

University of Mississippi

eGrove

---

Electronic Theses and Dissertations

Graduate School

---

1-1-2023

## Lack of Institutional Control: An Analysis of NCAA Football Bowl Subdivision Public Infractions Case Decisions

Julie K. Owen

Follow this and additional works at: <https://egrove.olemiss.edu/etd>

---

### Recommended Citation

Owen, Julie K., "Lack of Institutional Control: An Analysis of NCAA Football Bowl Subdivision Public Infractions Case Decisions" (2023). *Electronic Theses and Dissertations*. 2559.  
<https://egrove.olemiss.edu/etd/2559>

This Dissertation is brought to you for free and open access by the Graduate School at eGrove. It has been accepted for inclusion in Electronic Theses and Dissertations by an authorized administrator of eGrove. For more information, please contact [egrove@olemiss.edu](mailto:egrove@olemiss.edu).

LACK OF INSTITUTIONAL CONTROL: AN ANALYSIS OF NCAA FOOTBALL BOWL  
SUBDIVISION PUBLIC INFRACTIONS CASE DECISIONS

A Dissertation  
Presented in partial fulfillment of requirements  
for the degree of Doctor of Philosophy  
in the Department of Higher Education  
The University of Mississippi

by

JULIE K. OWEN

May 2023

Copyright © Julie K. Owen 2023  
ALL RIGHTS RESERVED

## ABSTRACT

Division I college athletics is a billion-dollar industry where success or scandal can impact the entire university. This research endeavored to identify the characteristics of infractions cases at the Division I, Football Bowl Subdivision level resulting in lack of institutional control violations and how those have changed over time. Lack of institutional control is the most serious NCAA violation for an institution; therefore this finding can have the most detrimental impact on a university. Despite that, lack of institutional control is not defined and there is no safe harbor for universities seeking to demonstrate sufficient control over their athletics programs.

The data for this project was NCAA public infractions case decisions including a finding of a lack of institutional control violation for Division I, Football Bowl Subdivision institutions. This qualitative study employed inductive analysis to categorize the data. In addition, content analysis was used to quantify frequency of some data for context and support for those categories.

Three themes emerged from the data. First, a legalization of public infractions case decisions occurred over time making the case decisions more resemble court decisions. Second, there has been a dilution of lack of institutional control cases since the inception of the NCAA enforcement process. Both the number of lack of institutional control violations and the penalties associated with a lack of institutional control have tapered. Finally, the third theme to emerge

was duplicitous association value meaning the stated values of the NCAA do not align with the lack of institutional control findings.

These themes can inform universities on how to structure compliance operations to provide insurance against a lack of institutional control violation. As the financial rewards of athletics success have increased, and the prevalence and athletics penalties associated with lack of institutional control eased, athletics departments may be more risk tolerant. Therefore, knowing factors that lead to lack of institutional control and understanding that the current enforcement procedure resembles a legal process, universities can be equipped to appropriately structure athletics compliance operations, articulate qualifications necessary for their athletics compliance staff members, and prioritize compliance monitoring systems.

## LIST OF ABBREVIATIONS AND SYMBOLS

AAU	Amateur Athletic Union
ACC	Atlantic Coast Conference
ACE	American Council of Education
BCS	Bowl Championship Series
CCACA	Collegiate Commissioners Association Compliance Administrators
COI	Committee on Infractions
FARA	Faculty Athletics Representatives Association
FBS	Football Bowl Subdivision
FCS	Football Championship Subdivision
IAAUS	Intercollegiate Athletic Association of the United States
IARP	Independent Accountability Resolution Process
IOP	Internal Operating Procedure
LSDBi	Legislative Services
N4A	The National Association of Academic and Student-Athlete Development Professionals
NAAC	The National Association for Athletics Compliance

NCAA	National Collegiate Athletic Association
NOA	Notice of Allegations
NOI	Notice of Inquiry
POPL	Publication of Proposed Legislation
OCOI	Office of the Committee on Infractions

## ACKNOWLEDGEMENTS

I would like to thank Dr. Neal Hutchins and Dr. Macey Edmondson who each served as my Committee Chair at times during this process. Your guidance, feedback, encouragement, and patience were instrumental in me reaching completion which, at times, I doubted would happen. In addition, I would like to thank committee members Dr. K.B. Melear, Dr. Ryan Niemeyer, and Dr. Phillis George for your time and feedback.

I would also like to thank Dr. April Thompson, the other half of the cohort of two. This journey was certainly more fun with you to laugh with, write with, and commiserate with, but I especially appreciate your continued support even after you finished first.

To Dr. Gerald Gurney, I would not have started this endeavor without your encouragement. I would not have continued without your support. I would not have finished without your insistence. Thank you for your unwavering belief in my ability.

Finally, thank you to my family and friends who supported me for years through this process. Thank you for your discussion, your proofreading, but mostly for your support and words of encouragement.



## TABLE OF CONTENTS

ABSTRACT .....	ii
LIST OF ABBREVIATIONS AND SYMBOLS .....	iv
ACKNOLWEDGMENTS .....	vi
LIST OF TABLES .....	viii
LIST OF FIGURES .....	ix
INTRODUCTION .....	1
LITERATURE REVIEW .....	11
METHODS .....	53
RESULTS .....	60
ANALYSIS AND CONCLUSIONS .....	107
REFERENCES .....	129
VITA .....	139

LIST OF TABLES

1. Cases with Complete Prohibition of Official Visits .....89

2. Cases with Partial Reduction of Official Visits .....90

## LIST OF FIGURES

1. Division I Infractions Process: Negotiated Resolution Process.....	44
2. Division I Infractions Process: Summary Disposition Process .....	46
3. Division I Infractions Process: Committee on Infractions Hearing .....	48
4. Division I Infractions Process: Independent Accountability Resolution .....	50
5. Coding Process in Inductive Analysis .....	58
6. Lack of Institutional Control Cases by Decade .....	62
7. Length of Public Infractions Case Reports .....	63
8. Length of Probation in Lack of Institutional Control Cases .....	76
9. Length of Postseason Ban in Lack of Institutional Control Cases .....	81
10. Length of Probation versus Length of Postseason Ban .....	82
11. Length of Television Ban in Lack of Institutional Control Cases .....	83
12. Types of Underlying Violations in Lack of Institutional Control Cases .....	95

## CHAPTER I

### **Introduction**

The spotlight on corruption in intercollegiate athletics grew brighter when the FBI announced the arrests of ten individuals, including four men's basketball assistant coaches and an executive for an apparel company, in September 2017 amid allegations they conspired to funnel money to the families of prospective student-athletes in exchange for their enrollment at a particular institution or receiving kickbacks for steering current student-athletes toward particular agents and financial advisors (Wetzel, 2017). Throughout the trials, evidence has suggested the potential for widespread NCAA violations affecting as many as 50 college basketball programs, including some prominent coaches and programs (Thamel, 2018). Four former assistant coaches either pled guilty or were convicted of various charges resulting from the FBI investigation (Neumeister, 2021).

The NCAA is actively paying attention to the trials, including filing a motion to obtain materials from the trial including exhibits. In the motion, the NCAA argued they had a "strong interest in the proceedings given the role its rules played at trial and its responsibility to enforce those rules" and stated they were requesting the materials to "investigate potential rule violations, take enforcement action if warranted, and consider reforms to prevent future violations" (Lerner, 2019, para. 4). The NCAA would be able to use information obtained from the courts in the infractions process under bylaw 19.7.4.1 adopted in August 2018 (NCAA,

2022). As of January 2023, NCAA infractions cases were concluded affecting nine institutions<sup>1</sup> with three more cases<sup>2</sup> still pending (Forde, 2021).

In addition to the FBI investigation, a couple of high-profile NCAA infractions cases have been decided in recent history shaping the current enforcement landscape. First, the end of the University of North Carolina's case, initially opened in 2008, came to a controversial conclusion. The headline read "North Carolina will not be Punished for Academic Scandal (Tracy, 2017)". The academic scandal referenced included 200 "paper classes" that occurred over approximately 18 years involving approximately 3,100 students, a disproportionate number of which were student-athletes (Ridpath, 2016; Tracy 2017). Despite the acknowledged paper classes and involvement of student-athletes, no violations occurred since the "information available in the record did not establish that the courses were solely created, offered, and maintained as an orchestrated effort to benefit student-athletes ("Infractions panel", 2017, para. 3)". The decision in the North Carolina case met significant criticism including that from past president of the Drake Group, Dr. Gerald Gurney, who stated that the decision "leads one to the absolute conclusion that this finding sanctions academic fraud among our institutions for the purpose of keeping athletes eligible (Tracy, 2017, para 20, 2017)".

On the other end of the spectrum, the infractions case decision released in December 2017 for the University of Mississippi ended an investigation that spanned more than five years with the University being cited for 21 violations and a lack of institutional control (University of

---

<sup>1</sup> Auburn University public infractions case decision, 2021; Creighton University public infractions case decision, 2021; North Carolina State University, Independent Accountability Resolution case decision, 2021; Oklahoma State University public infractions case decision, 2020; Texas Christian University public infractions case decision, 2021; University of Alabama public infractions case decision, 2020; University of Arizona Independent Accountability Resolution case decision, 2022; University of South Carolina public infractions case, 2021; and University of Southern California public infractions case, 2021;

<sup>2</sup> Louisiana State University, University of Kansas, and University of Louisville Independent Accountability Resolution cases

Mississippi, n.d.). Over the course of the investigation the case received considerable media coverage (Bieler, 2017; Chiari, 2016; Daniels, 2017; Forde, 2014; Paulling, 2015). The violations resulted in a two-year postseason ban, financial penalties, and recruiting restrictions for the University. In addition to the penalties handed down by the NCAA, Southeastern Conference bylaws dictated the University's portion of postseason football revenue would not be distributed for the years encompassed by the postseason ban<sup>3</sup> (Southeastern Conference, 2017).

### **Statement of the Problem**

NCAA infractions cases impact an institution well beyond the penalties levied as part of the NCAA decision in the infractions case. Institutions often expend considerable resources through the investigative process and to defend the university or its coaches against alleged NCAA violations. The University of North Carolina spent almost \$18 million during its academic fraud case (Kane, 2017). Louisville's spending totaled at least \$1.76 million dollars during the NCAA's investigation into whether a former staff member paid women in exchange for the entertainment of players and recruits (Greer, 2018). These expenditures are significant for any athletics department budget.

In addition to the direct monetary costs, a university that experiences an NCAA infractions case can result in a loss of revenue. For example, Grimes & Chressanthis (1994) concluded that an infractions case has a negative impact on donations from a university's alumni. Similarly, Rhoads & Gerking (2000) discovered that alumni contributions per student fell 13.6 percent when a University's basketball team is placed on NCAA probation as the result of an infractions case. Finally, Hughes & Shank (2008) found that a college athletics infractions case negatively impacts an institution's charitable contributions from all of its constituents. This most

---

<sup>3</sup> Southeastern Conference bylaws 31.25.1 and 31.25.2

recent study even concluded that institutions did not recover their fundraising levels in the time period following the infractions case suggesting the impact of an investigation may be more significant than first thought (Hughes & Shank, 2008). Beyond the loss of donations, some research suggests that, for public institutions, higher winning percentages in football and men's basketball could be associated with increases in state appropriations (Alexander, D.L. & Kern, W., 2000; Baumer, B. & Zimbalist, A., 2019).

An athletics department has been referred to as the front porch of a university. As a result, negative publicity resulting from an NCAA infractions case can negatively impact institutions in other manners as well. In fact, Hughes and Shank (2008) found that an infractions case more substantially affects enrollment when compared to charitable giving finding that universities realized decreased enrollments following cases and, when they did, did not recover to pre-infractions case enrollment numbers. Previously, Chressanthis and Grimes (1993) found that first year enrollment at an institution declined following the University's football team being penalized for NCAA rules violations. The decline in enrollment, and lack of recovery in the immediate future, highlight the effect of the negative publicity associated with an NCAA infractions case for the larger University.

Not surprisingly, infractions cases negatively affect the athletics teams involved in the investigation as well. Dumond, et al. (2007) found that recruits are significantly less inclined to choose to attend an institution if the team is under investigation or has been banned from post-season participation. Previously, infractions cases were linked to lower winning percentages for involved teams (Clark & Batista, 2009; Perry 2002).

## **Significance of the Study**

NCAA bylaw 2.8.1 assigns the responsibility for the control and conduct of intercollegiate athletics to the individual institutions and conference of which the institution is a member (NCAA, 2022). The NCAA bylaw further defines that “administrative control or faculty control, or a combination of the two, shall constitute institutional control.” (p.3). At the institutional level, NCAA bylaw 6.1.1 assigns ultimate responsibility and final authority for the intercollegiate athletics program to the president or chancellor of the school. A finding of Lack of Institution Control means there is institutional culpability either in addition to, or in lieu of, individual culpability for NCAA violations (Potuto, 2009).

When the NCAA Enforcement staff believes the nature and scope of alleged Level I or Level II violations, those that are not isolated and inadvertent so must go through the NCAA enforcement case resolution process, demonstrate an institution lacked a structure to create a culture of compliance or, in some cases where there was a breakdown in that structure, an allegation of lack of institutional control results (NCAA, n.d.). An allegation by the NCAA Enforcement staff that an institution lacked institutional control is a separate allegation than the technical alleged violations that lead to the assertion that the institution lacked institutional control. Further, a lack of institutional control violation has separate and additional penalties to those that may result from the underlying technical violations. As a result, the institution is essentially double punished, once for the underlying violations and again for lacking institutional control.

A finding of lack of institutional control is the most serious NCAA violation an institution can be found to have committed. Despite that, there is no exact definition of, or standard to satisfy the requirement of, institutional control. In the 1964 Supreme Court case,



*Jacobellis v. Ohio*, Justice Potter Stewart said “I know it when I see it” (p. 6) when describing his test for determining whether something was pornographic and, therefore, not entitled to First Amendment protection. This same “I know it when I see it” standard might be said to exist for determining when an institution lacks institutional control under NCAA rules.

As previously outlined, researchers have explored the impact of NCAA sanctions on various aspects of an athletics program, and the University as a whole, including recruiting, financial contributions, admissions, and enrollment. Further, legal researchers have written about the infractions process and, specifically, whether due process does or should exist in that process. Finally, studies relative to specific types of NCAA violations, such as recruiting or academic misconduct, have been conducted (Martin 1999; Hilliard, Shelton & Pearson, 2001). However, despite a lack of institutional control violation being the most damaging to an institution, no study examining factors leading to lack of institutional control violations has been conducted.

### **Purpose Statement**

The purpose of this study would be to examine NCAA infractions cases that result in a lack of institutional control violation at the Division I level within the football bowl subdivision (FBS) classification. The study would use public infractions case decisions published by the NCAA that summarize the findings in an institution’s infractions case to analyze the factors that lead to lack of institutional control violations being found. This research is intended to synthesize lack of institutional control cases to provide insight to university athletics departments and compliance practitioners charged with ensuring institutional control exists on their campus. The findings can inform risk management and resource allocation for athletics departments and prioritize certain aspects of a compliance program.

## **Research Questions**

The research questions examined in this study seek to provide insight into factors leading to lack of institutional control violations. Specifically, the study will employ the following research questions:

1. What are the characteristics of lack of institutional control cases?
2. How have the characteristics of lack of institutional control cases changed over time?

## **Limitations and Delimitations of the Study**

The study would be limited to Division I institutions in the football bowl subdivision classification. As a result, the research would not include lack of institutional control cases at the Division I, football championship subdivision nor would it include an analysis of cases at the Division II or Division III level. The study would be limited to Division I FBS schools to focus on those programs competing at the highest level of intercollegiate athletics where infractions cases are likely to have the most impact on an athletics department and university.

In conducting this study, the data would be limited to public infraction case decisions. As a result, the study could only analyze cases where lack of institutional control was alleged or found by the Committee on Infractions. Excluded from the analysis would be any case where the NCAA Enforcement staff considered, but did not allege, a lack of institutional control. Similarly, if the Committee on Infractions considered a lack of institutional control violation, even if it was not alleged by the NCAA Enforcement staff, but ultimately did not conclude the violation occurred it would not necessarily be reflected in the public infractions case decision.

Finally, the researcher is currently employed at a Division I, FBS institution's compliance office. In that capacity, the researcher has experienced investigations conducted by the NCAA Enforcement staff and participated in hearings before the Committee on Infractions including

one with a lack of institutional control allegation. As a result, the researcher will have to separate personal experience from the analysis of the data.

### **Definition of Terms**

Autonomy Conferences – NCAA classification of a subset of 65 Division I institutions that are members of the Atlantic Coast Conference, Big 12 Conference, Big Ten Conference, Pac-12 Conference, and Southeastern Conference (Hosick, 2014).

Booster – Also known as a Representative of Athletics Interest, a booster is an individual, independent agency, corporate entity (e.g., apparel or equipment manufacturer) or other organization who is known (or who should have been known) by a member institution’s executive or athletics administration to:

- (a) Have participated in or to be a member of an agency or organization promoting the institution’s intercollegiate athletics program;
- (b) Have made financial contributions to the athletics department or to an athletics booster organization of that institution;
- (c) Be assisting or to have been requested (by the athletics department staff) to assist in the recruitment of prospective student-athletes;
- (d) Be assisting or to have assisted in providing benefits to enrolled student-athletes or their family members; or
- (e) Have been involved otherwise in promoting the institution’s athletics program (NCAA, 2022, p. 98)<sup>4</sup>.

Bylaw – A rule that has been adopted by NCAA member institutions through the association’s legislative process.

---

<sup>4</sup> NCAA bylaw 13.02.15

Committee on Infractions – Hearing officers that find facts, conclude whether the facts constitute violations and prescribe appropriate penalties in infractions proceedings of the Association (“Glossary of NCAA acronyms,” 2016).

Due Process – One, a course of formal proceedings (such as legal proceedings) carried out regularly and in accordance with established rules and principles (also called procedural due process). Two, a judicial requirement that enacted laws may not contain provisions that result in the unfair, arbitrary, or unreasonable treatment of an individual (also called substantive due process) (Merriam-Webster, n.d.)

Football Bowl Subdivision (FBS) – A subset of 130 Division I institutions that sponsor football programs eligible to compete in the College Football Playoff and bowl games. All autonomy conference institutions are FBS institutions. However, not all FBS institutions are members of an autonomy conference (“Our Division I Members,” n.d.)

Football Championship Subdivision (FCS) – A subset of 126 Division I institutions that sponsor football programs eligible to compete in the Division I Football Championship but not the College Football Playoff or bowl games. None of the FCS institutions are members of an autonomy conference (“Our Division I Members,” 2021).

Public Infractions Case Decision – A written infractions decision available to the public, with names of involved individuals removed, from the Committee on Infractions that contains findings of fact, conclusions of violations, penalties, corrective actions, requirements for the institution and/or involved party(ies), and any other conditions and obligations of membership<sup>5</sup>. (NCAA, 2022)

---

<sup>5</sup> NCAA bylaw 19.8.1.2

National Collegiate Athletics Association (NCAA) – A voluntary, nonprofit organization that coordinates and oversees intercollegiate athletics competitions among its member institutions and conferences.

Notice of Allegations (NOA) – A formal written document issued by the NCAA Enforcement staff outlining allegations of rules violations to an institution, and potentially involved individuals, when it concludes there is sufficient information to conclude that a hearing panel of the Committee on Infractions could conclude a violation(s) occurred. The Notice of Allegations consists of a cover letter, details of the allegations, possible level of each violation, the processing level of the case, the available case resolution options, and factual information on which the NCAA Enforcement staff relied in presenting the allegations<sup>6</sup>. (NCAA, 2022)

### **Organization of the Study**

Chapter one introduces the NCAA violation for lack of institutional control. Further, chapter one provides background on the impact of a finding of a major NCAA violation for a university. Finally, chapter one discusses the significance and purpose of the study, research questions, applicable delimitations and limitations, and definition of terms.

Chapter two provides a review of current literature regarding the origins of intercollegiate athletics and formation of the NCAA. In addition, chapter two outlines power struggles and reform efforts present throughout the history of the NCAA. Chapter two further details the development of the current NCAA governance structure, Enforcement program, Committee on Infractions and Appeals Committee, and infractions case resolution options.

---

<sup>6</sup> NCAA bylaw 19.8.3

Chapter three provides details regarding the qualitative research design used in the study. The chapter describes the data source and type of data to be used in the study. Further, chapter three presents the conceptual framework and quantitative data analysis methods.

Chapter four reports the findings of the study. The findings are organized into three themes around the research question. Language from the public infractions case decisions is reviewed according to each theme.

Chapter five provides discussion and analysis stemming from the findings. The discussion and analysis includes comparison of the themes to contemporaneous events, anticipated findings, and potential explanations for findings as appropriate.

## CHAPTER II

### **Literature Review**

This chapter provides a review of literature beginning with the advent of intercollegiate athletics in the United States and the formation of the NCAA. Specifically, this chapter will briefly describe the origins of intercollegiate athletics and the formation of the NCAA. Further, the chapter details faculty's changing role in the administration of intercollegiate athletics over time and several significant reform efforts through the years. Next, the development of conferences, realignment and the evolution of the NCAA governance structure is explored. This chapter concludes with the development of the NCAA enforcement program, Committee on Infractions, and Appeals Committee.

### **Intercollegiate Athletics Begin & NCAA Formation**

England's historical sporting tradition served as the model from which athletics as part of higher education developed (Smith, 1990). For over a century before athletics became an intercollegiate venture, students at universities played games on college campuses as part of their development of extracurricular activities. Revolting to a degree against a strict limitation to educational endeavors in the higher education system and the concept of *in loco parentis* prevalent during the early 1800s, students began competitions among the classes (Smith, 1990; Thelin, 1996). Intercollegiate athletics developed from these inter-class competitions.

The first intercollegiate athletics event between two Universities occurred when Yale University competed against Harvard University in a regatta on August 3, 1852 (Smith, 1990; "Yale University", n.d.). Smith (1990) describes how Yale University had created a boat club in

1843 after which Harvard University quickly followed suit setting the stage for the regatta. Universities did not sponsor these social sporting clubs. Rather the clubs had student team captains or managers that organized training plans, practice schedules, line-ups, and in-game strategy. Student dues funded the clubs to begin, but fundraisers and sponsorships developed as means to establish more financial support. For example, the Yale-Harvard regatta was sponsored by the powerful Elkins Railroad Line which provided expenses for the eight-day trip (Smith, 1990).

As intercollegiate athletics spread to other sports, football was one sport that grew quickly in popularity. However, concern developed over the proliferation of injuries and deaths during intercollegiate football games. Reacting to that concern, President Theodore Roosevelt convened two separate White House conferences which ultimately resulted in the formation of the Intercollegiate Athletic Association of the United States (IAAUS) in 1905 (Smith, 1990, 2000). The focus of the IAAUS and its thirteen charter members was creating uniform playing rules for football that made the game safer for student-athletes. The IAAUS changed its name to the National Collegiate Athletics Association (NCAA) in 1910 (“History”, n.d.).

### **Faculty Control**

The struggle for faculty control over intercollegiate athletics is a theme that pervades the history of American intercollegiate athletics. In the early club days of intercollegiate athletics, faculty intervened because they believed athletics consumed too much of students’ time, student leadership led to wasted money, too much emphasis was placed on winning putting the institution’s reputation at stake, and that athletics were becoming too professionalized as clubs started to hire professional coaches and students received subsidies for participation (Smith, 1990). Early examples of faculty attempts include Yale faculty prohibiting road baseball games



in 1868 limiting the team to playing on campus and the Harvard faculty limiting baseball games to only Saturdays and holidays (Smith, 2010).

However, faculty intervention in intercollegiate athletic programs quickly became too time consuming leading to the development of athletics committees in order to spread the responsibility among institutional personnel. Princeton was the first to establish such an athletics committee in 1881 (Smith, 2010). According to Smith (2010), Princeton's athletics committee was tasked with regulating the time and place of intercollegiate athletics contests, scheduling competition dates, and approving professional coaches. The continued faculty struggle to control intercollegiate athletics was articulated in a Harvard athletic committee report which stated, "The necessity of regulation implies the existence of abuse (Smith, 2010, p. 187)."

While faculty battled students for control of athletics, alumni began inserting themselves into the operations of athletics as well. Initially, alumni offered financial support of athletics necessary when student clubs governed intercollegiate athletics. However, athletic committees began adding alumni to the committees (Smith, 2010). Smith (2010) described how the insertion of alumni into athletics committees led to an erosion of faculty power.

### ***The Drake Group***

Drake University provost and professor, Jon Ericson, organized a group of faculty interested in intercollegiate athletics reform known as the Drake Group ("History – The Drake Group," 2022). Ericson became interested in intercollegiate athletics during the early 1990s because he believed too many easy majors designed to keep student-athletes eligible had been created (Smith, 2010). The Drake Group, Smith (2010) indicated, originally met at a conference, "Corruption in College Sports: The Way Out" following a significant academic fraud case involving the University of Minnesota men's basketball team in 1999.

The Drake Group, however, struggled to establish themes or a consensus regarding focus areas of reform. There was basic agreement that academic counseling for student-athletes should be performed by the institution and not the athletics department, but no shared vision emerged. While the Drake Group ultimately published proposals, including some related to academic transparency, multiyear athletic scholarships, freshman ineligibility, and university counseling programs, their strident nature combined with a lack of institutional support resulted in most of those proposals dying at publication (Smith, 2010). Then NCAA president Myles Brand described the Drake Group as “self-appointed radical reformers and incorrigible cynics ... consisting of a small number of faculty members with an eye for publicity (Smith, 2010, p. 192).” Although still in existence, this approach inhibited the Drake Group from effectuating real change.

## **Reform Efforts through the Years**

### ***Savage Report***

One of the most significant reform proposals came very early in the history of the NCAA. Smith (2010) and Thelin (1996) identify *American College Athletics*, also known as the Savage Report, published in 1929 as the most significant set of reform proposals regarding intercollegiate athletics. The Carnegie Foundation for the Advancement of Teaching, following repeated requests by the NCAA spanning several years, commenced a study of 130 different athletics programs in 1926. The study aimed to gather information regarding the state of intercollegiate athletics to “present a summary of American college athletics, their merits and their defects, together with such suggestions looking to their improvement (Savage, 1929 p. 26).” The result of the study was the publication *American College Athletics*.

The New York Times ran the final report, called a “manifesto against commercialism” (p. 26) by Thelin (1996), on the front page with the headline “College Sports Tainted by Bounties, Carnegie Fund Finds in Wide Study.” With chapters devoted to the administrative control of college athletics, place of the professional coach, recruiting and subsidizing athletes, values in college athletics, and growth of professionalism in college athletics, the 347-page report detailed abuses in intercollegiate athletics. The Savage Report exposed college sports’ resistance to systematic investigation while also triggering rebuttals and denials from college and university presidents (Thelin, 1996).

### ***American Council of Education***

The next significant reform effort came in 1951 when eleven college presidents, mostly from bigger universities including Notre Dame, Nebraska, Yale, and Mississippi, created a special reform committee (Smith, 2010). The reform effort came on the heels of widespread scandal in intercollegiate athletics during the late 1940s and early 1950s. Point-shaving issues permeated college basketball, a sport that had grown to be as popular as football (Chang, 2020; Goldstein, 2003; Singer, 2013; Smith, 2010). Six decades earlier, Yale’s Walter Camp foreshadowed the gambling epidemic when he cautioned, “A man who begins by selling his skill to a college may someday find himself selling an individual act in a particular contest – selling races, selling games (Smith, 2010, p.110).” The culmination of the point-shaving scandal came in 1951 when six universities, including the University of Kentucky, and two of the best players in the country were implicated (Smith, 2010).

In addition to the gambling crisis, extensive academic cheating among student-athletes provided additional impetus for reform efforts. At William & Mary, evidence surfaced that basketball athletes received grade changes to maintain their eligibility (Smith, 2010). About the

same time, Smith (2010) noted the Naval Academy dismissed 83 cadets after they cheated on exams having obtained a copy prior to the test being administered.

Michigan State University president, John Hannah, chaired the group (Smith, 2010). Ultimately, Smith (2010) detailed that the committee presented almost two-dozen policy change recommendations at the NCAA convention in 1952. The committee's recommendations endeavored to make "intercollegiate athletics not as an end in themselves, but as a valuable part of a well-rounded program of higher education (Smith, 2010, p. 118)." Eligibility changes proposed included maintaining the same admissions standards for athletes as other students, no eligibility for freshman, and a requirement to make normal progress toward a recognized degree to retain eligibility. The issue of subsidization again entered the conversation with the resulting proposal to allow, but limited, athletics scholarships to tuition, room, board, books and fees. Finally, the committee called for athletics to be controlled under university administration and for coaches to have faculty status and be paid similarly.

