

[NOTE: FINDINGS OF VIOLATIONS AND PENALTIES UPHELD ON APPEAL. FULL TEXT OF THE INFRACTIONS APPEALS COMMITTEE DECISION FOLLOWS THE COMMITTEE ON INFRACTIONS REPORT.]

FOR RELEASE: Thursday, November 17, 1994, 1:30 p.m. (Central time)

CONTACT: David Swank, Chair, NCAA Committee on Infractions

University of Oklahoma

UNIVERSITY OF MISSISSIPPI

PUBLIC INFRACTIONS REPORT

OVERLAND PARK, KANSAS---This report is organized as follows:

- I. Introduction.
- II. Specific findings of violations of NCAA legislation.
- III. Committee on Infractions penalties.

I. INTRODUCTION.

This case involved the football program at the University of Mississippi and concerned very significant violations of NCAA bylaws governing recruiting, improper inducements, extra benefits, ethical conduct and institutional control.

The University of Mississippi is a Division I-A institution and a member of the Southeastern Conference. The university is located in Oxford, Mississippi. It has an enrollment of approximately 10,000 students and sponsors eight men's and seven women's intercollegiate sports.

In December 1986, less than six years before the present violations occurred, as a result of numerous violations of NCAA legislation by those involved in the football program, the NCAA Committee on Infractions initially placed the University of Mississippi on probation for two years, prohibited the football team from participating in postseason competition and television appearances for two years, significantly reduced initial grants-in-aid in football and imposed other penalties. However, because of the cooperation of the university administration, the penalties on postseason competition and television appearances were reduced by the committee to only one year. [Page 2]

Many of the violations in the present case were similar to the violations that occurred in the 1986 case. The violations again concerned the improper involvement of representatives of the institution's athletics interests in recruiting. At the time of the prior violations, representatives could engage in some recruiting activities, but several representatives made impermissible

recruiting contacts and provided prospective student-athletes with inducements, including clothing, improper transportation and offers of financial assistance. Under current rules, which were in effect at the time of the violations in this case, representatives cannot engage in the recruiting process and can have only limited incidental contact with prospective student-athletes. However, the representatives of the university's athletics interest had repeated contact with the prospective student-athletes, with either the implicit or explicit approval of the football coaching staff, and, as in the 1986 case, provided various inducements including clothing, entertainment, lodging, improper transportation and the offer of a gift of an automobile.

The Committee on Infractions was particularly troubled by these violations because of the very similar nature of the violations in both cases. Aggravating the similarity between the earlier violations and the violations before the committee in this case is that the administration of the university's intercollegiate athletics program did not change substantially before or after the 1986 infractions case. Because the chancellor, the director of athletics and the head football coach were all in the same positions in 1986, that case should have provided a clear message to the university administration of the areas within the athletics department and, in particular in the football program, that needed increased vigilance and a close monitoring of compliance with NCAA rules. Given the current violations of the same type, in the same program, under the same head football coach and athletics department administration, it is clear that the University of Mississippi did not heed these warnings. Instead, it seemed the university continued, at least within the football program, an attitude of business as usual.

In recent years, when universities charged with violations cooperated fully with the enforcement process and took significant steps to correct the circumstances that led to the infractions case, the Committee on Infractions has reduced or mitigated the penalties that it would have otherwise imposed. Prior to the changes in NCAA rules in January 1994, cooperation in the investigation was often considered one of the unique circumstances that lead to a reduction of the otherwise mandatory penalties.

In 1986, the University of Mississippi cooperated in the investigation of the infractions case, and as a result, the penalties imposed on postseason competition and television were reduced by one year. In the present case, although the university's cooperation in the investigation was complete and commendable once the violation of rules was discovered, it should be noted that it is an obligation of membership in the NCAA to cooperate in the investigation of the violations of the constitution and bylaws of the association. [Page 3]

In this case the committee gave careful consideration to whether the penalties to be imposed should be reduced as a result of the university's cooperation in the investigation. Because these violations were very serious, involved the same program as the 1986 infractions case, and were very similar in nature to those in the previous case, and because of the apparent failure of the university to create an atmosphere for and an attitude of compliance with NCAA rules within the football program, the Committee on Infractions did not reduce or mitigate its penalties.

What was particularly unfortunate about this case was the active involvement of representatives of the university's athletics interest in the various violations. These representatives, who purported to be friends and supporters of the athletics program, became the engine of destruction

of the very program they wanted to help. In this case the actions of the representatives were encouraged by some members of the football staff, which made the violations even more serious than they otherwise would have been. In today's world of athletics, it is the responsibility of all elements of a college or university, from the regents or trustees through the president or chancellor to the coaches and athletics department staff, to make certain that not only are the university staff members and student-athletes educated on NCAA rules but that the friends and supporters of the athletics program are also educated so they do not harm the program they wish to assist.

A. CASE CHRONOLOGY.

On December 8, 1992, the NCAA enforcement staff received information from an individual concerning possible violations of NCAA rules within the football program at the University of Mississippi. As a result of that information, in early 1993 and continuing through the remainder of the year, the NCAA enforcement staff conducted interviews with current and former university staff members, university student-athletes, student-athletes enrolled at other NCAA member institutions who had been recruited by the University of Mississippi from either high school or junior college, and other individuals who purportedly had knowledge of potential violations of NCAA legislation in the university's football program.

The Southeastern Conference office also received information concerning alleged violations of NCAA rules in the university's football program and also conducted an inquiry. In May 1993, conference officials provided the NCAA enforcement staff and university representatives with the information they had received and had developed regarding the alleged violations of NCAA rules at the university.

The NCAA enforcement staff continued to conduct interviews throughout the remainder of 1993 and into 1994. Some of these interviews were conducted in conjunction with the institution. On December 2, 1993, the assistant executive director for enforcement and eligibility appeals sent a letter of preliminary inquiry to the university's chancellor. On March 28 and 29, 1994, members of [Page 4] the enforcement staff conducted interviews on the university's campus with athletics department staff members and football student-athletes regarding the potential violations of NCAA legislation at the university.

On May 17, 1994, the enforcement staff sent a letter of official inquiry to the university's chancellor. On May 20, 1994, the enforcement staff sent letters to the former football recruiting coordinator, a former assistant football coach, and a representative of the university's athletics interests who had been a graduate student at the institution notifying them of their alleged involvement in violations of NCAA legislation and affording them the opportunity to respond. The enforcement staff also sent the former head football coach a copy of the allegations contained in the letter of official inquiry, because all of those allegations involved the program under his supervision, and afforded him an opportunity to respond to those allegations.

On June 17, 1994, the university requested an extension of time to respond to the letter of official inquiry. The Committee on Infractions granted an extension to August 16, 1994. On July 5,

1994, letters were sent to the other involved parties notifying them of the extension granted to the university and that their response dates were similarly extended.

During May, June and July 1994, the enforcement staff and the university conducted joint and independent interviews with individuals identified in the letter of official inquiry.

On August 15, 1994, the former head football coach submitted a response to the allegations contained in the letter of official inquiry. The university responded to the allegations on August 16. On August 25 the former football recruiting coordinator and on August 29 the athletics representative submitted responses to the allegations in which they were named.

On September 1, 1994, representatives from the enforcement staff and university held a prehearing conference at the NCAA national office to discuss procedural matters and to review issues that would be considered by the committee. As a result of the prehearing conference, several allegations in the letter of official inquiry were amended or withdrawn. All potential eligibility matters were also reviewed and resolved. On September 29, the enforcement staff met with the former head football coach and his attorney to discuss procedural issues and to review the case summary. The enforcement staff did not conduct prehearing conferences with the other involved individuals because they had elected not to attend the hearing.

Representatives from the university, conference and NCAA enforcement staff appeared before the Committee on Infractions at a hearing on September 30. The former head football coach and his attorney were also in attendance. [Page 5]

B. SUMMARY OF THE FINDINGS.

The violations found by the committee were as follows:

Representatives of the institution's athletics interests made numerous impermissible recruiting contacts with prospective student-athletes.

