeal is as a two-sport athlete (college football and professional skiing).

4. What violations of NCAA bylaws occurred in the Bloom case?

Jeremy participated in endorsement activities subsequent to his enrollment at an NCAA institution. NCAA legislation clearly prohibits the acceptance of money for an individual's involvement in endorsement activities. While NCAA legislation allows for student-athletes who are professional in one sport to accept a salary from that sport, NCAA legislation does not allow student-athletes to accept any kind of endorsements.

In Jeremy's specific situation, he entered into two contractual agreements with two separate companies. In addition, Jeremy engaged in photo shoots with two other companies where he was paid for his involvement. In all instances, Jeremy knew that his actions would render him ineligible for collegiate football.

5. Why was Mr. Bloom's request for reinstatement denied?

Jeremy's case involved repeated and willful violations of NCAA legislation. Specifically, prior to engaging in the endorsement activities, Jeremy was explicitly told by the NCAA that such activities would render him ineligible to participate in football. In addition, Jeremy filed a lawsuit against the NCAA seeking injunctive relief. The trial court found that the NCAA has a right to pass legislation and create rules. The court indicated a support for the Association's interest in upholding the amateur status of intercollegiate athletics. Further, the court noted that it was not going to rewrite rules that were established by member institutions across the country by individuals who are experts in these areas and understand the pressures and issues facing intercollegiate athletics. This decision was upheld by a Colorado Court of Appeals. After four attempts to have the endorsement rule set aside for his individual pursuits, Jeremy made the decision to enter into endorsement contracts knowing that it would jeopardize his collegiate football eligibility.

In addition to the repeated willful violations, Jeremy's actions involved violations of NCAA amateurism legislation that are among the most serious. Inclusive in the principle of amateurism is the express and unambiguous prohibition of endorsements. Based on the serious nature of the violations and the knowing involvement in violations of NCAA rules, Jeremy's case is one of the few cases where the level of culpability of the student-athlete and the severity of the violation resulted in permanent ineligibility.

6. Who reviewed the Bloom case?

Three separate NCAA committees were involved in the Bloom case.

In 2002, the University of Colorado, Boulder sought interpretive assistance from the NCAA interpretation staff and the NCAA Division I Subcommittee on Legislative Review and Interpretations. The subcommittee determined that NCAA legislation did not permit endorsement money to be sport specific and, thus, engaging in endorsement activities would make the enrolled student-athlete ineligible in all sports.

Also in 2002, Colorado-Boulder filed two waivers with the NCAA Division I Administrative Review Subcommittee, a subcommittee of the NCAA Division I Management Council. In these waivers, Colorado-Boulder asked that the normal application of NCAA rules be set aside in Jeremy's situation. Both these waivers were denied.

Despite the clear answers, Jeremy engaged in varies endorsement activities during 2004. Colorado-Boulder declared Jeremy ineligible and sought his reinstatement. This request was filed with the student-athlete reinstatement staff and was appealed to the NCAA Division I Student-Athlete Reinstatement Committee. Jeremy's request for reinstatement was first denied by the staff and then denied on appeal by the committee.

7. What is the process for changing NCAA legislation?

An NCAA member institution has the ability to propose changes to NCAA legislation. In addition, the National Student-Athlete Advisory Committee (composed of student-athlete representatives from NCAA member conferences) has the ability to propose legislation. The proposed legislation is then reviewed by the membership through the committee structure. The Management Council (athletics administrators from varies campuses) and the NCAA Division I Board of Directors (presidents from varies campuses) then vote on the legislation to determine if it will be adopted. At no time during the waiver requests from Colorado-Boulder did any NCAA member institution seek to modify the Association's endorsement guidelines.

8. What percentage of reinstatement cases result in permanent ineligibility?

Of the cases processed by the student-athlete reinstatement staff and committee, 99 percent result in the student-athlete being reinstated. This reinstatement may include some condition. In only one percent of the cases processed is a student-athlete ruled permanently ineligible. The small percentage of cases that result in permanent ineligibility involve situations where the severity of the violations and the culpability of the student-athlete are so significant that

reinstatement is not warranted. Reinstatement can be viewed on a spectrum with inadvertent violations involving institutional error is at one end of the spectrum and blatant disregard for NCAA legislation at the other. In addition, amateurism violations are seen as some of the most significant violations of NCAA legislation.

Clarifications on Jeremy Bloom Allegations

1. Jeremy Bloom indicates that the only way a professional skier can make money is through endorsements. Further, he indicates that the US Ski Team pays no salary, but it does fund a fraction of an athlete's training expenses, including providing a uniform and in-season travel costs. All other equipment, training expenses, living expenses, insurance, food and travel is paid by the athlete.

   NCAA legislation allows for Mr. Bloom to receive funds from the US Ski Association to cover all his training expenses, travel, insurance, and room and board. Thus, Mr. Bloom had access to considerable financial resources to participate in both sports. As reported in the court case, Mr. Bloom was eligible for and received funds from the United States Ski and Snowboard Association (USSSA) for coaches, trainers, insurance, uniforms, equipment, lift tickets, food and transportation while a member of its "A" team. Mr. Bloom wished to have a private coach and trainer and thus was attempting to fund expenses beyond those provided by USSSA for its athletes. Note that in addition to training funds from USSSA, Mr. Bloom also was receiving an athletics grant-in-aid from the University of Colorado, Boulder.

