ENFORCEMENT WRITTEN REPLY

University of Kansas – Case No. 00874

May 4, 2020

mglazier@bsk.com - May 6, 2020, 9:12:35 AM PDT

KEY RECORD LIST

Following is a list of key factual information that the NCAA enforcement staff relied on in bringing forward the allegations. This is not intended to be an all-encompassing list of factual information that supports the case.

1. FI001_BSelf_TR_051719_Kansas_00874 – Self's statement regarding information pertaining to Allegation Nos. 1 through 5.

2. FI004_KTownsend_TR_051619_Kansas_00874 – Townsend's statement regarding information pertaining to Allegation Nos. 1 through 5.

3. FI006_Gatto17Cr686_TGassnolaTestimony_101018_Kansas_00874 – Gassnola's testimony in U.S. v. Gatto, et al., (SDNY) trial pertaining to Allegation Nos. 1 through 5, including all referenced exhibits.

4. FI008_[redacted]BSK)_2_TR_021419_Kansas_00874 – [redacted] statement (Part No. 1) regarding information pertaining to Allegation Nos. 2, 4 and 5.

5. FI012_[redacted]TR_011819_Kansas_00874 – [redacted] statement regarding information pertaining to Allegation No. 3.

6. FI015_[redacted]TR_112718_Kansas_00874 – [redacted] statement regarding information pertaining to Allegation Nos. 3-(c), 4 and 5.

7. FI017_DReed_TR_051519_Kansas_00874 – Reed's statement regarding information pertaining to Allegation Nos. 1 through 5.

8. FI034_Gatto17Cr686_GattoSentencingSubmission_021219_Kansas_00874 – U.S. v. Gatto, et al. redacted sentencing submission of Gatto acknowledging his assistance in facilitating a payment to assist in the recruitment of individuals to Kansas.

9. FI040_U.S.vGattoetal_DefEx192_Kansas_00874 – Text message exchange between Gassnola and Self regarding Adidas contract extension and [redacted] [Defense Exhibit 192 was admitted into evidence during U.S. v. Gatto, et al., (SDNY)].

10. FI041_U.S.vGattoetal_GovtEx1096_Kansas_00874 – Email from Gassnola to Rivers providing a 90-day update of his activities including, but not limited, to contacts with Kansas staff and prospects being recruited by Kansas. [Government Exhibit 1096 was admitted into evidence during U.S. v. Gatto, et al., (SDNY)].

11. FI061_U.S.vGattoetal_DefEx156_Kansas_00874 – Text message exchange between Gassnola and Self regarding (1) Gassnola's conversations with [redacted] and (2) Self's conversation with Sean and a Tuesday deadline. [Defense Exhibit 156 was admitted into evidence during U.S. v. Gatto, et al., (SDNY)].

12. FI065_U.S.vGattoetal_GovtEx2T_Kansas_00874 – Transcript of a recorded conversation between Gassnola and Gatto discussing Gassnola's plans to send $20,000 to [redacted] [Government Exhibit 2T was admitted into evidence during U.S. v. Gatto, et al., (SDNY)].

13. FI177_[redacted]R_020119_Kansas_00874 – [redacted] statement regarding information pertaining to Allegation Nos. 6 and 7, through an interview done by the institution.

INDEX OF AUTHORITIES

Following is a list of key authorities that the NCAA enforcement staff relied on in bringing forward the allegations. This is not intended to be an all-encompassing list of pertinent authorities.

Official/Staff Interpretations.

October 19, 1999 – Official Interpretation – Corporate Entities as Representative of the institution's athletics interests – Pertinent to booster status.

August 22, 2012 – Representatives of Institution's Athletics Interests Involvement with Local Sports Clubs – Pertinent to institution's concerns about booster involvement in local sports.

Case-Specific Interpretations.

None.

Educational Columns.

None.

Committee on Infractions Decisions.

December 1, 2017 – University of Mississippi – Pertinent to basketball allegations and booster status.

July 11, 2007 – University of Oklahoma – Pertinent to basketball allegations and booster status.

October 24, 2000 – University of Minnesota, Twin Cities – Pertinent to basketball allegations and booster status.

November 20, 1996 – University of Louisville – Pertinent to basketball allegations and booster status.

December 5, 2018 – University of Oregon – Pertinent to head coach responsibility, football allegations and level discussion.

July 23, 2019 – DePaul University – Pertinent to Allegation No. 4.

March 6, 2015 – Syracuse University – Pertinent to head coach responsibility and institutional control.

October 22, 2013 – University of Miami (Florida) – Pertinent to institutional control.

July 31, 2012 – University of Central Florida – Pertinent to institutional control.

October 12, 2006 – University of Kansas – Pertinent to booster status and institutional control.

November 1, 1988 – University of Kansas – Pertinent to booster status and institutional control.

May 23, 2018 – University of Utah – Pertinent to head coach responsibility.

November 14, 2017 – The Ohio State University – Pertinent to head coach responsibility.

July 28, 2017 – Grambling State University – Pertinent to head coach responsibility.

February 1, 2002 – University of Alabama – Pertinent to institutional control.

April 17, 2003 – University of Arkansas – Pertinent to institutional control.

May 8, 2003 – University of Michigan – Pertinent to institutional control.

April 19, 2018 – California State University, Sacramento – Pertinent to head coach responsibility.

Infractions Appeals Committee Decisions.

March 6, 2015 – Syracuse University – Pertinent to head coach responsibility.

Other Reference Materials.

FI129_DivisionIManagementCouncilRepot_101899_Kansas_00874 – Pertinent to shoe apparel companies as boosters.

2000 NCAA Convention Proceedings.

I. INTRODUCTION

This case involves two distinct matters that reveal an institution with significant violations in its flagship programs – football and men's basketball. While the football allegations involve alleged Level II and III violations, which are serious alleged violations, there can be no doubt the men's basketball allegations are egregious, severe and are of the kind that significantly undermine and threaten the NCAA Collegiate Model. The institution secured significant recruiting and competitive advantages by committing alleged Level I men's basketball violations. The institution, in taking its defiant posture in this case, is indifferent to how its alleged violations may have adversely impacted other NCAA institutions who acted in compliance with NCAA legislation.

Regarding the men's basketball allegations, very few facts are in dispute. The institution does not dispute that Adidas and its employee and consultant provided at least $100,000 to the families of three men's basketball prospective student-athletes the institution was recruiting. Bill Self (Self), head men's basketball coach, and Kurtis Townsend (Townsend), assistant men's basketball coach, also do not dispute many of the facts related to Adidas and its representatives having contact with prospects, and that they regularly communicated with Adidas representatives about their recruitment of prospects. However, where the parties diverge from the NCAA enforcement staff is on the key issue of responsibility. The institution, Self and Townsend have accepted no responsibility for this conduct. They assert that Adidas and four of its employees or consultants are not representatives of the institution's athletics interests, arguing the enforcement staff's analysis is novel, unprecedented and never previously contemplated by the NCAA membership.

However, not only did the membership contemplate this scenario, they feared shoe apparel company involvement and influence in the recruitment of elite student-athletes and then put safeguards into place in an attempt to prevent what occurred in this case. Therefore, there is nothing novel in concluding that a shoe

apparel company is a representative of the institution's athletics interests. Shoe apparel companies are explicitly identified in the legislated definition and there is ample case precedent involving corporate entities as boosters. Further, despite the parties' claims, there is no cause for concern among member institutions as most of their relationships with corporate entities comply with NCAA legislation, existing without triggering violations due to the parties having established appropriate boundaries and oversight. The relationship between Adidas and the institution, however, was different. The institution failed to control and monitor the relationship between Adidas' representatives with its storied men's basketball program. This failure led to TJ Gassnola (Gassnola), a convicted criminal and then Adidas outside consultant, having unfiltered access to the men's basketball program and allowed for Gassnola and Adidas to profoundly influence the institution's recruitment of elite men's basketball student-athletes. In fact, Self and Townsend embraced, welcomed and encouraged Gassnola and other Adidas representatives' impermissible involvement. When boosters commit violations, the membership has clearly spoken through its legislative authority and infractions case precedent that the institution should be held responsible.

In the football case, there is credible and persuasive information that noncoaching staff members engaged in coaching activities, which resulted in Level II and III violations under two different head football coaches. Under the tenure of David Beaty (Beaty), then head football coach, he was not only aware of this activity, but supported it.

Finally, in its report, the Commission on College Basketball (Commission) highlighted the need for all stakeholders, including institutions and coaches, to protect collegiate men's basketball by accepting responsibility for violations that have occurred. It noted,

> It is the overwhelming assessment of the Commission that the state of men's college basketball is deeply troubled. The levels of corruption and deception are now at a point that they threaten the very survival of the college game as we know it…We the commissioners believe that this is a final opportunity to turn the course of college basketball in the right

direction. Every stakeholder will have to accept responsibility for what has happened in the past and commit to a new future if we are to succeed.[1]

While the institution cooperated in the football investigation, the enforcement staff was disappointed by the institution's posture in the men's basketball investigation. The institution's lack of timely cooperation and failure to acknowledge any responsibility for the alleged Level I violations are in direct contradiction to both the spirit and charge of the Commission and to the expectations of the membership.

II. ALLEGATION NO. 1 – Between September 2016 and September 2017, Adidas, a representative of the institution's athletics interests and agent; Gassnola, a then Adidas outside consultant, representative of the institution's athletics interests and agent; and Jim Gatto (Gatto), then Adidas director of global marketing for basketball, representative of the institution's athletics interests and agent, offered and provided $89,000 to the family of men's basketball prospective student-athlete and later student-athlete [redacted] Gassnola also had impermissible contacts with [redacted] family. [NCAA Division I Manual Bylaws 12.3.1.3, 13.01.2, 13.1, 13.1.2.1, 13.1.2.5, 13.2.1 and 13.2.1.1-(e) (2016-17) and 16.11.2.1 (2017-18)]

A. Overview.

The institution acknowledges Adidas, Gassnola and Gatto provided as much as $85,000 to [redacted], and that Gassnola had contacts with [redacted] while the institution was recruiting her son. However, because the institution disputes that Adidas, Gassnola and Gatto are representatives of the institution's athletics interests, it disagrees their behavior violates NCAA Bylaws 13 and 16 or that the institution is responsible for the violations. The enforcement staff believes the facts demonstrate that Adidas and its representatives were boosters; therefore, the institution is responsible for the alleged violations.

The institution also disputes that it is responsible for violations of Bylaw 12.3.1.3 related to Adidas,[2] Gassnola and Gatto since [redacted] never competed for the institution. However, because the institution in

[1] FI029, 2018CCBReportFinal_web_20180501, Page No. 1.
[2] 2016-17 NCAA Division I Manual.

its response acknowledges Adidas and its representatives were interested in signing men's basketball players to future endorsement contracts and paid the money to [redacted] family, the enforcement staff believes the Bylaw 12.3.1.3 violations occurred and the institution is responsible due to its failure to monitor and control its relationship with Adidas, as described in Allegation No. 5.

B. Enforcement staff's position as to why the violations should be considered Level I [NCAA Bylaw 19.1.1] and if the institution and involved individual(s) are in agreement.

The enforcement staff believes a hearing panel of the NCAA Division I Committee on Infractions could conclude that Allegation No. 1 is a severe breach of conduct (Level I) because the violations (a) were not isolated or limited; (b) provided or were intended to provide a substantial or extensive recruiting, competitive or other advantage; (c) provided or were intended to provide a substantial or extensive impermissible benefit; (d) involved third parties in recruiting violations that institutional officials knew or should have known about; (e) involved cash payments/benefits intended to secure, and which resulted in, the enrollment of a prospect; (f) were intentional or showed reckless indifference to the NCAA constitution and bylaws; and (g) seriously undermined or threatened the integrity of the NCAA Collegiate Model. The institution disputes a violation of NCAA legislation occurred, and therefore, takes no position on the level of the alleged violation.

C. Enforcement staff's review of facts related to the allegation.

1. Background on Gassnola and Gatto and their relationship with the institution.

Gassnola served as an outside consultant for Adidas and, in that role, reported to Gatto, whose primary role was signing professional athletes to Adidas marketing contracts. In 2013, Gassnola and Gatto began

working as Adidas liaisons to University of Kansas (Kansas).[3] Kansas athletics administrators who observed Gassnola between 2013 and 2017 described him as looking like "an old mob guy,"[4] having the "same rap sheet as Lucky Luciano," "a scumbag," "a phony want to be," "a parasite taking advantage of kids,"[5] an "entertaining bullshitting hustler"[6] and "a Tony Soprano" look-alike.[7] Further, Self learned around 2012 and David Reed (Reed), senior associate athletics director for compliance and student-athlete services, learned in 2014 the NCAA had sanctioned Gassnola and his AAU team, the New England Playaz. Reed learned this was due to Gassnola's association as a runner for an agent.[8] As evidenced by these statements, the athletics administrators were not only familiar with Gassnola but did not necessarily hold him in high regard or describe him in trustworthy terms.

Despite this low regard of Gassnola, both Self and Townsend regularly consulted with Gassnola and Gatto regarding the recruitment of elite men's basketball prospective student-athletes. Further, Self and Townsend provided Gassnola and Gatto significant access to the men's basketball program. Gassnola and Gatto visited Self and Townsend in the secure men's basketball coaches' office, accessed closed practices and shoot-arounds where they interacted with student-athletes, accessed a secure area where families waited for their student-athlete to exit the team locker room postgame and gained complimentary tickets to sold-

[3] FI006, Gatto17Cr686_TGassnolaTestimony_101018_Kansas_00874, Page Nos. 913, 920, 921, 925, 939 and 940.
[4] FI004, KTownsend_TR_051619_Kansas_00874, Page No. 18.
[5] FI017, DReed_TR_051519_Kansas_00874, Page Nos. 5, 8 and 10. Gassnola testified that in addition to pleading guilty to his crimes in *US v. Gassnola* (see FI233, FI36, FI37, FI38 and FI39), he also pled guilty to state crimes related to larceny, writing bad checks and misleading real estate investors approximately 20 years earlier.
FI006, Gatto17Cr686_TGassnolaTestimony_101018_Kansas_00874, Page Nos. 926 and 927.
[6] FI001, BSelf_TR_051719_Kansas_00874, Page No. 17.
[7] FI020, SLester_TR_022119_Kansas_00874, Page Nos. 31 and 32.
[8] FI001, BSelf_TR_051719_Kansas_00874, Page Nos. 26 and 27 and FI017, DReed_TR_051519_Kansas_00874, Page Nos. 5 and 30.

out games from Self's or the institution's allotment of tickets.[9] Sometimes Gassnola and Gatto even secured rooms in the institution's block of hotel rooms for events and games.[10]

2. Background on [redacted] and his recruitment to the institution.

[redacted] Self reported, [redacted] was a guy that we basically decided to recruit basically after we lost [redacted][11] Men's basketball prospective student-athlete [redacted] announced his verbal commitment to [redacted] instead of Kansas [redacted][12] Self reported that the institution had previously been "pseudo recruiting" [redacted] but [redacted] commitment to [redacted] caused his staff to elevate [redacted] recruitment.[13] Townsend, who had been the primary recruiter of [redacted], was [redacted] primary recruiter and knew Gassnola had a relationship with [redacted] due to [redacted] attendance at Adidas events. Townsend spoke with Gassnola throughout [redacted] recruitment to gather information about [redacted] and learn what Gassnola was hearing about other schools recruiting [redacted][14] While it is unclear if there was a connection to [redacted], within hours of [redacted] announcement about his commitment to [redacted], Townsend

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[9] FI001, BSelf_TR_051719_Kansas_00874, Page Nos. 22 through 24, 30 through 33 and 36 through 38; FI004, KTownsend_TR_051619_Kansas_00874, Page Nos. 18 through 26, 39 and 40; FI006, Gatto17Cr686_TGassnolaTestimony_101018_Kansas_00874, Page Nos. 920 and 921; FI123 J. Gatto Comp. Admissions - Duke in New York (11-15-2016) - Away; FI124, T. Gassnola Comp. Admissions - Iowa State (03-04-2016) - Home; FI125, J. Gatto Comp. Admissions - Texas (02-28-2015) - Home; FI126, J. Gatto Comp. Admissions - Baylor (02-01-2017) - Home; FI127, JStephens_Email_SHahn_BaylorCompTicketList_02117_Kansas_00874; and FI128, JStephens_Email_SHahn_KentuckyCompTicketList_012917_Kansas_00874.

[10] FI095, JGatto_Email_STemple_HotelRoomBlockHawaii_052616_Kansas_00874 and FI096, PVanRoekel_Email_FQuartlebaum-KTownsend_100914_Kansas_00874.

[11] FI001, BSelf_TR_051719_Kansas_00874, Page No. 61.

[12] FI004, KTownsend_TR_051619_Kansas_00874, Page No. 117.

[13] FI001, BSelf_TR_051719_Kansas_00874, Page No. 61.

[14] FI004, KTownsend_TR_051619_Kansas_00874, Page Nos. 76 and 77.

called Gassnola at 7:29 p.m. (seven-minute call), followed by Gassnola's call to Self at 8:50 p.m. (12-minute call).[15]

3. Gassnola's provision of money to

took an official paid visit to the institution the weekend of September 29 through October 2, 2016, which was also the same weekend as the institution's Late Night at the Phog (Late Night) event.[16] Gassnola and Gatto also attended Late Night during official paid visit. Gassnola testified he met at the Oread Hotel in his hotel room after Late Night and offered to provide them money.[17] This was the first of three impermissible contacts Gassnola had with family. Townsend reported that he saw Gassnola, , and possibly , at the Oread Hotel in a large meeting space after the event, but claimed he was unaware of Gassnola's offer to pay .[18]

According to Gassnola, he informed Gatto of his offer to family as he and Gatto drove to the airport the next day. Gatto told Gassnola, "Ok, do what you got to do."[19] Gassnola testified that between November 2016 and September 2017, he ultimately paid family a total of $90,000 since had agreed to attend Kansas, an Adidas sponsored institution.[20] Gatto's attorney also acknowledged these,

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[15] FI135, KTownsend_Institution_PhoneRecords_Kansas_00874 and FI133, BSelf_PersonalCellPhone_CombinedStatements_Kansas_00874;
Also see Exhibit NCAA-1 Allegation1_DescriptiveTimeline. In a series of August 2017 text messages between Gassnola and Self, Self texted Gassnola, "Just got to get a couple real guys." Later in the texts, Gassnola texted Self, "I have never let you down. Except lol," which Gassnola and Self said was in reference to the institution's failure to sign Gassnola testified in federal court that in 2015 he paid $15,000 to family and felt he had let Self down when committed to This is discussed further in Allegation No. 3-a.

[16] Late Night is an annual celebratory kick-off to the basketball season and major recruiting event for the institution.

[17] FI006, Gatto17Cr686_TGassnolaTestimony_101018_Kansas_00874, Page Nos. 1022 through 1024. The institution uses the Oread Hotel, which is located on campus, as the primary hotel for visiting prospects and their families. Gassnola and Gatto also stayed at the Oread Hotel when they visited the institution.

[18] FI004, KTownsend_TR_051619_Kansas_00874, Page Nos. 76 and 77.

[19] FI006, Gatto17Cr686_TGassnolaTestimony_101018_Kansas_00874, Page No. 1025.