Representatives of the institution's athletics interests gave improper benefits to prospective student-athletes by providing them with transportation, entertainment at topless bars and strip clubs otherwise described as "gentlemen's clubs," meals, lodging, clothing and other inducements.

A representative of the institution's athletics interests attempted to induce a prospective student-athlete to commit to the university by offering him an automobile.

Several student-athletes entertained prospective student-athletes on official visits beyond the permissible 30-mile limit from the university's campus.

A member of the football staff attempted to induce a prospective student-athlete to commit to the university by offering him money and airline tickets.

A representative of the institution's athletics interests provided an extra benefit to a student-athlete by giving him free clothes.

Representatives of the institution's athletics interests provided an extra benefit to a student-athlete by arranging for a deferred pay-back loan based primarily on his future earnings as a professional athlete.

A football staff member provided an extra benefit to a student-athlete by allowing him to use the staff member's car.

The former head football coach made impermissible comments in a newspaper article regarding the athletic ability of a prospective student-athlete.

There was unethical conduct by the former head football coach, a former assistant football coach and a former athletics department staff member.

The university lacked institutional control over its football program.

C. SUMMARY OF THE PENALTIES.

In imposing its penalties, the committee noted that had this case occurred within five years of the 1986 case, it would have considered seriously the penalties listed for repeat violators, including substantial restrictions on competition, financial aid and recruiting.

The committee imposed the following penalties:

Public reprimand and censure.

Four years of probation.

Requirement that the institution develop a comprehensive athletics compliance education program, with annual reports to the committee during the period of probation.

Prohibition from participating in postseason competition in football during the 1995 and 1996 seasons.

Prohibition from televising any football games during the 1995 season.

Reduction by 12 in the number of permissible initial financial aid awards in football for the 1995-96 and 1996-97 academic years.

Reduction by 16 in the number of permissible official visits in football during the 1995-96 and 1996-97 academic years.

Recertification of current athletics policies and practices.

Disassociation of two representatives of the institution's athletics interests.

Show-cause requirement on the former head football coach for four years.

II. SPECIFIC FINDINGS OF VIOLATIONS OF NCAA LEGISLATION.

A. IMPERMISSIBLE RECRUITING CONTACTS, TRANSPORTATION, ENTERTAINMENT, MEALS AND LODGING DURING PROSPECTIVE STUDENT-ATHLETES' OFFICIAL VISITS. [NCAA BYLAWS 13.1.2.1, 13.2.1, 13.5.1.1 AND 13.7.5.1]

On November 21, 1992, while four prospective student-athletes were on their official visits to the institution's campus, a representative of the institution's athletics interests made an in-person contact with the prospective student-athletes and transported them approximately 75 miles from Oxford, Mississippi, to Memphis, Tennessee, to meet a second representative of the institution's athletics interests at his home. The second athletics representative provided the prospective student-athletes automobile transportation, entertainment at several so-called "gentlemen's clubs," described by participants as topless bars or [Page 7] strip clubs, and meals at a restaurant. This representative of the institution's athletics interests also encouraged the prospective student-athletes to commit to the university and asked them generally what it would take for them to do so. Following the entertainment at the various clubs, the athletics representative transported the prospective student-athletes to a Memphis area hotel and paid for their lodging.

On November 22, 1992, the first representative of the institution's athletics interests transported three of the prospective student-athletes from the hotel back to Oxford and the university's campus. The prospective student-athletes then met with football coaching staff members and later returned via air travel to their junior college. The second representative of the institution's athletics interests transported the fourth prospective student-athlete, who never returned to Oxford or the university's campus, to the airport for his flight back to his junior college.

B. IMPERMISSIBLE RECRUITING CONTACTS WITH AND OFFER OF AN AUTOMOBILE TO A PROSPECTIVE STUDENT-ATHLETE. [NCAA BYLAWS 13.1.2.1, 13.1.3.6.1 AND 13.2.1]

During the 1992-93 academic year, a representative of the university's athletics interests offered a prospective student-athlete an automobile if he would sign a National Letter of Intent to attend the institution.

On November 21, 1992, during the official visit outlined in Finding No. II-A, the representative of the institution's athletics interests offered the prospective student-athlete a new red Ford Mustang 5.0 automobile if he would sign a National Letter of Intent with the institution. Following the prospective student-athlete's visit to the university, the athletics representative and the prospective student-athlete had several telephone conversations in which the representative reiterated this offer and continued to encourage the prospective student-athlete to commit to the university. The athletics representative informed the prospective student-athlete during one of the telephone conversations that, although he was serious about obtaining a car, he was having

trouble locating a new red Ford Mustang 5.0. The representative asked the prospective student-athlete if he would accept a red Ford Mustang 5.0 belonging to a student-athlete who was a member of the university's football team. The prospective student-athlete told the athletics representative that he would like that automobile. The representative offered to arrange for the prospective student-athlete to take possession of the automobile in another city on February 2, 1993, the day before the initial signing date for the National Letter of Intent. The representative also offered to put the title of the automobile in the name of the prospective student-athlete's mother or sister. [Page 8]

C. IMPERMISSIBLE RECRUITING CONTACTS, TRANSPORTATION, ENTERTAINMENT, CLOTHING AND OTHER INDUCEMENTS DURING A PROSPECTIVE STUDENT-ATHLETE'S OFFICIAL VISIT. [NCAA BYLAWS 13.1.2.1, 13.2.1, 13.2.2-(b), 13.5.1.1 AND 13.7.5.1]

During the January 17-19, 1992, official visit to the institution's campus of a prospective student-athlete, two representatives of the university's athletics interests had in-person contact with the prospective student-athlete. One of the representatives provided him automobile transportation and entertainment. The prospective student-athlete also received items of clothing from a sporting goods store without any cost to him.

One of the representatives of the university's athletics interests introduced the prospective student-athlete to the other representative of the university's athletics interests on the morning of January 18, 1992. The second representative later met the prospective student-athlete at a hotel and transported him around Oxford in his luxury automobile. At an afternoon luncheon held at the university's Vaught-Hemingway Stadium for visiting prospective student-athletes taking official visits to the university, the prospective student-athlete again met the second representative. Later that evening, the same two representatives met the prospective student-athlete at the hotel. The second representative transported the prospective student-athlete and the other representative approximately 75 miles to Memphis, Tennessee. While in Memphis, the second athletics representative provided entertainment, alcoholic beverages and a meal to the prospective student-athlete at a topless bar or strip club. On January 19, the second representative transported the prospective student-athlete and the other athletics representative to an Oxford sporting goods store, where the prospective student-athlete was permitted to select items of clothing which were paid for by the second representative.

D. ENTERTAINMENT OF PROSPECTIVE STUDENT-ATHLETES OUTSIDE THE PERMISSIBLE 30-MILE LIMIT. [NCAA BYLAW 13.7.5.1]

On several occasions during January 1992 and January 1993, enrolled student-athletes entertained prospective student-athletes beyond the permissible 30-mile radius during the prospective student-athletes' official visits to the university's campus. These off-campus excursions were in addition to those described in Finding Nos. II-A and C.

E. IMPERMISSIBLE OFFER OF MONEY AND AIRLINE TICKETS TO A PROSPECTIVE STUDENT-ATHLETE. [NCAA BYLAWS 13.2.1 AND 13.2.2-(e)]

On December 8, 1991, during the official visit to the institution's campus of a prospective student-athlete, a member of the [Page 9] football staff made improper recruiting offers to the prospective student-athlete during a private meeting in the football office. After the staff member asked the prospective student-athlete what it would take for him to commit to the university, the staff member offered cash if the prospective student-athlete would sign a National Letter of Intent. During this meeting, the staff member also offered free airline tickets for the prospective student-athlete's mother and girlfriend to use in traveling between the institution's campus and his home.

