

## NCAA Rules Noncompliance

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*When college coaches violate National Collegiate Athletic Association (NCAA) legislation, it can lead to extreme consequences for both their universities and the coaches. Universities can face long-term reputational damage, decreased enrollment applications, less donations, and NCAA sanctions, including the inability to compete in postseason competitions and/or on television. Coaches likewise face NCAA penalties, not only on their sport programs but potentially on themselves, which can inhibit their ability to maintain or obtain employment in college athletics. Additionally, committing significant NCAA violations may allow the university to terminate the coach's employment with cause and, thus, without severance.*

*Yet college coaches continue to violate NCAA rules, placing themselves and their universities at risk of these severe ramifications. In some recent cases, coaches failed to work effectively with their athletics departments' compliance staff members, whose job generally is to mitigate the likelihood of NCAA violations on their campuses. In these cases, the coaches' unwillingness to work with the compliance staff led to additional violations and, thus, additional sanctions.*

*This Article examines the harm that universities and coaches face due to NCAA rules violations and how effective working relations between sport and compliance staff members can mitigate the likelihood that universities and coaches will face potentially devastating consequences. To do so, Part II examines both the NCAA infractions procedure through which the Committee on Infractions processes NCAA rules violations and their consequences for universities and their coaches. Part III describes the roles that athletics department compliance staff members play in mitigating the likelihood of NCAA*

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*rules violations on their campuses. Part IV evidences the crucial role that compliance staff members play in college athletics by scrutinizing recent infractions cases where coaches failed to maintain effective working relations with them, resulting in additional violations and consequences for the involved universities and coaches. A brief conclusion follows.*

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## I. INTRODUCTION

In October 2014, the University of Hawaii (“Hawaii”) announced it was terminating head men’s basketball coach Gib Arnold’s employment just two weeks prior to the season tipping off.<sup>1</sup> The announcement was contemporaneous to media reports that, following an NCAA investigation, Hawaii considered self-imposing penalties for violations of National Collegiate Athletics Association (NCAA) recruiting rules in the men’s basketball program.<sup>2</sup> Arnold served as Hawaii’s head men’s basketball coach for four years, during which time he won seventy-two games and lost fifty-five, including twenty wins in the 2013–14 season.<sup>3</sup> When Hawaii terminated his employment, Arnold announced that Hawaii fired him “without cause.”<sup>4</sup> Thus, under Arnold’s employment contract with Hawaii, he was owed, and received, the rest of his \$344,000 annual salary until his contract expired in June 2015 despite the fact that he did not coach or otherwise work for Hawaii in the 2014–15 season.<sup>5</sup>

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<sup>1</sup> WTOP Staff, *Hawaii Fires Head Basketball Coach*, WTOP NEWS (Oct. 29, 2014), <http://wtop.com/news/2014/10/hawaii-fires-head-basketball-coach>.

<sup>2</sup> *See id.*; *see also Gib Arnold Removed as University of Hawaii Head Basketball Coach*, HAW. NEWS NOW (Oct. 29, 2014), <http://hawaii.newsnow.com/story/27147151/gib-arnold-removed-as-uh-basketball-coach-sources-say> (quoting Hawaii Chancellor Robert Bley-Vroman as stating that the university sought to set “the best possible examples for [their] players not only on the field of sports but in life”). The NCAA is the national governing body for college athletics and comprised of member universities for which it promulgates rules and regulations. Matthew Mitten & Timothy Davis, *Athlete Eligibility Requirements and Legal Protection of Sports Participation Opportunities*, 8 VA. SPORTS & ENT. L.J. 71, 116 (2008).

<sup>3</sup> WTOP Staff, *supra* note 1.

<sup>4</sup> *Id.* (quoting Arnold as stating, “[i]t pains me that they are taking my team and career away based on unknown allegations from unknown sources that have not been proven and that I have never been able to defend”).

<sup>5</sup> *Could the University of Hawaii’s Latest Move, Firing Men’s Basketball Coach Gib Arnold, Cost the School More in the Long Run?*, U. HAW. PRO. ASSEMBLY (Oct. 30, 2014), <http://uhpa.org/uh-funding/university-hawaiis-latest-move-firing-mens-basketball-head-coach-gib-arnold-cost-school-long-run>; *see also* Rick Daysog & Daryl Huff, *Fired UH Basketball Coach Says School Owes More than \$1 Million*, HAW. NEWS NOW (Feb. 4, 2015),

Having to pay Arnold hundreds of thousands of dollars to *not* coach occurred against a backdrop of numerous issues, including financial problems, in Hawaii's athletics department. In November 2014, Hawaii ruled star men's basketball student-athlete Isaac Fotu ineligible to compete following the NCAA investigation.<sup>6</sup> Fotu left the team a week later to pursue a professional playing career in New Zealand.<sup>7</sup> Following a two-year tenure marred by failed attempts to halt the athletics department's financial losses, Hawaii athletics director Ben Jay resigned in December 2014.<sup>8</sup> At the time, the department faced a \$3 million deficit, despite Hawaii's chancellor's office absorbing \$13 million in debt that the athletics department accumulated in 2013 to become solvent in 2014.<sup>9</sup> The split between Arnold and Hawaii, however, was just getting interesting—and costly—for Hawaii.<sup>10</sup> In January 2015, the NCAA issued Hawaii and Arnold a Notice of Allegations (NOA) in which it alleged seven NCAA rules violations against them for issues involving Hawaii's men's basketball program.<sup>11</sup> The NOA categorized three of the violations as Level I

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<https://www.hawaiinewsnow.com/story/28017408/watch-at-5-uh-may-be-obligated-to-pay-outgoing-gib-arnold-more-than-1-million> (confirming Hawaii paid Arnold around \$340,000 upon terminating his employment).

<sup>6</sup> Sources: *UH Men's Basketball Star Player Isaac Fotu Leaves Team*, HAW. NEWS NOW (Nov. 3, 2014) [hereinafter *Fotu Leaves Team*], <http://hawaiinewsnow.com/story/27257709/sources-uh-mens-basketball-star-player-isaac-fotu-leaves-team>. A Hawaii assistant coach's provision of an iPad to Fotu violated NCAA rules. *UH Releases Copy of NCAA Notice of Allegations Against Men's Basketball Team*, HAW. NEWS NOW (Feb. 1, 2015), <http://hawaiinewsnow.com/story/27993786/uh-mens-basketball-program-charged-with-seven-ncaa-violations>. Perhaps ironically, Hawaii contended that had it, as opposed to the assistant coach, provided the iPad to Fotu, there would have been no NCAA violation. See William H. King, III & William H. Brooks, *University of Hawaii Response to Notice of Allegations*, LIGHTFOOT, FRANKLIN & WHITE, LLC 4 (May 15, 2015) [hereinafter *Hawaii Response*], <http://hawaii.edu/news/wp-content/uploads/2015/05/HAWAII-NOA-Response-FINAL-Redacted.pdf>.

<sup>7</sup> *Fotu Leaves Team*, *supra* note 6.

<sup>8</sup> Associated Press, *Hawaii AD Ben Jay Resigns*, ESPN (Dec. 9, 2014), [http://espn.com/college-sports/story/\\_/id/12006660/hawaii-athletic-director-ben-jay-resigns-two-year-tenure](http://espn.com/college-sports/story/_/id/12006660/hawaii-athletic-director-ben-jay-resigns-two-year-tenure).

<sup>9</sup> *Id.* (noting that Jay "ruffled feathers" in August 2014 when he threatened that Hawaii may need to drop its football program if it continued to operate in debt).

<sup>10</sup> See Marc Lancaster, *Violations During Gib Arnold's Tenure Continue to Cost Hawaii*, SPORTING NEWS (Dec. 22, 2015), <http://sportingnews.com/us/ncaa-basketball/news/gib-arnold-hawaii-ncaa-violations-penalties-postseason-ban-show-cause/16w1x2cxxz9I71qp998irp8qo5> (stating "Hawaii will continue to pay for its association with former basketball coach Gib Arnold").

<sup>11</sup> See *Notice of Allegations to the Chancellor of Hawaii at Manoa*, HAWAII.EDU (Jan. 30, 2015) [hereinafter *Hawaii NOA*], <http://hawaii.edu/news/wp-content/uploads/2015>

(“severe” conduct breaches) and four as Level II (“significant” conduct breaches).<sup>12</sup> Notably, the NCAA charged Arnold individually with two Level I violations for engaging in unethical conduct and failing to uphold his responsibilities as a head coach.<sup>13</sup> Further, a Level II violation allegation centered on one of Arnold’s staff members engaging in activities (on-court coaching and making recruiting phone calls) prohibited under NCAA rules due to the staff member’s position.<sup>14</sup>

Days after Hawaii and Arnold received the NOA, Arnold publicly claimed that Hawaii owed him more than \$1 million in severance.<sup>15</sup> Arnold based his claim on language in his employment contract stating that Hawaii would pay him “a lump sum amount equal to the total amount of compensation earned . . . under the terms of this agreement as of the date of the termination.”<sup>16</sup>

Hawaii did not contest the NCAA’s allegations of rules violations and suggested that Arnold knew of, and concealed, them.<sup>17</sup> Rather, Hawaii pointed to its history of rules compliance and implementation of both appropriate corrective measures and self-penalties as potential mitigation for forthcoming NCAA penalties.<sup>18</sup>

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/01/Redacted\_NOA.pdf. The NCAA Enforcement Staff issues an NOA following an investigation that substantiates the likelihood that NCAA violations occurred. See NCAA, DIVISION I INFRACTIONS: 2019–20 ANNUAL REPORT 6–7 (2020) [hereinafter 2019–20 ANNUAL REPORT], [https://ncaaorg.s3.amazonaws.com/infractions/d1/2019D1Inf\\_AnnualReport.pdf](https://ncaaorg.s3.amazonaws.com/infractions/d1/2019D1Inf_AnnualReport.pdf). The NOA is a formal document directed to a university’s president or chancellor providing notice of the violation allegations. Jerry R. Parkinson, *Scooundrels: An Inside Look at the NCAA Infractions and Enforcement Processes*, 12 WYO. L.R. 215, 226 (2012).

<sup>12</sup> See *Hawaii NOA*, *supra* note 11. There are three levels of NCAA violations, and Level I is the most severe. See 2019–20 ANNUAL REPORT, *supra* note 11, at 5–7.

<sup>13</sup> See *Hawaii NOA*, *supra* note 11, at 28, 29, 33 (alleging, among other things, that Arnold violated NCAA legislation when he influenced others to conceal or provide Hawaii with inaccurate or misleading information during its investigation).

<sup>14</sup> See *id.* at 1 (alleging that the staff member’s actions caused Hawaii to exceed the NCAA’s maximum permissible number of countable men’s basketball coaches).

<sup>15</sup> Daysog & Huff, *supra* note 5 (noting this claim broke Arnold’s silence on his employment termination).

<sup>16</sup> *Id.* Arnold believed the contract language entitled him to four years of severance at \$340,000 per year. *Id.* Under a literal reading of Arnold’s employment contract, attorney and contract law expert Bruce Voss agreed with Arnold, describing it as “not a well-drafted contract.” *Id.*

<sup>17</sup> See *Hawaii Response*, *supra* note 6, at 1–2.

<sup>18</sup> See *id.* at 1 (pointing out that Hawaii’s last infractions case was forty years prior). Hawaii’s corrective actions and self-imposed penalties included vacating thirty-six of the men’s basketball program’s wins, reducing the number of available athletics

Hawaii then sued Arnold, alleging he deceived the university into believing the men's basketball program followed NCAA rules.<sup>19</sup> More specifically, Hawaii accused Arnold of fraud and negligence for failing to report NCAA violations as his employment contract required.<sup>20</sup> Because Arnold committed violations and failed to report them, Hawaii's suit also requested that the court declare Arnold's employment contract's liquidated damages provision unenforceable, meaning that the university did not owe him the severance he received.<sup>21</sup> Unsurprisingly, Arnold sought dismissal of the suit, seeking resolution through arbitration under state government employees union grievance processes.<sup>22</sup>

The lawsuit eventually settled for \$700,000, with Arnold receiving \$500,000 and his attorneys splitting the rest.<sup>23</sup> As part of the settlement, Arnold agreed to drop all claims against Hawaii.<sup>24</sup> In all, Arnold's employment termination cost Hawaii the \$700,000 settlement payout, Arnold's remaining salary of \$148,000, and \$250,000 in legal fees, which added together is over \$1 million.<sup>25</sup> Isaac Coy, chair of the

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scholarships for the men's basketball program, and terminating Arnold's employment. *See id.* at 57, 60.

<sup>19</sup> SI Wire, *Hawaii Sues Former Basketball Coach Gib Arnold*, SPORTS ILLUSTRATED (June 11, 2015), <http://si.com/college/2015/06/11/hawaii-sues-gib-arnold>.

<sup>20</sup> *Id.* (stating that Hawaii sought "undisclosed compensatory and punitive damages").

<sup>21</sup> Rob Dauster, *Ex-Hawaii Head Coach Gib Arnold in a Legal Battle with His Former School*, NBC SPORTS (June 11, 2015, 11:32 AM), <http://collegebasketball.nbcsports.com/2015/06/11/ex-hawaii-head-coach-gib-arnold-in-a-legal-battle-with-his-former-school> (quoting Arnold as describing Hawaii's lawsuit as "ridiculous and pathetic").

<sup>22</sup> *See* Lorin Eleni Gill, *Former University of Hawaii Basketball Coach Gib Arnold Files to Dismiss UH Lawsuit*, PAC. BUS. NEWS (Sept. 9, 2015, 2:51 PM), <https://www.bizjournals.com/pacific/news/2015/09/09/former-university-of-hawaii-basketball-coach-gib.html> (quoting Arnold's lawyers as describing the lawsuit as "vindictive retaliation and/or public grandstanding").

<sup>23</sup> Rick Daysog, *Regents Approve \$700K Settlement for Former UH Basketball Coach Gib Arnold*, HAW. NEWS NOW (Oct. 15, 2015, 10:03 PM), <http://hawaiinewsnow.com/story/30272911/source-regents-to-vote-on-700k-settlement-for-former-uh-basketball-coach-gib-arnold> (quoting Hawaii Chancellor Robert Bley-Vroman as explaining it was time for Hawaii to "move past this chapter in the history of (Hawaii) men's basketball").

<sup>24</sup> *Id.*

<sup>25</sup> *Could UH Have Handled Gib Arnold's Firing Differently?*, KHON2 (Dec. 23, 2015, 5:07 AM), <http://khon2.com/local-news/could-uh-have-handled-gib-arnolds-firing-differently>.

House's higher education committee, characterized the payments as "money that the university [didn't] have."<sup>26</sup>

Hawaii and Arnold continued to feel effects of Arnold's NCAA rules violations, however. The Committee on Infractions (COI) is the administrative entity that adjudicates most allegations of NCAA rules violations.<sup>27</sup> When it processed Hawaii's case, the COI affirmed many of the NCAA's violation allegations, including those against Arnold individually.<sup>28</sup> The COI imposed penalties on Hawaii including a \$10,000 fine, placing it on NCAA probation for two years, and reducing the number of athletics scholarships Hawaii could award in its men's basketball program.<sup>29</sup> The COI also placed a three-year show-cause penalty on Arnold under which he would face suspension of 30 percent of the first season in which any NCAA member university employed him during the three-year period.<sup>30</sup>

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<sup>26</sup> *Id.*

<sup>27</sup> COMM. ON INFRACTIONS, NAT'L COLLEGIATE ATHLETIC ASS'N, INFRACTIONS DECISION NO. 428 1 (2017) [hereinafter HAWAII CASE], <http://web3.ncaa.org/lstdbi/search/miCaseView/report?id=102588>.

<sup>28</sup> *See id.* at 1–2 (describing the case as centering on Arnold allowing and instructing a staff member to participate in impermissible coaching activities, failing to report a violation, and providing inaccurate information throughout the investigation). The COI downgraded the leveling of some of the violations, including against Arnold individually, ultimately classifying the case overall as Level II. *See* Ferd Lewis, *Former UH Coach Gib Arnold 'Very Pleased' With Outcome of NCAA Investigation*, HONOLULU STAR ADVERTISER (Dec. 22, 2015), <http://staradvertiser.com/2015/12/22/sports/sports-breaking/former-uh-coach-gib-arnold-very-pleased-with-outcome-of-ncaa-investigation> (quoting Arnold's attorney as describing Arnold as "very pleased" with the COI's decisions).

<sup>29</sup> *See* HAWAII CASE, *supra* note 27, at 27–28 (explaining that the COI initially imposed three years of probation, but the sanction was later decreased).

<sup>30</sup> *Id.* at 28–29. In 2015, the National Basketball Association's Boston Celtics hired Arnold as a scout. Ferd Lewis & Brian McInnis, *Boston Celtics Hire Former UH Coach Gib Arnold*, HONOLULU STAR ADVERTISER (Sept. 1, 2015), <http://staradvertiser.com/2015/09/01/sports/boston-celtics-hire-former-uh-coach-gib-arnold-2>. The COI does not preclude rules violators from working in college athletics but can (and does) impose penalties making it inconvenient for universities to employ them. Parkinson, *supra* note 11, at 217. Show-cause penalties do not directly affect an individual's ability to secure employment with a professional team such as the Celtics. *See* Ben Pickman, *Former Penn Coach Jerome Allen Hit with 15-Year Show-Cause Penalty*, SPORTS ILLUSTRATED (Feb. 26, 2020), <http://si.com/college/2020/02/26/jerome-allen-penn-basketball-show-cause-penalty>. For additional information on show-cause penalties, see *infra* Part II.C.2.iii. At least one media outlet queried whether Hawaii possessed cause to terminate Arnold under his employment contract and thus did not have to pay him severance. *See Could UH Have Handled Gib Arnold's Firing Differently?*, *supra* note 26 (citing Arnold's multiple Level II violations as a potential for-cause employment termination basis). *See generally* Josh Lens, *Terminating College Head Coaches' Employment*

Some believe that most, if not all, of Arnold's violations were avoidable. Unsurprisingly, Arnold's legal counsel pointed the finger away from his client, with Hawaii's athletics compliance staff shouldering attorney James Bickerton's blame.<sup>31</sup> Bickerton claimed that "the lack of action by [Hawaii's] compliance office put the team in a difficult spot and put Coach Arnold in a tough situation that led to the violations piling up."<sup>32</sup> For reasons explored in Part IV.B. below, the COI also pointed to the "tense" and "nearly dysfunctional" relationship between Arnold and Hawaii athletics compliance staff member Amanda Paterson as the reason for "at least some of the violations" occurring.<sup>33</sup> Had there been no NCAA violations—or fewer of them—the Hawaii-Arnold separation mess could have been avoided, and thus along with it the substantial severance pay, Hawaii's lawsuit against Arnold and ensuing large settlement payout, and sanctions for violating NCAA rules.

While the COI described Hawaii's case as "a cautionary tale regarding the interaction between coaching staffs and institutional compliance offices,"<sup>34</sup> recent cases show that other universities and their coaches have not heeded the COI's warning. In fact, these cases demonstrate the length to which some coaches have gone to avoid working effectively with compliance staff members to follow NCAA rules. Their tactics go so far as including secret alert systems just to warn coaches when compliance staff members visited practice to avoid detection of actions that would violate NCAA rules. By not working with compliance staff members, these coaches placed themselves at

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*with Cause for NCAA Rules Infractions*, 67 VILLANOVA L. REV. 35 (2022) (providing additional information regarding a university's employment options regarding a coach facing NCAA rules violation allegations).

<sup>31</sup> See Lewis, *supra* note 28.

<sup>32</sup> *Id.* (quoting Bickerton as explaining that the COI decision "vindicated" Arnold by downgrading Arnold's violations from Level I to II).

