

Response of Kurtis Townsend  
to the  
Amended Notice of Allegations  
in Case No. 00874

March 5, 2020

Submitted  
for Kurtis Townsend  
by Stu Brown  
Stuart L. Brown, LLC  
2089 Bohler Road  
Atlanta, GA, 30318

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## TABLE OF KEY RECORDS AND AUTHORITIES

FI #	FILE or DOCUMENT DESCRIPTION
FI 1	Self interview (5/2019)
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	Bylaw 19.7.1
	Bylaw 19.7.8.3
	Bylaw 19.7.8.3.1
	Enforcement Internal Operating Procedure 2-4
	Georgia Institute of Technology Public Infractions Decision 2019
	University of Utah Public Infractions Decision 2019

	University of Connecticut Public Infractions Decision 2019
	University of San Francisco Public Infractions Decision 2018
	University of Alabama Public Infractions Decision 2017
	Southern Methodist University Public Infractions Decision 2015

# INTRODUCTION

## Summary of the Case

After an extensive investigation, the enforcement staff ignored the weight of the information gathered, overlooked NCAA case precedent, and disregarded the language of NCAA bylaws when it charged Kurtis Townsend with two Level 1 violations.

Kurtis conscientiously tries to follow NCAA rules. Throughout twenty-eight years of recruiting and coaching high-profile student-athletes at highly-scrutinized NCAA men's basketball programs, Kurtis has never before been accused of committing a so-called major violation of NCAA rules.<sup>1</sup> At all times relevant to this case, Kurtis acted transparently in manner he believed, and still believes, to be completely normal for NCAA men's basketball coaches and compliant with NCAA rules. Prior to the investigation in this case, nobody suggested to Kurtis that the conduct for which the enforcement staff now charges him with Level 1 violations was against NCAA rules. Since the investigation in this case began, Kurtis has fully cooperated in the investigative process.

During the investigation in this case, the enforcement staff scrutinized Kansas' men's basketball program going at least as far back as 2014.<sup>2</sup> At least seven NCAA investigators interviewed people about Kansas' men's basketball program, including five investigators who participated in Kurtis' second interview with the enforcement staff.<sup>3</sup> During the investigation, the enforcement staff gathered at least 9,440 documents related to Kansas' men's basketball program,

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<sup>1</sup> <https://kuathletics.com/coach/kurtis-townsend/>

<sup>2</sup> Allegation 3.

<sup>3</sup> FI 4 @ 1. FI 2 @ 1. FI 87 @ 1. Known NCAA investigators participating in interviews in this case are Lydia Adeosun, James Garland, Tom Hosty, Dave Kuhn, Russell Register, Matt Sadowitz, and Darin Van Vlerah.



most of which contain multiple pages.<sup>4</sup> The factual information files (“FIs”) that the enforcement staff claims support its allegations regarding Kansas’ men’s basketball program include thirty-eight enforcement staff interviews of thirty people.<sup>5</sup> In addition to the transcripts of those interviews, the FIs include approximately 200 documents, some of which include hundreds of pages.<sup>6</sup> The FIs include a substantial amount of information arising out of the federal criminal trial in which Jim Gatto and his co-conspirators were convicted of fraudulent conduct against several universities, including Kansas. The trial information in the FIs includes, but is not limited to, hundreds of pages of transcripts of trial testimony as well as the contents of government wiretaps.<sup>7</sup> The FIs include the results of sophisticated investigative analysis by third-party experts such as a cellphone “extraction report” by the digital forensic examination firm Cellebrite and a report from Ernst and Young’s (“EY”) Project Fusion Team in response to the enforcement staff’s request for EY to decipher redacted portions of bank records provided to the NCAA by an individual in conjunction with a prior NCAA investigation.<sup>8</sup> As recently as January of 2020, the enforcement staff added to its FIs a non-public version of a telecast of a high school basketball game obtained from ESPN.<sup>9</sup>

After such an extensive investigation, Kurtis’ supposedly impermissible conduct identified by the enforcement staff as justifying holding Kurtis personally liable for two Level 1 violations basically boils down to the following:

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<sup>4</sup> <https://app.box.com/folder/88559120130>

<sup>5</sup> <https://app.box.com/folder/87938990327>

<sup>6</sup> <https://app.box.com/folder/87938989127>

<sup>7</sup> FI 6. FI 65.

<sup>8</sup> FI 14. FI 137. The enforcement staff’s interview in this case of the individual who provided the redacted bank records in the prior case lacks any indication that the enforcement staff obtained the individual’s permission to have EY analyze and report on the redacted portions of the records.

<sup>9</sup> FI 232.

- In August and September of [REDACTED], Kurtis had phone calls and/or text messages with former Kansas head men's basketball coach Larry Brown ("Brown") as well as Adidas consultants TJ Gassnola ("Gassnola") and Merl Code ("Code") in which Kurtis sought or shared insights about prospective student-athletes, and Kurtis did not report that communication to Kansas as a NCAA violation (Allegations 2(a), 2(b), and 3(d)); and

- In August of [REDACTED] Kurtis reached out to Gassnola, as a consultant for Adidas (like Kurtis also reached out to, or offered to reach out to, people with Under Armour and Nike), to facilitate dialogue between Adidas and [REDACTED] ("[REDACTED] the [REDACTED] of prospective student-athlete [REDACTED] [REDACTED] ("[REDACTED] about [REDACTED] search for used athletics gear for a youth basketball team in [REDACTED], and Kurtis did not report that communication to Kansas as a NCAA violation (Allegation 2(c)).

To be clear, the voluminous information gathered in this case does not show that Kurtis provided money to, or knew about money being provided to, any Kansas student-athlete or prospective student-athlete or anyone associated with a Kansas student-athlete or prospective student-athlete. To the contrary, the information establishes that provision of money to anyone associated with a Kansas student-athlete or prospective student-athlete was intentionally hidden from Kurtis by the people who provided the money.<sup>10</sup> Similarly, the voluminous information gathered in this case does not demonstrate that Kurtis asked Brown, Gassnola, or Code to recruit on behalf of Kansas.

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<sup>10</sup> FI 6 @ trial transcript 1017, 1172, 1215.

Throughout the investigation in this case, Kurtis has readily acknowledged his communication with Brown, Gassnola, and Code. Kurtis believed, and still believes, that his communication with Brown, Gassnola, and Code was the type of routine and permissible communication that college coaches have on a regular basis as a normal part of their jobs, that it did not involve improper recruiting assistance, and that it did not involve anyone Kurtis had reason to believe was a Kansas booster.

However, even if for some reason the Committee were to find that Kurtis' communication with Brown, Gassnola, or Code involved Kurtis in a breach of NCAA rules, then, as discussed later in this response, NCAA case precedent and legislation would not support the enforcement staff's position that Kurtis should be held personally liable for a Level 1 violation – much less two Level 1 violations.

**Particular Concern about Allegation 3(d)**

A Level 1 violation is the most severe level of violation with which the enforcement staff can charge a coach. Consistent with NCAA bylaws, enforcement staff operating procedures, and common sense, whenever the enforcement staff accuses a coach of committing a Level 1 violation, the charge should be carefully drafted and solidly supported by information gathered during the investigation in the case.

The reasons why the information gathered in this case and NCAA case precedent and legislation do not support holding Kurtis personally liable for Level 1 violations as alleged by the enforcement staff are discussed in more detail later in this response. However, at this point, it is important to express particularly serious concern about the enforcement staff alleging that Kurtis



committed a Level 1 violation as described in Allegation 3(d) during Kansas' recruitment of [REDACTED] (" [REDACTED] ")

The essential premise of Allegation 3(d) is unsupported by – and, in fact, is clearly and consistently refuted by – the information gathered during the investigation in this case. Specifically, the essential premise of Allegation 3(d) is that “on or about September [REDACTED],” Code had “an impermissible recruiting contact” with [REDACTED] family.<sup>11</sup> This premise is unfounded. The extensive investigation in this case produced no demonstration of recruiting contact between Code and [REDACTED] or his family on or about September [REDACTED]. To the contrary, [REDACTED] repeatedly explained that his limited interaction with Code at non-scholastic basketball events was merely in the nature of “what’s up man, how you doing, how you been” and that his last interaction of any kind with Code was at the Adidas Nations tournament in early August of [REDACTED].<sup>12</sup> [REDACTED] professed no knowledge of any recruiting conversations between his [REDACTED] and Code.<sup>13</sup> Likewise, [REDACTED] [REDACTED] [REDACTED] repeatedly and emphatically explained that they had no interaction with Code since the end of [REDACTED] sophomore year in high school, which was the spring of [REDACTED].<sup>14</sup> Furthermore, Steve Smith (“Smith”), a Clemson assistant men’s basketball coach who was a longtime friend of Code and who recruited [REDACTED] for Clemson, explained that both Code and [REDACTED] told Smith they did not talk to each other after [REDACTED] sophomore year in high school.<sup>15</sup>

This is not a situation involving unclear or conflicting information. In this situation, explicit, repeated, corroborated, unrebutted information refutes the essential premise of the

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<sup>11</sup> Allegation 3.

<sup>12</sup> FI 26 @ 8 – 10, 12, 13. <https://basketball.realgm.com/national/tournament/18/adidas-Nations/182/yearly-brackets>

<sup>13</sup> FI 26 @ 9, 13.

<sup>14</sup> FI 27 @ 16, 18, 19, 32.

<sup>15</sup> FI 88 @ 10, 11, 13, 14, 23.

allegation. Yet, despite the essential premise of Allegation 3(d) being disconnected from the voluminous information gathered during the extensive investigation in this case, the enforcement staff brought the allegation as a basis for the Committee to hold Kurtis personally liable for a Level 1 violation. Such conduct by the enforcement staff violates NCAA procedures related to fairness of process and information-based decision making set forth in Bylaw Article 19 and in the enforcement staff's internal operating procedures.<sup>16</sup> Such conduct by the enforcement staff is an example of the enforcement staff's willingness to ignore the weight of the information gathered in this case in order to charge Kurtis with Level 1 violations.

**Procedurally Improper Importation from the Federal Trial of Gatto and Co-conspirators**

Bylaw 19.7.8.3.1 states, in part, that "facts established by a decision or judgment of a court, agency, accrediting body, or other administrative tribunal of competent jurisdiction, 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."<sup>17</sup>

Kurtis understands that the verdicts in the federal criminal trial involving Jim Gatto and his co-conspirators from which the enforcement staff has charted much of its investigative course in this case have been under appeal since March of 2019. Kurtis understands that Bill Self's ("Self") response to the Amended Notice of Allegations addresses why the enforcement staff's use of facts established, evidence submitted, or positions taken in that federal criminal trial as part of the enforcement staff's investigation in this case violates Bylaw 19.7.8.3.1, irreparably prejudices the

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<sup>16</sup> Attachment @ 2 – 5.

<sup>17</sup> Attachment @ 4.

investigation and processing of this case, and renders Allegations 2(a), 2(b), 2(c), and 3(d), among others, improper and appropriate for dismissal. Kurtis adopts Self's analysis in that regard.<sup>18</sup>

### **Kurtis' Continued Cooperation**

As he had done throughout this case, Kurtis will continue to fully cooperate in the infractions/enforcement process. Kurtis welcomes the opportunity to meet with the Committee in order to discuss this case and answer questions the Committee has for him. Kurtis is confident that the more the Committee knows about Kurtis and his conduct as assistant coach at Kansas the more the Committee will recognize Kurtis' commitment to compliance with NCAA rules and that the voluminous information gathered during the extensive investigation in this case as well as NCAA case precedent and legislation do not support the enforcement staff's position that Kurtis should be held personally liable for a Level 1 violation – much less two Level 1 violations.

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<sup>18</sup> To the extent Kurtis cites information from the federal criminal trial of Gatto and his co-conspirators in this response, Kurtis does not waive his argument that Bylaw 19.7.8.3.1 prohibits the consideration of information from the trial in the NCAA infractions process and that the enforcement staff has violated the bylaw in a manner prejudicial to Kurtis. Kurtis cites to information from the trial in this response as a contingency in the event the Committee does not dismiss the allegations in which Kurtis is named and allows the enforcement staff to continue to reference trial information in future submissions to the Committee and/or at a hearing.

## ALLEGATION NO. 2

### ALLEGATION

2. [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, 13.13.5.1, 13.2.1, 13.2.1.1-(b), 13.2.1.1-(e) and 16.8.1 (2017-18)]

It is alleged that between August [REDACTED] and April [REDACTED], Bill Self (Self), head men's basketball coach; Kurtis Townsend (Townsend), assistant men's basketball coach; and four representatives of the institution's athletics interests, three of whom also acted as agents, engaged in recruiting violations related to then men's basketball prospective student-athlete [REDACTED] ( [REDACTED] ). This included impermissible recruiting inducements and contacts. As a result of the impermissible inducements, [REDACTED] [REDACTED] received actual and necessary expenses while ineligible. Specifically:

- a. In August [REDACTED], Townsend contacted Larry Brown (Brown), a representative of the institution's athletics interests, about Townsend's interest in recruiting [REDACTED]. At that time, Brown informed Townsend that he would contact [REDACTED] ( [REDACTED] ) and speak positively about the institution. After Brown impermissibly contacted [REDACTED], Brown informed Townsend that [REDACTED] wanted sponsorship to outfit a nonscholastic basketball team with which he was affiliated. Townsend failed to report this violation to the institution's compliance staff. [NCAA Constitution 2.8.1 and Bylaws 13.01.2, 13.1, 13.1.2.1 and 13.1.3.5.1 [REDACTED]]
- b. In August and September [REDACTED], Self and Townsend encouraged and had knowledge that T.J. Gassnola (Gassnola), a then Adidas outside consultant, representative of the institution's athletics interests and agent; had impermissible recruiting telephone calls with [REDACTED]. In the calls, Gassnola encouraged [REDACTED] to have [REDACTED] enroll at the institution as a student-athlete. Townsend failed to report this violation to the institution's compliance staff. [NCAA Constitution 2.8.1 and Bylaws 13.01.2, 13.1, 13.1.2.1 and 13.1.3.5.1 [REDACTED]]
- c. On August 9, [REDACTED], Adidas, a representative of the institution's athletics interests; Gassnola; Self; and Townsend offered a recruiting inducement to [REDACTED]. Specifically, Adidas, Gassnola, Self and Townsend worked together to offer [REDACTED] shoes and apparel to outfit the nonscholastic basketball team with which he was affiliated. [NCAA Bylaws 12.1.2, 12.3.1.3, 13.2.1 and 13.2.1.1-(b) [REDACTED]]
- d. Sometime between September 8 and 15, [REDACTED] Adidas; Gassnola; and James Gatto (Gatto), a then Adidas director of global marketing for basketball, representative of the institution's athletics interests and agent, provided a \$2,500 cash recruiting inducement and impermissible agent benefit to [REDACTED] in an effort to secure [REDACTED] enrollment at the institution as a student-athlete. [NCAA Bylaws 12.1.2, 12.3.1.3, 13.2.1 and 13.2.1.1-(e) [REDACTED]]



- e. On or about September 11, [REDACTED], Adidas, Gassnola and Gatto offered a \$20,000 recruiting inducement and impermissible agent benefit to [REDACTED] in order to persuade [REDACTED] to have [REDACTED] enroll at the institution. [NCAA Bylaws 12.1.2, 12.3.1.3, 13.2.1 and 13.2.1.1-(e) [REDACTED]]

This allegation serves a basis for head coach responsibility and lack of institutional control in Allegation Nos. 4 and 5.

