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UNIVERSITY OF ALABAMA, TUSCALOOSA

PUBLIC INFRACTIONS APPEALS COMMITTEE REPORT

INDIANPOLIS, INDIANA

This report is filed in accordance with NCAA Bylaw 32.11 and is organized as follows:

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I. INTRODUCTION.

The University of Alabama, Tuscaloosa, (hereinafter referred to as Alabama) appealed to the NCAA Division I Infractions Appeals Committee specific findings of violations and penalties as determined by the NCAA Division I Committee on Infractions. In this report, the Infractions Appeals Committee addresses the issues raised by Alabama.

II. BACKGROUND.

The Committee on Infractions issued Infractions Report No. 193 [February 1, 2002] in which the committee found violations of NCAA legislation in the football program. On the basis of those findings, the Committee on Infractions determined that this was a major infractions case and imposed penalties accordingly. [February 18, 2002, issue of The NCAA News.]

This case centered on violations of NCAA bylaws governing recruiting, honesty standards, salary control and extra benefits.

After the Committee on Infractions issued its report, Alabama filed a timely Notice of Appeal February 15, 2002. A written appeal was filed April 10, 2002. The Committee on Infractions filed its Response June 4, 2002. Alabama filed its Rebuttal to the Committee on Infractions Response July 1, 2002. The case was heard by the Infractions Appeals Committee August 16, 2002 (see Section VIII below).

III. VIOLATIONS OF NCAA LEGISLATION AS DETERMINED BY THE COMMITTEE ON INFRACTIONS.

II-A. RECRUITING INDUCEMENTS; IMPERMISSIBLE RECRUITING CONTACTS. [NCAA Bylaws 13.01.3, 13.01.4, 13.01.5, 13.1.2.1, 13.2.1, 13.2.2-(e) and 13.5.1]

In academic years 1995-96 and 1996-97, while recruiting prospect 1 athletics representative B provided $20,000 cash, lodging and entertainment to prospect 1 and his parents to induce the young man to sign a National Letter of Intent with

the university. Further, athletics representative B told prospect 1's family that athletics representative A was the source of the cash. Finally, athletics representatives A, B, and C made impermissible recruiting contacts with the young man and his family. Specifically:

1. In August 1995, during a home high-school football game in which prospect 1 competed, athletics representative C told the father of prospect 1 that athletics representative B knew someone who could "help" his son. Athletics representative B then spoke to prospect 1's father at the game and identified himself as an intermediary for someone who would provide $20,000 in cash if prospect 1 enrolled at the university. The next day athletics representative B told prospect 1's father that athletics representative A would provide the cash. Approximately one week later, representative B visited prospect 1 at his home and asked the prospect if there was anything he wanted, to which prospect 1 responded he wanted a truck. Athletics representative B told the young man he would provide $20,000 cash but not a truck so as to avoid creating a paper trail.

2. Prospect 1 and his parents attended the Alabama-Vanderbilt football game in Nashville [September 3, 1995]. Athletics representative B invited them to the game, selected their hotel, and paid for both the game and their hotel accommodations. The afternoon of the game, athletics representative B arranged separate meetings for prospect 1 and his father with athletics representative A in athletics representative A's hotel suite. Athletics representative A told prospect 1's father that he was pleased that the young man had committed to the university. While prospect 1's father was in the hotel suite, the then associate athletics director and current director of athletics entered the suite and was introduced to prospect 1's father. The athletics director told athletics representative A that it was improper for a prospect's father to be in the suite and thereupon athletics representative B and prospect 1's father were asked to leave, which they did.

3. In fall 1995, sometime subsequent to the Vanderbilt game and in partial fulfillment of the $20,000 offer as referenced in Finding II-A-1, athletics representative B delivered $10,000 to prospect 1’s home. The money was in $100 denominations inside a white plastic grocery bag. Prospect 1 used the money to buy an all-terrain vehicle (ATV), a shotgun and hunting accessories.

4. In January 1996, athletics representative B drove prospect 1's father to Memphis, Tennessee, to collect the remainder of the $20,000 from

athletics representative A for delivery to prospect 1's father. They drove past a Memphis bank that athletics representative B identified as the place where he would meet athletics representative A to collect the money. Athletics representative B then left prospect 1's father at a grocery store in a nearby shopping center. On his return several minutes later, athletics representative B handed prospect 1's father a large brown envelope containing $10,000 cash in $100 bill denominations. Some of this money was used to buy a 1996 Chevrolet Camaro and to pay a $600 car repair bill owed to athletics representative B. In February 1996, prospect 1 signed a National Letter of Intent with the university but did not enroll because he failed to meet NCAA initial-eligibility requirements.