Although the committee's recommendations received favorable press coverage, enacting the reform measures proved challenging. Presidents opposed reform for fear it would upset their governing boards or alumni. At the time of the reform proposals, booster involvement in intercollegiate athletics was high and athletics were very popular. For example, at Southern Methodist University the school offered 154 athletics scholarships compared to 141 academic scholarships (Thelin, 1996). Presidents feared for their jobs should they act on the reform proposals. The NCAA was not in a position to implement the changes either as the organization lacked an enforcement mechanism. Compounding the implementation challenges, Michigan State University, where Hannah was president, was discovered to have had an impermissible

slush fund used in recruiting that was discovered shortly after the release of ACE's report damaging its credibility (Smith, 2010).

### ***Carnegie Foundation Report***

In 1972, the Ford Foundation provided grants to the Carnegie Foundation to research intercollegiate athletics again in a follow-up to the 1929 Savage Report (Smith, 2010). Despite organizational and stylistic differences, the follow-up report, *An Inquiry into the Need for and Feasibility of a National Study on Intercollegiate Athletics*, detailed the same issues previously identified in reform efforts. Specifically, the report articulated concern related to recruiting, subsidies, campus care of athletes, commercialism, and competitive excess persisted and there was little hope college presidents had either the desire or ability to affect change (Hanford, 1974). The NCAA and others involved in intercollegiate athletics, including college presidents, did not receive the report well. In fact, requests for funding for a follow-up study were rejected (Smith, 2010).

### ***Knight Commission***

The Knight Commission, established in October 1989 to create a reform agenda for intercollegiate athletics to propose to the NCAA and college presidents, came at a time when cynicism dominated intercollegiate athletics and the NCAA. After several high-profile scandals between 1980 and 1985 involving impermissible booster club involvement in recruiting activities, another point-shaving incident that landed a student-athlete in jail, and one university having conducted 107 impermissible activities in just one year, the Knight Commission believed intercollegiate athletics “had reached proportions threatening the very integrity of higher education (Smith, 2010, p. 172).”

Ultimately, the Knight Commission proposed the “one-plus-three” model in its 1991 report titled *Keeping Faith with the Student Athlete* which called for presidential control of intercollegiate athletics with the backing of the governing board (“Keeping Faith, 1991). Underneath that primary principle, the report cited the need for academic integrity, financial integrity, and independent certification. The report also cited one new concern related to coaching endorsements from shoe companies as opposed to simply the excessive salaries cited in previous reports. As a result of the publication, the NCAA started discussing problems known to have existed for years, and in prior calls for reform. The visibility of the report aided in starting the conversation at the NCAA level (Smith, 2010).

Despite the positives, the Knight Commission report also had its criticisms. The criticisms related to what was missing from the report. Critics pointed to the lack of recommendations regarding freshman eligibility, no proposals for limiting coaches’ salaries, no solutions to the “arms race” for facilities and no discussion of appropriate methods for evenly distributing television money (Smith, 2010). The most pessimistic individuals insisted the report did not identify anything new that had not been previously identified through other reform efforts.

The Knight Commission still exists today. Over the years, the group has continued to conduct studies and published reports that call for changes to intercollegiate athletics. The group followed their initial 1991 report with one in 2001. The 2001 report was a ten-year review of the original report and pointedly called for a stronger commitment to academic standards for student-athletes (“Call to Action,” 2001). The most recent report, published in 2010, suggested great transparency in spending reports for intercollegiate athletics and the need to treat athletes as students first rather than professionals (“Restoring Balance”, 2010).

### ***Commission on College Basketball***

Following the arrests of four assistant basketball coaches, an Adidas employee, and several others in September 2017 for alleged monetary inducements to attend certain universities and/or kickbacks to sign with certain agents, the NCAA Board of Directors created the Commission on College Basketball. The Board of Directors charged the Commission with examining Division I men's basketball to identify legislative, policy and structural changes to improve integrity in the sport ("Commission on College Basketball Charter, 2018). The report issued in April 2019 by the Commission on College Basketball described the state of men's college basketball as "deeply troubled (p. 1)." Further, the Commission noted that the "levels of corruption and deception" were so significant that the "very survival of the college game" was in jeopardy (p.1). The Commission's conclusions led to four categories of recommendations.

The first recommendation from the Commission was to create "realistic pathways for student-athlete success (p. 3)." In this section, the Commission proposed allowing college basketball student-athletes to test try out for professional teams, under certain circumstances, without losing their eligibility. Similarly, the report recommended limited assistance be available for these student-athletes from certified agents. Finally, the Commission recommended legislation mandating educational expenses be provided to returning students who pursued professional opportunities.

The next recommendation stemmed from the Commission's stance that the college basketball environment was a "toxic mix of perverse incentives to cheat (p. 2)." The Commission noted that the NCAA's investigative and enforcement system (described later in this chapter) was designed for a simpler time, had lost credibility, and was unable to deter bad behavior. As a result, the Commission recommended an independent investigation process and

imposition of more significant penalties. In response, the NCAA created the Independent Case Resolution option described later.

The third group of recommendations endeavored to mitigate outside influence on college basketball and student-athletes. This group of recommendations specifically targeted AAU coaches, the apparel companies, and third parties like those involved in the FBI case. In response, legislation was adopted changing the men's basketball recruiting calendar eliminating opportunities to evaluate at nonscholastic (e.g. AAU) tournaments. In addition, the College Basketball Academy, a national summer camp conducted by the NCAA, was established creating a regulated event at which college coaches could recruit.

Finally, the Commission proposed adding public members to the NCAA's Board of Directors. Specifically, the Commission recommended adding at least five public members with the "stature and objectivity to assist the NCAA in re-establishing itself as an effective and respected leader and regulator of college sports (p. 14)." In January 2019, the NCAA voted to adopt this recommendation and the new Board of Directors composition became effective August 1, 2019 ("NCAA to add," 2019).

### **Role of Conferences and Conference Realignment**

Even prior to the creation of the NCAA, Universities started to group themselves into regional conferences. Initially, conferences formed to regulate intercollegiate athletics in the absence of the NCAA. However, as television contracts were deregulated conferences shifted and, today, are more a reflection of competitive leverage and television markets.

#### ***The First Conference: The Big Ten***

The first conference, the Intercollegiate Conference of Faculty Representatives, formed in 1895 and evolved into the current Big Ten Conference (Smith, 2010). The Big Ten was the first



conference to have a paid conference commissioner and focused early regulations on curbing alumni involvement in recruiting, the payment of student-athletes, eligibility, scholarships, and faculty control (Thelin, 1996). Thelin (1996) observed that the Big Ten was so committed to its regulations that it expelled Iowa for recruiting violations and threatened to expel Wisconsin because its Board endeavored to fire the head football coach and athletics director. Although with different member institutions, the Big Ten still exists as a major intercollegiate athletics conference today.

### ***Pac-12 Conference Origins***

In 1915, the Pacific Coast Conference (PCC) was established with a paid commissioner and conference office, following the model created by the Big Ten (Thelin, 1996). According to Thelin (1996), a notable moment in Pacific Coast Conference came with the publishing of the Atherton Code in 1933. The Code detailed abuses in conference institutions' athletics programs spanning several thousand pages. The report signaled to athletics directors and coaches that the conference staff and its faculty advisors took their charge to oversee intercollegiate athletics programs seriously. Ultimately, the PCC disbanded amidst a slush fund scandal at the University of Washington and booster club payments to athletes at UCLA. The current Pac-12 Conference, one of the five major intercollegiate athletics conferences today, links its origins to the PCC even though the conferences technically have two different charters.

### ***Southeastern Conference***

The Southeastern Conference, developed to create a group of institutions that could work together to establish better controls and implement higher academic standards (Thelin, 1996). The SEC formed when thirteen members of the then Southern Conference left to establish their own conference. Ten of the thirteen founding members have remained since the conference

formed with the three departures being The University of the South (now a Division III member), Georgia Tech (now a member of the Atlantic Coast Conference), and Tulane University (now a member of the American Athletic Conference) (Thelin, 1996).

Each of the three institutions that left did so for different reasons. As a small institution, the University of the South could not keep up with larger, public institutions as athletics scholarship coaches, professional coaches, and other rising expenses became a part of college athletics (Dorsey, 2011). Tulane followed the University of the South in departing the SEC after their then-president scaled back the university's athletic program (Papillion, 2022). On the other hand, Georgia Tech left the conference to be an independent because the conference voted to limit the number of football and basketball scholarships a university could offer to 140 ("Georgia Tech," 1964). The SEC departures are evidence of the resource discrepancy causing realignment as became more evident in future years.

### ***NCAA v. Oklahoma Board of Regents***

The Supreme Court set the stage for conference realignment with its decision in *NCAA v. Oklahoma Board of Regents* (1984). Several years earlier, the NCAA contracted with two television companies to broadcast a limited number of live football games each year. While the agreement required the television companies to pay a "minimum aggregate compensation" (p. 468) to the schools whose games were aired, the NCAA did not permit any of the schools to negotiate television agreements outside the centralized deal. The Supreme Court found the NCAA television agreement violated the Sherman Act because the NCAA's limiting of the number of live broadcasts attempted to artificially increase the value of tickets to attend the games live (*NCAA v. Board of Regents*, 1984).

The Supreme Court decision paved the way for individual institutions and conferences to negotiate their own television deals. Incidentally, ESPN aired its first live regular season game that fall (Bostock, M., Carter, S. & Quealy, K., 2013). Realignment would highlight the conflict between historical rivalries and passionate fan bases and the economic benefits derived from television exposure, access to high revenue bowl games and better competition available by realigning (Kogan, V. & Greyser, S.A., 2014).

### ***Conference Realignment***

The first round of realignment began when Pennsylvania State, not affiliated with any conference at the time, joined the Big 10 in 1993 (Bostock, M., Carter, S. & Quealy, K., 2013). Not long after, the Southwest Conference, a conference long associated with NCAA violations, dissolved after Arkansas departed for the SEC and Texas, Texas A&M, Baylor and Texas Tech joined the Big Eight Conference to form the Big 12 Conference, Houston left for Conference USA and Southern Methodist University, Texas Christian University and Rice moved to the Western Athletic Conference (Bostock, M., Carter, S. & Quealy, K., 2013). During this time, the Big East conference, initially formed as a basketball only conference, added football to stay competitive during realignment (Bostock, M., Carter, S. & Quealy, K., 2013).

Realignment affecting the Big East and ACC in the mid-2000s served as a precursor for significant realignment beginning in 2010 (Kogan, V. & Greyser, S.A., 2014). Boston College, a founding member of the Big East, Miami and Virginia Tech all departed the Big East for the ACC. The institutions sought more security in the ACC, perceived as a more stable power conference, as well as the financial benefits associated with the move (Bostock, M., Carter, S. & Quealy, K., 2013; Kogan, V. & Greyser, S.A., 2014).

A significant round of realignment occurred between 2010 and 2014 shaping the current landscape of Division I athletics (Havard, C.T. & Eddy, T., 2013). Access to new television markets motivated many of the realignment decisions during this time. The Big Ten added Maryland seeking more distribution for the newly formed Big Ten Network in the Baltimore-Washington D.C. market and Rutgers for the New York market (Smith & Ourand, 2003). Similarly, the SEC added Texas A&M for access to the Texas market. Missouri joined Texas A&M in making the switch from the Big 12 to the SEC.

Following realignment and the introduction of the Big Ten and SEC networks, the ACC network launched in 2019. While the Big 12 does not have its own network, the conference is featured on ESPN+, a streaming service through the ESPN network. The SEC network was valued at \$4.692 billion and distributed \$40.9 million to member institutions in the 2018 fiscal year (Berkowitz, 2018). By the 2021 fiscal year, the distribution to the 14 member institutions increased to \$54.6 million each (“SEC announces,” 2022). Comparatively, the Big Ten Network was valued at \$1.59 billion and distributed approximately \$37.5 million to institutions. That distribution increased to a range of \$43.1 million to \$49.1 million in the 2021 fiscal year (Berkowitz, 2022). Finally, the Pac-12 was worth \$305 million and distributed \$32 million to each institution but that distribution shrunk to \$19.8 million in fiscal year 2021 (Berkowitz, 2022).

For the institutions, access to BCS bowls served as a significant motivator during this round of realignment. During the 2010-2011 season, the first year of the realignment period, the BCS system paid out \$145.2 million to the five major conferences<sup>7</sup> (Kogan, V. & Greyser, S.A., 2014). Comparatively, the other conferences received just \$24.7 million.

---

<sup>7</sup> The five major conferences included the ACC, Big 10, Big 12, Pac-12 and the SEC.

Realignment was quiet for seven years until the University of Oklahoma and the University of Texas accepted invitations to join the SEC, departing the Big 12 (Martin, 2021). At the time, the two institutions were under contract with the Big 12 until 2025 so their departure was not immediate. The Big 12 responded by inviting four new universities, Brigham Young University, Central Florida University, the University of Cincinnati, and the University of Houston to join the conference (Bromberg, 2021).

Approximately one year later, in June 2022, the Big 10 announced UCLA and USC would join the conference. Prior to the announcement, no institution has left the SEC, Pac-12 or Big 10 in the modern era of college athletics as these conferences virtually guarantee access to the national exposure athletics programs seek (Bostock, M., Carter, S. & Quealy, K., 2013). However, the growing disparity in television revenues for member institutions between the Pac-12 and the Big 10 provided enough incentive for UCLA and USC to switch conferences.

### **NCAA Governance Structure**

Initially created as a national organization governing all institutions offering intercollegiate athletics, the NCAA reorganized into three different divisions in 1973 (“Division Differences, n.d.). The intent of dividing into three divisions was to align institutions that had similar philosophies regarding competition and opportunity. Two of the divisions, Division I and II, offered scholarships to student-athletes based on their athletics ability. The third division, Division III, did not offer any athletics scholarships. Division I football was further divided in 1978 into its own three divisions: DI-A, DI-AA and DI-AAA. Those divisions were later consolidated into two divisions: football bowl subdivision (FBS) and football championship subdivision (FCS).

Motivated, in part by scandals raising fears of a Federal intervention, the NCAA again adopted a new governance structure in 1996 (“The NCAA”, 1996; Weaver, 2015). The new structure matched the one proposed by the Knight Commission shifting the power from coaches and athletics directors to university presidents and chancellors. As part of the new governance structure, a sixteen-member executive committee was established with members consisting primarily of university presidents and chancellors (Weaver, 2015). In addition to the executive committee, a Division I Management Council was created to oversee the adoption of new legislation and recommend administrative policies.

The NCAA again underwent an organizational change in August 2014 when the Division I Board of Directors modified the governance structure (Hosick, 2014). Hosick (2014) states the motivation for the change was to create an organization that was more flexible to the varying needs of different types of Division I institutions. The change added representatives to the Board of Directors including a student-athlete, a faculty representative, an athletics director and a female administrator. In addition, members of the Autonomy conferences, the ACC, Big Ten, SEC, Big 12 and Pac-12, obtained control over governance of identified legislative areas. The remainder of the items in the governance structure operates under the name shared governance which translates to all Division I institutions, including those in autonomy conferences. The predominant rationale for the change was the need for Presidents and Chancellors to retain control of intercollegiate athletics and for those Universities with more resources available to provide student-athletes to do so.

Today, the NCAA, a private, voluntary organization, still consists of the three divisions created in the 1970s. The largest division, Division III, consists of 443 institutions with an average undergraduate enrollment of 1,748 students (“Our Division I Members,” 2021).

Comparatively, 308 member institutions with an average enrollment of 2,485 students comprise Division II. Division I consists of 351 member institutions who have an average enrollment of 9,629 undergraduate students. Division I schools can offer multi-year scholarships up to the value of cost of attendance while Division II offers partial scholarships. Division III continues to operate without athletics scholarships. The FBS and FCS football divisions persist with legislation differing in some areas between the two classifications. Further, the autonomy and council governance dichotomy still exists.

### ***Current Legislative Process***

Today, Division I bylaws are adopted through one of two legislative processes depending upon whether the bylaw is one that will apply only to Division I autonomy institutions or, conversely, to all Division I institutions. Both processes are highly structured with deadlines for submissions of proposed bylaws, a defined period for institutions to comment on the proposals, a subsequent period for amendments, and an official notice of all proposals. Proposals originate within the NCAA committee structure or are submitted by member conferences. Both processes permit a voice from presidents and chancellors, directors of athletics, athletics administrators, coaches, faculty athletics representatives, conference personnel, and student-athletes.

### ***Council Governance Process***

The Council governance process begins with proposals submitted by conferences or with an NCAA Committee requesting that the Division I Council introduce the legislative proposal into the cycle. There are nine NCAA Committees involved in the legislative cycle: Legislative Committee, Nominating Committee, Student-Athlete Advisory Committee, Competition Committee, Student-Athlete Experience Committee, Strategic Vision and Planning Committee, Women's Basketball Oversight Committee, Men's Basketball Oversight Committee,

and Football Oversight Committee (NCAA Resources, 2021). The legislative process is an annual one requiring conferences to submit new legislative concepts by July 15<sup>th</sup>.

Once submitted, the legislative proposal concepts are published for review and comment by institutions and conferences by August 1<sup>st</sup>. Following receipt of the comments, the proposals and feedback are distributed to the NCAA committees, coaches' associations, and professional organizations including NAAC, CCACA, FARA and N4A in September. The Legislative Committee then reviews the concepts and associated information and provides feedback to the sponsor of the proposal. The final step before submission of draft proposals is for the Council to review the concepts at their October meeting.

With all the feedback gathered from August to October, the NCAA staff works with the sponsor of the proposal to draft the actual proposed new legislation in advance of November 1<sup>st</sup>. By November 15<sup>th</sup>, the Division I Publication of Proposed Legislation (POPL) is available to the membership. Following the publication of the POPL, legislation is divided into those proposals to be voted on in January and those proposals to be voted on in April. Proposals selected for a January vote are those that were introduced by the Council, impact student-athlete well-being and are time sensitive. All remaining proposals are voted on in April. Ultimately, any legislation adopted by the Council is reviewed by the Board of Directors before it becomes final.

Council voting is representative voting. The Council is composed of 41 members including one representative from each of the 32 conferences and one representative from the Division I Committee on Academics. In addition, there are two faculty athletics representatives, conference commissioners, and two student-athletes. Generally, a simple majority is required for a legislative proposal to be adopted.



### ***Autonomy Process***

The autonomy legislation process begins with the five autonomy conferences submitting a description of concepts under consideration by September 15<sup>th</sup> (NCAA Resources, 2021). However, autonomy concepts do not go through the same comment and committee feedback process as the Council governance legislative proposals. Instead, throughout the month of November, sponsors can refine proposals and autonomy conferences can submit amendments to those proposals. This comment process concludes with the publication of all autonomy legislative proposals by December 15<sup>th</sup>. All autonomy legislative proposals are voted on in January at the NCAA Convention.

Autonomy voting is not representative voting. Instead, each autonomy school gets a vote. In addition, three selected student-athletes from each of the autonomy conferences have a vote. Prior to the Big 12 expansion, there were 80 total votes. When the four institutions join the Big 12, the total votes will increase to 84. There are two ways to pass autonomy legislation. First, a majority vote within three of the five conferences plus 60 percent overall results in a proposal being adopted. Alternatively, a majority vote within four of the five conferences plus a majority of overall votes results in adoption. Autonomy legislation is not subject to review by the Board of Directors.

### ***Publication***

All of the bylaws are published annually in the NCAA Division I Manual which is the division's official governing rulebook. In addition, the bylaws are published in an electronic database (LSDBi) that also houses interpretations of the bylaws as well as applicable educational columns. Interpretations are binding once published and issued either by the NCAA staff (staff interpretation) or the NCAA Interpretations Committee (official interpretation). Educational

columns are published in LSDBi by the NCAA staff to provide guidance to institutions on certain bylaws but do not have the same binding force as interpretations. The current 2022-2023 Division I Manual consists of 466 pages of rules and regulations.

### **NCAA Enforcement Program**

As previously indicated, the initial purpose of the NCAA was to create uniform playing rules that resulted in a safer environment for those students participating in intercollegiate athletics, particularly football. Not long into the organization's existence, the NCAA attempted at various points to legislate beyond sport playing rules. Those attempts proved futile until the NCAA established a national program to enforce those rules.

#### ***Origins of the NCAA Enforcement Program***

The NCAA's first attempt to legislate outside of playing rules came in 1922 with the passing of a nine-point code. Included in the code was a definition of amateurism, a freshman rule prohibiting competition in a student's first year, a call to eliminate graduate student participation, an emphasis on maintaining faculty control, and a ban on professional football players, coaches and officials (Smith, 2010). Smith (2010) noted the NCAA tried again to establish national rules by adopting a code for recruiting and subsidization of athletes as a guide to conferences. However, the NCAA had no enforcement authority which meant each institution was expected to police themselves according to a philosophy known as the home-rule. As a result, application was inconsistent among institutions and, ultimately, the legislative efforts failed.

The NCAA initiated substantial efforts to create an enforcement program with the Principles of Conduct of Intercollegiate Athletics, later known as the Sanity Code, in 1946 (Depken, C.A. & Wilson, D.P., 2006). Incorporated into the NCAA Constitution in 1948, the

Sanity Code contained rules that regulated the recruitment and retention of students participating in intercollegiate athletics at an institution. Specifically, scholarships for athletes were limited to no more than tuition and fees and alumni were no longer permitted to provide financial assistance to athletes. To enforce the rules, the Constitutional Compliance Committee was created. However, the sole penalty available to the Constitutional Compliance Committee under the Sanity Code was expulsion from the association (Depken, C.A. & Wilson, D.P., 2006). The Constitutional Compliance Committee first attempted to levy the proscribed penalties and expel Boston College, The Citadel, the University of Maryland, the University of Virginia, Villanova University, Virginia Military Institute and Virginia Tech University in 1950. A vote by the membership prevented the expulsion of the schools and effectively ended the Sanity Code.

### ***Modern Enforcement Program Begins***

Following a number of scandals, member institutions ultimately did establish the first NCAA enforcement program in an effort to create more equitable competition and promote a sense of fair play among member institutions in 1952 (Ridpath, B.D., Nagel, M. & Southall, R., 2008). Subsequently, the first enforcement officer, Arthur Bergstrom, was hired in 1956. Enforcement procedures continued to develop over the next twenty years and gained additional capacity to process violations (Smith, 2010)

Increased commercialization necessitated the need for increased enforcement capacity. However, as more enforcement action occurred, criticisms started to arise around the fairness of the process and penalties. The result of these early criticisms was the formation of the Committee on Infractions, a separate hearing panel described later in this chapter, to separate those investigating potential violations from those deciding whether the violations occurred and, if so, what constituted appropriate penalties.

### ***Judicial and Legislative Intervention in Enforcement Process***

Student-athletes and coaches challenged NCAA infractions decisions in court arguing the organization's system for investigating and enforcing its bylaws violated due process guarantees. One of the first cases specifically involving the NCAA enforcement process was *Howard Univ. v. NCAA* in which the University and one of its male soccer student-athletes sought relief from a decision stemming from the NCAA enforcement process declaring members of the soccer team had competed while ineligible and imposing sanctions accordingly (*Howard Univ. v. NCAA* (510 F.2d 213, 1975)). In reviewing the case, the Court found the NCAA to be a state actor because (1) about half of the association's membership included public institutions, (2) the majority of the NCAA's capital was derived from public institutions, and (3) public institution representatives had principle power to adopt or amend association bylaws and review committee actions making state instrumentalities and significant part of determining NCAA policy. As a result of the public institution influence, the Court found, citing *Evans v. Newton*, that although the NCAA was a private association, it was so "entwined with governmental policies or so impregnated with a government character" that it became state action (*Evans v. Newton*, 382 U.S. 296, 299, 86 S.Ct. 486, 488, 15 L.Ed.2d 373 (1966)).

As a state actor, the NCAA would be subject to the Due Process requirements of the fourteenth amendment. Due process would require, at a minimum, advanced notice of what the NCAA planned to do and the consequences of that action and the opportunity to be heard. Generally, the opportunity to be heard includes the right to have counsel and the right to cross examine witnesses. At the time of these lawsuits, neither was afforded individuals in the NCAA infractions process.

In the few years that followed the Howard Univ. decision, additional courts similarly found the NCAA to be a state actor. For example, the Court in *Regents of the Univ. of Minn. V. NCAA*, (422 F. Supp 1158, 1976) found the state-supported university members exercised such pervasive influence on NCAA affairs that the association became a state actor. Similarly, in *National Collegiate Athletic Ass'n v. Gillard*, 1977, the Supreme Court of Mississippi followed the precedent set in other jurisdictions in determining the NCAA was a state actor.

Although courts found the NCAA to be a state actor, courts were reluctant to find that the NCAA's enforcement procedures violated those Due Process requirements. For example, the court in *Howard Univ.*, even though it questioned whether there was a property interested subject to due process protection, found the NCAA provided notice of the charges, the right to participate and defend itself, and the opportunity to appeal to both the University and its student-athletes. As a result, the NCAA met any due process requirements it would have had if subject to the requirement. The Court in *Regents of the Univ. Of Minn.* Similarly declined to find whether a property or liberty interest existed compelling due process because, assuming it did, due process requirements were satisfied. Following suit, the Court in *National Collegiate Athletic Ass'n v. Gillard*, 1977, the Court expressed substantial doubt whether there was a property interest in participating in intercollegiate athletics but, even if there was, due process had been afforded through the NCAA enforcement process.

Despite the findings in recent court decisions that due process had been afforded in the NCAA's enforcement process, the issue of fairness in the NCAA enforcement process reached a level of controversy significant enough that the United States House of Representatives Subcommittee on Oversight and Investigation decided to examine the system in 1978. The central issue during the hearing was whether the NCAA conducted its enforcement practices in a

manner that was not offensive to the notion of fair play (“*NCAA Enforcement Program*,” 1978). Witnesses included a former NCAA enforcement staff member and representatives of multiple universities that had recently been the subject of NCAA enforcement staff investigations and sanctions.

Allegations of arbitrariness, inequality, secrecy, and abuse of power drove the inquiry even though courts had deemed the NCAA enforcement procedures fair. The standard for investigation at the time was purportedly that only allegations of “misconduct received from reasonable sources and reasonably substantial” were investigated (“*NCAA Enforcement Program*,” 1978). Specific complaints raised during the hearing included the lack of divulging of the sources of allegations, the inability to question or confront an accuser, lack of sufficient information at proper points in the process to lodge a fair defense, leaks from the NCAA staff to media while institutions were required to honor a confidentiality provision, broad power for investigators, tainting the Committee on Infractions with evidence prior to the hearing, and the admission of essentially hearsay evidence. Further, NCAA investigators frequently approached the opponent of an institution in an attempt to generate damaging information bringing into question the credibility of allegations. Finally, institutions shied away from the appeals process because allegations could be added or sanctions increased during the process (“*NCAA Enforcement Program*,” 1978). Despite the hearing, nothing changed in the NCAA’s Enforcement program following its conclusion (Miller, 1993).

By the 1980s, Courts started to reverse course in classifying the NCAA as a state actor and therefore subject to due process requirements. The shift began with two cases, *Rendell-Baker v. Kohn* (1982) and *Blum v. Yaretsky* (1982), which eliminated the application of state action in scenarios where schools independently made decisions and determined that state

permission for private action did not constitute state actions, respectively. Three years later, the court in *Arlosoroff v. NCAA* (1985) applied these principles to NCAA decisions in determining the NCAA was not a state actor. Subsequently, a New York trial court held that a student-athlete could not sue the NCAA.

The Supreme Court resolved the question regarding the state actor status of the NCAA when it ruled in *NCAA v. Tarkanian* (1988). The lawsuit arose after then head men's basketball coach at the University of Nevada, Las Vegas, Jerry Tarkanian, sued the organization alleging a lack of due process following an infractions case decision in 1977. In that case, the University's men's basketball program was found to have committed 21 different violations of NCAA rules leading to sanctions including a show cause order for Tarkanian.

Contrary to the prior lower court decisions, the Supreme Court decided the NCAA was not a state actor. In deciding the NCAA was not a state actor, the Court noted that universities had the ability to withdraw from the NCAA if it wanted to follow different rules and the NCAA did not have, and the University did not delegate, any power to take specific action with regard to a university employee. The Court rebutted Tarkanian's allegation that there was no practical alternative to NCAA membership by saying, even if true, that did not make the NCAA a state actor. Absent a classification as a state actor, the NCAA did not have an obligation to follow due process requirements. As a result, the NCAA, as a private organization, is free to adopt rules by which it will be governed and control the interpretation and enforcement of those rules (Potuto, 2009).