F. FREE CLOTHING PROVIDED TO A STUDENT-ATHLETE. [NCAA BYLAWS 16.02.3 AND 16.12.2.1]

On one occasion in 1992, a representative of the university's athletics interests, who was the owner of a department store in a city in the vicinity of Oxford, Mississippi, provided free clothing to a student-athlete. In April or May 1992, the student-athlete traveled from Oxford to the department store and received from the representative various items of clothing and apparel valued at approximately \$200 to \$300.

G. IMPERMISSIBLE RECRUITING CONTACTS BY TWO REPRESENTATIVES OF THE INSTITUTION'S ATHLETICS INTERESTS. [NCAA BYLAW 13.1.2.1]

On or about February 4, 1991, a representative of the institution's athletics interests telephoned a prospective student-athlete at his residence and told him that he and another athletics representative would visit the prospective student-athlete's home the following day. On or about February 5, 1991, the first representative transported the second representative to the prospective student-athlete's residence. While the first representative waited in his automobile, the second representative spoke with the prospective student-athlete on the front porch and told him about his experiences playing football at the university and with a professional football team.

H. IMPERMISSIBLE DEFERRED PAY-BACK LOAN PROVIDED TO A STUDENT-ATHLETE. [NCAA BYLAWS 12.1.2-(m), 16.02.3, 16.12.1.2-(b) AND 16.12.2.4]

In November or December 1992, a student-athlete approached a representative of the university's athletics interests, who also was the owner of an automobile dealership, concerning the purchase of a vehicle. The representative located an automobile that the student-athlete was interested in purchasing. The representative then telephoned another representative of the institution's athletics interests, who was the chief executive officer of a bank. As a result of those discussions, on December 31, 1992, the second representative approved a \$9,000 loan to the student-athlete for the automobile that was based primarily on the student-athlete's future earnings as a professional athlete. [Page 10] Although the loan was within the lending authority of the representative, it was contrary to NCAA legislation since it had a one-year deferred payment provision based upon the student-athlete's future professional earnings.

I. IMPERMISSIBLE RECRUITING CONTACTS, TRANSPORTATION AND MEALS DURING PROSPECTIVE STUDENT-ATHLETES' UNOFFICIAL VISITS. [NCAA BYLAWS 13.1.2.1, 13.2.1 AND 13.6.3]

On at least two occasions during the periods November 13-15 and 27-29, 1992, two representatives of the university's athletics interests made impermissible in-person contacts with prospective student-athletes and provided them with free meals and transportation.

On November 13, 1992, the two representatives of the institution's athletics interests transported two prospective student-athletes from their high-school playoff football contest to Oxford so they could attend the university's football contest against Louisiana Tech University. One of the representatives also purchased meals for the two prospective student-athletes at a restaurant on the way to Oxford. Upon arrival in Oxford, they met a university assistant football coach who led the two representatives to the men's athletics dormitory where the prospective student-athletes stayed for the weekend. On November 15, the two representatives provided the return transportation for the prospective student-athletes from Oxford to their hometown.

On November 27, 1992, the same two representatives of the university's athletics interests transported three prospective student-athletes from their hometown to Oxford so they could attend the university's football contest against Mississippi State University. The two representatives picked up the three prospective student-athletes at the home of one of the prospective student-athletes and transported them to Oxford. On November 28, a student-athlete transported and entertained two of the student-athletes in Memphis, Tennessee, approximately 75 miles from the university. The student-athlete served as a host for the prospective student-athletes during this weekend at the request of an assistant football coach. On November 29, the two representatives provided the return transportation for the three prospective student-athletes from Oxford to their hometown.

J. IMPERMISSIBLE USE OF AN ATHLETICS DEPARTMENT STAFF MEMBER'S AUTOMOBILE BY A STUDENT-ATHLETE [NCAA BYLAWS 13.6.1, 16.02.3, 16.12.1.1 AND 16.12.2.3]

On March 23, 1991, the football recruiting coordinator allowed a student-athlete to use his automobile on one occasion. While driving the recruiting coordinator's automobile, the student-athlete was involved in an alcohol-related moving automobile violation in Oxford. [Page 11]

K. IMPERMISSIBLE COMMENTS REGARDING A PROSPECTIVE STUDENT-ATHLETE. [NCAA BYLAW 13.11.1]

In a January 16, 1994, article that appeared in a newspaper, the head football coach made comments concerning the athletic ability of a prospective student-athlete prior to the February 2, 1994, national signing date.

L. UNETHICAL CONDUCT BY THE FORMER HEAD FOOTBALL COACH. [NCAA BYLAW 10.1]

Evidence presented during the hearing before the NCAA Committee on Infractions established that the former head football coach had not conducted the university's football program in accordance with NCAA rules. This indifference to NCAA rules is particularly significant given the university's 1986 infractions case that involved him and concerned violations very similar to

the violations in the current case. In the prior case, the committee found that he failed to fulfill his administrative responsibilities in maintaining proper control of the institution's football program. The facts found in this present case, when considered in light of the very similar violations in the prior case, indicate a continuing pattern on his part to disregard NCAA rules in the operation of the football program. This was particularly true in regard to the active involvement of representatives of the university's athletics interests in participating in the recruitment of prospective student athletes.

M. UNETHICAL CONDUCT BY A FORMER ASSISTANT FOOTBALL COACH. [NCAA BYLAW 10.01]

A former assistant football coach violated the principles of ethical conduct by his involvement in encouraging a former football student-athlete to recant information previously reported to the NCAA enforcement staff relating to violations of NCAA legislation concerning the university's football program. In late March or early April 1994, after the former assistant coach had been interviewed by the enforcement staff, he contacted the former football student-athlete and requested that he recant the information on NCAA rules violations that he had provided to the enforcement staff. The former assistant football coach indicated to the former football student-athlete that he would attempt to arrange a tryout for him with a professional football team if he recanted the information.

N. UNETHICAL CONDUCT BY A FORMER ATHLETICS DEPARTMENT STAFF MEMBER. [NCAA BYLAW 10.1]

A former football recruiting coordinator did not on all occasions deport himself in accordance with the generally recognized high standards normally associated with the conduct and administration [Page 12] of intercollegiate athletics. The former recruiting coordinator failed to report violations of NCAA legislation to appropriate university, conference or NCAA officials. Specifically, the former recruiting coordinator was aware of but did not report some of the violations described in Finding Nos. II-C, II-F and II-J.

As recruiting coordinator, he also permitted the recruiting program to operate without sufficient controls or monitoring. He permitted representatives of the university's athletics interests to be involved in recruiting. This involvement included impermissible in-person contacts with numerous prospective student-athletes and the provision of transportation, meals, entertainment, lodging, clothing and other inducements to them.

The former recruiting coordinator also failed to ensure that the recruiting forms regarding prospective student-athletes' official visits were properly completed and signed. Forms often were signed at the beginning of the prospective student-athletes' visits, rather than at the end, and on at least one occasion contained a forged signature.

O. LACK OF INSTITUTIONAL CONTROL. [NCAA CONSTITUTION 2.1.1, 2.1.2, 2.7.1 AND 6.01.1]

From November 1991 to February 1993, there was a pervasive lack of institutional control and appropriate monitoring in the administration of the University of Mississippi's intercollegiate football program. The university failed to monitor the activities of prospective student-athletes visiting the university during unofficial and official visits. A number of representatives of the university's athletics interests were actively involved in the recruitment of prospective student-athletes, with either the actual or tacit approval of the football coaching staff. This breakdown in the control and monitoring of the recruiting process created a climate that allowed many of the violations found in this case to occur.

1. Representatives of the institution's athletics interests transported prospective student-athletes on official visits to a city 75 miles from the university and provided them with entertainment, meals, lodging and other inducements, as described in Finding Nos. II-A and II-C. Either the football coaching staff was not concerned with the prospective student-athletes' extended absences from the university's campus, or the staff knew that they were away from campus with the various representatives.
2. Representatives of the institution's athletics interests had extensive contacts with prospective student-athletes during their official visits.
3. As a result of the active involvement of the representatives in the recruiting process one representative made an imper- [Page 13] missible offer of an automobile, as described in Finding No. II-B.
4. On several occasions, enrolled student-athletes transported prospective student-athletes on their official visits beyond the permissible 30-mile limit, as described in Finding Nos. II-D and II-I.
5. Two representatives of the institution's athletics interests transported prospective student-athletes to the university's campus for what were considered unofficial visits and provided them with meals as described in Finding No. II-I. At least one member of the football coaching staff was aware of the representatives' involvement.
6. The university did not adequately monitor the recruiting forms for official visits. Many forms were partially completed, signed at the beginning of the visit and, on at least one occasion, forged. Proper documentation and monitoring by the athletics department could have prevented or identified many of the violations.