5. In fall 1996, after his high-school eligibility was exhausted, prospect 1 attended high school in Stevenson, Alabama, in order to satisfy NCAA initial-eligibility requirements. At this time, he was recruited again by several institutions, and athletics representatives B and C made several visits to his home in an effort to recruit the young man. Athletics representative B offered as an inducement for prospect 1 to sign another National Letter of Intent with the university (a) $5,000 cash, (b) $500 a month, (c) $500 for each football game he started, and (d) $5,000 each Christmas to his mother while he was enrolled. In February 1997, after prospect 1 committed to sign a National Letter of Intent with another NCAA institution, athletics representative B offered to double the promised cash payments if prospect 1 reconsidered and signed with the university. The young man declined the offers and signed a National Letter of Intent with the other NCAA institution.

6. On numerous occasions in the 1995-96 and 1996-97 academic years, athletics representative C purchased meals for prospect 1's parents at restaurants located in Chattanooga, Tennessee, and Huntsville, Alabama. At other in-person meetings athletics representative C promised prospect 1's father to "sponsor" prospect 1 if he attended the university and stated that he had previously "sponsored" two other student-athletes who attended the university.

II-B. RECRUITING INDUCEMENTS THROUGH HIGH-SCHOOL COACH. [Bylaws 13.2.1 and 13.2.2-(e)]

Between May 1999 and February 2000, the university recruited a prospective student-athlete (henceforth, "prospect 2") from a Memphis high school. Athletics representative A offered a substantial amount of money to the high school's head football coach

(henceforth, "head high-school coach 1") to secure the prospect's commitment to attend the university. Head high-school coach 1 (who told coaches from at least five other NCAA member institutions who were interested in recruiting prospect 2 that they would have to provide him money or money and vehicles before he would allow prospect 2 to consider their school) accepted athletics representative A's offer. In fulfillment of the agreement, athletics representative A provided several large cash payments to head high-school coach 1 prior to the February 2000 National Letter of Intent signing day. Head high-school coach 1 used some of this money to make a $5,000 down payment on a new sport utility vehicle (SUV).

II-C. VIOLATION OF HONESTY STANDARDS; VIOLATION OF EMPLOYMENT AND SALARY CONTROLS. [Bylaws 11.1.l, 11.3.1 and 19.01.3]

During the summer of 1998, athletics representative A provided two loans to Alabama assistant football coach A, which he made no effort to repay until information about the loans surfaced during a formal interview with athletics representative A February 27, 2001. Alabama assistant coach A also violated the NCAA's principles of honesty and cooperation when he knowingly failed to provide complete information during an interview with the enforcement staff and the university about receiving financial assistance from athletics representative A. Specifically:

1. Athletics representative A provided an unsecured, no-interest loan of $1,600 to Alabama assistant A [June 3, 1998] that was used to pay miscellaneous expenses incurred during his move from Tallahassee, Florida, to Tuscaloosa, Alabama. Alabama assistant coach A repaid the loan May 3, 2001, with a personal check to an investment business owned by athletics representative A.

2. Athletics representative A provided a $55,000 loan to assistant football coach A [July 20, 1998] that was used to repay personal debt. The loan was secured through a mortgage on property owned by Alabama assistant coach A in Florida. According to the provisions of the promissory note, assistant football coach A was to be charged an interest rate of 8 percent per annum payable quarterly, and the principal of the loan was scheduled to be paid off by July 20, 1999. However, Alabama assistant coach A failed to make any payments on the principal, interest or late charges until May 7, 2001, when a payment of $67,723.24 was paid to athletics representative A's investment business out of proceeds derived from the sale of the Florida property.

3. During a November 29, 2000, interview conducted by a NCAA enforcement representative and university officials Alabama assistant coach A failed to disclose complete information regarding financial transactions he had with athletics representative A.

II-D. RECRUITING VIOLATIONS DURING UNOFFICIAL AND OFFICAL VISITS. [Bylaws 13.6.2.2, 13.8.2.1.1, 13.9.1 and 13.9.1.1]

On several occasions during the official paid and unofficial visits of prospect 2 the university violated NCAA recruiting legislation. Further, as a result of the violations during the young man's unofficial visit, he received two expense-paid visits to the institution's campus. Specifically:

1. During an unofficial visit by prospect 2 [Saturday, October 23, 1999], lunch and dinner were provided at Bryant-Denny Stadium for him, head high-school coach 1 and the assistant high-school coach.