In 2004, NCAA enforcement procedures again became the subject of a governmental hearing. Fairness concerns persisted despite modifications to the enforcement process. Criticisms of the enforcement process included the lack of audio recordings of interviews

meaning a reliance on handwritten notes by investigators and the inability of the Committee on Infractions to hear voice inflections or see body language as a means to assess witness credibility, the inability of accused institutions or individuals to cross-examine witnesses or present their own witnesses, the imposition of penalties numerous years after violations occurred, and the ability to impose additional sanctions for violations that an institution knew, or should have known about, but did not self-report (“Due Process and the NCAA,” 2004; Miller, 1993). To summarize, NCAA enforcement hearings did not follow any rules of evidence and Committee determined what would be heard making the hearings “informal and haphazard by judicial standards (“Due Process and the NCAA,” 2004, p. 9).”

The individuals testifying at the hearing made several recommendations for changes to the enforcement process. Recommendations included the creation of an independent Committee on Infractions and Appeals Committee consisting of professionals with training in law and dispute resolution, a separate board to hear grievances in the enforcement and student-athlete reinstatement processes, allowing those accused of violations to ask questions of all witnesses, and opening hearings to the public (“Due Process and the NCAA,” 2004).”

### ***Presidents’ Commission***

The 1980s saw several significant NCAA infractions cases that resulted in severe penalties. Five west coast teams, Arizona State, Oregon, Oregon State, UCLA and USC, resulting in them all being ineligible for postseason play in 1980 (Smith 2000). Clemson, the top ranked team in the country, endured an investigation into recruiting violations by their booster club in 1981. Boston College had a player sentenced to 10 years in prison after a point-shaving scandal in 1982 (Smith, 2010). In response to the most recent set of intercollegiate athletics



scandals, the NCAA created an advisory Presidents Commission in 1984 to help reform college athletics (Smith, 200).

Although the advisory Presidents Commission's primary purpose was to help reform college athletics, the group also played a role in the evolution of the enforcement program. The Commission developed eight proposals which all passed with ease. The most notable proposals in terms of how NCAA enforcement functioned included the categorization of violations as either major or secondary and the adoption of the death penalty, the cessation of a particular sport for a duration of time (Rose, 1991; White, 1985). With a 427-6 vote, the adoption of the death penalty sanction was not controversial but received significant public attention when imposed on the football program at Southern Methodist University two years later (Rose, 1991). While thought to be major reforms at the time, violations did not lessen in the years to follow the action.

### ***Rex Lee Commission Report***

Following two high profile court cases, scrutiny of the NCAA enforcement process led to the formation of an investigative group to evaluate and suggest changes to the process (*National Collegiate Athletic Ass'n v. Miller*, 1992; *NCAA v. Tarkanian*, 1988). In October 1991, the Rex Lee Commission Report, named after the Brigham Young University President chairing the committee, detailed eleven recommendations (Smith, 2010). The NCAA adopted several recommendations including providing institutions preliminary notice of an investigation, establishing a summary disposition procedure to expedite decisions, creating an appellate group now known as the Infractions Appeals Committee, expanding details of the public reports issued by the Committee on Infractions and composing a conflict-of-interest policy for enforcement staffers. Conversely, the NCAA did not adopt recommendations to use neutral former judges as

hearing officers or to open Committee on Infractions hearings to the public (Miller, 1993; Ridpath, B.D., Nagel, M. & Southall, R., 2008; Smith, 2010).

### ***Enforcement Working Group***

In 2012, citing the erosion of public trust in intercollegiate athletics, the NCAA established an Enforcement Working Group. The establishment of the working group came as revelations regarding potential misconduct by the NCAA Enforcement staff investigating potential violations at the University of Miami surfaced. In that case, members of the Enforcement staff retained the services of an attorney representing the Miami booster under investigation to obtain information regarding potential violations (Patterson, 2013). As a third party, the booster was not compelled to submit to an interview with the NCAA Enforcement staff as the NCAA does not have subpoena power. As a result, the NCAA Enforcement staff used the attorney to access information that would not have otherwise been available.

The Enforcement working group faced several issues including the perception of a risk-reward analysis to committing violations, the increase public profile, power and salaries of coaches, and an increasing presence of third parties pushing the pendulum for intercollegiate athletics from an amateur, co-curricular part of education toward a professional model. The NCAA provided the group with three guiding principles for their work: fairness, accountability, and process integrity (Lawrence, 2012).

A four-level violation structure, replacing the old major and secondary violation dichotomy, resulted from the working group. The four-level violation structure included a matrix with a range of penalties for each level of violation. Through their modifications, the working group endeavored to align the severity of the penalties with the egregiousness of the violations. Finally, the working group intended for their changes to “reestablish a sense of

shared responsibility with clarified roles among those who participate in, lead and administer intercollegiate athletics at the campus, conference and national levels (“Working Group”, 2013, para 1).”

### ***Current Enforcement Procedures***

The NCAA enforcement process today is still rooted in the cooperative principle as the organization does not have subpoena power. Institutions are expected to monitor their own programs and self-report violations as they are identified. In situations where the NCAA chooses to investigate an allegation, whether received independent of the institution or through an institution’s self-report, the investigation is supposed to be cooperative between the organization and the institution.

According to the NCAA (2022), prior to conducting any inquiry on an institution’s campus, the enforcement staff must provide the President or Chancellor a Notice of Inquiry (NOI)<sup>8</sup>. The NOI may be either verbal or in writing. The written notice tolls the four-year statute of limitations. While a NOI is necessary if the enforcement staff is conducting an inquiry on campus, similar notice requirements do not exist if the enforcement staff is conducting an investigation related to an institution but focusing on outside sources.

The enforcement staff operates under published internal operating procedures. The enforcement staff developed the IOPs to provide guidance for conducting investigations and processing alleged violations (NCAA, 2023). Some of these administrative guidelines were previously included in the NCAA manual. Now a separate document, the procedures are authorized by the Division I Board of Directors rather than being subject to membership vote. The procedures are ultimately reviewed and approved by the Committee on Infractions.

---

<sup>8</sup> NCAA bylaw 19.6.2

Individuals that are currently employed by a member’s athletics department and current student-athletes are required to cooperate with interview and document requests from the enforcement staff<sup>9</sup> (NCAA, 2022). If the subject of an interview, the witness is advised that the purpose of the interview is to determine if they have any knowledge of or involvement in rules violations<sup>10</sup>. However, the witness is not provided any information regarding the potential violation or subject matter of the interview in advance of the meeting. Witnesses are permitted to have counsel present during the interviews<sup>11</sup>.

At the conclusion of the investigation, the enforcement either notifies the institution the matter is closed or issues a Notice of Allegations. A Notice of Allegations (NOA) is issued when the enforcement staff finds that the Committee on Infractions could conclude Level I or Level II violations occurred. The notice allegations must provide details of the allegations, possible level for each alleged violation, and the factual information that serves as the basis for the allegations (NCAA, 2022)<sup>12</sup>. The issuance of the notice of allegations concludes the enforcement staff’s jurisdiction of the infractions case process.

### **Committee on Infractions Composition and Procedures**

Once the NOA is delivered to an institution, jurisdiction over the process transfers from the NCAA Enforcement Staff to the Committee on Infractions. The Committee on Infractions (“COI”), established in 1973 (Wong, G., Skillman, K, and Deubert, C, 2009), is the administrative body charged with deciding NCAA infractions cases after allegations are brought by the NCAA Enforcement staff against NCAA member institutions and/or their employees (Smith, 2010). COI members are not employees of the NCAA national office. Rather, the COI

---

<sup>9</sup> NCAA bylaw 19.2.1

<sup>10</sup> NCAA bylaw 19.6.3.3.2

<sup>11</sup> NCAA bylaw 19.6.3.3.1

<sup>12</sup> NCAA bylaw 19.9.2.1

is composed of volunteers from member institutions, including Presidents, Athletics Directors, Faculty Athletics Representatives and Compliance Administrators, conferences<sup>13</sup> (NCAA, 2022). In addition, there are a couple of members of the general public, who are compensated for their time, on the Committee on Infractions. The NCAA national office does have an Office of the Committee on Infractions (OCOI) that employs several staff members whose job it is to support the work of the COI.

### ***Committee Composition***

Initially, the COI consisted of one group of ten members. Of those ten members, seven had to be employed by a member institution or conference and at least two had to be from the general public and not associated with a sport organization or involved in coach representation. NCAA bylaws called for at least two of the members to be men and two to be women. To conduct business, a quorum (four) was required but the chair had the responsibility to make a “special effort” to have the entire committee present for infractions hearings.

However, upon recommendation by the Enforcement working group, the composition of the committee changed. Committee membership expanded to 24 members so that cases could be heard more expeditiously. In addition, the new composition bylaw had more detailed committee composition requirements to the extent possible. The new criteria stated (NCAA, 2022)<sup>14</sup>:

The committee shall be comprised of seven members. At least two members shall be from the general public and shall not be connected with a collegiate institution, conference, or professional or similar sports organization, or represent coaches or athletes in any capacity. The remaining members shall presently or previously be on the staff of

---

<sup>13</sup> NCAA bylaw 19.4.1

<sup>14</sup> NCAA bylaw 19.4.1

an active member institution or member conference, but shall not serve presently on the Board of Directors. (p. 396)

Hearing panels are required to consist of no less than five and no more than seven of the 24 Committee members.

### ***Committee Procedures***

The COI is tasked with various responsibilities beginning prior to any infractions hearing and extending beyond the conclusion of a hearing. Prior to the hearing, the COI is responsible for addressing any prehearing procedural matters and setting the hearing date. During the hearing, the COI conducts the hearing including asking involved parties, including University personnel and representatives from the NCAA Enforcement staff, questions. Following the hearing, the COI deliberates to determine if the violations alleged by the NCAA Enforcement staff occurred with the freedom to find additional violations that may not have been alleged. Based on the determination of violations, the COI will decide the penalties to be imposed. The COI then issues a public infractions case decision that outlines the procedural history of the case, allegations, findings by the COI, and penalties. In many regards, the public infractions decisions look like a court case decision. Following the hearing, institutions must submit an annual report for the duration of probation detailing compliance efforts so as to avoid repeat violations. The Office of the Committee on Infractions, composed of NCAA staff members, reviews and approves these annual reports.

Once part of the NCAA manual as administrative rules, the COI operating procedures are now contained in separate 43-page document most recently updated in January 2023. The creation of the operating procedures stemmed from Enforcement working group reform initiatives. The intent was to create a formal, but flexible, method for hearing cases. However,

since the operating procedures were removed from the NCAA manual, they are no longer subject to membership voting. Rather, the NCAA Board of Directors approves the operating procedures.

### **Case Resolution Options**

Initially, a full hearing before the Committee on Infractions was the only way for an infractions case to get resolved. Over time, alternate approaches have developed to accommodate unique or complex characteristics in different infractions cases. The changes resulted from continued criticism about the time an infractions case takes to process and the ability of the association to handle complex issues. Today, three different options exist to reach a resolution in an infractions case as the Independent Case Resolution path sunset in January 2021.

#### ***Negotiated Resolution***

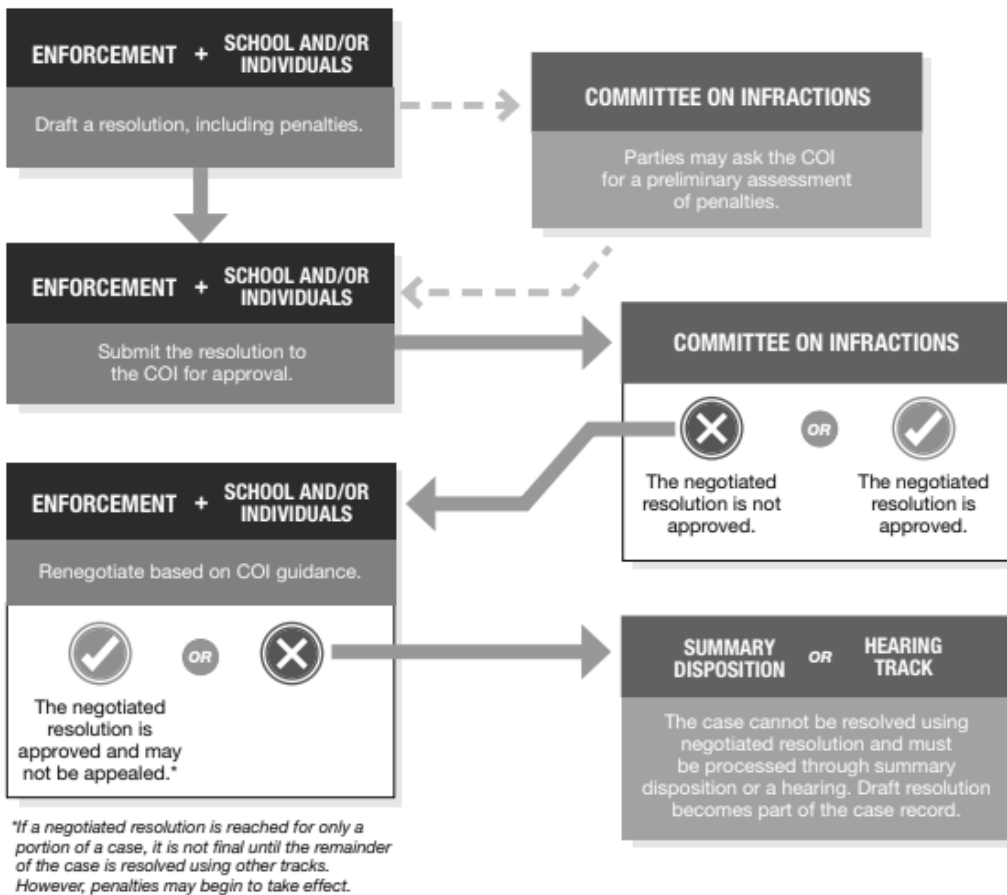
Negotiated resolution, an option available since August 1, 2019, is an infractions case resolution track only available when the institution, any involved individuals and the NCAA Enforcement staff agree on all aspects of the case. This resolution track, illustrated in Figure 1 below, is available when all three parties agree on what violations occurred, the level of the violations, and the appropriate penalties<sup>15</sup>. Working together, the institution, any involved individuals, and the NCAA Enforcement staff draft a resolution regarding the facts of the case and agreed upon penalties. This written agreement is then submitted to the Committee on Infractions. At that point, the COI has the choice to approve the resolution or not. If the COI approves the resolution, the case is final and a public infractions case decision will be published. However, if the COI does not approve the resolution, the case then must proceed to either the summary disposition or full hearing track.

---

<sup>15</sup> NCAA bylaw 19.5.12

**Figure 1**

*Division I Infractions Process: Negotiated Resolution*



*Note: From Inside the Division I Infractions Process: Negotiated Resolution. (2019).*

There are two advantages to pursuing the negotiated resolution path. First, the process is less time consuming as the formalities required in alternative paths are not present. Second, the resolution of the case should not yield any surprises. Since everything is agreed upon in advance, there are no violations to be added at a hearing and penalties are known in advance. Even though the COI may not approve a written negotiated resolution agreement, the parties involved can request a preliminary review. As a result, parties that avail themselves of this option should have a reasonable expectation that their resolution would be approved by the COI.



While the negotiated resolution path is attractive because of its advantages, not all infractions cases are suitable for the process. According to the NCAA Enforcement Internal Operating Procedures (2019) the following are factors that suggest a case may not be appropriate for the negotiated resolution path:

- A postseason ban or a violation involving ineligible competition by a student-athlete that may result in a vacation of records.
- Not all participating parties agree to negotiate a particular violation.
- The case involves an alleged violation of the cooperative principle or related bylaws.
- The type of violation was present in a separate Level I or Level II case at the institution that occurred within the past five years.
- The case involves significant disagreement on material facts.
- A hearing on the matter is scheduled to occur within 30 or fewer days.
- There are unique issues or circumstances that may necessitate consideration by the Committee on Infractions.
- The case involves an allegation or instance of material enforcement staff misconduct.

(p.21)

### ***Summary Disposition***

Summary disposition is a case resolution option somewhere between negotiated resolution and a full hearing. The NCAA Enforcement Internal Operating Procedures (2019) require this option, depicted in Figure 2 below, requires the institution, involved parties, and the NCAA enforcement staff to submit a written report to the COI detailing:

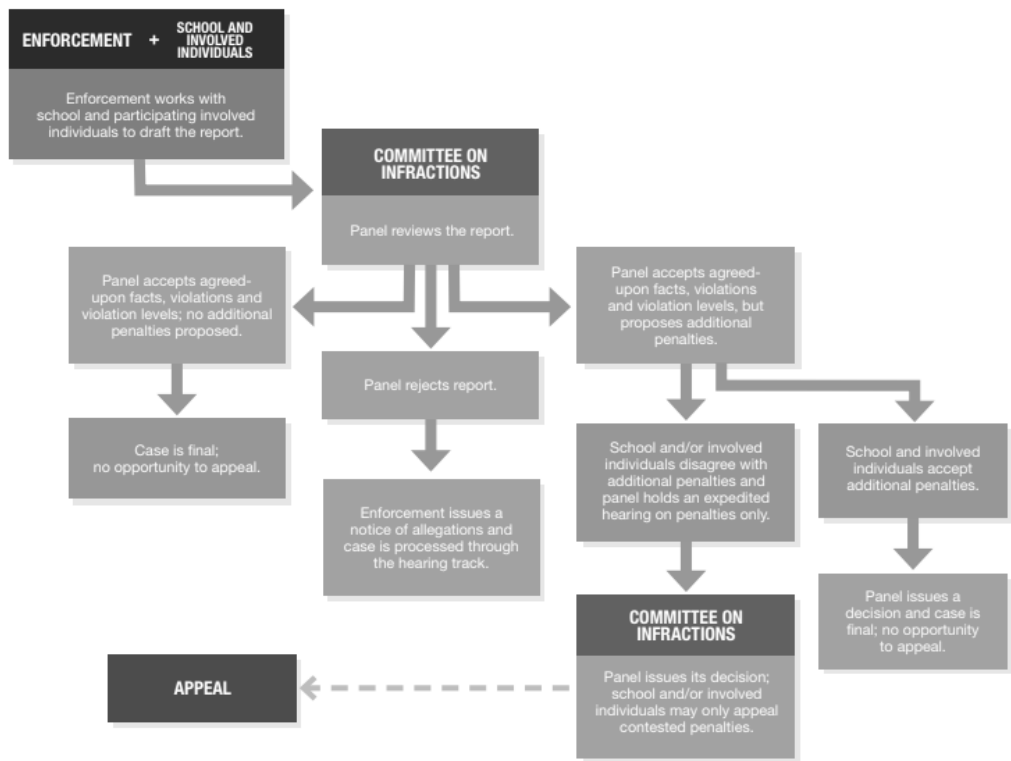
- The proposed findings of fact;
- A summary of information on which the proposed findings of fact are based;

- A statement identifying the violation(s) of the NCAA constitution and/or bylaws;
- The parties' agreement on the overall level of the case;
- A stipulation by the enforcement staff that the investigation, if conducted by the institution, was complete and thorough and that the institution cooperated fully in the process;
- A statement of unresolved issues;
- A list of any agreed-upon aggravating and mitigating factors; and
- A stipulation that the proposed findings of fact are substantially correct and complete.

(p.11)

**Figure 2**

*Division I Infractions Process: Summary Disposition*



*Note: From Inside the Division I Infractions Process: Summary Disposition. (2019).*

Upon receiving the written report, the COI has three options: (1) accept the findings of fact and penalties recommended in the written report; (2) reject the summary disposition and require a full hearing; or (3) accept the findings of fact and recommend additional penalties. If the COI accepts the findings of fact but recommends additional penalties, the institution and/or involved individual(s) can request a hearing on only the penalties if they disagree with the additional recommendations. Only in the last case does the institution and/or involved individual(s) have the right to appeal.

### ***Formal Hearing***

The formal hearing case resolution option is the one that most resembles a court or administrative proceeding. The pre-hearing process consists of formal requirements with specific deadlines. For example, upon receiving a notice of allegations the institution has 90 days to provide a formal written response<sup>16</sup>. Once the institution's response is received, the NCAA Enforcement staff has 60 days to reply in which they can provide additional information about the allegations<sup>17</sup>. Following the formal written procedures, a hearing is scheduled.

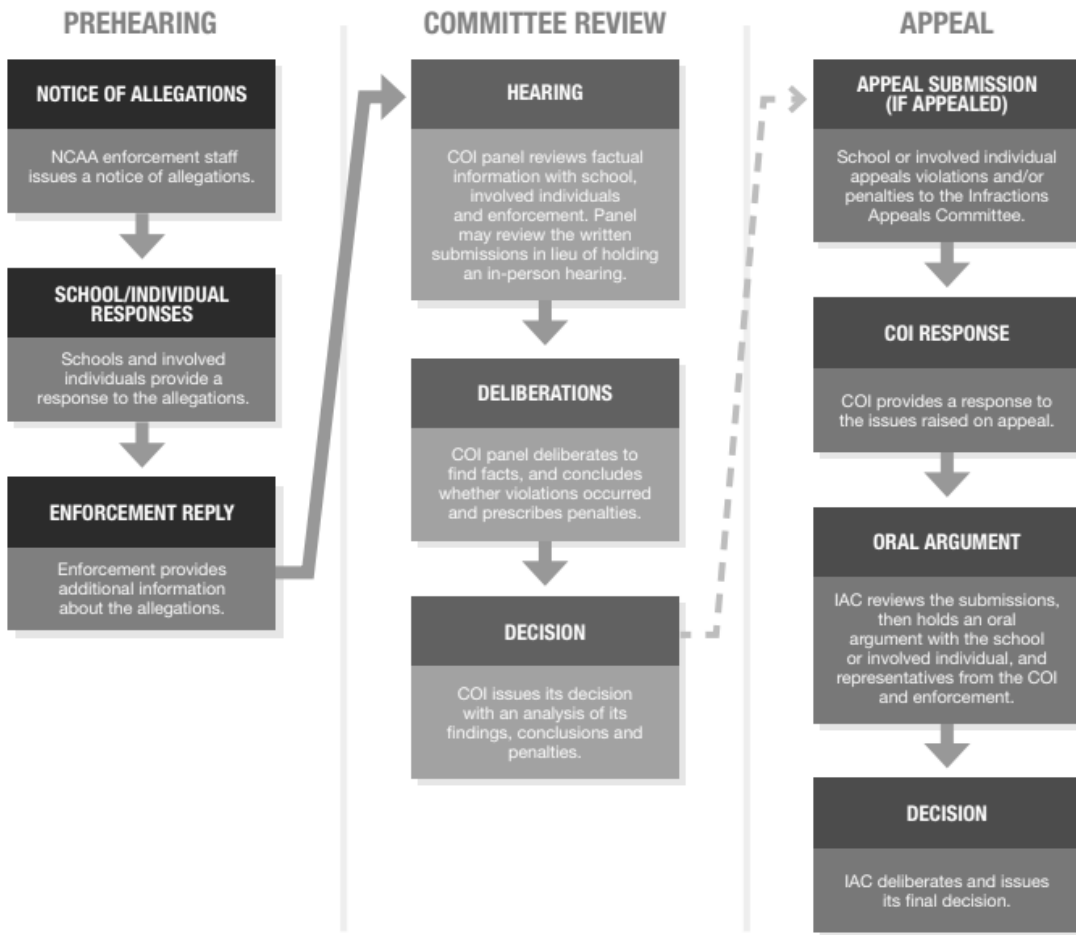
---

<sup>16</sup> NCAA bylaw 19.8.4.1

<sup>17</sup> NCAA bylaw 19.8.4.3

**Figure 3**

*Division I Infractions Process: Committee on Infractions Hearing*



*Note: From Inside the Division I Infractions Process: Committee on Infractions. (2019).*

As part of the process, certain individuals are required to attend the hearing. The hearing room is set up in a prescribed manner, much like a court room. An individual that chooses not to participate in the process may forego their right to appeal. At an infractions case hearing, the NCAA Enforcement Staff, institution, and any involved individuals are permitted to make an opening statement. From there, the COI takes each allegation in turn, directing questions to any party present. Only the COI is permitted to ask questions, however, meaning members of the NCAA Enforcement staff cannot ask the institution questions and vice versa. Prior to the

conclusion of the infractions case hearing, each party is permitted to make a closing statement if desired.

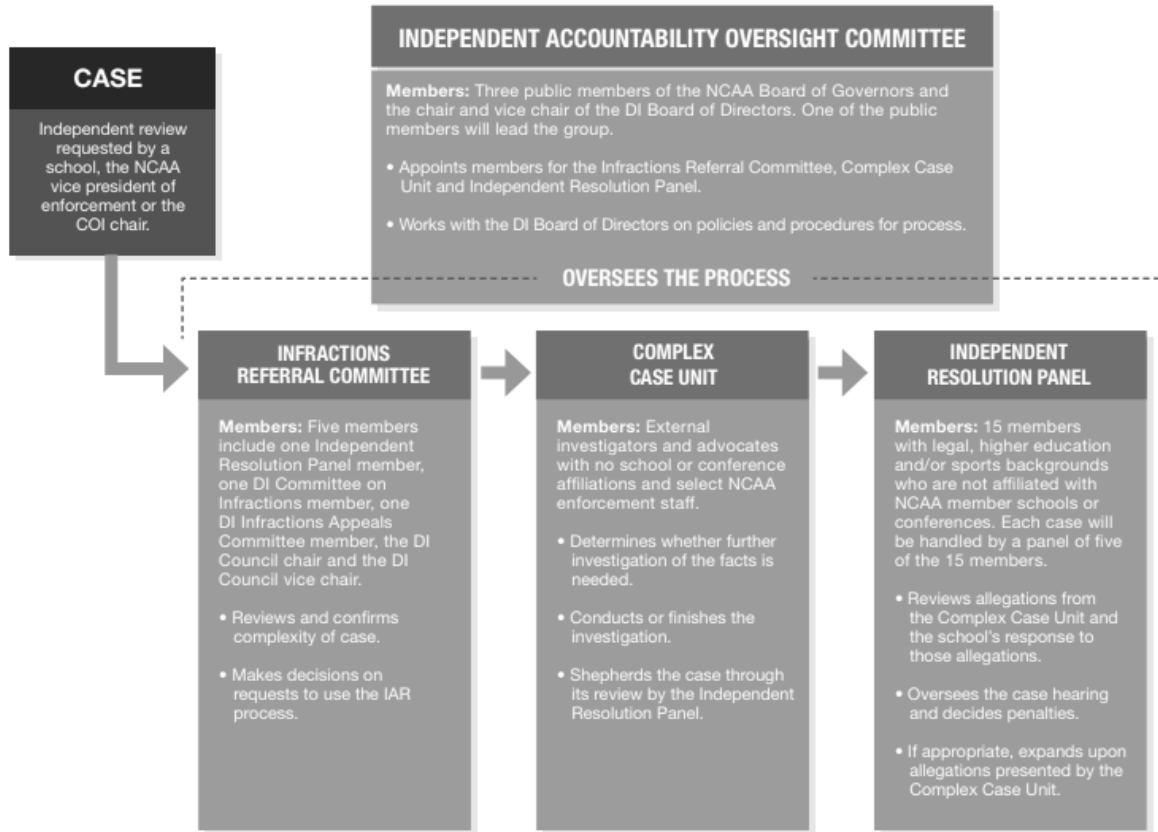
Following the conclusion of the hearing, the COI deliberates and determines which violations were demonstrated through the information presented, whether in one of the formal written documents or at the hearing, and decide on the appropriate penalties. The COI provides the information to the OCOI to draft an initial version of the public infractions case report. The COI will review that draft and provide edits so the OCOI can prepare the final report. There is no timetable for the release of the public infractions case, but the process can take a couple of months. The institution and any involved individuals can appeal the COI's decision.

### ***Independent Accountability Resolution Path***

Stemming from a recommendation by the Commission on College Basketball, referenced earlier, an independent resolution panel process was established to hear complex cases as diagramed in Figure 5 below. In order for an infractions case to be placed in the independent accountability resolution path, an independent review must be requested by either the institution, the NCAA Vice President of Enforcement, or the chair of the COI. Once the request was made, an infractions referral committee reviewed the request and confirms whether the complexity of the case warrants the path. Example of cases that warranted the independent accountability resolution path include allegations contrary to NCAA core principles such as academic misconduct, the possibility of major penalties, or adversarial behavior. The infractions referral committee was comprised of five individuals: one Independent Resolution Panel member, one COI member, one Infractions Appeals Committee member, the Division I Council chair, and the Division I Council vice chair.

