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IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION 3

TODD McNAIR,
Plaintiff-Respondent,

v.

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION,
Defendant-Appellant.

Appeal from Superior Court for the County of Los Angeles
Honorable Frederick Shaller
Case No. BC462891

APPELLANT'S APPENDIX

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Volume 1

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT

TODD McNAIR, an individual;

Plaintiff,

vs.

THE NATIONAL COLLEGIATE ATHLETIC
ASSOCIATION, an unincorporated
association, and DOES 1 through 50, inclusive,

Defendants.

CASE NO. BC462891

[Assigned for all Purposes to the Honorable
Frederick C. Shaller, Dept. 46]

**PLAINTIFF'S OPPOSITION TO
DEFENDANT'S SPECIAL MOTION
TO STRIKE COMPLAINT;
MEMORANDUM OF POINTS AND
AUTHORITIES; DECLARATIONS
SCOTT TOMPSETT AND TODD
MCNAIR**

[File Concurrently with the Declaration of
Scott H. Carr with Exhibits in Support of
Plaintiff's Opposition to Defendant's
Special Motion to Strike Complaint and
Objections to the Declaration of Laura A.
Wytisma]

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1 TO THE HONORABLE COURT AND ALL PARTIES:

2 Plaintiff, TODD MCNAIR, hereby submits the following in opposition to Defendant's
3 Special Motion to Strike the Complaint. This opposition is made and based upon the following
4 grounds:

- 5 1. Defendant made defamatory statements against Plaintiff, Todd McNair;
- 6 2. Defendant demonstrated malice towards Plaintiff, Todd McNair;
- 7 3. Plaintiff has alleged sufficient evidence to sustain a cause of action for slander against
8 Defendant;
- 9 4. Plaintiff has alleged sufficient facts to constitute a cause of action for libel against
10 Defendant.
- 11 5. Plaintiff has alleged sufficient facts to constitute a cause of action for interference with
12 contract against Defendant;
- 13 6. Plaintiff has alleged sufficient facts to constitute a cause of action for interference with
14 prospective economic advantage against Defendant;
- 15 7. Plaintiff has alleged sufficient facts to constitute a cause of action for negligence;
- 16 8. Plaintiff has alleged sufficient facts to constitute a cause of action for breach of
17 contract; and
- 18 9. Plaintiff has alleged sufficient facts to constitute a cause of action for declaratory relief.

19
20 Plaintiffs' Opposition is based on the attached Memorandum of Points and Authorities, the
21 Declaration of Scott H. Carr and attached Exhibits, the Declaration of Scott Tompsett, the
22 Declaration of Todd McNair, all pleadings on file in this matter, and all argument and evidence
23 submitted at hearing on this matter.

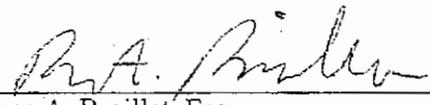
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DATED: September 28, 2012

GREENE BROILLET & WHEELER, LLP



Bruce A. Broillet, Esq.
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION.

On June 10, 2010, the NCAA published a report in which it said that Todd McNair, a USC assistant football coach, had committed unethical conduct based on the following fabricated facts relating to a purported telephone call on January 8, 2006 at 1:34 A.M.:

“Agency Partner A [Lake] said that he phoned the assistant football coach [McNair] to ask him to intercede with student athlete 1 [Bush] and get him to adhere to the agency agreement that he made with agency partners A and B. Agency partner A [Lake] said he also told the assistant football coach that he did not intend to lose the money he had given student-athlete 1 and his parents and preferred not to go public with the matter and implicate the institution”. (Infraction Report, Ex. 1, p.26.)

These fabricated facts, as well as the report’s finding that Todd McNair committed unethical conduct, were not supported by the record at the NCAA enforcement hearing. In fact, Lake never said what the NCAA published he said. But, unless Lake’s statement was altered, the NCAA could not reach its pre-determined, career-ending findings against McNair. So even though the NCAA knew the facts were not supported by the record, three different NCAA departments approved the publication of these false facts. They continued to cling to them even after their falsity was explained in great detail by McNair’s lawyer in his thorough appellate brief. (Ex. 22.) If the Court were to review that brief, it would readily see that there is no possible way the NCAA could claim that its continued publication of the false facts is anything but a deliberate decision to smear Todd McNair.¹

Furthermore, despite the requirement in the NCAA’s own bylaws that institutions, staff and student-athletes be afforded “fair procedures in the consideration of an identified or alleged failure in compliance” and that the assurance of fair procedures is “essential to the conduct of a viable and effective enforcement program”, the process here was anything but fair to Todd

¹ To be clear, many statements contained in the report were false (See Declaration of Todd McNair (“McNair Dec.”).) The egregious nature of the NCAA’s conduct as outlined herein demonstrates clear malice in publishing those false statements.

1 McNair.² As detailed herein, the NCAA fabricated facts, violated its own rules, procedures and
2 bylaws, allowed improper influence over the deliberations, allowed evidence outside the record to
3 be considered during the deliberations, failed to inform McNair that he was a target of the
4 investigation before interviewing him, and allowed Lake to be interviewed by the NCAA without
5 being subject to cross examination by McNair, USC, or their counsel. This was anything but "fair
6 process." Of course, the NCAA believed that whenever fair process stood in the way of its
7 ultimate goal, it could be ignored - regardless of the consequences to McNair.

8 This is the story of how such a miscarriage of justice occurred, and how the NCAA ruined
9 Todd McNair's reputation and career - by the NCAA violating its own rules, procedures and
10 bylaws, by the NCAA changing evidence to suit its purposes, and by the NCAA issuing a report
11 that was not supported by the record - all done to achieve a pre-conceived result. As explained
12 herein, the NCAA committed these acts with knowledge that the facts were false, or with reckless
13 disregard for the truth or falsity of the facts- stated another way, the NCAA acted with malice.

14 As further set forth below, the NCAA defamed McNair when it found that he engaged in
15 unethical conduct based upon its blatant and deliberate falsification of the facts. Further, the
16 NCAA is wrong in claiming that McNair voluntarily injected himself into a matter of public
17 interest sufficient to make him a limited public figure. He did no such thing. Rather, it was the
18 NCAA that thrust McNair into this matter and not the other way around. In any event, even if
19 McNair were a limited public figure then there is ample evidence from which a jury could infer
20 that the NCAA acted with malice. After all, it was told point blank that the facts on which it was
21 relying were made up and were not supported by anything in the record. Nevertheless it persisted.
22 What occurred here is malice personified.

23 Finally, McNair will explain why the NCAA's remaining shotgun arguments lack merit,
24 why its motion should be denied and why the NCAA cannot avoid a trial on the merits.

25
26
27 ² The Bylaws of the NCAA are binding. The NCAA is not permitted to violate them (Ex. 7,
28 pp. 20:18-21:2.)

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1 **II. STATEMENT OF THE FACTS.**

2 On November 6, 2007, the NCAA Enforcement Staff interviewed Lloyd Lake ("Lake")³
3 concerning his relationship with Reggie Bush. During that interview, NCAA Enforcement Staff
4 employee, Richard Johanningmeier ("Johanningmeier") asked Lake about a 2 minute and 32
5 second phone call with Todd McNair ("McNair") at 1:34 A.M. on January 8, 2006. In that
6 interview, Lake took the positions (1) that McNair had called Lake at that date and time and (2)
7 that McNair's motivation to call Lake was to try and resolve the issues between Lake and Bush.
8 Exhibit 3 is the portion of the Lake interview relating to the call:⁴

9 "RJ: Well let me ask you this one, too, Lloyd, on, uh, January 8th, 2006, at 1:34 in the
10 morning, there's a call, McNair call to you for two minutes and 32 seconds.
11 LL: What time was that?
12 RJ: This is January 8th, 2006, it's at 1:34 in the morning, and it's a call, uh, McNair -
13 AC: Coach doesn't understand why people are calling at 1:34.
14 RJ: --McNair makes a call to you at 2:32. I was asleep at that time --
15 LL: Yeah.
16 RJ: -- personally, but, but in your case --
17 LL: I think that was like, that was like him trying to resolve it, you know, and like
18 Reggie's wrong, he should make it right and basically don't implement the school.
19 RJ: Because this, this is 2006 we're talking about.
20 LL: Yeah, that's when I went to jail, that's when everything started falling apart, I mean,
21 it fell apart.
22 RJ: What can you tell us that you specifically recall about that conversation with him?
23 LL: Uh, just telling him about Reggie and all, he knew about the money he took, he knew
24 that he had an agreement and --
25 AC: Todd McNair indicated to you in the telephone conversation that he was aware that
26 Reggie took money --
27 LL: I mean, he knew --
28 AC: -- from you?
29 LL: -- yeah bec, he knew Reggie took money from me. There's no doubt he knew about
30 that.
31 RJ: And why do you say that?
32 AC: Yeah, we need to know why you, why you believe that he knew that?
33 LL: 'Cause he was around a lot and, you know, it's like he watched me get them guys,
34 his friends hotel rooms, Reggie told me he knew about certain things he was doing
35 but he's cool. You know what I mean? It's like basically through Reggie --
36 AC: Reggie said he --
37 LL: -- 'cause I told Reggie you shouldn't be having the, no, he's cool, the coach, that's
38 my, he's my friend. He's not --"

3 Lloyd Lake was a convicted felon who, at the time of these events, was a wannabe sports agent.

4 RJ refers to Richard Johanningmeier, AC refers to Angie Cretors (a member of the NCAA Enforcement staff), and LL refers to Lloyd Lake.

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1 The dialogue set forth above constitutes the only statement that the COI had regarding the
2 phone call upon which their factual assertions were based. There was no evidence to corroborate
3 the substance of the call. Thus, the statement of Lake, cited above, is the only evidence that was
4 before the COI regarding the content of the call.⁵

5 On February 15, 2008, NCAA Enforcement Staff employee Richard Johanningmeier
6 interviewed Todd McNair and asked him whether he recalled a phone call at 1:34 a.m. with Lloyd
7 Lake on January 8, 2005. McNair did not recall any such phone call. (McNair Interview, Ex. 4,
8 pp. 36-37.) In fact, McNair could not have remembered any such phone call because no such call
9 took place on January 8, 2005 (the call in question took place a year later).

10 Significantly, NCAA Enforcement Staff had obtained McNair's phone records from USC
11 as part of the investigation. Those records clearly showed that, contrary to what Lake had said,
12 McNair had not called Lake in the early hours of January 8, 2006. Rather, the records clearly
13 showed that Lake had called McNair. (Phone Records, Ex. 5.) Therefore, it was clear that Lake
14 made false assertions in his recorded statement when he claimed that McNair had called him on
15 January 8, 2006 at 1:34 A.M. and, perforce, his claim as to McNair's motivation to make such a
16 call was wrong since McNair did not make the call. Both prongs of Lake's statement about what
17 had happened that early morning were clearly demonstrated to be wrong by the phone records.

18 Despite the fact that they had no credible evidence of what transpired in that brief phone
19 call, and despite the fact that their sole witness, Lake (a convicted felon), had been thoroughly
20 impeached by the phone records relating to the call, the NCAA charged Todd McNair anyway on
21 September 24, 2009 with unethical conduct. (Notice of Allegations, Ex. 6.)

22 On February 18, 2010, the matter came on for hearing before the Committee on Infractions
23 ("COI"), the adjudicative arm of the NCAA. The COI is comprised of various individuals, only
24

25

26 ⁵ In a misguided attempt to create corroborating evidence, the Infractions Report cites to the
27 interview of Lake's girlfriend, Maiesha Jones. However, even a cursory review of Ms. Jones'
28 statement regarding McNair demonstrates that she cannot corroborate anything. Once again, this
is another instance of the NCAA misrepresenting facts. (Ex. 1; Ex. 33.)

1 some of whom are voting members for a particular enforcement proceeding.⁶ Once the hearing
2 has ended, the rules require the *voting* members, and the voting members *only*, to begin their
3 deliberations, similar to a jury. (Depo of Cooper, Ex. 7, pp. 46:3-47:24; Depo of Thomas, Ex. 8,
4 pp. 22:4-17, 24:25-25:9, 29:1-10, 33:17-37:8.) The voting members are not to be influenced by
5 non-voting members of the COI, or by the Director of the COI, or by the Coordinator of Appeals,
6 or by information outside of the record. (Cooper Depo, Ex. 7, pp. 46:3-47:24; Depo of Thomas,
7 Ex. 8, pp. 22:4-17, 24:25-25:9, 29:1-10, 33:17-37:8; NCAA Division 1 Manual, Rule 19.1.1.4, Ex.
8 9.)

9 The full hearing lasted nearly three days and at the conclusion, the COI began deliberating.
10 At the end of the first day of deliberations on February 21, 2010, the COI reached various findings
11 regarding matters submitted to it in the wide-ranging proceeding involving USC. But, as to Todd
12 McNair, the COI was unable to reach a determination. (Memo from Cooper, Ex. 10.) Various
13 COI voting members resisted making a finding against McNair based on the record evidence. The
14 interview of McNair by the Enforcement Staff was described in emails as "botched" (Myers
15 Email, Ex. 11, Ex. 8, p. 139:13-22), with a record that was "recklessly constructed" based on an
16 investigation that "fell short." (Howard Email, Ex. 15.) Further, at least one COI voting member
17 questioned why McNair had not been re-interviewed by Enforcement Staff. (Ex. 11.) This was
18 because the interview of McNair was "choppy." (Ex. 7, pp. 62:1-11.) Another voting member
19 expressed reservations about making a finding against McNair when there was no allegation or
20 evidence that he was involved in the provision of impermissible benefits Lake allegedly gave to
21 Bush. (Banowsky Email, Ex. 12.) And, when the Enforcement Staff considered whether McNair
22 should be re-interviewed using the date 2006 instead of 2005, senior members of Enforcement
23 Staff made a conscious decision not to do so. (Johanningmeier Depo, Ex. 13, pp. 207:13-208:21.)
24 Obviously, the NCAA was determined to obtain a finding against Todd McNair.

25
26
27 ⁶ The voting members of the COI for the USC/McNair hearing were identified by Cooper.
28 (Ex. 7, pp. 54:5-55:25.)

1 Moreover, as COI voting member Eleanor Myers stated, "To make an unethical conduct
2 finding, I think we would need to be pretty confident that we knew the content of the Jan 8 call
3 from Lake to McNair and that it was a threatening call and McNair lied about it." (Ex. 11.)
4 Myers' comment was consistent with the high standard of proof which the NCAA imposes upon
5 itself in enforcement proceedings by its own bylaws. As set forth in bylaw 32.8.8.2 "The
6 Committee on Infractions shall base its finding on information presented to it that it determines to
7 be credible, persuasive, and of a kind on which reasonably prudent persons rely in the conduct of
8 serious affairs." (Ex. 9, Rule 32.8.8.2.) Thus, if the evidence does not meet this high threshold, a
9 finding cannot be made.

10 As such, based upon the state of the evidence as it existed, there was no reasonable basis
11 for any finding against McNair and the NCAA knew it. For that reason, NCAA personnel
12 undertook efforts to change the facts and to improperly influence the COI so that a finding could
13 be made against McNair.

14 Significantly, it was in that first round of deliberations that the NCAA began a systematic
15 course of violating its own rules, procedures and bylaws regarding deliberations. Roscoe Howard
16 was new to the COI. As a new member, he was required to watch an entire proceeding before
17 becoming a voting member of the COI. The USC matter served this purpose for Howard – he was
18 an observer. (Ex. 7, pp. 42:3-6, 43:6-12, 46:3-23; Cooper Email, Ex. 27.) The parties were
19 informed in advance that Mr. Howard would be strictly an observer, and would not participate in
20 the USC matter. (Letter from NCAA, Ex. 14.) As an observer, the NCAA procedures further
21 required that he NOT participate in deliberations. (Ex. 7, p. 46:3-23; Ex. 8, pp. 14:16-15:2, 16:23-
22 17:22, 19:12-20:4.) He is further prohibited from influencing the deliberations. (Ex. 7, pp. 47:5-
23 24, 54:5-11.) However, as the evidence clearly demonstrates, Howard DID participate in the first
24 day of deliberations (and continued to participate in deliberations thereafter) and voiced a strong
25 position about what should be done in an obviously improper attempt to influence the voting
26 members of the COI. (Howard Memo, Ex. 15; Cooper Memo, Ex. 16.) This was done even
27 though the bylaws required the COI to discuss the matter in private. (Ex. 7, pp. 59:15-60:16; Ex.
28 9, Rule 32.8.8.)

1 On February 22, 2010, one day after the first day of deliberations (at the end of which the
2 decision on McNair had been deferred because the COI could not agree on the case against him)
3 (Ex. 7, pp. 60:17-61:8; Ex.10), Rodney Uphoff ("Uphoff"), the NCAA Coordinator of Appeals,
4 sent a vitriolic email to Shepard Cooper, the Director of the COI and an NCAA employee (Ex. 7,
5 pp. 148:12-13), about his concern that the COI was going to go too easy on USC, and why he
6 believed McNair should be hit with an unethical conduct finding. (Ex. 17.) He then prepared a
7 lengthy memo to be forwarded to the COI where he excoriated McNair. (Ex. 2.)

8 Astoundingly, recognizing that it was wrong for Uphoff to be participating in the
9 deliberation process, he stated the following to Cooper:

10 "Obviously this email is only going to you. I haven't been able to sleep for three
11 nights because I fear that the Committee is going to be too lenient on USC on the
12 football violations. I think that would be a huge mistake in light of the evidence
13 against Bush. It is incredible to think that he wasn't involved from the start.
14 Roscoe and I both are concerned because the evidence in our view is overwhelming
15 that he was involved in 2004 and we are surprised at the very level of proof
16 demanded by some of the Committee members. I am working on a long memo
17 summarizing the evidence...."

18 Likewise, Roscoe Howard sent a diatribe against McNair to Cooper (which was eventually
19 shared with the voting members of the COI), essentially expressing his desire to publish his
20 thoughts to the entire committee in an obvious attempt to influence them. (Ex. 15.) Howard went
21 even further in his obvious contempt for McNair and wrote as follows:

22 "McNair should have all inferences negatively inferred against him...we need not
23 say why we disbelieve him, we only need to let the public, or whomever, know that
24 we do disbelieve him."

25 How much more evidence of malice is needed? Neither of these people was supposed to
26 be influencing the *voting* members of the COI. Even more striking is that the NCAA encouraged
27 Howard to participate in the deliberations even though he was prohibited from doing so. As
28 Exhibit 31 makes clear, Howard was fully participating in the deliberations. (Elworth Email, Ex.
31.)

Amazingly, even though he was required to be a neutral administrator, Cooper clearly
voiced his opinion on McNair as well, conceding, amongst other things, that he believed that

1 "McNair shouldn't be coaching at any level....He's a lying, morally bankrupt criminal, in my
2 view..."⁷ (Ex. 16.)

3 Despite the fact that Howard, Uphoff and Cooper held these views, they were absolutely
4 forbidden from sharing them with the voting members of the COI, as this clearly would be an
5 attempt to improperly influence COI deliberations. But that is precisely what the NCAA allowed
6 them to do and, in doing so, the NCAA purposefully violated its own rules. Fearful that the COI
7 would be too lenient on USC, Uphoff's and Howard's lengthy rants about USC and McNair were
8 intentionally sent by Cooper and Howard to the voting COI members for the obvious purpose of
9 improperly influencing them to achieve the result against McNair that the NCAA wanted. (Exhs.
10 2, 15, 16, 17, 18.) In fact, these inappropriate communications were sent to the voting members
11 immediately prior to the next scheduled deliberation session of March 2, 2012. (Cooper Memo,
12 Ex. 19; Ex. 7, pp. 224:23-225:12.) Egregiously, the decision was made to send Uphoff's memo to
13 the voting members of the COI to "get the conversation going." (Uphoff Email, Ex. 29.) This
14 demonstrates a clear intent to improperly exert influence over the COI.

15 All of this was in blatant violation of NCAA rules, procedures and bylaws. Importantly,
16 neither McNair nor his counsel were made aware of the existence of these "rants", nor of the fact
17 that they were provided to the COI voting members after deliberations began. As such, they did
18 not have the opportunity to respond. (McNair Dec., Tompsett Dec.) Moreover, when questioned
19 about his memo, Uphoff doubled down and reiterated his position to the voting members that
20 McNair had lied. (Uphoff Email, Ex. 30.)

21 In addition, members of the COI went OUTSIDE the record by performing internet
22 searches on McNair and inaccurately concluding that he had been convicted of crimes related to
23 dog fighting. This information was then shared with the voting members. (Ex. 15.) Without ever
24 notifying McNair or his lawyer (again, in violation of its own rules), the COI considered whether
25

26 ⁷ In fact, the bylaws expressly prohibited Uphoff, the Coordinator of Appeals, from
27 participating in deliberations. (Ex. 9, Rule 19.1.1.4.) In addition, the procedures of the COI
28 prohibited both Howard and Cooper from participating in the deliberations as well. (Ex. 7, p.
46:3-23; Ex. 8, pp. 14:16-15:2, 16:23-17:22, 19:12-20:4.)

1 McNair had supposedly lied when asked whether he had anything in his background, of a criminal
2 nature, *which would call into question his veracity.* (Hearing Transcript Excerpt, Ex. 20.) In fact,
3 not only did McNair and his lawyer truthfully answer the question, but the information obtained
4 on the internet was inaccurate, because McNair had NEVER been convicted of dog fighting.
5 Cooper concedes that he has no information that McNair lied about whether he was convicted of
6 anything bearing on his veracity. (Ex. 7, pp. 180:17-18:1.) Unfortunately, neither McNair nor his
7 lawyer had any knowledge that this was going on nor did they have the opportunity to respond to
8 it. (McNair Dec., Tompsett Dec.) Once again, the NCAA determined that it was not going to let
9 the facts or the rules get in the way of its crusade against McNair.

10 After violating these clear-cut rules regarding deliberations, Director Cooper, on behalf of
11 the NCAA, began to write an opinion finding McNair guilty of unethical conduct *before* the COI
12 had even reached a decision on that issue! (Ex. 7, pp. 201:7-202:24, 214:4-215:2.) In fact, as
13 Exhibit 21 makes clear, Uphoff was pushing Cooper to draft findings against McNair even though
14 he conceded that, "We are not going to achieve consensus re McNair no matter how many calls we
15 have and we are going over ground that we already have discussed." Not only was Cooper not a
16 voting member of the COI, he was not a member of the COI at all. His role as Director was only
17 to be a support staff liaison to the COI and to administratively support the Committees. (Ex. 7, p.
18 23:6-8, 56:17-57:2.) It is important to remember that Cooper is the individual who had previously
19 expressed his overwhelming bias against McNair. Obviously, it was hoped that Cooper's draft
20 opinion would push the COI voting members to decide against McNair. (Uphoff Email, Ex. 21.)
21 As Uphoff stated, after Cooper drafted something up, a vote would be taken and "hopefully, it will
22 come out the right way." (Ex. 21.) Cooper and Uphoff made it clear that they believe the "right
23 way" would be to destroy McNair's reputation and career.

24 But even this action by the NCAA could not solve the next problem: The record evidence
25 could not support such a finding. So, consistent with its history in the deliberations of the McNair
26 matter, the NCAA broke another of its rules related to fair process: it blatantly falsified the
27 evidence in order to support a finding against Todd McNair. It knew that the phone records
28 clearly demonstrated that McNair had not called Lake (as Lake had claimed) and that, therefore,

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1 McNair could not have had a motivation to make such a call as Lake claimed. Indeed, at best, all
2 McNair would have done would have been to answer a ringing telephone – something which
3 requires no more motivation than to pick up the phone. Moreover, as the NCAA knew, there was
4 no evidence anywhere in the record that McNair knew anything about Bush's financial
5 relationship with Lake at any earlier date and, therefore, could not have had a motivation about
6 something which he did not know.

7 Undaunted by this huge problem with the evidence (and consciously ignoring that its
8 interview with McNair used the wrong date for the call), and in the face of the high standard of
9 proof described above, the NCAA decided to fabricate what Lake had said in order to achieve its
10 goal. (Ex. 1.) It published that Lake had said that Lake had called McNair on January 8, 2006 at
11 1:34 A.M. even though Lake never said any such thing in his statement. It published that Lake
12 had threatened to go public even though Lake never said any such thing in his statement. It
13 published that Lake made the call for the purpose of asking McNair to intercede with Bush and
14 getting him to adhere to the agency agreement that Bush had allegedly made with Lake and his
15 partner, even though Lake never said any such thing. It published that Lake said that he told
16 McNair that he did not intend to lose the money that he had given to Bush and Bush's parents,
17 even though Lake never said any such thing. It published that Lake told McNair that he preferred
18 not to go public with the matter and implicate the institution, even though Lake never said any
19 such thing. (Exhs. 1, 3.) In short, the NCAA fabricated evidence to suit its needs. The facts as
20 they existed just didn't work for the NCAA, as they would not have supported a finding against
21 McNair nor, as set forth below, did they support a finding which would have allowed the
22 implementation of severe penalties against the USC football program.

23 It is obvious that the NCAA knew just what it was doing. After all, the COI wrote the
24 facts differently than they appeared in the record. The COI, heavily and inappropriately
25 influenced by individuals who were not permitted to participate in deliberations, knew exactly
26 what it was doing.

27 Worse, the NCAA COI then sent the final draft of the Infractions Report to the NCAA
28 Enforcement Staff for a stamp of approval as to the facts stated in the report. (Ex. 7, pp. 216:6-

1 217:11.) The Enforcement Staff, which had developed the record evidence in the first place,
2 approved of the fabricated facts and sent the draft report back to the COI with its blessing. (Ex. 7,
3 pp. 216:6-217:11; Ex. 13, pp. 274:13-276:5.) With both of these departments of the NCAA (the
4 Enforcement Staff and the COI) knowingly approving of these false facts, the report was
5 published. (Ex. 1.)

6 Worse yet, in his appeal to the NCAA's Infractions Appeals Committee ("IAC"),
7 McNair's lawyer Scott Tompsett presented in writing, in painstaking detail, the facts that had been
8 fabricated and which were not supported by the record. (Appellate Brief, Ex. 22.) The appeal was
9 denied, even though the IAC clearly was shown that the facts were fabricated. (IAC Decision, Ex.
10 23.)

11 Thus, three different departments of the NCAA involved with enforcement proceedings,
12 each supposedly independent from the other, knowingly used or approved the use of fabricated
13 facts to find against Todd McNair. This constitutes overwhelming evidence of malice.

14 As further evidence of malice, the NCAA failed to provide McNair basic tenets of fair
15 process despite their bylaws which made clear that institutions, staff and student-athletes be
16 afforded "fair procedures in the consideration of an identified or alleged failure in compliance"
17 and that the assurance of fair process is "essential to the conduct of a viable and effective
18 enforcement program." (Ex. 9, Sections 2.8.2, 19.01.1.) Even Cooper conceded that fair process
19 was required. (Ex. 7, pp. 99:24-100:12.) In addition to the fabrication of facts in violation of rules
20 as set forth above, the NCAA conducted an interview of Lake which excluded McNair, USC and
21 their counsel from the process, and prevented cross-examination of McNair's key accuser. (Ex.
22 13, pp. 75:13-76:8; Ex. 7, pp. 101:22-102:18, 108:21-109:1.) Moreover, in interviewing McNair,
23 the enforcement staff made a conscious decision to interview McNair without allowing him to
24 have personal counsel present, in clear contravention of NCAA bylaws, rules and regulations.
25 (Ex. 9, Rule 32.3.6; Ex. 13, pp. 183:7-12, 204:4-9; McNair Dec.)

26 As a result, in complete contravention of NCAA bylaws, rules and regulations, fair process
27 was discarded in favor of achieving the NCAA's desired result.

28

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1 Why did the NCAA engage in this unceasing effort to find against McNair despite the
2 evidence? While McNair does not need to prove what the NCAA's motives were in order to
3 establish his claims, those motives can in fact be proven. The NCAA believed that in order to
4 punish USC to the extent it desired, it needed to make a finding against Todd McNair. Without
5 such finding, the only remedy which the NCAA had in relation to the Reggie Bush issue would
6 have been a charge of a violation of amateurism legislation against Reggie Bush himself. USC
7 could not have been charged or penalized as severely as it was. In the limited discovery plaintiff
8 has been afforded so far, two NCAA officials have candidly acknowledged that a finding against
9 McNair was necessary for the penalties to be assessed against USC. (Ex. 13, pp. 107:22-109:24,
10 111:1-112:1; Ex. 8, 144:14-18.) Furthermore, as stated above, Cooper expressed his desire to
11 ensure that McNair no longer had a coaching career at ANY level. (Ex. 16.) This all fits in with
12 the efforts of Cooper, Uphoff and Howard to hijack the process. As Uphoff articulated, "I agree
13 that this case cries out for something dramatic" (Uphoff Email, Ex. 28) and "a failure to send a
14 serious message in this case undercuts efforts to help clean up NCAA sports." (Ex. 2.)

15 Consequently, the NCAA clearly disregarded the rights and reputation of Todd McNair to
16 punish USC, a program for which it had clear disdain.⁸ All of this is malice personified, requiring
17 that defendants motion be denied.⁹

18 **III. ARGUMENT.**

19 **A. The Anti-SLAPP Standard.**

20 Code of Civil Procedure section 425.16 – the anti-SLAPP statute – provides:

21
22 ⁸ The reaction of COI members to the fact that USC hired Lane Kiffin as its Head Football
23 Coach is one example of their disdain for USC. (Ex. 2; Ex. 15.)

24 ⁹ In its moving papers, the NCAA, in the Declaration of Angie Cretors ("Cretors Dec."), goes
25 to significant lengths to include irrelevant information about events which allegedly occurred at a
26 birthday party for Marshall Faulk on March 5, 2005. As Ms. Cretors ultimately concedes, issues
27 surrounding this matter were debunked and proven irrelevant by McNair and his counsel, and no
28 findings were made. Thus, it constitutes nothing more than a smokescreen designed to direct this
Court's attention away from Defendant's own misconduct. As such, Plaintiff will not address the
issue further.

1 [a] cause of action against a person arising from any act of that person in
2 furtherance of the person's right of petition or free speech under the United States
3 or California Constitution in connection with a public issue shall be subject to a
special motion to strike, unless the court determines that the plaintiff has
established that there is a probability that the plaintiff will prevail on the claim.

4 (Code Civ. Proc., § 425.16, subd. (b)(1).)

5 Subdivision (b)(1) establishes a two-prong inquiry, with a shifting burden of proof.
6 Initially, under the first prong, the defendant bringing the anti-SLAPP motion must demonstrate
7 that the challenged cause of action arises from a protected activity. (See, e.g., *Lee v. Fick* (2005)
8 135 Cal.App.4th 89, 95, citing *Navellier v. Sletten* (2002) 29 Cal.4th 82, 88; Code Civ. Proc., §
9 425.16, subd. (b)(1).) "A defendant meets this burden by demonstrating that the act underlying
10 the plaintiff's cause fits one of the categories spelled out in section 425.16, subdivision (e)."
11 (*Navellier v. Sletten*, *supra*, 29 Cal.4th at p. 88, citing *Braun v. Chronicle Publishing Co.* (1997)
12 52 Cal.App.4th 1036, 1043.)

13 Only if the court finds the defendant has met this initial burden does the analysis proceed
14 to the second prong, where the burden shifts to the plaintiff to establish a probability of prevailing
15 on his or her claims. (See, e.g., *Navellier v. Sletten*, *supra*, 29 Cal.4th at p. 88, citing *Equilon*
16 *Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 67.)

17 **B. The NCAA Cannot Avoid a Trial on the Merits as Plaintiff Has Sufficient**
18 **Evidence to Substantiate His Claims.**

19 Once the defendant makes the "threshold showing that the challenged cause of action is
20 one "arising from" protected activity," the court "then must consider whether the plaintiff has
21 demonstrated a probability of prevailing on the claim." (*Nygaard v. Uusi-Kerttula*, *supra*, 159
22 Cal.App.4th at p. 1035, quoting *City of Cotati v. Cashman*, *supra*, 29 Cal.4th at p. 76.) In
23 determining whether a plaintiff has made the requisite factual showing, the court considers the
24 pleadings, and supporting and opposing affidavits upon which the liability or defense is based. (§
25 425.16, subd. (b)(2).) However, the court neither weighs credibility nor compares the weight of
26 the evidence. Rather, it accepts as true the evidence favorable to the plaintiff, and evaluates the
27 defendant's evidence only to determine if it has defeated that evidence submitted by the plaintiff as
28 a matter of law. If the plaintiff can show a probability of prevailing on any part of its claim, the

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1 cause of action is not meritless and will not be stricken; once a plaintiff shows a probability of
2 prevailing on any part of its claim, the plaintiff has established that its cause of action has some
3 merit and the entire cause of action stands. (*Oasis West Realty, LLC v. Goldman, supra*, 51
4 Cal.4th at p. 820.) If Plaintiff provides any evidence which supports his claims, Defendant's
5 motion must be denied:

6 "The plaintiff need only establish that his or her claim has minimal merit to avoid being
7 stricken as a SLAPP." (*Hailstone v. Martinez, supra*, 169 Cal.App.4th at p. 735.) The question
8 whether the plaintiff has shown a probability of prevailing is reviewed independently on appeal.
9 (*Ibid.*)

10 As now explained plaintiff satisfies this standard as to each of his claims.

11 **1. McNair Has Sufficient Evidence to Support His Defamation Claims.**

12 "The elements of a defamation claim are (1) a publication that is (2) false, (3) defamatory,
13 (4) unprivileged, and (5) has a natural tendency to injure or causes special damage." (*Wong v.*
14 *Jing* (2010) 189 Cal.App.4th 1354, 1369.) Libel is defamation in written form. (*Ibid.*) A
15 statement that "[t]ends directly to injure [the plaintiff] in respect to his office, profession, trade or
16 business ... by imputing something ... that has a natural tendency to lessen its profits" is actionable
17 defamation. (Civ. Code, § 46; *Rosenaur v. Scherer* (2001) 88 Cal.App.4th 260, 278.)

18 Here, McNair has alleged two causes of action for defamation. The first is for libel based
19 on the reports published by defendants which falsely and maliciously stated that McNair is
20 unethical, has committed unethical acts, cannot adequately perform in his profession, and is
21 dishonest in his business. (Ex. 1.) The second is for slander alleging the NCAA agents including
22 Paul Dee (the Chairman of the COI), falsely proclaimed among other things that McNair "attested
23 falsely that he had no knowledge of NCAA violations," and that he had "violated NCAA unethical
24 conduct legislation." (Ex. 24.)

25 McNair alleges and now offers proof that defendants defamatory conduct effectively ended
26 his career as a college football coach. Since the publication of the Infractions Report, McNair has
27 not obtained a position as a college football coach, despite his impressive credentials. Moreover,
28

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1 it is clear that he would have remained on the USC coaching staff, but/for the wrongful conduct of
2 the NCAA. (McNair Dec.)

3 In its motion, the NCAA first argues that McNair's defamation claims must be dismissed
4 because he supposedly cannot prove a false statement. According to the NCAA, in order to prove
5 a false statement McNair must present evidence that he did not speak to Lake in the middle of the
6 night on January 8, 2006. (Mtn 8.) This is a cramped and misleading view of McNair's
7 defamation claims. Those claims are not dependent upon whether a telephone conversation of
8 short duration occurred at that point. Rather, those claims are based upon the false statements as
9 to who made the call and what transpired during that telephone call that led to the NCAA's
10 equally false statements that McNair engaged in unethical conduct. Even if a brief telephone call
11 took place between McNair and Lake on January 8, 2006, that would not support an unethical
12 conduct finding against McNair and would not have cast McNair in a false light. McNair
13 explained that if he spoke to Lake during the call, it probably was about Lake's interest in
14 representing Bush, as Bush had not yet selected an agent and had meetings scheduled in the
15 upcoming days with Carroll and McNair to discuss his decision. (Ex. 32.)

16 The NCAA next argues that the "committee's opinions and conclusions on credibility –
17 based on disclosed facts – are not actionable." (Mtn. 8.) To support this assertion, the NCAA
18 relies on cases describing the difference between an actionable statement of fact and a non-
19 actionable statement of opinion. These cases reason that "the question is not strictly whether the
20 published statement is fact or opinion. Rather, the dispositive question is whether a reasonable
21 fact finder could conclude the published statement declares or implies a provably false assertion of
22 fact." (*Franklin v. Dynamic Details, Inc., supra*, 116 Cal.App.4th at p. 385.) It follows that "[a]
23 statement of opinion based on fully disclosed facts can be punished only if the stated facts are
24 themselves false and demeaning." [Citations.]" (*Id.* at p. 387; accord, *Integrated Healthcare*
25 *Holdings, Inc. v. Fitzgibbons, supra*, 140 Cal.App.4th at p. 528; *Partington v. Bugliosi* (9th Cir.
26 1995) 56 F.3d 1147, 1156-1157 ["[W]hen an author outlines the facts available to him, thus
27 making it clear that the challenged statements represent his own interpretation of those facts and
28 leaving the reader free to draw his own conclusions, those statements are generally protected by

1 the First Amendment."]; *Riley v. Harr* (1st Cir. 2002) 292 F.3d 282, 289 ["[E]ven a provably false
2 statement is not actionable if "it is plain that the speaker is expressing a subjective view, an
3 interpretation, a theory, conjecture, or surmise, rather than claiming to be in possession of
4 objectively verifiable facts""].)

5 However, when the facts which are disclosed are false, then the "full disclosure" rule has
6 no application. *Overhill Farms, Inc. v. Lopez* (2011) 190 Cal.App.4th 1248, 1263-64, is on point.
7 There, the Court concluded that the "full disclosure" rule on which the NCAA relies "is of no
8 assistance to defendants, for the simple reason that their statements do not fully and accurately
9 disclose the facts surrounding the firings" which were involved in that case because the defendants
10 writings did "not even begin to acknowledge the full story. . . ." (*Id.* at pp. 1263-1264.) The
11 Court summed up: "The evidence here was sufficient to demonstrate that defendants' disclosure
12 of facts underlying the employment termination was materially incomplete and misleading,
13 making their 'racist firing' claim sound far more credible than it actually is. Consequently, the rule
14 that '[a] statement of opinion based on fully disclosed facts can be punished only if the stated facts
15 are themselves false and demeaning [citation]' (*Franklin*, supra, 116 Cal.App.4th at p. 387, 10
16 Cal.Rptr.3d 429), does not apply here." (*Id.* at pp. 123-1264.)

17 Precisely the same is true here. The NCAA manufactured and distorted facts to support its
18 preordained crusade to get USC at any cost even if it meant throwing McNair under the proverbial
19 bus based upon false facts.

20 The crux of the finding against McNair is the COI's conclusion that Lake called McNair at
21 1:34 a.m. on January 8, 2006, and asked McNair to convince Bush "either to adhere to the agency
22 agreement or reimburse Lake and Michael Michaels for money provided to Bush and his family."
23 Infractions Report, Ex. 1, Finding B-1-b, p. 23. According to the COI, it was this two and a half
24 minute phone call that put McNair on notice that Bush had entered into an agency agreement with
25 Lake and Michaels, and that Bush had accepted money in violation of NCAA amateurism
26 legislation. McNair has consistently and categorically denied the allegation. The COI said it
27 relied on Lake's statement to support its finding:
28

1 "The Committee finds [Lake] credible in his report of the call. Lake said that he
2 phoned [McNair] to ask him to intercede with [Bush] and get him to adhere to the
3 agency agreement that he made with [Lake and Michaels]. [Lake] said he also told
4 [McNair] that he did not intend to lose the money he had given [Bush] and his
5 parents and preferred not to go public with the matter and implicate the institution."
6 (Ex. 1, p. 26.)

7 As described above, the COI materially mischaracterized and changed Lake's statement.
8 Lake never said, either in words or substance, what the COI claims he said. In fact, Lake's actual
9 statement does not comport with undisputed facts and, therefore, it is not credible or reliable. To
10 fix that problem, the COI changed Lake's statement to what they wish it would have been, so that
11 it fit their finding, and so that it did not conflict with the telephone records.

12 The reason the COI changed Lake's statement is simple: Lake's story does not comport
13 with the evidence or the facts because there is no evidence that McNair even knew about the
14 agency agreement, much less that Bush was backing out of the agreement. There is no evidence –
15 even from Lake – that anyone told McNair about the agency agreement before January 8, 2006.
16 (McNair Dec.; Ex. 3.) Further, Lake's statement was directly contradicted by the telephone
17 records. Thus, McNair would not have called Lake to discuss something he was not aware of.
18 But that is exactly what Lake claimed McNair did.

19 The COI resolved this material contradiction in Lake's statement by changing Lake's
20 description of the call to make it appear like Lake said he called McNair to ask him to intercede
21 and get Bush to adhere to the agency agreement. That is not what Lake said in his interview, and
22 the COI has no authority to mold and shape a witness's statement to make it appear more credible
23 and reliable than it actually is or to make it fit a predetermined result. According to its own
24 bylaws, procedures and rules, the COI should take a witness's statement at face value, not change
25 it to fix inconsistencies and contradictions.

26 Lake's bare, unsupported conclusory statement was insufficient to establish that McNair
27 knew that Bush had taken money in violation of NCAA rules. Without competent evidence that
28 McNair knew that Bush had taken money, there is no unethical conduct finding. Thus, the COI
embellished, changed and falsified Lake's statement to support its finding that Lake specifically
told McNair that he had given money to Bush even though Lake never said that.

1 And this falsification of the evidence was no accident. As already described, on at least
2 three occasions, the NCAA had the opportunity to correct these errors – even after they were
3 called to its attention in detail. Despite knowledge of these errors, the NCAA failed to make a
4 single correction. The reason why is clear. The NCAA knew that in order to sanction USC to the
5 extent it desired, it would be necessary to demonstrate knowledge by a USC employee of the
6 improper benefits allegedly received by Bush. Unfortunately, McNair was the sacrificial lamb.
7 Thus, in order to make such a finding, it would be necessary to tar McNair with unethical conduct,
8 regardless of the facts or the truth. The NCAA's defamatory writings are anything but a full and
9 accurate disclosure of the facts on which the NCAA based its conclusion. The characterization of
10 McNair having engaged in unethical conduct and the unethical conduct finding which effectively
11 ended McNair's career as a college football coach was thus defamatory. At a minimum, the
12 evidence is sufficient to allow a jury to make such a determination.

13 The same is true with respect to McNair's cause of action for slander. The NCAA argues
14 that "to the extent McNair's claim is based on a statement allegedly made by the NCAA
15 president...the claim fails" because it is "too vague to be taken as fact." (Mtn 9.) There are
16 several flaws in this argument. First, it fails to reference the fact that the second cause of action
17 for slander is based on much more than the one statement identified in the motion. That claim is
18 also based on the numerous other statements contained in paragraph 23 of the complaint including
19 charges that McNair "attested falsely," he "violated NCAA unethical conduct legislation,"
20 impeded [USC] from [fulfilling] its obligations under the NCAA violations" and more. Since the
21 NCAA does not even reference these allegations in its motion, it is presumably not challenging
22 that they are actionable. As to the one statement the NCAA does reference, its argument takes that
23 statement completely out of context. When NCAA Chairman Emmert stated that "The NCAA got
24 it right" he was not simply making a vague accusation that could not be understood as defamatory.
25 Rather, that statement was made in the context of the very detailed factual accusations and charges
26 that the NCAA had already published against McNair. An individual hearing Mr. Emmert –
27 particularly someone involved with collegiate sports – would know that Mr. Emmert was
28 reasserting those accusations and findings and was not just making the value statement the NCAA

1 now depicts. (See *Gallagher v. Connell* (2004) 123 Cal.App.4th 1260, 1270-1271.) (Ex. 24.) This
2 case is therefore far different than *ComputerXpress, Inc. v. Jackson* (2001) 93 Cal.App.4th 993,
3 1013, where the statements the Court found to be vague were not endorsements of a document
4 containing detailed defamatory statements.

5 **2. McNair Is Not A Public Figure.**

6 The NCAA next argues that even if McNair can establish that it falsely stated that he had
7 engaged in conduct which effectively ended his career, it nevertheless could not be liable for
8 defamation because McNair is a public figure, therefore making it necessary for McNair to
9 establish that the NCAA acted with malice. As now explained, the NCAA is wrong. McNair is
10 not a public figure. Even if he were, there is ample evidence that the NCAA acted with the
11 requisite malice.

12 In arguing that McNair is a limited public figure, the NCAA relies on the fact that (1)
13 McNair played professional football; (2) he accepted a position coaching a very visible running
14 back; (3) given USC's history it was reasonable to expect public scrutiny; and (4) his arrival at
15 USC was reported in the press. (Mtns. 9-10.) The NCAA cites to *Barry v. Time, Inc.*
16 (N.D.Cal.1984) 584 F.Supp. 1110.

17 However, in *Warford v. Lexington Herald-Leader Co.*, (Ky. 1990) 789 S.W.2d 758, 767-
18 69 the Court, referencing the district court's opinion in *Barry*, rejected a similar argument in a
19 well-reasoned opinion explaining that "[t]he 'nationwide controversy regarding recruitment of
20 college athletes' is too general a statement of a public controversy to be the axis of debate. Cf.
21 *Wolston v. Reader's Digest* 443 U.S. at 166 n. 8, 99 S.Ct. at 2707 n. 8 ("no public controversy or
22 debate in 1958 about desirability of permitting Soviet espionage in the United States"), *Barry v.*
23 *Time, Inc.*, 584 F.Supp. 1110, 1116 (N.D.Cal.1984) ("little or no dispute that violation of NCAA
24 rules was improper"). Certainly, in 1985 there was no legitimate controversy or debate about the
25 desirability of NCAA rules violations."

26 Newsworthy though NCAA recruiting violations at the University of Pittsburgh may have
27 been, public interest alone does not create a public controversy, nor does it create a public figure.
28 *Wolston v. Reader's Digest* 443 U.S. at 167, 99 S.Ct. at 2707; *Time v. Firestone* 424 U.S. at 454,

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1 96 S.Ct. at 965. A general public concern about recruiting violations, like the general public
 2 concern about wasteful public expenditures is not sufficient to qualify a grant recipient or
 3 assistant basketball coach as a public figure if neither is surrounded by a specific controversy.
 4 See *Hutchinson v. Proxmire*, 443 U.S. at 135, 99 S.Ct. at 2688." (Ibid, emphasis added.)

5 The *Warford* Court got it right. "A person is not a public figure merely because he
 6 happens to be involved in a controversy that is newsworthy. [Citation.] "[A] "public figure"
 7 plaintiff must have undertaken some voluntary act through which he seeks to influence the
 8 resolution of the public issues involved. As such, the mere involvement of a person in a matter
 9 which the media deems to be of interest to the public does not, in and of itself, require that such a
 10 person become a public figure for the purpose of a subsequent libel action. [¶] . . . [W]hen called
 11 upon to make a determination of public figure status, courts should look for evidence of
 12 affirmative actions by which purported "public figures" have thrust themselves into the forefront
 13 of particular public controversies.' [Citations.]" (*Brown v. Kelly Broadcasting Co.* (1989) 48
 14 Cal.3d 711, 744-745.) In order to elevate a person to public figure status, a fairly high level of
 15 public activity is required. (*Id.* at p. 745.) Most significantly, "those charged with defamation
 16 cannot, by their own conduct, create their own defense by making the claimant a public figure."
 17 (*Khawar v. Globe Internat., Inc.* (1998) 19 Cal.4th 254, 266.)

18 Here, as described above, McNair did not voluntarily inject himself into a matter of public
 19 interest in an effort to sway public opinion. Rather, he was involuntarily dragged into this matter
 20 by the very entity that is now attempting to claim he is a public figure. As the *Khawar* Court so
 21 aptly stated: "those charged with defamation cannot, by their own conduct, create their own
 22 defense by making the claimant a public figure." That is precisely what the NCAA seeks to do.

23 In any event, as now explained even if McNair were a limited public figure, there is ample
 24 evidence that the NCAA acted with malice.

25 **3. Even If McNair Were A Public Figure, Then There is Ample Evidence**
 26 **That The NCAA Acted With Malice.**

27 The NCAA next argues that because McNair is a limited public figure it will be necessary
 28 for McNair to prove that it acted with constitutional malice with respect to his defamation claims.

1 The NCAA argues that McNair will not be able to prove malice. To the contrary, given the
2 aforementioned evidence, it is clear that McNair will be able to demonstrate malice.

3 The actual malice standard of *New York Times v. Sullivan*, *supra*, 376 U.S. 254, requires a
4 showing that the allegedly false statement was made "'with knowledge that it was false or with
5 reckless disregard of whether it was false or not.'" (*Id.* at pp. 279-280.) The reckless disregard
6 standard requires a "'high degree of awareness of . . . probable falsity'" (*Garrison v.*
7 *Louisiana* (1964) 379 U.S. 64, 74 [13 L.Ed.2d 125, 85 S. Ct. 209].) "'There must be sufficient
8 evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the
9 truth of his publication.'" (*St. Amant v. Thompson* (1968) 390 U.S. 727, 731 [20 L. Ed. 2d 262, 88
10 S. Ct. 1323].) Gross or even extreme negligence will not suffice to establish actual malice; the
11 defendant must have made the statement with knowledge that the statement was false or with
12 "'actual doubt concerning the truth of the publication.'" (*Reader's Digest*, *supra*, 37 Cal.3d at p.
13 259, fn. 11.)

14 The existence of actual malice turns on the defendant's subjective belief as to the
15 truthfulness of the allegedly false statement. (*Reader's Digest*, *supra*, 37 Cal.3d at p. 257.) Actual
16 malice may be proved by direct or circumstantial evidence. *Factors such as failure to investigate,*
17 *anger and hostility, and reliance on sources known to be unreliable or biased* "'may in an
18 appropriate case, indicate that the publisher himself had serious doubts regarding the truth of his
19 publication.'" (*Id.* at pp. 257-258.) However, any one of these factors, standing alone, may be
20 insufficient to prove actual malice or even raise a triable issue of fact. (*Id.* at p. 258.)" (*Annette F.*
21 *v. Sharon S.* (2004) 119 Cal.App.4th 1146, 1166-1167 emphasis added; see also *Antonovich v.*
22 *Superior Court* (1991) 234 Cal.App.3d 1041, 1048 ["Although failure to investigate will not
23 alone support a finding of actual malice, [citation], the purposeful avoidance of the truth is in a
24 different category." (491 U.S. at p. 692 [105 L. Ed. 2d at p. 591].) "'[J]naction," i.e., failure to
25 investigate, which 'was a product of a deliberate decision not to acquire knowledge of facts that
26 might confirm the probable falsity of [the subject] charges' will support a finding of actual malice.
27 (*Ibid.*)"] Further, an inference of actual malice can also be drawn when a defendant's analysis
28 was designed to arrive at a predetermined conclusion. (*Suzuki Motor Corp. v. Consumers Union*

1 of *United States, Inc.* (9th Cir. 2003) 330 F.3d 1110, 1135 [evidence that the defendant's test was
2 designed to support its conclusion that plaintiff's vehicle rolled over too easily was sufficient to
3 prove actual malice]; see also *Harte-Hanks Communications, Inc. v. Connaughton* (1989) 491
4 U.S. 657, 684, 109 S.Ct. 2678, 2694, 105 L.Ed.2d 562 [newspaper decided to publish
5 unsubstantiated allegations against political candidate to support its overall attack on candidate in
6 spite of lacking credible source for the allegations].¹⁰

7 Here, as already described, there is sufficient evidence that defendants made a deliberate
8 decision to disregard their own procedures to properly investigate and to correct factual errors all
9 with the purpose of ensuring that they would be able to make an adverse finding against McNair in
10 their quest to sanction USC. The emails and memoranda obtained by McNair as a result of the
11 limited discovery he has been afforded drip with malice.

12 If there was any doubt, this was confirmed by McNair's appeal where he pointed out in
13 unmistakable, point-blank detail that the factual statements in the report which were critical to the
14 finding of unethical conduct were false. (Ex. 22.) Yet, the NCAA elected not to change even one
15 of its falsifications.¹¹ The reason was clear. If it corrected the false characterization of the
16 evidence then there would not be any basis to conclude that McNair engaged in unethical conduct.
17 It follows that McNair in turn could not be used as justification for a severe sanction against USC.

18 In addition to passing up repeated opportunities to investigate and correct its false
19 characterization of the evidence, malice in this case can be inferred by the NCAA's disregard and
20 violations of its own procedures in its effort to charge McNair. When the COI was unable to reach
21 the requisite consensus to make the unethical conduct finding against McNair, NCAA personnel
22 who were not supposed to even participate in the deliberations hi-jacked the process to ensure

23 ¹⁰ Communications between the Committee members make clear that the investigation was
24 sloppy, and the testimony of Johanningmeier makes clear that the NCAA made a conscious
25 decision to ignore evidence that might assist the COI. (Ex. 7, p. 62:1-11; Ex. 11; Ex. 8, p. 139:13-
26 22; Ex. 15.) The fact that the COI came to its predetermined conclusion despite the faulty
27 investigation is further indicia of malice.

28 ¹¹ In fact, the NCAA continues to this day to publish the demonstrably false statements on its
website. (Ex. 25.)

1 findings would be made against McNair regardless of the facts. NCAA employee Cooper, who
2 believed McNair "shouldn't be coaching at ANY level," helped Howard and Uphoff improperly
3 insert themselves into the deliberations with the sole purpose of persuading the voting members of
4 the COI to make the career-ending finding.

5 In his memo, which Howard himself described as a "rant" against McNair, Howard stated
6 that "McNair should have all inferences negatively inferred against him." He advised that "we
7 need not say why we disbelieve him we need only to let the public, or whoever, know we do
8 disbelieve him." Howard then went on to call McNair a liar based upon matters that were not in
9 the record, and which were in fact not true (relating to alleged convictions of dog fighting) and
10 questioning his credibility based on statements concerning the Marshall Faulk birthday party that
11 McNair attended that did not form a basis for the ultimate finding against McNair. (Ex. 1; 15.)
12 These efforts worked. At the very least, plaintiff's evidence is sufficient to get this case to a jury
13 and not be derailed at this early stage.

14 **C. The NCAA Common Interest Privilege Argument Lacks Merit.**

15 The NCAA next argues that its reports are protected by the common interest privilege
16 under Civil Code section 47, subdivision (c). As now explained that privilege does not shield the
17 NCAA from liability. This privilege generally applies to communications among supervisory
18 employees relating to a subordinate employee's job performance. (See *King v. United Parcel*
19 *Service, Inc., supra*, 152 Cal.App.4th at p. 440 ["employer's statements to employees regarding the
20 reasons for termination of another employee generally are privileged"]; *Bierbower v. FHP, Inc.*
21 (1999) 70 Cal.App.4th 1, 3 [privilege covers employer investigations of sexual harassment
22 allegations]; *Kelly v. General Telephone Co.* (1982) 136 Cal.App.3d 278, 285 (Kelly)
23 ["Communication among a company's employees that is designed to insure honest and accurate
24 records"].) Here, McNair was not an employee of the NCAA.

25 However, if that privilege were to apply in the abstract here, it does not shield the NCAA
26 because the defamatory communication was made with malice. "The malice necessary to defeat a
27 qualified privilege is 'actual malice' which is established by a showing that the publication was
28 motivated by hatred or ill will towards the plaintiff or by a showing that the defendant lacked
reasonable grounds for belief in the truth of the publication and therefore acted in reckless
disregard of the plaintiff's rights (citations)." (*Noel v. River Hills Wilsons, Inc.* (2003) 113
Cal.App.4th 1363, 1370).

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1 Here, even if the common interest privilege applied, there is sufficient evidence that the
2 NCAA acted with malice for the same reasons already explained. Therefore, that privilege does
3 not protect the NCAA's defamatory conduct.

4 **D. The NCAA Cannot Avoid McNair's Remaining Claims.**

5 In a final catch-all argument, the NCAA argues that McNair's remaining tort and contract
6 claims should be dismissed. (Mtn 13.) According to the NCAA, since all of McNair's claims
7 allege the same injury (damage to McNair's coaching career), it follows that if McNair cannot
8 prevail on his defamation claim then it is also necessarily the case that he cannot prevail on his
9 remaining claims. As already explained, however, the NCAA's arguments regarding McNair's
10 defamation claims fail. As now explained, the NCAA's remaining arguments as to the non-
11 defamatory claims also lack merit.

12 *Interference with contractual relations:* The NCAA argues that there was no breach or
13 disruption because McNair's contract with USC simply expired. (Mtn 13.) However, this is a
14 false characterization. Plaintiff alleged: "At all relevant times herein, prior to June 10, 2010, and
15 prior to the wrongful actions of the Defendants, and each of them, as described herein, it was the
16 desire and intent of both Plaintiff and USC to renew Plaintiff's contract for employment." (Ex.
17 26.) As described in the McNair declaration, he remained on the USC staff after Pete Carroll left
18 and was told that he would be retained by new Coach Kiffin - that is until the NCAA made its
19 unethical conduct finding as well as issuing its show cause penalty. It was because of this finding,
20 including the show cause penalty that McNair was told his contract would not be renewed.
21 (McNair Dec.)

22 *Tortious interference with prospective advantage.* The NCAA argues that this claim is
23 speculative because Pete Carroll and Mike Garrett left USC and therefore there was no assurance
24 that McNair would be kept on at USC. As just explained, however, this is false. Further, this
25 claim is not dependent upon McNair being kept on at USC. Prior to the false findings, McNair
26 was a highly sought after and successful college football coach at a well known Division I school.
27 He was the position coach for an award winning running back. There were numerous potential
28 coaching opportunities. This all ended when the unethical conduct finding was made. (McNair
Dec.)

The NCAA also argues that McNair could not pursue this claim because the NCAA was
not a stranger to any contract between McNair and a member institution. The NCAA reads the
term "stranger to the contract" far too broadly. Since the NCAA was not a party to the contract

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1 between McNair and USC (or the prospective contracts with member institutions) it was a stranger
2 and therefore could not interfere with impunity. (See *Woods v. Fox Broadcasting Sub., Inc.*
3 (2005) 129 Cal.App.4th 344, 352-356.)

4 *Negligence:* The NCAA argues that McNair cannot point to any bylaw that the NCAA
5 disregarded. (Mtn 15.) As described above, this argument lacks merit. McNair has submitted
6 evidence of a number of ways the NCAA violated its own rules in its effort to make an unethical
7 conduct finding against McNair. Further, while the NCAA attempts to depict its investigation and
8 hearing as thorough and fair (Mtn: 15), those labels ring hollow in view of what actually took
9 place. As depicted above, the pursuit of McNair was anything but thorough and fair. At the very
10 least, there is sufficient evidence to allow a jury to decide.

11 *Breach of Contract:* McNair was an intended third party beneficiary of a separate contract
12 between the NCAA and USC. As such, in undertaking the actions alleged herein, the NCAA
13 breached that contract with Mr. McNair.

14 Finally, the NCAA challenges McNair's claim for declaratory relief arguing that he has not
15 identified which of its bylaws should be stricken. Here, the bylaws that McNair challenges
16 include the ability to issue a show cause penalty. (Ex. 9, 19.02.1.) This penalty which was
17 leveled against McNair, was in direct violation of California law, as an improper restriction on the
18 right to work. (Cal. BPC. Code § 16600; *Edwards v. Arthur Andersen LLP* (2008) 44 C.4th 937.)¹²

19 **IV. CONCLUSION.**

20 For the foregoing reasons, the NCAA's motion to strike should be denied in full.

21 DATED: September 28, 2012

22 GREENE BROILLET & WHEELER, LLP

23 
24 _____
25 Bruce A. Broillet, Esq.
26 Attorneys for Plaintiff

27 ¹² In its moving papers, the NCAA attached a copy of an Order previously rendered in the
28 matter of *Guillory v. NCAA*. Despite the fact that the issues therein were completely different
from the matter at bar, the NCAA included the Order as an obvious attempt to improperly
influence this Court. The *Guillory* matter is completely irrelevant to the instant action and no
proceedings or orders therein should be considered here. It is also important to note that the
McNair and *Guillory* matters have been deemed by the Court to be unrelated.

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DECLARATION OF SCOTT TOMPSETT

I, SCOTT TOMPSETT, declare and say that:

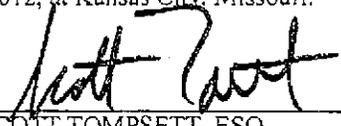
I was the attorney for Todd McNair in relation to the NCAA investigation which resulted in an Infractions Report being issued against USC and Todd McNair. I have personal knowledge of the facts surrounding the present action and all facts herein stated. If called as a witness, I could testify competently to the following:

1. At no time was I made aware that either Roscoe Howard or Rodney Uphoff were sending emails and memos to voting members of the Committee on Infractions. Because I was unaware of such communications, I did not have the opportunity to respond to them.

2. At no time did I become aware that the Committee on Infractions, during its deliberations, discussed issues related to allegations that Todd McNair was convicted of crimes related to dog fighting. Mr. McNair, in fact, had never been convicted of dog fighting. Because I was unaware of the communications between members of the Committee on Infractions, as well as non-voting members of the Committee on Infractions, I was unable to respond to them.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 28th day of September, 2012, at Kansas City, Missouri.



SCOTT TOMPSETT, ESQ.
Declarant

DECLARATION OF TODD MCNAIR

I, TODD MCNAIR, declare and say that:

I am the plaintiff in the above-entitled matter and, as such, I have personal knowledge of the facts surrounding the present action and all facts herein stated. If called as a witness, I could testify competently to the following:

1. The statements about me, which are contained in the University of Southern California Pubic Infractions Report ("Infractions Report"), particularly the statements made on pages 23 through 27 of the report, are false. At no time did I engage in any acts of unethical conduct as the report improperly and wrongfully states.

2. I had absolutely no knowledge that either Reggie Bush or any member of his family was receiving any improper benefits or money from Lloyd Lake ("Lake") or any other agent during the time periods identified in the Infractions Report.

3. I do not recall ever receiving a telephone call from Lake. I often received calls from people, some that I knew and some that I did not know, looking for Reggie Bush. However, I am absolutely certain that at no point did I ever discuss with Lake anything related to alleged improper benefits or money received by Reggie Bush and/or any member of his family.

4. The statement in the report that, "At least by January 8, 2006, the Assistant Football Coach (I) had knowledge that Student Athlete 1 (Reggie Bush) and Agency Partners A and B (Lloyd Lake and Michael Michaels) were engaged in NCAA violations" is patently false.

5. The statement in the report that, "At 1:34 a.m. he (I) had a telephone conversation for 2 minutes and 23 seconds with Agency Partner A (Lake) during which Agency Partner A attempted to get the Assistant Football Coach to convince Student Athlete 1 either to adhere to the agency agreement or reimburse Agency Partners A and B for money provided to Student Athlete 1 and his family" is patently false.

6. The statement in the report that "Agency Partner A said that he phoned the Assistant Football Coach to ask him to intercede with student Athlete 1 and get him to adhere to the Agency Agreement that he made with Agency Partners A and B" is patently false.

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1 7. The statement in the report that "Agency Partner A said he also told the Assistant
2 Football Coach that he did not intend to lose the money he had given Student-Athlete 1 and his
3 parents and preferred not to go public with the matter and implicate the institution" is patently
4 false.

5 8. The statement in the report which says, "Further, during his (my) September 19, 2006,
6 and February 15, 2008, interviews with the enforcement staff, the Assistant Football Coach
7 violated NCAA ethical conduct legislation by providing false and misleading information
8 regarding his knowledge of this telephone call and the NCAA violations associated with it" is
9 patently false.

10 9. The statement in the report which says, "The assistant football coach failed to alert the
11 institution's compliance staff of this information and later attested falsely, through his signature on
12 a certifying document, that he had no knowledge of NCAA violations" is patently false. I didn't
13 alert the compliance staff because I had no knowledge of the alleged NCAA violations.

14 10. The statements contained in the report of the National Collegiate Athletic Association
15 Division I Infractions Appeals Committee ("Appeals Committee Report") about me are false. In
16 particular, the Appeals Committee Report repeats, as though it were fact, many of the false
17 statements contained in the Infractions Report.

18 11. Additionally, the Infractions Report and the Appeals Committee Report wrongly,
19 improperly and falsely accuse me of lying. At no time did I lie or provide intentionally false
20 information to either the Committee on Infractions or the Appeals Committee.

21 12. Oral statements made by NCAA employees and agents about me, in relation to the
22 Infractions Report and the Appeals Committee Report, are false.

23 13. As a direct result of the false written statements made in the Infractions Report, the
24 Appeals Committee Report and the oral statements made by NCAA employees and agents,
25 including the unethical conduct finding and the "show cause" order, I have been unable to obtain
26 work as a college football coach.

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1 14. At no time was I made aware that either Roscoe Howard or Rodney Uphoff were
2 sending emails and memos to voting members of the Committee on Infractions. Because I was
3 unaware of such communications, I did not have the opportunity to respond to them.

4 15. At no time did I become aware that the Committee on Infractions, during its
5 deliberations, discussed issues related to allegations that I was convicted of crimes related to dog
6 fighting. I, in fact, had never been convicted of dog fighting. Because I was unaware of the
7 communications between members of the Committee on Infractions, as well as non-voting
8 members of the Committee on Infractions, I was unable to respond to them.

9 16. Prior to the decision by USC to not renew my contract, I had a discussion with Head
10 Football Coach Lane Kiffin. Coach Kiffin informed me that it was his intent to retain me on his
11 staff, however, he could not do so due to the findings as contained in the Infractions Report,
12 including the Unethical Conduct Finding and the Order to Show Cause penalty. Furthermore, I
13 had discussions with Todd Dickey, Senior Vice President for Administration at USC, who
14 indicated that USC could not renew my contract due to the NCAA Infractions Report, and the
15 content therein.

16 17. Prior to the commencement of the interviews which the NCAA conducted with me, I
17 was never orally informed that I was subject to NCAA discipline, or that I was a target of the
18 investigation. If I had been informed of such, I would have, consistent with NCAA rules, retained
19 personal counsel to represent me during the interviews.
20

21 I declare under penalty of perjury under the laws of the State of California that the
22 foregoing is true and correct.

23 Executed this 28th day of September, 2012, at Los Angeles, California.

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25 
26 TODD MCNAIR
Declarant

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(SPACE BELOW FOR FILING STAMP ONLY)

BRUCE A. BROILLET, State Bar No. 63910.
SCOTT H. CARR, State Bar No. 156664
ALAN VAN GELDER, State Bar No. 221820

Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

TODD McNAIR, an individual;

Plaintiff,

vs.

THE NATIONAL COLLEGIATE ATHLETIC
ASSOCIATION, an unincorporated
association, and DOES 1 through 50, inclusive,

Defendants.

CASE NO. BC462891
[Assigned for all Purposes to Judge
Frederick C. Shaller, Dept. 46]

**DECLARATION OF SCOTT H. CARR
WITH EXHIBITS IN SUPPORT OF
PLAINTIFF'S OPPOSITION TO
DEFENDANT'S SPECIAL MOTION
TO STRIKE COMPLAINT**

[Filed Concurrently with Plaintiff's
Opposition to Defendant's Special Motion
to Strike Complaint and Objections to the
Declaration of Laura A. Wytsma]

Date : November 21, 2012
Time : 1:30 p.m.
Dept. : 46

Complaint Filed: June 3, 2011
Trial Date: Not Set

[FILED UNDER CONDITIONAL SEAL]

///
///
///

DECLARATION OF SCOTT H. CARR

I, SCOTT H. CARR, declare and say that:

I am an attorney at law licensed to practice before all of the courts of the State of California, and am a partner of the law firm of Greene Broillet & Wheeler, LLP, attorneys of record for plaintiff, TODD MCNAIR. As such, I have personal knowledge of the facts surrounding the present action and all facts herein stated. If called as a witness, I could testify competently to the following:

1. Attached hereto as Exhibit 1 is a true and correct copy of the Committee on Infractions Report dated June 10, 2010.

2. Attached hereto as Exhibit 2 is a true and correct copy of a memo authored by Rodney Uphoff and sent to the voting members of the Committee on Infractions.

3. Attached hereto as Exhibit 3 is a true and correct copy of excerpts of the interview of Lloyd Lake dated November 6, 2007.

4. Attached hereto as Exhibit 4 is a true and correct copy of excerpts of the interview of Todd McNair dated February 15, 2008.

5. Attached hereto as Exhibit 5 is a true and correct copy of telephone records obtained by the NCAA from USC and Reggie Bush.

6. Attached hereto as Exhibit 6 is a true and correct copy of the Notice of Allegations issued to Todd McNair by the NCAA.

7. Attached hereto as Exhibit 7 is a true and correct copy of excerpts of the deposition testimony of Sheppard Cooper.

8. Attached hereto as Exhibit 8 is a true and correct copy of excerpts of the deposition testimony of Dennis Thomas.

9. Attached hereto as Exhibit 9 is a true and correct copy of portions of the NCAA Constitution, operating Bylaw and Administrative Bylaws in effect at the time of the USC hearing.

10. Attached hereto as Exhibit 10 is a true and correct copy of an email from Sheppard Cooper dated February 24, 2010 which indicates that a decision on McNair was deferred.

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1 11. Attached hereto as Exhibit 11 is a true and correct copy of emails, including an email
2 from Eleanor Myers dated March 1, 2010.

