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UNIVERSITY OF MISSISSIPPI INFRACTIONS APPEALS COMMITTEE REPORT

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

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III. Penalties Imposed By the Committee on Infractions.

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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. [As noted in Section V (Appellate Procedures) of this report, the second 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

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