[20] FI006, Gatto17Cr686_TGassnolaTestimony_101018_Kansas_00874, Page Nos. 915, 1021, 1022, 1255 and 1256.

as well as other payments, during his opening statement at trial, stating: "NCAA rules were broken. [Gatto] and Adidas helped out financially a few families…We are not going to waste your time pretending that these families did not get funds."[21]

Gassnola made the first impermissible payment of $30,000 to [redacted] using Adidas funds on or about November 1, 2016, at a New York City hotel.[22] This in-person meeting between Gassnola and [redacted] constituted the second impermissible contact. Gassnola told Gatto shortly after this meeting that [redacted] family was "in a good place."[23] Eight days later, on November 9, 2016, [redacted] signed a National Letter of Intent (NLI) with the institution.[24] Five weeks later, on December 15, 2016, and as seen in ESPN game footage, Gassnola sat in front-row, court-side seats at one of [redacted] high school basketball games with Jerrance Howard (Howard), assistant men's basketball coach; Self; and Townsend.[25]

Sometime between January 19 and 23, 2017, Gassnola made a second impermissible payment of $20,000 in Adidas cash to [redacted] at a Las Vegas hotel.[26] This meeting constituted the third impermissible contact between Gassnola and [redacted]. Subsequently, on February 24, 2017, Gassnola instructed his fiancé to wire transfer a third impermissible payment of $20,000 of Adidas funds to [redacted], as Gassnola testified [redacted] seemed to him in dire need of money.[27] Coincidently, the night before, on February 23, 2017, Townsend had a series of telephone calls with Gassnola, including one 12-minute call. Self also had an

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[21] FI031, Gatto17Cr686_OpeningStatements_100218_Kansas_00874, Page No. 66.
[22] FI006, Gatto17Cr686_TGassnolaTestimony_101018_Kansas_00874, Page Nos. 1026 through 1030.
[23] FI006, Gatto17Cr686_TGassnolaTestimony_101018_Kansas_00874, Page No. 1031.
[24] FI058, U.S.vGattoetal_GovtEx1820_Kansas_00874.
[25] FI101, Screenshots_OakHillAcademyVSierraCanyon_GassnolaKUCoaches_121516_Kansas_00874 and FI232, SierraCanyon(CA)vOakHillAcademy(VA)ESPNFootage_121516_Kansas_00874.
[26] FI006, Gatto17Cr686_TGassnolaTestimony_101018_Kansas_00874, Page Nos. 1031 through 1034.
[27] FI006, Gatto17Cr686_TGassnolaTestimony_101018_Kansas_00874, Page Nos. 1034 through 1036.

eight-minute telephone conversation with Gassnola February 23, 2017.[28] However, both Self and Townsend denied talking with Gassnola about any payments for [redacted][29]

Gassnola made these first three payments totaling $70,000 while [redacted] was a prospective student-athlete, and in violation of Bylaw 13.2.1. However, in violation of Bylaw 16.11.1, Gassnola continued to provide [redacted] family money after he enrolled at the institution June 3, 2017. Gassnola testified he made a fourth impermissible payment when he wire transferred $15,000 of Adidas funds to [redacted] June 14, 2017.[30] Similar to the February 2017 payment, Townsend had telephone communications with Gassnola – once June 13, 2017, and twice June 14, 2017 – around the time of the payment.[31] Self called Gassnola for five minutes June 14, 2017. However, Townsend again denied talking with Gassnola about [redacted] and [redacted] during these calls and denied any knowledge of the payment, while Self had no idea what he spoke to Gassnola about.[32]

The fifth and final impermissible payment occurred at some point between September 23 and 26, 2017. Specifically, Gassnola and [redacted] exchanged text messages September 22 and 23, 2017, in which Gassnola

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[28] FI134, JHoard_Institution_PhoneRecords_Kansas_00874; FI135, KTownsend_Institution_PhoneRecords_Kansas_00874; and FI137 [redacted] Phone Extraction.
[29] FI004, KTownsend_TR_051619_Kansas_00874, Page Nos. 90 and 91 and
FI001, BSelf_TR_051719_Kansas_00874, Page No. 69.
[30] Gassnola used his New England Playaz account at Berkshire Bank for the wire transfer, an account he controlled. Gassnola also testified that he specifically discussed this payment with Gatto.
FI006, Gatto17Cr686_TGassnolaTestimony_101018_Kansas_00874, Page Nos. 922, 923, 1037 and 1038 and
FI074, Institution'sTJGassnolaBPrestonInvestigation_081419_Kansas_00874, Page Nos. 3 through 14 (June 2017 records).
[31] FI074, [redacted] Text, exchange of texts between Gassnola and [redacted] and
FI135, KTownsend_Institution_PhoneRecords_Kansas_00874, Townsend's calls and texts. On June 14, 2017, Gassnola texted [redacted] a screenshot of the wire transfer confirmation at 11:01 a.m. Central Standard Time. Twenty minutes later Townsend sent Gassnola a text message at 11:20 a.m. Central Standard Time.
[32] FI004, KTownsend_TR_051619_Kansas_00874, Page No. 90; FI137, [redacted] Phone Extraction;
FI003, BSelf(BSK)_TR_120517_Kansas_00874, Page No. 18; and
FI133, BSelf_PersonalCellPhone_CombinedStatements_Kansas_00874. Additionally, about a month earlier, Self attended an Adidas Coaches Retreat in Costa Rica May 18 through 21, 2017, which included Gassnola and Gatto.
FI001, BSelf_TR_051719_Kansas_00874, Page Nos. 31, 32, 70 and 86.

told [redacted] he would deposit $4,000 in her bank account.[33] In regard to this payment, the institution questions whether the payment occurred because FBI agents arrested Gatto and others September 26, 2017.[34] However, the enforcement staff believes Gassnola's federal trial testimony that he provided $90,000 to [redacted] establishes that he also made the $4,000 payment.[35]

4. Adidas, Gassnola and Gatto as representatives of the institution's athletics interests.

The facts of this case establish that at all times relevant to this allegation, Adidas, Gassnola and Gatto were representatives of the institution's athletics interests, and therefore, the money they provided to [redacted] violated NCAA recruiting and extra benefit legislation. Specifically, Adidas, Gassnola and Gatto meet multiple subparts of NCAA Constitution 6.4.2 and Bylaw 13.02.15, which are the legislated definitions of a representative of the institution's athletics interests. The relevant legislation and the factual information supporting each of these subparts will be discussed in detail below.

a. Relevant NCAA legislation and case precedent.

Constitution 6.4.2, which is mirrored in Bylaw 13.02.15, clearly states that institutions are responsible for the acts of "a corporate entity (e.g., apparel or equipment manufacturer)" when "athletics administration or athletics department staff member has knowledge or should have knowledge" of five outlined behaviors. These behaviors include: (1) participating in an agency or organization outlined in Constitution 6.4.1; (2) making financial contributions to the athletics department or booster organization; (3) assisting in the recruitment of prospects at the request of an athletics department staff member or known to be assisting; (4) providing benefits to enrolled student-athletes; or (5) otherwise promoting the institution's athletics

[33] FI006, Gatto17Cr686_TGassnolaTestimony_101018_Kansas_00874, Page Nos. 1038 through 1040.
[34] It is for this reason that the institution concluded Gassnola made about $85,000 in payments.
[35] While Gassnola testified that he provided $90,000, the total of the five payments is actually $89,000.

program. A corporate entity or an individual need only meet one subpart to be considered a representative of the institution's athletics interests.

The membership contemplated corporate entities as boosters as early as 1999 and amended the bylaws defining athletics representatives to specifically include shoe apparel companies. An examination of the legislative history of the amendment shows the membership feared the influence shoe apparel companies could have in men's basketball generally and recruiting specifically. In October 1999, the NCAA Division I Management Council unanimously clarified that corporate entities could be considered athletics representatives, confirmed that the provisions of Constitution 6.4.1 were applicable to "corporate entities and other organizations (e.g., apparel and equipment companies)" and directed the NCAA Division I Academics/Eligibility/Compliance Cabinet (AEC) to incorporate that interpretation into Constitutions 6.4.1 and 6.4.2 and Bylaw 13.02.12.[36] This clarification arose as a part of the membership's expansive review of men's basketball and amateurism deregulation issues resulting from concerns raised by various membership organizations regarding possible interference of outside organizations, specifically including apparel companies. In fact, the 2000 Division I Forum at the NCAA Convention referenced this legislative adjustment. Specifically, speakers at the forum noted that membership groups and the AEC subcommittee shared "concern about outside groups – the shoe companies of the world, so to speak - having influence," and proposed an expansion of the athletics interests legislation to be clear that such companies could be regarded as representative of the institution's athletics interests.[37]

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[36] FI129, Division1ManagementCouncilReport_101899_Kansas_00874, Page No. 9 and FI130, Interp_CorporateEntitiesasRIAs_101999_Kansas_00874.
[37] 2000 Convention Proceedings, Page No. 122, Tom Hansen, Pac-10 Commissioner, speaking.

Therefore, there is nothing new, unprecedented or misguided about the enforcement staff's analysis on this issue as it is based upon fundamental and well-established NCAA legislation. In fact, John Carns, senior associate director of athletics for compliance, acknowledged this when he testified in *US vs. Gatto et al (Gatto)* that shoe apparel companies that sponsor NCAA member institutions are considered representative of the institution's athletics interests under NCAA legislation.[38] The NCAA Division I Committee on Infractions has also found corporate entities to be representatives of the institution's athletics interests in a number of major infractions cases.[39] Furthermore, the institution's own major infractions history demonstrates its familiarity with major violations involving representatives of its athletics interests. Since 1952, all six of the institution's major cases have involved violations committed by boosters.

b. Constitution 6.4.1, 6.4.2-(a) and 6.4.2-(e): Adidas, Gassnola and Gatto promoted the institution's athletics department.

The institution, Self and Townsend do not dispute that Adidas is an apparel manufacturing corporate entity. Instead, they argue in their responses that they did not know Adidas promoted the institution's athletics interests, thus triggering booster status. However, this position is wholly unsupported by the record, as the institution's own athletics department staff, including Self and Townsend, as well as multiple Adidas representatives reported that Adidas promoted Kansas' athletics interests.

For example, when Self was asked to describe Adidas' role with the institution, Self said: "Well, they're one of our primary athletic department sponsors, if not the primary athletic department sponsor. Their role is to outfit all the teams/athletes with gear *and certainly I will say promote*, a marketing our programs in a

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[38] FI234, JohnCarnsTestimony_USGattoSDNY_Kansas_00874, Page Nos. 402 and 403.
[39] December 1, 2017 – University of Mississippi, athletics apparel retail company and car dealership both found to be representatives of the institution's athletics interests; July 11, 2007 – University of Oklahoma, car dealership found to be a representative of the institution's athletics interests; October 24, 2000 – University of Minnesota, Twin Cities, car dealership found to a representative of the institution's athletics interests; November 20, 1996 – University of Louisville, local company that provided a car stereo to a student-athlete found to be a representative of the institution's athletics interests.

way, I guess, that brings most light to it."[40] He explained further, "Everywhere you go in town you have Adidas and Kansas and all these things but I think there would be – that would be a way that it would be used *to promote the respective programs*."[41] Later in this same interview, Self's attorney asked Self to return to the nature of Adidas' contractual relationship with the institution and its interests. For the third time, Self reiterated the promotion aspect of the relationship.

> [Excerpt from Self's May 17, 2019, interview, FI001, Page No. 35]
>
> WS – William Sullivan (Sullivan), outside legal counsel for Self and the institution.
> BS – Self.
>
> WS: James, I have a general Adidas question for coach Self. Coach to your understanding what is Adidas' general interest or purpose in connection with its contractual association with KU? Is that an interest in selling its product?
>
> BS: I think to – well I said – I thought I said this before, *I think to promote the school's programs* and you can do that many ways, although I'm probably not articulate enough to explain it but I would think Adidas would too to have as big a presence on our campus – men's basketball, it's important to have a presence – men's basketball is maxed out. We can't do much more with men's basketball. There's a lot of other programs that need help from Adidas more than us, i.e. football. So when I'm talking about signage, visual type of support, that kind of stuff so, you know, *I thought their role was to promote* and provide equipment and apparel for all our sports."[42]

Townsend agreed with Self's assessment of Adidas, saying: "No, I think *they promote us*. I think *they promote us* and we promote them."[43] Townsend further explained that the institution was one of Adidas' "flagship schools," which means it received exclusive gear and shoes bearing the institution's logo that made Kansas unique and set it apart from other institutions.[44] Regarding Gassnola's role, Townsend said

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[40] FI001, BSelf_TR_051719_Kansas_00874, Page No. 13 (emphasis added).
[41] FI001, BSelf_TR_051719_Kansas_00874, Page No. 13 (emphasis added).
[42] FI001, BSelf_TR_051719_Kansas_00874, Page No. 35 (emphasis added).
[43] FI004, KTownsend_TR_051619_Kansas_00874, Page No. 15 (emphasis added).
[44] FI004, KTownsend_TR_051619_Kansas_00874, Page No. 15.

Gassnola was there to make sure the institution was happy with Adidas and what the company was providing to the institution.[45]

Sean Lester (Lester), deputy director of athletics for administration, had a primary role negotiating the August 2017 contract extension with Adidas. During his interview, he acknowledged the institutional benefits of the Adidas relationship, describing it as follows:

> It's all encompassing. It's a university deal. You know, Kansas, University of Kansas, we were looking for an apparel deal that was unlike no other. We didn't want to look like every other team, we didn't want to act like every other school or AAU (American Association of Universities) institution. We deserved something that was bigger, better, brighter than anybody else.[46]

Lester noted the Adidas-Kansas relationship was designed to promote the Kansas athletics brand and support it in a positive manner.[47] Further, Lester described Adidas' September 22, 2017, public statement regarding the partnership as "rather accurate."[48] Specifically, that statement read:

> As part of the new strategic partnership between Adidas and Kansas, we are building a comprehensive institutional approach unlike any other apparel agreement in the country. *The agreement will promote the Jayhawk brand* with a sharp focus on impacting the former, current, and future Jayhawk. The resources from this new partnership will help support Kansas in their future capital investment initiatives while also helping to bring to life KU scholars and open source collaboration between Kansas and Adidas that provides student with an opportunity to gain new perspectives and create new initiatives that impact the world.[49]

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[45] FI004, KTownsend_TR_051619_Kansas_00874, Page No. 17.
[46] FI020, SLester_TR_022119_Kansas_00874, Page No. 33.
[47] FI020, SLester_TR_022119_Kansas_00874, Page No. 36. The institution and Adidas signed the final agreement April 19, 2019. FI093, Adidas_Contract_2019_Kansas_00874, the third paragraph states that Kansas was entering into the Adidas agreement "to secure sponsors to support its athletics programs." As part of the agreement, Kansas provided Adidas tickets to football, men's basketball and other sport teams contests.
[48] FI020, SLester_TR_022119_Kansas_00874, Page No. 41.
[49] FI156, AdidasStatement_092317_Kansas_00874 (emphasis added).

Regarding the reference in the statement to Adidas providing resources for capital investments, Lester confirmed that this consisted of athletically related investments, including funds for major renovations to the institution's football stadium.[50]

Chris McGuire (McGuire), Adidas director of sports marketing for North America, reported discussing with athletics department leaders how Adidas and Kansas could help each other build their brands and collectively work together to benefit both parties.[51] Similarly, during his opening statement at trial, Gatto's attorney said, "The evidence is going to show from Jim's (Gatto) perspective, this was a win-win-win situation," for the universities, Adidas and the families of prospective student-athletes.[52]

In addition to its contract with the institution, Adidas also played a significant role in promoting Late Night, which Self described as an important recruiting event and "next to a home game, it's the biggest things we do at the University of Kansas the entire year."[53] Jennifer Alle (Alle), assistant director of athletics for alumni engagement and the person with oversight of Late Night, said, "Absolutely, its (Late Night) promoting the basketball program…" She reported that Adidas became involved in Late Night following the October 9, 2015, event, which was poorly attended. Self complained to Alle that the event needed to improve the following year so Alle turned to Gassnola for assistance. Gassnola used his contacts at Adidas to help secure the musical artists and funding for the Front Lawn experience, a festival to entertain fans as they waited in line for the event. Adidas provided the institution with approximately $125,000 of allocated promotional funds to support and promote Late Night. As a result of this Adidas funding, Alle reported that

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[50] FI020, SLester_TR_022119_Kansas_00874, Page Nos. 41 and 42.
[51] FI079, CMcGuire_TR_061119_Kansas_00874, Page No. 7. In his role, McGuire had oversight of Adidas personnel who managed the relationships with college and grassroots programs.
[52] FI031 Gatto17Cr686_OpeningStatements_100218_Kansas_00874, Page Nos. 68 and 69.
[53] FI001, BSelf_T_051719_Kansas_00874, Page Nos. 33 and 39.

the 2016 event was much improved, better attended and set the bar for all future events. Alle said Kansas is known nationally for Late Night because "no one can pull off what we do around Midnight Madness."[54]

In addition to its financial support, Gassnola also attended Late Night because, according to Self, Adidas and Gassnola knew of the event's importance to the institution.[55] Similarly, Gassnola stated that Late Night was an important recruiting event for the institution, which is why he and Gatto attended the 2016 event.[56] Sheahon Zenger (Zenger), director of athletics from 2011 to 2018, recalled seeing Gassnola at Late Night, explaining that Adidas wanted to get involved in making the event bigger and Gassnola was the Adidas point person working with the institution's marketing office.[57]

In addition to Late Night, Adidas played a significant role in providing funding to another event that promoted both Self and the institution's men's basketball program. With assistance and direction from Gassnola and Gatto, Adidas paid for and organized a celebratory banquet for Self upon his induction into the Naismith Memorial Basketball Hall of Fame (Hall of Fame) September 8, 2017.[58] The event cost Adidas approximately $250,000.[59] Gassnola and Gatto both attended this event and interacted with institutional personnel, including Self, Townsend and Zenger.[60]

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[54] FI024, JAllee_TR_061919_Kansas_00874, Page Nos. 9 through 24 and FI025, JAllee_TR_081419_Kansas_00874, Page Nos. 11 and 12. Since 2016, Adidas has continued to provide the institution with approximately $125,000 annually in allocated promotional dollars to promote Late Night. It is noteworthy, despite the widely publicized federal Southern District of New York trial and the September 23, 2019, issuance of the notice of allegations, the institution and Self chose to promote the October 4, 2019, Late Night event using a video of Self wearing an Adidas basketball shirt and a large necklace featuring a money symbol. See Kansas Jayhawks Twitter (@KUAthletics).

[55] FI001, BSelf_T_051719_Kansas_00874, Page Nos. 33 and 39.

[56] FI006, Gatto17Cr686_TGassnolaTestimony_101018_Kansas_00874, Page No. 1023.

[57] FI022, SZenger_TR_022119_Kansas_00874, Page No. 16.

[58] FI001, BSelf_T_051719_Kansas_00874, Page No. 21. The event also celebrated former NBA player Tracy McGrady's induction. The night before the event, Self and his wife went to dinner with Gassnola, his fiancé and Gatto.

[59] FI004, KTownsend_TR_051619_Kansas_00874, Page No. 29. The enforcement staff believes the $250,000 Adidas paid for this event could be regarded as an in-kind donation to the institution as it saved the athletics department from having to pay for the event.

[60] FI022, SZenger_TR_022119_Kansas_00874, Page No. 15.

In short, there is overwhelming factual information demonstrating that Adidas, Gassnola and Gatto promoted the institution's athletics interests and, therefore, are boosters. In fact, as discussed above, the majority of the information regarding Adidas' promotion of Kansas athletics comes directly from statements made by Self and other athletics department staff members.

c. Constitution 6.4.2-(b): Adidas provided financial contributions to the Kansas athletics department.

It is undisputed that at all times relevant to the allegations of this case and certainly as early as October 2014, Adidas provided annual financial contributions to the athletics department as part of its sponsorship agreement. Between 2014 and 2018, Adidas provided a total of approximately $26 million to the institution's athletics department. One would be hard pressed to find an athletics department staff member who was not aware of the significant relationship and financial support Adidas provided to the institution.[61] Further, as discussed above regarding Late Night and Self's Hall of Fame celebration, Adidas also provided the institution with financial contributions for promotional events. Pursuant to Constitution 6.4.2-(b) and Bylaw 13.02.15-(b), these financial contributions make Adidas a representative of the institution's athletics interests.

d. Constitution 6.4.2-(c): Self and Townsend requested recruiting assistance and/or knew or should have known Adidas and Gassnola were providing recruiting assistance.

Self and Townsend either requested assistance or were aware of Adidas and Gassnola's recruiting on behalf of the institution as early as October 2014. As a result, Adidas and Gassnola are representatives of the institution's athletics interests pursuant to Constitution 6.4.2-(c). The majority of information regarding

[61] FI001, BSelf_T_051719_Kansas_00874, Page No. 13; FI004, KTownsend_TR_051619_Kansas_00874, Page No. 15; FI019, LKeating_TR_022219_Kansas_00874, Page No. 22; FI020, SLester_TR_022119_Kansas_00874, Page Nos. 35 and 36; FI022, SZenger_TR_022119_Kansas_00874, Page No. 31; and FI023, JLong_TR_022119_Kansas_00874, Page Nos. 26 through 28.

Self's and Townsend's requests for and knowledge of Adidas and Gassnola's recruiting assistance will be discussed further in Allegation Nos. 2 and 3.

However, in addition to that information, it is important to understand the dynamics of the relationship between Gassnola and the institution's coaching staff. While Gassnola stated he did not have relationships with any institutional administrators, he knew all the men's basketball coaches and had a very good relationship with Self.[62] Gassnola testified it was generally his job to build and maintain relationships with college basketball coaches, but specifically with the coaches at Kansas because the institution was one of Adidas' three flagship schools.[63] Gassnola said he wanted to ensure the coaching staffs of Adidas sponsored schools were happy so they did not switch sponsors to Nike or Under Armour.[64] Further, Gassnola testified that part of his job was to support and recruit top high school prospects to Adidas sponsored schools like Kansas.[65] Gassnola even agreed during cross-examination that college basketball coaches wanted shoe companies to help them recruit players to their institutions.[66]

Similarly, in his February 12, 2019, sentencing submission filing in the Southern District of New York (SDNY), Gatto spoke to the motivation of Adidas, Gassnola and himself. He noted:

> Rather, Mr. Gatto's motivation for paying the families of the talented basketball recruits was borne out of his desire to help Adidas-sponsored universities field great basketball teams, and a perception, or rather a misperception, that supporting recruiting efforts in ways that violated NCAA rules was how he was supposed to support universities Adidas sponsored….Helping the universities recruit successful basketball teams – which even the government's cooperating witnesses agree was the purpose of the alleged scheme – was

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[62] FI006, Gatto17Cr686_TGassnolaTestimony_101018_Kansas_00874, Page Nos. 1048 and 1078.
[63] University of Louisville and North Carolina State University were the other two flagship institutions.
FI006, Gatto17Cr686_TGassnolaTestimony_101018_Kansas_00874, Page No. 942.
[64] FI006, Gatto17Cr686_TGassnolaTestimony_101018_Kansas_00874, Page Nos. 1076, 1077, 1080, 1081 and 1084. Gassnola's concerns were legitimate as Zenger reported that Self had wanted to switch to Nike instead of Adidas.
FI022, SZenger_TR_022119_Kansas_00874, Page Nos. 13 and 29.
[65] FI006, Gatto17Cr686_TGassnolaTestimony_101018_Kansas_00874, Page Nos. 1053 and 1054.
[66] FI006, Gatto17Cr686_TGassnolaTestimony_101018_Kansas_00874, Page No. 1107.

> understood by the scheme participants as one that could help the universities bring in tens of millions of dollars in annual revenues.