2. On prospect 2's official paid visit during the weekend of January 21-22, 2000, head high-school coach 1 was provided a meal at a Tuscaloosa restaurant and meals in the university's Bryant Museum and football press box.

3. The university paid $147 to prospect 2 [January 22, 2000] to cover the round-trip automobile expenses incurred for his official visit. However, high-school coach 1 used his automobile to provide prospect 2's transportation.

II-E. IMPERMISSIBLE EXTRA BENEFIT – COST-FREE USE OF AN AUTOMOBILE. [Bylaws 16.02.3 and 16.12.2]

From June through August 1999, athletics representative D provided a 1994 SUV from an automobile dealership in Columbus, Georgia, at no cost to a football student-athlete (henceforth "student-athlete 1"). The young man possessed the vehicle until he enrolled at another NCAA member institution in August 1999.

II-F. IMPERMISSIBLE EXTRA BENEFITS. [Bylaws 16.02.3 and 16.12.2]

During the 1998-99 academic year, athletics representative C provided four $100 cash payments to student-athlete 1. Specifically:

1. On the morning of a home football contest in 1998, athletics representative C met in his room at a Tuscaloosa hotel with student-athlete 1 and gave him a $100 bill.

2. On three other occasions during the 1998-99 academic year, athletics representative C met in an apartment with student-athlete 1 and each time gave him a $100 bill.

II-G. IMPERMISSIBLE RECRUITING CONTACTS BY ATHLETICS REPRESENTATIVES. [Bylaws 13.01.5 and 13.1.2.1]

In the spring and summer of 1997, athletics representatives A and C each made improper in-person contacts with prospective student-athletes being recruited by the institution. Specifically:

1. At the university's 1997 spring intra-squad football game, athletics representative C introduced a prospective student-athlete (a high-school junior) from Nashville, Tennessee, to two other athletics representatives stating that the young man would be attending the institution.

2. During the university's 1997 summer football camp, athletics representative A introduced himself to a prospective student-athlete from Memphis, Tennessee, while the young man was walking through a campus building with the young man's high-school football coaches and an assistant football coach.

II-H. EXCESSIVE ENTERTAINMENT DURING RECRUITING VISIT. [Bylaws 13.01.2 and 13.2.2]

On several occasions during the 1997-98 and 1998-99 academic years, during the official paid visits to the university's campus of several prospective student-athletes, the prospects and their student hosts were entertained by female strippers at parties held at an apartment building on the university's campus.

IV. SECONDARY VIOLATIONS.

[Bylaws 13.1.8, 13.2.1, 13.2.7, 13.9.1.3, 14.3.1, 14.3.2.2.1, 14.3.2.4, 15.1, 15.01.5, 16.0.2.3, 16.2.2 and 16.12.2]

1. During the fall evaluation period on the specific dates of September 14 and October 23, 1998, and September 10 and October 15, 1999, Alabama assistant coach B made evaluations at a Memphis high school. During the fall evaluation period on the specific dates of September 10 and October 15, 1999, and then again October 6 and 27, 2000, Alabama assistant coach B made evaluations at both this high school and another Memphis high school.

2. During the 2000-01 academic year, the university permitted a student-athlete to practice, compete and receive athletically related aid although he was an NCAA nonqualifer. The committee noted that the university had no reason not to treat him as eligible as he had been deemed eligible by the NCAA initial-Eligibility Clearinghouse. From the evidence, the committee concluded that, but for the efforts taken by the associate director of athletics for compliance to assure that the young man's academic qualifications were in order, the violation would have been major, not secondary.

3. During fall 1999, a student-athlete placed the names of two individuals on the institution's complimentary ticket pass list in exchange for $100. These individuals then attended the institution's home football game October 23, 1999.

4. During spring and summer of 1999, Alabama assistant coach A violated the NCAA's recruiting and extra benefit legislation. Specifically:

   a. In January 1999, after learning that a student-athlete had been issued a speeding ticket, Alabama assistant coach A contacted a member of the state police and had the speeding ticket dismissed.

   b. Alabama assistant coach A arranged to have an institutional staff member drive a prospect to Alabama assistant coach A's home [July 13, 1999] to rest for several hours after receiving over-the-counter medication from the institution's training room. Alabama assistant coach A also had the staff member drive the young man back to the young man's apartment.

   c. Alabama assistant coach A gave four Orange Bowl tickets to a football student-athlete [January 3, 2000] with the understanding that he or his family would pay him at a later date, which the young man did.

d. During summer 1999, numerous football student-athletes received financial aid that exceeded the value of a full grant-in-aid when the director of football operations instructed the university's dining service to place each scholarship football student-athlete on a 15-meal plan. As a result, 28 student-athletes on the five-meal plan both had additional free meals provided under the 15-meal plan, and at the same time received money for those meals.

e. During late summer 1999, Alabama assistant coach A allowed a prospective student-athlete to make numerous long-distance telephone calls from the coach's athletics department office at no cost to the young man.