**Figure 4**

*Division I Infractions Process: Independent Accountability Resolution*



*Note: From Inside the Division I Infractions Process: Independent Accountability Resolution. (2019).*

Once an infractions case was approved for the independent accountability resolution process, an external investigator and an external advocate with no school or conference affiliation joins the NCAA enforcement staff in the process. Together, the complex case unit determined whether further investigation is needed and, if so, conducted that investigation. The case then moved to the review stage by the Independent Resolution Panel which substitutes for the COI.

The Independent Resolution Panel was comprised of fifteen members each with legal, higher education, and or athletics backgrounds. Unlike the members of the COI, members of the Independent Resolution Panel could not be affiliated with an NCAA member institution or conference. The panel for a specific case hearing consisted of five of the fifteen members. Like the COI, the Independent Resolution Panel could add allegations to those presented by the Complex Case Unit if the members feel they are warranted. There was no appeal option for decisions issued by the Independent Resolution Panel.

The IARP was mired in criticism not long after its formation. One criticism is the length of the process (Forde, 2021). Formed following the Commission on College Basketball report in spring 2018, the first case was referred in March 2020. A total of six cases were referred to the IARP process (<https://iarpc.org/referred-cases/>). The first decision came in May of 2020. As of early 2023, three of the six cases, University of Kansas, University of Louisville and Louisiana State University were still pending. Further, the process has been expensive as it is an independent process meaning billable hours are being charged for the investigative work and adjudication. In addition, the process was duplicative as investigative work by the NCAA Enforcement staff done prior to a case being placed in the IARP track was often duplicated. Finally, the IARP penalties were inconsistent with cases decided by the Committee on Infractions. This criticism, however, is not unique to the IARP process. In August 2022, the NCAA Board of Directors decided to end the IARP (Durham, 2022). The group would finish its remaining cases but no additional cases would be put in the process.

### **Appeals Committee Composition & Process**

The Appeals Committee was created following the Lee Commission Report in the early 1990s (Wong, G., Skillman, K, and Deubert, C, 2009). Today, the Appeals Committee consists

of five members with at least one member being from the general public and the remainder from an NCAA member institution or conference (NCAA, 2022)<sup>18</sup>. The Appeals Committee consists of separate individuals than the Committee on Infractions. A new standard of appeal was adopted in 2008. Today, the Appeals Committee has the authority to reverse a Committee on Infractions decision only when there is:

- (1) a factual finding clearly contrary to the evidence presented;
- (2) facts as decided do not constitute a violation;
- (3) a procedural error occurred that, but for that error, a violation would not have been found; or
- (4) the Committee abused its discretion in prescribing a penalty<sup>19</sup>.

---

<sup>18</sup> NCAA bylaw 19.5.1

<sup>19</sup> NCAA bylaw 19.5.5



## CHAPTER III

### **Methods**

This chapter outlines the conceptual framework, methodology and method of analysis, and data that was used for the study. An administrative law conceptual framework provided the basis for examining NCAA public infractions case decisions under the premise that, as a voluntary organization, the NCAA operates under much the same framework as an administrative agency. A legal analysis methodology was used to examine the research questions primary to this study which seeks to provide insight into factors leading to lack of institutional control violations. Specifically, the study examined the following research questions:

1. What are the characteristics of lack of institutional control cases?
2. How have the characteristics of lack of institutional control cases changed over time?

The primary data source for the analysis portion of this study was NCAA public infractions case decisions published in the association's database, LSDBi.

### **Conceptual Framework**

Administrative law is a specialized set of legal principles established to create a framework of control for the actions of administrative agencies (Werhan, 2008). Agencies typically perform a variety of functions including rulemaking and adjudication. The framework established defines the powers the agency possesses, articulates the process for decision-making by the agency, outlines the rights of individuals who participate in the agency process, and shapes the ability for agency decisions to be challenged in the court system. The theory behind

administrative law is that certain specialized fields are better served by allowing those individuals with expertise specific to that field to govern conduct and adjudication of disputes (Pierce, 2008).

One of the functions of agencies is to establish rules of operation under which that agency operates. The Administrative Procedures Act (APA), adopted by Congress in 1947, governs the rulemaking function of agencies (Fox, 2008; Pierce, 2008; Werhan, 2008). Congress adopted the APA to ensure clearly articulated standards existed for the rulemaking process (Pierce, 2008). As part of the rulemaking process, proposed rules must be published for a minimum duration of time allowing the public to comment on, whether in support of or opposition to, the proposed rule.

In addition to establishing applicable rules, administrative agencies typically independently enforce and adjudicate the rules they create. Enforcement proceedings may even resemble courtroom procedures with parties to the dispute presenting evidence to support their side of the case. While due process is not required for all agency enforcement proceedings, only those involving the deprivation of life, liberty or property rights, the Supreme Court has held that agencies must comply with their own rules of procedure (*United States v. Nixon*, 418 U.S. 683 (1974); *United States ex rel Accardi v. Shaughnessy*, 347 U.S. 260 (1954)). However, on the other end of the spectrum the Supreme Court has also indicated that courts can only require an agency to use those procedures the Constitution, statutes, or agency rules demand (*United States v. Nixon*, 418 U.S. 683 (1974); *United States ex rel Accardi v. Shaughnessy*, 347 U.S. 260 (1954)). Decisions made after administrative enforcement hearings, therefore, create precedent for the enforcement of administrative rules akin to court decisions.

Following the exhaustion of the administrative agency adjudication process, the APA provides a path for judicial review of an agency's determination to ensure sufficient checks and balances exist in the agency adjudication process. Generally, the APA provides three reasons judicial review may result in a change to the original agency decision. First, a court may overturn an agency decision when that decision violates the Constitution or statute. Second, if a court determines an agency decision is not supported by substantial evidence it may overturn the agency decision. Finally, an agency that is arbitrary, capricious, or an abuse of discretion is subject to reversal by a court. Despite the availability of judicial review, the vast majority of agency decisions are never subjected to court review (Fox, 2008).

Although a voluntary organization and not an administrative agency per se, the NCAA operates in a manner that essentially makes it a quasi-administrative agency. Much like one of the primary functions of administrative agencies is rulemaking, the NCAA has a legislative process for establishing rules for the organization. The APA requires agencies to publish proposed rules for a specified amount of time and permit public comment. Similarly, as outlined in Chapter 2, the NCAA has a structured timeline and process to introduce rule proposals, a deadline for publishing proposed rules, and the opportunity for members of the association to provide comment on the proposed rules prior to voting.

In addition to having an articulated rulemaking process, the NCAA has an established enforcement and adjudication system in a similar manner to administrative agencies. As discussed in Chapter 2, the NCAA has an enforcement staff to investigate potential violations of the association's rules governed by published internal operating procedures. Further, the association has a Committee on Infractions to hear cases where the NCAA enforcement staff has brought allegations of rules violations against member institutions and/or its staff members.

Institutions that have been accused of rules violations are entitled to a full hearing before the Committee on Infractions which proceeds similarly to an administrative agency hearing. In fact, both may resemble court room setups and proceedings. In the same fashion that administrative decisions create precedent, Committee on Infractions decisions create precedent within the NCAA structure.

In conclusion, while the NCAA is a voluntary private association and not an administrative agency, the association operates as a pseudo-administrative agency. The NCAA has a detailed process for rulemaking including notice, publication, and comment provisions like those required of administrative agencies. Further, the NCAA uses established procedures for enforcing and adjudicating violations of the association's rules, often resembling court proceedings, just as is the case with administrative agencies. Finally, both NCAA infractions case decisions and administrative hearing decisions serve as precedent for future cases, respectively. Given the similarities between the NCAA and an administrative agency, an administrative law framework is appropriate to use in the analysis of NCAA infractions decisions.

### **Data and Data Collection**

In conducting legal research three types of information exist for the researcher's use: primary sources, secondary sources, and research tools (Russo, 2006). Sources such as constitutions, statutes, regulations, and case law comprise primary sources. Secondary sources include legal writings like summaries, critiques, law review articles, and treatises. Finally, finding tools, including electronic databases like Westlaw and LexisNexis, allow a research access to the law.

As a voluntary organization operating as a pseudo-administrative agency, the NCAA has data sources like those used in conducting legal analysis. The research tool for the NCAA is an electronic database, LSDBi, that operates in a manner like Westlaw or Lexis Nexis. Practitioners use LSDBi to find association bylaws, the NCAA equivalent of statutes, and public infractions case decisions, the NCAA equivalent of case law.

According to Russo (2006), legal researchers rely heavily on primary sources. Consistent with that approach, the main source of data for this study was primary sources in the form of NCAA public infractions case decisions. Further, the issue examined specifically relates to findings of lack of institutional control. As a result, the data came from NCAA public infractions decisions obtained from LSDBi using the databases search features. Two different searches were conducted to ensure all relevant cases are identified and included in the research.

Both searches used the subdivision filter to limit search results to Division I FBS institutions, excluding FCS institutions. The first search used the keywords function to further limit results to those cases that had an exact match for “institutional control” in the public infractions case reports. Controlling for any spelling or cataloging errors in the public infractions reports, the second search limited results using identified NCAA bylaw 2.1, The Principle of Institutional Control and Responsibilities, and its subparts as well as bylaw 2.8, The Principle of Rules Compliance, and its subparts.

## **Methodology**

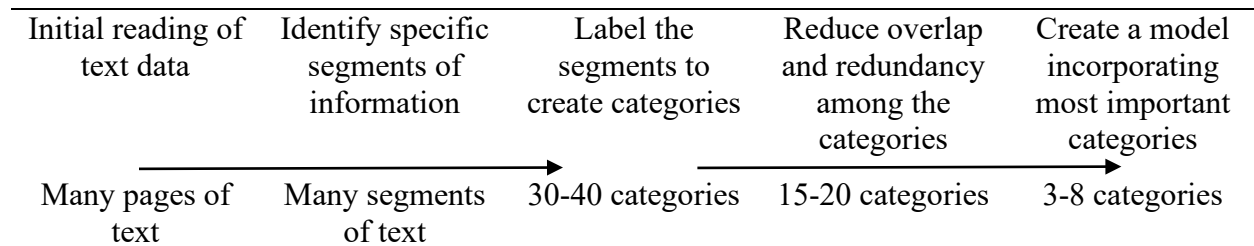
This study explored instances of lack of institutional control findings at the Division I FBS level. Given the lack of a concrete definition of what constitutes lack of institutional control and the absence of research surrounding findings of lack of institutional control, the study was structured with a general inductive approach. An inductive approach aims to develop an

understanding of complex data through themes or categories derived from the raw data while allowing research findings to emerge from those themes. As a result, the starting point for the research was to read and review the 66 public infractions case decisions that included a finding of a lack of institutional control to begin identifying similarities and patterns.

Thomas (2006) described a general inductive approach strategy consisting of five steps: initial reading of the text data, identification of specific text segments, group the text segments to create categories, and creating a model incorporating the most important categories which he adapted from Creswell (2002).

**Figure 5**

The coding process in inductive analysis



*Note:* From Thomas, D. R. (2006). A General Inductive Approach for Analyzing

Qualitative Evaluation Data. *American Journal of Evaluation*, 27(2), 237–246.

The five steps described by Thomas (2006) were followed to develop themes from the public infractions case decisions. At the same time, this study borrows from a content analysis approach. Content analysis enables the research to also include counting or frequency of text which provide important context and support to the categories and themes created (Krippendorff, 2004).

At the beginning of the data analysis process, the text from each of the public infractions case decisions were reviewed several times to begin to get an understanding of what text segments were relevant to the study. The qualitative software program ATLAS.ti was used to

organize the text segments and for initial coding. Case decisions were reviewed and coded in chronological order to help establish perspective over time. Throughout the data analysis, the case decisions were re-read, re-coded and categories adjusted as appropriate as additional cases and text were added to the process.

As the data analysis process moved from categories to the final themes, trustworthiness was established using stakeholder or member checks. For this study, practitioners with experience working in Division I FBS compliance offices were consulted about the emerging categories and themes and provided the opportunity to comment. The comments were used to refine the data analysis process. Ultimately, the text segments were reduced to three categories: (1) format characteristics of the public infractions case reports, (2) penalties resulting from lack of institutional control violations, and (3) the rationale or underlying violations for lack of institutional control findings. From those categories, the themes described in the next chapter emerged.

## CHAPTER IV

### **Results of the Study**

This chapter presents the findings of the research. The purpose of this qualitative study was to examine characteristics of NCAA infractions cases that allege or find lack of institutional control at Division I FBS institutions using public infractions case reports. Specifically, the research intended to provide insight into how infractions case decisions have changed over time and examine characteristics of cases that found a lack of institutional control. Accordingly, descriptive information related to the cases examined is presented. Specifically, the descriptive findings include a description of the frequency of when institutional control violations were alleged, case decisions by time period, and the length of case decisions over time.

Following the presentation of the descriptive findings, the research findings relevant to the research questions: (1) what are the characteristics of lack of institutional control cases and (2) how have the characteristics of lack of institutional control cases changed over time are presented as the three themes that emerged. The first theme relates to the legalization of the case decisions over time. The second theme looks at the characteristics and penalties associated with lack of institutional control cases. Finally, the third theme considers the nature of the underlying violations and role in the Committee on Infractions decisions' in finding lack of institutional control violations.



## **Descriptive Findings**

The NCAA's LSDBi database returned 79 infractions case decisions meeting the search criteria beginning with the first applicable infractions case decision published in 1962 and concluding with the last applicable infractions case decision published in 2017. The 79 infractions case decisions included over 1500 pages for review. Overall, 383 major, Level I, or Level II infractions cases are published in the database for the relevant classification of institutions. Accordingly, approximately 20 percent of the infractions cases at the Division I FBS level since the origination of the NCAA Enforcement program in 1952 have involved allegations of lack of institutional control. Further, of the 79 cases where lack of institutional control was alleged, the violation was found to have occurred in 66 cases. In other words, approximately 84 percent of the time the violation was alleged to have occurred, the Committee on Infractions found that the violation, did in fact, occur as alleged.

### ***Dates of Cases***

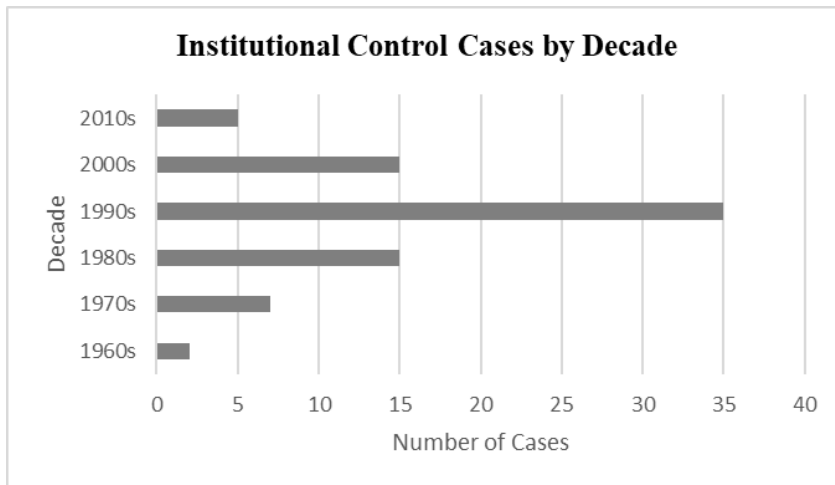
The first infractions case decision involving a lack of institutional control violation was published in 1962. Ten years earlier the NCAA established an enforcement division under the organization's new executive director, Walter Byers. The first infractions case, which did not involve an allegation of institutional control, was published a year later in 1953. In fact, there were 33 more infractions case decisions published before the first case involving an allegation of a lack of institutional control was published.

While only two cases involving lack of institutional control were published in the 1960s, that number increased some during the 1970s. A total of seven case decisions involving institutional control allegations were published. Another increase in the number of lack of

institutional control cases came with the next decade with total of fifteen cases involving lack of institutional control were published during the 1980s.

**Figure 6**

*Lack of institutional control cases by decade*



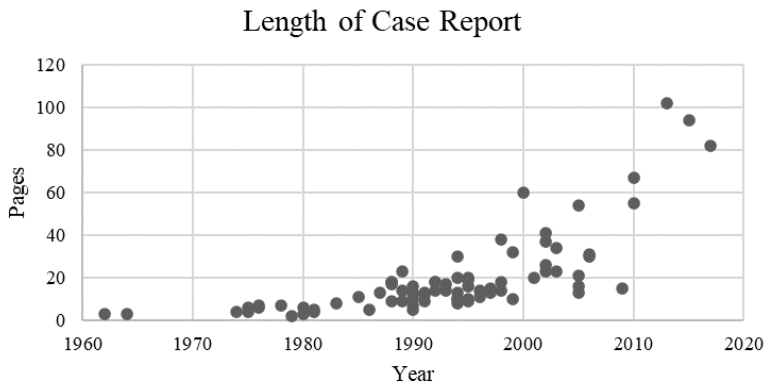
The 1990s saw far more infractions cases involving lack of institutional control allegations than any other decade. During the 10-year span of the 1990s, 35 of the total 79 lack of institutional control cases were published. Following the 1990s, a decline in cases started. There were 15 cases during the 2000s, but only four of those were after 2005. A total of five cases were decided in the 2010s but none since 2017.

***Length of Case Decisions***

From the initial public infractions case reports involving a lack of institutional control allegations to the most recent case reports, the length of the decisions has increased significantly. Each of the first two public infractions case decisions citing lack of institutional control totaled three pages each. Comparatively, the most recent three public infractions case reports involving lack of institutional control have each exceeded 80 pages.

**Figure 7**

*Length of public infractions case reports*



While the length of the public infractions case reports can be attributed in some degree to the number of violations included in the case, a comparison of cases over time suggests the volume of violations is not the primary cause of the increased decision length.

One of the significant early infractions cases involved the University of Clemson. The public infractions case decision for that case was published in October 1975. The Committee on Infractions found 15 different violations involving the University of Clemson, including lack of institutional control. Despite the extensive violations committed, the public infractions case decision was a total of six pages.

Just over ten years later, four public infractions case decisions were published in 1988. In the first case, the University of Kansas was found to have committed twelve violations that were detailed in a 9-page public infractions case report. Meanwhile, the University of Minnesota committed 19 violations which were detailed in a 17-page public infractions case report. Similarly, the public infractions case report detailing the University of Oklahoma's 20 violations totaled 18 pages. In another 18-page public infractions case report, the NCAA detailed nine violations committed by Texas A&M University. In just over ten years, public

infractions case reports for a similar number of violations expanded approximately three times in length.

Approximately another ten years later, there were again four infractions case decisions published in 2002. The NCAA published public infractions case reports involving the University of Alabama, University of California, University of Kentucky, and University of Minnesota for 3, 8, 4, and 13 violations, respectively. The length of those public infractions case reports totaled 37, 23, 41, and 26 pages. Again, just over ten years later and the public infractions case reports had approximately tripled in length.

Finally, the last four public infractions case reports involving lack of institutional control violations were published in 2010, 2013, 2015, and 2017. The University of Southern California infractions report detailed 7 violations in 67 pages. Meanwhile, the University of Miami infractions report, published in 2013, and the Syracuse University infractions report, published in 2015, each described 12 violations. Those 12 violations were articulated in 102 pages and 94 pages respectively. The last infractions report involving a lack of institutional control was the University of Mississippi on December 1, 2017 in which 16 violations were detailed over 82 pages.

### **Theme One: Legalization of Public Infractions Case Decisions**

The first theme that emerged in reviewing the sample set of public infractions case decisions was the evolution of the style of publication and included information to a style that more resembles publicizing a court decision. A court decision typically includes descriptive information including the parties to the case, date of publication, court in which the case was heard, and locator information like the reporter volume and page. Following the descriptive information, a court decision includes a procedural history, determinative facts and judge dicta,

and reasoning of the decision. Generally, the reasoning of the decision cites the applicable rule, proof of that rule, and application of the facts identified in the particular case to that rule. As facts are applied to rules, legal elements often emerge. Often as part of the reasoning for a decision, a court case will cite other precedent cases. Concluding the anatomy of a court decision is the holding, presiding judge or judges, and any concurring or dissenting opinions. The NCAA public infractions case decisions evolved from simple recitation of findings to documents that incorporated more of these elements of court decisions.

### **Initial Decisions**

The first two public infractions case decisions involving lack of institutional control bore little resemblance to court decisions. The University of Colorado public infractions decision, published in 1962, and the Michigan State University public infractions decision, published in 1964, came a decade after the NCAA created an enforcement division under the purview of the national office. The published decisions were brief statements that did little more than acknowledge the findings of the Committee on Infractions. The lone substantive similarity between those infractions decisions and a court decision was the reference to a governing rule.

The University of Colorado was the first institution to be cited for a Lack of Institutional Control by the Committee on Infractions. On April 27, 1962, the NCAA published the institution's infractions case decision opening with a statement simply acknowledging there was an investigation and report of findings:

WHEREAS, the NCAA Committee on Infractions has investigated alleged violations of NCAA legislation by the University of Colorado, Boulder, and has reported its findings to the Council

The opening resolute statement in the Michigan State University infractions case two years later was an exact replication of the above statement in the University of Colorado decision.

Neither decision contained any procedural history relating to how the investigation initiated, what allegations were made or investigated, how the case came to the jurisdiction of the Committee on Infractions, or the process for investigation.

In finding that the University of Colorado violated the principles of institutional control, the infractions decision contained a single sentence resolution supporting the finding:

WHEREAS, the Council has found the University of Colorado to have violated the principle of institutional control and responsibility (Article III, Section 2, of the NCAA Constitution), and the legislation prohibiting outside recruiting funds (Article VI, Section 2, (a), of the NCAA Bylaws), in the following instance: (1) There existed in connection with the University of Colorado football program during the years 1959-61, an outside recruiting or “slush” fund which was conceived and originated by the university’s head football coach and operated under the immediate supervision of an assistant football coach.

The finding in the Michigan State infractions decision was published in the same format as the University of Colorado decision.

WHEREAS, the Council has found Michigan State University to have violated the principle of institutional control (Article III, Section 2, NCAA Constitution), and that prohibiting outside recruiting funds (Article VI, Section 2, NCAA Bylaws), in that there existed in connection with the Michigan State University football program prior to and during the years of 1957-59, an outside secret fund for providing improper financial assistance to student-athletes.

Both decisions included the reference to the then governing NCAA rule requiring institutional control, Article III, Section 2, NCAA Constitution similar to a court decision identifying an applicable law or statute. Both decisions cited other bylaws as the underlying reason for the lack of institutional control violation. However, neither infractions case decision distinguished why these violations of those underlying bylaws also constituted violations of institutional control rather than just the underlying bylaw violation. In addition, neither infractions case decision provided a significant application of the facts identified as part of the investigation to the rule requiring institutional control so a reasoning or violation elements could be identified. Finally,

the members of the Committee on Infractions deciding the case were not a part of the published decision.

### **Procedural History Origins**

Following the descriptive information relevant to the case, a court decision continues with a description of the procedural history of the case. The procedural history of a court case includes how the case got to the present court including which party may be appealing the decision, if applicable. The first evidence of procedural history being included in NCAA infractions case decisions involving institutional control came with the announcement of the decision in the case against the University of Florida on January 13, 1985.

The University of Florida infractions case decision was published nearly 23 years after the initial institutional control case involving the University of Colorado in 1962. In between the University of Colorado and the University of Florida infractions case decisions, there were 13 other infractions case decisions published. The format of the public infractions case decision had changed from the “whereas resolution” format in the first two cases to a document consisting of a press release followed by a summary of the penalties and similar summary of the violations.

The articulation of the procedural history in the 1985 University of Florida case came in the press release. As part of the procedural history, the beginning and end dates of the investigation were noted, the dates of the hearing before the Committee on Infractions were provided, and the dates of appeals of two of the involved coaches were included:

The NCAA’s investigation of the case began in November 1982 and concluded in August 1984 after members of the university’s football coaching staff were confronted with substantial information concerning their alleged involvement in serious violations of NCAA rules. The university’s hearing before the NCAA Committee on Infractions occurred on September 21-22, 1984, and subsequent appeals submitted by the university and two assistant football coaches in the case were considered by the NCAA Council on January 13, 1985.

The piece of the relevant procedural history absent from the decision in the University of Florida case was how the information came to the NCAA for investigation.

The University of Wisconsin case decision published in 1986 also contained a procedural history in the press release portion of the decision. The University of Wisconsin case's procedural history included the method in which the information arrived at the NCAA, self-reported by the university following a newspaper report, but did not include the date of a hearing:

The university initiated the investigation of this case in July 1985 as a result of newspaper articles indicating that a representative of the university's athletics interests had guaranteed a personal bank loan on behalf of a men's basketball team member in 1982. The university's report of its findings was forwarded to the NCAA enforcement staff for review and subsequently was considered by the Committee on Infractions.

Following the publication of the University of Wisconsin decision, the format in which infractions case decisions were released publicly changed to a three-part report format without any sort of press release. The next published case decision, released on June 17, 1987, included the case's procedural history in the introduction portion of the decision:

On June 3, 1987, the NCAA Committee on Infractions reviewed the allegations contained in the NCAA's official inquiry issued to the University of Texas, Austin, on March 19, 1987, and the university's written response to those allegations.

The procedural history in this case included the start of the inquiry, date of the determination, and method for consideration of the case in a similar manner to the University of Florida decision two years earlier.

While it took over 20 years to include any procedural history as part of infractions case decisions, the level of detail provided in the procedural history increased substantially just three years after the initial inclusion of procedural history. On November 1, 1988, the infractions



decision in the University of Kansas case was published and included two paragraphs of procedural history:

In October 1986, a confidential informant telephoned an NCAA special investigator and arranged a meeting during which the informant reported possible violations of NCAA legislation in the recruitment of a highly visible transfer student-athlete by the University of Kansas. In November 1986, a member of the NCAA enforcement staff met with the then associate director of athletics at the University of Kansas to inquire whether this same prospect ever enrolled or attended classes at the university. This inquiry was made in order to determine the student-athlete's eligibility at another institution. When the associate director of athletics discussed this inquiry with the then men's head basketball coach, the head coach, for the first time, reported his involvement in the violation described in Part II-E of this report to the university's associate director of athletics. In a letter dated December 11, 1986, the university reported this violation to the NCAA and to the Big Eight conference.

The enforcement staff interviewed the young man who was involved in this violation on January 7, 1987, and other possible violations of NCAA legislation in addition to those reported by the original informant and the university's then men's head basketball coach were reported. On May 28, 1987, the NCAA enforcement staff sent a letter of preliminary inquiry to the university. A letter of official inquiry followed on June 17, 1988, and on September 2, 1988, the university filed its response to the NCAA's inquiry. The Committee on Infractions met with university representatives, the former men's head basketball coach and two former men's assistant basketball coaches on September 30, 1988, to consider the university's response to the alleged violations. Following this hearing, the Committee on Infractions deliberated in private and found that former members of the men's basketball coaching staff and representatives of the university's athletics interests who were closely affiliated with the men's basketball program had violated NCAA legislation.

Adding the procedural history provided a level of transparency into the origins and timing of the infractions case. In addition, the addition of the procedural history meant the infractions case decisions took a step toward looking more like a court decision.

## **Reasoning**

Court reasoning in a decision can be divided into three distinct parts. The first part of the reasoning is the rule. The rule is the principle from a source of law like a statute or case law that is being applied to the case to reach a decision. The second part of the reasoning is the explanation of the rule and the reason that rule should be applied in the case being considered.

Finally, the last part of reasoning is the application of the rule identified as the appropriate rule to the facts present in the case.

### ***Rule***

Beginning with the publication of the initial lack of institutional control cases, the case report cited the NCAA rule being cited for the violation which is the first part of reasoning. The citation was simply a notation of the applicable rule at the conclusion of the sentence that the rule had been violated. For example, in the first case involving the University of Colorado in 1962, the institutional control rule was housed in the NCAA Constitution as cited in the case decision:

WHEREAS, the Council has found the University of Colorado to have violated the principle of institutional control and responsibility (Article III, Section 2, of the NCAA Constitution)

That method of citation is consistent in case decisions published throughout the time period in the study. Even though the format or specific cite may have changed over the course of time, the reference was still present. For example, the decision in Mississippi State's case decision in 1995 included the new format for referencing the NCAA Constitution, third article and section 2:

NCAA Constitution 3-2 [institutional control] – The involvement of certain representatives of the University's athletic interests in the violations set forth in this case demonstrates that Mississippi State University did not adequately exercise institutional control and responsibility over these individuals.