Gatto said this conduct "was so widespread as to have become virtually an industry practice."[67] Gatto agreed with Gassnola that the objective of the scheme "was to 'make sure that the coaching staffs' of the universities' basketball teams 'were happy' with Adidas because he understood that the 'basketball coaches' at colleges 'wanted shoe companies to help recruit players to their schools.'"[68] Gatto also agreed with Gassnola's statement that Gatto "was 'trying to help' the Adidas-sponsored universities recruit talented players, who would hopefully play well for the universities' (sic) basketball teams and lead the schools to athletic success."[69] Gatto drew a direct connection to Kansas as an intended beneficiary of the scheme to pay money to families of talented recruits. Specifically, Gatto pointed to men's basketball student-athlete [redacted] who played for Kansas [redacted] and helped Kansas reach the Elite Eight in the NCAA Division I men's basketball tournament. Gatto noted that Gassnola agreed to pay [redacted] $20,000 of Adidas money to help ensure [redacted] played at Kansas.[70] Also, Gatto confirmed that he facilitated the payments Gassnola made to [redacted] family "to ensure that the Adidas-sponsored universities were not placed at a disadvantage in the highly competitive world of college recruiting."[71] In his sentencing submission, Gatto wrote, "With regard to the coaches at Kansas, the evidence showed that Coach Self and Coach Townsend actually expected Mr. Gassnola to

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[67] FI034, Gatto17Cr686_GattoSentencingSubmission_021219_Kansas_00874, Page No. 7.
[68] FI004, KTownsend_TR_051619_Kansas_00874 , Page Nos. 85 through 89. To this point, it is worth considering the following: February 22, 2017, the institution's men's basketball team defeated Texas Christian University to win its 13th straight Big 12 conference title. That same day, Gatto texted Townsend congratulating him on winning the conference title. Townsend texted back thanking Gatto for all he had done for them. Townsend told the enforcement staff that his thank you to Gatto was not in relation to [redacted] recruitment, but rather to thank Gatto for giving the coaches Yeezy shoes to wear in a game against the University of Kentucky January 28, 2017, and for providing 150 shirts and bags to Townsend's wife for her family reunion in June or July 2017.
[69] FI034, Gatto17Cr686_GattoSentencingSubmission_021219_Kansas_00874, Page No. 17.
[70] FI034, Gatto17Cr686_GattoSentencingSubmission_021219_Kansas_00874, Page Nos. 22 through 24.
[71] FI034, Gatto17Cr686_GattoSentencingSubmission_021219_Kansas_00874, Page No. 26.

violate NCAA recruiting rules in order to help them recruit players, just as Nike does for the teams it sponsors."[72]

Gassnola testified in Gatto's trial that he kept his impermissible activity with prospective student-athletes concealed from Kansas and its coaches.[73] However, contemporaneous documentation, including Gassnola's own communications, and Self's and Townsend's statements support that the coaching staff knew or should have known Gassnola was assisting in the recruitment of prospective student-athletes to the institution. For example, in Gassnola's March 2, 2015, email to Chris Rivers (Rivers), Adidas director of grassroots basketball, Gassnola informed Rivers that he and Gatto had been on Kansas' campus October 10, 2014.[74] Gassnola reported that he and Gatto "[m]et with Self and his staff. Talked recruiting targets and the upcoming season, assured them that we are here to help."[75] Self acknowledged this October 2014 meeting and that the conversation occurred; however, Self claimed that Gassnola's offer of assistance was no different than a friend, co-worker or even a waitress at a restaurant offering to help in a generic way with no intention of following through on it.[76] But Gassnola, with Self's knowledge, did follow through. As will be discussed further in Allegation No. 2, Self knew Gassnola had contact with and worked to provide a

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[72] FI034, Gatto17Cr686_GattoSentencingSubmission_021219_Kansas_00874, Page No. 29. In Gatto making this statement, FI006, Gatto17Cr686_TGassnolaTestimony_101018_Kansas_00874, Page Nos. 1184:20 through 1186:11 and FI040, U.S.vGattoetal_DefEx192_Kansas_00874.

[73] FI006, Gatto17Cr686_TGassnolaTestimony_101018_Kansas_00874, Page No. 934.

[74] FI006, Gatto17Cr686_TGassnolaTestimony_101018_Kansas_00874, Page Nos. 952 and 953; FI041, U.S.vGattoetal_GovtEx1096_Kansas_00874; and FI042, U.S.vGattoetal_GovtEx1141_Kansas_00874. Rivers oversaw "black ops," which Gassnola described in the *Gatto* trial as a dark, underground black operations group that made payments to families of prospective student-athletes. Gassnola explained that he sent his March 2, 2015, email in response to Rivers' February 17, 2015, email and that everyone listed on Rivers' email were a part of the "black ops" team. The enforcement staff makes note that Cutler, along with Gassnola and Gatto were included on this email. Dan Cutler's (Cutler), Adidas outside consultant, involvement in NCAA violations is discussed further in Allegation No. 3-c.

[75] FI006, Gatto17Cr686_TGassnolaTestimony_101018_Kansas_00874, Page Nos. 952 and 953 and FI041, U.S.vGattoetal_GovtEx1096_Kansas_00874.

[76] FI001, BSelf_TR_051719_Kansas_00874, Page Nos. 105 and 106.

benefit to [redacted] while Self and Townsend were recruiting [redacted].[77] Additionally, as discussed further in Allegation No. 3-a, Gassnola and Self exchanged text messages in which Gassnola told Self that he had never let Self down before, except related to [redacted] recruitment.

In addition to Self's knowledge of Gassnola's assistance with [redacted], Self acknowledged that both Gassnola and Gatto had a business interest in prospective student-athletes, particularly those who ultimately enrolled at the institution. Specifically, Self reported seeing Gassnola at the Late Night in 2016 in the presence of prospective student-athletes.[78] Self also noted that any shoe company representative would want to talk with elite prospects as they may potentially have an interest in signing them to contracts when they turned professional.[79] Similarly, Self knew Gatto's role with Adidas was to secure sponsorship deals with NBA players and Gatto had successfully signed Kansas men's basketball student-athletes to Adidas contracts when they declared for the NBA draft.[80]

Finally, while Self claimed he only saw or spoke by telephone with Gassnola about 10 times per year, he acknowledged asking Gassnola about how the institution's recruiting efforts were going with particular prospective student-athletes. Self also knew Gassnola and Townsend spoke often and about the institution's recruitment of prospects. Despite this, Self asserted that he did not believe Gassnola assisted his program in recruiting; instead, Self only acknowledged Gassnola providing general information about prospects and what the prospects were thinking about their recruitment.[81] Self reported that, at most, the institution received indirect recruiting assistance from Adidas in that Adidas built brand loyalty with prospective student-athletes.

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[77] FI001, BSelf_TR_051719_Kansas_00874, Page No. 104.
[78] FI001, BSelf_TR_051719_Kansas_00874, Page No. 34.
[79] FI001, BSelf_TR_051719_Kansas_00874, Page No. 40.
[80] FI001, BSelf_TR_051719_Kansas_00874, Page Nos. 21, 40, 87 and 111.
FI041, U.S.vGattoetal_GovtEx1096_Kansas_00874. As noted in the March 2, 2015, Gassnola email to Rivers, Gassnola reported that Gatto did "say his hellos" to prospects in attendance at the 2014 Late Night event.
[81] FI001, BSelf_TR_051719_Kansas_00874, Page Nos. 22, 23 and 109.

However, on August 19, 2017, the day before the institution announced a 12-year, $191 million extension of the Adidas sponsorship agreement, Gassnola and Self exchanged the following texts:

> Gassnola: Hall of Famer. Thank you for the help with Getting this extension done. Thx brotha.
>
> Self: I'm happy with adidas. Just got to get a couple real guys.

After some back and forth, the text continued:

> Gassnola: In my mind it's KU bill self. Everyone else fall into line, to fucking bad, that what's right for adidas Basketball. And I know I am RIGHT. The more you win, have lottery pics. And you happy. That's how it should work in my mind.
>
> Self: That's how ur (it) works. At unc and Duke. [82]
>
> Gassnola: Kentucky as well. I promise you. I got this, I have never let you down. Except [redacted] lol. We will get it right.[83]

In his May 17, 2019, interview, Self denied that this text exchange referred to Gassnola assisting the institution in the recruitment of prospective student-athletes. However, Self reported that the comment "got to get a couple real guys," was in reference to Self's desire to secure the commitment of "difference-maker" student-athletes who could help his basketball program, though Self claimed it was not intended as a request for Gassnola's assistance. Self also stated he did not know what Gassnola meant in regard to [redacted] but never followed up about the comment.[84]

Self's 2019 explanations for the 2017 text messages, however, are in direct contradiction to sworn statements by Gassnola and Gatto. Gatto specifically pointed to these text messages in his sentencing submission as confirmation that Self and Townsend expected Adidas to assist the men's basketball staff in recruiting elite prospective student-athletes. Further, as discussed in detail above, Gassnola testified it was

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[82] FI001, BSelf_TR_051719_Kansas_00874, Page No. 82. Self confirmed "ur" should have been "it."
[83] FI040, U.S.vGattoetal_DefEx192_Kansas_00874.
[84] FI001, BSelf_TR_051719_Kansas_00874, Page Nos. 80 through 85. This will also be discussed in more detail in the head coach responsibility allegation outlined in Allegation No. 4.

his job to help Adidas-sponsored schools like Kansas recruit elite athletes and college coaches expected his assistance.

As for Townsend, he reported developing a relationship with Gassnola around the same time Gassnola became the institution's Adidas liaison in 2013. Gassnola and Townsend eventually became friends and spoke often, as evidenced by telephone records showing the two exchanging 152 calls in 2017 alone. Townsend said Gassnola always wanted to know who Kansas was recruiting and served as a source of recruiting information, and that Self knew Townsend regularly spoke with Gassnola about their recruitment of prospects.[85] In fact, Townsend acknowledged exchanging information with Gassnola about the institution's recruitment of key prospects, including [redacted], [redacted], [redacted] and men's basketball prospective student-athlete [redacted] ([redacted]).[86] Further, Townsend reported that he may have even introduced Gassnola and Gatto to the parents of a prospective student-athlete at the Oread Hotel in Lawrence, Kansas.[87]

e. Summary of Adidas', Gassnola's and Gatto's status as representatives of the institution's athletics interests.

In summary, the facts clearly establish that Adidas, Gassnola and Gatto are representatives of the institution's athletics interests. As outlined above and will continue to be discussed below, Adidas, Gassnola and/or Gatto (1) is an organization and are members of an organization described in Constitution 6.4.1, (2) have made financial contributions to the athletics department, (3) have been requested and/or known by Self and Townsend to assist in the recruitment of prospects and (4) have promoted the athletics department.

Division I institutions have many boosters, some that are corporate entities and some whom are individuals. The vast majority of these relationships are positive and within the permissible boundaries of

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[85] FI004, KTownsend_TR_051619_Kansas_00874, Page Nos. 45, 47 and 48.
[86] FI004, KTownsend_TR_051619_Kansas_00874, Page Nos. 104, 116, 122 and 124. The recruitment of [redacted] and [redacted] will be discussed in more detail in Allegation Nos. 2 and 3.
[87] FI004, KTownsend_TR_051619_Kansas_00874, Page Nos. 41 and 43.

NCAA legislation. However, as case precedent makes clear, the institution is responsible when its boosters engage in impermissible activities, such as recruiting or providing impermissible inducements and benefits on behalf of the institution, whether or not the institution had knowledge of the behavior. In this case, Adidas, Gassnola and Gatto triggered booster status and engaged in impermissible activities, some of which were known to Self and Townsend. As a result, the institution is responsible for the violations.

5. Adidas, Gassnola and Gatto were agents as defined by NCAA legislation.

In addition to their status as representatives of the institution's athletics interests, Adidas, Gassnola and Gatto met the definition of agents as defined by NCAA legislation. Gassnola, Gatto, Reed and Self reported information supporting this fact and the institution makes note of facts in its response on Page No. 24 supporting the conclusion they were agents. However, the institution asserted following a prehearing conference that it is not responsible for the Bylaw 12.3.1.3 violations because [redacted] never competed for the institution and that Adidas, Gassnola and Gatto were not agents.

As previously discussed, Gatto's primary role with Adidas was to sign student-athletes to marketing contracts with Adidas when they turned professional. Gassnola testified he supported Adidas and Gatto in these efforts. Self reported that Gatto's role at Adidas was to secure NBA players to sponsorship deals.[88] Reed reported that Gassnola was an agent, remarking the agent analysis on Gassnola was "easy."[89] As a result, at all times relevant to the allegations of this case, Adidas, Gassnola and Gatto not only met the NCAA legislative definition of a booster, they also met the definition of an agent. Therefore, they violated provisions of Bylaws 12, 13 and 16 when they provided approximately $89,000 to [redacted] Further, as discussed in Allegation No. 5, under the principle of institutional control, the institution is responsible to monitor and control its men's basketball program and ensure NCAA violations

[88] FI001, BSelf_TR_051719_Kansas_00874, Page Nos. 21, 87 and 111.
[89] FI017, DReed_TR_051519_Kansas_00874, Page Nos. 58 and 59.

do not occur, including violations involving agents providing the family of their student-athlete with impermissible benefits.

D. Remaining issues.

1. Are Adidas, Gassnola and Gatto representatives of the institution's athletics interests?
2. Did Adidas, Gassnola and Gatto violate NCAA recruiting and extra benefit legislation when they provided money to [redacted]
3. Did Gassnola have impermissible recruiting contacts with [redacted]?
4. Are Adidas, Gassnola and Gatto agents under NCAA legislation and, if so, was their provision of money to [redacted] a violation of agent legislation?
5. Do the violations outlined in Allegation No 1 constitute Level I violations?

E. Rebuttal information.

1. Shoe apparel companies' sponsorship of nonscholastic basketball events.

Among other issues, the institution argues that, should Adidas be considered a representative of the institution's athletics interest, any prospects who participate in an Adidas sponsored nonscholastic basketball event would lose their amateur status because Bylaw 12.1.2.1.4.3 does not permit outside sponsors who are boosters to provide actual or necessary expenses for competition. The institution's suggested application of NCAA legislation is overly broad and is diametrically opposite of longstanding interpretive guidance relied upon by the membership related to a booster's involvement in recruiting activities. Additionally, NCAA legislation and interpretive guidance specific to boosters providing pre-enrollment expenses specifically addresses the institution's concern that all Adidas Nations or Gauntlet participants would have jeopardized their eligibility. Specifically, an August 22, 2012, interpretation regarding boosters' involvement with sports clubs states that it is permissible for a booster to provide pre-

enrollment expenses to a sports club "provided the representative acts independently of the institution and does not engage in any recruiting activities."[90]

2. Importation pursuant to Bylaw 19.7.8.3.1.

In addition to their disagreement with the enforcement staff's booster analysis, both Self and Townsend challenge the importation of facts, evidence and positions taken in *Gatto* and the *US vs. Gassnola et al* (*Gassnola*) cases. The institution and enforcement staff agree that the hearing panel has the authority to import information from the *Gatto* and *Gassnola* cases pursuant to Bylaw 19.7.8.3.1; therefore, facts, evidence and positions taken from the federal cases are properly included in the record for consideration by this hearing panel.

Like much of NCAA Article 19, the importation legislation assists the Committee on Infractions in making fully-informed decisions by giving hearing panel members access to all available and relevant information.[91] Confirming the hearing panel's permissive authority to take judicial notice of evidence admitted in federal court proceedings is wholly unremarkable. Self's and Townsend's contrary position on importation is not supported by the bylaw language, the clear purposes of Article 19 or any other authority.

Further, the enforcement staff does not purport to import a jury verdict under appeal. Instead, the enforcement staff simply imported facts and evidence admitted into the proceeding, and those facts and that evidence remain probative regardless of whether a verdict is ultimately affirmed or reversed on appeal. Contrary to Self's and Townsend's suggestion, the bylaw does not require exhaustion of all appellate remedies before underlying facts may be considered in the infractions process. Furthermore, their position would undermine Article 19 by depriving the hearing panel of pertinent information and delaying the processing of an infractions case. While the hearing panel may opt to assign little or no weight to imported

[90] August 22, 2012 – Representatives of Institution's Athletics Interests Involvement with Local Sports Clubs.
[91] See the rationale for NCAA Proposal 2018-15.

information, its members should at least be permitted to consider facts admitted in federal court proceedings on a related matter.

F. Additional matters that relate to Allegation No. 1.

None.

III. ALLEGATION NO. 2 – Between August 2017 and April 2018, Self, Townsend and four representatives of the institution's athletics interest, three of whom also acted as agents, engaged in recruiting violations related to [redacted]. This included impermissible inducements and contacts. As a result of the impermissible inducements, [redacted] competed in 20 contests and received actual and necessary expenses while ineligible. [NCAA Division I Manual Constitution 2.8.1 and Bylaws 12.1.2, 12.3.1.3, 12.11.1, 13.01.2, 13.1, 13.1.2.1, 13.1.3.5.1, 13.2.1, 13.2.1.1-(b), 13.2.1.1-(e) and 16.8.1 ([redacted])

A. Overview.

The institution, Self and Townsend agree with many of the facts of this allegation. The institution does not dispute that Gassnola provided $2,500 to [redacted]. However, the parties disagree any of these facts constitute violations, because they do not agree Adidas, Gassnola or Gatto were boosters.

While the institution acknowledges facts that appear to indicate Adidas, Gassnola and Gatto were agents at Page No. 24 of its response, the institution asserted following a prehearing conference that it does not believe Adidas, Gassnola and Gatto were agents or that it is responsible for any Bylaw 12 violations in this allegation. The enforcement staff believes the facts establish that Adidas, Gassnola and Gatto were boosters of the institution and agents and violations of Bylaws 12 and 13 occurred.

B. Enforcement staff's position as to why the violations should be considered Level I [NCAA Bylaw 19.1.1] and if the institution and involved individual(s) are in agreement.

The enforcement staff believes a hearing panel could conclude that Allegation No. 2 is a severe breach of conduct (Level I) because the violations (a) were not isolated or limited; (b) provided or were intended to provide a substantial or extensive recruiting or other advantage; (c) provided or were intended to provide a substantial or extensive impermissible benefit; (d) involved third parties in recruiting violations that

institutional officials knew or should have known about; (e) involved cash payments/benefits intended to secure, and which resulted in, the enrollment of a prospect; (f) were intentional or showed reckless indifference to the constitution and bylaws; and (g) seriously undermined or threatened the integrity of the NCAA Collegiate Model. The institution, Self and Townsend disagree with all subparts of the allegation and, therefore, take no position on the level.

C. Enforcement staff's review of facts related to the allegation.

1. Information regarding [redacted]

[redacted] and initially enrolled at the institution in [redacted]. When he was young, [redacted]'s family decided to send him to high school in the United States in hopes [redacted] could earn a college basketball scholarship and ultimately play professionally in the NBA. Before coming to the United States [redacted], [redacted]'s father, arranged for [redacted] [redacted] lived with and was cared for by [redacted], when he was not living at the college preparatory academies he attended.

From January [redacted] through the spring of [redacted] attended and played basketball for [redacted] a, during his freshman and sophomore years of high school. [redacted] then transferred to [redacted] [redacted] played basketball for [redacted] during his junior and senior years of high school until his early graduation in December [redacted] In addition to playing basketball for his two high schools, [redacted] also participated for

nonscholastic teams [redacted] during his freshman through junior years and for [redacted] during the summer prior to his senior year.[92]

[redacted] reported that [redacted] assisted him during his recruitment by talking and corresponding with college coaches and discussing the institutions with [redacted].[93] Kansas, University of Oregon (Oregon), University of Florida, Florida State University and University of Maryland (Maryland) all recruited [redacted].[94] Townsend, who served as the primary recruiter for [redacted], reported that he began recruiting [redacted] in summer of [redacted] after [redacted]'s freshman year at [redacted] and during a time period that he played basketball for [redacted].[95] The institution's recruitment of [redacted] continued after [redacted] transferred to [redacted] and began playing for [redacted]. [redacted] took an official visit to the institution and verbally committed in August [redacted]. [redacted] reported that, while on his official visit, he told Townsend [redacted] and Townsend responded that he would like it if [redacted].[96] [redacted].

2. Allegation No. 2-a: Larry Brown's (Brown), former head men's basketball coach, impermissible recruitment of [redacted].

Brown served as the institution's head men's basketball coach from 1983 through 1988. Due to his recruiting and promotional activities while head coach, Brown is also considered a representative of the institution's athletics interests.[97] However, even after his tenure as head coach at the institution ended,

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[92] [redacted] is sponsored by the Nike apparel company. [redacted] team is sponsored by the Under Armour apparel company.
[93] FI078, [redacted]_TR_121118_Kansas_00874, Page Nos. 15 and 16.
[94] FI078, [redacted]_TR_121118_Kansas_00874, Page Nos. 15 and 16.
[95] FI005, KTownsend_TR_121018_Kansas_00874, Page Nos. 11 and 12.
[96] FI078, [redacted]_TR_121118_Kansas_00874, Page Nos. 30 and 31.
[97] Pursuant to long-standing NCAA legislation and interpretations, once a person is considered a representative of the institution's athletics interests, he or she holds that status indefinitely. See Bylaw 13.02.15.1 Duration of Status.

Brown continued to assist in recruiting efforts and in promoting the institution's athletics interests. For example, Brown, who is the only coach to ever win both an NCAA championship and an NBA championship, attended multiple Kansas alumni events, men's basketball team reunions and recognition events that promoted the Kansas men's basketball program. Furthermore, and as described below, Townsend knew Brown was assisting in the institution's recruitment of [redacted], which again triggered representative status pursuant to Constitution 6.4.2 and Bylaw 13.02.15.