V. CORRECTIVE ACTIONS TAKEN AND PENALTIES (PROPOSED OR 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, proposed to take, or will take are the following:

1. The university has disassociated athletics representative A for a period of 5 years; athletics representative B for a period of 10 years and athletics representative C for a period of seven years.

2. The university has self-imposed the following reductions in scholarships in the sport of football: a reduction in the permissible limit of 25 initial scholarships in the sport of football in 2002-03 to 17, in 2003-04 to 21, and in 2004-05 to 22.

3. The university has self-imposed the following reductions in the number of official paid visits in the sport of football: in the academic year 2001-02, a reduction of 22 visits; in the academic year 2002-03 a reduction of 12 visits; and, in the academic year 2003-04 a reduction of 10 visits.

4. The university reduced the number of football coaches who can recruit off campus at any one time from seven to six for a period of one calendar year beginning December 1, 2001, through December 1, 2002.

5. The university ceased to recruit prospects from eight Memphis high schools for a one-year period (December 1, 2000, through December 1, 2001).

6. The university has modified its outside income reporting procedures for coaches and staff. In addition, the associate athletics director for compliance has emphasized with the National Alumni Association that payments to coaches and athletic staff for speaking at events must adhere to alumni association parameters and be coordinated through the National Alumni Association. The associate athletics director for compliance also speaks with the alumni chapter presidents and officers from all across the country at their annual officer workshop each summer.

7. The letter sent to each signed prospective student-athlete in the sport of football has been revised to include information regarding the rules associated with coming to Tuscaloosa's community during the summer prior to initial full-time enrollment. The compliance office has implemented a policy designed to monitor these activities.

8. The university has modified its compliance systems in the areas of unofficial and official visits.

    a. With regard to unofficial visit meals, the football recruiting office will continue to require prospects and their guests to purchase a meal ticket for any meals provided for prospects and will continue to receipt each payment.

    b. With regard to official visit mileage reimbursement, the compliance office has modified its official visit approval form and its official visit mileage voucher to reflect the rule that mileage money shall only be provided to those prospects who drive themselves to an official visit or prospects who are driven to an official visit by their parents or legal guardians.

    c. With regard to official-visit meals, the football recruiting office has begun documenting the receipt of meal payments from anyone not covered by permissible official visit rules.

9. For all incoming scholarship student-athletes, the coordinator of eligibility and financial aid within the athletics department will photocopy all transcripts received during the recruiting process and send these transcripts to the admissions counselor responsible for student-athletes admissions. When the final transcript is received in the admissions office, the admissions counselor will carefully

compare the transcripts received during the recruiting process with the final transcript to determine if any discrepancies exist. If discrepancies exist, the admissions counselor will then contact the student's high school and perform any other necessary inquiries needed.

10. As a proactive measure the faculty athletics representative and the associate athletics director of compliance will give a presentation on NCAA rules to all new university board of trustee members.

11. The university has brought the management of football camps and coaches' clinics, which had previously been managed by an outside management company hired by the head coach, back under the auspices of the athletics department.

12. The university has updated its "Guide to NCAA Rules for Alumni, Faculty and Friends" brochure and this fall has mailed a copy to all season-ticket holders in all sports. The associate athletics director for compliance will speak regularly at various alumni and booster club gatherings where she will continuously reiterate the importance of rules compliance by all individuals associated with the athletics department.

VI. PENALTIES IMPOSED BY THE COMMITTEE ON INFRACTIONS.

The Committee on Infractions imposed additional penalties because of the involvement of the university in a number of the violations. The penalty in which Alabama was cited was III-B.

1. Alabama shall be publicly reprimanded and censured.

2. The university shall be placed on five years of probation commencing February 1, 2002. This period coincides with the length of time in which the university is subject to the repeat violator rule (Bylaw 19.6.2.3).

3. The institution's football team shall end its 2002 and 2003 seasons with the playing of its last regularly scheduled, in-season contests and shall not be eligible to participate in any bowl game or take advantage of the exemption provided in Bylaw 17.10.5.3 for preseason competition.