Even in the most recent case decisions, the citation to the applicable rule has not changed even though the actual rule involving institutional control has moved. For example, in the University of Mississippi infractions case decision, the most recent case involving lack of institutional control, published in 2017, the institutional control rule is in a different place in the Constitution but the format for citation remains the same.

P. LACK OF INSTITUTIONAL CONTROL [NCAA Division I Manual Constitution 2.1.1, 2.8.1 and 6.01.1 (2009-10 and 2011-12 through 2015-16); 6.4.1 and 6.4.2 (2009-10 and 2012-13 through 2015-16)]

Over five years, Mississippi failed to exercise control of the conduct and administration of its football program because football staff members felt they could continually commit recruiting rules violations, not report known violations and involve boosters in violations. The football program was able to involve boosters in violations because Mississippi fostered a culture that enabled unconstrained and undeterred booster involvement in the recruiting process. The institution disagreed that it lacked control of the football program. The panel concludes that Level I violations occurred.

### ***Rule Proof***

The second component of reasoning is the explanation of the rule and rationale for applying that specific rule to the case. This piece of reasoning may be more important in a legal context which has different jurisdictions requiring the application of a rule, especially from case law, to the particular jurisdiction for the case. In the context of an NCAA infractions case, there is only one set of rules applicable to the institution's Division. Therefore, the only variance to the choice of rule is if that rule changes over the course of the investigation.

The actual bylaw requiring institutional control is simplistic and somewhat vague in nature. As a result, even in cases where the investigation covers a significant number of years it is not likely that the text of the institutional control itself changed in that time. The only case examined that contained a year specific cite was the most recent case involving the University of Mississippi where the cite appears to have been different based on the years.

P. LACK OF INSTITUTIONAL CONTROL [NCAA Division I Manual Constitution 2.1.1, 2.8.1 and 6.01.1 (2009-10 and 2011-12 through 2015-16); 6.4.1 and 6.4.2 (2009-10 and 2012-13 through 2015-16)]

Since the institutional control rule changes so infrequently, it is difficult to determine if the University of Mississippi case is the first one where the case decision references specific years or whether it was simply the first time it was necessary.

### ***Rule application***

The last part of reasoning, the application of the rule identified as the appropriate rule to the facts present in the case in order to reach the decision issued, is where NCAA infractions case decisions have evolved significantly over time. Initially, infractions case decisions had no support for the finding. The decision was published as the violation occurred without any determinative facts included or application of those facts to the requirement that the institution exercise control over its athletics program. The lack of determinative facts or application of those facts to the rules continued from the initial case decisions in the 1960s into the 1970s.

Decisions in the Illinois (1974), Clemson (1975), Mississippi State (1975), Michigan State (1976), Kentucky (1976), and Oklahoma State (1978) cases all used substantively the same language:

NCAA Constitution 3-2 [institutional control] – The involvement of certain representatives of the University’s athletic interests in the violations set forth in this case demonstrates that Mississippi State University did not adequately exercise institutional control and responsibility over these individuals.

Other than identifying booster conduct contributed to the lack of institutional control finding, the decision language provided no facts, what that conduct was for example, and, therefore, no application of those facts to the rule.

With the publication of the decision in the University of Oregon case in 1981, case decisions contained a few relevant facts for the first time.

NCAA Constitution 3-2, 3-6-(a) and Bylaw 1-5-(a) [institutional control, ethical conduct and use of funds] – In March 1978, an assistant football coach refunded unused airline tickets that were originally charged to the university’s athletic department in order to establish a “secret” travel account at a travel agency; further, this “secret account was administered by this assistant football coach, the head football coach and a former assistant football coach for athletic purposes, including payment of recruiting expenses without the approval, knowledge or control of the university.

While some relevant facts were included, there is little application of those facts to the rule. The extent of the application of the facts to the rule is that the fund was secret and therefore not under the control of the University.

In 2000, the University of Minnesota infractions case decision was released and contained a specific section devoted to Committee rationale. The section of the decision pertaining to lack of institutional control contained two and half pages of facts supporting the lack of institutional control allegation. While the Committee rationale was extensive related to other violations outlined in the case decision, the language was vague when it came to the rationale for the lack of institutional control violation:

The committee agreed with the university and the enforcement staff on the facts contained in this finding and that violations of NCAA legislation occurred. These violations involve institutional responsibility only; no staff member was named.

So, although there was an acknowledgement in the case decision that the facts should be tied to the rule, the actual rationale detailed in the decision failed to do so.

Following the Minnesota case decision in 2000, a more robust Committee rationale for lack of institutional control violations emerged. In the next Minnesota case, published two years later in 2002, the case decision included two and half pages of Committee rationale detailing why the facts presented constituted lack of institutional control. In the most recent cases, the Committee rationale, although not separately delineated any longer, contains significant amounts of detail regarding the facts and application of those facts to the rule. The increased level of detail related to the Committee's reasoning is evidenced in the lengthy case decisions which have exceeded 50 pages in recent cases.

The detailed explanation of the facts and application of those facts to the rule requiring institutional control demonstrates the development reasoning applied in institutional control case.

While decisions started with a simple statement that the violation occurred and applicable rule cite, additional factual information was added over time. Currently, substantial portions of case decisions are dedicated to the determinative facts and application of the rule in a similar manner as is expected in legal decisions.

### **Use of Precedent**

Legal decisions often cite case precedent, prior decisions by that court or other courts that were decided based on similar facts or legal issues. The rationale for using case precedent in reaching decisions is that it provides a level of predictability, fairness and efficiency. Decisions that are based on precedent provide notice to individuals about what their rights and obligations are in a given circumstance. In the context of NCAA infractions case decisions involving institutional control, precedent would serve to provide institutions with notice about what their obligations are in exercising control over and responsibility for their athletics programs.

Despite the benefits of using case precedent in the adjudication decision-making process, the Committee on Infractions case decisions did not cite precedent until 2013. The first time case precedent is cited as part of a lack of institutional control decision is in the University of Miami case:

As the committee has stated in previous infractions cases, institutions have a greater responsibility to monitor athletics representatives with “insider” or favored status. See University of Alabama, Case No. M173 (February 1, 2002), University of Arkansas, Case No. M183 (April 17, 2003), University of Michigan, Case No. M191 (May 8, 2003), University of Central Florida, Case No. M361 (July 31, 2012). In some of those cases, the committee specified that a failure to monitor and control these athletics representatives is demonstrative of either an institutional failure to monitor (Arkansas) or a lack of institutional control (Central Florida). With regard to the issue of institutional responsibility pertaining to “insider boosters,” the committee wrote the following in the Alabama decision:

But those athletics representatives provided favored access and “insider” status, frequently in exchange for financial support, are not the typical representative. Their favored access and insider status creates both a greater university obligation to monitor

and direct their conduct and a greater university responsibility for any misconduct in which they engage.

While the use of precedent was new in the University of Miami case, the cases the decision referenced were not all contemporaneous with some precedent cites dating back over ten years.

Interestingly, the addition of case precedent cites came following two newsworthy events for the NCAA enforcement staff. First, responding to criticisms of consistency and fairness, the NCAA adopted the use of a penalty matrix when deciding penalties for NCAA violations. The penalties for cases were dependent on the classification of the case by the Committee on Infractions with the most severe penalties being for Level I, Aggravated cases. In addition to the introduction of the penalty matrix, the NCAA enforcement staff was accused of investigative misconduct during the course of the investigation into the University of Miami. The allegations resulted in the delay of the institution's infractions case, an external review of the NCAA enforcement staff involved, and ultimately a new individual leading the NCAA's enforcement division.

### **Theme Two: Dilution of Lack of Institutional Control**

The second theme that emerged in reviewing the sample set of public infractions case decisions was a dilution of the lack of institutional control standard and violation over time. The dilution theme is evidenced by two trends in the cases where a lack of institutional control was found by the Committee on Infractions. First, the sheer number of lack of institutional control findings has diminished. After hitting a peak of 35 cases during the 1990s, the most recently concluded decade saw just five judgments that an institution lacked institutional control. However, examining the substance of the lack of institutional control violations reveals the substantive basis for finding a lack of institutional control has eroded over time as well.

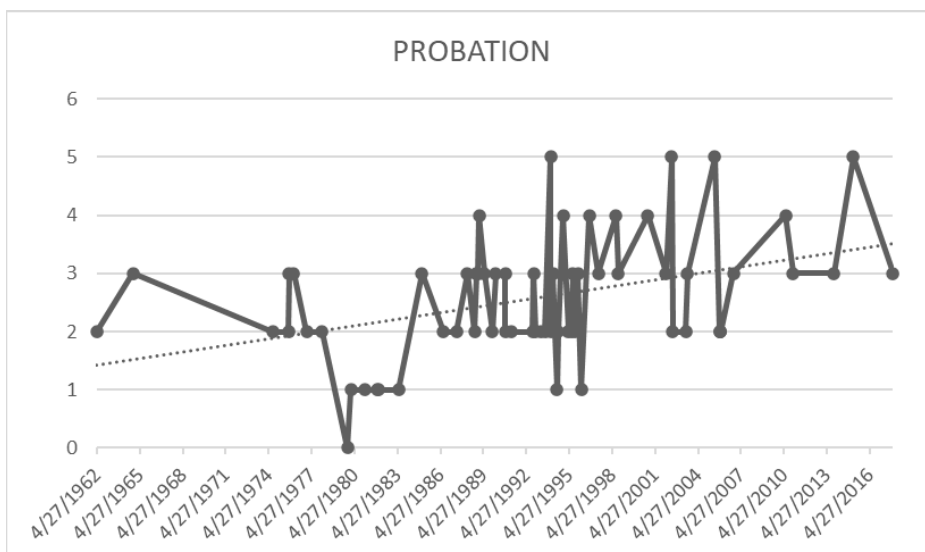
In addition to dilution showing in the number and substance of lack of institutional control violations, dilution is evident in the penalties associated with lack of institutional control cases. There have been some variations in penalties over the span of infractions cases. For example, the vacation of victories for participation of ineligible student-athletes is a comparatively new penalty that really only started to emerge in the 1990s. However, an examination of probation periods, postseason bans, television bans, scholarship restrictions, and recruiting restrictions provides a lens through which to observe the dilution of penalties in lack of institutional control cases. Over time, the number, substantive, and associated penalties for lack of institutional control cases has diminished.

### Probation Period and Requirements

With the exception of one case, the University of Missouri in 1979, all cases where an institution was cited for a lack of institutional control violation a period of probation ranging from one year to five years was implemented. The duration of probation indicates an increasing trend line since the first lack of institutional control case in 1962.

**Figure 8**

*Length of probation*





A quick glance at the duration of probation suggests that this particular penalty has increased since the initial lack of institutional control case in 1962. However, the probation requirements imposed by the Committee on Infractions have varied since the initial case.

Today, probation, in and of itself, requires an annual written report to be filed with the Office of the Committee on Infractions. The language in the case decision requiring the annual report is essentially boilerplate language. Further, the reporting requirement often has little to do with nuanced findings in the case instead painting with a broad brush in terms of high-level topics. In the University of Mississippi case from 2017, the case report required the institution to:

Continue to develop and implement a comprehensive educational program on NCAA legislation to instruct the coaches, the faculty athletics representative, all athletics department personnel and all institution staff members with responsibility for NCAA recruiting and certification legislation. File with the OCOI annual compliance reports indicating the progress made with this program. Particular emphasis shall be placed on ethics training for the football staff, training on recruiting rules for the football staff, ethics training for institutional boosters and recruiting rules presentations to institutional boosters.

The decision requires a report articulating rules education efforts being the focus despite the case report highlighting that appropriate rules education had been provided to involved staff. The result is that the annual reporting requirement is neither a punitive punishment associated with probation nor a substantive check to ensure similar violations have not continued which might demonstrate a persistent lack of institutional control.

Comparatively, at prior times in history, probation has included on-site inspection by members of the NCAA staff. The implementation of the on-site inspection requirement varies in some of the cases but is mostly present until the end of the 1990s. In subsequent years no on-site inspections were included as a condition of probation.

In a handful of case decisions in the 1980s and 1990s, the on-site inspection was randomized over the duration of probation. The decision in those cases included the probation

condition specifying “a periodic in-person monitoring system and written institutional reports.” The requirement that the institution be subject to period in-person monitoring was in addition to required institutional reports.

In other cases, the on-site monitoring condition of probation was more definite, but still present. There were cases that imposed the on-site inspection during each year of the probationary period. For example, the decision in the University of Wisconsin case in 1986 required an in-person visit at the conclusion of each year of probation.

At the conclusion of each probationary year, the NCAA enforcement staff shall review the athletics policies and procedures of the university, which shall include an in-person visit to the university’s campus.

Similarly, in the University of Florida case decided in 1985, a condition of probation was an on-site inspection prior to the end of the two-year probation term:

Prior to the end of the second year of probation, there shall be a second on-site inspection by a member of the NCAA staff to ensure that practices are in compliance with NCAA rules. Should the on-site inspection indicate questions about whether procedures are adequate to ensure compliance, the term of probation and accompanying sanctions may be extended for one year by the Committee on Infractions.

Failure to satisfy the NCAA staff during the on-site inspection could result in the extension of the probationary period.

In addition to the on-site inspection requirement, specific audits were implemented in some case decisions as a probation condition. The audit requirement was imposed in addition to the familiar annual reporting requirement and permitted the NCAA staff to review information specific to violations previously committed by the institution. In addition, the audit requirement required institutions to actually collect the information, rather than just outlining educational efforts, and review for compliance with NCAA rules.

The Committee on Infractions released the case decision for the University of Kansas case in 1988. Violations in that case included compensation provided to a student-athlete for work that was not performed. As a result, during the probationary period the institution was required to submit an annual report. As indicated in the public infractions case decision report the institution was required to include in its report:

1. A full audit of the summer jobs program in which its student-athletes are involved.
2. A report on wages and salaries paid to student-athletes employed in summer camps at the university or summer camps operated by members of the university's athletics staff.
3. The university's compliance program activities for that year.

In contrast to the general annual report currently required, the University of Kansas had to submit full and specific information related to employment compensation for student-athletes which tied directly to the violations present in the case.

Similarly, the University of Oklahoma public infractions case report published in the same year detailed also related to compensation to student-athletes for work not performed. Further, violations related to the provision of an automobile to a student-athlete and student-athletes selling their complimentary admissions were part of the case. As a result, the annual reporting condition of the institution's probation term included the requirement that the institution also provide:

1. A full audit of the summer jobs arranged for student athletes.
2. A full audit of all admissions and tickets to football games owned, possessed or controlled by student-athletes.
3. The steps taken to implement a rules compliance program in the athletics department.
4. An audit of automobiles owned, leased or registered to members of the football team, including method of appropriate payments.

On occasion, the Committee on Infractions required the institution to obtain and submit outside audits as part of their probationary reporting requirements. To illustrate, in 1990 the University

of Illinois public infractions case report was published. One of the reporting requirements of during the probationary period necessitated the institution obtaining outside audits;

The athletics department will implement an extensive program of rules education and compliance monitoring for the men's basketball program, which will include special rules education programs, monitoring recruiting procedures and *outside audits*.

The outside audit requirement provides a review from outside the institution, but the submission of the audit results still permitted NCAA staff to review the findings during the probation period. Although the length of the probationary period has trended towards a longer duration in recent Committee on Infractions decisions involving institutional control violations, the specific requirements associated with that probationary period have diminished over recent history. Requirements of on-site inspection, whether at specific intervals or random occasions during probation, and detailed audits related to the activities that resulted in violations have been replaced by a generalized annual reporting requirement. In some cases, that general annual reporting requirement has little association with the specific facts of an infractions case that led to the lack of institutional control finding.

### **Postseason Ban**

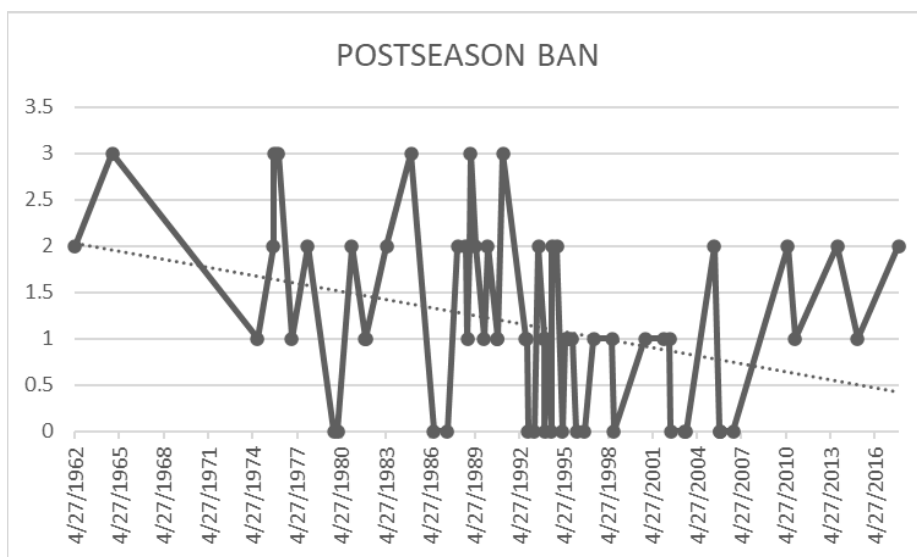
One of the consistent penalties for lack of institutional control violations, either implemented or discussed, in public infractions case reports is a postseason ban. Postseason bans prevent the involved sport from participating in NCAA Championships, and potentially Conference championships depending on conference rules, for a prescribed period of time. A postseason ban obviously affects participation opportunities. However, if implemented for multiple years a postseason ban can also hinder recruiting activities affecting future performance as well. Finally, for revenue sports, a postseason ban is generally accompanied by a forfeiture of

the institution’s revenue share. As a result, a postseason ban is considered one of the more severe penalties at the disposal of the Committee on Infractions.

Postseason bans were included as a penalty in approximately 70 percent of lack of institutional control cases. Most frequently, postseason bans range from one to three years. The trend line for the length of a postseason ban penalty is declining.

**Figure 9**

*Length of postseason bans*

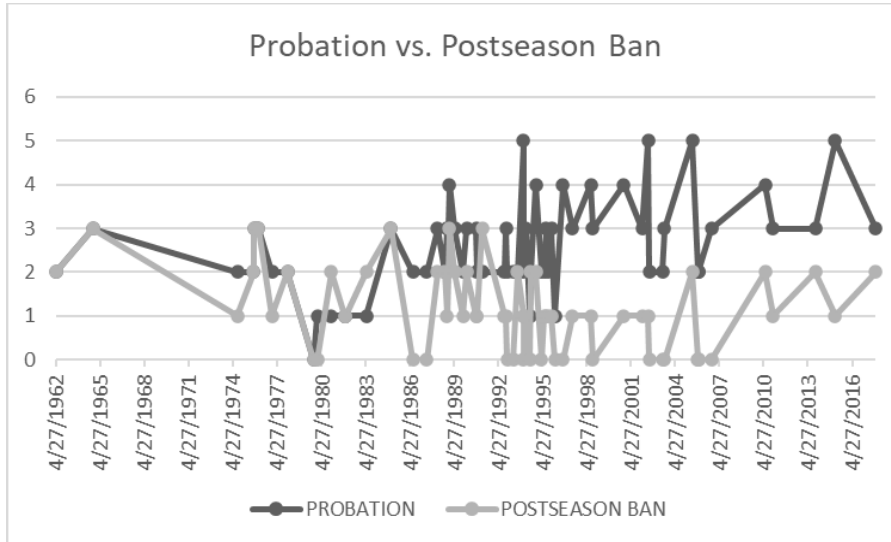


Notably, a three-year postseason ban has not been prescribed since the University of Michigan case decided in 1991. Even in that case, one year of the postseason ban was suspended due to mitigating circumstances. Further, while there was only one lack of institutional control case that did not result in a postseason ban in the first 24 years of the NCAA enforcement program and that was a case where the institution had previously received a two-year post season ban and was back before the Committee on Infractions which simply resulted in an extended period of probation. Comparatively, 13 of the lack of institutional control cases in the last 24 years did not result in a postseason ban.

Early in the enforcement program an institution's probation term usually matched its postseason ban duration. However, over time the two periods have diverged as the duration of postseason bans decreased.

**Figure 10**

*Length of probation vs length of postseason ban*



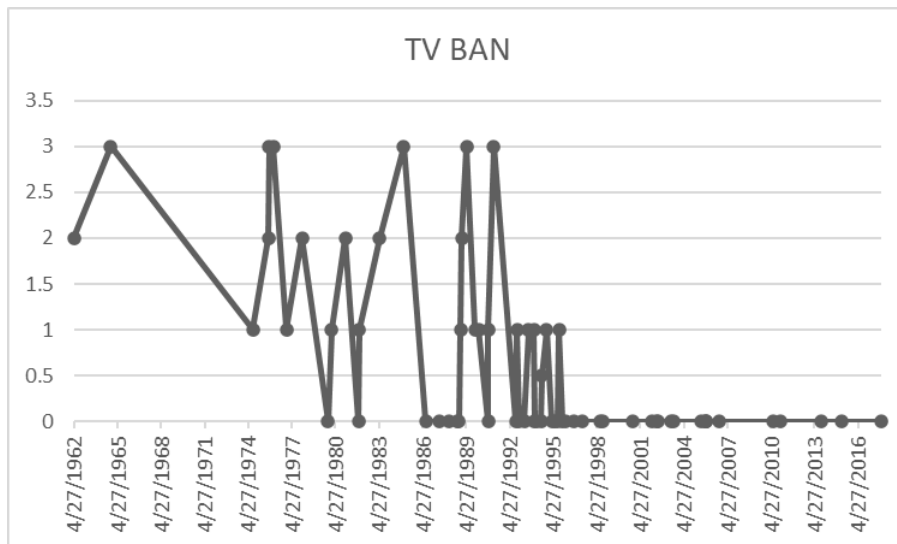
Charting an institution's duration of probation and the duration of its postseason ban together shows the increasing divergence.

**Television Ban**

Another significant punitive punishment available to the Committee on Infractions was to prohibit institutions from participating in televised athletics contests. Early in the NCAA enforcement program, television bans were prevalent in lack of institutional control cases. In fact, it was not unusual for an institution to receive a multi-year television ban that coincided with the length of probation and, often, a postseason ban as well. However, the television penalty has not been a punishment in a case since 1995.

**Figure 11**

*Length of television ban*



There are probably a number of factors that have resulted in the death of the television ban. First, prior to 1985 the NCAA controlled television rights for all institutions making implementing a television ban more simplistic. However, following the Supreme Court's decision in *NCAA v. Board of Regents (1984)* television rights were decentralized. Nevertheless, the NCAA continued to use the television ban as a penalty for nearly ten years so the Court decision is not the sole reason for its elimination.

Another factor in eliminating the television ban as a penalty could be the increased number of television options and the revenue associated with those contracts. As television options expanded, the implementation of the penalty likely became more difficult. Further, as the penalty applied only to live broadcasts, institutions were still able to air replays of games. In addition, as revenue increased the penalty may have become disproportionately more punitive than originally intended.

Regardless of the rationale, the reality remains that television bans were once a prominent penalty in lack of institutional control cases prior to 1995. The impact would be different except

that no new penalties were introduced to replace the television ban. In addition, as discussed during this theme of Chapter 4, other penalties were not increased to compensate for the removal of the television ban penalty.

### **Scholarship Reductions**

Another of the penalties the Committee on Infractions has used extensively in lack of institutional control cases is to limit the number of scholarships an institution's team can provide in a given year or years. The severity of a scholarship reduction penalty can be measured both in the number limited but also the duration of time. Some restrictions were limited to a single year while others spanned multiple years. Scholarship reductions were part of the penalties in all but 14 of the cases involving lack of institutional control violations.

Since scholarship restrictions vary by sport, the best way to view the use of scholarship restrictions as a penalty for lack of institutional control violations over time is to group cases by sport. The most prevalent sports involved in lack of institutional control cases are football and men's basketball. As a result, those two sports are used to illustrate the application of scholarship reductions.

#### ***Football***

First, NCAA bylaws limit football scholarships in two categories. There is a limit on initial scholarships, most simply described as new enrollees, and similarly a limit on overall scholarships, the total number of student-athletes on a scholarship. Generally, a reduction in initial scholarships, currently limited to 25, is more impactful than limiting overall scholarships, currently limited to 85. A comparison of scholarship reductions over time reveals generally less significant reductions in more recent cases.



To illustrate, Michigan State University received significant scholarship reductions over a two-year period as a penalty for their violations when the case decision was published in 1976.

The University will be permitted to award only 20 new football scholarships during the 1976-77 academic year rather than the allowable 30, and the total number of new football scholarships the University will be permitted to award for the 1977-78 academic year will be limited to five less than the total initial limitation in effect for that year.

Approximately ten years later, the University of Oklahoma received similarly significant scholarship reductions as a result of their lack of institutional control violations when their case was published in 1988.

During the 1989-90 and 1990-91 academic years, the university will be limited to 18 initial grants-in-aid in the sport of football.

The Committee on Infractions held to the significant reductions into the early 1990s. For example, in the University of Mississippi case published in 1994 the Committee on Infractions imposed significant scholarship reductions for two years.

Reduction by 12 in the number of permissible initial financial aid awards in football for the 1995-96 and 1996-97 academic years.

Similarly, in the University of Miami case decision published in 1995 the institution being docked double-digit initial scholarships for each of two years.

Reduction in the number of permissible initial financial aid awards in football as follows:  
-- reduction of 13 initial scholarships during the 1996-97 academic year.  
-- reduction of 11 initial scholarships during the 1997-98 academic year.

Following the University of Miami case, the severity of the scholarship reductions imposed began to lessen.

In 1996, the Committee on Infractions published the decision in the Michigan State University infractions case. Notably, this case decision came just after the last television ban penalty a year earlier. In total, the Committee on Infractions imposed a reduction of 13 initial scholarship but spread over a two-year period:

\_ Reduction by six in the number of permissible total financial aid awards in football during the 1996-97 academic year.

\_ Reduction by seven in the number of permissible initial financial aid awards in football during the 1997-98 academic year.

The total number of scholarship reductions in the Michigan State infractions decision was similar to that which had been imposed during *each* year of a two-year penalty for other lack of institutional control cases.

The trend to reduce the scholarship reduction penalty continued into the 2000s. The University of Kentucky case decision, published in 2002, included three years of scholarship reductions:

The university will reduce the permissible limit of 25 initial scholarships in the sport of football in 2002-03 to 16, in 2003-04 to 18, and in 2004-05 to 22.

There are a few interesting observations regarding the decision in this case. First, although taken over a three-year period, the total scholarship reduction amounts to 19 with nine in the first year, seven in the second year and three in the third year of the penalty. Second, the institution self-imposed those penalties, not an uncommon practice, but there is no way to know if that is more than the Committee on Infractions would have imposed had they made the initial decision. Finally, the Committee on Infractions did not impose any additional scholarship penalties as it had done in prior cases.

Several years later, the University of Kansas was punished for a lack of institutional control violation. The scholarship reductions in that case were minimal as they were tailored only to incoming two-year transfer student-athletes.

The institution restricted the number of two-year college transfer student-athletes it recruited to the football program to three for the 2005 and 2006 seasons.

Similar to the University of Kentucky case decided four years earlier, this penalty was self-imposed by the institution. The Committee on Infractions did not add any scholarship reductions,

however. Functionally, the institution could still award all 25 initial scholarships so long as they were only two high school students or four-year college transfer students.

Finally, the two most recent lack of institutional control cases involving football were the University of Miami in 2013 and the University of Mississippi in 2017. Both cases included scholarship reductions. The University of Miami case had a total reduction of nine initial scholarships spread over a three-year period with the institution choosing how many reductions to use each of those three years:

Reduction in Athletics Awards. The total number of athletically related financial aid awards in football shall be reduced by a combined total of nine during the 2014-15, 2015-16 and 2016-17 academic years. The institution shall reduce the total number of athletics awards during each academic year. The institution has the option of assigning the reductions during those years.