## **RESPONSE**

### **Summary Regarding Allegation 2**

Kurtis disagrees with the enforcement staff's position that he should be personally liable for a Level 1 violation in connection with Allegation 2.

Kurtis agrees that he had a few phone calls with Larry Brown ("Brown") in which Kurtis sought Brown's insight about prospective student-athlete [REDACTED] [REDACTED] ("[REDACTED]" and [REDACTED] guardian [REDACTED] ("[REDACTED]" Kurtis also agrees that he reached out to Adidas consultant TJ Gassnola ("Gassnola") to put Gassnola and [REDACTED] in contact with each other to facilitate dialogue between Adidas and [REDACTED] about [REDACTED] search for used athletics gear for a youth basketball team in [REDACTED].

Kurtis' communication with Brown and Gassnola was conducted openly on his Kansas cell phone. Kurtis never asked Brown or Gassnola to recruit on behalf of Kansas. Kurtis never believed that Brown or Gassnola was a Kansas booster. Nobody told Kurtis that communication with Brown or Gassnola was problematic, and Kurtis never thought that his communication with them was contrary to NCAA rules. Kurtis did not ask for, encourage, or condone any conduct by Brown or Gassnola that Kurtis thought might break NCAA rules. Kurtis was unaware of Gassnola's clandestine payments on behalf of Adidas to anyone associated with a Kansas student-athlete or prospective student-athlete. Kurtis believed at the time, and still believes, that his

communication with Brown and Gassnola was the type of routine and permissible communication that college coaches have on a regular basis as a normal part of their jobs.

If for some reason the Committee were to find that Kurtis' communication with Brown or Gassnola involved Kurtis in a breach of NCAA rules, then NCAA case precedent and legislation would not support the enforcement staff's position that Kurtis should be held personally liable for a Level 1 violation in connection with Allegation 2.

**Allegation 2(a)**

Kurtis disagrees with the enforcement staff's position that he breached NCAA rules in the circumstances related to Allegation 2(a).

Kurtis began recruiting [REDACTED] for Kansas after seeing [REDACTED] play in an AAU tournament during the last weekend of the July recruiting period in [REDACTED].<sup>19</sup> Kurtis initially called [REDACTED] AAU coach [REDACTED] ("[REDACTED]") and [REDACTED] high school coach [REDACTED] ("[REDACTED]") about [REDACTED].<sup>20</sup> During Kurtis' conversations with [REDACTED] and [REDACTED], Kurtis learned three things: (1) the main adult in [REDACTED] recruiting process was [REDACTED] (2) [REDACTED] had planned to attend Southern Methodist University ("SMU") and play for Brown before Brown retired from coaching at SMU, and (3) [REDACTED] was interested in Kansas.<sup>21</sup>

Brown and Kurtis had known each other for years, and Brown also had a longstanding relationship with Kansas' head men's basketball coach Bill Self ("Self").<sup>22</sup> While talking about

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<sup>19</sup> FI 5 @ 12.

<sup>20</sup> FI 5 @ 12.

<sup>21</sup> FI 5 @ 12.

<sup>22</sup> FI 77 @ 11, 12.



recruiting during a bus ride to an exhibition game during Kansas' men's basketball program's trip to Italy in August of 2017, Kurtis mentioned to Self that Brown knew [REDACTED] and [REDACTED] through SMU's recruitment of [REDACTED] and one of [REDACTED] high school teammates. Kurtis and Self agreed that in order to try to gain some insight into [REDACTED] and [REDACTED] Kurtis should call Brown and ask what background information Brown could provide. Kurtis called Brown from the bus on the way to the exhibition game and told Brown that he was interested in insight Brown could provide about [REDACTED] and [REDACTED].<sup>23</sup> The call was very brief, only about two minutes.<sup>24</sup> One of the things that Brown mentioned was that [REDACTED] was looking for gear for [REDACTED] youth basketball team. Kurtis tried to call Brown again after the exhibition game to continue the conversation, but Brown was not available.<sup>25</sup>

About a week after Kurtis returned to the United States, Kurtis called Brown again.<sup>26</sup> The purposes of this call were, first, to resume the discussion started when Kurtis was in Italy about what insight Brown could provide about [REDACTED] and [REDACTED] and, second, to discuss Brown's participation in Self's induction into the Naismith Memorial Basketball Hall of Fame (the "Hall of Fame") in early September of 2017, at which Brown presented Self. In subsequent weeks leading up to and following Self's Hall of Fame induction, Kurtis had several more phone conversations with Brown.<sup>27</sup> Although Kurtis recalls occasionally mentioning [REDACTED] recruitment in some of those calls, the main focus of the calls was Self's Hall of Fame induction events.<sup>28</sup>

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<sup>23</sup> Attachment @ 6.

<sup>24</sup> Attachment @ 6.

<sup>25</sup> Attachment @ 6.

<sup>26</sup> Attachment @ 6.

<sup>27</sup> Attachment @ 6.

<sup>28</sup> The dates of Kurtis' calls with Brown illustrate an example of the enforcement staff drafting an allegation that does not reflect the information gathered during the investigation in this case. Allegation 2(a) asserts the following sequence of events: Kurtis called Brown about [REDACTED] Brown said he would call [REDACTED] Brown called [REDACTED] and then Brown told Kurtis that [REDACTED] was looking for gear for [REDACTED] youth basketball team. However, call records show that Kurtis' only call with Brown before Kurtis provided [REDACTED] with contact information for Adidas (as

Kurtis did not ask Brown to contact [REDACTED] or [REDACTED] or to recruit [REDACTED] on behalf of Kansas. As Kurtis explained, “Nobody recruits at Kansas for us except for me, coach Self, [assistant coach] Jerrance Howard, and [assistant coach] Norm Roberts.”<sup>29</sup> To the extent Kurtis and Brown discussed [REDACTED] and [REDACTED] the conversation was not even memorable to Brown, although Brown is confident that nobody at Kansas asked him to contact [REDACTED].<sup>30</sup> Based on Kurtis’ decades of experiences as a NCAA men’s basketball coach, when Kurtis sought Brown’s insight about [REDACTED] and [REDACTED] Kurtis believed his communication with Brown was the type of routine and permissible information-gathering communication that college coaches have on a regular basis as a normal part of their jobs.<sup>31</sup> Kurtis’ calls with Brown occurred openly on Kurtis’ Kansas cell phone.<sup>32</sup>

Contrary to Allegation 2(a)’s assertion, the information gathered during the investigation in this case is void of testimony, documentation, or any other information that “Brown informed Townsend that he would contact [REDACTED] [REDACTED] or that “Brown impermissibly contacted [REDACTED]. In fact, as [REDACTED] explained, based on a personal relationship between [REDACTED] and

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discussed later in this response) was Kurtis’ call to Brown from Italy. Brown could not have initially mentioned [REDACTED] search for gear for [REDACTED] youth team in a follow-up call with Kurtis, because no follow-up call occurred until after Kurtis shared contact information for Adidas with [REDACTED]. If, as the enforcement staff charges, Kurtis’ conduct referenced in Allegation 2(a) was egregious enough to hold Kurtis personally liable for a Level 1 violation, the timeline of events asserted in the allegation should accurately reflect the information gathered in this case.

<sup>29</sup> FI 4 @ 105.

<sup>30</sup> FI 77 @ 18, 25 - 26.

<sup>31</sup> Information gathered during the investigation in this case shows that Kansas men’s basketball assistant coach Jerrance Howard (“Howard”), who was previously an assistant coach for Brown at SMU, regularly spoke with Brown. Howard never asked Brown to contact [REDACTED] or [REDACTED] on behalf of Kansas. However, during one of their conversations, Howard asked Brown whether Brown would have positive things to say about Kansas if [REDACTED] asked Brown about the university, to which Brown replied affirmatively. (FI 77 @ 18, 25 - 26. FI 86 @ 36 - 38.) Thus, information in this case shows that Howard, who the enforcement staff has not charged with any violation of NCAA rules, had similar communication with Brown about [REDACTED] as Kurtis, who the enforcement staff asserts should be personally liable for a Level 1 violation related to Brown. Kurtis does not believe Howard’s communication with Brown was impermissible or that Howard should be charged with any NCAA violation – and clearly, neither does the enforcement staff, given that it did not name him in the Amended Notice of Allegations. This is another illustration of the enforcement staff unjustly seeking to hold Kurtis personally liable for a Level 1 violation inconsistent with the information in this case.

<sup>32</sup> Attachment @ 6.

Brown that predated Kansas' recruitment of [REDACTED] [REDACTED] initiated communication with Brown about [REDACTED] like [REDACTED] previously did about other prospective student-athletes [REDACTED] coached:<sup>33</sup>

QUESTION: And the recruitment of [REDACTED] [REDACTED] walk us through what happened, who was involved. And we'll start with that.

[REDACTED] Well, I reached out to coach Brown and asked him, you know, for his advice.<sup>34</sup>

and

[REDACTED] But what I will definitely say is that I had a relationship with coach Brown where I would ask him about stuff, ask him about his opinion. And then, you know, just like, hey coach, like we have this situation. And it was mainly schools. It was never outside schools. Okay, coach, like the kid, he needs a school. Here are the schools. What do you think?<sup>35</sup>

and

QUESTION: Who initiated the call? Who communicated?

[REDACTED] No, it was me. It was me. I was going to him for advice. It wasn't him coming to me.

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<sup>33</sup> FI 7 @ 40 – 43. FI 8 @ 71 – 80, 88, 89. FI 9 @ 2 – 4.

<sup>34</sup> FI 9 @ 2.

<sup>35</sup> FI 9 @ 3, 4.

QUESTION: Okay. That's what I'm –

██████████ Yeah, it was –

QUESTION: – I want to establish.

██████████ – it was me going for advice. Like, what do you think? We have this, and what do you think about that?<sup>36</sup>

As Brown explained, ██████████ calls seeking Brown's thoughts about the college choices of prospective student-athletes were not unusual. Brown noted that he talks to people "all the time" about "different schools" because "people are constantly asking" him about collegiate men's basketball programs due to his background and relationships.<sup>37</sup> Brown further explained: "I mean it happens daily with me. I think it happens daily with everybody, every coach. I think that's not something that's out of the ordinary with me."<sup>38</sup>

As ██████████ explained, he did not perceive Brown to be recruiting for Kansas:

QUESTION: Did anybody from Kansas ever say coach Brown is assisting with recruiting for us, and he's a good guy to rely on?

██████████ No, never. That never happened.<sup>39</sup>

and

QUESTION: In your judgement, was coach Brown recruiting on behalf of KU?

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<sup>36</sup> FI 8 @ 79.

<sup>37</sup> FI 77 @ 17, 18.

<sup>38</sup> FI 77 @ 18.

<sup>39</sup> FI 8 @ 79.

██████████ No. He was not doing that. It was just him suggesting somebody that he trusted.<sup>40</sup>

and

QUESTION: Other than the time where coach Brown suggested that a good fit for ██████████ might be KU – other than that, did coach Brown ever suggest or say or push or prod or try to recruit ██████████ to KU?

██████████ No.<sup>41</sup>

and

QUESTION: To wrap all of that up on coach Brown, again, and I think we've been over it again, and again, and again, but I think the concern here is that the perception that some folks have is that coach Brown was recruiting on behalf of the University of Kansas.

██████████ No. Because coach, coach Brown didn't want to, didn't want to suggest anything to me. It was something that – almost had to force that out of him. And I promise you that is – I'm not – I can't, I can't put this out there saying that coach Brown, you know, was trying to recruit for Kansas. Because I, I asked him, and he said I can't tell you what to do. I don't want to say to you any kind of way. Like this is you guys' decision.<sup>42</sup>

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<sup>40</sup> FI 8 @ 77.

<sup>41</sup> FI 8 @ 84.

<sup>42</sup> FI 8 @ 88.

and

QUESTION: He was not doing what?

Like, recruiting for Kansas or recruiting for Maryland. He was not doing that. He was just trying to help because I was begging basically for him to help.<sup>43</sup>

According to [REDACTED] Brown stated that at least two universities other than Kansas would be good schools for [REDACTED]<sup>44</sup>

Like [REDACTED] [REDACTED] clearly explained that Brown did not recruit for Kansas:

QUESTION: Did he [Brown] ever talk to you about Kansas?

[REDACTED] He never spoke to me, I never, I never talked to Larry Brown about basketball. I just said –

QUESTION: Right. Right. I know you, you said that. And that's about basketball, because basketball could be AAU, high school, and all that. I just want to make it more specific to Kansas. Did Larry Brown ever talk to you about Kansas?

[REDACTED] No, sir.<sup>45</sup>

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<sup>43</sup> FI 8 @ 89.

<sup>44</sup> FI 8 @ 76, 79, 88.

<sup>45</sup> FI 78 @ 17.



████ further explained that that █████ never suggested to █████ that Brown wanted █████ to attend Kansas.<sup>46</sup> █████ liked Kansas even before Kansas started to recruit him, and his decision to attend Kansas was not influenced by Brown:

████ Honestly, I have been watching Kansas since my freshman and sophomore year, and I, I just, well, Kansas was always like my, one of my top one, top one, top two schools. And after my junior, I just had an idea of what school I wanted to go.<sup>47</sup>

One aspect of Allegation 2(a) that accurately reflects the information gathered during the investigation in this case is that Kurtis did not report a recruiting violation involving Brown to Kansas' athletics compliance staff. This is accurate because Kurtis did not believe there was a violation to report. For the reasons mentioned above, Kurtis did not believe impermissible conduct involving Brown occurred. Furthermore, Kurtis' boss, Self, who the information in this case shows forcefully emphasizes compliance with NCAA rules including telling assistant coaches he will fire them for cheating, knew that Brown had a relationship with █████ from Brown's time coaching at SMU and that Kurtis would call Brown to try to gain some insight about █████ and █████<sup>48</sup> Kurtis never believed Brown was a Kansas booster, and the information in this case demonstrates that Brown did not fall within the definition of a booster.<sup>49</sup> Specifically, the information in this case does not contain testimony or documentation (1) that Brown participated in a Kansas booster organization, (2) that Brown made financial contributions to Kansas' athletics department, (3) that anyone asked Brown to recruit for Kansas, (4) that anyone perceived Brown as recruiting for Kansas,

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<sup>46</sup> FI 78 @ 18.

<sup>47</sup> FI 78 @ 31.

<sup>48</sup> FI 1 @ 6 – 11. FI 4 @ 12.

<sup>49</sup> Attachment @ 7.

