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**REPORT OF THE  
NATIONAL COLLEGIATE ATHLETIC ASSOCIATION  
DIVISION I INFRACTIONS APPEALS COMMITTEE**

**September 25, 2003**

Report No. 208

University of Michigan

Ann Arbor, Michigan

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 Michigan (hereinafter referred to as Michigan or institution) appealed to the NCAA Division I Infractions Appeals Committee one specific finding of violation and one penalty as determined by the NCAA Division I Committee on Infractions. In this report, the Infractions Appeals Committee addresses the issues raised by Michigan.

## **II. BACKGROUND.**

On May 8, 2003, the Committee on Infractions issued Infractions Report No. 208 in which the committee found violations of NCAA legislation in the men's basketball program. On the basis of those findings, the Committee on Infractions determined that this was a major infractions case and imposed penalties accordingly. [May 26, 2003, issue of The NCAA News.]

This case centered on violations of NCAA bylaws governing amateurism and extra benefits.

After the Committee on Infractions issued its report, Michigan filed a timely Notice of Appeal May 12, 2003. A written appeal was filed June 13, 2003. The Committee on Infractions filed its Response July 14, 2003. Michigan filed its Rebuttal to the Committee on Infractions Response July 28, 2003. The case was considered by the Infractions Appeals Committee August 17, 2003 (see Section VII below).

## **III. VIOLATIONS OF NCAA LEGISLATION AS DETERMINED BY THE COMMITTEE ON INFRACTIONS.** [Please note that the citations below are the citations as they appear in the Committee on Infractions report dated May 8, 2003.]

### **II-A VIOLATION OF AMATEURISM REGULATIONS; PROVISION OF IMPERMISSIBLE RECRUITING INDUCEMENTS AND EXTRA BENEFITS BY AN ATHLETICS REPRESENTATIVE. [NCAA Bylaws 12.1.1(a), 13.02.11, 13.1.2.1, 13.2.1, 13.2.2, 16.02.3 and 16.12.2.1]**

From the spring of 1992 and continuing through the spring of 1999, the athletics representative provided recruiting inducements and extra benefits

in the form of cash, clothing, jewelry, transportation, lodging, meals and other like benefits totaling approximately \$616,000 in value to at least four then student-athletes (henceforth, "student-athletes A, B, C and D" respectively) and members of their families and at least one other unnamed former student-athlete. In accepting these benefits while student-athletes, these individuals nullified their amateur status. The athletics representative characterized these inducements and benefits as loans. The representative intended that the student-athletes would repay him the value of these inducements and benefits once becoming well-paid professional basketball players following their Michigan careers. Student-athletes B and C received recruiting inducements from the athletics representative as prospective student-athletes and extra benefits after becoming student-athletes, while student-athletes A and D received extra benefits while they were student-athletes. Specifically:

1. Student-athlete A and his family received a total of approximately \$280,000 in extra benefits from the representative between 1988 and 1993, a significant portion of which was received after the athletics representative became a representative of the university's athletics interests in the spring of 1992.
2. Student-athlete B and his family received a total of approximately \$160,000 in inducements and extra benefits from the athletics representative between 1994 and 1998.
3. Student-athlete C and his family received a total of approximately \$105,000 in extra benefits from the athletics representative between 1995 and 1998.
4. Student-athlete D and his family received a total of approximately \$71,000 in extra benefits from the athletics representative between 1995 and 1999.

#### **IV. CORRECTIVE ACTION 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 penalties and corrective actions. [Note: the institution's

self-imposed corrective actions from the 1997 report are contained in Appendix 2<sup>1</sup>.] In November 2002 the university self-imposed the following penalties:

