

**PETITION TO REQUEST REFERRAL OF CASE TO THE
INDEPENDENT ACCOUNTABILITY RESOLUTION PROCESS**

by the Chair Designee of the NCAA Division I Committee on Infractions

to the

Infractions Referral Committee

May 18, 2020

University of Kansas

Case No. 00874

Confidential

Pursuant to NCAA Bylaw 19.11.3.2.1 (2019-20 Division I Manual), the chair designee of the NCAA Division I Committee on Infractions submits this petition to request that the Infractions Referral Committee refer *University of Kansas*, Case No. 00874, to the independent accountability resolution structure.

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INTRODUCTION

On September 7, 2018, the NCAA Division I Committee on Infractions (COI) chair designated me to handle all procedural matters in infractions cases connected to the publicly disclosed basketball litigation in the United States District Court for the Southern District of New York (SDNY) to avoid any potential conflict of interest.¹ As designee, I submit this referral petition pursuant to [NCAA Bylaw 19.11.3.2.1](#) and request that the Infractions Referral Committee (IRC) refer *University of Kansas*, Case No. 00874, to the Independent Accountability Resolution Process (IARP).² The case record, nature of the case, and parties' positions and conduct establish six legislated referral factors.

The notice of allegations (NOA) in this case stemmed from the public and high-profile basketball corruption trials in the SDNY.³ The circumstances resulting in these trials prompted the NCAA to establish the Commission on College Basketball (Commission), which recommended transformational changes to college basketball that included the creation of the IARP. This case—which involves unique challenges that do not align with the cooperative peer-review process—is the very type of case intended to be resolved through that process.

The COI starts from the position that a case should remain in the peer-review process unless the presence and aggregation of referral factors demonstrate that it should be resolved under the IARP. The COI has already heard an SDNY-related case and others remain on the COI's docket to be scheduled for hearing when circumstances related to COVID-19 change. In this case, however, six factors supporting referral to the IARP became apparent as the parties advanced their positions: (1) major policy issues that may implicate NCAA core values and commitments to the NCAA Collegiate Model; (2) the lack of acceptance of core principles of self-governance; (3) perceived misconduct; (4) the scope and scale of the case and other factual complications; (5) potential confidentiality breaches; and (6) increased stakes. See [Bylaw 19.11.3.1.1](#). These factors, when weighed in totality, could impede effective resolution of this case in the peer-review process. The NCAA's interests are best served by resolving this case under the IARP. The COI, however, will hear this case fairly and impartially if the IRC disagrees that these factors support referral to the IARP.

CASE HISTORY AND BACKGROUND

This case stems from a broader investigation conducted by the United States Attorney's Office and Federal Bureau of Investigation into college basketball-related fraud and corruption. The investigation led to formal charges in the fall of 2017. On September 26, 2017, the United States Attorney's Office charged ten individuals across three cases, including an Adidas executive, other individuals associated with the company and Division I men's college basketball coaches.

¹ In accordance with [Bylaws 19.3.7-\(h\)](#) and [19.7.6](#), the chair designee may resolve matters that arise prior to an infractions hearing.

² To assist the IRC, this petition provides hyperlinks to bylaws, operating procedures, proposals and attachments.

³ The most pertinent support documentation is attached to this petition in accordance with [IRC Procedure 6-3-2](#).

In April 2018, the United States Attorney's Office issued a superseding indictment charging James Gatto (Adidas executive), Merl Code (Adidas consultant) and Christian Dawkins (business manager) in a scheme whereby individuals affiliated with a global apparel company, financial advisors and business managers made or attempted to make illicit payments to families of high school basketball players to serve two main purposes: (1) influence those players to sign with apparel-sponsored schools and (2) later sign sponsorship contracts with the apparel company when entering the National Basketball Association (NBA). All three individuals were tried and convicted and are appealing their convictions. The testimony of Thomas Gassnola was critical to the convictions.⁴

As it relates to Kansas, the indictment asserted that Gatto conspired with an Adidas consultant (later identified as Gassnola) and others to funnel approximately \$90,000 from a global apparel company (later identified as Adidas) to [REDACTED]

[REDACTED] The payments were made in connection with the prospect's commitment to attend Kansas, an institution sponsored by the company, and with the expectation that the prospect ultimately sign with the company upon entering the NBA. The indictment also asserted that Gatto, Gassnola and others agreed to make payments to [REDACTED] to secure his commitment to Kansas. The NCAA enforcement staff began its investigation into the matter after the indictment.