4. The institution shall reduce the permissible limit of 25 initial grants in the sport of football in 2002-03 to 17; in 2003-04 to 18 and in 2004-05 to 19. [Note: the university had proposed a limit of 17 initial grants in the sport of football in 2002-

03; in 2003-04 to 21 and in 2004-05 to 22]. Further, the university shall also reduce the total number of football counters available under Bylaw 15.5.5.1 from 85 to 80 during each of those years.

5. For the period of the probation, the university shall prohibit all non-institutional athletics representatives (except former football student-athletes approved by the Associate Director of Athletics for Compliance on a case-by-case basis) from doing the following:

   a. Traveling on football team charters.

   b. Attending football team practices normally closed to the public.

   c. Participating in any fashion with the university's football camps, including the donation of funds to the camps.

   d. Accessing sidelines and locker rooms before, during and after football games.

6. The university shall show cause why it should not be penalized further if it fails to permanently disassociate from its athletics programs athletics representatives A, B and C based on their involvement in violations of NCAA legislation as set forth in Findings II-A, II-B, II-C, II-F and II-G. All disassociations shall include the following provisions:

   a. Refraining from accepting any assistance, including aid in the recruitment of prospective student-athletes, the support of enrolled student-athletes or providing benefits for athletics department personnel;

   b. Refusing financial assistance or contributions (in cash or in kind) to the university's athletics program;

   d. Ensuring that no athletics benefits or privileges, including preferential tickets, are provided, 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 involvement in the university's athletics program.

7. Further, the university shall show cause why it should not be penalized further if it fails to disassociate athletics representative D from its athletics programs for a period of at least three years based on his involvement in violations of NCAA legislation as set forth in Finding II-E. The conditions of disassociation shall be the same as set forth in the preceding penalty.

8. The committee considered imposing a show-cause order under Bylaw 19.6.2.2-(1) against Alabama assistant coach A but decided not to do so, due to the fact that he was terminated by the university at the conclusion of the 2000 season and since that time has been out of college coaching, under what the committee considered to be a *de facto* show-cause order.

9. 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 March 15, 2002, setting forth a schedule for its compliance and educational program; and

    c. File with the committee's director annual compliance reports indicating the progress made with this program by November 15 of each year during the probationary period. Particular emphasis should be placed on the monitoring and education of athletics representatives. The reports must also include documentation of the university's compliance with the penalties (adopted and) imposed by the committee.

    10. At the conclusion of the probationary period, the university's president shall provide a letter to the committee affirming that the university's current athletics policies and practices conform to all requirements of NCAA regulations.

VII. ISSUES RAISED ON APPEAL.

In its written appeal, Alabama asserted that findings of violations II-A, II-B, and II-F against it should be set aside because they are clearly contrary to the evidence and procedural error affected the reliability of the information on which the findings were based. Further, Alabama asserted that penalties III-B-2, III-B-3, III-B-4, III-B-5 and III-B-7 imposed by the committee are excessive and inappropriate. (Bylaw 32.10.2)

VIII. APPELLATE PROCEDURE.

In considering Alabama's appeal, the Infractions Appeals Committee reviewed the Notice of Appeal; the transcript of the institution's November 17, 2001, hearing before the Committee on Infractions; and the submissions by Alabama and the Committee of Infractions referred to in Section II of this report.

The hearing on the appeal was held by the Infractions Appeals Committee August 16, 2002, in Chicago, Illinois. The representatives of Alabama present at the hearing included the president, former president, athletic director, and general counsels. Also present were its attorneys and paralegal. The Committee on Infractions was represented by the appeals coordinator for the Committee on Infractions and the director of the NCAA Infractions Committees. Also present were the chair of the Committee on Infractions, the vice president of enforcement services and a director of enforcement services. The hearing was conducted in accordance with procedures adopted by the committee pursuant to NCAA legislation.

IX. INFRACTIONS APPEALS COMMITTEE'S RESOLUTION OF THE ISSUES RAISED ON APPEAL.

In reviewing the report in this case, the Infractions Appeals Committee may overturn a determination of fact or finding of violation only if:

A. The committee's finding clearly is contrary to the evidence presented to the committee;

B. The facts found by the committee do not constitute a violation of the Association's rules; or

C. A procedural error affected the reliability of the information that was used to support the committee's finding. [Bylaw 32.10.2]

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 on which the committee based a finding. The Infractions Appeals Committee ... will set aside a finding only on a showing that information that might have supported a contrary result clearly outweighed the information on which the Committee on Infractions based the finding. The Committee on Infractions determines the credibility of the evidence. (University of Mississippi Public Infractions Appeals Committee Report, at page 10, May 1, 1995) The Committee on Infractions determines the credibility of the evidence.