3 12. Attached hereto as Exhibit 12 is a true and correct copy of emails, including an email
4 from Briton Banowsky dated March 3, 2010.

5 13. Attached hereto as Exhibit 13 is a true and correct copy of excerpts of the deposition
6 testimony of Richard Johanningmeier.

7 14. Attached hereto as Exhibit 14 is a true and correct copy of a letter sent by the NCAA to
8 USC dated January 6, 2010 informing them that Roscoe Howard was "strictly" an observer.

9 15. Attached hereto as Exhibit 15 is a true and correct copy of an email from Roscoe
10 Howard dated March 2, 2010.

11 16. Attached hereto as Exhibit 16 is a true and correct copy of emails including an email
12 from Sheppard Cooper dated February 22, 2010.

13 17. Attached hereto as Exhibit 17 is a true and correct copy of emails including an email
14 from Rodney Uphoff dated February 22, 2010.

15 18. Attached hereto as Exhibit 18 is a true and correct copy of an email from Sheppard
16 Cooper dated March 1, 2010.

17 19. Attached hereto as Exhibit 19 is a true and correct copy of an email from Sheppard
18 Cooper dated February 25, 2010.

19 20. Attached hereto as Exhibit 20 is a true and correct copy of an excerpt from the hearing
20 transcript from the Committee on Infractions.

21 21. Attached hereto as Exhibit 21 is a true and correct copy of various emails including an
22 email from Rodney Uphoff dated March 4, 2010.

23 22. Attached hereto as Exhibit 22 is a true and correct copy of the appeal of Todd McNair
24 to the Infractions Appeals Committee.

25 23. Attached hereto as Exhibit 23 is a true and correct copy of the report of the Infractions
26 Appeals Committee dated April 29, 2011 and a press release issued therewith.

27 24. Attached hereto as Exhibit 24 is a true and correct copy of a transcript of an interview
28 with Paul Dee dated June 10, 2010 in relation to the issuance of the Infractions Report.

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1 25. Attached hereto as Exhibit 25 is a true and correct copy of a screen capture from the
2 NCAA website showing the current publication of the Infraction Appeals Committee Report.

3 26. Attached hereto as Exhibit 26 is a true and correct copy of the Complaint filed by
4 Plaintiff Todd McNair in this action.

5 27. Attached hereto as Exhibit 27 is a true and correct copy of an email from Sheppard
6 Cooper dated January 25, 2010 identifying Roscoe Howard as an observer.

7 28. Attached hereto as Exhibit 28 is a true and correct copy of various emails including an
8 email from Rodney Uphoff dated May 10, 2010.

9 29. Attached hereto as Exhibit 29 is a true and correct copy of various emails including an
10 email from Rodney Uphoff dated February 23, 2010.

11 30. Attached hereto as Exhibit 30 is a true and correct copy of various emails including an
12 email from Rodney Uphoff dated March 2, 2010.

13 31. Attached hereto as Exhibit 31 is a true and correct copy of various emails including an
14 email from Jim Elworth dated March 2, 2010.

15 32. Attached hereto as Exhibit 32 is a true and correct copy of a portion of the hearing
16 transcript for the Committee on Infractions.

17 33. Attached hereto as Exhibit 33 is a true and correct copy of a portion of the statement of
18 Maiesha Jones.

19
20 I declare under penalty of perjury under the laws of the State of California that the
21 foregoing is true and correct.

22 Executed this 28th day of September, 2012, at Santa Monica, California.

23
24
25 
26 SCOTT H. CARR, ESQ.
Declarant

Colleagues:

As I thought about defending whatever decision we make on appeal, I went back and reviewed the evidence that I think justifies the serious penalty of vacating the 2005 National championship. None of us take such a penalty lightly and want to be sure we are doing the right thing. . All of us bring different backgrounds and life experiences to this committee- that is one of our strengths. With that in mind, here is my assessment based on 34 years of doing trial work and teaching trial advocacy as to why I would be able to successfully defend such a penalty.

How do we know that there was an agreement to go forward between Lloyd Lake, Michael Michaels, Lamer Griffin and Reggie Bush in the fall of 2004.

- Lake's testimony corroborated by roughly 100 calls between Lake and Griffin or Lake and Bush in Dec 2004
- Lemuel Campbell says that he learned of Lake and Lamar Griffins plans to go forward with sports agency in fall of 2004 (case summary 10-10/10-11)
- Lisa Lake, Gunner, Lemuel Campbell all take actions w/Lloyd Lake and Michael in going forward (Lake women and Lemuel are very credible, well-to-do business persons and there is absolutely no reason to doubt their credibility)
- Lisa initially skeptical but convinced enough to contribute to venture which she clearly wouldn't move forward without Bush being involved(see case summary 1-11/1-12)
- Michael also won't go forward and give money unless Reggie on board (makes perfect sense. Michael is well connected, solid business man). Lamar, Michaels, and Lake meet at Charger game in fall of 2004
- Gunner has other investment opportunity and she also won't go forward without commitment Reggie is involved. She says meets with Reggie and gives money for car (see case summary 1-44)
- Why would Michael, Lisa, Gunner, Lemuel provide money to Griffins if Reggie is not involved?

They wouldn't.

- USC argues Reggie would never agree to have Lake be his agent...claims it is incredible because of who Lake is -- convicted felon.
- But there is no testimony that Lake ever intended to be the agent (look at Jan. 2006 operating agreement). His role was to be in recruiting players. .
- Moreover, no other reason to doubt their story that this agreement started in fall of 2004 other than a general credibility attack that Lake is ex-con and why would Reggie ever agree to get involved in such a crazy scheme. But the answer is clear. The actors involved didn't view it as a crazy scheme. His dad was involved and Michaels/Lake were his friends who he could trust wouldn't rat him out or stab him in the back. Michaels had access to the Sycuan tribe and their considerable money. Reggie had a chance to get stuff now -- like his car -- with little risk. He also stood to

make money on this business if they could attract other players. In the end, if things went bad, it would be his word against the Lakes.

- Look at all the actions that Michaels/Lake family and Campbell took to push their scheme forward.
 - There is no question that Campbell bought tickets for the Griffins to the national championship game in early January and the Griffins moved into the house in March. It is clear that this money was not spent – especially for a house worth \$750,000 house – without significant prior discussion and the assurances noted above.
 - Giving Reggie money for a car and the Griffins to pay off their credit card bills. We may not exactly how much or exactly when but once again there is no little reason to doubt the testimony of Gunnar, Lisa Lake and Lake that these payments occurred and most of the evidence points to payments being made before Jan. 1st. Bush's car registration form is completed in the summer of 2005 before all of the story broke when he is more likely to both remember the date and not have a reason to fabricate. Who is in the best position at this point to know when he actually bought the car? Bush himself and he clearly says it was bought in Dec. 2004. I will have no trouble defending our finding that the car purchase occurred in 2004 given this registration form. Why should we reject the best evidence of when the car was purchased especially when Bush could have supplied exculpatory evidence about the car if there was any. See below re Bush.
 - Pulling together an Operating agreement in Jan. - that also must have been preceded by considerable planning and discussion
 - Gunnar buying furniture and washer and dryer for the Griffins. Why would she do this if it weren't part of her plan to see her son make something of himself?
 - There is no question that Lake/ Michaels ultimately got an agent David Caravantes involved in New Era in Oct. 2005. Look at Exhibit 31 – NFLPA arbitrator found overwhelming evidence of a functioning sports agency – including Bush!! This completely undercuts the Institution's claim that the whole idea was fanciful or preposterous. Lake /Michaels/ Griffins/ Bush did launch an agency that attempted to sign other players and may actually have worked had Reggie stayed with them. Moreover, it confirms that at least one other fact finder found that Bush was part of the agency. There is no good reason to reject the evidence that Bush agreed to be involved at some point in the fall or late fall of 2004.
 - Other evidence such as Bush's use of the hotel and limo on March 5th and his admitted trip to Vegas on March 12th support the claim he was involved with Lake and Michaels.
 - Other evidence supports the fact the agency was legitimate and Bush was involved such as – Putting together marketing materials

featuring Bush; meeting with the Sycuan tribe including Lamar Griffin ; attempting to recruit other players

If there is no reason to doubt that an agency was ultimately formed, why should we doubt that the ball started forward in fall of 2004. For once again Michaels, Gunner and the others would not have started "investing" in the venture if they didn't think Reggie was in. Moreover, Reggie and family wouldn't have settled with Michaels after Reggie/ his lawyer accused Michaels and the Lakes of trying to extort money and turning them in to the Federal authorities. Look at the settlement agreement demanding confidentiality with respect to Bush. Why is he included if this only involves a dispute over the lease? Why is there even a confidentiality agreement if this is only a simple lease dispute?

One of the most powerful pieces of evidence that Bush was involved in this scheme is his failure to cooperate and to supply evidence that would prove his innocence. Reggie did submit to one interview and in doing so admitted some of the facts that support the allegations while denying other things. (See case summary 1-14/ 1-15). But he clearly was and is in best position to rebut the allegations against him. Unlike a criminal case where he would have a constitutional right to silence and no duty to cooperate in providing evidence, we can and should hold his failure to supply critical evidence against him in this situation. This is commonly done in civil cases and administrative settings. There is no absolutely no reason an innocent person would fail to provide banks records and car records, car repair records etc, unless the evidence cuts against them, especially given how much he stands to lose in terms of reputation by not coming forward. Compare his incentive with the incentive for the Lakes to continue to hunt down documents. Once they were hauled before the grand jury, their lawyers certainly would have advised them to stop talking to others. They then had to start their own lawsuit to recover their money. What do they care anymore about what the NCAA does? If I am representing Bush, why would I not have him supply documents and other evidence to rebut Lake's claims. If my client has been publically attacked, why wouldn't I defend him by showing Lakes/Michaels are lying?

Additionally, Bush might be expected to support the school he loves, his coaches that he is so close to and his teammates. But even if Bush is unwilling to support them, it is inconceivable to me that an innocent person in Bush's situation with all that he has at stake, wouldn't come forward with the documents to prove his innocence. Accordingly, we should hold him accountable. Indeed, as a policy matter, we send a horrible message if we let Bush off the hook. Given the limited powers of the NCAA enforcement staff we emasculate them if we allow ex athletes to refuse to cooperate and suffer no adverse inference from a failure to supply information under these circumstances.

Lake is actually also corroborated by the turn of events once Ornstein gets involved. I say that because Bush ultimately signs w/Ornstein and it is reasonable to assume that the internship provided Ornstein the ability to persuade Bush that hiring him made more economic sense than going w/New Era. No doubt Ornstein is smooth and incredibly well connected. Bush describes Ornstein as a mentor or father figure. It is very likely that Ornstein denigrated New Era and boasted about the vast amount of money he could deliver if Bush opted to go with him. The fact that Bush decides to renege on New Era because he was greedy and thought Ornstein would make him more money, or was irritated with his father or Lake or some combination of reasons is unclear. What we do know is that Bush does enter into an agreement with Ornstein and Ornstein supplies he and the Griffins more money and airline tickets. We know that because another cast of credible folks expose the illegal actions of Ornstein and his crew. See the testimony of

- o Gary Wichard
- o Bob DeMartino
- o Lee Pfeifer

Moreover, because Bush and his family are willing to take money for the car repair/tickets, etc. from the Ornstein agency, it lends additional credence to the claims of Lake, Michaels, Gunner, Lisa Lake and Campell that Bush and the Griffins had been taking money/other benefits from them as well.

I have enormous respect for the sense of fairplay of this committee and their desire to do the right thing. For example, I have listened to Eleanor object that the NCAA sometimes makes a mountain out of a molehill and looks ridiculous by penalizing a school/coach for a technical violation. I whole heartedly agree. That is one of the reasons why I think the Committee wisely decided to treat the Papadukis violations as a secondary one. I also whole heartedly agree that we can and should use this case to send a serious message about the agent situation in basketball. But we also need to send USC and the membership a serious message about agents in football and about looking the other way when there are red flags that ought to be closely scrutinized. If we impose too high of a burden of proof in the football situation, we will create a nearly impossible burden on the enforcement staff to deal with some of the most egregious conduct that the ncaa regulations are designed to prevent- paying players.

I think the evidence in this case is actually very strong. It is based not just on direct evidence by people involved but it spans 2 different groups of witnesses and there are documents that support the allegations. Moreover, circumstantial evidence clearly supports that the agreement included Bush and that it started in 2004. The use of circumstantial evidence is common in criminal case and as the jury instruction re circumstantial evidence reads, it can be just as powerful as direct evidence. The evidence in this case is, for example, markedly stronger than in the OKC bombing case which was built entirely on circumstantial evidence. In fact, there was no direct evidence that Nichols was ever involved in the bombing plot. The most damning evidence in the OKC case was the statement by Michael Fortier, a co- conspirator, that Tim McVeigh said "that if I wouldn't help him,

Terry Nichols would." We, of course, attacked Fortier's credibility (worse than Lake with more to gain by making up story against Nichols than Lake does from Bush) and challenged the weight to be given this hearsay, but Nichols was convicted (and after the trial admitted that he had in fact helped McVeigh build the bomb.) But there is no question that the evidence in this case is much stronger than against Nichols in the OKC case. Just as in criminal cases, ncaa cases that involve illegal payments will almost always include key witnesses with a motive to get back at the players or coaches involved and often they will have a checkered past. This case, however, doesn't involve just one uncorroborated snitch but credible people who confirm the core of his story. Lake's inconsistencies re dates and details about events that spanned over 15 months in an interview that occurred several years after the events in question doesn't render his credibility "shaky." Tim Floyd couldn't give us any idea of what he was doing on Feb. 14, 2007 other than he didn't give Gulliroy \$1000. University counsel and the coaches' counsel often used the length of time between event and interview as a explanation for Garret, McNair, Carroll, Floyds or one of their employees lack of memory, inability to recall details or inconsistent testimony. That applies to Lake as well.

Admittedly, I find this hearing process to be an incredibly difficult and very odd one. The Committee is asked to be a fact finder, including making credibility determinations, when we have virtually no chance to observe the demeanor of witnesses or to test their credibility with questions of our own. Witnesses never have to give testimony under oath and the NCAA staff is unable to subpoena documents to impeach witnesses even if their stories are lame. Hence, if defense witness want to lie, it is relatively easy to do so with virtually no consequence. Most of the case is put in by both sides by way of hearsay but we are restricted to the evidence that staff or institution/coach chooses to put into the record, even if there is contrary evidence that we are aware of because we have read about the matter in the newspaper or have seen a report on television. Thus I find it difficult to square the institution's duty is to cooperate fully with its posture of fighting particularly hard to keep us in the dark about information that is clearly in the public domain and relevant to the issues at hand.

I also find it especially disturbing that the institution can sit idly by and allow Todd McNair to attempt to create a false impression regarding his character and record and then fail to take any action to alert the Committee to his actual situation. This is especially true when the institution put into evidence a coke conviction for Louis Johnson (to make him look like a bad guy unworthy of belief) which is really nor more relevant to veracity than McNair's two prior cases of cruelty to animals. I have attached the part of the transcript that includes the questions to Garrett, McNair and his counsel about his past. Mike Garrett's response is not accurate. I also am troubled that counsel can purport to be ethically required to present the testimony of Brooke Augustin -which was so bogus- and then respond as he did to the question re McNair's past. Arguably in a criminal case he might have been justified in parsing his words carefully but this

isn't a criminal case and McNair was not being straight in his response. I will be very troubled if in the end, after we agreed either unanimously or almost unanimously that McNair was disingenuous, that there is not some finding in the report to that effect.

I find it very hard to believe given the close relationship between Bush and McNair that McNair was oblivious to what was going on with Bush. In support of Lake's direct evidence that McNair knew, look at this circumstantial evidence of his knowledge:

- the numerous calls between them(see staff's exhibit 3-1) including 17 calls on the night of March 5th and 10 calls in the early morning of March 6, 2005 when McNair claimed he never saw Bush at any time that night)
- the numerous calls to Bush and Lake on the night of Oct. 29th and his lame explanation re the culmination of the Percy Harvin debacle coupled with McNair's claim he never saw Bush or partied with Lake and Michaels' despite the photo and despite the fact it is incredible to believe he wouldn't have followed up with Bush to check on him at least by phone that night after Bush left Harvin in the hotel room for so long. Moreover, McNair's claim and the institution's suggestion that McNair didn't know either Lake or Michaels and that Lake and Michaels were not ever with McNair and Love but just 2 guys who positioned themselves in the photo rings particularly hollow in light of the fact that Love and Lake are friends.
- that McNair was unaware that Reggie was riding in limos and staying in fancy hotels in Vegas/ San Diego
- that he never talked to Bush about his new cool car (especially compared to his old truck), or how he got the money to buy it
- that he never talked to Bush about the fact that Bush's parents and brother were flying to expensive away games and going to the Heismann events.
- Never talked to him about his internship with Ornstein even after learning from Ornstein that Bush was working for him(USC exhibit 54)
- Never knew that Bush's parents moved into a new home

This is especially surprising given that McNair claims Reggie had difficulties with his dad and stepdad and looked to him as a mentor. Given this backdrop, it is hard to believe that McNair knew or saw nothing. But even if he ignored all of the red flags or was totally hoodwinked by Reggie, once he got the 2 minute and 32 second call from Lake on Jan. 8, 2006 he had to alert Carroll, Garrett and the compliance staff at that point.

How do we know that Lake's version of the Jan. 8th call rings true? Although it is true that we can't possibly know word for word what was said during that conversation, it was clearly a lot more than a wake up call. It is hard to believe McNair's claim that it must have been only a call about Lake still hoping to be invited to the agent meeting the next morning with Pete Carroll. McNair is very unlikely to have stayed on the phone that long with a person he says he never met or talked to while this unknown person attempts to

persuade him to help secure an invitation to this meeting. McNair's credibility is further compromised by his claim that he didn't know or ever talk to Lake despite the 4 calls. That he didn't know Michaels' despite the photo. This is similar to McNair's claim that he never communicated with Ornstein by phone despite the cell phone records showing 3 calls on Dec. 27, 2004.

On the other hand, Lake's version of the Jan. 8th conversation is very credible given the demise of his agency dream and the fact he/Michaels/his family have spent so much time and money on Reggie. Britton used the word "desperate" and no doubt he was at that point. No question he wanted McNair to intercede and I have no doubt that he threatened to expose the institution at that point.

Lake's version is also supported by the fact that Bush's lawyer claims Lake and his family started harassing his client and was trying to extort money from him. (see USC exhibit 38) That is exactly what Lake was trying to do with McNair on Jan. 8th: pressing him to get Reggie back into the fold or he wanted his money back. The only problem is that Lake was not actually an extortionist because Bush/ the Griffins owed the Lakes and Michaels a chunk of money. And, as I have already suggested, the fact that Bush and his family settled with Michaels corroborates Lake's claim that he is not an extortionist.

Thus, McNair had knowledge at least as of Jan. 8, 2006 that Bush had taken money and therefore played when he was ineligible. I think he was aware well before then based on Lake and the circumstantial evidence that supports Lake. Certainly by Jan 8th, McNair had a duty to report that information to Mike Garrett and to the compliance staff. His failure to do so was wrong and he should be held accountable because as Paul said, everyone in the program has a duty to report conduct that violates the rules. In light of the seriousness of these allegations, he cannot simply blow that duty off.

I am not going to spell out all of the reason that I think USC has dropped the ball in its duty to monitor the actions of agents and prevent(or at least make reasonable efforts to prevent) the kind of misconduct that occurred in both football and basketball. USC did little to catch or to follow up on red flags as Jo addressed in the meeting. Allowing folks like Ornstein and Guillory to have access to your coaches and players invites serious trouble. USC turned a blind eye to the problem and largely just hoped that nothing bad would happen. A failure to sanction USC both in basketball and football rewards USC for swimming with sharks. Although they all talked about the importance of compliance at the hearing, winning at any cost seems more important. Paul Dee was bought in at Miami to clean up a program with serious problems. USC has responded to its problems by bringing in Lane Kiffin. They need a wakeup call that doing things the wrong way will have serious consequences In light of all of the problems at USC, a failure to send a serious message in this case undercuts efforts to help clean up NCAA sports.

MANUAL 2009-10 NCAA® DIVISION I MANUAL



Constitution
Operating Bylaws
Administrative Bylaws
Effective August 1, 2009

EXHIBIT 9

28

CONSTITUTION, ARTICLE 2

Principles for Conduct of Intercollegiate Athletics

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2.2	The Principle of Student-Athlete Well-Being.....	3	2.10	The Principle of Competitive Equity.....	5
2.3	The Principle of Gender Equity.....	4	2.11	The Principle Governing Recruiting.....	5
2.4	The Principle of Sportsmanship and Ethical Conduct.....	4	2.12	The Principle Governing Eligibility.....	5
2.5	The Principle of Sound Academic Standards.....	4	2.13	The Principle Governing Financial Aid.....	5
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2
PRINCIPLES

2.01 GENERAL PRINCIPLE [*]

Legislation enacted by the Association governing the conduct of intercollegiate athletics shall be designed to advance one or more basic principles, including the following, to which the members are committed. In some instances, a delicate balance of these principles is necessary to help achieve the objectives of the Association.

2.1 THE PRINCIPLE OF INSTITUTIONAL CONTROL AND RESPONSIBILITY [*]

2.1.1 Responsibility for Control. [*] It is the responsibility of each member institution to control its intercollegiate athletics program in compliance with the rules and regulations of the Association. The institution's president or chancellor is responsible for the administration of all aspects of the athletics program, including approval of the budget and audit of all expenditures. *(Revised: 3/8/06)*

2.1.2 Scope of Responsibility. [*] The institution's responsibility for the conduct of its intercollegiate athletics program includes responsibility for the actions of its staff members and for the actions of any other individual or organization engaged in activities promoting the athletics interests of the institution.

2.2 THE PRINCIPLE OF STUDENT-ATHLETE WELL-BEING [*]

Intercollegiate athletics programs shall be conducted in a manner designed to protect and enhance the physical and educational well-being of student-athletes. *(Revised: 11/21/05)*

2.2.1 Overall Educational Experience. [*] It is the responsibility of each member institution to establish and maintain an environment in which a student-athlete's activities are conducted as an integral part of the student-athlete's educational experience. *(Adopted: 1/10/95)*

2.2.2 Cultural Diversity and Gender Equity. [*] It is the responsibility of each member institution to establish and maintain an environment that values cultural diversity and gender equity among its student-athletes and intercollegiate athletics department staff. *(Adopted: 1/10/95)*

2.2.3 Health and Safety. [*] It is the responsibility of each member institution to protect the health of and provide a safe environment for each of its participating student-athletes. *(Adopted: 1/10/95)*

2.2.4 Student-Athlete/Coach Relationship. [*] It is the responsibility of each member institution to establish and maintain an environment that fosters a positive relationship between the student-athlete and coach. *(Adopted: 1/10/95)*

2.2.5 Fairness, Openness and Honesty. [*] It is the responsibility of each member institution to ensure that coaches and administrators exhibit fairness, openness and honesty in their relationships with student-athletes. *(Adopted: 1/10/95)*

2.2.6 Student-Athlete Involvement. [*] It is the responsibility of each member institution to involve student-athletes in matters that affect their lives. *(Adopted: 1/10/95)*

2.3 THE PRINCIPLE OF GENDER EQUITY [*]

2.3.1 Compliance With Federal and State Legislation. [*] It is the responsibility of each member institution to comply with federal and state laws regarding gender equity. *(Adopted: 1/11/94)*

2.3.2 NCAA Legislation. [*] The Association should not adopt legislation that would prevent member institutions from complying with applicable gender-equity laws, and should adopt legislation to enhance member institutions' compliance with applicable gender-equity laws. *(Adopted: 1/11/94)*

2.3.3 Gender Bias. [*] The activities of the Association should be conducted in a manner free of gender bias. *(Adopted: 1/11/94)*

2.4 THE PRINCIPLE OF SPORTSMANSHIP AND ETHICAL CONDUCT [*]

For intercollegiate athletics to promote the character development of participants, to enhance the integrity of higher education and to promote civility in society, student-athletes, coaches, and all others associated with these athletics programs and events should adhere to such fundamental values as respect, fairness, civility, honesty and responsibility. These values should be manifest not only in athletics participation, but also in the broad spectrum of activities affecting the athletics program. It is the responsibility of each institution to: *(Revised: 1/9/96)*

- (a) Establish policies for sportsmanship and ethical conduct in intercollegiate athletics consistent with the educational mission and goals of the institution; and *(Adopted: 1/9/96)*
- (b) Educate, on a continuing basis, all constituencies about the policies in Constitution 2.4-(a). *(Adopted: 1/9/96)*

2.5 THE PRINCIPLE OF SOUND ACADEMIC STANDARDS [*]

Intercollegiate athletics programs shall be maintained as a vital component of the educational program, and student-athletes shall be an integral part of the student body. The admission, academic standing and academic progress of student-athletes shall be consistent with the policies and standards adopted by the institution for the student body in general.

2.6 THE PRINCIPLE OF NONDISCRIMINATION [*]

The Association shall promote an atmosphere of respect for and sensitivity to the dignity of every person. It is the policy of the Association to refrain from discrimination with respect to its governance policies, educational programs, activities and employment policies including on the basis of age, color, disability, gender, national origin, race, religion, creed or sexual orientation. It is the responsibility of each member institution to determine independently its own policy regarding nondiscrimination. *(Adopted: 1/16/93, Revised: 1/16/00)*

2.7 THE PRINCIPLE OF DIVERSITY WITHIN GOVERNANCE STRUCTURES [*]

The Association shall promote diversity of representation within its various divisional governance structures and substructures. Each divisional governing body must assure gender and ethnic diversity among the membership of the bodies in the division's administrative structure. *(Adopted: 1/9/95 effective 8/1/97)*

2.8 THE PRINCIPLE OF RULES COMPLIANCE [*]

2.8.1 Responsibility of Institution. [*] Each institution shall comply with all applicable rules and regulations of the Association in the conduct of its intercollegiate athletics programs. It shall monitor its programs to assure compliance and to identify and report to the Association instances in which compliance has not been achieved. In any such instance, the institution shall cooperate fully with the Association and shall take appropriate corrective actions. Members of an institution's staff, student-athletes, and other individuals and groups representing the institution's athletics interests shall comply with the applicable Association rules, and the member institution shall be responsible for such compliance.

2.8.2 Responsibility of Association. [*] The Association shall assist the institution in its efforts to achieve full compliance with all rules and regulations and shall afford the institution, its staff and student-athletes fair procedures in the consideration of an identified or alleged failure in compliance.

2.8.3 Penalty for Noncompliance. [*] An institution found to have violated the Association's rules shall be subject to such disciplinary and corrective actions as may be determined by the Association.

2.9 THE PRINCIPLE OF AMATEURISM [*]

Student-athletes shall be amateurs in an intercollegiate sport, and their participation should be motivated primarily by education and by the physical, mental and social benefits to be derived. Student participation in intercollegiate athletics is an avocation, and student-athletes should be protected from exploitation by professional and commercial enterprises.

BYLAW, ARTICLE 19

Enforcement

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19.01 GENERAL PRINCIPLES

19.01.1 Mission of NCAA Enforcement Program. It shall be the mission of the NCAA enforcement program to eliminate violations of NCAA rules and impose appropriate penalties should violations occur. The program is committed to fairness of procedures and the timely and equitable resolution of infractions cases. The achievement of these objectives is essential to the conduct of a viable and effective enforcement program. Further, an important consideration in imposing penalties is to provide fairness to uninvolved student-athletes, coaches, administrators, competitors and other institutions. *(Adopted: 1/11/94)*

19.01.2 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.

19.01.3 Responsibility to Cooperate. All representatives of member institutions shall cooperate fully with the NCAA enforcement staff, Committee on Infractions, Infractions Appeals Committee and Board of Directors to further the objectives of the Association and its enforcement program. The enforcement policies and procedures are an essential part of the intercollegiate athletics program of each member institution and require full and complete disclosure by all institutional representatives of any relevant information requested by the NCAA enforcement staff, Committee on Infractions or Infractions Appeals Committee during the course of an inquiry. *(Revised: 1/11/07 effective 8/1/08)*

19.01.4 Violations by Institutional Staff Members. Institutional staff members found in violation of NCAA regulations shall be subject to disciplinary or corrective action as set forth in the provisions of the NCAA enforcement procedures, whether such violations occurred at the certifying institution or during the individual's previous employment at another member institution.

19.01.5 Nature of Penalty Structure. As a guiding principle, a penalty imposed under NCAA enforcement policies and procedures should be broad and severe if the violation or violations reflect a general disregard for the governing rules; in those instances in which the violation or violations are isolated and of relative insignificance, then the NCAA penalty shall be specific and limited. Previous violations of NCAA legislation shall be a contributing factor in determining the degree of penalty.

19.02 DEFINITIONS AND APPLICATIONS

19.02.1 Show-Cause Order. A show-cause order is one that requires a member institution to demonstrate to the satisfaction of the Committee on Infractions (or the Infractions Appeals Committee per Bylaw 19.2) why it should not be subject to a penalty (or additional penalty) for not taking appropriate disciplinary or corrective action against an institutional staff member or representative of the institution's athletics interests identified by the committee as having been involved in a violation of NCAA regulations that has been found by the committee. *(Revised: 1/10/95, 4/24/03)*

19.02.2 Types of Violations.

19.02.2.1 Violation, Secondary. A secondary violation is a violation that is isolated or inadvertent in nature, provides or is intended to provide only a minimal recruiting, competitive or other advantage and does not include any significant recruiting inducement or extra benefit. Multiple secondary violations by a member institution may collectively be considered as a major violation. *(Revised: 1/11/94)*



19.02.2.2 Violation, Major. All violations other than secondary violations are major violations, specifically including those that provide an extensive recruiting or competitive advantage. *(Revised: 1/11/94)*

19.02.3 New Evidence. New evidence is evidence that could not reasonably be ascertained prior to the Committee on Infractions hearing. *(Adopted: 1/6/96)*

19.1 COMMITTEE ON INFRACTIONS

The Board of Directors shall appoint a Committee on Infractions, which shall be responsible for administration of the NCAA enforcement program. *(Revised: 1/11/07 effective 8/1/08)*

19.1.1 Composition of Committee. The committee shall be composed of ten members, seven of whom shall be at present or previously on the staff of an active member institution or member conference of the Association, no more than three and no less than two of whom shall be from the general public and shall not be associated with a collegiate institution, conference, or professional or similar sports organization, or represent coaches or athletes in any capacity. One of the members shall serve as chair and one member shall serve as vice chair. Two members shall be elected as coordinators of appeals, one of whom may be a public member. Two positions shall be allocated for men, two allocated for women and six unallocated. There shall be no subdivision restrictions except that all nonpublic members may not be from the same subdivision; however, the coordinators of appeals shall not be considered in determining whether such a requirement is satisfied. *(Revised: 1/16/93, 10/27/98, 10/28/99, 1/11/00, 11/1/01, 11/31/02)*

19.1.1.1 Quorum. Four members present and voting shall constitute a quorum for conduct of committee business, it being understood that the chair shall make a special effort to have full committee attendance when major infractions cases involving violations are to be considered.

19.1.1.2 Temporary Substitutes. If it appears that one or more members of the committee will be unable to participate in the hearing of a case, the chair may request the Administration Cabinet to designate a former member or members of the committee to rejoin the committee for purposes of the consideration and disposition of that case. *(Revised: 1/11/07 effective 8/1/08)*

19.1.1.3 Term of Office. A member shall serve a three-year term, which shall commence on the first day of September following the member's election. A member may be reappointed but shall not serve more than nine years on the committee, with the exception of the position of coordinator of appeals, which may be filled by a former member of the committee who had previously served nine years. In such instances, a minimum period of three years must have elapsed between the date the committee member previously relinquished duties with the committee and reappointment to the committee as the coordinator of appeals. As with a regular member of the committee, the coordinator of appeals shall serve a three-year term, which commences on the first day of September following the coordinator of appeal's selection. The coordinator of appeals may be reappointed but shall not serve more than nine years on the committee in that capacity. *(Adopted: 1/11/00)*

19.1.1.4 Duties of the Coordinators of Appeals. The coordinators of appeals shall be responsible for processing appeals to infraction cases on behalf of the committee. The coordinators of appeals will be present during institutional hearings before the committee and during following committee deliberations, but will not be active participants in either. The coordinators of appeals shall represent the committee in proceedings before the Infractions Appeals Committee. *(Adopted: 10/28/99, Revised: 10/31/02)*

19.1.2 Authority of Committee. Disciplinary or corrective actions other than suspension or termination of membership may be effected by members of the Committee on Infractions present and voting at any duly called meeting thereof, provided the call of such a meeting shall have contained notice of the situation presenting the disciplinary problem. Actions of the committee in cases involving major violations, however, shall be subject to review by the Infractions Appeals Committee per Bylaw 19.2, on appeal. *(Revised: 1/16/93, 1/10/95, 4/24/03)*

19.1.2.1 Authority of Vice President for Enforcement Services. Upon review of information developed by the enforcement staff or self-reported by the member institution, the vice president for enforcement services shall identify the charges as involving alleged major or secondary violations, or multiple secondary violations that should be viewed as a major violation. Disciplinary or corrective actions in the case of secondary violations may be effected by the vice president for enforcement services. Said actions shall be taken in accordance with the provisions of the enforcement policies and procedures and shall be subject to review by the committee upon appeal. *(Revised: 4/24/03)*

19.1.2.2 Authority of Committee Chair. In the interim between meetings of the committee, the chair shall be empowered to act on behalf of the committee, subject to committee approval at its next meeting. If at any time, at a meeting or between meetings, the chair is unavailable to act as such, the vice chair is empowered to exercise the functions of the chair. *(Revised: 1/11/01)*

19.1.2.3 Authority of Infractions Appeals Committee. The Infractions Appeals Committee per Bylaw 19.2, shall hear and act upon an institution's or an involved individual's appeal of the findings of major violations and/or the imposition of associated penalties by the Committee on Infractions. *(Revised: 1/16/93, 1/10/95, 4/24/03)*

32.2.1.2 Self-Disclosure by an Institution. Self-disclosure shall be considered in establishing penalties, and, if an institution uncovers a violation prior to its being reported to the NCAA and/or its conference, such disclosure shall be considered as a mitigating factor in determining the penalty. *(Revised: 10/12/94)*

32.2.2 Investigative Guidelines. The Committee on Infractions shall provide general guidance to the enforcement staff through approved and established investigative and procedural guidelines.

32.2.2.1 Initial Enforcement Staff Responsibilities. The enforcement staff is responsible for evaluating information reported to the NCAA staff to determine whether the possible violation should be handled by correspondence with the involved institution or its conference, or whether the enforcement staff should conduct its own in-person inquiries.

32.2.2.1.1 Basic Information Gathering. The enforcement staff has a responsibility to gather basic information regarding possible violations and, in doing so, may contact individuals to solicit information. If information indicating a potential NCAA violation believed to be reliable is developed, the procedures provided in Bylaw 32.5 (Notice of Inquiry) are undertaken. *(Revised: 4/24/03)*

32.2.2.1.2 Identification of Major/Secondary Violation. The enforcement staff shall identify information developed by it or self-reported by the institution as alleged major or secondary violations (as defined in Bylaw 19.02.2). The staff shall have the discretion to submit information to the Committee on Infractions, or a designated member of the Committee on Infractions, for an initial determination of how that information should be processed. *(Adopted: 4/24/03, Revised: 4/10/06)*

32.2.2.1.3 Matters Handled by Correspondence. Matters that clearly are secondary in nature should be handled promptly by correspondence with the involved institution. *(Revised: 4/24/03)*

32.3 INVESTIGATIVE PROCEDURES

32.3.1 Conformance with Procedures. Investigations by the enforcement staff shall be conducted in accordance with the operating policies, procedures and investigative guidelines established by the Committee on Infractions, the Board of Directors and membership in accordance with Bylaw 19. *(Revised: 1/11/07 effective 8/1/08)*

32.3.1.1 Consultation with Committee on Infractions. If questions arise concerning investigative procedures during the course of an investigation, the chair (or the full Committee on Infractions, if necessary) may be consulted by the enforcement staff. *(Adopted: 4/24/03)*

32.3.2 Timely Process. The enforcement staff shall make reasonable efforts to process infractions matters in a timely manner. *(Revised: 4/24/03)*

32.3.3 Conflict of Interest. Any enforcement staff member who has or had a personal relationship or institutional affiliation that reasonably would result in the appearance of prejudice should refrain from participating in any manner in the processing of the involved institution's or individual's infractions case. *(Adopted: 1/16/93)*

32.3.4 Interviews with Member Institution. The athletics director or other appropriate official of an institution shall be contacted by the enforcement staff in order to schedule interviews on the institution's campus with enrolled student-athletes, coaching staff members or other institutional staff members with athletically related responsibilities or oversight who are involved in possible violations at the institution. *(Revised: 4/24/03)*

32.3.4.1 Presence of Institutional Representative During Interview. If an interview with an enrolled student-athlete or athletics department staff member is conducted on the campus of an institution, an institutional representative(s) (as designated by the institution) will be permitted to be present during the interview, provided the subject matter to be discussed in the interview relates directly to the individual's institution or could affect the individual's eligibility or employment at the institution. If the investigator wishes to discuss information with a student-athlete or staff member that is related solely to institutions other than the one in which the student-athlete is enrolled or staff member is employed and would not reasonably affect the student's eligibility or the staff member's employment, the institutional representative shall not be present during that portion of the interview. In such a situation (after the institutional representative has departed), any information inadvertently reported by the student-athlete or the staff member that is related to his or her own institution shall not be used against the student-athlete, staff member or that institution. *(Revised: 4/24/03)*

32.3.4.2 Conflict with Academic Schedule. If possible, interviews should be conducted without disrupting the normally scheduled academic activities of the student-athlete. *(Revised: 4/24/03)*

32.3.5 Proper Identification of NCAA Staff Member. In no case shall an enforcement staff member misrepresent the staff member's identity or title.

32.3.6 Representation by Legal Counsel. When an enforcement staff member conducts an interview that may develop information detrimental to the interests of the individual being questioned, that individual may be represented by personal legal counsel throughout the interview.

32.3.7 Notice Requirements.

32.3.7.1 Disclosure of Purpose of Interview. When an enforcement representative requests information that could be detrimental to the interests of the student-athlete or institutional employee being interviewed, that individual shall be advised that the purpose of the interview is to determine whether the individual has

knowledge of or has been involved directly or indirectly in any violation of NCAA legislation. (Revised: 4/24/03, 4/10/06)

32.3.7.2 Responsibility to Cooperate. At the beginning of an interview arranged or initiated by the enforcement staff, a current or former student-athlete or institutional employee shall be advised that refusing to furnish information or providing false or misleading information to the NCAA, conference or institution may result in an allegation that the individual has violated NCAA ethical conduct legislation (see Bylaw 10.1).

32.3.8 Limited immunity. At the request of the enforcement staff, the Committee on Infractions may grant limited immunity to a student-athlete who provides information when such individual otherwise might be declared ineligible for intercollegiate competition based on the information that he or she reports and an institutional employee with responsibilities related to athletics when such an individual otherwise would be subject to disciplinary action as described in Bylaws 19.5.1-(i) and 19.5.2.2-(k) based on the information that individual reports. Such immunity shall not apply to the individual's involvement in violations of NCAA legislation not reported or to future involvement in violations of NCAA legislation by the individual or to any actions that an institution imposes. In any case, such immunity shall not be granted unless the individual provides information not otherwise available to the enforcement staff. (Revised: 10/12/94, 4/24/03)

32.3.9 Interview Record.

32.3.9.1 Recordings. It is preferable that an interview conducted by the enforcement staff be recorded through the use of a mechanical device. If an interviewee objects to being recorded however, or the enforcement staff believes the use of a recording device would have an inhibiting effect on the interviewee, a summary of the information reported shall be prepared per Bylaw 32.3.9.2. (Revised: 4/10/06, 6/11/07)

32.3.9.1.1 Access to Recordings and Transcripts. Both the enforcement staff and the interviewee may record the interview or the interviewee may receive a copy of the recording and if prepared by the enforcement staff, the interview transcript, subject to the confidentiality provisions of Bylaws 32.3.9.1.4 and 32.3.9.2.1. Copies of recorded interview summaries and any report prepared by the enforcement staff are confidential and shall only be provided to interviewees (and their institutions) as set forth in Bylaws 32.3.9.2 and 32.6.4. (Revised: 4/24/03, 4/10/06, 6/11/07, 8/7/08)

32.3.9.1.2 Institutional Recording of an Interview—Access to Recordings and Transcripts. Interviews conducted in accordance with Bylaw 32.3.4.1 or jointly with the enforcement staff at any location, may be recorded by the institution under inquiry. If the institution is unable or chooses not to record such an interview, the institution may receive a copy of the enforcement staff's recording of the interview and/or a copy of the interview transcript, if prepared by the enforcement staff. Institutional recordings of NCAA interviews under any other circumstances must be approved by the Committee on Infractions. (Adopted: 10/12/94)

32.3.9.1.2.1 Access to Recordings and Transcripts by Conference. For interviews conducted in accordance with Bylaw 32.3.4.1 or jointly by the institution and enforcement staff, and on consent of the institution, a conference may receive a copy of the interview recording and/or transcript, if prepared by the enforcement staff or institution. (Adopted: 6/11/07)

32.3.9.1.3 Use of Court Reporters. Institutional representatives or individuals being interviewed may use a court reporter to transcribe and interview subject to the following conditions. The institution or individual shall:

- (a) Pay the court reporter's fees;
- (b) Provide a copy of the transcript to the enforcement staff at no charge; and
- (c) Agree that the confidentiality standards of Bylaw 32.3.9.1.4 apply. An institutional representative or individual who chooses to use a court reporter shall submit a written notice of agreement with the required conditions to the enforcement staff prior to the interview. If the enforcement staff chooses to use a court reporter, the NCAA will pay all costs of the reporter. A copy of the transcript prepared by the court reporter for the enforcement staff shall be made available to the institution and the involved individuals. (Adopted: 4/24/03, Revised: 5/22/09)

32.3.9.1.4 Statement of Confidentiality. Individuals and institutional representatives shall be required to agree not to release recordings or interview transcripts to a third party. A statement of confidentiality shall be signed or recorded prior to an interview. Failure to enter into such an agreement would preclude the individual or institutional representative from recording or transcribing the interview. (Adopted: 4/23/03, Revised: 4/10/06)

32.3.9.2 Nonrecorded Interviews. When an interview is not recorded or if the recording device malfunctions, the enforcement staff shall prepare a written summary of the information and attempt to obtain a signed affirmation of its accuracy from the interviewee. The interviewee shall be permitted to make additions or corrections to the memorandum before affirming its accuracy. In order to obtain the interviewee's signature, the enforcement staff may provide a copy of the unsigned summary to the interviewee and his or her counsel. After the summary is signed, the interviewee and his or her counsel may receive a signed copy. Testimony as to the substance of an unrecorded interview for which a signed affirmation was not obtained may nevertheless be con-

sidered by the Committee on Infractions to the extent the Committee on Infractions determines the testimony to be reliable. (Revised: 4/24/03, 4/10/06, 8/7/08)

32.3.9.2.1 Confidentiality of Nonrecorded Interview Documents. Copies of nonrecorded interview summaries and any report prepared by the enforcement staff are confidential and shall not be provided to individuals (or their institutions) who may be involved in reporting information during the processing of an infractions case except as set forth in Bylaws 32.3.9.2, 32.3.10 and 32.6.4. (Revised: 4/24/03, 8/7/08)

32.3.9.3 Handwritten Notes. It shall be permissible for all individuals involved in interviews conducted by the enforcement staff to take handwritten notes of the proceedings. (Adopted: 4/23/03)

32.3.10 Enforcement Staff's Responsibility to Maintain Case Information.

32.3.10.1 Case File. The enforcement staff is responsible for maintaining evidentiary materials involved with an infractions case, including copies of recorded interviews, interview summaries and/or interview transcripts and other evidentiary information. Such materials shall be retained on file at the national office. (Adopted: 1/13/08 for all cases heard by the Committee on Infractions, unless not feasible due to security, format or technology issues)

32.3.10.2 Custodial File. The enforcement staff shall make available copies of recorded interviews, interview summaries and/or interview transcripts and other evidentiary information pertinent to an infractions case. The institution and involved individuals may review such information in the national office or through a secure Web-based custodial site in accordance with the provisions of Bylaw 32.6.4. (Adopted: 1/13/08 for all cases heard by the Committee on Infractions, unless not feasible due to security, format or technology issues)

32.3.11 Failure to Cooperate. In the event that a representative of an institution refuses to submit relevant information to the Committee on Infractions or the enforcement staff on request, a notice of inquiry may be filed with the institution alleging a violation of the cooperative principles of the NCAA bylaws and enforcement procedures. Institutional representatives and the involved individual may be requested to appear before the Committee on Infractions at the time the allegation is considered. (Revised: 4/24/03)

32.3.12 Meeting with Chancellor or President. The enforcement staff may meet personally with the chancellor or president or a designated representative of the involved institution to discuss the allegations investigated and information developed by the NCAA in a case that has been terminated. (Revised: 4/24/03, 3/8/06)

32.4 PROCESSING INFORMATION FOR SECONDARY VIOLATIONS

32.4.1 Authority of Conference Commissioners. Selected secondary violations that have been identified by the Committee on Infractions, and for which specific disciplinary or corrective actions have been prescribed by the Committee on Infractions, shall be processed by the institution's conference when such violations occur for the first time in a particular sport. Any violations processed and penalties imposed by the conference commissioner shall be reported to the NCAA enforcement staff on a quarterly basis. If an institution believes that a case warrants action that is less than the prescribed penalty, it may request further review by the vice president for enforcement services. (Adopted: 10/21/97 effective 1/1/98, Revised: 4/24/03)

32.4.2 Review of Institutional or Conference Actions or Penalties In Secondary Cases. If the Committee on Infractions or the enforcement staff, after review of institutional or conference action taken in connection with a rules infraction in a secondary case, concludes that the corrective or punitive measures taken by the institution or conference are sufficient, the Committee on Infractions or the enforcement staff may accept the self-imposed measures and take no further action. Failure to fully implement the self-imposed measures may subject the institution to further disciplinary action by the NCAA. (Revised: 10/12/94, 4/24/03)

32.4.2.1 Insufficient Actions. If the institutional or conference actions appear to be insufficient, the enforcement staff shall notify the institution of additional penalties in a secondary case. (Revised: 10/12/94, 4/24/03)

32.4.3 Action Taken by Enforcement Staff (Non-Institution or Non-Conference). If the enforcement staff, after reviewing the information that has been developed and after consulting with the institution involved, determines that a secondary violation has occurred, the enforcement staff may determine that no penalty is warranted or impose an appropriate penalty (see Bylaw 19.6.1). (Revised: 4/24/03)

32.4.4 Appeal of Secondary Cases. An institution may appeal penalties imposed by the enforcement staff for a secondary violation by submitting a written notice of appeal to the Committee on Infractions. The Committee on Infractions must receive the written notice of appeal and any supporting information within 30 days of the date the institution receives the enforcement staff's decision. An institution may request the opportunity to appear in person or through participation in a telephone conference call. If no such request is made, or if the request is denied, the Committee on Infractions will review the institution's appeal on the basis of the written record. (Adopted: 1/12/99, Revised: 4/24/03)

32.5 NOTICE OF INQUIRY

32.5.1 Notice to Institution. If the enforcement staff has developed reasonably reliable information indicating that an institution has been in violation of NCAA legislation that requires further investigation, the enforcement staff shall provide a notice of inquiry in writing to the chancellor or president unless the institution and

conclusion of the hearing, followed by a closing statement by a representative of the enforcement staff. *(Revised: 4/24/03)*

32.8.7.2 Staff Presentation. During the hearing, the enforcement staff first shall present the information that its investigation has developed.

32.8.7.3 Institutional or Involved Individual's Presentation. The institution and involved individual then will present their explanation of the alleged violations and any other arguments or information deemed appropriate in the Committee on Infractions' consideration of the case. *(Revised: 4/24/03)*

32.8.7.4 Type of Information. Any oral or documentary information may be received, but the Committee on Infractions may exclude information that it determines to be irrelevant, immaterial or unduly repetitious.

32.8.7.4.1 Information from Confidential Sources. In presenting information and evidence for consideration by the Committee on Infractions during an infractions hearing, the enforcement staff shall present only information that can be attributed to individuals who are willing to be identified. Information obtained from individuals not wishing to be identified shall not be relied on by the Committee on Infractions in making findings of violations. Such confidential sources shall not be identified to either the Committee on Infractions or the institution.

32.8.7.4.2 Information Concerning Mitigating Factors. Institutional, conference and enforcement staff representatives and any involved individuals are encouraged to present all relevant information concerning mitigating or other factors that should be considered in arriving at appropriate penalties. *(Revised: 4/24/03)*

32.8.7.5 Scope of Inquiry. If an institution appears before the Committee on Infractions to discuss its response to the notice of allegations, the hearing shall be directed toward the allegations set forth in the notice of allegations but shall not preclude the committee from finding any violation resulting from information developed or discussed during the hearing. *(Revised: 4/24/03)*

32.8.7.6 Committee on Infractions Questioning. The Committee on Infractions, at the discretion of any of its members, shall question representatives of the institution or the enforcement staff as well as any involved individuals or other persons appearing before it in order to determine the facts of the case. Further, under the direction of the Committee on Infractions, questions and information may be exchanged between and among all parties participating in the hearing. *(Revised: 5/22/09)*

32.8.7.7 Recording of Proceedings. The proceedings of infractions hearings shall be recorded by a court reporter (unless otherwise agreed) and shall be recorded by the Committee on Infractions. No additional verbatim recording of these proceedings will be permitted by the Committee on Infractions. The Committee on Infractions shall maintain custody of the recordings and any transcriptions. In the event of an appeal, a transcript of the hearing proceedings shall be reproduced and submitted to the Infractions Appeals Committee and made available for review at the NCAA national office or at custodial sites reasonably near the institution and involved individuals. [Note: Involved individuals will receive only those portions of the hearing transcripts in which they were in attendance at the hearing.] *(Revised: 1/16/93, 4/24/03, 4/10/06)*

32.8.8 Posthearing Committee Deliberations. After all presentations have been made and the hearing has been concluded, the Committee on Infractions shall excuse all others from the hearing, and the Committee on Infractions shall make its determinations of fact and violation in private.

32.8.8.1 Request for New Information. In arriving at its determinations, the Committee on Infractions 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 from the institution, the enforcement staff or an involved individual to assist the Committee on Infractions, all parties will be afforded an opportunity to respond at the time such information is provided to the Committee on Infractions. *(Revised: 6/11/07)*

32.8.8.2 Basis of Findings. The Committee on Infractions shall base its findings 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.

32.8.8.3 Imposition of Penalty. If the Committee on Infractions determines that there has been a violation, it shall impose an appropriate penalty (see Bylaw 19.5); or it may recommend to the Board of Directors suspension or termination of membership in an appropriate case. *(Revised: 4/24/03)*

32.8.8.4 Voting Requirements. The finding of a violation or the imposition of a penalty or recommended action shall be by majority vote of the members of the Committee on Infractions present and voting. If fewer than eight members are present, any Committee on Infractions action requires a favorable vote of at least four committee members. *(Revised: 10/12/94)*

32.9 NOTIFICATION OF COMMITTEE ON INFRACTIONS ACTION

32.9.1 Infractions Report. The Committee on Infractions, without prior public announcement, shall be obligated to submit promptly an infractions report, to the chancellor or president of the institution (with copies to those individuals receiving copies of the notice of allegations) and to all involved individuals, as defined in Bylaw 32.1.5. The following procedures shall apply to the infractions report: *(Revised: 4/24/03, 3/8/06, 1/13/08)*

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- (f) The Committee on Infractions' responses to the issues raised in the appeal; and
- (g) A transcript of any hearing conducted by the Committee on Infractions (submitted as an attachment to the response). *(Adopted: 10/12/94, Revised: 1/13/08)*

32.10.3 Enforcement Staff Information. The enforcement staff may provide written information to the Infractions Appeals Committee regarding perceived new information, errors, misstatements and omissions relating to the written appeal, Committee on Infractions response and/or rebuttal documents, as long as any such written information is received by the Infractions Appeals Committee not later than 10 calendar days from notification from the Infractions Appeals Committee of whether rebuttal materials have been submitted as established under the policies and procedures of the Infractions Appeals Committee. *(Adopted: 1/13/08, Revised: 1/13/09)*

32.10.4 Basis for Granting an Appeal.

32.10.4.1 Penalties. A penalty determined by the Committee on Infractions shall not be set aside on appeal except on a showing by the appealing party that the penalty is excessive such that it constitutes an abuse of discretion. *(Adopted: 1/13/08)*

32.10.4.2 Findings. Findings of violations made by the Committee on Infractions shall not be set aside on appeal, except on a showing by the appealing party that: *(Adopted: 1/13/08)*

- (a) A finding is clearly contrary to the evidence presented to the Committee on Infractions;
- (b) The facts found by the Committee on Infractions do not constitute a violation of the Association's rules; or
- (c) There was a procedural error and but for the error, the Committee on Infractions would not have made the finding of violation.

32.10.5 New Evidence. In making a determination pursuant to Bylaw 32.10.4, the Infractions Appeals Committee shall consider only the information contained in the record(s) of proceedings before the Committee on Infractions and the record on appeal. If an institution or involved individual seeks to introduce information during the appeals process that was not presented to the Committee on Infractions for its consideration, the Infractions Appeals Committee shall: *(Adopted: 1/6/96)*

- (a) Determine whether the information is "new evidence" per Bylaw 19.02.3. If the Infractions Appeals Committee determines that the information meets the definition of "new evidence" per Bylaw 19.02.3, the Infractions Appeals Committee, after input from a Committee on Infractions' designee, shall determine whether the "new evidence" could have materially affected any decision made by the Committee on Infractions, and if so the case shall be referred back to the Committee on Infractions for its review. If the information does not meet the definition of "new evidence" per Bylaw 19.02.3 or if the "new evidence" would not have materially affected a decision made by the Committee on Infractions, the information shall not be included in the record on appeal and shall not be considered by the Infractions Appeal Committee; and *(Revised: 1/13/08)*
- (b) Enter findings in the record on appeal regarding all decisions made pursuant to Bylaw 32.10.5-(a). *(Adopted: 1/13/08)*

32.10.6 Determination of Appeal Procedures. The specific procedures to be followed during the written appeals process will be determined by the Infractions Appeals Committee. *(Adopted: 1/13/08)*

32.11 APPEAL HEARINGS

32.11.1 Hearing Procedures. An institution or involved individual may appeal the Committee on Infractions' findings of violations and penalties, corrective actions, requirements, and other conditions and obligations of membership imposed by the Committee on Infractions for violations of NCAA legislation. Should one or more of the parties request a hearing, the hearing will be conducted according to the following procedures: *(Revised: 1/16/93, 1/10/95, 4/24/03, 1/13/08)*

- (a) Consistent with the requirements of Bylaw 32.10.1, if the institution and/or involved individual elects to be represented in person before the Infractions Appeals Committee, the institution and/or involved individual shall be permitted a reasonable time to make its oral presentation to supplement the written appeal. The coordinator of appeals or another member of the Committee on Infractions then shall be permitted a reasonable time to make its oral presentation. The period of time for the presentation by the institution, involved individual and the Committee on Infractions shall be left to the discretion of the chair of the Infractions Appeals Committee; *(Revised: 1/10/95, 4/24/03, 1/13/08)*
- (b) The enforcement staff may elect to be represented in person by a maximum of three persons, and may participate during the hearing. Any participation by the enforcement staff shall be limited to the opportunity to provide information regarding perceived new information, errors, misstatements and omissions. *(Adopted: 1/13/08)*
- (c) If an institution or involved individual appeared before the Committee on Infractions but waived the right to appeal, the institution or involved individual may elect to be present in person and/or by counsel, by a maximum of three persons, as a silent observer during the hearing before the Infractions Appeals Committee. *(Adopted: 1/14/08)*

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From: Cooper, Shep
To: Eleanor Myers; Britton B. Banowsky; John Black; conboy.1@nd.edu; Dee, Paul T; Brian Halloran; thomasd@themeac.com; jpotulo1@unl.edu; Schiessler, Diann
CC: Uphoff, Rodney; Elworth, Jim
Sent: 3/1/2010 12:55:28 PM
Subject: RE: Thoughts to Consider for Tue Evening Conf Call from Rod Uphoff

Eleanor-

Thank you for your thoughts on this. There is one bylaw the committee might consider if it does not find McNair for unethical conduct. That bylaw is 11.1.1 – **Standards of Honesty and Sportsmanship**. It's somewhat "all-encompassing" and has been cited only on rare occasions, but it was cited by the committee in the 2002 Alabama case against an assistant football coach.

Shep Cooper

Shepard C. Cooper
Director NCAA Infractions Committees
(317)917-6222

From: Eleanor Myers [mailto:eleanor.myers@temple.edu]
Sent: Monday, March 01, 2010 2:09 PM
To: Cooper, Shep; Britton B. Banowsky; John Black; conboy.1@nd.edu; Dee, Paul T; Brian Halloran; thomasd@themeac.com; jpotulo1@unl.edu; Schiessler, Diann
Cc: Uphoff, Rodney; Elworth, Jim
Subject: Re: Thoughts to Consider for Tue Evening Conf Call from Rod Uphoff

Rod,

This is really fantastic. thanks for all this wonderful work. I had independently come to a conclusion that I could support a finding that the "agreement"/understanding between the Griffins, Bush, Lake and Michaels regarding the formation of a sports agency began in late 2004 and that money was provided to the Griffins pursuant to that agreement prior to the National Championship game in January 2005. I appreciated your views on that point.

Here is the issue that I am currently struggling with and that I hope we will have time to discuss tomorrow evening: assuming that McNair failed to monitor and/or ignored a number of indications that Bush was receiving improper benefits, is that a basis for an unethical conduct finding or a lack of institutional control finding on behalf of USC? His lawyer makes a strong claim that as an assistant coach, he cannot cause the institution to be charged with a lack of institutional control. Moreover, the unethical conduct charge is appropriate only if he lied. Does a failure to follow up and investigate when he should show that he actually knew anything? To make an unethical conduct finding, I think we would need to be pretty confident that we knew the content of the Jan 8 call from Lake to McNair and that it was a threatening call and McNair lied about it. As to that call, we have evidence that Lake was taping calls during this time (I believe this is from Lisa Lake or Maiesha Jones' transcripts and not from an illegal source) and that soon after he made threats directly to Bush which Bush's lawyer called extortionate. On the other side, we have a botched interview in which McNair did not have a good opportunity to explain the call, since the date the staff questioned him about was wrong. (2005 instead of 2006). We also have the Brooke Augustin stuff, but which version was the lie? if the first interview was a lie and he corrected it, can we really charge him with unethical conduct? That creates a bad incentive for others caught in a lie. And finally, I personally do not think we can use the dog fighting information which is not in the record and which staff chose not to put in the record.

Look forward to a productive conversation tomorrow. Eleanor

At 11:37 AM 3/1/2010, Cooper, Shep wrote:

Members of the Committee:

SECRET //

CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER

NCAA 009032

A0462

PREVIOUSLY LODGED UNDER SEAL. FILED PURSUANT TO COURT'S 2/6/15 ORDER

Last week Rod Uphoff "put pen to paper" (actually fingers to keyboard) and provided some thoughts with Paul and me that he wanted to share with the Committee regarding the USC case. Paul took a look at the document this weekend and has given his approval to pass it on to you. It's attached as a Word document to this e-mail.

Shep Cooper

Shepard C. Cooper
Director NCAA Infractions Committees
(317)917-6222

Prof. Eleanor W. Myers
Temple University Beasley School of Law
1719 N. Broad St.
Phila. PA 19122
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January 6, 2010

VIA ELECTRONIC MAIL/REGULAR MAIL

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www.ncaa.org

President Steven B. Sample
University of Southern California
University Park
3551 Trousdale Parkway
Los Angeles, California 90089-0012

Dear President Sample:

This is in reference to the NCAA Division I Committee on Infractions members who will be hearing your institution's infractions case during the period February 18-20 in Tempe, Arizona.

The committee has recently added a new public member, Mr. Roscoe Howard, a former U.S. Attorney and currently an attorney in private practice with a Washington, D.C. firm. The University of Southern California's (USC's) hearing will be the first Mr. Howard has had the opportunity to attend. It is the committee's policy that new members of the committee observe at least one hearing before becoming "full-fledged" members and directly participate in the adjudication of cases. As a result, Mr. Howard will be attending the USC hearing strictly as an observer. Committee member Brian Halloran, one of the committee's two coordinators of appeals, and who is also a public member, will move from appeals to the deliberative committee for this case.

Mr. Rodney Uphoff, a professor of law at the University of Missouri, Columbia, is the committee's other coordinator of appeals. Mr. Uphoff will represent the committee in the event there is an appeal of the committee's decisions in this matter.

You may contact Mr. Cooper or the committee's assistant director, Jim Elworth, at the NCAA national office should you have any questions or concerns.

Sincerely,

A handwritten signature in cursive script, appearing to read "Paul T. Dee".

Paul T. Dee
Lecturer in Law and Education,
University of Miami
Chair, NCAA Division I Committee on Infractions

PTD:ksm

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EXHIBIT 14

A0484

cc: Ms. Carol Mauch Amir
Mr. Ron Barker
Ms. Kelly Bendell
Mr. Tim Floyd
Mr. Mike Garrett
Mr. Mark Jones
Mr. William King
Mr. Todd McNair
Ms. Noel Ragsdale
Selected NCAA Staff Members
Division I NCAA Committee on Infractions

From: Howard, Roscoe
To: Jo Potulo; Brian Halloran
CC: Cooper, Shep; Britton B. Barowsky; John Black; Melissa Conboy; PaulDee; DennisThomas; uphoffr@missouri.edu; DiannSchuessler; Eleanor Myers; Elworth, Jim; Howard, Roscoe
Sent: 3/2/2010 10:13:52 AM
Subject: USC

I wanted to respond to Eleanor's concern that USC should not be held accountable for McNair's actions in failing to reel in Reggie Bush.

I have trouble when we credit any argument, that is a point not based on fact, that is put forward by Mr. King. Eleanor makes the point that King made a "strong argument" that an assistant coach cannot cause an institution to be charged with lack of institutional control.

Initially, as to Mr. King, once he said to this committee, in describing a series of calls, most of which were 2:00 to 2:30 in length as a series of "dropped calls" (I am forgetting the actual context, and I realize that McNair's attorney made the identical argument as to his client in the calls to Augustine), I realized that despite the NCAA mandate that the parties work together toward figuring out what had happened, that USC was in adversarial mode and wanted to ensure that this committee be placed in a "box" of his making and only consider those things they want us to see.

My point is that as a committee I feel we keep looking at these events in this hearing as individual events, unrelated to one another. That is how King has argued the case and it seems to be his strategy. I found Mr. King's representation disingenuous so it has been fairly easy for me to disregard most of his arguments. Although, as always, I do consider and would review any "fact" he put before us.

I understand I am new to these hearings, but understanding the concept of "lack of institutional control" has not been difficult, since I spend a good part of my time with any given Newspaper's [yes, I still read the printed page and not an LED screen for my news] Sports Section. The one "take-away" [a term borrowed from one of Floyd's attorneys] I had from watching the proceedings is that USC, and especially their athletic director, kept themselves in a state of "plausible deniability". That is they do not try to educate themselves or engage to curb some of this activity, At least the administrators, especially Garrett, put themselves in a position where they could truthfully answer our questions with "I don't know" answers.

I guess what I find troubling is the fact that the University officials there that were not part of the athletic department did not find those answers troubling.

Specifically as to Todd McNair and the concerns expressed in the March 1st email, McNair should have all inferences negatively inferred against him. Credibility determinations are for this committee and this committee alone. As with all tribunals or fact finders, we need not say why we disbelieve him we only need to let the public, or whomever, know that we do disbelieve him.

McNair is the only witness or hearing participant that we undoubtedly know has lied to us. He has told us that. I don't believe he should be "rewarded" for coming forward, because coming forward is exactly what he is supposed to do. I simply think it is backwards to say that because he came forward to admit he's a liar we should now, somehow, provide him with some sort of "benefit" in terms of how we treat his testimony, or we refrain from "punishing him" to encourage people to come forward in the future.

This is a committee that lacks the power and the "punch" of most

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tribunals. We don't see the witnesses so we can examine them, we cannot compel testimony, no one takes an oath when they appear before us and there are no consequences for lying to investigators or us such as a charges for perjury. To come forward at a later time and expect to be treated as anything but a liar flies in the face of logic.

I don't think we need the LA Times article to know that McNair continued to lie in the hearing. First, I don't think we need the staff to point out what the rest of the world knows: that when Brit asked McNair does he have anything criminal in his background and McNair answered "no", that was a lie. Keep in mind, when McNair was playing for the Chiefs, there were Michael Vick type protests at Arrowhead Stadium. It flies in the face of logic that as a deliberative body, we are supposed to wait for parties to tell us what the rest of the world knows. Especially, when we know it.

However, understanding the reluctance of the committee to go that far and acknowledge the article, McNair's course of deception continued during our hearing. I think we all know that McNair, has lied to the staff, and, as I have argued, we as a committee we are allowed to reach a conclusion that he has not been believed without pointing to an article or any item in the record. Nevertheless, I believe, for those who want to be able to point to something, that the items that indicate McNair duplicity are all in our record.

For instance, one thing we did not focus on is the picture that was entered into evidence with McNair, Faizon Love, Lake and one other person [I'm forgetting who]. McNair insists that he does not know the people in the picture other than Love, and the others there are "groupies" who want to be close to a former NFL Player and current movie "star" [as a digression to make a point I tried to make earlier: Faizon Love is in the recently released movie "Couples Retreat" with Vince Vaughn. I don't think we would have to have any of the parties to tell us that as part of our fact finding if one of us had gone to the movie and seen Love. I think the same rationale can be made with the McNair's criminal record and/or the LA Times article]. That picture was taken from "Chief" Michael's camera phone according to later representation from the staff. Indeed, a representation unchallenged by King and the University. That "coincidence" makes it very doubtful, as factual matter, that Lake was there in the picture as some Faizon "groupie". McNair and his counsel would have us think that it is simply a coincidence that most of the major players in this investigation happened, by accident, to appear in that group picture at the Marshall Faulk party. I've learned, after doing investigations for a while, to never trust "coincidences". That is the argument we got from McNair because that is all he could come up with.

However, if we buy into the methodology of USC and McNair, we are to only view this picture and the party as separate incidents. That would be a huge mistake on our part. Just isolating the night of the party, it is hard to explain how Bush would end up in the hotel room (even just to change clothes) with Lake (excusing McNair for this argument) on the evening of the party, then have Lake appear in a picture with Bush's position coach that same evening at the largest party thrown in San Diego, a picture that happened to be taken by the phone of another hopefully Bush improper agent. Common sense should tell me this picture was no accident.

In addition, although we shy away from Lake as a witness to be relied upon, other than the USC arguments that Lake cannot be believed because he has a record, everything we have found as "fact" so far is consistent with Lake's testimony to staff. I cannot point to one thing that demonstrates that Lake has lied. There is not a shred of an inconsistent statement or inconsistent evidence. Lake is not the guy you want living next door to you, but that is not a reason to disbelieve him. In my current practice and in my prior life, I have relied on felons and the shady types for information because that is who gets into this scenarios. But the background does not make them a liar.

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Indeed, Lake admits his criminal behavior. We have tapes that are, again, unavailable to us, that Lake made specifically because he knew his background would be called into question. Putting the tapes aside as an actual piece of evidence, we do know they exist and intuition should tell us that if what Lake is telling the staff is, in fact, a lie he would never make a tape.

We seem unwilling to ask for the LA Times article that proves McNair lied. Again, we don't need the article to make the determination, however, with Paul removing Lake's probation report from the hearing record there is now nothing in the record that point to us disbelieving Lake in the manner King would have us to do it. It is such a convoluted way to go about it, but that works.

This is a point I made in Tempe, but the only reason that USC raised no fuss over the removal of Lake's probation report from the record is because we made the concurrent decision not to pursue the tapes. For USC it was a great trade. However, I am still of the mind that if the tapes were an actual issue for California authorities, then ESPN and "Tarnished Heisman" would have all been hearing from the California law enforcement authorities. Granted, we are the only ones using the tapes in a hearing, but how the California legislature can dictate what is admissible evidence in a hearing in Arizona run by an organization headquartered in Indiana is beyond me. We should have demanded those tapes and see if USC would then report us. I am confident of the answer to that.

However, for USC litigation strategy, keeping that tape out was of paramount importance. Keep in mind, the USC arguments about not having time to "authenticate" the tapes was specious. Authentication only goes to the weight of the piece of the evidence and not its admissibility. I am hard pressed to believe that anyone from USC would ever be able to prove the voices on the tapes were not those of whom are represented on the tape.

USC wanted to put this committee in a box and they, somewhat, have succeeded. I did say to the NCAA general counsel that I thought she did this committee a disservice with her work. The only research I saw or heard referred to on the tapes or the LA Times article was simply a reading of the California statue with the former and a mention of the article not being part of the charges. We have the staff, its g.c. and USC all insisting we only operate in a world and with a record that has been recklessly constructed. I honestly believe the staff and the g.c. are intimidated when faced with any legal argument, while USC, I believe, is simply disingenuous.