Before the issuance of the NOA, and with the awareness of other SDNY-related cases in the pipeline, I issued a master procedural letter for all SDNY-related cases on September 19, 2019.⁵ The letter stayed these cases for 60 days. The letter expressly identified that the additional time was intended to accomplish three things: (1) allow the COI to strategically manage its docket; (2) provide parties with adequate time to organize and align their schedules to avoid future delays; and (3) ensure case records were best positioned for efficient and fair review. Because the enforcement staff had only issued one SDNY-related NOA at the time of the letter, I asked the enforcement staff to provide the letter to all institutions and potential parties in ongoing SDNY-related investigations.

With these goals in mind, I requested that during the stay the enforcement staff and other parties remain mindful of the considerations in three ways. First, the parties should identify and utilize stipulated facts where appropriate. Next, the enforcement staff should remain strategic in the order in which it issued NOAs by identifying and connecting threads to ensure that the resolution of one case does not subsequently contradict others. Finally, to ensure a manageable docket and record, the parties should focus on the volume, nature and organization of the record. The parties have not stipulated to any facts in this case and, as further explained below, the case file is voluminous.

⁴ Gassnola was an outside consultant for Adidas. On March 30, 2018, Gassnola pleaded guilty to conspiracy to commit wire fraud. He became a cooperating witness for the government. Gassnola's plea and testimony are central to this case.

⁵ As a matter of docket management, the COI monitors the number, grouping and timing of upcoming cases.

Four days after I issued the stay letter, on September 23, 2019, the enforcement staff issued the NOA to Kansas, Bill Self as the head men's basketball coach, Kurtis Townsend as an assistant men's basketball coach, David Beaty as the former head football coach, and Jeff Love as the former football video coordinator. The NOA consisted of five Level I allegations involving the men's basketball program—including the alleged illicit recruiting scheme—and two Level II allegations involving the football program. The enforcement staff amended the NOA on January 27, 2020, to include a Level III allegation involving the football program that occurred after Kansas terminated Beaty. The enforcement staff further amended the NOA on April 17, 2020, and May 5, 2020, to correct minor discrepancies in two allegations and remove an alleged impermissible recruiting contact and Bylaw 12 citations in one allegation. *See* NOA at [Attachment 1](#).

On the same day that the enforcement staff issued the NOA, Kansas and Self made public statements that disclosed case-related material. The attempts by Kansas and Self to frame the public narrative of this case are explained in more detail below.

The parties submitted their responses to the NOA on March 5, 2020. The enforcement staff submitted its written reply and statement of the case on May 4, 2020. There is no agreement on any of the men's basketball allegations. In addition, football allegations are at the center of a federal lawsuit by Beaty against Kansas that claims the institution improperly terminated his employment.⁶

APPLICATION OF REFERRAL FACTORS

Six of the seven membership-defined referral factors under [Bylaw 19.11.3.1.1](#) are present in this case: (1) major policy issues that may implicate NCAA core values and commitments to the Collegiate Model; (2) lack of acceptance of core principles of self-governance, such as adversarial posturing; (3) perceived misconduct; (4) the scope and scale of the case and other factual complications; (5) potential confidentiality breaches; and (6) increased stakes. Taken together, these factors strongly support referral to the IARP.

Bylaw 19.11.3.1.1-(a): Major Policy Issues

This case involves major policy issues that may implicate NCAA core values and commitments to the Collegiate Model, which is the first factor supporting referral. *See* [Bylaw 19.11.3.1.1-\(a\)](#). The enforcement staff alleges men's basketball recruiting violations that are antithetical to the basic purpose of the NCAA. In addition, the football allegations are central to a federal lawsuit by Beaty against Kansas, which has resulted in parallel tracks for the infractions process and lawsuit. These parallel tracks may impact how the infractions process supports the Collegiate Model by effectively deciding infractions cases.