Similarly, the University of Mississippi, whose case was decided in 2017, imposed a scholarship reduction totaling 13 initials taken over a four year period (just over two per year on average) at the institution's discretion:

Scholarship reductions: Mississippi has reduced, and shall reduce, football grants-in-aid by greater than 15% as outlined below:

Academic year 2015-16: Overall reduction: 1; Initial reduction: 0

Academic year 2016-17: Overall reduction: 2; Initial reduction: 3

Academic year 2017-18: Overall reduction: 6; Initial reduction: 4

Academic year 2018-19: Overall reduction: 4; Initial reduction: 3

Totals: 13 grants overall, 10 initial grants.

The reductions in the University of Mississippi case totaled less over a four year period than restrictions previously imposed for each year of a multi-year period.

### ***Men's Basketball***

The diminished use of scholarship reductions as a penalty is less obviously illustrated in lack of institutional control cases involving men's basketball programs. Part of the difference can be attributed to the fewer number of scholarships in the sport of basketball so the less variance in

penalties. However, examining cases over the varying period of time does reveal a change in how scholarship reductions are used as a penalty in lack of institutional control cases.

Early scholarship reductions in men's basketball were based on initial awards. For example, Clemson University could not award more than two initial scholarships in their first-year punishment and not more than three in their second year because of their infractions case decision published in 1975. In 1989, the case decision in the University of Kentucky decision was published, also with two years of scholarship reductions as a penalty. In that case, the University of Kentucky could not award any initial scholarships in the first year of punishment and, like Clemson, no more than three initial scholarships in the second year. Following those cases, the legislation changed in men's basketball so only overall scholarships were limited and there was no limit on initial scholarships.

Comparing men's basketball cases under the overall limit reveals that, much like in football cases, where penalties implemented each of multiple years trended toward the single year total being taken over several years. In other words, the total reduction and reduction per year lessened. For example, comparable cases in the 1990s, the University of Virginia published in 1992 and Baylor University published 1995, each included a penalty of a reduction of two scholarships in the first year and a reduction of two and three scholarships, respectively, in the second year. Total scholarship reductions were four and five in the two cases.

More recently, the University of Minnesota and University of Southern California were punished for lack of institutional control cases that included violations in men's basketball. In each of those cases, the institution has their scholarships reduced by one for two years. Comparatively, the total scholarship reduction was just two compared to the four and five in the

Virginia and Baylor cases. In addition, no more than a single scholarship was taken in any one year.

***Recruiting Restrictions***

Recruiting restrictions are often a penalty in NCAA infractions cases including those for lack of institutional control. Common and impactful recruiting restrictions implemented as penalties were a reduction in official (paid) visits for recruits and off-campus recruiting activities, in-person contacts and evaluations, for members of the institutional coaching staff.

The severity of these two penalties has diminished over the history of lack of institutional control cases.

***Official Visits***

Reduction in the number of official visits emerged as a common penalty in lack of institutional control cases in the late 1980s. At that time, the penalty often included a complete prohibition on official visits for a calendar year. The complete prohibition on official visits for a year was included as a penalty in eleven cases over the next four years.

**Table 1**

*Cases with Complete Prohibition of Official Visits*

<b>Institution</b>	<b>Date Case Decision Published</b>
University of Kansas	November 1, 1988
University of Kentucky	May 19, 1989
North Carolina State University	December 12, 1989
University of Illinois	November 7, 1990
University of Maryland	March 5, 1990
University of Missouri	November 8, 1990

<b>Institution</b>	<b>Date Case Decision Published</b>
University of Michigan	March 25, 1991
Clemson University	December 9, 1992
Oklahoma State University	November 4, 1992
University of Wisconsin	January 13, 1994
University of West Virginia	June 13, 1995

The last time a complete ban on official visits for a year was used as a penalty was in the University of West Virginia Case in 1995.

Beginning in 1996, there were another ten cases through the most recent University of Mississippi case in 2017 that included official visit reductions as penalties. Not only did none of those cases include a complete prohibition on official visits, most reflected reductions more in the 25 percent range of what was permissible or averaged, depending on the case.

**Table 2**

*Cases with Partial Reduction of Official Visits*

<b>Institution</b>	<b>Date of Case Decision</b>	<b>Penalty</b>	<b>Permissible</b>
Michigan State University	September 16, 1996	Reduction of 8	56 visits
University of Minnesota	October 24, 2000	Limit of 6 for 2 years	From 4-year average of 8 visits
University of Kentucky	January 31, 2002	Reduction of 11 in year 1; 7 in year 2	From 4-year average of 47 visits
University of Minnesota	July 26, 2002	10/year for 2 years	12 visits
University of Utah	July 30, 2003	Total of 13 over 2 years	12 visits
Baylor University	June 23, 2005	Limit of 8 in year 1; 9 in year 2	12 visits

<b>Institution</b>	<b>Date of Case Decision</b>	<b>Penalty</b>	<b>Permissible</b>
University of South Carolina	November 16, 2005	Limit of 50 for 2 years	56 visits
Arizona State University	December 15, 2010	Limit of 9 visits	25 visits
University of Miami	October 22, 2013	Reduction of 20%	56 visits
University of Mississippi	December 1, 2017	Reduction of 20%	56 visits

The case in the last 20 years with the most significant reduction in official visits was the University of Utah which had a total reduction of 13 official visits over a two-year period. That reduction represented about half of the permissible visits over the same time period but provided the University flexibility about when to take the penalty within that two-year period. Certainly, even that comparatively significant penalty for other cases during the same time window was still significantly less than a complete ban on official visits for a year.

### ***Off-Campus Recruiting***

The first case where off-campus recruiting restrictions were imposed on individual coaches or an entire sport staff was the Michigan State case in 1976. From that case forward, most lack of institutional control violations included an off-campus recruiting penalty. Penalties ranged from the entire staff being precluded from engaging in off-campus recruiting activity for as much as a year in duration to individual coaching staff members being prohibited for more nominal amounts of time.

In the Michigan State case, the Committee on Infractions imposed significant recruiting restrictions on two coaches:

The University shall:

- (a) prohibit a certain assistant football coach from engaging in any off-campus recruiting activities during the first calendar year of the University's probationary period;

(b) prohibit a certain assistant football coach from engaging in any recruiting activities or programs (on- or off-campus) during the University's probationary period

Similarly, the next case involving the University of Illinois published in 1974, the Committee precluded an assistant coach from recruiting prospective student-athletes for one year.

At the height of the lack of institutional control cases heading into the 1990s, there was a series of case decisions that all included a complete prohibition on off-campus recruiting for a year. The North Carolina State case, published in 1989 started the series of cases with the one-year prohibition. The University of Illinois, University of Maryland, and University of Missouri cases, all published in 1990, contained the same prohibition. Three more cases followed with the one-year prohibition on off-campus recruiting: the University of Michigan in 1991 and Clemson University and Oklahoma State University, both published in 1992.

Following the Clemson University and Oklahoma State University case decisions, no other institution had an off-campus recruiting ban for an entire year as part of the penalties as part of its case decision. In the Syracuse University case, published in 1992, the Committee implemented a lesser six-month prohibition followed by a six-month reduction.

All basketball coaching staff members shall be prohibited from engaging in any off-campus recruiting from January 1, 1993, through June 30, 1993. From July 1, 1993 through December 31, 1993, the institution shall be limited to only one member of the men's basketball coaching staff at any one time who may engage in off-campus recruiting activities (including in-person contacts and evaluations).

A couple of years later the Committee limited the penalty further when it included in the penalties for Ohio State University a recruiting prohibition only for the head coach.

The number of coaches permitted to recruit off-campus at any one time will be reduced from three to two during the July 5-31, 1994, evaluation period and from two to one during the September 9-26, 1994, contact period. In both cases, the head men's basketball coach shall be the coach who shall not recruit off-campus.



The penalties amounted to a single coach not being able to recruit off-campus for a total of less than two months while other members of the staff continued to do so.

In subsequent cases, the reduction in the number of coaches being able to recruit off-campus became the standard form of off-campus recruiting restrictions implemented by the Committee. For example, the Committee reduced the permissible number University of Minnesota's basketball staff recruiting during July for three years.

For each of the next three summers (2000-02), the university proposed to reduce the number of coaches permitted to evaluate off-campus during the summer evaluation period from three to two.

Similarly, as part of its penalties, Arizona State self-imposed a reduction in the number of permissible recruiters for the baseball staff by one for an academic year.

Reduced the number of coaches participating in off-campus recruiting for baseball from three to two for the 2010-11 academic year.

The Committee did not add to the institution's self-imposed off-campus recruiting restriction.

Finally, in the most recent case decision, the University of Mississippi self-imposed penalties prohibiting one assistant coach from recruiting off-campus for 21 days and another for 30 days.

The Committee did not add additional off-campus recruiting prohibitions for an individual coach or the staff.

### **Theme Three: Duplicitous Association Values**

The third theme to materialize in reviewing public infractions case decisions was impermissible benefits were the underlying violations that most frequently served as the foundation for lack of institutional control findings. The prevalence of impermissible benefits as the underlying violation provides an indicator of what the NCAA and Committee on Infractions values most in the Association rules. The NCAA was formed with the goal of protecting the health, safety and welfare of student-athletes following on-field deaths in the sport of football.

College athletics is part of the higher education system designed to educate and graduate students. However, neither health, safety or welfare or academic integrity violations were frequently found as the foundation of lack of institutional control violations. Instead, the Association placed more value on cases involving impermissible benefits, whether to prospective or current student-athletes, when concluding an institution lacked institutional control.

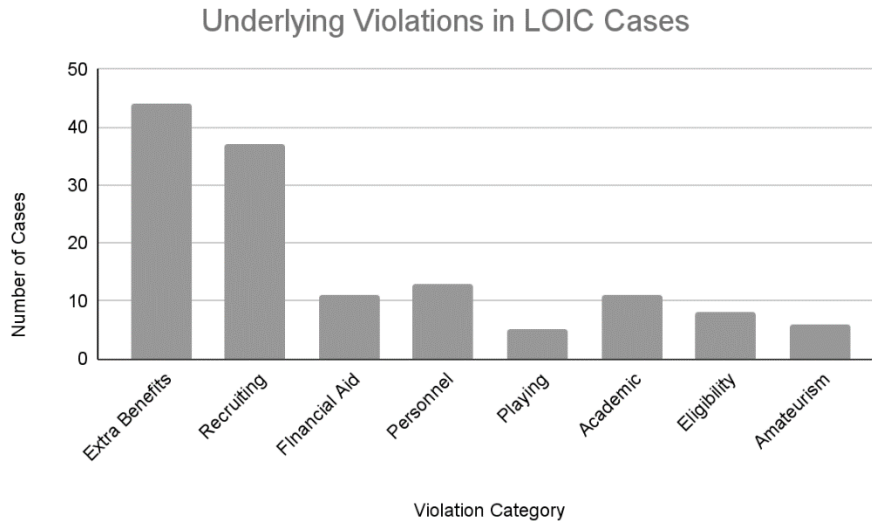
### **Underlying Violations**

Most lack of institutional control cases contained impermissible benefits violations whether in the form of extra benefits to current student-athletes or recruiting inducements to prospective student-athletes. Many lack of institutional control cases contained more than one type of underlying violation. Nevertheless, impermissible benefits to current student-athletes were a part of 44 cases while recruiting inducements to prospective student-athletes were cited in 37 cases. Comparatively, academic misconduct was cited as a violation in 11 cases. Similarly, playing seasons, the set of rules that governs how many hours student-athletes can practice per week, the number of competitions they can play during a season, and the number of days off that are required, appeared as an underlying violation in just five cases.

Exploring the types of impermissible benefits provided as extra benefits and recruiting inducements revealed that often the benefits were relatively nominal in nature. For example, benefits frequently cited included transportation, meals, lodging, clothes, access to long-distance calls, etc. The basis for the lack of institutional control findings in these cases were the institution's failure to control the involved individuals or the funds used to finance the violations.

**Figure 12**

*Type of Underlying Violations in Lack of Institutional Control Cases*



The first lack of institutional control case involving the University of Colorado in 1962 included extra benefits to current student-athletes as the substantive underlying violation. While other violations were present in the case, the extra benefits provided the basis for the lack of institutional control finding.

During the period of 1959-61, 21 student-athletes participating in football received improper financial assistance in the form of cost-free transportation between their homes and the university campus prior to, during and at the close of the college year;

The financing of the impermissible transportation originated with a “slush fund” that operated outside of the institution’s control but under the supervision of an assistant coach. The result was a lack of institutional control finding.

There existed in connection with the University of Colorado football program during the years 1959-61, an outside recruiting or “slush” fund which was conceived and originated by the university’s head football coach and operated under the immediate supervision of an assistant football coach

Although provided to multiple students, the sole basis for the University of Colorado lacking institutional control laid in the provision of transportation between home and the institution.

In the 1974 University of Illinois public infractions case report outlined impermissible benefits provided by representatives of the athletics interest to both current and prospective students.

3. NCAA Constitution 3-1-(g)-(6) [extra benefits to student-athletes not available to student body in general] – (i) twelve student-athletes were provided evening meals without charge on several occasions in the homes of several representatives of the University’s athletic interests; (ii) several representatives of the University’s athletic interests provided their personal automobiles without charge on several occasions to eight student-athletes for the young men’s personal use; (iii) representatives of the University’s athletic interests provided their personal automobiles without charge to three student-athletes to travel between the University’s campus and their hometowns; (... (v) a representative of the University’s athletic interests provided dental service without charge to a student-athlete; (vi) ... (vii) prior to the fall 1973, each member of the University’s Letterman’s Club was permitted to play golf without charge at the two golf courses operated by the University’s athletic association.
4. NCAA Constitution 3-1-(g)-(6) and 3-4-(a) [extra benefits and improper financial aid to student-athletes] – (i) ... (ii) during their attendance at the University, five student-athletes were provided cash for various purposes by representatives of the University’s athletic interests or from sources upon which they were not naturally or legally dependent; (iii) a representative of the University’s athletic interests loaned cash to a student-athlete to pay a telephone bill which has not been repaid by the student-athlete; (iv) a representative of the University’s athletic interests paid the cost of two parking tickets incurred by a student-athlete ...

The impermissible benefits identified nominal items including meals, use of a vehicle, golf privileges, cash to pay a telephone bill, and the payment of parking tickets as the violations.

While other violations were included in the public infractions case report, the lack of institutional control finding related to the involvement of representatives of the University’s athletics interest in providing the benefits outlined.

The involvement of certain representatives of the University’s athletic interests in the numerous violations set forth in this case demonstrates that the University did not adequately exercise institutional control and responsibility over those individuals.

Interestingly, the University's failure to control the representatives of its athletics interests contributed to the lack of institutional control violation while the actions of university staff members and coaches is not cited as a contributing factor.

Transportation again served as the central impermissible benefit in the University of Kansas infractions decision in 1988. The University committed similar violations years prior but had not been cited for a lack of institutional control violation according to the public infractions case decision. However, in this instance the provision of local transportation between the University's campus and the nearest airport in Kansas City combined with the provision of airline tickets supported a lack of institutional control finding.

For example, violations concerning local transportation between the Kansas City airport and Lawrence that had been committed in a previous infractions case were repeated with no evidence that the athletics administration had taken steps to prevent them. Actions known by assistant coaches and the head coach to be violations were not reported to appropriate members of the administration, even when there were apparent mitigating circumstances explaining the actions. The unauthorized provision of airline tickets to a student-athlete, which resulted in extra benefits to the student-athlete, were not promptly reported to a superior or to the NCAA when discovered by an athletics department staff member. In summary, these actions demonstrated that the compliance program established by the university after its 1983 case had not, in fact, resulted in the establishment of institutional control over its basketball program.

Similar to other cases, the underlying violation involved nominal impermissible benefits. In contrast to the previous two examples, however, the basic lack of control exhibited by the institution was over coaches as opposed to funds or representatives of athletics interests not employed by the institution.

The public infractions case report published in 1988 citing the University of Minnesota for a lack of institution control detailed nominal impermissible benefits including airline tickets, mileage expense for recruiting visits, and meals as the underlying violations.

...this failure of institutional control was demonstrated by: administrative procedures that allowed student-athletes to receive prepaid airline tickets; the provision of mileage

expense money to the student hosts for prospective student-athletes during official visits; the disbursement of “meal money” and other very small amounts of cash in a manner that may have constituted rules violations; the provision of meals to more than one student-athlete who dined with a prospective student-athlete during the prospect’s official visit in a manner that violated NCAA legislation...

Similar to the University of Kansas case, members of the institution’s athletics department staff provided the impermissible benefits.

While transportation and meals were frequently cited impermissible benefits, the impermissible benefit provided by North Carolina State university that resulted in their 1989 lack of institutional control violation was shoes. In this case, members of the men’s basketball team exchanged institution issued shoes for other items at a local sporting goods store.

...the institution’s athletics department and members of the men’s basketball staff did not exercise appropriate institutional control concerning the use of basketball shoes by student-athletes in the sport of men’s basketball. Specifically, excessive numbers of shoes were made available to members of the men’s basketball team during this period, particularly in the 1984-85 and 1985-86 academic years; further, numerous student-athletes sold the basketball shoes that were issued to them to student-athletes in other sports at the university, as well as to other university students; further, several student-athletes exchanged the university’s basketball shoes (an approximate value of \$75) for both athletics shoes and apparel of equal value at a local sporting goods store, and finally, even though records were kept of the number of pairs of basketball shoes issued to each member of the men’s basketball team, no monitoring activities occurred in order to ensure that the young men did not sell or exchange their shoes as described.

The institution’s failure came in not preventing the students from selling or exchanging the shoes they received to participate in their sport. Again, the underlying violation related to nominal impermissible benefits, but student-athletes were the population the institution failed to control.

The University of Maryland infractions case detailed impermissible benefits to prospective students, in the form of souvenirs and apparel, and to current students, in the form of transportation.

There was a lack of administrative control and oversight of the conduct of basic recruiting activities such as official visits of prospective student-athletes. As a result, recruits on official visits were able to obtain souvenirs and apparel at little or no cost to

them from a representative of the university's athletics interests under circumstances where the men's basketball staff should have been aware these violations were occurring

There were extensive violations of NCAA rules governing recruiting contacts with and transportation of a prospective student-athlete, as described in Part II\_D of this report. Various persons connected with the men's basketball program, including assistant coaches, provided improper transportation, and the circumstances were such that the then head coach knew or should have known that the men's basketball staff was providing such transportation...

In this case, the underlying violations contributing to the lack of institutional control violation, nominal impermissible benefits, were provided by representatives of athletics interest and members of the coaching staff.

One last example of the cases involving impermissible benefits is the University of Louisville case published in 1998. The impermissible benefits in this case were provided to students intending to enroll at the University but prior to their actual enrollment.

- During the spring and summer of 1996, members of the women's volleyball staff provided financial assistance, temporary lodging, local automobile transportation and other recruiting inducements to two prospective student-athletes.
- During July 1996, the head women's volleyball coach provided automobile transportation to two prospective student-athletes.
- During the summer of 1996, the institution provided athletically related financial aid in the form of dormitory housing to two prospective student-athletes.
- During the 1996-97 academic year, the head women's volleyball coach provided automobile transportation and the use of university computers to two student-athletes and temporary lodging to one student-athlete.
- During June 1996, an assistant women's volleyball coach arranged for a prospective student-athlete to receive dental treatment free of charge.

The impermissible benefits constituting the underlying violations were arranged for, as opposed to provided by, members of the coaching staff. The rationale the Committee on Infractions cited for finding a lack of institutional control nor the head coach monitored the activities of these students before their enrollment.

Furthermore, as evidenced by Findings II-A-3, II-A-5 and II-A-6, neither the university nor the head coach attempted to monitor the prospects' initial lodging, transportation and other activities in the Louisville area prior to their full-time enrollment.

The type of impermissible benefits cited in this case, lodging and transportation, were similar types of benefits as were cited in other cases. However, this case involved the provision of those benefits to students not during a recruiting trip or while enrolled as students but rather prior to enrollment. As a result, the lack of control in this case involved another different population of individuals.

The majority of cases resulting in the Committee on Infractions finding the institution lacked institutional control consisted of impermissible benefits. The nature of those benefits was primarily items of nominal value including transportation, meals, and apparel items. While the underlying violations presented a theme, there was not a similar pattern for the populations the institution was responsible for “controlling.” Case decisions cited an institution’s failure to exert control over prospective students, current students, coaching staff members, and representatives of athletics interests.

### **Underlying Academic Misconduct Violations**

Academic misconduct was an underlying violation in just eleven of the cases that resulted in a lack of institutional control violation. Interestingly, academic misconduct alone was the underlying violation in just three of those cases. The other cases included violations in addition to academic misconduct. However, most revealing are the cases where academic misconduct is present as an underlying violation but is given little weight or does not contribute to the rationale for the Committee on Infractions finding a lack of institutional control violation.

In 1980, Arizona State University received a decision from the Committee on Infractions that the institution lacked institutional control. Several underlying violations were detailed in the public infractions case report including academic misconduct, extra benefits and recruiting



violations. The academic misconduct violations were significant as multiple students received academic credit for courses they never attended in order to secure their athletic eligibility.

During the summer following the 1978-79 academic year, eight student-athletes received unearned academic credit through an extension program offered by another collegiate institution without attending class sessions; further, this unearned credit was utilized to certify the young men eligible to participate in intercollegiate football competition during the 1979-80 academic year.

Nevertheless, the expressed basis for the finding that Arizona State lacked institution control is that it failed to control outside compensation to staff members.

During the 1978-79 academic year, the university failed to exercise appropriate control over the compensation provided the former head football coach and the former director of athletics, in that outside sources were permitted to provide each of them a large cash supplement; further, these supplements were not provided in recognition of specific or extraordinary achievements as required by NCAA legislation.

The “control” the Committee on Infractions expressed the most concern about with this finding was that of salaries rather than the academic integrity of students.

In 1981, the Committee on Infractions similarly found the University of Oregon lacked institutional control in a decision that included underlying violations in a number of categories. Included in the underlying violations were extra benefit, recruiting inducement, and academic misconduct violations.

5. NCAA Constitution 3-3-(a)-(1) and 3-6-(a) [academic standards and ethical conduct] – (a) During the summer of 1979, a prospective and an enrolled student-athlete received unearned credit from a community college on the basis of forged transcripts that were submitted to the university; further, a former assistant football coach was aware that these transcripts did not represent academic work performed by the young men, and (b) During the summer of 1977, a prospective and three enrolled student-athletes received unearned credits from a community college on the basis of forged transcripts; further a former assistant football coach was aware that these transcripts did not represent academic work performed by the identified young men.
6. NCAA Constitution 3-3-(a)-(1), 3-3-(a)-(3) and 3-6-(a) [academic standards and ethical conduct] – (a) During the summer of 1979, a former assistant football coach arranged for a prospective and two enrolled student-athletes to receive unearned credit through an extension course at another four-year institution, and (b) During the

summer of 1977, a former assistant football coach arranged for a prospective and an enrolled student-athlete to receive unearned credit from a community college.

7. NCAA Constitution 3-3-(a)-(3), 3-6-(a) and NCAA Bylaw 5-1-(j)-(8) [academic standards, ethical conduct and junior college transfer legislation – During the summer of 1978, a prospective and three enrolled student-athletes received unearned credit from a community college; further, an assistant football coach made arrangements for each of the young men to take these courses and provided false addresses so they might claim resident tuition status.
8. NCAA Constitution 3-3-(a)-(3) and 3-6-(a) [academic standards and ethical conduct] – (a) In September 1979, the former head swimming coach arranged for two student-athletes to receive unearned credit from another four year collegiate institution; (b) In September 1978, an assistant football coach arranged for a student-athlete to receive unearned credit from a community college; (c) During the summer of 1978, a former assistant football coach arranged for two student-athletes to receive unearned credit from a community college, and (d) During the summer of 1977, a former assistant foot-ball coach arranged for a student-athlete to receive unearned credit from a community college

Despite the multiple findings of academic misconduct, involving multiple students, and two sports, the basis for the Committee on Infraction’s lack of institutional control finding was the existence of an account at a travel agency:

In March 1978, an assistant football coach refunded unused airline tickets that were originally charged to the university’s athletic department in order to establish a “secret” travel account at a travel agency; further, this “secret account was administered by this assistant football coach, the head football coach and a former assistant football coach for athletic purposes, including payment of recruiting expenses without the approval, knowledge or control of the university.

University coaching staff members used the account at the travel agency, which was unknown to University administrators, to provide prospective and current students transportation between their homes and campus on a number of occasions.

The University of Kentucky was cited for violations related to academic misconduct, extra benefits, recruiting, and personnel in 2002. The academic misconduct that occurred included a football staff member writing papers for multiple student-athletes.

During the 1998-99 and 1999-00 academic years, the recruiting coordinator engaged in unethical conduct when he knowingly committed academic fraud by preparing papers for enrolled student-athletes. On some occasions during the 1998-99 academic year, the recruiting coordinator arranged for a student assistant to type the young men's papers.

In finding the University lacked institutional control, the Committee on Infractions did include the academic misconduct in its rationale.

The evidence showed that a tutor became suspicious about a paper ostensibly written by one of the student-athletes participating in the recruiting coordinator's sessions and brought her concerns to the director of academic services. The director of academic services eventually informed an associate director of athletics of her concerns that improper activities were taking place during the recruiting coordinator's study sessions. The associate director of athletics instructed the director of academic services to contact the head football coach about these concerns. The director of academic services did as she was instructed, but the head football coach failed to stop the sessions, as set forth in Finding II-K-1. Neither the associate director of athletics nor the director of academic services contacted anyone in the compliance office, as they should have.

The Committee on Infractions took issue more with the failure to follow reporting protocol than the actual academic misconduct that occurred. In this particular case, the Committee on Infractions weighed in on all of the underlying violations. The language the Committee used related to the recruiting violations identified those as of major concern.

Of major concern to the committee was the fact that the recruiting coordinator was able to openly violate basic, fundamental recruiting legislation for an extended period of time (approximately two years) without detection. Moreover, he openly involved several individuals, including his own recruiting assistant as well as student workers, in the committing of these violations. This concern was compounded by the fact that the activities supporting the majority of these violations were occurring on campus or in the local community where heightened awareness should exist.

Interestingly, the Committee identified the recruiting violations as a major concern and pointed out the legislation was fundamental in nature and the violations occurred on campus or in the locale. The Committee made no disclaimer about the academic misconduct violations being a major concern or the fact that completing work for students was a fundamental principle not just in the administration of college athletics but at any higher education institution. Further, the

academic misconduct violations occurred in athletics facilities which did not enter into rationale. Instead, the Committee's biggest concern with the academic violations was simply the fact they were not properly reported.

A final example of a case involving a lack of institutional control finding that included an underlying academic misconduct violation as a contributing factor was the University of Utah's 2003 case. The University of Utah's infractions case also included impermissible benefits, primarily in the form of meals to student-athletes, and playing season violations for exceeding permissible practice time. In describing the academic misconduct violations, the Committee on Infractions focused on the institution's failure to report the violation and seek reinstatement for the involved student-athletes rather than the actual violations.

... During the spring of 1999, the institution discovered that a athletics department tutor and two football student-athletes committed academic fraud when the athletics department's tutor provided a paper to the young men to submit as their own work, as outlined in Finding II-I. The institution subsequently gave each young man a failing grade in the course and terminated the tutor. However, the institution failed to immediately report this violation and recognize the eligibility reinstatement requirements for student-athletes who commit academic fraud when it permitted the young men to compete prior to receiving formal restoration from the NCAA student-athlete reinstatement staff.

Comparatively, in relation to the impermissible benefits and playing season violations, the Committee on Infractions specifically said the failure to control and monitor, including terminate, the violations.

The institution demonstrated a failure to exert appropriate institutional control and monitoring in the conduct and administration of its athletics programs in that it failed to fully investigate and terminate the violations as outlined in Findings IIA, (meals with head coach), and II-G (excessive practice in men's basketball), despite concerns that violations may have occurred.

In other words, the mere fact these violations occurred contributed to the lack of institutional control.

## **Underlying Playing Violations**

Playing season violations, the set of rules that regulates the number of times, days and hours student-athletes can practice, are identified as underlying violations in just five cases resulting in lack of institutional control findings. In those cases where playing season violations existed, those violations contributed little to the lack of institutional violations the majority of the time.

In only one case, the University of Utah infractions case from 2003 previously cited, did the Committee on Infractions comment on the playing season violations as part of the rationale for the lack of institutional control violation.

The institution demonstrated a failure to exert appropriate institutional control and monitoring in the conduct and administration of its athletics programs in that it failed to fully investigate and terminate the violations as outlined in Findings IIA, (meals with head coach), and II-G (excessive practice in men's basketball), despite concerns that violations may have occurred.