However, the only thing that is certain is that McNair lied to us. When you put the entire series of events together, it is clear that it is McNair's story that does not fit. McNair's first attempt at explaining his presence at the Faulk party fell flat -- because it was a lie. Then McNair identifies Augustine as an "alibi". His "song and dance" about his family being made of lasting relationships was merely a cover to introduce Augustine while simultaneously excusing her presence as something his wife was aware of with their trip to the Faulk party being a business meeting. Of course, nothing he told us about his travels to San Diego indicated a meeting about record labels or the need for Augustine to help -- in fact, he was partying downstairs at the party with "older crew" which hardly sounds conducive to getting something business-wise done. McNair also told us that he had identified Augustine as the perfect candidate to help him build his record label. I find that hard to believe with any undergraduate, but to compound my disbelief, Augustine ends up in Medical School, a career choice about as far from the recording industry as I can imagine.

McNair's attorney's explanation of why he made some 1,000 calls to Augustine before she was interviewed by the NCAA was totally incredulous. To insist that some 700 of the those calls were simply

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dropped calls I thought was insult to this committee. But, even with that argument, 300 some odd calls remain unexplained. I have no doubt that McNair and Augustine were not in a business relationship and more than likely were in an affair. I come to that conclusion because with medical school awaiting her she still put herself in a position to be used in a very high profile investigation, and I don't think she does that for anyone other than some she is close to and intimate with. I expect a response that she could do it because she was telling the truth, but there is nothing in her statement to the NCAA or in having her story fit in this scenario that would lead me to that conclusion. This is simply the body of work that I have recognized with McNair. He will lie to get out of any situation in this case.

This committee has recognized that a call of some substance had to be made from Lake to McNair the night before the Bush selection of his agent and that Lake's one contact to Bush [since Bush was not reaching out to him] was McNair. McNair's explanation is simply implausible. McNair claims it was a hang up call or a mistake. Plus, McNair says he has no idea how the person who is pictured with him in a photo at an exclusive party, and is a friend of his best player who was also at the party got his phone number and made the call to his cell, is, again, implausible. At the very least, if you want to credit McNair, which I don't believe we should [obviously], Lake is going to say to McNair starting out that call, "Listen, don't hang up, I know Reggie". McNair's representation that he has never spoken to Lake and did not speak to him that night has to be a lie.

It has to be a lie because we need to ignore the pleas of King and McNair, and look at this as one big picture. Lake has the more plausible explanation of why he made the call and his fear of losing Reggie as "ticket" seems very real. McNair is protecting his job and his ability to work later in an NCAA institution. The only way McNair gets out of this scenario is to deny that it ever happened. Anything less, he would be (and should be) fired, as well as eliminate his chances of coaching anywhere else.

The fact that the university, through this coach, who we know was Bush's position coach and whose athletic director never seemed to know the answer to any question, had this going on without an ounce of knowledge makes them either inept or corrupt. What are the assistant coaches there for if not to watch these players? How could a Heisman Trophy candidate not have some special "watch" on to protect the player and the institution?

I think we know exactly what was said in the late night phone call between Lake and McNair. I also submit there was, in fact, a phone conversation. We know because Lake told us what went on. I think we believe Lake because he has given us every reason to. McNair is, in fact, a liar, because he has told us that. The University only acts through its employees, and they should be credited with the acts of McNair. Lack of Institutional control, especially when you add the later appearance of Orenstein and those issues, the admissions with the O.J. Mayo scenario (and do we add the hiring of Lane Kiffin?), is a very easy call for me.

If I can be a little more frank than I have been, I don't think this committee should be chained to a staff that has seemed to have fallen short with this investigation or an Institution that has no intention of having us find out what actually happened here. I was insulted by the arguments made by institution and embarrassed by the reaction of the staff. I am sorry I snapped at our g.c., but she was proud of the way the LA Times article issue was handled, and never gave a moments thought to the integrity of this hearing. It is beyond me, in my experience, how any attorney could know someone was lying to a tribunal and not take every opportunity and try every action to correct it.

We have very few chances to establish our own credibility. Once you blow that opportunity, its always hard to get it back. I believe we

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should worry less about an appeal in this hearing and more about getting this right, despite the best efforts of the parties to keep us from that goal. If the appellate committee overrules us - - so be it. Let's rule on what we know and make our decisions on what makes sense.

I hope none of you was insulted by this rant. I know not everyone agrees with me (and, I am hoping that at least someone does), but USC's approach to this case I have found very troubling, and down right insulting. I found their general counsel close to obstructionist and I am thoroughly convinced that what they want from this hearing has nothing to do with helping us learn what actually happened.

Now, I understand there is conference call this evening. For whatever reason, I'm not getting all of the emails that are floating around. I just need to know when to be on the call and how to get on [hoping you have read this far and haven't hit "delete" yet on your keyboard].

Roscoe C. Howard, Jr.

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To: Uphoff, Rodney [uphoffr@missouri.edu]
Cc: Cooper, Shep [scooper@ncaa.org]
From: DeVees, Cheryl (Contractor)
Sent: Tue 2/23/2010 2:21:41 AM
Subject: FW: Fwd transcript

Rod, here you go...

Cheryl

From: bc0205@aol.com [bc0205@aol.com]
Sent: Sunday, February 21, 2010 12:27 AM
To: DeVees, Cheryl (Contractor)
Subject: Fwd transcript

My plane was delayed and my computer would not work so borrowed one.

MR. BANOWSKY: I have just a few questions. First to the university, do you have anything in your institutional history which would suggest that Mr. McNair is not trustworthy or that he engaged in misconduct?

MR. GARRETT: In the five or six years he has been in our place we have had no record of any type of violation or anything of that kind.

MR. BANOWSKY: For you, Mr. Tompsett or Mr. McNair, do you have anything in your background, your history of a criminal nature, or anything else that would call into question your veracity?

MR. TOMPSETT: I will answer and then I will let Todd answer. I am not aware of any criminal background that would call into question his veracity, or that sort of thing. I am not aware of anything.

MR. MCNAIR: No, sir.

EXHIBIT 20

To: Cooper, Shep[scooper@ncaa.org]
From: Uphoff, Rodney
Sent: Thur 3/4/2010 4:30:11 PM
Subject: FW: Question for the Chair

I would encourage you to respond that you are writing something up and we will schedule another meeting after the draft. We are not going to achieve consensus re mcnair no matter how many calls we have and we are going over ground that we already have discussed. We will ultimately have to take a vote and hopefully it will come out the right way.

rod

Rodney J. Uphoff

Elwood Thomas Missouri Endowed

Professor of Law

University of Missouri & Director,

University of Missouri South African Education Program

From: Eleanor Myers [mailto:eleanor.myers@temple.edu]
Sent: Thursday, March 04, 2010 10:21 AM
To: Cooper, Shep; Britton B. Banowsky; Jo Potuto; pauli dee; Roscoe Howard; Melissa Conboy; Uphoff, Rodney; brian halloran; Elworth, Jim; john black; dennis thomas
Subject: Question for the Chair

Dear Everyone,

I think the 30.3.5 issues that Jo raised and Shep responded to are important and deserve further discussion to which I am glad to contribute. However, I am becoming increasingly uneasy with conducting our deliberations by email. I am concerned about confidentiality both because I do not know the California open records law and because several of us use our institutional email accounts at public institutions. Further, it is not clear that everyone is equally comfortable using email in this way and I think it is important for the deliberations to be inclusive. Therefore, Paul, will you weigh in on whether you think it is appropriate to continue this email discussion, particularly as it concerns Todd Mc Nair or whether we should schedule another (briefert!) phone call or wait to see what Shep and Jim come up with in this draft? Personally I would like to

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have another call, perhaps for 1/2 hr to discuss Todd McNair. E

At 08:52 AM 3/4/2010, Cooper, Shep wrote:

All-

It's my firm belief that Bylaw 30.3.5 has traditionally been viewed such that athletics department staff members have an obligation to report knowledge of any NCAA violations involving the institution. It is NOT limited to the individual's involvement. Granted, the bylaw, the way it is currently written (and awkwardly at that) might liberally be interpreted to exclusively mean one's personal involvement, but that was not the intent of the legislation, as I understand it. Jim Elworth, who was the compliance officer at North Dakota, said that it was his recollection that the form itself requires individuals to report knowledge of NCAA violations; not exclusively one's involvement.

Jo, you might weigh in on this. We also might take this to the AMA staff for an interpretation, just to be sure. Finally, we should also consider modifying the legislation to be consistent with its intent.

As soon as we receive the transcript, I will take a look at what, exactly, McNair said when questioned about the call, but our recollection (Jim's and mine's) was that he simply said he didn't remember that 2.5 minute call in the wee hours of January 8.

Shep Cooper
Shepard C. Cooper
Director NCAA Infractions Committees
(317)917-6222

-----Original Message-----

From: Eleanor Myers [mailto:eleanor.myers@temple.edu]
Sent: Wednesday, March 03, 2010 4:50 PM
To: Britton B. Banowsky; Jo Potuto; paul dee; Roscoe Howard; Melissa Conboy; rod uphoff; brian halloran; Cooper, Shep; Elworth, Jim; john black; dennis thomas
Subject: RE: followup to conference call

Jo, Britton and others,

The problem I am having with 1(b)(3) is that I did not think McNair had an adequate opportunity during his interviews to discuss what happened in that call. The staff told him it occurred in 2005 not 2006 and it was generally a very confusing piece of questioning. I

suppose we could review the transcript at the hearing to see whether he lied in his discussion of that call then, but on the record, I am not comfortable charging with him with lying. On the reporting issue, (30.3.45), he must report "any knowledge of any involvement in any violation". As Britton says, on this record it is hard to find that he was "involved" in anything, only perhaps his knowledge. Does 30.3.5. cover that? That is my memory of where we are, albeit fading rapidly. E

At 04:19 PM 3/3/2010, Britton B. Banowsky wrote:

>Jo,

>

>I will share my thoughts, which are less fresh than they were.

>

>My recollection was while I didn't find him credible, on most issues it

>was his word against Lake's word. And, Lake's transcript was really

>choppy on his relationship with McNair, and as I recall he had

>difficulty being able to come up with his name until staff prompted him.

>The telephone calls and the picture were more persuasive to me. And he

>stuck to his story that he didn't know Lake even when confronted with

>them, which was a stretch.

>

>He may have not told the truth about knowing Lake, but the real question

>would seem whether he knew of Lake's plan to have the agency and that he

>was giving benefits to Reggie.

>

>It is challenging for me to make the finding when there is no allegation

>that he personally was involved in any rules violations, or even had

>specific knowledge of any.

>

>That's why this is a tough one. But I will defer to others on it.

>

>Britton

>-----Original Message-----

>From: Jo Potuto [<mailto:jpotuto1@unl.edu>]

>Sent: Wednesday, March 03, 2010 2:32 PM

>To: paul dee; Britton B. Banowsky; Roscoe Howard; Melissa Conboy; rod

>uphoff; brian halloran; shep cooper; jim elworth; john black; Eleanor

>Myers; dennis thomas

>Subject: followup to conference call

>

>I am reviewing my notes from the call and need to bookmark something for

>

>our phone call once we have a draft report. This is re McNair and 1B3.

>

>The allegation against him is that he provided false and misleading

>information (10-1-d) in addition to his failure to report the

>information to USC (30.3.5). If we provide general context that we do
>not find him credible and we also find, as we did, that he is not
>credible re his explanation of the Jan 8 phone call, then how is it that
>
>we do not find he committed a 10-1-d violation? I apologize for
>re-raising this, but I had been under the mistaken impression that the
>charge in 1-b-c was that he failed to report. Jo

Prof. Eleanor W. Myers
Temple University Beasley School of Law
1719 N. Broad St.
Phila. PA 19122
215-204-1923

Prof. Eleanor W. Myers
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APPEAL OF TODD MCNAIR

SUBMITTED BY:
SCOTT TOMPSETT
STINSON MORRISON HECKER LLP
KANSAS CITY, MISSOURI

CASE NO. M295
AUGUST 11, 2010

EXHIBIT

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INTRODUCTION

Overview

Former assistant USC football coach Todd McNair submits this Appeal to set aside Finding B-1-b and the associated penalties.

The finding is clearly contrary to the evidence because it is based on factually incorrect and false statements. Specifically, the COI changed and mischaracterized the testimony of Lloyd Lake, the sole source of the allegations against McNair, and then based its finding on the mischaracterized testimony.

Further, the COI's findings that McNair was not credible are internally inconsistent, contradictory and based on false statements and mischaracterizations. McNair understands that the COI has discretion to make credibility findings. He is not challenging that principle. However, the COI's credibility findings must be based on true and correct facts. The COI may not change testimony or make up facts to support credibility findings.

The COI also committed a procedural error by using an erroneously low standard in making credibility findings. Specifically, the COI found that McNair's recollection of certain events was less likely than other versions and then used that innocuous finding to cast grave doubt on McNair's credibility. If the COI is going to denounce an individual's credibility in a public infractions report, it must find that the individual made statements that are unbelievable, inconceivable, unimaginable or unthinkable, not merely unlikely. The collective errors and mistakes with the credibility findings are so egregious, that they are both clearly contrary to the evidence and based on procedural error.

Finally, McNair complains of pre-hearing and post-hearing misconduct. First, the enforcement staff violated McNair's right to fair process by unilaterally excluding USC from the interviews of Lake and his family. Thus, McNair was denied the opportunity to have his institution question Lake and test his credibility.

Second, the COI communicated *ex parte* with the enforcement staff concerning the draft infractions report. The purpose of the *ex parte* communications reportedly was to permit the enforcement staff to correct any "factual errors" in the report. McNair believes the *ex parte* communications were improper and unauthorized by NCAA bylaws. McNair also believes the improper communications created a rebuttable presumption of prejudice.

Third, McNair believes the NCAA has prejudged his appeal. Following the COI's release of the Infractions Report, the NCAA issued a public statement criticizing an article that raised questions about the COI's finding against McNair and voicing support for the COI. McNair believes the NCAA's statement is inappropriate and shows prejudice.

Chronology of Relevant Events

While this case is not as factually complex as some, McNair understands that the IAC is new to the case and unfamiliar with the chronology and details of relevant events. The events below relate directly to the COI's finding against McNair.

- Saturday, March 5, 2005 – Marshall Faulk's Birthday Party In San Diego

Lloyd Lake alleged that he provided Reggie Bush with a hotel room for two nights so he could attend the Faulk party. Lake claimed to have met McNair both at the hotel room and at the party,

and he alleged that McNair knew he provided the hotel room to Bush. Lake was the sole source of the allegations.

The staff alleged that Bush received a benefit in violation of NCAA amateurism legislation, and it charged McNair with unethical conduct for allegedly knowing about the benefit but not reporting it and for allegedly having a conversation with Lake at the Faulk party. The COI did not find evidence sufficient to support any of the three allegations. Nonetheless, the Infractions Report said that McNair's successful defense to the allegations raised questions about his credibility. The Infractions Report did not question Lake's credibility even though the COI rejected his allegations. As set forth in more detail below, the COI's credibility analysis and determinations are procedurally improper and prejudicial.

- **Night of October 29, 2005 – Reggie Bush Hosted PSA Percy Harvin On An Official Visit/Todd McNair Appeared In A Photograph At A Nightclub With Lloyd Lake In The Background**

It is important to understand that no one has ever alleged that McNair committed any violations on October 29, 2005. The date is relevant only because the staff alleged that McNair had telephone and in-person contact with Lake that night. Thus, the staff argued that McNair knew Lake. However, the staff did not allege – nor is there any evidence – that McNair was told on October 29, 2005, that Bush had entered into an agency agreement with Lake and that Lake had provided Bush with impermissible benefits.

While the COI did not find any violation against McNair relating to October 29, 2005, it did question his credibility concerning what he reported occurred that night. Specifically, the COI said McNair was not credible in his recollection that he attempted to contact Bush to get him to retrieve then prospective student-athlete Percy Harvin from his hotel room and entertain him

during his official visit. The COI said Lake's version of the events was more credible than McNair's recollection.

However, in making its credibility findings, the COI misstated and mischaracterized the evidence. In fact, it based its findings on false statements. Moreover, the two credibility findings against McNair relating to October 29, 2005, are mutually inconsistent and contradictory. In other words, the COI found that two mutually exclusive events occurred and then used both events to denounce McNair's credibility.

The events of that night are discussed in detail below. For purposes of this overview, what is important is that McNair never denied that he may have been introduced to Lake; he simply said he did not recall ever being introduced to Lake. It is not a violation for McNair to be introduced to Lake nor is it unbelievable that McNair would not recall the introduction when he was interviewed almost a year after it occurred.

- **January 8, 2006, Call To McNair**

The COI found that Lake made a two and a half minute call to McNair on January 8, 2006, and attempted to get McNair to convince Bush either to adhere to the agency agreement or reimburse Lake for the money provided to Bush and his family. The COI found that McNair committed unethical conduct when he failed to report the call to USC and when he reported false and misleading information about the call to the enforcement staff. McNair has consistently and categorically denied the allegations.

The finding is clearly contrary to the evidence because it is based on mischaracterized evidence and false statements. The COI changed and mischaracterized Lake's testimony about the call. Lake's actual testimony does not support the finding.

Moreover, the COI materially mischaracterized Lake's girlfriend's testimony by stating that she "confirmed Lake's account of the call." However, the girlfriend was not present for the call, did not know what was said during the call and did not even know McNair. The evidence is far short of that necessary to support a finding of unethical conduct.

I. STANDARD OF REVIEW

Bylaw 32.10.4.2 (Findings) states:

Findings of violations made by the Committee on Infractions shall not be set aside on appeal, except on a showing by the appealing party that:

(a) a finding is clearly contrary to the evidence presented to the Committee on Infractions;

(b) the facts found by the Committee on Infractions do not constitute a violation of the Association's rules; or

(c) there was a procedural error and but for the error, the Committee on Infractions would not have made the finding of violation.

II. ISSUES RAISED ON APPEAL

A. The COI Used False Statements To Support Its Unethical Conduct Finding Against McNair

The crux of the finding against McNair is the COI's conclusion that Lake called McNair at 1:34 a.m. on January 8, 2006, and asked McNair to convince Bush "either to adhere to the agency agreement or reimburse Lake and Michael Michaels for money provided to Bush and his family." Infractions Report, Finding B-1-b, p. 23. According to the COI, it was this two and a half minute phone call that put McNair on notice that Bush had entered into an agency agreement with Lake and Michaels, and that Bush had accepted money in violation of NCAA amateurism legislation.¹

¹ The findings states, "At least by January 8, 2006, [McNair] had knowledge that [Bush] and [Lake and Michaels] likely were engaged in NCAA violations." Infractions Report at p. 23 (emphasis added). The COI did not identify a single piece of evidence indicating that McNair knew of the violations prior to January 8, 2006. Thus, the COI has no business using the phrase "[a]t least by January 8, 2006..." to suggest or imply that McNair knew of the

McNair has consistently and categorically denied the allegation. The COI said it relied on Lake's testimony to support its finding.

The Committee finds [Lake] credible in his report of the call. Lake said that he phoned [McNair] to ask him to intercede with [Bush] and get him to adhere to the agency agreement that he made with [Lake and Michaels]. [Lake] said he also told [McNair] that he did not intend to lose the money he had given [Bush] and his parents and preferred not to go public with the matter and implicate the institution.

Infractions Report at p. 26.

The COI materially mischaracterized and changed Lake's testimony. Lake never said, either in words or substance, what the COI claims he said. In fact, Lake's actual testimony does not comport with undisputed facts and, therefore, it is not credible or reliable. To fix that problem, the COI changed Lake's testimony to fit the finding.

Set forth below is three-part analysis showing what Lake actually said contrasted with what the COI claims he said. The complete excerpt from Lake's transcript was set forth at pp. 1-19 to 1-21 of McNair's Response to the Notice of Allegations, and it is attached to McNair's Appeal as Exhibit 1.

1. First Discrepancy – Lake Said McNair Called Him, But That Did Not Happen

As shown in Lake's testimony and explained in McNair's Response, the enforcement staff told Lake that McNair's phone records show that *McNair called Lake* at 1:34 a.m. on January 8, 2006, even though the records show it was *Lake who called McNair*. Lake agreed with the

violations before that date. After a four year investigation, a three day hearing and months of deliberation, the COI should be required to state its findings with specificity and precision. McNair cannot appeal a finding that he knew of a violation but failed to report it, unless he knows the specific date he is alleged to have had notice. Accordingly, for purposes of this Appeal, McNair requests the IAC to strike the phrase "At least by" and replace it with the word "On".

enforcement staff's mischaracterization of who placed the call and explained why McNair had called him. Lake said McNair called him to discuss the agency agreement, even though there is no record of a call from McNair to Lake on January 8, 2006, or at any other time around that date.

As described in more detail below, it is material who placed the call because there is no evidence to support Lake's claim that McNair would have called him to discuss the agency agreement. McNair did not even know there was an agency agreement. Thus, Lake reported something that did not happen, i.e., that McNair called Lake to discuss the agency agreement.

That should be a strike against Lake's credibility. Lake's failure to correct the investigator and say, "No, I called McNair," raises the question whether Lake was even the person who placed the call. At a minimum, it calls into question whether he remembered the call and testified from actual knowledge or made up his testimony. The COI had an easy fix for this problem. It ignored Lake's actual testimony and changed it to fit the facts.

The COI stated that it found Lake "credible in his report of the [January 8, 2006] call [Lake] said that he phoned [McNair]..." Infractions Report at p. 26 (emphasis added). The obvious purpose in changing Lake's testimony was to make it conform to the phone records and thus make it appear that Lake had an accurate recollection of the call and the conversation. However, Lake did not say that he called McNair in the early morning hours of January 8, 2006, and, therefore, the COI's finding is based on an erroneous statement.²

² Later in the interview, *after discussing the January 8, 2006 call*, the enforcement staff asked Lake, "Did you ever call McNair?" and Lake said, "Yeah, I called him a couple times . . . trying to get this resolved, just get my money back and make it right." See McNair Response at pp. 1-20 to 1-21. This proves that Lake claimed that McNair called him at 1:34 a.m. on January 8, 2006. Otherwise, after discussing the January 8, 2006, call, the NCAA investigator would not have asked Lake if he ever called McNair and Lake would not have given the answer that he

2. Second Discrepancy – Lake Said McNair Called Him To Try To Resolve The Dispute With Bush And Asked Him Not To Implement USC

The COI's mischaracterization does not end with Lake's mistake about who placed the call on January 8, 2006. The COI stated that Lake said that he asked McNair to intercede and get Bush to adhere to the agency agreement. However, Lake's description of the conversation – brief and vague as it is – makes clear that Lake claimed McNair initiated the call because he (McNair) wanted to intercede and mediate whatever dispute that supposedly existed between Lake and Bush. That is the opposite of what the COI claimed Lake said. The verbatim excerpt from Lake's testimony describing the call on January 8, 2006, is set forth below.

Mr. Johanninger: --McNair makes a call to you at 2:32. I was asleep at the time--

(People laughing)

Mr. Lake: Yeah.

Mr. Johanninger: --personally, but, but in your case--

Mr. Lake: *I think that was like that was like him (McNair) trying to resolve it, you know, and like Reggie's wrong, he should make it right and basically don't implement the school.*

Mr. Johanninger: Because this, this is 2006 we are talking about.

Mr. Lake: Yeah, that's when I went to jail, that's when everything started falling apart, I mean, it fell apart.

Mr. Johanninger: What can you tell us that you specifically recall about that conversation with him?

Mr. Lake: Uh, just telling about Reggie and all, he knew about the money he took, he knew that he had an agreement and--

Ms. Cretors: Todd McNair indicated to you in the telephone conversation that he was aware that Reggie took money--

did. More importantly, it shows that Lake said he made two calls that never occurred. The records show only the call on January 8, 2006. Thus, Lake described calls that did not occur.

Mr. Lake: I mean, he knew--

Ms. Cretors: --from you?

Mr. Lake: --Yeah, bec, he knew Reggie took money from me. There's no doubt he knew about that.

Lake Transcript at p. 113 (emphasis added).

Thus, Lake said McNair interceded on his own initiative trying to resolve it, that McNair acknowledged that Bush was wrong, and that McNair asked Lake not to implement [sic] USC. That is the reverse of what the COI claimed Lake said, i.e., that he asked McNair to intercede and get Bush to adhere to the agency agreement. In other words, even though Lake said it was McNair who placed the call and initiated the discussion, the COI said in its Infractions Report that Lake said he called McNair and asked for McNair's assistance.

The reason the COI changed Lake's testimony is simple: Lake's story does not comport with the facts because there is no evidence that McNair even knew about the agency agreement, much less that Bush was backing out of the agreement. There is no evidence – *even from Lake* – that anyone told McNair about the agency agreement before January 8, 2006. To avoid any possibility that the IAC misunderstands this point, McNair will state it again and emphatically: *there is not one shred of evidence that anyone, including Lake or Bush, told McNair about the agency agreement prior to the call at 1:34 a.m. on January 8, 2006.*³ Thus, McNair would not have called Lake to discuss something he was not aware of. But that is exactly what Lake claimed McNair did.

The COI resolved this material contradiction in Lake's testimony by changing Lake's description of the call to make it appear like Lake said he called McNair to ask him to intercede and get

³ To be clear, McNair disputes that Lake told him about the agency agreement during the call.

Bush to adhere to the agency agreement. That is not what Lake said and the COI has no authority to mold and shape a witness's testimony to make it appear more credible and reliable than it actually is. The COI should take a witness's testimony at face value, not change it to fix inconsistencies and contradictions.

Finally, the COI claimed Lake said he told McNair that he "preferred not to go public with the matter and implicate [USC]." Infractions Report at p. 26. Lake did not say that he told McNair that he preferred not to go public with the matter. Neither those words nor anything similar to those words appear anywhere in Lake's transcript. Yet the COI claimed Lake said those words in its Rationale supporting the unethical conduct finding against McNair.⁴

3. Third Discrepancy – Lake Never Said That He Told McNair That He Did Not Intend To Lose the Money He Had Given Bush

The COI claimed "[Lake] said he also told [McNair] that he did not intend to lose the money he had given [Bush]" Infractions Report at p. 26. Lake never told the enforcement staff that he said those words to McNair during the January 8, 2006 call. Indeed, Lake's brief and vague description of the call is only about what he claims *McNair said to him*. He did not describe any statements *he made to McNair*.

Nonetheless, the COI claimed Lake said he told McNair he did not intend to lose the money he had given Bush, and the COI then used it to support its finding that Lake called McNair and put him on notice that he had given money to Bush. But Lake did not say that. The only thing Lake ever said about whether McNair knew that Bush had taken money is in this exchange:

⁴ Moreover, Lake did not use the word "implicate." Lake said it was McNair who interceded on his own initiative and asked him "basically don't implement [sic] the school." But as explained above, McNair would not have contacted Lake to ask him not to implicate USC because McNair did not know Lake had any reason to implicate USC. Thus, the COI not only changed Lake's testimony to fit its finding, it also corrected and dressed up his vocabulary.

Mr. Johanninger: What can you tell us that you specifically recall about that conversation with him?

Mr. Lake: Uh, just telling about Reggie and all, he knew about the money he took, he knew that he had an agreement and--

Ms. Cretors: Todd McNair indicated to you in the telephone conversation that he was aware that Reggie took money--

Mr. Lake: I mean, he knew--

Ms. Cretors: --from you?

Mr. Lake: --Yeah, bec, he knew Reggie took money from me. There's no doubt he knew about that.

Lake Transcript at p. 113.

How did McNair know that Bush had taken money? Because according to Lake, "he knew ... [t]here's no doubt he knew about that." Thus, it is not because, as the COI claims, "[Lake] said he also told [McNair] that he did not intend to lose the money he had given [Bush]. . ." It is merely because Lake *said* McNair knew.

Lake's bare, unsupported conclusory statement was insufficient to establish that McNair knew that Bush had taken money. Without competent evidence that McNair knew that Bush had taken money, there is no unethical conduct finding. Thus, the COI embellished Lake's testimony to support its finding that Lake specifically told McNair that he had given money to Bush even though Lake never said that.

4. Without Credible And Reliable Testimony From Lake, The COI's Finding Is Clearly Contrary To The Evidence

McNair and Lake were the only people on the call.⁵ McNair has consistently and categorically denied the allegation that forms the basis for Finding B-1-b. The COI changed and mischaracterized Lake's testimony to support its finding. The COI's description of Lake's testimony is below. The factual assertions which are incorrect or mischaracterized are in red.

The committee nonetheless remains particularly troubled by the two minute and 32 second telephone call from [Lake] to [McNair] that took place at 1:34 a.m. on January 8, 2006. [McNair] claimed that he did not remember the phone call and denied [Lake's] description of what was said. The committee finds [Lake] credible in his report of the call. [Lake] said that he phoned [McNair] to ask him to intercede with [Bush] and get him to adhere to the agency agreement that he made with [Lake and Michaels]. [Lake] said he also told [McNair] that he did not intend to lose the money he had given [Bush] and his parents and preferred not to go public with the matter and implicate the institution.

Infraction Report at p. 26 (emphasis added).

Without the incorrect and mischaracterized statements, there is no meat on the bone. There is no competent factual evidence to support Finding B-1-b and, therefore, the IAC must vacate the finding because it is clearly contrary to the evidence. Mischaracterized and made up testimony does not meet the standard required in Bylaw 32.8.8.2.⁶

5. The COI Also Mischaracterized Lake's Girlfriend's Testimony

The COI also mischaracterized the secondary evidence it used to support the finding. Specifically, the COI said Lake's girlfriend "confirmed Lake's account of the call." Infractions

⁵ Assuming Lake was even on the call, which as explained above is questionable.

⁶ Bylaw 32.8.8.2 (Basis of Findings): The Committee on Infractions shall base its findings 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.

Report at p. 26. However, the girlfriend described a call Lake *said he was going to make to a person she did not even know*. Jones Transcript at pp. 56-58, included in Case Summary at pp. 1-169 to 1-171, attached hereto as Exhibit 2.

The girlfriend did not say anything about McNair calling Lake "trying to resolve it" and asking Lake "basically don't implement the school." That is the call that Lake reported. If the girlfriend had "confirmed Lake's account of the call," her description would be similar to Lake's. However, the girlfriend described a call that Lake claimed he was going to make, not a call that Lake had received. She does not know if Lake even made the call he claimed he was going to make. Jones Transcript at p. 58. Thus, the girlfriend did not "confirm Lake's account of the call."

Moreover, the girlfriend did not even know who McNair was until the NCAA investigator mentioned his name to her and told her that he was Bush's position coach. Even after being led by the investigator, she still said, "I don't know for sure if it was that guy though." Jones Transcript at p. 58. Thus, the girlfriend could not confirm a call with McNair because she was not present for the call and did not even know who McNair was.

B. The COI's Adverse Credibility Determinations Against McNair Are Clearly Contrary To The Evidence

The IAC has made clear that the COI determines the credibility of the evidence. University of Mississippi Public Infractions Appeals Committee Report (May 1, 1995) at p. 8. However, if the COI's finding of violation is based on clearly erroneous credibility findings, then it is clearly contrary to the evidence and must be set aside. The COI does not have free reign to make internally inconsistent and contradictory credibility decisions. It also may not use false statements to support its credibility decisions.

In this case, the COI found McNair to be more credible than Lake with respect to the two allegations involving the Marshall Faulk birthday party (Allegations 1-b-1 and 1-b-2). We know the COI found McNair more credible than Lake because Lake was the sole source for those allegations and the COI did not find any violations related to those allegations. In other words, *the COI rejected Lake's allegations*. However, even though the COI found McNair more credible than Lake and declined to find the violations alleged in Allegations 1-b-1 and 1-b-2, the COI used those nonfindings to find that McNair was not credible without once questioning Lake's credibility. In other words, McNair successfully defended the allegations by showing that Lake was not credible, yet the COI questioned McNair's credibility.

The COI also flatly mischaracterized and changed testimony to support its findings that McNair was not credible. The COI made demonstrably false statements. Findings based on incorrect and false statements are erroneous and must be set aside as clearly contrary to the evidence.

Finally, the COI used an erroneously low standard in determining that McNair was not credible. Specifically, the COI found that McNair's recollection of certain events was less likely than other

versions. The COI then used that innocuous finding to support its particularly harsh conclusion that it has "grave doubt as to the credibility of [McNair]." Infractions Report at p. 26. As explained in detail below, a finding that one person's recollection of events is more likely than another's person's version does not justify "grave doubt" about the latter's credibility.

1. The COI Ruled In Favor Of McNair With Respect To The Faulk Birthday Party Allegations But Then Improperly Made An Adverse Credibility Determination Against Him

Allegations 1-b-1 and 1-b-2 involved the Marshall Faulk birthday party in San Diego in March 2005. See McNair Response at pp. 1-5 to 1-18. Lake claimed that he met McNair at the Hyatt Hotel that weekend and that McNair knew that Lake had provided Bush with a hotel room. Lake also claimed that he had a conversation with McNair at the party, during which he told McNair that he was starting a sports agency and asked for referrals.⁷ As explained in McNair's Response, Lake was the *only* source of these allegations. Not a single person corroborated Lake. Not even his girlfriend and sister.

Those alleged incidents formed the bases of two unethical conduct allegations against McNair, which the COI did not find.⁸ In other words, with regard to Lake's allegations involving the Faulk birthday party, the COI found McNair to be more credible than Lake.

Normally when the COI declines to find an allegation that has been brought by the enforcement staff, there is no discussion of the nonfinding in the infractions report.⁹ However, in this case,

⁷ Lake did not claim that he told McNair about the Bush agency agreement during this alleged conversation or even that he knew Bush.

⁸ The COI also found that there was insufficient evidence to support Lake's allegation that Bush stayed in the Hyatt room for two nights at a cost of \$1,574. Thus, the COI rejected *in toto* Lake's allegations about the Faulk party weekend.

⁹ It is unusual for the COI to comment on nonfindings. In this case, the COI devoted over two full pages to a discussion about nonfindings that have little or nothing to do with the one finding the COI did make against McNair.

the COI included two paragraphs and a footnote in its report detailing what the COI said are reasons to question McNair's credibility concerning what occurred during the Faulk birthday party weekend. Throughout its analysis of the evidence, the COI *did not once* cite the problems with Lake's credibility, of which there were many. See McNair Response to Notice of Allegations at pp. 1-5 to 1-18.¹⁰ The COI's failure to discuss the problems with Lake's credibility is inexplicable and inexcusable. Lake was the sole source of the allegations and part of the COI's job was to determine whether Lake was credible in his allegations against McNair.¹¹

If the COI found that Lake's testimony about the Faulk party allegations was not credible – which it obviously did – then the COI should say so in its discussion of the nonfindings. However, in declining to make any findings against McNair involving the Faulk party, the COI said only that "the evidence contained unresolved discrepancies in what witnesses reported regarding the events and who was present during the March 2005 birthday party weekend." Infractions Report at p. 26. In other words, Lake was not credible. But the COI did not say that because that would undermine Lake's credibility with regard to the January 8 call.

To be clear, the nonfindings do not show that McNair was put on notice prior to January 8, 2006, that either Bush had entered into an agency agreement with Lake or that Lake had provided benefits to Bush in violation of NCAA amateurism rules. It is obvious that the COI departed from its normal procedure in order to try to establish that McNair was not credible in order to strengthen the only finding the COI did make. The COI's unorthodox approach illustrates the lengths it was willing to go to try to articulate a Rationale that would hold up on appeal.

¹⁰ For example: (1) McNair was in Los Angeles on the day Lake claimed to have met him at the San Diego Hyatt; (2) Lake's girlfriend said Lake did not meet McNair until October 29, 2005, almost eight months *after* the Faulk party; and (3) Lake claimed he gave McNair a New Era business card at the Faulk party, but New Era was not formed until November 2005, over eight months after the party.

¹¹ The COI did find that Lake was credible in the information he provided with regard to the efforts to establish the sports agency and the benefits he provided to Bush and Bush's family. See Infractions Report at p. 7. However, credibility as to those issues does not automatically establish credibility with regard to Lake's allegations against McNair. As explained in McNair's and USC's Responses, Lake blamed McNair for not having signed Bush. See McNair Response at p. 1-4, USC Response at pp. 1-30 to 1-31. Specifically, Lake made the completely false and unsubstantiated allegation that McNair accepted \$50,000 from a different agent for delivering Bush to the agent's firm. No one disputed that Lake had a motive to damage McNair. However, there is no evidence in the Infractions Report that the COI even considered Lake's motive in determining that Lake was credible in his report of the January 8, 2006, call.

However, instead of acknowledging that Lake was not credible or remaining silent on the nonfindings, as is customary, the COI actually attacked McNair's credibility with respect to the two unethical conduct allegations *that he successfully defended*. In other words, the enforcement staff failed to carry the burden of proof on Allegations 1-b-1 and 1-b-2 (Faulk party allegations), but rather than detailing the problems with Lake's credibility and the staff's case in explaining why it declined to make the findings, *the COI attacked McNair's defense*.

The COI's credibility analysis is upside down and internally inconsistent. The COI may not rule in favor of McNair on Allegations 1-b-1 and 1-b-2 – and in doing so, rule against Lake – but then turn around and use McNair's successful defense as a basis for its finding that Lake is more credible than McNair on Allegation 1-b-3 (January 8 call). To do so turns analytical reasoning on its head.

The obvious purpose of this exercise in sophistry was to create the illusion that Lake was credible and McNair was not, and thereby bolster the only finding the COI made against McNair, i.e., the January 8, 2006 call. However, Lake was not credible with regard to the Faulk party allegations. If he was, the COI would have made findings relating to those allegations. The COI's credibility determinations against McNair relating to those nonfindings are prejudicial, procedurally improper, intellectually dishonest and should be set aside.

2. False Statement About Brooke Augustin Assisting Todd McNair With His Record Label

The COI went to great lengths to discount McNair's report that Brooke Augustin, a USC student, accompanied him to San Diego for the Marshall Faulk birthday party in March 2005. See

Infractions Report at pp. 24-25. However, in doing so the COI made a demonstrably false statement. Specifically, the COI said:

According to [McNair], [Augustin] was a tutor in the athletics department and he contemplated hiring her to assist him in "starting an independent record label."
[Note: *No such enterprise was ever started.*]¹²

Infractions Report at p. 24 (emphasis added).

The obvious implication of the COI's statement is that McNair made up the story that he met Augustin at USC and invited her to accompany him to the Faulk party because he was thinking about hiring her to help with his record label. The COI made it appear that McNair was not credible because it said *no record label was ever started*. In other words, if McNair never started a record label, it is not credible that he invited Augustin to the Faulk party to discuss her helping with the record label. As detailed below, there is substantial credible and undisputed evidence in the record that McNair did start a record label and that Augustin did a significant amount of work for the label.

First, it was not just "according to McNair" that Augustin was a tutor in the athletics department, it was an undisputed fact. Augustin herself testified that she tutored USC student-athletes in the basement of Heritage Hall.¹³ See Augustin Transcript at pp. 2-3, attached to the University's Response to the Notice of Allegations as Exhibit 22, attached hereto as Exhibit 3. There is absolutely no evidence to dispute that Augustin was a tutor and it is misleading to suggestively frame the testimony as if McNair made it up.

¹² The COI did not cite one piece of evidence for its conclusion that McNair never started an independent record label.

¹³ Augustin being a tutor was relevant because it explained how she and McNair met. They worked in the same building.

Second, the COI is incorrect when it says that no record label was ever started. The record is replete with evidence that McNair did start a record label and that Augustin assisted him.

Chairman Dec: What was the purpose of having [Augustin] go with you [to the Faulk party]?

Mr. McNair: Well, I had – at that time I had an idea on starting an independent record label, and at the time she was one of the people that I had an idea that I wanted to work for me.

Hearing Transcript at p. 515.

Later in the hearing, McNair described in detail the circumstances that led him to take Augustin to the Faulk party and her working with him.

- He met Augustin in the football offices in the fall of 2004 when she helped a USC football student-athlete and his father deliver a home cooked meal to the football coaches. Hearing Transcript at p. 540.
- He learned that she had done promotion and publicity work for an entertainment company in Los Angeles. Hearing Transcript at pp. 540-41.
- He occasionally saw Augustin in Heritage Hall during the winter of 2004-05 but he was not working on forming his record label at that time because he was busy preparing for the national championship game and then he was on the road recruiting. Hearing Transcript at p. 541.
- Going to the Faulk party was the first thing they did together. Hearing Transcript at p. 541.
- Following the Faulk party, McNair decided to hire Augustin and they started communicating much more frequently. Hearing Transcript at p. 542.

McNair's testimony about starting a record label even provoked a lively and lengthy discussion between the COI and USC about whether USC had a policy prohibiting moonlighting and whether California law allows an employer to prohibit moonlighting. See Hearing Transcript at pp. 547-553. Some of the questions indicated the COI was somewhat incredulous that USC did not have a policy. It is curious, the COI would debate California's moonlighting law with USC but then find that McNair was not moonlighting.

Testimony was even entered into the record that former head coach Pete Carroll knew about McNair's record label.

Mr. Tompsett: Chairman Dee, I just wanted to add it is my understanding that Coach Carroll was fully aware of Todd's record label and that he was working on that.

Chairman Dee: Were you, Mr. Garrett? Did you know about this record label and production company?

Mr. Garrett: No, I did not know about it. I understand that Pete Carroll did. I think Pete's idea is as long as he is performing his job adequately, then it was fine with him.¹⁴

Hearing Transcript at p. 553.

Finally, Augustin reported detailed information during her interview about the record label and how long she worked with McNair. She said the name of the label was Blakout Records and that she worked for the label for about three and a half years. See Augustin Transcript at pp. 10-11, attached to the University's Response to the Notice of Allegations as Exhibit 22, attached hereto as Exhibit 4.

¹⁴ Coach Carroll had been excused from the hearing prior to this issue being discussed and, therefore, was not present to answer the question himself.

Thus, there was overwhelming competent evidence that McNair did start a record label and that he hired Augustin to assist him. This information was relevant to McNair's credibility because it explained why Augustin accompanied him to the Faulk party. Even though there was no evidence refuting that McNair started a record label and that Augustin helped him, the COI ruled that "no such enterprise was ever started" and used that finding to impeach McNair's credibility. The COI's finding is clearly contrary to the evidence.

3. The COI Used A Straw Man Argument To Question McNair's Credibility On Whether He Ever Was Introduced To Lake And It Also Applied The Wrong Standard In Finding That McNair Was Not Credible

The COI also questioned McNair's credibility because it believed McNair's actor friend, Faison Love, likely introduced McNair to Lake at the club where the photograph was taken. Infractions Report at p. 25. The COI said that given the fact that Love and Lake knew each other, "the Committee finds it *unlikely* that [McNair] would have posed in a photograph, which included [Lake] and [Love] and not, at a minimum, have been introduced to [Lake] by [Love]." Infractions Report at p. 25 (emphasis added).

The implication is that McNair categorically denied ever being introduced to Lake despite the fact that there is a photograph of them in a nightclub. However, McNair never denied that he may have been introduced to Lake; he said he had not met Lake to the best of his knowledge. Thus, the issue is not whether it is unlikely that McNair posed in a photograph that included Lake but was not introduced to Lake. The issue is whether McNair may have been introduced to Lake but did not recall the introduction nearly a year later when he was first interviewed by the enforcement staff. Set forth below is the relevant testimony.

McNair was asked at his first interview if he had ever met Lake.

Ms. Cretors: Can you tell me if you ever met Michael Michaels?

Mr. McNair: Yeah.

Ms. Cretors: Have you ever spoken with Michael Michaels?

Mr. McNair: Not to my knowledge.

Ms. Cretors: Have you ever met Lloyd Lake?

Mr. McNair: *Not to my knowledge.*

Ms. Cretors: So you might have but you're not sure and you might not have. Is that to your knowledge, you never have met them, you don't know them or you're not sure whether you have?

Mr. McNair: *Not to my knowledge.* I'll come in here with my nephew and some of his old friends and I introduce you to them. As my nephew Marcus would say, "Hey Marcus, that's Pete." What's your name again?

Ms. Cretors: Angie.

Mr. McNair: "That's Pete. That's Angie. Bobby, that's Angie and Steve. That's Andrew, so hey, hey, hey." All of 'em then they'll go about their way, so not to my knowledge. If I asked you a month later, have you met Pete or Bobby or, your, I don't know. I mean really, I don't, I don't think I have, *so not to my knowledge.*

Ms. Cretors: Has Reggie ever . . .

Ms. Ragsdale: And certainly it sounds like you certainly don't recall meeting them.

Mr. McNair: *Don't recall ever meeting them.*

Ms. Ragsdale: Okay. What about speaking with him?

Mr. McNair: No.

Ms. Cretors: With either Lake or Michaels?

Mr. McNair: No.

McNair Transcript, Sept. 19, 2006, at pp. 26-27 (emphasis added).

At his second interview, which was conducted a year and a half later, the staff asked McNair again about Lake and then showed him the photograph.

Mr. Johanningmeier: When you were asked, when you were asked during the interview back when we met.

Mr. McNair: Uh huh.

Mr. Johanningmeier: *You denied that you ever knew or met Lloyd Lake. Is that correct?*

Mr. McNair: *You asked me did I meet him and I think I told you not to my knowledge.*

Mr. Johanningmeier: That's correct. We're gonna go through this.

Mr. Jones: That's what he said though.

Mr. McNair Uh huh.

McNair Transcript, Feb. 15, 2008, at p. 31 (emphasis added).

This is what McNair said about the photograph.

Mr. Johanningmeier: Would you look at this photograph right here.

Mr. Jones: Thought we were done.

Mr. Johanningmeier: Do you know who these individuals are?

Mr. McNair: That's Faison. I don't know who they are. That's (inaudible), I guess.

Mr. Johanningmeier: So you don't know the other two individuals?

Mr. McNair: Naw, is it supposed to be Lake? Is one of them supposed to be Lake?

Mr. Johanningmeier: That's what we're asking you.

Mr. McNair: I don't know.

McNair Transcript, Feb. 15, 2008, at pp. 36-37.

* * *

Ms. Myers: And you don't recall – what do you recall about this photograph?

Mr. McNair: I don't recall anything about the photograph. I take a ton of photographs, especially when I am with Faison, and especially in a club, we can't get 20

feet without people kind of mobbing him and Big Worming and all that stuff.¹⁵

If we walked in this room from the door to where you are sitting, we would be stopped fifteen times. We have taken so many pictures, especially with him, you know. I just couldn't remember that.

Ms. Myers: When did you first see this picture?

Mr. McNair: I believe my second interview. I believe my second interview with the enforcement staff.

Ms. Myers: Did you recognize – other than Mr. Love, did you recognize who was in the picture?

Mr. McNair: No, I didn't recognize them, but I could tell by the way they were leading the questions and the way they presented it was probably, you know, the two individuals in question.

Ms. Myers: So, Mr. Lake didn't look familiar to you when you saw the picture?

Mr. McNair: No, not at all.

Hearing Transcript at pp. 623-24.

Thus, McNair consistently stated that he had not met Lake *to the best of his knowledge*. In other words, he never denied being introduced to Lake; he simply said he did not recall meeting him. Nonetheless, the COI set up a classic straw man argument as a basis to question McNair's credibility. The COI misrepresented McNair's testimony, to make it sound like McNair categorically denied ever being introduced to Lake. Then the COI questioned the credibility of that position without ever refuting McNair's actual position, i.e., that he may have been introduced to Lake but did not recall.

If the COI is going to question McNair's credibility, it should at least get the facts straight and frame the issue accurately according to the testimony. In other words, state whether it is credible

¹⁵ Big Worm is the name of a character Love played in a movie.

that McNair met a friend of a friend after midnight at a club and did not recall the incident a year later.¹⁶ That is the issue. Not whether it is unlikely that McNair and Lake were in a photograph but were not introduced.

The COI also failed to explain in its credibility finding that Lake never described actually being introduced to McNair on the night the photograph was taken.¹⁷ In fact, the staff never asked Lake to describe what interaction, *if any*, that he had with McNair the night the photograph was taken. Lake never said what happened between him and McNair at the club where the photograph was taken. He never said whether he and McNair talked to each other, what they talked about or how long he was around McNair that night. For all the COI knows, Lake and McNair were introduced briefly immediately before the photograph was taken and they went separate ways immediately after it was taken. There is no evidence in the record to conclude that did not happen.

In fact, Lake had difficulty recalling McNair's name in his interview with the enforcement staff.

Mr. Johanningmeier: Did, did you socialize at all with [Bush]?

Mr. Lake: Yeah, you mean as far as a club, go out and hang out?

Mr. Johanningmeier: Yeah.

Mr. Lake: Yeah.

¹⁶ It is perfectly understandable that McNair may have met Lake and not recalled it almost a year later when he was interviewed. First, it was after midnight and it had been a long day for McNair. He had been up since early that morning and had helped coach USC in a conference game against Washington State earlier that day. He also had enjoyed a few drinks while club hopping with his friend. Second, McNair, a nine year veteran of the NFL and an assistant coach with one of the most successful college football programs in the country, had nothing in common with Lake, an unemployed felon recently released from prison. It is hard to imagine what they would have talked about. The one thing we know that they did not talk about is Lake's agency agreement with Bush and his provision of money to Bush. Lake himself said that was done so secretly that it reminded him of a drug deal. See McNair Response at p. 1-11.

¹⁷ Lake claimed he first met McNair in March 2005 during the Faulk party weekend. The Committee did not make any finding supporting this claim. That should be another strike against Lake's credibility.

Mr. Johanningmeier: Tell us about that. This is when he's at USC now?

* * *

Mr. Lake: . . . what, you know, we went out to a couple of clubs. We went to Faison Love, T-Mac, his running back coach, uh, *I don't even know the name of the dude.*

Mr. Johanningmeier: Reg, Reggie's running back coach?

Mr. Lake: Yeah.

Mr. Johanningmeier: Reggie?

Ms. Cretors: T-Mac?

Mr. Lake: Yeah.

Ms. Cretors: Do you know his full name?

Mr. Lake: Uh, McNair, I think.

Mr. Johanningmeier: But did he call him T-Mac?

Mr. Lake: Yeah.

Mr. Johanningmeier: And would Todd McNair make –

Mr. Lake: Yeah, that's it. McNair. Yeah.

Mr. Johanningmeier: Okay. Okay. So, so he was with you when you socialized?

Mr. Lake: One time we went to the club. I got a picture.

Lake Transcript at pp. 15-16 (emphasis added).

Finally, the COI used an erroneously low standard in determining that McNair was not credible with regard to whether he was introduced to Lake. The COI did not find that McNair met Lake under circumstances that would have caused McNair never to forget Lake's face and name. The COI did not find that the introduction, assuming it occurred, would have been so memorable that McNair could not have forgotten it. Instead, the COI found that it is "unlikely" that McNair

would have posed for a photograph and not have been introduced to Lake.¹⁸ Infractions Report at p. 25.

A finding that an event is merely "unlikely" is insufficient to support a finding that there are grave doubts concerning an individual's credibility. Merriam-Webster's Online Dictionary defines unlikely as not likely. Something may be not likely but still take place nonetheless. But when describing something as not credible, we say it is unbelievable, inconceivable, unimaginable or unthinkable. We do not say something is not credible merely because it is not likely.

But that is exactly the misguided approach the COI has taken in finding that McNair is not credible because "the Committee finds it unlikely" that he posed for a photograph in which Lake appears but was not introduced to Lake. Thus, in addition to misframing the issue and using a straw man argument to support its adverse credibility finding, the COI also used the wrong standard. If it had framed the issue correctly and applied the correct standard, the COI would have been required to find that McNair's lack of recall of meeting Lake is unbelievable, inconceivable, unimaginable or unthinkable – not merely unlikely – before it destroyed his character and reputation in a public infractions report.

4. The COI Mischaracterized And Misstated The Evidence Concerning The Events On October 29, 2005 And It Also Applied The Wrong Standard In Finding That McNair Was Not Credible

The COI again took aim at McNair's credibility when it said it believed Lake's explanation that McNair knew Lake was with Bush on the night of October 29, 2005, that McNair phoned Lake

¹⁸ As explained above, the issue is not whether McNair and Lake were introduced, the issue is whether it is credible that McNair did not recall the introduction.

to locate Bush and that McNair eventually met Lake, Bush and then prospective student-athlete Percy Harvin at the club. Infractions Report at p. 25. The COI said that version of events was more credible than McNair's explanation that he called Lake's phone because Bush had given him that number to call and he was trying to contact Bush to get him to retrieve Harvin from his hotel room, and that he went to a club looking for Bush and Harvin but did not see them, even though McNair stopped calling Bush at that point. Id. As explained below, the COI's finding contains half truths and false statements.

First, the COI's statement that "[McNair] said that he went to a club looking for [Bush] and [Harvin]" is not correct. McNair did not say that. This is what he said.

Mr. McNair: . . . Now, Percy was the most important recruit in the country by far.

I remember that night it was hard for me to get ahold of Reggie and, you know, to really coordinate what he was going to do with Percy. Somewhere along the night I found out, it was getting later in the evening, and I found out that Reggie had not picked Percy up yet.

So, I am now frantically calling Reggie to have him go pick up Percy Harvin, and I really can't get Reggie. I talked to him at some point in time during the night, and he is having trouble with his phone. His phone is dying or something.

He gave me another number to call him. You know, he said if you can't reach me on this number, call me on this number. He gave me another number for me to call him on. That is not uncommon.

Like with these kids, they live on their phone. If your phone is dying, you know, "My phone is about to die, call me on this number or call me on this phone." So, now I am under the realization I have the number one recruit in the country who is sitting in the hotel and he is not being entertained.

So, I am calling Reggie and he is not responding to me. I can't get him. I get him on the phone. I might have reached him somewhere in there, and he says he is going to go get him.

Well, later, you have got to get down there and pick him up. Now, it is later in the evening, 11:00 or 11:30, or so, I guess, and it is really him, you know, I am trying to call him.

"You have to come pick this kid up or go pick this kid up." You know, after he picked him up, I am sure I called him again to make sure that, "Do you have him, did you pick him up?" As I told you, when you have a host, what are your plans? You ask your host what are your plans for the evening?

Well, it is a basketball party at UCLA, and we might go to this spot or that spot. So, I get some kind of idea where you are at. If anything happens, I will know at least where you said, you know, a good chance where you would be.

So, my recollection of the evening was I had the best player in the country here at USC. He is being neglected by his host, and I am trying to call his host and he is not responding to me.

I have got two numbers and I am calling the phone for him to go pick him up. *I believe once he picked him up and I was sure that he had him, and they were on their way out or whatever, I don't think I called after that.*

* * *

Ms. Myers: Mr. McNair, were you at the club with Percy later in the evening?

Mr. McNair: I did not see Percy at the club that I went to.

Ms. Myers: You were at a club later that evening, though?

Mr. McNair: *I was at several clubs that evening.*

Ms. Myers: Can you tell us which ones?

Mr. McNair: I really don't recall. I remember being at Pearl. I think Pearl was the name of one of them, but I really don't recall.

* * *

Ms. Potuto: . . . I just have a couple of other questions. That is, you are really concerned that Reggie is messing up and he is not doing what he is supposed to do with [Harvin]. You called him a couple of times, and I believe you said it was 10:00 and 10:30.

Reggie didn't actually pick him up until actually midnight. So, how do you know that Reggie ever picked him up since the last call I think is 10:30, 10:37 or 10:57, maybe?

Mr. McNair: I made a number of calls. I believe I made a call at 11:00. My lawyer is looking for the record now. I made a number of calls right just before midnight, at like 11:55, two calls at 11:56, and I think it was four calls total.

Ms. Potuto: Reggie, who has not been doing much hosting and has messed up earlier in the evening, finally picks up the prospect.

Do you call after that to be sure that he is now doing what he is supposed to be doing, or do you assume once he gets him that everything is copacetic?

Mr. McNair: I believe that night he gave me the idea, like I said before, a couple of options where they might go. *I might have stopped by, you know, might have tried to drop in to make sure where they were, or something, in the Hollywood aspect of it. I wouldn't go down to campus and go -*

Ms. Potuto: To the club where they were at?

Mr. McNair: He gave me a couple of options where they might be. *I believe I could have stopped by to check on them, but I didn't call them after that. I knew that he had him and they are on their own then.*

Ms. Potuto: *You think you may have stopped calling, and then went to an in-person check, or attempted an in-person check?*

Mr. McNair: *I could have. You know, I am speculating there.*

* * *

Ms. Myers: Coach McNair, correct me if I'm wrong. I think I heard two different things today. One was that you did not see Percy Harvin and Reggie Bush at the club, and then at another point you said you might have stopped by just to make sure that they were there.

If you have no memory, I could understand that. But I think the record has two different things at this moment.

Mr. McNair: *No, I said I could very well have stopped by to see if they were there, but I didn't see them.*

Ms. Myers: You could have stopped by but you didn't see them?

Chairman Dee: He went to the club.

Mr. McNair: Yes, ma'am. I had some idea where they might be. As the staff said earlier, they think that they went out, came back and went out again, and

you know if they had given me any idea where they might be, *I could very well have stopped by there and then I would be there.*

But this is, you know, a very long time ago and night life, and I can't really recall with any accuracy.

* * *

Ms. Conboy: I might have missed it, but what club did Reggie take Percy to that evening?

Mr. McNair: Ma'am, I don't recall that.

Ms. Conboy: Do you recall what club you stopped by to check to see if they were there, because you had an idea of where they might be going?

Mr. McNair: I don't recall that either. I recall vaguely that we were at Pearl, but I can't recall that.

Ms. Conboy: Coach, is it common for members of the athletic staff and coaches to socialize at the same clubs that student-athletes go to in Los Angeles?

Mr. McNair: No, it is not common, and I didn't say I was socializing with them.

Ms. Conboy: No, but you said you had been to several clubs that evening. I am just wondering if there is any kind of a policy that you know of that would prohibit coaches and student-athletes and students in general from being at the same types of establishments.

Mr. McNair: I don't know if there is any policy, because some of our student-athletes are over the age of 21. Like I said, I don't make it a habit of socializing with student-athletes.

Hearing Transcript at pp. 409-11, 430, 436-38, 451-52 and 453-54 (emphasis added).

Thus, McNair never said that he went to a club looking for Bush and Harvin. He said that he stopped calling Bush when he learned that Bush had picked up Harvin from the hotel and that he *could have stopped* at a club to check in on them but he *does not recall*. That is what McNair said and it is materially different from the COI's false statement that McNair said he "went . . . looking for [Bush] and [Harvin] [but] [h]e claimed he did not see them in the club, even though

the phone calls stopped at that point," which the COI said was "[y]et another example of [McNair's] lack of credibility." Infractions Report at p. 25. The phone calls stopped because McNair knew that Bush had picked up Harvin, not because he went looking for them and found them. Thus, the COI based its adverse credibility finding on a false and incorrect recitation of McNair's testimony.

Moreover, the COI also mischaracterized Lake's testimony. The COI said it believed Lake's statement that McNair called him to locate Bush and then eventually met him, Bush and Harvin at the club. Infractions Report at p.25. However, that is a very misleading characterization of Lake's testimony. Lake was all over the map regarding the calls to his phone on the night of October 29, 2005. In fact, Lake had no independent recollection of the calls until the NCAA investigators told him about them and even then he seemed surprised. The relevant testimony is below.

Mr. Johannngmeier: What club did you go to?

Mr. Lake: I don't know the name of it.

Mr. Johannngmeier: Where was it located?

Mr. Lake: I wanna say Hollywood but I'm not sure.

Mr. Johannngmeier: And, and this is the time you said McNair –

Mr. Lake: Yeah.

Mr. Johannngmeier: How does he show up or how does, does he go with you? Just help us understand how this comes about?

Mr. Lake: *I guess he called Reggie and Reggie told him where we were going. He came there. He just met us down there. He didn't ride with us.*

* * *

Mr. Johanningmeier: Let me go through this thing 'cause this might be in the same area. All right, I wanna, I, I wanna ask you, uh, on record, if in, uh, October 2005 was 619/726-9713 your telephone number?

Mr. Lake: Yes.

Mr. Johanningmeier: Okay. And the reason I ask you this is that in checking, uh, telephone records at USC, there shows a call on October 29th at 11:39 p.m. -

Mr. Lake: Uh-huh.

Mr. Johanningmeier: -- to Todd McNair for a minute, another call at 11:52 p.m. for a minute, and another one on the same October 29th at 11:56 for one minute.

Mr. Lake: *They called me?*

Mr. Johanningmeier: There was calls, uh, that call was made to your telephone number, correct.

Mr. Lake: Yes.

Mr. Johanningmeier: From Todd McNair.

Mr. Lake: Yes.

Mr. Johanningmeier: Can you tell us what those calls were about?

Mr. Lake: *Shh, I don't even recall.* Uh, let me see. What was the dates on it?

Mr. Johanningmeier: October 29th.

Mr. Wong: Is that the night of, of, uh -

Mr. Lake: That's the night of that party I think.

Mr. Wong: Yeah, of, uh, Marshall Faulk's party. Was it the 29th?

Mr. Johanningmeier: That would've been March.

Ms. Cretors: That would've been March.

Mr. Wong: Oh, okay.

Mr. Lake: No, no I think that was the night, this is the night we were out.

Mr. Johanningmeier: The, is this the night you're talking about -

Mr. Lake: The club.

Mr. Johanningmeier: Right.

Mr. Lake: Yeah. That's, that's that night. That's what it's gotta be 'cause we was trying to figure out where we were.

Mr. Johanningmeier: Somebody's got a computer we can figure out real quick --

Ms. Cretors: I'm trying to see if I can --

Mr. Johanningmeier: -- if that's a Saturday.

Ms. Cretors: -- find that.

Mr. Johanningmeier: I think it might be a Saturday.

Mr. Lake: Oh.

Mr. Johanningmeier: October 29th on, uh, 2005. Do you, first of all, do you remember McNair making a call to you?

Mr. Lake: Yeah, that's why I said that's what's it gotta be. Yeah, Saturday.

Ms. Cretors: Saturday.

Mr. Lake: That was the night we went to the club I'm telling you guys about.

Mr. Johanningmeier: Okay.

Mr. Lake: Hello? (apparently answering phone) Oh, shit. Why don't, why, I'm looking for an important call for a reason.

Mr. Johanningmeier: Okay. So, so that Oct, so that October 29th, you remember the calls from McNair?

Mr. Lake: Yes.

Mr. Johanningmeier: And what would he be calling you about?

Mr. Lake: He was calling seeing what club we were at, where we were going.

Lake Transcript at pp. 26-27.

Thus, Lake's story evolved from *guessing* that McNair called Bush, to being surprised that the phone records show that McNair called his phone, to finally saying "that's what it's gotta be," i.e., McNair called him to find out what club they were going to. It is fundamentally unfair and misleading for the COI to arbitrarily choose the last version of Lake's three stories to discredit

McNair's recollection that he called Lake's phone because Bush gave him that number that to call. The record shows Lake guessed and speculated and was not sure what happened. The COI cannot rely on such equivocal and unreliable testimony to cast "grave doubt" on the credibility of McNair.

Harvin also contradicts Lake's claim and the COI's conclusion that McNair joined Lake, Bush and Harvin at the club. Harvin said he was with Bush the entire time from when Bush picked him up at the hotel until Bush brought him back to the hotel around 2 or 3 a.m. and he did not recall seeing McNair that night. McNair Response at p. 3-7. Below are the relevant excerpts from Harvin's transcript.

Mr. Johanningmeier: ... and, uh, when you were in that [club], were you with Bush every minute or was he somewhere where you didn't see him?

Mr. Harvin: I mean for the most part, like every now and then he'll go, like, walk off and like go talk to a girl or, or something like that. But it was never like a long period of time that he, he wasn't there.

Mr. Johanningmeier: Was, was he always in your sight?

Mr. Harvin: Yeah, like, uh.

* * *

Mr. Johanningmeier: Was, was, was McNair at the party?

Mr. Harvin: Uh, I'm not, I'm not sure. Not, *not that I can recall.*

Mr. Johanningmeier: Okay. You don't recall that?

Mr. Harvin: Yeah.

Mr. Johanningmeier: Do you recall if any of those individuals, was Faison Love at the party?

Mr. Harvin: Uh, I don't, I'm not, I don't think so..

* * *

Mr. Johanningsmeier: Okay. But you don't ever rem, uh, seeing any, seeing McNair that evening?

Mr. Harvin: I'm, I'm not recalling, I, I, like I say, I can't give you a definite answer but I, not that I, uh, I don't, *I don't think so.*

* * *

Mr. Johanningsmeier: Okay. But you still, uh, from the recollection of this photograph, you don't recall any time seeing McNair and Faison Love in that club with, with those other guys (Lake and Michaels)?

Mr. Harvin: Hmm, I couldn't even, this, that might be the, the club picture. I don't, it's a chance.

* * *

Mr. Johanningsmeier: Okay. Uh, uh, uh, would it have been possible for McNair to be in that club and you be in the club and not see each other?

Mr. Harvin: And not see each other? Uh, nah, pretty much it was just one big dance floor. And, now let's see, if he stood by the bar, but it was a little walkway to where the bar was at and pretty much all that was the club. I wouldn't, I'm not sure who, I remember like somebody, like, coming up to me and shaking my hand but I, I'm, I can't connect it to if it was him or not. Like I said, it could, it, it could be a possibility.

Mr. Johanningsmeier: Okay.

Mr. Harvin: But I don't want to give you my word on it or anything.

* * *

Mr. Johanningsmeier: What time did you leave from the party?

Mr. Harvin: I wanna say around 2, 3, 2.

Mr. Johanningsmeier: In the morning?

Mr. Harvin: Yeah.

Harvin Transcript at pp. 26, 27, 30, 47, 49 and 17-18 (emphasis added).

Thus, the NCAA investigators asked Harvin repeatedly if he saw McNair while he was with Bush at the club and Harvin said he did not recall seeing McNair. The COI conveniently ignored Harvin's testimony in choosing to believe Lake's story that McNair met him, Bush and Harvin at the club.

Finally, even the enforcement staff acknowledged that there is no clear evidence whether Bush and Harvin were in the same club as McNair, Love, Lake and Michaels on the night of October 29, 2005.

Ms. Myers: Am I correct that there is something in Percy Harvin's statement that he remembers the medallion that Mr. Michaels was wearing?

Mr. Johanningermeier: That is correct. Initially, Percy Harvin could not recall Lake or Michaels, and then as he looked at the photograph, and particularly he probably remembered Michaels more than Lake because of the way he dressed.

He had a presence about him. There was a certain type of, I guess, medallion or necklace that kind of caught his eye. He remembered seeing it. He also remembered seeing Faison Love earlier in the day at a Chicken and Waffles, and had some comments made to him about attending USC. So, he recalled that.

Ms. Myers: Does that suggest that he and Mr. Bush were at the same club with Mr. Michaels, Mr. Lake and Mr. McNair that night, and Mr. Love?

Mr. Johanningermeier: It is the best of the suggestions. *We are at the point where I am not sure anyone at this stage, with all the stories, could sort this thing out completely as to who was where at what time.*

Again, I think the best recollection might be the one that Bush gave, because Harvin backs that up. Harvin says that he was at the club, at the first club, with Reggie Bush. He was tired.

He said Bush basically ignored him, didn't talk to him very much. He stood in the corner by himself most of that evening. They decided there was a gathering out in the parking lot. He was like, "Hey, I want to go home."

He said he knew Bush had "family or friends," he wanted to go do some things with, and he asked to be taken home. Reggie Bush, his friend told him apparently, because Reggie said he remembers absolutely nothing

about Harvin or that night. But according to Reggie Bush's friend, they went to two clubs that night, and probably makes the most sense that that is the one where Lake, Michaels, McNair, Faison, Love, Bush, etc., were at. *That is the best we can do from the speculation standpoint.*

Ms. Myers: Mr. McNair, is it your testimony that you were not at any – you did not see Mr. Harvin or Mr. Bush at any clubs that night on October 29th, right? I guess this would have been October 30th, right, because it is past midnight?

Chairman Dee: It was Halloween.

Mr. McNair: Yes, I don't remember seeing Reggie Bush or Percy Harvin.

* * *

Mr. King: I wanted to follow-up on Mr. Johanningmeier's description of Harvin's testimony. I don't have the page cites and I will try to get them. But as I recall, Harvin said that he and Reggie Bush went to this club and not that Reggie blew him off and he was in a club, that they kind of stayed together at the club, and he was very tired and he said, "Reggie, take me on home."

I think he said he got back to the hotel, I don't know, it was late, 2:30 or 3:00, something like that. My understanding is that they were together at the club based on his testimony.

Mr. Johanningmeier said, and maybe I am forgetting a witness, was that Reggie Bush's friend said they went to a second club. If I can ask the question of them through you, may I ask who that is in reference to?

Chairman Dee: Was there a statement made by the staff that they went to a second club that night and with whom?

Mr. Johanningmeier: We believe it is in Reggie Bush's interview with the staff. Again, for the committee, Mr. Bush refused to allow us to record that conversation, so we are going to have to probably – we have the University's version and our version.