⁶ Beaty filed the lawsuit against Kansas Athletics, Inc., which operates under the administrative jurisdiction of Kansas and is subject to all regulations and administrative policies for the institution.

The Division I membership has identified nine express commitments to the Collegiate Model to assist the membership in defining the nature and purpose of the division. These include the commitment to: (1) amateurism; (2) fair competition; (3) integrity and sportsmanship; (4) institutional control and compliance; and (5) responsible recruiting standards. The principles for the conduct of intercollegiate athletics in Article II of the Constitution memorialize these commitments. Supporting these commitments, as set forth in [Bylaw 19.01.1](#), the infractions process' mission is to uphold integrity and fair play by ensuring that institutions are not disadvantaged by their commitment to compliance.

The allegations that Adidas, Gatto and Gassnola paid families of prospects to influence prospects' enrollment decisions, if true, run counter to the NCAA's core values and commitments to the Collegiate Model. Under the model, enrollment decisions traditionally balance educational, athletic and geographic considerations. Injecting monetary influence and pressure into prospects' decision-making processes contradicts the model. In addition, institutions and individuals who act contrary to the core values and commitments do not exemplify the integrity and sportsmanship required of member institutions and their staffs. Rather, they promote unfair and ineligible competition and threaten the integrity of the model. Likewise, whether apparel companies and their executives and consultants are boosters is a critical question underlying these commitments. Deciding this question for men's college basketball and the NCAA is an area that could benefit from independent decision making in the IARP.

The intersection of football allegations and Beaty's lawsuit against Kansas involves another major policy issue that affects how the infractions process helps the membership uphold its commitments to the Collegiate Model. The alleged violations in the football program during Beaty's tenure at Kansas are central to his lawsuit. Specifically, Beaty contends in his response to the NOA that these allegations are "largely the result of an institutionally initiated investigation drummed up in December 2018 to concoct violations in an effort to retroactively void the \$3,000,000 buy-out contractually confirmed to [him] as part of his termination without cause." See pages 1-3 of Beaty's response at [Attachment 2](#). The resulting parallel infractions and civil legal tracks present many challenges for the infractions process. For instance, one party may leverage allegations or violations in the infractions process within the context of the lawsuit. Likewise, another party may use the lawsuit to conduct discovery related to allegations—or even after a hearing panel concludes that violations occurred—without the presence of the enforcement staff. These and other challenges associated with the parallel tracks could detrimentally impact the infractions process.

Allegations involving an illicit recruiting scheme, as well as a federal lawsuit that runs parallel with the infractions process, are major policy issues for the NCAA. This factor supports referral.

Bylaw 19.11.3.1.1-(c): Lack of Acceptance of Core Principles of Self-Governance

A second factor supporting referral is the lack of acceptance of the core principles of self-governance. See [Bylaw 19.11.3.1.1-\(c\)](#). The adversarial posturing by several parties extends

beyond simple disagreement and advocacy. First, in his response to the NOA, Self attacks the membership's importation bylaw, which serves as the procedural vehicle for the factual information (FIs) supporting the alleged illicit recruiting scheme. *See* pages PROC-1-PROC-4 of Self's response at [Attachment 3](#). Townsend adopts Self's arguments pertaining to importation in Townsend's response to the NOA. Through multiple letters sent to me as the chair designee, Kansas also challenged the use of the bylaw as it relates to information from Beaty's lawsuit. *See* Kansas' letters at [Attachments 4](#) and [5](#). In addition, this case involves virtually no agreement on whether the men's basketball violations occurred. Finally, Self has challenged the credibility of the peer-review process.

With regard to importation, Self, Townsend and Kansas attempt to refashion [Bylaw 19.7.8.3.1](#) to the narrowest possible application. Self and Townsend argue that information from the criminal case—including Gassnola's testimony as a cooperating witness—cannot be considered by a hearing panel because Gatto, Code and Dawkins are appealing their convictions. They insert traditional legal arguments into the process to support their position. Relatedly, Kansas argued that transcripts of depositions taken as part of discovery in conjunction with Beaty's lawsuit should not be added into the infractions case record as supplemental information. Kansas noted that there is no final judgment in the lawsuit and asserted that the depositions had not been formally entered into evidence.