Given the findings of violations in the institution's December 1986 infractions case involving the football program, the university should have placed greater emphasis on the control and monitoring of its athletics program. The violations in the earlier case were similar to the violations in this case, particularly those that concerned a lack of institutional control, impermissible recruiting contacts by representatives of the university's athletics interests, and the failure of the head football coach to fulfill his administrative responsibilities in maintaining proper control of the institution's football program. Given the recurrence of the same types of violations, it is clear that the university should have implemented tighter controls of its athletics department, especially the football program. The football staff placed its emphasis on

maintaining forms and completing paper work without a positive commitment to abide by NCAA rules. More importantly, the university administration and athletics department also failed to foster a commitment to comply with NCAA rules among its staff, student-athletes and athletics representatives involved in the football program. An environment where breaking NCAA rules is not tolerated is crucial to maintaining institutional control and preventing further violations.

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. Had this case occurred within five years of the previous case, the committee would have seriously considered imposing the penalties listed for repeat violators, including significant restrictions on competition, financial aid and recruiting. The committee imposed the following penalties: [Page 14]

A. Public reprimand and censure.

B. Four years of probation from September 30, 1994.

C. During this period of probation, the institution shall:

1. Develop and implement a comprehensive educational program, including seminars and testing, on NCAA legislation to instruct coaches, the faculty athletics representative, athletics department personnel and all university staff members with responsibility for the certification of student-athletes for admission, retention or competition;
2. More fully develop and implement an educational program for the representatives of its athletics interests and alumni;
3. Submit a preliminary report to the administrator for the Committee on Infractions by December 15, 1994, setting forth a schedule for establishing these compliance and educational programs; and
4. File with the committee's administrator annual compliance reports indicating the progress made with these programs by September 1 of each year during the probationary period. Particular emphasis should be placed on all aspects of recruiting, including official and unofficial visits, and the education of representatives of the university's athletics interest.

D. The institution's football team shall end its 1995 and 1996 seasons with the playing of its last regularly scheduled, in-season contest and shall not be eligible to participate in any postseason competition or take advantage of any of the exemptions provided in Bylaw 17.7.5.2.

E. The institution's football team shall not be eligible to appear on any telecast during the 1995 season except for the closed-circuit television exception provided for in Bylaw 19.6.2.5.1. This ineligibility to appear on television shall include live broadcasts, delayed broadcasts, cable

broadcasts and game footage that exceeds a total of five minutes on coaches' shows at the institution.

F. During the 1995-96 and 1996-97 academic years, the institution shall be limited to 12 fewer initial athletically related financial aid awards in football that are countable under Bylaw 15.02.3. This is a reduction from 25 to 13 under current rules. [Page 15]

G. During the 1995-96 and 1996-97 academic years, the institution shall be limited in football to 16 fewer expense-paid visits to the institution's campus than the maximum number allowed under NCAA rules. This is a reduction from 56 to 40 under current rules.

H. The institution's chancellor shall recertify that all of the university's current athletics policies and practices conform to all requirements of NCAA regulations.

I. The institution shall show cause why it should not be penalized further if it fails to disassociate one representative of the institution's athletics interests from the institution's athletics program based upon his involvement in violations of NCAA rules. The committee also adopted the institution's action to disassociate another representative. These disassociations shall be for at least the institution's probationary period and shall include: (1) refraining from accepting any assistance from the individuals that would aid in the recruitment of prospective student-athletes or the support of enrolled student-athletes; (2) refusing financial assistance or contributions to the institution's athletics program from the individuals; (3) ensuring that no athletics benefit or privilege is provided to the individuals, either directly or indirectly, that is not available to the public at large; and (4) implementing other actions that the institution determines to be within its authority to eliminate the involvement of the individuals in the institution's athletics program.

J. If the former head football coach had still been employed at the institution, the university would have been required to show cause in accordance with Bylaw 19.6.2.2-(1) why it should not be subject to additional penalties, including further recruiting restrictions, if it had failed to take appropriate disciplinary action against him.

K. The former head football 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 a four-year period (September 30, 1994, to September 30, 1998), he and the involved institution shall be requested to appear before the Committee on Infractions to consider whether the member institution should be subject to the show-cause procedures of Bylaw 19.6.2.2-(1), which could limit the former coach's athletically related duties at the new institution for a designated period.

As required by NCAA legislation for any institution involved in a major infractions case, the University of Mississippi shall be subject to the provisions of NCAA Bylaw 19.6.2.3, concerning repeat violators, for a [Page 16] five-year period beginning on the effective date of the penalties in this case.

The University of Mississippi may appeal either the findings of violations or penalties in this case to the NCAA Infractions Appeals Committee by submitting a notice of appeal to the executive director of the NCAA within 15 calendar days from the date the member institution receives this infractions report. In the event of an appeal, the Committee on Infractions will submit a response to the members of the appeals committee. This response may include an expanded report and additional information in accordance with Bylaw 32.10.5. A copy of the report will be provided to the institution prior to the institution's appearance before the appeals committee.

The former head football coach who was found in violation of the rules of ethical conduct that resulted in the imposition of a show-cause order against him may also appeal, if he has met the requirements of Bylaw 19.7.3 and Bylaw 32.10.3. The notice of appeal must be submitted through the member institution to the executive director of the NCAA not later than 15 calendar days from the date the member institution receives the report of the Committee on Infractions.

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 penalties shall be reconsidered by the Committee on Infractions. Should any actions by NCAA Conventions 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

Richard J. Dunn

Jack H. Friedenthal

Frederick B. Lacey

Yvonne (Bonnie) L. Slatton

David Swank (chair)

DS:rjg:jmq

FOR IMMEDIATE RELEASE: Monday, May 1, 1995

CONTACT: Michael L. Slive, chair, NCAA Infractions Appeals Committee

Great Midwest Conference

UNIVERSITY OF MISSISSIPPI

INFRACTIONS APPEALS COMMITTEE REPORT

OVERLAND PARK, KANSAS--This report is organized as follows:

I. Introduction.

II. Violation of NCAA legislation, as Determined by the Committee on Infractions.

III. Penalties Imposed By the Committee on Infractions.

IV. Issues Raised on Appeal.

V. Appellate Procedures.

VI. Infractions Appeals Committee's Resolution of Issues Raised on Appeal.

I. Introduction.

On November 17, 1994, the NCAA Committee on Infractions issued Infractions Report No. 111 in which the committee found numerous violations of NCAA legislation in the University of Mississippi's football program. On the basis of these findings, the Committee on Infractions determined this was a major infractions case and imposed penalties accordingly. [Reference: November 28, 1994, edition of the NCAA Register, page 14.]

After the Committee on Infractions issued its infractions report November 17, 1994, Mississippi filed a timely notice of appeal November 30, 1994. The institution submitted an extensive appeal to the Infractions Appeals Committee January 13, 1995. The committee's response was filed February 15, 1995, and the institution's rebuttal was submitted February 27, 1995.

II. Violations of NCAA Legislation as Determined by the Committee on Infractions.

Violations found by the Committee on Infractions are set forth in Appendix A of this report. The violations were summarized by the committee as follows:

1. Representatives of the institution's athletics interests made numerous impermissible recruiting contacts with prospective student-athletes.

2. Representatives of the institution's athletics interests gave improper benefits to prospective student-athletes by providing them with transportation, entertainment at topless bars and strip clubs (otherwise described as "gentlemen's clubs"), meals, lodging, clothing and other inducements.