We sent our version to ask Mr. Bush, like we did Mr. Fritz, to review it and make any changes, acknowledge it, and we are still waiting to get it back.

Chairman Dee: But your notes in that said they went to a second facility? You are going to read that to us? You are correct, that is what they said, but were your notes different than that?

Mr. King: I don't remember from the interview summary. When he said his friend reported it, I just wondered, I didn't recall a friend being interviewed or saying that. I am on page 18 of the Percy Harvin interview. He said he and Bush were together the entire time of the party.

Mr. Tompsett: If I may add, my recollection is that Percy Harvin said he was taken back to the hotel, I am sure Rich will correct me if I misstate this, somewhere around 3:00 am, and the closing time for bars in L.A. is 2:00.

So, if Bush took Harvin back after 2:00, they more than likely were not back out to another club.

* * *

Chairman Dee: Some of the statements that have been made here today present something that is sort of unrealistic. That is, any group of people that are fettered together for the entire night.

Mr. King: Exactly.

Chairman Dee: Well, we don't remember. Somebody could have gone to the restroom. Somebody would have seen another friend. They could have gone off to another corner.

So, the mere fact that something wasn't seen at a particular point in time doesn't mean that it didn't happen. It just means that person didn't observe it. So, we have to take that for what it is worth.

Infractions Report at pp. 622-23, 624-25 and 628-29.

The COI may choose to believe one version over another. However, McNair's recollection that he was trying to contact Bush to retrieve Harvin, that Bush gave him an alternative number to call because Bush's phone was dying,¹⁹ that he eventually contacted Bush but stopped calling him around midnight when he confirmed Bush had picked Harvin up, and did not see Bush and Harvin later at the club is hardly evidence that McNair was untruthful, and it is not so contrary to the rest of the evidence that the COI may single out McNair and say he lacks credibility. The

¹⁹ Who among us has never been asked to call a friend on an alternative number?

COI has to conclude more than that McNair's version is merely less likely than Lake's version before it publicly denounces McNair as not credible. It has to find that McNair made statements that are unbelievable, inconceivable, unimaginable or unthinkable. The COI also has an obligation to accurately recite all of the relevant evidence and not base its findings on half truths and false statements.

However, in the end it really does not matter whether they were all in the same club at the same time because no one – including Lake – has ever suggested or alleged that McNair was put on notice that night that Lake and Bush were involved in an impermissible arrangement. There is absolutely no evidence that McNair was involved in or learned of any NCAA violations on the night the photograph was taken. Thus, the COI's analysis of the events of October 29, 2005, is not only fraught with half truths and false statements, it is a red herring.

5. The COI's Credibility Findings Involving The Events Of October 29, 2005, Are Contradictory And Internally Inconsistent

The COI's findings concerning what occurred between McNair and Lake on October 29, 2005, are also contradictory and internally inconsistent. Specifically, the COI said it believed Lake's explanation that McNair called him because McNair knew he was with Bush, McNair wanted to locate Bush, and that McNair later joined him, Bush and Harvin at the club. Infractions Report at p. 25. The COI's finding presupposes that McNair knew Lake, otherwise he would not have called Lake to locate Bush.²⁰ However, the COI also found it likely that McNair's friend, Faison Love, *introduced* Lake to McNair at the club *later that night*. *Id.*

²⁰ The COI never explained when and where McNair met Lake prior to calling him on October 29, 2005, to locate Bush. As explained above in Section II.B.1 at p. 16, the COI did not find evidence sufficient to support Lake's claim that he met McNair in San Diego during the Faulk birthday party weekend. Thus, there is no finding to provide a

The COI's contradictory findings beg the question: If McNair was not introduced to Lake until he got to the club, how did McNair know to call Lake earlier in the evening to locate Bush? Certainly McNair did not call someone that he had not yet met in order to find his star player. That makes no sense. But that is exactly what the COI concluded in order to find that McNair lacked credibility. McNair's explanation that Bush gave him Lake's number because Bush's phone was dying makes more sense than the COI's conclusion that McNair called Lake to find Bush.

The point is that the COI cannot have it both ways. If McNair knew Lake and called him to locate Bush, then there would be no need for Love to introduce Lake to McNair at the club. Love would not introduce two people who already know each other. On the other hand, if Love introduced Lake to McNair at the club, then McNair certainly did not call Lake earlier that evening to locate Bush. The COI said both of these events occurred and used them to publicly destroy McNair's credibility. The COI may not base its findings on mutually inconsistent and contradictory events.

foundation for the COI's conclusion that McNair knew Lake and, therefore, would have called him to locate Bush on October 29, 2005.

C. The COI Improperly Relied On Lloyd Lake's Surreptitious Audio Tapes To Conclude That Lake Was Credible

In concluding that Lake was credible, the COI relied on surreptitious audio tapes that Lake made.

[Lake] went to extraordinary lengths to document his version of the events. In an interview with the enforcement staff, a portion of which was provided to the Committee in the Case Summary, he reported that he taped telephone conversations, which he said would corroborate his account of what transpired in the attempted founding of the agency and the associated provision of benefits to [Bush] and his family²¹. On the advice of NCAA counsel, the enforcement staff did not present the tapes to the Committee.

Infractions Report at p. 7, f.n.1.

It is obvious the tapes influenced the COI's decision to conclude Lake is credible even though the COI never even listened to the tapes. That is clear error.

NCAA Bylaw 32.8.8.2 (Basis of Findings) states:

The Committee on Infractions shall base its findings 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.

Because the tapes were never presented to the COI, the COI is precluded from basing any of its findings on the tapes. Thus, the COI erroneously relied on the tapes to conclude that Lake was credible.

Moreover, the COI's reference to "taped telephone conversations, which [Lake] said would corroborate his account of what transpired . . . ," wrongfully suggests that there is a tape supporting the COI's finding that Lake called McNair on January 8, 2006 and asked McNair to

²¹ The COI is referring to an alleged conversation between Bush and agent David Caravantes, that Lake claimed he recorded. See Case Summary at pp. 1-7 to 1-8, attached as Exhibit 5. Not only did the COI not listen to the alleged tape, but the enforcement staff never made the tape available to USC and McNair so they could listen to it and confirm whether Lake's description was credible.

convince Bush to adhere to the agency agreement or reimburse Lake and Michaels for money provided to Bush and Bush's family. There is no such tape and McNair's attorney specifically told the COI that during the hearing.

Mr. Tompsett: Yes, I would like to respond to that question on behalf of my client. I firmly believe that we have included and discussed in our response, and that the record before you, before the Committee, contains all relevant and probative inculpatory and exculpatory evidence concerning the allegations directed at my client.

I will take that a step further, if I may.

Ms. Potuto: Sure.

Mr. Tompsett: Because this is something that occurred to me last night. I don't believe that I am violating California law in what I am about to say.²² The staff, as I understand it, they said that Lake made his surreptitious recordings.

Let me back up to be clear. What I have been given access to, what we have been given access to. We have been given access to the two surreptitious recordings that Lloyd Lake made in which he had discussions with Lamar Griffin. I think that is it. I am speaking as to those only.

The staff said that Lake made his recordings because he knew his credibility was going to be questioned. And concerning the allegations directed at my client, that's right, we are questioning his credibility.

The point I want to make is this: I am not aware of any surreptitious recording that implicates Todd McNair in any of the allegations directed at him. I would suggest to you that if Todd knew about the impermissible benefits that Lake was giving Bush, like Lake claims, there would be a recording.

But there isn't any recording implicating Todd. Certainly nothing that I have been made aware of. I have listened to the two that we have been given access to, and my analysis of those recordings is they are not particularly relevant to these allegations and they don't implicate Todd.

Ms. Potuto: Are they just relevant to the allegations in which Coach McNair is implicated or relevant to the allegations in total that relate to football?

²² The COI and USC had discussed whether California law prohibited the COI from using Lake's surreptitious recordings to adjudicate the allegations. See Hearing Transcript at p. 156 et seq.

Mr. Tompsett: I have not been retained to address any allegations other than the allegations in 1-b and 3. I have not analyzed the evidence concerning allegations other than those, and, therefore, I have no position.

It would be improper for me to take a position concerning the relevance of those tapes to allegations that are not directed at my client.

Infractions Report at pp. 535-37 (emphasis added).

Thus, the COI knew that the tapes did not implicate McNair in any form or fashion. The COI should have made that clear in the Infractions Report rather than suggesting that the tapes may corroborate Lake's story about the two and half minute phone call on January 8, 2006. Finally, that Lake recorded conversations—none of which involved or even referenced McNair—has nothing to do with McNair's credibility, nor does it make Lake's allegations against McNair credible.

D. McNair Was Denied Fair Process Because The Enforcement Staff Excluded USC From Participating In The Interviews Of Lake And His Family.

As explained in USC's appeal of Finding B-1-b, the enforcement staff unilaterally excluded USC from the interviews of Lake and his family. USC was McNair's employer at the time and as such, was McNair's only representative for cross-examining witnesses prior to the issuance of the Notice of Allegation.²³ By excluding USC from Lake's interview, the staff denied McNair the opportunity to have his institution question Lake and test his credibility when it would be most effective, i.e., contemporaneous with the first time that Lake was questioned about the matters that ultimately became the basis of the allegations against McNair.

²³ NCAA enforcement procedures generally do not permit an individual staff member or his counsel to participate in or conduct interviews of other witnesses until after an NOA is issued. However, institutional representatives and legal counsel often are permitted to participate in interviews conducted by the staff.

E. The COI Had Impermissible *Ex Parte* Communications With The Enforcement Staff About The Infractions Report

On June 4, 2010, almost a week before the infractions Report was released, McNair's attorney, Scott Tompsett, contacted NCAA director of enforcement Ameen Najjar about the status of the report. Najjar informed Tompsett that he did not know when the report would be released but he said the COI had shared its draft report with the enforcement staff so the staff could inform the COI of any "factual errors" in the report. Najjar did not discuss what, if any, feedback the staff provided to the COI concerning the draft report.

McNair was not involved with the *ex parte* communications between the COI and the staff nor was he ever informed that the COI would share its draft report with the staff so the staff could correct "factual errors."²⁴ As explained below, McNair believes any *ex parte* communications the COI had with the staff are improper and create a rebuttable presumption of prejudice.

NCAA enforcement procedures do not authorize the COI to communicate *ex parte* with the staff about its decision. In fact, the enforcement procedures expressly state that the COI shall make its determinations of fact and violation in private and that if the COI requests new information from any party, all parties shall be afforded an opportunity to respond.

Bylaw 32.8.8 (Posthearing Committee Deliberations) states:

After all presentations have been made and the hearing has been concluded, the Committee on Infractions shall excuse all others from the hearing, and the Committee on Infractions shall make its determinations of fact and violation in private.

²⁴ The staff's explanation does not justify or excuse the conduct. First, if that was the COI's intent, it should have done as many courts do with a tentative decision; share it with *all* parties and request comments. Second, the COI did not accomplish its goal because, as explained above, the findings against McNair contain factual errors and mischaracterizations.

Bylaw 32.8.8.1 (Requests for New Information) states:

In arriving at its determinations, the Committee on Infractions may request additional information from any source, including institution, the enforcement staff or an involved individual. In the event that new information is requested from the institution, the enforcement staff or an involved individual to assist the Committee on Infractions, all parties will be afforded an opportunity to respond at the time such information is provided to the Committee on Infractions.

Indeed, statements made by the COI at the end of the discussion of McNair's allegations led McNair to believe that the COI would give him an opportunity to participate in any additional discussion that the COI might have with either the staff or USC about the allegations directed at him.

Chairman Dee: I'm going to read some of the closing instructions. It will be repeated at the end of the entire hearing, but these are for the benefit of Coach McNair and Mr. Tompsett.

Coach McNair, I want to advise you that after leaving the hearing today, that it is the Committee's expectation that nothing that is said will involve allegations concerning you. All allegations will have been discussed that do concern you.

Should the Committee believe that information being presented may affect you, the Committee will cease the discussion of that allegation until you are given the opportunity to participate.

Hearing Transcript at pp. 647-48.

The law also generally prohibits *ex parte* communications between a decision maker and one party in an adversarial proceeding. See Dep't of Alcoholic Beverage Control v. Alcoholic Beverage Appeals Bd., 145 P.3d 462 (Cal. 2006) (holding that California law prohibits *ex parte* communications between an agency's prosecutor and the agency's decision maker).

One fairness principle directs that in adjudicative matters, one adversary should not be permitted to bend the ear of the ultimate decision maker or the decision

maker's advisors in private. Another directs that the functions of prosecution and adjudication be kept separate, carried out by distinct individuals. California's Administrative Procedure Act (APA) (Gov. Code, § 11340 et seq.), as overhauled in 1995, adopts these precepts by regulating and strictly limiting contacts between an agency's prosecutor and the officers the agency selects to preside over hearings and ultimately decide adjudicative matters. We conclude that the Department's procedure violates the APA's bar against *ex parte* communications.

* * *

Article 7, modeled on provisions of the federal Administrative Procedure Act and the 1981 Model State Administrative Procedure Act (see California's New APA, supra, 32 Tulsa L.J. at p. 315), broadly prohibits *ex parte* contacts between parties, including agency parties, and decision makers during administrative adjudicative proceedings. "While the proceeding is pending there shall be *no communication, direct or indirect, regarding any issue in the proceeding*, to the presiding officer from an employee or representative of an agency that is a party ... without notice and opportunity for all parties to participate in the communication." (§ 11430.10, subd. (a), italics added.)

Dep't of Alcoholic Beverage Control, at 463, 466.

Codes of Judicial Conduct and Rules of Professional Conduct also generally prohibit *ex parte* communications. See, e.g., Indiana Code of Judicial Conduct, Rule 2.9; Indiana Rules of Professional Conduct, Rule 3.5, attached as Exhibit 6.

Once an *ex parte* communication has been established, most courts hold that a rebuttable presumption of prejudice arises, and the burden of showing that the prohibited *ex parte* communication has not resulted in prejudice shifts to the agency. See, e.g., Blaker v. Planning & Zoning Commission, 562 A.2d 1093 (Conn. 1989); Jennings v. Dade County, 589 So.2d 1337 (Fla. Dist. Ct. App. 1991).

Indeed, McNair has good reason to be concerned that he has been prejudiced by the COI sharing its draft decision with the enforcement staff to correct "factual errors." In addition to *ex parte*

communications being impermissible and, at a minimum, creating the appearance of impropriety, based on what occurred at the hearing, McNair believes there is a strong likelihood that the staff mischaracterized or misstated facts to the COI during the *ex parte* communications. At the hearing, USC's counsel and McNair's counsel had to correct incorrect factual representations that the staff made to the COI. Three examples are set forth below.

- First Incorrect Representation – Staff Falsely Stated That It Did Not Exclude USC From The Lake Interview And That USC Never Attempted To Interview Lake

Mr. Najjar: If I could briefly respond. I don't disagree that the institution and the Pac-10 were excluded [from the Lake interview], *but I want to make it clear that it was not the enforcement staff that excluded them.* It took us months and months and months of wrangling to get Lloyd Lake's interview in the first place.

As you know, he is certainly not under the jurisdiction of the NCAA. He did not have to interview with us at all, and he and his legal counsel excluded the University and the Pac-10. So, I want to make that clear. Again it was not the enforcement staff.

Every interview we attempted or conducted, we always requested that the University of Southern California and the Pac-10 be allowed to participate, and in many of those instances were successful.

The other thing I would like to point out is after we were able to secure Lloyd Lake's interview, and up to this moment the institution never came to us, *nor as far as we know did they ever approach Lloyd Lake or his legal counsel to secure their own interview.*

Ms. Mauch Amir: May I respond to that, Mr. Chairman?

Chairman Dee: Are you finished, Mr. Najjar?

Mr. Najjar: Yes.

Chairman Dee: Okay. Please.

Ms. Mauch Amir: I would like to clarify a few of those points. In fact, I have an e-mail here dated November 6, 2007, which is the date of the Lake interview. We were informed the morning of the Lake interview that the interview was to move forward.

We had been trying to involve ourselves in this interview for six weeks before the day of the interview after hearing from press reports that the interview was being discussed between the NCAA and Lloyd Lake's attorney.

When we finally found out from Mr. Najjar, our outside counsel, Mark Jones, had an e-mail exchange with him asking why we were banned and what had happened? Ameen's e-mail back to Mark says, "Let me clarify one thing. *It is not my understanding that Lake banned USC from today's possible interview.* When the enforcement staff raised the possibility of USC's participation early on, it created a number of complications, coupled with the highly tenuous nature of the possible interview and the number of previously cancelled interviews, we thought it prudent at this time to simply attempt to get the interview."

So, it is clear that Lake did not say that he would not give the interview without USC present. It was the NCAA's staff's conclusion and decision to move forward without us. Also, with regard to the issue that Mr. Najjar raised with regard to whether USC tried to get an interview, we were not allowed to read the testimony of Lloyd Lake for more than three months after the interview was held.

During that three-month period, we finally were able to review it in the NCAA offices. We were not given a copy. It was after three months. During that three-month period, the staff had moved forward to interview the family members without USC present.

At the time that we did finally read the testimony, we then moved forward; *we tried to get an interview with Lloyd Lake.* We, in fact, sent a letter.

An attorney in my office, Kelly Bendell, who had been working on the investigation cooperatively with the NCAA, sent a letter to Lake and his attorney requesting an interview with Lake and his family members.

The NCAA was given a copy of that letter. They knew full well that we were trying to get the interview. Lake's attorneys, instead of responding to us, went directly to the press, talked about the fact that we were trying to get an interview with them, and eventually said we are considering our options. But they didn't come back to us.

Ultimately, we followed up with phone calls. We were never able to connect with Lake's attorney. They were never willing to sit down and interview with us. So, I think it was very clear from the beginning that avenue was not going to proceed.

Hearing Transcript at p. 19-21 (emphasis added).

- Second Incorrect Representation – Staff Falsely Stated That McNair's Explanation That He Called Lake's Number On October 29, 2005, To Reach Bush Was "Completely New Information"

Mr. Najjar: Can we clarify something?

Chairman Dee: Go right ahead.

Mr. Najjar: Earlier in Coach McNair's statement today, apparently five years after the fact he has had a memory recall *which is new information*, and that concerns his statement that Reggie Bush was having phone issues where the phone was dying, or something [on the night of October 29, 2005].

That is not contained and there is no reference to that in his February 15, 2008, interview. In fact, when he is questioned about the calls to Reggie Bush that evening, he even says he is speculating that it could be about hosting a recruit.

Mr. McNair also just brought up in relation to that, that he was given another number to call. *Again, this is completely new information*. But we believe we know where he is going with this.

When he was questioned specifically about calling the 619 area code number during his February interview, he said he had no idea what that number was, and he was questioned about that a couple of times, and each time he said, "I have no idea."

So, we just wanted to point that out.

Mr. Tompsett: Mr. Dee, may I respond?

Chairman Dee: Yes, Mr. Tompsett.

Mr. Tompsett: First, let me point out that in the January or February 2008 interview that Mr. Najjar is referencing, Mr. McNair had no prior knowledge of what he was going to be questioned about in that interview. He had no notice of the issue. He came in totally unprepared, not knowing that he was going to be asked about these phone calls.

I submit to you that it is perfectly normal and to be expected that under those circumstances he would not recall specifically what happened three years prior to the fact. I want to respond to Mr. Najjar's comment that this is, I think he said, "totally new information," that Todd said he was trying to reach Reggie perhaps on a different phone because Bush's cell phone was low on batteries or dead.

That is totally not new information. This was included in McNair's Response at page 3-8, and in the first sentence of the first full paragraph. The staff has had that Response for several weeks, and this is not totally new information.

Mr. King: Chairman Dee, I would also like to refer the Committee to pages 42 and 43 of Exhibit 3 of our Response. This is a quote from Mr. McNair's February 2008 interview.

"I was trying to get hold of Reggie. Obviously if Reggie gave them that number to call him on, somebody gave me that number, I don't know." So, he raised the possibility totally cold.

He had no idea what the interview was going to be about before we walked in. The interview was approximately a week or ten days after USC had been given access to the Lake Transcript and instructed not to discuss it with anyone.

Coach McNair had not reviewed any of his records, he speculated that maybe Reggie was hosting a recruit, which proved to be correct, and that maybe he was trying to get in touch with Reggie about a recruit, which proved to be correct and, in fact, it was the number one recruit for Reggie's position that year.

So, for them to say that this is a change in his story or he has come up with something new is really not fair.

Mr. Tompsett: I would also add that when Todd suggested in response to the staff's question that he speculated he was trying to get hold of a recruit, the staff totally discounted that answer and said that they were pretty certain that Reggie was not hosting a recruit that night. They were wrong, and Todd was right.

Hearing Transcript at p. 421-24 (emphasis added).

* * *

- Third Incorrect Representation – Staff Falsely Stated That Lake's Girlfriend Was Present For The January 8, 2006, Call

Mr. King: ...The staff relies on Micsha Jones. If you will look at page 1-174 of the Case Summary it says, "*Jones recalled that during a telephone conversation, Lake told a university coach that someone better talk with*

Bush or the issue was going public because Lake was not going to lose money."

Now, when I read that, to me that clearly suggests that Jones was present and heard. She recalled a conversation in which he said that. Let's look at what she actually said. This is on page 1-171 of the Response.

Her actual testimony was that Lloyd Lake said he was going to call someone at USC, and she couldn't say if it was Todd McNair or not, that he left and went to somewhere else, she believes Michael Michaels' home. And she thinks that's where the call was made.

Ms. Jones did not say that Lloyd Lake came back to her at any time and reported, "I made the call." If you look at her testimony, and you have it all, it is at the very end, and I will refer you to the language, is that she has no personal knowledge.

The only knowledge that she claims to have is that he told her he was going to do this. Of course, we know that Lake told Ms. Jones he was going to make this call to someone at USC.

So, I didn't want you to read the Case Summary and believe, "Well, there is a second witness who says she heard the content of the conversation." That is not the case at all. She has no personal knowledge about any conversation or even that one was made.

Hearing Transcript at pp. 591-92.

The staff made materially incorrect statements to the COI at the hearing and but for USC's and McNair's counsel, the statements would not have been corrected. There is no reason to believe that conduct did not continue when the COI shared the draft report with the staff to correct "factual errors." Thus, McNair has good reason to be concerned that the staff made factually inaccurate and prejudicial statements to the COI during the *ex parte* communications.

Based on all of the authority above, McNair believes that there is a rebuttable presumption that he has been prejudiced by the impermissible *ex parte* communication between the COI and the

enforcement staff. If the COI is unable to overcome the presumption with credible and persuasive evidence, the JAC should set aside McNair's finding and penalties.

F. The NCAA Has Prejudged McNair's Appeal

On June 24, 2010, two weeks after the Infractions Report was released, the website USCFootball.com published an article titled "NCAA Missteps on McNair." See Exhibit 7. The article referenced the Case Summary and USC's Response, and detailed "a number of mistakes and factual errors in the evidence presented against [McNair]." Id. The points made in the article are some of the same arguments that McNair has made in his appeal.

The following day, the NCAA responded to the article by sending an email from NCAA associate director for public and media relations Stacey Osburn to ESPN, which was published in ESPN's Pac-10 Blog. See Exhibit 8. According to the ESPN article,²⁵ the email stated:

The NCAA will not comment on the content of confidential documents. However, it is important to note that the recent story from fan site USCFootball.com takes select pieces of information from comprehensive documents out of context, weaving them into an inaccurate depiction. When reaching a decision, the Committee on Infractions carefully considers the hearing discussions and reviews all documents from all parties in their entirety, not just excerpts taken out of their original context.

Thus, the NCAA criticized an article that suggested the COI made mistakes in adjudicating the allegations directed at McNair. The NCAA also expressly endorsed the COI's methodology and processes, stating that the COI had carefully considered all of the relevant evidence. Simply put, the NCAA came out in support of the COI and against McNair. Accordingly, McNair believes the NCAA has prejudged his appeal.

²⁵ McNair's attorney, Scott Tompsett, asked Osburn to provide a copy of the email so that he could include it with McNair's Appeal. See Exhibit 9. Osburn declined stating that Tompsett's representation of McNair "does not entitle you to the email correspondence of NCAA staff." See Exhibit 9. McNair finds it curious that the NCAA would send an email to a national news outlet concerning the COI's adjudication of his case, but not provide a copy of the email to his attorney.

NCAA enforcement procedures provide an involved individual, which McNair is, the right to appeal findings and penalties. See Bylaw 32.10.1.2. Because the NCAA has prejudged McNair's appeal, he has no meaningful option to appeal his finding and penalties. It is a foregone conclusion. The NCAA has nullified his right to appeal. The NCAA should vacate McNair's finding and penalties because in speaking out in support of the COI's decision, it has demonstrated bias and tainted the process.

CONCLUSION

The sole finding against McNair is based on false statements and mischaracterized testimony. The COI changed and mischaracterized Lake's testimony to make it appear credible. Lake's actual testimony is not credible and does not support the COI's finding.

The COI's credibility findings are filled with reversible error. They are based on incorrect statements and mischaracterized testimony. They also are internally inconsistent and contradictory. The COI also used an erroneously low standard to find that McNair was not credible.

Finally, there was misconduct by the enforcement staff, the COI and the NCAA. The staff wrongfully excluded USC from the interviews of Lake and his family. The COI engaged in impermissible *ex parte* communications with the staff about the draft Infractions Report. The NCAA publicly endorsed the COI's finding against McNair before he had even filed his notice of appeal.

For all of these reasons, McNair asks the IAC to set aside Finding B-1-b and the associated penalties.

Johanningmeier: Well let me ask you this one, too, Lloyd, on, uh, January 8, 2006, at 1:34 in the morning, there's a call, *McNair call to you* for two minutes and 32 seconds.¹

Lake: What time was that?

Johanningmeier: This is January 8, 2006, it's at 1:34 in the morning, and it's a call, uh, McNair--

Cretors: Coach doesn't understand why people are calling at 1:34.

Johanningmeier: --*McNair makes a call to you at 2:32.*² I was asleep at that time--

(Many people laughing)

Lake: Yeah.

Johanningmeier: --personally, but, but in your case--

Lake: I think that was like, *that was like him trying to resolve it, you know, and like Reggie's wrong, he should make it right and basically don't implement the school.*³

Johanningmeier: Because this, this is 2006 we are talking about.

Lake: Yeah, that's when I went to jail, that's when everything started falling apart, I mean, it fell apart.

Johanningmeier: What can you tell us that you specifically recall about that conversation with him?

Lake: Uh, just telling about Reggie and all, he knew about the money he took, he knew that he had an agreement and--

Cretors: Todd McNair indicated to you in the telephone conversation that he was aware that Reggie took money--

Lake: I mean, he knew--

Cretors: --from you?

Lake: --Yeah bec, he knew Reggie took money from me. There's no doubt he knew about that.

¹ The staff incorrectly stated that McNair called Lake.

² Here the staff again misstated who made the call and also the time of the call.

³ Here Lake is saying that McNair called him to try to resolve the dispute and ask Lake not to implement (sic) USC.

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.....

Cretors: Did you ever call McNair?

Lake: Yeah, I called him a couple times.

Cretors: Do you know when or what the--

Lake: Around this time.

Cretors: --those conversations--

Lake: Yeah, trying to get this resolved, just get my money back and make it right.

Cretors: So you called McNair in early July and vocalized to him that you wanted your money back?

Lake: January.

Cretors: January of '06?

Lake: Yeah.

Cretors: Okay. And when did you say you went back to jail?

Lake: January 18.

Cretors: January 18. So before, prior to that--

Lake: Yeah.

Cretors: --you were making calls?

Lake: Yes.

Cretors: Okay.

Lake: I got calls with Reggie.

Lake Transcript at 112-113 and 115 (emphasis added).

- Jones was interviewed by the enforcement staff March 31, 2008.

Angie Cretors (AC)
Rich Johannigmeier (RJ)
Maiesha Jones (MJ)

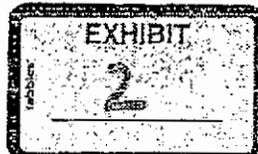
[Excerpt from Page Nos. 56 through 58]

RJ: Do you have any knowledge --

MJ: His, oh --

RJ: -- of, uh, in, uh, of Lloyd making contact with anyone, uh, at USC about his concerns of, uh, about the deal falling apart and maybe calling to get their assistance? Do you have any knowledge of any contacts --

MJ: Uh.



RJ: -- he might've made?

MJ: I, if I'm not mistaken it might've been that guy. I don't, who is that guy? What, did he --

RJ: Todd McNair.

MJ: What is he?

RJ: He's an assistant football coach. He was the backfield coach for Reggie Bush.

MJ: For, yeah, I think it may've been him. Like, look, tell him, you know, he needs to, I know for sure it was somebody at USC.

RJ: Well, well, what --

MJ: I know it wasn't Pete Carroll.

RJ: Okay.

MJ: You know.

RJ: Okay. Help me, help me set the whole scene.

MJ: Uh-huh.

RJ: What you remember

MJ: Uh, I just remember Ta-Ta making the calls. And then, uh, he was, like, you know, I hate to do this but I'm gonna have to 'cause I'm not about to get screwed. So he called, I just remember the word co, I just remember coach. So I'm just assuming it's him, but I'm not sure.

RJ: And what was the call about?

MJ: Just basically, like, somebody better talk to Reggie or this is gonna go public, you know, 'cause I'm not gonna lose my money.

RJ: And, and about what period of time would that call or calls --

MJ: This was at the, this was right when everything was getting dirty. When he was, uh, recording everything. So this was, he went to prison, I think, right after his

birthday so it must've been, like, the beginning of February then when he went to prison or late January of '06. So, I mean, within a four-month frame before that.

RJ: There's a call on the record --

MJ: Uh-huh.

RJ: -- that shows a call around January 8th.

MJ: Okay.

RJ: What that've been in the same time frame?

MJ: That's four month, yeah, that would've been in the same time.

RJ: And why do you --

MJ: I don't know for sure if it was that guy though.

RJ: Okay.

MJ: But I'm just assuming because I remember him saying, you know, oh, something, somehow, some way he made me believe that it was the person that Reggie introduced him to. You know, he was, like, basically gonna tell on him. Like, this guy, at least if I call this guy he can talk to Reggie and say, look, idiot. You know what I mean? Like, pay the money. You have, you know, you're gonna get yourself in deeper. So that's how Ta-Ta did it. You know, he was going above his head. He was trying to get him to, you know, and then also get somebody scared inside USC to say, look, you know what I mean, this is gonna be a bigger issue. And he really didn't wanna ruin Reggie, you know.

RJ: How did that conversation come up or how did you learn that from Lloyd?

MJ: Uh, I think him and Michael Michaels made the call. I just remember him saying it. You know, I remember him saying that he was gonna do it and then I remember him going over to Michael Michaels. I don't know for sure if Michael Michaels was around, but I know he was, like, at Michael Michaels when all this was going on and, uh, he had made the call. You know, he had said that he was gonna call somebody and start to make some moves.

AUGUSTINE: And my cell phone is 612-669-8987.

TOMPSETT: And you're currently a second year medical student at Michigan?

AUGUSTINE: Yes, sir.

TOMPSETT: Okay. Um. We want to talk about, um, some of the events that occurred in, uh, early 2005.

AUGUSTINE: Uh-huh.

TOMPSETT: Tell us what, where you were living in early 2005 and what you were doing.

AUGUSTINE: So early 2005 I was living in an apartment on Menlow Blue. I was, mmm, spring of 2005, I was a Junior, I guess, at USC. I graduated in the spring of '06. Um. Pre-med and studying my butt off and, uh, I was, you know, working, trying to be a college student.

TOMPSETT: Okay. And, uh, so you were a Junior at USC in ...

AUGUSTINE: Yes.

TOMPSETT: ... early 2005, in the spring semester.

AUGUSTINE: Uh-huh.

TOMPSETT: And did you know Todd McNair?

AUGUSTINE: I did. Um. I met Todd for the first time, um, late fall semester, right before Christmas, um, I had a lot of friends on the football team, one of my best friends is John Walker, um, he also lived in the Monroe Apartments, uh, and his dad is a big cook; loves to cook for everybody, how he showed love, um, and he made a big meal for the coaching staff and had asked me to help serve or whatever. Turns out I didn't really do much but, um, I ended up in the coaches office, upstairs and I met Todd, um, and then, uh, after Christmas, early in the spring semester, um, we started talking about, uh, working together on some music industry stuff that he was trying to put together.

TOMPSETT: Okay. And I wanna talk about that a little bit.

AUGUSTINE: Sure.

TOMPSETT: If you can explain what that was, but, uhm, did you have any other, uh, connection with the football program, other than having a friend on the football team?

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- 2 -



A0572

AUGUSTINE: I mean, I was a student so I knew most of the boys. I also, at the time, was tutoring.

TOMPSETT: Uh-huh.

AUGUSTINE: Um, athletes downstairs in SAAS. I don't think, um, during that semester, I was tutoring any football players specifically but, you know, the athletes float in and out and, you know, the circle's kinda small. So, I mean, I knew a lot of them.

TOMPSETT: And in what building were you doing the tutoring at?

AUGUSTINE: So, SAAS is in the basement of Heritage Hall.

TOMPSETT: Uh-huh.

AUGUSTINE: Student Athlete Academic Services, so, yeah.

TOMPSETT: Okay. Um. So tell us, you were explaining about, um, possibly working with Todd or doing some work in the music industry?

AUGUSTINE: Yes.

TOMPSETT: Talk about that a little bit for me.

AUGUSTINE: So, he was doing a bit of independent, um, music stuff. He was thinking about, um, starting an independent record label. At the time, I had been doing fashion shows, um, kind of in the hip-hop circle in Los Angeles. Um. I had done a couple of, uh, print photo shoots with some hip-hop clothing lines, um, and I was also, um doing some celebrity party planning with a company called IMP, uh, Entertainment, uh, it's run by a guy named Remy, with a very long last name that starts with D that I can't pronounce, um, uh, we were doing a lot of parties for some pretty big music artists at the time, um, we were doing Missy Elliott, Jermaine Dupri, um, I think Tiara Marie was pretty big at that time, we did one of her parties, um, so I was, you know, kind of foot-in-the-door, with that, um, scene already, um, so Todd and I got to talking and, you know, thought it might be interesting to sort of have a bigger role, I guess, in something, so ...

TOMPSETT: Did you know Reggie Bush at that time?

AUGUSTINE: I did, yes. I, um, I was a year ahead of Reggie in school, um, I actually met Reggie when he was a freshman so we've known each other, I guess, for, I don't know, what was he in '05. I suppose a year and a half, right, um, but yeah, I knew Reggie.

AUGUSTINE: It was a long time ago.

NAJJAR: And not to get too personal, how old were you in spring of '05?

AUGUSTINE: Well, I'm 26 now, so, you're putting me on the spot with math, uh, 23, I guess.

NAJJAR: Okay. And, uh, before the, uh, Marshall Faulk party ...

AUGUSTINE: Uh-huh.

NAJJAR: ... had you socialized with Todd McNair previous to that?

AUGUSTINE: Right. So, um, you know, we had met each other out at different, um, Hollywood parties, um, never gone anywhere specifically together, um, but, you know, I'm going here, okay, I'll, you know, meet you there type, um, you know, scenarios, but we'd never gone anywhere together.

NAJJAR: And can you tell me a little more about this music industry idea or plan you guys had?

AUGUSTINE: So his plan? Okay, so, um, he was working on an independent label, excuse me, he called it Blakout Records. B-l-a-k-o-u-t. Um. And originally, he brought me on to work on promotions, um, because that's what I had been doing, uh, eventually, you know, he sort of, through knowing me for a while, um, gave me a little bit more responsibility. I started doing all of the graphic designs that he needed done so they would do photo shoots, uh, with artists and then they would bring all the photos to me and there would be a great picture with some guy standing in, you know, behind a French door that you could see in, you know, it was my job to take that guy out from behind windows and, um, I did their web site, um, I, you know, basically took on a pretty big role in the label after a while, um, unfortunately, it ended up kind of being a, a record label on the back of two people cause, you know, the rest of the people we had brought in weren't really carrying weight, so, sort of fell apart after a while.

NAJJAR: Did he pay you for your work?

AUGUSTINE: Um, not really. Um, here and there, yes. Um, especially when I was, you know, doing the small stuff at the beginning, um, but after a while, it sort of became Well, you know, we're both basically putting in all this time and if it pays off, you know, it's kinda, almost like a partnership investment type, um, arrangement.

NAJJAR: A venture type ...



AUGUSTINE: Yeah, exactly.

NAJJAR: Okay. When did it kind of dissolve or end?

AUGUSTINE: I would say it floated off into the distance after I graduated, maybe a year after I graduated. I just, I remember working on stuff still when I was living at, um, you know, the different spots that I was, you know, living in, um, I would say probably a year and a half after I graduated.

NAJJAR: Okay. And when did you graduate?

AUGUSTINE: I graduated spring of '06.

NAJJAR: And you went to USC, you went to USC all four years?

AUGUSTINE: Yes.

JONES: So how long were you working probably for Blakout?

AUGUSTINE: So, let's see, if we start, um, early '05 and I would say three years, three and a half.

JONES: Okay. Thank you.

AUGUSTINE: Uh-huh.

NAJJAR: What was your understanding of Todd McNair's marital status?

AUGUSTINE: Hmm, uh, I mean, we never really got personal with his, uh, relationship. Todd's pretty tight-lipped about, you know, his marriage. I think it's pretty respectful, I guess, I don't know. I really don't have any idea. I know he was living at home.

NAJJAR: Did you ever meet a wife or ...?

AUGUSTINE: Um, I've met her at a, one of the spring ball scrimmages, at the very beginning of, um, you know, my, I guess, I don't know, working relationship, I guess with Todd, um, her and the kids were there, uh, I recognized the kids because they had been to the pool before. I worked also at the Lyon Center Swimming Pool here, that's kind of getting the whole vibe of me having a million jobs at once, uh, I was a life guard at the pool, so I saw the kids and, yeah, met his wife.

NAJJAR: So you say that was early on. Would that have been spring of '05?

AUGUSTINE: Yes.

NAJJAR: Okay.

Lake was interviewed by the enforcement staff November 6, 2007.

Angie Cretors (AC), associate director of agent, gambling and amateurism activities

Rich Johanningmeier (RJ), associate director of enforcement

Lloyd Lake (LL)

Brian Watkins (BW), Lake's attorney

Paul Wong (PW), Lake's attorney

[Excerpt from Page Nos. 142 and 143]

AC: Did Cervantes ever have any conversations with Lamar, Denise or Reggie?

LL: Yeah.

AC: With who?

LL: Reggie.

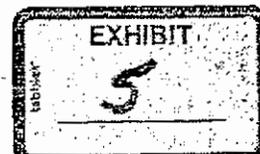
AC: Cervantes had conversations with Reggie?

LL: Yeah.

AC: How do you know that?

LL: Uh, it's on, it's on tape.

AC: There's a taped conversation between Reggie and Cervantes?



LL: Yup.

AC: And did you tape that conversation?

LL: Yeah, but Dave Cervantes knew it was being taped.

AC: And --

RJ: What was the nature of that conversation?

LL: That was still about money, just to get the proof that it happened, you know, and still trying to recruit him at the time but just had proof that --

AC: So this was the December timeframe?

LL: Yeah, this is December.

RJ: So you're talking to him --

LL: This is like when the articles --

AC: Uh-huh.

LL: -- when it's really out, you know, well I've gotta get --

AC: Uh-huh.

LL: -- some proof because right now if I didn't have those tapes where would I say, it was just on ESPN saying I never gave him any money.

AC: Uh-huh.

LL: If I didn't have those tapes I wouldn't have any proof.

RULE 2.9: *Ex Parte Communications*

(A) A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties or their lawyers, concerning a pending* or impending matter,* except as follows:

(1) When circumstances require it, ex parte communication for scheduling, administrative, or emergency purposes, which does not address substantive matters, is permitted, provided:

(a) the judge reasonably believes that no party will gain a procedural, substantive, or tactical advantage as a result of the ex parte communication; and

(b) the judge makes provision promptly to notify all other parties of the substance of the ex parte communication, and gives the parties an opportunity to respond.

(2) A judge may obtain the written advice of a disinterested expert on the law applicable to a proceeding before the judge, if the judge gives advance notice to the parties of the person to be consulted and the subject matter of the advice to be solicited, and affords the parties a reasonable opportunity to object and respond to the notice and to the advice received.

(3) A judge may consult with court staff and court officials whose functions are to aid the judge in carrying out the judge's adjudicative responsibilities, or with other judges, provided the judge makes reasonable efforts to avoid receiving factual information that is not part of the record, and does not abrogate the responsibility personally to decide the matter.

(4) A judge may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to settle matters pending before the judge.

(5) A judge may initiate, permit, or consider any ex parte communication when expressly authorized by law* to do so.

(B) If a judge inadvertently receives an unauthorized ex parte communication bearing upon the substance of a matter, the judge shall make provision promptly to notify the parties of the substance of the communication and provide the parties with an opportunity to respond.

(C) A judge shall not investigate facts in a matter independently, and shall consider only the evidence presented and any facts that may properly be judicially noticed.

(D) A judge shall make reasonable efforts, including providing appropriate supervision, to ensure that this Rule is not violated by court staff, court officials, and others subject to the judge's direction and control.

Comment



A0578

[1] To the extent reasonably possible, all parties or their lawyers shall be included in communications with a judge.

[2] Whenever the presence of a party or notice to a party is required by this Rule, it is the party's lawyer, or if the party is unrepresented, the party, who is to be present or to whom notice is to be given.

[3] The proscription against communications concerning a proceeding includes communications with lawyers, law teachers, and other persons who are not participants in the proceeding, except to the limited extent permitted by this Rule.

[4] A judge may initiate, permit, or consider ex parte communications expressly authorized by law, such as when serving on therapeutic or problem-solving courts, mental health courts, or drug courts. In this capacity, judges may assume a more interactive role with parties, treatment providers, probation officers, social workers, and others.

[5] A judge may consult with other judges on pending matters, but must avoid ex parte discussions of a case with judges who have previously been disqualified from hearing the matter, and with judges who have appellate jurisdiction over the matter.

[6] The prohibition against a judge investigating the facts in a matter extends to information available in all mediums, including electronic.

[7] A judge may consult ethics advisory committees, outside counsel, or legal experts concerning the judge's compliance with this Code. Such consultations are not subject to the restrictions of paragraph (A)(2).

[8] A judge is permitted by Rule 2.9(A)(3) to consult about legal and procedural issues with the Indiana Judicial Center or Indiana Supreme Court Division of State Court Administration.

Rule 3.5. Impartiality and Decorum of the Tribunal

A lawyer shall not:

- (a) seek to influence a judge, juror, prospective juror or other official by means prohibited by law;
- (b) communicate ex parte with such a person during the proceeding unless authorized to do so by law or court order;
- (c) communicate with a juror or prospective juror after discharge of the jury if:
 - (1) the communication is prohibited by law or court order;
 - (2) the juror has made known to the lawyer a desire not to communicate; or
 - (3) the communication involves misrepresentation, coercion, duress or harassment.
- (d) engage in conduct intended to disrupt a tribunal.

Amended Sep. 30, 2004, effective Jan. 1, 2005.

Comment

PREVIOUSLY LODGED UNDER SEAL. FILED PURSUANT TO COURT'S 2/6/15 ORDER

[1] Many forms of improper influence upon a tribunal are proscribed by criminal law. Others are specified in the ABA Model Code of Judicial Conduct, with which an advocate should be familiar. A lawyer is required to avoid contributing to a violation of such provisions.

[2] During a proceeding a lawyer may not communicate ex parte with persons serving in an official capacity in the proceeding, such as judges, masters or jurors, unless authorized to do so by law or court order.

[3] A lawyer may on occasion want to communicate with a juror or prospective juror after the jury has been discharged. The lawyer may do so unless the communication is prohibited by law or a court order but must respect the desire of the juror not to talk with the lawyer. The lawyer may not engage in improper conduct during the communication.

[4] The advocate's function is to present evidence and argument so that the cause may be decided according to law. Refraining from abusive or obstreperous conduct is a corollary of the advocate's right to speak on behalf of litigants. A lawyer may stand firm against abuse by a judge but should avoid reciprocation; the judge's default is no justification for similar dereliction by an advocate. An advocate can present the cause, protect the record for subsequent review and preserve professional integrity by patient firmness no less effectively than by belligerence or theatrics.

[5] The duty to refrain from disruptive conduct applies to any proceeding of a tribunal, including a deposition. See Rule 1.0(m).

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June 24, 2010

NCAA Missteps on McNair

By Dan Weber and Bryan Fischer
USCFootball.com

In its December Response to the charges from the NCAA Committee on Infractions, USC noted a number of mistakes and factual errors in the evidence presented against assistant coach Todd McNair.

USCFootball.com's The Peristyle



Gerard Hartline
After six years as USC's running backs coach, Todd McNair's contract ends this summer.

Those errors were also detailed at the Committee's Feb. 18-20 hearing in Tempe, Ariz., according to a source familiar with the case but not authorized to speak publicly about it.

USCFootball.com reviewed a copy of the Case Summary detailing evidence in the NCAA Committee on Infractions Case No. M295 against McNair supports the USC claim of factual errors, misleading questions and uncorroborated evidence used by the organization's enforcement staff.

The testimony in question involves would-be sports marketer Lloyd Lake and whether McNair knew or should have known of a scheme to provide impermissible benefits to former USC running back Reggie Bush and his family.

The Case Summary is "what the Institution believes, what the individuals in the case believe and what the enforcement staff believes," NCAA associate director of public and media relations Stacey Osburn said in commenting about infractions cases in general. No NCAA staffer may talk about a specific case, Osburn said, after the press conference conducted by the Committee chair on the report's release.

The Case Summary documented the allegations against McNair. Each

had factual problems.

- In questioning Lake, the enforcement staff misstated who made a 2-minute, 32-second phone call that the Committee said it relied on as proof McNair was told of the scheme. In questioning McNair, the staff incorrectly stated the year the phone call was made as happening in 2005. In all five mentions of the year in the questioning session, the phone call is said to have happened in January of 2005, not 2006, when it actually occurred.

"If this (mistake) did occur, then I couldn't imagine they would not be jumping out of their seats about it," said Tom Yeager, former Committee Chairman and Commissioner of the Colonial Athletic Association. "If it's as clear as they're trying to say, then there isn't even a finding to be made against the client."

"The committee would have turned to the enforcement staff for an explanation. If they're making a finding on a call that didn't even occur, that's strange credibility. I can't see all eight of those guys missing that."

Michael Buckner, whose Florida law firm represented Alabama State in the only appeals case that has reduced an NCAA penalty under the new, much stricter standard adopted in January, 2008, was not surprised by discrepancies in the allegations.

"That's not unusual," Buckner said. "They do make mistakes."

- The enforcement staff alleged that McNair had knowledge of impermissible activities when told of them by Bush and Lake at a San Diego hotel, March 4, 2005, a day when McNair was not in San Diego. Lake claims to have met McNair that "weekend" at a Marsnali Faulk birthday party for 2,000 people. McNair didn't arrive in San Diego until Saturday, March 5, as phone records and two witnesses indicated. No witnesses corroborated Lake's account.

The inconsistencies in this allegation led to this statement in the NCAA June, 10 Infractions Report.

"The committee concludes that the evidence presented contained unresolved discrepancies in what witnesses reported regarding the events and who was present during the March 2005 birthday party weekend."

- In three one-minute phone calls to a 619 (San Diego) area code number, the enforcement staff claimed McNair called Lake on the night of Oct. 29, 2005. A photo was provided by Lake showing Lake and partner Michael Michaels standing behind McNair and an actor-friend at a club that night.

Testimony and records indicated that McNair was attempting to reach Bush that evening because Bush was hosting a high-profile recruit. Lake's number was provided to McNair by Bush, who was out with his family and Lake and Michaels. Lake doesn't recall the phone call. The photo, taken by Michaels' phone, was described by McNair as something the USC coach and former NFL player often did when out in public.

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The photo was also called into question by an expert in the USC Response to the NCAA because it was altered from its original format. Neither USC nor the Committee was able to examine the original photo.

Sources close to the case tell USCFootball.com, that USC and McNair detailed the inconsistencies and errors by the enforcement staff at the Committee's Feb. 18-20 hearing and they will be an element in USC's appeal and McNair's appeal.

"If there are apparent errors, the Committee requires that the errors be brought up at the hearing," Buckner said. The new appeals process does not allow new evidence to be presented in the appeal.

McNair had been pursued by NCAA investigators for the almost four years before being found guilty of unethical conduct and given a one-year show-cause penalty by the NCAA. The penalty prevents him from any recruiting activities in that time.

The Committee found that the USC assistant "knowingly provided false and misleading information . . ." when questioned about his knowledge of Lloyd Lake.

The longest, most-high-profile infractions case in modern NCAA history found USC culpable on many fronts, including multiple violations of amateurism rules. However, the strongest link connecting USC to knowledge of impermissible benefits to Bush lay with McNair.

According to published reports, McNair was questioned for nearly eight hours over two days at the Committee's Tompe hearing. That's longer than many entire NCAA infractions hearings.

In the Case Summary, McNair's credibility was continually questioned by the enforcement staff. USC, in its Response to the allegations, stated that the enforcement staff "accepted at face value the allegations of the primary accusers and summarily dismissed the explanations of the accused . . . charges corroborated by little or no testimony or documentation."

USC also noted in its Response Lake's convictions of drug trafficking, theft, illegal possession of firearms, violence and domestic abuse. An FBI investigation also described Lake's involvement in a San Diego-based gang.

The NCAA countered by saying that, in addition to circumstantial evidence presented, Lake had tape recordings that supported his testimony. On the advice of legal counsel, however, the NCAA Infractions Report said that "the enforcement staff did not present those tapes to the Committee."

According to a source close to the case, and a review of the Case Summary, no tapes were ever cited to corroborate any allegations against McNair.

The NCAA's Osburn cautioned about relying too much on a Case Summary that "does not have all the documentation involved in the case . . . The Committee makes the decision."

But the enforcement staff, USC explained in its Response, needed McNair to make its case:

"USC believes the Staff has pursued these weak institutional allegations in football because it recognizes that without a direct institutional link, the allegations surrounding student-athlete 1 (Reggie Bush) involve amateurism issues with no institutional violation. After 3 1/2 years of intensive public and media scrutiny, including repeated public questions as to why USC football has not been 'brought to justice' by the NCAA, the pressure to accuse USC of having had actual knowledge of and direct connection to the alleged impermissible benefits is very real. The truth is that USC and the assistant football coach had no knowledge of the alleged impermissible benefits to student-athlete 1 and his family."

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by Yahoo! Buzz

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While allegations against McNair about the March 2005 birthday party were dismissed by the Committee due to discrepancies, Oct. 29, 2005 and Jan. 8, 2006 remained key dates in the NCAA Infractions Report.

Bush was to host a recruit after the Oct. 29, 2005 USC-Washington State game considered the nation's the top high school prospect.



Associated Press

McNair made repeated attempts to contact Reggie Bush in regards to the top recruit's official visit.

But Bush, on a post-game outing with family and friends, including Lake and Michaelis, left the recruit waiting in his hotel room while they ate dinner. The recruit would later verify that timeline.

Among the numerous calls McNair placed to Bush and the recruit that night, three were to a 619 area code that was not Bush's number. That number, cited from McNair's USC phone records, belonged to Lake.

The NCAA assistant director of enforcement, Richard Johanningsmeier immediately questioned McNair's credibility when he denied knowing Lake or having any recollection of whose phone number he'd called that night.

"So as you can see from our standpoint, we're having a lot of problems with your credibility and I have to tell you that there's a good possibility that, uh, the NCAA could allege a, uh, ethical conduct charge of providing us false, misleading information in the fact that you denied that you know him, we have the telephone calls and we have a photograph with you with people that you say that you don't know."

The phone calls and photo were cited as proof despite McNair's explanation that the three one-minute calls were to a number Bush had given him earlier when Dush's cellphone wasn't working. Lake, in his interview, didn't recall the phone calls.

The photo, which USC was never allowed to see in its original format, had been altered, according to an expert in the university's response to the NCAA's allegations. McNair and his easily recognized actor-friend had posed for photos frequently according to his testimony.

Despite pages of documentation covering the Oct. 29 calls, the photo and statements of McNair's "lack of credibility" the June 10 Infractions Report did not cite this as evidence that the assistant football coach must have had knowledge of the illegal benefits.

That left the Jan. 8, 2006 phone call.

The Committee said the call from Lake's phone to McNair's at 1:34 a.m., Jan. 8, 2006, and lasting two minutes and thirty two seconds, was "particularly troubling". Based on that call, it said the USC coach misled the enforcement staff and failed to inform USC compliance that he'd been told of the intent to funnel illegal benefits to Bush.

It was the same information about Bush the staff had originally concluded that McNair learned in San Diego 10 months earlier. But the Case Summary shows several inconsistencies in the evidence cited.

The NCAA enforcement staff questioned Lake about the early Sunday morning call, which was the day before Bush was to sit down with USC head coach Pete Carroll, McNair and others to qualify a list of agents seeking to represent Bush. Johanningsmeier mistakenly stated twice to Lake that the call in question came from McNair.

Just 10 days from returning to prison at the time of the Jan. 8 call, Lake did not admit that the call had been made from his phone, as telephone records showed. He answered the question as if it accurately reflected the situation, recounting why McNair had called him even though that was clearly not true.

The Case Summary does not show that NCAA investigators asked Lake to explain this discrepancy or his detailed answer about a phone call that the assistant coach did not make.

But the NCAA enforcement staff said it did have a corroborating witness, Lake's girlfriend, Maiesha Jones, who was asked this question by Johanningsmeier:

"Do you have any knowledge . . . of uh, in, uh, of Lloyd making contact with anyone, uh, at USC about his

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I just remember 'ouch' . . . So I'm just assuming it's him, but I'm not sure.

Maiesha Jones tells investigators in the Case Summary

concerns of, uh, about the deal falling apart and maybe calling to make their assistance? Do you have any knowledge of any contacts?"

Jones answered that she remembered such a call, "in like the beginning of February then, when he went to prison, or late January of '05, so I mean within a four-month period before that."

Lake's girlfriend thought maybe the call went to a USC coach, but wasn't sure it was McNair.

"I think it may have been him," Jones answered. "I know it wasn't Pete Carroll . . . I don't know for sure if it was that guy though . . . It might have been that guy . . . I just remember 'coach' . . . So I'm just assuming it's him, but I'm not sure."

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Another enforcement agent asked about what she described as "the July call." Elsewhere, the transcript shows the call was described as happening at 2:32 a.m. and lasting 1:34, reversing the numbers.

The questioning errors didn't end there.

Johanningmeier, who had misstated the nature of the call to Lake, would have similar factual inconsistencies in his questioning of McNair, asking the USC coach about a call that he said was made "Jan. 8, 2005," -- getting the year wrong.

There would be four more "2005" references in this session with no one catching the wrong year.

Given the 2005 date, McNair recounted what he was doing the week after USC's HCS championship game against Oklahoma, not after the 2006 Texas game, when Bush was a junior headed off early to the NFL.

At that time in 2005, McNair was on the road recruiting Kyle Moore in Georgia and Brian Cusling in New Jersey. Both signed letters of intent with USC in February of 2005.

As a result of the enforcement staff's mistakes, McNair appears to have never had the chance to respond about the call that the Committee used to convict him. The NCAA admitted that its staff had considered questioning McNair again, but declined since McNair "was on the record and adamant that he had never spoken to Lake."

The Committee agreed with the enforcement staff's finding that Lake, despite having given a detailed answer to a key question with a false premise, was more credible.

The Committee also agreed with its staff's recommendation, finding that McNair had received the incriminating knowledge of the Bush, Lake and Michaels violations as a result of a phone call lasting two minutes and 32 seconds. A call in which, investigators said, Lake was threatening "to go public," and "attempted to get [McNair] to convince [Bush] to either adhere to the agency agreement or reimburse Bush and Michaels."

The Jan. 8, 2006 call that the enforcement staff had mischaracterized as to who made it and when it was made, seems to have provided the NCAA its proverbial smoking gun on McNair.

In a call that took "less time than it would take to order a pizza", as McNair's attorney described in his Response according to the Infractions Report, the Committee determined that the assistant coach learned about the scheme and then failed to report it to USC's compliance office. McNair is then accused of falsely signing a document saying he had no knowledge of any violations in order to avoid being implicated.

USC, in its Response to the Committee, objected to what it described as a flawed process when the NCAA denied USC any opportunity to take part in the questioning of Lake.

USC stated in the Response that Lake had a motive to go after McNair.

"He blamed the assistant football coach for student-athlete 1's decision to go elsewhere and even made the completely unsubstantiated and false allegation that the assistant football coach was paid \$50,000 by Sports marketer K. (Michael Ornstein) for delivering student-athlete 1 to his sports marketing firm."

McNair, who had no comment for this report, is being represented by independent legal counsel, Scott

EXHIBITIVE INFORMATION

An important exchange between Enforcement Agent Richard Johanningmeier and Todd McNair places the assistant coach in Jan. 2005 rather than Jan. 2006.

RJ: Okay. This is January 2005. According to your telephone records, on Saturday, January 8th, 2005, you had a two minute and 32, uh, second telephone conversation with that same San Diego number, that 619. And for the record, tell me read that into the record. The number was 619-****-****. Tell us about that?

TM: I have no idea. I don't recognize that number.

RJ: Okay. And then subsequently on January 8th, the same day, at 2:50 p.m., you placed a one minute call to Bush. And at 3:26 p.m., Bush called you and that call lasted for 13 minutes and 22 seconds. Help us with that sequence? So again, I wanna set the record here, there's the call to the San Diego number comes to you, there's a one minute and 34 second conversation.

TM: Right.

RJ: You place a call to Bush for one minute. Bush then returns that call and there's a 13 minute, almost a 13 and a half minute conversation that occurs.

TM: And this is when?

RJ: This is on January 8th, 2005.

TM: January 8th, I mean, I, I have no idea January 8th.

RJ: Okay. You still don't know --

TM: Uh, that's two --

RJ: -- recognize this?

TM: -- that's 2005. That's the, uh, that's 2005, that's after the Orange Bowl, that's a week after the Orange Bowl. Uh, I could've, I don't know, I could, I don't know, I mean, I could be on the, on the road, I could be on the road recruiting 'cause the Orange Bowl was probably, that's the championship game, it's probably a week after the first, seventh, I'm probably on the road. I don't, I don't know.

RJ: Okay. So --

TM: I'm probably on the road recruiting. I don't know.

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CAPTURED PRODUCTS sidebar featuring images of Nike USC Trojans Cardinal Classic College T-shirt and Nike USC Trojans Cardinal NikeFIT Performance Polo.

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Tunipset.

"You have to overwhelm the Committee with evidence," Duckner said, "you have to blow them out of the water if you challenge what the staff believes. If you don't, they're going to believe the staff."

Stay tuned to USCFootball.com for more on this developing story as we document further findings from the investigation as they become available.

Gerard Martinez contributed to this story.

Bryan Fischer and Dan Weber cover the Trojans program for USCFootball.com. You can reach them at bryan@uscfootball.com and weber@uscfootball.com.

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STATS LLC



Tompsett, Scott

From: Osburn, Stacey [sosburn@ncaa.org]
Sent: Wednesday, July 21, 2010 3:05 PM
To: Tompsett, Scott
Subject: RE: Request for Email to Ted Miller

Scott,

I received both of your emails and am aware that you are representing Mr. McNair. However, this representation does not entitle you to the email correspondence of NCAA staff.

Thank you.

Stacey Osburn
Associate Director for Public and Media Relations
National Collegiate Athletic Association
1111 21st Street



Please consider the environment before printing this email.

From: Tompsett, Scott [mailto:STompsett@stinson.com]
Sent: Tuesday, July 20, 2010 7:53 PM
To: Osburn, Stacey
Subject: RE: Request for Email to Ted Miller

Stacey,

I would appreciate a response to my request below.

Thanks,
Scott

Scott W. Tompsett | Partner | Stinson Morrison Hecker LLP
1201 Walnut Street, Suite 2900 | Kansas City, MO 64106-2150
T: 816.691.3318 | F: 816.412.9340 | M: 816.674.4141
STompsett@stinson.com | www.stinson.com

From: Tompsett, Scott
Sent: Thursday, July 15, 2010 3:15 PM
To: 'Osburn, Stacey'
Subject: Request for Email to Ted Miller

Stacey,

As I think you know, I represent Todd McNair. Please send me a copy of the email you sent to Ted Miller last month concerning Dan Weber's article.

Thanks,
Scott



PREVIOUSLY LODGED UNDER SEAL. FILED PURSUANT TO COURT'S 2/6/15 ORDER

Please consider the environment before printing this e-mail.

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News Release

FOR IMMEDIATE RELEASE
Friday, April 29, 2011

CONTACT:
Stacey Osburn
Associate Director of Public
and Media Relations
317/917-6117

APPEALS COMMITTEE UPHOLDS DECISION FOR UNIVERSITY OF SOUTHERN
CALIFORNIA FORMER ASSISTANT COACH

INDIANAPOLIS – The NCAA Division I Infractions Appeals Committee has upheld the finding of violation and associated penalties for the former assistant football coach at the University of Southern California.

The NCAA Division I Committee on Infractions found that the former assistant coach spoke with agency partner (an individual who was in the process of forming a sports agency and marketing company in partnership with student-athlete 1 and his parents) who asked for assistance in convincing a then-current student-athlete 1 to adhere to an agreement with the agency and reimburse the agency partners for money and benefits previously provided to student-athlete 1. The committee found that the former assistant coach violated NCAA ethical conduct rules by providing false and misleading information about his knowledge of this telephone call and failing to report the potential violation.

EXHIBIT 23

NCAA NEWS RELEASE

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In his appeal, the former assistant coach asserted that the finding of violation should be set aside because it was contrary to the evidence and resulted from procedural error. The former assistant coach also appealed the one-year show-cause penalty, which prohibits him from engaging in any recruiting activity with prospective student-athletes. The public report further details these show-cause restrictions.

The Infractions Appeals Committee stated in its report that, "As the committee considered the former assistant coach's arguments, both written and oral, it became clear that the most pertinent issues devolved to matters of witness credibility." This statement specifically related to the former assistant coach's arguments that the Committee on Infractions allegedly relied on false statements in making its credibility determinations. The appellate committee considered all of the information presented by the Committee on Infractions and the former assistant coach. As a result, the appellate committee found that the evidence met the standard required by its prior reports, the applicable NCAA bylaw and other matters which properly guide its decisions. The appellate committee also did not agree with the former assistant coach's remaining arguments on appeal, which the public report further details.

In considering the former assistant coach's appeal, the Infractions Appeals Committee reviewed the notice of appeal; the transcript of the university's Committee on Infractions hearing; and the submissions by the former head coach and the Committee on Infractions. This appeal decision is separate from the university's appeal, which has not yet been decided.

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The Infractions Appeals Committee may overturn a determination of fact or violation finding if the Committee on Infractions' finding is contrary to the evidence presented; the facts found by the committee do not constitute a violation of NCAA rules; or a procedural error affected the reliability of information that was used to support the findings. A penalty by the Committee on Infractions may be set aside on appeal if the penalty is excessive such that its imposition constitutes an abuse of discretion.

The members of the Infractions Appeals Committee who heard this case were: Christopher L. Griffin, Foley & Lardner LLP, chair; William Hoyer, executive vice president for administration, planning and legal affairs at the Institute for the International Education of Students; Patti Ohlendorf, vice president for legal affairs at University of Texas at Austin; and David Williams, vice chancellor and general counsel at Vanderbilt University.

REPORT OF THE
NATIONAL COLLEGIATE ATHLETIC ASSOCIATION
DIVISION I INFRACTIONS APPEALS COMMITTEE

April 29, 2011

Report No. 323

Former Assistant Football Coach

University of Southern California

Los Angeles, California

This report is filed in accordance with NCAA Bylaw 32.11 and is organized as follows:

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I. INTRODUCTION.

The former assistant coach at University of Southern California appealed to the NCAA Division I Infractions Appeals Committee specific findings of violations and penalties as determined by the NCAA Division I Committee on Infractions. In this report, the Infractions Appeals Committee addresses the issues raised by the former assistant football coach (hereinafter referred to as former assistant coach).

II. BACKGROUND.

The Committee on Infractions issued Infractions Report No. 323 June 10, 2010, in which the committee found violations of NCAA legislation in the football program. On the basis of those findings, the Committee on Infractions determined that this was a major infractions case and imposed penalties accordingly. [June 9, 2010, issue of *The NCAA News*.]

This case centered on violations of NCAA bylaws governing amateurism, unethical conduct and reporting of knowledge of NCAA violations.

After the Committee on Infractions issued its report, former assistant coach filed a timely notice of appeal June 24, 2010. A written appeal was filed August 11, 2010. A supplement to the written appeal was filed September 9, 2010. The Committee on Infractions filed its response October 4, 2010. The former assistant coach filed its rebuttal to the Committee on Infractions Response November 1, 2010. The case was considered by the Infractions Appeals Committee November 14, 2010 (see Section VI below).

III. VIOLATIONS OF NCAA LEGISLATION AS DETERMINED BY THE COMMITTEE ON INFRACTIONS. [Please note that the cites below are the cites as they appear in the Committee on Infractions report dated June 10, 2010.]

B-1 UNETHICAL CONDUCT; VIOLATIONS OF AMATEURISM LEGISLATION; FAILURE TO REPORT KNOWLEDGE OF NCAA VIOLATIONS. [NCAA Bylaws 10.1-(d), 12.01.1, 12.1.1, 12.1.2-(a), 12.3.1, 12.3.1.2 and 30.3.5 (2009-10 NCAA Division I Manual)]

Beginning in October 2004 and continuing until November 2005, two individuals (for the purposes of this report, "agency partners A and B" respectively), were in the process of forming a sports agency and marketing company, in partnership with student-athlete 1 and his step-father and mother ("the parents"). In the course of this relationship, agency partners A and B gave student-athlete 1 and his parents impermissible benefits in the form of cash, merchandise, an automobile, housing, hotel lodging and transportation. As a result of the receipt of these benefits, student-athlete 1 competed for the football team while ineligible. This

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ineligibility began at least by December 2004 and encompasses the 2005 Orange Bowl game and the entire 2005 football season, including postseason competition. Further, the assistant football coach knew or should have known that student-athlete 1 and agency partners A and B were engaged in violations that negatively affected student-athlete 1's amateurism status. The assistant football coach provided false and misleading information to the enforcement staff concerning his knowledge of agency partner A's and B's activity and also violated NCAA legislation by signing a document certifying that he had no knowledge of NCAA violations.

- b. At least by January 8, 2006, the assistant football coach had knowledge that student-athlete 1 and agency partners A and B likely were engaged in NCAA violations. At 1:34 a.m. he had a telephone conversation for two minutes and 23 seconds with agency partner A during which agency partner A attempted to get the assistant football coach to convince student-athlete 1 either to adhere to the agency agreement or reimburse agency partners A and B for money provided to student-athlete 1 and his family. Further, during his September 19, 2006, and February 15, 2008, interviews with the enforcement staff, the assistant football coach violated NCAA ethical conduct legislation by providing false and misleading information regarding his knowledge of this telephone call and the NCAA violations associated with it. The assistant football coach failed to alert the institution's compliance staff of this information and later attested falsely, through his signature on a certifying statement, that he had no knowledge of NCAA violations.

IV. PENALTIES IMPOSED BY THE COMMITTEE ON INFRACTIONS. [Please note that cites below are cites as they appear in the Committee on Infractions report dated June 10, 2010.]

The Committee on Infractions imposed additional penalties because of the involvement of the former assistant coach in a number of the violations. The penalty[ies] imposed on former assistant coach are set forth in Part C-22.

In maintaining institutional control and a rules compliant athletics program, institutions must rely on the efforts of coaches and staff to abide by the rules and to share any information they have regarding potential rules violations. The assistant football coach had knowledge that student-athlete 1 and agency partners A and B likely were engaged in NCAA violations. He was not credible in his denials of knowing agency partner A or in his claimed failure to remember a

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telephone call between him and agency partner A. The assistant football coach failed to report information to the compliance staff regarding potential NCAA violations related to the activities of agency partners A and B. He also attested, falsely, that he had no knowledge of NCAA violations. His conduct impeded the institution from fulfilling its responsibilities under NCAA bylaws. His conduct also resulted in findings that he violated NCAA ethical conduct legislation by providing false and misleading information to the enforcement staff as described in Finding B-1-b and that he violated NCAA Bylaw 30.3.5 by signing a document attesting, falsely, that he had no knowledge of NCAA violations involving the institution. For these reasons, the committee imposes on him a one-year show cause period beginning on June 10, 2010, and running through June 9, 2011, during which he is restricted as follows in his athletically related duties at the institution or any subsequent employing institution:

- a. The assistant football coach is prohibited from engaging in any on or off-campus recruiting activities or interactions with prospective student-athletes (or their parents or legal guardians) prior to their first full-time enrollment at any institution at which he is employed and whether or not they have signed a National Letter of Intent, accepted an offer of financial aid, or are recruited by the institution as these are or may be defined in NCAA bylaws. Prohibited activities include, but are not limited to, phone calls and phone conversations; contacts and evaluations as they are or may be defined in NCAA bylaws; electronic transmissions, general correspondence and other recruiting material as they are or may be defined in NCAA bylaws; official and unofficial visit activities; and activities or interactions with prospective student-athletes that are prohibited to a representative of the employing institution's athletics interests.
- b. If the assistant football coach is employed at the institution or another member institution at the time of the 2011 NCAA Regional Rules seminars, then he must attend a rules seminar at his own expense and, within one month provide to the Director - Committees on Infractions a list of the sessions he attended, together with his certification of attendance.
- c. Should an institution other than USC employ the assistant football coach while these penalties are in effect, it shall submit a report to the Director - Committees on Infractions no later than 30 days after its first employment of him. The report shall set forth the employing institution's understanding of the above-listed penalties that are in effect at the time of employment and its responsibilities to monitor compliance. Pursuant to NCAA Bylaw

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19.5.2.2-(1) it may challenge the continued imposition of the above-listed penalties restricting the athletically related duties of the assistant football coach by scheduling an appearance before the Committee on Infractions to show cause why it should not be penalized for failure to comply with the penalties.