Self's, Townsend's and Kansas' interpretations are not supported by the plain reading of the bylaw or its intent and rationale. [Bylaw 19.7.8.3.1](#) defines importation as:

Facts established by a decision or judgement of a court, . . . *which is not under appeal*, . . . may be accepted as true in the infractions process in concluding whether an institution or individual participating in the previous matter violated NCAA legislation. *Evidence submitted and positions taken in such a matter may be considered in the infractions process.* (Emphasis supplied.)

The intent and rationale associated with the legislative proposal for the bylaw makes clear that evidence and positions are *separate* from facts established by a decision or judgment. *See* [Proposal No. 2018-15](#). Thus, evidence and positions can be considered in an infractions case *regardless of appeal or final judgment*. This information may be part of the record under the general provisions of admissibility pursuant to [Bylaw 19.7.8.3](#) when it is pertinent in accordance with [COI Internal Operating Procedure \(IOP\) 4-6](#).⁷

In this case, Gassnola's plea is a final judgement and the predicate facts upon which the plea and judgment of sentence are based may be imported and treated as conclusive. Likewise, although Gatto, Code and Dawkins have appealed their convictions, and there is no final judgment in Beaty's lawsuit, information taken from the cases may still be considered by a hearing panel. The

⁷ [Bylaws 19.7.8.3](#) and [19.7.8.3.1](#) correspond with [Bylaws 19.11.5.8.3](#) and [19.11.5.8.3.1](#) in the IARP. Likewise, [COI IOP 4-6](#) corresponds with [Independent Resolution Panel \(IRP\) Procedure 3-3](#).

parties can challenge the credibility of that information, and a panel must assess and weigh the information as it would any other information before it.

The membership adopted [Bylaw 19.7.8.3.1](#) in response to the events that led to the SDNY litigation and through the work stemming from the review by the Commission. The membership intended the bylaw to enhance the infractions process. The arguments against importation threaten to undermine the bylaw and weaken the process.

Separate from these efforts to limit the application of [Bylaw 19.7.8.3.1](#), there is little to no agreement on any of the allegations involving the men's basketball program. Much of the disagreement centers on the classification of Adidas, Gatto and Gassnola as boosters, which the enforcement staff submits is based on longstanding interpretive guidance relied upon by the NCAA membership. Although the peer-review process does not require institutions and involved individuals to agree with all allegations, the membership built the process on some level of cooperation, collaboration, and acceptance of responsibility and accountability for violations. It is a cooperative process and not adversarial. The Commission emphasized the need for all stakeholders, including institutions and coaches, to protect the game by accepting responsibility for violations. In its reply, the enforcement staff noted that Kansas' "failure to acknowledge any responsibility for the alleged Level I violations [is] in direct contradiction to both the spirit and charge of the Commission and to the expectations of the membership." See pages 1-3 of enforcement staff's reply at [Attachment 6](#). Here, there is effectively no agreement on the men's basketball allegations.

Self takes this disagreement on the allegations even further. In a statement made in conjunction with release of the NOA, he condemned the enforcement staff's investigation:

[I]t's no secret that there is tremendous pressure on the NCAA to respond to the federal court proceedings involving college basketball. Compelled to reassure member institutions and the general public that it can police its member institutions, the NCAA enforcement staff has responded in an unnecessarily aggressive manner in submitting today's unsubstantiated [n]otice of [a]llegations, and I, as well as [Kansas], will vigorously dispute what has been alleged.

In its haste and attempt to regain control, the enforcement staff has created a false narrative regarding me and our basketball program. The narrative is based on innuendo, half-truths, misimpressions and mischaracterizations. In reality, we all know there is only one version of the truth. The truth is based on verifiable facts, and I am confident the facts we will demonstrate in our case will expose the inaccuracies of the enforcement staff's narrative.

See Self's statement, included with Kansas' public response to the issuance of the NOA, at [Attachment 7](#). Self's response to the NOA echoes this public statement.

The adversarial posturing is pervasive. The COI can handle contentious issues and has done so in many past cases. However, cases involving parties who try to limit the information the COI may rely upon, challenge nearly all allegations and attack the peer-review process are best resolved through the independent process, which anticipates this posturing. This factor supports referral.