(5) that Brown provided benefits to any Kansas student-athlete or his/her family, or (6) that Brown otherwise promoted Kansas' athletics program (unless Brown's frequent conversations in response to questions from people seeking informed insight about collegiate men's basketball programs at numerous different schools including Alabama, Kentucky, Maryland, North Carolina, Oregon, UNC-G, and UCLA or USC, just to note schools specifically mentioned by Brown or ██████ make Brown a booster of all of those schools as well as Kansas under a theory that he promoted their athletics programs).<sup>50</sup>

Two recent situations discussed during Kurtis' interviews with the enforcement staff in this case show Kurtis' habit of promptly informing senior Kansas athletics administrators when he recognizes compliance problems. One situation occurred during Kurtis' recruitment of a top current prospective student-athlete when the prospect's family introduced Kurtis to a third party who was "helping in [the prospect's] recruiting" who seemed suspicious to Kurtis. Kurtis promptly provided the third party's name to Kansas' senior athletics compliance staff member who researched the situation before giving Kurtis go-ahead to continue recruiting the prospect.<sup>51</sup> The second situation occurred in November of ██████ when ██████ apprised Kurtis that he learned from ██████ that ██████ received money from Gassnola. Although Gassnola's federal trial testimony about such a payment was already public, Kurtis had never before personally learned information related to any such payment. As soon as ██████ suggested to Kurtis that a payment occurred, Kurtis informed senior Kansas athletics administrators about ██████ comments.<sup>52</sup> As such, the information in this case indicates that, as is his habit, Kurtis would have informed Kansas' senior athletics

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<sup>50</sup> FI 8 @ 77. FI 77 @ 7, 9, 17, 18, 26. FI 78 @ 17.

<sup>51</sup> FI 5 @ 46. The prospect committed to another institution in the fall of 2019.

<sup>52</sup> FI 5 @ 46.

administrators of potentially impermissible conduct involving Brown if Kurtis thought such conduct occurred.

For the reasons discussed above, the weight of the credible, persuasive information gathered during the investigation in this case – and in regard to some aspects of Allegation 2(a), literally all of the relevant information in this case – refutes the enforcement staff’s position that Kurtis should be held personally liable for a violation of NCAA rules in connection with Allegation 2(a). However, if for some reason the Committee were to find that Kurtis’ communication with Brown involved Kurtis in a breach of NCAA rules, then, as discussed later in this response, NCAA case precedent and legislation would not support the enforcement staff’s position that Kurtis should be held personally liable for a Level 1 violation.

#### ***Allegation 2(b)***

Kurtis disagrees with the enforcement staff’s position that he breached NCAA rules in the circumstances related to Allegation 2(b).

Kurtis never believed that his communication with Gassnola or any interaction between Gassnola and [REDACTED] about which Kurtis was aware was impermissible. Kurtis never encouraged Gassnola to engage in any conduct Kurtis thought might break NCAA rules.

Kurtis initially met Gassnola in 2010 or 2011 through then Kansas assistant men’s basketball coach Joe Dooley (“Dooley”), a long-time friend of Gassnola, and [REDACTED], a player from Gassnola’s AAU program who was a Kansas men’s basketball student-athlete.<sup>53</sup> Kurtis understood Gassnola to be both an AAU coach and a consultant for Adidas, whose duties

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<sup>53</sup> FI 4 @ 17.

for Adidas included being a point of contact for Kansas' men's basketball program and monitoring whether the program was happy with Adidas apparel.<sup>54</sup> When Dooley left Kansas to become a head coach, Kurtis was the remaining Kansas coach who Gassnola knew best, so Kurtis and Gassnola began to communicate more frequently.<sup>55</sup> Kurtis and Gassnola regularly swapped recruiting scuttlebutt and insight about prospective student-athletes, like Kurtis does with employees or consultants from Nike and Under Armour, scouting service providers, high school coaches, and non-scholastic coaches.<sup>56</sup> As Kurtis explained:

[Gassnola] talked to so many people, so many other college coaches, so many other AAU coaches, he was a source of information. So even if eight of the things he said I walked away going you're full of it, but two of the things helped me in, you know, in my grasping, hey, you know, what this recruitment will be like, then it's just something I did. That's how I gathered information. That's how I recruit. And I didn't only get all my information from him.<sup>57</sup>

In addition to recruiting scuttlebutt, Kurtis and Gassnola discussed topics including NBA draft entrants, NFL football, and Gassnola's travels.<sup>58</sup> In July, August, and early September of [REDACTED] much of Kurtis' communication with Gassnola involved Adidas' preparations for an elaborate party at Self's Hall of Fame induction.<sup>59</sup>

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<sup>54</sup> FI 4 @ 17.

<sup>55</sup> FI 4 @ 17. FI 5 @ 4.

<sup>56</sup> FI 4 @ 45, 48, 124.

<sup>57</sup> FI 4 @ 124.

<sup>58</sup> FI 4 @ 29, 37, 110, 127.

<sup>59</sup> FI 4 @ 110.

Also, as discussed in more detail in response to Allegation 2(c), on August 8, [REDACTED], Kurtis followed-up on conversations with Brown and [REDACTED] about [REDACTED] interest in getting used gear for [REDACTED] youth basketball team by providing contact information for Gassnola, as an Adidas consultant, to [REDACTED] and vice versa.<sup>60</sup> Kurtis provided the information openly on his Kansas cell phone and shortly thereafter told his boss, Self, that he had done so.<sup>61</sup> As Kurtis explained:

I didn't think that was -- I didn't think that was anything that was illegal or -- I just thought that that's what they did. I just thought that the apparel companies sponsor AAU teams, national teams. In no way did I think that there was anything wrong with that.<sup>62</sup>

The next day, Kurtis followed-up with Gassnola by text about whether Gassnola and [REDACTED] had connected.<sup>63</sup> During the following weeks, Kurtis and Gassnola communicated frequently, particularly about Adidas' party at Self's Hall of Fame induction.<sup>64</sup> Although Kurtis and Gassnola almost certainly talked about [REDACTED] some, they did not discuss [REDACTED] recruitment much because Gassnola did not know [REDACTED] and had not seen him play.<sup>65</sup> On a few occasions, Kurtis texted to Gassnola snippets of news about [REDACTED] recruitment that Kurtis thought would interest Gassnola, like Kurtis and other coaches regularly share interesting recruiting news with people in the grassroots basketball community.<sup>66</sup>

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<sup>60</sup> FI 4 @ 102. FI 9 @ 16, 17. FI 60.

<sup>61</sup> FI 1 @ 94, 95. FI 60.

<sup>62</sup> FI 4 @ 94.

<sup>63</sup> FI 62.

<sup>64</sup> FI 4 @ 110. Attachment @ 8, 9.

<sup>65</sup> FI 5 @ 14, 15, 19, 20.

<sup>66</sup> FI 5 @ 32, 43, 44. FI 63.

Kurtis' communication with Gassnola ended on approximately September 25, [REDACTED], when Kansas told Kurtis to cease communication with people associated with Adidas after the announcement of the indictments preceding the federal criminal trial of Jim Gatto ("Gatto") and his co-conspirators.<sup>67</sup>

Kurtis believed, and still believes, that his communication with Gassnola was the type of routine and permissible communication that college coaches have on a regular basis as a normal part of their jobs. Kurtis never asked Gassnola to give money to [REDACTED] or to help Kansas recruit [REDACTED].<sup>68</sup>

During the period in question, Kurtis also believed that any communication between Gassnola and [REDACTED] was normal, appropriate communication between a consultant for an international apparel company and a non-scholastic team coach about whether Adidas might be interested in sponsoring or providing gear for [REDACTED] youth basketball team.<sup>69</sup> Gassnola's only communication to Kurtis (or Self) about Gassnola's conversations with [REDACTED] were brief comments or text exchanges about talking to [REDACTED] about gear.<sup>70</sup> Gassnola purposefully concealed from Kurtis and all other Kansas personnel Gassnola's interactions with [REDACTED] that were contrary to NCAA rules.<sup>71</sup> Gassnola knew that Kurtis, Self, and their Kansas colleagues would disapprove of impermissible conduct and report a violation that would result in [REDACTED] ineligibility.<sup>72</sup>

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<sup>67</sup> FI 5 @ 19, 20.

<sup>68</sup> FI 4 @ 105, 106, 127. FI 5 @ 27.

<sup>69</sup> FI 4 @ 105, 106. FI 5 @ 27. FI 6 @ trial transcript 1014.

<sup>70</sup> FI 6 @ trial transcript 1014, 1015, 1172. FI 61. FI 62.

<sup>71</sup> FI 6 @ trial transcript 1017, 1172, 1215.

<sup>72</sup> FI 6 @ trial transcript 1017.



Kurtis never participated in a call between Gassnola and [REDACTED] so Kurtis lacks personal knowledge of what Gassnola and [REDACTED] discussed. Given discrepancies between Gassnola and [REDACTED] about some aspects of their communication, the exact content of their discussions cannot be known. However, [REDACTED] reported that he and Gassnola spoke no more than five times, and nothing in the information gathered during the investigation in this case indicates otherwise.<sup>73</sup> According to [REDACTED] Gassnola seemed more interested in learning about the structure of youth basketball in [REDACTED] and “who’s in charge of the kids in [REDACTED]” than in discussing whether Adidas could provide gear for [REDACTED] youth basketball team or [REDACTED] recruitment status.<sup>74</sup> [REDACTED] was emphatic that that Gassnola did not recruit for Kansas:

QUESTION: Did TJ ever suggest to you that KU was a good place –

[REDACTED]: No.

QUESTION: – for [REDACTED] to be?

[REDACTED] No, because his opinion didn’t matter. His opinion at the end of the day –

QUESTION: Again –

[REDACTED] – did not matter.

QUESTION: – what matters to you is not what we really need to know. What we need to know is whether or not TJ ever said –

[REDACTED] No, he never said that.

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<sup>73</sup> FI 7 @ 61. FI 8 @ 17, 18.

<sup>74</sup> FI 7 @ 74, 95. FI 8 @ 17, 21, 68.

QUESTION: – ever said anything to you about KU and coming to KU and KU  
being the right place for him.

He, he never said that.

QUESTION: He never said anything like that?

He never said that because –

QUESTION: Doesn't matter why.

Yeah, it was –

QUESTION: Did he say it or not?

– it was never mentioned. Like it, like he –

QUESTION: Did he ever –

– like who is he to say that?

QUESTION: Did he recruit on behalf –

No, no.

QUESTION: – of KU?

No, that never happened.<sup>75</sup>

The undisputed information in this case establishes that Gassnola never spoke with

that was not even aware of Gassnola prior to the federal criminal trial of Gatto

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<sup>75</sup> FI 7 @ 92 – 94.

and his co-conspirators, and that Gassnola had no influence on [REDACTED] decision to attend Kansas.<sup>76</sup>

Kurtis did not report a recruiting violation involving Gassnola to Kansas' athletics compliance staff because Kurtis did not believe there was a violation to report. As discussed in response to Allegation 2(a), Kurtis' history of bringing compliance concerns to the attention of senior Kansas athletics administrators indicates that Kurtis would have reported a potential violation regarding Gassnola if he recognized one. However, for the reasons mentioned above, Kurtis did not believe impermissible conduct occurred regarding either his communication with Gassnola or Gassnola's communication with [REDACTED]. Furthermore, Kurtis' compliance-conscious boss, Self, knew that Kurtis connected Gassnola and [REDACTED] to facilitate dialogue between Adidas and [REDACTED] about gear for a youth basketball team in [REDACTED].<sup>77</sup> Kurtis never believed Gassnola was a Kansas booster, and the information in this case demonstrates the reasonableness of Kurtis' understanding. The information does not show (1) that Gassnola participated in a Kansas booster organization, (2) that Gassnola contributed financially to Kansas' athletics department, (3) that Kurtis or anyone else at Kansas asked Gassnola to recruit for Kansas, (4) that Kurtis or anyone else at Kansas should have considered Gassnola to be recruiting for Kansas, (5) that Kurtis or anyone else at Kansas should have thought that Gassnola provided benefits to an enrolled Kansas student-athlete or his/her family, or (6) that Gassnola otherwise promoted – as opposed to conspired to defraud, as he pled guilty to – Kansas.<sup>78</sup>

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<sup>76</sup> FI 8 @ 66. FI 78 @ 31, 33.

<sup>77</sup> FI 1 @ 94, 95.

<sup>78</sup> FI 6 @ trial transcript 913, 914.

To the extent that the enforcement staff asserts that Gassnola was a booster simply because of his status as an Adidas consultant or employee, Kurtis understands that Kansas' response to the Amended Notice of Allegations addresses the unsoundness of the enforcement staff's position, and Kurtis adopts the university's analysis in that regard. Kurtis notes that, prior to the enforcement staff's assertion in this case, at no point during Kurtis' twenty-eight years as a Division 1 men's basketball coach at six different universities has Kurtis been advised by a university, a conference, the National Association of Basketball Coaches, or NCAA personnel that by itself a person's employment by an apparel company that supplies gear to a university's athletics department classifies that person as a booster of the university. Furthermore, Kurtis' understanding that Gassnola was not a booster simply because of his connection with Adidas is consistent with the assessment of five accomplished senior athletics administrators who the enforcement staff interviewed during the investigation in this case: (1) Kansas' current athletics director Jeff Long, who has over thirty years of collegiate athletics experience, including prior athletics director experience at Eastern Kentucky, Pittsburgh, and Arkansas;<sup>79</sup> (2) Kansas' former athletics director Sheahon Zenger, who has over thirty years of collegiate athletics experience, including athletics director experience at Illinois State prior to coming to Kansas;<sup>80</sup> (3) Kansas' former senior associate athletics director Larry Keating, who has almost fifty years of collegiate athletics experience, including experience as Seton Hall's athletics director for twelve years;<sup>81</sup> Kansas' deputy athletics director Sean Lester, who has been at Kansas fifteen years;<sup>82</sup> and Kansas' senior associate athletics director David Reed, who in 2019 received the National Association for

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<sup>79</sup> FI 23 @ 1, 3.

<sup>80</sup> FI 22 @ 1, 2, 4.

<sup>81</sup> FI 19 @ 1, 3, 6.

<sup>82</sup> FI 20 @ 4.

Athletics Compliance's ("NAAC") Frank Kara Leadership Award, which is NAAC's premiere award and highest honor.<sup>83</sup>

QUESTION: In your view as athletics director, do you view Adidas as a representative of KU's athletics interests?

LONG: No. You know I never had, candidly, in my career looked at a shoe or apparel person as a representative of our athletics interest. I see them as a sponsor.<sup>84</sup>

and

QUESTION: Did you regard Adidas as a representative of Kansas' athletics interests?

ZENGER: No. I saw them as a partner, as any other institution viewed their apparel sponsors.<sup>85</sup>

and

QUESTION: And was the Adidas relationship, did it have any objective or purpose as to helping secure enrollment of prospective student-athletes to KU?

ZENGER: Absolutely not.<sup>86</sup>

and

QUESTION: As a long-time athletics administrator, are you familiar with the term representative of the institution's athletics interest?

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<sup>83</sup> FI 17 @ 1. <https://kuathletics.com/staff/david-reed/>

<sup>84</sup> FI 23 @ 30.

<sup>85</sup> FI 22 @ 32.

<sup>86</sup> FI 22 @ 33.

KEATING: Yeah.

QUESTION: At any time did you ever consider Adidas to be a representative of the KU's athletics interest?

KEATING: No. Not at all.

QUESTION: And why is that?

KEATING: They're not. They're representing their own interests. Not ours.<sup>87</sup>

and

QUESTION: What I'm asking is from your point of view in real time, did you ever in your own mind, regard Adidas as a representative of KU's athletics interest.?

LESTER: Absolutely not.<sup>88</sup>

and

QUESTION: So, you think that Adidas is a representative of the institution's athletics interest here at KU?

REED: No. I think they're a corporate partner.