A penalty imposed by the Committee on Infractions may be set aside on appeal if the penalty is "excessive or inappropriate based on all the evidence and circumstances." [Bylaw 32.10.2]

On appeal, the institution has challenged several of the Committee on Infractions' findings of violations relating to recruiting inducements and impermissible recruiting contacts that occurred in 1995-96 and 1996-97.

The institution first contends that these violations are barred by the statute of limitations. Bylaw 32.5.2 provides:

> Allegations included in a letter of official inquiry shall be limited to possible violations occurring not earlier than four years before the date the notice of preliminary inquiry is forwarded to the institution or the date the institution notifies (or, if earlier, should have notified) the enforcement staff of its inquiries into the matter. However, the following shall not be subject to the four-year limitation: *(Revised: 10/12/94)*
>
> 1. Allegations involving violations affecting the eligibility of a current student-athlete;
>
> 2. Allegations in a case in which information is developed to indicate a pattern of willful violations on the part of the institution or individual involved, which began before but continued into the four-year period; and
>
> 3. Allegations that indicate a blatant disregard for the Association's fundamental recruiting, extra-benefit, academic or ethical-conduct regulations or that involve an effort to conceal the occurrence of the violation. In such cases, the enforcement staff shall have a one-year period after the date information concerning the matter becomes available

> to the NCAA to investigate and submit to the institution an official inquiry concerning the matter.

In this case, the NCAA letter of preliminary inquiry was dated February 21, 2001, which is more than four years after the violations in question. The NCAA enforcement staff contended that the violations were timely under subparagraph (b) of Bylaw 32.5.2 because they were part of a pattern of willful violations by the involved institution's athletics representatives that began before, and continued into, the four-year period prior to issuance of the letter of preliminary inquiry. The institution argued on appeal that the violations were time-barred by operation of the last sentence in Bylaw 32.5.2-(c), which requires the NCAA enforcement staff to investigate and submit an official inquiry within one year after information concerning the matter becomes available to it. Here, the NCAA enforcement staff received information concerning these violations in 1996 and early 2000.

We conclude that the one-year limitation set forth in Bylaw 32.5.2 (c) applies only to that subparagraph and not to violations covered by subparagraph (b). Our conclusion is based on the legislative history of the bylaw as well as the plain meaning of the bylaw.

Subparagraph (c) was added to the statute of limitations bylaw in 1988. When this amendment was introduced at the NCAA Convention, its sponsor indicated the last sentence was intended to place a time limit on the exception that was being added to the statute of limitations. There is nothing in the legislative history that indicates an intention to apply this time limit to the first two subparagraphs of the bylaw.

Further, applying the one-year time limit is not consistent with the policies reflected in subparagraphs (a) and (b). Subparagraph (a) involves violations affecting the eligibility of a currently enrolled student-athlete. It would be inappropriate to limit the statute of limitations to the one-year investigation/notice period if a student-athlete involved in the violation has eligibility remaining. Subparagraph (b) addresses situations when the conduct giving rise to the violation is part of a pattern of willful misconduct that began before but continued into the four-year period. The continuing nature of this conduct brings it within the four-year statute.

We conclude that the findings with regard to violations occurring in 1995-96 and 1996-97 are not barred by the statute of limitations.

The institution also contended on appeal that a procedural error affected the reliability of the information used to support the Committee on Infractions' findings of violations occurring in 1995-96 and 1996-97, and that these findings are contrary to the evidence.

In its report, the Committee on Infractions cited evidence received from a confidential source in support of its findings. The institution contends that use of this information was improper under the provisions of Bylaw 32.7.5.5.1 which states:

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

The NCAA enforcement staff did obtain evidence from a confidential source, but the identity of this source was disclosed to the institution, and it had the opportunity to interview the individual and judge the individual's credibility. The institution agreed to allow the enforcement staff to use evidence from the confidential source and submitted a letter waiving its rights under Bylaw 32.7.5.5.1. On appeal, the institution claims that this waiver related only to allegations other than those involved in the 1995-96 and 1996-97 recruiting violations.