Bylaw 19.11.3.1.1-(d): Perceived Misconduct

Self's claim that the COI is prejudiced by alleged misconduct by NCAA executives is a third factor supporting referral. *See* [Bylaw 19.11.3.1.1-\(d\)](#). Self argues that the NCAA has prejudged the case because of public statements by executives during the investigation. When a party argues that it cannot receive a fair hearing, independent adjudication is appropriate.

As set forth in Self's response to the NOA, during a May 22, 2019, meeting with the Knight Commission on Intercollegiate Athletics, the NCAA vice president for Division I governance stated "now that the court cases are done, now we're in a position where you're likely to see notices of allegations going to institutions that have violated NCAA rules, etc." Shortly thereafter, as Self states, the NCAA vice president of regulatory affairs made public comments on June 12, 2019, that two high-profile programs would receive NOAs in early July and "you'll see consequences." Self contends in his response to the NOA that this is the "the definition of prejudgment" and it is "difficult to see how [he] can obtain [a] fair hearing." *See* pages IN-4-IN-6 of Self's response at [Attachment 8](#). At the time of the comments, the enforcement staff had not issued allegations in this or any other SDNY-related case.

In adjudicating cases, the COI finds facts, concludes whether violations occurred and prescribes penalties in accordance with the membership's penalty guidelines based on the information in the record and presented at hearings. The COI has the authority to consider and weigh all information in the record when making these decisions, a responsibility the COI takes seriously. Although the COI does not pass judgment on statements about the infractions process holding potential offenders responsible, some review, comment and education about the process falls within the purview of the NCAA executive staff in the proper settings. Executive staff members are outside the NCAA's hearing operations unit and have no responsibilities related to the NCAA or independent adjudicative bodies. Here, comments by executives elicited ad hominem attacks on the peer-review process.

The COI is not influenced by public pressures or comments by NCAA executives. Independent adjudication, however, eliminates any perception of undue influence. This factor supports referral.

Bylaw 19.11.3.1.1-(e): Scope and Scale of Case and Other Factual Complications

A fourth factor supporting referral is the scope, scale and other factual complications of this case. *See* [Bylaw 19.11.3.1.1-\(e\)](#). This case involves a voluminous record with FIs that intersect other pending and potential infractions cases. Beaty's lawsuit against Kansas presents other factual complications.

The case record is massive. The enforcement staff has relied upon nearly 250 FIs to support its allegations. This information includes thousands of pages, excel sheets with tens of thousands of data points, and audio recordings and videos. The allegations themselves are also extensive. As Kansas noted in its February 24, 2020, request for an extension of the page limit for its response to the NOA, the five allegations involving the men's basketball program contain roughly 30 separate subparts. The three football allegations also consist of several subparts.

In light of the number and nature of the allegations, I extended the page limit for the responses to the NOA from 50 to 130 pages and for the enforcement staff's reply from 35 to 85 pages. The responses of Kansas, Self, Townsend and Beaty each exceeded 50 pages, with Kansas' response consisting of roughly 120 pages. The enforcement staff's reply totaled 85 pages. The length of these responses and reply are unprecedented since the COI imposed a page limitation on these documents. Further, in conjunction with their responses, the parties added nearly 100 other records—consisting of thousands of pages—as information pertinent to the case that the enforcement staff did not identify as FIs.

The case also presents factual complications. Some of the FIs detail potential violations involving coaches and student-athletes at other Division I institutions. The presence of information related to conduct that could implicate other institutions and coaches may present challenges, which reinforces my request that SDNY-related cases be grouped and processed to ensure credible and consistent decision making based on complete information. In addition, the parallel tracks between the infractions process and Beaty's lawsuit present factual complications regarding the use of information from the lawsuit in the infractions process and vice versa. For example, during a deposition, an individual may contradict information previously reported to the enforcement staff or offer new information. In addition, the enforcement staff may not be permitted to participate in these depositions. The intersection between this case and other potential infractions cases, as well as Beaty's lawsuit, involve unique complexities that could strain the peer-review model.

The size of the record and factual complications alone do not necessarily support referral. The COI regularly manages large records and sensitive information when deciding infractions cases. But they provide further support for referral when taken together with the other factors.