QUESTION: So, in, in your analysis, what is different between being a corporate partner and a representative of the institutions athletic interest?

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<sup>87</sup> FI 19 @ 25.

<sup>88</sup> FI 20 @ 43.



REED: The, I separate it from the, the true, the true meaning of a representative of athletics interests is to, they're donating money for the betterment of the athletic department. And I understand there's, there's additional triggers, but KU is in a corporate partnership with Adidas that both sides make significant amount of money from. It's not Adidas dumping all this money into KU with no outcome on the other side. So to me, Adidas is no different as I said earlier, to Pepsi, to Demarini Bats from baseball, to New Era hats in baseball, to Land Management that cuts the grass. It's no different. It's a corporate partner.<sup>89</sup>

For the reasons discussed above, the weight of the credible, persuasive information gathered during the investigation in this case refutes the enforcement staff's position that Kurtis should be held personally liable for a violation of NCAA rules in connection with Allegation 2(b). However, if for some reason the Committee were to find that Kurtis' interaction with Gassnola involved Kurtis in a breach of NCAA rules, then, as discussed later in this response, NCAA Case precedent and legislation would not support the enforcement staff's position that Kurtis should be held personally liable for a Level 1 violation.

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<sup>89</sup> FI 17 @ 57.

**Allegation 2(c)**

Kurtis disagrees with the enforcement staff's position that he breached NCAA rules in the circumstances related to Allegation 2(c).

Contrary to the enforcement staff's specific assertion that "Adidas, Gassnola, Self and Townsend worked together to offer [REDACTED] shoes and apparel," the information gathered during the investigation in this case demonstrates that Kurtis never offered a recruiting inducement to [REDACTED] or worked with anyone do so. When Kurtis gave [REDACTED] contact information to Gassnola and vice versa and then had limited follow-up communication about whether they connected, Kurtis believed, and still believes, that his conduct was the type of ordinary, permissible communication that college coaches have as a normal part of their jobs.<sup>90</sup>

During Kurtis' conversations with Brown and [REDACTED] Kurtis learned about [REDACTED] interest in finding used gear for a youth basketball team in [REDACTED].<sup>91</sup> [REDACTED] was seeking used gear because [REDACTED] new gear were high.<sup>92</sup> [REDACTED] initially asked Kurtis about the possibility of obtaining used Kansas gear, but Kurtis correctly explained that NCAA rules do not allow Kansas to donate new or used institutional gear to a non-scholastic basketball program.<sup>93</sup> In order to try to help [REDACTED] in a manner compliant with NCAA rules, Kurtis offered to connect [REDACTED] with Nike, but [REDACTED] expressed disinterest in Nike due to a prior poor experience with Nike.<sup>94</sup> Because the [REDACTED] AAU team with which [REDACTED] was associated was sponsored by Under Armour, Kurtis also suggested that [REDACTED] talk with Under

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<sup>90</sup> FI 4 @ 94, 127. FI 5 @ 15, 16.

<sup>91</sup> FI 5 @ 22. 7 @ 58 – 59.

<sup>92</sup> FI 7 @ 72. FI 9 @ 17, 18.

<sup>93</sup> FI 7 @ 58, 59. FI 8 @ 12, 13, 27.

<sup>94</sup> FI 5 @ 15. FI 7 @ 96, 97.

Armour employee Hanif Hill (“Hill”), who Kurtis offered to tell about [REDACTED] search for gear.<sup>95</sup> As a third option for [REDACTED] to explore about a potential sponsorship or gear donation, Kurtis suggested [REDACTED] talk with Adidas consultant Gassnola.<sup>96</sup> In order to help [REDACTED] connect with Gassnola, on August 8, [REDACTED] Kurtis provided contact information for [REDACTED] to Gassnola and vice versa.<sup>97</sup> The next day, Kurtis followed-up in a text exchange with Gassnola about whether Gassnola and [REDACTED] had connected.<sup>98</sup> During Kurtis’ calls with Gassnola in the following weeks, Kurtis recalls one time when Gassnola told Kurtis that Gassnola would get in touch with [REDACTED] about gear for the [REDACTED] youth basketball team, but Kurtis does not recall other discussions with Gassnola about the topic.<sup>99</sup> Similarly, Kurtis recalls that in a call with [REDACTED] later in August or September, Kurtis confirmed to [REDACTED] that Kurtis had called Hill at Under Armour about [REDACTED] interest in sponsorship or gear.<sup>100</sup>

No information gathered during the investigation in this case indicates that Kurtis told [REDACTED] that Adidas (or Under Armour, Nike, or any other source) would provide gear for a youth basketball team in [REDACTED]. As Kurtis explained, his mindset was that it was up to Adidas to determine whether a sponsorship or gear donation made sense to the company. Whether a sponsorship or donation occurred had no impact on Kansas recruiting [REDACTED].

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<sup>95</sup> FI 5 @ 15. FI 8 @ 22 – 24.

<sup>96</sup> FI 5 @ 14. FI 8 @ 12, 13.

<sup>97</sup> FI 5 @ 21, 25. FI 6 @ trial transcript 1013, 1168. FI 60.

<sup>98</sup> FI 5 @ 26, 27. FI 62.

<sup>99</sup> FI 5 @ 14.

<sup>100</sup> FI 5 @ 14.

TOWNSEND: If it was good for Adidas, for them to sponsor a team and they wanted to do it, fine. If they didn't, it didn't matter, I was still going to recruit [REDACTED]<sup>101</sup>

and

TOWNSEND: I mean, I told this guy [Gassnola] to, you know, hey, if this is good for Adidas and you guys want to do it, fine.<sup>102</sup>

and

QUESTION: You know, you're recruiting [REDACTED] [REDACTED] is the [REDACTED]. [REDACTED] is looking for some material benefit, ostens -- you know, for a team.

TOWNSEND: Yeah, I understand.

QUESTION: And now you're -- you've just injected yourself in a situation and put into contact with somebody who can fulfill that need. Is that a violation of NCAA rules? Have you just involved yourself in a violation?

TOWNSEND: I don't believe, Tom. And here's why I don't believe it. This is why I don't believe it. It didn't matter to me one way or another if [Gassnola] was able to put [REDACTED] together with somebody who could sponsor. It didn't matter. I was going to recruit [REDACTED] one

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<sup>101</sup> FI 4 @ 96.

<sup>102</sup> FI 4 @ 99.

way or the other. [REDACTED] never – or not [REDACTED] – [REDACTED] never let me know hey, if I can't get the gear I'm not coming. It was never like that. [...] So I did not think it was a violation in any way. I thought that was something that if it – if Adidas thought it was a benefit for them to be able to sponsor a team, they would do it. If they didn't, no big deal. It didn't matter one way or the other. Nobody – that wasn't a make or break deal for the kid coming to school here.<sup>103</sup>

Based on Kurtis' decades of experiences as a NCAA men's basketball coach, Kurtis did not consider it unusual, much less impermissible, to connect a consultant of an international apparel company and a non-scholastic team coach about whether Adidas might be interested in sponsoring or providing gear for a youth basketball team in [REDACTED].<sup>104</sup> As Kurtis explained:

I just thought that the apparel companies sponsor AAU teams, national teams. In no way did I think that there was anything wrong with that.<sup>105</sup>

As Kurtis further explained, high school and non-scholastic coaches regularly ask Kurtis to connect them with apparel companies about potential sponsorship opportunities:

I don't know what, how the outside looks in at it. But I think these high school coaches and AAU coaches think oh, man, they – they're in there good with the shoe company. They could help.<sup>106</sup>

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<sup>103</sup> FI 4 @ 105.

<sup>104</sup> FI 4 @ 105, 106. FI 5 @ 27. FI 6 @ trial transcript 1014.

<sup>105</sup> FI 4 @ 94.

<sup>106</sup> FI 5 @ 16.

and

If I told you how many people asked me to do that – I probably wouldn't have to coach if I – because everybody asks hey, could you help me with this or that?<sup>107</sup>

Kurtis provided Gassnola and [REDACTED] with each other's contact information and subsequently talked and texted with Gassnola and [REDACTED] openly on Kurtis' Kansas cell phone.<sup>108</sup> Shortly after Kurtis provided contact information to Gassnola and [REDACTED] Kurtis told his boss, Self, that he had done so.<sup>109</sup> Kurtis never learned whether Adidas (or Under Armour) provided any sponsorship for the [REDACTED] youth basketball team.<sup>110</sup>

Like Kurtis, [REDACTED] did not associate receiving Gassnola's contact information from Kurtis with Kansas' recruitment of [REDACTED]

QUESTION: Yeah, how did we get to him? And I was –

[REDACTED] Well, it was just to let you know that, it like – coach Townsend was not – he didn't give me the impression that he was putting Adidas in to recruit [REDACTED] because his first suggestion was Nike.

QUESTION: Okay.

[REDACTED] You know, that's really what – it was Nike, because like he had, like I think, a better relationship as far as like, you know, with the guys at Nike, you know, like somebody at Nike than he does at Adidas. So,

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<sup>107</sup> FI 5 @ 15.

<sup>108</sup> FI 5 @ 14, 26, 27. FI 60. FI 62. FI 63.

<sup>109</sup> FI 1 @ 94, 95.

<sup>110</sup> FI 5 @ 47.



it was only when I said I didn't like Nike because of this guy that claimed to know everybody from Nike – I mean, this guy said he knew everybody from Nike. So, I was like I don't want to get involved with the people that he knows. And that's when he [Kurtis] referred me to TJ [Gassnola].”<sup>111</sup>

According to [REDACTED] Gassnola did not seem particularly interested in [REDACTED] search for gear for the [REDACTED] youth basketball team. To begin with, Gassnola “didn't pick up the first couple times” [REDACTED] tried to call him, so [REDACTED] “bugged him so much” that Gassnola “picked up after a while.”<sup>112</sup> [REDACTED] reported that he and Gassnola spoke no more than five times total, and Gassnola seemed more interested in “who's in charge of the kids in [REDACTED]” than in discussing whether Adidas could provide gear for [REDACTED] youth basketball team.<sup>113</sup>

The information gathered during the investigation in this case consistently indicates that neither Gassnola, nor anyone else at Adidas, provided, arranged for, or even offered to provide or arrange for gear or sponsorship for a youth basketball team in [REDACTED]. Thus, the enforcement staff's core claim in Allegation 2(c) is not merely unsupported by the information in this case, but it is contradicted by the information.

Gassnola, who described the team in question as the [REDACTED] team, addressed the issue during his federal trial testimony:

QUESTION: Did Adidas ever end up providing any assistance to the [REDACTED] team?

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<sup>111</sup> FI 7 @ 97.

<sup>112</sup> FI 8 @ 13, 18, 20.

<sup>113</sup> FI 7 @ 61, 74, 95. FI 8 @ 17, 18, 21, 68.

GASSNOLA: As I can recall, I don't think so.<sup>114</sup>

confirmed that gear was never provided and no arrangement for, or offer of, gear was ever made:

QUESTION: And what, what was the final outcome related to getting gear for the team?

Funny that you ask, because I spoke to him [Gassnola] about it. And he said, well I'm gonna get back to him, I'm gonna get back to you. It was like, I'm gonna get back to you. I'm gonna get back to you. And I would call him, and he would not pick up. And, and then all of a sudden, that's when that whole incident started like, you know.

QUESTION: What incident?

Like the whole trial thing, like, you know. And I had the — my brother-in-law actually calls me, and he's like, you know, did you see like the whole Adidas, the Adidas thing? And that's when I started putting two-and-two together with like, you know, why he wasn't responding anymore.<sup>115</sup>

and

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<sup>114</sup> FI 6 @ trial transcript 1015.

<sup>115</sup> FI 7 @ 61.

QUESTION: Let me ask you this then. Quantity wise, when you say I need used gear, what was the quantity of how much you need in terms of used gear?

Well, we never got to that part, because what he said was, well let me find out. And it was – he never, he never said yes, it's doable. And he never said no, it's not doable. So, it was – he was in the process of basically finding out.<sup>116</sup>

and

QUESTION: Next call. Same thing?

Same thing. I mean, this kept on dragging. It, it was, I, I couldn't get a yes or no from him.<sup>117</sup>

The information in this case lacks any indication that Kurtis providing Gassnola and [REDACTED] with each other's contact information in connection with [REDACTED] search for used gear for [REDACTED] youth basketball team influenced [REDACTED] decision to attend Kansas. Gassnola never spoke with [REDACTED] was not even aware of Gassnola prior to the federal criminal trial of Gatto and his co-conspirators, and [REDACTED] affinity for Kansas actually predated his recruitment by Kansas.<sup>118</sup>

As discussed in response to Allegation 2(a), Kurtis' history of bringing compliance concerns to the attention of senior Kansas athletics administrators indicates that Kurtis would have reported a

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<sup>116</sup> FI 7 @ 72.

<sup>117</sup> FI 8 @ 28.

<sup>118</sup> FI 8 @ 66. FI 78 @ 31, 33.

potential violation regarding providing Gassnola and [REDACTED] with each other's contact information if Kurtis thought one occurred. However, for the reasons mentioned above, Kurtis did not believe his conduct was impermissible. Furthermore, Kurtis' compliance-conscious boss, Self, knew that Kurtis connected Gassnola and [REDACTED] to facilitate dialogue between Adidas and [REDACTED] about gear for a youth basketball team in Angola.<sup>119</sup> Like Kurtis, Self did not believe that connecting Gassnola and [REDACTED] was impermissible:

QUESTION: And, thank you. That's actually what I was getting to. Did you inform the institution of that connection?

SELF: No, I did not.

QUESTION: Did you feel that you needed to or you didn't think it was an issue or why not?

SELF: It would be both. I didn't feel I needed to, because it wasn't an issue, and at least in my mind. Because all that was done was put two people in contact with each other. So, it wasn't, it wasn't prearranging any type of arrangement, anything like it. It was two people that would, that were – contact information was shared.<sup>120</sup>

and

QUESTION: Did it strike you as a red flag that – or give you any pause or concern to know that Kurtis Townsend was putting the [REDACTED] of a prospect in touch with a representative of a shoe company?

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<sup>119</sup> FI 1 @ 94, 95.

<sup>120</sup> FI 1 @ 61.

SELF: It did not. Cause [REDACTED] [REDACTED] was also an AAU coach, not just [REDACTED]. And AAU programs and shoe companies deal with each other all the time. If [REDACTED] was not affiliated with an AAU program, then I would say definitely that would be something that would be an alarm. But it did not – it was not a red flag to me.<sup>121</sup>

As discussed in response to Allegation 2(b), Kurtis never believed Gassnola was a Kansas booster, and the information in this case demonstrates the reasonableness of Kurtis' understanding. To the extent the enforcement staff claims that Adidas was a Kansas booster based on factors arising out of Adidas' contract with the university and that Gassnola was a Kansas booster because of his status as an Adidas consultant or employee, Kurtis refers the Committee to the discussion about the unsoundness of that proposition set forth in response to Allegation 2(b).

For the reasons discussed above, the weight of the credible, persuasive information gathered during the investigation in this case refutes the enforcement staff's position that Kurtis should be held personally liable for a violation of NCAA rules in connection with Allegation 2(c). However, if for some reason the Committee were to find that Kurtis' provision of [REDACTED] contact information to Gassnola and vice versa involved Kurtis in a breach of NCAA rules, then, as discussed later in this response, NCAA case precedent and legislation would not support the enforcement staff's position that Kurtis should be held personally liable for a Level 1 violation.