In each of the other cases, the Committee on Infractions rationale for a lack of institutional control finding did not include the playing season violations.

In 1976, the University of Kentucky was cited for a violation of lack of institutional control. In addition to playing season violations, the case included impermissible benefits in the form of extra benefits and recruiting inducements. In finding a lack of institutional control violation occurred, the Committee cited the involvement of boosters and number of violations.

The involvement of representatives of the University's athletic interests in the numerous violations set forth in this report demonstrates that the University of Kentucky did not adequately exercise institutional control and responsibility over these individuals.

The Committee did not include any rationale related to the playing season violations or the potential adverse effect on student-athlete physical or mental well-being.

Similarly, the University of Florida was cited for violations in a 1985 public infractions case report. Violations included in the public infractions case report, in addition to lack of institutional control, included impermissible benefits, personnel, recruiting, and playing season violations. The Committee on Infractions specifically identified impermissible benefits when explaining the reasoning for lack of institutional control.

During the period beginning with the 1978-79 academic year and continuing through the 1983-84 academic year, the institution failed to exercise appropriate institutional control of its intercollegiate football program; (b) during the period beginning with the 1979-80 academic year and continuing through the 1982-83 academic year, the head football coach administered a fund of at least \$4,000 from which he withdrew cash to pay costs that could not be paid by the university without violating NCAA legislation, and (c) during the period beginning with the 1979-80 academic year and continuing through the 1982-83 academic year, the then administrative assistant for football administered a fund from which he withdrew cash to pay costs that could not be paid by the university without violating NCAA legislation.

The playing season violations were not referenced in the rationale.

## **Summary**

Three themes emerged from a qualitative analysis of Division I, FBS infractions cases resulting in lack of institutional control violations. First, since the first case decision published in 1962 the decisions have developed to more resemble court decisions contributing to the first theme, the legalization of public infractions case decisions. The second theme, dilution of lack of institutional control, is evidenced by the reduction in lack of institutional control violations since the 1980s and the considerable lessening of the penalties associated with lack of institutional control violations. Finally, the third theme, duplicitous association values, reflects an incongruence between the Association's stated values and those impermissible activities that led to lack of institutional control violations.

## CHAPTER V

### **Analysis and Conclusions**

#### **Introduction and Purpose**

The NCAA's enforcement division began in 1952, almost 50 years after the inception of the organization. Prior to that, the NCAA did not play an active role in legislating college athletics. The NCAA's foray into the governance and enforcement of rules in college athletics came as the organization's first million-dollar television contract was established. Since its inception, college athletics has received criticism for being too commercialized. A million-dollar television contract and emphasis on enforcement seem to correlate from a timing perspective to have the intended effect of "offsetting" each other. The organization seemed willing to tolerate more commercialization while simultaneously trying to demonstrate control over the increasingly commercialized college athletics industry.

This study examined when the NCAA enforcement process resulted in findings of lack of institutional control violations at the Division I FBS level. A lack of institutional control violation is considered the most serious institutional violation under NCAA rules. As such, a lack of institutional control finding illustrates the height of the NCAA enforcement goals. Despite being the most significant institutional violation, lack of institutional control is not clearly defined. In practice, the Committee on Infractions makes the determination on a case-by-case basis.

This research was intended to explore the themes present in lack of institutional control findings. At a practical level, synthesizing lack of institutional control cases provides insight to

university and athletics department administrators responsible for establishing institutional control on their campus. Further, the information can inform risk management and resource allocations decisions for rules compliance programs.

### **Summary of Findings**

This study examined NCAA public infractions case reports for FBS institutions alleged to have a lack of institutional control violation. A total of 79 public infractions case decisions were reviewed. A qualitative analysis resulted in the identification of three themes present in these reports which span a period of 55 years from 1962 through 2017. The first theme, the legalization of public infractions case decisions could be expected based on the historical evolution of the NCAA and the Association's enforcement program. Elements of the second theme, the dilution of lack of institutional control cases, were not surprising but the penalty portion yielded some interesting results. Finally, the third theme, duplicitous association values, provided the most unexpected results.

#### ***Theme 1: Legalization of Public Infractions Case Decisions***

NCAA public infractions case decisions evolved from simple resolutions to lengthy publications containing elements similar to court case decisions. As the enforcement process evolved, the NCAA began to more resemble an agency adhering to an administrative law framework. The NCAA, as an organization, developed an enforcement process with articulable individual rights, processes, and the consistent use of precedent that combined with an established rule making process akin to an agency. That alignment with an administrative law framework is found in the first theme.

The first formatting change of public infractions case decisions appeared in a 1974 decision with the shift from a resolution to a press release. The timing of the change



corresponded with the change in NCAA governance structure separating Association members into three divisions so that member institutions could align with like-minded campuses in terms of philosophy and competition. Division I, the most commercialized and competitive of the divisions, possessed institutions most susceptible to scandals challenging the enforcement process. Contemporaneously with the split to three divisions, Division I formed the Committee on Infractions to separate the individuals involved in the enforcement and adjudication portions of the process. The changes were some of the first as the Association headed down the path of legalization of its decisions.

Two subsequent changes, the addition of procedural history and shift in format from the press release to a formal report, occurred following two notable federal interventions in college athletics. First, a series of due process lawsuits in the mid-1970s highlighted criticisms of the NCAA enforcement process that culminated in a 1978 hearing before the United States House of Representatives Subcommittee on Oversight and Investigation to review allegations of unfairness. Next, in a battle that began in 1981, the Supreme Court decided the NCAA violated antitrust laws by controlling television contracts for games paving the way for individual conferences and Universities to negotiate their own contracts resulting in more televised college athletics competitions.

While the rule, NCAA bylaw for purposes of this study, has always been included as part of the infractions case decision publication, the addition of the application of the rule to case facts in a fashion that more resembles legal reasoning has evolved over time. Similar timing to other changes is evident as decision reasoning moved from the boilerplate language reflective of cases published during the 1970s to some specific tie to the facts of the case during the 1980s. As was the case with prior reform efforts, an increased detailing of the rule application followed the

1991 Rex Lee Commission report which called for expanded details in reports. Incidentally, in 1991 Notre Dame University also signed the first deal for a television network, NBC, to carry any institution's football games exclusively. That move paved the way for conference specific networks beginning with the Big Ten Network in 2006. In another move towards mirroring court case decisions, a robust rationale appears as part of infractions case reports beginning in 2000 and evolves into identified analysis of that application in 2013.

The final element in the legalization of public infractions case decisions, the use of precedent, emerged in 2013. The addition of the use of precedent followed the establishment of, and recommendations from, an Enforcement working group. The group, consisting primarily of college and athletics administrators, developed in response to criticisms related to processing times, a focus on technical rules violations rather than violations of Association values, and penalty inconsistency. By this time, the largest Conferences have launched, or are in the final stages of launching, their own television networks which distributed upwards of \$50 million to member institutions annually. The addition of citing precedent contributes to the desire to have predictable and consistent penalty outcomes, but also completes the trend towards legalization of decisions.

The evolution of public infractions case decisions from brief resolutions to robust decisions containing all the elements of a court decision, including procedural history, "legal" reasoning, and the use of precedent, can be traced along a parallel path of increased commercialization in college athletics and calls to reform to the Enforcement process to assure fairness. Increased commercialization, primarily in the form of increased access to, and compensation from, televising athletics competitions, provided more significant economic stakes for universities, coaches as their increasing compensation reflected increasing revenue, and

student-athletes, particularly in highly publicized sports, whose professional careers increasingly depended on participation and exposure at the collegiate level. Dovetailing with the increased economic stakes from increased commercialization were repeated efforts to reform the Enforcement process to one that included more due process rights. The reform efforts came on the heels of high-profile hearings and lawsuits alleging impropriety in the process and/or penalties. As a result, the emergence of a theme about the legalization of public infractions case decisions through this study did not come as a surprise.

### ***Theme 2: Dilution of Lack of Institutional Control***

The second theme that emerged following a qualitative analysis of public infractions case decisions was a dilution of lack of institutional control over time. The dilution of lack of institutional control was evidenced by two primary factors: fewer number of cases and a reduction in the severity of penalties associated with a lack of institutional control violation.

The first indication of a dilution of lack of institutional control cases occurred is the significant decrease in the number of cases over time. The height of lack of institutional control cases came during the 1980s and 1990s. At the same time, college Chancellors and Presidents were attempting to exert more control over college athletics on their individual campuses. While the power struggle between students, faculty, administrators and Presidents was not new, Presidents made a concerted effort in the late 1980s through the 1990s to assert their authority. The result was the formation of the Presidents Commission in 1984, a special convention convened in 1985 that resulted in the addition of the death penalty as an option in infractions cases, and another special convention in 1987. However, by the end of the 1990s, power had largely returned to the coaches and administrators who had less incentive to pursue or heavily punish infractions cases given the potential personal impact, program impact, and economic

considerations. The rise and fall of lack of institutional control cases runs parallel to the Presidential effort to, and ultimate failure to, reign in control over college athletics.

Also indicative of the dilution of lack of institutional control is a relaxing of the parameters associated with probation and penalties for lack of institutional control findings. Initially, penalties spanned the duration of probation, on-site reviews were required, and detailed audits demonstrating compliance in the areas of violations were necessary. Over time, those requirements evaporated into the lone, watered-down requirement of an annual report during the probationary period in existence today. In addition, the penalties associated with lack of institutional control violations have diminished from television and postseason bans that run the duration of probation, crippling scholarship reductions, and yearlong recruiting prohibitions. The last television ban was in 1995. Multi-year postseason bans are the exception rather than the expectation. Finally, nominal recruiting restrictions or prohibitions have replaced year long punishments for individual coaches or programs.

During the mid-1980s, as Chancellors and Presidents wrestled for control on their campuses, there was another battle for control being fought. Conferences and individual institutions were challenging the NCAA's unilateral control over television contracts for intercollegiate athletics competitions. In 1984, the Supreme Court decision in *NCAA v. Board of Regents* signaled a victory for conferences and institutions as it granted those entities the ability to negotiate their own television contracts rather than those deals being centralized with the NCAA national office. The effect was significant as today individual FBS conferences have lucrative television contracts paying out hefty distributions to member institutions.

Taken in isolation, the dilution of lack of institutional control violations mirrors a shift in power from the Chancellors and Presidents back to the Athletics Directors and the increasing

monetary interest in operating successful athletics programs. However, with consideration of the first theme, the legalization of the case decisions, the shift is potentially more complex. Case decisions evolving to be more reflective of a court decision are indicative of an adjudication process that has been challenged. The challenges led to more procedural safeguards for institutions and individuals throughout the process. These procedural safeguards inevitably made proving cases for the NCAA Enforcement staff, which relies heavily on the principle of cooperation for investigations, more difficult. As violations have become more difficult to prove, the lack of institutional control findings have correspondingly diminished.

### ***Theme 3: Duplicitous Association Values***

The NCAA openly identifies three areas of focus for the organization: emphasize academics, promote fairness, and protect the well-being of student-athletes. In emphasizing academics, the NCAA advertises that the ultimate goal of the college experience is graduation. Further, over 100 years ago the association was founded specifically to keep college athletics safe. Yet, through the lack of institutional control findings the predominate value illustrated through case decisions is arguably competitive fairness. The alignment between the NCAA's stated missions and those demonstrated through the enforcement process is captured in the third theme, duplicitous association values.

Lack of institutional control violations are based on the University's actions related to underlying violations discovered during an investigation. In other words, a lack of institutional control violation cannot be found unless there are other significant violations discovered. Further, lack of institutional control is a standalone, additional violation based on the specific set of facts present. As a result, not all impermissible benefit violations also result in a lack of institutional control violation. Similarly, not all academic misconduct or practice hours violations

result in a lack of institutional control violation. Therefore, looking at the underlying violations that led to a lack of institutional control violation provides some insight to association priorities in the enforcement process.

Most lack of institutional control cases stem from impermissible benefits to prospective or current student-athletes. Interestingly, the impermissible benefits cited were rarely egregious but instead things like transportation, meals, lodging, and clothing. In fact, over the course of history the impermissible benefits have increasingly become permissible through legislative changes. Comparatively few cases contain academic misconduct violations as the underlying violation with even fewer containing academic misconduct violations alone, as opposed to combined with impermissible benefit violations. When impermissible benefits are included with academic misconduct violations, it is usually the impermissible benefits that are cited in the rationale for the lack of institutional control rather than the academic misconduct. Even fewer lack of institutional control cases are based on exceeding the permissible amount of countable activity, rules designed to protect the health, safety, and welfare of student-athletes, as the underlying violations.

One potential explanation for the prevalence of impermissible benefits as the foundation for lack of institutional control violations, when compared to the lack of academic misconduct violations being the basis, is that there simply are not as many academic misconduct violations occurring. However, the long history of calls for academic reform and adopted accountability measures suggests otherwise. If academic misconduct was not occurring, why would there be the documented concern about academic integrity and efforts at reform? More likely, the lack of academic misconduct is not the reason for the disparity in the violation being the basis for a lack of institutional control violation. That position is supported by the absence of including academic

misconduct in articulating the rationale for a lack of institutional control violation when both academic misconduct and impermissible benefits were present as the underlying violation.

Another potential explanation for the prevalence of impermissible benefits violations as the underlying violations in lack of institutional control cases is that type of violation is easier to identify or prove. Impermissible benefits may be more visible (e.g. use of a vehicle) or have a paper trail (e.g. receipt and payment) associated with them making them more apparent to others interested in making an allegation of wrongdoing or easier to prove a violation occurred. Comparatively, demonstrating academic misconduct violations may be harder to detect given the protection of academic records, lack of visibility that violations may have occurred, or the difficulty in demonstrating an allegation of academic misconduct had merit.

A final, more likely, explanation is the motivation to curb impermissible benefits stemmed from motivations other than stated NCAA values. As an organization, the NCAA has been subjected to legal judgements regarding potential antitrust violations. The NCAA defense has often been that there is a vested interest in student-athletes retaining amateur status. As such, the organization has prohibited benefits beyond those available students, generally, because of the possible perception that those benefits could be considered payments contradictory to the amateur model. Support for this explanation can be found in the organization's decision to permit additional benefits for student-athletes as a result of the Supreme Court's decision in the NCAA v. Alston case decided in June 2021 that found the NCAA's restriction on identified benefits violated antitrust provisions.

Regardless of the explanation, it is difficult to argue based on the data reviewed in this study that the NCAA enforcing underlying violations at a more significant level, one contributing to lack of institutional control findings, for benefits cases is consistent with the

organization's stated values. The NCAA says it emphasizes academics and the ultimate goal is graduation. College athletics departments are part of institutions of higher education and participants are students in a structure where academics should be the priority. Throughout the history of the association there have been calls for academic reform, protection of academic integrity, and ensuring a meaningful academic experience for student-athletes. Nevertheless, the enforcement process seems to prioritize institutional accountability in other areas of NCAA legislation.

### **Implications for Practice**

The enforcement mechanism of the NCAA functionally originated in the 1960s. Since its inception, the process has evolved significantly. In addition to the procedural changes in the enforcement process, the revenue tied to college athletics has exponentially increased largely through increasingly lucrative television and media deals. Further, research has highlighted the effect of a NCAA infractions case on the larger university's application numbers, donations, and even state appropriations. Understanding the themes associated with lack of institutional control violations, the most serious institutional violation within the NCAA framework, can inform decision-making about athletics department structure, staffing, and policies and procedures related to rules compliance.

### ***Athletics Department Structure***

Athletics professional compliance positions started to emerge during the 1980s. Initially, many compliance professionals were former coaches because they knew the rules. Over time, compliance positions turned into administrative professional positions. Today, the financial incentive for operating a successful athletics program, particularly in the revenue sports, is evident. At the same time, the analysis of lack of institutional control cases demonstrates an



enforcement process that more resembles a legal process. Finally, the entire university can be adversely affected by an NCAA infractions case. These factors can inform decision making on an appropriate structure including reporting lines for athletics compliance offices, the title of the senior compliance person within an athletics department, and when to use outside counsel.

### **Reporting Lines.**

Generally, the Director of Athletics has oversight of an athletics department and its staff. As a result, one option for the athletics compliance office reporting line is the Director of Athletics. In a larger university structure, this would be similar to a General Counsel reporting to a University President. There are advantages to this reporting line including both parties having an awareness of the day-to-day activities of the athletics department. Further, if the Athletics Director has ultimate responsibility for the operation of the athletics department, then, logically, it makes sense he or she has oversight over all athletics department employees, including those working in athletics compliance. The potential concern with a reporting line to the athletics director is pressure to suppress information related to violations, especially in revenue sports or with high profile coaches, in order to try to avoid costly sanctions despite the potential impact to the larger university. Ultimately, the competitive level of the athletics program, size of the athletics department, and public attention on the athletics program may increase the risk bearing some influence on whether this reporting line is appropriate.

Another option for a compliance reporting line is the General Counsel's office. For more high-profile universities, a major NCAA infractions case can be costly. Further, the infractions process has grown to more resemble a legal process. As a result, a General Counsel's office may be best equipped to evaluate compliance systems and decisions through a more neutral, broader university impact lens. In addition, a General Counsel's office is adept at analyzing when a

matter can or should be handled in-house versus seeking assistance from outside counsel. On the other hand, athletics, and specifically the NCAA compliance component of athletics, operates under its own set of rules rather than state and federal laws in which a General Counsel's office is more versed. Further, a reporting line outside of athletics may make it difficult for a compliance office to navigate the directive and desires of an athletics director when they are in conflict with those of General Counsel. However, viewed through another lens, an outside ally may be helpful for a compliance office navigating difficult conversations with an athletic director. The more a university has at stake with the visibility and revenue tied to an athletics department, the more this reporting structure may be desirable.

A third option for reporting lines is the Office of Compliance and Integrity at universities that have such an office. Some universities have established central offices to oversee various compliance efforts including research, information security, Clery Act reporting, etc. This option retains the benefit of independence from the athletics department similar to a General Counsel reporting line. However, such an office may be more equipped to deal with managing nuanced regulatory systems like the NCAA. If a university desires an independent report link this option presents a viable day-to-day option outside of General Counsel's office while still maintaining a connection with the legal arm of the university.

One additional option is a dual reporting line option that incorporates the athletics director and either the General Counsel's office or an Office of Compliance Integrity. Obviously, one would have to be given primary authority but a dotted line to the other facilitates information sharing. For example, a primary reporting line to General Counsel could facilitate meetings, information sharing regarding national infractions trends, minor violations, and compliance concerns. A dotted line to the Athletics Director helps ensure an open line of communication

between the compliance office and the Athletics Director and integration of the compliance office into the athletics department. The challenge with the dual reporting line is establishing roles in performance evaluations, hiring a new compliance staff member, etc.

There are several reporting line options for athletics compliance offices, and the appropriate structure may vary by institution. Athletics is a high revenue operation with a lot of risk associated for the university should a significant infractions case result. As the NCAA enforcement process has evolved to more resemble a legal process, athletics compliance programs arguably entail a significant amount of legal strategy and risk versus reward analysis. Given the potential impact to the university as a whole, the reporting line for athletics compliance is an important consideration for a university, not just its athletics program.

#### **Title of Senior Compliance Person.**

In establishing an athletics compliance structure designed to ensure institutional control, a university and athletics department should consider the level, or title, of the senior most compliance staff member. The actual title is probably not as important as the comparative title to other athletics department staff members. The intent is to endorse the role of compliance within an athletics program by making the senior most person at least equal to senior athletics department staff members. In addition, this departmental standing gives the senior compliance person access to meetings, discussions, and decision-making necessary to proactively identify potential issues or concerns before they become an infractions case. This structure is one way an athletics department and institution can demonstrate a commitment to compliance in the event an investigation occurs.

### ***Compliance Office Staffing & Structure***

After considering the reporting lines and role of the senior compliance staff member within the athletics department, the next consideration should be the structure and staffing of the compliance office. Structure and staffing are important decisions for an athletics department and institution. The correct structure and number of staff is not a precise science. Since compliance does not directly drive revenue, the argument for additional positions does not come in additional revenue generated. However, understaffing or improper structure could render a university and athletics department less capable of responding to allegations and ensuring a lack of institutional control violation is not found.

In establishing a compliance office structure, there are likely to be several considerations including the number of sports the athletics department offers, the number of high-profile coaches or student-athletes, and the frequency of allegations or investigations. These factors can aid in deciding how many employees should compose the compliance staff, what qualifications are important in those employees, and how to structure compliance responsibilities within that office.

#### **Qualifications.**

As the enforcement process has evolved to mimic more of an administrative law system, institutions need to consider what qualifications they should seek in compliance professionals. Interactions with university attorneys and outside counsel are necessary for a university going through the infractions process. Universities should consider whether compliance staff members should have a legal education, experience in the legal field, or experience interacting with legal professionals.

At the same time, compliance staff interact daily with coaches, other athletics department staff, student-athletes, and boosters about nuanced rules specifically relating to college athletics. Compliance staff must put complex regulations in an easy to understand, digestible manner for these different audiences. Experience navigating the NCAA legislative process and resources can assist with reading, interpreting, and applying those rules daily. As a result, legal education or experience in isolation may not be sufficient to effectively perform the responsibilities associated with athletics compliance.

Universities and athletics department leaders should consider the qualifications necessary for individuals within the compliance office, and the composition as a whole. Given the evolution of the enforcement process to resemble an administrative law process, there is merit in having legal education or experience on a compliance staff. However, NCAA rules are their own complex set of legislation making experience working with the set of regulations, and in the practice of college athletics, valuable. Both should be prioritized within the overall compliance office structure even if not requirements for each individual compliance staff member.

### **Structure.**

The division of responsibilities within a compliance office can be done in several different manners. One option is to have a compliance staff member assigned to each sport. This method would be akin to dividing a General Counsel's office by campus department. Conversely, the division could be by area of responsibility. For example, a staff member would be responsible for the recruiting regulations for all sports. This division would be similar to dividing a General Counsel's office by area of legal expertise. Within these two opposite structures, there are options for hybrid divisions as well.

Dividing responsibilities by sport means an athletics department can assign their best or most experienced compliance staff member to their highest risk sport. In theory, that would mean the most insurance against a significant infractions case. However, there are several disadvantages to this arrangement. First, professional detachment can be an issue for a compliance staff member assigned to a particular sport, especially if they are “imbedded” in that sport so their office is in the same location as the sport staff’s office. Second, this essentially requires each individual compliance staff member to be “good at everything” as they are really working in isolation with their sports. Finally, an office’s best or most experienced staff member would be required to spend time on lower priority tasks associated with the sport rather than high priority tasks that may be required with other sports. Given the advantages and disadvantages, a by sport model may be more effective for larger offices, athletics departments with more sports, or departments with only one comparatively high-profile sport.

In contrast, dividing responsibilities by regulation or bylaw allows compliance offices to use individual staff member’s strengths and to have experts in each area, much as a larger General Counsel’s office may have attorneys that specialize in different areas of the law. The disadvantages are effective education and monitoring require significantly more collaboration and communication amongst staff members as the same information may be relevant to more than one staff member. If those staff members are working from different information compliance systems could breakdown. Further, in this model sports will likely interact with different compliance staff members and could become confused about which staff member should be contacted. This method of dividing responsibility may be more suited for smaller offices, departments with more than one high-profile sports program that presents risk, or athletics departments with a smaller number of sports.

In today's college athletics environments, compliance officers are asked to navigate a complex regulatory field while working day-to-day in a specialized work environment. Staff members may be asked to play the role of investigator, prosecutor in the case of uncovered violations, defense attorney as investigations unfold, legislative interpreter, or data reviewer when administering monitoring systems. As universities consider the best way to divide those responsibilities amongst staff members, the size and number of sports sponsored by the athletics department, size of the compliance office itself, and relative risk by sport should be considered.

### ***Compliance Policies and Procedures***

Lack of institutional control violations only result when there is some other underlying violation or group of violations. Early public infractions case reports contained little detail about the case or reason for the decision. Instead, the public infractions case reports were simply a statement that violations occurred and detailing the resulting penalties. However, as the legalization of public infractions case decisions occurred more information regarding the factors contributing to institutional control emerged and can guide universities in the creation of their athletics compliance policies and monitoring procedures. This study found impermissible benefits is the predominant underlying violation found in cases resulting in a lack of institutional control violation. While there are other areas violations can occur, including personnel, amateurism, recruiting, academic eligibility, financial aid, and playing seasons, the findings of this study imply the primary focus for compliance offices should be on impermissible benefits.

### **Systems of Focus.**

In establishing the systems to monitor the provision of impermissible benefits, the athletics department is also forced to make some philosophical decisions. Examples of impermissible benefits that serve as the underlying violations for lack of institutional control

violations include purchase or use of a vehicle, transportation, lodging, and meals. Systems that monitor these types of benefits are inherently invasive as they ask student-athletes and coaches for documentation of activities away from class or their sport. As a result, athletics departments and universities must make decisions about how much invasion is necessary and acceptable and whether that can differ for individual student-athletes or student-athletes in certain sports. For example, if a compliance office is monitoring lodging they could ask student-athletes to complete a housing form indicating where they are living, how much rent they are paying, etc. To go further, compliance offices may require student-athletes to submit a copy of their lease. Alternatively, only high-profile student-athletes or student-athletes in revenue sports may be required to take this additional step.

Adding a challenge for institutions creating systems to monitor impermissible benefits is the changing nature of what is permissible under NCAA bylaws. Some of the impermissible benefits found to be underlying violations in the infractions cases in this study would be permissible under current NCAA bylaws. Conversely, there are new rules which open potential violation issues with different impermissible benefits. As a result, systems should be evaluated when new infractions cases are published, or new legislation is adopted.

Devoting more compliance resources to deterring and detecting impermissible benefit violations does not suggest absolving responsibility for deterring and detecting other types of violations. Rather, the analysis is that there is more risk associated with an infractions case related to impermissible benefits evolving into one that results in an institutional control violation as well. As a result, athletics departments that have more recognizable student-athletes, boosters or staff members with prior impermissible benefit violations, or other factors that may increase the likelihood of impermissible benefits should weigh the risk associated with those



violations occurring, the level of comfort with various compliance system options, and the level of staffing available to assign to deterring and detecting these types of violations.

### **Campus partnerships.**

Campus partnerships can collaborate with athletics departments for information sharing purposes to assist athletics compliance offices with detecting violations. The benefit to establishing campus partnerships is access to more real-time student information, limiting the need for overly invasive monitoring systems, and ensuring compliance offices have the same information relating to students that the institution possesses. For example, one of the impermissible benefits identified as an underlying violation in this study was the purchase for or use of a vehicle by student-athletes. A campus partnership with parking services could indicate to a compliance office that a student-athlete has use of a vehicle because they purchased a parking pass or received a parking ticket. If that same student-athlete had completed a vehicle form indicating they did not have a vehicle, the compliance office would be unaware of the potential vehicle use without the campus partnership.

Similarly, campus partnerships can serve as an independent verification of compliance processes to ensure institutional control. Although institutional control cases are less frequent, and arguably less damaging, they can still have a significant impact as evidenced by the two-year postseason ban in the most recent infractions case with a lack of institutional control violation. As competitive pressures have increased with the financial incentives associated with successful athletics programs, partnering with campus to administer compliance systems can offer an institutional double-check. For example, while an athletics compliance office may award and allocate financial aid, ensure that runs through an individual with some knowledge of NCAA

bylaws in the financial aid office can offer some checks and balances on the athletics department for the institution.

### **Limitations of the Study and Suggestions for Future Research**

This study was limited to historical lack of institutional control findings for only FBS institutions. There are lack of institutional control violations involving Division I FCS and Division I non-football institutions. In addition, there are similar violations associated with Division II and Division III college athletics programs. As a result, the themes that emerged in this study may or may not be consistent with themes identified from cases in other levels. In fact, given the revenue disparity for Division I FBS institutions from other classifications of athletics programs, it may be expected the themes could be significantly different. At a more finite level, FBS institutions could be segmented into Autonomy and Council-Governance institutions to examine whether themes differed amongst those classifications. A comparison to other levels could provide insight into the role of economics in the themes present at the Division I FBS level.

The data set analyzed for this study was the public infractions case decision reports. As revealed during the study of those reports, there were varying levels of detail related to each case included in those reports. The reports are a summary of what information was deemed important by the Committee on Infractions deciding the case and not a complete reflection of the information gathered through the course of the investigation or presented at a hearing. Additional information gathered through the investigation or at a hearing could have provided more insight into the rationale for a lack of institutional control finding but not made the public infractions case decision. Further, potential quantitative studies into penalties and variances over time could be insightful.