2. Mr. Bloom indicates that it is customary for professional skiers to endorse ski equipment, resorts and other products to pay for their expenses.

   The NCAA allows student-athletes to be paid a salary in a sport in which they do not participate at the collegiate level. Mr. Bloom argued that endorsements are the customary salary for professional skiers; however, neither the NCAA membership nor the Colorado courts accepted that position. The Colorado court of appeals judge said, "The clear import of the bylaws is that, although student-athletes have the right to be professional athletes, they do not have the right to simultaneously engage in endorsement or paid media activity and maintain their eligibility to participate in amateur competition. And we may not disregard the clear meaning of the bylaws simply because they may disproportionately affect those who participated in individual professional sports."

   Thus, endorsements constitute a stand-alone business unrelated to salary for performance. Although the money a football student-athlete is receiving as salary for playing professional baseball is clearly for his participation in baseball, the money accepted for endorsements is not as clear. In fact, at least one of Mr. Bloom's endorsement companies has said that his appeal is as a two-sport athlete, not just a skier. In addition, Mr. Bloom did not confine his endorsement activities only to ski related activities and in fact had agreements or paid photo shoots with Equinox Gym, Abercrombie and Fitch, and Under Armor.

3. Mr. Bloom indicates that in part because of NCAA Bylaw 19.7 (prior to August 1, 2004, Bylaw 19.7 was codified as Bylaw 19.8), a district court judge denied his request for preliminary injunction.

   Although Bylaw 19.8 was a factor in the judge's decision, it was not the only or primary one used to determine if an injunction should be issued. The judge considered it in weighing the public interest to be served and the balance of equities between the parties. In denying Mr. Bloom's motion for reconsideration of his previous denial of an injunction, the judge said Mr. Bloom had failed to demonstrate how the court's findings were incorrect or not supported by the evidence. In addition, the judge said, "Further, Bylaw 19.8 serves a necessary purpose. If an institution or student athlete could obtain injunctive relief without any consequences for an improper injunction being granted, there would be no deterrent to those seeking an injunction. There is not a reasonable or rational way to set a bond in a case such as this. An outcome could be achieved through an injunction that would create a competitive imbalance. By preventing any sanction from being imposed in such a case the NCAA would be toothless. Although there may be less burdensome penalties than the possible penalties set forth in Bylaw 19.8, that bylaw was adopted by the 1,267 members of the NCAA. I cannot and will not substitute my judgment for the judgment of the NCAA and its member institutions."

   The judge said the NCAA has a right to pass legislation and create rules upholding the amateur status of intercollegiate athletics. Further, the court noted that it was not going to rewrite the rules of the NCAA that were written by its member institutions by individuals who were experts in these areas and who understand the pressures and issues facing intercollegiate athletics.

4. Mr. Bloom believed his collegiate football career was over. However, in days leading up to his hearing on appeal, he claims information was brought forward that until then only the NCAA, the University of Iowa, Tim Dwight and Mr. Dwight's representative had available to them.

   Previous decisions of the NCAA regarding amateurism rules are published on a Web site available to all NCAA institutions. Due to federal privacy laws, the information is not available to the public; however, all relevant information can be shared if the national office is contacted by a student-athlete who has a reinstatement request pending.

   When Colorado submitted Mr. Bloom's request for reinstatement, Mr. Dwight's case was included. Mr. Dwight's case was considered by the NCAA staff in its analysis of Colorado's request for reinstatement of Mr. Bloom and was considered in the NCAA Division I Student-Athlete Reinstatement Committee's deliberation of that request.

Mr. Dwight's information was not considered in Colorado's request for a waiver of the normal application of NCAA rules by the NCAA Division I Management Council Administrative Review Subcommittee. This is a different administrative process than requesting reinstatement relying on different principles, and, therefore, reinstatement precedent such as Mr. Dwight's is not relevant in such a review.

5. Mr. Bloom argues that Mr. Dwight's case was virtually identical to his request. In addition, he claims that the NCAA failed to mention or cite Mr. Dwight's case and when he requested information about the case he was provided false, misleading and deceptive facts.

   The facts as they were presented in Mr. Dwight's situation differed greatly from those regarding Mr. Bloom. Specifically, in Mr. Dwight's situation the school reported to the NCAA that in following his professional football aspirations Mr. Dwight inadvertently violated the endorsement regulations. The institution reported he had agreed to repay the money.

   In Mr. Bloom's written statement presented at this hearing, he argues that Mr. Dwight now claims he knowingly violated the rules and was allowed to continue acceptance of his endorsement monies. Based on the information provided, it is clear that Mr. Dwight and the institution either provided incorrect information in 1999 or incorrect information has now been provided. The NCAA is not in a position to determine which set of facts is correct; however, the decision made in 1999 was based on the information presented at that time, and those facts do not parallel those in Mr. Bloom's case.

   Finally, it should be noted that since 1999 when Mr. Dwight's case was reviewed, NCAA schools and colleges comprehensively reviewed its amateurism legislation. After much careful consideration, its members did not support any significant changes in that area. In fact, in the two years since Mr. Bloom brought attention to the endorsement rule, not a single proposal (among some 250 offered) was put forth by any NCAA college or university, including Colorado, to change the rule.

6. Bloom indicates that he was only allowed ten minutes to state his case to the Student-Athlete Reinstatement Committee and in his oral testimony he indicated this was his first opportunity to present his case to anybody.