- d. At the end of the show-cause period imposed on the assistant football coach or upon termination of employment while the show-cause order is in effect, the president of USC or any subsequent employing institution shall provide a letter to the committee affirming that the penalties were complied with during the time of employment. If the president is unable to so affirm, he shall so inform the committee.

V. ISSUES RAISED ON APPEAL.

In his written appeal, the former assistant coach asserted that the finding of violation against him should be set aside because the finding of violation is clearly contrary to the evidence presented to the Committee on Infractions and there was a procedural error and, but for the error, the Committee on Infractions would not have made the finding of violation. Additionally, the former assistant coach asked that the penalties imposed against him be set aside. (Bylaws 32.10.4 and 32.10.4.1)

VI. APPELLATE PROCEDURE.

In considering the former assistant coach's appeal, the Infractions Appeals Committee reviewed the notice of appeal; the transcript of the institution's February 18 - 20, 2010, hearing before the Committee on Infractions and the submissions by the former assistant coach and the Committee on Infractions referred to in Section II of this report.

The hearing on the appeal was held by the Infractions Appeals Committee November 14, 2010, in Indianapolis, Indiana. The former assistant coach was present and was represented by his attorney. The Committee on Infractions was represented by the appeal coordinator for the Committee on Infractions and the director of the Infractions Committees. Also present were the vice president of enforcement; director of enforcement; director of agents, gambling and amateurism; associate director of enforcement; associate director of agents, gambling and amateurism and assistant general counsel of the NCAA. The hearing was conducted in accordance with procedures adopted by the committee pursuant to NCAA legislation.

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VII. INFRINGEMENTS APPEALS COMMITTEE'S RESOLUTION OF THE ISSUES RAISED ON APPEAL.

The former assistant coach appeals finding B-1-b:

At least by January 8, 2006, the assistant football coach had knowledge that student-athlete 1 and agency partners A and B likely were engaged in NCAA violations. At 1:34 a.m. he had a telephone conversation for two minutes and 23 seconds with agency partner A during which agency partner A attempted to get the assistant football coach to convince student-athlete 1 either to adhere to the agency agreement or reimburse agency partners A and B for money provided to student-athlete 1 and his family. Further, during his September 19, 2006, and February 15, 2008, interviews with the enforcement staff, the assistant football coach violated NCAA ethical conduct legislation by providing false and misleading information regarding his knowledge of this telephone call and the NCAA violations associated with it. The assistant football coach failed to alert the institution's compliance staff of this information and later attested falsely, through his signature on a certifying statement, that he had no knowledge of NCAA violations.

The former assistant coach raises several issues in his appeal of that finding, set forth in full as follows:

- a. The Committee on Infractions used false statements to support its unethical conduct finding against former assistant coach.
- b. The Committee on Infractions' adverse credibility determinations against former assistant coach are clearly contrary to the evidence.
- c. The Committee on Infractions improperly relied on agency partner A's surreptitious audio tapes to conclude that agency partner A was credible.
- d. Former assistant coach was denied fair process because the enforcement staff excluded University of Southern California from participating in the interviews of agency partner A and his family.
- e. The Committee on Infractions had impermissible *Ex Parte* Communications with the enforcement staff about the infractions report.

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- f. The NCAA has prejudged former assistant coach's appeal.

Issues Of Credibility.

As the committee considered the former assistant coach's arguments, both written and oral, it became clear that the most pertinent issues devolved to matters of witness credibility. Specifically, the former assistant coach's arguments regarding the Committee on Infractions' alleged reliance on false statements, the evidentiary basis of the Committee on Infractions' adverse credibility determinations, and the claimed exclusion of the former assistant coach's former employer from certain witness interviews turned principally on the Committee on Infractions' conclusions regarding the January 8, 2006, telephone call involving the former assistant coach and agency partner A, particularly its determination that agency partner A "call[ed] [the former coach] to try to get his money back." (Committee on Infractions Response Page No. 40.)

In all, these arguments are based on the Committee on Infractions' determination of the credibility of the former coach and agency partner A. The Committee on Infractions stated that it found agency partner A "credible in his report of the call," and recited the essence of that "report" as follows:

[Agency partner A] said that he phoned former assistant coach to ask him to intercede with student athlete 1 and get him to adhere to the agency agreement that he made with agency partners A and B. [agency partner A] said he also told former assistant coach that he did not intend to lose the money had given student-athlete 1 and his parents and preferred not to go public with the matter and implicate the institution. (Committee on Infractions Report Page No. 26)

The former assistant coach, of course, disputes these conclusions. He characterizes his disagreement in several ways, including that "the Committee on Infractions changed and mischaracterized [agency partner A's] . . . testimony," that "the Committee on Infractions' findings that [the former assistant coach] . . . was not credible are internally inconsistent, contradictory and based on false statements and mischaracterizations," and that while "the Committee on Infractions has discretion to make credibility findings[,] . . . the Committee on Infractions' credibility findings must be based on true and correct facts." (Written Appeal Page No. 1.)

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The Standard of Review.

Bylaw 32.10.4.2 states, in relevant part, that a finding of violation made by the Committee on Infractions may be set aside on a showing that the finding "is clearly contrary to the evidence presented to the Committee on Infractions" As this Committee stated in the University of Mississippi case:

"A showing that there was some information that might have supported a contrary result will not be sufficient to warrant setting aside a finding nor will a showing that such information might have outweighed the information on which the committee based a finding. The Infractions Appeals Committee . . . will set aside a finding only on a showing that information that might have supported a contrary result clearly outweighed the information on which the Committee on Infractions based the finding." (University of Mississippi, Public Infractions Appeals Committee Report, Page No. 10, May 1, 1995.)

Thus, the Committee on Infractions argues that its determinations discussed above are indeed matters of witness credibility, and, therefore, are within the authority of the Committee on Infractions to make:

Although University of Southern California¹ criticizes the Committee on Infractions for its speculation about the January 8 call, the Committee on Infractions appropriately did what fact finders are routinely required to do – weigh conflicting testimony and draw inferences based in part on the credibility of the witnesses involved, their motives, and the plausibility of the different accounts of the events in question. (Committee on Infractions Response to the University of Southern California's Written Appeal Page No. 40.)

While this may be true as a general matter, it is equally true that this committee is not without a proper role in the review of evidence presented to the Committee on Infractions. And, we must caution that matters decided by the Committee on Infractions may not be insulated from review simply by denominating them "credibility determinations." That said, this committee has considered all of the arguments presented by the Committee on Infractions and the former assistant coach, and in particular, the opposing characterizations of the January 8, 2006, telephone call. Some may consider

¹ The former assistant coach incorporated into his appeal sections of Southern California's written appeal. This statement is found in the Committee on Infractions response to the written appeal of Southern California.

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the evidence on which the Committee on Infractions based its conclusions regarding that call, and its decision to choose agency partner A's characterization of what occurred during the call, to be insufficient to support a finding of violation. However, we find that the evidence meets the standard required by this committee's prior reports, the applicable bylaw and other matters which properly guide this committee's decisions.

Alleged Ex Parte Communications.

The former assistant coach argues that the Committee on Infractions['s] shar[ing] its draft report with the enforcement staff so the staff could inform the Committee on Infractions of any 'factual errors' in the report" constituted improper *ex parte* communication which "create[s] a rebuttable presumption of prejudice." (Written Appeal Page No. 47.) This issue resulted in additional written communication following this committee's November 14, 2011, hearing on the former assistant coach's appeal. Specifically,

1. March 2, 2011, this committee requested that the Committee on Infractions provide to the Infractions Appeals Committee, and former assistant coach's counsel, a description of (a) what material, if any, was provided to the enforcement staff prior to the public release of the subject report; (b) the response, if any, which the Committee on Infractions received from the enforcement staff; and (c) what action, if any, was then taken by the Committee on Infractions or its staff (including any changes to the draft report).
2. March 7, 2011, the Committee on Infractions responded to the questions in the March 2, 2011, letter from the Infractions Appeals Committee:
 - a. What material, if any, was provided to the enforcement staff prior to the public release of the subject report? **Answer:** As set forth above, the infractions report with the Committee on Infractions' final determinations in the case was provided to the enforcement staff Tuesday, June 1, 2010.
 - b. The response, if any, which the Committee on Infractions received from the enforcement staff. **Answer:** As set forth above, five typographical errors were detected by director of enforcement and were sent to director and assistant director of the Infractions Committees in a June 2 e-mail message. Further, also as set forth above, there was verbal communication between assistant director of the Infractions Committees and associate director of

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enforcement regarding Footnote 3 on Page No. 41 of the infractions report.

- c. What action, if any, was then taken by the Committee on Infractions or its staff (including any changes to the draft report).
Answer: The typographical errors were corrected and a sentence was clarified in Footnote 3 as described above.” (See letter from appeal coordinator for the Committee on Infractions dated March 7, 2001.)”

3. The former assistant coach was provided the opportunity to respond to the information provided by the Committee on Infractions. The former assistant coach notified the Infractions Appeals Committee March 14, 2011, that he had nothing further to add.

Based on this information, we find that no prejudice resulted from the communication between the Committee on Infractions and the enforcement staff which preceded the release of the Committee on Infractions’ report.

The “Prejudgment” of the Former Assistant Coach’s Appeal.

The former assistant coach argues that an e-mail from the NCAA’s associate director for public and media relations (“the associate director”) which responded to a posting on the website “USCfootball.com” criticizing the Committee on Infractions’ decision in this case demonstrates that “the NCAA . . . prejudged his appeal.” (Written Appeal Page Nos. 56-57) We reject the argument. First, we note that, at the time the associate director sent the e-mail at issue, the only part of “the NCAA” which had any judgment to render was this committee. We assure the former assistant coach that this committee had no role in the drafting or transmittal of the e-mail. Indeed, this committee did not know the e-mail existed until the former assistant coach raised it in this appeal. Second, and perhaps most important, we will not burden those charged with the NCAA’s media relations with a fear that their statements made in the execution of that duty will be used to argue that this committee has made up its mind about a case. Again, the former assistant coach, as well as others who read this report, may be assured that this committee bases its decisions on the record and the applicable adjudicatory principles. It does not consider other, extraneous matters, including those which are part of other legitimate activities of the NCAA.

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VIII. CONCLUSION.

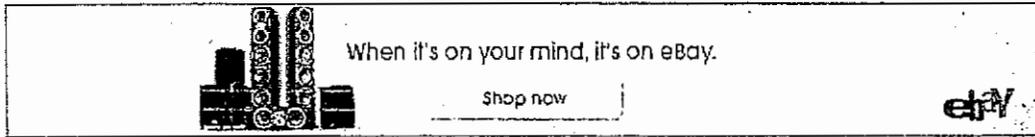
Finding of violation B-1-b as well as penalties C-22, C-22-a, C-22-b, C-22-c and C-22-d are affirmed.²

NCAA Infraction Appeals Committee³

Christopher L. Griffin, chair
William Hoye
Patti Ohlendorf
David Williams.

² According to the Division I Infractions Appeals Committee Policies and Procedures (See III.A.2.d at Page No. 4), any penalty that is appealed is automatically stayed through the course of the appeal process. This stay is triggered with the filing of the notice of appeal by the appellant and ends with the public release of the committee's decision. Therefore, the appellant's affirmed penalty C-22 (one-year show cause order) shall be applied April 29, 2011, through April 28, 2012.

³ William Hoye replaced Susan Cross Lipnickey who recused herself from this case. Additionally, Jack Friedenthal recused himself from this case and all parties agreed to proceed with a four-member panel.



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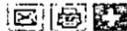
Dec 15, 2010

NCAA president: Stiff penalties needed for coaches who commit violations

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By Marlen Garcia, USA TODAY

Updated 2010-12-15 7:24 PM

INDIANAPOLIS – NCAA President Mark Emmert steered clear Tuesday of addressing the infractions case against Tennessee men's basketball coach Bruce Pearl.

Making general comments, Emmert stressed a need for significant penalties for coaches who commit rules violations.

"We do need to have a situation where coaches know if they're in violation of major infractions, that the penalties will be significant enough that they serve as an impediment and discouragement of that type of behavior," he said during a dinner with reporters. "You don't want a circumstance where a coach is saying, 'I have to do that, too, if I'm going to be competitive.' That's a fundamental problem."

Pearl lied to NCAA investigators last summer when asked whether he had recruits visit his home – an NCAA violation in itself since the recruits were juniors in high school. Pearl admitted in September that he had lied to the investigators and was punished by Tennessee with a one-year, off-campus recruiting ban and was suspended for eight conference games by the SEC.

Pearl's case brings to mind the case of Dez Bryant, the former Oklahoma State football player who lied last year to NCAA investigators about his connection to former NFL star Deion Sanders. Bryant was suspended by the NCAA for lying.

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About Erick Smith

Erick Smith has managed USA TODAY's online college football coverage and picked games on the web for the last 11 years. He's been a fan of the sport going back to the days when the Big 12 and the BCS didn't exist and all the New Year's Day games were actually played on New Year's Day. More about Erick.



About Nicole Auerbach

Nicole Auerbach joined USA TODAY in the fall of 2011 to oversee online college basketball coverage. She's a New Jersey native and a big fan of Big Ten football and basketball. She firmly believes Madness need not be limited to just March. More about Nicole.



USA TODAY Top 25 college polls

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Football coaches' poll

- Alabama (31)
- Southern California (14)
- LSU (7)

circumstances, Emmert said coaches should be punished "at least as much" as players. "They're the teachers."

Other topics Emmert addressed:

□ He said the NCAA could "potentially" implement a rule change as early as next month to address concerns raised by the decision to keep Auburn quarterback Cam Newton on the playing field despite his father's involvement in a play-for-pay scheme.

MORE FROM EMMERT: Closing loophole in Newton case is complex

□ Asked about the swiftness of some decisions – Newton was reinstated quickly though the investigation is ongoing – while others drag on for months or years, as was the case of Reggie Bush at USC, Emmert said: "Everyone looks at the Reggie Bush case and says, 'It took them a long time.' But they got it right, I think. It was a very hard, complex case. Again, remember, the NCAA does not have subpoena power. You cannot mandate that somebody talks to you. You have to work very hard to get at the facts."

□ When the Pacific-10 and Big Ten conferences expanded last summer to 12 teams, the viability of the Big 12 conference was in question. The NCAA has no power over such matters, but Emmert said he could use his office as a bully pulpit.

"I see my role in conference realignment to simply be one of a reminder ... about the overall condition of sports and the game. ... You've got to worry about the health of the other conferences. It can't just be every man for himself completely. Part of my job is to remind them of that."

The Pac-10 and Big Ten seemed to show little regard for the Big 12, however, last summer, Emmert was told.

"At the end of the day, they wound up in a pretty good place," he said of the leagues. "While the realignments caused some angst, they weren't the catastrophe that people were concerned about. ... They were good rational decisions that were made." He said he's not losing sleep over the possibility that a conference could expand to 16 football teams, thus creating a super conference.

"I don't know whether or not it makes sense to have a 16-team conference with two eight-team divisions. What is that? So is it a lot more money? If the divisor changes and you have to divide it in uneven fashion, is it a good deal for all those members? Maybe not. Can you work out the logistics? It's unknown territory and it's not clear to me what it would all mean."

-- Marlen Garcia and Steve Wieberg

See photos of: NCAA, Bruce Pearl, Mark Emmert

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grf88
1:29 AM on December 16, 2010
Son of a...

Score: 0

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What the hell is going on here -- is prejudice not in the vocabulary of Mark Emmert? He can't come out and comment on the USC case while it's under appeal; just as he said, Emmert is demonstrating the power of his bully pulpit. His words on critiquing the act of the PAC-10 to expand to 16 teams, shows he's got a bias against PAC-10 teams. His words about USC's case is the nail in the coffin, showing his true colors. He should resign for an unethical act of attempting to sway the outcome of USC's appeal.

Mark Emmert shows that the NCAA is a big fat joke.

traanother
4:59 AM on December 16, 2010
Mr. E. why did you hire Steve and punished USC? Odd good cop bad cop again?

Score: 0

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idaholic
1:47 PM on December 16, 2010
Sorry! I can't place any credibility in an organization supposedly in charge of college athletics which endorses th hijacking of college football by the BCS.

Score: 0

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Score: 0

June 10, 2010



An interview with:

PAUL DEE

STACEY OSBURN: Welcome to today's telephonic press conference to discuss the NCAA Division I Committee on Infractions' decision regarding University of Southern California.

The members of the NCAA Division I committee on infractions who heard this case include Paul Dee, lecturer of law and education at the University of Miami and formerly the institution's athletics director and general counsel. He is the chair of the Committee on Infractions.

Other members are Britton Banowsky, commissioner of Conference USA; John S. Black, attorney; Melissa Conboy, deputy director of athletics at University of Notre Dame; Brian Halloran, attorney and the manager/general counsel of Painted Hills Wind Developers; Eleanor Myers, faculty athletics representative and law professor at Temple University; Josephine R. Potulo, the Richard H. Larson Professor of Constitutional Law at the University of Nebraska, College of Law; and Dennis Thomas, the commissioner of the Mid Eastern Athletic Conference and formerly director of athletics at Hampton University.

In just a moment, chair Paul Dee will discuss the findings and decisions of infractions committee. Following his comments, he will take questions.

I would like to turn the call turnover to the chair for opening comments.

PAUL DEE: Good afternoon. This is the report of the Committee on Infractions in the case M-295, the University of Southern California. This case strikes at the heart of the principles of amateurism of the NCAA in both football and basketball. The principles of amateurism and the rules state that intercollegiate athletics should be

motivated primarily by education and its benefits and not otherwise.

Second issue that is important in this case is that there was a finding of a lack of institutional control on the part of the institution. There were three areas where that occurred: the failure to hear clear warnings, warning signs, the failure to be proactive when they presented themselves, and the failure to have effective monitoring within the athletics program.

There were some questions regarding the length of time that it took this case to develop both as a case and the report of this committee. This case was an extremely complicated case for a number of reasons and involved multiple sports which required the investigative staff and the enforcement division of the NCAA to be particularly careful and deliberate in finding and making the case which it brought to the Committee on Infractions.

The second issue is the length of time it took to issue this report. This case was heard in February, but this case, again, was an extraordinary case not only in the substance but in the amount of time it took to hear this case. Ordinarily cases take six to eight hours in a one-day period. This case took more than 30 hours to hear over a three-day period. So there was some concern about getting this out as quickly as possible, which we tried to do, but we also wanted as a committee to be extremely deliberate and careful in rendering the report, which is by way of explaining the delay and the issuance of the report.

This case involves violations in three sports, with the majority of the violations occurring in the sports of football and men's basketball.

The violations included unethical conduct, violations of the rules of amateurism, the failure to report knowledge of violations, the receipt of impermissible extra benefits, and the lack of institutional control.

The violations in football included involvement of a student-athlete with those

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persons who were covered by the rules of agency of the NCAA, the receipt by student-athlete one and his family of impermissible benefits, including cash, travel, housing, furnishings, transportation, merchandise, not only for themselves but for the benefit of friends. There was also knowledge of possible violations by a member of the coaching staff which apparently was not reported. Finally, there was a violation of the coaching staff limitations by the football coaching staff.

The violations in men's basketball included receipt of impermissible inducements and extra benefits, including transportation, meals, lodging, cash, merchandise, including a television for the student-athlete and friends.

The violations in both cases involved individuals who triggered the NCAA legislation and representatives of institutions athletic interest in acceptance of the benefits by both the student-athletes and their families and friends which were impermissible under the rules of the association.

The penalties which were imposed by the committee are the following:

- 1, public reprimand and censure.
- 2, four years of probation from June the 10th, 2010, through June the 9th, 2014.

3, the institution men's basketball team ended its 2009/10 season with the playing of its last regularly scheduled in-season contest and was not able to participate in any post-season competition including the foreign tour for the following season. This penalty was imposed by the institution.

4, the institution's football team shall end its 2010 and 2011 seasons with the playing of its last regularly scheduled in-season contest and shall not be eligible to participate in any post-season competition, including a Bowl game following those seasons.

5, pursuant to bylaw 19-5-22-C2 and bylaw 31-2-2-3B, the institution will vacate all wins in which student-athletes competed while ineligible beginning in December of 2004.

Pursuant to the same bylaws the institution will vacate all wins in which student-athlete two competed during the 2007/2008 regular basketball season. This was imposed by the institution.

7, pursuant to the same bylaws, the institution will vacate all wins in which women's tennis student-athlete competed while ineligible between November 2006 and May 2009. This penalty was self-imposed by the institution.

8, regarding these penalties with regard to vacations, they shall be effective pursuant to NCAA bylaws that I read above and shall include participation in any post-season competition, including football Bowl games, conference tournaments and NCAA championships.

The individual records of student-athlete one, student-athlete two, and the former women's tennis student-athlete shall also be vacated for all contests in which they competed while ineligible.

Further, the records of the head coaches of the affected sports shall be reconfigured to reflect the vacated results.

Finally, the institution's record regarding football, men's basketball and women's tennis shall be reconfigured to reflect the vacated institutional coaches and student-athlete records in all publications in which records for football, basketball and women's tennis are recorded, including but not limited to media guides, recruiting materials, electronic digital media, institution and NCAA archives. Any reference to the results, including championships, shall be removed from the athletic department's stationery, banners displayed in public areas or any other form in which they appear.

9, there shall be a limit of 15 initial grants and aid and 75 total grants in football for each of the 2011/12, 2012/13, and 2013/14 academic years.

10, there shall be a limit of 12 grants and aids in men's basketball for the year 2009/10 and the next year 2010/11. Those academic years, that penalty was self-imposed by the institution.

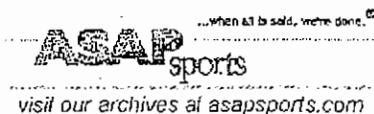
Reduce by one the number of men's basketball coaches permitted to engage in off-campus recruiting activity in the summer of 2010. The institution self-imposed this penalty.

12, reduce the total number of recruiting days in men's basketball by 20 days from 130 to 110 for the 2010/11 academic year. This penalty was self-imposed by the institution.

A fine of \$5,000 for student-athlete one's amateurism violations. This was self-imposed by the institution.

14, the return to the NCAA of \$206,020 the institution received from the Pacific Conference for its participation in the 2008 men's basketball championship. This was imposed by the institution.

Further, due to the ineligible participation of student-athlete two and consistent with the



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NCAA Division I Infractions Appeals Committee January 24, 2000 decision in the matter of Purdue University, the institution shall return to the NCAA all of the monies it has received to date to the PAC-10 conference regarding sharing for its appearances in the 2008 NCAA men's basketball tournament.

Further, the distributions to the institution resulting from its appearance in the 2008 men's basketball tournament that are scheduled to be provided to the institution in the future shall be withheld by the conference and forfeited to the NCAA.

15, the institution shall disassociate student-athlete number one. This was imposed by the institution.

16, the institution shall disassociate student-athlete number two. This, too, was imposed by the institution.

17, disassociate the person referred to as Representative B to activities with regard to the athletic department at the institution. This also was institution imposed.

18, regarding the dissociation of these student-athletes and persons, the institution shall show cause why it should not be penalized further if it fails to permanently disassociate student-athletes one, two, and Representative B from the institution's athletic program based on their involvement in the violations set forth in this report.

This association shall include refraining from accepting any assistance from the individuals that would aid in the recruitment of prospective student-athletes or the support of enrolled student-athletes. Refusing financial assistance or contributions to the institution's athletic program from those individuals. Ensuring that no athletics benefit or privileges provided to the individuals, either directly or indirectly, that is not available to the public at-large. Implementing other actions that the institution determines to be within its authority to eliminate the involvement of the individuals and the institution's athletics program.

19, the university released three men's basketball prospective student-athletes from their letters of intent. This was self-imposed by the institution.

20, the committee is further troubled by the institution's failure to regulate access to practices, facilities, including locker room and games. Therefore, for the period of probation, the institution shall prohibit all non-institutional personnel, including representatives of the

institution's athletics interest, with the exception of media, family and others approved by the compliance office on a case-by-case basis from doing any of the following: traveling on men's and football team charters, attending football and men's basketball practices, C, attending or participating in any way with institutional football and men's basketball camps, including the donation of funds to those camps, and D, having access to sidelines and locker rooms before, during and after football and men's basketball games. Exceptions may be granted by the compliance office to prospective student-athletes and their families consistent with the rules of the NCAA.

21, there will be requirements for the publication and reporting of infractions to prospective student-athletes and those student-athletes recruited, which is more fully explained in the report.

22, in maintaining institutional control and rules compliant athletics program, institutions must rely on the efforts of coaches and staff to abide by the rules and share any information they have regarding potential rules violations. The assistant football coach who had knowledge that student-athlete one and agent partners A and B likely were engaged in NCAA violations, he was not credible in his denials of knowing agency partner A or in his claim failure to remember a telephone call between him and agency partner A. The assistant football coach failed to report information to the compliance staff regarding potential NCAA violations related to the activities of agency partners A and B. He also attested falsely that he had no knowledge of NCAA violations. His conduct impeded the institution from fulfilling its obligation under the NCAA bylaws. His conduct also resulted in findings that he violated NCAA unethical conduct legislation by providing these statements.

During this period of probation, the institution shall be required to perform a number of activities that are more fully set out in the report to the university.

24, the above-listed penalties are independent of and supplemental to any action that has been brought, taken or may be taken by the Committee on Academic Performance through its assessment of contemporaneous historical or other penalties.

25, at the conclusion of the probationary period, the institution's president shall provide a



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letter to the committee affirming that the institution's then current athletics policies and practices conform to all requirements of NCAA regulations.

At this point I have concluded by opening remarks and would be happy to take questions.

Q. Paul, I've seen a number of infractions reports over the past few years. One thing I found interesting about this one is how close the NCAA gets to identifying who these athletes are. Typically not a lot of details are provided. In the introduction it mentions a candidate for the Heisman Trophy and a known one-and-done student-athlete for basketball. I'm sure you know through media reports that folks are pretty certain they know who these guys are. I'm wondering, was there some rationale there? Is this trying to send a message, given those two players are now professionals, was there more of an effort to get closer to their identity than a lower-profile infractions case?

PAUL DEE: The answer is no. It was included in part to show how prominent the individuals were with respect to their relationship with the university.

Q. How much further could the penalties have gone before I guess the death penalty? I don't think USC was eligible for it. In your opinion, how much further could this have gone?

PAUL DEE: Well, there are two issues that you bring up. The first issue is with regard to the death penalty. How the death penalty works is if an institution is a repeat offender within a five-year period, they were eligible for consideration for the imposition of the death penalty, what's referred to as the death penalty.

The committee felt as it reviewed all of the penalties that were at its disposal in this case that the penalties that it imposed were sufficient to respond to what it perceived to be the violations that had occurred.

Q. On the finding against the football assistant coach, was that based on that one phone call? I don't have the report in front of me, but I understand there was one phone call making contact with one of the agents.

PAUL DEE: I would refer you to the public report and to that section which more fully explains that person's involvement at that point in time.

Q. What would you say the message is that you've sent to SC? Can you characterize what you believe SC's pattern of behavior was?

PAUL DEE: Well, I think that the message is not sent in any other way but to recognize what had occurred and to try and address it on behalf of what was appropriate as it might have negatively affected all the other members of the NCAA.

We have to protect their interest, and that's why we have compliance programs. So I don't think that there was a specific message. I think there was a reaction by the committee to what it perceived to be a very serious case.

Q. I'm sure you're aware during the four years since the initial Yahoo report, since the NCAA doesn't comment on investigation, a lot of the public wondered whether the NCAA was going to 'let USC get by.' Obviously it's been quite the opposite. Why did it take four years to put this case together since all these Reggie Bush details came out?

PAUL DEE: There probably are a number of reasons, let me give a few, but certainly not exhaustive.

The investigation by the enforcement division of the NCAA is very, very difficult. They only have people that they can get to voluntarily take part. The staff has no subpoena power in which to bring people outside of universities to testify or to give information. It has a very difficult time getting records. This was a very serious case. And at the same time a second case developed that had to be dealt with, and the cases were consolidated. I think that explains over a period of time why there may have been what might be perceived as a delay.

The problem is in many cases it takes quite a while once a problem has been discovered to fully investigate it, to work with the institutions, to get their responses, to do all of the necessary discovery, particularly in extremely difficult and far-reaching cases.

It took a long time, yes. I don't think that it was any kind of delay.

Q. Paul, how did the committee specifically come up with these particular penalties? Did you look at any previous cases in deciding these penalties? If so, which ones did you look at?

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PAUL DEE: Well, there are a couple things. In deciding the penalties, we have in front of us all of the penalties approved over the years by the membership for application by the Committee on Infractions. We try to impose those penalties in most case that deal directly with the institution. To be sure, some of the penalties are punitive.

In this case we looked at the fact that ineligible players participated which gives rise to the vacation of records for the institution, team, coaches and the individual. Similarly, on a going-forward basis, it's important that important sanctions be rendered when they're due. The committee believed this was a very serious case and dealt very seriously with the sanctions that were imposed.

It took the committee a good while to go through those sanctions. Other sanctions were considered. The sanctions that were put in place we believe most properly respond to the benefits gained by the institution through the notoriety that occurred during these periods of times which led to enhanced recruiting, which led to their ability to recruit other athletes. Consequently we thought, at least in the area of the scholarship limitations, that would be an appropriate penalty.

Q. How would you characterize USC's cooperation level with the investigation?

PAUL DEE: There is in our report a full and complete description of our characterization and our view of the cooperation by the institution. I would direct you to that more than I could paraphrase it.

But I think it's a full and fair analysis of the cooperation of the institution. They met their minimum obligation or they met their obligation to cooperate. The question was whether there should be any mitigation with respect to that, with regard to the penalties, and the answer of the committee was no and brief.

Q. When you were at Miami in '95, they got hit pretty hard, 30 scholarships, I believe.

PAUL DEE: 31.

Q. How difficult is it to rebound from that? Miami won a national title six years later. Is there a punitive purpose in sending a message where you're going to effectively take a school back for a while or in a timeout almost.

PAUL DEE: My answer to that would be, that depends on the institution. The institution can accept where it is, work hard with what they have, and continue to be competitive. But whenever you limit scholarships, you, frankly, limit the chances of making a mistake. You have to be extremely careful in your recruiting and only bring in the right people that are going to be able to help you was our point of view back in Miami. I'm not speaking for the committee. You asked me about Miami. We hired a new coach at that time. Butch Davis came in. He understood that. He got us back to right on the brink of winning a national championship before he went to the Cleveland Browns.

Q. Can you clarify what happens with the 2004 football championship and which school the NCAA recognizes as the champion from this year?

PAUL DEE: The NCAA does not recognize a championship in the sport of football. That is taken care of by the Bowl Championship Series, the various media polls and the like. The only jurisdiction that we have is whether or not that person was eligible to participate in that contest. If that person was not eligible to participate in that contest, we have ruled that that game must be vacated.

Consequently, if that is the finding, the BCS would look at how it conduct its affairs and the BCS would have to make the determination of how to handle the national championship of that year.

Q. Could you explain the length of three days for the hearing. Most schools it might be a few hours. Regarding the men's basketball program, it seems like most of theirself imposed penalties around accepted and only a few others were added. What did you see there, the decisions in handling them?

PAUL DEE: You're going to have to repeat the first question.

Q. The first question is the length of time it took for the USC actual hearing.

PAUL DEE: Thank you.

The committee gives to the school and to the enforcement staff the opportunity to present clear, fair and fully all of the information to everyone. This case was very complicated with



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multiple, multiple allegations. It was not a case that lent itself to being resolved in a short period of time.

I think we were expeditious in the hearing. I think the hearing was conducted fully and fairly. But I think we tried to handle it in such a way as the hearing moved ahead quickly.

It took three full days at approximately 10 hours plus a day to hear this case. We think that that's what is fair to the institution and that's what's fair to the enforcement staff, and the committee accommodates that by giving them the time that they need.

With regard to the penalties in basketball, the institution did, as you said, self-impose many penalties with regard to the sport of basketball because in most instances the institution agreed that a violation had occurred.

In the sport of football, with regard to that situation, there was not as much agreement that a violation had occurred, and consequently the school would not self-impose a penalty if they were taking the position that a violation had not occurred.

Q. You mentioned in your report that television ban was strongly considered but you ultimately did not impose one. What were some of the factors and considerations you talked about with regard to a television ban situation?

PAUL DEE: Well, first of all, the television penalty has been a regular penalty of the NCAA for many years going back to the days of conventions where the institutions and members voted to have such a ban as a penalty. It has not been used as a penalty for a number of years.

However, we felt that we should consider this penalty because of the high-profile nature of the individuals involved, the advantages that were gained or may have been gained by having television appearances, particularly national television appearances. One of the ways to get at the reward that was received by the television exposure and public relations positives, would be to withdraw that same opportunity in the future for a period of a year or whenever.

The committee also took a look at other penalties that were available to it and made the determination that other penalties would be appropriate in this circumstance and made the final decision not to impose the television penalty.

The point being, we felt it was important to discuss that publicly because we want people to

understand all those people that are involved, it could cause a violation, could create a violation, could make a violation, that this penalty is available, and whenever someone breaks the rule there are consequences. This is a substantial consequence, but it is available.

It was not imposed here because we felt we fairly treated the penalties that were deserved by other means.

Q. There are media reports that one recruit signed a letter of intent in 2010, was told by Lane Giffin he was confident there would be no significant sanctions against of football program. Is there any recourse for recruits who felt like they were misled when they signed a letter of intent or a university portraying that when that turned out not to be the case?

PAUL DEE: I don't mean to avoid the question, but that really isn't the subject of what our committee does. If there are issues in this regard, there are other avenues available to the student-athletes, including filing for appeals or perhaps releases for their letter of intent if they signed them. If they've simply been recruited and not signed a letter of intent, that student is free to go elsewhere.

Q. Obviously USC imposed releasing three basketball prospects from their letters of intent. What is the difference there?

PAUL DEE: The answer to your question is, I'm not familiar with the facts as to what student-athletes had signed letters of intent in football at the University of Southern California, so I'm not able to give you an answer to that question.

They had at the time made a determination that there were violations in the sport of basketball. In order to be fair to those student-athletes, they took a very strong step by releasing those potential prospects from their letters of intent.

I was not aware and we have not been made aware of the same circumstance existing in football.

Q. Going back to the 2010 recruiting class. If, in fact, those guys asked for a release from their letter of intent, would they have to follow the same NCAA bylaws that would require them to sit out a year?

PAUL DEE: They would have to file

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whatever the appropriate rules are of the NCAA and the rules of the letter of intent. That's beyond the scope of what our committee does. I don't mean to avoid your question. I just think it would be safest to go the safe way, and that is to tell you that involves another rule, and I'm not able to give you a complete answer on that.

Q. Can you take us through what USC's response could be to this in terms of appealing this report, a layout of the landscape of how they would go about doing that and what the time frame would be.

PAUL DEE: Yes. All matters decided by the Committee on Infractions are open to an appeal by any affected party. That can be a party, an institution, in this case the university, or an individual who is at risk can take an appeal to the infractions appeal committee of the NCAA.

At the hearing, the conclusion of the hearing, the terms and conditions of that are noticed. When they get the official notice, they have so many days to give notice of an appeal. Once that has been accepted by the Infractions Appeals Committee, then the clock starts running on the filing of briefs by both the institution and the person who will respond on behalf of the Committee on Infractions.

So the beginning of the process comes very quickly. The setting of the hearing time, the filing of the materials, one of the things I would simply say to you here, I don't know that any of you have seen the size of the record in this case. If we stacked it on a table, I bet it would be close to a yard tall, maybe a meter, give or take an inch. But when the Infractions Appeal Committee gets this, and that's the record, they have to go through the relevant parts of that record. Consequently, after the briefs are filed, the record is established, everything is sent to the committee, they can take a while to digest that and then set the hearing time. That's up to them to set the hearing time. I don't even have a have a good guess as to the length of time it would take in this case for the hearing to be fully prepared, digested and scheduled.

Q. I'm not seeing inside the report how these infractions were brought forth or to the committee's know-abouts. Was the football self-reported? If not, who brought it to the committee?

PAUL DEE: That actually was not discussed at the hearing. But my independent recollection was that information became generally

available that caused I think both the institution and the NCAA enforcement division to begin an investigation.

Q. Are you going to make any recommendations to the BCS on the football national championship? Did Melissa Conboy argue for a TV ban on football? How much bigger could or would the penalties be if Pete Carroll were still on the job? Did you pull back on penalties after Pete Carroll left?

PAUL DEE: Am I going to make a recommendation to the BCS? No. That's not for me or even the NCAA to do. That's an independent championship which they have to do.

You asked about Ms. Conboy. During the consideration of this issue, Ms. Conboy withdrew basically. The decision was made with her present but without her input in terms of that. I understand the conundrum that you're referring to and so did we at that time.

The penalties are not directed at an individual. We select the penalties that we believe appropriately respond to the violations that occurred by the institution or by people who are associated with the institution or who are governed by the rules of the NCAA.

I don't think the penalty would have been any different had Mr. Carroll stayed.

Q. There was talk about Tim Floyd possibly facing sanctions. Will he face any individual punishments? How was his cooperation with the NCAA?

PAUL DEE: The coach was not found to have violated any rule. Let's just put it that way.

Q. If they go ahead with the appeals process, would it affect the 2010 season or how long would that process take?

PAUL DEE: The rule with respect to appeals is as follows:

If the institution is determined to make an appeal, all penalties are stayed. Consequently, they could proceed into the next season and do whatever they wish to do, understanding that there's a risk to that which simply pushes the penalties back yet further.

So if they take an appeal on a particular issue and are unsuccessful, those penalties would then apply, let's say the scholarships, for the next three years. So the penalties don't shorten, but


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they are stayed during the time of the appeal, if they are appealed.

Q. You said the men's basketball coach was found to not have violated any rules. The compliance office stated he stop recruiting a student-athlete and he didn't do that. How was that considered not a violation? Also in terms of men's basketball, was the committee satisfied with the self-imposed sanctions, which is why not much further action was taken?

PAUL DEE: On your second issue, the committee was impressed with the institution of sanctions by the institution. The question is we only passed on those issues that were in front of us.

One thing I will go back and say, I want to clarify the previous question, with regard to appeals. Only those penalties appealed are stayed. If there's not an appeal of the penalty that's in question, those penalties take effect immediately.

Q. How did you handle the information of a \$1,000 payment from the previous men's basketball coach Tim Floyd? Why did the committee feel the need to specifically spell out the student-athlete obviously in this case was a one-and-done player and how that affected this case, the desire to mention 'one-and-done'?

PAUL DEE: I answered that part of the question earlier. I think those statements were made particularly to indicate the quality and level that the individuals were that were involved in the case.

With regard to the allegation regarding the \$1,000, the committee did not make a finding on that issue.

Q. I noticed the NCAA money that USC earned in 2008 is going back. The university can't give back any of its BCS football money because it's an independent championship, is that correct?

PAUL DEE: The direct answer to your question is generally yes. The NCAA runs the tournament and therefore has the jurisdiction over the basketball tournament. Through prior cases before the Committee on Infractions and the Infractions Appeals Committee, particularly the case earlier this decade with regard to Purdue, the methodology for the return of funds from the NCAA

championship were spelled out. We applied that principle here.

Because the NCAA does not own or function as the operator of the Bowl Championship Series, our jurisdiction is somewhat limited in that area, although indirectly a fine may have been imposed that may have had the similar result. But that wasn't the case.

Our view is that the BCS is an independent agency and the funds that an institution makes from that agency are beyond the jurisdiction of this committee.

Q. On the vacating of the Orange Bowl that Bush played in, which was the championship game, does SC vacate the victory but not vacate getting the national championship? Can you explain that for me.

PAUL DEE: Let me explain a couple of things.

One, 'vacation' means the only record changed is that of the offending institution. It's a one-sided thing. It's not a forfeiture. It does not benefit a win to the other side.

Second, with regard to vacating the championship, our jurisdiction makes a determination as to whether a student was eligible to play in that game, because we do have jurisdiction over regulating the Bowl games. But if the player was ineligible and we determine that player was ineligible to participate and therefore we vacate the record, then the BCS has to make the determination with respect to the championship.

Q. Was it taken into any consideration that USC hired a coach recently from the same staff where all these violations occurred and that coach also has the NCAA looking at him for potential violations at his former job at Tennessee?

PAUL DEE: The answer is that the committee looks at the case in front of it. We don't look at who the institution has hired. The only way you go backwards would be if that coach were particularly charged or involved. So I would say that's an independent issue that's beyond the consideration of this committee and was not part of it.

Q. Could you clarify, in terms of the appeals process, who composes the Infraction

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Committee on appeals? Are they made up by the same people who comprise the infractions committee which determined these findings?

PAUL DEE: No, that would be kind of redundant. Not to be light, but I want you to understand that it's an independent committee established by the NCAA some 18 or 17 years ago to oversee the work of this committee. It has jurisdiction. It's composed of a number of members who are from institutions and also from the private sector according to NCAA bylaws. They are independent. They are extremely well-qualified individuals. We have great regard for their opinion. They are independent of this committee and no member of this committee serves on that committee.

Q. Regarding the two-year Bowl ban, how much consideration was given to it being less than that? How did you exactly come up with that particular number of years to ban the football team for the post-season?

PAUL DEE: Well, frankly, it was the number of Bowl games that the individual participated in.

Q. Can you clarify exactly what are the rules for juniors and seniors on the football team should they wish to transfer at this point?

PAUL DEE: I have not reviewed that. I'm generally familiar with those rules. But I do think it would be best to go with the review of the NCAA rule book which I don't have in front of me. I'd be happy to look up.

I would also suggest that you might contact Ms. Stacey Osburn with media relations here at the NCAA. Her phone number is on the press release. She will attempt to get that information for you.

Q. The fact that USC didn't self-impose any sanctions for football, they did self-impose sanctions for men's basketball and tennis, the fact that they didn't even admit any wrongdoings in football, did that play a role in your ruling?

PAUL DEE: Well, there are two things. One is over the period of time as the discovery and the investigation was conducted by the institution and by the enforcement division of the NCAA, the university, you will see this in the report, acknowledge some of these violations but they hadn't done that at the beginning.

Separately, to their own reasons, they did not self-impose penalties. I'm unable to say why or speculate why they did not do that.

Q. The self-imposition of penalties in one sport help the other necessarily or is it treated as one?

PAUL DEE: Each act is independent. In a sense, there were three different main issues in front of the committee. With respect to the issue of the activities in one sport, how they affect the other sport, I would say that the committee independently treated them.

Q. When you have a lack of institutional control, why aren't head coaches held accountable?

PAUL DEE: Well, it depends on what the committee found to be the place where the institutional control occurred. If it did not occur in a place where a coach could be charged under Rule 10, then that wasn't charged, so we only made the determinations with respect to those areas where it was charged. We determined for the reasons I elucidated earlier that are set forth in the public report as to why we found there was a lack of institutional control in this case. The fact is that it didn't include the actions of the head coach.

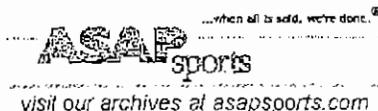
Q. How much did you look at any possible show cause penalties?

PAUL DEE: The question that we have in front of us, we only look at those charges that are brought to us. With respect to why other people weren't charged I would have to assume that they were looked into and the enforcement staff made the determination or the university acknowledged that only certain people were involved.

The next step would be whether they came at risk and whether they would be personally responsible for their activities. We only had one such instance here.

Q. You made a point to mention on this call the high-profile nature of the two athletes involved. Is that to suggest if these same exact infractions were found but involved players that were a fourth-round draft pick these penalties would be different?

PAUL DEE: I think what you have to consider is the fact if somebody was a fourth-round draft pick, none of this would have happened.



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Q. Paul, can you explain the rationale on why the assistant football coach was given a show cause penalty and why the former head coach Pete Carroll was not given any penalties?

PAUL DEE: We reacted to the charges that were brought before us and we considered the ones that were brought and we did not hear any information or have anything brought where us with respect to bringing charges against the coach which I indicated a little earlier.

The last thing I would mention, going back to the previous question, you asked about the high-profile people, would it have been different if it had been a fourth-rounder. The real issue here is if you have high-profile players, your enforcement staff has to monitor those students at a higher level. It's extraordinarily important that the people that are likely to be receiving these kinds of interactions from people outside the institution are also those same people who are going to provide a reward somewhere down the road.

So high-profile players demand high-profile compliance.

STACEY OSBURN: Thank you, everyone, for joining us today for this telephonic press call. This concludes our comments. There will be no further comment from the NCAA or Committee on Infractions members in this case.

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**REPORT OF THE
NATIONAL COLLEGIATE ATHLETIC ASSOCIATION
DIVISION I INFRACTIONS APPEALS COMMITTEE**

May 26, 2011

Report No. 323

University of Southern California
Los Angeles, California

This report is filed in accordance with NCAA Bylaw 32.11 and is organized as follows:

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EXHIBIT 25

A0618

TRANSCRIPT OF RECORDED INTERVIEW

Agent, Gambling and Amateurism Activities
University of Southern California

SUBJECT: Maiesha Jones.

DATE: March 31, 2008.

LOCATION: [REDACTED]

PRESENT: Angie Cretors (AC), NCAA assistant director of agent, gambling and amateurism activities.
Rich Johanningmeier (RJ), NCAA associate director of enforcement.
Maiesha Jones (MJ).

RJ: Okay. My name is Rich Johanningmeier. I'm an associate director of enforcement for the NCAA. The date is Monday, March 31, 2008. It's approximately 9:10, uh, p.m. Pacific Coast Time. This is an interview with Maiesha Jones, and Maiesha spells her first name M-E-I-S-H --

MJ: No.

RJ: -A.

MJ: It's --

RJ: Oh, oh, I'm sorry. I got, I'm wrong. It's M-A-I-E-S-H-A Jones. And the interview is being conducted in [REDACTED] Also participating in the interview is Angie Cretors, NCAA assistant director of agents, gambling and amateurism. And, uh, Maiesha, you are aware that we are recording the interview?

MJ: Yes.

RJ: And also prior to turning on the recorder, you signed a statement of confidentiality, and with that, uh, the NCAA will send you a, uh, copy of the recorded interview. So you're aware of that?

MJ: Yes.

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EXHIBIT 33

A0636

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March 31, 2008
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RJ: Do you remember people that he may've talked to?

MJ: Reggie or Ta-Ta? Reggie or Lloyd?

RJ: Lloyd.

MJ: Uh, yeah. I mean, he just talked to everybody.

RJ: Okay. There, there's an individual named Todd McNair.

MJ: Oh, I've never heard that name.

RJ: If I showed you a photograph of him, would that maybe help you remember his, if he was there or not.

MJ: Maybe.

RJ: Okay. Let me show you and see if you can. Okay. On this photograph, and we'll, this is we'll say photograph one, can you identify any of those people in that photograph?

MJ: Well, yeah. That's Faison, that's, uh, Michael Michaels and Ta-Ta. But this was that night?

RJ: No, we're just --

MJ: Yeah. I was about to say I don't think this was.

RJ: Do you remember anything about that photograph?

MJ: Yeah, I've seen it before.

RJ: And what do you recall about it?

MJ: It, well, this was after the game.

RJ: Tell me, tell me what you know about the photograph?

MJ: Uh, I just remember Ta-Ta coming home and saying, oh, we met all, Reggie introduced us to all his people, the coaches, and dah, dah, dah, dah and everything. And he was like a coach or an advisor or something like that.

RJ: Do, do you, the, the individual you mentioned, uh, in this, the individual with the sunglasses on that's who?

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A0637

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RJ: And by him, and by him, you're talk, you, you've identified?

MJ: I don't know his name. But I just know from Ta-Ta pointing to this picture, hey, this is the guy that, you know what I mean --

RJ: And, and --

MJ: -- when this happened.

RJ: -- and that's, our understanding its Todd McNair.

MJ: Okay.

AC: Yeah. For the record, she's pointing at the individual in the picture --

RJ: Right.

AC: -- that we believe - -

MJ: That's Todd, uh-huh.

AC: -- was Todd McNair.

RJ: And what did, and what did, uh, what do you remember Lloyd telling you about Todd McNair or that individual?

MJ: Uh, I still don't know really who he is or what he does. But I know that he had a big part in Reggie. Like, he was a, something to do, I don't know.

RJ: How, how, why do you say that?

MJ: Uh, 'cause I just remember him saying, God, he's stupid for introducing me to him.

RJ: Help us with that.

MJ: Lloyd saying that.

RJ: Lloyd said what now?

MJ: Like it was stupid that he introduced him to him.

RJ: That who introduced him?

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A0638

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MJ: Uh, I mean, at the house. You know, we'd be at the house a lot. Socially, uh, no, I don't think so.

RJ: Okay.

AC: When's the last time you talked to Reggie?

MJ: That night, when I ran into --

AC: That night you had --

MJ: -- him in the club.

AC: -- an argument?

MJ: Uh-huh.

RJ: Do you have any knowledge --

MJ: His, oh --

RJ: -- of, uh, in, uh, of Lloyd making contact with anyone, uh, at USC about his concerns of, uh, about the deal falling apart and maybe calling to get their assistance? Do you have any knowledge of any contacts --

MJ: Uh.

RJ: -- he might've made?

MJ: I, if I'm not mistaken it might've been that guy. I don't, who is that guy? What, did he --

RJ: Todd McNair.

MJ: What is he?

RJ: He's an assistant football coach. He was the backfield coach for Reggie Bush.

MJ: For, yeah, I think it may've been him. Like, look, tell him, you know, he needs to, I know for sure it was somebody at USC.

RJ: Well, well, what --

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MJ: I know it wasn't Pete Carroll.

RJ: Okay.

MJ: You know.

RJ: Okay. Help me, help me set the whole scene.

MJ: Uh-huh.

RJ: What you remember

MJ: Uh, I just remember Ta-Ta making the calls. And then, uh, he was, like, you know, I hate to do this but I'm gonna have to 'cause I'm not about to get screwed. So he called, I just remember the word co, I just remember coach. So I'm just assuming it's him, but I'm not sure.

RJ: And what was the call about?

MJ: Just basically, like, somebody better talk to Reggie or this is gonna go public, you know, 'cause I'm not gonna lose my money.

RJ: And, and about what period of time would that call or calls --

MJ: This was at the, this was right when everything was getting dirty. When he was, uh, recording everything. So this was, he went to prison, I think, right after his birthday so it must've been, like, the beginning of February then when he went to prison or late January of '06. So, I mean, within a four-month frame before that.

RJ: There's a call on the record --

MJ: Uh-huh.

RJ: -- that shows a call around January 8th.

MJ: Okay.

RJ: What that've been in the same time frame?

MJ: That's four month, yeah, that would've been in the same time.

RJ: And why do you --

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A0640

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March 31, 2008
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MJ: I don't know for sure if it was that guy though.

RJ: Okay.

MJ: But I'm just assuming because I remember him saying, you know, oh, something, somehow, some way he made me believe that it was the person that Reggie introduced him to. You know, he was, like, basically gonna tell on him. Like, this guy, at least if I call this guy he can talk to Reggie and say, look, idiot. You know what I mean? Like, pay the money. You have, you know, you're gonna get yourself in deeper. So that's how Ta-Ta did it. You know, he was going above his head. He was trying to get him to, you know, and then also get somebody scared inside USC to say, look, you know what I mean, this is gonna be a bigger issue. And he really didn't wanna ruin Reggie, you know.

RJ: How did that conversation come up or how did you learn that from Lloyd?

MJ: Uh, I think him and Michael Michaels made the call. I just remember him saying it. You know, I remember him saying that he was gonna do it and then I remember him going over to Michael Michaels. I don't know for sure if Michael Michaels was around, but I know he was, like, at Michael Michaels when all this was going on and, uh, he had made the call. You know, he had said that he was gonna call somebody and start to make some moves.

RJ: Okay.

AC: I forget what my question was.

RJ: Is there anything else that, uh, in this whole situation that we may not've asked you that you think we, we oughta know?

MJ: Uh, I mean, just about our times with, uh, no, I mean, we had a big, uh, I don't know, you know, we took Lamar and Denise, helicop, on helicopter rides. We just wined and dined them a lot. Uh, there was a big time, I know a lot of people were there. This is when that guy, I think Dave was there and his friend that I can't remember his name. Uh, Tony Gwinn, you know who Tony Gwinn is? His wife, she was with us. Uh, this was a big New Era thing. You know, we were celebrating what was going on. And we got a big limo, I mean, there was 20 of us. There was, and so it was a huge limo and we all went out. I mean, I don't know if that's the only other thing.

AC: And that was in San Diego?

MJ: That was in San Diego.

AC: And that was, was Lamar and Denise there?

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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT

12 TODD McNAIR, an individual,
13 Plaintiff,
14 v.
15 NATIONAL COLLEGIATE ATHLETIC
ASSOCIATION, an unincorporated
16 association, and DOES 1 through 50,
inclusive,
17 Defendants.

Case No. BC 462891
Assigned to the Hon. Frederick C. Shaller
REPLY IN SUPPORT OF NATIONAL
COLLEGIATE ATHLETIC ASSOCIATION'S
SPECIAL MOTION TO STRIKE COMPLAINT
Date: November 21, 2011
Time: 1:30 p.m.
Dept.: 46
Complaint Filed: June 3, 2011

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1	<i>Paterno v. Super. Ct.</i> ,	
2	163 Cal. App. 4th 1342 (2008).....	11
3	<i>Reader's Digest Ass'n v. Super. Ct.</i> ,	
4	37 Cal. 3d 244 (1984).....	16, 23
5	<i>Roberts v. L.A. Cty. Bar Ass'n</i> ,	
6	105 Cal.App.4th 604, 614 (2003).....	10
7	<i>Ryan v. Cal. Interscholastic Fed'n-San Diego Section</i> ,	
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9	<i>Seelig v. Infinity Broad. Corp.</i> ,	
10	97 Cal. App. 4th 798 (2002).....	11
11	<i>Silberg v. Anderson</i> ,	
12	50 Cal. 3d 205 (1990).....	20
13	<i>Sipple v. Found. for Nat'l Progress</i> ,	
14	71 Cal. App. 4th 226 (1999).....	12
15	<i>St. Amant v. Thompson</i> ,	
16	390 U.S. 727 (1968).....	17
17	<i>Taus v. Loftus</i> ,	
18	40 Cal. 4th 683 (2007).....	22
19	<i>Wallace v. McCubbin</i> ,	
20	196 Cal. App. 4th 1 169, 1206 (2011).....	10, 23
21	<i>Warford v. Lexington Herald-Leader Co.</i> ,	
22	789 S.W.2d 758 (Ky. 1990).....	15
23	<i>Westside Ctr. Assocs. v. Safeway Stores 23, Inc.</i> ,	
24	42 Cal. App. 4th 507 (1996).....	24
25	<i>Whyte v. Am. Bd. of Physical Med. & Rehab.</i> ,	
26	393 F. Supp. 2d 880 (D. Minn. 2005).....	17
27	<i>Wilson & Wilson v. City Council of Redwood City</i> ,	
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1 INTRODUCTION

2 Plaintiff Todd McNair tells a story of “fabricated facts” in a “blatantly falsified” report
3 published with “malice personified” resulting in “a miscarriage of justice.” But for all its fury,
4 McNair’s opposition fails to demonstrate that the National Collegiate Athletic Association
5 “fabricated” a single fact. Nor does it establish that the NCAA—including a Committee on
6 Infractions composed of ten independent and distinguished attorneys, law professors, and
7 conference representatives—acted with actual malice in publishing the USC Infractions Report.

8 Although permitted to review the NCAA’s entire investigative and enforcement record
9 and depose three key witnesses, McNair does not and cannot show that the NCAA published
10 statements about him knowing them to be false or with reckless disregard for their accuracy. To
11 the contrary, the evidence shows that the NCAA enforcement staff and Committee on Infractions
12 devoted extraordinary efforts to ascertain the truth during a four-year process. That some
13 mistakes may have been made along the way does not make their actions malicious.

14 McNair’s “fair process” arguments are without merit as well. Although his due process
15 claim must fail because the NCAA is not a state actor, McNair was afforded every opportunity to
16 develop evidence and present his case to the Committee on Infractions. Indeed, McNair
17 addressed the Committee directly. The fact that NCAA investigators interviewed a key witness
18 without USC or McNair present does not render the process unfair, and it certainly does not
19 violate any NCAA bylaw. Nor does the fact that two non-voting committee members expressed
20 their personal opinions to other committee members. But even if (contrary to the evidence) the
21 enforcement process was unfair, as McNair complains, that would still not establish malice.

22 Because McNair failed to offer evidence of malice, his defamation claims fail and, with
23 them, his remaining contract and tort claims. McNair’s remaining claims fail for the separate
24 reason that McNair failed to offer any admissible evidence whatsoever to support the claims.
25 McNair’s conclusory arguments do not satisfy his evidentiary burden in proving likely success.
26 After a full opportunity to develop admissible evidence, McNair failed to show a probability of
27 prevailing on his claims arising out of the NCAA’s exercise of its First Amendment rights.
28 The time has come to strike McNair’s strategic lawsuit against public participation.

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FACTUAL BACKGROUND

McNair has now had the opportunity to review *all* documents in the NCAA's possession relating to the enforcement process against USC's football program. These are the same documents that McNair promised would establish malice. He has also deposed three key witnesses: Richard Johanningmeier, the NCAA's lead investigator in the USC enforcement matter; Shepard Cooper, the NCAA's Director of Committees on Infractions; and Dr. Dennis Thomas, a member of the Committee on Infractions at the time of the USC Infractions Report.

Notwithstanding the opportunity to scour the NCAA's internal correspondence and the committee members' emails, and question three individuals directly involved in the USC enforcement proceedings, McNair has not offered evidence of probable success on the merits. Importantly, McNair's version of the facts, *even if accurate*, does not establish malice. But McNair's version of the facts is not accurate—not at all. The full facts tell a very different story.

* * *

A. The NCAA Provides Fair Procedures in Investigating Possible Violations.

The NCAA operates under a "cooperative principle" that imposes an obligation on member institutions to assist NCAA enforcement staff in developing information to determine whether violations of NCAA legislation have occurred. Decl. of Angie Cretors ("Cretors Decl.") Ex. 1 Bylaw § 32.1.4. "Knowingly furnishing the NCAA or the individual's institution false or misleading information concerning involvement in or knowledge of matters relevant to a possible violation of an NCAA regulation" constitutes unethical conduct. Bylaw § 10.1(d).

The NCAA's constitution requires it to provide "fair procedures in the consideration of an identified or alleged failure in compliance." Bylaw § 2.8.2. To effectuate this constitutional mandate, the NCAA bylaws provide an institution, staff, and student-athletes with a number of protections, including the right to counsel, the right to a notice of allegations, the right to review evidence relied upon by the NCAA in making allegations, the right to respond to a notice of allegations, the right to independent review by a Committee on Infractions, the right to attend and participate in a hearing before the Committee on Infractions, and the right to further review by a separate appeals committee. *See, e.g.*, Bylaws §§ 19.4, 19.6, 32.1.3, 32.3.6, 32.6.2, 32.6.4.

1 The NCAA bylaws permit representation by legal counsel when an interview may
2 develop information adverse to the interests of the individual being questioned. Bylaw § 32.3.6.
3 The bylaws also permit institutional members to participate in interviews of an athlete or staff
4 member on the institution's campus. Bylaw § 32.3.4.1. But the bylaws do not preclude the
5 NCAA from interviewing third-party witnesses without an institution or involved individuals
6 present. Indeed, because the NCAA does not have subpoena power, it cannot compel the
7 cooperation of such witnesses and depends on their voluntary cooperation to secure interviews.

8 **B. The NCAA Conducts an Extensive Investigation into Alleged Violations.**

9 In April 2006, after NCAA agent, gambling, and amateurism staff received information
10 that Reggie Bush might have received impermissible benefits while a student-athlete at USC, the
11 NCAA opened an investigation that would last over three years. Cretors Decl. ¶ 33. NCAA
12 investigators Angie Cretors and Rich Johannningmeier devoted their full time efforts to the
13 investigation. *Id.* ¶ 36.¹ The two tried to develop information as to “whether or not a violation
14 occurred or not,” “and if the information indicated a violation, to present that information to the
15 committee on infractions within the guidelines and the bylaws of the association.” Suppl.
16 Wytsma Decl. Ex. 1 at 14:23-16:2.

17 In September 2006, the NCAA conducted interviews of USC faculty, including McNair.
18 *Id.* at 178:3-8. During his initial interview, McNair denied knowing or ever speaking with the
19 men who provided benefits to Bush, Lloyd Lake and Michael Michaels. McNair stated that to
20 his knowledge, he had neither met nor spoken to either of them. When asked if he recalled
21 meeting or speaking with Lake, McNair responded unequivocally: “Never.” *Id.* Ex. 2 at 36
22 (emphasis added).

23 However, in the course of its investigation, the NCAA obtained the phone records of
24 Bush and his coaches. Cretors Decl. ¶ 39; Decl. of Scott H. Carr (“Carr Decl.”) Ex. 5.

25 _____
26 ¹ At the time of his retirement in 2012, Johannningmeier had worked for the NCAA for 18 years.
27 Before joining the NCAA, Johannningmeier was an assistant football coach at three institutions
28 and, from 1976 to 1985, he was the head football coach at Missouri State University. Suppl.
Decl. of Laura A. Wytsma (“Suppl. Wytsma Decl.”) Ex. 1 at 283:19-284:1. He was also an
athletic director at two member institutions in Illinois and Kansas. *Id.* at 8:21-25.

1 McNair's records revealed calls with Lake, including three calls from Lake to McNair the night
2 of October 29, 2005, and a call from Lake to McNair on January 8, 2006, at 1:34 a.m., lasting
3 over two minutes. *Id.*; Suppl. Wytmsa Decl. Ex. 7.

4 Lake was among the many witnesses the NCAA attempted to interview. Because it lacks
5 subpoena power, however, it could not compel interviews of Lake or other key witnesses.

6 Michaels refused to be interviewed because of an out-of court settlement with Bush. Suppl.
7 Wytmsa Decl. Ex. 3 at 376:21-23. Lake also refused to be interviewed initially. It took "months
8 and months and months of wrangling" to schedule his interview. *Id.* at 19:19-21. It was a "very
9 difficult interview for [the NCAA] to get." *Id.* Ex. 1 at 124:12-13. Ultimately, however, Cretors
10 and Johanningmeier were allowed to interview Lake at his counsel's office in November 2007,
11 but only on the condition that only the NCAA participate in the interview. *Id.* at 71:15-22;
12 74:13-1. "The NCAA had nothing to do with who was going to be in there." *Id.* at 71:15-16.

13 During the interview, Lake claimed that he had socialized with McNair at a party in San
14 Diego in March 2005 and again in October 2005, at a nightclub in Los Angeles where they were
15 photographed together. Suppl. Wytmsa Decl. Ex. 4 at 16, 26-28. The photograph, depicting
16 Lake, Michaels, McNair, and actor Faizon Love in a nightclub, was later provided to the NCAA
17 by Lake's counsel. Lake also confirmed during his interview that he had spoken to McNair
18 several times. *Id.* at 108-110, 112-113, 115.

19 Johanningmeier asked Lake about a telephone call on "January 8th, 2006, at 1:34 in the
20 morning, there's a call, McNair call to you for two minutes and 32 seconds." *Id.* at 112-13.
21 Johanningmeier misspoke. The phone records reflect that Lake called McNair, not vice versa.
22 Lake described the call as McNair "trying to resolve it, you know, and like Reggie's wrong, he
23 should make it right and basically don't implement the school." *Id.* at 113. Lake stated that
24 McNair "knew Reggie took money from me. There's no doubt about that." *Id.* He knew this
25 from his discussions with Bush. *Id.* When Cretors asked Lake whether he had called McNair in
26 early July, Lake quickly corrected her, noting that he called McNair in "January" 2006. *Id.* at
27 115. At the interview's conclusion, Johanningmeier "strongly encourage[d]" Lake to "cooperate
28 with a representative" from USC and Pac-10 conference. *Id.* at 162-63.

1 In light of Lake's interview and the documents corroborating his claims, the NCAA
2 interviewed McNair again on February 15, 2008. Prior to his interview, the NCAA disclosed in
3 writing that the purpose of the interview was to determine whether he had "knowledge of or
4 ha[d] been involved directly or indirectly in any violation of NCAA legislation." Suppl.
5 Wytmsa Decl. Ex. 2. McNair was further advised that he could "be represented by personal
6 legal counsel during his interview." *Id.* McNair acknowledged that he "reviewed and
7 understood" these advisements. *Id.* At the beginning of the interview, McNair had the
8 opportunity to ask any questions concerning the notice. *Id.* at 2. USC's inside legal counsel and
9 outside enforcement counsel both attended McNair's interview. *Id.* at 1.

10 At the time of the interview, the NCAA had not reached any conclusions about McNair,
11 but was exploring a "conflict" in the evidence created by Lake's statement, phone records, and
12 the photograph depicting Lake, Michaels, McNair and Love, a friend of both Lake and McNair.
13 Suppl. Wytmsa Decl. Ex. 1 at 181. He was not a target of the NCAA's investigation. *Id.* at 181-
14 83. Even so, Johannimgmeier began the interview by informing McNair that the "purpose of this
15 interview [was] to review information reported during [his] September 19th, 2006 interview with
16 the NCAA and university and to review additional information which indicates that possible
17 violations of NCAA legislation may have occurred in the USC football program." *Id.* Ex. 2 at 2.

18 During his second interview, McNair continued to deny that he knew Lake. When
19 Johannimgmeier asked McNair about the late-night telephone call from Lake, he "misspoke" and
20 described the call as having occurred in "January 2005." *Id.* at 36.² McNair was emphatic that he
21 did not know Lake, had never met Lake, and had never spoken to Lake. *Id.* at 44, 52, 55. When
22 shown the photograph of McNair, Lake, Michaels and Love in the nightclub, McNair denied that
23 he knew Lake or Michaels. McNair stated, "I don't know them dudes" and suggested they could
24 be "hangers on" who asked to be photographed with him because of his status as a football coach
25

26
27 ² After McNair's interview, Johannimgmeier realized that he "had misspoke on the date." Suppl.
28 Wytmsa Decl. Ex. 1 at 207:16. However, because McNair flatly denied speaking with Lake at any
time during his first two interviews, the NCAA decided against a third interview to clarify the
date. *Id.* at 207:15-208:5.

1 for USC. *Id.* at 46-47. However, as McNair has acknowledged, “Faizon Love is a friend of
2 [McNair] who is [also] an acquaintance of Lake’s.” Suppl. Wytsma Decl. Ex. 3 at 357:20-21. In
3 fact, Lake and Love are childhood friends. *Id.* at 608:12-13.

4 When asked about the March 2005 party in San Diego, McNair claimed that he attended
5 the party with Martin Bayless, a former NFL teammate. *Id.* Ex. 2 at 14. When asked whether he
6 attended with “[a]nyone besides, uh, Bayless,” McNair answered “no.” *Id.* As McNair’s
7 counsel would later concede, “[t]hat was a false statement.” *Id.* Ex. 3 at 526:20 (emphasis
8 added). “Not only was it not complete, but it wasn’t accurate and true.” *Id.* at 528:1-2.

9 After McNair’s interview, the NCAA interviewed Bayless about the party in San Diego.
10 Suppl. Wytsma Decl. Ex. 5 at 2-6. But Bayless was clear that he “did not attend with” McNair;
11 they simply “bumped into each other” at some point and chatted for “maybe 15-20 minutes.” *Id.*
12 at 2-3. After Bayless failed to corroborate his story, McNair claimed for the first time that he
13 attended the 2005 party with an “associate,” (Cretors Decl. ¶ 42), who he later described as his
14 “best friend.” Suppl. Wytsma Decl. Ex. 3 at 524:12-18.³ At the time of the party, the associate
15 was a 21-year old junior at USC who tutored student athletes. *Id.* Ex. 6 at 2-3. McNair claimed
16 that he attended the party with the student to discuss launching an independent record label with
17 her. *Id.* Ex. 3 at 540-44. After interviewing the student, the NCAA found the story not credible.
18 Among other reasons, no calls were exchanged between McNair and the student the weekend of
19 the party; McNair only began making hundreds of calls to her weeks later. *Id.* at 542:8-17.