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<sup>121</sup> FI 1 @ 99.



## ALLEGATION NO. 3

### ALLEGATION

3. [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) (2014-15); 12.1.2, 12.3.1.2 and 16.11.2.1 (2015-16); 13.01.2, 13.1, 13.1.2.1, 13.1.2.5, 13.2.1 and 13.2.1.1-(g) (2016-17); 13.01.2, 13.1, 13.1.2.1 and 13.1.3.5.1 (2017-18)]

It is alleged that between December 2014 and September 2017, 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. Bill Self (Self), head men's basketball coach, and Kurtis Townsend (Townsend), assistant men's basketball coach, 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 guardian of a then student-athlete. Specifically:

- a. During the [redacted] academic year, TJ Gassnola (Gassnola), a then Adidas outside consultant, representative of the institution's athletics interests and agent, engaged in violations in an effort to recruit then men's basketball prospective student-athlete [redacted] ([redacted] to the institution, and later communicated some of his efforts to Self. Specifically, on or about December 11, [redacted], Gassnola had an impermissible recruiting contact with [redacted] in San Diego. Then in the winter of [redacted], Gassnola provided \$15,000 to a family friend of [redacted] who was to provide the money to [redacted] mother. Finally, on August 19, [redacted], and after [redacted] enrolled at another institution, Gassnola communicated in a text message to Self that he had let Self down in the recruitment of [redacted] [NCAA 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) (2014-15)]
- b. On or about March 22, [redacted], Gassnola provided an impermissible benefit and impermissible agent benefit in the form of an indeterminate amount of cash through a wire transfer to [redacted]  
[redacted] [NCAA Bylaws 12.1.2, 12.3.1.2 and 16.11.2.1 ([redacted])]
- c. On or about June 27 through July 1, [redacted] Dan Cutler (Cutler), a then Adidas outside consultant, representative of the institution's athletics interests and agent, had an impermissible recruiting contact with and offered an impermissible recruiting inducement to men's basketball prospective student-athlete [redacted] ([redacted] Specifically, Cutler had contact with [redacted] at an Adidas basketball event in Los Angeles and inquired if [redacted] would be open to recruitment by the institution. When [redacted] answered affirmatively, Cutler informed [redacted] that if he enrolled at the institution, then Cutler and Adidas would ensure [redacted] parents could attend his games by providing financial assistance for their travel expenses. Within three weeks of Cutler's impermissible contact and offer, Self learned that Cutler had been in contact



with [REDACTED] and of [REDACTED] interest in the institution. Self then telephoned [REDACTED] and spoke with him and his mother about [REDACTED] attending the institution. [NCAA Bylaws 13.01.2, 13.1, 13.1.2.1, 13.1.2.5, 13.2.1 and 13.2.1.1-(g) ([REDACTED])]

- d. On or about September 14, [REDACTED], Merl Code (Code), a then Adidas outside consultant, representative of the institution's athletics interests and agent, had an impermissible recruiting contact with the family of then men's basketball prospective student-athlete [REDACTED] ([REDACTED]) and learned recruiting information and what it would take for [REDACTED] to commit to the institution and participate as a men's basketball student-athlete. In a telephone call, Code communicated some of what he learned to Self and Townsend just prior to their scheduled home visit with the [REDACTED] family. Code provided additional information to Townsend after the home visit. Townsend failed to report this violation to the institution's compliance staff. [NCAA Constitution 2.8.1 and Bylaws 13.01.2, 13.1, 13.1.2.1 and 13.1.3.5.1 ([REDACTED])]
- e. Allegation Nos. 3-a, 3-c and 3-d serve as a basis for head coach responsibility as noted in Allegation No. 4. Allegation Nos. 3-a through 3-d serve as a basis for lack of institutional control, as noted in Allegation No. 5.

### **RESPONSE**

#### **Allegation 3(d)**

Kurtis disagrees with the enforcement staff's position that he breached NCAA rules in the circumstances related to Allegation 3(d).

The enforcement staff cites Kurtis' conduct related to Allegation 3(d) as justification for holding Kurtis personally liable for a Level 1 violation.

A Level 1 violation is the most severe level of violation with which the enforcement staff can charge a coach. Therefore, before discussing the egregious substantive flaws in Allegation 3(d), it is important to examine the context in which the allegation appears in the Amended Notice of Allegations. Allegation 3 has three sub-allegations in addition to Allegation 3(d). Based on Kurtis' personal knowledge, he has no reason to believe any of the three other sub-allegations are true, but that is not the point. The point is that none of the other sub-allegations have anything to

do with Kurtis. Furthermore, all three of the other sub-allegations involve alleged payments or offers of financial benefits, and two of the three involve alleged direct personal contact between alleged boosters and prospective student-athletes. Even if the premise of Allegation 3(d) were supported by the information in this case, which it is not, Allegation 3(d) would not involve any payment or offer of a financial benefit or any direct personal contact by a booster with a prospective student-athlete. Even if the premise of Allegation 3(d) were supported by the information in this case, the full extent of Kurtis' involvement would be listening to generic or incredible comments about a highly-publicized prospective student-athlete who Kurtis had recruited for three years, but who eventually decided not to attend Kansas, from a grassroots basketball consultant for an apparel company for a total of at most thirteen minutes during a span of two days. Therefore, even if the premise of Allegation 3(d) were supported by the information in this case, the alleged impermissible conduct would be materially different in nature and far less severe than the alleged impermissible conduct in the other sub-allegations. Consequently, even if the premise of Allegation 3(d) were supported by the information in this case and the enforcement staff wanted to present it for the Committee to assess Kurtis' personal liability, the enforcement staff properly should have presented it as a separate allegation. Instead, the enforcement staff lumped Allegation 3(d) into Allegation 3 with other unrelated sub-allegations of comparatively severe alleged misconduct and then asserted that it is appropriate for the Committee to hold Kurtis personally liable for a Level 1 violation based on his "involvement in Allegation 3." The enforcement staff's inclusion of Allegation 3(d) in Allegation 3 as a basis for a second Level 1 allegation against Kurtis illustrates an unwarranted approach to drafting the Amended Notice of Allegations in a manner designed to portray Kurtis in the most negative light possible and to expose

him to potentially enhanced personal liability based on the overstated allegation itself as well as the aggravating factor of multiple Level 1 violations.

Substantively, as noted in the introduction to this response, Allegation 3(d) is unsupported by – and, in fact, is clearly and consistently refuted by – the voluminous information gathered during the extensive investigation in this case. Allegation 3(d) asserts that “on or about September 14, 2017,” Adidas consultant Merl Code (“Code”) had “an impermissible recruiting contact” with prospective student-athlete [REDACTED] (“[REDACTED] family and then “communicated some of what he learned to Self and Townsend just prior to their scheduled home visit with the [REDACTED] family.” The premise of the allegation is flawed in several respects.

To begin with, even if Code communicated with [REDACTED] family in September of [REDACTED] – which, as discussed below, the information gathered in this case demonstrates did not happen – the sequence of events asserted by the enforcement staff is wrong. Kurtis and Bill Self’s (“Self”) recruiting visit to [REDACTED] home occurred on September [REDACTED].<sup>122</sup> Kurtis’ phone records corroborate Kurtis’ testimony and establish that Kurtis’ only conversation with Code in the week leading up to the visit occurred on September [REDACTED], as Kurtis and Self were driving to [REDACTED] home.<sup>123</sup> Kurtis’ phone records also corroborate his testimony and establish that Kurtis’ next, and final, conversation with Code was the following morning, September [REDACTED].<sup>124</sup> However, despite testimony and documentary information establishing that Kurtis’ two conversations with Code occurred on September [REDACTED] [REDACTED] [REDACTED] in conjunction with a September [REDACTED] home visit, the enforcement staff drafted this Level 1 allegation asserting a September [REDACTED] pre-visit conversation

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<sup>122</sup> FI 1 @ 88. FI 4 @ 50, 63, 73.

<sup>123</sup> FI 1 @ 88. FI 4 @ 50, 51. Attachment @ 10.

<sup>124</sup> FI 4 @ 50, 51. Attachment @ 10.

between Kurtis, Self, and Code. Given the seriousness of this Level 1 allegation against Kurtis, and its citation to justify the aggravating factor of multiple Level 1 violations, the enforcement staff's drafting of an allegation that is incompatible with the sequence of events established by the information in this case illustrates an apparent willingness to forego careful and objective analysis in order to charge Kurtis with multiple Level 1 violations. Any suggestion that the allegation is reasonably drafted consistent with the information in the case because the enforcement staff left itself so-called wiggle room by using the phrase "on or about September [REDACTED]" is a weak excuse for the enforcement staff's indifference and/or overzealousness when clear, accurate information contradicting the enforcement staff's asserted sequence of events is readily available.

Additionally, the extensive investigation in this case produced no demonstration of recruiting contact between Code and [REDACTED] or his family on or about September [REDACTED]. To the contrary, [REDACTED] and his family repeatedly explained the limited nature of their interaction with Code after the spring of [REDACTED], including the absence of any interaction with Code near September [REDACTED].

[REDACTED] reported only about five total interactions with Code in the nature of casual greetings at non-scholastic basketball events:

QUESTION: Would you see [Code] or would you actually interact with him, like you know...

[REDACTED] It'd be like a what's up man, how you doing, how you been.

QUESTION: Yeah, that's fair. How many times did you have those sorts of encounters with Mr. Code, where at least a greeting was exchanged?



██████████ Probably like five times, probably.<sup>125</sup>

and

QUESTION: There was some type of friendship bond that you had, is that correct?

██████████ Well, I don't want to say bond. It was just like you see him, and you just kind of acknowledge him. Like, yeah. Like, I know you. Like, how are you doing? Like, how have you been? And stuff like that. I wouldn't say it's a deep bond though.<sup>126</sup>

The last time ██████████ even saw Code was at the Adidas Nations tournament in early August of ██████████, more than a month before the enforcement staff alleges Code had recruiting contact with ██████████ family.<sup>127</sup>

██████████ reported that his parents had similarly limited interaction with Code, that neither he nor his family had any professional relationship with Code, and that neither he nor his family had private conversations with Code.<sup>128</sup> ██████████ specifically denied knowledge of any conversation between himself or his parents and Code about potentially impermissible benefits:

QUESTION: And the conversations, you never talked about – You've already answered this question, but I'm just going to ask it again. You never informed [Code], or your parents never informed him in your presence, that you were looking for cash, employment, relocation, wherever you signed?

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<sup>125</sup> FI 26 @ 8.

<sup>126</sup> FI 26 @ 12.

<sup>127</sup> FI 26 @ 8, 9. <https://basketball.realgm.com/national/tournament/18/adidas-Nations/182/yearly-brackets>

<sup>128</sup> FI 26 @ 9, 10, 13.

[REDACTED] No, sir.<sup>129</sup>

[REDACTED] [REDACTED] repeatedly and emphatically explained that they had no interaction with Code since the end of [REDACTED] sophomore year in high school, which was the spring of [REDACTED]:

QUESTION: And so, what is your relationship with Merl Code?

[REDACTED] Merl Code?

QUESTION: Merl Code.

[REDACTED] There is no relationship.

QUESTION: What do you know about him?

[REDACTED] I mean, I know he is a person – an executive on the Adidas circuit.

He was from [REDACTED] area [REDACTED]. So, I mean outside of that, there was no relationship, yeah.

[REDACTED] That's that.

QUESTION: Did you guys talk regularly or...

[REDACTED] No.

QUESTION: ...text?

[REDACTED] No.

[REDACTED] No, sir.

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<sup>129</sup> FI 26 @ 13.



QUESTION: Anything like that?

■ ■■■■■ No.<sup>130</sup>

and

■■■■■ So [Code] wanted to know why we were trying to get our own team, and suggested that I come and play with his team, or coach his team and allow ■■■■ to come to his team, you know. And that, I think that's where our relationship stopped at, you know, when he said that. Yeah, because when I told him, he thought we were angry with him, you know. But, you now, that was the last time we actually spoke with him, and that was going – ■■■■

■ ■■■■■ Sophomore.

■■■■■ ...10th – sophomore year. We haven't talked to him since. So, you know, I don't...

QUESTION: So you haven't had a conversation with...

■. ■■■■■ No. No.

QUESTION: ...Code since sophomore year?

■■■■■ No.

■■■■■ Going into junior year.<sup>131</sup>

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<sup>130</sup> FI 27 @ 16.

<sup>131</sup> FI 27 @ 18, 19.

and

Let's – let me get this – Merl Code had nothing to do with us, even though . Nothing to do with us.<sup>132</sup>

parents specifically denied knowledge of any conversation with Code about potentially impermissible benefits:

QUESTION: But have you ever asked [Code], or told him, what you needed, or what the family would need, in terms of for recruitment?

Sir, we ain't talked to him since was a 10th grader. We didn't know what would need or what we would need, you know, during that time.

All needed was a full scholarship.

All he needed was a scholarship.<sup>133</sup>

Steve Smith ("Smith"), a Clemson assistant men's basketball coach who was close friends with Code since high school and who recruited for Clemson, corroborated the testimony of and his parents about their lack of communication with Code:<sup>134</sup>

QUESTION: What about Merl Code? Was – do you know – do you have any reason to believe Merl was working with the family in any way?

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<sup>132</sup> FI 27 @ 32.

<sup>133</sup> FI 27 @ 19.

<sup>134</sup> FI 88 @ 6.

SMITH: It's been a lot of stuff put out in the media. And I can say, to my knowledge, talking to Merl, talking to [REDACTED] – Merl was not involved in [REDACTED] recruitment after [REDACTED] sophomore year of high school.<sup>135</sup>

and

SMITH: Merl wanted [REDACTED] on his team, so to speak, [REDACTED]. The [REDACTED] wanted their own team – his own team. Somehow, they were working against each other. His [REDACTED] and Merl kind of butt heads there, and that's when they hadn't spoken since, to my knowledge. I don't know if they've spoken recently, but during the recruitment process, from that point on, they were not speaking.

QUESTION: And that's based on what you heard from Merl?

SMITH: From Merl and the [REDACTED].<sup>136</sup>

Smith also reported that Code never told Smith that Code was helping Kansas recruit [REDACTED] or that anyone from Kansas asked him to help recruit [REDACTED].<sup>137</sup>

As the explicit, repeated, consistent, corroborated, un rebutted testimony from [REDACTED] [REDACTED] parents, and Smith demonstrates, the information gathered during the investigation in this case clearly refutes the fundamental premise of Allegation 3(d) that Code had recruiting

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<sup>135</sup> FI 88 @ 10.

<sup>136</sup> FI 88 @ 11.

<sup>137</sup> FI 88 @ 17, 18.

contact with [REDACTED] family on or about September [REDACTED]. The enforcement staff's drafting of an allegation with a core premise so disconnected from the information in this case further illustrates an apparent willingness to forego careful and objective analysis in order to charge Kurtis with multiple Level 1 violations.

Because Allegation 3(d) is so contrary to the information gathered in this case, Kurtis summarizes below what actually happened.