1. The men's basketball team shall not be eligible for participation in the 2003 NCAA Division I Men's Basketball Championship Tournament, or the 2003 National Invitation Tournament.
2. The university forfeited all "wins" by the men's basketball team for any game in which the former men's basketball student-athletes participated while ineligible. (This includes the 1992 NCAA Men's Final Four competition, the entire 1992-93 season, and the entire 1995-96 through 1998-99 seasons including postseason play.)
3. The university has vacated all records of its appearances in NCAA Division I Men's Basketball Championship Tournaments and the National Invitational Tournament (NIT) when the former men's basketball student-athletes were participants while ineligible. Further, the university shall return all team awards for its participation in these events and has deleted and/or removed references to those teams' participation that might have appeared on campus or in university publications. (This includes NCAA tournament appearances in 1992, 1993, 1996, and 1998 and the 1997 NIT championship.)
4. The university shall return to the NCAA 90 percent of the monies, approximately \$323,810; it received (through Big Ten distributions) for the university's appearances in NCAA postseason championship competition while ineligible players participated. An additional \$25,630 will be withheld from future distributions, for a total financial penalty of approximately \$349,440.
5. The university placed its men's basketball program on institutional probation for a period of two years. As a condition of this probation, reports as directed by the president shall be submitted and compliance-related activities shall be undertaken in further effort to ensure strict compliance with NCAA and Big Ten rules and regulations. Specifically required shall be an annual compliance audit of key compliance areas within the athletics department.

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<sup>1</sup> Of the May 8, 2003, Committee on Infractions Report.

## **V. PENALTIES IMPOSED BY THE COMMITTEE ON INFRACTIONS.**

The Committee on Infractions agreed with and adopted the actions taken by the university, noting that they represented meaningful self-imposed penalties. The president is to be commended for demonstrating the university's commitment to accepting responsibility for these violations. The committee also commends the university's cooperation in this case, including its efforts in conjunction with federal authorities to develop complete information in the case beyond the reach of the NCAA's investigative abilities. Finally, the committee recognized that some of the violations in this case date back several years and that the involved student-athletes and coaches have long since departed the university. The committee accorded all of these mitigating factors significant weight in its determination of appropriate penalties in this case.

Despite this mitigation, however, the case remains one of the most serious ever to come before the committee. It represents the largest acknowledged cash payments (\$616,000) in the history of NCAA infractions cases, to some of the most prominent men's basketball student-athletes of an era. These student-athletes led the university to NCAA Tournament appearances in four of the six years in which the violations occurred, including two consecutive NCAA Final Four appearances in 1992 and 1993 and the NIT Championship in 1997. While some of the violations did occur several years ago, the actions of the athletics representative continued through most of the 1990's and constituted a continuing pattern of NCAA violations until 1999. During that time period, the violations provided a staggering competitive and ancillary recruiting advantage over other member institutions. The fact that the university's men's basketball coaching staffs embraced the representative and accorded him insider status within their programs further elevated the seriousness of the case.

Because of these factors, the committee concluded that additional penalties beyond those self-imposed by the university in November 2002 were warranted. In light of the nature and seriousness of the violations in this case, the committee imposed the penalty as cited in III-B of the Committee on Infractions' report.

1. The University of Michigan shall be publicly reprimanded and censured.
2. The university shall be placed on four years of probation commencing November 7, 2002, the date of the university's response to the NCAA's official inquiry and the application of self-imposed penalties. The probationary period will conclude on November 6, 2006.

3. The institution's men's basketball team shall end its 2003-04 season with the playing of its last regularly scheduled, in-season contest and shall not be eligible to participate in any postseason competition. The men's basketball team is also prohibited from taking advantage of the exceptions to the limitation on the number of basketball contests provided in Bylaws 17.5.3.1, 17.5.5.1, 17.5.5.2 and 17.5.5.3. If the institution has any existing commitments to participate in contests under these exceptions, it may seek permission from the committee to defer application of this portion of the penalty until the 2004-05 academic year. [Note: The committee considered this a two-year postseason ban, giving credit for the university's one-year self-imposed ban.]
4. The number of total athletically related financial aid awards in men's basketball shall be reduced by one during each of the 2004-05, 2005-06, 2006-07 and 2007-08 academic years. This limits the institution to 12 total men's basketball grants-in-aid under current rules for those years. [Note: the reduction of four total grants is tied to the four student-athletes who received recruiting inducements and extra benefits as set forth in this report.]
5. The institution shall show cause why it should not be penalized further if it fails to disassociate from the institution's athletics program the four student-athletes identified in this report based upon their involvement in violations of NCAA rules and some of the student-athletes' refusal to cooperate with university and NCAA investigators. This disassociation shall be for at least 10 years and shall include the following:
  - a. Refraining from accepting any assistance from the individual(s) that would aid in the recruitment of prospective student-athletes or the support of enrolled student-athletes;
  - b. Refusing financial assistance or contributions to the institution's athletics program from the individual(s);
  - c. Ensuring that no athletics benefit or privilege is provided to the individual(s), either directly or indirectly, that is not available to the public at large; and
  - d. Implementing other actions that the institution determines to be within its authority to eliminate the involvement of the individual(s) in the institution's athletics program.