   In both Administrative Review Subcommittee requests to waive the rules and requests to the Student-Athlete Reinstatement Committee to make ineligible student-athletes eligible to compete, student-athletes are permitted to submit written statements explaining why that should occur. During his reinstatement request a written statement was requested from Mr. Bloom. He provided two short statements. The first explained his need to accept endorsement money and the second explained his endorsements. Further, had Mr. Bloom

contacted the reinstatement staff, the staff would have been more then willing to discuss his case with him.

With regard to the accusation of only being allowed 10 minutes to speak, this is false. During a reinstatement appeal call a student-athlete is required to participate. While there is a 10-minute limit on opening statements for the staff, institution and student-athlete (each party has 10 minutes), following that there is an unlimited period for questions and answers. This discussion period constitutes the bulk of the call and is a period for all facts, arguments and mitigation to be discussed. The call does not proceed to closing arguments until each party is satisfied that all relevant information has been presented. Before they leave the call, each party has an additional five minutes for a closing statement (staff, institution and student-athlete). Mr. Bloom took full advantage of these opportunities to present his case.

7. Mr. Bloom noted in his statement that Colorado was of the understanding from the NCAA, that if Mr. Bloom agreed to suspend his endorsement contracts, while enrolled, he could be reinstated.

   Nobody from the NCAA staff ever indicated to Colorado that a suspension of endorsement contracts would result in Mr. Bloom being reinstated. In fact, even if Mr. Bloom had been reinstated, "suspending" his contracts would not have satisfied the conditions for eligibility. He would have had to void all his agreements with the companies and issue a cease and desist letter indicating that the endorsements could not continue to air.

LETTER AND COMPLAINT FROM FURNIER THOMAS LLP, SUBMITTED BY CHAIRMAN CHABOT

FURNIER THOMAS
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CINCINNATI, OHIO 45242
(513) 745-0400 • FAX (513) 792-6724

Rasheed A. Simmonds
rsimmonds@fandtlaw.com

September 22, 2004

VIA REGULAR MAIL AND ELECTRONIC MAIL DISTRIBUTION –

The Honorable Steve Chabot
129 Cannon House Office Building
Washington, DC 20515

The Honorable Steve King
1432 Longworth Office Building
Washington DC 20515

The Honorable William Jenkins
1207 Longworth Office Building
Washington, DC 20515

The Honorable Spencer Bachus
442 Cannon Building
Washington, DC 20515

The Honorable John Hostettler
1214 Longworth House Office Building
Washington, DC 20515

The Honorable Melissa Hart
1508 Longworth House Office Building
Washington, DC 20515

The Honorable Tom Feeney
323 Cannon House Office Building
Washington DC 20515

The Honorable J. Randy Forbes
307 Cannon House Office Building
Washington, DC 20515

The Honorable Jerrold Nadler
2334 Rayburn House Office Building
Washington, DC 20515

The Honorable John Conyers
2426 Rayburn Building
Washington, DC 20515

The Honorable Robert Scott
2464 Rayburn House Office Building
Washington, DC 20515

The Honorable Melvin Watt
2236 Rayburn House Office Building
Washington, DC 20515

The Honorable Adam Schiff
326 Cannon HOB
Washington DC 20515

Re: *Bassett v. NCAA, et al.*, United States District Court, Eastern District of Kentucky, Lexington Division, Case No. 04-425

Dear Chairman Chabot and Subcommittee Members:

We represent Claude Bassett, former football Recruiting Coordinator at the University of

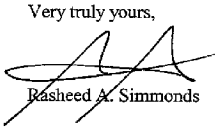
Kentucky (UK). On September 17, 2002, the National Collegiate Athletic Association (NCAA) imposed an 8-year ban prohibiting any of its members from hiring Coach Bassett. Enclosed please find the complaint we filed Friday on behalf of Mr. Bassett against the NCAA, the Southeastern Conference and UK. The allegations asserted therein flatly contradict recent testimony given to the House Subcommittee on the Constitution.

As we were drafting the complaint, we inadvertently learned that during a September 14, 2004 subcommittee hearing, the NCAA stated that its rules afford each targeted institution or individual certain due process protections. During the enforcement process against Coach Bassett, however, the NCAA Committee on Infractions clearly took the contrary position that these protections ***need not*** be afforded to targets during a member institution's investigation and self-reporting to the NCAA. According to the NCAA's own words. . .

> *In essence, Mr. Bassett contends that representatives of the University of Kentucky should be held to the same investigative standards as the NCAA enforcement staff.* ***The bylaws, however, do not require that*** ***

I write, as a concerned citizen, in an effort to ensure that the Subcommittee is not misled in its efforts. Should you need anything further, please feel free to contact me.

Very truly yours,



Rasheed A. Simmonds

Enc.