<sup>33</sup> HAWAII CASE, *supra* note 27, at 2 (describing "an ongoing personality conflict" between Arnold and Paterson that resulted in "poor" communication between the two). Part IV.B provides further detail on how improved relations or interactions between Hawaii's athletics compliance and men's basketball staffs could have mitigated the likelihood that the violations occurred. COI written decisions do not identify individuals by name, but media reports identify both Arnold and Paterson as involved individuals. See, e.g., Ferd Lewis & Brian McInnis, *We Got Crushed: NCAA Hands Down Sanctions Against UH*, HONOLULU STAR ADVERTISER (Dec. 22, 2015), <http://staradvertiser.com/2015/12/22/sports/sports-breaking/sanctions-against-uh-mens-basketball-announced/?l1> (noting Paterson received a promotion around the time the COI released its decision).

<sup>34</sup> HAWAII CASE, *supra* note 27, at 2.



risk of, and ended up, committing NCAA violations that led to significant ramifications. These consequences affect not only coaches, but their employer universities.

This Article illustrates the perils at which coaches place themselves and their universities by violating NCAA legislation and not working effectively with athletics compliance staff members. To do so, Part II describes both the NCAA infractions process through which the NCAA adjudicates rule violation allegations and the myriad negative effects that infractions cases have on universities and rule-violating coaches. Part III describes the important roles that athletics department compliance staff members play in college athletics by mitigating the likelihood of NCAA infractions. Part IV analyzes and provides takeaways from recent NCAA infractions cases in which violations resulted, at least in part, due to some type of defect or shortcoming in the relationship or interactions between sport and compliance staff members. A brief conclusion follows Part IV.

## II. THE CURRENT NCAA DIVISION I<sup>35</sup> INFRACTIONS PROCESS AND EFFECTS OF RULES VIOLATIONS ON UNIVERSITIES AND THE COACHES THAT COMMIT THEM

The NCAA is “big, national, the focus of media and public attention, and scrutinized by legislators.”<sup>36</sup> A private association,<sup>37</sup> the

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<sup>35</sup> Division I is the highest division in the NCAA’s three-division structure. Glenn M. Wong et al., *NCAA Division I Athletic Directors: An Analysis of the Responsibilities, Qualifications and Characteristics*, 22 JEFFREY S. MOORAD SPORTS L.J. 1, 5 (2015). It includes “the largest and best-funded research universities.” Josephine (Jo) R. Potuto, *The NCAA Rules Adoption, Interpretation, Enforcement, and Infractions Processes: The Laws that Regulate Them and the Nature of Court Review*, 12 VAND. J. ENT. & TECH. L. 257, 259 (2010).

<sup>36</sup> Potuto, *supra* note 35, at 266. It may surprise that state legislatures and even United States Congresspeople have shown interest in the NCAA’s regulation of college athletics. Kevin E. Broyles, *NCAA Regulation of Intercollegiate Athletics: Time for a New Game Plan*, 46 ALA. L. REV. 487, 506–07 (1995). For example, in March 2022, Congress released a bipartisan bill titled the NCAA Accountability Act of 2021. Dennis Dodd, *With NCAA Enforcement on Its Last Legs, Congress Seeks to Place Limits on Investigations*, CBS SPORTS (Mar. 29, 2022, 4:55 PM), <http://cbssports.com/college-basketball/news/with-ncaa-enforcement-on-its-last-legs-congress-seeks-to-place-limits-on-investigations>. The bill attempts to streamline the infractions process, limiting investigations to eight months and reducing the statute of limitations in half to two years. *Id.*

<sup>37</sup> Potuto, *supra* note 35, at 266 (citing *NCAA v. Tarkanian*, 488 U.S. 179 (1988)).

NCAA describes itself as “a member-led organization” that consists of over 1,000 colleges and universities.<sup>38</sup>

A ground-up association,<sup>39</sup> the NCAA derives its authority from its member universities.<sup>40</sup> Through the NCAA’s legislative process, its member universities propose and adopt rules regarding college athletics and implement them on campus.<sup>41</sup> NCAA legislation, while often complex,<sup>42</sup> attempts to level the playing field for universities competing against each other.<sup>43</sup> NCAA member universities and their staff and student-athletes agree to abide by the rules in exchange for the opportunity to compete in NCAA-sponsored competitions.<sup>44</sup>

The NCAA notoriously does not lack rules.<sup>45</sup> For example, one NCAA Division I bylaw defines the term “business day,” while others regulate when and how often coaches may call or write prospective student-athletes, or even answer incoming calls from them.<sup>46</sup> Thus,

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<sup>38</sup> *What Is the NCAA?*, NCAA, <http://ncaa.org/about/resources/media-center/ncaa-101/what-ncaa> (last visited June 2, 2022) (providing basic information regarding the NCAA).

<sup>39</sup> Parkinson, *supra* note 11, at 223.

<sup>40</sup> Potuto, *supra* note 35, at 259 (describing the NCAA as both “one of the most talked about and widely known private associations” yet “also the least understood”).

<sup>41</sup> *See What Is the NCAA*, *supra* note 38 (noting these rules include “everything from recruiting and compliance to academics and championships”).

<sup>42</sup> *See* Megan Fuller, *Where’s the Penalty Flag? The Unauthorized Practice of Law, the NCAA, and Athletic Compliance Directors*, 54 N.Y.L. SCH. L. REV. 495, 507 (2010) (noting that “experienced coaches and sports law scholars have lamented the difficulty of understanding these rules and called for reforms to the rules”).

<sup>43</sup> Potuto, *supra* note 35, at 262 (explaining that “[t]he NCAA exists to do what no institution can do on its own: administer championships and regulate athletics competition so as to ensure a level playing field”). For example, were there no rules regulating the amount of time coaches can require student-athletes to practice, some coaches would “require student-athletes to spend all waking hours in athletics-related activities” to gain a competitive advantage. *Id.* at 262 (citing NCAA Division I rules regulating playing and practice seasons). In fact, many NCAA rules exist to end coaches’ practices that were once technically compliant with rules yet resulted in a competitive advantage. Gene Marsh & Marie Robbins, *Weighing the Interests of the Institution, the Membership and Institutional Representatives in an NCAA Investigation*, 55 FLA. L. REV. 667, 698 (2003) (explaining that “NCAA staff members do not sit in Indianapolis and crank out new legislation, like Santa’s Little Helpers working on the Christmas toys”).

<sup>44</sup> *See* Brandon Leibsohn, *Road to Recovery: The NCAA’s New Enforcement Process Creates More Legal Headaches*, 21 SPORTS LAW. J. 123, 126 (2014).

<sup>45</sup> NCAA bylaws and policies cover myriad substantive areas, competition rules, and scheduling. *See* Potuto, *supra* note 35, at 262.

<sup>46</sup> NCAA, 2022–23 DIVISION I MANUAL § 13.02.1, 13.1.3, 13.4.1 (2022) [hereinafter 2022–23 MANUAL].

college coaches operate in an environment controlled by NCAA rules.<sup>47</sup> The NCAA expects staff members and student-athletes to know and follow its rules.<sup>48</sup>

The NCAA investigative and penal process through which member universities and their staff members are penalized for NCAA rules violations is unique,<sup>49</sup> and like the NCAA itself, the public holds many misperceptions about it.<sup>50</sup> To appreciate the potential consequences universities and coaches face from rules violations and the downsides when coaches do not have positive working relations or interactions with compliance staff members, it is necessary to understand the current NCAA infractions process through which the NCAA enforces its myriad rules. Thus, this Part describes the infractions process, hopefully clearing up any misperceptions.

#### A. *The NCAA Enforcement Staff and Its Role in the Infractions Process*

Universities and staff members that abide by NCAA legislation should not be disadvantaged by doing so.<sup>51</sup> Thus, NCAA member universities created an infractions process to help ensure fair play and

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<sup>47</sup> See Martin J. Greenberg, *College Coaching Contracts Revisited: A Practical Perspective*, 12 MARQ. SPORTS L. REV. 127, 146 (2001) (describing NCAA rules as a “voluminous, complicated and very often broken set of guidelines”).

<sup>48</sup> Broyles, *supra* note 36, at 509; see also Potuto, *supra* note 35, at 302 (describing expectations that coaches know, understand, and comply with NCAA rules as an affirmative obligation). For example, consider the case involving a University of California, Los Angeles (UCLA) assistant football coach who professed ignorance of NCAA recruiting rules after allegedly violating them. See COMM. ON INFRACTIONS, NAT’L COLLEGIATE ATHLETIC ASS’N, UNIVERSITY OF CALIFORNIA, LOS ANGELES PUBLIC INFRACTIONS DECISION 6 (2016) [hereinafter UCLA CASE], <http://web3.ncaa.org/lstdbi/search/miCaseView/report?id=102558>. The assistant coach received sanctions for not only violating the recruiting rules but also for engaging in unethical conduct for his lack of awareness of the rules. *Id.* Some find the expectation that coaches know and comply with NCAA rules unreasonable. See, e.g., Broyles, *supra* note 36, at 509 (quoting former Virginia Commonwealth University head men’s basketball coach Sonny Smith as describing NCAA rules as “too complicated” to follow and former University of Texas coach Abe Lemons as stating, “[y]ou’ve got to be a lawyer at the top of your class [to understand the NCAA rules]”).

<sup>49</sup> See Broyles, *supra* note 36, at 488 (explaining that aspects of the infractions process would be unconstitutional in the United States court system yet “this is the way the game is played” in college athletics).

<sup>50</sup> Parkinson, *supra* note 11, at 219.

<sup>51</sup> See Elizabeth Lombard, Note, *Changes Are Not Enough: Problems Persist with NCAA’s Adjudicative Policy*, 95 NOTRE DAME L. REV. 925, 928 (2019) (describing the NCAA’s infractions process’s purpose). Conversely, without rules, enforcement, and an infractions system to find and punish rules violators, “unscrupulous coaches and staff would have a field day.” See Potuto, *supra* note 35, at 262.

integrity among members.<sup>52</sup> One group of NCAA employees in particular bears this responsibility: the Enforcement Staff.<sup>53</sup> The Enforcement Staff is akin to the NCAA's prosecutor;<sup>54</sup> it is the NCAA entity responsible for reviewing information about potential violations.<sup>55</sup> The Enforcement Staff receives information regarding potential rule violations from many sources, including self-reports.<sup>56</sup> Its investigators must review information regarding potential violations in a "fair, accurate, collaborative, and timely manner."<sup>57</sup>

If the Enforcement Staff believes information may substantiate violations, it alleges potential Level I or Level II violations, with the

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<sup>52</sup> See NCAA, *Division I Infractions Process*, NCAA [hereinafter *Division I Infractions Process*], <http://ncaa.org/enforcement/division-i-infractions-process> (last visited June 2, 2022). An offshoot of private associations' authority to adopt the rules governing them is their right to control their rules' enforcement and interpretation. Potuto, *supra* note 35, at 272.

<sup>53</sup> See 2019–20 ANNUAL REPORT, *supra* note 11, at 9 (describing the Enforcement Staff's role in the infractions process). "[E]nforcement staff members . . . are paid employees of the NCAA." Parkinson, *supra* note 11, at 224. Note that under NCAA rules, member universities are responsible for enforcing compliance, but if a university is unaware of, or contributing to, NCAA rules violations, the NCAA may act on its own. See Leibsohn, *supra* 44, at 126 (citing *Investigations*, NCAA, <http://www.ncaastudent.org/wps/wcml/connect/public/NCAA/Enforcement/Process/Investigations> (last updated Jan. 21, 2013)).

<sup>54</sup> See Timothy Davis & Christopher T. Hairston, *Majoring in Infractions: The Evolution of the National Collegiate Athletic Association's Enforcement Structure*, 92 OR. L. REV. 979, 988 (2014) (describing the Enforcement Staff's actions to include presenting information to support allegations of rules infractions to the COI); see also Mike Rogers & Rory Ryan, *Navigating the Bylaw Maze in NCAA Major-Infractions Cases*, 37 SETON HALL L. REV. 749, 753–54 (2007) (noting that Enforcement Staff members are full-time NCAA employees).

<sup>55</sup> See *Division I Infractions Process*, *supra* note 52.

<sup>56</sup> See *Inside the Infractions Process: Paths for Handling Potential Violations*, NCAA (Jan. 2020) [http://ncaaorg.s3.amazonaws.com/infractions/d1/glnc\\_grphcs/D1INF\\_ResolutionPathsforViolations.pdf](http://ncaaorg.s3.amazonaws.com/infractions/d1/glnc_grphcs/D1INF_ResolutionPathsforViolations.pdf) (illustrating various resolution paths for potential violations). University staff members, athletics representatives, student-athletes, and prospective student-athletes may violate NCAA rules. Potuto, *supra* note 35, at 284. The Enforcement Staff may receive tips on potential violations from university self-reports, rival coaches, media stories, anonymous tips, and disgruntled staff members or student-athletes. See *id.* at 289–90. In one case, a former girlfriend of a UCLA assistant football coach notified the NCAA that the "coach had knowledge of and/or involvement in potential NCAA recruiting violations." See UCLA CASE, *supra* note 48, at 2.

<sup>57</sup> 2019–20 ANNUAL REPORT, *supra* note 11, at 9 (characterizing trust and collaboration between the Enforcement Staff, universities, and conferences as "vital" to the process).

former being the more significant of the two.<sup>58</sup> The Enforcement Staff states its allegations in a formal document directed to the university and involved individuals called a Notice of Allegations (NOA).<sup>59</sup> The Enforcement Staff bears the burden of proving these violations.<sup>60</sup>

#### B. *Resolution of NCAA Infractions Cases*

There are currently four means by which an infractions case involving a Division I member university resolves, and three of them conclude with a COI decision.<sup>61</sup> Founded in 1954,<sup>62</sup> the COI is an independent administrative body, which includes volunteers from NCAA member universities and athletics conferences, former coaches, and individuals from the general public who possess legal training.<sup>63</sup>

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<sup>58</sup> *See id.* at 7 (providing overview of infractions process). There are three violation levels. *See id.* at 9. The COI adjudicates cases involving alleged Levels I and II violations, whereas, for the most part, the Enforcement Staff and universities handle Level III violations. *See id.* For context, the Enforcement Staff alleged an average of ninety-one Level I or II violations per year between 2017 and 2019. *See id.* at 11. For further context, the COI hosted six hearings over disputed allegations in 2019. *See id.* at 12. On the other hand, many universities self-report at least ten Level III violations annually, many of which do not become public. Marsh & Robbins, *supra* note 43, at 675.

<sup>59</sup> Parkinson, *supra* note 11, at 226 (noting that the enforcement staff directs the notice to the university's president or chancellor).

<sup>60</sup> *See id.* at 224 (noting that the COI has concluded that the Enforcement Staff failed to meet its burden "plenty" of times).

<sup>61</sup> *See Division I Infractions Process, supra* note 52 (illustrating the four means by which a case resolves and showing that three of them end with a COI adjudication). "The jurisdictional responsibility of the COI is to hear and resolve cases of institutional culpability." Potuto, *supra* note 35, at 295. "An unusual aspect of the NCAA model is that the body that resolves cases under the bylaws—the COI—is not the same body that renders authoritative interpretations." *Id.* at 274 (listing other NCAA units on which the interpretative function falls). Note that the fourth means through which an infractions case may resolve is through the Independent Accountability Resolution Process—although as of this writing, referrals to it have been paused due to its backload of cases. *See* Michelle Brutlag Hosick, *DI Board of Directors Pauses Referrals to Independent Infractions Process*, NCAA (Jan. 20, 2022, 3:30 PM), <http://ncaa.org/news/2022/1/20/media-center-di-board-of-directors-pauses-referrals-to-independent-infractions-process.aspx>.

<sup>62</sup> Greg Heller, *Preparing for the Storm: The Representation of a University Accused of Violating NCAA Regulations*, 7 MARQ. SPORTS L.J. 295, 298–99 (1996) (explaining that the COI's creation "gave the NCAA some legitimacy and spurred growth, as it now had a mechanism in place with investigative powers and powers to punish member institutions").

<sup>63</sup> *Division I Committee on Infractions*, NCAA <http://ncaa.org/governance/committees/division-i-committee-infractions> (last visited Jan. 29, 2023) (describing COI). The NCAA Enforcement Staff and COI are "entirely separate enterprise[s]."

More specifically, COI panelists' professional profiles include current and former university presidents, chancellors, and athletics directors; conference commissioners; former coaches; attorneys; and professors.<sup>64</sup> Thus, the COI touts the infractions process as "peer-review[ed]."<sup>65</sup> There are up to twenty-four COI members at any given time, a smaller panel of which considers each case on the COI's behalf.<sup>66</sup>

If the university and any other parties (e.g., coaches) agree with the Enforcement Staff on the facts, violations, level(s) of violations, and penalties, the Enforcement Staff and parties may pursue "negotiated resolution" to resolve the matter.<sup>67</sup> The Enforcement Staff and parties draft a report and submit it to the COI for review.<sup>68</sup> The

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Marsh & Robbins, *supra* note 43, at 677. The COI, however, affirmed a staggering 93 percent of the Enforcement Staff's allegations over a recent three-year period. JON DUNCAN, ENFORCEMENT SELF-STUDY OPERATIONS AND COMPLIANCE 5, 7 (2019) (contending that this data shows that the Enforcement Staff makes well-supported charges). Some institutions question the COI's neutrality and describe the COI as an arm of the Enforcement Staff that will not deviate from the Enforcement Staff's recommendations. Davis & Hairston, *supra* note 54, at 992–93 (pointing out that such accusations are difficult to substantiate). For additional discussion regarding the propriety of the COI's affirmation rate of Enforcement Staff allegations, see Josh Lens, *Examining the Committee on Infractions's Affirmation Rate of NCAA Enforcement Staff Allegations of Rules Violations*, 72 FLA. L. REV. F. 121 (2022).

<sup>64</sup> *Inside the Division I Infractions Process: Division I Committee on Infractions Composition*, NCAA (Jan. 2019) [hereinafter *Inside the Division I Infractions Process: Composition*], [https://ncaaorg.s3.amazonaws.com/infractions/d1/glnc\\_grphcs/DIINF\\_COIComposition-FactSheet.pdf](https://ncaaorg.s3.amazonaws.com/infractions/d1/glnc_grphcs/DIINF_COIComposition-FactSheet.pdf). Former COI Chair Marsh has stated, "[b]eing on the Committee on Infractions is like being on jury duty in perpetuity." Marsh & Robbins, *supra* note 43, at 679.

<sup>65</sup> 2019–20 ANNUAL REPORT, *supra* note 11, at 5 (describing the infractions process's framework). For a discussion regarding the benefits of judgment by peers, see Gene A. Marsh, *A Call for Dissent and Further Independence in the NCAA Infractions Process*, 26 CARDOZO ARTS & ENT. L.J. 695, 709 (2009) (recommending, among other things, more independent members on the COI). For an analysis regarding whether the process is actually peer-reviewed for coaches who face allegations that they violated NCAA rules, see Josh Lens, *The NCAA Infractions Process and Peer Review*, 83 OHIO STATE L.J. ONLINE 80 (2022).

<sup>66</sup> *Inside the Division I Infractions Process: Composition*, *supra* note 64 (explaining that a panel's size for each individual case is between three and seven COI members).

<sup>67</sup> *Division I Infractions Process*, *supra* note 52 (describing means of resolving infractions cases).

<sup>68</sup> *Id.* (noting there is no opportunity to appeal a negotiated resolution).

COI reviews the appropriateness of the parties' agreed-upon penalties.<sup>69</sup>

When the parties agree to the facts and violation level but disagree on penalties, they may elect to forgo participating in a COI hearing and attempt to resolve their case via the "summary disposition track."<sup>70</sup> When doing so, the Enforcement Staff, university, and any individual subject to a violation charge submit a report to the COI.<sup>71</sup> If the COI accepts the report, it issues penalties.<sup>72</sup> The COI, however, may reject the report and order a full hearing if it feels the Enforcement Staff failed to allege a pertinent violation.<sup>73</sup>

In cases involving disputed allegations, a panel of COI members conducts a hearing and determines whether the Enforcement Staff's allegations are accurate, and, if so, imposes penalties on the involved university and any staff member.<sup>74</sup> The COI also has the authority to conclude that violations occurred even when the enforcement staff did not allege them.<sup>75</sup> A COI hearing combines elements of a legal trial,

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<sup>69</sup> *Inside the Division I Infractions Process: Negotiated Resolution*, NCAA (Jan. 2019), [http://ncaaorg.s3.amazonaws.com/infractions/d1/glnc\\_grphcs/DIINF\\_InfractionsProcessNegotiatedResolution-FactSheet.pdf](http://ncaaorg.s3.amazonaws.com/infractions/d1/glnc_grphcs/DIINF_InfractionsProcessNegotiatedResolution-FactSheet.pdf) (describing the negotiated resolution track).