Kurtis did not know Code well, having spoken with him only approximately fifteen to twenty times during Kurtis' tenure at Kansas prior to August of [REDACTED], when Merl and Kurtis had a few brief conversations regarding the party at Self's Hall of Fame induction that Adidas was planning.<sup>138</sup> Prior to Kurtis' conversations with Code on September [REDACTED], Kurtis never spoke with Code about [REDACTED].<sup>139</sup> At the Adidas party for Self's Hall of Fame induction, Adidas employee Jim Gatto ("Gatto") told Kurtis that Code knew [REDACTED] family through Adidas' sponsorship of [REDACTED] non-scholastic basketball team.<sup>140</sup> Gatto's comment surprised Kurtis, because Kurtis had recruited [REDACTED] for three years without any mention, much less involvement, of Code in the recruiting process.<sup>141</sup> Based on Gatto's comment, while Kurtis and Self were driving to their September [REDACTED] recruiting visit at [REDACTED] home, Kurtis called Code about what insight Code might have into [REDACTED] recruitment.<sup>142</sup> The call was brief, lasting only about five minutes.<sup>143</sup> The call was on speakerphone so Self could participate,

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<sup>138</sup> FI 4 @ 49, 50, 125. Attachment @ 10.

<sup>139</sup> FI 4 @ 50.

<sup>140</sup> FI 4 @ 50, 57, 66.

<sup>141</sup> FI 4 @ 50, 57, 66.

<sup>142</sup> FI 4 @ 50, 51, 66.

<sup>143</sup> FI 4 @ 51. Attachment @ 10. Kurtis' phone records show a call from Kurtis to Code at 5:56 PM lasting two minutes and a call from Code to Kurtis at 5:58 PM lasting four minutes. Kurtis does not recall whether the first call resulted in a voice message that Code returned or whether the first call was dropped and the second call was a reconnect. In either event, the total conversation lasted no more than six minutes.

and when Code suggested that [REDACTED] “want[ed] to play point guard,” Self jokingly replied that he would tell [REDACTED] that he was Magic Johnson.<sup>144</sup> At the end of the call, Code asked Kurtis to let Code know how the visit went, and Kurtis agreed to do so.<sup>145</sup> The home visit with [REDACTED] family was routine, and at no point during the visit (or at any other time during Kurtis’ recruitment of [REDACTED] did [REDACTED] or his family ask for any impermissible benefit.<sup>146</sup> The next morning, September [REDACTED], Kurtis called Code, as promised, to share that the visit went fine.<sup>147</sup> The call lasted seven minutes.<sup>148</sup> During the call, Code interrupted Kurtis and claimed he knew that [REDACTED] family wanted various impermissible benefits as part of [REDACTED] recruitment.<sup>149</sup> Kurtis found Code’s claim to be unbelievable, because throughout three years of recruitment, including the previous night’s home visit, neither [REDACTED] nor his family ever asked for anything impermissible.<sup>150</sup> Before finishing the call, Kurtis said that he had to figure out a way to successfully recruit [REDACTED] to Kansas, which to Kurtis included highlighting all the permissible financial benefits [REDACTED] could receive at Kansas as discussed during the home visit the previous night, but nothing impermissible.<sup>151</sup> Kurtis believed, and still believes, that his communication with Code was the type of routine and permissible communication that college coaches have on a regular basis as a normal part of their jobs, that it did not involve improper recruiting assistance, and that it did not involve anyone Kurtis had reason to believe was a Kansas booster. However, based on Kurtis’ long recruitment of [REDACTED] discussions with [REDACTED] and his family during the home visit, and Code’s farfetched comments during the September [REDACTED]

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<sup>144</sup> FI 4 @ 51.

<sup>145</sup> FI 4 @ 50.

<sup>146</sup> FI 4 @ 51, 52, 55, 56, 58, 59.

<sup>147</sup> FI 4 @ 50, 51.

<sup>148</sup> Attachment @ 10.

<sup>149</sup> FI 4 @ 51.

<sup>150</sup> FI 4 @ 51, 56, 58, 59, 64.

<sup>151</sup> FI 4 @ 54, 55.



call, Kurtis concluded that Code did not have credible insight regarding [REDACTED] recruitment, so Kurtis never spoke with Code again.<sup>152</sup>

As discussed in response to Allegation 2(a), Kurtis' history of bringing compliance concerns to the attention of senior Kansas athletics administrators indicates that Kurtis would have reported a potential violation regarding Code if Kurtis thought one occurred. However, for the reasons mentioned above, Kurtis did not believe his conduct was impermissible or that anything Code said credibly indicated improprieties in [REDACTED] recruitment. Furthermore, Kurtis' compliance-conscious boss, Self, obviously knew about Kurtis and Self's conversation with Code on September [REDACTED]. Kurtis never believed Code was a Kansas booster, and the information in this case demonstrates the reasonableness of Kurtis' understanding. The information does not show (1) that Code participated in a Kansas booster organization, (2) that Code contributed financially to Kansas' athletics department, (3) that Kurtis or anyone else at Kansas asked Code to recruit for Kansas, (4) that Kurtis or anyone else at Kansas should have considered Code to be recruiting for Kansas, (5) that Code provided benefits to an enrolled Kansas student-athlete or his/her family, or (6) that Code otherwise promoted Kansas. To the extent the enforcement staff claims that Code was a Kansas booster because of his status as an Adidas consultant or employee, Kurtis refers the Committee to the discussion about the unsoundness of that proposition related to TJ Gassnola set forth in response to Allegation 2(b), which applies equally to Code.

For the reasons discussed above, the weight of the credible, persuasive information gathered during the investigation in this case refutes the enforcement staff's position that Kurtis should be

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<sup>152</sup> Attachment @ 10. The indictments preceding the federal trial of Gatto, Code, and their co-conspirator were announced on September 26, 2017. At that time, Kansas instructed Kurtis to cease all communication with Adidas. Between September [REDACTED] and September [REDACTED], while Kansas continued to actively recruit [REDACTED] Kurtis had no calls with Code.



held personally liable for a violation of NCAA rules in connection with Allegation 3(d). However, if for some reason the Committee were to find that Kurtis' limited interaction with Code involved Kurtis in a breach of NCAA rules, then, as discussed later in this response, NCAA case precedent and legislation would not support the enforcement staff's position that Kurtis should be held personally liable for a Level 1 violation.

## CASE PRECEDENT AND LEGISLATION

For the reasons discussed above, the weight of the credible, persuasive information gathered during the investigation in this case refutes the enforcement staff's position that Kurtis should be held personally liable for a violation of NCAA rules. However, if for some reason the Committee were to find that Kurtis' limited interactions with Brown, Gassnola, or Code in the circumstances of this case involved Kurtis in a breach of NCAA rules, then NCAA case precedent and legislation would not support the enforcement staff's position that Kurtis should be held personally liable for a Level 1 violation – let alone two Level 1 violations.

Although no two cases are identical, the six recent cases summarized in the following table involved similar factors as alleged by the enforcement staff as justification for holding Kurtis personally liable for two Level 1 violations. Specifically, the six cases involved boosters' direct contacts with prospective student-athletes and/or student-athletes in conjunction with coaches' active involvement in, or knowledge of, the boosters' contacts. Four of the cases also involved boosters providing items, services, or entertainment with significant monetary value, and a fifth case involved a coach providing impermissible recruiting inducements. The extent of the misconduct cited in the six cases appears broader than the alleged misconduct involving Kurtis in Allegations 2(a), 2(b), 2(c), and 3(d). Nevertheless, the Committee classified the misconduct in all six cases as Level 2 violations. Thus, the cases demonstrate that even if Kurtis were involved in a breach of NCAA rules as alleged, a Level 1 classification of any violation involving Kurtis would be excessive.

<u>Case</u>	<u>Description</u>
Georgia Tech University	A booster who was the head coach's friend provided two student-athletes and a potential transfer student-athlete with over \$2,400 in benefits and inducements. The booster engaged in impermissible recruiting activity by

2019	<p>overextending his personal relationship with a transfer student-athlete at the head coach's previous institution and by regularly attempting to recruit him to Georgia Tech. Specifically, while the transfer student-athlete was still competing for his first institution, the booster introduced the idea of transferring to Georgia Tech. The booster made the head coach aware of his communications with the potential transfer. The head coach did not report any concerns to Georgia Tech's compliance office. Later, the booster again made the head coach aware of his communication with the transfer student-athlete. The head coach asked the booster to keep him in the loop on the transfer student-athlete because he did not want to waste his time. The booster ended the conversations stating, "He will be a Yellow Jacket if you want him. Period." The booster also provided the transfer student-athlete with shoes and arranged for him and his brother to visit the booster by purchasing roundtrip airfare.</p>
University of Utah 2019	<p>As part of the recruitment of a prospective student-athlete during a period in which Utah had no available official visits, a Utah coach and a community college coach developed a plan to have the community college pay for the prospect to visit the institution. When the community college coach began assisting Utah in the recruitment of the prospect by helping plan and execute the prospect's visit to the institution, he became a Utah booster. Subsequently, the community college paid for the prospect's visit to the area and the institution. Further, the community college coach accompanied the prospect on the visit to the institution, and the Utah men's basketball staff knew of, and participated in, the contacts that occurred on the visit.</p>
University of Connecticut 2019	<p>A longtime friend of the head coach who trained athletes became a booster when he provided on-campus training to student-athletes. The trainer also gave the student-athletes free meals and lodging at his home over four days, local transportation, use of his personal automobile, and access to a private gym. The benefits totaled just under \$1,200 for the three student-athletes. Based on testimony from an assistant coach, the institution's strength coach, a student-athlete, and a parent of a student-athlete, the COI determined that the head coach knew about the training arrangements.</p>
University of San Francisco 2018	<p>The second head coach provided, or arranged for a booster to provide, a prospect and the prospect's father a free round of golf with the booster valued at \$550 during the prospect's official visit. The second head coach also provided, or arranged for, a second prospect to play a round of golf with a booster at a \$200 discount during the prospect's official visit, and again the booster interacted with the prospect's father. Additionally, when a prospect made a six-day, five-night unofficial visit to USF, the second head coach provided, or arranged for, the prospect to receive free rounds of golf and driving range privileges valued at \$419, one night of free off-</p>

	campus lodging valued at \$50, and impermissible transportation valued at \$48.
University of Alabama 2017	An assistant coach knew and/or should have known that a booster was assisting and/or participating in the recruitment of four prospective student-athletes. Specifically, a booster, who was the mother of an Alabama student-athlete, contacted a high school coach to arrange a meeting at a high school. Once the booster arrived at the high school, she asked to meet with four prospective student-athletes. The booster initially met with the four prospects for approximately 10 to 15 minutes, and then the assistant coach joined the meeting for approximately 15 to 20 minutes. A few months later, the booster contacted the high school coach to arrange a follow-up meeting with three of the prospective student-athletes. The meeting lasted approximately 10 minutes.
Southern Methodist University 2015	The head golf coach knew a booster, who ran a junior golf tournament like a recruiting service, providing a "road map to college golf for juniors." The head golf coach permitted the booster to initiate and engage in recruiting contacts with prospects. The booster contacted nine prospects to promote the institution's golf program; facilitated contact and communication between the head golf coach and prospects and their families; and/or encouraged the prospects to arrange unofficial visits to the institution. The head golf coach was aware of the booster's contact with the prospects because he was copied on or forwarded multiple email communications between the representative and prospects and/or their parents regarding the institution. The booster also provided the head golf coach with updates on prospects whom the representative had contacted or was planning to contact. The email communications fell into two categories: communications between the two men about prospects and whether the booster planned to reach out to them; and communications on which the head golf coach was copied or forwarded emails between the booster and prospects and/or their families. Additionally, head golf coach provided reduced-cost merchandise and equipment to four prospective student-athletes. The approximate value of the impermissible merchandise received by the prospects was at least \$777.

If, despite the weight of the credible, persuasive information gathered during the investigation in this case, the Committee were to find that Kurtis' limited interactions with Brown, Gassnola, or Code involved Kurtis in a breach of NCAA rules, then such a breach would meet the

criteria of a Level 3 violation as set forth in Bylaw 19.1.3.<sup>153</sup> Specifically, the information gathered in this case establishes (1) that Kurtis' relevant interactions with Brown, Gassnola, and Code were infrequent, brief, and limited in nature, (2) that no advantage occurred, because the recruiting decisions of [REDACTED] and [REDACTED] were not influenced by Brown, Gassnola, or Code, (3) that no impermissible benefit was provided, arranged, or even offered, and (4) that any connection by Kurtis with impermissible conduct was inadvertent, because he acted transparently, in a manner he understood to be routine and permissible based his coaching experience, and with a good-faith belief that his conduct did not involve Kansas boosters.

In sum, an objective analysis of the information gathered during the investigation in this case calls for the Committee to reject the enforcement staff's plea to hold Kurtis personally liable for two Level 1 violations. However, if the Committee were to find Kurtis involved in a breach of NCAA rules, then, based on NCAA case precedent and legislation, the proper classification of any such breach by Kurtis would be Level 3, not Level 2, and most certainly not Level 1.

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<sup>153</sup> Attachment @ 11.



## AGGRAVATING AND MITIGATING FACTORS

The weight of the credible, persuasive information gathered during the investigation in this case refutes the enforcement staff's position that Kurtis should be held personally liable for a violation of NCAA rules. Furthermore, if for some reason the Committee were to find that Kurtis' limited interactions with Brown, Gassnola, or Code in the circumstances of this case involved Kurtis in a breach of NCAA rules, then, as discussed above, NCAA case precedent and legislation would not support classifying Kurtis' involvement as a Level 1 or Level 2 violation to which aggravating and mitigating factors apply.

This response addresses the aggravating and mitigating factors proposed by the enforcement staff because the two proposed aggravating factors illustrate the overzealous nature of the allegations against Kurtis. Kurtis disagrees with both proposed aggravating factors.

The first proposed aggravating factor is that Kurtis committed multiple Level 1 violations (Bylaw 19.9.3(a)). This aggravating factor requires the Committee to find that Kurtis is personally liable for a Level 1 violation in Allegation 2 and in Allegation 3. As previously discussed, the notion that Kurtis committed a Level 1 violation in either allegation is unsupported by the information in this case as well as NCAA case precedent and legislation. The enforcement staff's assertion that Kurtis committed a Level 1 violation in Allegation 3(d) is completely contrary to the information in this case, egregiously inappropriate, and particularly concerning.

The second proposed aggravating factor is that Kurtis condoned, participated in, or negligently disregarded a violation or related wrongful conduct (Bylaw 19.9.3(h)). The



information in this case shows that Kurtis' relevant conduct involved the type of ordinary interactions in which college coaches engage on a daily basis as a normal part of their jobs. Even if, hypothetically, the conduct of Brown, Gassnola, or Code were inappropriate in the circumstances of Allegations 2(a), 2(b), 2(c), or 3(d), it would be a stretch to find that Kurtis significantly "participated" in any wrongdoing. Because no reasonable basis existed for Kurtis to believe that impermissible conduct occurred in the circumstances of Allegations 2(a), 2(b), 2(c), or 3(d), Kurtis certainly did not negligently disregard or condone violations or related wrongful conduct in those circumstances.

The enforcement staff proposed one mitigating factor: the absence of prior Level 1, Level 2, or major violations (Bylaw 19.9.4(h)). If aggravating and mitigating factors were applicable, Kurtis would agree with this mitigating factor because it is accurate. Throughout almost thirty years of coaching Division 1 men's basketball, Kurtis has never before been accused of a so-called major violation of NCAA rules.