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
LEXINGTON DIVISION

Eastern District of Kentucky
FILED
SEP 17 2004
AT COVINGTON
LESLIE G WHITMER
CLERK U.S. DISTRICT COURT

CLAUDE L. BASSETT **13656 Teague Lane, #48** **Corpus Christi, Texas 78410**	:	**Case No.** 04-425
PLAINTIFF,	:	**Judge** Hood
V.	:	
THE NATIONAL COLLEGIATE ATHLETIC ASSOCIATION **700 W. Washington Street** **Indianapolis, Indiana 46206,**	:	**Complaint for Antitrust, Fraud, Civil Conspiracy and Tortious Interference With Prospective Contractual Relations With** **Jury Demand**
THE SOUTHEASTERN CONFERENCE **2201 Richard Arrington Boulevard North** **Birmingham, Alabama 35203,**	:	
And	:	
THE UNIVERSITY OF KENTUCKY ATHLETIC ASSOCIATION **University of Kentucky** Memorial Coliseum **Lexington, Kentucky 40506,**	:	
DEFENDANTS.	:	

I. THE PARTIES

1. Claude Bassett has been a football coach most of his adult life, primarily coaching college football. Today, he is the athletic director and head football coach for Robstown

High School in Robstown, Texas. Coach Bassett's college coaching career effectively ended on September 17, 2002, the day the National Collegiate Athletic Association (NCAA) imposed an 8-year ban prohibiting any of its members from hiring Coach Bassett. In the process, the NCAA, the Southeastern Conference (SEC) and the University of Kentucky (UK) branded him a liar and cheat, rendering the coach unemployable as a college coach even beyond the ban.

2. The National Collegiate Athletic Association, headquartered in Indianapolis, Indiana, is an unincorporated association of over 1,200 colleges and universities throughout America organized to govern intercollegiate athletics. Headquartered in Birmingham, Alabama, the Southeastern Conference is also an unincorporated association of colleges and universities, including the University of Kentucky, formed to promote intercollegiate athletics. The University of Kentucky Athletic Association (UKAA) is a non-profit corporation based in Lexington, Kentucky.

3. The UKAA serves as the athletic department for the University of Kentucky. Although the UKAA is not a part of the university itself, UK controls the association through its president and board of trustees. Specifically, the UKAA's articles of incorporation require that the UK president also serve as UKAA president and on its board of trustees, along with other UK officials, faculty and students. The University of Kentucky does not, however, own stock in the UKAA or fund its activities. In fact, the UKAA is totally self-supporting with no state tax dollars or university dollars to fund its activities.

II. JURISDICTION

4. This action arises under 28 U.S.C. §1331 (federal question jurisdiction), 15 U.S.C. §§1-2 (Sherman Antitrust Act), and 15 U.S.C. §15 (Clayton Act).

III. BACKGROUND

THE HYPOCRISY OF SEC FOOTBALL

5. One of the great ironies—or, more accurately, hypocrisies—of the campaign to foist all responsibility upon Claude Bassett for rules violations at the University of Kentucky is this exchange between Tony Franklin, former UK offensive coordinator, and Larry Ivy, former UK athletic director, as the two conspired to ruin Coach Bassett's college coaching career:

> *I told Ivy if Bassett . . . wanted to flagrantly cheat to get players it was their business. Ivy responded, "Sometimes you've got to cheat to get a good player." I told Ivy I would not be a part of that, but they could cheat all they wanted.*

6. As part of a plan to preserve his position on the UK coaching staff, Franklin gathered evidence of NCAA violations to supply to Ivy. The athletic director had asked Franklin, "*I want that fat !@#$ [referring to Coach Bassett]. Do you have anything at all that I can use?*" Neither Franklin nor Ivy wanted to clean up UK football. Both had long been aware of, and indifferent to, rules violations in the football program.

7. The University of Kentucky hired Claude Bassett to recruit talented players to revive its football program. But early in his tenure, Coach Bassett learned that his employer not only knew about NCAA rules violations, but also took a "win at all cost" attitude that encouraged these violations. Worse, he quickly understood that, as recruiting

coordinator, he was supposed to carry on this tradition while shielding his employer with "plausible deniability."

8. This indifference toward rules violations was not unique to the University of Kentucky. Coach Bassett discovered that violations were the rule, not the exception, for SEC schools pursuing the best players. The driving force behind the competition for players was not simply victories, but the money that victories could generate.

9. In its 2002-2003 fiscal year, the SEC distributed $101.9 million to its twelve member schools through revenue sharing plans, the most in SEC history. SEC schools generated this money from television, bowls, and SEC and NCAA championships—including $41.4 million alone for televising SEC football. Even though the game is played the same way in every large or small college football program across the country—11 young men on both sides of the ball playing to win—SEC football is big business.

10. The NCAA understands that college football has become one of the most popular forms of entertainment in America—touting the virtues of amateurism on the one hand, and grabbing for dollars with the other. By marketing its major college sports as entertainment, the NCAA likewise understands that as the competition among schools for that money grows, the competition among schools for talented athletes will grow too. The formula is simple: football programs that win games also win the most money.

11. Consequently, the incentive to win within athletic departments like the UKAA is great because the economic pressures are great. The UK athletics budget for fiscal year 2004 is $48 million. This UKAA budget and those of other SEC schools far exceed the

budgets of the vast majority of 1200 NCAA member schools providing the same athletic opportunities for their students beyond the national spotlight.

12. The vast majority of major NCAA institutions have athletic departments that are separately run from the rest of the university departments. The Kentucky University Athletic Association is typical of athletic departments at other major universities. A non-profit corporation, the KUAA earns its own revenue, sets its own budget, hires its own employees—including coaches like Claude Bassett—and controls player recruiting. Coach Bassett was not a University of Kentucky or NCAA employee; he was a UKAA employee hired to recruit players according to wishes and guidelines—express and implied—of his employer.