<sup>70</sup> *Inside the Division I Infractions Process Prior to January 1, 2023: Infractions Process Overview*, NCAA [hereinafter *Inside: Infractions Process Overview*], [http://ncaaorg.s3.amazonaws.com/infractions/d1/glnc\\_grphcs/DIINF\\_InfractionsProcessOverview-FactSheet.pdf](http://ncaaorg.s3.amazonaws.com/infractions/d1/glnc_grphcs/DIINF_InfractionsProcessOverview-FactSheet.pdf) (last visited Jan. 29, 2023) (illustrating different paths to resolve infractions cases). The summary disposition process should be streamlined and cooperative. See Edward F. O'Brien, *NCAA Announces Results of Its Investigation into UM's Athletics Department*, MONT. PUB. RADIO (July 26, 2013, 10:17 AM), <http://mtp.org/montana-news/2013-07-26/ncaa-announces-results-of-its-investigation-into-ums-athleticsdepartment> (quoting University of Montana President Royce Engstrom following the university's summary disposition case).

<sup>71</sup> *Inside: Infractions Process Overview*, *supra* note 70.

<sup>72</sup> *Id.*

<sup>73</sup> See NCAA, DIVISION I COMMITTEE ON INFRACTIONS: INTERNAL OPERATING PROCEDURES §§ 4-16-2-3, 4-16-3 (Jan. 1, 2023) [hereinafter INTERNAL OPERATING PROCEDURES]. For example, the Ohio State University, its former head women's golf coach, and the Enforcement Staff submitted a summary disposition report agreeing that violations in the university's women's golf program had occurred. COMM. ON INFRACTIONS, NAT'L COLLEGIATE ATHLETIC ASS'N, THE OHIO STATE UNIVERSITY PUBLIC INFRACTIONS DECISION 4 (Apr. 19, 2022) [hereinafter OHIO STATE CASE], <http://web3.ncaa.org/lstdbi/search/miCaseView/report?id=102968>. The COI rejected the parties' report, however, over concerns regarding a potential failure to monitor violation. *Id.* at 31. After a full hearing, the COI ultimately concluded that no such violation occurred. *Id.*

<sup>74</sup> *Division I Infractions Process*, *supra* note 52.

<sup>75</sup> See *Internal Operating Procedures*, *supra* note 73, at § 5-11.

an administrative agency hearing, and an academic misconduct hearing on a university campus.<sup>76</sup> These “hearings are not open to the public.”<sup>77</sup>

Following a hearing, the COI confers privately,<sup>78</sup> ultimately producing a written decision detailing the facts, violations, penalties,<sup>79</sup> and reasoning for its findings and penalties.<sup>80</sup> This written report is publicly available<sup>81</sup> and comparable to a court opinion.<sup>82</sup> In summary disposition or contested cases, the COI follows NCAA member-legislated guidelines when issuing penalties.<sup>83</sup> Penalties should reflect the violations’ severity and degree of institutional fault while heeding the interests of other universities not involved in the case by offsetting any competitive or other advantage through sanctions.<sup>84</sup> “The penalties range from financial penalties and vacation of records to [athletics] scholarship reductions and postseason bans.”<sup>85</sup> A law review article co-authored by former COI Vice Chair Gene Marsh describes the COI as “the thousand pound gorilla, with the final word in the case.”<sup>86</sup> Some consider the COI to be the most powerful committee in college athletics.<sup>87</sup>

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<sup>76</sup> Marsh & Robbins, *supra* note 43, at 678 (describing a COI hearing as “a unique process”). COI hearing procedures have been criticized for lacking due process safeguards. Heller, *supra* note 62, at 308. For example, evidence rules are inapplicable at infractions hearings; therefore, reliance on hearsay is commonplace. Potuto, *supra* note 35, at 297. For further comparison of NCAA infractions proceedings and legal proceedings, see Rogers & Ryan, *supra* note 54, at 754–61.

<sup>77</sup> Broyles, *supra* note 36, at 507 (describing the fact that COI hearings are private as one of the enforcement structure’s “most apparent problems”).

<sup>78</sup> *Id.* at 496.

<sup>79</sup> 2019–20 ANNUAL REPORT, *supra* note 11, at 21.

<sup>80</sup> Potuto, *supra* note 35, at 296.

<sup>81</sup> Parkinson, *supra* note 11, at 218 (noting that many are unaware that COI written decisions are publicly available on the NCAA’s website).

<sup>82</sup> Broyles, *supra* note 36, at 497.

<sup>83</sup> 2019–20 ANNUAL REPORT, *supra* note 11, at 15 (describing penalty guidelines as increasingly serious).

<sup>84</sup> Potuto, *supra* note 35, at 301.

<sup>85</sup> Nathaniel Richards, *The Judge, Jury, and Executioner: A Comparative Analysis of the NCAA Committee on Infractions Decisions*, 70 ALA. L. REV. 1115, 1116 (2019) (citing relevant NCAA legislation).

<sup>86</sup> Marsh & Robbins, *supra* note 43, at 677 (describing the COI’s vast authority in cases where a party does not appeal).

<sup>87</sup> See, e.g., Broyles, *supra* note 36, at 493.



C. *Effects of Violation Findings in NCAA Infractions Cases on Universities and Coaches*

When the COI concludes that a coach committed significant or severe NCAA violations,<sup>88</sup> both the university employing—or that employed—the coach and the coach themselves face ramifications. This section describes some of the weightier potential consequences for each actor.

1. Potential Effects of NCAA Violations on Universities

Over the past few decades, college athletics morphed from a time-honored tradition into “an economic commodity.”<sup>89</sup> Generating billions of dollars annually for its constituents, college athletics has become big business in the United States.<sup>90</sup> For example, in 2005, The Ohio State University reported \$89.7 million in athletics revenue.<sup>91</sup> In 2020, that amount nearly tripled to \$233 million.<sup>92</sup>

College athletics programs are also important in higher education because many view a university’s athletics department as its metaphorical “front door.”<sup>93</sup> Former University of North Carolina, Chapel Hill (UNC) head men’s basketball coach Dean Smith used a

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<sup>88</sup> Level I violations “seriously undermine[] or threaten[] the integrity of the NCAA Collegiate Model” and Level II violations “provide[] or [are] intended to provide more than a minimal but less than a substantial or extensive recruiting, competitive or other advantage.” 2022–23 MANUAL, *supra* note 46, at § 19.1.1, 19.1.2.

<sup>89</sup> Heidi Roche, *Loyalty v. Laissez Faire: The Coaching Contract Conundrum and Antitrust Implications of a No-Tampering Policy in College Sports*, 24 MARQ. SPORTS L. REV. 219, 221 (2013) (describing college athletics as previously “respected for its rivalries and cherished for its pure, inspiring nature”).

<sup>90</sup> Martin J. Greenberg & Jay S. Smith, *A Study of Division I Assistant Football and Mens’ Basketball Coaches’ Contracts*, 18 MARQ. SPORTS L. REV. 25, 25 (2007); Kevin Stangel, *Protecting Universities’ Economic Interests: Holding Student-Athletes and Coaches Accountable for Willful Violations of NCAA Rules*, 11 MARQ. SPORTS L. REV. 137, 137 (2000) (“The role of intercollegiate athletics at major colleges and universities has undergone a dramatic change since the inception of the National Collegiate Athletic Association (‘NCAA’) in 1906.”).

<sup>91</sup> Andy Wittry, *College Athletics Spending and the Movement Towards Revenue Sharing*, ATHLETIC DIR. U., <https://www.athleticdirector.u.com/articles/student-athlete-revenue-sharing> (examining NCAA Membership Financial Reporting System annual reports).

<sup>92</sup> *Id.*

<sup>93</sup> Richard T. Karcher, *Redress for a No-Win Situation: Using Liquidated Damages in Comparable Coaches’ Contracts to Assess a School’s Economic Damage from the Loss of a Successful Coach*, 64 S.C. L. REV. 429, 433 (2012).

slightly different metaphor to explain college athletics's importance: "[a]thletics is to the university like the front porch is to a home. It is the most visible part, yet certainly not the most important."<sup>94</sup> High-profile teams and their head coaches exist on that front porch.<sup>95</sup>

A high-profile team's on-field struggles can rock a university's front porch, dominate the media, and affect donor contributions.<sup>96</sup> Likewise, a public NCAA investigation<sup>97</sup> and a resulting infractions case bring negative attention, consumes calendars, intrigues the media, and provides a governing board with fodder for questions of university administration.<sup>98</sup> A COI finding that NCAA violations occurred on a campus can further rock its front porch and cause lasting injury to its academic reputation and status.<sup>99</sup> Further, coaches and administrators may lose their jobs, student-athletes may lose their competition eligibility, and universities may lose millions of dollars.<sup>100</sup> Penalties can include banning a team from participating in postseason competitions.<sup>101</sup> For example, the COI prohibited Oklahoma State University from participating in the 2022 men's basketball championship, which not only affected student-athletes emotionally, but cost the university financially.<sup>102</sup> It can also cost a university

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<sup>94</sup> Josephine R. Potuto, *The Athletic Department Compliance Job: Descriptive and Prescriptive*, 61 SANTA CLARA L. REV. 87, 118 (2020). Smith led the Tar Heels to two national championships, won an Olympic gold medal, and achieved induction into basketball's Hall of Fame. *See Dean Smith Dies at Age of 83*, ESPN (Feb. 8, 2015), [https://www.espn.com/mens-college-basketball/story/\\_/id/12296176/dean-smith-former-north-carolina-tar-heels-coach-dies-age-83](https://www.espn.com/mens-college-basketball/story/_/id/12296176/dean-smith-former-north-carolina-tar-heels-coach-dies-age-83).

<sup>95</sup> Potuto, *supra* note 94, at 118.

<sup>96</sup> *Id.* *See also* Marsh & Robbins, *supra* note 43, at 668 ("In the modern Academy, football is not only taught, but is wound into the fabric of many institutions. And for many alumni and followers, the fortunes of the football team dictate how they feel about the school.").

<sup>97</sup> *See* Fuller, *supra* note 42, at 496; *see also* Marsh & Robbins, *supra* note 43, at 668 (explaining that at universities "where college football is King, there is nothing like the word of an NCAA investigation to strike fear in the hearts of the faithful and stir the salacious nature of members of the press").

<sup>98</sup> Marsh & Robbins, *supra* note 43, at 669; *see also id.* at 674 (explaining "[t]here is a visceral, gloom-and-doom reaction to NCAA violations[,] and discussing how "[s]hould news of an NCAA violation find its way to the press, one of the first challenges is to get people calmed down").

<sup>99</sup> Potuto, *supra* note 94, at 118.

<sup>100</sup> Fuller, *supra* note 42, at 496.

<sup>101</sup> 2022–23 MANUAL, *supra* note 46, at § 19.9.5.1.

<sup>102</sup> *See* Ryan Breeden, *So . . . What Now?: The Implications Behind OSU's Postseason Ban*, POKES REP. (Nov. 3, 2021), <http://pokesreport.com/s/1788/sowhat-now-the-implications-behind-osus-postseason-ban> (quoting head men's basketball coach Mike

millions of dollars to investigate NCAA violations and traverse the NCAA's infractions process.<sup>103</sup> In 2015, for example, UNC reported that it spent over \$10 million for legal and public relations assistance throughout its academic fraud scandal.<sup>104</sup>

## 2. Potential Effects of NCAA Violations on Coaches

Some coaches willingly place their careers and attempts to win above their universities' futures by taking chances with actions that violate NCAA rules.<sup>105</sup> Just as NCAA violations are costly for universities, they can be very harmful to coaches' careers.<sup>106</sup> To appreciate this statement, one must understand the coaching profession in modern college athletics. Thus, this section first describes the college coaching profession, then explains how NCAA

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Boynton as stating his student-athletes were "hurting" emotionally and that "[w]e had some guys crying, for sure"). Because of the way the NCAA distributes postseason competition revenue to conferences, this severe sanction results in less revenue for the university's conference to distribute. *See id.* (explaining that conferences receive NCAA tournament payouts on six-year rolling windows based on the number of appearances conference members make in the tournament). Oklahoma State's postseason ban stemmed from an investigation by federal authorities, and later the NCAA, that concluded that now-former assistant men's basketball coach Lamont Evans accepted bribes in exchange for sending student-athletes to certain financial advisors once they became professional athletes. *See* Nate Chute, *'This Makes Absolutely No Sense.'* *Fans Livid at NCAA Over Oklahoma State Postseason Ban*, OKLAHOMAN (Nov. 3, 2021), <http://oklahoman.com/story/sports/college/cowboys/2021/11/03/oklahoma-state-banned-ncaa-basketball-tournament-postseason-march-madness-2022/6265553001>.

<sup>103</sup> *See* Stangel, *supra* note 90, at 139 (describing the \$1.9 million cost to the University of Minnesota to investigate potential academic fraud in its men's basketball program and noting that the university also had to pay both then-head coach Clem Haskins's \$1.5 million buyout and NCAA financial penalties).

<sup>104</sup> *See UNC-CH's Total Price Tag For Academic Scandal Tops \$10M*, WRAL (Oct. 26, 2015), <http://wral.com/unc-ch-paid-7-6m-for-legal-pr-help-in-academic-scandal/15022416>. The UNC case featured academic courses that the Enforcement Staff felt were less-than-rigorous and unfairly benefited student-athletes. *See* Pat Forde, *Baylor's Slap on the Wrist Doesn't Feel Right, But There's Not Much NCAA Rules Could Do*, SPORTS ILLUSTRATED (Aug. 11, 2021), <http://si.com/college/2021/08/11/baylor-football-ncaa-sanctions-investigation> (describing the UNC case as one of the "most significant scandals of the past decade"). Because the classes were available to non-athlete students in addition to student-athletes, however, the COI concluded that the classes did not violate NCAA legislation. *See id.*

<sup>105</sup> *See* Stangel, *supra* note 90, at 152–53 (describing knowingly violating NCAA rules as "inexcusable").

<sup>106</sup> Broyles, *supra* note 36, at 526, 534–35 (explaining that NCAA enforcement issues can threaten coaches' futures and COI decisions greatly effect coaches' lives and livelihoods).

violations can lead to a coach's employment termination without severance and/or an NCAA penalty, complicating a coach's ability to work in college athletics.

i. The College Coaching Profession in Contemporary College Athletics

Serving as a college coach can be an around-the-clock profession.<sup>107</sup> In modern college athletics, head coaches' roles and standing are akin to CEOs' in other industries.<sup>108</sup> Coaches' responsibilities extend beyond conducting practices and coaching in games.<sup>109</sup> Today's coaching duties include recruiting prospective student-athletes, fundraising, coordinating their student-athletes' academics, serving as public figures and media personalities, and performing administrative tasks such as budgeting.<sup>110</sup> Head coaches' jobs can be stressful, and constituents may analyze and debate their every move and choice.<sup>111</sup>

Not only are their positions time consuming, head coaches are among the highest profile employees at their universities.<sup>112</sup> Relatively high pay accompanies this profile,<sup>113</sup> and head coaches' pay often exceeds that of their universities' chancellors or presidents, as well as their most esteemed professors.<sup>114</sup> As of March 2021, thirty-one head

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<sup>107</sup> Greenberg, *supra* note 47, at 127.

<sup>108</sup> Martin J. Greenberg & Steven D. Gruber, *You Get Hired to Get Fired*, 24 MARQ. SPORTS L. REV. 141, 146 (2013) (explaining that the modern college head coach is much more than purely an athletics instructor); *see also* Brendan L. Smith, *Bench Coaches Shooting Back*, A.B.A. J. MAG. (Oct. 1, 2010), [https://www.abajournal.com/magazine/article/benched\\_coaches\\_shooting\\_back](https://www.abajournal.com/magazine/article/benched_coaches_shooting_back) (quoting sports law attorney Robert Lattinville).

<sup>109</sup> Greenberg, *supra* note 47, at 127 (citing "exponential growth in . . . responsibilities beyond conducting practices" and coaching in games).

<sup>110</sup> *See id.* at 130–31 (noting that some head coaches experience health problems due to the position's demands).

<sup>111</sup> *See id.* at 127. "Head coaches receive most of the credit and criticism for the success" and lack of success, respectively, for their sport programs. *See* Greenberg & Smith, *supra* note 90, at 26.

<sup>112</sup> *See* Randall S. Thomas & R. Lawrence Van Horn, *College Football Coaches' Pay and Contracts: Are They Overpaid and Unduly Privileged?*, 91 IND. L.J. 189, 199 (2016).

<sup>113</sup> Broyles, *supra* note 36, at 535 (noting that speaking engagements, employment performance bonuses, and media and advertising opportunities result in a "heroic aura around many coaches, transforming them into living legends and providing instant financial success.").

<sup>114</sup> *See* Greenberg, *supra* note 47, at 127 (noting that head coaches' athletics accomplishments receive more notoriety than their universities' science departments')

men's basketball coaches earned more than \$3 million annually.<sup>115</sup> This has increased from twenty-nine coaches in 2020, twenty-one in 2019, and fourteen in 2018.<sup>116</sup>

A coach's workplace environment, however, lends itself to job insecurity.<sup>117</sup> Whereas a coach's job security once depended only on serving as both a sport instructor and role model for student-athletes,<sup>118</sup> university administrators currently evaluate coaches on their win-loss records.<sup>119</sup> Winning increases game attendance and donations, helps increase the likelihood of lucrative media rights contracts, and influences prospective student-athletes to attend a university.<sup>120</sup> Thus, universities often view their athletics departments

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most celebrated lab discoveries). Head coaches often earn as much as seventeen times the average salary of a full-time university professor. *See id.* at 137. Universities justify their large financial commitments to head coaches as investments that should pay off through "increased ticket sales, marketing and sponsorship revenue, donations . . . admissions applications." *See* Karcher, *supra* note 93, at 433. For example, when the University of Alabama ("Alabama") hired Nick Saban as its head football coach, then-Alabama President Robert Witt described Saban's employment contract to the board of trustees as "a sound business decision." Richard T. Karcher, *The Coaching Carousel in Big-Time Intercollegiate Athletics: Economic Implications and Legal Considerations*, 20 FORDHAM INTELL. PROP. MEDIA & ENT. L.J. 1, 28 (2009). For analysis of the propriety of college football head coaches' pay, see Randall S. Thomas & Lawrence R. Van Horn, *Are College Presidents Like Football Coaches? Evidence from Their Employment Contracts*, 58 ARIZ. L. REV. 901, 956 (2016) (pointing out that head football coaches are highly skilled and owe "great responsibility [to] their programs and universities" and arguing that, "given competitive labor markets . . . their level of compensation is inefficient").

<sup>115</sup> *See* NCAA Salaries, USA TODAY (Mar. 9, 2021), <http://sports.usatoday.com/ncaa/salaries/mens-basketball/coach>.

<sup>116</sup> *See* Brent Schrottenboer, Steve Berkowitz & Matt Wynn, *Cheating Allegations, Corruption Scandal Don't Slow Men's Basketball Coaches' Pay*, USA TODAY (Mar. 11, 2020), <http://usatoday.com/story/sports/ncaab/2020/03/11/college-basketball-coaches-salaries-schools-pay-more-after-fbi-probe/5012939002>. In 1997, there were only two college coaches who earned at least \$1 million annually. *See* Greenberg, *supra* note 47, at 137.

<sup>117</sup> *See* Thomas & Van Horn, *supra* note 112, at 230–31.

<sup>118</sup> Greenberg & Gruber, *supra* note 108, at 146 (describing a coach's job security "as fleeting as the last seconds of an overtime victory").