## CONCLUSION

Kurtis conscientiously tries to follow NCAA rules. After an extensive investigation, the voluminous information gathered in this case shows (1) that Kurtis' conduct which the enforcement staff claims justifies two Level 1 violations involved the type of ordinary interactions in which college coaches engage on a daily basis as a normal part of their jobs, (2) that Kurtis never asked a third party to recruit for Kansas, (3) that Kurtis did not offer, arrange, or provide any impermissible benefit, (4) that Kurtis reasonably believed Brown, Gassnola, Code, and Adidas were not Kansas booster, (5) that Kurtis kept his boss, Self, generally appraised of Kurtis' communication with Brown, Gassnola, and Code relevant to this case, and (6) that Kurtis' habit is to report possible NCAA violations when thinks a violation may have occurred.

Therefore, the weight of the credible, persuasive information gathered during the investigation in this case refutes the enforcement staff's position that Kurtis should be held personally liable for a violation of NCAA rules.

Even if for some reason the Committee were to find that Kurtis' limited interactions with Brown, Gassnola, or Code in the circumstances of this case involved Kurtis in a breach of NCAA rules, then NCAA case precedent and legislation would not support the enforcement staff's position that Kurtis should be held personally liable for two Level 1 violations.

Kurtis welcomes the opportunity to meet with the Committee in order to discuss this case, answer questions the Committee has for him, and further demonstrate why the enforcement staff's charges that he committed major violations of NCAA rules are unsupported and should be dismissed.

Attachment to the  
Response of Kurtis Townsend  
to the  
Amended Notice of Allegations  
in Case No. 00874

March 5, 2020

Submitted  
for Kurtis Townsend  
by Stu Brown  
Stuart L. Brown, LLC  
2089 Bohler Road  
Atlanta, GA, 30318

# Infractions Program

## 19.01 General Principles.

**19.01.1 Mission of the Infractions Program.** It is the mission of the NCAA infractions program to uphold integrity and fair play among the NCAA membership, and to prescribe appropriate and fair penalties if violations occur. One of the fundamental principles of the infractions program is to ensure that those institutions and student-athletes abiding by the NCAA constitution and bylaws are not disadvantaged by their commitment to compliance. The program is committed to the fairness of procedures and the timely resolution of infractions cases. The ability to investigate allegations and penalize infractions is critical to the common interests of the Association's membership and the preservation of its enduring values. *(Adopted: 1/11/94, Revised: 10/30/12 effective 8/1/13, 7/31/14)*

**19.01.2 Accountability.** The infractions program shall hold institutions, coaches, administrators and student-athletes who violate the NCAA constitution and bylaws accountable for their conduct, both at the individual and institutional levels. *(Adopted: 10/30/12 effective 8/1/13, Revised: 7/31/14)*

**19.01.3 Public Disclosure.** Except as provided in this article, the Committee on Infractions, Infractions Appeals Committee, Independent Resolution Panel, enforcement staff and Complex Case Unit shall not make public disclosures about a pending case until the case has been announced in accordance with prescribed procedures. An institution and any individual subject to the NCAA constitution and bylaws involved in a case, including any representative or counsel, shall not make public disclosures about the case until a final decision has been announced in accordance with prescribed procedures. *(Adopted: 10/30/12 effective 8/1/13, Revised: 1/23/19 effective 8/1/19)*

**19.01.4 Penalty Structure.** The infractions program shall address the varying levels of infractions and, for the most serious infractions, include guidelines for a range of penalties, which the Committee on Infractions, subject to review by the Infractions Appeals Committee, or the Independent Resolution Panel may prescribe. Penalties shall depend on the relative severity of the infraction(s), the presence of aggravating or mitigating factors and, in some cases, the existence of extenuating circumstances. *(Adopted: 10/30/12 effective 8/1/13, Revised: 7/31/14, 1/23/19 effective 8/1/19)*

**19.01.5 Exemplary Conduct.** Individuals employed by or associated with member institutions for the administration, the conduct or the coaching of intercollegiate athletics are, in the final analysis, teachers of young people. Their responsibility is an affirmative one, and they must do more than avoid improper conduct or questionable acts. Their own moral values must be so certain and positive that those younger and more pliable will be influenced by a fine example. Much more is expected of them than of the less critically placed citizen.

## 19.02 Definitions and Applications.

**19.02.1 Involved Individual.** Involved individuals are current or former institutional staff members and current or former student-athletes who have received notice of involvement in alleged violations. *(Adopted: 10/30/12 effective 8/1/13)*

**19.02.2 New Information.** New evidence is relevant, material information that could not have reasonably been ascertained prior to the Committee on Infractions hearing. *(Adopted: 1/6/96, Revised: 10/30/12 effective 8/1/13, 7/31/14)*

**19.02.3 Show-Cause Order.** A show-cause order is an order that requires a member institution to demonstrate to the satisfaction of the Committee on Infractions or Independent Resolution Panel why it should not be subject to a penalty or additional penalty for not taking appropriate disciplinary or corrective action with regard to an institutional staff member or representative of the institution's athletics interests found by the Committee on Infractions or Independent Resolution Panel as having been involved in a violation of the NCAA constitution and bylaws. *(Revised: 1/10/95, 4/24/03, 10/30/12 effective 8/1/13, 1/23/19 effective 8/1/19)*

**19.02.4 Review of Cases.** Cases involving allegations of Level I or Level II violations will be presented to and decided by the Committee on Infractions unless referred to the independent accountability resolution structure pursuant to the standard and process for referral set forth in Bylaw 19.11.3. The select cases referred to the independent structure will be presented to and decided by the Independent Resolution Panel in accordance with Bylaw 19.11. *(Adopted: 1/23/19 effective 8/1/19)*

**19.6.3 Proposed Penalties.** The institution and involved individuals shall submit proposed penalties from the guidelines set forth in Bylaw 19.9 and Figure 19-1. The institution and involved individuals also may submit a statement regarding any aggravating or mitigating factors and other considerations that may impact the penalty or penalties. *(Adopted: 10/30/12 effective 8/1/13)*

**19.6.4 Committee on Infractions Review.** A hearing panel of the Committee on Infractions shall consider the case during a subsequent meeting. *(Adopted: 10/30/12 effective 8/1/13)*

**19.6.4.1 Review of Investigation.** The panel shall determine whether a thorough investigation of possible violations of the NCAA constitution and bylaws has been conducted (by the enforcement staff and/or the institution). If the panel determines that the investigation was inadequate, it shall notify the enforcement staff and the parties and allow them to respond, as appropriate. *(Adopted: 10/30/12 effective 8/1/13)*

**19.6.4.2 Additional Information or Clarification.** The panel may contact the institution, enforcement staff and involved individuals for additional information or clarification prior to accepting or rejecting the proposed findings or penalties. *(Adopted: 10/30/12 effective 8/1/13)*

**19.6.4.3 Acceptance of Proposed Findings of Fact, Violations and Penalties.** If the proposed findings of fact and proposed penalties are accepted, the panel shall prepare a report of its decision or adopt the written report of the parties. The panel may make additional comments explaining its analysis or amend the proposed findings of fact, provided any addition or amendment is editorial and does not alter the substance of the proposed findings of fact. The written report may identify the chancellor or president of the institution (in cases involving lack of institutional control); the director of athletics and/or any individual with direct responsibility and oversight of the athletics department (in cases involving lack of institutional control and failure to monitor); the head coach(es) of the sport(s) involved; and, if appropriate, the chair or other members of the institution's governing body. The panel shall forward the report to the enforcement staff and the parties and publicly announce the resolution of the case. *(Adopted: 10/30/12 effective 8/1/13, Revised: 7/31/14)*

**19.6.4.4 Proposed Findings of Fact and/or Violations Not Accepted.** If the panel does not accept the proposed findings of fact, the case shall be processed pursuant to Bylaw 19.7. *(Adopted: 10/30/12 effective 8/1/13, Revised: 7/31/14)*

**19.6.4.5 Proposed Penalties Not Accepted.** If the panel accepts the proposed findings of fact but proposes penalties in addition to those set forth in the parties' written report, the institution and/or involved individuals may accept those penalties or request an expedited hearing on penalties before the panel. The institution and/or involved individuals may appear before the panel in person, by video conference or other mode of distance communication, as the panel deems appropriate, to discuss the proposed additional penalties. The institution and/or involved individuals also may provide a written submission in lieu of a hearing. The panel shall only consider information relevant to the calculation of penalties during the expedited hearing or, if no hearing is requested, on the written record. At the conclusion of the expedited hearing or review of the written record, the panel shall prepare a written report and provide notification of its decision. The institution and/or any involved individuals may appeal additional penalties to the Infractions Appeals Committee. *(Adopted: 10/30/12 effective 8/1/13)*

## **19.7 Notice of Allegations and Opportunity to Respond Before the Committee on Infractions.**

**19.7.1 Notice of Allegations.** If the enforcement staff determines after an investigation that there is sufficient information to conclude that a hearing panel of the Committee on Infractions could conclude that a violation occurred, it shall issue a cover letter and notice of allegations to the chancellor or president of the institution involved (with copies to the faculty athletics representative, the director of athletics and the executive officer of the conference of which the institution is a member). The institution and/or involved individuals, if applicable, shall be given notice of the alleged violation(s), the details of the allegations, the possible level of each alleged violation, the processing level of the case, the available hearing procedures and the opportunity to answer the allegations. The notice of allegations shall also identify the factual information and aggravating and/or mitigating factors on which the enforcement staff may rely in presenting the case. *(Adopted: 10/30/12 effective 8/1/13, Revised: 7/31/14)*

**19.7.1.1 Notice to Institution's Administration.** The cover letter accompanying each notice of allegations shall: *(Adopted: 10/30/12 effective 8/1/13)*

- (a) Inform the chancellor or president of the matter under inquiry and request the cooperation of the institution in obtaining all the pertinent facts;
- (b) Request the chancellor or president to respond to the allegations and to provide all relevant information that the institution has or may reasonably obtain, including information uncovered related to new violations. The responsibility to provide information continues until the case has been concluded;
- (c) In cases in which there will be an in-person hearing, request the chancellor or president and other institutional staff to appear before a hearing panel of the Committee on Infractions at a time and place determined by the panel;



**19.7.8 Posthearing Committee Deliberations.** After all presentations have been made and the hearing has been concluded, the hearing panel shall excuse the parties and deliberate in private. *(Adopted: 10/30/12 effective 8/1/13)*

**19.7.8.1 Request for New Information.** In arriving at its decision, the hearing panel may request additional information from any source, including the institution, the enforcement staff or an involved individual. In the event that new information is requested, all parties will be afforded an opportunity to respond at the time such information is provided. *(Adopted: 10/30/12 effective 8/1/13)*

**19.7.8.2 Request for Interpretation.** The hearing panel may request that the NCAA academic and membership affairs staff provide an interpretation of applicable legislation based on facts submitted by the panel. If an interpretation is requested, the institution, involved individuals and the enforcement staff will be notified in writing of the interpretation request and the response. The institution may appeal the interpretation in accordance with Constitution 5.4.1.2. *(Adopted: 10/30/12 effective 8/1/13)*

**19.7.8.3 Basis of Decision.** The hearing panel shall base its decision on information presented to it that it determines to be credible, persuasive and of a kind on which reasonably prudent persons rely in the conduct of serious affairs. The information upon which the panel bases its decision may be information that directly or circumstantially supports the alleged violation. *(Adopted: 10/30/12 effective 8/1/13, Revised: 8/8/18)*

**19.7.8.3.1 Importation of Facts.** Facts established by a decision or judgment of a court, agency, accrediting body, or other administrative tribunal of competent jurisdiction, which is not under appeal, or by a commission, or similar review of comparable independence, authorized by a member institution or the institution's university system's board of trustees and regardless of whether the facts are accepted by the institution or the institution's university system's board of trustees, 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. *(Adopted: 8/8/18)*

**19.7.8.3.2 Materials Not Produced.** The hearing panel may infer that materials requested during an investigation by the enforcement staff but not produced by an institution or individual would support an alleged violation for which the party may be subject to penalty pursuant to Bylaw 19.9. *(Adopted: 8/8/18)*

**19.7.8.3.3 Failure or Refusal to Participate in Interview.** The hearing panel may view the failure or refusal to participate in an interview requested by the enforcement staff as an admission that an alleged violation, for which the individual may be subject to penalty pursuant to Bylaw 19.9, occurred. *(Adopted: 8/8/18)*

**19.7.8.3.4 Failure to Submit Timely Response to Notice of Allegations.** The hearing panel may view the failure by an institution or individual to submit a timely response to a notice of allegations as an admission that an alleged violation, for which the party may be subject to penalty pursuant to Bylaw 19.9, occurred. *(Adopted: 8/8/18)*

**19.7.8.4 Calculation of Penalty.** If the hearing panel concludes that a violation occurred, it shall prescribe an appropriate penalty pursuant to Bylaw 19.9 or recommend to the Board of Directors suspension or termination of membership in an appropriate case. Failure to fully implement the prescribed penalty may be considered a violation and/or may subject the institution, and/or an institution employing an involved individual under a show-cause order, to further disciplinary action by the Committee on Infractions. *(Adopted: 10/30/12 effective 8/1/13, Revised: 7/31/14)*

## **19.8 Notification of Committee on Infractions Decision.**

**19.8.1 Infractions Decision.** After a hearing, the Committee on Infractions hearing panel shall prepare and approve the final written infractions decision, which shall contain a statement of the findings of fact, conclusions of violations, penalties, corrective actions, requirements and (for institutions) any other conditions and obligations of membership. *(Adopted: 10/30/12 effective 8/1/13, Revised: 1/23/19 effective 8/1/19)*

**19.8.1.1 Provision of Decision to the Parties.** The decision shall be sent to the chancellor or president of the involved institution (or his or her designee), any involved individuals and the vice president of enforcement. *(Adopted: 10/30/12 effective 8/1/13)*

**19.8.1.2 Public Infractions Decision.** Once the decision has been provided to the parties, the hearing panel shall release a public infractions decision. The public infractions decision will not include names of individuals, but the panel may, at its discretion, identify the chancellor or president of the institution (in cases involving lack of institutional control); the director of athletics and/or any individual with direct responsibility and oversight of the athletics department (in cases involving lack of control or failure to monitor); the head coach(es) of the sport(s) involved; and, if appropriate, the chair or other members of the institution's governing body. *(Adopted: 10/30/12 effective 8/1/13)*

**19.8.1.3 Public Announcement.** Once the public infractions decision has been released, the panel member designated by the chief hearing officer may make a public announcement related to the infractions case. The





## ENFORCEMENT: DIVISION I INTERNAL OPERATING PROCEDURES

the Committee on Infractions. Failure by a party to adhere to the deadlines may serve as a basis for the other parties to withdraw their consent to the summary disposition process. Additionally, the chair of the Committee on Infractions or chief hearing officer, pursuant to Bylaw 19.7.6, may in his or her discretion convene a scheduling conference to discuss why the report was not completed within the deadline and determine a plan for completing the processing of the case, which could include abandoning the summary disposition process and proceeding via a hearing.