13. Claude Bassett is among the most hated men in Lexington for doing precisely what his employer and UK football fans expected him to do: recruit some the best football players that UK had ever signed. Contrary to popular belief, though, he did not solicit large cash payoffs from boosters to players—as the UK football program had done in the past and other SEC schools did before and after his banishment from college football. He and his fellow UK coaches worked countless hours scouring the country for talent and wooing that talent to UK.

14. The University of Alabama was sanctioned at the same time as the University of Kentucky for recruiting violations, including allegations of paying for players. The Alabama charges involved hundreds of thousands of dollars of illicit inducements. The allegations against Coach Bassett involved less than $7,000. Though Alabama coaches were reprimanded, Coach Bassett received one of the longest, if not the longest, bans in NCAA history.

15. Most of the improper inducements arose from hotel incidentals (several recruits' telephone calls, pay-per-view movies, room service), UK apparel, meals during unofficial visits and other "payments" that no prize recruit would ever view as an inducement to play football at the University of Kentucky. On those rare occasions when Coach Bassett helped a player with money, he used only his own funds, not those of the UKAA or a booster. In fact, the players he helped had already committed to UK and simply needed the kind of help quite common among all students. For instance, one student needed help to pay for a tutor, while another needed an application fee for graduate school.

16. SEC football players are big-time entertainers and moneymakers. They entertain the fans, and generate money for the university. Most UK fans, many of whom never attended the university, view NCAA violations as crimes, with themselves as victims because UK's football team will be unable to recruit the best players shackled with NCAA sanctions. The UK administration publicly characterizes the NCAA scandal as a threat to the amateur ideals underlying the student-athlete myth, while scrambling to replace the lost revenue caused by the NCAA sanctions.

17. Coach Bassett was never able to defend himself against this hypocrisy because he was denied due process.

DUE PROCESS AND THE NCAA

18. On September 14, 2004, the U.S. House Judiciary Committee's Subcommittee on the Constitution held an oversight hearing on "Due Process and the NCAA." According to the subcommittee chair, Representative Steve Chabot, the hearing was "about fairness—particularly the fairness the NCAA displays in enforcing its rules. Merited or not, the NCAA has at least the perception of a fairness problem." The subcommittee was

concerned that the NCAA had inadequate due process protections for anyone punished through its enforcement process.

19. At the hearing, the NCAA argued against any Congressional legislation that could change the enforcement process. Specificially, its representative proclaimed that the NCAA enforcement process "*exceeds what procedural due process requires*." This testimony, though, was patently false.

20. The NCAA told the Subcommittee on the Constitution that its rules afford each targeted institution or individual these protections:

> *(a) notice of the allegations; (b) a list of particulars regarding each allegation that includes the names of individuals providing information and a summary of the information on which the allegation is based; (c) an opportunity pre-hearing to discuss the substance of the allegations and to present information leading to the enforcement's staff's amendment or withdrawal of allegations; (d) access to all information relevant to an allegation; (e) an opportunity, and sufficient time, to provide exculpatory or explanatory information and a written response to the allegations; (f) a requirement that information provided to the Committee on Infractions must come from sources identified to the Committee on Infractions and to the institution and any individuals appearing before the Committee on Infractions; (g) representation by counsel at the hearing; (h) a full opportunity at the hearing to present one's case; (i) an independent fact-finder; (j) fact-finding based only on that information made part of the hearing record; (k) a finding of violation requiring a high burden of proof; (l) a written report by the Committee on Infractions that sets forth the grounds for its decision; and (m) the opportunity to appeal adverse findings or penalties to the Infractions Appeals Committee."*

21. The NCAA's constitution and bylaws do, in fact, acknowledge the importance of due process to ensure the fairness of enforcement proceedings. But during the enforcement process against Coach Bassett, the NCAA Committee on Infractions clearly took the position that these protections need ***not*** be afforded to targets during a member institution's investigation and self-reporting to the NCAA. The Infractions Committee rejected Coach Bassett's claim that UK had to afford him the due process protections that

the NCAA recently told the House Congressional Subcommittee on the Constitution was extended to every investigation target:

> *In essence, Mr. Bassett contends that representatives of the University of Kentucky should be held to the same investigative standards as the NCAA enforcement staff.* ***The bylaws, however, do not require that*** * * *

22. Member institutions generate the bulk of the evidence used at infractions hearings. Because of its small enforcement staff, the NCAA expects its member institutions to uncover and investigate most infractions because, as the NCAA emphasized during the oversight hearing, the primary responsibility for rules enforcement rests with each member institution:

> *First and foremost among the responsibilities imposed by all member institutions on each member institution is that of institutional control of its athletics program to assure rules compliance, academic integrity, student-athlete well-being, and the promotion of the highest level of sportsmanship and ethical conduct. Institutional control, as adopted by the membership, locates the primary responsibility for rules compliance squarely on each institution and requires each institution both to self-police and to self-report when potential violations are uncovered.*

23. The NCAA offers incentives to member institutions that vigorously prosecute rules violators. Indeed, the University of Kentucky investigated Coach Bassett for three months before self-reporting to the NCAA rules violations in UK's football program on February 28, 2001 in its "Self Disclosure of Internal Investigation." With the aid of a retired FBI agent from the SEC, UK officials spent countless hours interviewing more than 120 witnesses leading up to its report and dozens more witnesses before the NCAA Division I Committee on Infractions hearing on November 16-18, 2001.