<sup>119</sup> *See* Thomas & Van Horn, *supra* note 112, at 941 (explaining that, for example, head football coaches cannot rely solely on their close connections to athletics supporters or trustees to maintain employment if their teams fail to meet high expectations). Thus, because winning and revenue often go together, "universities assess their athletics personnel and bottom line similarly to any profit-driven corporation." *See* Greenberg & Gruber, *supra* note 108, at 147 (explaining why universities routinely fire head coaches "at a drastically increased frequency").

<sup>120</sup> Greenberg, *supra* note 47, at 127 (describing a head coach's job security as "conditioned on winning because "wins are the equivalent of the bottom line"). On-

not only as a potential revenue source, but as a way to increase name recognition and application rates.<sup>121</sup>

Men's basketball and football are often a university's most visible sports programs.<sup>122</sup> Universities can receive significant revenue when they play in a football bowl game or in the NCAA men's basketball tournament.<sup>123</sup> On many campuses, football revenue alone funds most, if not all, of the universities' other athletics programs.<sup>124</sup> Success on the football field has also benefited many universities' reputations and provided them national prominence.<sup>125</sup> Likewise, men's basketball postseason success provides universities free advertising and results in increased interest among prospective students.<sup>126</sup>

ii. Terminating a Coach's Employment for Violating NCAA Rules

The potential to garner enormous revenue and job security through athletic success, however, can present coaches with a win-at-all-costs attitude.<sup>127</sup> When swayed by temptations to violate NCAA rules in order to gain a competitive advantage, coaches who are caught cheating place themselves at risk of not only employment termination but forfeiting severance pay. This section explores college coach

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field success helps athletics programs sustain success because prospective student-athletes seek to join winning sport programs and maintain that success. *See* Karcher, *supra* note 93, at 431.

<sup>121</sup> *See* Greenberg & Gruber, *supra* note 108, at 147 (explaining that college athletics' financial stakes have never been higher).

<sup>122</sup> *See* Greenberg, *supra* note 47, at 131 (noting that football and basketball revenue often underwrites women's sports programs and less visible sports).

<sup>123</sup> *See id.* at 142–44 (stating “[t]here is no better way to illustrate the high financial stakes associated with winning than by looking at the dollars paid out for bowl game participation”).

<sup>124</sup> Thomas & Van Horn, *supra* note 112, at 199 (describing the indirect benefits to universities from having successful football programs).

<sup>125</sup> *See id.* (referring to the University of Alabama, the University of Notre Dame, and the University of Florida as examples of universities who enjoy “instant name recognition at least in part because of their football traditions”).

<sup>126</sup> *See* Eamonn Brennan, *Study: Hoops Success Helps Enrollment*, ESPN (Aug. 27, 2012), [http://espn.com/blog/collegebasketballnation/post/\\_/id/63340/study-hoops-success-begets-more-students](http://espn.com/blog/collegebasketballnation/post/_/id/63340/study-hoops-success-begets-more-students) (citing George Mason University and Butler University as examples of universities whose success in the men's basketball championship led to benefits off the court).

<sup>127</sup> *See* Greenberg, *supra* note 47, at 146 (explaining that revenue potential from media contracts, ticket sales, sponsorship relationships, donations, and postseason tournament participation has put the bottom line or balance sheet on equal standing with on-court success).

employment contract provisions that permit universities to terminate their employment without having to continue to pay them.<sup>128</sup>

College coach employment contracts usually contain separate “termination for cause” and “termination without cause” provisions.<sup>129</sup> Depending on the provision under which the university terminates a head coach’s employment, the university may still owe the coach millions of dollars.<sup>130</sup>

A termination without cause provision provides the university authority to terminate the contract prior to its end-of-term date for any reason.<sup>131</sup> Common reasons why universities terminate coaches without cause include consistent losses, inadequate fan support and financial support from donors, failing to compete with other conference member or rival teams, and other reasons that the pertinent contract provisions do not list.<sup>132</sup>

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<sup>128</sup> Given their profession’s volatility and the relatively rapid turnover, head coaches negotiate employment contracts with their universities that include protection mechanisms like multi-year fixed terms and substantial severance payments in the event of employment termination. Thomas & Van Horn, *supra* note 114, at 941. Universities likewise value continuity in their coaching positions and stability in their athletics programs and are thus willing to employ their head coaches for several years. Karcher, *supra* note 93, at 432.

<sup>129</sup> See Martin J. Greenberg, *Termination of College Coaching Contracts: When Does Adequate Cause to Terminate Exist and Who Determines its Existence?*, 17 MARQ. SPORTS L. REV. 197, 205 (2006) (describing The Ohio State University’s termination of head men’s basketball coach Jim O’Brien); see also Stephen F. Ross & Lindsay Berkstresser, *Using Contract Law to Tackle the Coaching Carousel*, 47 U.S.F. L. REV. 709, 720 (2013).

<sup>130</sup> See Thomas & Van Horn, *supra* note 112, at 229 (contrasting ramifications of terminations for cause and terminations without cause).

<sup>131</sup> See Greenberg & Gruber, *supra* note 108, at 149; see also Martin J. Greenberg & Djenane Paul, *Coaches’ Contracts: Terminating a Coach Without Cause and the Obligation to Mitigate Damages*, 23 MARQ. SPORTS L. REV. 339, 341 (2013) (explaining that mitigation of damages found its way into coaches’ employment contracts through provisions permitting termination without cause and for the university’s own convenience). Most college head coach employment contracts contemplate an employment period of at least five years. Thomas & Van Horn, *supra* note 114, at 940–41 (describing the contract length as necessary because head coaches attempt to sway high school-aged prospective student-athletes to attend their universities, and these prospects and their families appreciate a strong likelihood that the head coach will be at the university throughout the prospects’ athletic career at the university).

<sup>132</sup> See Greenberg & Gruber, *supra* note 108, at 149. Further, it is not uncommon for a new president, chancellor, or athletics director to seek to make their “mark” on a sport program by bringing in a new coach and terminating the current coach’s employment without cause. *Id.*

When a university terminates a coach's employment without cause, it will likely incur potentially enormous fiscal obligations.<sup>133</sup> A coach's employment contract frequently requires their university to pay the coach severance payments or common law damages for breach upon termination.<sup>134</sup> The severance amount the university owes the coach often equals the full amount of compensation to which the coach would have been entitled if the parties fully performed the contract.<sup>135</sup> Thus, the amount a university owes and pays a coach that it terminated without cause is, in essence, payment to someone to *not* perform work for the university.<sup>136</sup>

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<sup>133</sup> Greenberg & Paul, *supra* note 131, at 339 (explaining that the employment contract may require the university to pay for the head coach's remaining contract years).

<sup>134</sup> Thomas & Van Horn, *supra* note 114, at 942 (comparing amounts that universities owe depending on whether termination was with or without cause); *see also* Richard T. Karcher, *The Coaching Carousel in Big-Time Intercollegiate Athletics: Economic Implications and Legal Considerations*, 20 FORDHAM INTELL. PROP. MEDIA & ENT. L.J. 1, 23 (2009). Authors, fans, and media members commonly refer to the severance payments accompanying employment terminations without cause as "buyouts." *See id.* at 23–24. Regardless of nomenclature, the industry trend is for universities and coaches to contract around the default consequential damages by quantifying, or liquidating, their damages during contract negotiations. *See* Karcher, *supra* note 93, at 435 (explaining that a buyout is nothing more than a triggered liquidated damages clause).

<sup>135</sup> Thomas & Van Horn, *supra* note 114, at 942; *see also* Karcher, *supra* note 134, at 24 (explaining that "[t]he amount of the buyout is typically tied to the number of years remaining on the term of the contract at the time the coach is terminated"). Given coaches' relatively short tenures, it is unsurprising that they bargain for greater protection in the event of termination without cause. *See* Thomas & Van Horn, *supra* note 114, at 906 (comparing college head football coach and university president employment contracts). Losing is costly to a head coach; not only does it markedly increase the chance of termination, but it also reduces their likelihood of future employment as a head coach. *See id.* at 913 (explaining why coaches compensate for this risk by negotiating significant severance payment provisions).

<sup>136</sup> *See* Karcher, *supra* note 134, at 24 (referring to buyouts as "an additional cost to schools for keeping coaches on contract that are no longer working for them"). In fact, two legal scholars describe the money that university officials willingly pay to buy out faltering head coaches' contracts as the latest symbol of the college "football arms race." Greenberg & Paul, *supra* note 131, at 340. For example, Louisiana State University recently terminated the employment of head football coach Ed Orgeron without cause less than two seasons after he guided the team to a national championship, thus owing him \$17 million in severance. *See* Chip Patterson, *LSU, Coach Ed Orgeron Agree to Part Ways at Conclusion of 2021 College Football Season*, CBS SPORTS (Oct. 17, 2021), <http://cbssports.com/college-football/news/lsu-coach-ed-orgeron-agree-to-part-ways-at-conclusion-of-2021-college-football-season> (quoting LSU athletics director Scott Woodward as explaining that the football program was not competing for "SEC and national championships").



Universities often negotiate termination *for cause* provisions into employment contracts to protect their images in the event of employee misconduct.<sup>137</sup> These contract provisions also go by termination “with cause,” termination with or for “just cause,” or “for cause termination.”<sup>138</sup> They provide the circumstances under which a university may terminate a coach for the coach’s bad act or harmful omission and relieve the university of its duty to further compensate the coach.<sup>139</sup> If a coach commits an act that, per the employment contract, justifies termination for cause, the university may terminate the contract prior to the end of its term.<sup>140</sup> A coach who breaches an employment contract and whose university terminates their employment with cause typically is not entitled to severance compensation.<sup>141</sup>

The circumstances justifying termination for cause vary depending on head coach contracts. Such circumstances are often a

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<sup>137</sup> See Adam Epstein, *An Exploration of Interesting Clauses in Sports*, 21 J. LEGAL ASPECTS SPORT 5, 17 (2011) (explaining that the right to end a working relationship is a natural consideration for contract drafters and parties); see also Thomas & Van Horn, *supra* note 114, at 943 (describing termination for cause provisions as “an important protection” for a university from the damage to its reputation and image that could arise if a coach engages in serious misconduct). In fact, negotiations regarding the circumstances that can justify termination for cause can become contentious. See Thomas & Van Horn, *supra* note 112, at 230; see also Greenberg & Gruber, *supra* note 108, at 147 (stating that “universities and coaches . . . fight bitterly over what constitutes termination for cause”).

<sup>138</sup> See Greenberg & Gruber, *supra* note 108, at 150. This Article uses the terms termination “with cause,” termination “for just cause,” and “for cause termination” interchangeably.

<sup>139</sup> See Greenberg, *supra* note 129, at 205 (contrasting termination for cause and termination without cause employment contract provisions generally); see also Thomas & Van Horn, *supra* note 114, at 942.

<sup>140</sup> Greenberg & Gruber, *supra* note 108, at 150.

<sup>141</sup> Thomas & Van Horn, *supra* note 114, at 942 (explaining that, as a result, universities carefully draft definitions for what constitutes cause); see also Greenberg, *supra* note 129, at 205 (explaining that most college head coach employment contracts include a clause exonerating the university from any further liability for compensation following termination with cause). Thus, an employee likely would prefer a termination without cause from a financial standpoint. See Thomas & Van Horn, *supra* note 114, at 942 (noting that counsel for employees will vociferously resist including strong definitions of cause in their clients’ employment contracts). Conversely, “universities prefer to terminate a coach’s contract” with cause because of the hefty severance payments that often accompany termination without cause. Greenberg & Gruber, *supra* note 108, at 149–50.

main focus of head coach contract negotiations.<sup>142</sup> Most relevant to this Article, coach employment contracts typically permit termination with cause for material contract breaches, NCAA or conference rule violations resulting in certain sanctions, and “conduct that constitutes moral turpitude or reflects adversely on [the university].”<sup>143</sup> Virtually every coach’s employment contract states that it is their duty to abide by, and comply with, the NCAA’s constitution, bylaws, and interpretations as well as all rules of the conference to which the university belongs.<sup>144</sup> Universities double down on the importance of coaches following NCAA rules by including failure to follow NCAA rules as grounds for termination for cause.<sup>145</sup> More specifically, common contract language states that “a deliberate or serious violation, material in nature, of any law, rule, regulation, constitutional provision or bylaw of . . . the NCAA[,]” which reflects adversely on the university or its athletics program, or that results in the NCAA placing the university on probation, constitutes a basis for termination with

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<sup>142</sup> See Thomas & Van Horn, *supra* note 112, at 209 (explaining that the parties may look to previous contracts between the university and other coaches as well as other universities’ coach employment contracts).

<sup>143</sup> Greenberg, *supra* note 129, at 206, 221 (noting The Ohio State University’s head men’s basketball coach Jim O’Brien’s employment contract included these terms). Additionally, circumstances that can constitute adequate reasoning for termination with cause often include “perpetuation of willful fraud, conduct seriously prejudicial to the best interests of the university, immoral acts, habitual intoxication, dishonesty, and gross negligence.” Thomas & Van Horn, *supra* note 112, at 230–31. Coaches’ contracts also often contain provisions defining neglect of duties as grounds for termination for cause, which suggests that universities could use poor on-field results to terminate a head coach’s employment for-cause. See *id.* at 233. This, however, has not been the case. See *id.*; see also Karcher, *supra* note 134, at 23 (describing it as unfortunate for universities that lack of winning is not a valid reason to terminate a head coach for cause).

<sup>144</sup> See Greenberg & Gruber, *supra* note 108, at 194 (providing example contract language from coaches’ contracts, including now-former Texas Tech University head football coach Kliff Kingsbury). The inclusion of university, conference, and NCAA rules is an “important aspect” of coaches’ contracts. Stangel, *supra* note 90, at 153.

<sup>145</sup> See Greenberg & Gruber, *supra* note 108, at 194 (providing examples, including language from Kingsbury’s contract). Because of NCAA Bylaw 11.1.1.1, which makes head coaches presumptively responsible for their staff members’ actions, universities may contractually require coaches to take all reasonable steps to ensure staff members comply with NCAA rules. See Greenberg, *supra* note 47, at 147. See 2022–23 MANUAL, *supra* note 46, at § 11.1.1.1.

cause.<sup>146</sup> “A violation finding by the COI, as opposed to the university, is usually a prerequisite for just cause.”<sup>147</sup>

Universities hope that, by carefully enumerating offenses that would trigger termination for cause, they will deter or punish offenders for their actions.<sup>148</sup> A complete loss of severance pay should serve as a significant deterrent to engaging in actions that would constitute cause under a coach’s employment contract.<sup>149</sup> Further, a coach terminated with cause likely suffers severe reputational harm.<sup>150</sup>

### iii. Show-Cause Penalties

In addition to potential employment termination with cause and the accompanying lack of severance, coaches who commit NCAA violations may face an NCAA penalty—a show-cause order—that lessens the likelihood they will maintain or find continued employment in college athletics. This section details the potential application of a show-cause order for a rule-violating coach.<sup>151</sup>

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<sup>146</sup> See Greenberg, *supra* note 47, at 147 (noting that the contract also likely references conference or university rules, which are less relevant to this Article).

<sup>147</sup> Lens, *supra* note 30, at 63; see Stangel, *supra* note 90, at 154. For example, Louisiana State University fired assistant football coach James Cregg with cause after he admitted to violating NCAA rules when he provided gear to a prospective student-athlete while visiting him during a recruiting dead period when such visits were impermissible. Joseph Zucker, *Former LSU OL Coach James Cregg Admits Violating NCAA Rules in Lawsuit Against School*, BLEACHER REP. (Aug. 20, 2021), <http://bleacherreport.com/articles/10010716-former-lsu-ol-coach-james-cregg-admits-violating-ncaa-rules-in-lawsuit-against-school>. Cregg’s subsequent lawsuit alleged that cause did not exist at the time of his employment termination since the NCAA had not yet concluded that a violation occurred. *Id.* For analysis regarding the bind that universities place themselves in when they precondition termination with cause on a COI finding, as opposed to an Enforcement Staff allegation, see Lens, *supra* note 30, at 42–43.

<sup>148</sup> See Thomas & Van Horn, *supra* note 114, at 943. Given the near certainty that coaches terminated with cause will sue their universities for breach of contract, however, universities are selective about their use of the just cause distinction. Michael McCann, *Breaking Down Kevin Ollie’s Case Against UConn and the University’s Likely Defenses*, SPORTS ILLUSTRATED (June 29, 2018), <http://si.com/college/2018/06/29/uconn-huskies-kevin-ollie-fired-arbitration-lawsuit> (citing Louisville’s termination of Pitino with cause as an example after retaining him through multiple scandals).

<sup>149</sup> See Thomas & Van Horn, *supra* note 114, at 943.

<sup>150</sup> See *id.* (noting that coaches aggressively negotiate limitations to what constitutes cause in their employment contracts); see also Greenberg & Gruber, *supra* note 108, at 213 (explaining that a termination with cause provision can interfere with a coach’s future, both financially and professionally).

<sup>151</sup> For analysis of a recent California court decision regarding the legality of show-cause orders and what it means for college athletics, see Joshua Lens, *Voiding the NCAA*

According to the COI's internal operating procedures, show-cause orders are an available penalty and "run to an individual's conduct that violated NCAA legislation while on staff with a member institution."<sup>152</sup> "A show-cause order essentially means that any NCAA penalties" attach to a rule breaker for a designated period of time and transfer to any university that hires the individual prior to the order's expiration.<sup>153</sup>

There can be two components to each show-cause order: its length and any specific provisions the COI includes.<sup>154</sup> The COI refers to show-cause orders containing specific conditions or restrictions as "specific" show-cause orders. The orders typically prescribe for an individual who either remains at the university where the individual committed the violations or has secured employment at another university.<sup>155</sup> Possible restrictions include practice and game suspensions and prohibiting recruiting activity.<sup>156</sup> Any restrictions on a coach prevent them from fully engaging in a coach's normal job functions.<sup>157</sup> Thus, the fact that a coach cannot fulfill all job responsibilities due to a show-cause order with restrictions strains the rest of the coaching staff.<sup>158</sup> This additional burden threatens the stability of the sport program and security of the remaining coaching staff.<sup>159</sup>

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*Show-Cause Penalty: Analysis and Ramifications of a California Court Decision, and Where College Athletics and Show-Cause Penalties Go From Here*, 19 U.N.H. L. REV. 21 (2020).

<sup>152</sup> INTERNAL OPERATING PROCS., *supra* note 73, at § 5-15-5.

<sup>153</sup> See Nicole Auerbach, *The Perception and Reality of NCAA Show-Cause Penalties*, USA TODAY SPORTS (May 27, 2014, 7:15 PM), [usatoday.com/story/sports/college/2014/05/27/ncaa-show-cause-penalty-bruce-pearl-kelvin-sampson/9632273](http://usatoday.com/story/sports/college/2014/05/27/ncaa-show-cause-penalty-bruce-pearl-kelvin-sampson/9632273).

<sup>154</sup> See *id.* (citing current Auburn University head men's basketball coach Bruce Pearl's three-year show-cause order that specifically barred him from "conducting any and all recruiting activities").

<sup>155</sup> See INTERNAL OPERATING PROCS., *supra* note 73, at § 5-15-5-2.

<sup>156</sup> *Id.*

<sup>157</sup> See Ellen J. Staurowsky, Brian Menaker & Jeffrey Levine, *California Judge Rules NCAA's Show-Cause Order Violates State Law*, SPORTS L. EXPERT (Dec. 12, 2018), <http://sportslawexpert.com/2018/12/12/California-judge-rules-ncaas-show-cause-order-violates-state-law>.

<sup>158</sup> NCAA rules place a cap on the total number of individuals who can engage in coaching activities or recruit off-campus in a given sport. 2022-23 MANUAL, *supra* note 46, at § 11.7. Thus, NCAA rules preclude a university who hires or retains an individual subject to a show-cause order from, for example, simply hiring a temporary coach to recruit or coach in the penalized coach's place.

<sup>159</sup> Staurowsky, *supra* note 157.