Bylaw 19.11.3.1.1-(f): Breaches of Confidentiality

Potential confidentiality breaches are a fifth factor supporting referral. *See* [Bylaw 19.11.3.1.1-\(f\)](#). Beginning with the issuance of the NOA, Kansas and Self publicly disclosed their position on the allegations in an apparent attempt to frame the public narrative. Kansas also released case-related material.

The COI acknowledges that some states' freedom of information acts require institutions to produce requested information. These obligations, however, do not require the parties to publicly comment on ongoing cases. [Bylaw 19.01.3](#) and [COI IOP 5-1](#) prohibit institutions, involved

individuals and their representatives from making any public disclosures about a case until a final decision has been announced.

Despite this well-known prohibition on public commentary, Kansas released statements in response to the allegations on the same day that the enforcement staff issued the NOA. Kansas revealed details regarding the case and its position on several allegations, including that it "emphatically reject[ed] the assertion that Adidas and Adidas employees and associates were boosters and agents of [Kansas]." Kansas' response also included Self's statements, which—as discussed above—challenged the credibility of the peer-review process. *See* Kansas' public response to the issuance of the NOA at [Attachment 7](#). Self's attorneys submitted a separate statement disclosing more information about the case the same day. *See* Self's additional statement at [Attachment 9](#).

In addition to these statements, Kansas immediately made its response to the NOA and some records cited in the response, as well as Self's and Townsend's responses, publicly available through a dedicated page on the institution's website. Kansas also posted the enforcement staff's reply and statement of the case on the same page shortly after receiving them. Local and national media has reported extensively on all the disclosures. The attempts to frame the public narrative and the release of information could support breaches of confidentiality.

Breaches of confidentiality, including comments intended to set the public narrative, threaten the COI's ability to effectively manage and resolve cases. In response to recommendations by the Commission, the membership recently modified the legislation to permit disciplinary action for such conduct. *See* [Bylaws 19.3.6-\(j\)](#) and [19.11.2.3.5-\(h\)](#) (authorizing the COI and IRP to sanction parties and/or their representatives for behavior that inhibits the ability to effectively manage the docket, ensure a professional and civil decorum in all proceedings or otherwise efficiently resolve infractions cases). The public commentary could thus potentially support disciplinary action.

Public disclosure about this case could support additional allegations against some parties and even disciplinary action. At a minimum, the attempt to frame the public narrative is another factor supporting referral.

Bylaw 19.11.3.1.1-(g): Increased Stakes

Finally, increased stakes for the parties and NCAA is a sixth factor supporting referral. *See* [Bylaw 19.11.3.1.1-\(g\)](#). The case involves one of the premier men's basketball programs in the country, one of the winningest head coaches in Division I men's basketball history who is in the Naismith Memorial Basketball Hall of Fame and alleged violations that are central to a federal lawsuit. Few cases have so much at stake.

The stakes are particularly high for the Kansas men's basketball program. The Level I allegations include an illicit recruiting scheme, other recruiting violations, a head coach responsibility violation and lack of institutional control. As part of the institutional control allegation, the

enforcement staff argues that Kansas played [REDACTED] despite knowing that the potential violations would have impacted his eligibility. The enforcement staff also identified a prevalence of aggravating factors for Kansas, Self and Townsend. If a hearing panel concludes that violations occurred, the penalties may be significant.

Although he is not at-risk for Level I violations, this case also presents high stakes for Beaty. Beaty's lawsuit against Kansas appears to turn on whether the alleged football violations occurred. This case is thus critical to Beaty's lawsuit.

Finally, this case involves increased stakes for the NCAA. The NOA stems from SDNY litigation. That litigation has resulted in increased public interest in related infractions cases. It has also called into question the health of men's college basketball and its recruiting landscape.

This case involves high stakes for the parties, as well as the NCAA. This factor supports referral, especially when weighed in totality with the other factors.

CONCLUSION

For the reasons set forth herein, I respectfully ask the IRC to refer *University of Kansas*, Case No. 00874, to the IARP. When weighed in totality, the six factors overwhelmingly support referral to the IARP. Pursuant to [COI IOP 4-20](#), the COI will take no action on this case until the IRC issues its decision.

Respectfully submitted by,

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