- e. Consistent with the vacation of team records in self-imposed penalty No. 3, these individuals' own personal records and references shall also be deleted/removed from university records.
6. 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 Committees on Infractions by June 30 setting forth a schedule for establishing this compliance and educational program; and
    - c. File with the committee's director annual compliance reports indicating the progress made with this program by February 15 of each year during the probationary period. Particular emphasis should be placed on the monitoring of athletics representatives. The reports must also include documentation of the university's compliance with the penalties (adopted and) imposed by the committee.
  7. At the conclusion of the probationary period, the institution'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.

## **VI. ISSUES RAISED ON APPEAL.**

In its written appeal, Michigan challenged that portion of Finding II-A-3 in which the Committee on Infractions found that student-athlete C received "inducements" as well as benefits. Michigan contended this finding was erroneous because the evidence established that student-athlete C received no money or other benefits prior to his enrollment at the institution. In its response, the Committee on Infractions explained that it had made a clerical error and agreed with the institution that the reference to inducements in this finding should be deleted. Michigan also asserted that penalty III-B-3, a ban on postseason competition by

its basketball team following the 2003-04 season, should be set aside as excessive and inappropriate.

## **VII. APPELLATE PROCEDURE.**

In considering the Michigan appeal, the Infractions Appeals Committee reviewed the Notice of Appeal; the transcript of the institution's February 14, 2003, hearing before the Committee on Infractions and the submissions by Michigan 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 17, 2003, in Chicago, Illinois. The representatives of Michigan present at the hearing included attorneys, the president, faculty athletics representative, vice-president and general counsel and athletics director. The Committee on Infractions was represented by the appeals coordinators for the Committee on Infractions and the director of the NCAA Infractions Committees. Also present were the vice-president of enforcement services, the chair of the Committee on Infractions and director of enforcement services. The hearing was conducted in accordance with procedures adopted by the committee pursuant to NCAA legislation.

## **VIII. INFRACTIONS APPEALS COMMITTEE'S RESOLUTION OF THE ISSUES RAISED ON APPEAL.**

In light of the Committee on Infractions' agreement with Michigan's appeal of Finding II-A-2, the only remaining issue is whether the decision of the Committee on Infractions to add a second year to the one-year self-imposed postseason ban is excessive or inappropriate.

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] Bylaw 19.5.2.1 sets forth the presumptive penalties for major violations, and includes, in subparagraph (f), the preclusion of postseason competition in the sport. Such a ban is therefore an appropriate penalty and the sole issue before the Infractions Appeals Committee is whether the second year of the postseason ban is excessive.

Bylaw 19.5.2.1 does not specify the length of the presumptive postseason ban. Because the bylaw does not explicitly specify a multi-year ban, the natural

inference is that a single-year ban satisfies the presumption. The Committee on Infractions' application of the rule has been consistent with this inference. Since 1985 the Committee on Infractions has imposed a one-year ban in 70.6 percent, and a multiple year ban in 29.4 percent, of the cases in which it has imposed a postseason ban.<sup>2</sup>

In the University of Mississippi decision, we identified seven factors to be considered in the selection and application of penalties generally.<sup>3</sup> In subsequent decisions, we elaborated on factors relevant to the imposition of a postseason ban.<sup>4</sup> None of these decisions comprehensively articulated the factors that should be considered in evaluating the appropriate length of a postseason ban. However, a review of the decisions since Mississippi which upheld a postseason ban revealed the presence of one or more of the following factors in each case: repeat violator status, lack of institutional control, or academic fraud.<sup>5</sup> None of these factors is present in this case.<sup>6</sup>

The NCAA bylaw governing presumptive penalties for a major violation provides for "sanctions precluding postseason competition in the sport, particularly in those cases in which:

- (1) Involved individuals remain active in the program;
- (2) A significant competitive advantage results from the violation(s); or
- (3) The violation(s) reflect a lack of institutional control." [Bylaw 19.5.2.1-(f)]

None of these factors is present in this case.