For example, the COI proscribed a show-cause penalty on current Auburn University head men's basketball coach Bruce Pearl for violations that occurred while he served in the same position at the University of Tennessee.<sup>160</sup> The violations stemmed from a dinner at Pearl's home, which three prospective student-athletes, who were high school juniors on campus visits, attended.<sup>161</sup> The COI concluded that Pearl informed the prospects that their attendance at the dinner violated NCAA rules and encouraged them not to disclose it to others.<sup>162</sup> Pearl failed to report the violations to the university and denied knowledge of them when university administrators and the NCAA Enforcement Staff interviewed him.<sup>163</sup> The COI imposed penalties, including a three-year show-cause order on Pearl, which included a specific condition barring him from conducting any recruiting activities between August 24, 2011, and August 23, 2014.<sup>164</sup>

The COI has used show-cause orders to punish rule breakers for decades, but the penalty remains one of the NCAA's most misunderstood punishments.<sup>165</sup> Described as the NCAA's scarlet letter,

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<sup>160</sup> Auerbach, *supra* note 153. Pearl has been involved in a number of NCAA issues in his career—from secretly recording a phone call with a prospective student-athlete in an attempt to get another university in trouble thirty years ago while a University of Iowa assistant coach to more recently having one of his Auburn assistant coaches ensnared in a federal investigation into men's college basketball corruption. See Dave Skretta, *Auburn's Bruce Pearl Has Sheen of Sweat, Slime and Success*, ASSOCIATED PRESS (Apr. 6, 2019), <http://apnews.com/bd3edaf566444bd0b7b8ff7337778cf4> (describing Pearl as covered in Teflon).

<sup>161</sup> See UNIVERSITY OF TENNESSEE, PUBLIC INFRACTIONS REPORT 1 (2011) [hereinafter TENNESSEE CASE], <https://i.turner.ncaa.com/sites/default/files/files/Tenn%20Public%20Inf%20Rpt.pdf> (setting forth COI's conclusions in case involving men's basketball, football, and institutional violations). The COI's public infractions decisions do not identify involved individuals by name, but numerous media outlets identified the relevant individuals. For example, see Auerbach, *supra* note 153.

<sup>162</sup> See TENNESSEE CASE, *supra* note 161, at 1. The off-campus interactions between members of the university's men's basketball staff and the prospective student-athletes visiting the university on "unofficial" visits violated NCAA recruiting legislation in effect at the time. See *id.* at 3–4.

<sup>163</sup> *Id.* at 1. The COI concluded Pearl's intentional violations of NCAA recruiting legislation, provision of false and misleading information, and attempts to influence others to furnish false and misleading information were contrary to NCAA principles of ethical conduct. See *id.* at 5.

<sup>164</sup> *Id.* at 14 (noting the penalties were due to knowingly violating NCAA recruiting legislation, telling individuals to not disclose the impermissible activities, failing to report the violation, and providing false and misleading information to investigators).

<sup>165</sup> Auerbach, *supra* note 153. The University of Nebraska-Omaha received the first show-cause penalty for playing an unsanctioned postseason football game in 1963.

it *can* end a coach's career, or at least blacklist a coach from finding work again for a certain period of time.<sup>166</sup> Many falsely believe that imposition of a show-cause order requires a university to terminate a coach's employment and that other universities may not hire the coach during the period of the penalty.<sup>167</sup> These misguided assumptions originate with an old misunderstanding of the penalty.<sup>168</sup> According to former COI chairman Gene Marsh, it is false to assume a show-cause order is a permanent scarlet letter preventing universities from hiring individuals subject to them.<sup>169</sup> When Auburn hired Pearl with five months remaining on his show-cause penalty,<sup>170</sup> for example, the two parties achieved the "dubious" distinction that it was the first time a university hired a coach with an active show-cause order.<sup>171</sup>

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Joseph Duarte, *Coaches Finding Life After "Kiss of Death,"* HOUS. CHRON. (Apr. 5, 2014, 9:49 PM), <http://houstonchronicle.com/sports/cougars/article/Coaches-finding-life-after-kiss-of-death-5379846.php> (profiling coaches who received show-cause orders). Since that time, hundreds of coaches have received show-cause penalties. Ron Kroichick, *Back on the Sidelines After Decade in Exile*, SFGATE (Dec. 23, 2007), <http://sfgate.com/sports/article/Back-on-the-sidelines-after-decade-in-exile-3234092.php> (describing the career of Todd Bozeman, recipient of eight-year show-cause order).

<sup>166</sup> See Duarte, *supra* note 165. Show-cause orders have served as de-facto bans on college athletic employment for numerous now-former coaches. Alex Kirshner, *The NCAA's Method of Blackballing Coaches is Now Invalid in California*, SBATION (Oct. 10, 2018, 9:37 AM), <http://sbnation.com/college-football/2018/10/10/17959082/ncaa-show-cause-todd-mcnair-california>.

<sup>167</sup> See Auerbach, *supra* note 153 (acknowledging that outside perceptions affect hiring and firing decisions).

<sup>168</sup> John Infante, *Where the Penalties Against Frank Haith Could Lead*, ATHNET (Jan. 22, 2013), <http://athleticscholarships.net/2013/01/22/ncaa-penalties-frank-haith-show-cause-order.htm> (explaining that show-cause penalties do not necessarily end careers or even require a coach to lose his current position). But coach non-renewal or outright firing depending on contract provisions is logical. Staurowsky, *supra* note 157 (explaining that restrictions on coach's ability to fully perform job functions burdens other staff).

<sup>169</sup> Auerbach, *supra* note 153 (noting Marsh worked for a law firm in Birmingham and represented former Ohio State University head football coach Jim Tressel during an NCAA investigation that ultimately resulted in a five-year show-cause order for Tressel).

<sup>170</sup> See *id.* (noting, ironically, that one of Auburn's compliance staff members at time of Pearl's hiring was NCAA's lead investigator during NCAA investigation of Pearl).

<sup>171</sup> See James Crepea, *Bruce Pearl Celebrates as NCAA Show-Cause Expires*, MONTGOMERY ADVERTISER (Aug. 24, 2014, 8:48 AM), <http://montgomeryadvertiser.com/story/sports/college/auburn/2014/08/24/bruce-pearl-celebrates-with-auburn-fans-team-as-ncaa-show-cause-expires/14524371>. Pearl and dozens of Auburn fans celebrated outside Auburn Arena at the exact moment his show-cause penalty expired, with Pearl going so far as to pose for pictures and jump in celebration with his student-athletes,

Hiring or retaining a coach during the period of a show-cause penalty, however, is not without consequences for the university. Such an employment action requires a university to jump through some procedural hoops.<sup>172</sup> In instances where a university retains or hires an individual subject to a show-cause penalty, NCAA Bylaw 19.02.3 requires the university to demonstrate, to the COI's satisfaction (who imposed the penalty in the first place), why the university should not be subject to a penalty or additional penalty for failing to take appropriate disciplinary or corrective action regarding that individual.<sup>173</sup> Thus, if a university hires a coach with a show-cause order, it must "show cause" to the COI, which includes demonstrating both why the university should not receive a penalty for hiring the coach and how it plans on monitoring him.<sup>174</sup> More specifically, when a university retains or hires a coach subject to a show-cause order, the COI essentially requires the university to prove that the coach has made amends and abides by the COI's restrictions.<sup>175</sup> For example, the COI required any university employing Pearl to file a report with it within thirty days of hiring him in which the university agreed to the recruiting restriction or sought a date to appear before the COI to

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shouting, "Free at last!" before heading to his office to, of course, make recruiting calls and meet with a prospective student-athlete. *Id.*

<sup>172</sup> See Staurowsky, *supra* note 157. The decision to retain or hire a coach subject to a show-cause, however, is likely to result in scrutiny. *See id.* Many college athletics administrators and university officials wish to remain clear of compliance scrutiny and thus are less likely to knowingly place themselves in a position where others question their commitment to rules compliance. *See id.*

<sup>173</sup> Auerbach, *supra* note 153.

<sup>174</sup> 2022–23 MANUAL, *supra* note 46, at § 19.9.5.4.

<sup>175</sup> The COI used to require universities hiring coaches subject to a show-cause to appear in front of it and show cause why the university should not receive additional punishment. *See Infante, supra* note 168 (referencing a 2004 University of Georgia case involving then-men's basketball assistant coach Jim Harrick, Jr. as an example). More recently, however, the onus on a university employing a coach subject to a show-cause penalty lessened to ensuring the coach abides by the COI's restrictions and filing reports with the COI proving same. *See id.* The employing university no longer must attend a hearing, does not face a presumption of penalties, and does not have to hope that it can demonstrate to the COI's satisfaction that it should not receive punishment. *See id.* (referencing a 2014 University of Tennessee case involving Pearl as an example).

contest it.<sup>176</sup> Every six months thereafter, the hiring university had to file reports detailing adherence to the show-cause restriction.<sup>177</sup>

If the coach violates NCAA rules during the period of the show-cause order, the university employing them faces harsher penalties.<sup>178</sup> For example, if a university hires or retains a coach subject to a show-cause order and the coach commits an NCAA violation that the COI deems Level I or II, the violation can constitute an “aggravating factor” justifying more stringent penalties.<sup>179</sup> Additional penalties could include extreme measures such as prohibiting a sport program from engaging in competition, requiring the university to relinquish NCAA voting privileges, and prohibiting televised appearances.<sup>180</sup> Further, if the COI determined that the university failed to take appropriate disciplinary or corrective action regarding the coach, the COI could implement additional penalties, such as restriction of some or all

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<sup>176</sup> See TENNESSEE CASE, *supra* note 161, at 14. Auburn’s then-athletics director Jay Jacobs and Pearl agreed that Auburn would not appeal Pearl’s show-cause penalty, as Jacobs believed not appealing “was the right thing to do.” The Associated Press, *Auburn Opts Not to Appeal Bruce Pearl’s Show-Cause Order*, TUSCALOOSA NEWS (Apr. 22, 2014), <http://tuscaloosaneews.com/story/sports/2014/04/22/auburn-opts-not-to-appeal-bruce-pearls-show-cause-order/223257007>.

<sup>177</sup> See TENNESSEE CASE, *supra* note 161, at 14.

<sup>178</sup> Auerbach, *supra* note 153. Consider the case involving longtime men’s basketball coach Kelvin Sampson. In 2008, the COI imposed a five-year show-cause penalty on Kelvin Sampson for making impermissible recruiting phone calls while he served as the University of Oklahoma’s head men’s basketball coach. Sampson then continued making impermissible calls and failed to adhere to COI penalties while in the same position at the University of Indiana. IND. UNIV., BLOOMINGTON, PUBLIC INFRACTIONS REPORT 43 (2008), <http://web3.ncaa.org/lstdbi/search/miCaseView/report?id=102283>. The COI prohibited Sampson from engaging in any recruiting activities or interactions with prospective student-athletes for a three-year period. *Id.* After the expiration of the three-year period, Sampson had to forego certain recruiting activities until the expiration of an overall five-year show-cause period. *Id.* at 44–45. The COI required any university that employed Sampson during the show-cause period to submit reports evidencing its understanding of the penalties and detailing how it would monitor Sampson’s conduct to assure compliance with penalties. *Id.* at 45–46. Further, the president of the employing university would be required to provide a letter to the COI affirming Sampson’s compliance with the penalties at the conclusion of the show-cause period. *Id.* at 46. The COI went on to admonish Sampson and any employing university to both construe the penalties broadly and strictly adhere to them. *Id.* The University of Houston hired Sampson as its head men’s basketball coach a year after the show-cause order expired. Duarte, *supra* note 165.

<sup>179</sup> 2022–23 MANUAL, *supra* note 46, at §§ 19.1, 19.9.3(n).

<sup>180</sup> *Id.* § 19.9.7.



athletically related duties.<sup>181</sup> Notably, “[d]ecisions regarding disciplinary or corrective actions involving personnel shall be made by the institution, but the determination of whether the action satisfies the institution’s obligation of NCAA membership shall rest solely with the Committee on Infractions.”<sup>182</sup>

Given the foregoing, it is no surprise that current Southeastern Conference Commissioner and former COI member Greg Sankey has described show-cause penalties as “significant”<sup>183</sup> and career-impacting. Like the possibility of facing employment termination without severance, show-cause orders loom as a potentially severe ramification for rule-breaking coaches.

### III. NCAA RULES COMPLIANCE ON UNIVERSITY CAMPUSES

The NCAA Division I constitution requires member universities to comply with all NCAA rules,<sup>184</sup> and universities are accountable for all staff members’ actions.<sup>185</sup> Thus, NCAA legislation shares similarities with tort law’s concept of *respondeat superior* through which businesses may be held responsible for employees’ acts.<sup>186</sup> Under NCAA rules, “[b]ecause universities act through individuals for whom they are responsible, when one such individual commits a violation so too does the university.”<sup>187</sup> The university’s knowledge and exercise of due diligence are irrelevant—its responsibility stems from its relationship with the individual who broke the rules.<sup>188</sup>

NCAA member universities’ top responsibility toward each other and the NCAA is institutional control, which<sup>189</sup> requires universities to

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<sup>181</sup> *Id.* § 19.9.5.4.

<sup>182</sup> *Id.*

<sup>183</sup> Auerbach, *supra* note 153.

<sup>184</sup> 2022–23 MANUAL, *supra* note 46, at § 1E (explaining that a university’s president or chancellor has ultimate responsibility for “all aspects of the athletics program”).

<sup>185</sup> *Id.*

<sup>186</sup> Marsh & Robbins, *supra* note 43, at 671.

<sup>187</sup> Potuto, *supra* note 35, at 298 (referring to institutional responsibility for violations as “[o]ne of the least understood aspects of the infractions process”).

<sup>188</sup> *Id.* at 299 n.174 (explaining that the institutional responsibility concept “tracks the law of *respondeat superior*” and agency principles). “Who committed the violation and whether an institution could have prevented or uncovered it, however, are relevant to assessment of penalties.” *Id.* at 299.

<sup>189</sup> *Id.* at 283. A COI conclusion that a university lacks institutional control is one of the worst findings that a university can suffer, as it indicates institution-wide failure, as opposed to one coach or staff member’s dishonest act, for example. Fuller, *supra* note 42, at 502–503. Said otherwise, a lack of institutional control finding can suggest

self-police and self-report any violations of NCAA rules.<sup>190</sup> Thus, just as following NCAA rules is an obligation of NCAA membership, “member institutions must monitor the conduct of those for whom they are responsible and sanction them for violations.”<sup>191</sup>

NCAA legislation explicitly holds a university’s president or chancellor accountable for its athletics department’s conduct.<sup>192</sup> Practically, however, an athletics director has a greater impact on the attitudes of “staff members, coaches, student-athletes, and boosters toward NCAA rules compliance.”<sup>193</sup> Athletics directors are full-time administrators who oversee their respective university’s athletics enterprises.<sup>194</sup> Their jobs are 24/7, and their vast responsibilities may include negotiating multimillion-dollar media and licensing rights agreements, managing highly paid coaches, acting as fundraising and development specialists, balancing budgets, and mastering applicable compliance standards.<sup>195</sup>

While the athletics director “sets the tone, NCAA rules compliance hardly defines the job.”<sup>196</sup> As most of the athletics compliance responsibility on a campus falls on the athletics department’s compliance staff,<sup>197</sup> it is therefore essential that an

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“a climate of noncompliance or a lackadaisical” attitude toward NCAA rules compliance. Marsh & Robbins, *supra* note 43, at 670–671.

<sup>190</sup> Potuto, *supra* note 35, at 283 (explaining that the Enforcement Staff would be unnecessary if universities had trust and confidence in other universities’ self-policing and that all universities approached NCAA rules compliance the same). “Institutional control means that an institution has the responsibility to investigate potential violations vigorously and expeditiously, to share inculpatory information with the Enforcement Staff, and to cooperate fully as the Enforcement Staff does its investigation.” *Id.* at 291.

<sup>191</sup> *Id.* at 267.

<sup>192</sup> See Marsh & Robbins, *supra* note 43, at 695. “The institution’s president or chancellor is responsible for the administration of all aspects of the athletics program, including approval of the budget and audit of all expenditures.” 2022–23 MANUAL, *supra* note 46, at § 1E.

<sup>193</sup> Marsh & Robbins, *supra* note 43, at 695.

<sup>194</sup> Martin J. Greenberg & Alexander W. Evrard, *Athletic Directors*, 26 MARQ. SPORTS L. REV. 735, 735–36 (2016) (explaining that athletic directors’ profiles may not loom as large as their head men’s basketball or football coaches, but they have enhanced their public profile).

<sup>195</sup> See *id.* at 735–36 (referring to an athletics director’s job as “more sophisticated and pedigreed” because it “requires experience and more formalized education”).

<sup>196</sup> Marsh & Robbins, *supra* note 43, at 695 (describing athletics directors’ time as devoted to fundraising, negotiating contracts, “speaking engagements, and related matters”).

<sup>197</sup> Potuto, *supra* note 35, at 274.

athletics department possesses a strong compliance department.<sup>198</sup> Compliance offices often include several staff members who focus on student-athletes' financial aid and academic eligibility among all of the other applicable NCAA rules.<sup>199</sup> A university's athletics compliance department's overall mission and everyday duty is to keep the athletics department and student-athletes compliant with NCAA rules.<sup>200</sup> Responsible for serving coaches, current and prospective student-athletes, athletics representatives, and supporters of as many as a dozen sports and hundreds of student-athletes,<sup>201</sup> the following section describes the important roles that athletics compliance staff members play on their campuses in order to help maintain institutional control.

#### A. *NCAA Rules Education*

In furtherance of their overall mission and duty, compliance staff members “perform the central risk management prevention functions” of educating constituents regarding NCAA rules and monitoring compliance with them.<sup>202</sup> Yale University's (“Yale”) Athletics Compliance staff, for example:

seeks to educate its constituencies, including but not limited to, student-athletes, coaches, athletics staff members, University staff members outside of athletics, and representatives of athletics interests (boosters) regarding Ivy, ECAC, and Yale University rules and regulations. The primary methods of rules education are monthly newsletters, regular email tips, brochures, and compliance-related sessions at various staff meetings.<sup>203</sup>

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<sup>198</sup> Wong et al., *supra* note 35, at 12 (explaining that most, if not all, NCAA member universities have a compliance department); *see also* Fuller, *supra* note 42, at 503 (characterizing athletics compliance staff as “vital within an athletic department”).

<sup>199</sup> Marsh & Robbins, *supra* note 43, at 695.

<sup>200</sup> *See* Wong et al., *supra* note 35, at 12–13 (noting that this includes ensuring student-athletes are academically eligible to engage in practice and competition, that their respective university's recruitment of student-athletes was permissible under NCAA rules, and that student-athletes refrain from accepting impermissible benefits).

<sup>201</sup> *See, e.g., Athletics Compliance Office*, UNIV. OF NOTRE DAME DEP'T OF ATHLETICS [hereinafter *Notre Dame Compliance Website*], <http://ncaacompliance.nd.edu> (last visited Jan. 23, 2023) (explaining that Notre Dame's compliance staff ensures the integrity of Notre Dame is upheld by establishing an atmosphere of education, consistency, and responsibility in adherence to the explicit guidelines set forth by the governing legislation of the NCAA and Atlantic Coast Conference).

<sup>202</sup> Potuto, *supra* note 94, at 90.

<sup>203</sup> *Compliance*, YALE UNIV. ATHLETICS [hereinafter *Yale Athletics Compliance Website*], <http://yale.prestosports.com/information/compliance/index> (last visited Jan. 24,

At many universities, student-athletes receive rules training at the academic year's outset, while sport staff members often attend rules education sessions as often as monthly.<sup>204</sup> The frequency at which constituents receive rules education differs by campus. Vanderbilt University's athletics compliance staff, for example, conducts multiple sessions annually with its student-athletes, educating them on NCAA rules.<sup>205</sup>

### B. *Interpreting NCAA Legislation*

In addition to education regarding NCAA rules, compliance staff members spend a lot of their time deciding whether potential conduct complies with the rules.<sup>206</sup> They receive questions from sport staff members and other constituents who know what action they would like to take but are unsure whether their desired conduct complies with NCAA rules.<sup>207</sup> For example, the University of Notre Dame Athletics Compliance Office website tells its constituents that it "is available as a resource for anyone who has any questions or concerns regarding NCAA guidelines."<sup>208</sup> Likewise, Yale's compliance staff provides rules interpretations "in a timely manner throughout the year as well as

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2023) (explaining that "[a] broad-based rules education program provides the foundation and culture necessary to cultivate, sustain, and enhance a successful program.").