3. A representative of the institution's athletics interests attempted to induce a prospective student-athlete to commit to the institution by offering him an automobile.
4. Several student-athletes entertained prospective student-athletes on official visits beyond the permissible 30-mile radius from the institution's campus.
5. A member of the football staff attempted to induce a prospective student-athlete to commit to the institution by offering him money and airline tickets.
6. A representative of the institution's athletics interests provided an extra benefit to a student-athlete by giving him free clothes.
7. Representatives of the institution's athletics interests provided an extra benefit to a student-athlete by arranging for a deferred pay-back loan based primarily on his future earnings as a professional athlete.
8. A football staff member provided an extra benefit to a student-athlete by allowing him to use the staff member's car.
9. The former head football coach made impermissible comments in a newspaper article regarding the athletics ability of a prospective student-athlete.
10. There was unethical conduct by the former head football coach, a former assistant football coach and a former athletics department staff member.
11. The institution lacked institutional control over its football program.

III. Penalties Imposed by the Committee on Infractions.

In imposing its penalties, the Committee on Infractions noted that had this case occurred within five years of the 1986 case, it would have considered seriously the penalties listed for repeat violators, including substantial restrictions on competition, financial aid and recruiting. The penalties adopted by the Committee on Infractions are listed in Appendix B of this report. The penalties imposed by the committee were summarized as follows:

1. Public reprimand and censure;
2. Four years of probation;
3. Requirement that the institution develop a comprehensive athletics compliance education program, with annual reports to the committee during the period of probation;
4. Prohibition from participating in postseason competition in football during the 1995 and 1996 seasons;
5. Prohibition from televising any football games during the 1995 season;

6. Reduction by 12 in the number of permissible initial financial aid awards in football for the 1995-96 and 1996-97 academic years;
7. Reduction by 16 in the number of permissible official visits in football during the 1995-96 and 1996-97 academic years;
8. Recertification of current athletics policies and practices;
9. Disassociation of two representatives of the institution's athletics interests; and
10. Show-cause requirement on the former head football coach for four years.

Prior to the hearing before the Committee on Infractions, the institution terminated the employment of its head football coach, accepted the resignation of its long-time director of athletics, disassociated several representatives of its athletics interests, increased its efforts to educate its staff, students and alumni, and strengthened its athletics administration and compliance program.

On December 5, 1994, the institution requested that the Committee on Infractions change the time frame of the reduction in official visits. On December 9, 1994, the Committee on Infractions notified the institution that it had granted the request to apply the official visit penalty during the 1994-95 and 1995-96 academic years, rather than the 1995-96 and 1996-97 academic years.

On December 19, 1994, the Committee on Infractions denied a December 16 request from the institution to redistribute the official visit and grant-in-aid sanctions throughout the four-year probationary period rather than the two years specified by the committee. The committee noted that although it would make limited changes in the time frame of penalties, it determined that it should not make significant substantive alterations in a penalty once it has been imposed.

IV. Issues Raised on Appeal.

In its notice of appeal filed November 30, 1994, the institution appealed the following findings and penalties:

(1) The Specific Finding of Violation of NCAA Legislation II-E of the Committee on Infractions' report regarding impermissible offers to a prospective student-athlete:

E. On December 8, 1991, during the official visit to the institution's campus of a prospective student-athlete, a member of the football staff made improper recruiting offers to the prospective student-athlete during a private meeting in the football office. After a staff member asked the prospective student-athlete what it would take for him to commit to the institution, the staff member offered cash if the prospective student-athlete would sign a National Letter of Intent. During this meeting, the staff member also offered free airline tickets for the prospective student-athlete's mother and girlfriend to use in traveling between the institution's campus and his home.

(2) Committee on Infractions Penalties III-(F) and (G) regarding reduction in athletically related financial aid awards in football and reduction in numbers of allowable expense paid visits to the institution's campus by prospective student-athletes:

F. During the 1995-96 and 1996-97 academic years, the institution shall be limited to 12 fewer initial athletically related financial aid awards in football that are countable under 15.02.3. This is a reduction from 25 to 13 under current rules.

G. During the 1994-95 and 1995-96 academic years, the institution shall be limited in football to 16 fewer expense-paid visits to the institution's campus than the maximum number allowed under NCAA rules. This is a reduction from 56 to 40 under current rules. [NOTE: The Committee on Infractions originally placed the penalty on the 1995-96 and 1996-97 academic years, but amended it to 1994-95 and 1995-96 upon the request of the institution.]

(3) Committee on Infractions Penalty III-(i) insofar as it indicates that the institution should show cause why it should not disassociate a representative of the institution's athletics interests from the institution's athletics program. The institution formally disassociated the representative by letter of August 31, 1994, which previously was provided the enforcement staff and referenced at the hearing before the Committee on Infractions.

V. Appellate Procedures.

In considering the University of Mississippi's appeal, the Infractions Appeals Committee reviewed the institution's notice of appeal, the transcript of the institution's hearing before the Committee on Infractions, and several submissions by the institution and by the Committee on Infractions referred to in Section I of this report. The hearing on the appeal was held by the committee March 1, 1995. The president, vice-chairman for executive affairs, faculty athletics representative, director of athletics, athletics compliance coordinator and the institution's legal counsel appeared on behalf of the institution. The chair of the Committee on Infractions, accompanied by the administrator for the Committee on Infractions and two members of the NCAA enforcement staff, appeared on behalf of the Committee on Infractions. The NCAA group executive director for membership services and staff liaison for the Infractions Appeals Committee also were in attendance. The hearing was conducted in accordance with procedures adopted by the committee pursuant to NCAA legislation.

In its response to the institution's appeal and in its presentation to the Infractions Appeals Committee, the Committee on Infractions asserted that the institution, in its appeal, relied on evidence that was not newly discovered and was not presented at the Committee on Infractions hearing. The institution, in its rebuttal, disagreed generally with that assertion and countered that the committee's failure to identify the particular evidence of which it complained left the institution without information sufficient to respond fully on this point. At its March 1, 1995, hearing, the Infractions Appeals Committee, based on its review of all the material submitted to it, determined that all the information relied on by the institution in support of its appeal had been presented or discussed during the institution's appearance before the Committee on Infractions. The Committee on Infractions did not pursue this point. (The question of "evidence

that was not newly discovered and was not presented at the Committee on Infractions hearing" will be addressed in Section VI of this report.)

Following the hearing, the parties and all staff were excused and the Infractions Appeals Committee then deliberated and reached a decision.

VI. Infractions Appeals Committee's Resolution of Issues Raised on Appeal.

A. Appeal of Findings.

The first issue presented is whether Specific Finding of Violation II-E by the Committee on Infractions - that a member of the football staff attempted to induce a prospective student-athlete to commit to the institution by offering him money and airline tickets - was clearly contrary to the evidence presented to the committee. This issue comes within NCAA Bylaw 32.10.2-(a), authorizing the Infractions Appeals Committee to set aside determinations of fact and violations arrived at by the Committee on Infractions upon a showing that "[T]he committee's finding is clearly contrary to the evidence presented to the committee."

In its response to the institution's appeal, the Committee on Infractions stated that it had based its findings in this instance on statements by the prospective student-athlete and what it considered credible corroborating statements from several individuals. It also observed that the denials by the recruiting coordinator and the head football coach were self-serving statements and noted factors that, in its judgment, brought into question the credibility of the recruiting coordinator.

In support of its assertion that the committee's finding in this instance were clearly contrary to the evidence presented to the committee, the institution maintained that it did not find sufficient evidence to conclude that an offer of money and airline tickets was made to the prospective student-athlete in question by anyone associated with the institution. Specifically, it argued that it found the allegations to be without merit because of vagueness and uncertainty in the prospective student-athlete's claim of offers; the denials of any offer by the institution's recruiting coordinator and head football coach; the "lack of corroboration" of the prospective student-athlete's claim by others; and the "lack of credibility" in statements given by the prospective student-athlete himself.