24. The NCAA banned Coach Bassett from coaching on January 30, 2002 for eight years. Throughout the initial hearing and appeal, Coach Bassett's due process pleas fell on deaf ears.

THE UK INVESTIGATION AND THE ABSENCE OF DUE PROCESS

Coach Bassett's November 19th Resignation

25. UK's Athletic Director, Larry Ivy, first confronted Coach Bassett with allegations of impropriety on November 19, 2000, the day after the UK's football season ended. As a UKAA employee, Coach Bassett was entitled to the due process protections of any athletics department employee subject to disciplinary action. But after the Athletic Director struck a deal with Coach Bassett to obtain his resignation, the coach lost these protections.

26. Coach Bassett resigned for one reason and one reason only: he was led to believe that his resignation would end any further inquiry into his conduct, avoiding the scandal that ultimately ensued. That day, he was called into a meeting with Ivy and Head Coach Hal Mumme. Unaware of any university concern over his recruiting activities, Coach Bassett was shocked to learn that "*anonymous*" sources had provided information to Ivy about NCAA rules violations and other misconduct.

27. At the end of the meeting, the Athletic Director gave Coach Bassett a choice: (a) resign and, in exchange, no further action would be taken on these allegations or (b) face an investigation, potential criminal prosecution and sure dismissal. Coach Bassett resigned, believing that his resignation would spare himself, his family and the university community the controversy that would inevitably follow any battle over these allegations. Coach Bassett left the meeting to draft his resignation and clean out his office desk.

28. One desk drawer—where Coach Bassett kept personal papers, including his passport—was already empty. He knew that the theft of his documents was recent, because within the past week he had been reading a document from that drawer. More

importantly, some of the missing documents had been used to force his resignation earlier that day.

The Sources of the Documents Offered Against Coach Bassett

29. Coach Bassett has since learned that Larry Ivy obtained the documents through a disgruntled former UK assistant coach, Tony Franklin. Though aware of NCAA rules violations for over two years, and guilty of some himself, Franklin remained silent about them until he wanted to seek revenge against Coach Bassett and Head Coach Mumme fired. Several weeks earlier, Coach Mumme had informed Franklin that his contract would not be renewed because of insubordination. Franklin blamed his problems on Coach Bassett and Coach Mumme.

30. Franklin had two meetings with Ivy in the weeks before Coach Bassett was forced to resign. At the first meeting, Franklin told the AD that Coach Bassett had been cheating and provided details of alleged improprieties to the AD. The following week, the AD allegedly called Coach Franklin, saying, "*I want that fat !@#$ [referring to Coach Bassett]. Do you have anything at all that I can use? He is going to !@#$ up this whole program if I don't get rid of him now.*"

31. Franklin went to Ivy's house for another meeting to provide the AD with documents. Franklin had encouraged Coach Bassett's chief assistant, Sandy Wiese, to keep records for the past two years that allegedly reflected recruiting infractions, some of which she later admitted during the UK investigation that she herself committed. In the days following his second meeting with Larry Ivy, Franklin arranged to have Ms. Wiese turn over these documents to the AD after extracting a promise from Larry Ivy that Ms. Wiese would not be fired.

32. If Coach Franklin is to be believed, Larry Ivy convened the meeting with Coach Bassett knowing full well that the sources of the allegations against Coach Bassett were a disgruntled coach and a disloyal assistant, both of whom had remained silent ***for over two years*** about Coach Bassett's alleged misconduct. As members of the football program, they were obligated to immediately report any improprieties to the University's NCAA compliance office. Instead, Coach Franklin chose to wait until disclosure suited his personal ends and—with Coach Franklin having triggered an investigation—Coach Bassett's assistant came forward only when her own actions would come into question when her involvement in an investigation was unavoidable.

33. The questionable motives of Coach Bassett's accusers, the dubious history of the key documents offered against him, and Coach Bassett's explanation of his actions were not enough to ensure that the allegations against Coach Bassett would be considered in a proper forum with appropriate due process protections. Rather than question the veracity of these allegations, the AD acted on the allegations without involving UK's Compliance Office, Human Resource Department, or the Office of the President. AD Ivy elected to adjudge Coach Bassett in a brief meeting that led to his forced resignation.

The Aftermath of Coach Bassett's Resignation

34. Coach Bassett would never have resigned if he had known that the university would initiate an NCAA inquiry contrary to the AD's earlier assurances to the coach. Thus, UK's investigation was tainted from its inception.

35. The day following Coach Bassett's resignation, November 20th, the university announced to the press that he, along with several other assistants, had been fired. That day, as UK details in its self-disclosure, the university decided to investigate its football

program and contacted the NCAA and the SEC about its decision. Meanwhile, through counsel, Coach Bassett contacted the UK Compliance Officer, Sandy Bell, to arrange a meeting between Coach Bassett and UK officials to discuss the allegations against him.

36. The request was declined, as the compliance officer indicated that a meeting was not possible for the time being. Coach Bassett was not interviewed until January 4-5, 2001, *over six weeks* into the UK investigation. In its self-disclosure report, the university explains the delay this way: "*We did not interview Coach Bassett until January 5, 2001, when we felt we had sufficient proof of numerous recruiting violations to encourage his cooperation with the investigation.*" In short, the university decided to fully investigate the allegations before informing Coach Basset about the nature of the allegations against him and before giving him the opportunity to address them.