- 2-4. Guidelines for Allegations.** When determining whether a hearing panel of the Committee on Infractions could conclude that a Level I or II violation occurred (Bylaw 19.7.1), the enforcement staff must (a) use only attributable information and documentation and (b) evaluate relevant information in a fair and objective manner. In exercising its discretion to bring or not bring an allegation, the enforcement staff should also review relevant bylaw interpretations and prior similar cases as appropriate. Case-specific interpretations are addressed above in IOP 2-1.

Decisions whether to bring allegations are made on a case-by-case basis. Unethical conduct, failure of head coach responsibility, lack of institutional control and failure to monitor are among the most serious allegations the enforcement staff can bring. Accordingly, the following are general guidelines the enforcement staff will consider when determining whether to bring the identified allegations.

- 2-4-1. Unethical Conduct.** Unethical conduct by a prospective or enrolled student-athlete or a current or former institutional staff member (e.g., coach, professor, tutor, teaching assistant, student manager, student trainer, etc.) may include, but is not limited to, the following:
- a. Refusal to furnish information. Unless there are extenuating circumstances that would prevent an individual's participation in an interview and/or provision of requested information, the enforcement staff will allege a violation of Bylaw 10.1-(a) when one or more of the following factors exist:
    - (1) There is a nexus between the information requested and the underlying alleged violation(s);
    - (2) An individual's agreement to interview or produce requested information is untimely; or
    - (3) The failure or refusal to interview or produce requested information hinders the ability to discover pertinent information, slows the timely progress of the matter or otherwise negatively impacts efforts to conduct a thorough investigation.

# Kurtis Townsend Calls with Larry Brown in 2017

20170117	15:34:00	215	In	1
20170117	16:32:00	215	Out	1
20170117	16:39:00	215	Out	6
20170126	14:03:00	215	In	3
20170126	14:37:00	215	Out	1
20170126	14:37:00	215	Out	1
20170803	17:28:00	1215	Out	2
20170803	20:24:00	1215	Out	1
20170815	11:58:00	215	Out	1
20170815	14:59:00	215	Out	2
20170815	15:34:00	215	In	12
20170816	9:56:00	215	In	1
20170816	10:18:00	215	In	8
20170816	16:20:00	215	Out	1
20170818	8:40:00	215	Out	2
20170818	8:51:00	215	In	12
20170821	12:39:00	215	In	6
20170826	18:30:00	215	In	6
20170829	14:09:00	215	Out	1
20170829	21:56:00	215	Out	2
20170829	22:04:00	215	In	9
20170914	20:53:00	215	Out	2
20170914	21:26:00	215	In	5
20170927	18:45:00	215	Out	1
20170928	7:52:00	215	Out	2
20170928	8:02:00	215	In	2
20170928	8:05:00	215	In	5

- (a) Providing the prospective student-athlete with an official visit;
- (b) Having an arranged, in-person, off-campus encounter with the prospective student-athlete or the prospective student-athlete's parents, relatives or legal guardians; or
- (c) Issuing a National Letter of Intent or the institution's written offer of athletically related financial aid to the prospective student-athlete. Issuing a written offer of athletically related financial aid to a prospective student-athlete to attend a summer session prior to full-time enrollment does not cause the prospective student-athlete to become recruited.

**13.02.15 Representative of Athletics Interests.** A "representative of the institution's athletics interests" is an individual, independent agency, corporate entity (e.g., apparel or equipment manufacturer) or other organization who is known (or who should have been known) by a member of the institution's executive or athletics administration to: *(Revised: 2/16/00)*

- (a) Have participated in or to be a member of an agency or organization promoting the institution's intercollegiate athletics program;
- (b) Have made financial contributions to the athletics department or to an athletics booster organization of that institution;
- (c) Be assisting or to have been requested (by the athletics department staff) to assist in the recruitment of prospective student-athletes;
- (d) Be assisting or to have assisted in providing benefits to enrolled student-athletes or their families; or
- (e) Have been involved otherwise in promoting the institution's athletics program.

**13.02.15.1 Duration of Status.** Once an individual, independent agency, corporate entity or other organization is identified as such a representative, the person, independent agency, corporate entity or other organization retains that identity indefinitely. *(Revised: 2/16/00)*

**13.02.16 Telephone Calls.** All electronically transmitted human voice exchange (including videoconferencing and videophones) shall be considered telephone calls. *(Adopted: 1/10/95, Revised: 1/9/96 effective 8/1/96, 1/14/97, 4/27/00 effective 8/1/00, 9/6/00, 4/29/04 effective 8/1/04, 4/26/07 effective 8/1/07)*

#### **13.02.17 Visits by Prospective Student-Athletes.**

**13.02.17.1 Official Visit.** An official visit to a member institution by a prospective student-athlete is a visit financed in whole or in part by the member institution.

**13.02.17.2 Unofficial Visit.** An unofficial visit to a member institution by a prospective student-athlete is a visit made at the prospective student-athlete's own expense. The provision of any expenses or entertainment valued at more than \$100 by the institution or representatives of its athletics interests shall require the visit to become an official visit, except as permitted in Bylaws 13.5 and 13.7. *(Revised: 2/22/07, 5/9/08)*

**13.02.18 Individual Associated with a Prospective Student-Athlete—Basketball.** In basketball, an individual associated with a prospective student-athlete is any person who maintains (or directs others to maintain) contact with the prospective student-athlete, the prospective student-athlete's relatives or legal guardians, or coaches at any point during the prospective student-athlete's participation in basketball, and whose contact is directly or indirectly related to either the prospective student-athlete's athletic skills and abilities or the prospective student-athlete's recruitment by or enrollment in an NCAA institution. This definition includes, but is not limited to, parents, legal guardians, handlers, personal trainers and coaches. An individual who meets this definition retains such status during the enrollment of the prospective student-athlete at the institution. *(Adopted: 8/26/10, Revised: 4/26/17 effective 8/1/17)*

**13.02.19 Individual Associated with a Prospective Student-Athlete—Bowl Subdivision Football. [FBS]** In bowl subdivision football, an individual associated with a prospective student-athlete is any person who maintains (or directs others to maintain) contact with the prospective student-athlete, the prospective student-athlete's relatives or legal guardians, or coaches at any point during the prospective student-athlete's participation in football, and whose contact is directly or indirectly related to either the prospective student-athlete's athletic skills and abilities or the prospective student-athlete's recruitment by or enrollment in an NCAA institution. This definition includes, but is not limited to, parents, legal guardians, handlers, personal trainers and coaches. An individual who meets this definition retains such status during the enrollment of the prospective student-athlete at the institution. *(Adopted: 4/26/17)*

### **13.1 Contacts and Evaluations.**

Recruiting contacts (per Bylaw 13.02.4) and telephone calls by institutional staff members or representatives of the institution's athletics interests are subject to the provisions set forth in this bylaw. **[D]** *(Revised: 1/10/91 effective 7/1/91, 6/13/08, 10/30/14)*

#### **13.1.1 Contactable Individuals.**

**13.1.1.1 Time Period for Off-Campus Contacts—General Rule.** Off-campus recruiting contacts shall not be made with an individual (or his or her relatives or legal guardians) before July 1 following the completion of his or her junior year in high school (July 7 after the junior year in high school in women's ice hockey and July 15 after the junior year in high school in women's gymnastics), or the opening day of classes of his or her senior

# Kurtis Townsend Calls with TJ Gassnola in August and September of 2017

20170803	20:42:00	1413	Out	1
20170803	22:18:00	1413	Out	4
20170808	18:53:00	413	Out	6
20170809	16:25:00	413	Out	10
20170809	20:25:00	413	In	3
20170809	20:25:00	413	Out	1
20170809	20:51:00	413	Out	10
20170810	17:22:00	413	Out	3
20170810	18:31:00	413	In	1
20170812	17:26:00	413	Out	5
20170812	18:11:00	413	Out	1
20170812	18:19:00	413	In	6
20170814	13:46:00	413	In	2
20170814	13:46:00	413	Out	1
20170814	19:36:00	413	Out	6
20170814	22:02:00	413	Out	1
20170815	15:57:00	413	Out	1
20170815	19:19:00	413	Out	9
20170815	19:28:00	413	Out	2
20170815	21:43:00	413	Out	1
20170815	21:57:00	413	Out	3
20170816	15:12:00	413	Out	3
20170817	11:16:00	413	In	10
20170817	11:26:00	413	In	2
20170821	18:20:00	413	Out	12
20170823	14:19:00	413	Out	7
20170825	11:42:00	413	Out	3
20170827	14:44:00	413	Out	8
20170828	7:45:00	413	Out	1
20170828	9:57:00	413	Out	13
20170828	20:10:00	413	Out	1
20170828	20:38:00	413	Out	8
20170829	9:09:00	413	Out	7
20170829	15:52:00	413	Out	3
20170830	7:04:00	413	Out	4
20170830	13:39:00	413	Out	1
20170830	13:40:00	413	In	2
20170904	20:29:00	413	Out	1
20170904	20:31:00	413	In	2
20170905	9:58:00	413	Out	2

20170905	12:41:00	413	Out	2
20170905	12:42:00	413	Out	1
20170905	13:31:00	413	In	9
20170905	14:44:00	413	In	2
20170908	21:59:00	413	Out	1
20170908	22:09:00	413	Out	1
20170912	21:35:00	413	Out	1
20170912	21:56:00	413	Out	8
20170913	12:00:00	413	Out	1
20170913	12:14:00	413	Out	4
20170913	12:17:00	413	Out	7
20170913	13:50:00	413	In	2
20170919	19:57:00	413	Out	1
20170919	20:18:00	413	In	18
20170920	19:51:00	413	Out	1
20170920	19:53:00	413	In	3
20170922	9:14:00	413	Out	1
20170926	8:53:00	413	Out	1
20170926	11:53:00	413	In	1

# Kurtis Townsend Calls with Merl Code 2013 Through 2017

## MERL CODE 2017

20170809	16:34:00	503	[REDACTED]	Out	1
20170809	21:14:00	503	[REDACTED]	Out	1
20170822	19:41:00	503	[REDACTED]	Out	2
20170827	15:20:00	708	[REDACTED]	Out	1
20170827	15:21:00	708	[REDACTED]	In	6
20170904	20:30:00	708	[REDACTED]	Out	1
20170905	10:00:00	708	[REDACTED]	Out	2
20170905	12:38:00	708	[REDACTED]	Out	3
20170905	20:22:00	708	[REDACTED]	In	7
20170912	17:26:00	708	[REDACTED]	Out	1
20170912	17:56:00	708	[REDACTED]	Out	2
20170912	17:58:00	708	[REDACTED]	In	4
20170913	11:46:00	708	[REDACTED]	Out	7

## MERL CODE 2016

## MERL CODE 2015

## MERL CODE 2014

2014/03/25 17:44:00	503	[REDACTED]	Out	2
2014/03/25 22:39:00	503	[REDACTED]	Out	2
2014/03/26 14:49:00	503	[REDACTED]	Out	2

## MERL CODE 2013

122712	20:50	503	[REDACTED]	INCOMING, CL	2
41613	11:44	503	[REDACTED]	PORTLAND, OR	1
41613	12:05	503	[REDACTED]	INCOMING, CL	2
42213	10:08	503	[REDACTED]	CALL WAIT,	4



- (d) Individual unethical or dishonest conduct, regardless of whether the underlying institutional violations are considered Level I;
- (e) A Bylaw 11.1.1.1 violation by a head coach resulting from an underlying Level I violation by an individual within the sport program;
- (f) Cash payment or other benefits provided by a coach, administrator or representative of the institution's athletics interests intended to secure, or which resulted in, enrollment of a prospective student-athlete;
- (g) Third-party involvement in recruiting violations in which institutional officials knew or should have known about the involvement;
- (h) Intentional violations or reckless indifference to the NCAA constitution and bylaws; or
- (i) Collective Level II and/or Level III violations.

**19.1.2 Significant Breach of Conduct (Level II Violation).** A significant breach of conduct is one or more violations that provide or are intended to provide more than a minimal but less than a substantial or extensive recruiting, competitive or other advantage; include more than a minimal but less than a substantial or extensive impermissible benefit; or involve conduct that may compromise the integrity of the NCAA Collegiate Model as set forth in the constitution and bylaws. Among other examples, the following may constitute a significant breach of conduct: *(Adopted: 10/30/12 effective 8/1/13)*

- (a) Violations that do not rise to the level of Level I violations and are more serious than Level III violations;
- (b) Failure to monitor (such violations will be presumed Level II but may be deemed to be of a Level I nature if the failure is substantial or egregious);
- (c) Systemic violations that do not amount to a lack of institutional control;
- (d) Multiple recruiting, financial aid, or eligibility violations that do not amount to a lack of institutional control;
- (e) A Bylaw 11.1.1.1 violation by a head coach resulting from an underlying Level II violation by an individual within the sport program; or
- (f) Collective Level III violations.

**19.1.3 Breach of Conduct (Level III Violation).** A breach of conduct is one or more violations that are isolated or limited in nature; provide no more than a minimal recruiting, competitive or other advantage; and provide no more than a minimal impermissible benefit. Among other examples, the following may constitute a breach of conduct: *(Adopted: 10/30/12 effective 8/1/13)*

- (a) Inadvertent violations that are isolated or limited in nature; or
- (b) Extra-benefit, financial aid, academic eligibility and recruiting violations, provided they do not create more than minimal advantages.

## 19.2 Expectations and Shared Responsibility.

**19.2.1 Member Responsibility for Compliance.** Each institution has an affirmative obligation to monitor and control its athletics programs, its representatives and its student-athletes to assure compliance with the constitution and bylaws of the Association. *(Adopted: 10/30/12 effective 8/1/13)*

**19.2.2 Member Responsibility to Report Noncompliance.** Each institution has an affirmative obligation to report all instances of noncompliance to the Association in a timely manner. *(Adopted: 10/30/12 effective 8/1/13)*

**19.2.3 Responsibility to Cooperate.** Current and former institutional staff members or prospective or enrolled student-athletes of member institutions have an affirmative obligation to cooperate fully with and assist the NCAA enforcement staff, the Committee on Infractions and the Infractions Appeals Committee to further the objectives of the Association and its infractions program. The responsibility to cooperate requires institutions and individuals to protect the integrity of investigations and to make a full and complete disclosure of any relevant information, including any information requested by the enforcement staff or relevant committees. Current and former institutional staff members or prospective or enrolled student-athletes of member institutions have an affirmative obligation to report instances of noncompliance to the Association in a timely manner and assist in developing full information to determine whether a possible violation has occurred and the details thereof. *(Adopted: 11/1/07 effective 8/1/08, Revised: 10/30/12 effective 8/1/13, 7/31/14)*

**19.2.3.1 Exemplary Cooperation.** Exemplary cooperation by an institution or involved individual may constitute a mitigating factor for purposes of determining a penalty for a violation. Institutions or involved individuals may demonstrate exemplary cooperation while denying some or all of the alleged violations and otherwise acting in furtherance of their independent interests. *(Adopted: 10/30/12 effective 8/1/13)*

**19.2.3.2 Failure to Cooperate.** Failing to satisfy the responsibility to cooperate may result in an independent allegation and/or be considered an aggravating factor for purposes of determining a penalty. Institutional representatives and the involved individual may be requested to appear before a hearing panel of the Committee on Infractions at the time the allegation is considered. *(Adopted: 10/30/12 effective 8/1/13)*