<sup>204</sup> Potuto, *supra* note 94, at 95. Compliance staffs at many universities also provide specialized rules education to, and work with, student-athletes with significant potential to participate in professional sports in order to mitigate the likelihood of these student-athletes violating NCAA amateurism regulations. See Mike Rogers & Kelli Masters, *Paving the Road Between NCAA Stardom and an NFL Career: A University Advisory Panel Perspective*, 19 U. DENV. SPORTS & ENT. L.J. 187, 198 (2016). As then-Baylor University Law School professor Mike Rogers and lawyer and contract advisor Kelli Masters have explained, "NCAA rules compliance starts with the small stuff," noting that a football student-athlete once had to miss a game as a penalty for consuming a muffin purchased by a football agent. *Id.* at 192.

<sup>205</sup> 2021 *Student Athlete Handbook*, VAND. UNIV. (2021), <http://vanderbilt.edu/studentathletes/student-athlete-handbook/compliance> (explaining that Vanderbilt student-athletes must follow NCAA, Southeastern Conference, and Vanderbilt rules and policies).

<sup>206</sup> Potuto, *supra* note 35, at 274. "A significant part of the compliance [staff member's] job is to assist coaches with day-to-day interpretations of the rules, to help coaches achieve desired objectives within both the letter and spirit of the rules." Marsh & Robbins, *supra* note 43, at 697.

<sup>207</sup> Potuto, *supra* note 94, at 96 (noting that other athletics staff members, student-athletes, and boosters also seek NCAA rules interpretations).

<sup>208</sup> *Notre Dame Compliance Website*, *supra* note 201 (imploping constituents to "Remember, Ask Before You Act!").

when questions arise from any constituency.”<sup>209</sup> In these instances, compliance staff members should strive to avoid being “Dr. No” and instead determine the desired objective and finding a way to achieve it while maintaining compliance with NCAA rules.<sup>210</sup>

A coach may also believe another university interpreted a rule’s language differently,<sup>211</sup> which could result in a competitive advantage for a competitor. While the bylaw interpretation process begins on campus, compliance staff members often must consult their conference office and/or NCAA staff regarding their position.<sup>212</sup> This interpretation process can cause real conflict when coaches or staff attempt to pressure a compliance staff member into a favorable or quick interpretation.<sup>213</sup> It is important to note, however, that “[b]oth rules education and rules interpretation assist coaches and staff to forestall the commission of violations.”<sup>214</sup>

### C. *Monitoring NCAA Rules Compliance*

Monitoring systems help ensure rules compliance.<sup>215</sup> A compliance staff’s monitoring efforts include double-checking and verifying information.<sup>216</sup> To do so, compliance staff often requires sport staff members and student-athletes to complete and submit numerous forms.<sup>217</sup> For example, coaches must disclose information regarding practice hours so the compliance staff can verify compliance with relevant NCAA limitations.<sup>218</sup> Compliance staff members often

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<sup>209</sup> *Yale Athletics Compliance Website*, *supra* note 203.

<sup>210</sup> Marsh & Robbins, *supra* note 43, at 697.

<sup>211</sup> Potuto, *supra* note 94, at 96.

<sup>212</sup> *Id.* at 96–97.

<sup>213</sup> *Id.* at 90–91.

<sup>214</sup> *Id.* at 90 (explaining how compliance staff members’ work “supports and facilitates the objectives of staff and student-athletes”). “Interpretive efforts also often result in finding a rules-compliant way for coaches and staff to achieve their objectives.” *Id.*

<sup>215</sup> *Yale Athletics Compliance Website*, *supra* note 203 (noting that monitoring systems also assist in maintaining accurate records).

<sup>216</sup> Potuto, *supra* note 94, at 91.

<sup>217</sup> *See id.* at 94. Compliance staff members should, and often do, monitor social media for information regarding student-athletes and sport staff members. *Id.* at 116 (explaining that the Enforcement Staff likewise checks social media for this information).

<sup>218</sup> *Id.* at 94. NCAA Bylaw 17 regulates when, how often, and how long student-athletes may participate in activities regarding their sport. *See* 2022–23 MANUAL, *supra* note 46, at § 17.

verify the veracity of the coaches' submitted practice hours by providing that information to student-athletes to review and/or by spot-checking practices.<sup>219</sup> When coaches realize the information they submit is subject to review by their student-athletes, or that compliance staff members may show up at practices, they are more likely to provide complete and accurate information.<sup>220</sup>

Knowing that their actions are constantly monitored, however, may lead some coaches and staff to perceive that the compliance staff distrusts them.<sup>221</sup> Elliott Charles, who prior to serving as Chicago State University's Athletics Director ran Clemson University's compliance department, explained that "[o]nce you are in compliance you are put in an adversarial role."<sup>222</sup> Yet coaches must understand that "[i]f the Committee on Infractions (COI) concludes that institutional monitoring and oversight were not reasonably calculated to prevent and uncover violations, then it will penalize the institution for a failure to monitor its athletic programs."<sup>223</sup>

#### D. *Seeking Waivers of NCAA Rules' Application*

Compliance staff members often serve as their athletics department's point people for seeking waivers of the application of NCAA legislation to scenarios on their campuses.<sup>224</sup> Thus, successful waivers allow student-athletes or staff members to engage in action that

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<sup>219</sup> See Potuto, *supra* note 94, at 94–95 (explaining that the creation and review of forms is “an important part of monitoring for rules compliance, but it is only part of that job”).

<sup>220</sup> *Id.* at 95.

<sup>221</sup> *Id.* at 91.

<sup>222</sup> Daniel Libit, *Weary Compliance Directors Hope NIL Boosts Their Market Value*, SPORTICO (Jul. 2, 2021, 5:55 AM), <http://sportico.com/leagues/college-sports/2021/college-nil-compliance-directors-1234633397> (quoting Elliott as explaining, “[w]hat you are really getting evaluated on is how you are received by coaching staffs. If you cannot discern how to not just survive but manage the inherent conflict [of the job], you are going to be giving up on your career goals”).

<sup>223</sup> Potuto, *supra* note 94, at 98. A failure to monitor allegation is among the most serious at the Enforcement Staff's disposal. *Division I Enforcement Charging Guidelines*, NCAA, <http://ncaa.org/sports/2018/2/8/division-i-enforcement-charging-guidelines.aspx> (last visited Feb. 13, 2023). According to Division I enforcement charging guidelines, “the enforcement staff will take a common sense approach in considering an institution's specific efforts to monitor individuals and operations consistent with the NCAA constitution and bylaws.” *Id.* Relevant factors include policies and procedures, education and training, program monitoring and review, and responses to enforcement issues on campus. *Id.*

<sup>224</sup> See Potuto, *supra* note 94, at 90.

would otherwise fall outside the scope of the rules.<sup>225</sup> Waivers are especially appropriate when a scenario falls within the letter of a rule but outside its intent.<sup>226</sup>

Often time sensitive, especially to coaches, waivers often involve a student-athlete's competition eligibility.<sup>227</sup> For example, in June 2022 the NCAA granted waivers for two men's basketball student-athletes at West Virginia University, Emmitt Matthews, Jr. and Tre Mitchell, to play in the 2022–23 season.<sup>228</sup> Absent the waivers, NCAA rules would have required the pair of incoming transfers to sit out the season since they already transferred once, taking advantage of the NCAA's one-time transfer exception when doing so.<sup>229</sup>

Another example of a successful waiver stemmed from tragedy within the University of Virginia's football program. After the shooting deaths of three Virginia football student-athletes, the University canceled its final two football games of the 2022 season to allow teammates to attend the slain student-athletes' memorial service and funerals.<sup>230</sup> Virginia filed a waiver asking the NCAA to set aside application of its athletics eligibility rules such that the student-athletes whose competition eligibility exhausted in 2022 could have an extra season of eligibility.<sup>231</sup> The NCAA granted the waiver request, enabling several student-athletes to extend their careers through the 2023 season.<sup>232</sup>

#### E. NCAA Rules Enforcement

"Enforcement is a necessary component to a successful athletics compliance program."<sup>233</sup> When there appears to be a potential NCAA violation on campus, the compliance staff is often responsible for

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<sup>225</sup> See *id.* at 97.

<sup>226</sup> *Id.*

<sup>227</sup> See *id.* (explaining that waivers can be stressful for compliance staff members).

<sup>228</sup> Justin Jackson, *NCAA Grants Waivers for WVU Forwards Emmitt Matthews Jr., Tre Mitchell to Play This Season*, DOMINION POST (June 28, 2022), <http://yahoo.com/entertainment/ncaa-grants-waivers-wvu-forwards-040100513.html>.

<sup>229</sup> See *id.*

<sup>230</sup> Matt Newton, *NCAA Grants Additional Eligibility to UVA Football Players in Final Season*, SPORTS ILLUSTRATED: FANNATION (Dec. 7, 2022, 3:26 PM), <http://si.com/college/virginia/football/ncaa-grants-additional-eligibility-to-uva-football-players-in-final-season>.

<sup>231</sup> *Id.*

<sup>232</sup> *Id.*

<sup>233</sup> *Yale Athletics Compliance Website*, *supra* note 203.

investigating the incident and reporting it to the Enforcement Staff if that investigation concludes that a violation occurred.<sup>234</sup> Compliance staff members usually must impose a penalty for a violation, sometimes in consultation with the athletics director.<sup>235</sup>

While their educational and interpretive efforts support coaches and staff, compliance staff members must also be skeptical and potentially adversarial when conducting their monitoring and investigative duties.<sup>236</sup> Investigations regarding NCAA rules violations can lead to both negative job consequences and potential NCAA penalties for not only coaches and staff members, but also for the student-athletes, their teams, and the athletics department.<sup>237</sup> Thus, athletics department staff members and individuals outside of the department may blame the compliance staff for costly penalties or view the compliance staff as disloyal.<sup>238</sup> A compliance staff member's work, therefore, "can be not only grudging but grudge-making"<sup>239</sup> and can result in post-investigation relational impacts.<sup>240</sup> Successful compliance staff members forge positive, trustworthy working relationships with coaches and staff and effectively communicate with them at all times.<sup>241</sup>

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<sup>234</sup> Potuto, *supra* note 94, at 90. In fact, when a compliance staff member concludes that a potential violation, if proved, is Level I or II, it should inform the NCAA Enforcement Staff as a showing of intent to cooperate. *Id.* at 109.

<sup>235</sup> Heller, *supra* note 62, at 319. For example, the University of Alabama self-reported a dozen Level III violations in the 2021–22 academic year. Christopher Walsh, *Alabama Releases Annual List of Minor NCAA Infractions*, SPORTS ILLUSTRATED (July 1, 2022, 1:50 PM), <http://si.com/college/alabama/bamacentral/alabama-releases-annual-list-of-minor-ncaa-infractions>. Among them was a coach sending a text message to a prospective student-athlete prior to the first permissible date to send recruiting materials to the prospect. *Id.* The university self-imposed penalties for the violation including prohibiting the women's basketball staff from sending the prospect additional recruiting materials for the first 30 days when it becomes permissible to do so. *Id.*

<sup>236</sup> Potuto, *supra* note 94, at 90 (describing compliance staff members as "a Janus").

<sup>237</sup> *Id.* at 91.

<sup>238</sup> *Id.*

<sup>239</sup> Libit, *supra* note 222 (explaining that "for a college sports marketplace built on who you know, that often makes advancement precarious").

<sup>240</sup> Potuto, *supra* note 94, at 91–92 (explaining that even relationships with individuals not subject to an investigation can be "irrevocably broken"). For these reasons, among others, the head compliance staff member should have access to their university's president or chancellor. Marsh & Robbins, *supra* note 43, at 696–97.

<sup>241</sup> Potuto, *supra* note 94, at 90–91. The ideal relationship between the compliance staff and coaches is based on trust, with recognition that the compliance staff is an



#### F. *An Athletic Department's "Dumping Ground"*

Given the foregoing job responsibilities like interpreting legislation, drafting waivers, and investigating potential rules violations, it is likely not a surprise that, while not an NCAA requirement, many athletics compliance staff members possess law degrees.<sup>242</sup> This could be a contributing factor to the high turnover rates among compliance offices—those with their law degrees can receive much higher salaries practicing law while working comparable hours.<sup>243</sup> In addition to high turnover rates, the athletics compliance position suffers from high burnout rates.<sup>244</sup>

Compliance staff members' job responsibilities recently increased due to NCAA deregulation; the inception of student-athletes' newfound ability to monetize their names, images, and likenesses; and the Supreme Court's recent decision in *NCAA v. Alston*.<sup>245</sup> Understanding this new era of college athletics fell to the "dumping

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advocate for coaches and their student-athletes. Marsh & Robbins, *supra* note 43, at 697.

<sup>242</sup> See Libit, *supra* note 222 (describing the work of college athletics compliance as "increasingly fraught—reflected by the growing number of attorneys" but pointing out that those attorneys are "arguably no more esteemed" than their non-attorney colleagues). See also Fuller, *supra* note 42, at 503 (explaining that while many universities employ attorneys as athletics compliance staff members, "there is no NCAA requirement that the compliance director be an attorney"). While the NCAA does not require athletics compliance staff members to possess a law degree, it is unsurprising that universities may require legal experience for such employment. Heller, *supra* note 62, at 318 (explaining that the complexity of NCAA legislation is the basis for such a requirement).

<sup>243</sup> See Libit, *supra* note 222 (describing a conversation with the University of Oklahoma's head of compliance Jason Leonard, who estimates that his office encounters a 30 to 40 percent annual turnover and explaining that compliance staff members with law degrees "might as well get paid more if they are going to work as hard as they do.").

<sup>244</sup> *Id.* (describing athletics compliance as "a silo of intercollegiate athletics known for high burnout rates").

<sup>245</sup> *Id.* (describing compliance work's burdens as "especially weighty of late"). In *Alston*, the Supreme Court affirmed the lower court's decision that NCAA rules restricting student-athletes' benefits related to education violate antitrust law. Andrew Brandt, *Business of Football: The Supreme Court Sends a Message to the NCAA*, SPORTS ILLUSTRATED (June 29, 2021), <http://www.si.com/nfl/2021/06/29/business-of-football-supreme-court-unanimous-ruling>. Around the time the Court decided *Alston*, the NCAA began permitting student-athletes to market and brand their names, images, and likenesses, resulting in "an inflection point in college athletics." *Id.*

ground” of athletics departments—the compliance staff.<sup>246</sup> Answers from the NCAA regarding these areas, however, have been difficult to come by.<sup>247</sup>

A compliance staff member “is an educator, arbitrator, mediator, advocate, enforcer, and not infrequently, the fall-[person].”<sup>248</sup> In our modern big-money college athletics industry with its pressures to win, compliance staff members hold the hardest job in college athletics.<sup>249</sup> Despite their importance to a campus, however, compliance staff members are relatively underpaid.<sup>250</sup> Entry-level athletics compliance positions at Autonomy Five member universities<sup>251</sup> may pay less than \$40,000 annually.<sup>252</sup> An athletics compliance staff at a Group of Five

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<sup>246</sup> Libit, *supra* note 222 (quoting Jason Leonard as describing the compliance office as an athletics department’s “dumping ground” and describing the already overwhelming compliance job as “doubly so”).

<sup>247</sup> Josh Moody, *Lack of Clear-Cut NCAA Rules Creates Confusion About NIL*, INSIDE HIGHER ED. (Jan. 4, 2022), <https://www.insidehighered.com/news/2022/01/04/lack-clear-ncaa-rules-creates-confusion-around-nil> (noting that NCAA’s lack of guidance “has created a host of confusion around many aspects of NIL”).

<sup>248</sup> Marsh & Robbins, *supra* note 43, at 695. One of the many reasons a compliance staff member’s position can be difficult is they serve as a coach’s advocate one day but may investigate them the next. *Id.* at 697–98.

<sup>249</sup> *Id.* at 695 (stating “[a]ll of the conflicting agendas in the Wild West of college athletics today meet at one pinpoint of the campus map—the door that reads ‘Associate Athletics Director for Compliance’”). Interestingly, “not too many years ago,” athletics departments often gave compliance duties to a retiring coach or someone who held additional job responsibilities like media relations or business operations. *Id.*

<sup>250</sup> See Libit, *supra* note 222 (quoting Jason Leonard as stating these staff members are “underappreciated and underpaid”).

<sup>251</sup> The five “autonomy” conferences are the Atlantic Coast (ACC), Big Ten, Big 12, Pacific-12 (Pac 12), and Southeastern (SEC). John Wolohan, *What Does Autonomy for the “Power 5” Mean for the NCAA?*, LAW SPORT (Feb. 11, 2015), <http://lawinsport.com/topics/item/what-does-autonomy-for-the-power-5-mean-for-the-ncaa>. These conferences, commonly referred to as “the Power Five,” are “the five biggest and wealthiest college-sports conferences” and have the ability to pass legislation that applies only to their member universities. *Id.*

<sup>252</sup> See Libit, *supra* note 222.

university<sup>253</sup> may only have one employee making more than \$50,000 per year.<sup>254</sup>

#### IV. RECENT INFRACTIONS CASES ILLUSTRATE POTENTIAL RAMIFICATIONS WHEN COACHES DO NOT WORK EFFECTIVELY WITH COMPLIANCE STAFF MEMBERS

Because a university's athletics compliance staff members are at the front line in attempting to mitigate the likelihood of NCAA rules violations<sup>255</sup> and upholding their university's responsibility to maintain institutional control,<sup>256</sup> they join coaches on their university's metaphorical front porch.<sup>257</sup> This section examines recent COI decisions that illustrate potential consequences of sport staff members not working effectively with the compliance staff.

##### A. *California State University, Northridge 2022 Case Involving its Men's Basketball Program*

In a 2022 case, the COI concluded that California State University, Northridge (CSUN) men's basketball staff members committed recruiting violations.<sup>258</sup> Among other infractions, the men's basketball staff in place at the time arranged in-person recruiting contacts, evaluations, and campus visits during the NCAA's "COVID-19 recruiting dead period," which prohibited this exact activity.<sup>259</sup> These

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<sup>253</sup> "The Group of Five refers to conferences that aren't part of the Power Five . . . . It includes Conference USA, the MAC, the Mountain West and the Sun Belt, as well as the American Athletic Conference." Steve Megargee, *These Six Group of Five Teams Should Be Among the Best*, NCAA (Aug. 27, 2018), <http://ncaa.com/news/football/article/2018-08-06/college-football-these-six-group-five-teams-should-be-among-nations>.

<sup>254</sup> See Libit, *supra* note 222 (quoting Jason Leonard as describing these salary figures as "terrible").

<sup>255</sup> Fuller, *supra* note 42, at 496.

<sup>256</sup> *Notre Dame Compliance Website*, *supra* note 201.

<sup>257</sup> Potuto, *supra* note 94, at 118.

<sup>258</sup> COMM. ON INFRACTIONS, NAT'L COLLEGIATE ATHLETIC ASS'N, CALIFORNIA STATE UNIVERSITY, NORTHRIDGE PUBLIC INFRACTIONS DECISION 1 (Dec. 16, 2022) [hereinafter CSUN CASE], [http://ncaaorg.s3.amazonaws.com/infractions/decisions/Dec2022DIINF\\_CSUNPublicDecision.pdf](http://ncaaorg.s3.amazonaws.com/infractions/decisions/Dec2022DIINF_CSUNPublicDecision.pdf).