37. NCAA Bylaw 19.5 provides for notice to any member (and, presumably, to any involved individual) of specific charges and of the facts upon which these charges are based, along with the right to answer the charges. The NCAA Bylaws in Articles 19 and 32 provide a timely process to allow any affected individual to be provided notice of any charges, to review the evidence supporting those charges and to prepare a thoughtful response to them. Consistent with these bylaws, Coach Bassett requested that the university provide him with notice of the allegations against him prior to meeting with UK representatives

38. UK, however, declined to supply specific information about the allegations or any documents supporting them. Thus, on the day these charges were first presented to him, Coach Bassett was expected to respond on the spot to evidence that the university's

investigative team—which included an investigator, a former FBI agent, on loan from the SEC—had spent six weeks gathering.

Coach Bassett's Taped Interview

39. Coach Bassett went to the meeting expecting an informal exchange of information between himself and university representatives. Prior to the meeting, he was told that the compliance officer and other "interested" individuals would attend. The coach was taken aback when he learned that SEC Commissioner Roy Kramer was present and that a retired FBI agent, SEC investigator Bill Seviers, would primarily conduct the interview.

40. Coach Bassett was asked to consent to having his interview tape-recorded. After being assured that he would be provided a copy of the tape, Coach Bassett agreed that his interview could be recorded. In the hours that followed, Coach Bassett felt ambushed, as the interview was conducted more like a police (or, more specifically, FBI) interrogation than a meeting between a college coach and his former employer to discuss allegations regarding the recruiting of student athletes.

41. At the end of the first day, the interrogators were dissatisfied with Coach Bassett's response to their questioning. He was then told that, under NCAA rules, he had a 24-hour window to reconsider his responses and submit to another interview to correct any discrepancies. More importantly, he was led to believe that any prior inconsistencies in his testimony would not be part of the record submitted to the NCAA.

42. The next day, Coach Bassett returned to correct his prior testimony, again allowing his interview to be tape-recorded. Contrary to the "*24-hour*" rule, the UK's self-disclosure report highlights the discrepancies between the coach's testimony on the first and second days of his interview and, worse yet, mischaracterizes his response to a key

allegation against him pertaining to $1,400 in money orders sent to a high school coach to pay his assistant coaches for working at a UK football summer camp.

43. The report suggests that Coach Bassett admitted to sending the money orders to the high school coach to influence the coach to steer talented players to the UK football program. Coach Bassett *never* admitted to sending the money for this purpose. Recognizing, however, that the tape of his interview is the best evidence of Coach Bassett's testimony, the coach asked both UK and the SEC for a copy of the tape. The UK/SEC investigative team, however, would renege on its agreement to provide the coach with a copy of the tape.

Coach Bassett's Efforts To Obtain The Tape of His Interview

44. When requested to supply the tape, UK's compliance officer disputed that the coach was ever promised a copy of the tape. More troubling, she claimed that the university never received a copy of it anyway. Instead, Ms. Bell said that the SEC had the tape in its possession.

45. UK's report indicates that the SEC, through its Commissioner and its investigator, jointly conducted the investigation underlying the university's self-disclosure to the NCAA. Yet, in response to Coach Bassett's request for the tape, the UK compliance officer indicated that *all* tape recordings of witnesses were solely in the SEC's possession. This was a deliberate attempt to circumvent Kentucky's Open Records Act.

46. The university relied upon the SEC's involvement, a non-public agency not subject to any open records laws, to shield key evidence from the coach: *copies of taped interviews of witnesses, including himself.* By depositing any tapes with the SEC, Coach Bassett has not had access to the testimony of his accusers. Perhaps more importantly,

Coach Bassett could not offer his own words, captured on tape, to support his account of what he and others said during his interview.

47. The SEC also refused Coach Bassett's request for a copy of the tape. The tape would only be made available, however, at a law firm in Lexington, Kentucky, over 100 miles from this office. Coach Bassett had limited resources to pay for counsel. Thus, paying to send an attorney to Lexington prior to the NCAA infractions hearing to listen to a tape of testimony the coach already clearly recalls was a luxury he could not afford. More to the point, without the actual recording, any interpretation offered by Coach Bassett would be given no more weight than his prior recollection of his testimony.

48. NCAA Bylaw 32.3.8 requires that all tapes of interviews be made available to the interviewee at minimal cost. Similarly, Bylaw 32.3.9 permits individuals who have provided information to enforcement staff to be allowed the opportunity to review the information and make additions and corrections. Finally, Bylaw 32.5.4 requires that all individuals accused of violations be granted "*reasonable access to all pertinent evidentiary materials, including tape recordings of interviews and documents, upon which the inquiry is based.*" During UK's investigation, Coach Bassett enjoyed none of the protections inherent in these rules, which are clearly designed to permit an accused person to review the evidence offered against him and, thus, offer his own interpretation as to its significance or veracity.

49. Worse yet, the university apparently thwarted the coach's independent investigation of the allegations against him. With his limited financial resources, Coach Bassett could not hire investigators or his counsel to interview witnesses. Instead, Coach

Bassett attempted to contact many of the witnesses to speak to them about their testimony.