20 On September 24, 2009, the NCAA sent USC and McNair a notice of allegations that
21 charged McNair with violating principles of ethical conduct legislation by knowingly providing
22 false and misleading information to the NCAA during its investigation. Carr Ex. 6. That same
23 month, McNair retained Scott Tompsett, an attorney experienced in representing coaches in
24 NCAA enforcement proceedings, to represent him. Suppl. Wytsma Decl. Ex. 1 at 285:21-286:3.
25 The NCAA provided Tompsett with access to all interview transcripts and other evidence upon
26 which the NCAA relied in making allegations against McNair. Cretors Decl. ¶ 47.

27
28 ³ McNair later claimed that he lied “to protect her from what he viewed as unnecessary
involvement in [the USC] investigation.” Suppl. Wytsma Decl. Ex. 14 at 1-9 n.3.

1 On February 1, 2010, the NCAA provided a case summary to the Committee on
2 Infractions, USC, and involved individuals, including McNair, that identified all the information
3 that the NCAA intended to use to support its allegations. Cretors Decl. ¶ 48; Suppl. Wytsma
4 Decl. Ex. 7. The case summary, prepared by Johanningmeier, disclosed the fact that Lake was a
5 convicted felon. Suppl. Wytsma Decl. Ex. 7 at 1-6.

6 **C. An Independent Committee Adjudicates the Allegations Against USC.**

7 In February 2010, USC and McNair appeared before a 10-member Committee on
8 Infractions. Cretors Decl. ¶¶ 49-50. The Committee's duties include making findings related to
9 alleged violations of NCAA legislation and, when necessary, imposing penalties for violations.
10 *Id.* Ex. 1 Bylaw § 19.1.3. The committee includes a "coordinator of appeals" who attends the
11 hearings and committee deliberations. *Id.* § 19.1.4. Although not an "active participant" during
12 the hearing or deliberations (*id.*), it is the appeals coordinator who represents the committee
13 before the Infractions Appeals Committee if necessary. Suppl. Wytsma Decl. Ex. 8 at 32:20-24.

14 The Committee on Infractions makes its determinations in private based on information
15 that is "credible, persuasive and of a kind on which reasonably prudent persons rely in the
16 conduct of serious affairs." Cretors Decl. Ex. 1 Bylaw § 32.8.8.2. A finding of violation or
17 imposition of penalty requires a majority vote of at least four committee members. *Id.* § 32.8.4.4.

18 At the time of the USC infractions hearing, the ten committee members were chairman
19 Paul T. Dee, former General Counsel of the University of Miami; Britton Banowsky, an attorney
20 and Commissioner of Conference USA; John S. Black, an attorney in Kansas City with over
21 35 years of experience and a past president of the Missouri Bar; Melissa Conboy, an attorney and
22 deputy athletic director at Notre Dame; attorney Brian P. Halloran who serves as general counsel
23 to a renewable energy company; Roscoe Howard, an attorney who served as the United States
24 Attorney for the District of Columbia between 2001 and 2004; Eleanor W. Myers, the faculty
25 athletics representative at Temple University and law professor of professional responsibility;
26 Josephine Potuto, a constitutional law professor at the University of Nebraska; Dr. Dennis E.
27 Thomas, commissioner of the Mid-Eastern Athletic Conference; and Rodney Uphoff, a professor
28 of law at the University of Missouri and former public defender appointed to represent Terry

1 Nichols in Oklahoma.⁴ Suppl. Wytsma Decl. Ex. 9. Uphoff served as the appeals coordinator
 2 for the USC hearing. *Id.* Ex. 8 at 29:18-20; *id.* Ex. 10 at 30:23-25. Howard, a newcomer to the
 3 Committee, participated as an “observer” of the process. Carr Decl. Ex. 14.

4 On February 18, 2010, the Committee began the three-day hearing in Arizona, in which
 5 over fifty individuals from the NCAA, USC and Pac-10 participated, including McNair and his
 6 counsel. Suppl. Wytsma Decl. Ex. 3 at 2-9. McNair made an opening statement, noting that he
 7 was “not happy to be [t]here.” *Id.* at 47:19-48:19. Throughout the first two days, the Committee
 8 questioned NCAA enforcement staff and McNair concerning the allegations against him.
 9 Committee members probed credibility issues concerning both Lake and McNair. *Id.* at 187-
 10 194. McNair responded directly to questions from committee members regarding the telephone
 11 calls with Lake. *Id.* at 600:23-602:18. He had every opportunity to fully explain his position.

12 After the hearing concluded, the Committee began its deliberations in Arizona. Although
 13 it quickly reached a consensus on certain findings, it deferred decisions on other issues, including
 14 the allegations against McNair. Carr Decl. Ex. 10. Several days later, on February 22, 2012,
 15 appeals coordinator Uphoff and Cooper, who served as “staff liaison” to the Committee, privately
 16 exchanged their opinions of the evidence against USC’s football program.⁵ *Id.* Ex. 16.

17 On March 1, with the express “approval” of the Committee chair, (Carr Decl. Ex. 18),
 18 Uphoff presented his opinions of the evidence as the individual who would be defending the
 19 committee’s decision on appeal. Carr Decl. Ex. 2. Uphoff explained why, “based on 34 years of
 20 doing trial work and teaching trial advocacy,” he would be able to successfully defend the
 21 committee’s decision. *Id.* Uphoff noted his “enormous respect for the sense of fairplay of [the]
 22 committee and their desire to do the right thing.” *Id.* After noting that the Committee had
 23 *already* “agreed unanimously or almost unanimously that McNair was disingenuous,” Uphoff
 24

25 ⁴ Potuto, who previously served nine years on the Committee on Infractions including two years
 26 as its chair, served as a substitute committee member due to a conflict of interest. Suppl. Wytsma
 Decl. Ex. 8 at 51:21-24.

27 ⁵ Cooper’s “role was to administratively support the committees [on infractions]” by “generating
 28 correspondence, setting up hearings, attending hearings, attending deliberations, taking notes,
 things of that nature.” Suppl. Wytsma Decl. Ex. 10 at 56:21-57:2.

1 outlined the evidence relating to the allegations against McNair. *Id.* After another Committee
2 member responded with her opinions on McNair, Howard shared his opinions, pointing to
3 inconsistencies in McNair's statements. Carr Decl. Ex. 15. Although Uphoff and Howard did
4 not vote, as full committee members, they were free to share their opinions with other members.
5 Suppl. Wytmsa Decl. Ex. 8 at 15:23-25; 18:10-13; 35:6-8; 38:9-16; 39:3-6; 40:2-4; *id.* Ex. 10 at
6 23:10-20; 41:4-8; 43:19-23; 44:4-8; 45:16-19; 73:17-18; 132:17-133:1; 149:4-7; 149:25-150:2;
7 162:1-5; 166:13-15. There was "nothing in the bylaws that preclude[d] them from expressing
8 their opinion." *Id.* Ex. 10 at 149:6-7.

9 On March 2, the Committee continued its deliberations by telephone but did not reach a
10 decision on McNair. Carr Decl. Ex. 19. Although the committee members did not find McNair
11 credible, they continued to discuss whether the evidence proved a violation. The Committee "was
12 extremely conscientious in trying to get this case right." Suppl. Wytmsa Decl. Ex. 10 at 39:8-9.
13 Ultimately, the Committee reached "a consensus to make the finding" against McNair. *Id.* at
14 98:5. Myers, who had initially "struggl[ed]" in considering the evidence against McNair, (Carr
15 Decl. Ex. 12), recommended a "show cause" on McNair. Suppl. Wytmsa Decl. Ex. 16. Based on
16 committee comments, Cooper prepared an initial draft of the Infractions Report, (*id.* Ex. 10 at
17 115:14), which was then revised by committee members. *Id.* Exs. 10 at 237:4-19, 16, 17.

18 On June 10, 2010, the Committee on Infractions disclosed its findings and conclusions in
19 the Infractions Report. Cretors Decl. Ex. 2. With respect to McNair, the Infractions Report
20 explicitly disclosed his denial of any wrongdoing, noting that "the assistant football coach
21 maintained that there was no convincing proof that [he] knew agency partners A and/or B
22 Further, the assistant coach maintained that, to the best of his knowledge, he had neither met nor
23 spoken to agency partner A." *Id.* at 23.

24 However, the Committee found "ample reason in the record to question the credibility" of
25 McNair, including the fact that he admittedly lied to the NCAA regarding the March 2005 party
26 in San Diego. *Id.* at 7, 24-25. Despite the Committee's "grave doubt as to the credibility" of
27 McNair, the Committee did not make an unethical conduct finding against him with regard to the
28 March 2005 party weekend due to "unresolved discrepancies." *Id.* at 26.

1 **II. The Committee's Credibility Findings and Conclusions Are Nonactionable Opinions.**

2 "The *sine qua non* of recovery for defamation ... is the existence of a falsehood."
 3 *Nygaard, Inc. v. Uusi-Kerttula*, 159 Cal. App. 4th 1027, 1048 (2008) (citation omitted). Thus, to
 4 show probable success on defamation, McNair must show a statement of fact that is "provably
 5 false." *Paterno v. Super. Ct.*, 163 Cal. App. 4th 1342, 1349 (2008). Statements of "subjective
 6 judgment" are "not actionable." *Seelig v. Infinity Broad. Corp.*, 97 Cal. App. 4th 798, 810 (2002).

7 The Infractions Report contains the Committee's opinions on the credibility of Lake and
 8 McNair and their conclusions on the evidence. Their credibility opinions were shaped by facts
 9 not in dispute, such as telephone records, pictures, and McNair's admittedly "false statement" to
 10 enforcement staff.⁶ Suppl. Wytsma Decl. Ex. 3 at 526:15-20; Cretors Decl. Ex. 2 at 24. Their
 11 opinions are not provably false and thus not actionable.⁷

12 Importantly, the facts on which the Committee relied were fully disclosed in the Report.
 13 Cretors Decl. Ex. 2 at 23-27. Not only does the Infractions Report describe the facts supporting
 14 the Committee's conclusions, but it discloses McNair's position as well, making clear that there
 15 was a "disagreement regarding the facts of [its] finding." *Id.* at 23. By explicitly acknowledging
 16 that McNair disputed the NCAA's allegations and presenting *both* sides, the Infractions Report
 17 itself makes clear that the Committee's findings are merely *its* opinions. *See Kleier Adver., Inc.*
 18 *v. Premier Pontiac, Inc.*, 921 F.2d 1036, 1045 (10th Cir. 1990) ("[W]here the article reported
 19 both sides of the controversy, [defendant's] subjective remarks would lead the reasonable person
 20 to infer he is merely stating his position regarding the lawsuit.").

21 _____
 22 ⁶ McNair suggests that his "false statement" concerning his attendance at the San Diego party is
 23 "irrelevant." Pl. Opp. to Def.'s Special Mot. to Strike Compl. ("Opp.") 12 n.9. Not so. The
 24 admittedly "false statement" to the Committee (Suppl. Wytsma Decl. Ex. 3 at 526:20) played a
 significant role in its evaluation of McNair's credibility. Carr Decl. Ex. 1 at 24; *id.* Ex. 15.

25 ⁷ Although the Committee's conclusion that McNair engaged in unethical conduct is a non-
 26 actionable opinion, the finding is supported by the evidence. "Knowingly furnishing the NCAA
 27 ... false or misleading information concerning an individual's ... knowledge of matters relevant
 28 to a possible violation of an NCAA regulation" constitutes unethical conduct. Suppl. Wytsma
 Decl. Ex. 15 Bylaw § 10.1(d). McNair's own attorney conceded that McNair provided a "false
 statement" to the NCAA concerning the party at which Lake allegedly met McNair for the first
 time. *Id.* Ex. 3 at 526:20.

1 McNair does not dispute that most of the facts disclosed in the Infractions Report are
2 true. Indeed, he identifies only the following statement of fact as false:

3 Agency partner A said that he phoned the assistant football coach to ask
4 him to intercede with student athlete 1 and get him to adhere to the agency
5 agreement that he made with agency partners A and B. Agency partner A
6 said he also told the assistant football coach that he did not intend to lose
7 the money he had given student-athlete 1 and his parents and preferred not
8 to go public with the matter and implicate the institution.

9 Cretors Decl. Ex. 2 at 26.

10 This statement is simply not the fabrication that McNair suggests. Lake *did* state that he
11 called McNair. Suppl. Wytsma Decl. Ex. 4 at 115. And Lake *did* state that he called McNair to
12 get matters “resolved” and to “get [his] money back.” *Id.* And Lake *did* state that there was “no
13 doubt” that McNair was aware of the money Bush took from Lake. *Id.* at 113. And Lake *did*
14 state that when he spoke to McNair to get his money back, McNair said “[Bush] should make it
15 right and basically don’t implement [sic] the school.” *Id.*

16 The fact that the Committee did not describe Lake’s statement word-for-word does not
17 make its description a provably false statement of fact. Indeed, the Committee’s description of
18 the conversation between Lake and McNair on January 8, 2006, is supported not only by Lake’s
19 interview, but his former girlfriend’s statement that Lake called a USC coach to convince
20 someone to “talk to (student-athlete 1) or this is gonna go public” because Lake was “not gonna
21 lose [his] money.” Cretors Decl. Ex. 2 at 26.

22 Moreover, a statement containing minor inaccuracies is not “false” provided that the
23 substance or “gist” of the statement is true. *See Masson v. New Yorker Magazine, Inc.*, 501 U.S.
24 496, 516, 517 (1991) (finding difference between actual statement and quotation in book
25 immaterial). *See also Sipple v. Found. for Nat’l Progress*, 71 Cal. App. 4th 226, 244 (1999) (“It
26 is well settled that a defendant is not required ... to justify every word of the alleged defamatory
27 matter; it is sufficient if the substance, the gist, the sting of the libelous charge be justified.”)
28 (citation omitted). The Committee accurately captured the “gist” of Lake’s statement.

1 McNair also fails to provide any evidence of provably false statements made by
2 Committee chairman Paul Dee or NCAA President Mark Emmert. When interviewed about the
3 Infractions Report the day it issued, Dee noted the Committee's finding of "knowledge of
4 possible violations by a member of the coaching staff which apparently was not reported." Carr.
5 Decl. Ex. 24 at 2. That is an entirely true statement. The Infractions Report did make that
6 finding. The other two statements attributed to Dee (Compl. ¶ 23) were not actually made by
7 Dee but are contained in the Infractions Report itself. Cretors Decl. Ex. 2 at 61-62 ¶ 22.

8 McNair's slander claim based on a statement purportedly made by Emmert also fails. As
9 an initial matter, McNair offered no evidence that Emmert ever said that the NCAA "got it
10 right." (In fact, he did not.) Moreover, such a statement would be an opinion, if made. Finally,
11 a statement that the NCAA "got it right" in a 67-page report on a four-year investigation into
12 violations by multiple athletic departments at USC is simply "too vague" to be actionable.
13 *ComputerXpress, Inc. v. Jackson*, 93 Cal. App. 4th 993, 1013 (2001). *See also Gilbert v. Sykes*,
14 147 Cal. App. 4th 13, 31-32 (2007) (describing allegation that patient "misstated the content of
15 unspecified communications ... relating to unspecified procedures ... [a]s a paradigm of
16 vagueness" lacking sufficient specificity to state a libel claim).

17 Because McNair has not shown a false statement of fact, he cannot demonstrate probable
18 success on his defamation claims and the Court need not proceed any further to strike them.

19 **III. McNair Failed to Show a Probability of Prevailing on His Defamation Claims.**

20 **A. McNair's Denial That He Is a Public Figure Is Contrary to Established Law.**

21 McNair argues that he is not a public figure. Opp. 19:5-20:22. The argument strains all
22 credibility, particularly in light of McNair's suggestion that Lake and Michaels might have been
23 "hangers on" who asked to be photographed with him because of his status as a football coach
24 for USC. Suppl. Wytmsa Decl. Ex. 2 at 46-47. In any case, as a former professional athlete,
25 McNair is a public figure for all purposes, and certainly for purposes of his defamation claims.

26 Before coaching, McNair played professional football for eight seasons with the Kansas
27 City Chiefs and Houston Oilers. Wytmsa Decl. Ex. 2. As a running back with a successful
28 record, McNair was extremely well known long before coaching at USC. Johanninger

1 “followed [McNair’s] career when he played for the Kansas City Chiefs.” Suppl. Wytsma Decl.
 2 Ex. 1 at 172:5-6. Committee member Thomas, himself a former football coach, had great respect
 3 for McNair’s “very productive professional career.” *Id.* Ex. 8 at 48:6-11.

4 Though McNair need only be considered a limited public figure to trigger the burden of
 5 proving actual malice, McNair also qualifies as a general purpose public figure.⁸ “[T]here is a
 6 public interest which attaches to people who by their professional calling ... create a legitimate
 7 and widespread attention to their activities.” *Carafano v. Metrosplash.com Inc.*, 207 F. Supp. 2d
 8 1055, 1070 (C.D. Cal. 2002). Professional athletes fall in this category. *See Carlisle v. Fawcett*
 9 *Publ’ns, Inc.*, 201 Cal. App. 2d 733, 746-47 (1962) (describing “actors and actresses, professional
 10 athletes, public officers, noted inventors, explorers, [and] war heroes” as “public figures”).

11 A “voluntary decision to pursue a career in sports, whether as an athlete or a coach,
 12 ‘invites attention and comment’ regarding his job performance and thus constitutes an assumption
 13 of the risk.” *Barry v. Time, Inc.*, 584 F. Supp. 1110, 1119 (N.D. Cal. 1984) (noting “long line of
 14 cases ... which have found professional and collegiate athletes and coaches to be public figures”).
 15 *Accord Curtis Publ’g Co. v. Butts*, 388 U.S. 130, 136 (1967).

16 At a minimum, McNair was a limited public figure with respect to his position as an
 17 assistant football coach at USC. McNair “made career choices that thrust [him] into positions
 18 involving much public interest and concern.” *Cottrell v. NCAA*, 975 So. 2d 306, 340 (Ala. 2007).
 19 When McNair accepted a position coaching the nation’s most successful and visible running
 20 back, the media reported it. Wytsma Decl. Ex. 3. Public scrutiny of McNair’s coaching position
 21 at USC intensified after his (undisclosed) conviction for animal cruelty surfaced in 2007.
 22 Wytsma Decl. Ex. 5. While coaching at USC, McNair was not just Bush’s coach; he was a close
 23 friend. Suppl. Wytsma Decl. Ex. 3 at 49:24-25, 65:10-12. Bush described “T-Mac” (McNair) as
 24 “a best friend” while accepting the Heisman award in December 2005, which was reported by the
 25

26 _____
 27 ⁸ A Westlaw search shows over 2000 articles referencing Todd McNair *before* the publication of
 28 the USC Infractions Report. Wytsma Suppl. Decl. Ex. 12. These media articles may be
 considered for “their relevance to the question of whether [he] attained the position of a ‘public
 figure.’” *Mosesian v. McClatchy Newspapers*, 233 Cal. App. 3d 1685, 1689-90 (1991).

1 press. Suppl. Wytsma Decl. Ex.11. The two spoke frequently—McNair’s telephone records
 2 revealed approximately 330 calls between them from December 2004 through June 2005. Suppl.
 3 Wytsma Decl. Ex. 2 at 37. They socialized together. *Id.* Ex. 3 at 58:12-14.

4 Because McNair “voluntarily entered the public arena as a college football coach” and the
 5 allegedly defamatory report “dealt exclusively” with “the public role he voluntarily undertook,”
 6 he is a limited public figure for purposes of the statements he challenges. *McGarry v. Univ. of*
 7 *San Diego*, 154 Cal. App. 4th 97, 115 (2007). *See also Barry*, 584 F. Supp. at 1121-22 (finding
 8 former head basketball coach was a limited public figure). Although *McGarry* is directly on
 9 point, McNair does not address the case. Instead, McNair relies on *Warford v. Lexington Herald-*
 10 *Leader Co.*, 789 S.W.2d 758, 769 (Ky. 1990), which found “no particular or ongoing [local]
 11 controversy” concerning NCAA violations necessary for a public figure finding under *Gertz*.
 12 Quite the contrary here, long before the allegedly defamatory report, the NCAA’s investigation
 13 into USC rule violations generated significant local and even national controversy.⁹

14 A “public controversy existed before, during, and after the NCAA investigated the
 15 alleged rule violations” by USC and “imposed the severe penalties against” it. *Cottrell*, 975 So.
 16 2d at 334. “[D]iscussion focused on the fairness of the investigation process itself and on the
 17 NCAA’s accountability with regard to fitting the penalty imposed to the offense. Consequently,
 18 widespread local and statewide media coverage was generated for [many] years as the media
 19 sought to unravel precisely what had happened that resulted in The University’s being charged
 20 and found guilty of several rule violations.” *Id.* at 335. Along with Bush, McNair played “a
 21 prominent role in the public controversy. Newspaper articles focused on their conduct, ... the
 22 violations alleged against them, and how their conduct would impact the COI’s view of The
 23 University. ... [McNair] charged with not providing full disclosure of information during an
 24 _____

25 ⁹ McNair argues that the NCAA cannot make McNair a public figure through its own conduct,
 26 citing *Khawar v. Globe Int’l, Inc.*, 19 Cal. 4th 254, 266 (1998). *Opp.* 20:18-22. But *Khawar*
 27 simply held that an interview that “occurred *after and in response* to the [defamatory]
 28 publication” could not be used to establish plaintiff’s media access. 19 Cal. 4th at 266 (italics in
 original). *Khawar* has no bearing here. The NCAA is not attempting to use publicity generated
 by a report that does not even identify him by name to establish that McNair is a public figure.

1 interview. ... Therefore, the conduct of [McNair] did influence the way the NCAA viewed The
2 University's compliance with the rules." *Id.* at 337.

3 McNair knew when accepting a coaching position at USC that it was a member of the
4 NCAA and that he was "expected to comply with NCAA rules in a highly competitive
5 environment, and that [his] actions would come under close scrutiny." *Id.* at 340. "The nature of
6 [his] positions at [USC] and the responsibilities of [his] position[] thrust [him] into the public
7 controversy concerning [USC] compliance with NCAA rules." *Id.* While McNair may claim to
8 have been "caught up in the controversy against [his] will," by his actions and close association
9 with Bush, he assumed a "prominent position in its outcome." *Id.* at 337 (citation omitted).

10 **B. McNair's Evidence Does Not and Cannot Establish Actual Malice.**

11 The "committee believed that it got the facts correct" in the Infractions Report. Suppl.
12 Wytmsa Decl. Ex. 8 at 123:19-20. Whether it actually did or not is "irrelevant" under the
13 constitutional standard of malice. *McCoy v. Hearst Corp.*, 42 Cal. 3d 835, 854 n.16 (1986). All
14 that matters is that the Committee *believed* that the Infractions Report contained accurate
15 statements. *See Reader's Digest Ass'n v. Super. Ct.*, 37 Cal. 3d 244, 257 (1984). And it did.

16 Confusing motive with malice, McNair suggests that certain persons were biased against
17 him. Opp. 7-9. But "actual malice" "has nothing to do with bad motive or ill will." *Harte-*
18 *Hanks Commc'ns, Inc. v. Connaughton*, 491 U.S. 685, 666 n.7 (1989); *see also Masson*, 501
19 U.S. at 510. The actual malice test considers a defendant's attitude toward the truth or falsity of
20 published material, not its attitude toward the plaintiff. *Reader's Digest Assn.*, 37 Cal.3d at 257.

21 McNair also argues that an inaccurate characterization of Lake's statement in the
22 Infractions Report shows actual malice. Opp. 10. Not so. Inaccuracies or discrepancies do not
23 establish malice. In *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964), for example, the
24 Supreme Court refused to find malice even though the Times would have discovered the falsity of
25 the published material had they simply checked their own news files. *Id.* at 287-88. *See also*
26 *Cottrell*, 975 So. 2d at 348 (rejecting claim of malice based on NCAA's alleged "reckless
27 disregard for the veracity of the statements when they published the penalty-summary report
28 without proofreading the report for accuracy").

1 Even when coupled with evidence of hostility or inadequate investigation, mistakes or
2 inaccuracies still do not establish actual malice. In *Annette F. v. Sharon S.*, 119 Cal. App. 4th
3 1146, 1158 (2004), the defendant published a statement that the plaintiff was “convicted” of
4 domestic violence. No such conviction existed; the plaintiff was subject to a restraining order.
5 Despite this inaccuracy, and even with evidence of hostility, an alleged motive to discredit the
6 plaintiff, and a lack of investigation, the court found that the publication “was not so far from the
7 truth as to permit an inference of actual malice by clear and convincing evidence...” *Id.* at 1170.
8 At most, the evidence “raised a speculative possibility” that the defendant knew her use of the
9 word “convicted” was incorrect that fell “short of clear and convincing evidence.” *Id.*

10 In *Fletcher v. San Jose Mercury News*, 216 Cal. App. 3d 172 (1989), an erroneous quote
11 and clear “factual errors” in an article did not show clear and convincing evidence of actual
12 malice, notwithstanding the reporter’s hostility, an “interview style” that “tried to put words in the
13 witness’s mouth,” and lack of objectivity. *Id.* at 185-86, 189. Even though the erroneous quote
14 of the witness’ statement was “troubling,” the conflict did not demonstrate with “convincing
15 clarity” that [the reporter] believed the allegations against [the plaintiff] were unfounded or
16 support the inference that he had “deliberately falsified” the witness’s statement. *Id.* at 188-89.
17 McNair has offered no more evidence of malice here.

18 Actual malice is shown when “a story is fabricated by the defendant” or “is the product of
19 his imagination.” *St. Amant v. Thompson*, 390 U.S. 727, 732 (1968). Malice is also shown when
20 published “allegations are so inherently improbable that only a reckless man would have put them
21 in circulation.” *Id.* See also *Khawar v. Globe Int’l, Inc.*, 19 Cal. 4th 254, 278 (1998) (finding that
22 Globe publication claiming Iranian secret police assassinated Senator Robert Kennedy rather than
23 the convicted Sirhan Sirhan was so “highly improbable” as to support a finding that the Globe
24 recklessly disregarded the truth or falsity of its publication).

25 But when a publication presents *both* sides of an issue, as here, a finding of malice is
26 inappropriate. See *Whyte v. Am. Bd. of Physical Med. & Rehab.*, 393 F. Supp. 2d 880, 891 (D.
27 Minn. 2005) (finding that letter that “present[ed] both sides of the story” could not support
28 finding of actual malice); *Manning v. WPXI, Inc.*, 886 A.2d 1137, 1145 (Pa. Super. Ct. 2005)

1 (finding that broadcast that “presented both sides of the story” could “not support a finding of
2 actual malice”).

3 Against this legal framework, McNair’s evidence falls woefully short of showing a
4 probability of prevailing on malice. McNair argues that he has “sufficient evidence” to support a
5 defamation claim. Opp. 14:11-19:4. But McNair needs sufficient *clear and convincing* evidence
6 to establish malice, and he has offered no evidence that meets this heightened evidentiary burden.

7 McNair argues that he was not afforded “fair process” by the NCAA in the enforcement
8 proceedings.¹⁰ Opp. 1:20-2:7. It is long established, however, that McNair cannot judicially
9 challenge the process afforded by a non-state actor, such as the NCAA. *Nat’l Collegiate Athletic*
10 *Ass’n v. Tarkanian*, 488 U.S. 179, 198-99 (1988). Attempting to circumvent this well-established
11 principle, McNair suggests that the enforcement process in this case reflects malice. Opp. 2, 22.

12 Even if McNair’s “fair process” challenge could be considered on the issue of malice, his
13 argument fails. McNair alleges that the NCAA denied fair process by fabricating facts, violating
14 its own rules, interviewing Lake without the opportunity for any cross-examination, failing to
15 inform McNair that he was a target before his second interview, allowing improper influence of
16 committee members, and relying on extra-record evidence. Opp. 2:1-6. None of these alleged
17 “fair process” violations evidence malice; indeed, most of these alleged violations never occurred.

18 There is simply no evidence that the NCAA “fabricated” facts, as McNair insists. As
19 discussed above, the NCAA’s description of Lake’s statements is materially accurate. Although
20 the Infractions Report did not provide a verbatim recitation of Lake’s statement, the summary of
21 his statements does not show malice. The Supreme Court has rejected that “any alteration beyond
22 correction of grammar or syntax by itself proves falsity in ... determining actual malice.” *Masson*,
23 501 U.S. at 514. As the Supreme Court observed, “if a speaker makes an obvious misstatement,
24 for example by unconscious substitution of one name for another, a journalist might alter the
25 speaker’s words but preserve his intended meaning.” *Id.* at 515. The fact that the NCAA
26

27 ¹⁰ The purpose of due process is “to provide affected parties with the right to be heard at a
28 meaningful time and in a meaningful manner.” *Ryan v. Cal. Interscholastic Fed’n-San Diego*
Section, 94 Cal. App. 4th 1048, 1072 (2001). McNair had that opportunity.

1 modified the language used by Lake in describing his conversation with McNair—*e.g.*, changing
2 “implement” to “implicate” in the Infractions Report—does not show malice.

3 Nor did the NCAA violate its own rules. The NCAA was not required to inform McNair
4 that he was a “target” before interviewing him. Opp. 2:3-4. It simply had to provide notice that
5 the purpose of the interview was to determine whether McNair had knowledge of or had been
6 involved in any violation of NCAA legislation. Bylaw § 32.3.7.1. McNair was so informed, and
7 in fact acknowledged this in writing. Suppl. Wytmsa Decl. Ex. 2. Although not obligated to do
8 so, Johanningmeier candidly informed McNair that an ethical conduct charge was possible.
9 Suppl. Wytmsa Decl. Ex. 2 at 46. Such candor belies, rather than suggests, malice.

10 Although the NCAA interviewed Lake without USC present, no NCAA bylaw precluded
11 it from doing so.¹¹ The bylaws permit institutional representatives to attend interviews only when
12 an enrolled student or athletic staff member is interviewed on campus. Bylaw § 32.3.4.1. It is not
13 “uncommon” for witnesses to request that an institution not participate in interviews. Suppl.
14 Wytmsa Decl. Ex. 1 at 287:10-13. And when that happens, the NCAA either has to “accept that
15 restriction or not do the interview. ... [I]f it’s an outside party, those people ... can set the ground
16 rules any way they want.” *Id.* at 68:22-69:2. Without subpoena power, the NCAA had no choice
17 but to accept Lake’s unilateral terms for an interview.

18 The fact that after “months and months and months” of attempting to interview Lake the
19 NCAA agreed to his conditions does not establish malice. Suppl. Wytmsa Decl. Ex. 3 at 19:19-
20 21. Quite the contrary, it demonstrates the diligent efforts of the NCAA to fully investigate the
21 facts, even without the benefit of subpoena power or other discovery tools available in civil
22 litigation. Significantly, at the end of Lake’s interview, the NCAA urged him to cooperate with
23 USC. Suppl. Wytmsa Decl. Ex. 4 at 162-163.

24 Not acknowledged by McNair but critical to his fair process claim is the fact that McNair
25 had every opportunity to present his position to the Committee on Infraction. His counsel had
26 access to all evidence relied upon by the NCAA in alleging violations. Cretors Decl. ¶ 47. He

27
28 ¹¹ Even under California law, “not every situation requires a formal hearing accompanied by the
full rights of confrontation and cross-examination.” *Ryan*, 94 Cal. App. 4th at 1072.

1 had the opportunity to interview witnesses and present their statements. The Committee received
 2 a written submission from McNair before the hearing and then heard directly from McNair and
 3 his counsel at the hearing. McNair had every opportunity to tell his side of the story—and he did.

4 During the initial deliberations, the Committee on Infractions did not rush to judgment as
 5 part of a conspiracy to scapegoat McNair as he suggests. Opp. 18. Instead they continued
 6 deliberating on the allegations against McNair. Two non-voting members expressed their
 7 opinions at times, but no NCAA bylaw precluded the committee members from doing so. As
 8 full committee members who sat through the entire three-day hearing, they were free to share
 9 their thoughts. Far from evidence of malice, the candid exchange of opinions among committee
 10 members over the course of many months simply reinforces that the Committee worked as a
 11 deliberative body to reach a proper finding based on the evidence.¹²

12 Although one non-voting member raised McNair's conviction and McNair's denial of any
 13 criminal history (Carr Decl. Ex. 15), there is no evidence that the Committee based its findings on
 14 the conviction.¹³ Indeed, voting member Myers stated her opinion that such evidence should not
 15 be considered since it was "not in the record" (*id.* Ex. 11) and Thomas did not recall any
 16 discussion concerning a conviction. Suppl. Wytsma Decl. Ex. 10 at 156:21-25. This is hardly
 17 evidence of actual malice, and certainly not clear and convincing evidence of malice. At most, it
 18 demonstrates that one non-voting committee member believed that McNair had answered
 19 dishonestly when questioned about his criminal past during the hearing.

20
 21
 22 ¹² McNair accurately describes the Infractions Committee as an "adjudicative" body. Opp. 4:22-
 23 23. The Committee's adjudicative role is analogous to that of judges and arbitrators who enjoy
 24 immunity under California's litigation privilege. The same "fundamental purposes" served by
 25 this privilege, such as protecting communications made during "truth-seeking proceedings,"
 26 *Silberg v. Anderson*, 50 Cal. 3d 205, 213 (1990), will be served by dismissing McNair's claims.

25 ¹³ In his declaration, McNair states that he has "never been convicted of dog fighting." McNair
 26 Decl. ¶ 15. That is true, albeit highly misleading. He was convicted of animal cruelty after being
 27 charged with animal fighting, torture and mutilation. Suppl. Wytsma Decl. Ex. 13. McNair had
 28 the opportunity to explain this distinction when asked by the Committee if he had any "history of
 a criminal nature." Suppl. Wytsma Decl. Ex. 3 at 619:14-20:1. Instead, he flatly denied any
 criminal background. *Id.*

1 McNair's theory of malice suggests that NCAA enforcement staff conspired to make him
2 a "sacrificial lamb," (Opp. 18:6), and then ten independent lawyers, law professors, and
3 conference representatives joined in the conspiracy, followed by four more lawyers and
4 professors.¹⁴ This theory is beyond far-fetched. It suggests that fourteen distinguished
5 professionals around the country determined, collectively, to blatantly disregard the truth
6 concerning McNair for the sole purpose of adding even further penalties to those penalties that
7 USC had already imposed on itself for conceded violations. Cretors Decl. Ex. 2 at 56, 67.

8 Stripped of its hyperbole, skewed facts, unsupported assertions, and fantastic conspiracy
9 theory, McNair's theory of malice can be reduced to insignificant mistakes made during two
10 interviews and the supposed influence of two non-voting members during the deliberative process
11 by *eight* other individuals on the independent Committee. But mistakes do not establish malice.
12 Nor does the fact that two committee members expressed their opinions to the voting members.
13 From several emails, McNair asks this Court to infer that Howard and Uphoff were able to
14 persuade eight highly accomplished and reputable attorneys, law professors, and conference
15 commissioners to disregard the evidence, vote against their own beliefs, risk their professional
16 reputations and licenses, and ultimately make false statements knowing them to be untrue. This
17 theory does not comport with either common sense or the evidence of record, and it certainly does
18 not satisfy McNair's clear and convincing burden of proving malice with "direct evidence" rather
19 than merely possible inferences. *Beilenson v. Super. Ct.*, 44 Cal. App. 4th 944, 950 (1996).

20 The histrionics of his arguments notwithstanding, McNair's evidence does not come close
21 to establishing actual malice, a point made clear when juxtaposed with the evidence in *Christian*
22 *Research Institute v. Alnor*, 148 Cal. App. 4th 71 (2007). There, although the evidence supported
23 an inference that the defendant, who "harbored ill will" toward plaintiffs, fabricated a discussion
24 with a possibly fabricated witness, the court found insufficient evidence to support a finding of
25

26 ¹⁴ In arguing malice, McNair relies on the fact that the Appeals Infractions Committee did not
27 "change" the alleged "falsifications" on appeal. Opp. 22:12-15. The subsequent appeals process,
28 however, is not relevant to the NCAA's state of mind at the time of the allegedly defamatory
publication, as this Court recognized in limiting discovery to the date of the Infractions Report.

1 actual malice. *Id.* at 617-19. If the evidence in *Christian Research* did not support a finding of
2 actual malice, then perforce the evidence here cannot possibly support such a finding.

3 **C. McNair's Claims Fail under the Common Interest Privilege.**

4 Because the Infractions Report was published without malice, it is also protected by
5 California's statutory common interest privilege. Civ. Code § 47(c). McNair argues that the
6 common interest privilege does not apply here because it protects "communications among
7 supervisory employees relating to a subordinate employee's job performance." Opp. 23:15-16.
8 The argument is without merit.

9 The "common-interest" privilege applies where the relationship between the interested
10 parties is "close, e.g., a family, business, or organizational interest," and the information was
11 provided in the course of the relationship. *Brown v. Kelly Broad. Co.*, 48 Cal. 3d 711, 727 (1989)
12 (emphasis added). It is not, as McNair suggests, limited to employer-employee communications.
13 See *Taus v. Loftus*, 40 Cal. 4th 683, 721 (2007) (finding statements made by psychology professor
14 at professional conference protected by common-interest privilege); *Kachlon v. Markowitz*, 168
15 Cal. App. 4th 316, 333 (2008) (finding notices in non-judicial foreclosure protected by common-
16 interest privilege); *Lundquist v. Reusser*, 7 Cal. 4th 1193, 1204 (1994) (finding statements made
17 during seminar to persons sharing a common interest in horse breeding subject to common-
18 interest privilege); *Inst. of Athletic Motivation v. Univ. of Ill.*, 114 Cal. App. 3d 1, 7-14 (1980)
19 (applying common-interest privilege to letter criticizing plaintiff's psychological testing sent by
20 university professor to athletic organizations and sports magazines).

21 The NCAA's report to its institutional members on a matter of significant common
22 interest is privileged under California's statutory common-interest privilege.

23 * * *

24 Because McNair cannot establish (1) a provably false statement (2) published with actual
25 malice, he cannot prevail on his defamation claims and they should be stricken. And because he
26 cannot prevail on his defamation claims, his remaining claims must also be stricken. See *Gilbert*,
27 147 Cal. App. 4th at 34 (noting the "collapse" of defamation claim "spells the demise of all other
28 causes of action" arising "from the same publications").

1 **IV. McNair Cannot Show a Probability of Prevailing on His Remaining Claims.**

2 McNair does not dispute that his remaining claims arise from the publication of the
3 Infractions Report and that he must show a probability of prevailing on those claims as well.
4 Nor could he. *See Reader's Digest*, 37 Cal. 3d at 265 (“[C]onstitutional protection does not
5 depend on the label given the stated cause of action.”). Instead, in just two pages—and without
6 any admissible evidence—McNair purports to make such a showing. However, tersely
7 responding only to those arguments raised in the NCAA’s motion, McNair misapprehends his
8 burden of proof, which requires admissible evidence on each prima facie element of his claims
9 *See Wallace*, 196 Cal. App. 4th at 1206.

10 To show likely success on his tortious interference with contractual relations claim,
11 McNair must demonstrate the “actual breach or disruption of [a] contractual relationship.”
12 *Nygaard*, 159 Cal. App. 4th at 1047. As an initial matter, McNair has provided no evidence of an
13 actual contract or the NCAA’s knowledge of that contract. Nor has he shown any admissible
14 evidence of causation, *viz.*, that the NCAA caused any disruption in an enforceable contract.

15 Without any foundation or detail, McNair declares that USC’s head football coach, Lane
16 Kiffin, intended to retain McNair on his coaching staff but could not do so as a result of the
17 Infractions Report. Decl. of Todd McNair ¶ 16. But McNair’s inadmissible hearsay statements
18 must be disregarded. *See Gilbert*, 147 Cal. App. 4th at 26 (noting that declarations “that are
19 argumentative, speculative, impermissible opinion, hearsay, or conclusory are to be disregarded”
20 in considering a special motion to strike). Notably, McNair never sought permission to obtain
21 any discovery from USC, presumably knowing that such evidence would not support his position.

22 Even if McNair’s hearsay evidence could be considered, it would show—at most—that
23 USC decided that it could not renew McNair’s contract due to the Infractions Report. The
24 NCAA did not bar McNair from coaching; its show cause penalty barred McNair only from
25 recruiting activities or contact with prospective student-athletes for one year. *Cretors Decl. Ex. 2*
26 at 61-63. The fact that USC opted against renewing McNair’s contract does not and cannot
27 establish that the NCAA *caused* USC to breach any contractual obligation. Nor does it establish
28 interference with prospective economic advantage.

1 To show a probability of prevailing on his claim for interference with prospective
 2 economic advantage, McNair must establish a specific, non-speculative expectation of future
 3 economic benefit. See *Korea Supply Co. v. Lockheed Martin Corp.*, 29 Cal. 4th 1134, 1164
 4 (2003). Without any evidentiary support at all, McNair argues that there “were numerous
 5 potential coaching opportunities” that he lost after the NCAA’s unethical conduct finding. Opp.
 6 24:23-24. Not only does McNair fail to provide any evidence of these lost opportunities, he fails
 7 even to identify them. His “lost opportunity” theory will not support an interference claim.
 8 *Westside Ctr. Assocs. v. Safeway Stores 23, Inc.*, 42 Cal. App. 4th 507, 527 (1996). Without an
 9 existing relationship with an “identifiable” employer, McNair’s interference claim fails as a
 10 matter of law. *Blank v. Kirwan*, 39 Cal. 3d 311, 331 (1985). McNair also failed to offer any
 11 evidence that the NCAA had knowledge of any lost opportunity (*id.* at 321-22, 330), or that it
 12 engaged in any “independently wrongful” conduct. *Korea Supply*, 29 Cal. 4th at 1158.

13 McNair’s breach of contract claim fails because he has not identified any *contractual*
 14 obligation that the NCAA owed McNair. McNair’s conclusory statement that he was an
 15 “intended third party beneficiary” of an unidentified contract does not meet his evidentiary
 16 burden. A party claiming to be an intended third-party beneficiary “bears the burden of *proving*
 17 that the promise he seeks to enforce was actually made to him personally or to a class of which he
 18 is a member” and that the contracting parties intended to confer a contractual benefit on the third-
 19 party. *Neverkovec v. Fredericks*, 74 Cal. App. 4th 337, 348-49 (1999) (emphasis added).

20 McNair’s claim for negligence likewise fails because he failed to show that the NCAA
 21 breached a duty owed him. See *Friedman v. Merck & Co.*, 107 Cal. App. 4th 454, 463 (2003).
 22 Although McNair claims that the NCAA disregarded its bylaws, the evidence shows otherwise.

23 McNair’s final claim for declaratory relief fails as well. McNair has now clarified that his
 24 declaratory relief claim challenges the NCAA’s show cause penalty as an improper restraint on
 25 the right to work under California law. Opp. 25:13-17. McNair is incorrect. On its face, Section
 26 16600 of California’s Business and Professions Code applies only to *contracts* that restrain one
 27 from engaging in a lawful profession, trade, or business. Bus. & Prof. Code § 16600. No
 28 *contract* restrained McNair from engaging in a lawful profession. Moreover, nothing in the

1 NCAA's show cause order prohibited McNair from engaging in his profession of coaching.
2 Indeed, it did not even prohibit him from continuing to coach at USC. Finally, because McNair's
3 show cause penalty has now elapsed, his request for declaratory relief is moot. *See Daily Journal*
4 *Corp. v. Cnty. of L.A.*, 172 Cal. App. 4th 1550, 1557 (2009) (finding case moot where county
5 contract expired and court could not award it to disappointed bidder). There is no "effectual
6 relief" that this Court can grant McNair on his declaratory relief claim. *Wilson & Wilson v. City*
7 *Council of Redwood City*, 191 Cal. App. 4th 1559, 1574 (2011).

8 **CONCLUSION**

9 For years, the NCAA investigated allegations involving USC's football program as best it
10 could without formal discovery procedures available to it. Mistakes may have been made along
11 the way, but the NCAA's enforcement staff tried its best to determine the true facts. As did the
12 Committee on Infractions that ultimately considered the evidence presented to it during a lengthy
13 hearing in which McNair and his counsel had every opportunity to present evidence. Ultimately,
14 based largely on documentary evidence, the Committee concluded that McNair was not credible
15 and found that he engaged in unethical conduct.

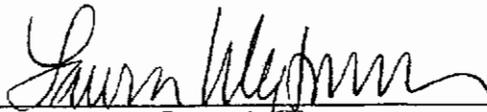
16 McNair sued the NCAA because he disagreed with the conclusions reached by the
17 Committee. But those conclusions are not actionable. McNair failed to demonstrate a single
18 "provably false" statement of fact. But even if he had, McNair failed to show with clear,
19 convincing, and admissible evidence that the NCAA acted with actual malice in publishing the
20 Infractions Report. Absent evidence of malice, McNair cannot prevail on his defamation claims.

21 After being afforded the opportunity to develop admissible evidence to support his claims,
22 McNair failed to show a probability of prevailing on his claims and they should be stricken.

23 Dated: October 22, 2011

Respectfully submitted,

LOEB & LOEB LLP

24
25
26 By 

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REC'D

OCT 22 2012

FILING WINDOW

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT

12 TODD McNAIR, an individual,

13 Plaintiff,

14 v.

15 NATIONAL COLLEGIATE ATHLETIC
ASSOCIATION, an unincorporated
16 association, and DOES 1 through 50,
inclusive,

17 Defendants.
18

Case No. BC 462891

Assigned to the Hon. Frederick C. Shaller

SUPPLEMENTAL DECLARATION OF
LAURA A. WYTSMA IN SUPPORT OF
NATIONAL COLLEGIATE ATHLETIC
ASSOCIATION'S SPECIAL MOTION TO
STRIKE COMPLAINT

Date: November 21, 2011

Time: 1:30 p.m.

Dept.: 46

Complaint Filed: June 3, 2011

20
21
22 **CONDITIONALLY UNDER SEAL**
23
24
25
26
27
28

1 I, Laura A. Wytmsa, declare:

2 1. I am an attorney at law licensed to practice before all of the Courts of the State of
3 California, and before this Court. I am a partner with the law firm of Loeb & Loeb LLP ("Loeb"),
4 counsel of record for defendant National Collegiate Athletic Association ("NCAA") in this action.
5 Except as otherwise indicated, I have personal knowledge of the following facts and, if called and
6 sworn as a witness, could and would competently testify thereto.

7 2. Attached as **Exhibit 1** are true and correct copies of pages from the transcript of
8 the videotaped deposition of Richard Johanningmeier taken on August 23, 2012, including the
9 court reporter's certification.

10 3. Attached as **Exhibit 2** are true and correct copies of excerpts from an interview
11 transcript of Todd McNair on February 15, 2008.

12 4. Attached as **Exhibit 3** are true and correct copies of excerpts from the transcript
13 of the hearing before the Committee on Infractions in February 2010.

14 5. Attached as **Exhibit 4** are true and correct copies of excerpts from an interview
15 transcript of Lloyd Lake on November 6, 2007.

16 6. Attached as **Exhibit 5** are true and correct copies of excerpts from an interview
17 transcript of Martin Bayless on August 19, 2009.

18 7. Attached as **Exhibit 6** are true and correct copies of excerpts from an interview
19 transcript of Brooke Augustin on November 18, 2009.

20 8. Attached as **Exhibit 7** are true and correct copies of excerpts from the NCAA's
21 Case Summary provided to the Committee on Infractions on February 1, 2010.

22 9. Attached as **Exhibit 8** are true and correct copies of excerpts from the transcript
23 of the videotaped deposition of Dennis Thomas taken on August 28, 2012, including the court
24 reporter's certification.

25 10. Attached collectively as **Exhibit 9** are biographical summaries of the members of
26 the Committee on Infractions obtained from the internet.

27
28

1 11. Attached as **Exhibit 10** are true and correct copies of pages from the transcript of
2 the videotaped deposition of Shepard Cooper taken on August 21, 2012, including the court
3 reporter's certification.

4 12. Attached as **Exhibit 11** is a true and correct copy of a Los Angeles Times article
5 dated December 13, 2005, entitled "Bush Passes Credit Out to USC."

6 13. Attached as **Exhibit 12** are pages from the results of a Westlaw search that I
7 conducted indicating over 2000 articles referencing Todd McNair published before the USC
8 Infractions Report, dating back to December 1983 when McNair played football for Temple
9 University.

10 14. Attached as **Exhibit 13** is a true and correct copy of the transcript of the
11 disposition in the case of *State of New Jersey vs. Todd D. McNair*.

12 15. Attached as **Exhibit 14** is a true and correct copy of McNair's Response to the
13 Notice of Allegations on January 4, 2010, and email forwarding it on January 5, 2010.

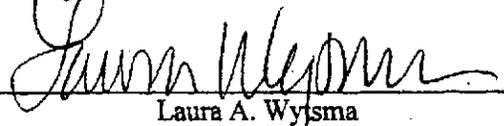
14 16. Attached as **Exhibit 15** are true and correct copies of portions of the NCAA
15 Constitution, operating Bylaw and Administrative Bylaws in effect at the time of the USC
16 hearing.

17 17. Attached as **Exhibit 16** is a true and correct copy of an email from Committee on
18 Infractions member Eleanor Myers dated May 10, 2010.

19 18. Attached as **Exhibit 17** is a true and correct copy of a memorandum authored by
20 Committee on Infractions member Josephine Potuto.

21 I declare under penalty of perjury under the laws of the State of California that the
22 foregoing is true and correct.

23 Executed this 22nd day of October 2012, at Los Angeles, California.

24 
25 _____
26 Laura A. Wytmsa

In The Matter Of:

TODD McNAIR

v.

THE NATIONAL COLLEGIATE ATHLETIC ASSOCIATION

JOHANNINGMEIER, RICHARD - Vol. 1

August 23, 2012

**CONFIDENTIAL - PURSUANT TO
PROTECTIVE ORDER**

MERRILL CORPORATION

LegalLink, Inc.

20760 Ventura Boulevard
Suite 205
Woodland Hills, CA 91364
Phone: 818.593.2300
Fax: 818.593.2301

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1 A No.

2 Q What other positions did you hold?

3 A When I first came with the NCAA, I believe we
4 were called enforcement representatives. I was
5 with the NCAA for approximately four to five
6 years. I left. I went out, and I was an
7 athletic director at two member institutions.

8 I came back to the NCAA. I'm not real sure
9 what titles we were using at the time. There's
10 been changes over the years. But at the -- the
11 majority of the time I was with the NCAA, I was
12 either an assistant or an associate director of
13 enforcement.

14 Q Did you ever receive a promotion during the time
15 that you were with the NCAA?

16 A Well, I went from assistant to associate
17 director.

18 Q Did you ever apply for a promotion and didn't
19 get it?

20 A No.

21 Q When you said you were an athletic director at
22 two member institutions, which member
23 institutions?

24 A Illinois College and Washburn University of
25 Topeka, Kansas.

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1 well as exculpatory evidence?

2 A That's not the process, no.

3 Q And why isn't -- strike that.

4 Are you aware in the bylaws whether it
5 indicates that you are supposed to provide
6 exculpatory evidence as well as the damning
7 evidence?

8 MS. WYTSMA: Objection. The bylaws speak
9 for themselves.

10 Q I'm asking for your knowledge, your
11 understanding.

12 MS. WYTSMA: You can answer if you're able.

13 A My understanding is that we are to -- to present
14 all information regarding the allegation, but
15 it's not done in the allegation itself. That
16 would usually have been done during the hearing
17 with the committee on infractions or in the case
18 summary.

19 Q Did you see the role of the associate director
20 of enforcement as being one to merely provide
21 facts or to be an advocate on behalf of the NCAA
22 once the notice of allegations was prepared?

23 A I saw it as trying to develop the information as
24 to whether or not a violation occurred or not.
25 And if the facts in the investigation indicated

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1 that a violation occurred, then to present that
2 information that supported that allegation to
3 the committee on infractions.

4 Q And only to present the information that
5 supported the allegation as opposed to
6 presenting both the supporting and opposing
7 information if there was information developed
8 that didn't support the allegation?

9 A To a certain extent, we would -- the staff would
10 present in -- in our oral arguments with the
11 committee or in our case summary any information
12 that may have been opposite to the allegation.
13 But also in the process, that was normally done
14 by the institutions. If they had an attorney,
15 that institution's attorney would present that
16 information. Or if an involved party was
17 present and facing an allegation, their attorney
18 or whoever represented them would normally
19 present that information on their behalf.

20 Q Did you see yourself as an advocate in any way
21 on behalf of the NCAA?

22 A No. I saw myself as a person who was to develop
23 the information, and if the information
24 indicated a violation, to present that
25 information to the committee on infractions

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1 within the guidelines and the bylaws of the
2 association.

3 Q And if there was some information that in- --
4 indicated there may be a violation and some that
5 indicated there weren't, you saw it as your role
6 to present both sides; correct?

7 A Well, we would not prob- -- there would have to
8 be -- there would have to be an overwhelming
9 amount of information that indicated that a
10 violation took place before we would even allege
11 a violation.

12 Q And when you say "an overwhelming amount," how
13 did you make a determination in your own mind as
14 to whether the evidence was overwhelming in your
15 view?

16 A Telephone records, documents, other witnesses
17 that had direct knowledge or were told directly
18 by individuals about a violation, photographs,
19 tape-recordings. A number of different sources
20 throughout the years would come into play. Bank
21 records, car records, numerous types of items
22 that would indicate whether or not an individual
23 was credible in what they were telling us.

24 Q And, in fact, one of the reasons why you obtain
25 things such as telephone records was to see

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1 they can choose to talk to or not talk to
2 whomever they choose.
3 Q So in terms of the NCAA fair procedures, when
4 the NCAA is in viewing -- is interviewing a
5 witness, the accused person doesn't have the
6 right to sit in on the interview and ask
7 questions, do they?
8 A Not --
9 MS. WYTSMA: Objection to the
10 characterization of "accused person."
11 A The bylaws -- the bylaws from the enforcement
12 standpoint does not require us to have any
13 member -- any member institution present when we
14 do an interview.
15 Q Wouldn't that be fair process in your --
16 A I'm just telling you what the bylaws --
17 Q Well, the by- -- the bylaws don't prohibit it,
18 do they?
19 A They don't prohibit it, no. But they also don't
20 require. Because you'll have individuals that
21 on occasion will restrict who they will talk to.
22 And you -- you either got to accept that
23 restriction or not do the interview. And again,
24 if it's a member institution, those restrictions
25 don't apply. But if it's an outside party,

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1 those people can -- those people can set the
2 ground rules any way they want.

3 Q And do you think it's fair to conduct an
4 interview without allowing the person against
5 whom accusations are being made to ask questions
6 of that particular witness?

7 A I think your question is incorrect in that on
8 many, many occasions when you do an interview,
9 you don't know if there's going to be
10 information about a violation or not a
11 violation. You go in a lot of times just trying
12 to get some background or understanding what
13 that person knows.

14 So -- so you don't know going into
15 interview -- particularly outside interviews. A
16 lot of times somebody might tell you -- there
17 might be a source that says, this person knows
18 something. You go in and interview, and they
19 don't know a thing, and the information is not
20 credible at all.

21 So you're assuming that every interview
22 we -- your statement to me is an assumption that
23 every interview we do is definitely about a
24 violation, and that's just not correct. That's
25 just not the way the process worked.

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1 and interview anyone they want, provide any
2 information as part of their defense as to why
3 or why the allegation did or did not happen.
4 Q Assuming third-party witnesses will talk to
5 them?
6 A Correct.
7 Q So let's look in particular at this case. When
8 you interviewed Mr. Lake, the NCAA didn't allow
9 USC or their lawyers to be there or Mr. McNair
10 or his lawyers to be there; correct?
11 A That's not a correct statement.
12 Q Were Mr. -- was -- was USC told about the
13 interview and told that they could participate?
14 A That was -- first of all, your whole statement
15 was incorrect. The NCAA had nothing to do with
16 who was going to be in there. Mr. McNair's
17 attorneys told our -- Mr. Lake's attorneys -- my
18 understanding was that the only people they were
19 going to talk to were members of the enforcement
20 staff. There was going to be no one else
21 allowed, or there was not going to be an
22 interview. That was their determination, not
23 ours.
24 Q Who told you that?
25 A Brian Watkins and Wong. We were not going to --

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1 A I have no idea.

2 Q And, in fact, you knew that Mr. Lake wouldn't
3 speak to USC, and you knew that Mr. Lake
4 wouldn't speak to McNair; correct?

5 A No.

6 Q Okay. So --

7 A I knew --

8 MS. WYTSMA: No, no, no. Mr. Carr, you're
9 going to let the witness finish his answer.

10 Q You answered your --

11 A No, I didn't.

12 Q Go ahead. Tell us what you want to tell us.

13 A I told you initially, the only way that we could
14 interview Mr. Lake -- his attorneys told us it
15 would only be the NCAA involved. We either
16 took -- we either did the interview or we didn't
17 do the interview. My people that are above me
18 said, we're going to do the interview.

19 Now, once we established and we had that
20 interview -- and I think the record in that
21 interview will show that we encouraged Mr. Lake
22 all along that down the line, we wanted him to
23 be cooperative with the PAC 10 and USC. And we
24 were prepared, that if we were asked, we were
25 going to do everything we could to make sure

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1 your interview with Mr. Lake dated
2 November 6th, 2007.

3 Other than the fact that USC, their
4 attorneys, Mr. McNair, and his attorneys
5 couldn't be present during the interview, were
6 there any other preconditions that Mr. Lake or
7 his lawyers put on the interview?

8 A You know, I don't -- I can't tell you
9 specifically. I know there were lots of issues
10 to get that interview. That's all I can tell
11 you. I don't recall what specific conditions
12 were at this particular time. But I know this
13 was a very difficult interview for us to get.

14 Q And if the NCAA had any problems with any of the
15 preconditions, the enforcement staff could have
16 just chosen not to do the interview; right?

17 A I think we answered that before.

18 Q So the answer to that is true; correct?

19 A You answered it, yes. You're doing the
20 answering for me.

21 Q I'm doing the --

22 A You're assuming all the -- all you want me to do
23 is sit there and agree with everything you say.

24 Q Well, and if you don't agree, you can certainly
25 tell me.

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1 during the interview that you either knew or
2 knew of prior to the interview commencing?
3 A Todd McNair.
4 Q And how did you know Mr. McNair or know of him?
5 A I followed his career when he played for the
6 Kansas City Chiefs.
7 Q And what did you -- other than that he was a pro
8 football player, what did you know or know of
9 him about?
10 A Well, I knew he played with some of the better
11 Chiefs teams. And at the time, our offices were
12 located in Kansas City. I also -- when I was at
13 Washburn, not far outside of Kansas City, so
14 tended to be a follower of the Kansas City
15 Chiefs. Marty Schottenheimer had done some
16 favours as far as speaking to NYSP groups for me.
17 So -- John Mackovic had -- when I coached, had
18 provided hospitality to me and my coaches to
19 come to training camp and to view their tapes,
20 et cetera. So I had a very favorable impression
21 of the Kansas City Chief organization and, you
22 know, as a casual fan, would certainly rather
23 see them win than someone else.
24 Q Did you have any impression of Mr. McNair?
25 A He could have been a little faster and catch the

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1 they'd be reflected in the transcript; correct?
2 A That's correct.
3 Q Now, about a year and a half later, a decision
4 was made to conduct a second interview of
5 Mr. McNair; correct? I'll -- I'll represent to
6 you the date of the first interview was
7 September 19th, 2006. The date of the second
8 interview was February 15th, 2008.
9 A Sounds correct.
10 Q So at some point prior to February 15th, 2008,
11 a decision was made to conduct a second
12 interview with Mr. McNair; correct?
13 A Correct.
14 Q Who made that decision?
15 A I think the -- I think the decision was made by
16 our entire group that was working on it; Rachel,
17 Améen, Angie, and myself.
18 Q Would you have meetings from time to time to
19 discuss what further investigatory efforts
20 needed to be made?
21 A Yes.
22 Q And would you take notes of those meetings?
23 A I didn't take any notes.
24 Q Are you aware of anybody taking notes?
25 A No.

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1 interview?

2 A Well, I think the information that -- the
3 investigation had developed a conflict with his
4 first testimony and the telephone records, the
5 photograph, information that indicated that
6 there was reason to believe that he had contact
7 with Lloyd Lake and that he knew Lloyd Lake when
8 he had first initially denied ever knowing the
9 man.

10 Q So is there a reason why you then just didn't
11 include that in the notice of allegations rather
12 than take a second interview of him if you
13 believed already that he had made statements
14 that were contradictory to what you believed to
15 be other evidence?

16 A No, because there was a -- there was the
17 possibility that he might have been able to
18 provide some explanation or he might have been
19 able to tell us something that -- different than
20 what he told us in the first interview.

21 Q Well, if he told you something different than
22 what he told you in the first interview, you
23 would have charged him with an allegation that
24 he lied to you in the first interview, wouldn't
25 you have?

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1 A Not necessarily, no.
2 Q But you may have; right?
3 A No.
4 Q All right. So if somebody in a second interview
5 says, I'm sorry, I made a mistake, I wasn't
6 entirely truthful in the first interview, then
7 you give them the benefit of the doubt and don't
8 charge them --
9 A It would be --
10 Q -- with lying?
11 A I would say over my years at the NCAA, if on --
12 if during a second interview an individual came
13 forth and began to tell the truth, there would
14 be a real good possibility that there would not
15 be an ethical conduct charge against that
16 individual.
17 Q Were there -- the unethical conduct charges
18 involving Mr. McNair were brought based upon
19 testimony he gave in both the first and the
20 second interviews; correct?
21 A Basically, correct.
22 Q So the allegations were that he lied in the
23 first interview and that he lied again in the
24 second interview about the same issues he lied
25 in in the first interview?

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1 A I think the al- -- I -- I don't know
2 specifically how the allegation was written, but
3 I'll stand by whatever the allegation is on
4 record.

5 Q Because you wrote it; right?

6 A Yes, I did.

7 Q As of the time that the second interview began,
8 you had already believed that Mr. McNair had
9 lied to you in the first interview; correct?

10 MS. WYTSMA: Objection, asked and answered.

11 A I think the information indicated that there was
12 a credibility issue.

13 Q Did you believe he had lied?

14 A I think the information indicated that there was
15 a credibility issue. I was not totally
16 convinced. And when he gave us an explanation
17 with Percy Harvin, when we started asking about
18 that particular issue, I really thought that
19 there was a possibility that when we interviewed
20 Percy Harvin, he could certainly back up what
21 Mr. McNair told us, and our case would fall
22 apart with Lloyd Lake. That's what my thoughts
23 were.

24 Q But you didn't know the information about Percy
25 Harvin going into the second interview?

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1 Q So you're giving him the wrong date of the call;
2 correct?

3 A I -- I provided the wrong date.

4 Q And, in fact, if you look down to his answer
5 just a few down, it says, "That's 2005. That's
6 the, uh, that's 2005. That's after the Orange
7 Bowl. That's a week after the Orange Bowl."

8 So he's thinking about what was occurring
9 in the January 2005 time frame when the events
10 that you meant to ask him about occurred in the
11 January 2006 time frame; correct?

12 A That's correct.

13 Q Did you ever conduct a follow-up interview to
14 try to clarify that?

15 A Yes. What we did was, when we recognized that
16 we had misspoke on the date, the decision had
17 been made. I said, we need to go back and
18 clarify it. And I -- I believe Ameen Najjar
19 said that it wasn't going to be necessary
20 because of Coach McNair's flatout denial that he
21 had any conversations at any times with Lloyd
22 Lake. So for -- for that reason, we never did
23 go back and clarify that particular date.

24 And I believe that's -- I do recognize, and
25 I do recall that we caught that mistake and that

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1 we were going to go back, and we decided -- the
2 decision was made that it wasn't going to be
3 necessary, because there was just a flatout
4 refusal of ever having any conversations, so it
5 wouldn't make any difference what the date was.

6 Q And you -- and that decision was made by
7 Mr. Najjar?

8 A I believe so.

9 Q Najjar?

10 A I know this, it wasn't my decision. Because
11 my -- my thoughts were, we need to go back, just
12 go through the date thing again, get him on
13 record as saying he doesn't know the calls or
14 whatever. And it was decided that that wasn't
15 going to be necessary because of the flat
16 denials that he just never had talked to the
17 person, period.

18 Q And when you say it was -- it was decided it
19 wasn't necessary, that was by one of your
20 superiors, but you don't know which; correct?

21 A That's correct.

22 Q All right. And then if you look on page 704, in
23 the middle of the page, where you say, "Okay.
24 And the number I asked you about in January is
25 Lloyd Lake calling you for about a 2-minute and

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1 A No. No, I did not. Please, make sure that's on
2 the record that I am not a lawyer.

3 Q Did you receive any training as an investigator
4 prior to working for the NCAA?

5 A No.

6 Q Since -- other than the training you described
7 to us earlier that the NCAA provides the
8 education, I think as you described it, did you
9 receive any other training in your career in
10 investigation?

11 A Not in investigations, no.

12 MR. CARR: All right. Laura, go ahead.
13

14 CROSS-EXAMINATION,

15 QUESTIONS BY MS. LAURA A. WYTSMA:

16 Q Mr. Johanningmeier, can you briefly describe
17 your professional background before joining the
18 NCAA?

19 A Before joining the NCAA, I was an assistant
20 football coach at a number of New England
21 institutions; American International College,
22 University of Vermont, University of
23 Connecticut. I then went, I believe, in 1985,
24 and I was the -- from '76 to 1985 was the head
25 football coach at now Missouri State University.

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1 And then from there I joined the NCAA staff.

2 Q Can you provide an approximate number of

3 investigations you have been primarily

4 responsible for handling while at the NCAA?

5 A Numerous.

6 Q Are we talking more than dozens?

7 A At least -- at least a dozen or more.

8 Q You mentioned some significant investigations at

9 Alabama, Mississippi, Georgia Tech, and Clemson.

10 In terms of the visibility or high-profile

11 nature of the USC investigation, where would you

12 put that relative to the other significant

13 investigations you handled?

14 A It -- it was -- it was certainly a -- a

15 high-profile case, but I don't think it was in

16 the same neighborhood as the University of

17 Alabama.

18 Q Did you personally have any hostility towards

19 Mr. McNair during the enforcement process?

20 A No. I -- I only knew of Mr. McNair as a former

21 Kansas City Chief football player.

22 Q Did you have any reason to want to reach any

23 particular conclusion with respect to

24 Mr. McNair's activities and conduct?

25 A No.

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1 Q Did you have any reason to want to reach a
2 certain conclusion with respect to the
3 institution, USC, during the enforcement
4 process?

5 A No.

6 Q Were you ever pressured to reach any particular
7 result or conclusion with respect to either
8 Mr. McNair or the institution during your
9 investigation?

10 A No.

11 Q Did anyone at the NCAA ever pressure you to --
12 to rush the investigative process with respect
13 to the USC investigation?

14 A Not at the USC investigation. We were -- we
15 were never pressured to rush anything.

16 Q Earlier during your deposition testimony, you
17 indicated that Mr. Thompsett, who is
18 Mr. McNair's counsel, was familiar with NCAA
19 procedures. What was the basis for your opinion
20 on that?

21 A Because Mr. Thompsett is, I think, highly
22 regarded by the NCAA enforcement staff, because
23 he's represented a number of coaches. I don't
24 recall Scott ever representing an institution.
25 He's primarily, I think, representing coaches.

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1 And I know among the enforcement staff, he's
2 held in high regard, and we know that he's going
3 to do an excellent job for his client.

4 Q And just to be clear, Mr. Thompsett never
5 contacted you to request your assistance in
6 arranging for an interview with Lloyd Lake; is
7 that correct?

8 A That is correct.

9 Q Just to clarify a point of your prior testimony.
10 Does the enforcement staff review a final draft
11 of the infractions appeal committee report
12 before it's released?

13 A That's been the practice since I was on staff.

14 Q Okay. I want to distinguish between the -- the
15 infractions appeals committee and the committee
16 on infractions.

17 A We don't do anything with the infractions
18 appeals committee.

19 Q Thank you.

20 Does the NCAA have any right or ability to
21 compel a third-party witness to allow other
22 individuals to participate in an interview
23 conducted by the enforcement staff?

24 A Absolutely none.

25 Q Was Mr. Love the first instance in which a

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1 witness requested that an institution be
2 excluded from an interview?

3 A Mr. Lake?

4 Q I'm sorry, thank you for the --

5 A Mr. Lake.

6 Q Let me start over.

7 Was --

8 MR. CARR: I didn't think Mr. Love was
9 interviewed.

10 Q Was your interview of Lloyd Lake the first
11 instance in which a third-party witness
12 requested that the institution not participate?

13 A Oh, no. That's -- that's not uncommon at all.

14 MS. WYTSMA: I have no further questions.
15 If you have any follow-up.

16 MR. CARR: Just a couple of brief ones.

17

18 REDIRECT EXAMINATION,

19 QUESTIONS BY MR. SCOTT H. CARR:

20 Q In terms of the enforcement staff and Mr. Lake's
21 interview, the enforcement staff certainly could
22 have chosen not to go forward with the interview
23 unless there was participation by all parties;
24 correct?