<sup>259</sup> *Id.* at 2 (explaining that the NCAA enacted the COVID-19 recruiting dead period in part "to protect the health and safety of prospects, student-athletes and institutional staff").

actions “demonstrated disregard for well-known recruiting legislation[.]”<sup>260</sup> The COI explained, however, that:

[T]he coaches’ misconduct was exacerbated by their passive relationship with the institution’s compliance staff in which clear communication and understanding were lacking between both groups. This relationship was particularly problematic at a time when heightened communication and support were necessary to navigate the challenges of the COVID-19 pandemic.<sup>261</sup>

More specifically, CSUN contended that its men’s basketball staff often missed virtual compliance education sessions, which were difficult to even schedule in the first place.<sup>262</sup> CSUN’s head men’s basketball coach Mark Gottfried’s<sup>263</sup> involvement in an infractions case stemming from his tenure at a prior university further concerned the compliance staff about the potential for NCAA infractions within CSUN’s men’s basketball program.<sup>264</sup>

The COI found, however, that “CSUN’s compliance efforts could have been better,” describing the communication and understanding between the compliance and men’s basketball staff as unclear.<sup>265</sup> In fact, the COI described the two parties as “complacent with their passive relationship.”<sup>266</sup> This complacency led to an environment where the men’s basketball staff was comfortable violating NCAA legislation while the compliance staff worked remotely due to the pandemic.<sup>267</sup> This led in part to the COI imposing three years of probation on CSUN, which “provides the COI with the opportunity to

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<sup>260</sup> *Id.* at 14.

<sup>261</sup> *Id.* at 2.

<sup>262</sup> *Id.* at 13 (noting that the head coach and an assistant coach disputed the description that the meetings were difficult to schedule).

<sup>263</sup> COI written infractions decisions do not identify involved individuals by name; however, several media outlets identified Gottfried as the involved head coach. *See, e.g.,* Kyle Boone, *NCAA Hits Former NC State, CSUN Coach Mark Gottfried with Three-Year Show-Cause Penalty for Rule Violations*, CBS SPORTS (Dec. 16, 2022, 4:32 PM), <http://cbssports.com/college-basketball/news/ncaa-hits-former-nc-state-csun-coach-mark-gottfried-with-three-year-show-cause-penalty-for-rule-violations> (noting that CSUN’s 2018 hiring of Gottfried was controversial because it came shortly after federal investigators implicated one of Gottfried’s coaches while Gottfried served as North Carolina State’s head men’s basketball coach and that the NCAA penalized Gottfried as a result).

<sup>264</sup> CSUN CASE, *supra* note 258, at 13.

<sup>265</sup> *Id.*

<sup>266</sup> *Id.* at 13–14.

<sup>267</sup> *Id.* at 14.

monitor the growth of the compliance department's relationship with all of CSUN's sport programs."<sup>268</sup>

B. *The Ohio State University 2022 Case Involving Its Fencing Program*

Vladimir Nazlymov<sup>269</sup> enjoyed a lengthy, nineteen-year tenure as the Ohio State University's ("Ohio State") head fencing coach.<sup>270</sup> Nazlymov, however, engaged in "recurring misconduct" in relation to the local sports club he operated.<sup>271</sup> Nazlymov's transgressions included: (1) providing or directing assistant coaches to provide both impermissible recruiting inducements to prospective student-athletes and impermissible benefits to current student-athletes; and (2) engaging in impermissible evaluations of prospective student-athletes.<sup>272</sup> Nazlymov's program also exceeded the NCAA's permissible maximum number of countable coaches for a month.<sup>273</sup> The COI described the legislation that Nazlymov violated as "fundamental" and "well-known,"<sup>274</sup> and categorized the recruiting, benefits, and coaching activity violations as Level II.<sup>275</sup>

Nazlymov committed the violations intentionally "and involved his staff in violations and attempted to conceal them from the compliance staff."<sup>276</sup> "As a result of his knowing provision of

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<sup>268</sup> *Id.*

<sup>269</sup> COI written decisions do not identify individuals by name but media reports identify Nazlymov as the head fencing coach at the time. *See, e.g.*, Andrew Lind, *Ohio State Fencing, Women's Golf and Women's Basketball Programs Placed on Probation for NCAA Violations*, SPORTS ILLUSTRATED: FANNATION (Apr. 19, 2022, 1:36 PM), <http://si.com/college/ohiostate/news/ohio-state-fencing-womens-golf-basketball-programs-placed-on-probation-for-ncaa-violations>.

<sup>270</sup> OHIO STATE CASE, *supra* note 73, at 1, 5.

<sup>271</sup> *Id.* at 1. Nazlymov "owned and operated a local fencing club" that trained individuals in the university's locale. *Id.* at 5.

<sup>272</sup> *Id.* at 1–2 (noting that the receipt of the benefits caused numerous student-athletes to compete and receive competition-related expenses while ineligible, in violation of NCAA rules). For example, student-athletes and a prospective student-athlete used a facility that Nazlymov's club rented without paying relevant fees, resulting in impermissible benefits and recruiting inducements, respectively. *Id.* at 5–6.

<sup>273</sup> *Id.* at 2.

<sup>274</sup> *Id.* at 22.

<sup>275</sup> *Id.* at 2.

<sup>276</sup> OHIO STATE CASE, *supra* note 73, at 2 (explaining that Nazlymov thus failed to meet his responsibility as a head coach under NCAA Bylaw 11 and he violated Bylaw 10 by engaging in unethical conduct, both of which the COI categorized as Level I violations). Nazlymov "received relevant education on the exact areas of the violations

impermissible inducements and benefits, [Nazlymov] also violated the principles of ethical conduct.”<sup>277</sup> For example, not only did he lie to the compliance staff about a prospective student-athlete’s plans to reside in the community and how long the prospective student-athlete had these arrangements, Nazlymov instructed the prospect to mislead the compliance staff in an attempt to conceal the violation.<sup>278</sup> Further, the compliance staff instructed Nazlymov that the prospect could not use university facilities; however, Nazlymov continued to permit them to do so.<sup>279</sup> Likewise, Nazlymov disregarded compliance staff instructions regarding permissible activities for an outside consultant, which caused the program to exceed the maximum permissible number of countable coaches.<sup>280</sup>

As a result, Nazlymov was penalized with four years of NCAA probation for Ohio State, a postseason ban for the fencing program in the 2020–21 academic year, a fine of at least \$5,000, athletics scholarship reductions and recruiting restrictions on the fencing program, a ten-year show-cause order for Nazlymov, and vacation of fencing wins and records.<sup>281</sup> Further, after Nazlymov retired, Ohio State altered “his employment classification to ‘retirement in lieu of termination—ineligible for rehire.’”<sup>282</sup> While this was an unfortunate end to a long and successful coaching tenure, the Ohio State case illustrates the importance of coaches both heeding compliance staff members’ guidance and being forthcoming with them so the compliance staff can help coaches follow NCAA rules.

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*as they were occurring* but continued to commit the same violations and, in some circumstances, concealed them from the compliance staff.” *Id.* at 22 (emphasis in original).

<sup>277</sup> *Id.* at 21.

<sup>278</sup> OHIO STATE CASE, *supra* note 73 at 6. By providing free or reduced-cost housing to a prospective student-athlete, Nazlymov violated NCAA Bylaw 13.2.1’s prohibition on recruiting inducements. *Id.* at 16.

<sup>279</sup> *Id.* at 6. Free or reduced cost use of facilities by prospective student-athletes violates Bylaw 13’s prohibition on impermissible recruiting inducements. *Id.* at 14.

<sup>280</sup> *See id.* at 7 (explaining that a compliance staff member instructed that the consultant could observe practices, “[h]owever, the consultant ultimately led footwork drills, gave individual lessons and provided verbal instruction”). Exceeding the limitations on coaching staff members violated Bylaw 11. *Id.* at 19–20.

<sup>281</sup> OHIO STATE CASE, *supra* note 73, at 41–44. The fencing program had to vacate its 2016, 2017, and 2018 Midwest Conference titles, its 2016 and 2017 NCAA second place finishes, and its 2018 NCAA third place finish. Lind, *supra* note 269.

<sup>282</sup> OHIO STATE CASE, *supra* note 73, at 2.

C. *Georgia Tech 2021 Case Involving Its Women's Basketball Program*

As discussed in the Introduction, the COI panel in the Hawaii case described the relationship between Arnold, Hawaii's head men's basketball coach, and Paterson, the compliance director, as "tense" and noted that the two had a "personality conflict" that led to their poor communication.<sup>283</sup> Arnold went so far as to tell his student-athletes that Paterson "was an enemy who could not be trusted."<sup>284</sup> Paterson distanced herself from the men's basketball program and once stated she would not "lift a finger" to assist Arnold.<sup>285</sup>

Their poor relationship led Arnold and Paterson to conduct most of their business through e-mail instead of in person.<sup>286</sup> According to the COI, "[h]ad they worked more collaboratively in their dealings, at least some of the violations in this case likely would not have occurred."<sup>287</sup> More specifically, Paterson did not conduct any practice "spot checks" during the relevant time frame.<sup>288</sup> Had she done so, Paterson may have seen and been able to prevent a staff member from engaging in impermissible coaching activities during practices.<sup>289</sup> Thus, the COI described "[the] director of compliance's failure to be fully engaged with the men's basketball program" as a significant factor in the violations.<sup>290</sup> Further, the COI concluded that Hawaii bore responsibility for Arnold and Paterson's negative relationship, and this helped create "aggravating factors" increasing the severity of Hawaii's penalties.<sup>291</sup> The COI imposed penalties including two years of NCAA probation, a fine of over \$10,000, loss of athletics scholarships in the men's basketball program, a three-year show-cause penalty for Arnold, and both recruiting restrictions and vacation of wins in the men's basketball program.<sup>292</sup> As a result of the violations, Hawaii began requiring a compliance staff member to attend practices.<sup>293</sup> The compliance staff likely would have attended more practices if the

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<sup>283</sup> HAWAII CASE, *supra* note 27, at 2.

<sup>284</sup> *Id.* at 4.

<sup>285</sup> *Id.* at 5.

<sup>286</sup> *Id.* at 4.

<sup>287</sup> *Id.* at 2.

<sup>288</sup> *Id.* at 4.

<sup>289</sup> HAWAII CASE, *supra* note 27, at 19.

<sup>290</sup> *Id.* at 20 (describing Arnold's failure to notify the compliance staff of another potential NCAA compliance matter as another significant factor in the violations).

<sup>291</sup> *Id.* at 25–26.

<sup>292</sup> *Id.* at 27–31.

<sup>293</sup> *Id.* at 1.

men's basketball and compliance staffs had better working relations, which would have increased the likelihood that the compliance staff would have discovered and addressed the violations before they began "piling up."<sup>294</sup>

In 2021, the COI decided a case that shared similarities with Hawaii's and involved impermissible athletically related activities and coaching activities in the women's basketball program at the Georgia Institute of Technology ("Georgia Tech").<sup>295</sup> More specifically, over a nearly three-year period, then-head women's basketball coach MaChelle Joseph<sup>296</sup> routinely required student-athletes to participate in basketball-related activities in excess of the amount permitted both per day and per week by NCAA rules.<sup>297</sup> Joseph also failed to ensure accurate reporting of practice hours to the compliance staff.<sup>298</sup>

Further, Joseph allowed graduate student managers to instruct student-athletes for several months.<sup>299</sup> As a result, the women's

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<sup>294</sup> See Lewis, *supra* note 28 (quoting Arnold's attorney as blaming the compliance staff).

<sup>295</sup> COMM. ON INFRACTIONS, NAT'L COLLEGIATE ATHLETIC ASS'N, GEORGIA INSTITUTE OF TECHNOLOGY PUBLIC INFRACTIONS DECISION 1 (Sept. 21, 2021) [hereinafter GEORGIA TECH CASE], <http://web3.ncaa.org/lsdbi/search/miCaseView/report?id=102936>.

<sup>296</sup> COI written decisions do not identify individuals by name, but media reports identify Joseph as the head coach at the time. See, e.g., Maria Carrasco, *NCAA: Georgia Tech Women's Basketball Committed Violations*, INSIDE HIGHER ED. (Sept. 22, 2021), <http://insidehighered.com/quicktakes/2021/09/22/ncaa-georgia-tech-women's-basketball-committed-violations?v2>.

<sup>297</sup> GEORGIA TECH CASE, *supra* note 295, at 1, 4, 7. NCAA Bylaw 17 regulates when and how long student-athletes may engage in activities related to their sport. *Id.* at 8. For example, at the time, NCAA bylaws 17.1.7.4 and 17.1.7.6 required sport programs to provide their student-athletes one day off from athletically related activity per week. *Id.* at 10. While the women's basketball program had a practice schedule, Joseph "regularly" required the team "to practice longer than scheduled" and did not provide days off. *Id.* at 2. The women's basketball staff reviewed shot-tracking technology during shooting sessions that identified participating student-athletes and occurred on what was supposed to be off days for the women's basketball team. *Id.* at 6. Under NCAA rules, staff members' review of the data resulted in the activities not being voluntary, and thus no day off occurred on the days the activities took place. *Id.* at 10.

<sup>298</sup> *Id.* at 7. The staff member responsible for completing practice hour logs did not physically attend practices and was unaware that actual practice times were routinely longer than scheduled practice times. *Id.* at 4. Joseph, however, did not monitor the staff member's completion of practice hour logs. *Id.* at 2, 5. Thus, the practice logs that the staff member submitted to the compliance staff reflected the scheduled or anticipated shorter practice times instead of lengthier, actual practice times. *Id.* at 4–5. "Even [Joseph's] cursory review of the . . . logs would have identified issues or raised concerns." *Id.* at 13.

<sup>299</sup> *Id.* at 1, 6.



basketball program exceeded the maximum number of individuals permitted to provide instruction to student-athletes.<sup>300</sup> These violations, and Joseph's personal involvement in them, led the COI to conclude that Joseph failed to promote a compliant atmosphere and monitor her staff.<sup>301</sup> Therefore, Joseph failed to meet her responsibilities as a head coach under NCAA legislation.<sup>302</sup> Joseph's "general indifference to NCAA rules"<sup>303</sup> and "disregard for [practice] hour limitations" troubled the COI.<sup>304</sup> In fact, the COI concluded Joseph "blatantly disregarded certain fundamental and well-known [rules] . . . . She was indifferent to others."<sup>305</sup> "At best, compliance was an afterthought" for Joseph.<sup>306</sup>

Women's basketball student-athletes received rules education from the compliance staff regarding NCAA practice hour limitations "and they were generally aware of the number of hours the team could permissibly practice."<sup>307</sup> While student-athletes had the opportunity to review and approve practice logs that the women's basketball staff submitted to the compliance staff, the student-athletes acknowledged they knowingly approved logs that reflected shorter practice lengths than what actually occurred.<sup>308</sup> Student-athletes explained they did so out of concern that Joseph would retaliate if they did not.<sup>309</sup>

Joseph's relationship with the compliance staff and athletics department's administration was "tense."<sup>310</sup> This caused Joseph to "distance her program from compliance."<sup>311</sup> Georgia Tech's compliance director described her relationship with Joseph as

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<sup>300</sup> *Id.* The "two graduate managers provide[d] tactical or technical instruction to student-athletes [at] practices." *Id.* at 4. Thus, under NCAA Bylaw 11, they engaged in coaching activities which resulted in the women's basketball program exceeding Bylaw 11's maximum number of permissible coaches. *Id.* at 11.

<sup>301</sup> *Id.* at 2.

<sup>302</sup> *Id.* at 1–2. The COI categorized Joseph's violation of Bylaw 11.1.1.1 as Level II. *Id.* at 12–14.

<sup>303</sup> GEORGIA TECH CASE, *supra* note 295, at 1.

<sup>304</sup> *Id.* at 2.

<sup>305</sup> *Id.* at 12 (explaining that Joseph's conduct "failed to meet the high expectations set for head coaches under the membership's bylaws").

<sup>306</sup> *Id.*

<sup>307</sup> *Id.* at 5.

<sup>308</sup> *Id.*

<sup>309</sup> GEORGIA TECH CASE, *supra* note 295, at 5.

<sup>310</sup> *Id.* at 8.

<sup>311</sup> *Id.* at 12.

“strained and increasingly so.”<sup>312</sup> In fact, one student-athlete reported that Joseph specifically instructed “the team not to trust or communicate with the associate director of athletics for compliance.”<sup>313</sup>

For more than two years, the inaccurate practice logs did not “raise[] red flags for the Georgia Tech compliance office.”<sup>314</sup> Had such a flag been raised, the compliance staff “could have inquired about the women’s basketball practice schedule, discovered the violations earlier and prevented additional violations from occurring.”<sup>315</sup> Partially due to the lack of red flag, practice-hour-limitation violations continued for over two years, resulting in a Level II violation.<sup>316</sup> The COI also posited that compliance staff “spot checks” of practices may have identified the practice hour limitation and/or coaching staff limitation violations.<sup>317</sup>

Penalties from the case included three years of probation for Georgia Tech, a fine of over \$5,000, and a one-year show-cause order for Joseph.<sup>318</sup> The Hawaii and Georgia Tech cases illustrate the potential downfalls of “tense” compliance-coach relations that lead to the parties distancing themselves from each other.<sup>319</sup> This tension made it difficult for the compliance staff to monitor and detect rule violations, which piled up over time. More specifically and practically, both cases illustrate the importance of compliance staff members monitoring practices in person, even when working relations are less than ideal.

#### D. “Alert System” Cases

The physical distance between CSUN’s compliance and men’s basketball staffs due to the COVID-19 pandemic helped lead to an atmosphere where the men’s basketball staff felt comfortable engaging

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<sup>312</sup> *Id.* at 5.

<sup>313</sup> *Id.*

<sup>314</sup> *Id.* at 8.

<sup>315</sup> GEORGIA TECH CASE, *supra* note 295, at 8–9 (explaining that the excessive practice violated multiple Bylaw 17 provisions and reviewing precedent for similar Level II cases involving other universities).

<sup>316</sup> *Id.* at 9 (explaining that the extra practice time resulted in “more than a minimal competitive advantage over other institutions” that followed NCAA rules).

<sup>317</sup> *See id.* at 13.

<sup>318</sup> *Id.* at 21–22.

<sup>319</sup> *See* discussion of Hawaii and Georgia Tech cases beginning on pages 3 and 36, respectively.

in actions that violated NCAA rules.<sup>320</sup> In the Ohio State case, the head fencing coach concealed his conduct from the compliance staff and disregarded its guidance in an attempt to avoid detection of NCAA violations.<sup>321</sup> The Hawaii and Georgia Tech cases both involved “tense” relations between a distanced compliance staff and coaches.<sup>322</sup> Those three cases illustrate the importance of compliance staff members conducting effective practice spot checks as part of their monitoring responsibilities, as in each case the COI opined that they may have facilitated earlier detection of violations and, thus, an opportunity to stop them.<sup>323</sup> In two recent cases, however, coaches went beyond simply concealing conduct from the compliance staff by proactively installing “alert systems” to indicate the compliance staff’s mere presence, illustrating the lengths to which some sport staffs will go to interfere with compliance-staff monitoring so they can continue to conceal and commit violations of NCAA coaching staff limitations.

#### 1. University of Pittsburgh 2020 Case Involving Its Men’s Basketball and Football Programs

In 2017, the University of Pittsburgh (“Pittsburgh”) administration became troubled that a director of men’s basketball operations (“DOBO”), who was in a noncoaching role, engaged in activities that required Pittsburgh to categorize him as a countable coach under NCAA rules.<sup>324</sup> Pittsburgh administrators engaged in additional monitoring of the men’s basketball program, including reviewing practice film to determine whether violations occurred.<sup>325</sup> Practice film showed multiple individuals in noncoaching staff positions performing coaching activities over an extended period.<sup>326</sup>

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<sup>320</sup> CSUN CASE, *supra* note 258, at 13–14.

<sup>321</sup> OHIO STATE CASE, *supra* note 73, at 22.

<sup>322</sup> HAWAII CASE, *supra* note 27, at 2; GEORGIA TECH CASE *supra* note 295, at 8.

<sup>323</sup> The COI seems to have emphasized compliance staff practice “spot checks” recently. *See, e.g.*, Ohio State Case, *supra* note 258, at 33 (critiquing its compliance staff’s hundreds of practice site visits).

