



News Release

"This report reflects removal of a "corrective action" originally imposed by the institution involving the former compliance director."

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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
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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

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. 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. 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. 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. 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 nonqualifiers, 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 201 examination 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.

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 nonqualifiers 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. 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. Established an Interim Compliance Committee to review the decisions of the Compliance Office;

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 19.6.2.1 and 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 nonqualifiers who worked for the athletics representative.]
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 nonqualifiers who worked for the athletics representative.]
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. 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. 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. Refusing his financial assistance or contributions (in cash or in kind) to the university's athletics program.
 - 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. Implementing other actions that the university determines to be within its authority to eliminate his involvement in the university's athletics program.
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.
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As required by NCAA legislation for any institution involved in a major infractions case, Marshall shall be subject to the provisions of NCAA Bylaw 19.6.2.3, concerning repeat violators, for a five-year period 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 violations or penalties in this case to the NCAA Infractions Appeals Committee, the Committee on Infractions will submit a response to the members of the appeals committee. This response may include additional 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 penalties 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.

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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.