In considering this appeal, it is important to emphasize the basis required for findings by the Committee on Infractions. Bylaw 32.7.6.2 provides that "[T]he 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." (Emphasis added.) Under that standard, it is the Committee on Infractions that is to determine whether the information presented to it, and upon which it bases its findings, is credible, persuasive and of a kind described in the bylaw. In this case the committee acknowledged that "not all of the details regarding these offers are completely consistent." It also acknowledged that it had been "unable to determine which of these two individuals (the recruiting coordinator or the head football coach) made the actual offers" to the prospective student-athlete. However, the committee clearly stated that it had:

"No difficulty in determining there was sufficient evidence to support a finding that a member of the institution's football staff had made impermissible offers to [the prospective student-athlete] and that there was a violation on the part of the [University ...]."

The institution acknowledged that there can be differences of opinion as to many of the facts, and the interpretations to be drawn from them, in an infractions case. It argued that in this case it could not reconcile the conflicting statements by the individuals involved in a manner that convinced it that the alleged violations had occurred. Finally, it pointed out that it would have admitted the violation had the evidence been more convincing. Those statements reflect the institution's assessment of the information and evidence in this case. However, as noted above, Bylaw 32.7.6.2 makes clear that it is the Committee on Infractions that is to make determinations regarding matters such as relevance, credibility and the sufficiency of the information presented to it.

There remains the question of the standard to be used by the Infractions Appeals Committee in reviewing a case involving such issues. As previously discussed, Bylaw 32.10.2-(a) provides that the committee may set aside determinations of fact and violations arrived at by the Committee on Infractions upon a showing that "[T]he committee's finding is clearly contrary to the evidence presented to the committee."

It is important to note that the NCAA enforcement proceedings are not judicial proceedings. Formal rules of evidence are not applicable; testimony is not taken under oath; the Committee on Infractions, when it finds a violation, does not issue specific findings of fact; the committee is not required to consider the weight of the evidence (i.e., whether, and to what extent, the evidence supporting the finding of a violation outweighs evidence to the contrary). Bylaw 32.7.6.2 requires only that the committee base its findings on information presented to it that meets the criteria specified in the bylaw.

Because Bylaws 32.10.1 and 32.10.2 were intended to create a meaningful right of appeal, the reference in Bylaw 32.10.2-(a) to "the evidence presented to the committee" must be read to include all the information that was presented to the Committee on Infractions. For that reason, the Infractions Appeals Committee, in hearing an appeal of a finding such as that in this case, will consider both the information upon which the Committee on Infractions based its finding and all other information that was presented to the committee, including information that might have supported a contrary result. In this case, for example, the institution disputed the probative value of the evidence upon which the committee based its finding and asserted that there was credible evidence that would have supported a contrary result.

However, Bylaw 32.10.2 specifies that a finding may be set aside on appeal only upon a showing that it is clearly contrary to the information presented to the Committee on Infractions. A showing that there was some information that might have supported a contrary result will not be sufficient to warrant setting aside a finding, nor will a showing that such information might have outweighed the information upon which the committee based a finding. The Infractions Appeals Committee under existing legislation will set aside a finding only upon a showing that information that might have supported a contrary result clearly outweighed the information upon which the Committee on Infractions based the finding.

That the Infractions Appeals Committee will consider all the information that was presented to the Committee on Infractions does not mean that it will conduct an infractions hearing de novo. Absent unusual circumstances, the Infractions Appeals Committee will not consider information that was not made available to the Committee on Infractions when it made its findings and will not consider "newly discovered" information. In the latter circumstances, the party may submit the newly discovered information to the Committee on Infractions in support of a request for reconsideration by that committee per Bylaw 19.6.2.8.1.

The Infractions Appeals Committee has considered all the information presented to the Committee on Infractions in this case, including the transcript of the Committee on Infractions hearing. It concludes that Committee on Infractions Specific Finding II-E, that a member of the institution's football staff had made impermissible offers to a prospective student-athlete and that there was a violation on the part of the institution, is not clearly contrary to the evidence presented to the committee.

The committee's consideration of this issue was complicated by the fact that the allegation made by the enforcement staff in the Official Inquiry specifically identified the former recruiting coordinator as the member of the staff who made the impermissible offers. When the institution appeared before the Committee on Infractions, it based its presentation on that allegation. However, the Committee on Infractions subsequently found that "a member of the football staff" had made the impermissible offers. In its response to the appeal and in its presentation at the Infractions Appeals Committee hearing, the Committee on Infractions explained that in considering all of the information that had been presented to it at its hearing, it had determined that the impermissible offers had been made either by the former recruiting coordinator or by the former head football coach but had been unable to determine which of them had made the actual offers.

The Infractions Appeals Committee was concerned by this change from a specific allegation to a more general finding for two reasons. First, the reference in the finding to "a member of the football staff" unfairly cast a shadow over members of the institution's football staff other than the former recruiting coordinator and the former head football coach. Second, the institution might have made its presentation differently had it realized that the allegation that specified the recruiting coordinator might ultimately be found to be a violation that also involved the head football coach. However, Bylaw 19.5.3 authorizes the Committee on Infraction to make new findings.

"New Findings. If a member appears before the committee to discuss its response to the official inquiry, the hearing shall be directed toward the general scope of the official inquiry but shall not preclude the committee from finding any violation resulting from information developed or discussed during the hearing."

The Infractions Appeals Committee interpreted this provision to encompass authority for the Committee on Infractions to make a finding that conforms an allegation made in the official inquiry to the information developed or discussed during a hearing.

On the basis of the foregoing discussion, the Infractions Appeals Committee affirms Specific Finding II-E by the Committee on Infractions.

B. Appeal of Penalties.

The second issue presented is whether the Committee on Infractions Penalties III-(F) and (G), imposing reductions for two years in the number of athletically related financial aid awards in football and in the number of allowable expense-paid visits to the institution's campus by prospective student-athletes, should be set aside, in whole or in part.

The institution asserted that the initial financial aid and expense-paid visit reductions for the second year (1996-97) "are too severe and are not warranted" when appropriate consideration is given to (1) the undue serious impact that the penalties will have on innocent student-athletes and coaches; (2) the voluntary corrective actions already taken by the institution; (3) the full cooperation of the institution in the investigation of the alleged violations; and (4) NCAA policies calling for "fairness and the equitable resolution of infractions cases."

In its appeal, the institution also stated that it accepted the appropriateness of many of the penalties imposed on it by the Committee on Infractions. It pointed out that it had already implemented the reduction in initial financial aid awards by 12 and the reduction of expense-paid visits by 16 for the 1995-96 academic year of the reduction in the number of expense-paid visits will be 1995-96, not 1996-97, as the result of a modification in Penalty III-G requested by the institution under date of December 5, 1994, and approved by the Committee on Infractions December 9, 1994.]

The Committee on Infractions, in its response to the institution's appeal, summarized its position as follows:

"...these penalties are appropriate given the number and seriousness of the violations, the direct involvement in the violations of the football staff and numerous representatives of the institution's athletics interests, the similarity of the violations to the 1986 case and the institution's failure to create an atmosphere for and attitude of compliance with NCAA rules within the football program. "

The committee commented that it had determined that the present case was one of the most serious cases that it had considered in recent years and, for that reason, warranted significant penalties.

Bylaw 32.10.2 provides that a penalty may be set aside on appeal:

"If the Infractions Appeals Committee determines that the penalty is excessive or inappropriate based on all of the evidence and circumstances."

The Infractions Appeals Committee, in its November 5, 1993, report regarding an appeal of penalties by the University of New Mexico, identified the following facts and circumstances that it would deem to be of particular significance in considering an appeal of penalties (1) the nature,

number and seriousness of the violations; (2) the conduct and motives of the individuals involved in the violations; and (3) what the institution had done to correct the problem.

The committee focused on these factors in its March 3, 1995, report regarding an appeal of penalties by Coastal Carolina University. The committee also identified the analysis of the penalties imposed when compared with the penalties imposed in other cases with similar characteristics as an additional factor that it deems significant in considering an appeal of penalties.