[redacted] first met and became acquainted with Brown when Brown was the head men's basketball coach at Southern Methodist University (SMU) and completed recruiting evaluations of [redacted] at [redacted].[98] Brown and [redacted] remained in touch because, according to [redacted] he trusted and looked up to Brown due to Brown's experience as a head coach who had developed several international student-athletes.[99]

Townsend reported that he had heard Brown had a relationship with [redacted] and [redacted] so, as a part of his recruitment of [redacted], he called Brown in mid-2017 to gain insight.[100] During this telephone call, Townsend reported that Brown said he would tell [redacted] and [redacted] "what a great place Kansas is because, you know, I coached there or whatever."[101] While Brown reported that he might have talked with Townsend about [redacted], Brown specifically recalled agreeing to speak positively about Kansas to [redacted] when [redacted] asked.[102] [redacted] confirmed that Brown did, in fact, speak with him about the institution. Specifically, [redacted] recalled that Brown spoke positively about the institution and Self,

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[98] FI077, LBrown_TR_040419_Kansas_00874, Page No. 16. Brown served as head coach at SMU from 2012 through 2016.
[99] FI007, [redacted]TR_112918_Kansas_00874, Page No. 14.
[100] FI005, KTownsend_TR_121018_Kansas_00874, Page No. 13. At this time, Brown was not employed at an NCAA institution.
[101] FI005, KTownsend_TR_121018_Kansas_00874, Page Nos. 11 and 12.
[102] FI077, LBrown_TR_040419_Kansas_00874, Page Nos. 17 through 20. [redacted] acknowledge that he spoke with Brown about [redacted] but denied asking Brown to assist in the recruitment.
FI086, JHoward_TR_051519_Kansas_00874, Page Nos. 37 through 39.

telling [redacted] that the institution would be a good fit for [redacted] and was a place where [redacted] could play and develop as a student-athlete.[103]

After speaking with [redacted] Brown reported back to Townsend, notifying him of the conversation and that [redacted] wanted to secure a "sponsorship for an [redacted] team."[104] Townsend reported that he told Brown, "I would definitely see what I could do and try to put them together with somebody that could help him with that."[105] As will be discussed in more detail regarding Allegation No. 2-c, Townsend ultimately connected [redacted] with Gassnola. Further, as will be discussed in Allegation No. 2-d, Gassnola referred to Brown as "family," and said Brown instructed Gassnola to take care of [redacted][106]

With Brown having a history of promotional activities on behalf of Kansas and specifically the men's basketball program, and with Townsend's awareness of Brown's recruiting assistance in the recruitment of [redacted], the institution knew or should have known of Brown's status as a representative of the institution's athletics interest. As a result, Brown's communications with [redacted] violated Bylaws 13.01.2, 13.1,13.1.2.2 and 13.1.3.5.1. Further, Townsend failed to report this violation as required under Constitution 2.8.1.

3. Allegation Nos. 2-b and 2-c: Gassnola's impermissible recruitment of [redacted] and Adidas', Gassnola's, Self's and Townsend's offer of impermissible inducements to [redacted]

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[103] FI007, [redacted]_TR_112918_Kansas_00874, Page Nos. 104 and 112.
[104] FI005, KTownsend_TR_121018_Kansas_00874, Page No. 14. [redacted] also confirmed during his interview that he also told Townsend he was looking for used basketball gear to outfit an [redacted] nonscholastic basketball team with which he was affiliated. FI007, [redacted]TR_112918_Kansas_00874, Page Nos. 72 and 74.
[105] FI005, KTownsend_TR_121018_Kansas_00874, Page No. 14.
[106] FI011, WhatsAppMessages_[redacted]_TJGassnola_091517_Kansas_00874.

As outlined previously, both Brown and [redacted] communicated to Townsend that [redacted] wanted to secure used athletics gear for [redacted] nonscholastic basketball team.[107] As a result of this request, Townsend connected [redacted] to several individuals associated with apparel companies, including Gassnola.[108] [redacted] and Gassnola reported having several conversations about Adidas providing used gear to [redacted] however, both also acknowledged that their communications included discussions regarding [redacted]'s eligibility and his recruitment by Kansas.[109] Gassnola admitted that, through these conversations, he hoped [redacted] would enroll to play basketball at Kansas.[110]

Further, both Self and Townsend knew of, encouraged and even approved of Gassnola's contact with and offer of a recruiting inducement to [redacted][111] Specifically, Townsend initiated the relationship when he texted [redacted] contact information directly to Gassnola August 7, 2017.[112] Further, in a series of texts August 9, 2017, Townsend texted Gassnola, "Coach self just talked to [redacted] let me know how it goes."[113] Gassnola responded that he tried to call [redacted] but would attempt again.[114] Later that same day, Gassnola notified Self via text that he had spoken with [redacted][115] When Self responded, "We good?," Gassnola replied: "Always. That's [sic] was light work. Ball is in his court now."[116] Both Gassnola and Self said this communication was in reference to Gassnola discussing with [redacted] the possibility of

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[107] FI005, KTownsend_TR_121018_Kansas_00874, Page Nos. 14 through 16; FI007, [redacted]TR_112918_Kansas_00874, Page Nos. 58, 59 and 72. [redacted] specifically requested used gear due to the higher taxes imposed on new gear when imported to [redacted]
[108] FI005, KTownsend_TR_121018_Kansas_00874, Page Nos. 14 through 16; FI007, [redacted]TR_112918_Kansas_00874, Page No. 95; and FI060, U.S.vGattoetal_DefEx160-1_Kansas_00874.
[109] FI006, Gatto17Cr686_TGassnolaTestimony_101018_Kansas_00874, Page Nos. 1013 through 1015 and FI007, [redacted]_TR_112918_Kansas_00874, Page Nos. 16 through 25.
[110] FI006, Gatto17Cr686_TGassnolaTestimony_101018_Kansas_00874, Page No. 1013.
[111] FI061, U.S.vGattoetal_DefEx156_Kansas_00874 and FI062, U.S.vGattoetal_DefEx160-2_Kansas_00874.
[112] FI60U.S.vGattoetal_DefEx160-1_Kansas_00874.
[113] FI062, U.S.vGattoetal_DefEx160-2_Kansas_00874.
[114] FI062, U.S.vGattoetal_DefEx160-2_Kansas_00874.
[115] FI061, U.S.vGattoetal_DefEx156_Kansas_00874.
[116] FI061, U.S.vGattoetal_DefEx156_Kansas_00874.

Adidas providing gear for [redacted] team.[117] Gassnola confirmed in his federal trial testimony that he worked with Townsend and Self in an effort to provide [redacted] with gear.[118] Similarly, both Self and Townsend reported that they approved of Gassnola's offer to provide [redacted] with gear.[119]

While an offer of used gear may not sound influential in the grand scheme of recruiting inducements, it is noteworthy that this gear was significant to [redacted] First, [redacted] voiced the need for gear to multiple individuals connected with the institution. Further, after Gassnola sent [redacted] $2,500 in cash (as will be discussed below regarding Allegation No. 2-d), [redacted] sent Gassnola a message stating: "I really don't want to sound ungrateful for what you did. But I really need nothing money wise. I can really use your help with the used jerseys for the poor kids in [redacted] This message by [redacted] evidences the significance of Adidas' and Gassnola's offer to provide gear as well as the institution's coaching staff in making every effort to fulfill [redacted] wishes.

As noted in Allegation No. 1, both Adidas and Gassnola were representatives of the institution's athletics interests and agents at the time of these conversations and when the offer of impermissible inducements occurred. Therefore, Gassnola's communication with [redacted] as well as the offer of Adidas gear, violated NCAA recruiting legislation. Neither Self nor Townsend reported these violations or consulted with the institution's compliance staff to ascertain whether the contacts or their involvement in an offer of gear were permissible.

4. Allegation No. 2-d: Adidas, Gassnola and Gatto provided a $2,500 cash recruiting inducement and impermissible agent benefit to [redacted] in an effort to secure [redacted]'s enrollment at the institution as a student-athlete.

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[117] FI001, BSelf_TR_051719_Kansas_00874, Page Nos. 61, 99 and 100; FI004, KTownsend_TR_051619_Kansas_00874, Page No. 95; FI061, U.S.vGattoetal_DefEx156_Kansas_00874; and FI062, U.S.vGattoetal_DefEx160-2_Kansas_00874.
[118] FI006, Gatto17Cr686_TGassnolaTestimony_101018_Kansas_00874, Page Nos. 1014 and 1015.
[119] FI001, BSelf_TR_051719_Kansas_00874, Page Nos. 94 through 100 and FI004, KTownsend_TR_051619_Kansas_00874, Page Nos. 95 through 107.

In determining whether [redacted] could reclassify and enroll at the institution for the 2018 spring semester, the institution's coaching and compliance staffs discussed with [redacted] the possibility of [redacted] taking online courses, possibly through [redacted].[120] During a conversation in August or September [redacted], [redacted] told Gassnola that [redacted] might need to enroll in [redacted] in order to be eligible to enroll midyear at the institution.[121] According to [redacted] Gassnola asked [redacted] how much these courses cost and [redacted] responded that he did not know.[122] Gassnola confirmed this conversation in his *Gatto* trial testimony, stating, "As I got to know [redacted] later on in our relationship, he informed me that … [[redacted]] was going to attend online classes at night … and he needed money to pay for those classes."[123]

Although they differed in their descriptions of how the money arrived, both [redacted] and Gassnola reported that Gassnola mailed [redacted] an envelope filled with $2,500 in cash to put toward the online courses [redacted] needed in order to enroll midyear at the institution.[124] In further support of this payment, [redacted] provided the institution and enforcement staff a series of What's App messages between [redacted] and Gassnola dated September 15, [redacted][125] [redacted] messaged Gassnola: "I got $2500 in the mail? Car repair?" and Gassnola responded: "For classes. LB said to take care of you. LB is family."[126]

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[120] FI018, DReed_TR_121118_Kansas_00874, Page Nos. 5 through 7. [redacted] is an accredited, public, e-learning school serving students in grades K-12 online in Florida and all over the world. The courses are free of charge to Florida residents.
[121] FI008, [redacted](BSK)_2_TR_021419_Kansas_00874, Page Nos. 16 and 17 and FI007, [redacted]TR_112918_Kansas_00874, Page Nos. 66 and 67.
[122] FI008, [redacted](BSK)_2_TR_021419_Kansas_00874, Page Nos. 16 and 17 and FI007, [redacted]_TR_112918_Kansas_00874, Page Nos. 66 and 67.
[123] FI006, Gatto17Cr686_TGassnolaTestimony_101018_Kansas_00874, Page No. 1012.
[124] FI006, Gatto17Cr686_TGassnolaTestimony_101018_Kansas_00874, Page Nos. 1012 and 1013. Gassnola testified he overnight mailed [redacted] the $2,500 wrapped in a magazine inside of an envelope. [redacted] reported the $2,500 arrived in an envelope addressed to him in his next door neighbor's mailbox and the cash was wrapped in a receipt for car repairs. FI007, [redacted]_TR_112918_Kansas_00874, Page No. 81.
[125] What's App is a free messaging application that operates off of a cellular phone's data plan as opposed to its cellular network.
[126] FI011, WhatsAppMessages[redacted]_TJGassnola_091517_Kansas_00874. In his interview, [redacted] stated that he understood the reference of LB to mean Brown.

When [redacted] noted that he did not need the money since the classes [redacted] were free, Gassnola replied: "Can't give it back now. Just keep it."[127] [redacted] reported that he deposited $2,000 in his bank account and donated $500 to his church.[128] [redacted] provided his bank records, which confirm he made a $2,000 deposit into his bank account in September [redacted].[129]

Gassnola reported that Gatto approved this payment to [redacted] and he used Adidas funds. Because Gassnola was both a representative of the institution's athletics interests and an agent, Gassnola violated Bylaws 12.1.2, 12.3.1.3, 13.2.1 and 13.2.1.1-(e).[130] Gassnola testified that in providing the money to [redacted] he hoped [redacted] would enroll at and be eligible to participate in men's basketball at the institution.[131]

5. Allegation No. 2-e: Adidas, Gassnola and Gatto offered a $20,000 recruiting inducement and impermissible agent benefit to [redacted] in order to persuade [redacted] to convince [redacted] to enroll at the institution.

During the *Gatto* trial, Gassnola testified he offered $20,000 in Adidas funds to [redacted] and Gatto approved the payment.[132] Specifically, in a September 11, [redacted], wiretapped telephone conversation between Gassnola and Gatto, Gassnola discussed paying [redacted] $20,000 to get "him out from under this Under Armour deal."[133] Gassnola testified he learned in his conversations with [redacted] that [redacted]

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[127] FI011, WhatsAppMessages_[redacted]_TJGassnola_091517_Kansas_00874.
[128] FI007, [redacted]_TR_112918_Kansas_00874, Page No. 84.
[129] FI010, [redacted]_PNCBankOnlineBanking_CombinedStatements_Kansas_00874. [redacted] made two deposits of $2,000 – one September 8 and one September 15. [redacted] could not recall which deposit included the funds from Gassnola; however, most likely it was the deposit September 15, given that the What's App messages between [redacted] and Gassnola are dated September 15 as well.
[130] FI006, Gatto17Cr686_TGassnolaTestimony_101018_Kansas_00874, Page No. 945.
[131] [redacted] reported and [redacted] confirmed that [redacted] did not become aware of the $2,500 from Gassnola until after reading some information about it in an October 2018 news article that reported information in connection to the federal indictments and complaints that were released. The institution subsequently took [redacted] through Student-Athlete Reinstatement. FI075, [redacted]_100718_Kansas_00874 and FI078, [redacted]_TR_121118_Kansas_00874, Page Nos. 20 and 21.
[132] FI006, Gatto17Cr686_TGassnolaTestimony_101018_Kansas_00874, Page Nos. 1195 through 1197.
[133] FI006, Gatto17Cr686_TGassnolaTestimony_101018_Kansas_00874, Page Nos. 1195 through 1197 and

had a $60,000 financial arrangement with someone [redacted] described as a Maryland booster.[134] Gassnola testified [redacted] told him that, in order for [redacted] to go to Kansas, [redacted] needed to repay this individual.[135] Therefore, Gassnola offered [redacted] $20,000 so [redacted] would be free to enroll at Kansas.[136] Both [redacted] and Gassnola acknowledged that Gassnola did not ultimately provide the $20,000, with Gassnola noting that the FBI arrested Gatto September 26, 2017.[137]

A careful examination of the record shows [redacted] entered into approximately $50,000 in contracts with Under Armour and John Lasko (Lasko), a businessman aligned with Under Armor.[138] These contracts included a financial arrangement with Under Armour, whereby [redacted] would serve as a grassroots basketball consultant and be paid $10,000 per year for two years.[139] [redacted] also signed a contract with EBL Basketball, LLC, which was run by Lasko, to work with the Florida Vipers, an Under Armour sponsored nonscholastic basketball team.[140] [redacted] acknowledged being paid approximately $30,000 in salary under this contract.[141] [redacted] also admitted to speaking with Gassnola about these contracts.

While Gassnola may not have accurately described the exact details of [redacted]'s contractual obligations to Under Armour, what is clear based on the record of this case is that, at least in Gassnola's mind, he needed to offer [redacted] $20,000 in order for [redacted] to enroll at Kansas. Furthermore, Gatto

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FI065, U.S.vGattoetal_GovtEx2T_Kansas_00874. Under Armour is a shoe apparel corporate entity like Adidas and sponsors Maryland.
[134] Maryland athletics has an apparel contract with Under Armour.
[135] Maryland recruited [redacted] and [redacted], in his interview, acknowledged that Maryland was in his top five of schools to which he considered committing.
FI078, [redacted]_TR_121118_Kansas_00874, Page No. 14. [redacted] also served as the legal [redacted] of prospective men's basketball student-athlete [redacted], who committed to and played basketball for Maryland.
[136] FI006, Gatto17Cr686_TGassnolaTestimony_101018_Kansas_00874, Page No. 1013.
[137] FI007, [redacted]_TR_112918_Kansas_00874, Page Nos. 100 and 101 and
FI006, Gatto17Cr686_TGassnolaTestimony_101018_Kansas_00874, Page Nos. 1012 through 1020.
[138] Lasko reported that he terminated the contract with [redacted] based on [redacted]'s failure to perform the duties required in the contract.
FI087, JLasko_TR_082819_Kansas_00874, Page Nos. 9 and 10.
[139] FI120, [redacted]_UnderArmourOffer_043018_Kansas_00874.
[140] FI121, [redacted]_EBLBasketballEmploymentDocs_112918_Kansas_00874 and
FI007, [redacted]_TR_112918_Kansas_00874, Page Nos. 11, 12, 26 and 27.
[141] FI007, [redacted]_TR_112918_Kansas_00874, Page No. 55.

approved this offer and the use of Adidas funds. As representatives of the institution's athletics interests, the offer from Adidas, Gassnola and Gatto to [redacted] violated Bylaw 13.2.1.

D. Remaining issues.

1. Is Brown a representative of the institution's athletics interests?
2. Did the impermissible contact by Brown and with Townsend's knowledge occur as alleged?
3. Did the impermissible recruiting telephone calls by Gassnola to [redacted] and with the knowledge of Self and Townsend occur as alleged?
4. Did Adidas, Gassnola, Self and Townsend offer an impermissible recruiting inducement to [redacted] as alleged?
5. Did Adidas, Gassnola and Gatto provide a $2,500 cash recruiting inducement and impermissible agent benefit to [redacted] as alleged?
6. Did Adidas, Gassnola and Gatto offer a $20,000 recruiting inducement and impermissible agent benefit to [redacted] as alleged?
7. Do the violations outlined in Allegation No. 2 constitute Level I violations?

E. Rebuttal information.

None.

F. Additional matters that relate to Allegation No. 2.

None.

IV. ALLEGATION NO. 3 – Between December [redacted] and September [redacted], three consultants of Adidas, who were also representatives of the institution's athletics interests and agents, engaged in impermissible recruiting activities with three prospective student-athletes. Self and Townsend had knowledge of some impermissible recruiting contacts. Also, one of the representatives of the institution's athletics interest, who was also an agent, provided an impermissible benefit and an impermissible agent benefit to the [redacted] of a then student-athlete. [NCAA Division I Manual Constitution 2.8.1 and Bylaws 12.1.2, 12.3.1.2, 13.01.2, 13.1, 13.1.2.1, 13.1.2.5, 13.2.1 and 13.2.1.1-(e) [redacted]); 12.1.2, 12.3.1.2

and 16.11.2.1 (13.01.2, 13.1, 13.1.2.1, 13.1.2.5, 13.2.1 and 13.2.1.1-(g)); and 13.01.2, 13.1, 13.1.2.1 and 13.1.3.5.1 ( )]

A. Overview.

The institution, Self and Townsend agree with many of the facts of this allegation. The institution agrees Gassnola provided $15,000 to the family of . However, the parties disagree any violations occurred because they do not regard Adidas and its representatives to be boosters of the institution.

B. Enforcement staff's position as to why the violations should be considered Level I [NCAA Bylaw 19.1.1] and if the institution and involved individual(s) are in agreement.

The enforcement staff believes a hearing panel could conclude that Allegation No. 3 is a severe breach of conduct (Level I) because the violations (a) were not isolated or limited; (b) provided or were intended to provide a substantial or extensive recruiting, competitive or other advantage; (c) provided or were intended to provide a substantial or extensive impermissible benefit; (d) involved third parties in recruiting violations that institutional officials knew or should have known about; (e) involved cash payments/benefits intended to secure, and which resulted in, the enrollment of a prospect; (f) were intentional or showed reckless indifference to the constitution and bylaws; and (g) seriously undermined or threatened the integrity of the NCAA Collegiate Model. The institution, Self and Townsend do not take a position on the level of this violation since they dispute any violations occurred.

C. Enforcement staff's review of facts related to the allegation.

1. Allegation No. 3-a: Gassnola provided a $15,000 inducement to and later communicated some of his efforts to Self.

, . Multiple recruiting sources listed as a five-star recruit and, as noted above, he was . The institution's men's basketball program began recruiting during the academic year when it conducted an

evaluation of [redacted] during his freshman year of high school. In November [redacted], the institution added [redacted] to their Institutional Request List.[142] Townsend reported that he served as the primary recruiter of [redacted], and both he and Self believed they were in the final running for [redacted]s commitment to enroll and play at Kansas.[143] However, on September [redacted] verbally committed to [redacted] with whom he signed an NLI [redacted]. [redacted] currently plays for the NBA [redacted].

While the institution was recruiting [redacted], Gassnola sent a March 2, [redacted] email to Rivers summarizing his and Gatto's October 10, [redacted], attendance at the institution's Late Night and discussion of "recruiting targets" with Self and his staff. Gassnola referenced [redacted] later in the email.[144]

Gassnola also testified he subsequently provided $15,000 of Adidas funds to an [redacted] family friend named [redacted] in the winter of [redacted].[145] According to Gassnola, [redacted] was to provide the funds to [redacted]s mother as a way for Gassnola and Adidas to build a relationship with the family. While disputing any violation, the institution agrees that Gassnola provided the $15,000 to [redacted] to provide to [redacted]s mother. Because the enforcement staff believes the facts establish that Gassnola was a representative of the institution's athletics interests, this benefit violated Bylaw 13.2.1. Further, as evidenced by the previously referenced August 19, [redacted], text exchange between Gassnola and Self in which Gassnola referenced [redacted], Gassnola's motives were also tied to the institution. Specifically, Gassnola testified about his text message to Self in which he wrote, "I have never let you down except for [redacted] lol," was in reference to the fact that Gassnola felt he had disappointed Self when [redacted] committee to [redacted] instead of Kansas.[146]

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[142] FI004, KTownsend_TR_051619_Kansas_00874, Page No. 119.
[143] FI004, KTownsend_TR_051619_Kansas_00874, Page No. 118 and FI001, BSelf_TR_051719_Kansas_00874, Page No. 79.
[144] FI041, U.S.vGattoetal_GovtEx1096_Kansas_00874.
[145] Gassnola could not recall [redacted] last name; however, media reports indicate that Gassnola was likely referencing [redacted], a former [redacted] where [redacted] was first identified as an elite basketball player and who was involved in [redacted]
[146] FI040, U.S.vGattoetal_DefEx192_Kansas_00874.