<sup>324</sup> COMM. ON INFRACTIONS, NAT’L COLLEGIATE ATHLETIC ASS’N, NEGOTIATED RESOLUTION UNIVERSITY OF PITTSBURGH—CASE NO. 00878 1 (2020) [hereinafter PITTSBURGH CASE], <https://web3.ncaa.org/lstdbi/search/miCaseView/report?id=102826> (noting that the men’s basketball program previously received rules education regarding coaching staff limitation rules and permissible activities of noncoaching staff members).

<sup>325</sup> *Id.* (noting that Pittsburgh administrators provided additional NCAA rules education to the men’s basketball staff).

<sup>326</sup> *Id.*

Interviews revealed that then-head men's basketball coach Kevin Stallings<sup>327</sup> "instructed and permitted noncoaching staff to essentially serve as additional assistant coaches during team practices and at halftime of some competitions."<sup>328</sup> Pittsburgh, however, was already using the maximum number of men's basketball coaches permitted by NCAA legislation, and these staff members' activities placed the program over the NCAA maximum limit.<sup>329</sup>

Upon belief that Pittsburgh athletics administrators were suspicious of his impermissible use of noncoaching staff members, Stallings compounded the issue by implementing an alert system in an attempt to avoid detection of the violations:

Whenever an administrator arrived at practice, a team manager positioned outside the doors to the practice gymnasium would send a text message to another manager at the scorer's table inside. The inside manager then sounded the buzzer, which the noncoaching staff members understood as a sign they should exit the court.<sup>330</sup>

Further trying to avoid detection, Stallings ordered the deletion of men's basketball practice video from the program's server.<sup>331</sup> To his credit, when the Enforcement Staff interviewed Stallings, he admitted he instructed or permitted noncoaches to perform activities he knew were impermissible and ordered erasure of practice video.<sup>332</sup>

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<sup>327</sup> COI written decisions do not identify individuals by name, but media reports identified Stallings as an involved individual. See, e.g., Trent Leonard, *Unpacking the Silly and the Serious in Pitt's NCAA Violations*, PITT NEWS (Feb. 21, 2020), <http://pittnews.com/article/155484/sports/155484>.

<sup>328</sup> PITTSBURGH CASE, *supra* note 324, at 1–2 (citing as an example Stallings tasking a noncoaching staff member "with installing a new defensive scheme for the team's 2017–18 season and working directly with student-athletes in performing this responsibility").

<sup>329</sup> *Id.* at 3.

<sup>330</sup> *Id.* at 2.

<sup>331</sup> PITTSBURGH CASE, *supra* note 324, at 2. One video of practice remained accessible to Pittsburgh administrators. *Id.* at 1. The university used computer forensics to recover video of additional practices. *Id.* "It's unclear if Stallings tried and failed to delete all video evidence, or if he purposely left behind one piece of film in an effort to make Pitt think that that was the extent of the violations. Either way, it didn't work." Leonard, *supra* note 327. Regardless, by using an alert system and ordering deletion of practice videos, Stallings violated NCAA legislation requiring cooperation in investigations of potential rules violations. PITTSBURGH CASE, *supra* note 324, at 4.

<sup>332</sup> PITTSBURGH CASE, *supra* note 324, at 2 (noting Stallings attributed his decisions to his relationship with the athletics director, which he described as "fractured").

The football program became tangled in the inquiry when a men's basketball staff member accused it of similar tactics involving noncoaching staff members.<sup>333</sup> When questioned, head football coach Pat Narduzzi admitted to authorizing a noncoaching staff member to engage in coaching activities for five weeks in 2017.<sup>334</sup> Enforcement Staff interviews and review of football practice video confirmed that additional football staff members in noncoaching roles performed activities that constituted coaching.<sup>335</sup> As a result, Pittsburgh's football program exceeded the maximum number of coaches permitted under NCAA rules.<sup>336</sup>

The COI lauded the compliance staff for conducting sufficient practice spot checks.<sup>337</sup> The violations in the football program, however, were not detected in part because football program staff members would play certain music to indicate that "outside parties, including athletics department administrators, were present at the football practice facility."<sup>338</sup> Upon hearing the music, noncoaching staff members would distance themselves from student-athletes.<sup>339</sup>

Penalties for the violations included three years of NCAA probation for the university, a fine of at least \$5,000, recruiting restrictions in the men's basketball program, suspending Narduzzi from two days of practice, a three-year show-cause order for Stallings, and reducing both the number of practice hours and countable coaches who could participate in practice for both sport programs.<sup>340</sup> When considering the propriety of penalties, the COI gave "significant weight" to factors including the athletics director and compliance

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The whole thing gains another layer of humor when you add in the context that Pitt men's basketball had one of its worst seasons ever in 2017–18, going 8–24 overall and 0–18 in the ACC. For all the extra instruction that Stallings was so determined to maintain, it didn't result in any on-court advantage. Maybe if some of that cover-up planning had gone toward . . . helping Pitt actually win games, the team might've stolen a win in the ACC.

Leonard, *supra* note 327.

<sup>333</sup> See PITTSBURGH CASE, *supra* note 324, at 2.

<sup>334</sup> See *id.* at 4–5.

<sup>335</sup> *Id.* at 5 (citing holding play cards for scout team student-athletes in practice as the noncoaching staff members' most consistent impermissible activity).

<sup>336</sup> *Id.* at 4–5.

<sup>337</sup> *Id.* at 2.

<sup>338</sup> *Id.* at 2–3. One wonders whether compliance staff members now need to monitor for buzzers and changes in music as they approach practice facilities.

<sup>339</sup> PITTSBURGH CASE, *supra* note 324, at 3.

<sup>340</sup> *Id.* at 10–12.

staff's diligence in uncovering the violations and the compliance staff's extensive review of computer software and practice video in its investigation.<sup>341</sup> On the other hand, Stallings's "use of a system to avoid the detection of violations and his directive to delete video confirming violations had occurred" served as an aggravating factor for penalties resulting from his violations.<sup>342</sup>

## 2. University of South Florida 2021 Case Involving Its Football Program

While Pittsburgh's football and men's basketball staffs' use of alert systems seems extreme, another sport program on the other side of the country was using a similar system around the same time. In 2021, the COI concluded that a University of South Florida ("South Florida") football staff member in a noncoaching role in 2018 provided technical and tactical instruction for practice drills and film review to football student-athletes who played the tight end position.<sup>343</sup> Further, "[d]uring the 2019 season, numerous football noncoaching staff members engaged in impermissible on-field activity," occasionally in then-head football coach Charlie Strong's presence.<sup>344</sup> As a result, South Florida's football program exceeded the maximum number of countable coaches permitted by NCAA rules.<sup>345</sup>

South Florida compliance staff members regularly visited football practice yet:

did not observe the extensive impermissible noncoaching staff member activity in part because equipment staff members provided warnings to noncoaching staff members.

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<sup>341</sup> *Id.* at 9 (describing the compliance staff's efforts "to ensure a complete and thorough investigation").

<sup>342</sup> *Id.*

<sup>343</sup> COMM. ON INFRACTIONS, NAT'L COLLEGIATE ATHLETIC ASS'N, NEGOTIATED RESOLUTION, UNIVERSITY OF SOUTH FLORIDA—CASE NO. 01184 1 (2021) [hereinafter SOUTH FLORIDA CASE], <http://web3.ncaa.org/lstdbi/search/miCaseView/report?id=102940> (describing violations in South Florida's women's basketball program, too, which are not relevant to this Article). This noncoaching staff member was involved in similar violations the prior season, and South Florida reported Level III violations for them. *Id.*

<sup>344</sup> *Id.* at 2 (citing as example noncoaching staff members simulating opposing players in scout team on-field practices). COI written decisions do not identify individuals by name but media reports identify Strong as the head coach at the time. See, e.g., Matt Baker, *USF Committed NCAA Violations Under Charlie Strong, Jose Fernandez*, TAMPA BAY TIMES (Oct. 29, 2021), <http://tampabay.com/sports/bulls/2021/10/29/usf-committed-ncaa-violations-under-charlie-strong-jose-fernandez>.

<sup>345</sup> SOUTH FLORIDA CASE, *supra* note 343, at 3.

Specifically, if an equipment staff member observed a member of the compliance staff approaching the practice field from the athletics department offices, he would alert the other equipment staff members dispersed throughout the practice field via radio headsets. The equipment staff members would then directly inform noncoaching staff members that compliance was on its way, allowing noncoaching staff members an opportunity to step back or stop their activities.<sup>346</sup>

As a result of the case, the NCAA placed South Florida on probation for three years and fined the school over \$10,000.<sup>347</sup> Penalties for its football program included reductions in both the number of athletics scholarships it could award and the number of noncoaching staff members who could participate in certain practices.<sup>348</sup> Strong received a one-game suspension,<sup>349</sup> for which a significant factor was the alert system his program implemented and utilized to try to conceal impermissible activity.<sup>350</sup>

Like in the Pittsburgh case,<sup>351</sup> South Florida's football program received rules education regarding permissible activities for noncoaching staff members.<sup>352</sup> Yet in both cases, staff members not only knowingly violated NCAA rules, but their programs schemed to implement alert systems designed to mitigate the likelihood that

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<sup>346</sup> *Id.* at 2.

<sup>347</sup> *Id.* at 10.

<sup>348</sup> *Id.* at 11, 13.

<sup>349</sup> *Id.* at 11. Strong has yet to serve the suspension, however, because it only applied to collegiate games, and at the time the COI imposed his suspension, Strong was serving as the assistant head coach and linebackers coach for the National Football League's Jacksonville Jaguars. Sean Labar, *NCAA Announces Punishment for NFL Assistant Coach Charlie Strong*, ON3 (Oct. 29, 2021), <http://on3.com/news/charlie-strong-ncaa-announces-punishment-violations-south-florida-football-womens-basketball-nfl-jacksonville-jaguars>. The University of Miami recently hired Strong as its co-defensive coordinator and linebackers coach. Chris Low, *Sources: Charlie Strong Agrees to Become Miami Hurricanes' Co-Defensive Coordinator and Linebackers Coach*, ESPN (Feb. 18, 2022), [http://espn.com/college-football/story/\\_/id/33324482/charlie-strong-finalizing-deal-become-miami-hurricanes-linebackers-coach](http://espn.com/college-football/story/_/id/33324482/charlie-strong-finalizing-deal-become-miami-hurricanes-linebackers-coach). The COI's one-game suspension of Strong applied to "any member institution employing [Strong] in an athletically related position during the 2021–22 or 2022–23 academic years." SOUTH FLORIDA CASE, *supra* note 343, at 11. Thus, Strong will miss a game in the 2022–23 season for his new employer.

<sup>350</sup> SOUTH FLORIDA CASE, *supra* note 343, at 4.

<sup>351</sup> PITTSBURGH CASE, *supra* note 324, at 1.

<sup>352</sup> SOUTH FLORIDA CASE, *supra* note 343, at 12 n.9.

administrators would discover impermissible activities.<sup>353</sup> Since the schemes attempting to avoid detection of NCAA rules noncompliance were factors in the COI's determination of violations and/or penalties in both cases, the Pittsburgh and South Florida cases are instructive. Compliance staff members can use the Pittsburgh and South Florida cases to educate sport staff members regarding the perils of actively concealing their impermissible activities.<sup>354</sup>

E. *Missouri State 2021 Case Involving Its Women's Volleyball Program*

A 2021 case involving Missouri State University ("Missouri State") illustrates the perils that coaches expose themselves and their universities to when they show "general indifference toward rules compliance" and "operate independently" of the compliance staff.<sup>355</sup> Melissa Stokes,<sup>356</sup> the head women's volleyball coach during the relevant time frame, enjoyed immense on-court success over her twenty-three year tenure at Missouri State.<sup>357</sup> Nonetheless, toward the end of this period, Stokes's "approach to compliance changed, and she began handling issues and making decisions in-house rather than consulting with the compliance office."<sup>358</sup>

In fact, over her final three years at Missouri State, Stokes and her staff acted and/or directed actions without considering the application

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<sup>353</sup> *Id.* at 2; PITTSBURGH CASE, *supra* note 324, at 2.

<sup>354</sup> See Greenberg & Evrard, *supra* note 194, at 823–24 (explaining that though the COI writes them with the benefit of hindsight, their written decisions provide valuable insight into the COI's application of NCAA legislation and expectations).

<sup>355</sup> COMM. ON INFRACTIONS, NAT'L COLLEGIATE ATHLETIC ASS'N, MISSOURI STATE UNIVERSITY PUBLIC INFRACTIONS DECISION 11 (Nov. 4, 2021) [hereinafter MISSOURI STATE CASE], [https://ncaaorg.s3.amazonaws.com/infractions/decisions/Nov21D1INF\\_MissouriStatePublic%20InfractionsDecision.pdf](https://ncaaorg.s3.amazonaws.com/infractions/decisions/Nov21D1INF_MissouriStatePublic%20InfractionsDecision.pdf).

<sup>356</sup> COI written decisions do not identify individuals by name, but media reports identify Stokes as the head coach during the relevant time period. See Wyatt D. Wheeler, *NCAA Says Missouri State Failed to Monitor Women's Volleyball Program, Issues One-Year Postseason Ban, More Sanctions*, SPRINGFIELD NEWS-LEADER (Nov. 4, 2021, 11:24 AM), <http://news-leader.com/story/sports/college/msu/2021/11/04/ncaa-bans-missouri-state-volleyball-postseason-after-investigation-melissa-stokes/6282874001>.

<sup>357</sup> MISSOURI STATE CASE, *supra* note 355, at 3 (noting Stokes led the program to conference championships and regular NCAA tournament appearances).

<sup>358</sup> *Id.* at 3. "She assumed she knew rules, failed to consult with compliance when she did not, and was generally indifferent to rules compliance during her last three years of employment at the institution." *Id.* at 2. For example, Stokes permitted student-athletes to live rent-free at Stokes's rental properties. *Id.* at 4. This arrangement violated NCAA Bylaw 16, which pertains to permissible and impermissible benefits for student-athletes. *Id.* at 12. The compliance staff was unaware of the arrangements. *Id.* at 5.



of NCAA rules.<sup>359</sup> “The head coach’s failure to adhere to well-known NCAA legislation and her resistance to consulting the compliance staff contributed to systemic violations within her program.”<sup>360</sup> The coaching staff’s conduct included providing impermissible benefits to prospective and current student-athletes, providing impermissible academic assistance to prospective student-athletes, permitting and paying expenses for an NCAA nonqualifier to participate in the program’s foreign tour, and impermissibly providing discounted team apparel to a prospective student-athlete and her family.<sup>361</sup> Stokes herself directed enrolled and incoming student-athletes to participate in practice activities during summer camps, and then she provided compensation and arranged complimentary lodging for volunteer coaches, both of which violated NCAA rules.<sup>362</sup> In fact, the COI admonished Stokes for violating “well-known [NCAA] rules.”<sup>363</sup> The Committee concluded that Missouri State and Stokes committed Level I and II violations.<sup>364</sup>

The COI acknowledged and addressed the fact that “Missouri State’s compliance office was a one-person shop” during the time

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<sup>359</sup> MISSOURI STATE CASE, *supra* note 355, at 3.

<sup>360</sup> *Id.* at 18.

<sup>361</sup> *Id.* at 3–4. Prospective student-athletes must satisfy certain requirements (e.g., earn at least a 2.3 grade point average in core courses) in order to qualify to practice, compete, and receive athletically related financial aid. *Play Division I Sports*, NCAA, <http://ncaa.org/sports/2014/10/24/play-division-i-sports.aspx>. A nonqualifier, on the other hand, may not practice or compete with their team or receive athletically related financial aid in their first year of full-time collegiate enrollment. *Initial-Eligibility Status Terms*, NCAA, <https://www.ncaa.org/sports/2016/4/22/initial-eligibility-status-terms.aspx>. In this instance, a senior level administrator directed Stokes that NCAA rules did not permit the nonqualifier student-athlete to participate in the foreign tour, and Stokes “defied” the directive. MISSOURI STATE CASE, *supra* note 355, at 18. To her credit, Stokes accepted responsibility for this decision at the COI hearing. *Id.* at 7.

<sup>362</sup> MISSOURI STATE CASE, *supra* note 355, at 4. Stokes dismissed assistant coaches’ concerns that student-athlete camp participation violated NCAA rules. *Id.* at 18. In fact, Stokes once halted camp drills to force an assistant coach to include student-athletes in the drills. *Id.* at 8. Assistant coaches “were afraid of discipline or retaliation if they pushed back against something [Stokes] asked them to do.” *Id.* By providing compensation to volunteer coaches, they counted against the volleyball program’s maximum number of countable coaches that NCAA rules permit, placing the program over the Bylaw 11 limit. *Id.* at 9, 15.

<sup>363</sup> MISSOURI STATE CASE, *supra* note 355, at 1. “As a longtime head coach, [Stokes] should have been well acquainted with fundamental NCAA legislation in areas such as inducements, benefits, CARA and coaching limitations.” *Id.* at 18.

<sup>364</sup> *Id.* at 2.

period in which most violations occurred.<sup>365</sup> Moreover, the sole compliance staff member at the time stated that due to the lack of resources, they never attended a women's volleyball practice, staff meeting, or camp.<sup>366</sup> Per the COI, a lack of spot checks helps enable coaches to disregard rules and adopt practices that provide a sports program with a greater advantage.<sup>367</sup> Yet the COI did not let any inaction by the compliance staff or its lack of resources excuse Stokes's conduct, citing the failure to spot check practices or camps as a factor in the Enforcement Staff alleging, and the COI finding, a Level I violation for failure to monitor.<sup>368</sup>

Stokes's conduct resulted in significant penalties levied against her and Missouri State. Missouri State received three years of NCAA probation and a fine of over \$5,000, the COI vacated volleyball wins and records and also banned the program from competing in the postseason in the 2021–22 academic year.<sup>369</sup> Sanctions for the volleyball program included reductions to athletics scholarships and restrictions on both practice time and recruiting.<sup>370</sup> Stokes received a five-year show-cause order<sup>371</sup> and resigned from Missouri State.<sup>372</sup> These penalties evidence the ramifications coaches and universities face when coaches take NCAA compliance matters into their own hands.

## V. CONCLUSION

The contemporary college athletics industry may tempt college coaches to violate NCAA rules to gain a competitive advantage. If caught, however, coaches and their employing universities face potentially dire consequences. Universities face ramifications,

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<sup>365</sup> *Id.* at 9. The COI stated it was “sensitive to the lack of compliance personnel and resources at Missouri State.” *Id.* at 20.

<sup>366</sup> MISSOURI STATE CASE, *supra* note 355, at 10 (noting the then-compliance staff member “explained that dropping in on practices was not feasible for a one-person compliance office”). Missouri State's compliance staff director later implemented a practice of spot-checking practices. *Id.*

<sup>367</sup> *Id.* at 20 (describing compliance as “a shared responsibility between coaching staff and the institution”).

<sup>368</sup> *Id.* at 19–20 (stating that “the compliance office's lax monitoring enabled the head coach's independence”).

<sup>369</sup> *Id.* at 27, 29. The COI's vacation of wins correlates to one of the most successful stretches in Missouri State volleyball program history. Wheeler, *supra* note 356.

<sup>370</sup> MISSOURI STATE CASE, *supra* note 355, at 27–28, 30.

<sup>371</sup> *Id.* at 28.

<sup>372</sup> Wheeler, *supra* note 356.

including negative publicity, significant expenses associated with investigating and defending rules violation allegations, the possibility of a team's postseason ban, and the accompanying loss of revenue. When the COI concludes that a coach violated NCAA rules, the coach's university can likely terminate their employment without having to pay severance. If a coach receives a show-cause penalty from the COI, finding employment in college athletics can be very complicated. Recent infractions cases demonstrate that coaches' ineffective working relations with their athletics departments' compliance staff can increase not only the number of NCAA violations they commit but also the severity of accompanying penalties. Thus, coaches and university officials should work to foster effective working relations between sport and compliance staff members.