Similarly, absent from the data set is any investigation where the NCAA enforcement staff considered, but did not allege, a lack of institutional control finding or where the Committee on Infractions did not find a lack of institutional control violation occurred. Rationale for those decisions, particularly in comparison to the rationale for finding the violation, could provide additional context.

## **Conclusion**

Initially created in 1905, the NCAA was established to protect the health, safety, and welfare of student-athletes. During the late 1940s and early 1950s, the NCAA began to assert control over legislative matters and develop an enforcement program designed to ensure adherence to those rules. The result was an enforcement program that published its first decision for a lack of institutional control violation, the most egregious institutional but least defined violation, in the early 1960s. Over the 55 years since, 66 instances of lack of institutional control at Division I FBS institutions have been articulated in public infractions case reports.

A qualitative review of each of those 66 lack of institutional control decisions led to the identification of three themes. First, the public infractions case reports became increasingly complex, lengthy, and more similar to publication of court decisions reflecting an increased legalization of the enforcement process. Second, there is evidence of a dilution of the lack of institutional control as a violation based on a significant decrease in the frequency of a finding of the violation as well as the parameters and penalties associated with the violation occurring. Finally, impermissible benefits was the predominant underlying violation associated with a lack of institutional control violation revealing curbing benefits as the primary goal or value of the enforcement process as opposed to academic or student-athlete welfare violations seemingly inconsistent with the stated values of the organization.

An understanding of the themes associated with lack of Institutional control violations are important for university administrators assigned with ensuring institutional control exists on their campus. Decisions regarding rules compliance programs, staffing, and structure are interwoven in the risk management versus returns on successful college athletics programs analysis. As the revenue associated with college athletics at the highest levels continues to increase the pressure to defend an institution, and potentially successful coaches, against allegations increases.

This study focused on infractions decisions specifically involving Division I FBS institutions. The themes identified at this level may differ from themes inherent in the decisions at other levels, Division I FCS, Division II, and Division III, for example, of college athletics. In addition, this study was limited to the public infractions case reports which may not represent the complete analysis or rationale that may further exist in investigative documents, hearing transcripts or discussions during deliberations by the Committee on Infractions.

## LIST OF REFERENCES

- A Call to Action: Reconnecting College Sports and Higher Education*. (2001, June). Knight Commission in Intercollegiate Athletics. [https://www.knightcommission.org/wp-content/uploads/2008/10/2001\\_knight\\_report.pdf](https://www.knightcommission.org/wp-content/uploads/2008/10/2001_knight_report.pdf)
- Alexander, D. L., & Kern, W. (2010). Does athletic success generate legislative largess from sports-crazed representatives? The impact of athletic success on state appropriations to colleges and universities. *International Journal of Sport Finance*, 5(4), 253.
- Anderson, M. (2012). The Benefits of College Athletic Success: An Application of the Propensity Score Design with Instrumental Variables. *Review of Economics and Statistics*, 99, 1, (119).
- Arlosoroff v. National Collegiate Athletic Ass'n, 746 F.2d 1019 (4<sup>th</sup> Cir. 1984)
- Baumer, B., & Zimbalist, A. (2019). The Impact of College Athletic Success on Donations and Applicant Quality. *International Journal of Financial Studies*, 7(2), 19.
- Berkowitz, S. (2022, May 20). *Pac-12, Big Ten, Big 12 revenue fell in fiscal year of pandemic, while ACC, SEC saw increases*. USA Today. <https://www.usatoday.com/story/sports/ncaaf/2022/05/20/pac-12-big-ten-big-12-revenue-fell-pandemic/9855686002/>
- Berkowitz, S. (2018, February 1). *SEC paid an average of about \$41 million to each school in 2017*. USA Today. <https://www.usatoday.com/story/sports/college/2018/02/01/sec-paid-average-41-million-each-school-2017/1087235001/>
- Bieler, D. (2017, February 22). *Ole Miss self-imposes one-year bowl ban after new notice of allegations from NCAA*. Washington Post. [https://www.washingtonpost.com/news/early-lead/wp/2017/02/22/ole-miss-self-imposes-1-year-bowl-ban-after-new-notice-of-allegations-from-ncaa/?utm\\_term=.43289adea9d4](https://www.washingtonpost.com/news/early-lead/wp/2017/02/22/ole-miss-self-imposes-1-year-bowl-ban-after-new-notice-of-allegations-from-ncaa/?utm_term=.43289adea9d4)

- Blum v. Yaretsky, 457 U.S. 991 (1982)
- Bostock, M., Carter, S., Quealy, K. (2013, November 30). *Tracing the History of N.C.A.A. Conferences*. The New York Times.  
<http://www.nytimes.com/newsgraphics/2013/11/30/football-conferences/index.html>.
- Bromberg, N. (2021, September 10). *Big 12 officially invites BYU, Cincinnati, Houston and UCF*. Yahoo!Sports. <https://sports.yahoo.com/big-12-officially-invites-byu-cincinnati-houston-and-ucf-140831354.html>
- Byers, W., & Hammer, C. H. (1997). *Unsportsmanlike conduct: Exploiting college athletes*. University of Michigan Press.
- Chang, J. (2020, April 3). *'From Heroes to Villains': CCNY Basketball's Dramatic Fall from Glory*. WBUR. <https://www.wbur.org/onlyagame/2020/04/03/city-college-of-new-york-basketball-scandal>.
- Chiari, M. (2016, January 29). *Ole Miss Reportedly Receives Notice of Allegations from NCAA: Details, Reaction*. Bleacher Report. <https://bleacherreport.com/articles/2612192-ole-miss-reportedly-receives-notice-of-allegations-from-ncaa-details-reaction>
- Ching, D. (2018). *Big Ten's Rights Deal Threatens to Widen Financial Gap Between Even The Biggest Conferences*. Forbes.  
<https://www.forbes.com/sites/davidching/2018/04/17/big-tens-rights-deal-threatens-to-widen-financial-gap-between-even-the-biggest-conferences/#5ccc146e5bf2>
- Chu, D. (1985). *Sport and higher education*. Human Kinetics.
- Clotfelter, C. T. (2019). *Big-time sports in American universities*. Cambridge University Press.
- Commission on College Basketball Charter*. (2018, September 13). NCAA.  
<http://www.ncaa.org/governance/commission-college-basketball-charter>.

- Daniels, T. (2017, September 15). Ole Miss Releases Statement on NCAA Notice of Allegations. Retrieved May 19, 2019, from <https://bleacherreport.com/articles/2714031-ole-miss-releases-statement-on-ncaa-notice-of-allegations>
- Depken, C. A., & Wilson, D. P. (2006). NCAA enforcement and competitive balance in college football. *Southern Economic Journal*, 826-845.
- Division Differences and the History of Multidivision Classification* (n.d.). NCAA. <https://www.ncaa.org/sports/2013/11/20/divisional-differences-and-the-history-of-multidivision-classification.aspx>
- Division I Committee on Infractions*. (n.d.). NCAA. <http://www.ncaa.org/governance/committees/division-i-committee-infractions>.
- Dorsey, P. (2011, September 23). Sewanee, long-lost member of the SEC. ESPN. [http://www.espn.com/espn/page2/story/\\_/id/7001627/sec-expansion-conference-consider-sewanee-long-lost-founding-member](http://www.espn.com/espn/page2/story/_/id/7001627/sec-expansion-conference-consider-sewanee-long-lost-founding-member).
- Due Process. (2019). In *Merriam-Webster dictionary*. Retrieved from <https://www.merriam-webster.com/dictionary/due%20process>.
- Dumond, J. M., Lynch, A. K., & Platania, J. (2007). An Economic Model of the College Football Recruiting Process. *Journal of Sports Economics*, 9(1), 67-87.
- Due Process and the NCAA: Hearings Before the Subcomm. On the Constitution of the House Comm. On the Judiciary*, 108<sup>th</sup> Cong., 2d Sess. 1 (2004).
- Durham, M. (2022, August 31). *Division I Board of Directors modernizes infractions process*. NCAA. <https://www.ncaa.org/news/2022/8/31/media-center-division-i-board-of-directors-modernizes-infractions-process.aspx>.
- Forde, P. (2014, October 2). *Sources: Mississippi under investigation for rules violations in*



- multiple sports*. Yahoo!Sports. <https://sports.yahoo.com/news/sources--mississippi-under-investigation-for-rules-violations-in-multiple-sports-075017671-ncaaf.html>
- Forde, P. (2021, October 20). *Sources: Four NCAA Infractions Cases from 2017 Scandal Make Notable Progress*. Sports Illustrated. <https://www.si.com/college/2021/10/20/ncaa-basketball-fbi-scandal-lsu-oklahoma-state-updates>
- Forde, P. (2021, May 19). *The NCAA's Independent Accountability Resolution Process is Another Hinderance to Progress*. Sports Illustrated. <https://www.si.com/college/2021/05/19/ncaa-iarp-no-progress>.
- Georgia Tech Quits Conference to Escape Limit on Athletics Scholarships*. (1964, January 25). The New York Times. [https://www.nytimes.com/1964/01/25/archives/georgia-tech-quits-conference-to-escape-limit-on-athletic.html#:~:text=24%20\(UPI\)%E2%80%94Georgia%20Tech,limit%20of%20140%20footballbasketball%20scholarships](https://www.nytimes.com/1964/01/25/archives/georgia-tech-quits-conference-to-escape-limit-on-athletic.html#:~:text=24%20(UPI)%E2%80%94Georgia%20Tech,limit%20of%20140%20footballbasketball%20scholarships).
- Glossary of NCAA terminology, acronyms and descriptions*. (2016, December 7). NCAA. [ncaa.org/sites/default/files/NCAAglossary\\_20161207.pdf](https://www.ncaa.org/sites/default/files/NCAAglossary_20161207.pdf).
- Goldstein, J. (2003, November 19). *Explosion: 1951 scandals threaten college hoops*. ESPN. Retrieved from [https://www.espn.com/classic/s/basketball\\_scandals\\_explosion.html](https://www.espn.com/classic/s/basketball_scandals_explosion.html)
- Green, R. J. (1992). Does the NCAA Play Fair-a Due Process Analysis of NCAA Enforcement Regulations. *Duke LJ*, 42, 99.
- Greer, J. (2018, May 07). *Costs are high – and rising – in Louisville's basketball scandal cleanup*. Courier Journal. <https://www.courier-journal.com/story/sports/college/louisville/2018/05/07/louisville-fbi-ncaa-basketball-scandal-cleanup-costs-high/531893002/>

- Grimes, P. W., & Chressanthis, G. A. (1994). Alumni Contributions to Academics. *American Journal of Economics and Sociology*, 53(1), 27-40.
- Chressanthis, G. A., & Grimes, P. W. (1993). Intercollegiate sports success and first-year student enrollment demand. *Sociology of Sport Journal*, 10(3), 286-300.
- Hanford, G. (1974, March 22). *An Inquiry into the Need for and Feasibility of a National Study of Intercollegiate Athletics*. American Council on Education.  
<https://eric.ed.gov/?id=ED132942>
- Havard, C. T., & Eddy, T. (2013). Qualitative assessment of rivalry and conference realignment in intercollegiate athletics. *Journal of Issues in Intercollegiate Athletics*, 6(6), 216-235.
- Hilliard, R. R., Shelton, A. F., & Pearson, K. E. (2001). An Update on Recent Decisions Rendered by the NCAA Infractions Appeals Committee: Further Guidance for NCAA Member Institutions. *JC & UL*, 28, 605.
- History*. (n.d.). NCAA.  
<https://www.ncaa.org/sports/2021/5/4/history.aspx#:~:text=The%20IAAUS%20officially%20was%20constituted,and%20Field%20Championships%20in%201921.>
- History – The Drake Group* (2022). The Drake Group.  
<https://www.thedrakegroup.org/about/history/>
- Hosick, M. B. (2014, August 7). *Board adopts new Division I structure*. NCAA.  
<https://www.ncaa.org/news/2014/8/7/board-adopts-new-division-i-structure.aspx>
- Howard University et al, v. National College Athletic Association, 510 F.2d 213 (D.C. Cir. 1975)
- Hughes, S. F., & Shank, M. D. (2008). Assessing the impact of NCAA scandals: An exploratory analysis. *International Journal of Sport Management and Marketing*, 3(1/2), 78.

- Humphreys, B. R., & Mondello, M. (2007). Intercollegiate Athletic Success and Donations at NCAA Division I Institutions. *Journal of Sport Management*, 21(2), 265-280.
- University of Mississippi. (n.d.). *Information about NCAA case: 2017 COI final report*.  
<https://athleticsworking.wp2.olemiss.edu/2017-coi-final-report/>
- Infractions panel could not conclude academic violations in North Carolina case*. (2017, November 14). NCAA.  
<http://www.ncaa.org/about/resources/mediacenter/news/infractions-panel-could-not-conclude-academic-violations-north-carolina-case>
- Inside the Division I Infractions Process: Negotiated Resolution*. (2019, January). NCAA.  
[https://ncaaorg.s3.amazonaws.com/enforcement/infractions/d1/D1INF\\_InfractionsProcessesNegotiatedResolution-FactSheet.pdf](https://ncaaorg.s3.amazonaws.com/enforcement/infractions/d1/D1INF_InfractionsProcessesNegotiatedResolution-FactSheet.pdf)
- Kane, D. (2017, March 25). *Cost of bills in UNC academic scandal nears \$18 million*. The News & Observer. <https://www.newsobserver.com/news/local/education/unc-scandal/article140688913.html>
- Keeping Faith with the Student Athlete*. (1991). Knight Commission on Intercollegiate Athletics.  
[https://www.knightcommission.org/wp-content/uploads/2008/10/1991-93\\_kcia\\_report.pdf](https://www.knightcommission.org/wp-content/uploads/2008/10/1991-93_kcia_report.pdf)
- Kirshner, A. (2018). *The SEC is paying out a record \$40.9 million per school, and the Big Ten could pass it soon*. SBNation. <https://www.sbnation.com/college-football/2018/2/2/16964186/sec-revenue-distribution-2017>
- Kogan, V., & Greyser, S. A. (2014). *Conflicts of College Conference Realignment: Pursuing Revenue, Preserving Tradition, and Assessing the Future*. Harvard Business School.
- Lawrence, M. (2012, January 13). *Working group to recommend expanded violation structure*

*for infractions*. NCAA.

<http://ncaanewsarchive.s3.amazonaws.com/2012/january/working-group-to-recommend-expanded-violation-structure-for-infractions.html>

Lerner, D. (2019, March 01). *NCAA files motion to intervene in FBI college basketball case*.

Courier Journal. [https://www.courier-](https://www.courier-journal.com/story/sports/college/louisville/2019/02/28/judge-wont-let-ncaa-intervene-fbi-college-basketball-case/3016536002/)

[journal.com/story/sports/college/louisville/2019/02/28/judge-wont-let-ncaa-intervene-fbi-college-basketball-case/3016536002/](https://www.courier-journal.com/story/sports/college/louisville/2019/02/28/judge-wont-let-ncaa-intervene-fbi-college-basketball-case/3016536002/)

Miller, Travis L. Home Court Advantage: Florida Joins States Mandating Due Process in NCAA Proceedings, 20 Fla. St. U. L. Rev. 871 (1993).

National Collegiate Athletic Ass'n v. Gillard, 352 So. 2d 1072 (1977).

National Collegiate Athletic Ass'n v. Miller, 795 F. Supp. 1476 (D. Nev. 1992)

NCAA. (2022). *2022-2023 Division I Manual*.

<https://www.ncaapublications.com/DownloadPublication.aspx?download=D123.pdf>

NCAA. (n.d.). *Division I Enforcement Charging Guidelines*.

<https://www.ncaa.org/sports/2018/2/8/division-i-enforcement-charging-guidelines.aspx#LIC>

*NCAA Enforcement Program: Hearings Before the Subcomm. On Oversight and Investigations of the House Comm. On Interstate and Foreign Commerce, 95<sup>th</sup> Cong., 2d Sess. 1* (1978).

*NCAA to add independent members to top board* (2019, January 24). NCAA.

<https://www.ncaa.org/news/2019/1/24/ncaa-to-add-independent-members-to-top-board.aspx>

NCAA Resources. (2021, April 28). *How the NCAA Works – Division I* [Video]. Youtube.

- [https://www.youtube.com/watch?v=d\\_M12OC27vI](https://www.youtube.com/watch?v=d_M12OC27vI)
- NCAA v. Board of Regents, 468 U.S. 85 (1984)
- NCAA. (2023). *Division I Enforcement: Internal Operating Procedures*  
[https://ncaaorg.s3.amazonaws.com/committees/d1/infraction/D1COI\\_IOPs.pdf](https://ncaaorg.s3.amazonaws.com/committees/d1/infraction/D1COI_IOPs.pdf)
- NCAA v. Tarkanian, 488 U.S. 179 (1988)
- Neumeister, L. (2021, June 4). *Appeals court upholds verdicts in NCAA bribes case*. Yahoo.  
Retrieved from <https://www.yahoo.com/entertainment/appeals-court-upholds-guilty-verdicts-154829363.html>
- Oriard, M. (2009). *Bowled over: Big-time college football from the sixties to the BCS era*. Univ of North Carolina Press.
- Our Division I members* (2021, May 11). NCAA. <https://www.ncaa.org/sports/2021/5/11/our-division-i-members.aspx>
- Papillion, J. (2022, September 23). *Why Tulane left the SEC*. Tualne Hullabaloo.  
<https://tulanehullabaloo.com/61062/sports/why-tulane-left-the-sec/>.
- Parish v. National Collegiate Athletic Association, 361 F. Supp. 1220 (W.D. La. 1973)
- Patterson, C. (2013, January 23). *NCAA investigating enforcement after misconduct in Miami case*. CBS Sports. <https://www.cbssports.com/college-football/news/ncaa-investigating-enforcement-after-misconduct-in-miami-case/>
- Paulling, D. (2015, October 13). *Ole Miss linked to NCAA investigation at ULL*. Clarion Ledger.  
<https://www.clarionledger.com/story/sports/college/ole-miss/2015/10/13/former-coach-saunders-may-have-committed-violations/73892168/>
- Pierce, Richard J. *Administrative Law*. Foundation Press, 2008.
- Potuto, J. R. (2009). *The NCAA rules adoption, interpretation, enforcement, and infractions*

- processes: The laws that regulate them and the nature of court review. *Vand. J. Ent. & Tech. L.*, 12, 257.
- Potuto, J. R., & Parkinson, J. R. (2010). If It Ain't Broke, Don't Fix It: An Examination of the NCAA Division I Infractions Committee's Composition and Decision-Making Process. *Neb. L. Rev.*, 89, 437.
- Regents of University of Minnesota v. NCAA, 422 F. Supp. 1158 (D. Minn. 1976).
- Rendell-Baker v. Kohn, 457 U.S. 830 (1982)
- Restoring the Balance: Dollars, Values, and the Future of College Sports.* (2010, June). Knight Commission on Intercollegiate Athletics. <https://www.knightcommission.org/wp-content/uploads/2017/09/restoring-the-balance-0610-01.pdf>
- Rhoads, T. A., & Gerking, S. (2000). Educational contributions, academic quality, and athletic success. *Contemporary Economic Policy*, 18(2), 248-258.
- Ridpath, B. D. (2022, December 22). *North Carolina Releases NCAA's Third, Yes Third, Notice of Allegations in Academic Fraud Case.* Forbes. [www.forbes.com/sites/bdavidridpath/2016/12/22/north-carolina-releases-ncaas-third-yes-third-notice-of-allegations-in-academic-fraud-case/#7c598c422d24](http://www.forbes.com/sites/bdavidridpath/2016/12/22/north-carolina-releases-ncaas-third-yes-third-notice-of-allegations-in-academic-fraud-case/#7c598c422d24).
- Ridpath, B. D., Nagel, M., & Southall, R. (2008). New Rules for a New Ballgame: Legislative and Judicial Rationales for Revamping the NCAA's Enforcement Process. *ESLJ*, 6, xxiii.
- Rose, L.M. (1991), *College Presidents and the NCAA Presidents' Commission: All Bark and No Bite*, 67 N.D. L. Rev. 243.
- Russo, C.J. (2008). *Encyclopedia of Education Law* (pp. xxxiii). Thousand Oaks, CA: Sage Publications.

*SEC announces 2020-21 revenue distribution* (2022, February 10). SEC.

<https://www.secsports.com/article/33261323/sec-announces-2020-21-revenue-distribution>

Singer, M. (2013, May 1). *Ranking the 10 Most Shocking Scandals in College Basketball*

*History*. Bleacher Report. <https://bleacherreport.com/articles/1625497-ranking-the-10-most-shocking-scandals-in-college-basketball-history>

Smith, M. & Ourand, J. (2018). *Collegiate realignment, round 2? After the disruption and chaos earlier this decade, is another cycle of conference movement inevitable or will this period of calmer heads and stability continue?* Sports Business Daily.

<https://www.sportsbusinessdaily.com/Journal/Issues/2018/12/03/In-Depth/College-sports.aspx>.

Smith, R. K. (2000). A brief history of the National Collegiate Athletic Association's role in regulating intercollegiate athletics. *Marq. Sports L. Rev.*, 11, 9.

Smith, R. A. (2010). Pay for play: a history of big-time college athletic reform. Retrieved from <https://ebookcentral.proquest.com>.

Smith, R. A. (1990). Sports and freedom: the rise of big-time college athletics. Retrieved from <https://ebookcentral.proquest.com>.

Southeastern Conference. (2017). *Constitution and Bylaws*.

<http://a.espncdn.com/photo/2017/0822/201718%20SEC%20Constitution%20and%20Bylaws.pdf>

Stinson, J. L., & Howard, D. R. (2007). Athletic Success and Private Giving to Athletic and Academic Programs at NCAA Institutions. *Journal of Sport Management*, 21(2), 235-264.

- Thamel, P. (2018, February 15). *Sources: College hoops corruption case poised to take down Hall of Fame coaches, top programs, lottery picks*. Yahoo!Sports.  
from <https://sports.yahoo.com/sources-college-hoops-corruption-case-poised-to-take-hall-of-fame-coaches-top-programs-lottery-picks-224417174.html>
- Talty, J. (2017). *SEC Network is the king of conference TV networks despite losing subscribers*. Alabama Media Group.  
[https://www.al.com/sports/2017/05/the\\_sec\\_network\\_is\\_still\\_the\\_k.html](https://www.al.com/sports/2017/05/the_sec_network_is_still_the_k.html).
- The N.C.A.A. gets it right*. (1996, January 23). The New York Times.  
<https://www.nytimes.com/1996/01/23/opinion/the-ncaa-gets-it-right.html>.
- Thelin, J. R. (1996). *Games colleges play: Scandal and reform in intercollegiate athletics*. JHU Press.
- Thomas, D. R. (2006). A General Inductive Approach for Analyzing Qualitative Evaluation Data. *American Journal of Evaluation*, 27(2), 237–246.
- Tracy, M. (2017, October 13). *N.C.A.A.: North Carolina Will Not Be Punished for Academic Scandal*. New York Times. <https://www.nytimes.com/2017/10/13/sports/unc-north-carolina-ncaa.html>
- United States ex rel Accardi v. Shaughnessy, 347 U.S. 260 (1954)
- United States v. Nixon, 418 U.S. 683 (1974).
- Yale University. (n.d.). *Rowing History*. <https://rowing.yale.edu/history>.
- Wetzel, D. (2017, September 26). *FBI probe uncovers massive college basketball scandal snaring big-time programs*. Yahoo!Sports. <https://sports.yahoo.com/fbi-probe-uncovers-massive-college-basketball-scandal-snaring-big-time-programs-144631716.html>
- Weaver, A. G. (2015). *New Policies, New Structure, New Problems-Reviewing the NCAA's*



Autonomy Model. *Elon L. Rev.*, 7, 551.

White, Jr., G.S. (1985). *College Presidents are Taking Control*. New York Times.

<https://www.nytimes.com/1985/06/23/sports/college-presidents-are-taking-control.html>.

*Working Group: Collegiate Model – Enforcement*. (2013, November 18). NCAA.

<https://www.ncaa.org/sports/2013/11/18/working-group-collegiate-model-enforcement.asp>

## VITA

### JULIE K. OWEN

---

---

#### EDUCATION

---

**Doctor of Philosophy**, Higher Education University of Mississippi, May 2023  
Dissertation: *Lack of Institutional Control: An Analysis of NCAA Football Bowl Subdivision Public Infractions Case Decisions*

**Juris Doctor** University of Denver, May 2007

**Master of Sports Administration & Facility Management** Ohio University, June 2003

**Master of Business Administration** Ohio University, June 2003

**Bachelor of Arts**, Economics Colorado College, May 2000

#### ACADEMIC EXPERIENCE

---

**Assistant Instructional Professor**, University of Mississippi November 2020 - Present

Courses Taught: NCAA Governance  
Leadership in Intercollegiate Athletics

Courses Developed: Academic Reform and the Academic Performance Program  
NCAA Bylaws & Compliance Monitoring Systems  
NCAA Enforcement and Infractions Cases

**Paper Presentation:** *Unanticipated Problems with the Transfer Portal*. 2023 University of Memphis Law Review Annual Symposium, Memphis, TN (with R.J. Rychlak).

#### ATHLETIC EXPERIENCE

---

**Senior Associate Athletics Director**, Kansas State University May 2021 - Present

Oversee compliance and governance operations and staff of five full-time employees while serving as a member of the Athletics Director's Senior Staff and a member of the Sport Administrators Committee. Drafted athletics department's Name, Image and Likeness and Academic and Graduation Awards policies.

**Senior Associate Athletics Director**, University of Mississippi October 2018 – May 2021

Promoted to oversee compliance and governance operations and staff of eight full-time employees while serving as a member of the Athletics Director's Executive Staff and Senior Staff. Served as liaison with campus departments including Registrar, Admissions, Housing, and Financial Aid. Member of committee to review validity of academic credentials for incoming student-athletes and compliance accurate data for submission as part of the NCAA Academic Performance Program.

**Associate Athletics Director**, University of Mississippi August 2011 – October 2018

Established athletics department's compliance rules education program before being assigned to oversee day-to-day compliance operations. Collaboratively established camps and clinics policies and procedures and associated operating manual, revised student-athlete eligibility

certification procedures, and modified method of distribution of NCAA student-athlete opportunity fund. Appointed liaison to NCAA staff during APP Data Review

**Director of Compliance**, University of Oklahoma April 2008 – August 2011  
Hired as part of the compliance office restructuring following two major infractions cases. Compliance staff was divided by topic (as opposed to sport). Asked to switch topics multiple times during my employment to address areas that needed enhancement or that lagged in terms of monitoring expectations. Served as the contact person for implementation of the University’s comprehensive compliance software system (ACS) prior to the fall 2008 semester.

**Director of Compliance**, Wright State University August 2007 – April 2008  
Administered a comprehensive Division I NCAA and Horizon League compliance program as the sole full-time compliance staff member. Developed real-time APR tracking system to proactively advise department leadership and coaches regarding eligibility and retention strategies.

**COMMITTEES AND SERVICE**

---

NCAA Legislative Committee	2022 - Present
<i>Legislative Process Subcommittee</i>	
<i>Transfer Issues Subcommittee</i>	
NCAA Committee for Legislative Relief	2020 - 2021
NAAC A.C.E. Mentor	2019 – 2020 and 2021 - 2022
University of Mississippi Housing Appeals Committee	2019 - 2021
NAAC Nominating Committee	2019 - 2021
NCAA Initial-Eligibility Waivers Committee	2014 - 2017

**ATHLETICS PRESENTATIONS**

---

*NCAA Name, Image and Likeness Interim Policy Panel*. 2023 Ahearn Fund National Leadership Circle weekend (with K. Lannou, J. McCown, and G. Taylor)

*NCAA Name, Image and Likeness Interim Policy Panel*. 2022 Ahearn Fund National Leadership Circle weekend (with A. Lockett, G. Taylor and D. Vaughn)

*Educating Boosters*. 2018 National Association for Athletics Compliance Annual Convention. Washington D.C. (with M. Hagen and J. Pollnow)

*Athletics Compliance Best Practices*. 2019 University of Mississippi Continuing Legal Education. Oxford, MS. (with R. Bjork and E. McKinley)

*The NCAA Legislative Process*. 2018 Oxford Newcomers Club education series. Oxford, MS.

*NCAA Division I Initial-Eligibility and Recruiting Rules*. 2012 MHSSA Coaches Clinic. Jackson, MS (with M. Ball)