25 A That's correct.

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1 STATE OF INDIANA)
2 COUNTY OF HENDRICKS) SS:

3

4 I, Debbi S. Austin, RMR, CRR, a Notary
5 Public in and for the County of Hendricks, State of
6 Indiana, at large, do hereby certify that RICHARD
7 JOHANNINGMEIER, the deponent herein, was by me
8 first duly sworn to tell the truth, the whole
9 truth, and nothing but the truth in the
10 aforementioned matter;

11 That the foregoing videotaped deposition was
12 taken on behalf of the Plaintiff at the offices of
13 Connor Reporting, 1650 One American Square,
14 Indianapolis, Marion County, Indiana, on the 23rd
15 day of August, 2012, commencing at 8:30 a.m.,
16 pursuant to the Indiana Rules of Trial Procedure;

17 That said deposition was taken down in
18 stenograph notes and afterwards reduced to
19 typewriting under my direction, and that the
20 typewritten transcript is a true record of the
21 testimony given by the said deponent; and that the
22 signature of said deponent to his or her deposition
23 was requested;

24 That the parties were represented by their
25 counsel as aforementioned.

TRANSCRIPT OF RECORDED INTERVIEW

Agent, Gambling and Amateurism
University of Southern California

SUBJECT: Todd McNair, assistant football coach.

DATE: February 15, 2008.

LOCATION: General counsel's office, University of Southern California.

PRESENT: Ron Barker (RB), associate commissioner, governance and enforcement; Pacific-10 Conference.
Kelly Bendell (KB), legal counsel, University of Southern California.
Angie Cretors (AC), NCAA assistant director of agent, gambling and amateurism.
Ellen Ferris (EF), associate provost for athletics compliance, University of Southern California.
Rich Johanningmeier (RJ), NCAA associate director of enforcement.
Mark Jones (MJ), Ice Miller, outside legal counsel, University of Southern California.
Todd McNair (TM), assistant football coach, University of Southern California.

RJ: My, my name is Rich Johanningmeier. I'm an associate director of enforcement for the NCAA. The date is Friday, February 15, 2008. It's approximately, uh, noon, Pacific coast time. This is an interview with University of Southern California assistant football coach Todd McNair. The interview is being conducted in the general counsel's office in Bouvard Hall on the campus of the University of Southern California, located in Los Angeles, California. Also participating in the interview are Angie Cretors, NCAA assistant director for agents, gambling and amateurism; Mark Jones of Ice Miller, USC outside counsel; Ellen Ferris, associate provost for athletics compliance at USC; Ron Barker from the Pac-10 conference; and Kelly Bendell, USC legal counsel. And I think for the record, uh, starting with, uh, coach McNair, let's all identify ourselves. Coach?

TM: Todd McNair, USC.

MJ: Mark Jones, USC.

RB: Ron Barker.

EF: Ellen Ferris.

KB: Kelly Bendell.

AC: Angie Cretors.

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TRANSCRIPT
February 15, 2008
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RJ: Thank you. And for the record, the university is recording, uh, also recording the interview and will comply with the st, uh, confidentiality provisions, isn't that correct?

MJ: Yes, it is.

RJ: Thank you.

KB: Yes.

RJ: Coach, you are aware that the interview is being recorded?

TM: Yes, I am, yes.

RJ: And prior to, uh, prior to turning on the recorder, you signed a statement of confidentiality and with that, uh, the NCAA will provide you a copy of the recorded interview. So you're aware of that?

TM: Yes.

RJ: And you also had an opportunity to review and you signed and dated the notices for interview. Do you have any questions regarding your obligation under Bylaw 10.1 to be truthful during the interview?

TM: No.

RJ: We're gonna ask you to limit your discussion of the interview to the appropriate representatives of USC, which are in the room, and, uh, the NCAA. Do we have your word on that?

TM: Yes.

RJ: Thank you. The purpose of this interview is to review information reported during your September 19, 2006, interview with the NCAA and university, and to review additional information which indicates that possible violations of NCAA legislation may have occurred in the USC football program. So that's the purpose of the interview. And I wanna make sure that, uh, we have your contact information correct, which we reviewed with you prior to turning on the recorder. You provided your home address as still at [REDACTED] that's in [REDACTED]. Your home telephone number is [REDACTED]; cell telephone number [REDACTED]. You're currently the assistant football coach here at USC. And your business address is [REDACTED] on the [REDACTED] campus, here in [REDACTED]. Your business telephone number is [REDACTED].

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TM: Not that I know of.

RJ: Okay. So you personally never discussed with Reggie or have any knowledge as to how he obtained the Impala?

TM: No.

AC: Did you ever see the car?

TM: I've seen it.

AC: Did you see it prior to it being on the cover or in the magazine, Dow Magazine?

TM: Yeah, I've seen it.

AC: Did you see the work that had been done to the car?

TM: What work?

AC: Stereo system, wheels?

TM: Uh, I didn't, you know, I didn't notice the wheels or stereo system. I've been in it. I've seen the inside of it.

AC: Did he ever talk about the work that had been, been done to the car?

TM: No.

MJ: Were you even aw, aware that it was on the cover of the magazine?

TM: No.

RJ: During the weekend of March 4-6, this is 2005, were you in San Diego for the Marshall Faulk birthday party?

TM: I was at Marshall Faulk's birthday party, yes.

RJ: Tell us about it.

TM: Uh, I went to Marshall's birthday party. Uh, what's, what's there, what do you want me to tell you?

RJ: Well, help, help me, when did you arrive in San Diego?

TRANSCRIPT
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TM: The night of the party, the day of the party.

RJ: And where was the party being held?

TM: I don't recall.

RJ: Okay. Did anyone go with you to, uh, the party?

TM: Yes.

RJ: Who was that?

TM: Martin Bayless.

RJ: Okay. Anyone besides, uh, Bayless?

TM: No.

RJ: Where'd you stay while you were in San Diego?

TM: At Martin's house.

RJ: Okay. About what time did you get to that party?

TM: I don't recall.

RJ: Okay. Did you have any contact with Bush while you were in San Diego?

TM: Actually I don't, I don't think so. I don't remember seeing Reggie at the party.

RJ: So you don't, you're not sure if he attended the party or not?

TM: I didn't see him. I, I don't, I don't, I don't recall seeing Reggie.

RJ: So you don't have any knowledge as to where he may've stayed that night?

TM: He, you said it was in San Diego? Well, he's from San Diego. I wouldn't, no, I don't.

RJ: Okay. Looking over your telephone records --

TM: Uh-huh.

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RJ: At any time on the night of October 29th and the early morning of October 30th, were you with Reggie Bush?

TM: Uh, I'm sorry, say that?

RJ: On that night, on that night, the night after the game and the early morning of the Sunday, were you with Reggie Bush?

TM: Again, if it was, if it was in reference to him hosting a recruit of mine, I, I could've been, but I don't, I don't remember that night. I don't, I don't --

RJ: Do you hang out --

TM: -- think so.

RJ: -- could you have been out socializing with him?

TM: With Reggie? No.

RJ: Could you've been --

TM: I would make sure that he, that he had the recruit and he, he took him out.

RJ: Could you've been out with Faison Love?

TM: Certainly.

RJ: Okay. This is January 2005. According to your telephone records, on Saturday, January 8th, 2005, you had a two minute and 32, uh, second telephone conversation with that same [REDACTED] number, that [REDACTED]. And for the record, let me read that into the record. The number was [REDACTED]. Tell us about that?

TM: I have no idea. I don't recognize that number.

RJ: Okay. And then subsequently on January 8th, the same day, at 2:50 p.m., you placed a one minute call to Bush; and at 3:26 p.m., Bush called you and that call lasted for 13 minutes and 23 seconds. Help us with that sequence? So again, I wanna set the record here, there's the call to the San Diego number comes to you, there's a one minute and 34 second conversation.

TM: Right.

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RJ: You place a call to Bush for one minute. Bush then returns that call and there's a 13 minute, almost a 13 and a half minute conversation that occurs.

TM: And this is when?

RJ: This is on January 8th, 2005.

TM: January 8th, I mean, I, I have no idea. January 8th.

RJ: Okay. You still don't know --

TM: Uh, that's two --

RJ: -- recognize this?

TM: -- that's 2005. That's the, uh, that's 2005, that's after the Orange Bowl, that's a week after the Orange Bowl. Uh, I could've, I don't know, I could, I don't know. I mean, I could be on the, on the road, I could be on the road recruiting 'cause the Orange Bowl was probably, that's the championship game, it's probably a week after the first, seventh, I'm probably on the road. I don't, I don't know.

RJ: Okay. So --

TM: I'm probably on the road recruiting. I don't know.

RJ: Okay. I'm going back to the September 19th interview that we had with you.

TM: Uh-huh.

RJ: When you were asked by Angie Cretors during that September 19th interview --

TM: Uh-huh.

RJ: -- how much contact you had with your players outside of scheduled practices and during the offseason, you answered next to none.

TM: Uh-huh.

RJ: A review of your telephone records, however, indicate that in the case of Reggie Bush, that statement was not correct. Your telephone records indicate that during that, during this period from Oct, from December 2004 through June 2005 that you and Bush engaged in approximately 330 telephone calls. What was the reason for that number of calls?

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TM: It says New Era Sports and Entertainment, Lloyd Lake, senior director of operations, The
office, [REDACTED], fax, [REDACTED]; mobile, [REDACTED].

RJ: Is that the same phone number that I asked you about just a few --

TM: Sounds --

RJ: -- minutes ago.

TM: -- sounds like it.

RJ: So Lloyd Lake's number appears, that you made calls to Lloyd Lake and you denied to us that you know Lloyd Lake.

TM: I don't know Lloyd Lake.

RJ: Well why, what's his telephone number doing on your telephone call, uh, list and why are you calling him?

TM: I have no idea but I, I don't know Lloyd Lake.

RJ: Okay. And the number I asked you about in January is Lloyd Lake calling you for about a two minute and 32 second conversation, you follow up with a minute call to Reggie Bush and then there's a call, a 13 minute something call after that --

TM: Uh-huh.

RJ: --that Bush returns to you.

TM: Yup, I remember you said that. That's the number. I, I don't know and have never talked to Lloyd Lake.

RJ: Well, we have information Lloyd Lake gave you his business card at the, uh, at the Marshall Faulk party.

TM: I didn't see Lloyd Lake at the Marshall Faulk birthday party.

RJ: Well that's contrary what, uh, Lloyd Lake tells us.

TM: I don't care what it is. Just I didn't talk to Lloyd Lake, I didn't see Lloyd Lake, I didn't have his business card.

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RJ: So you don't know the other two individuals?

TM: No, is it supposed to be Lake, one of 'em supposed to be Lake?

RJ: That's what we're asking you.

TM: No, I don't know.

RJ: Could you tell us on this photograph, where this photograph would've been taken?

TM: That's the USC locker room.

RJ: Do, do you know who that individual is in there?

TM: No.

RJ: For the record, the enforcement staff and the, uh, agents, gambling and amateurism staff have, uh, reasons to believe that that's Lloyd Lake in the, uh, USC locker room. And, the NCAA also has reasons to believe that the photograph with you putting your fingers behind Faison Love's head is the gentleman next to Faison Love is Michael Michaels, also known as the Chief, along with Lloyd Lake. And according to our information, that picture was taken on the night of the 29th and 30th of 2005 during those telephone calls when you were calling to find out where Reggie Bush and, and Lake and those people were going to be out socializing.

TM: Hmm.

RJ: And that you then went out there with them. So as you can see from our standpoint, we're having a lot of problems with your credibility and I have to tell you that there's a good possibility that, uh, the NCAA could allege a, uh, ethical-conduct charge of providing us false, misleading information in the fact that you denied that you know him, we have the telephone calls and we have a photograph with you with people that you say that you don't know.

TM: I don't know 'em and I did not call him.

RJ: Well coach, how can you explain this photograph?

TM: You know, I can around there and pull a lot of pictures out of, out of our office, pictures after games posing with parents, and various friends, hangers on, this guy, that guy, I can take a, coach, take a picture with me; coach, take a picture, oh, hold on a minute. I can take, you can come, you can be outside our game, uh, hey, coach McNair, great game, could you take a picture with us? All right. Sure. You know what I mean? We, that

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happens to us constantly, all the time. I don't know these guys. Yes, that's the phone number that was on my phone. How it, how that happened, if, if somebody else had that phone or I thought I was calling somebody else or they called me, I don't know. But I don't know them dudes. That picture, that night, I don't, you know, I don't, I don't rem, is this supposed to be the night after the, the, uh, the game in, in question or whatever?

RJ: That's correct.

TM: I don't know. I, you know, there was some dudes that was with us, not with us, came with us, was staying or whatever, uh, this is my friend, I'm with him, you know, I don't know.

AC: You had indicated he also --

TM: Wasn't with.

AC: -- knew Lloyd, correct, Faison?

TM: Yeah, he knew Lloyd. He knew Lloyd.

RJ: Help, help us what Lloyd Lake's doing in your locker room?

TM: I have no idea. I have no idea.

RJ: And when you take pictures with fans and that, do you usually put your fingers up behind their head and to --

TM: That --

RJ: -- everybody?

TM: -- that's my buddy. I'm making it funny, like a rabbit ear.

RJ: Well, these guys certainly are part of the group.

TM: They're standing a little ways behind. I mean, this, this is --

RJ: Okay coach.

TM: -- they're standing a little in the background. They're, they're, like, not in here with me. This, this looks like a picture of me and Faison and they're standing behind, you know.

RJ: So you, you still deny that you don't even know these people?

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RJ: That's correct.

MJ: Okay. I mean, uh, the fact that he might not recall something does that, does that, and a meeting is a basis for unethical conduct, which is, this --

RJ: We think, we think, we think that--

MJ: -- it's not even, it's not even a violation.

RJ: -- we think he was, he, we think he denied ever knowing the guy.

TM: I don't know him. I'm denying today even --

RJ: There's telephone records that indicate --

TM: That's right.

RJ: -- that he had his number and he made calls and a call made to him.

TM: That's right.

EF: Well I think there's telephone records --

RJ: There's --

EF: -- that showed that --

MJ: There was --

EF: -- he called a cell phone that's listed on his business card. It doesn't mean that Lloyd Lake was the one answering the phone.

TM: I never had Lloyd's --

EF: It could've --

TM: -- I never had Lloyd's --

RJ: He had to have done it.

TM: -- I never had Lloyd Lake's business card.

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RJ: -- there'll be plenty of time --

MJ: -- what's he doing in their locker though, Rich, so we're just trying to respond.

RJ: Okay.

MJ: I mean, you, you know how he claimed he got in there, so.

TM: Anyway. So I don't know Lloyd Lake.

RJ: Okay.

TM: I've never spoken to Lloyd Lake. That night, uh, it sounds to me and I don't, there's no evidence, there's no proof that Reggie was there and I don't remember Reggie being there, I was trying to get a hold of Reggie obviously. If Reggie gave me that number to call him on or somebody else gave me that number, I, I don't know.

RJ: Coach, help me with this 'cause --

TM: Uh-huh.

RJ: -- I've gotta try to figure this out. There's a call to Lake's number, then there's a call to Bush's, or there's a call from Bush and then there's a call to Lake.

TM: Uh-huh.

RJ: Back to back.

TM: It's a call from Reggie.

RJ: To right, right, calls are back to back.

TM: And was we talking for a little while?

RJ: It's just a, there just boom, boom. Right, right in a row.

MJ: What --

RJ: Within the same time period.

MJ: -- what day?

NCAA Interview Notices (Divisions I and II)

You are about to be interviewed by a representative of the NCAA Enforcement Services staff. You may be represented by personal legal counsel during this interview. Prior to this interview, the NCAA would like to notify you of the following bylaws:

32.3.7.1 Disclosure of Purpose of Interview. When an enforcement representative requests information that could be detrimental to the interests of the student-athlete or institutional employee being interviewed, that individual shall be advised that the purpose of the interview is to determine whether the individual has knowledge of or has been involved directly or indirectly in any violation of NCAA legislation. (Revised: 4/10/06)

32.3.7.2 Responsibility to Cooperate. At the beginning of an interview arranged or initiated by the enforcement staff, a current or former student-athlete or institutional employee shall be advised that refusing to furnish information or providing false or misleading information to the NCAA, conference or institution may result in an allegation that the individual has violated NCAA ethical-conduct legislation (see NCAA Bylaw 10.1).

30.1 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) may include, but is not limited to, the following: (Revised: 1/10/90, 1/9/96, 2/22/01)

- (a) Refusal to furnish information relevant to an investigation of a possible violation of an NCAA regulation when requested to do so by the NCAA or the individual's institution;
- (b) Knowing involvement in arranging for fraudulent academic credit or false transcripts for a prospective or an enrolled student-athlete;
- (c) Knowing involvement in offering or providing a prospective or an enrolled student-athlete an improper inducement or extra benefit or improper financial aid; (Revised: 1/9/96)
- (d) Knowingly furnishing the NCAA or the individual's institution false or misleading information concerning the individual's involvement in or knowledge of matters relevant to a possible violation of an NCAA regulation; or
- (e) Receipt of benefits by an institutional staff member for facilitating or arranging a raceing between a student-athlete and an agent, financial advisor or a representative of an agent or advisor (e.g., "rucker"); (Adopted: 1/9/96; Revised 8/4/05)
- (f) Knowing involvement in providing a banned substance or impermissible supplement to student-athletes, or knowingly providing medications to student-athletes contrary to medical licensure, commonly accepted standards of care in sports medicine practice, or state and federal law; (Adopted: 8/4/05)
- (g) Failure to provide complete and accurate information to the NCAA or institution's admissions office regarding an individual's academic record (e.g., schools attended, completion of coursework, grades and test scores); (Adopted: 4/27/06)
- (h) Fraudulence or misconduct in connection with entrance or placement examinations; or (Adopted: 4/27/06)
- (i) Engaging in any athletics competition under an assumed name or with intent to otherwise deceive. (Adopted: 4/27/06)
- (j) Failure to provide complete and accurate information to the NCAA, Initial-Eligibility Clearinghouse or the institution's athletics department regarding an individual's amateur status. (Adopted: 1/8/07)

I have reviewed and understand this form and the notices contained therein.

TODD McNAIR
Printed name

Todd S. McNeil
Signature

2-15-08
Date

The National Collegiate Athletic Association
January 19, 2007 TCH:ajh

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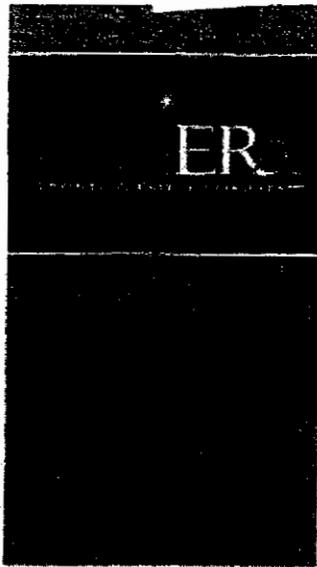
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A0724



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A0725

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PURSUANT TO PROTECTIVE ORDER

NCAA 000737

A0726

B245475

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION 3

TODD McNAIR,
Plaintiff-Respondent,

v.

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION,
Defendant-Appellant.

Appeal from Superior Court for the County of Los Angeles
Honorable Frederick Shaller
Case No. BC462891

APPELLANT'S APPENDIX

Pages previously lodged under seal.
Filed publicly pursuant to February 6, 2015 Order

Volume 2

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NCAA DIV. I INFRACTIONS COMMITTEE

UNIVERSITY OF SOUTHERN CALIFORNIA

FEBRUARY 18-20, 2010

JOHN M. BOWEN & ASSOCIATES - (816) 421-2876

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PROCEEDINGS BEFORE THE DIVISION I
COMMITTEE ON INFRACTIONS OF THE
NATIONAL COLLEGIATE ATHLETIC ASSOCIATION

In Re: UNIVERSITY OF
SOUTHERN CALIFORNIA) Case No. M295

TRANSCRIPT OF PROCEEDINGS

BE IT REMEMBERED, that on this 18th day of February, 2010, the above-entitled matter comes on for hearing before the Division I Committee on Infractions of The National Collegiate Athletic Association, meeting in the Marriott Suites Hotel, Tempe, Arizona, beginning at 8:30 o'clock a.m., with Chairman Paul Dee, presiding.

The other members of the Committee present are: Messrs. Britton Banowsky, Dennis Thomas, John Black, Brian Halloran; and Mmes. Josephine Potuto, Melissa "Missy" Conboy, and Eleanor Myers.

Also in attendance was Mr. Rodney Uphoff, Coordinator of Appeals, and Mr. Roscoe Howard, appearing as an observer.

Mr. Shepard Cooper, Director for the Committees on Infractions, Mr. Jim Elworth, Assistant Director for the Committees on Infractions, Ms. Cheryl DeWess and Ms. Karen Martin, Assistants to the Committee on Infractions, were also present.

1 Representing the Pac-10 Conference are
2 Messrs. Larry Scott and Ron Barker.
3
4 (WHEREUPON, the following proceedings
5 are had and entered of record.)
6
7 CHAIRMAN DEE: Good morning, everyone
8 This is Case No. M295, the University of
9 Southern California. My name is Paul Dee. I am
10 the University Lecturer in Law and Education and
11 formerly the Director of Athletics and general
12 counsel at the University of Miami. I serve as
13 Chair of the Division I Committee on
14 Infractions.
15 With me today hearing this case are to
16 my right, Mr. John Black, a partner with the law
17 firm of Polsinelli, Shughart of Kansas City,
18 Missouri. Mr. Black is a public member of the
19 Committee.
20 Next is Ms. Eleanor Myers, the Faculty
21 Athletics Representative and Professor of Law at
22 Temple University School of Law.
23 Mr. Britton Banowsky, the Commissioner
24 of Conference USA. Dr. Dennis Thomas, the
25 Commissioner of the Mid-Eastern Athletic

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1 Ms. Naima Stevenson from the General
2 Counsel's Office of The National Collegiate
3 Athletic Association, and Dr. Bernard Franklin,
4 the NCAA's Executive Vice-President for
5 Membership and Student-Athlete Affairs were also
6 in attendance.
7 APPEARANCES
8 The NCAA Enforcement Staff of the
9 National Collegiate Association was represented
10 by Messrs. David Price, Amcen Najjar, Rich
11 Johanningmeir, Tom Hosty, David Didion, Chris
12 Strobel; and Mmes. Angie Cretors, Stephanie
13 Hannah, LuAnn Humphrey, Jennifer Anderson; and
14 Mmes. Julie Roe and Rachel Baker by
15 teleconference.
16 Appearing on behalf of the University
17 of Southern California are Messrs. Steven
18 Sample, William King, William Brooks, Mike
19 Garrett, Lane Kiffin, Todd Dickey, Mark Jones,
20 Pete Carroll, Magdi El Shahawy; and Mmes. Carol
21 Mauch Amir, Noel Ragsdale, Ellen Ferris, Valerie
22 Hickman and Hallett Ruzic.
23 Mr. Todd McNair, assistant football
24 coach, appears in person with his counsel, Mr.
25 Scott Tompsett.

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1 Conference and formerly the Director of
2 Athletics at Hampton University.
3 To my left are Ms. Melissa Conboy,
4 Deputy Director of Athletics and Senior Woman
5 Administrator at the University of Notre Dame.
6 Mr. Brian Halloran of Malibu, California, the
7 manager and general counsel of Painted Hills
8 Wind Developers, a company involved in the
9 renewable power business. Mr. Halloran is a
10 public member of the Committee.
11 Ms. Josephine Potuto, the Faculty
12 Athletics Representative and Professor of Law at
13 the University of Nebraska College of Law. Ms.
14 Potuto is the former chair of this Committee.
15 Seated at the table to my right is Mr.
16 Shep Cooper, the Director for the Committees on
17 Infractions, and Mr. Jim Elworth, the Assistant
18 Director.
19 At the table to my left is the
20 Committee's Coordinator of Appeals, Mr. Rodney
21 Uphoff, a Professor of Law at the University of
22 Missouri, Columbia. Seated beside Mr. Uphoff is
23 Mr. Roscoe Howard, a partner in the law firm of
24 Andrews Kurth in Washington, D.C. Mr. Howard is
25 a new member of this Committee and is attending

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1 this hearing as an observer.
 2 At the table between the enforcement
 3 staff and the University is Ms. Naima Stevenson
 4 of the NCAA General Counsel's office. Seated
 5 with Ms. Stevenson is Dr. Bernard Franklin, the
 6 NCAA's Executive Vice-President for Membership
 7 and Student-Athlete Affairs. I just want to
 8 welcome Dr. Franklin. We singled you out. He
 9 is attending this case as an observer, as I
 10 said.
 11 Ms. Cheryl DeWees and Ms. Karen Martin
 12 of the Committee's support staff are seated
 13 together at the table behind Dr. Franklin and
 14 Ms. Stevenson. Ms. DeWees and Ms. Martin are
 15 available to assist with any logistical needs
 16 during the hearing.
 17 Finally, to take the record in this
 18 case, as always, is Mr. John Bowen, of Bowen &
 19 Associates, a Certified Court Reporter from
 20 Kansas City.
 21 Before I turn to other instructions,
 22 let me just describe how the microphones work.
 23 On each microphone is a small black button. You
 24 activate your microphone by pushing the button.
 25 You know your microphone is activated when the

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1 red collar at the top is illuminated.
 2 When you push the button and activate
 3 your microphone, you also cut off all other
 4 microphones except mine. So, please, be
 5 careful. Don't active your microphone while
 6 someone else is speaking, but be sure to
 7 activate it when you wish to speak.
 8 You don't need to press the button to
 9 turn off your microphone as that automatically
 10 occurs when the next speaker pushes his or her
 11 button.
 12 If you push the microphone button
 13 after you have finished speaking, you may cut
 14 off the next speaker, so please avoid doing
 15 this.
 16 If the person next to you forgets to
 17 activate his or her microphone, please assist by
 18 pushing the button for them.
 19 Finally, if you have a cell phone,
 20 BlackBerry or other wireless device, please turn
 21 them completely off as they can interfere with
 22 our sound system and disrupt the hearing. We
 23 appreciate that. I will take my own advice in
 24 just a second.
 25 President Sample, would you, please,

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1 introduce yourself and the other representatives
 2 of the University?
 3 MR. SAMPLE: Thank you, Mr. Chairman.
 4 I would like to make introductions of the USC
 5 folks who are here at this hearing. To my right
 6 is Todd Dickey, USC's Senior Vice-President for
 7 Administration.
 8 Next is Carol Mauch Amir, USC General
 9 Counsel and Secretary of the University. Then
 10 William King, III, outside counsel of Lightfoot,
 11 Franklin & White; Mark Jones, outside consultant
 12 with Ice Miller.
 13 Next is Mike Garrett, USC's Director
 14 of Intercollegiate Athletics. Noel Ragsdale,
 15 Clinical Professor of Law and Faculty Athletics
 16 Representative for USC. Ellen Ferris, USC
 17 Associate Provost for Athletic Compliance.
 18 Next is Pete Carroll, former head
 19 football coach at USC. Then Magdi El Shahawy,
 20 USC's Associate Athletic Director for Academic
 21 Services. Lane Kiffin, USC's head football
 22 coach.
 23 Todd McNair, USC's assistant football
 24 coach, and Scott Tompsett, an attorney for Todd
 25 McNair.

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1 Also William Brooks, outside counsel
 2 from Lightfoot, Franklin & White. Hallett
 3 Ruzic, legal assistant at Lightfoot, Franklin &
 4 White. Then Valerie Hickman, Executive
 5 Administrator of the USC Office of General
 6 Counsel.
 7 Tomorrow you will be hearing from Bob
 8 Cantu, USC's men's basketball assistant coach,
 9 Phil Johnson, USC men's basketball assistant
 10 coach, and Johnny Yzurdiaga, Bob Cantu's legal
 11 counsel. That is my introduction, Mr. Chairman.
 12 CHAIRMAN DEE: Thank you, sir.
 13 Mr. Scott, will you, please, introduce
 14 yourself and your colleague.
 15 MR. SCOTT: Hello. I am Larry Scott,
 16 Commissioner of the Pac-10 Conference. Along
 17 with me is Ron Barker, Associate Commissioner
 18 for Enforcement for the Pac-10 Conference.
 19 CHAIRMAN DEE: Thank you and welcome.
 20 Mr. Price, would you, please,
 21 introduce yourself and the NCAA representatives
 22 here today?
 23 MR. PRICE: Thank you. I am David
 24 Price, Vice-President of Enforcement. To my
 25 immediate left are the three individuals who are

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1 responsible for presenting the case today, Ameen
 2 Najjar, Rich Johanningmeir and Angie Cretots.
 3 Continuing down the line, we have
 4 Directors of Enforcement, Tom Hosty, Dave
 5 Didion, Stephanie Hannah, LuAnn Humphrey is our
 6 Associate Director for the Basketball Focus
 7 Groups; Jennifer Henderson is a Director of
 8 Student-Athlete Reinstatement, and Chris is
 9 Director of Enforcement for secondary
 10 infractions.
 11 In addition, we have two individuals
 12 joining us by audio conference, both whom are
 13 new mothers, and they are Julie Roe who just
 14 returned 1st week from maternity leave after
 15 having her first child, Sally, and Rachel
 16 Newman-Baker, who is on maternity leave now, and
 17 two weeks ago had a young daughter named Riley.
 18 CHAIRMAN DEE: Congratulations.
 19 Please extend our best wishes, and I am sure
 20 everyone joins me in that.
 21 I have one question. Was there
 22 someone on your staff that isn't present, Magdi
 23 El Shahawy?
 24 MR. SAMPLE: He is here.
 25 CHAIRMAN DEE: Okay. I didn't see

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1 him. Thank you so much. I apologize.
 2 These hearings proceed rather
 3 informally. If you wish to take off your
 4 jacket, please feel free to do so. You are
 5 welcome to stand up and move about the room and
 6 to avail yourself of the refreshments in the
 7 back of the room.
 8 We usually spend an hour to an hour
 9 and a half, and then take a break. If at any
 10 time you need to step out of the room, please
 11 feel free to do so. There is one exception to
 12 this, and, Coach McNair, you should be here when
 13 any allegations concerning you are discussed.
 14 If you need to step out or take a break, please
 15 let me know and we will accommodate you.
 16 You were previously advised in a
 17 Notice of Allegations sent by the enforcement
 18 staff, as well as in the supplemental letter
 19 that you received from the Committee, that the
 20 Committee does not receive all of the
 21 information and material which the enforcement
 22 staff has developed, and in particular the
 23 Committee does not see all of the information
 24 that the enforcement staff has placed in the
 25 custodial file.

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1 What the Committee has seen is a list
 2 of items that I am now going to read. This list
 3 also has been provided to you. This list
 4 contains the written record of the case as it
 5 exists right now at the start of this hearing.
 6 What the Committee knows about this case is
 7 contained in this record. The record currently
 8 includes the following items:
 9 August 27, 2008, Notice of Inquiry.
 10 September 24, 2009, Notice of
 11 Allegations.
 12 December 23rd, 2009, the institution's
 13 response to the Notice of Allegations.
 14 January 4, 2010, Mr. McNair's response
 15 to the Notice of Allegations.
 16 January 11, 2010, Mr. Floyd's response
 17 to the Notice of Allegations.
 18 February 2, 2010, the case summary.
 19 February 2, 2010, a letter from Mr.
 20 William King, dated February 1st, notifying the
 21 Committee of corrections to the institution's
 22 response as it pertains to the following
 23 allegations: 1, 2, 3, 6, 7 and 10.
 24 February 2, 2010, Supplement to the
 25 University's Response at Allegation 1, Exhibits

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1 12, 45, 74, 76, 100, 160, 161 and 162.
 2 February 8, 2010, Supplement to Mr.
 3 Floyd's Response to Allegation 6.
 4 A questionnaire signed by O.J. Mayo,
 5 dated July 27, 2006.
 6 A list of topics for August 27, 2007,
 7 team meeting.
 8 February 8, 2010, Supplement to Mr.
 9 McNair's Response.
 10 A February 8th, 2010, statement signed
 11 by Martin Bayless.
 12 February 8th, 2010, Amendments to the
 13 University's Response to Allegations 1-a-(9), 1-
 14 a-(10), 1-a-(11), Supplements to the
 15 University's Response in the form of Exhibits 1-
 16 63 and 1-64.
 17 February 9, 2010, from the enforcement
 18 staff, corrections to the case summary at Pages
 19 6-7 and 6-8.
 20 The second supplement to the case
 21 summary in response to information received from
 22 the institution on February 1st and February 8th
 23 related to Mr. McNair's telephone records.
 24 February 9, 2010, Supplement to Mr.
 25 Floyd's Response for Allegations 6 and 7.

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1 A document entitled "An Alternative
 2 Approach to recruiting in Division I Men's
 3 Basketball."
 4 February 14, 2010, Pages 50 through
 5 52, and 55 through 67 of the September 6th,
 6 2007, Keith Miller interview transcript.
 7 If there are any materials which are
 8 not part of the record which I have just listed
 9 that you want the Committee to consider, then
 10 you must ask permission from the Committee to
 11 have that information introduced as evidence
 12 during this hearing.
 13 The Committee has the discretion to
 14 determine what additional information will be
 15 made part of the record.
 16 Let me emphasize that the record in
 17 this case constitutes the list of items that I
 18 have just read to you, in addition to any other
 19 items accepted into the record during this
 20 hearing, as well, of course, as the information
 21 presented and discussed here today and in the
 22 next few days that will be transcribed by Mr.
 23 Bowen.
 24 The Committee's findings in this case
 25 will be based on this record. Should there be

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1 adverse findings against the University or any
 2 involved party that result in an appeal, this
 3 record and the Committee's infractions report
 4 will constitute the full and complete record on
 5 appeal.
 6 Finally, there may be copies of
 7 memoranda or transcripts, or other documents
 8 that are provided to the University or an
 9 involved party by the enforcement staff during
 10 this hearing. These documents must be returned
 11 to the enforcement staff at the conclusion of
 12 the hearing.
 13 We are here to undertake a full and
 14 complete exploration of the issues, and because
 15 of that we have set aside three full days to
 16 hear this case. Although we do not want to rush
 17 through the hearing, as I stated in my letter of
 18 February 12th, we want everyone presenting
 19 information today to be succinct and judicious
 20 with their remarks.
 21 The University has been helpful in
 22 this regard by being willing to forego a lengthy
 23 presentation with regard to Allegation 1-a and
 24 Allegation 6. Despite this, we want everyone to
 25 be satisfied that you have had the full

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1 opportunity to explain your positions for the
 2 Committee to explore these allegations with you
 3
 4 At the conclusion of the hearing, we
 5 would like to have a discussion with the
 6 University regarding its self-imposed penalties
 7 and corrective actions, and in particular the
 8 reasoning the institution used in imposing these
 9 sanctions and implementing those corrective
 10 actions.
 11 Based on the information that may be
 12 discussed in this hearing today or that may be
 13 raised in the information previously submitted,
 14 the Committee has the authority on its own
 15 initiative to make additional findings or to
 16 amend the allegations to conform with the
 17 information presented.
 18 Additional findings may relate to any
 19 bylaw violation, including unethical conduct,
 20 lack of institutional control, or a failure to
 21 monitor.
 22 We have noted in particular that there
 23 are allegations of unethical conduct against
 24 Coach McNair. Further, there is a failure to
 25 monitor and a lack of institutional control
 claim against the institution.

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1 Even if there were no such claims,
 2 those here today should understand that the
 3 Committee can make additional findings if
 4 evidence presented to the Committee justifies
 5 such action.
 6 If the Committee should decide that
 7 additional findings may be appropriate, it will
 8 inform all parties and give you the opportunity
 9 to respond.
 10 If the additional findings relate to
 11 unethical conduct or lack of institutional
 12 control, or a failure to monitor, the Committee
 13 will afford the parties an opportunity for
 14 further response after this hearing if they so
 15 desire.
 16 Each violation charged in a Notice of
 17 Allegations or in the enforcement staff's case
 18 summary is considered to be a major violation of
 19 NCAA legislation unless specifically designated
 20 to the contrary as secondary.
 21 If the enforcement staff, the
 22 institution or Coach McNair believe a violation
 23 is secondary, including any initially alleged as
 24 secondary by the enforcement staff, the parties
 25 must make that known to the Committee at this

4 (Pages 13 to 16)

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1 hearing, either then on its written submission,
 2 if any, or present evidence and argument why it
 3 is secondary. The Committee will make the final
 4 decision after considering all of the
 5 information and arguments in the record.
 6 Everyone here today also should know
 7 that any issues related to the processing of
 8 this case, including issues regarding the
 9 conduct of the enforcement staff, must be raised
 10 during the course of this hearing. Failure to
 11 raise such claim during the course of the
 12 hearing constitutes a waiver of any such claim.
 13 Among other things, such waiver precludes
 14 raising the issue on appeal.
 15 I have been advised -- Ms. Mauch Amir,
 16 would you please make the motion that you wanted
 17 to make that you advised me you needed to make?
 18 MS. MAUCH AMIR: Thank you, Mr.
 19 Chairman. It is my understanding, as you
 20 stated, that we need to make any process issues
 21 known on the record. As you know, we have
 22 raised a fair process claim as part of our
 23 response in order to preserve our rights in this
 24 regard.
 25 We do believe that our fair process

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1 rights were violated when we were excluded by
 2 the NCAA from participation, particularly in the
 3 interview of Lloyd Lake, who is the key witness
 4 the NCAA has relied upon in making allegations
 5 against the USC football program.
 6 We were also excluded from a number of
 7 other interviews of Lake's family members and
 8 other individuals making allegations against the
 9 football program.
 10 I think it is important to note that
 11 we and the Pac-10 were excluded from these
 12 interviews after a full 18 months of working
 13 cooperatively with the NCAA and Pac-10 staffs to
 14 investigate these issues.
 15 Ultimately, the exclusion violated
 16 USC's fair process rights in that we did not
 17 have an opportunity to confront and cross-
 18 examine this key witness. It is not an
 19 ancillary witness. Lloyd Lake ultimately became
 20 the linchpin -- his testimony became the
 21 linchpin of many of the allegations against the
 22 football program.
 23 Had we been allowed in the interview,
 24 we feel we could have tested the reliability and
 25 credibility of the information that Lake gave

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1 the staff and indeed the reliability and
 2 credibility of Lake himself.
 3 We have, of course, provided a written
 4 statement, as you know, in our response of our
 5 fair process position, and to the extent that I
 6 have not included all these points that were
 7 made in our written presentation, I would like
 8 to incorporate them herein by reference. Thank
 9 you.
 10 CHAIRMAN DEE: Okay. Thank you very
 11 much. I don't know whether it is appropriate
 12 for a response at this point or whether we
 13 should just move forward.
 14 Mr. Price. No?
 15 MR. NAJJAR: If I could briefly
 16 respond. I don't disagree that the institution
 17 and the Pac-10 were excluded, but I want to make
 18 it clear that it was not the enforcement staff
 19 that excluded them. It took us months and
 20 months and months of wrangling to get Lloyd
 21 Lake's interview in the first place.
 22 As you know, he is certainly not under
 23 the jurisdiction of the NCAA. He did not have
 24 to interview with us at all, and he and his
 25 legal counsel excluded the University and the

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1 Pac-10. So, I want to make that clear. Again,
 2 it was not the enforcement staff.
 3 Every interview we attempted or
 4 conducted, we always requested that the
 5 University of Southern California and the Pac-10
 6 be allowed to participate, and in many of those
 7 instances we were successful.
 8 The other thing I would like to point
 9 out is after we were able to secure Lloyd Lake's
 10 interview, and up to this moment the institution
 11 never came to us, nor as far as we know did they
 12 ever approach Lloyd Lake or his legal counsel to
 13 secure their own interview.
 14 MS. MAUCH AMIR: May I respond to
 15 that, Mr. Chairman?
 16 CHAIRMAN DEE: Are you finished, Mr.
 17 Najjar?
 18 MR. NAJJAR: Yes.
 19 CHAIRMAN DEE: Okay. Please.
 20 MS. MAUCH AMIR: I would like to
 21 clarify a few of those points. In fact, I have
 22 an e-mail here dated November 6, 2007, which is
 23 the date of the Lake interview. We were
 24 informed the morning of the Lake interview that
 25 the interview was to move forward.

<p>Page 45</p> <p>1 we will be happy to accommodate you. 2 MR. SAMPLE: Thank you. 3 CHAIRMAN DEE: Mr. Scott, did you wish 4 to make an opening statement? 5 MR. SCOTT: Thank you, Mr. Chairman. 6 I appreciate the opportunity to be here and to 7 make a brief opening statement. I am 8 Commissioner of the Pac-10 Conference, and have 9 been since July 2009. 10 With me is Ron Barker, who is our 11 Association Commissioner for Enforcement. As 12 many of you know, the Pac-10 is unique in terms 13 of having its own enforcement division and 14 having a Compliance Enforcement Committee that 15 is regularly working with our schools to review 16 violations and self-reported incidents. 17 I joined the Pac-10 this past summer, 18 and as I was approaching joining, and soon after 19 I joined, I was certainly reading an awful lot 20 about this case and I have asked many questions 21 about it. 22 I know this has been played out 23 repeatedly in the media over a long period of 24 time, and there are a lot of opinions that have 25 been expressed about this case. The events in</p>	<p>Page 47</p> <p>1 one of the very important goals that was laid 2 out for me as I was arriving in this job and 3 since is the great importance our conference and 4 our presidents have placed on strict adherence 5 to Pac-10 and to NCAA regulations. 6 There is a deep commitment to 7 conducting high-quality intercollegiate 8 athletics programs in observance of those rules. 9 We remain committed to those goals, and I remain 10 committed to those goals, and we look forward to 11 continuing to work closer with our institutions 12 and with the NCAA in furthering those. Thank 13 you. 14 CHAIRMAN DEE: Thank you, sir. 15 Mr. McNair, Coach McNair, would you 16 wish to make an opening statement, or your 17 counsel wish to make an opening statement at 18 this time? 19 MR. McNAIR: Yes, I will make one. I 20 am going to give a brief opening statement, 21 because I want you to hear directly from me 22 first. I am not happy to be here and I don't 23 think I deserve to be here. 24 I cooperated with the enforcement 25 staff and I am very disappointed to be charged</p>
<p>Page 46</p> <p>1 question, or most of the events in question 2 obviously took place before I arrived last 3 summer, so I am certainly not in a position to 4 talk about the specifics of the case or how the 5 University would have addressed them at the 6 time. 7 But what I can tell you is I have had 8 numerous conversations with President Sample and 9 his senior team, Mike Garrett, Noel Ragsdale, 10 soon after arriving, and they have been very 11 open and forthcoming with me and others in the 12 conference about this case. 13 Moreover, as an institution, USC has 14 been actively involved in our compliance and 15 enforcement activities. They have regularly 16 reported violations after investigating them. 17 They have actively served and chaired our 18 Compliance and Enforcement Committee. 19 In fact, USC routinely reports more 20 violations than any other institution in the 21 Pac-10 Conference. They have recently self- 22 imposed penalties which not only penalized USC 23 but also have had an effect on the conference 24 and our fellow member institutions. 25 I want to simply underscore today that</p>	<p>Page 48</p> <p>1 with violating NCAA principles of ethical 2 conduct. I did not participate in a cover-up to 3 hide violations from USC or the enforcement 4 staff. 5 I was very close with Reggie Bush, but 6 if I had known he was accepting benefits in 7 violation of NCAA legislation, I would not have 8 hesitated to tell USC. 9 I want to thank USC for standing by me 10 and supporting me throughout this process. I am 11 very grateful that USC believes in my character 12 and my integrity, and is helping me to defend 13 against these allegations. 14 Finally, although my attorney is here 15 and will help me present my response to the 16 allegations, I want the Committee to know that I 17 am eager to participate in the discussion today 18 and I will answer any questions that you have. 19 Thank you very much. 20 CHAIRMAN DEE: Thank you, sir. 21 Mr. Najjar, does the staff have any 22 preliminary comments before turning to 23 Allegation 1-b? 24 MR. NAJJAR: Thank you, Mr. Chair. I 25 have a brief opening. If this rather large case</p>

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1 could possibly be distilled down to one theme, I
 2 would call it "bury your head in the sand."
 3 Individuals named and mentioned in these
 4 allegations missed or ignored obvious signs of
 5 NCAA bylaw violations, and certainly the
 6 institution failed to acknowledge and confront
 7 most of the issues before you today.
 8 The recruitment of high-profile
 9 prospects and the fielding of very high-profile
 10 student-athletes to compete for your University
 11 creates and requires a greater responsibility
 12 for monitoring on the part of the institution
 13 and its employees.
 14 Beginning in October 2004, and
 15 throughout his collegiate career, Reggie Bush
 16 and his family had their hands out to whomever
 17 would put money in them. Allegations 1 and 2
 18 relating to football detail a laundry list of
 19 impermissible benefits provided to Bush and his
 20 family, yet despite numerous red flags the
 21 University failed to recognize or detect
 22 violations.
 23 Additionally, the enforcement staff
 24 will show that Reggie Bush's coach and close
 25 friend, Todd McNair, became aware of Bush's

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1 involvement with Lloyd Lake and others in a
 2 fledgling sports agency and marketing company.
 3 Yet, they made no inquiry into Bush's
 4 participation and failed to alert anyone at the
 5 institution. In particular, concerning the
 6 Marshall Faulk party in San Diego, when Mr.
 7 McNair's first alibi fell apart, he had to
 8 invent another one. And we will show that his
 9 second alibi is merely that, an invention.
 10 On March 5th, 2005, when Coach McNair
 11 met Lloyd Lake, learned the nature of Lake's
 12 business, and that Lake had supplied the Hyatt
 13 hotel room to Reggie Bush, Coach McNair should
 14 have reported his knowledge to Compliance,
 15 rather he buried his head in the sand.
 16 The enforcement staff does not believe
 17 a number of Todd McNair's explanations are
 18 credible and we will show that he provided false
 19 and misleading information to the institution
 20 and the enforcement staff.
 21 Rich will provide additional
 22 background in his opening comments, but let me
 23 say this about Lloyd Lake. He may have
 24 skeletons in his closet which makes it easy for
 25 the institution to malign and dismiss him. He

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1 may be motivated by money, which as you will see
 2 he should be.
 3 But the enforcement staff believes,
 4 and we will establish that Lloyd Lake's
 5 statement is credible, because of the depth and
 6 detail of his knowledge concerning Reggie Bush's
 7 actions and the fact that Lake is corroborated
 8 by a number of other witnesses, documents, phone
 9 records, and even photos.
 10 To disbelieve Lloyd Lake's accounting
 11 of these events is to believe that he invented
 12 and orchestrated the year-long convoluted
 13 conspiracy to defraud Reggie Bush. However,
 14 Lloyd Lake eventually fell out of favor with
 15 Reggie Bush.
 16 After Bush was employed in a
 17 permissible and exclusive internship with Sports
 18 Link during the summer of 2005, with the
 19 awareness and assistance of the institution,
 20 Reggie Bush and his family turned to sports
 21 marketing agent Michael Ornstein for a profusion
 22 of impermissible benefits to carry him through
 23 the remaining years of his college career.
 24 Despite the institution's awareness of
 25 a circumstance requiring heightened scrutiny, a

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1 series of red flags and warning signs were
 2 ignored.
 3 While the details of this case are
 4 obviously important, I would ask the Committee
 5 to keep in mind the overall sequence of events
 6 and particularly how Reggie Bush's various
 7 relationships evolved as we thoroughly examine
 8 the allegations and issues.
 9 I will hold my opening comments
 10 related to the men's basketball until Coach
 11 Floyd and his legal counsel are present.
 12 With that, thank you and we are
 13 prepared to present Allegation 1-a.
 14 CHAIRMAN DEE: We have agreed that we
 15 are going to take the allegations that involve
 16 Coach McNair first. Did we not agree to that,
 17 that we were going to do 1-a? We will do 1-a,
 18 then 1-b, and then 3.
 19 MR. NAJJAR: 1-a, 1-b and then 3.
 20 CHAIRMAN DEE: We will jump 2. Is
 21 that what we agreed to?
 22 MR. NAJJAR: That is correct. Thank
 23 you.
 24 CHAIRMAN DEE: Is the University aware
 25 of this and agree to that? We will do 1-a, 1-

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1 Reggie acknowledges that he socialized
 2 with Lloyd Lake. There were a lot of telephone
 3 calls back and forth. Some were about the
 4 agency. He places himself at the Faulk party.
 5 He acknowledges that he called and asked Lloyd
 6 to go to the party. He puts himself in the
 7 hotel room. He puts himself in the limousine.
 8 So, he does a lot of things to
 9 actually support what Lloyd Lake has told the
 10 staff. Also, we think Percy Harvin is a very
 11 key witness that the Committee needs to focus
 12 on, and I am going to touch upon what he has to
 13 say here in just a second.
 14 I want to call the Committee's
 15 attention to the date of October 29, 2005. I
 16 want the Committee to keep this in mind as you
 17 go through this entire presentation and the
 18 entire discussion of all the allegations,
 19 because it is going to link.
 20 What is the key about it is this:
 21 Lloyd Lake told the staff that on that
 22 particular day, which the University was playing
 23 Washington State University, that he and his
 24 partner, Michael Michaels, traveled to Los
 25 Angeles to attend that particular football game.

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1 After the football game, he went down
 2 on the field, Reggie and Lamar brought him into
 3 the locker room. Lloyd provided the staff with
 4 photographs of himself and others in the locker
 5 room, and he said after the game he went to
 6 Reggie's apartment, and after Reggie arrived he
 7 took the family out to dinner to a Chinese
 8 restaurant.
 9 They took Reggie to a mall where they
 10 purchased clothing items for him. they also got
 11 a room at the Marriott Hotel for a couple of
 12 Reggie's friends, and then that evening they
 13 went out and socialized, and also socialized
 14 with Faison Love and Coach McNair.
 15 Now, when we went to check this, Percy
 16 Harvin, as I think many of you know, was one of
 17 the outstanding intercollegiate football players
 18 for the University of Florida. He was recently
 19 named the National Football Player Rookie of the
 20 Year.
 21 When we interviewed Percy Harvin, he
 22 told us that, yes, he did attend the USC-
 23 Washington State game on an official visit. So,
 24 after the game, his host was Reggie Bush. He
 25 told us that after coming out of the locker

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1 room, they went to a little barbecue that the
 2 parents of the football players put on.
 3 He had something to eat. He said then
 4 he went back to his hotel; the limousine service
 5 took him back to his hotel room, and Reggie Bush
 6 went on his way.
 7 He said the next time that he heard
 8 from Reggie Bush was at 11:30 that night when he
 9 got a phone call, and Reggie told him that he
 10 was downstairs in the parking lot waiting for
 11 him to come down to take him out to a club to
 12 socialize.
 13 As the investigation unraveled, what
 14 we found was that the game, that day that
 15 Washington State game was a 12:30 game. So, it
 16 is very much possible that Percy Harvin was
 17 sitting in his hotel room from 6:00 o'clock
 18 until 11:30.
 19 So, what Lloyd Lake told us is also
 20 very possible that he did take the Bushes and
 21 the Griffins out to dinner, they did take them
 22 out to a mall for some clothing items. That all
 23 this in that time frame becomes possible.
 24 Also, which is interesting about this
 25 October 29th date is that Lloyd recalls when

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1 they are driving around with Reggie, he receives
 2 a call from Mike Ornstein. Lloyd says he could
 3 hear part of the conversation, and at first
 4 Lloyd thought this is a call from a coach,
 5 because he could hear things like, "You
 6 shouldn't be out with these guys. What are you
 7 doing out with them?" It was that type of
 8 language.
 9 He says when Reggie hung up, Reggie
 10 acknowledged that the call was from Ornstein.
 11 Lloyd said that the following day they had
 12 scheduled to take Reggie to a Ferrari dealership
 13 and Michaels was going to begin to set the
 14 paperwork and get the wheels in motion so that
 15 once Reggie declared for the draft that they
 16 could provide him with a Ferrari. He said all
 17 of a sudden he noticed a real change in Reggie
 18 Bush.
 19 He says the next day Reggie cancels
 20 the trip to the Ferrari dealership. He said
 21 that the Griffins quit asking him and Michaels
 22 for money. He said Reggie quit asking him for
 23 money.
 24 Why is this significant to the
 25 Committee? Because if you will check, Mike

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1 cetera, we probably would not be here today on
 2 Allegation 1 and Allegation No. 3. But Mr. Bush
 3 has provided absolutely no documentation
 4 whatsoever.
 5 In a February 14th latimes.com article
 6 by David Wharton, Mr. Garrett is quoted as
 7 saying, "If you talk to Reggie Bush or if Mayo
 8 were here, they would defend the University.
 9 They loved the University."
 10 Reggie Bush had the opportunity to
 11 defend the University and his good friend, Coach
 12 McNair. But for some reason, he chose not to
 13 provide the documentation that would have
 14 prevented the University and Coach McNair from
 15 going through this ordeal.
 16 That basically concludes the staff's
 17 general presentation for Allegation No. 1. We
 18 are ready to move to the issue as to whether or
 19 not there was an oral agreement between the
 20 parties.
 21 CHAIRMAN DEE: Okay. Before we do, I
 22 would like to ask the institution if you have a
 23 response.
 24 MR. KING: Yes, briefly. I didn't
 25 realize we were going to talk more about

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1 Allegation 1-b at this point than a, and I want
 2 to make it clear that we have responses to many
 3 of the things that Mr. Johannimgmeir pointed
 4 out.
 5 We certainly don't agree entirely with
 6 many of the things that he said and we will
 7 address those in due course as we go through 1-
 8 b. I will not spend 30 or 40 minutes, unless,
 9 Mr. Dee, you just want me to right now going
 10 through point by point how we would respond to
 11 that.
 12 CHAIRMAN DEE: It is my choice?
 13 MR. KING: I would like to give you,
 14 maybe some background on our approach to
 15 Allegation 1-a. So, perhaps it might expedite
 16 things, at least give you some insight into our
 17 thought process.
 18 At any time, if I use the name of a
 19 person that you don't recognize, the people on
 20 either side of this room had been living with
 21 these names for four years, and they are like
 22 their family now. You have been living with
 23 them for maybe six weeks, so if I am talking
 24 about something that doesn't register, please
 25 shut me down and make sure we are on the same

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1 page.
 2 Mr. Johannimgmeir went through the
 3 names of the witnesses, and you will hear them
 4 over and over again. I won't repeat that. But
 5 it is accurate to say that Lloyd Lake is the
 6 centerpiece of Allegation 1 and Allegation 3.
 7 As we have noted in our response, some
 8 of the allegations that he has made appear to be
 9 correct. Some of the allegations that he has
 10 made appear to be in doubt in our mind. There
 11 some, especially Allegations 1-b and 3, the
 12 allegations in 1-b and 3, we believe are not
 13 correct. I hope we have made that very clear.
 14 I want to give you USC's view at the
 15 outset of this sports agency. Mr. Johannimgmeir
 16 referred to it as New Era. For the first year
 17 of its so-called existence, it was known as
 18 Aggressive Integrity. That is a name you will
 19 not hear very often, because it doesn't exactly
 20 help Mr. Lake's story. The name change of the
 21 agency, as you will see over time, is of some
 22 significance.
 23 After looking at the evidence, here is
 24 the conclusion that we came to: That in the fall
 25 of 2004, it seems clear that Lloyd Lake and

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1 Lamar Griffin, Reggie Bush's stepfather, had
 2 some discussions about possibly doing this.
 3 The allegation, the first allegation
 4 that we will discuss in 1-a is that Reggie Bush
 5 agreed during the middle of his sophomore year
 6 to become the agency, which at that point was
 7 nothing more than an idea, the first client.
 8 We do strongly disagree with that,
 9 that Bush was a part of that. But there clearly
 10 was some back and forth starting in late '04
 11 through '05 between Mr. Griffin and Mr. Lake,
 12 and that's really not in dispute.
 13 Now, with regard to the specific
 14 allegations in 1-a, we have admitted violations,
 15 if you want to check these off, 1-a-(6), 1-a-(7)
 16 in part, 1-a-(9) in part, 1-a-(10) and 1-a-(11).
 17 With regards to the remaining
 18 allegations, we have not admitted them to be
 19 substantially correct, and the basis for our
 20 position is that we do not believe the evidence
 21 in the record before you is sufficient to
 22 support a finding of a violation under the bylaw
 23 that you are to follow under the question that
 24 was put to us as part of the notice is for each
 25 one of these is it substantially correct?

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<p>1 question we face, either tonight or sometime 2 tomorrow, let's proceed with Item 5, Issue 5 of 3 No. 1.</p>	<p>1 from the Committee? 2 Dr. Thomas.</p>
<p>4 MR. JOHANNINGMEIR: Mr. Chair, Issue 5 5 is did Michaels provide Bush two nights lodging 6 at the Manchester Grand Hyatt? The position of 7 the institution is that they believe there is no 8 basis on which to conclude the allegation is 9 substantially correct and does not agree that 10 Bush stayed at the hotel that night.</p>	<p>3 MR. THOMAS: To the enforcement staff, 4 would I be incorrect if I indicated that this 5 No. 5 is based upon Lake's testimony? 6 MR. JOHANNINGMEIR: Lake's, Bush's and 7 the hotel receipt, and Maiesha Jones. 8 MR. THOMAS: Let me ask another 9 question. How confident are you that Lake's 10 testimony with the allegations as refers to Lake 11 and Bush, how confident are you that Lake in 12 terms of his credibility is right on, 100 13 percent, 90 percent?</p>
<p>11 The enforcement staff believes that 12 Bush requested to attend the Faulk party and 13 that Lake contacted Michaels who provided Bush 14 two nights lodging at the Manchester Grand Hyatt 15 based on Lake's statement that at Bush's request 16 he and Michaels provided Bush two nights of 17 lodging at the Manchester Grand Hyatt so that 18 Bush could attend the Faulk party.</p>	<p>14 How comfortable are you with Lake in 15 terms of his credibility? I know you have 16 already stated throughout here that you think 17 that he is credible. But how confident are you? 18 MR. NAJJAR: I am not going to put a 19 percentage on it, but let me say this. If we 20 were not confident, we would not have brought 21 this allegation or any of these other 22 allegations.</p>
<p>19 Jones' statement, Maiesha Jones, that 20 is again Lloyd Lake's former girlfriend, her 21 statement that she was aware that Bush called 22 and told Lake that Bush was coming to the Faulk 23 party and needed a hotel room and limousine. 24 We also point out to the Committee 25 that Bush acknowledged that he did make calls to</p>	<p>23 MR. THOMAS: Well, I guess you didn't 24 answer the question. But it seems to me that 25 when you all questioned Lake in reference to 5,</p>
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<p>1 Lake, and Bush stated Michaels asking about 2 going to the Faulk party with them. Bush also 3 acknowledged that he was in the limousine and 4 went to the Faulk party with Lake and Michaels. 5 Bush also acknowledges that he was in 6 the hotel room, but that he did not stay in the 7 hotel room.</p>	<p>1 on whether he got the key or not, and McNair's 2 response, it seems that Bush -- oh, I am sorry. 3 It seemed that Lake wasn't sure how he got the 4 key, whether he left it at the desk or whether 5 he handed it to him. 6 MR. NAJJAR: Mr. Thomas -- 7 MR. THOMAS: Hold on. Let me finish 8 up here and then you can have your say. But I 9 do reserve the right to have my say, if I may. 10 Okay?</p>
<p>8 CHAIRMAN DEE: Mr. King, for the 9 record. 10 MR. KING: Chairman Dec, other than 11 what is in our written response, we don't have 12 any further information to add. If you will 13 recall in my introductory remarks, though, I 14 pointed out that there was one thing I wanted to 15 modify in our response where I had said -- where 16 the University had said in the response that 17 there was no information suggesting that Reggie 18 Bush was in San Diego on March 4th, and the 19 staff in the case summary pointed out that 20 Lake's testimony on that point was really 21 inconclusive and that Bush stated in his 22 interview he may have gone down a day or two 23 early. I just wanted to point that 24 clarification out again.</p>	<p>11 "Cretors: You paid, you went and 12 registered the room in your name at the Hyatt? 13 "Lake: It was in Mike's name but he 14 left it where I could pick the key up, too. 15 "Cretors: Okay. 16 "Lake: So I can gave Reggie the key. 17 "Cretors: So Michaels arranged the 18 room and paid for the room? 19 "Lake: Yes. 20 "Cretors: And then left at the front 21 desk that Lloyd Lake could come to pick up the 22 key? 23 "Lake: Yes, or he either, or he gave, 24 or he either gave me a key. 25 "Cretors: Okay.</p>
<p>25 CHAIRMAN DEE: Okay. Any questions</p>	<p>25</p>

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<p>Page 189</p> <p>1 "Lake: I'm not sure." 2 So, I am finding it difficult 3 throughout these allegations, at what point do 4 you believe Lake and what point do you don't? 5 At some point you think he has a great deal of 6 veracity and other points you are saying this 7 just can't be true. 8 So, I am trying to really figure out 9 whether or not he is credible in terms of when 10 he does tell the truth and when he doesn't. So, 11 help me with this. 12 MR. NAJJAR: If anything, I think that 13 shows Lloyd Lake's credibility in that he 14 couldn't clearly 100-percent remember, and this 15 is what he is saying there. He is not making 16 stuff up, or embellishing, or adding or trying 17 to put somebody where he wants them to be. He 18 just told us the story as best he could 19 remember, and Reggie Bush corroborates that, 20 that he was with Lloyd in the hotel room. 21 Now, he is the one who certainly did 22 not have a good explanation as to how he got a 23 key to get into that hotel room. 24 MR. THOMAS: Okay. Lake indicated 25 that Coach McNair was in the room. That is when</p>	<p>Page 191</p> <p>1 incidents, whether they remember or not. But it 2 seems to me that if someone made arrangements 3 for a room, paid for the room, and either he 4 left a key at the front desk where someone has 5 to pick it up, or he gave me the key and I met 6 Coach McNair in the room. 7 From what I can ascertain, Coach 8 McNair was not in the room other than Ms. Jones 9 saying that she thought she heard when he was 10 talking to Lake about seeing Coach McNair in the 11 room. All I am trying to get to here is a point 12 of credibility on how you-all got there with 13 Lake. 14 MR. NAJJAR: Two things. One, this 15 allegation does not concern Coach McNair. I am 16 a bit uncomfortable bleeding into that 17 allegation ahead of time. Lastly, we defer or 18 refer to, or again remind you this is not merely 19 based on Lloyd Lake's statement. There is 20 Maiesha Jones' statement 21 Bush corroborates what Lake told us, 22 and there is a hotel receipt. That's what we 23 base the allegation on. 24 MS. CRETORS: In the transcript that 25 you read, I believe his confusion was whether</p>
<p>Page 190</p> <p>1 he first met him. Coach McNair said he wasn't 2 in the room. So, I am just trying to get a 3 sense that you-all feel very, very confident 4 about his credibility, but there are glaring, 5 from my perspective, glaring issues in terms of 6 Lake's credibility with the information that is 7 presented in the record. 8 MR. NAJJAR: I understand that, but I 9 want to make sure, are these credibility issues 10 that you are concerned with or recollection 11 issues? There is a huge difference there. 12 Credibility goes to him out and out lying or 13 making something up. 14 I am not or we are not seeing that in 15 Lloyd Lake's testimony. Confusion, some lack of 16 recollection, certainly. But I don't see those 17 as credibility issues. 18 MR. THOMAS: Well, I guess semantics 19 play a role in life. Someone could conveniently 20 have convenient amnesia. So, you see it as 21 something different. I am just trying to reach 22 a point of confident in terms of one's 23 credibility. 24 Credibility from where I sit does 25 hinge upon one's ability to recall situations,</p>	<p>Page 192</p> <p>1 Michael Michaels gave him the key or Michael 2 Michaels left the key at the hotel. But he did 3 indicate at the top of that transcript that he 4 did meet Reggie and take him up to the room. 5 The question and the part you read was 6 whether Michael Michaels gave him that key or 7 Michael Michaels left the key at the desk. I 8 just wanted to make sure. I didn't know if you 9 were talking about Michael Michaels or Reggie 10 Bush. 11 MR. THOMAS: Yes, I understand that 12 component of it. I am just going to move on. 13 Basically, I guess I got what I needed to get. 14 I understand that you guys and gals base your 15 comfortability or credibility on what people 16 tell you and other factors as well. So, I 17 understand that. 18 All this information, it just does not 19 confirm that he did or he did not. The hotel 20 receipt does not indicate that in terms of 21 Bush's name on the hotel receipt, and so that is 22 just part of my uneasiness. 23 MR. NAJJAR: It doesn't confirm what 24 for you? 25 CHAIRMAN DEE: Now, that is not the</p>

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1 purpose of this hearing. The purpose is for us
 2 to ask you questions. Okay.
 3 Ms. Conboy.
 4 MS. CONBOY: I don't want to jump
 5 ahead into another allegation, either, but I
 6 just am following up on Dennis' comments. The
 7 information that came to light in Lake's
 8 interview about the hotel stay and the
 9 information that also came to light in that
 10 interview about whether Coach McNair was there
 11 or not, is the staff believing -- you have
 12 alleged both of those things, both.
 13 Am I right in that? I just want to
 14 make sure that you are not taking parts of
 15 Lake's testimony and saying we believe this and
 16 parts that we are not going to allege. Didn't
 17 you allege both of those things? I just want to
 18 make sure I am clear on that.
 19 You alleged both, that they got a
 20 hotel for Bush and you are later alleging in
 21 another allegation that Coach McNair was present
 22 in the hotel room. You are not saying one
 23 happened and one didn't. Am I right there?
 24 MR. NAJJAR: That is exactly right,
 25 and pardon me for my earlier question, but I

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1 wanted to confirm that Reggie Bush confirmed he
 2 was in that hotel room.
 3 MS. CONBOY: I didn't know if you were
 4 picking and choosing parts of Lake's testimony
 5 to believe or not to believe. I was of the
 6 impression that you were alleging both those
 7 things. I just wanted to verify that.
 8 MR. NAJJAR: That is correct.
 9 CHAIRMAN DEE: The mere fact that he
 10 was in the room doesn't prove he stayed there.
 11 His position is that he went there to change
 12 clothes. He did go to the room, I don't think
 13 there is dispute on that, that Mr. Bush
 14 acknowledged that he went into the room.
 15 I mean, that is even in their
 16 position. They say he did. But he only went
 17 there for the purpose of changing clothes.
 18 Could it have well been this is when they showed
 19 up and saw him there and concluded that he was
 20 staying there? I mean, did Lake give him the
 21 key?
 22 Lake got him a room, and he goes up
 23 and changes clothes, and then decides to go home
 24 and never really stays in the room; is that
 25 possible?