2. Allegation No. 3-b: Gassnola provided an impermissible benefit and impermissible agent benefit to the guardian of men's basketball student-athlete [redacted] ([redacted]).

[redacted] attended and played basketball for the institution during the [redacted] academic year. [redacted] is originally from [redacted] and moved to the United States in [redacted].[147] [redacted] declared for the NBA draft in [redacted].[148]

[redacted].[149] During an NCAA Eligibility Center review of a different prospective student-athlete for whom [redacted] served as [redacted] the Eligibility Center staff requested and received [redacted] bank records. A March [redacted] statement from [redacted] Chase Bank checking account listed several items that [redacted] had attempted to redact. However, some items were still visible, including a March 22, [redacted], wire transfer deposit for an indeterminate amount of money from a New England Playaz account at Berkshire Bank in Ludlow, Massachusetts.[150] The New England Playaz was the nonscholastic team operated by Gassnola and Gassnola testified at the *Gatto* trial he controlled the New England Playaz Berkshire Bank account at all times relevant to the allegations of this case.[151]

In light of the wire transfer from Gassnola's nonscholastic team, the Eligibility Center provided a copy of [redacted] bank record to the enforcement staff, who questioned [redacted] about it during his January 18,

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[147] FI012, [redacted]_TR_011819_Kansas_00874, Page No. 6.
[148] [redacted]
[149] FI012, [redacted]_TR_011819_Kansas_00874, Page No. 3. [redacted] is also the organizer of [redacted] a youth basketball camp. The camp has had several apparel sponsors, including Adidas. As recently as January 2019, Adidas served as the camp's apparel sponsor. FI012, [redacted]_TR_011819_Kansas_00874, Page No. 10.
[150] FI013, [redacted]_ChaseBankRecords_NewEnglandPlayaz_Kansas_00874.
[151] FI006, Gatto17Cr686_TGassnolaTestimony_101018_Kansas_00874, Page Nos. 922 and 923.

2019, interview. [redacted] confirmed that the checking account statement was his and confirmed the March 22, [redacted], wire transfer from New England Playaz. [redacted] also confirmed that, as of the date of the wire transfer, [redacted] was still a student-athlete at the institution.[152] While [redacted] asserted he did not know why he would have received a wire transfer from the New England Playaz, he was adamant that the money was unrelated to Kansas or [redacted] and speculated Gassnola may have sent him money for a different international player. [redacted] also asserted he could not recall the amount of the wire transfer. On this point, [redacted] told the enforcement staff he would provide an unredacted version of the bank record but never did.[153]

The enforcement staff also requested the national accounting firm Ernst and Young to examine the partially redacted bank record showing the March 22, [redacted] wire transfer.[154] The firm provided a report summarizing its findings, which identified the account holder's name as New England Playaz, the bank as Berkshire Bank and the bank's city and zip code.[155] When comparing [redacted] March 22, [redacted] wire transfer from New England Playaz to the wire transfers Gassnola testified he sent to [redacted] in Allegation No. 1, the enforcement staff found several items in common; both identify New England Playaz as the account holder and both identify the bank as Berkshire Bank of Ludlow with a zip code of 01056-1694.[156]

To summarize: (a) Gassnola testified he controlled the New England Playaz Berkshire Bank account in 2016; (b) Gassnola used this account to make two wire transfer payments to [redacted] as outlined in Allegation No. 1; (c) this same account was used to wire transfer an indeterminate amount of money to [redacted] March

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[152] Shortly after the wire transfer, [redacted] declared for the NBA draft.
[153] FI012, [redacted]_TR_011819_Kansas_00874, Page Nos. 27 through 38.
[154] The NCAA retained and contracted with Ernst and Young, which signed confidentiality agreements related to providing their consultant services to the enforcement staff.
[155] FI014, Ernst&Young_ExpertReport_090619_Kansas_00874.
[156] FI013, [redacted]_ChaseBankRecords_NewEnglandPlayaz_Kansas_00874;
FI014, Ernst&Young_ExpertReport_090619_Kansas_00874; and
FI053, U.S.vGattoetal_GovtEx306E_Kansas_00874.

22, [redacted] (d) [redacted] confirmed receipt of this wire transfer from New England Playaz; (e) at the time of the wire transfer, [redacted] was [redacted], who was then an enrolled student-athlete at Kansas; (f) while [redacted] acknowledged knowing Gassnola, he offered no explanation as to why Gassnola or the New England Playaz would wire transfer money to him; and (g) as described in Allegation No. 1, in March [redacted] Gassnola was a representative of the institution's athletics interests and an agent. Therefore, these facts establish that Gassnola paid an indeterminate amount of money to [redacted] in violation of Bylaws 12.1.2, 12.3.1.2 and 16.11.2.1.

3. Allegation No. 3-c: Dan Cutler (Cutler), Adidas outside consultant, had an impermissible recruiting contact with and offered an impermissible recruiting inducement to men's basketball prospective student-athlete [redacted] ([redacted]).

[redacted] was a highly ranked men's basketball prospective student-athlete. He attended and competed for [redacted]. After his freshman season, [redacted] transferred to [redacted] where he is currently enrolled and serving a year in residence.

Cutler declined to interview with the enforcement staff. However, Self identified Cutler as working for Adidas in grassroots basketball development while Gassnola identified Cutler as a part of the "black ops" team that provided impermissible payments to families of elite men's basketball prospective student-athletes.[157] Self reported that Cutler sometimes spoke with the institution's men's basketball staff about his knowledge of different prospective student-athletes.[158]

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[157] FI001, BSelf_TR_051719_Kansas_00874, Page Nos. 41 and 52 and FI042, U.S.vGattoetal_GovtEx1141_Kansas_00874.
[158] FI001, BSelf_TR_051719_Kansas_00874, Page Nos. 43 through 50 and FI131, BSullivan_Letter_THosty_CutlerRecords_072619_Kansas_00874.

[redacted] reported that, in June [redacted] Cutler approached him at an Adidas Nations event in Los Angeles and asked [redacted] if he had any interest in playing for Kansas, which was an Adidas sponsored institution.[159] According to [redacted], Cutler added that if [redacted] decided to attend Kansas, Adidas would ensure [redacted]'s parents attended every game by providing them with a nice hotel and travel expenses. [redacted] also stated that Cutler told [redacted] if he was interested in Kansas, Cutler would let Self know.[160]

[redacted] reported that he told his parents about this offer and, when interviewed by the enforcement staff, [redacted]s parents confirmed that [redacted] told them Cutler approached him at an event and told him that their travel would be taken care of if [redacted] attended Kansas.[161] While [redacted]'s parents were not sure where the conversation between Cutler and [redacted] took place, they both reported that [redacted] contemporaneously told his mom about his conversation with Cutler, and [redacted]'s mother then told her husband.[162]

Initially, Self reported that Cutler telephoned him "out of the blue" to notify him that [redacted] might be interested in attending the institution; however, Self later reported that Cutler actually called Norm Roberts (Roberts), Kansas assistant men's basketball coach, to notify the staff of [redacted]'s potential interest and it was Roberts who likely relayed the information to Self.[163] While Roberts could not specifically recall having a conversation with Cutler, Roberts remembered learning [redacted] was open to being recruited by the institution around the time that [redacted] said Cutler approached him. Roberts remembered relaying this information to Self.[164]

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[159] FI015, [redacted]_TR_112718_Kansas_00874, Page Nos. 9 through 11. [redacted] noted that, at the time of the contact, he knew Cutler worked for Adidas and had previously met him on the nonscholastic basketball circuit.
[160] FI015, [redacted]_TR_112718_Kansas_00874, Page Nos. 9 through 11.
[161] FI016, [redacted]_TR_111318_Kansas_00874, Page Nos. 30 through 32.
[162] FI016, [redacted]_TR_111318_Kansas_00874, Page Nos. 30 through 33.
[163] FI001, BSelf_TR_051719_Kansas_00874, Page No. 42 and
FI002, BSelf(BSK)_TR_082019_Kansas_00874_DRAFT, Page No. 17.
[164] FI092, NRoberts_TR_081319_Kansas_00874, Page Nos. 3 through 5.

Based on the information the coaching staff learned from Cutler, Self called [redacted] July 20, [redacted], and spoke with both [redacted] and his mother.[165] During the call, Self told [redacted] the institution was interested in him and asked if [redacted] would be open to the recruitment. [redacted] and his mother told Self they were not interested and three days later, July 23, [redacted], [redacted] announced his verbal commitment to [redacted].[166]

As previously detailed in Allegation No. 1, Adidas is both a representative of the institution's athletics interests and an agent. During the time period of Allegation No. 3, Cutler served as an outside consultant for Adidas. Therefore, Cutler is both a representative of the institution's athletics interest and an agent, and his contact with and offer of a recruiting inducement to [redacted] were impermissible per NCAA recruiting legislation.

4. Allegation No. 3-d: Merl Code's (Code), an Adidas outside consultant, impermissible recruiting contact with the family of [redacted]

[redacted]. Ranked as a top five men's basketball recruit by multiple recruiting services, [redacted] ultimately attended [redacted] and played during the [redacted] academic year. After one year at [redacted], [redacted] declared for the NBA draft and [redacted]

According to Self and Townsend, they first met Code when he worked for Nike and did not learn of his move to Adidas until September [redacted]. Specifically, Townsend reported that at the September 8, [redacted]

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[165] FI133, BSelf_PersonalCellPhone_CombinedStatements_Kansas_00874, Page 628. Telephone records show Self called [redacted] July 20, [redacted].
[166] FI002, BSelf(BSK)_TR_082019_Kansas_00874_DRAFT, Page No. 17;
FI016, [redacted]TR_111318_Kansas_00874, Page Nos. 30 through 38; and
FI015, [redacted]R_112718_Kansas_00874, Page Nos. 13 through 17.

celebratory reception for Self's Hall of Fame induction, Townsend told Gatto that he and Self were scheduled to make an in-home recruiting visit with [redacted] and his family September 12, [redacted] Gatto responded that Townsend should speak to Code about [redacted] before going on their visit. Townsend noted he was "shocked" when Gatto mentioned Code because he had been recruiting [redacted] for three years and had never talked to Code about him.[167] As a result of Gatto's suggestion, Townsend and Self spoke with Code via speaker phone during the car ride to [redacted] in-home visit.[168] Townsend asked Code what information he might have to share in order to help in the institution's recruitment of [redacted] and Code and the coaches discussed what position [redacted] might prefer to play.[169]

During the institution's recruitment of [redacted], [redacted], and [redacted], informed Self and Townsend that they intended to move to the locale of whatever school [redacted] decided to enroll and were interested in [redacted] opportunities for [redacted]. According to Self, he told the family what the institution could provide [redacted] from a financial aid perspective pursuant to NCAA legislation. However, when Townsend called Code the day after [redacted] home visit, Code told Townsend that [redacted] wanted an arrangement for housing, a job opportunity and money in order for [redacted] to commit to an institution.[170] Townsend said he may have shared this information with Self; however Self said he did not learn of Code and Townsend's conversation until the *Gatto* trial. While Townsend said he knew what Code

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[167] FI004, KTownsend_TR_051619_Kansas_00874, Page No. 50.
[168] FI004, KTownsend_TR_051619_Kansas_00874, Page Nos. 50 and 51 and FI001, BSelf_TR_051719_Kansas_00874, Page Nos. 88 and 89.
[169] FI004, KTownsend_TR_051619_Kansas_00874, Page Nos. 50 through 52.
[170] FI135, KTownsend_Institution_PhoneRecords_Kansas_00874 and FI004, KTownsend_TR_051619_Kansas_00874, Page Nos. 50 through 52.

described was contrary to NCAA legislation, he decided to continue to recruit [redacted] anyway. Townsend said he would have never been a part of an improper offer to [redacted] family.[171]

[redacted] and [redacted] reported that they knew Code and had spoken with him in the past.[172] However, both [redacted] and [redacted] denied ever telling Code they wanted a housing arrangement, a job opportunity or money for their son's commitment to a school. They did acknowledge telling college coaches recruiting their son that they would relocate to the locale of the institution and were interested in job opportunities.[173] Code did not agree to interview with the enforcement staff.

Based upon the totality of the factual information, the enforcement staff believes it is reasonable to conclude that Code had an impermissible recruiting contact with [redacted] family on behalf of the institution.[174] First, as detailed in Allegation No. 1, Adidas is a corporate entity that promotes Kansas' athletics interests. Because Code worked for Adidas and because of his conduct in this allegation, Code is also a booster of the institution. Second, Gassnola and Gatto both stated in *Gatto* trial court proceedings that Adidas assisted Adidas sponsored schools in the recruitment of elite prospective student-athletes in violation of NCAA legislation. With this goal in mind, it is unclear why Gatto would have instructed Townsend to contact Code if Code did not have information about and a connection with the family. Instead, Code's action further supports the pattern of Adidas employees violating NCAA legislation by injecting themselves into the recruitment of elite prospective student-athletes to promote and assist the institution. Townsend never reported this violation to the compliance staff.

D. Remaining issues.

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[171] FI004, KTownsend_TR_051619_Kansas_00874,Page Nos. 50 through 60.
[172] FI027, [redacted]TR_110118_Kansas_00874, Page Nos. 15 through 25. [redacted] said he and Code had known each other from their college student-athlete days.
[173] FI027, [redacted]TR_110118_Kansas_00874, Page Nos. 15 through 25.
[174] The enforcement staff is only alleging that Code had an impermissible recruiting contact and not with making an offer of a recruiting inducement.

1. Did Gassnola engage in impermissible recruiting contact and provide a recruiting inducement to the family of [redacted]?
2. Did Gassnola provide an impermissible benefit and agent benefit in the form of an indeterminate amount of cash to [redacted]?
3. Did Cutler have an impermissible recruiting contact with and offer an impermissible recruiting inducement to [redacted]?
4. Did Code have impermissible recruiting contact with the family of [redacted]?
5. Are the violations outlined in Allegation No. 3 Level I violations?

E. Rebuttal information.

None.

F. Additional matters that relate to Allegation No. 3.

None.

V. ALLEGATION NO. 4 – From the [redacted] academic years, Self is presumed responsible for the violations detailed in Allegation Nos. 1 through 3 and did not rebut the presumption of responsibility. [NCAA Division I Manual Bylaw 11.1.1.1 ([redacted])]

A. Overview.

Because the institution and Self do not believe any violations occurred in Allegation Nos. 1 through 3, they dispute any basis for an allegation of head coach responsibility pursuant to Bylaw 11.1.1.1. In the alternative, if the hearing panel determines that violations occurred, Self and the institution assert that he rebutted the presumption of responsibility.

B. Enforcement staff's position as to why the violations should be considered Level I [NCAA Bylaw 19.1.1] and if the institution and involved individual(s) are in agreement.

The enforcement staff believes a hearing panel could conclude that Allegation No. 4 is a severe breach of conduct (Level I) because it is a head coach responsibility violation resulting from underlying Level I

violations and seriously undermined or threatened the integrity of the NCAA Collegiate Model. The institution and Self disagree a violation occurred and therefore take no position on the level.

C. Enforcement staff's review of facts related to the allegation.

Pursuant to Bylaw 11.1.1.1, Self, as the head men's basketball coach, is presumed responsible for the violations outlined in Allegation Nos. 1 through 3. The Committee on Infractions stated in their July 23, 2019, DePaul University decision:

> Bylaw 11.1.1.1 establishes two affirmative duties for head coaches: (1) to promote an atmosphere of compliance; and (2) to monitor individuals in their program who report to them. The bylaw presumes that head coaches are responsible for the actions of their staff members. A head coach may rebut this presumption by demonstrating that he or she promoted an atmosphere of compliance and monitored his or her staff.

Self failed to demonstrate either.

1. Self's failure to promote an atmosphere of compliance.

Based on the conduct outlined in Allegation Nos. 1 through 3, the record clearly establishes that Self failed to promote an atmosphere of compliance due to his personal involvement in some violations and his failure to take steps to prevent and/or engage the compliance staff when he learned of potential or actual violations.

First, it is difficult to envision a scenario where a head coach is personally involved in significant, Level I violations yet still meets the membership's expectations of promoting an atmosphere of compliance within the sports program. Further, these failures are compounded when the violations occur in front of or in coordination with direct and indirect reports.[175] As detailed in Allegation Nos. 1 through 3, there were multiple occasions where Self, both individually and in conjunction with Townsend, was directly involved

[175] See Enforcement Internal Operating Procedure (IOP) 2-4-2, the enforcement staff charging guidelines for head coach responsibility. See also the following recent Committee on Infractions cases where a hearing panel found a violation of head coach responsibility when the head coach was personally involved in the violations: March 9, 2020 - Siena College and December 18, 2019 - University of Houston. In addition, there are multiple other similar cases in the Major Infractions Database.

in violations. Self knowingly engaged Adidas, Gassnola and other Adidas employees in the recruitment of elite men's basketball prospects and encouraged an offer of impermissible inducements to

Further, the committee has consistently concluded that "head coaches do not promote an atmosphere of compliance when they do not identify, address or report potential problems in their program."[176] Despite his knowledge of actual or potential violations, Self repeatedly failed to take steps to identify, prevent or report the violations or engage the institution's compliance staff so they could conduct an independent inquiry. Specifically:

- Self knew Gassnola interacted with elite prospective student-athletes and their families during Late Night, even acknowledging Gassnola did so in hopes those prospects might sign a marketing contract with Adidas when turning professional. Not only did Self fail to take steps to ensure Gassnola did not interact with the elite prospects like Self did not report the impermissible contacts to the compliance staff. These failures contributed to the significant and unchecked Level I violations outlined in Allegation No. 1.

- Self knew Gassnola had impermissible contact with and encouraged the communication.[177] Further, Self supported and was involved in Adidas', Gassnola's and Townsend's arrangement for an impermissible offer of used gear to Not only did Self fail to identify red flags associated with facilitating Gassnola's offer of an inducement to a recruited prospect's guardian, he failed to proactively engage the compliance staff to ensure its permissibility and report the violations. These failures contributed to the Level I violations outlined in Allegation No. 2.

- Self knew Gassnola had impermissible recruiting contact with and failed to report the violation. Even if the committee finds credible Self's assertion that he did not know what Gassnola was referring to in the August 19, text referencing recruitment, Self asked no follow-up questions of Gassnola or took any steps to engage compliance.[178] Instead, Self did nothing to discourage Gassnola's involvement in the institution's recruitment of student-athletes, which further contributed to the violations in this matter.[179]

- Self knew Cutler had an impermissible recruiting contact with and failed to report the violation. Not only should Self have known Cutler was a booster based on his affiliation with Adidas, Self never questioned why Cutler proactively contacted a prospect on behalf of the institution and never instructed Cutler to cease his behavior. Instead, Self used Cutler's behavior to his advantage in an effort to advance his recruiting position with Similar to his inaction

[176] July 2, 2019 - University of Connecticut, Page No. 19; University of Tennessee at Chattanooga - March 27, 2018; November 14, 2017 – The Ohio State University; and July 28, 2017 – Grambling State University.
[177] See Allegation No. 2-b. FI001, BSelf_TR_051719_Kansas_00874, Page No. 99.
[178] FI040, U.S.vGattoetal_DefEx192_Kansas_00874.
[179] FI001, BSelf_TR_051719_Kansas_00874, Page Nos. 85 and 86.

with Gassnola, Self's failure to stop another Adidas representative from participating in the institution's recruitment of elite student-athletes contributed to the violations in this matter.

- Self knew or, at the very least, should have known that Code had a recruiting contact with the family of [redacted] Just as with Gassnola and Cutler, Self did not stop or report the violation. Instead, he used Code's contact with the family to advance the institution's recruitment of an elite prospect.

The facts of this case demonstrate an explicit pattern of Adidas representatives actively participating in the recruitment of student-athletes with Self's awareness and reveal Self's failure to promote compliance within his program. By both his action and inaction, Self failed to establish a culture where there were clear expectations regarding rules compliance or the reporting of potential or actual violations to the institution's compliance staff. As a result, Self did not rebut the presumption of responsibility for the violations.

2. Self failed to demonstrate that he monitored his staff.

Bylaw 11.1.1.1 places an affirmative obligation on the head coach, independent of the compliance staff, to monitor his or her direct and indirect reports. This committee has identified actively looking for red flags, asking pointed questions and encouraging the reporting of violations as ways a head coach can fulfill this responsibility.[180] Regarding Townsend's involvement in the institution's recruitment of [redacted] and [redacted] Self did none of these.

Specifically, Self knew Townsend had a close relationship with Gassnola and that Townsend connected Gassnola with [redacted] to discuss Adidas providing [redacted] with gear. Self failed to identify the red flags that should naturally arise when Townsend helped create a relationship between a booster and the

[180] The committee noted in the December 5, 2018 – University of Oregon (the Committee on Infractions has previously concluded that head coaches failed to monitor when they over-relied on staff members); April 19, 2018 – California State University, Sacramento (concluding that the head men's tennis coach did not meet his monitoring responsibility when he failed to supervise his staff member's recruiting efforts and involvement in arranging housing for incoming student-athletes); and March 6, 2015 – Syracuse University (concluding that a head coach does not meet his monitoring responsibility by delegating duties to staff members and trusting them to follow rules without checking up on them). As these cases illustrate, head coaches must "trust but verify" when it comes to monitoring their staff members. And for purposes of head coach responsibility, verifying means "actively performing steps to monitor."