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<sup>2</sup> During that period, there have been 215 major infractions cases. Ninety-two (42.8 percent) involved a post-season ban. Of those 92 postseason bans, 65 were for one year (70.6 percent), 24 were for two years (26 percent) and two were for three years (two percent). There was one "death penalty."

<sup>3</sup> The factors include: (1) the nature, number and seriousness of the violation(s); (2) the conduct and motives of the involved individuals; (3) the corrective actions taken by the university; (4) a comparison of the penalty or penalties imposed in other cases with similar characteristics; (5) the university's cooperation in the investigation; (6) the impact of penalties on innocent student-athletes and coaches; and (7) NCAA policies regarding fairness in and equitable resolution of infractions cases. [University of Mississippi Infractions Appeals Committee Report (May 1, 1995) pages 15-20.]

<sup>4</sup> See University of Maine, Orono, Infractions Appeals Committee Report (February 13, 1997), University of California, Los Angeles, Infractions Appeals Committee Report (November 7, 1997), Louisiana State University Infractions Appeals Committee Report (March 19, 1999), University of Nevada at Las Vegas Infractions Appeals Committee Report (February 16, 2001), University of Kentucky Infractions Appeals Committee Report (September 17, 2002) and University of Alabama, Tuscaloosa, Infractions Appeals Committee Report (September 17, 2002).

<sup>5</sup> We are not stating that one of the three factors must be present to impose a postseason ban. [Louisiana State Infractions Appeals Committee Report (March 19, 1999) page 7.]

<sup>6</sup> The Committee on Infractions argued that this case is most comparable to our 2002 decision regarding Alabama and that the penalty therefore should be the same. We do not agree. There are significant differences between the two cases. Most notably, Alabama was a repeat violator and the inducements provided by the athletics representative were tied directly to the student-athletes' attendance at the institution.

In this case, the Committee on Infractions concluded that the violations provided Michigan with “a staggering competitive advantage” over other member institutions. (Committee on Infractions Report page 14.) We disagree. The applicable bylaw requires a causal connection between the violation and the competitive advantage. Examples of this would include improper recruiting inducements or academic fraud where the student-athlete would not have attended the institution, or would not have been able to compete, but for the improper assistance derived from the violation. In this case, the opposite is true. Here, the student-athletes would have attended the institution, and would have competed in the sport, even absent the violation. Therefore, the competitive advantage did not “result from” the violation.

We have indicated that institutional cooperation is a factor that must be considered when fashioning penalties [Mississippi Infractions Appeals Committee Report and Howard University Infractions Appeals Committee Report (July 16, 2002)]. In its decision, the Committee on Infractions did commend “the university's cooperation, including its efforts in conjunction with federal authorities to develop complete information beyond the reach of the NCAA’s investigative abilities.” (Committee on Infractions Report page 14.) We believe, however, that the Committee on Infractions did not accord sufficient weight to the institution’s unique level of cooperation. In this case, the institution’s and NCAA’s investigations were stymied for several years by the investigators’ inability to interview any of the parties directly involved in the violations.

In order to uncover the facts, the institution insisted that the athletics representative agree, as part of his federal criminal plea agreement, to cooperate with the institution’s and NCAA’s investigations. And, when the institution’s request threatened the plea agreement, the institution successfully pressed the U.S. Attorney’s office to insist on the athletics representative’s cooperation. Without the athletics representative’s cooperation pursuant to the plea agreement, the identities of the individuals involved and the amounts of the loans never would have been established, and there likely would have been no NCAA enforcement case. The institution’s extraordinary efforts transcended “cooperation,” and strongly militate against imposition of the second year of the postseason ban.

For the foregoing reasons, the Infractions Appeals Committee has determined that the second year of the postseason ban is excessive.

**IX. CONCLUSION.**

We reverse the imposition of the additional one-year ban on postseason competition. Penalty III-B-3 is vacated.

NCAA Infraction Appeals Committee

Terry Don Phillips, chair  
Christopher L. Griffin  
William P. Hoye  
Noel M. Ragsdale  
Allan A. Ryan Jr.