This report will discuss the application of those four factors to the present case. It then will discuss the three additional factors that the institution advances for consideration: (1) Institutional cooperation in the investigation; (2) The impact of penalties on innocent student-athletes and coaches; and (3) NCAA policies regarding fairness in the equitable resolution of infractions cases.

1. Nature, Number and Seriousness of the Violations.

There can be little question that the nature, number and seriousness of the violations warranted severe penalties in this case. Numerous major violations were alleged in the Official Inquiry. The institution, after conducting a thorough investigation, acknowledged that eleven of the fifteen alleged violations had occurred, questioned several of the remaining allegations in its appearance before the Committee on Infractions and ultimately appealed only one finding of a violation to this committee. The violations found by the Committee on Infractions were serious, i.e., major violations. The nature of the violations in this case also warranted severe penalties.

2. Conduct and Motives of the Individuals Involved in the Violations.

The second factor that this committee deems to be of particular significance in considering an appeal of penalties imposed by the Committee on Infractions has to do with the conduct and motives of the individuals involved in the violations. The violations found by the Committee on Infractions included unethical conduct on the part of the former head football coach, a former assistant football coach and a former athletics department staff member. None of these findings was appealed. It is significant that the violations involved the same type of impermissible activities, in the same program (football), under the same head football coach and the same athletics department administration as the violations that resulted in the imposition of severe penalties on the institution in 1986.

This committee, in weighing the conduct and motives of the individuals involved in the violations that gave rise to the University of New Mexico and Coastal Carolina University cases, considered whether:

- a. One or more of the individuals held a position that carried supervisory responsibility;
- b. The violations involved a basic NCAA principle, such as academic integrity;
- c. The conduct amounted to flagrant violations of clearly understood rules; and

d. The violations constituted improper attempts to gain recruiting and competitive advantages.

The committee noted that (1) violations in this case involved, among others, the former head football coach, who was primarily responsible for maintaining control of the institution's football program; (2) the violations involved basic NCAA principles, including amateurism and ethical conduct; (3) the conduct by members of the football staff and representatives of the institution's athletics interests amounted to flagrant violations of clearly understood rules; and (4) the violations were intended to gain a recruiting and competitive advantages by improper means. Here, again, the conduct and motives of the individuals involved in these violations warranted the imposition of significant penalties.

3. Corrective Actions Taken by the Institution.

The third factor that this committee considers to be of particular significance in considering an appeal of penalties is what the institution has done to correct the problem or problems that resulted in the violations. The institution took several steps to correct the problems in its football program that gave rise to this case. It terminated the employment of its former head football coach, accepted the resignation of its long-time athletics director, disassociated several representatives of its athletics interests, employed a new athletics director and a new head football coach, increased its efforts to educate its staff, students and alumni regarding NCAA regulations and strengthened its compliance program.

The Infractions Report in this case made no reference to these corrective actions taken by the institution. The institution, in its appeal, asserted that the committee "should have accepted the actions taken by the institution in mitigation of penalties and afforded [. . .] some relief in sanctions because of its responsible conduct." The Committee on Infractions acknowledged, in its Response, that the institution had discussed these actions when it appeared before the committee. It explained that there was no reference to these actions in the Infractions Report because "they were not included in the written materials submitted to the Committee on Infractions." However, the committee indicated that the corrective actions had been considered when it decided on the penalties to be imposed.

The Committee on Infractions characterized the institution's commitment to compliance as "commendable." It acknowledged that less severe penalties might have been appropriate in this case if it had not been so similar to the earlier case, but again emphasized that the violations in both cases were of the same type, in the same program under the same athletics department administration. It also noted that a commitment to compliance is expected of all NCAA member institutions and that corrective actions do not erase or justify violations that have occurred.

The institution, in its rebuttal and during its appearance before the Infractions Appeals Committee, questioned whether the Committee on Infractions had given appropriate weight to the corrective actions it had taken in this case. While acknowledging the similarities between the earlier case and the present case, it questioned the extent to which the committee rested its penalties on those similarities. It also acknowledged that corrective or remedial actions are part of its NCAA membership responsibilities, but asserted that such actions "are important

components in the success of NCAA enforcement procedures and should not be disregarded lightly by the Committee [on Infractions]."

In this case, the Committee on Infractions considered the corrective actions taken by the institution after the more recent violations had been discovered. The Infractions Appeals Committee agrees that such corrective actions, although an obligation of NCAA membership, are an important component of the NCAA enforcement program. It is for that reason that the committee considers "what the institution has done to correct the problem" to be of particular significance in considering an appeal of penalties. However, the Committee on Infractions also considered the apparent lack of adequacy of corrective or remedial action taken by the institution following the 1986 case to avoid or prevent repetition of the earlier violations. In the words of the committee:

"If instead of waiting for a new set of violations to occur and then cooperating in the investigation, the institution's athletics administration had developed a meaningful compliance program and had created an effective educational program for its alumni and supporters, this hearing would not be occurring."

Consideration of such mitigating and aggravating circumstances, and the balance struck by the Committee on Infractions here, is appropriate in a case involving successive major violations by the same institution. As the committee noted, had the present case occurred within five years of the 1986 case, the institution would have been subject to the more severe penalties listed for repeat violators in Bylaw 19.6.2.3.

4. Comparison of the Penalty or Penalties Imposed.

The fourth factor of particular significance in considering an appeal of penalties is the review and analysis of the penalty or penalties imposed when compared with the penalty or penalties imposed in other cases with similar characteristics. Because each case presents its own set of facts and circumstances, this comparison cannot be made by mechanically applying a formula.

In its appeal, the institution did not attempt to compare its violations and resulting penalties to those in other cases. Rather, it stated that the penalties were among the harshest penalties imposed by the Committee on Infractions in recent years. The Committee on Infractions did not dispute that observation by the institution. It observed that "[I]f one were to attempt to write a case study of what can go wrong in the recruiting process," this case would be a model. The committee's position was that because this was one of the most serious cases that it has considered in recent years, it was appropriate that the penalties were among the harshest penalties that it has imposed in recent years. The Infractions Appeals Committee does not disagree with that assessment.

5. Institutional Cooperation in the Investigation.

The institution also questioned whether the Committee on Infractions had given appropriate weight to its cooperation in investigating the alleged violations. In its Infractions Report the committee acknowledged that the institution's cooperation in the investigation was "complete

and commendable." After noting that the postseason competition and television penalties in the 1986 case had been reduced from two years to one year because of the institution's cooperation in that investigation, the committee explained why it had concluded that no similar reduction of penalties was appropriate in this case:

In this case the committee gave careful consideration to whether the penalties to be imposed should be reduced as a result of the institution's cooperation in the investigation. Because these violations were very serious, involved the same program as the 1986 infractions case, and were very similar in nature to those in the previous case, and because of the apparent failure of the institution to create an atmosphere for and an attitude of compliance with NCAA rules within the football program, the Committee on Infractions did not reduce or mitigate its penalties.

There is a threshold question as to whether cooperation by an institution in the investigation of alleged violations should be considered in the mitigation of sanctions. Both the Committee on Infractions and the institution noted that Bylaw 19.01.3 makes explicit the responsibility of every member institution of the NCAA to cooperate in such investigations. Failure to do so can itself be a violation. However, the Bylaws are silent about the extent to which the Committee should consider cooperation as a mitigating factor in imposing penalties. In this case the Committee on Infractions "gave careful consideration to...the institution's cooperation in the investigation" because it characterized that cooperation as "complete and commendable."

The Infractions Appeals Committee agrees that it was appropriate for the Committee on Infractions to consider the institution's cooperation in this case. The NCAA enforcement process does not include many of the features of a judicial system, such as a subpoena power and testimony given under oath. It is therefore required in many instances to rely on the good faith, assistance and cooperation of the institution being investigated. For that reason, institutional cooperation is an important element in the NCAA enforcement program and such cooperation should be a factor when the Committee on Infractions imposes penalties and when this committee considers an appeal of penalties.