50. The taped interviews of several university employees interviewed by the NCAA enforcement staff, summaries of which were made available to the coach's counsel, suggest that university officials discouraged employees and student athletes from talking with Coach Bassett, implying that the coach was trying to alter their testimony. This may well explain why so many of Coach Bassett's former friends and colleagues have broken off all contact with him, perhaps afraid of retribution from the NCAA, SEC and UKAA.

51. With meager financial resources and the vast resources of the NCAA, SEC and UKAA against him, Coach Bassett's only hope for a fair hearing was due process, due process wrongfully denied him by three institutions whose mission is to promote integrity and fair play in intercollegiate sports.

IV. THE CLAIMS

COUNT ONE
ANTITRUST AND CLASS ACTION
(Against the NCAA, SEC and UKAA)

52. The NCAA, SEC and the UKAA conspired to prevent Coach Bassett from coaching at any of the NCAA's over 1200 member schools. This conspiracy violates the Sherman Antitrust Act (15 U.S.C. §§1-2) and the Clayton Act (15 U.S.C. §15) as an unlawful group boycott of Coach Bassett. In banning Coach Bassett from coaching, these defendants violated the letter and spirit of the NCAA rules designed to afford Coach Bassett due process in defending himself against the rules violations that led to the ban.

53. Coach Bassett also brings this antitrust claim on behalf of all others similarly situated under Federal Rule of Civil Procedure Rule 23. The proposed class is so numerous that joining all its members is impracticable. Questions of law and fact are common to the members of the plaintiff class and Coach Bassett's claim is typical of the claims of the other members of the class. Being similarly situated, Coach Bassett will fairly and adequately protect the interests of the class and has no interest that is now or may be potentially antagonistic to the interests of the class.

54. Coach Bassett represents a class of present and past college coaches that the NCAA has investigated or punished for rules violations since 1992 when the NCAA adopted due process protections for those accused of rules violations. The United States Supreme Court ruled in 1988 that the NCAA is not a state actor and therefore not bound by due process standards under the U.S. Constitution. Nonetheless, responding to legislation enacted by several states to require due process, the Association amended its bylaws in 1992 to extend due process protections to those accused of rules violations.

55. Member institutions, however, initiate most investigations into rules violations and gather the bulk of the evidence used against coaches prosecuted through the NCAA's enforcement program. Unfortunately, the NCAA does not require its members to adhere to the association's own due process standards. Consequently, coaches prosecuted for rules violations do not enjoy those protections that the NCAA has deemed critical to a fair and impartial enforcement proceeding. Thus, these coaches have been unfairly investigated or sanctioned through the NCAA enforcement process.

COUNT TWO
FRAUD AND CIVIL CONSPIRACY
(Against the NCAA, SEC and UKAA)

56. During the enforcement process against Coach Bassett, UKAA and SEC employees lied to the coach to encourage him to take actions depriving himself of the due process guaranteed under his employment contract with the UKAA and NCAA rules. Despite knowing that the evidence against the coach was tainted, the NCAA relied upon this evidence to ban Coach Bassett from college coaching.

57. Even after the 8-year ban is lifted, the Coach will likely be unable to rejoin the college coaching ranks because of his time away from the profession and the irreparable damage to his reputation.

COUNT THREE
TORTIOUS INTERFERENCE
WITH PROSPECTIVE CONTRACTUAL RELATIONS
(Against the NCAA)

58. The NCAA has intentionally and improperly interfered with Coach Bassett's prospective contractual relations with its member institutions as a football coach or recruiting coordinator by forbidding its members to hire him. Applying to any NCAA member institution for employment would be useless for Coach Bassett because of the economic pressure that the association has placed on its members. Any member hiring the coach could be sanctioned, including losing its NCAA membership and the considerable financial benefits flowing from it.

59. The NCAA's ban against Coach Bassett violates its constitution and bylaws, which constitute a contract between the NCAA and its membership. The NCAA has agreed to only prohibit its members from hiring Coach Bassett and other coaches like him after affording them due process. This way, member institutions can comply with the ban knowing that it was arrived at fairly and impartially.

60. By rejecting Coach Bassett's pleas for due process, the NCAA breached its contract with its member institutions now prohibited from hiring the coach. Worse, these institutions believe that the charges against Coach Bassett and the punishment were fair. Far from fair, the accusations and ban were based upon evidence gathered through deceit and never tested through due process. Yet, the damage to Coach Bassett's reputation will discourage any NCAA institution from hiring him long after the ban is lifted.

COUNT FOUR
OTHER CLAIMS
(Against the NCAA, SEC and UKAA)

61. Rule 8 of the Federal Rules of Civil Procedure do not require a plaintiff to specify in his complaint every cause of action against a defendant that may arise from the facts alleged in the complaint. The rule only requires that the plaintiff allege facts that support any cause of action against the defendant. Coach Bassett intends to pursue all claims arising from the allegations of this complaint even if he has not labeled or identified every cause of action.

V. PRAYER FOR RELIEF

WHEREFORE, Claude E. Bassett asks that this court:

(a) Grant compensatory and punitive damages to Coach Bassett and to other class members in excess of $50 million dollars as damages against the NCAA, SEC and UKAA, tripling these damages if the court finds an antitrust violation under the Sherman Antitrust Act and the Clayton Act;

(b) Award Coach Bassett his attorney fees and litigation costs; and

(c) Order such other relief as the court deems just.

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JURY DEMAND

Plaintiff Claude L. Bassett requests a trial by jury as to all claims.

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