[redacted]of a prospect. Further, Self did not ask Townsend pointed questions about the relationship in order to assess whether to engage compliance or report a violation. Self's failure to monitor Townsend's facilitation of the relationship between Gassnola and [redacted] contributed to the violations outlined in Allegation No. 2.

Similarly, Self knew Townsend had conversations with Code regarding the institution's recruitment of [redacted] However, once again, Self failed to ask pointed questions of Townsend to ensure Code's communication with [redacted] family was permissible. Self's failures contributed to the violations outlined in Allegation No. 3-d.

Regarding his affirmative responsibility to monitor his program, Self failed to fully evaluate potential violations by asking pointed questions and identifying significant red flags. Further, despite knowing of violations, Self failed to encourage the reporting of these issues to the compliance staff. In sum, Self failed on multiple aspects of head coach responsibility and therefore, pursuant to Bylaw 11.1.1.1, is presumed responsible for the violations.[181]

D. Remaining issue.

If violations occurred in Allegation Nos. 1 through 3, did Self rebut the presumption of responsibility outlined in Bylaw 11.1.1.1 by demonstrating that he promoted an atmosphere of compliance in his program and monitored his program including those who reported directly or indirectly to him?

E. Rebuttal information.

None.

F. Additional matters that relate to Allegation No. 4.

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[181] Enforcement IOP 2-4-2, see Enforcement Staff Charging Guidelines, Page No. 14 (see Head Coach Responsibility). See also the following recent Committee on Infractions cases where a hearing panel found a violation of head coach responsibility for the violations of direct reports to the head coach: University of Utah - August 6, 2019. In addition, there are multiple other similar cases in the Major Infractions Database.

None.

VI. ALLEGATION NO. 5 – From [redacted] the institution failed to exercise institutional control and monitoring of its men's basketball program as it relates to Allegation Nos. 1 through 3. [NCAA Division I Manual Constitution 2.1.1, 2.1.2, 2.8.1, 6.01.1, 6.4.1 and 6.4.2 ([redacted])]

A. Overview.

Because the institution does not believe any violations of NCAA legislation occurred in Allegation Nos. 1 through 3, it disputes that it failed to monitor and exercise control over its men's basketball program. In sum, the institution believes it bears no responsibility for Adidas' impermissible contacts with and impermissible offers and payments to the families of prospects whom its men's basketball staff was recruiting. The enforcement staff believes the facts demonstrate that Adidas, Gatto, Gassnola, Cutler and Code were representatives of the institution's athletics interests and agents, and that the institution failed to exercise control related to its relationship and involvement with Adidas and its personnel.

B. Enforcement staff's position as to why the violations should be considered Level I [NCAA Bylaw 19.1.1] and if the institution and involved individual(s) are in agreement.

The enforcement staff believes a hearing panel could conclude that Allegation No. 5 is a severe breach of conduct (Level I) because the lack of institutional control seriously undermined or threatened the integrity of the NCAA Collegiate Model. The institution does not believe a violation occurred and therefore, takes no position on the level.

C. Enforcement staff's review of facts related to the allegation.

1. Allegation No. 5-a: Institution failed to develop policies, provide rules education or monitor Adidas' activities.

As detailed in Allegation No. 1, Adidas and its employees triggered multiple subparts of the legislated definition of a representative of the institution's athletics interest. This analysis is straightforward, supported by legislative history and case precedent, and understood among the membership. Despite this, the

institution confirmed in its response that it did not implement any policies or procedures to deter and prevent Adidas and its staff from engaging in NCAA violations, it did not provide any rules education to any Adidas staff or consultants and did not monitor Adidas' interactions with its men's basketball program.

During his interview, Reed asserted that the institution's compliance program is one of the best in the country.[182] In support of this belief, Reed said, "I feel like we are in the top 1% of the country in what we do in rules education initiatives," noting his staff goes door-to-door to businesses in the community and spends a lot of money to distribute extra benefit and booster education to every registered business in the state of Kansas.[183] These education efforts are impressive, which makes the institution's response to this allegation even more disappointing, as the institution did not recognize Adidas' status as a booster or attempt to provide any NCAA rules education to Adidas and its staff, including Code, Cutler, Gassnola and Gatto.

Further, Reed acknowledged Gassnola's agent status, noting, "in my mind's eye, he triggers an agent….I think you can argue Gassnola for certain (is an agent)…Gassnola is easy."[184] Yet again, the institution confirmed in its response that it provided no rules education to Gassnola or monitored his involvement with the men's basketball program. In fact, Reed never once met with or spoke to Gassnola.[185]

Of additional concern is that, other than reviewing game tickets provided to Adidas, the institution still has not taken any steps to implement any compliance measures, monitoring systems or rules education

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[182] Reed explained his professional background: He was an assistant compliance director at Marshall University (Marshall), 1999 through 2001; compliance coordinator at University of Pittsburg, 2001 through 2003; associate director of athletics at Marshall, 2003 through 2007; assistant director of athletics for compliance and then promoted to associate director of athletics for compliance at University of Miami (Florida) 2007 through 2012; and then joined Kansas in 2012. FI018, DReed_TR_121118_Kansas_00874, Page No. 3.
[183] FI017, DReed_TR_051519_Kansas_00874, Page Nos. 61 and 62.
[184] FI017, DReed_TR_051519_Kansas_00874, Page No. 59.
[185] FI017, DReed_TR_051519_Kansas_00874, Page Nos. 13 and 14.

efforts regarding its relationship with Adidas despite the SDNY trials and this infractions matter.[186] Further, Kansas has not disassociated Gassnola or Gatto from the institution's athletics program.[187]

2. Allegation No. 5-b: Senior athletics administrators identified red flags about Gassnola's relationship with and presence around the program yet took no action to detect or deter violations.

The facts supporting this subpart are not in dispute as the majority of the information comes directly from the three administrators at issue – Reed, Lester and Zenger.[188]

Reed reported that he first became aware of Gassnola's presence around the men's basketball program during the 2013-14 season, which is consistent with when Gatto engaged Gassnola as a consultant in order to foster better relationships between Adidas and the Kansas men's basketball program and coaching staff. According to Reed, the first time he recalled seeing Gassnola – Reed described him as "this Tony Soprano want to be looking dude" – was during an away contest while he was seated at a ticket table with Scott Hahn (Hahn), the institution's ticket manager.[189] When Reed asked Hahn who Gassnola was, Hahn said Gassnola worked for Adidas and instructed Reed, "Just Google him, he's a scum bag."[190] Reed learned from an internet search that Gassnola had been associated with the Andy Miller sports agency as a runner, had been previously arrested for racketeering and that the NCAA had suspended Gassnola's nonscholastic program for his affiliation with an agent.[191] Based on this research, Reed said he developed "a prejudice

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[186] FI017, DReed_TR_051519_Kansas_00874, Page No. 59.
[187] FI017, DReed_TR_051519_Kansas_00874, Page No. 60.
[188] NOAResponse_030520_Kansas_0087, Page Nos. 92 and 94 of the institution's response, the institution asserts that the notice of allegations was not clear who the three senior athletics administrators were. However, the institution confirmed for the enforcement staff at the prehearing conference that it had been verbally notified by the enforcement staff prior to the September 23, 2019, issuance of the notice that the senior administrators were Lester, Reed and Zenger and that this was sufficient notice.
[189] FI017, DReed_TR_051519_Kansas_00874, Page Nos. 8 and 10.
[190] FI017, DReed_TR_051519_Kansas_00874, Page Nos. 8 and 10.
[191] FI017, DReed_TR_051519_Kansas_00874, Page Nos. 5 and 30 and
FI141, TGassnolaSuspensionSummerBasketball_070512_Kansas_00874, details of the NCAA suspension.

towards him at first sight."[192] Reed went on to describe Gassnola as "a phony want to be. He's a parasite taking advantage of kids and riding their coattails to be a jock sniffer to power coaches and power players in this industry while having absolutely no credentials himself."[193]

After that first encounter during the 2013-14 season, Reed continued to see Gassnola at multiple contests both in Lawrence, Kansas, and at away sites, including the 2015 Maui Invitational basketball tournament and standing in a public area at an entryway in Allen Fieldhouse where the Kansas coaches walk through to the court.[194] Reed acknowledged having concerns about Gassnola's access to the program, noting he raised these concerns with Hahn and Stephanie Temple, Adidas employee who has a physical office in the institution's athletics department in order to service the apparel portion of the sponsorship agreement. Reed said, "I always asked her how he was getting his access and I would say our ticket manager, Scott Hahn, same thing always making sure he wasn't on our coach pass list of any of his tickets were affiliated with" the institution's athletics corporation.[195] Reed also took his concerns about Gassnola to Lester, who was the men's basketball sport supervisor. While Reed said he expressed his concern with "snide remarks," he recalled asking Lester "why would Adidas send a grassroots guy to Maui."[196] While Reed said he was not sure whether anyone from the athletics administration – including Lester – contacted Adidas to learn more about Gassnola and his role, Reed said Lester was "singing the same tune" as Reed in that neither of them were "overly excited to ever see TJ Gassnola."[197]

Further, in July [redacted], Reed hosted nearby institutions on Kansas' campus for two days of meetings and discussion as a part of the Midwest Compliance Summit. During a meeting with senior compliance officials

[192] FI017, DReed_TR_051519_Kansas_00874, Page No. 8.
[193] FI017, DReed_TR_051519_Kansas_00874, Page No. 8.
[194] FI017, DReed_TR_051519_Kansas_00874, Page Nos. 6 and 9 through 11.
[195] FI017, DReed_TR_051519_Kansas_00874, Page No. 7.
[196] FI017, DReed_TR_051519_Kansas_00874, Page No. 6.
[197] FI017, DReed_TR_051519_Kansas_00874, Page Nos. 6 and 27.

from multiple institutions as well as NCAA officials, Reed shared his concerns regarding Gassnola with the entire group. Reed said:

> And the comment I made was these shoe companies are employing less than desirable individuals in their grassroots areas and we are placed in an impossible situation because we cannot dictate who the shoe companies hire or send to our universities. And in that comment, I said this Adidas parades TJ Gassnola to our campus and this guy has the same rap sheet as Lucky Luciano (Luciano).[198]

These comments demonstrate Reed obviously had significant concerns about Gassnola, his relationship with the institution and his access to the men's basketball program.

However, Reed believed there was nothing the institution could do about Gassnola due to his employment with Adidas. Reed stated:

> I don't know how we would have the ability to prevent something like TJ Gassnola because of the position we're put in. And I go right back to what I said in the Midwest Summit. The University of Kansas cannot dictate who our corporate sponsors hire and sent to conduct their business with us. And TJ Gassnola is in – definitely in a position … has the ability -- - doesn't necessarily help us but can definitely hurt you and that as you all know is the culture of major college football and basketball recruiting with these handlers, and these high school coaches, AAU coaches, Deacons, spiritual mentors, mom's boyfriend, we're faced to deal with a lot of unscrupulary people that we necessarily would not want to deal with and it's all part of the machine. [199]

Because he believed the institution had no authority over Gassnola, Reed took no action. As previously noted, he never met or spoke directly with Gassnola. Nor did Reed recall discussing Gassnola at any athletics department staff meetings.[200] Further, Reed never spoke with his supervisor, the director of athletics, about Gassnola.[201]

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[198] FI017, DReed_TR_051519_Kansas_00874, Page Nos. 5 and 29. Reed explained during his interview that Luciano was a gangster and the founder of the Gambino crime family in New York.
[199] FI017, DReed_TR_051519_Kansas_00874, Page No. 62.
[200] FI017, DReed_TR_051519_Kansas_00874, Page No. 27.
[201] FI017, DReed_TR_051519_Kansas_00874, Page Nos. 6, 7 and 10.

Perhaps of most concern is that Reed never once asked Self or any members of the men's basketball staff about Gassnola or their relationship with him. Reed said: "It's not my lane to police who they're friends with and who they talk to. My concern is strictly the recruiting side of it through monitoring. I don't get intertwined with paying attention to what, who they're talking to, you know, in conversations."[202] When asked if he conducted any level of inquiry or investigation to determine what, if any, connection Gassnola had with the Kansas basketball program prior to November 2017, Reed said, "No, I knew it was through Adidas and that I chalked it up to this guy's in Adidas grassroots, Adidas is sending their reps to be at certain events and I had no reason or cause to insert myself into a situation."[203] Reed further asserted that his concerns with Gassnola did not rise to the level where he felt the institution or its compliance department needed to assess or vet the situation, stating "I had no reason to act on TJ Gassnola until November 13, 2017."[204]

Lester reported that he first met Gassnola on the floor of Allen Fieldhouse around 2015 or 2016. Lester described Gassnola as "6-4, overweight, big belly, look alike, you know, probably to Tony Soprano...Look alike from look, image, and personality to Tony Soprano."[205] Lester told Zenger that Gassnola "was not my cup of tea."[206] When asked why he had this opinion of Gassnola, Lester said it was based on his "New England instincts. He's from Massachusetts. I'm from Connecticut. I don't know, just not – personalities just wouldn't – he's boisterous personality. I'm probably not, just somebody I wouldn't enjoy."[207] In fact,

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[202] FI017, DReed_TR_051519_Kansas_00874, Page Nos. 10 and 31.
[203] FI017, DReed_TR_051519_Kansas_00874, Page No. 32.
[204] FI017, DReed_TR_051519_Kansas_00874, Page Nos. 13, 22, 37 and 38. The November 13, 2017, date references when [redacted] thus, instigating Self's receipt of a confidential tip about [redacted] getting paid and [redacted] admission that she received $15,000 from Gassnola.
[205] FI020, SLester_TR_022119_Kansas_00874, Page Nos. 12, 13, 31 and 32.
[206] FI020, SLester_TR_022119_Kansas_00874, Page No. 30.
[207] FI020, SLester_TR_022119_Kansas_00874, Page No. 30.

Gassnola made such a bad impression that, in 2016, Lester asked Mark King (King), head of Adidas North America and "one of the most powerful men in the apparel business," to step out of an in-person meeting regarding contract negotiations so he could ask about Gassnola. According to Lester, King replied that Gassnola was a consultant for Adidas in the men's basketball space and left it at that. [208]

Similarly, at some point prior to the September 2017 federal indictments, Lester asked Self about "Adidas guys," including Gassnola, and "How does Adidas help you, what do they do versus what do other places do."[209] According to Lester, Self's response was "He's there, that he's around. I mean, nothing – nothing that to the point where it raised an eyebrow … you know, they're all in the gyms. We're all together. You know, more of a social environment than anything else so that was – you know, that was generally the extent of conversations."[210] Therefore, despite having articulated these concerning views about Gassnola and recognizing the potential for Adidas and Gassnola to assist in the institution's recruitment at nonscholastic events, Lester did not further explore the relationship with Self or Adidas representatives, or ask compliance to monitor the relationship to ensure any Adidas interaction at nonscholastic events was permissible.

Zenger reported that, about three or four years after he arrived at the institution, Lester told him "There's a guy I'm just not real comfortable with," and mentioned Gassnola's name.[211] While Zenger was unfamiliar with Gassnola, Lester pointed Gassnola out to Zenger at a men's basketball contest several weeks later. Zenger said Lester's concerns about Gassnola were nothing specific, but "gut feelings" because Lester was

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[208] FI020, SLester_TR_022119_Kansas_00874, Page Nos. 14 and 30.
[209] FI020, SLester_TR_022119_Kansas_00874, Page Nos. 16 and 17.
[210] FI020, SLester_TR_022119_Kansas_00874, Page No. 17.
[211] FI022, SZenger_TR_022119_Kansas_00874, Page No. 15.

"street smart" and Gassnola gave him "the willies."[212] According to Zenger, because of Lester's concern, he instructed Lester to contact Adidas about Gassnola. Zenger said, "Sean then called Adidas, at my behest, and said hey, tell me about this guy, is he on the up-and-up and they assured him he was on the up-and-up."[213] Similar to Lester, Zenger took Adidas' word regarding Gassnola and conducted no further follow up.

Zenger subsequently saw Gassnola in the hallways of the athletics office because, as noted above, Zenger knew Gassnola was Adidas' point person working with the Kansas marketing office to improve Late Night. Zenger also interacted with Gassnola during Adidas' September 8, 2017, celebration for Self's Hall of Fame induction. Other than these contacts, Zenger said he saw Gassnola at Kansas men's basketball game maybe once a year. [214]

It is a fundamental NCAA expectation that institutions exercise control and oversight of their athletics programs, and this can only be done through institutional employees. In this case, three senior athletics administrators failed to exercise their authority to utilize any effective compliance measures to ensure that its corporate sponsor's employees, who were also boosters, complied with NCAA legislation. Specifically, institutions should and do use their authority to place permissible boundaries between corporate entities and its sports program. This is especially true where there are serious compliance concerns about a person assigned as liaison to the men's basketball program, such as knowing Gassnola was a former runner for an agent, an NCAA-sanctioned nonscholastic coach and someone described in distrustful terms. At the very least, the institution should have taken proactive steps to provide rules education and set clear expectations

[212] FI022, SZenger_TR_022119_Kansas_00874, Page No. 16.
[213] FI022, SZenger_TR_022119_Kansas_00874, Page No. 15.
[214] FI022, SZenger_TR_022119_Kansas_00874, Page Nos. 15, 16 and 22.

on the nature and extent of Gassnola's relationship with the men's basketball coaches and program. None of these things occurred.

3. Allegation No. 5-c: The institution failed to monitor Gassnola and Gatto at Late Night.

By the time of [redacted] official paid visit during the Late Night event in September [redacted] Lester, Reed and Zenger had each identified or knew of concerns or issues with Gassnola's presence around the basketball program. Further, not only did Self and Townsend know that Gassnola and Gatto were in attendance, Self expected and assumed they would interact with prospects and expressed no misgivings about it.[215]

Further, multiple institutional employees knew about the relevance of the Oread Hotel. Specifically, Reed, Self and Townsend all reported that the institution used the Oread Hotel to house prospects and their families during official visits. For his part, Reed reported that other than rules education for the hotel, the institution's compliance staff had no monitoring system in place related specifically to the Oread Hotel and the institution's placement of prospective student-athletes there.[216] Self and Townsend also believed or knew that Gassnola and Gatto stayed at the Oread Hotel.[217] As previously discussed, Townsend even saw Gassnola, [redacted] and [redacted] at the Oread Hotel after Late Night.[218]

Despite institutional staff members knowing or having reason to believe that Gassnola; Gatto; and [redacted] an elite prospect, were all staying at the Oread Hotel on the same occasion, no one monitored the

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[215] FI001, BSelf_TR_051719_Kansas_00874, Pages 34, 39 and 40.
[216] FI017, DReed_TR_051519_Kansas_00874, Page No. 26.
[217] FI001, BSelf_TR_051719_Kansas_00874, Page No. 33 and FI004, KTownsend_TR_051619_Kansas_00874, Page Nos. 21, 23, 40, 43, 73, 77 and 87.
[218] FI004, KTownsend_TR_051619_Kansas_00874, Page Nos. 40 through 43 and 77.

arrangement to ensure compliance with NCAA legislation.[219] Specifically, Reed reported that other than reviewing paperwork before and after an official paid visit and providing rules education to families during the visit, the institution did not have any other compliance measures in place regarding official paid visits.[220] Further, Self and Townsend took no steps to ensure that Gassnola and Gatto's interactions with prospects were permissible.

Allegation No. 5-c again demonstrates the continued institutional failures to exercise its authority and control over its men's basketball program related to boosters and agents. In this void, and as discussed in Allegation No. 1, Gassnola had his first impermissible recruiting contact with [redacted] and [redacted] when he approached them at the Oread Hotel following Late Night and offered the recruiting inducement of money to ensure [redacted] enrollment at the institution.