Although cooperation in an investigation of alleged violations is an obligation of NCAA membership, there are different levels or degrees of cooperation. Where an institution cooperates only to the extent necessary to meet its basic membership obligation, its conduct does not warrant special consideration in determining or imposing penalties. However, where an institution fully accepts its membership obligations and makes every effort to participate in and assist the enforcement process, its conduct must be a significant factor in determining and imposing penalties. The chief executive officer who requires his or her institution to open itself to the NCAA enforcement process, often in the face of powerful opposition, must be supported by the Association. Failure to accord such cooperation substantial weight in determining and imposing penalties would be a disincentive to the fullest possible institutional cooperation.

In this case the enforcement staff, in its presentation before the Committee on Infractions, took pains to praise the institution for its cooperation in the investigation. As previously noted, the Committee on Infractions characterized the institution's cooperations as "complete and commendable." Nevertheless, the committee concluded that the other factors in the case outweighed that cooperation. For that reason, the committee did not reduce or mitigate the

penalties. The Infractions Appeals Committee is concerned that the balance struck by the Committee on Infractions does not accord appropriate weight to the institution's cooperation in this case.

6. Impact of Penalties on Innocent Student-Athletes and Coaches.

The institution also based its appeal of penalties in this case on the assertion that they will have an undue serious impact on innocent student-athletes, prospective student-athletes and coaches who were not involved in the violations. In support of this basis for appeal it cited Bylaw 19.01.1, which includes the following provisions:

"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....An important consideration in imposing penalties is to provide fairness to uninvolved student-athletes, coaches, administrators, competitors and other institutions."
[Emphasis added.]

In its response to the institution's appeal, the Committee on Infractions asserted that the impact on innocent students and coaches is always an important consideration when it determines appropriate penalties in a case. In this case, it attempted to minimize the impact on innocent parties by limiting to two the number of years on the postseason competition and television bans. Also, the initial scholarship and official visit reductions were scheduled so that it would be possible for the institution to return to its 1994 scholarship levels by the 1998 or 1999 season, which will coincide with the conclusion of the probationary term imposed by the Committee on Infractions.

The institution is correct in its assertion that the penalties imposed in this case will have an effect on innocent students and coaches. However, it would be impossible for the Committee on Infractions to carry out its functions and responsibilities under Bylaw 19.01.1 without having some effect on innocent students and coaches. That bylaw directs the committee, in imposing penalties, to provide fairness to uninvolved parties. However, the bylaw also makes it clear that the primary mission of the committee is "to eliminate violations of NCAA rules and impose appropriate penalties should violations occur." The Infractions Appeals Committee concludes that the Committee on Infractions, in imposing the penalties in question, balanced properly its functions and responsibilities under Bylaw 19.01.1.

7. NCAA Policies Regarding Fairness in, and Equitable Resolution of, Infractions Cases.

The final basis upon which the institution rested its appeal is the NCAA policy calling for "fairness and the equitable resolution of infractions cases." Here, again, the institution relies on Bylaw 19.01.1, citing that bylaw's provision that the NCAA Enforcement Program "is committed to fairness of procedures and the timely and equitable resolution of infractions cases."

The institution did not claim that the procedures followed were unfair or that the case had not been resolved in a timely fashion. Rather, the claim asserted here is that the penalties imposed on

the institution by the committee on Infractions did not constitute an "equitable resolution" of the case.

The Committee on Infractions appropriately imposed severe penalties in this case. Those penalties were intended to have substantial impact on the institution and its football program. The representatives of the institution who appeared before the committee on Infractions and before this committee were the same representatives who had cooperated in the investigation of the allegations and who, in the face of threatened lawsuits, had taken the corrective actions discussed earlier. They argued that equity and fairness warranted a reduction in, or modification of, the penalties imposed by the Committee on Infractions. The specific relief requested by the institution in its Appeal was that the Infractions Appeals Committee lessen the initial financial aid and expense-paid visit reductions imposed by the Committee on Infractions or, in the alternative, reduce the impact of these penalties by redistributing the reductions over the remaining three years of the probationary term.

The Infractions Appeals Committee considered carefully this request that Penalties III-(F) and (G) be reduced or modified. As previously discussed, the members of the committee agree unanimously that the NCAA must, whenever possible, support the chief executive officers and other representatives of institutions who cooperate in the NCAA Enforcement Program. Whether such support should be demonstrated by setting aside, in whole or in part, penalties imposed by the Committee on Infractions must depend on the particular facts and circumstances of the case.

In making that determination in this case, the Infractions Appeals Committee was mindful of the fact that Bylaw 19.01.1, while calling for "equitable resolution of infractions cases," also sets forth the mission or primary goals of the NCAA Enforcement Program. That mission is "to eliminate violations of NCAA rules and impose appropriate penalties should violations occur." Those goals require that the committee, in determining whether or not the penalties appealed are fair and equitable, consider factors such as those discussed in this report - the nature, number and seriousness of the violations; the conduct and motives of the individuals involved in the violations; corrective action taken by the institution; proportionality of the penalty or penalties imposed; institutional cooperation in the investigation; the impact of penalties on innocent student-athletes and coaches; and the purposes and policies of the NCAA enforcement program.

The imposition of significant penalties in this case is consistent with the mission and primary goals of the NCAA enforcement program. Representatives of the institutions athletics interests, with encouragement by some member of the football staff, were actively involved in numerous flagrant violations of NCAA rules; the violations were the same type of violations, in the same program (football), that resulted in the finding of major violations and the imposition of significant sanctions as recently as 1986; the violations in this case occurred at a time when the institution's athletics director and head football coach were the same individuals who held those same positions at the time of the violations in the 1986 case; the repeated violations demonstrated the continuing failure of the former athletics director and the former head football coach to establish and maintain proper institutional control of its football program; the violations in this case included ethical conduct violations on the part of several former athletics department staff members, including the former head football coach, who had primary responsibility for maintaining control of the institution's football program. Imposing significant penalties in this

case provides a clear message to the institution, its athletics department administration and the representatives of its athletics interests that any repeat violations of NCAA rules will cause great harm to the institution and its football program. It also serves to deter staff members, student-athletes and friends and supporters of other institutions from becoming involved in activities that might harm the programs that they wish to assist.

In determining whether the specific penalties imposed in this case are "excessive or inappropriate," consideration must be given not only to the aggravating factors summarized in the preceding paragraph but also to mitigating factors. Those mitigating factors are the corrective actions taken by the institution and its cooperation in the investigation. Consideration of these factors is also consistent with the mission and primary goals of the NCAA enforcement program.

As previously indicated, the Infractions Appeals Committee is concerned that the institution's cooperation was not accorded appropriate weight in imposing penalties in this case. The institution's chief executive officer, together with other members of the institution's administration, addressed the problems in the institution's football program with courage and integrity. That performance argues strongly for some credit or relief. However, given the many aggravating factors summarized above, which involved less praiseworthy conduct by other representatives of the institution, the Infractions Appeals Committee concludes that the penalties imposed by the Committee on Infractions are neither excessive nor inappropriate.

C. Appeal of Show-Cause Penalty.

The institution appealed the "show-cause" penalty requiring it to disassociate a representative of its athletics interests, inasmuch as the institution disassociated the representative August 21, 1994, one day prior to a prehearing conference with the NCAA enforcement staff and one month prior to the hearing before the Committee on Infractions. However, this information was not provided to the committee, and the committee issued the "show-cause" penalty. The Committee on Infractions stated in its response that if it had been aware of the disassociation when it issued its report, it would have adopted the disassociation with the qualifications contained in the penalty. It also noted that its knowledge of the disassociation would not have changed any of the other penalties imposed. Given the fact that the institution complied with the committee's intentions prior to the hearing, the Infractions Appeals Committee thus vacates the "show-cause" penalty in this instance.

NCAA Infractions Appeals Committee

Marshall M. Criser

Katherine E. Noble

David Price

Michael L. Slive (chair)

John W. Stoepler

MLS:tkm

- 30 -