The institution's written waiver contains no such limitation on the use of information obtained from the confidential source, nor did the institution articulate any such limitation at the Committee on Infractions hearing. The institution argued on appeal that its waiver related only to using the confidential source information in connection with other allegations because that was the context in which the NCAA enforcement staff had discussed using it. If an institution that waives its rights under Bylaw 32.7.5.5.1 does so on a limited or conditional basis, it must articulate those conditions in its waiver. There is no evidence that the institution here did so or that the Committee on Infractions had any information about limitations on the use of the information obtained from the confidential source. Thus, there was no procedural error.

In addition, we conclude that there was ample evidence supporting the findings, even if the Committee on Infractions had not relied on the information from the confidential source.

We conclude that all of the findings of violations by the Committee on Infractions including the 1995-96 and 1996-97 violations are not clearly contrary to the evidence in this case.

The institution also appealed several of the penalties in this case, particularly focusing on the two-year ban on postseason competition (III-B-3) and the five-year probation (III-B-

2). The institution contended on appeal that the conduct of its athletics representatives should not result in an institutional penalty without a showing of fault by the institution.

We have addressed violations by athletics representatives in a number of prior cases. The issue in the University of Nevada, Las Vegas, case was whether it was appropriate to impose a ban on postseason competition against an institution whose athletics representatives had made cash payments to a prospective student-athlete and an enrolled student-athlete. We held that such a penalty was appropriate as a deterrent to future violations by bringing the "violations to the attention of the institution's boosters as well as the institution." (UNLV Public Infractions Appeals Committee Report, page 11, February 16, 2001) In that case, we discussed the application of Bylaw 19.6.2.1-(f). We found it unnecessary to decide there whether one of the three conditions of the bylaw must be satisfied as a condition to imposing a postseason ban because the case was subject to the repeat violator Bylaw 19.6.2.3.

In this case, we have a similar situation because the institution is subject to the repeat violator bylaw. The Committee on Infractions has discretion to ban postseason competition under this bylaw if such a penalty is not excessive or inappropriate. We have already concluded that such a ban is not inappropriate in a case involving violations by athletics representatives.

A ban on postseason competition is one of the most serious penalties that can be imposed on an institution. It deprives the institution and its student-athletes of the opportunity to achieve the highest level of success in the their sport. It also prevents the fans and other supporters of the program from enjoying the full success of a season of competition. Because the violations in this case were numerous and particularly egregious, we conclude that the imposition of such a penalty is appropriate under the facts of the case.

The institution contended that, although it is responsible for the conduct of its athletics representatives, it was not, and was not found to be, at fault with respect to their actions. Without institutional fault, the institution argued that it is inappropriate to impose penalties on it for violations committed by its athletics representatives. This argument is based on the fact that the Committee on Infractions did not make a finding of lack of institutional control. As discussed above, we upheld the institutional sanction of a postseason ban in the UNLV case based on athletics representative violations for a repeat violator where there were no findings of lack of institutional control. Moreover, the Committee on Infractions noted in this case that the athletics representatives were "not the typical representatives" due to their "favored access and 'insider status'." (Committee on Infractions report page 3) The Committee found this status:

> "… not only gives credence to their claims of authority within a program but also, and however unintended, serves to reward them for the illicit activities in which they engage. Moreover, special access and insider status likely ease the way for illicit conduct by rogue representatives both by identifying prospects for them and by fostering (or contributing to) the belief of prospects and their parents that the representative's conduct is sanctioned by the university and in its best interest as well as that of the prospect." (Committee on Infractions report page 3).

The Committee concluded that this favored access and insider status created "greater university responsibility for any misconduct in which they engage." (Committee on Infractions report page 3) We agree.

The remaining question is whether the penalty is excessive. The two-year postseason ban imposed here is one of the longest imposed by the Committee on Infractions. However, in its report, the Committee on Infractions indicated that it seriously considered imposing the repeat violator penalty set forth in Bylaw 19.6.2.3.2-(a) and prohibiting outside competition in football (the "death penalty"). Its articulated bases for considering this penalty were the institution's status as a "two-time repeat violator" (1995 and 1999), the very serious nature of the recruiting violations and its view that the institution "bears some responsibility for the special status … within the athletics department" enjoyed by two of the athletics representatives. (Committee on Infractions report page 29) Although finding this a "very close question," the Committee on Infractions declined to impose the death penalty due to "the particular circumstances of this case and of the university's infractions history." (Committee on Infractions report page 29)

Although the Committee did not elaborate in the report on what it meant by the "particular circumstances" of the institution's infractions history, it appears that the Committee considered cooperation of the institution in reporting the 1999 violation as a mitigating factor. This is consistent with the view the Committee took in its 1999 report on this matter. In that report, the Committee recognized that the institution had made great strides after the 1995 violation by creating "an environment of compliance" and stated: "Rather than impose institutional penalties, the Committee commends the university for its effective institutional control and proactive compliance …." (Public Infractions Report for the University of Alabama, Tuscaloosa, page 3, February 9, 1999). The Infractions Appeals Committee agrees with this assessment of the 1999 report. However, even if the nature of the 1999 case mitigates the institution's status as a two-time repeat violator, the institution remains a repeat violator as a result of the 1995 report.