4. Allegation No. 5-d: Institution failed to ensure a compliance review of [redacted] vehicle.

As referenced in Allegation No. 1, [redacted] began driving a [redacted] on the institution's campus in mid-August [redacted] According to Townsend, [redacted] notified him about a week before [redacted] arrived with the car that [redacted] would be returning to campus with a car. Townsend reported that, after discussing whether [redacted] was responsible enough for a car, he advised [redacted] they would need to complete compliance forms for the car and include car registration, proof of insurance and [redacted] driver's license.[221] Around this same time in August [redacted], Fred Quartlebaum (Quartlebaum), director of student-athlete development for men's basketball and a direct report to Self, learned from [redacted] that he had a car

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[219] As noted in FI96, PVanRoekel_Email_FQuartlebaum-KTownsend_100914_Kansas_00874, and while concerning a different year, the institution had a rooming list for the [redacted] Late Night that shows Gatto's and Gassnola's hotel rooms were on the same floor and in close proximity to recruited prospects and their families.
[220] FI017, DReed_TR_051519_Kansas_00874, Page Nos. 16 and 26.
[221] FI004, KTownsend_TR_051619_Kansas_00874, Page Nos. 99 and 100.Townsend reported that he had no reason to question [redacted] ability to purchase this car.

on campus and needed a parking permit.[222] Subsequently, Vincent McKamie, assistant director of athletics for athletic and career counseling, sent an email October 21, [redacted] to Quartlebaum informing him that [redacted] was unable to register for classes due to a hold on his account as a result of an unpaid parking permit involving his car.[223]

This factual information demonstrates that between August and October [redacted] three athletics department administrators, including Townsend, knew [redacted] had a car on campus; however, no one ensured [redacted] registered the vehicle with the compliance staff so it could be reviewed under the appropriate monitoring systems.[224] Instead, the institution has confirmed in its response that the car was finally registered with the compliance staff only after [redacted][225]

On [redacted], Self reported that he notified Reed of a call he had just received from a person whose identity Self did not want to reveal to the enforcement staff. Self said this person notified him that [redacted] was getting paid or had been paid.[226] After this, on November 13, [redacted] Rick Evrard (Evrard), the institution's outside counsel, and Reed went to [redacted] and interviewed [redacted] reported that her mother made the initial car payment and then [redacted] used her money to pay the car insurance payments.[227] In [redacted] interview, Reed said he "took the opportunity at the very last question, as we were wrapping up of anything else and I threw out the name TJ Gassnola just as a fishing expedition because of my disdain and prejudice towards TJ Gassnola and that's

[222] FI085, FQuartebaum_TR_081419_Kansas_00874, Page Nos. 6 through 10.
[223] FI090, VMcKamie_TR_081419_Kansas_00874, Page No. 6.
[224] FI074, 12-5-17 Kurtis Townsend Transcript, Page Nos. 13 and 14 and FI004, KTownsend_TR_051619_Kansas_00874, Page Nos. 99 and 100.
[225] FI001, BSelf_TR_051719_Kansas_00874, Page No. 71 and FI017, DReed_TR_051519_Kansas_00874, Page Nos. 38 and 47.
[226] FI002, BSelf(BSK)_TR_082019_Kansas_00874_DRAFT, Page No. 13.
[227] FI074, 11-13-17 [redacted] Transcript, Page Nos. 5 through 7.

when all hell broke loose with [redacted]"[228] When [redacted] responded she knew Gassnola, Evrard commented: "Okay. He's, he's an important piece here for us."[229] After additional questioning, [redacted] ultimately reported that Gassnola provided her $15,000 in June [redacted] The institution later obtained [redacted] bank records, which showed a $15,000 deposit from Gassnola into [redacted] bank account June 14, [redacted][230] The institution acknowledged in a December 21, [redacted] letter to Derrick Crawford, NCAA managing director of enforcement, that [redacted] comingled the Gassnola funds with her own funds and even transferred $1,650 of these comingled funds to her son after he had enrolled at Kansas.[231] Presumably, [redacted] paid the car insurance from the same comingled funds.

In its response to the notice of allegations, the institution acknowledges it failed to have [redacted] register the [redacted] with the compliance staff when he first brought it to campus. The enforcement staff regard this failure as one more example of the institution's lack of control and monitoring of its men's basketball program. But for the federal arrests of Code, Gassnola and Gatto in September [redacted] and [redacted], the violations involving [redacted] may have gone undetected and the institution would have allowed him to compete while ineligible. Further, [redacted] interview evidences that – even if based on disdain and prejudice of Gassnola – when the institution proactively asked questions about him, NCAA violations came to light.

5. Allegation No. 5-e: Institution allowed ineligible [redacted] to compete.

The cascading failures of the institution to exert control and oversight of its men's basketball program culminated in its decision to certify [redacted] as eligible in January [redacted] and allow him to compete in 20 games during the [redacted] season, including the [redacted] NCAA tournament and [redacted] At the time the

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[228] FI017, DReed_TR_051519_Kansas_00874, Page No. 38.
[229] FI074, 11-13-17 [redacted] Transcript, Page No. 13.
[230] FI074, [redacted] Bank Records - 20171215211316, Page Nos. 3 through 9 and 11 through 14.
[231] FI076, Rick Evrard Letters RE [redacted] SAR, Page No. 5.

institution certified [redacted] eligible in January [redacted], the institution's athletics administrators were aware of the following information:

1. As outlined in Allegation No. 2, Self and Townsend knew of Gassnola's impermissible recruiting inducement and contacts with the [redacted] of [redacted] in August and September [redacted]. Self and Townsend also knew or should have known that Adidas and Gassnola were boosters and agents, as defined in NCAA legislation.
2. As outlined in Allegation No. 3-a, Self was aware of Gassnola's August [redacted] texts indicating he had let Self down in the recruitment of [redacted]
3. When federal authorities arrested and indicted Gatto and Code September 26, [redacted], the institution knew Gassnola reported to Gatto and worked with Code. The institution knew it was one of the flagship schools for Adidas, that Adidas had been involved in promoting its athletics interests, and had significant involvement with its men's basketball program and coaches.
4. The institution was put on notice of the heightened need to ensure all its men's basketball student-athletes were eligible when, in October [redacted] the NCAA Division I Board of Directors issued its directive. The institution's process for this review simply consisted of asking the men's basketball coaches and student-athletes to complete a questionnaire form in early November [redacted].[232] Surprisingly, the questionnaire did not include Gassnola's name despite his known connection to Adidas and Gatto and considering Reed's and Lester's voiced disdain or wariness regarding Gassnola. Also, Reed and Self knew Gassnola had been sanctioned by the NCAA in 2012. Unsurprisingly, the questionnaire form did not yield any useful information regarding potential violations.

[232] For an example, FI074.[redacted] Student-Athlete Questionnaire.

5. Finally, and as just outlined, the institution learned November 13, [redacted] that Gassnola had provided $15,000 to the mother of one of its student-athletes in June [redacted]

The institution failed to take all of this into account and instead certified [redacted] eligible. Had the institution conducted a timely and comprehensive review, including preserving Self and Townsend text messages, it would have revealed what Self and Townsend failed to disclose to the institution – that they had impermissibly engaged Gassnola in the recruitment of [redacted] and worked with Gassnola to offer [redacted] an inducement. Further, timely and effective in-person interviews and document requests of [redacted] Gassnola, Self and Townsend could have yielded pertinent and important information, including [redacted] $2,000 cash deposit from Gassnola around the same time Gassnola, Self and Townsend were simultaneously in contact with [redacted]

While there was abundant information in January [redacted] raising red flags regarding [redacted] eligibility, any doubts by the institution should have been erased when Sullivan received a tip just before Kansas was scheduled to play [redacted] Specifically, on the day the men's basketball team arrived in [redacted] Sullivan notified Zenger about a concern regarding [redacted] Zenger came to Reed's hotel door and said, "I need you to call Bill Sullivan," as Sullivan was expecting Reed's call. Reed called Sullivan and learned [redacted] may be involved in a federal indictment. Reed said there was "no information other than there may be some concern with [redacted] coming down the road and that's all we had."[233] Rather than withhold [redacted] or conduct an immediate investigation, the institution permitted Self to play [redacted] in the [redacted] game.[234] Eleven days later, April 10, [redacted] the federal government released a superseding indictment, which detailed Gassnola and Gatto's illicit payments and offers to [redacted] in September [redacted]

[233] FI018, DReed_TR_121118_Kansas_00874, Page Nos. 21 through 23.
[234] Playing for a total of [redacted] minutes, [redacted] scored [redacted] points and grabbed [redacted] rebounds in the [redacted]

6. Summary of the institution's failure to control.

Throughout the NCAA infractions history, the committee has repeatedly emphasized the need for institutions to implement proper policies, procedures, rules education and monitoring systems that effectively deter and detect violations.[235] Further, the committee has noted that high profile programs with elite student-athletes create unique challenges, requiring close monitoring and follow through.[236] Similarly, the committee has consistently warned institutions of the greater monitoring responsibility when an individual has insider or favored status, such as representatives of the institution's athletics interests.[237] Even in its own infractions history, the committee found the institution lacked control when it failed to provide rules education to boosters who were later discovered to have provided impermissible benefits to men's basketball student-athletes.[238]

As evidenced by the facts in this case, the institution failed in every single one of these areas. For over three years, Adidas and Gassnola and its other staff had unfettered access to the institution's storied men's basketball program and, during that time, they engaged in multiple Level I violations. Not only did the institution fail to recognize these breakdowns then, it is disappointing they refuse to take responsibility for them now.

D. Remaining issues.

1. Did the institution lack institutional control and fail to monitor as alleged?

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[235] March 6, 2015 – Syracuse University, Page No. 56.
[236] March 6, 2015 – Syracuse University, Page No. 56.
[237] February 1, 2002 – University of Alabama; April 17, 2003 – University of Arkansas; May 8, 2003 – University of Michigan; July 31, 2012 – University of Central Florida, Page No. 53 and 54; October 22, 2013 – University of Miami (Florida), Page Nos. 5 through-62, at Page No. 57 the committee wrote, "In assessing whether a member lacks institutional control, the committee considers whether adequate compliance measures exist; whether those compliance measures were appropriately conveyed to those who need to be aware of them; whether the compliance measures are monitored to ensure they are followed; and whether upon learning that a violation may have occurred, the institution takes timely and appropriate action."
[238] October 12, 2006 – University of Kansas, Page No. 17 and November 1, 1988 – University of Kansas infractions report in which the committee concluded there were booster violations, the institution lacked control of its men's basketball program and needed to strengthen its compliance, education and monitoring systems.

2. If so, is this a Level I violation?

E. Rebuttal information.

None.

F. Additional matters that relate to Allegation No. 5.

None.

VII. ALLEGATION NO. 6 – From December 2017 to September 2018, Jeff Love (Love), then football video coordinator, provided technical and tactical instruction to quarterback student-athletes as a noncoaching staff member with sport specific responsibilities. [NCAA Division I Manual Bylaws 11.7.1.1, 11.7.3 and 11.7.6 (2017-18 and 2018-19)]

A. Overview.

The institution and enforcement staff are in agreement on the facts and that Level II violations occurred. Beaty and Love dispute the facts of Allegation No. 6 and believe if a violation occurred, it is Level III.

B. Enforcement staff's position as to why the violations should be considered Level II [NCAA Bylaw 19.1.2] and if the institution and involved individual(s) are in agreement.

The enforcement staff believes a hearing panel could conclude that Allegation No. 6 is a significant breach of conduct (Level II) because the violations (a) were not isolated or limited, (b) provided or were intended to provide more than a minimal competitive or other advantage, (c) were more serious than Level III violations and (d) compromised the integrity of the NCAA Collegiate Model. Beaty and Love believe if any violation occurred, it is Level III.

C. Enforcement staff's review of facts related to the allegation.

Throughout a 10-month period, Love met with quarterback student-athletes six to 10 times (Allegation No. 6-a), provided on-field instructions to quarterbacks on two to three occasions (Allegation No. 6-b) and provided the quarterbacks instructional videos through text messages on least one occasion (Allegation No. 6-c). Love's conduct constituted coaching activity, which made him a countable coach. Because the

institution was at its full complement of football coaches, the institution exceeded the limitation on countable coaches by one.

On December 5, 2014, the institution named Beaty head football coach, his first such position at the collegiate level. Beaty reported that the institution provided him and his coaching staff with extensive support and education on NCAA rules and regulations.[239]

Love has worked in college football for nearly a decade, mostly as a video staff member, including stints at the University of Central Florida, Washington State University and Houston Baptist University (Houston Baptist). Between 2008 and 2012, Kansas employed Love as a videographer and Beaty as an assistant football coach. From 2012 through 2016, Love worked at Houston Baptist where he initially served as wide receiver coach before being promoted to quarterbacks coach in 2014. In July 2016, Beaty hired Love, bringing him back to Kansas as director of football technology (DFT), a noncoaching staff position with football specific responsibilities. As DFT, Love oversaw all video and technology operations for the football program and managed ten football video staff members, including [redacted] an assistant video coordinator. In October 2018, Beaty promoted Love to quarterbacks coach, a countable coaching position.[240] In December 2018, following Beaty's departure from the institution, Les Miles (Miles) was hired as the new head football coach. Love was reassigned to his previous noncoaching staff position as DFT; however, he resigned because he viewed the reassignment as a demotion.[241]

The institution discovered the violations involving Love in November 2018, when it conducted a routine exit interview of [redacted] following [redacted] resignation, which [redacted] said was for personal growth reasons.

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[239] FI163, DBeaty_TR_022719_Kansas_00874, Page Nos. 8 and 9.
[240] FI165, JLove_TR_020519_Kansas_00874, Page No. 6.
[241] FI165, JLove_TR_020519_Kansas_00874, Page No. 11.

[redacted] disclosed to the institution that on [redacted] first day on the job in the summer of 2018, Love informed [redacted] that while he was listed as head of football video staff, he also worked with the quarterbacks "under the table."[242]

The institution promptly initiated an inquiry and discovered Love had engaged in impermissible coaching activities on multiple occasions when he provided technical and tactical instructions to quarterback student-athletes. The institution conducted interviews with Beaty's former staff and [redacted]

On December 7, 2018, the institution informed the enforcement staff of potential football violations, shared information from its investigative file and requested assistance with securing interviews of Beaty and Love, who were former employees of the institution at that time. The enforcement staff interviewed both men, with Love initially denying providing technical or tactical instructions. However, later in the same interview, Love admitted he provided instruction to quarterbacks regarding defensive formations and coverages in a meeting setting on two or three occasions. Love reported that neither Beaty nor other football assistant coaches were aware of these impermissible coaching activities. Beaty disputed the allegation in his interview.

It is noteworthy that following the 2017 football season in which the team finished 0-9 in conference play and 1-11 overall, Beaty made some coaching changes. Beaty transitioned Garrett Riley (Riley) from the quarterbacks to tight ends coach and assigned David Meacham (Meacham), offensive coordinator, the additional responsibility of coaching quarterbacks. According to most of the quarterback student-athletes, in January 2018, Love began meeting with them in the quarterback meeting room and provided coaching

[242] FI170, [redacted] TR_120418_Kansas_00874, Page Nos. 6, 17 and 18.

instruction. Most of the quarterbacks reported that Beaty knew of at least some of Love's impermissible coaching activities.

Moreover, Riley stated that when he was moved from quarterbacks to tight ends coach, he confronted Beaty about Love meeting with the quarterbacks. Riley reported he told Beaty "…it was not right if Beaty asked Love to meet with the quarterbacks."[243] Beaty denied that Riley reported that information to him. The enforcement staff asserts that Riley's statement, in combination with the information provided by the quarterback student-athletes supports that Beaty knew or should have known Love impermissibly provided coaching instruction during quarterback meetings.

As additional contextual information concerning the violations, it should be noted that Beaty and Meacham confirmed they diverged in coaching philosophy regarding the quarterback position, and this ultimately led to Meacham's termination in September 2018 in the middle of the season.[244] Beaty then promoted Love to quarterbacks coach and by this time, and as outlined in the allegation, Love had already been working with the quarterbacks in individual meetings and occasionally on the practice field.

As the facts reveal, as the 2018 spring semester was about to begin, Beaty was not satisfied with the coaching of the quarterbacks and used Love to improve the quarterback play with additional instruction related to pre-snap and post-snap defensive schemes and formations.

1. Allegation No. 6-a.

After the 2017 football season, Beaty charged Love with the task of creating voluntary video exercises to assist the quarterbacks with mental muscle memory. Beaty wanted Love to administer these exercises while Beaty was out of town. Beaty knew Love would need to meet with the respective quarterbacks to set

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[243] FI174, GRiley_TR_120418_Kansas_00874, Page No. 8.
[244] FI163, DBeaty_TR_022719_Kansas_00874, Page No. 18.

up the technology for the exercise.[245] Love used XOS, a self-taught video software, for the exercises, as well as PowerPoints and video cut-ups he created. The video exercises ranged in duration from 15 to 25 minutes and did not require a coach or noncoaching staff member to be present. Despite this, Love met with the quarterbacks in their meeting room during the video exercises. Love confirmed he provided instructions to the quarterbacks on one or two occasions.[246]

[redacted] student-athlete, enrolled at the institution [redacted]. [redacted] stated Love met with the quarterbacks more than 10 times for 30 to 45 minutes and provided instructions in reading defensive schemes in preparation for spring and fall camps.[247] Love texted or told the quarterbacks what time the meetings would occur. [redacted] added that when he first arrived on campus [redacted], Love also had individual meetings with the quarterbacks. [redacted] stated Love met with him individually two or three times per week, with each meeting lasting about 45 minutes. In these meetings, Love reviewed defensive fronts, defensive coverages, game tape of conference opponents' fronts and coverages, and their own practice film.[248]

[redacted] enrolled at the institution as a freshman [redacted]. [redacted] confirmed that Love started meeting with the quarterbacks sometime after the 2017 football season.[249] The meetings occurred twice a week and lasted close to one hour. [redacted] stated that most of the meetings happened when Beaty was out of the office recruiting or when no one was around the football facility. However, [redacted] stated Beaty attended some of the quarterback meetings to show "validation" for Love's instruction.[250] [redacted] reported that during the quarterbacks meetings, Love showed game film and pointed out defensive coverages. Love gave them

[245] FI163, DBeaty_TR_022719_Kansas_00874, Page No. 22.
[246] FI165, JLove_TR_020519_Kansas_00874, Page No. 18.
[247] FI176, [redacted]_TR_120418_Kansas_00874, Page Nos. 3 through 5.
[248] FI167, [redacted]_TR_041019_Kansas_00874, Page No. 5.
[249] FI175, [redacted]_TR_120418_Kansas_00894, Page No. 3.
[250] FI175, [redacted]_TR_120418_Kansas_00894, Page No. 3.

cues and tips on what to do as the quarterback in those situations. Love then had the quarterbacks draw coverages on the white board to demonstrate they understood the instruction. Love occasionally told the quarterbacks that Beaty would quiz them at the end of the week on what they learned. [redacted] stated that when Beaty attended the meetings, it was like a partnership between Beaty and Love as they instructed the quarterbacks.[251]

[redacted], enrolled at the institution [redacted]. [redacted] recalled receiving a text message or telephone call from someone, whom he could not remember, informing the quarterbacks they were to start meeting weekly with Love in the offseason to study film in order to improve as quarterbacks. [redacted] stated the sessions began during the 2018 spring semester and they met twice a week for about one hour each time. He said [redacted] participated with Love.[252] [redacted] estimated that Love met with the quarterbacks 20 times. Love ran the meeting, showed film of opponents and gave the quarterbacks his best diagnosis about what the defense was going to do pre-snap by examining their defensive formation. Love used a pointer during film study for instruction purposes, sometimes drew on the white board to make a point and quizzed the quarterbacks. [redacted] said Beaty briefly attended Love's sessions with the quarterbacks, "every now and then…maybe one or twice."[253]

[redacted] enrolled at the institution [redacted]. [redacted] acknowledged Love had one or two meetings with him after the 2017 football season.[254] During these meetings, Love instructed [redacted] on defensive schemes and coverage recognition. [redacted] described the spring of 2018 meetings as follows:

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[251] FI175, [redacted]_TR_120418_Kansas_00894, Page Nos. 4 and 5.
[252] FI177, [redacted]_TR_020119_Kansas_00874, Page Nos. 3 and 4.
[253] FI177, [redacted]_TR_020119_Kansas_00874, Page Nos. 5 through 10.
[254] FI173, [redacted]_TR_120418_Kansas_00874, Page No. 4.

> It would be ran the same way as it was back in December, except there would be all the quarterbacks in there. In these meetings, Love would sit behind the computer using the controller to plays for rewind and slow motion, as well as use a laser pointer when asking questions or pointing out players or an area of the field.

[redacted] added that the quarterbacks were also quizzed during these sessions.[255]

[redacted] enrolled at the institution [redacted] after many of Love's quarterback meetings described above. As [redacted] reported, [redacted] was not in the quarterback meetings. However, [redacted] confirmed some impermissible coaching by Love. [redacted] reported that during meetings run by Meacham and with Love in attendance, if Meacham forgot something, sometimes Love injected instruction to the quarterbacks on what to do on a particular play and sometimes explained things better. [redacted] stated that Love was there to assist the quarterbacks and knew what he was talking about. Meacham said Love occasionally made statements to back up his coaching points during his meetings with the quarterbacks.[256] Additionally, on one occasion during the summer, Meacham instructed Love to meet with [redacted]. The session lasted approximately 30 minutes, with Love providing coaching instruction by drawing defensive schemes on a white board.[257] [redacted] information generally corroborates the fact that Love provided impermissible coaching instruction.

2. Allegation No. 6-b.

The enforcement staff directs the hearing panel to the institution's response as it provides a fair review of the facts of the allegation. Love denies any violations occurred but acknowledged he would "typically stand behind the action at practices."[258] Nevertheless, in an April 1, 2020, letter from Henry Gimenez, Beaty's attorney, to the enforcement staff, Beaty acknowledges Love was present in at least one of the video

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[255] FI164, [redacted]_TR_041019_Kansas_00874, Page No. 5.
[256] FI169, DMecham_TR_122118_Kansas_00874, Page No. 11.
[257] FI172, [redacted]_TR_120418_Kansas_00874, Page Nos. 3 through 9.
[258] Love's Response, 03.05.2020_JMLove SIGNED Response to the Notice of Allegations(2471323.2), Page No. 2 (Part B).

clips and agrees that Love was standing around the quarterbacks. In the enforcement staff review of the video clips, the clips show on at least one occasion, August 7, 2018, Love engaged in instruction at practice when he was still a noncoaching staff member. There is no indication on the videos that Beaty observed Love's instruction and Beaty denies seeing such activity.[259]

In addition to the video clip, three quarterbacks reported Love provided occasional instruction at practice. [redacted] reported that Love spent his practice time with the quarterbacks and gave them feedback regarding their performance and advice about how to do better during practice.[260] [redacted] reported that during practice he sometimes stood next to Love and asked Love what he wanted him to do regarding certain plays or to explain what the coverage was on a play.[261] [redacted] reported that Love became more involved with on-field practices in August 2018. He said while Meacham ran drills, Love was on the side and spoke with the quarterbacks about the defensive formations and reactions during a practice play. Love would remind the quarterbacks to read their keys during a play.[262]

3. Allegation No. 6-c.

On August 30, 2018, Love sent [redacted] a text message with a link to a video that showed a football play. In the text message, Love instructed [redacted]: "Remember on the stick snag out of the leap tight. If the backer doesn't move, the ball goes to the back." Love confirmed that he sent [redacted] the text message and video to [redacted] and characterized his instruction as "helping him understand how to watch tape." While not specifically recalling other instances, Love said he may have sent other quarterbacks similar messages on occasion during the time he was a noncoaching staff member if someone asked or he felt he needed to explain to the quarterbacks how to watch tape.[263]

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[259] FI187, [redacted]Video_JLovePractice_062619_Kansas_00874.
[260] FI177, [redacted]_TR_020119_Kansas_00874, Page Nos. 8 and 9.
[261] FI172, [redacted]_TR_120418_Kansas_00874, Page Nos. 5 and 6.
[262] FI176, [redacted]_TR_120418_Kansas_00874, Page No. 6.
[263] FI165, JLove_TR_020519_Kansas_00874, Page Nos. 25 and 26.

In summary, the enforcement staff found the information from the quarterbacks to be credible and reliable, even though there were variances in the details of their information. The quarterbacks did not appear to have an agenda, other than telling the truth. Additionally, Love admitted that he provided some impermissible coaching instruction in quarterback meetings and when he texted at least one video clip. As a result, the enforcement staff concluded Level II violations occurred.

D. Remaining issues.

1. Did Love provide technical and tactical instruction to the quarterbacks as a noncoaching staff member with sport specific responsibilities in violation of NCAA legislation?
2. If so, what is the level for this violation?

E. Rebuttal information.

None.

F. Additional matters that relate to Allegation No. 6.

None.

VIII. ALLEGATION NO. 7 – Beaty violated head coach responsibility related to Allegation No. 6. [NCAA Division I Manual Bylaw 11.1.1.1 (2017-18 and 2018-19)]

A. Overview.

Beaty disputes violations occurred in Allegation No. 6 but believes that if the hearing panel finds violations occurred, they should be classified as Level III with no head coach responsibility finding. Regardless, Beaty believes he rebutted any presumption of responsibility as head coach. The institution and enforcement staff agree that Beaty violated head coach responsibility and that this is a Level II violation.

B. Enforcement staff's position as to why the violations should be considered Level II [NCAA Bylaw 19.1.2] and if the institution and involved individual(s) are in agreement.

The enforcement staff believes a hearing panel could determine that Allegation No. 7 is a significant breach of conduct (Level II) because it is a head coach responsibility violation resulting from an underlying Level II violation and compromised the integrity of the NCAA Collegiate Model. The institution agrees this is a Level II violation. Beaty disputes a violation even occurred.

C. Enforcement staff's review of facts related to the allegation.

There is important context for this allegation. When Beaty hired Love into a noncoaching role, he knew Love had been a quarterbacks coach at Houston Baptist. Additionally, Beaty instructed Love to produce instructional videos for quarterbacks and knew Love would have to work with the quarterbacks, at least in the capacity of setting up and facilitating the technology for the quarterbacks. Further, Beaty grew dissatisfied with the coaching performance of Meacham, his offensive coordinator, and Riley, his quarterbacks coach, especially following the 2017 football season when the team's record was 1-11. Beaty knew Meacham struggled with the technology of film study, which was an area of expertise for Love.[264]

The institution and enforcement staff agree that Love engaged in Level II violations when he met with the quarterbacks on a fairly routine basis in the offseason starting in January 2018. The quarterbacks also reported that Love provided occasional instruction at practice. Love acknowledged that on one or two occasions he provided instruction to the quarterbacks as they watched video of football plays. Love also acknowledged occasionally sending text messages to quarterbacks with videos and coaching instruction.

If the hearing panel concludes Love engaged in Level II violations, then per Bylaw 11.1.1.1, Beaty is presumed responsible for the violations because Love was his direct report. Beaty can avoid responsibility if he can rebut this presumption, but in this case, Beaty cannot. This is because most of the quarterbacks reported that Beaty came into at least one, if not more, of Love's instructional sessions with the

[264] FI163, DBeaty_TR_022719_Kansas_00874, Page No 3.

quarterbacks. Therefore, Beaty had knowledge that Love engaged in violations as a noncoaching staff member. Beaty did not identify the red flags, took no steps to ask pointed questions of Love or to refer the matter to the compliance staff. Beaty did not appropriately monitor Love's involvement with the quarterbacks. As a result, Beaty violated head coach responsibility legislation and because the underlying violation is Level II, Beaty's head coach responsibility violation should be found as Level II.[265]

Three of the five quarterbacks reported that Beaty attended at least one meeting Love conducted with them while a fourth believed Beaty was aware of it. [redacted] reported he could not recall the exact number of times Beaty was present, but it was not more than half. [redacted] said Beaty vouched for Love when he was present at one of the meetings, saying that Love was "smart", "knew what he was talking about" and that Beaty had learned a lot from Love.[266] [redacted] reported Beaty popped in "maybe once or twice" while Love was conducting a quarterbacks meeting and Beaty vouched for Love during the film sessions when he reassured them Love "knew what he was talking about."[267] [redacted] reported that Beaty sometimes came to the quarterback meetings Love was leading and watched tape with the group for five or 10 minutes. [redacted] believed Beaty wanted the quarterbacks to "get better" with Love's assistance.[268] [redacted] reported that he could not recall if Beaty was present during the meetings conducted by Love but believed Beaty felt his attendance was unnecessary because he taught Love what the quarterbacks needed to know about defensive recognition.[269]

Beaty claimed he was not around the football complex in January 2018 because he was out of town recruiting. While Beaty's recruiting travel records show that he was not in Lawrence most of January (except weekends), Beaty was around the football offices at many other times during the 2018 spring semester

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[265] Enforcement IOP 2-4-2, see the enforcement staff charging guidelines for head coach responsibility.
[266] FI175, [redacted] TR_120418_Kansas_00894, Page Nos. 3 and 9.
[267] FI177, [redacted] TR_020119_Kansas_00874, Page Nos. 7 and 10.
[268] FI176, [redacted] TR_120418_Kansas_00874, Page Nos. 8 and 9.
[269] FI173, [redacted] TR_120418_Kansas_00874, Page No. 7.

leading up to spring practices. As a result, the enforcement staff believes there were opportunities for Beaty to stop by sessions Love conducted just as three of the quarterbacks described.

In summary, Beaty is presumed responsible for Love's Level II violations and did not rebut the presumption because he hired Love, a capable coach, into a noncoaching staff role, knew Love worked with the quarterbacks, and even sat in on some of Love's coaching sessions with the quarterbacks. Accordingly, Beaty's head coach responsibility violation should be found as Level II.

D. Remaining issue.

Has Beaty rebutted the presumption of responsibility as head coach by demonstrating that he promoted an atmosphere of compliance and monitored his program, including those who reported directly or indirectly to him?

E. Rebuttal information.

None.

F. Additional matters that relate to Allegation No. 7.

None.

IX. ALLEGATION NO. 8 – Level III violations involving noncoaching staff members engaging in limited instruction at practice.

A. Overview.

The institution and enforcement staff agree on the facts and that Level III violations occurred. There is no involved individual.

B. Enforcement staff's position as to why the violations should be considered Level III and if the institution and involved individual(s) are in agreement.

The institution and enforcement staff agree that a hearing panel could conclude Allegation No. 8 is a breach of conduct (Level III) because the violations were isolated and limited and provided no more than a minimal competitive advantage.

C. Enforcement staff's review of facts related to the allegation.

Four days after the issuance of the September 23, 2019, notice of allegations, the Kansas City Star (Star) reported possible NCAA rules violations involving noncoaching staff members on the staff of Miles, who was hired as the new head football coach in December 2018 to replace Beaty. The institution and enforcement staff worked collaboratively to investigate this matter. On January 27, 2020, the enforcement staff amended the notice of allegations to include this Level III violation. In the spirit of fairness and transparency, the enforcement staff provided Beaty and Love access to the investigative file for this Level III violation so that they could compare this violation to their own alleged violations. However, the enforcement staff observed factual distinctions between the Beaty-Love alleged violations and this Level III violation, and these factual distinctions influenced the enforcement staff's decision on the charging level for the violation. This will be explained below in greater detail.

The enforcement staff directs the hearing panel to Section H of the institution's response as the institution fairly described the facts. When the Star published its story, the institution and Big 12 Conference office reviewed the video clips attached to the article and determined that no violations occurred in those instances. The Star's video clips focused on Tony Coaxum (Coaxum), a noncoaching staff member assigned to the special teams of the football program. The enforcement staff requested the institution conduct a review of all practice videos from the spring and fall of 2019, which was the entirety of Miles' time at the institution at that point, and the activities of Coaxum. In this effort, the institution first isolated practice videos of the special teams unit, which was the unit Coaxum had been assigned. In its review of over 80 hours of practice videos, the institution observed not only Coaxum but also Devin Ducote (Ducote), another noncoaching staff member assigned to special teams, participating in on-field coaching activities in violation of NCAA legislation. The institution determined that there was a total of five occurrences of

violations involving Coaxum and Ducote. The institution promptly suspended Coaxum and Ducote for two weeks for these violations.

On October 10, 2019, the institution provided the enforcement staff with a 43-minute video file of special team unit practices. This file included 29 occurrences the institution flagged as related to Coaxum and Ducote engaging in questionable practice activities with student athletes, including the five violations mentioned above. The institution disclosed the 29 occurrences to the enforcement staff, even though it did not believe violations had occurred in every situation except for those five previously identified.

The enforcement staff then reviewed the video file and determined that 18 of the 29 video clips showed Coaxum and Ducote engaged in on-field practice activities that included technical or tactical instruction to student athletes in violation of NCAA legislation. There is no audio in the practice videos, so the enforcement staff looked for nonverbal communications from Coaxum and Ducote that indicated whether they were providing instruction to student-athletes. For example, in one clip, Ducote squatted in front of an offensive lineman in a blocking stance, in an apparent demonstration of proper technique. The enforcement staff concluded Ducote was coaching in that instance.

The institution and enforcement staff interviewed Coaxum; Ducote; Mike Ekeler (Ekeler), the special teams coach; [redacted] football student-athlete [redacted]; Miles; and [redacted] football student-athlete [redacted]. Coaxum and Ducote confirmed their engagement in technical or tactical instruction during on-field practice drills with special teams student-athletes on limited occasions. Miles reported that while he was present for many of those instances, he witnessed only Coaxum and Ducote communicating to Ekeler and other coaches who help with special teams practice. However, Miles

supported the institution's findings and the suspensions of Coaxum and Ducote.[270] Ekeler, who supervises Coaxum and Ducote, was not aware either man was committing violations.[271] The two student-athletes, [redacted], reported that Coaxum and Ducote did not provide any technical and tactical instruction at practices or even in meetings.[272]

While NCAA legislation is clear that noncoaching staff members with football specific duties, like Coaxum and Ducote, may not engage in coaching activities, the bylaws do not preclude their presence at practice. In fact, NCAA legislation permits individuals like Coaxum and Ducote to be present at practice and allows them to talk with coaches and provide support such as running a stopwatch or recording results. From what Coaxum, Ducote and others reported and from what can be seen in the video clips, it appears Coaxum and Ducote mostly engaged in these sorts of permissible activities at practice. However, the enforcement staff believes 18 video clips show Coaxum and Ducote engaged in impermissible coaching activity, each lasting no more than two to 10 seconds. Coaxum and Ducote reported that when they engaged in this coaching activity, it was spontaneous and unplanned in nature. There is no information to contradict what they reported. The enforcement staff concluded that the Coaxum-Ducote violations were Level III because of their limited nature and less-than-minimal competitive advantage.

The fact that Miles is present in many of the video clips when impermissible activity occurs is troublesome. Miles should have recognized the violations and stopped the activity, even if it was Level III in nature. Because the enforcement staff concluded the underlying violations were Level III, the enforcement staff did not allege a head coach responsibility violation against Miles. This is consistent with prior charging decisions of the enforcement staff.

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[270] FI189, LMiles_TR_110419_Kansas_00874, Page No. 22.
[271] FI196, MEkler_TR_110519_Kansas_00874, Page No. 7.
[272] FI193, [redacted]_TR_110419_Kansas_00874, Page No. 6 and FI195, [redacted]_TR_110419_Kansas_00874, Page Nos. 8 and 11.

D. Remaining issue(s).

None.

E. Rebuttal information.

None.

F. Additional matters that relate to Allegation No. 8.

Beaty has raised concerns that the enforcement staff's violation level analysis in Allegation No. 6 is inconsistent with its analysis in Allegation No. 8. The enforcement staff believes there are distinctions between the Coaxum-Ducote and Love violations and this informs on the enforcement staff's analysis on levels. In the Love violations, there is information that Love planned and purposely carried out his quarterback room meetings in private. Love was the only staff member present, except when Beaty showed up and Love was in charge of the meetings. In these meetings, Love engaged in extensive coaching instruction for about 45 minutes to an hour each time. Love met with the quarterbacks like this as many as 10 times. Those actions alone constitute Level II violations and secured more than a minimal competitive advantage for the football program, especially considering that while Love engaged in at least some of the impermissible activities, the rest of the coaches were available to travel for recruiting in January. Similar to Coaxum and Ducote, Love engaged in limited and probably spontaneous coaching instruction on the practice field with the quarterbacks in Allegation No. 6-b. If that was the only violation involving Love, then the enforcement staff would have regarded the violation as Level III, just as it views the Coaxum-Ducote violations. But there is one more distinction between the allegations, as Love acknowledged engaging in a third type of violation unique to his case when he texted coaching instruction and videos on an occasional basis. Love's alleged violations are distinguishable from the Coaxum-Ducote violations because of Love's more substantive role in coaching student-athletes.

The enforcement staff believes the Coaxum-Ducote violations are comparable to those in the recent infractions case involving Oregon (December 5, 2018). In that case, the committee found a Level III violation involving the Oregon men's basketball program and the assistant strength coach. The hearing panel noted that the impermissible activity occurred in a few instances and was of a less substantive nature. The hearing panel also concluded that Level II violations occurred when a director of men's basketball operations engaged in impermissible coaching activities with the men's basketball team over four years and a women's assistant strength coach engaged in impermissible coaching activities with the women's basketball team over the course of one year. Though Love's violations are of a different kind of impermissible coaching activity, the enforcement staff believes Love's conduct is more akin to the Level II violations in Oregon.

X. ADDITIONAL MATTERS RELATED TO THE CASE

A. Legislative Guidance.

The enforcement staff relied on official/staff interpretations and/or educational columns outlined in the key record list index of authorities and included all case-specific formal interpretations as factual information. NCAA academic and membership affairs staff provided enforcement the following general guidance that significantly impacted the charging decisions:

1. On July 22, 2019, academic and membership affairs audited the draft notice of allegations and advised the alleged violations supported the bylaw citations listed.
2. On December 2, 2019, academic and membership affairs audited the amended draft notice of allegations and advised the alleged violations supported the bylaw citations listed.

XI. POTENTIAL AGGRAVATING AND MITIGATING FACTORS

A. Position of enforcement staff regarding institution's response.

The enforcement staff identified aggravating factor 19.9.3-(o) which is "Other facts warranting a higher penalty range for the institution." This is based on the actions of the institution when it failed to timely disclose information related to an internal investigation into potential NCAA violations regarding then student-athlete [redacted]. Between April 2018 and August 2019, the enforcement staff made several requests for information concerning the institution's investigative file of potential NCAA violations concerning [redacted].[273] Late in the investigation, and after all on-campus interviews had been conducted, the institution finally provided the enforcement staff with the [redacted] investigative file, which included never before disclosed interviews of the coaching staff. The institution claimed it withheld the investigative file under attorney-client privilege related to the federal investigation.[274] Upon examination of the institution's investigative file, it became apparent the enforcement staff would have been able to use the file in its own investigation. The institution did not demonstrate timely cooperation with the enforcement staff investigation and its failure to be fully forthcoming with information impeded the enforcement staff investigation. They delayed and cost the enforcement staff time and resources in collecting information that the institution had in its possession the whole time.

Regarding the other identified aggravating and mitigating factors, the enforcement staff directs the hearing panel to the statement of the case for a summary of aggravating and mitigating factors identified and the parties' positions on each identified factor.

The institution proposed three additional mitigating factors that the enforcement staff does not support. Related to the institution's proposed mitigating factor of "Prompt acknowledgement of the violation, acceptance of responsibility and imposition of meaningful corrective actions and penalties" under Bylaw

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[273] FI143, Final_RecordsRequest_040518_Kansas_00874; FI144, Final_RecordsRequest_062118_Kansas_00874; and FI153, THosty_Letter_JLongMGlazier_RecordsRequest_080719_Kansas_00874.
[274] FI122, MGlazier_Email_THosty_InstitutionResponseToCooperativePrinciple_091119_Kansas_00874.

19.9.4-(b), the enforcement staff cannot support this mainly because the institution has not accepted full responsibility of all the alleged violations of this case. The enforcement staff does not agree with the institution that "Prompt self-detection and self-disclosure of the violations" outlined in Bylaw 19.9.4-(a) and "Other facts warranting a lower penalty range" outlined in Bylaw 19.9.3-(i) apply. Specifically, the institution did not begin its internal investigation until after the federal government's investigation became public and the NCAA Board of Governors directed all member institutions to review their men's basketball programs. Therefore, the institution should not receive credit for self-detection and self-disclosure when any disclosure of a violation did not originate based on the institution's efforts. Furthermore, many of the violations had been occurring for months and years. Finally, this case is based on widely understood NCAA bylaws and the institution should not have its case mitigated due to its failure to accept responsibility for the violations.

B. Position of enforcement staff regarding response of involved individual [Beaty].

Beaty proposed three additional mitigating factors that the enforcement staff does not support. Beaty proposed the factor of "Exemplary Cooperation" outlined in Bylaw 19.9.4-(f). The enforcement staff notes that while Beaty cooperated throughout the investigation, there are no facts demonstrating exemplary cooperation. Beaty also proposed mitigating factor in Bylaw 19.9.4-(g), the "Unintentional and limited scope of the allegation." The enforcement staff disagrees as the facts demonstrate Love and Beaty intentionally engaged in the violations. Beaty also proposes that Bylaw 19.9.4-(i) applies related to "Other facts warrant a lower penalty range." The facts put forth by Beaty concern an employment dispute between Beaty and the institution and should not be considered in this matter.

XII. INDIVIDUALS WHO MAY BE MENTIONED DURING THE HEARING

Alle, Jennifer – assistant director of athletics for alumni engagement.

[redacted] – [redacted] of men's basketball prospective student-athlete and [redacted] men's basketball student-athlete [redacted].

[redacted] – [redacted] of [redacted].

[redacted]

Beaty, David – then head football coach.

[redacted]

Brown, Larry – representative of the institution's athletics interests.

Coaxum, Tony – noncoaching staff member assigned to the special teams of the football program.

Carns, John – senior associate director of athletics for compliance at University of Louisville.

Code, Merl – Adidas outside consultant.

[redacted] – [redacted] of [redacted], men's basketball student-athlete.

Crawford, Derrick – NCAA managing director of enforcement

Cutler, Dan – Adidas outside consultant.

[redacted]

[redacted]

[redacted] – [redacted] for [redacted].

Ducote, Devin – special teams consultant for the football team.

Ekeler, Mike – special teams coordinator for the football team.

Evrard, Rick – institutional outside counsel.

[redacted]

[redacted] – [redacted] for [redacted].

[redacted] – assistant video coordinator for football.

Gassnola, TJ – Adidas outside consultant.

Gatto, Jim – Adidas director of global sports marketing for basketball.

Hahn, Scott – institution's ticket manager.

[redacted] – former men's basketball prospective student-athlete, attended Michigan State University.

Howard, Jerrance – assistant men's basketball coach.

[redacted]

Keating, Larry – special assistant to the director of athletics.

[redacted]

King, Mark – head of Adidas North America.

[redacted] – [redacted] of [redacted], [redacted] of former men's basketball prospective student-athlete [redacted].

Lasko, John – businessman aligned with Under Armour.

Lester, Sean – deputy director of athletics.

Long, Jeff – director of athletics.

Love, Jeff – then football video coordinator.

[redacted]

McGuire, Chris – Adidas director of sports marketing for North America with oversight of Adidas personnel that manage relationships with professional athletes, colleges and grassroots programming.

McKamie, Vincent – assistant director of athletics for athletic and career counseling.

Meacham, David – offensive coordinator.

Miles, Les – current head football coach.

[redacted]

[redacted] – [redacted] of former men's basketball prospective student-athlete [redacted].

[redacted]

Quartlebaum, Fred – director of student-athlete development for men's basketball.

Reed, David – senior associate director for compliance and student services.

Riley, Garrett – formerly quarterback coach then tight ends position coach.

Rivers, Chris – Adidas director of grassroots basketball and in charge of Adidas "black ops" team.

Roberts, Norm – assistant men's basketball coach.

Self, Bill – head men's basketball coach.

[redacted]

Sullivan, William – legal counsel for Self and the institution.

Temple, Stephanie – Adidas employee.

Townsend, Kurtis – assistant men's basketball coach.

[redacted] – men's basketball prospective student-athlete and [redacted] men's basketball student-athlete.

Zenger, Sheahon – former director of athletics.