In further explaining why it did not impose the death penalty, the Committee on Infractions contrasted this case with the prior case (Southern Methodist University,

February 25, 1987) in which this penalty was imposed. In that case, the Committee noted that there was "a demonstrated blatant disregard for NCAA rules that permeated throughout the entire university and its governance structure." (Committee on Infractions report page 29) The Committee found the circumstances of this case in sharp contrast. Here "university officials cooperated fully with the enforcement staff, often at great personal criticism, in a diligent effort to develop complete information regarding the violations." (Committee on Infractions report page 29) The Committee concluded "[h]ad this candor and cooperation been lacking, the death penalty (as well as substantial penalties in addition to those imposed in this case) would have been imposed." (Committee on Infractions report pages 29-30)

In the recent Howard University case, we encouraged the Committee on Infractions "to include in its report in future cases a fuller explanation of the basis of the penalties imposed and the extent of the consideration given to any degree of institutional cooperation sufficient to be a mitigating factor." (Howard Public Infractions Appeals committee Report, page 31, July 16, 2002). The Infractions Appeals Committee commends the Committee on Infractions for its explanation of the rationale for the penalties it imposed and the extent to which the institution's cooperation operated to mitigate those penalties. It is clear from the Committee's report that it did properly consider institutional cooperation as a "significant factor" and accorded it "substantial weight in determining and imposing" penalties here. (Mississippi page 19)

Finally, the institution argued that the two-year postseason ban and five-year probation are excessive compared to the penalties imposed in other cases involving repeat violators. Consistency in penalties so that comparable cases receive comparable penalties is a factor to consider in determining whether a penalty is excessive or inappropriate. We recognize that it is difficult to meaningfully compare cases because there are so many disparate variables in the cases. We also recognize that the Committee on Infractions must have latitude in tailoring remedies to the particular circumstances involved in each case and that the universe of relevant cases is not static, but evolving. In this case, the Committee on Infractions carefully considered the nature, number and seriousness of the violations, the conduct and motives of those involved in the violations, the corrective actions taken by the institution, the institution's exemplary cooperation and its repeat violator status.

The Committee on Infractions compared this case with the only case in which the death penalty was imposed and appropriately distinguished this case from that one. In the hearing on appeal, it adequately demonstrated the consistency of the result in this case with other recent cases.

There is one other circumstance present in this case which deserves comment. In 1996, the NCAA enforcement staff received a letter alleging that one of the athletics representatives who was involved in the 1995-96 violations reviewed in this case had committed recruiting violations involving a prospective student-athlete. The enforcement staff noted in its records that the information should be given to the institution. This was not done. All the parties regretted this lapse by the enforcement staff.

The institution argued on appeal that it was disadvantaged by the enforcement staff's failure to notify it of the allegation and that this lapse should be a mitigating factor in imposing penalties. The institution contended that, had it been apprised of the information in a timely manner, it would have investigated the matter in 1996 and could have prevented further violations by the athletics representatives involved in the later violations. It is not, of course, clear what would have happened had the institution received the information in 1996, and so the consequences of the enforcement lapse are speculative.

The Committee on Infractions did consider an enforcement lapse when deciding the University of Minnesota, Twin Cities, infractions case (July 2, 2002). At the hearing in this case, the appeals coordinator for the Committee on Infractions agreed that an enforcement lapse should be a mitigating factor. The report in this case does not, however, indicate how or the extent to which the factor was so considered by the Committee. We do not find it necessary to decide in this particular case whether a lapse in the enforcement process is a mitigating factor. We note, however, that should this issue arise in a future case, the Committee on Infractions' report should include an explanation of the effect of such an enforcement lapse.

For all of the foregoing reasons, we conclude that the two-year postseason ban and five-year period of probation imposed in this case are not excessive or inappropriate, and affirm Penalties III-B-3 and III-B-2.

X. CONCLUSION.

The findings and penalties in this case are affirmed.

NCAA Infraction Appeals Committee

Terry Don Phillips, chair
Noel Ragsdale
Allan Ryan Jr.
Robert Stein