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1 MR. NAJJAR: Certainly.
 2 CHAIRMAN DEE: Okay.
 3 Ms. Potuto.
 4 MS. POTUTO: Yes, I want to understand
 5 a little of the geography here. This Manchester
 6 Grand Hyatt, can you tell me how far that would
 7 be from Broadway where the Faulk party was?
 8 MR. JOHANNINGMEIR: Really, not that
 9 far. When you say walking distance, walking
 10 distance for one might be okay, for another it
 11 would not be. I am sure you are familiar with
 12 the Manchester Hyatt in San Diego that is on the
 13 harbor.
 14 MS. POTUTO: It would be certainly
 15 long.
 16 MR. JOHANNINGMEIR: But on Broadway is
 17 actually on the street of Broadway, which in our
 18 understanding and from being around there and
 19 downtown San Diego.
 20 MS. POTUTO: And the Griffin family, I
 21 don't know which home they were at this point,
 22 but how far is that from this club? Can anybody
 23 tell me what the distance is?
 24 MS. MAUCH AMIR: We did MapQuest that
 25 at one point. I think the Hyatt is .8 miles

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1 from on Broadway. The Griffins' home is 12
 2 miles to the east of downtown San Diego, of the
 3 Hyatt.
 4 MS. POTUTO: And can you tell me if at
 5 that point they were on Apple Street?
 6 MR. KING: They were still in the
 7 condo on Paradise Valley Road, I believe.
 8 MS. CONBOY: I have a question. Did
 9 anybody ask really how he got home from the
 10 party, if he took a car from the hotel to the
 11 party? Where did Reggie go from the party? I
 12 know that he stayed at home, but he didn't have
 13 a car with him, I don't think. *
 14 MR. JOHANNINGMEIR: Our understanding
 15 is that he went to the party in a limousine with
 16 Michael Michaels, Lloyd Lake, Lisa Lake, Tony
 17 Glenn's wife, and who am I forgetting, Maiesha
 18 Jones. According to Lisa Lake, who recalls it,
 19 he also returned to the Hyatt with them in a
 20 limousine.
 21 MR. KING: Ms. Conboy, the testimony
 22 was that he drove to the hotel, parked his car,
 23 personal car. Bush went to the room, changed
 24 clothes. This is the testimony. He rode in a
 25 limousine to the party with Lake and friends,

<p>Page 301</p> <p>1 there is really no dispute as far as the facts 2 go.</p> <p>3 CHAIRMAN DEE: Ms. Potuto. 4 MS. POTUTO: Can you just help me with 5 the dates here? You have got December '02 to 6 December '05. I thought, and maybe I was wrong, 7 that the four secondaries occurred within a 12 8 or 14-month period. Is that wrong? Did they go 9 over four years, or three years?</p> <p>10 MS. RAGSDALE: We looked back four 11 years, because of the statute of limitations. 12 MS. POTUTO: I was asking the four 13 secondaries that actually occurred, I thought 14 were within a 12 or 14-month period. I can 15 double check tonight. I just thought those were 16 the dates, that they were much closer in time.</p> <p>17 MS. RAGSDALE: I don't think so. 18 MS. POTUTO: Okay. 19 MS. RAGSDALE: I don't believe so. 20 MR. KING: Ms. Potuto, I think if you 21 look at Exhibit 73, that the reinstatement 22 request may have fallen over that period of 23 time, but the violations themselves, I think, 24 were over the three-year period. It is Exhibit 25 No. 73.</p>	<p>Page 303</p> <p>1 our response where they looked into one event 2 and then working with the Pac-10 and the NCAA 3 and so we go back and look a little farther 4 back, and then go all the way back to 2002. 5 The prospects, I think, a lot of them 6 didn't even remember any comments at all about 7 USC. But the ones who did, the vast majority of 8 those were general comments that Mr. Papadakis 9 made to the entire restaurant. 10 It as almost always, as I understand, 11 talking about his experience as a USC player. 12 We have acknowledged that crossed the line. But 13 it was not anything specific to the recruits. 14 There were a few who reported that he made 15 comments directly to them while they were in the 16 restaurant. But at least I would consider them 17 fairly innocuous. I think one of them may even 18 be considered insulting to the prospect, so it 19 would not be very bright if he went somewhere 20 else. They all reported that they made zero 21 impact on them. 22 CHAIRMAN DEE: Okay. Any other 23 questions with regard to Allegation No. 5? 24 Okay. Specifically, I believe that ends the 25 allegations, but there may be some general</p>
<p>Page 302</p> <p>1 CHAIRMAN DEE: Okay. Any other 2 questions? 3 Ms. Conboy. 4 MS. CONBOY: The institution takes the 5 position that the comments were not intended to 6 be of a recruiting nature, but they seemed 7 pretty specific to encouraging the kids to 8 attend USC. 9 Then you say they did not impact any 10 prospect's decision to attend USC. I don't know 11 if there is any information on how many of these 12 prospects who received these comments actually 13 attended USC. I think they were just very 14 general questions in making the argument that 15 these were inadvertent comments. 16 MR. KING: I believe that the vast 17 majority, all but just a handful of the 18 prospects who became student-athletes were 19 interviewed, and they were asked that specific 20 question. 21 Those interviews are not a part of the 22 record. If you would like for us to give you 40 23 or 50 more transcripts to read, we will be happy 24 to. But Ms. Ragsdale interviewed them as part 25 of this ongoing investigation as set forth in</p>	<p>Page 304</p> <p>1 questions for the coach before you leave, and I 2 would like to give everybody the opportunity to 3 ask those questions before you vacate and go 4 back and do other things. 5 So, I will start with Professor Myers. 6 MS. MYERS: I will try to master my 7 microphone here. Coach Carroll, Reggie Bush 8 lived off campus at least during the 2005 9 season. 10 Can you tell me how far away his 11 apartment was from the campus? 12 MR. CARROLL: I am not sure, but I 13 think it is about a mile or two. It is less 14 than two miles, I think. If he lived where I 15 think he lived, it is under two miles. 16 MS. MYERS: Did you ever visit him in 17 his apartment? 18 MR. CARROLL: No. In the nine years I 19 visited one time, his apartment one time. 20 MS. MYERS: Could you tell me about 21 USC, how much on-campus housing is there? 22 MR. CARROLL: After the first year, 23 our guys on scholarship at USC, we allow them to 24 move off campus. If their grades are right and 25 they have handled their business okay, then we</p>

<p>Page 357</p> <p>1 Saints, probably, and we were getting ready for 2 our season, so it was probably not much 3 communication going on, but I am sure I talked 4 to him.</p> <p>5 MS. MYERS: Did you talk to him about 6 this article? It must have been sort of 7 surprising to you that there was this article 8 and you knew him so well. As you say, it wasn't 9 true.</p> <p>10 Did you call him to say that can't be 11 true or what's going on here?</p> <p>12 MR. McNAIR: Yes, he adamantly denied 13 anything. We all believed it was a concocted 14 story.</p> <p>15 MS. MYERS: At that time that you were 16 having these conversations, did you try and 17 remember whether you know Mr. Lake or had met 18 Mr. Lake?</p> <p>19 MR. McNAIR: No, not at all. You 20 know, actually Faison Love is a friend of mine 21 who is an acquaintance of Lake's. When 22 everything came out, obviously, a lot of people, 23 it was public knowledge, you know, everybody-- 24 it was a big story in Los Angeles.</p> <p>25 When it came out, even Faison was like</p>	<p>Page 359</p> <p>1 whole time.</p> <p>2 MR. McNAIR: He was the normal 3 student-athlete as far as, you know, I am in the 4 office from 7:30 to 11:00 o'clock at night.</p> <p>5 CHAIRMAN DEE: I am talking about his 6 lifestyle. I am not talking about did he come 7 around, did he go to practice? I am talking 8 about did he appear to have money?</p> <p>9 MR. McNAIR: No, he appeared to be 10 normal like any other students.</p> <p>11 CHAIRMAN DEE: The other students 12 where, USC?</p> <p>13 MR. McNAIR: Yes. I mean, he didn't 14 appear to have any abnormal amount of money.</p> <p>15 CHAIRMAN DEE: Generally speaking, Mr. 16 King, what are we to infer on his failure to 17 cooperate with you?</p> <p>18 MR. KING: That's a very good 19 question, Chairman Dee, and one we have 20 struggled with. I think there were several 21 options. Obviously, you will decide which one 22 or ones.</p> <p>23 I think you can also may vary from 24 issue to issue. The options that come to my 25 mind, one, he is not cooperating because the</p>
<p>Page 358</p> <p>1 that is not true. He is not an agent. He 2 talked about his background. He is a gang 3 banger. He has nothing to do with sports. He 4 has nothing to do with the agency. He has 5 nothing to do with any of that.</p> <p>6 That just confirmed what I already 7 thought it was, an extortion attempt or 8 something. I just didn't believe it.</p> <p>9 MS. MYERS: I am afraid I am jumping 10 ahead a little bit. But did Mr. Love mention to 11 you that this is the same guy we saw at the club 12 that night?</p> <p>13 MR. McNAIR: No, not at all.</p> <p>14 CHAIRMAN DEE: Ms. Conboy. No? I 15 have a couple of questions, general questions. 16 Was Mr. Bush on a Pell Grant?</p> <p>17 MR. KING: No.</p> <p>18 CHAIRMAN DEE: How would you describe 19 his lifestyle when he was a student?</p> <p>20 MR. KING: Are you asking me or Coach 21 McNair?</p> <p>22 CHAIRMAN DEE: I am asking whoever 23 knows the answer.</p> <p>24 MR. KING: Then I will push my button.</p> <p>25 CHAIRMAN DEE: I tried to do that the</p>	<p>Page 360</p> <p>1 information would contradict his testimony.</p> <p>2 Two, he is not cooperating because he 3 is in litigation with Lloyd Lake.</p> <p>4 Three, he is not cooperating because 5 unfortunately like many former student-athletes, 6 once they become professionals they really don't 7 look back and don't want to be involved with 8 this process.</p> <p>9 Unfortunately, many of the events in 10 this investigation have received extensive press 11 coverage for Mr. Bush. Not much of it has been 12 positive. That may have been part of his 13 thinking. But all of those are just speculation 14 on my part, and obviously the Committee has the 15 discretion to draw whatever inference it sees 16 fit.</p> <p>17 CHAIRMAN DEE: Also, with respect to 18 the allegations that don't involve Mr. Lake with 19 people he was in litigation with, so we probably 20 are able to infer that if there was something to 21 be written out of the Lake, it doesn't apply to 22 the other information obtained about Ornstein or 23 trips or paid for trips by Ornstein, or any of 24 that?</p> <p>25 MR. KING: Let me make sure I</p>

<p>Page 373</p> <p>1 MR. KING: Sure. I am looking at the 2 actual language of the allegation rather than 3 the issues as explained by the staff. 4 CHAIRMAN DEE: Just so we are clear 5 you are looking at 1-a-(9)? 6 MR. KING: Yes, sir. 7 CHAIRMAN DEE: On Page 1-2. Okay. 8 MR. KING: I just started at the end, 9 because the last sentence is what we admit. 10 That it appears to us that they have lived there 11 at no cost regardless of what the terms or 12 agreements were on the front end, that there is 13 no evidence that we are aware of that the family 14 actually paid any rent. So, that's what we have 15 admitted. 16 As far as whether there was an 17 agreement that called for the Griffins to pay 18 \$1,400 a month, plus utilities, until such time, 19 the testimony of that is Lloyd Lake alone. His 20 testimony was that he paid out of his own 21 account -- that he made two references to a 22 personal account that he had. 23 Those records were not provided; that 24 he had records that would show that he paid half 25 of the rent. So, it is really just his</p>	<p>Page 375</p> <p>1 between the end date of the use of the house and 2 the fact that the story was breaking at the same 3 time, and he may have selected another agent by 4 that time? Is that relevant here or is that 5 true? 6 MR. KING: I will try to answer those 7 one at a time. I think the chronology, Chairman 8 Dec, Reggie selected an agent around January 9 12th, and the story broke within a few days 10 before the NFL draft. 11 I think it is fair to assume that was 12 no coincidence, and that they were, I believe, 13 evicted or left the house around the same time. 14 I don't imagine that was a coincidence, either, 15 but that is really my speculation. 16 CHAIRMAN DEE: Thank you. Other 17 questions on Allegation 1-a-(9), or Issue 8? 18 There being none, let's move on to 19 (10), which is one you have identified for 20 admission. But let's go through it. 21 Mr. Najjar, will you introduce it, 22 please, or Mr. Johannimgmeir? 23 MR. JOHANNINGMEIR: Issue No. 9 is did 24 Michaels provide the Griffins approximately 25 \$10,000 cash to purchase furniture for the Apple</p>
<p>Page 374</p> <p>1 testimony on that. 2 Then you also have got the written 3 lease itself, which did not contain any of those 4 terms. So, our position on that is that it is 5 just inconclusive whether this agreement, verbal 6 agreement to pay \$1,400 a month was in place. 7 But our view is that at the end of the 8 day the real crux of this allegation is that 9 they lived in the house and didn't pay rent, and 10 we agree with that. 11 CHAIRMAN DEE: Any questions? I think 12 we sort of have been over this a couple of 13 times, but are there any other additional 14 questions? 15 Professor Myers. 16 MS. MYERS: Who does the University 17 believe owned the house? 18 MR. KING: I think the public records, 19 Professor Myers, show that Michael Michaels 20 purchased the house. I think that for some 21 reason I have March 27th in my mind. It was 22 sometime in late March or early April where he 23 actually, I think, purchased the house. That is 24 not in dispute. 25 CHAIRMAN DEE: Any connectivity</p>	<p>Page 376</p> <p>1 Street residence? 2 The position of the institution 3 initially was that there as no basis with which 4 to conclude that the allegation is correct, 5 substantially correct, and then in their 6 supplemental they agreed that the information 7 was and acknowledged the violation. 8 The position of the staff has been 9 that they believed that Michaels did provide the 10 Griffins approximately \$10,000 cash to purchase 11 the furniture for the residence, and that was 12 based on Lake's statement that Michaels gave the 13 Griffins the \$10,000 to purchase furniture. 14 Gunner's statement that she went with 15 the Griffins to a consignment store to purchase 16 the furniture was actually there. 17 Jones' statement that she saw Michaels 18 give Denise Griffin the check, and she was also 19 at the consignment store when the furniture was 20 being purchased. 21 As is noted, Michaels refused to be 22 interviewed because of the out-of-court 23 settlement. 24 CHAIRMAN DEE: Okay. 25 Mr. King, just for the record, this is</p>

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1 specifically about the party.
 2 Coach McNair, during this interview,
 3 that was the interview where you were asked but
 4 did not reveal you were accompanied to the party
 5 by Brooke Augustin; is that correct?
 6 MR. McNAIR: That is correct.
 7 MS. CONBOY: Can you explain to the
 8 Committee why -- first of all, before I ask that
 9 question, before that second interview with
 10 Coach McNair, was he provided the type of
 11 instructions as to the importance of
 12 truthfulness and complete information being
 13 given during the course of that interview?
 14 MR. JOHANNINGMEIR: He signed a notice
 15 of interview, and the University had prepared
 16 him and he had gone through that during the
 17 first interview. We do have his signature on
 18 that document.
 19 MS. CONBOY: So, Coach McNair, having
 20 signed that document and being asked specific
 21 questions about the trip down to San Diego, can
 22 you explain to the Committee your reasoning for
 23 not divulging -- I am not suggesting an
 24 accomplice -- I am just suggesting the
 25 accompaniment of Ms. Augustin with you?

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1 MR. McNAIR: There is nothing improper
 2 about me and her, you know, going down there
 3 her accompanying me down there. I didn't think
 4 it would look good, and I was uncomfortable
 5 talking about it.
 6 I didn't understand how it would be
 7 relevant at the time. I didn't understand
 8 how -- I didn't understand I was being accused
 9 of anything. I do now, though. I wish I would
 10 have then. You know, I might not be here now.
 11 I know it was a mistake, and I am sorry that I
 12 didn't divulge that at the time.
 13 MS. CONBOY: Did you understand at the
 14 time the importance of being truthful again with
 15 the NCAA in answering all their questions
 16 completely?
 17 MR. McNAIR: Yes.
 18 MS. MYERS: Did you ask Mr. Bayless to
 19 not mention her in his interview, his first
 20 interview?
 21 MR. McNAIR: No, I did not.
 22 MS. MYERS: You and he did not have a
 23 discussion prior to his interview about your
 24 interview or about the questions that might be
 25 asked?

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1 MR. McNAIR: No, we did not.
 2 MS. MYERS: Do you think it is a
 3 strange coincidence that both you and he failed
 4 to mention her?
 5 MR. McNAIR: He might have -- he
 6 probably felt the same way I did, that it didn't
 7 look good. He probably just didn't want to get
 8 into it, either. He may not have felt
 9 comfortable talking about it, either.
 10 MS. MYERS: Why didn't you think it
 11 looked good?
 12 MR. McNAIR: Because it could raise
 13 questions. I mean, I am there with a woman, and
 14 my wife, I am pretty sure my wife knew Brooke.
 15 She met Brooke. But the people outside of that
 16 scope, I just didn't think it looked good and
 17 could raise questions and I wasn't comfortable
 18 with the speculation that could arise.
 19 MS. CONBOY: Coach, in reading the
 20 interview with Brooke Augustin, one of the
 21 things that stood out to me was the fact that
 22 when the enforcement staff asked her when she
 23 had last spoken to you, and again as Mr.
 24 Tompsett suggested, this is four and a half
 25 years or somewhere in that vicinity after the

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1 event, her immediate reaction was that she had
 2 spoken to you the previous day.
 3 Can you share with us the reason why
 4 you would be having a conversation with Ms.
 5 Augustin the day before she was being
 6 interviewed by the enforcement staff and Mr.
 7 Tompsett?
 8 MR. McNAIR: You said the day before?
 9 Just to make sure, that she was scared, she had
 10 talked to Sentt and when to go and those sort of
 11 things.
 12 MS. CONBOY: Prior to that specific
 13 interview, had you had an ongoing phone
 14 friendship with Ms. Augustin during the four and
 15 a half years since her departure, or since this
 16 event?
 17 MR. McNAIR: Yes, we are extremely
 18 close. We are best friends, basically.
 19 CHAIRMAN DEE: Ms. Potuto.
 20 MS. POTUTO: First, I just want to
 21 confirm something. Am I right that she was
 22 asked -- was she asked how many phone calls or
 23 how close in touch she was with Coach McNair?
 24 Can you remind me what the answer was?
 25 MR. NAJJAR: We did ask that. In

<p>Page 525</p> <p>1 terms of the weeks or so preceding the 2 interview, is that your question? 3 MS. POTUTO: I am reading from the 4 case summary. This information in No. 6, when 5 she was asked if she kept in touch with McNair, 6 and she relied she talked occasionally and 7 characterized their contact as maybe a couple of 8 times a week. 9 MR. NAJJAR: That is exactly right. 10 MS. POTUTO: I assume, Mr. Tompsett, 11 you don't disagree that was her response. 12 MR. TOMPSETT: I do not disagree that 13 that was her response. 14 MS. POTUTO: I know there is somewhere 15 a listing of the number of phone calls which are 16 substantially in excess of her estimate. And, 17 Mr. McNair, you just said you are very close to 18 her even still, and she described your contact 19 as talking occasionally, which doesn't suggest 20 the same level of close relationship. 21 I have a couple of questions about 22 that. One of them is, Mr. Tompsett, I didn't 23 fully understand why you felt you needed to do 24 the interview and bring her information to the 25 attention of the Committee.</p>	<p>Page 527</p> <p>1 the same questions would be asked today, and 2 certainly I cannot allow my client nor did Todd 3 want to come in here and continue to answer that 4 question falsely. 5 So, there is an obligation to correct 6 the record, and we felt it was important to do 7 that as expeditiously as possible. This all 8 took place in November, and to do it certainly 9 in advance of the hearing and to do it in 10 advance of responses being submitted and to 11 involve the enforcement staff. 12 MS. POTUTO: So, it could have been, 13 when you were talking about correcting the 14 record, it could also have been Coach McNair 15 coming forward and saying I said nobody was with 16 me, there was somebody with me, and Mr. Bayles 17 is going to be able to confirm that, and I can 18 give you her name; is that right? 19 MR. TOMPSETT: It could have been done 20 that way, I suppose, yes. 21 MS. POTUTO: So, when you are talking 22 about the ethical obligation to correct the 23 record, it is if there is something in the 24 record that at least is not complete without the 25 information from, in this case, Ms. Augustin?</p>
<p>Page 526</p> <p>1 Do you think it corroborates your 2 client, refutes your client? How would you 3 characterize the information she provides? 4 MR. TOMPSETT: I think on the issue 5 relevant to Allegation 1-b-(1), I think that she 6 corroborates Coach McNair in that she says they 7 did not go to the Hyatt Hotel that weekend. As 8 to why -- 9 MS. POTUTO: Don't pay attention to 10 me. Go ahead. 11 MR. TOMPSETT: As to why we felt the 12 need to include her in the allegation, I 13 apologize, I probably wasn't as clear as I 14 should have been in my initial investigation. 15 Because Todd initially stated that he 16 had not driven down from Los Angeles to San 17 Diego with anyone, he had failed to inform the 18 enforcement staff that she was with him and went 19 to the Faulk party with him, that was 20 inaccurate. That was a false statement. 21 So, the record was not accurate, and 22 certainly looking forward, I mean, we couldn't 23 allow that to stand. We certainly knew that 24 this was going to be a subject of vigorous 25 discussion today, and certainly anticipated that</p>	<p>Page 528</p> <p>1 MR. TOMPSETT: Yes. Not only was it 2 not complete, but it wasn't accurate and true. 3 MS. POTUTO: And to the institution, 4 that was the same position that you had, that it 5 was not complete and maybe not accurate and 6 true? 7 MR. KING: Right. If I could 8 elaborate on this a little bit. Our view was 9 that we, of course, had already assessed all the 10 information before this became available. I 11 would agree with Mr. Tompsett, it didn't change 12 the conclusion. 13 Our view was and shared with him was 14 there was no choice. I mean, we have to bring 15 this information to the attention of the 16 Committee, and that's what we did. 17 MS. POTUTO: Okay. And the issue, and 18 Mr. Tompsett, I will try it on both of you, it 19 wasn't that it was complete and, of course, it 20 is in your view it makes it more accurate and 21 true because it is your assessment of what the 22 information is and your assessment as to the 23 veracity of your client; is that right? 24 Well, in other words, it is a 25 characterization as to whether it makes the</p>

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1 MS. POTUTO: Are they just relevant to
 2 the allegations in which Coach McNair is
 3 implicated or relevant to the allegations in
 4 total that relate to football?
 5 MR. TOMPSETT: I have not been
 6 retained to address any allegations other than
 7 the allegations in 1-b and (3). I have not
 8 analyzed the evidence concerning allegations
 9 other than those, and, therefore, I have no
 10 position.
 11 It would be improper for me to take a
 12 position concerning the relevance of those tapes
 13 to allegations that are not directed at my
 14 client.
 15 CHAIRMAN DEE: Ms. Conboy.
 16 MS. CONBOY: I just want to get back
 17 to the credibility one more time. With regard
 18 to this particular allegation, is as though
 19 Lloyd Lake has indicated that there was this
 20 meeting, and for obvious reasons in the record
 21 there might be credibility issues there.
 22 His girlfriend, Maiesha, is not really
 23 saying that she was present for the meeting, so
 24 we don't really know whether she witnessed
 25 anything. Coach McNair is saying he wasn't

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1 there, and for reasons that have just been
 2 shared with the Committee, there are some
 3 credibility issues there that we need to wade
 4 through.
 5 Then Brooke Augustin has come forward
 6 and supported or given a story that would lead
 7 one to believe that there was no stop at the
 8 Hyatt en route to the Gas Lamp District on the
 9 evening of the party.
 10 But one of my concerns, and I feel
 11 like, Mr. Tompsett, you have indicated the
 12 credibility or endorsed the credibility of Ms.
 13 Augustin. She was asked during the course of
 14 the interview how often she stayed in touch with
 15 Coach McNair. Her response was a couple of
 16 times a week.
 17 The record shows somewhere in the
 18 neighborhood of 1,100 to 1,200 calls during
 19 those hundred or so days. That is an average of
 20 ten times a day, up to her interview. That is a
 21 bit of a credibility issue with me.
 22 So, I am just curious as to again,
 23 Coach McNair, you may be best friends with her,
 24 but, you know, the amount of conversation that
 25 is taking place with them leading up to this

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1 interview is at least troubling and inconsistent
 2 with what she said.
 3 MR. TOMPSETT: That is a fair
 4 question. I would like to respond to that.
 5 What is not in the record concerning those, I
 6 think some 1,100 calls, by my count, 931 were
 7 two minutes or less, indicating that there was
 8 no conversation or a voice mail or a hang-up.
 9 That is about 80 percent of the calls.
 10 Now, that still leaves a substantial
 11 amount of calls. Todd is here to answer your
 12 questions about what they talked about and what
 13 the nature of the relationship is. I don't
 14 think it is the staff's position nor do I think
 15 it would be fair to infer that all these calls
 16 related, or even majority of the calls related
 17 to testimony that she gave in this case.
 18 I mean, the calls as the staff
 19 requested the phone records, went back and
 20 included them in the case summary, they went
 21 back to August and there are calls in August and
 22 September.
 23 As Todd said, they were very close
 24 friends and continue to be close friends. Why
 25 Brooke Augustin said a couple of times a week, I

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1 don't know. I will say -- and it is a fair
 2 question, Ms. Conboy.
 3 But for me, my personal belief is that
 4 in the end her response to that question of how
 5 many times do you still talk to Todd McNair, and
 6 her answer to that question, it is really
 7 attenuated from the real issue in this case, and
 8 this allegation, which is did she go to San
 9 Diego with Todd McNair?
 10 CHAIRMAN DEE: Professor Myers.
 11 MS. MYERS: The staff has done an
 12 evaluation of Mr. McNair's phone records and
 13 suggests that the calls to Ms. Augustin did not
 14 begin until two weeks after the Faulk party.
 15 Can you explain that?
 16 MR. McNAIR: Yes. I met Brooke late
 17 in the fall of 2004. She was a tutor in the
 18 building. She knew a lot of football players.
 19 John Walker was the football player on our team.
 20 His dad coached for the staff, the coaching
 21 staff, and they brought the food up to our
 22 offices and Brooke came with them.
 23 I struck up a conversation with
 24 Brooke. As I said earlier, I was in the thought
 25 process of starting a record label in the

<p>Page 541</p> <p>1 springtime. Brooke, somewhere in the 2 conversation, she had let me know she had worked 3 at an entertainment company in Los Angeles, IMP 4 I think is the name of it. So, she had done 5 some promotion and publicity work. 6 You know, after I met her, I would see 7 her in the building, you know, now and then. 8 But I was really busy with football. We had a 9 national championship game we were playing. I 10 am out on the road after the national 11 championship game, I am out on the road 12 recruiting. This is all the way until February. 13 Somewhere along there, Martin Bayless, 14 the Faulk party came up, and he and I talked 15 about going to the Faulk party. You know, I 16 know, you know there are no calls, but now that 17 I think back and now look back on it, that was 18 the very first thing we had done together, 19 actually went and done together. 20 MS. MYERS: You said the night of the 21 party you dropped her off at her house to change 22 and went over to another player's house, and 23 then came back and got her. 24 How did you know when to pick her up 25 if there were no phone calls?</p>	<p>Page 543</p> <p>1 MS. MYERS: Is there anything formal 2 that you did that would talk about the 3 initiation of that business relationship? 4 MR. McNAIR: Not formal. The company 5 still hadn't officially been formed. You know, 6 we were, you know, talking business and going on 7 with a bunch of stuff. Most of my artists were 8 in New Jersey. 9 I had just taken a job in L.A., not 10 long before that, a year before that. Being in 11 L.A., and my friend is an actor, and I have got 12 contacts with different people. So I thought, 13 you know, that it would be a good idea to start 14 promoting and bring my artists out to Los 15 Angeles. 16 We had not really -- it was still an 17 idea and a lot of information that I had to 18 transfer to her, you know, before we started 19 really rolling. 20 MS. MYERS: So, your testimony is that 21 you never had a single phone call with her prior 22 to the party or two weeks after the party, and 23 then all of a sudden things heated up because 24 you were getting serious about this business 25 center; is that right?</p>
<p>Page 542</p> <p>1 MR. McNAIR: LenDale lives right 2 across diagonal, right across the walk. He is 3 closer to me than you. After she got done, 4 after she got done, in the middle of the Blue 5 Apartments, there is a narrow pathway and 6 apartments on either side. When she got done, 7 she knocked on the door and we took off. 8 MS. MYERS: So, you never had a single 9 phone call with her until -- how about after the 10 party, you still weren't talking to her on the 11 phone? 12 MR. McNAIR: After the party and 13 spring break, in the middle of March we have 14 spring break for a period of time and we are 15 getting ready for spring ball, and a little 16 while after that I decided that she was going to 17 work for me. 18 I had targeted her as the person to be 19 the front for the company, and then we started 20 talking, you know, a bunch after that. 21 MS. MYERS: When you said she was 22 going to work for you, did you work out a 23 contract with her? 24 MR. McNAIR: No, not really. It 25 wasn't contractual at the time.</p>	<p>Page 544</p> <p>1 MR. McNAIR: Yes, ma'am. You know, I 2 was looking for somebody and out of the people 3 that I was meeting, you know, she was the best 4 fit. Once after spring ball we got settled, we 5 got going on spring ball is when I decided, you 6 know, I might as well go with her because 7 summertime was coming and we really wanted to 8 start doing some stuff in the summertime. 9 MR. BANOWSKY: Mr. Tompsett, I don't 10 recall, it seems like yesterday was a long time 11 ago at the beginning. But do you share the same 12 thought process and concerns that the University 13 has about the ability of you or your client to 14 cross-examine Lake? 15 MR. TOMPSETT: I do share those 16 concerns. Let me cut off the next question and 17 maybe answer it before it is asked. 18 "Mr. Tompsett, did you ever try to 19 talk to Mr. Lake?" 20 CHAIRMAN DEE: Just keep on going. 21 MR. TOMPSETT: We will get done a lot 22 faster. I had those concerns. Here is my 23 analysis on that. I have investigated a lot of 24 NCAA cases. I have represented several 25 institutions over the years and I have</p>

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1 make sure everybody is given a fair chance on
 2 this one.
 3 MR. NAJJAR: We agree, obviously, that
 4 the underlying issues in (1), (2) and (3) have
 5 to be found first. But then we are saying Coach
 6 McNair lied to us about those.
 7 MS. CONBOY: I am just curious as to
 8 why they were positioning here within this
 9 particular allegation as opposed to being
 10 additional information that would be alleged in
 11 Allegation 3 as a further example of the
 12 potential violations of the ethical conduct
 13 bylaw.
 14 MR. NAJJAR: I suppose they could have
 15 been.
 16 MS. CONBOY: I don't mean to take
 17 issue with you, Ameen. I am just trying to
 18 understand why it was placed here rather than
 19 there, if there was a reasoning there.
 20 MR. NAJJAR: Perhaps no more than
 21 establishing the throo of the events with this
 22 entire allegation.
 23 CHAIRMAN DEE: Okay. Any other
 24 questions on Issue 15?
 25 MR. TOMPSETT: Chairman Dee, I still

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1 have the second part of my presentation.
 2 CHAIRMAN DEE: Okay. Go ahead.
 3 MR. TOMPSETT: And I don't want to
 4 belabor this too much.
 5 CHAIRMAN DEE: We are going to press
 6 on, so everybody can pack a lunch. I am going
 7 to give everybody an opportunity to be fully
 8 fair with you.
 9 MR. TOMPSETT: I understand that the
 10 enforcement procedures allow me to ask questions
 11 of the enforcement staff through the Committee.
 12 I would like to ask the enforcement staff if it
 13 is their position that assuming that the
 14 allegation in 1-b-(2) occurred exactly as they
 15 alleged it, that allegation alone, separate and
 16 independent of the other allegations, I would
 17 like the enforcement staff to answer the
 18 question if it is their position that Coach
 19 McNair had an obligation to report the substance
 20 of that statement to USC. And if they answer
 21 "yes", I would like to know why they believe
 22 that.
 23 CHAIRMAN DEE: I will be happy to let
 24 them answer but -- well, I will let them answer.
 25 I think it is fair question.

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1 MS. CRETORS: Let me see if I can
 2 answer that question. The first, do we believe
 3 that Lake is telling Coach McNair that he is
 4 part of an agency constitutes a violation? No.
 5 Do we believe that at that time what our belief
 6 is that he knew Lake was associated with Reggie
 7 Bush and had an agency, should have reported
 8 that to the compliance staff? Yes.
 9 MR. NAJJAR: It is a bit unfair to
 10 just take that little piece in a vacuum. You
 11 have to couple that with (1). In other words,
 12 he just found out that and should have realized
 13 that Reggie Bush was receiving an impermissibl
 14 benefit in the hotel room, and then later that
 15 day he gets information that Lake is
 16 establishing a sports agency. So, to separate
 17 those completely is invalid.
 18 CHAIRMAN DEE: We didn't separate
 19 them.
 20 MR. NAJJAR: I am not saying that you
 21 did. Thank you.
 22 CHAIRMAN DEE: I think that the answe
 23 is what it is. There are three allegations
 24 here. We will have to decide whether they are
 25 dependent or independent. I think that is

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1 really what drives your question.
 2 We have not decided that issue yet.
 3 But if they are dependent, that is he learned
 4 that Reggie was involved with Mr. Lake, and the
 5 Mr. Lake said he had an agency, if they are
 6 coupled, if you will, then there may well be
 7 something that could be found there and maybe
 8 not.
 9 But if they were decoupled, then that
 10 would go to your argument, and that issue hasn't
 11 been decided. But I understand both of your
 12 points and I thank you for calling it to our
 13 attention. Okay?
 14 MR. TOMPSETT: Yes. Thank you. I
 15 will continue with my presentation on Allegation
 16 1-b-(2). Again, we don't think this, and it is
 17 not a conversation, this is not even in the
 18 allegation as it is alleged, it is not a
 19 conversation. If it is, it is a one-way
 20 conversation.
 21 There is no evidence in the allegation
 22 nor in the record in Lloyd Lake's transcript
 23 that Todd McNair said a single word to him at
 24 the Faulk party, that he acknowledged him, or
 25 responded to him, or engaged in a conversation

<p>Page 581</p> <p>1 MS. POTUTO: How much did you have to 2 pay to get into the party? 3 MR. McNAIR: I really don't recall. 4 MS. POTUTO: You have gone to other 5 parties where you have paid? 6 MR. McNAIR: Yes. 7 MS. POTUTO: Is there at least a 8 range? Would you be paying more than five 9 bucks? 10 MR. McNAIR: \$10 to \$20. 11 MS. POTUTO: \$10 to \$20 range to get 12 in? 13 MR. McNAIR: Yes. 14 CHAIRMAN DEE: Ms. Conboy, and then 15 Mr. Banowsky. 16 MS. CONBOY: Just a quick question. 17 Coach McNair, I think you indicated yesterday in 18 your testimony about when asked how Reggie Bush 19 got into the party. He was a pretty well-known 20 guy, and he would have no trouble availing 21 himself of admission to a party like that. 22 I know I am paraphrasing. But did 23 that raise any concerns for you? I mean, 24 certainly he was a pretty well-known guy and he 25 could avail himself of a car or free lodging, or</p>	<p>Page 583</p> <p>1 his hometown. He is known in the area, and I 2 figured, you know, that he paid like I paid. 3 CHAIRMAN DEE: Mr. Banowsky. 4 MR. BANOWSKY: I don't have anything 5 CHAIRMAN DEE: Anybody else. Okay. 6 MR. McNAIR: May I add to that? Also 7 I tried to reach Reggie all night. I was 8 calling him from the party and, you know, I 9 talked to him earlier and he said he was 10 probably going to be there. 11 I tried to reach him all night, and at 12 2:00 o'clock when the party was over, there were 13 a number of calls from 2:00, 2:19 or so in 14 there, and I never really got Reggie. I didn't 15 know if he didn't come, decided not to come, if 16 he was avoiding me, or what the case was. But I 17 never got confirmation that he was ever there. 18 MR. HALLORAN: Is it possible that the 19 party was a fund-raiser? 20 MR. TOMPSETT: I don't think so. This 21 is an annual party that Marshall Faulk throws, I 22 think, every year by my research since 2004 or 23 so. It is put on with one or two other 24 celebrities. It is a high-profile event. 25 Maiesha Jones described it as the</p>
<p>Page 582</p> <p>1 who knows what? That statement was a little 2 concerning to me, because it kind of was 3 indicating that Reggie was able to do some 4 things because of his notoriety, and I was aware 5 of that. 6 MR. McNAIR: Again, I was on the guest 7 list and I paid to get in. I fully expected to 8 pay to get in. You know, that is what I meant 9 by that. You know, they had in their testimony, 10 they were concerned about getting him in. I 11 paid like everybody else. You know, that's it. 12 And I expected to pay like everybody else. He 13 probably had a wristband because he is under 21. 14 MS. CONBOY: What you mentioned was 15 that Reggie was able to avail himself of an 16 invitation to the party based on his notoriety. 17 Again, to get on to a list, a special privilege 18 because you are a well-known student-athlete is 19 something that as a coach I think I would have 20 an issue with, and maybe think about reporting 21 back to the institution. I am sorry? 22 MR. McNAIR: I guess I expected he 23 paid like everybody else. I didn't expect that 24 he would get anything free. What I meant by 25 that, you know, he is from San Diego, that is</p>	<p>Page 584</p> <p>1 biggest party in San Diego. I don't think it 2 was a fund-raiser. 3 MS. CRETORS: Chairman Dec. 4 CHAIRMAN DEE: Yes. 5 MS. CRETORS: I believe in Martin 6 Bayless' interview, I forget whether in his 7 first or second, but he indicated that he did 8 see Reggie Bush at the party. I guess I have 9 some concerns as to whether Martin Bayless ever 10 told Coach McNair that he saw his star running 11 back at the party. 12 CHAIRMAN DEE: Did Mr. Bayless ever 13 say that to you, that he saw Mr. Bush at the 14 party? 15 MR. McNAIR: I don't recall, but I 16 don't think that he did. 17 CHAIRMAN DEE: Okay. We are going to 18 move on to 1-b-(3), and see if we can finish up 19 1 and go to 3 and move this thing on. We have 20 got a lot of work to do, and we are just going 21 to make sure that everybody has their say and 22 everybody feels comfortable that they are being 23 given an opportunity to present their case 24 fairly and thoroughly. 25 Mr. Johannigmeir.</p>

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<p>Page 597</p> <p>1 The staff has said there was a call to 2 Reggie Bush that day. Yeah, 13 hours later. 3 There were never any calls back to Lloyd Lake. 4 The calling records are inconsistent with the 5 sense of urgency or alarm that you would expect 6 Coach McNair would have had if Lloyd Lake had 7 had that conversation with him. That completes 8 my presentation on Allegation 1-b-(3). 9 CHAIRMAN DEE: Ms. Conboy. 10 MS. CONBOY: Mr. Tompsett, you 11 indicated that had that information come to 12 Coach McNair's attention, the first thing he 13 would have done was to inform USC. But as I 14 read the response, and maybe I am not 15 understanding the point of it, you seem to be 16 indicating that Bylaw 33.5 wouldn't have 17 required Coach McNair to say anything at all to 18 USC, because it didn't involve his own 19 involvement in a violation. 20 That when on an annual basis he signs 21 the Certification of Compliance form, he really 22 doesn't have any need or emphasis to sign that 23 form. Let me rephrase that. 24 He can go ahead and sign that form so 25 long as he has not been personally involved in</p>	<p>Page 599</p> <p>1 I don't have access to the complete legislative 2 history. I had several conversations with Mr. 3 Najjar about this, and asked him to assist me in 4 getting as much legislative history as we could. 5 I have included, I think some legislative 6 history from the original implementation. 7 As I understand the legislative 8 history and the amendment to the bylaw and the 9 current language, it requires staff members to 10 report their own knowledge of involvement in 11 violations, but not necessarily their knowledge 12 of others involvement in violations. 13 Now, I may be wrong about that. But I 14 don't think it is a frivolous argument, I don't 15 think it is a trivial argument. But I 16 understand your point. 17 MS. CONBOY: Mr. McNair, can you share 18 with us what your understanding is each year 19 when you have signed the Certificate of 20 Compliance has been? What were you attesting 21 to? 22 MR. McNAIR: Any violations, to tell 23 them. 24 MS. CONBOY: Any violations by whom? 25 MR. McNAIR: Any knowledge of any</p>
<p>Page 598</p> <p>1 that violation, even if he knows of others on 2 his staff or in the organization that have been 3 involved in violations. I have never understood 4 the Certification of Compliance to work that 5 way. 6 So, I am interested in both what your 7 position is on that and also what the staff's 8 position is on that as well. 9 MR. TOMPSETT: Let me take your first 10 point, and that is a very good question and a 11 fair question. Let me take your first point 12 first. Yes, Todd would have done that, because 13 it is the right thing to do. He knows it is the 14 right thing to do, and that's what he would have 15 done. 16 Now, the argument that we have made, I 17 think in Section 4 of our response, this is kind 18 of lawyerly argument that is obviously my 19 argument as his attorney. As I understand the 20 bylaw, the plain language of the bylaw as it is 21 written, it requires staff members to report 22 only their knowledge of involvement in 23 violations. 24 What I tried to do was to do a 25 comprehensive and complete research as I could</p>	<p>Page 600</p> <p>1 violations by student-athletes, coaches, 2 anybody. 3 MS. CONBOY: Maybe we can get a 4 comment from the staff as to what the intent of 5 the Certification of Compliance is and whether, 6 in fact, that specific language of the bylaw 7 would require a coach to report any knowledge of 8 involvement by anyone of NCAA violations. 9 MR. NAJJAR: We believe that it does 10 require that. 11 CHAIRMAN DEE: Are there any other 12 questions? Let's go right through it. We have 13 got a long way to go. Be succinct with your 14 questions. 15 MS. POTUTO: Okay. I don't know that 16 I have any records, and tell me if I am wrong, 17 of Reggie Bush's phone calls in 2006, is that 18 right, the exhibits that end with the '05 phone 19 calls in terms of at least Reggie Bush's phone 20 records? 21 MR. KING: I don't believe we have any 22 records from Mr. Bush. Do you? 23 MS. POTUTO: Coach, my question is you 24 don't know Lake, you don't ever remember talking 25 to Lake; is that right?</p>

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<p>1 MR. McNAIR: Yes, ma'am.</p> <p>2 MS. POTUTO: And that includes this</p> <p>3 phone call on January 8th?</p> <p>4 MR. McNAIR: Yes, ma'am.</p> <p>5 MS. POTUTO: Then explain to me, if I</p> <p>6 got a phone call at 1:34 in the morning from</p> <p>7 somebody I didn't know, there is no way on the</p> <p>8 face of the earth I would have a two-and-a-half</p> <p>9 minute conversation with this unknown person.</p> <p>10 MR. McNAIR: I am saying I don't</p> <p>11 recall the conversation. I don't know who it</p> <p>12 was. I don't recall the conversation. What I</p> <p>13 do know is that it was the day before the</p> <p>14 screening.</p> <p>15 During that time I had, you know,</p> <p>16 conversations with Reggie about his agents and</p> <p>17 everything. I fielded a couple of calls from</p> <p>18 people trying to get in on the screening. You</p> <p>19 know, I think it was reported in the paper that</p> <p>20 the coach and I and J.C. were going to help</p> <p>21 Reggie in his decision-making.</p> <p>22 You know, I did field a couple of</p> <p>23 calls of people trying to get in on it, and I</p> <p>24 quickly got off the phone. I don't recall this</p> <p>25 call, but I do know if it was a call of the</p>	<p>1 would have been the same thing, oh, this is</p> <p>2 ridiculous?</p> <p>3 MR. McNAIR: I would have grilled the</p> <p>4 person to find out, you know, what it is</p> <p>5 exactly, you know, what is going on. Wait a</p> <p>6 minute, hold on a second. Who are you? You</p> <p>7 know, I would have grilled them about that.</p> <p>8 MS. MYERS: Somewhere in these</p> <p>9 exhibits, and I am sorry I can't remember and I</p> <p>10 guess I am talking to the two lawyers here,</p> <p>11 there is a letter, and I believe it is from</p> <p>12 Reggie Bush's then lawyer to Lloyd Lake, or</p> <p>13 Lloyd Lake's lawyer saying you better stop</p> <p>14 making these phone calls to my client or I am</p> <p>15 going to sue you for extortion.</p> <p>16 The only thing -- I looked through it</p> <p>17 and I can't remember where it is. I know there</p> <p>18 is some yellow highlighting on it.</p> <p>19 MR. JOHANNINGMEIR: I can answer that</p> <p>20 Mr. Chair.</p> <p>21 CHAIRMAN DEE: Mr. Johannimgmeir.</p> <p>22 MR. JOHANNINGMEIR: You are referring</p> <p>23 to an e-mail that was sent by Cornwall, Bush's</p> <p>24 attorney, to Lisa Lake about the same period of</p> <p>25 time. That is in the University's exhibits.</p>
Page 602	Page 604
<p>1 nature that was alleged, I would have</p> <p>2 immediately hung up the phone and I would have</p> <p>3 called Reggie. I would have called Coach</p> <p>4 Carroll.</p> <p>5 I would have been blowing up the</p> <p>6 phones with somebody. I wouldn't have just</p> <p>7 taken somebody's word in that sort of fashion,</p> <p>8 if that was the allegation that they said, and</p> <p>9 just hung up the phone.</p> <p>10 MS. POTUTO: If you have an excited</p> <p>11 phone call from somebody saying that Reggie owe</p> <p>12 me money, we had an agency relationship, and I</p> <p>13 am about to go public, you wouldn't have simply</p> <p>14 said just calm down and I will get hold of</p> <p>15 Reggie and we will get back to you?</p> <p>16 MR. McNAIR: No, I would have to find</p> <p>17 out more about the caller, who it was, what he</p> <p>18 was saying, what he was alleging, all of that.</p> <p>19 CHAIRMAN DEE: Professor Myers.</p> <p>20 MS. MYERS: Coach, you said when the</p> <p>21 allegation actually came out in the newspaper</p> <p>22 that you and everybody else thought they were</p> <p>23 ridiculous and an extortion plot.</p> <p>24 Is it possible if you heard something</p> <p>25 like that on the phone in January, your reaction</p>	<p>1 Again, it is an e-mail from David Cornwall to</p> <p>2 Lisa Lake.</p> <p>3 MS. CRETORS: It is Exhibit No. 38.</p> <p>4 CHAIRMAN DEE: Okay. Are there any</p> <p>5 other questions?</p> <p>6 Go ahead.</p> <p>7 MS. CONBOY: Does the institution have</p> <p>8 a professional sports counseling panel pursuant</p> <p>9 to Bylaw 12.3.4?</p> <p>10 MR. KING: The answer is yes, but I</p> <p>11 will let Ms. Ferris provide the specifics, or</p> <p>12 Ms. Ragsdale.</p> <p>13 MS. FERRIS: We do have one now, but</p> <p>14 it was not in effect at that time.</p> <p>15 MS. CONBOY: I guess my question is,</p> <p>16 if the institution does not have such a panel in</p> <p>17 effect at the time, are other members of the</p> <p>18 athletic department permitted to give agent</p> <p>19 counseling advice as was done in this particular</p> <p>20 case with Reggie Bush, or is it a specific</p> <p>21 permissive piece of legislation which is the</p> <p>22 only way you can give that type of advice?</p> <p>23 MR. NAJJAR: We are looking it up, but</p> <p>24 we think it is only the head coach. But give me</p> <p>25 a second.</p>

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<p>Page 605</p> <p>1 MS. CONBOY: It is Page 69 in the 2 manual, but you are looking it up on-line. I am 3 sorry. The reason I ask it, that is very 4 specific about who in particular from the 5 athletics department and it expressed no more 6 than one representative from the athletics 7 department has to be appointed by the chancellor 8 or the president of the University. 9 I just don't know how Coach McNair's 10 involvement in this particular group that was 11 advising Reggie, whether that in any way 12 violated a provision of NCAA rules or whether 13 that was permissible because he had already 14 declared for the draft at that point. 15 MS. CRETORS: If the head coach, if 16 you look at, and I want to read it real quick, 17 Bylaw 11.4.1, there is an exception, 18 "Professional Sports Counseling and Head Coach. 19 An institution's professional sports counseling 20 or immediate coach in a sport may contact 21 agents, professional sports teams or 22 professional sports organizations on behalf of a 23 student-athlete provided no compensation is 24 received for such services. 25 "The head coach shall consult with and</p>	<p>Page 607</p> <p>1 state the position of the staff with respect to 2 Allegation 3. 3 MR. JOHANNINGMEIR: Thank you, Mr. 4 Chairman. I want to call the Committee's 5 attention to our first interview with Mr. 6 McNair, which occurred on September 19, 2006. 7 As I mentioned to the Committee before, that was 8 the very first day that I became involved in 9 this case. 10 I rushed home, grabbed a flight from 11 Indianapolis to Los Angeles, and met my 12 colleague, Angie Cretors. We went forth with 13 these interviews. At that particular time, when 14 Angie Cretors was interviewing Mr. McNair, in 15 that effort to determine if McNair had a 16 relationship with Lake, in response to those 17 questions posed by Angie Cretors, McNair stated 18 that to his knowledge he had neither met nor 19 spoken with Lake. 20 At that particular time, Angie or I 21 had absolutely no reasons not to doubt Mr. 22 McNair. We took him for his word, that he had 23 never met these people, he had never spoken to 24 them, and we went from there. 25 But as the investigation continued, it</p>
<p>Page 606</p> <p>1 report his or her activities on behalf of the 2 student-athlete to the institution's 3 professional sports counseling panel. If the 4 institution has no such panel, the head coach 5 shall consult and report his or her activities 6 to the president or the chancellor." That is 7 11.4.1. 8 CHAIRMAN DEE: Are there any more 9 questions? This brings us to a conclusion of 1. 10 What we are going to do, I think 3 is a lot, and 11 we have already gone through a lot of the 12 material for 3. 13 What we will do is we are going to 14 take a recess or a break here for probably 15 15 minutes. We will come back at quarter after 16 4:00. We are going to do 3, and then we are 17 going to finish 2, and then we are going to move 18 on. We are going to keep going. We will be 19 back at 4:15. 20 (RECESS.) 21 CHAIRMAN DEE: We are now going to 22 turn to Allegation 3. We are going to go back 23 to 2 because this involves Mr. McNair. 24 Allegation 3 is the ethical conduct allegation. 25 I will turn to Mr. Johannimgmeir to</p>	<p>Page 608</p> <p>1 became apparent that something was wrong, 2 because no matter how we spin this, there are 3 four telephone calls that took place between 4 Lloyd Lake and Mr. McNair. At least people from 5 Mr. McNair's point that he did not know. 6 There is also a photograph of Mr. 7 McNair with Lake and Michaels, and his friend 8 Faison Love. The spin we got initially was that 9 this was a celebrity, these two guys are just 10 trying to horn in on the picture, but that fact 11 doesn't hold up because there is a significant 12 relationship between Lloyd Lake and Love because 13 they were childhood friends. 14 As I mentioned to the Committee 15 earlier, they are doing a joint venture right 16 now, putting on a reality TV show. The 17 contradictions in the testimonies of McNair, 18 Bayless and Augustin about the party are very 19 troubling to the staff. 20 The staff's position is this: Coach 21 McNair is in a very difficult position regarding 22 the Hyatt Hotel meeting from this standpoint. 23 He cannot even admit that he is in that room, 24 whether Lloyd Lake is in there or not, because 25 we are not talking about a \$99 weekend special</p>

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1 interpretation is that the person who owns the
 2 phone probably made the phone call?
 3 MR. TOMPSETT: I think that is the
 4 normal default position. I would agree, Mr.
 5 Dee.
 6 CHAIRMAN DEE: I have got a funny
 7 phone. Okay. Does that conclude your comments?
 8 MR. TOMPSETT: Yes, it does.
 9 CHAIRMAN DEE: Before we go farther,
 10 earlier today there was conversation with regard
 11 to Brooke Augustin, where it was stated that
 12 Coach McNair denied her attendance early on and
 13 then later recanted that.
 14 Is that part of this charge, or is it
 15 to be made part of this charge?
 16 MS. CRETORS: If you look at the
 17 enforcement staff's position on recruiting
 18 information, that is No. 6 regarding Brooke
 19 Augustin, that during his February interview we
 20 specifically asked Mr. McNair, and he stated he
 21 had attended the Faulk party with Bayless and no
 22 one else. On November 18th, Brooke Augustin,
 23 McNair's associate, said she attended it with
 24 him.
 25 CHAIRMAN DEE: I am sorry. Where are

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1 you?
 2 MS. CRETORS: 3-27, Page 3-27.
 3 CHAIRMAN DEE: Okay. This is No. 6 on
 4 3-7?
 5 MS. CRETORS: Correct.
 6 CHAIRMAN DEE: Okay. That is part of
 7 the proof. Is it part of the charge?
 8 MR. NAJJAR: No, it is not.
 9 CHAIRMAN DEE: Okay. Any questions?
 10 MR. NAJJAR: Mr. Dee, let me point out
 11 that the Notice of Allegations had been prepared
 12 and sent when this information, this Brooke
 13 Augustin information became available.
 14 CHAIRMAN DEE: We have had more
 15 amendments than the constitution in this case.
 16 MR. NAJJAR: Not from us.
 17 CHAIRMAN DEE: You get the mail,
 18 though, that is not that you couldn't have
 19 brought it. It is also here for this Committee
 20 to decide whether to add it, because it is an
 21 admission that has occurred during the course of
 22 the hearing.
 23 So, I am just asking where we are with
 24 that. But that is of some concern, I will be
 25 honest with you. That does cause us some

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1 concern.
 2 Let's go forward with this information
 3 and then we will make a decision as to that.
 4 Mr. Banowsky.
 5 MR. BANOWSKY: Thank you. I just have
 6 a few questions. First, for the University, do
 7 you have anything in your institutional history
 8 which would suggest that Mr. McNair is not
 9 trustworthy or is engaged in misconduct?
 10 MR. GARRETT: In the five or so years
 11 that he has been in our place we have had no
 12 record of any type of secondary violations, bad
 13 behavior or anything of that kind.
 14 MR. BANOWSKY: And then for you, Mr.
 15 Tompsett or Mr. McNair, do you have anything in
 16 your background, your history from a criminal
 17 nature, or anything else that would call into
 18 question your veracity?
 19 MR. TOMPSETT: I will answer and then
 20 I will let Todd answer. I am not aware of any
 21 criminal background that would call into
 22 question his veracity. Referring, I assume,
 23 Commissioner Banowsky, to the crimes of moral
 24 turpitude, that sort of thing? I am not aware
 25 of any.

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1 MR. McNAIR: No, sir.
 2 MR. BANOWSKY: Now, for the staff,
 3 other than the allegations in 3 in the
 4 references to knowledge potentially about
 5 allegations, do you have anything to suggest
 6 that Mr. McNair was affirmatively involved in
 7 violating NCAA rules?
 8 MR. NAJJAR: No.
 9 MR. BANOWSKY: And it seems like most
 10 of the basis for most of your allegation here in
 11 3 is the testimony of Lake; is that correct?
 12 MR. JOHANNINGMEIR: And Mr. McNair's
 13 own testimony.
 14 MR. BANOWSKY: Which either doesn't
 15 support the phone records or the picture, or Mr.
 16 Lake's testimony?
 17 MR. JOHANNINGMEIR: Correct.
 18 MR. BANOWSKY: Thank you.
 19 CHAIRMAN DEE: Professor Myers.
 20 MS. MYERS: Do you have an original of
 21 the picture?
 22 MR. JOHANNINGMEIR: No, we do not.
 23 That photograph from our understanding was taken
 24 on Michael Michaels' phone. The attorney for
 25 Mr. Lake contacted Mr. Michaels and then

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1 supporting the allegations against Todd McNair
 2 is Lloyd Lake. We have demonstrated repeatedly
 3 today that when it comes to the allegations
 4 against Coach McNair, Lake is not credible, he
 5 is not reliable, and he is contradicted by other
 6 witnesses, including his own girlfriend and by
 7 the circumstantial evidence. Moreover, he has a
 8 self-admitted motive to damage Todd McNair.
 9 Lake blames Todd for his failure to
 10 sign Reggie Bush. I would respectfully remind
 11 the Committee that the enforcement staff has the
 12 burden of proof and with each allegation they
 13 have come far short of presenting evidence that
 14 is credible, persuasive, and of a kind in which
 15 reasonably-prudent persons rely in the conduct
 16 of serious affairs.
 17 The evidence is simply insufficient to
 18 support findings of unethical conduct. We ask
 19 you to dismiss each and every allegation against
 20 Todd McNair.
 21 Finally, we want to thank you for the
 22 opportunity to appear before you and respond to
 23 the allegations, and we thank you for your
 24 careful consideration in this case. Thank you.
 25 CHAIRMAN DEE: I hate to dig deeper

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1 here, but you made a statement that Mr. Lake
 2 blamed Coach McNair for not signing Mr. Bush.
 3 Where did that ever appear in this
 4 hearing? Maybe I missed it.
 5 MR. TOMPSETT: That is in both Coach
 6 McNair's response, and it is also in the
 7 University's response. I believe it is --
 8 CHAIRMAN DEE: So, it is in the record
 9 but it wasn't discussed?
 10 MR. TOMPSETT: Let me amplify.
 11 CHAIRMAN DEE: I have got my answer.
 12 I have the answer. I understand.
 13 MR. TOMPSETT: Okay.
 14 CHAIRMAN DEE: Do you have anything
 15 further to say as a closing?
 16 MR. TOMPSETT: No, I do not. Thank
 17 you, Chairman Dee.
 18 CHAIRMAN DEE: Thank you.
 19 Does the University wish to say
 20 anything with respect to the closing of this
 21 part of the case?
 22 MR. KING: No, sir.
 23 CHAIRMAN DEE: Does the enforcement
 24 staff wish to make any closing statement?
 25 MR. NAJJAR: Very briefly. Just to

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1 touch on that last issue you were discussing, if
 2 Lloyd Lake was out with a vendetta to get Todd
 3 McNair, why would there be a question about the
 4 Hyatt Hotel room?
 5 When Angie Cretors asked him about the
 6 transportation from the hotel to the party, she
 7 said, "And Todd McNair was part of this as well."
 8 "Lloyd Lake: No, he didn't ride with
 9 us.
 10 "Angie: He didn't ride in the limo?
 11 "Lake: No, he didn't ride in the limo
 12 with us."
 13 So, if he is out here making up
 14 stories to implicate Todd McNair, he easily
 15 could have put him in the limo. He didn't.
 16 The other thing I would like to point
 17 the Committee to is 10.1-(d) and the change of
 18 10-1-(d), particularly that last portion. I
 19 will not read it to you, but early on in the
 20 investigation when Todd McNair denied ever
 21 meeting or talking to Lloyd Lake, that relates
 22 directly to knowledge of matters relevant to a
 23 possible violation of an NCAA regulation.
 24 Todd McNair did need an alibi for that
 25 late afternoon, evening before the Faulk party.

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1 Again, because his original Martin Bayless'
 2 alibi only began at midnight, he had no
 3 accounting for the time up until then.
 4 Todd McNair knew that in no way, shape
 5 or form could he admit he was ever in that hotel
 6 room, the hotel room he knew that Reggie Bush
 7 could not afford.
 8 When you take a look at the phone
 9 records, Todd McNair's phone records concerning
 10 Brooke Augustin, it is far more likely, it is
 11 far more believable that Coach McNair had no
 12 relationship with Brooke Augustin until more
 13 than two weeks after the party.
 14 We are not talking about a few phone
 15 calls, a smattering of phone calls beginning
 16 March 23rd, 2005. We are talking about an
 17 immediate spike, a huge spike of phone calls
 18 from zero to a hundred miles an hour, hundreds
 19 of phone calls every billing period. But before
 20 that, none, zero.
 21 I ask again to go back to our point in
 22 my opening. She was an invention. Thank you.
 23 CHAIRMAN DEE: Okay. I am now going
 24 to review for Coach McNair what will happen
 25 after the hearing adjourns. First, I would like

<p>Page 1109</p> <p>1 REPORTER'S CERTIFICATE</p> <p>2</p> <p>3 I, JOHN M. BOWEN, a Certified Court</p> <p>4 Reporter in the State of Missouri, hereby</p> <p>5 certify that I was present at the hearing as set</p> <p>6 forth in the caption sheet hereof, that I then</p> <p>7 and there took down in shorthand the proceedings</p> <p>8 had thereat, and the foregoing pages constitute</p> <p>9 a true and correct transcript of such notes made</p> <p>10 at said time and place.</p> <p>11 IN WITNESS WHEREOF, I have hereunto</p> <p>12 set my hand this 24th day of March, 2010.</p> <p>13</p> <p>14</p> <p>15 Certified Court Reporter</p> <p>16 C.C.R. No. 727(G)</p>	

TRANSCRIPT OF RECORDED INTERVIEW

Agent, Gambling and Amateurism Activities
University of Southern California

SUBJECT: Lloyd Lake.

DATE: November 6, 2007.

LOCATION: Office of Paul Wong, 234 East Colorado Street, Pasadena, California.

PRESENT: Angie Cretors (AC), NCAA assistant director of agent, gambling and amateurism activities.
Rich Johanningmeier (RJ), NCAA associate director of enforcement
Lloyd Lake (LL).
Brian Watkins (BW), attorney for Lloyd Lake.
Paul Wong (PW), attorney for Lloyd Lake.

PW: All right, I'm gonna turn it on, too, coach.

RJ: Okay. My name is Rich Johanningmeier. I'm an associate director of enforcement for the NCAA. The date is November 6, 2007. This is an interview with Lloyd Lake. The interview is being conducted in a conference room of the office of Mr. Lake's attorney, Paul Wong. And the address of the location of Mr. Wong's office is 234 East Colorado Street, Pasadena, California. Also present during the interview is Angie Cretors, NCAA assistant director for agents, gambling and amateurism; and Mr. Lloyd's attorneys Paul Wong and Brian Watkins. And for the record, we might wanna go around right now and introduce, introduce ourselves by our name so that, uh, we have it on tape and, uh, for tape identification. So Lloyd, you wanna start off first?

LL: Lloyd Lake.

BW: Brian Watkins, attorney.

PW: Paul Wong, attorney.

AC: Angie Cretors, NCAA staff.

RJ: Thank you. And, uh, Lloyd, you are aware that the interview is being recorded by the NCAA?

LL: Yes, sir.

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A0755

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RJ: And would Todd McNair make --

LL: Yeah, that's it, McNair. Yeah.

PW: (Unintelligible).

RJ: Okay. Okay. So, so he was with you when you socialized?

LL: One time we went to the club I got a picture.

AC: With?

LL: With, with, uh, Reggie wasn't in it but T-Mac and Fasion was in it. Reggie had got in a argument with, some girls were arguing and he wasn't in the picture but.

RJ: When, when did this exactly occur? When you were socializing with Todd McNair and Reggie?

LL: I mean it was two times. He came down for the Marshall Faulk party, too, and we got him that room, Reggie the room down there.

RJ: Okay.

LL: McNair was down there for that, too. But, uh, this was right before the UCLA game.

AC: His sophomore season?

LL: Junior.

AC: Junior season?

LL: Yeah, I didn't go out any during his sophomore season with him.

RJ: And, and was this in Los Angeles or in --

LL: Los Angeles.

RJ: Do, do you remember what clubs you went to?

LL: I don't know the name of 'em but Larry Pearce was, was with us, one of Reggie's friends, and, uh --

AC: Larry?

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RJ: What club did you go to?

LL: I don't know the name of it.

RJ: Where was it located?

LL: I wanna say Hollywood but I'm not sure.

RJ: And, and this is the time you said McNair --

LL: Yeah.

RJ: How does he show up or how does, does he go with you? Just help us understand how this comes about?

LL: I guess he called Reggie and Reggie told him where we were going. He came there. He just met us down there. He didn't ride with us.

RJ: How, how, uh, had you met him before?

LL: Yes, I met him when he came down for the, uh, Faulk party. When we got the room for Reggie, he was in the room. He came through the room with Reggie.

AC: So.

RJ: And we were probably gonna get onto that but why don't you explain that part to us, about how that all came about?

LL: Well, Marshall Faulk was having a birthday party and Reggie called me, uh, 'cause he needed a room. So, uh, Michael got him a suite down at the Hyatt, downtown San Diego. So he got Reggie a room for the Marshall Faulk party.

RJ: And then how does McNair connected with this?

LL: McNair was down there, too, I guess for the party. So when I went to the room, McNair was in the room with Reggie.

AC: And who else was there --

LL: Just McNair --

AC: -- in --

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LL: -- with and Reggie.

AC: Just the three of you?

LL: Yes.

RJ: And that --

AC: And did you go to the party with them?

LL: Yeah, we went, well he rode in the limo with us to the Faulk party.

AC: Was it just the three of you in the limo?

LL: No, it was Tony Qwinn's wife, uh, my sister, Michael, Reggie.

AC: And Todd McNair was part of that as well?

LL: No, he didn't ride with us.

AC: He didn't ride in the limo?

LL: No, he didn't ride in the limo with us.

AC: Was he aware that Reggie was riding in the limo --

LL: Yeah.

AC: -- with you guys?

RJ: How, how do you know he was aware?

LL: Because when we left the party, he was with Reggie when we got in the limo, and he told Reggie, you know, be safe and stay out of trouble.

RJ: Did, did he come to the party?

LL: Yeah, he was at the party.

RJ: McNair showed up at the party?

LL: Yeah, at the Faulk party, yeah.

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A0758

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RJ: Where was that Faulk party actually held?

LL: Uh, at a club called On Broadway.

RJ: On Broadway?

LL: Yes.

RJ: Right there in San Diego?

LL: Yes, that's the name of the club is called On Broadway.

BW: And it's located on Broadway Street.

RJ: Okay.

AC: And, and was, was McNair aware that you or Michaels was, were paying for the suite that Reggie was staying in?

LL: Yeah, I mean, yeah.

RJ: How, how --

AC: And how, how would he know that?

LL: I mean because --

AC: Or why would you assume that he knew that?

LL: I mean, if I call recall when Reggie, when, when I came in the room that the introduction I think Reggie said this is my man I was telling you about that got me the room, you know. I mean, he knows Reggie couldn't afford the room.

AC: And Reg, who else was staying in that room?

LL: I don't know if McNair was staying in there with him or not.

AC: Did you stay in the room?

LL: No, no, no.

AC: Did Michaels stay in the room?

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LL: That was the night T-Mac was out with us, yeah.

AC: Uh-huh.

LL: So I figured T-Mac told that we were with Reggie and I figured he got, that's just, uh, how I'm thinking.

AC: Uh-huh.

RJ: Let me go through this thing 'cause this might be in the same area. All right, I wanna, I, I wanna ask you, uh, on record, if in, uh, October 2005 was [REDACTED] your telephone number?

LL: Yes.

RJ: Okay. And the reason I ask you this is that in checking, uh, telephone records at USC, there shows a call on October 29th at 11:39 p.m. --

LL: Uh-huh.

RJ: -- to Todd McNair for a minute, another call at 11:52 p.m. for a minute, and another one on the same October 29th at 11:56 for one minute/

LL: They called me?

RJ: There was calls, uh, that call was made to your telephone number, correct.

LL: Yes.

RJ: From Todd McNair.

LL: Yes.

RJ: Can you tell us what those calls were about?

LL: Shh, I don't even recall. Uh, let me see. What was the dates on it?

RJ: October 29th.

PW: Is that the night of, of, uh --

LL: That's the night of that party I think.

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PW: Yeah, of, uh, Marshall Faulk's party. Was it the 29th?

RJ: That would've been March.

AC: That would've been March.

PW: Oh, okay.

LL: No, no, I think that was the night, this is the night we were out.

RJ: The, is this the night you're talking about --

LL: The club.

RJ: Right.

LL: Yeah. That's, that's that night. That's what it's gotta be 'cause we was trying to figure out where we were.

RJ: Somebody's got a computer we can figure out real quick --

AC: I'm trying to see if I can --

RJ: -- if that's a Saturday.

AC: -- find that .

RJ: I think it might be a Saturday.

LL: Oh.

RJ: October 29th on, uh, 2005. Do you, first of all, do you remember McNair making a call to you?

LL: Yeah, that's why I said that's what's it gotta be. Yeah, Saturday.

AC: Saturday.

LL: That was the night we went to the club I'm telling you guys about.

RJ: Okay.

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LL: Hello. Oh, shit. Why don't, why, I'm looking for an important call for a reason.

RJ: Okay. So, so that Oct, so that October 29th, you remember the calls from McNair?

LL: Yes.

RJ: And what would he be calling you about?

LL: He was calling seeing what club we were at, where we were going.

AC: How did he have your number?

LL: Uh, we had exchanged numbers I think from the Faulk party. He was aware what was going on.

AC: He was aware of what was going on?

LL: The sports company.

RJ: How do you --

AC: McNair was aware?

LL: Yeah.

RJ: How do you know that?

LL: I had told him about it.

AC: When?

LL: Uh, I think at the Faulk party, uh.

AC: When is that? We need det, we need details on what exactly was relayed during that conversation.

LL: I just told him we were starting a sports company and if he knew any athletes, you know, that, that were coming up, up and coming in the league to send 'em our way basically.

RJ: Did you tell him that Reggie was involved with you?

LL: I didn't tell him Reggie had, I don't know. I don't know if I told him Reggie had ownership in the company.

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LL: Maybe, uh --

AC: -- Marshall Faulk party, you indicated to Todd McNair that you were serving as sports agent to --

LL: He knew about the sports agency. I gave him a card and everything. That's how he called me from.

AC: What kind of card?

LL: A business card.

AC: And what was on the business card?

LL: New Era Sports.

AC: Do you have a copy of that card?

LL: I think, yeah, at home I do.

AC: Can we get a copy of that?

LL: Yeah.

AC: Do you have any other materials?

LL: Brochures that we did.

AC: Could we also get a copy of that as well?

LL: You got any B?

PW: Yeah.

RJ: Well let me ask you this one, too, Lloyd, on, uh, January 8th, 2006, at 1:34 in the morning, there's a call, McNair call to you for two minutes and 32 seconds.

LL: What time was that?

RJ: This is January 8th, 2006, it's at 1:34 in the morning, and it's a call, uh, McNair --

AC: Coach doesn't understand why people are calling at 1:34.

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RJ: -- McNair makes a call to you at 2:32. I was asleep at that time --

LL: Yeah.

RJ: -- personally, but, but in your case --

LL: I think that was like, that was like him trying to resolve it, you know, and like Reggie's wrong, he should make it right and basically don't implement the school.

RJ: Because this, this is 2006 we're talking about.

LL: Yeah, that's when I went to jail, that's when everything started falling apart, I mean, it fell apart.

RJ: What can you tell us that you specifically recall about that conversation with him?

LL: Uh, just telling about Reggie and all, he knew about the money he took, he knew that he had an agreement and --

AC: Todd McNair indicated to you in the telephone conversation that he was aware that Reggie took money --

LL: I mean, he knew --

AC: -- from you?

LL: -- yeah bec, he knew Reggie took money from me. There's no doubt he knew about that.

RJ: And why do you say that?

AC: Yeah, we need to know why you, why you believe that he knew that?

LL: 'Cause he was around a lot and, you know, it's like he watched me get them guys, his friends, hotel rooms, Reggie told me he knew about certain things he was doing but he's cool. You know what I mean? It's like basically through Reggie --

AC: Reggie said he --

LL: -- 'cause I told Reggie you shouldn't be having the, no, he's cool, the coach, that's my, he's my friend. He's not --

RJ: What, what's your understanding of the relationship that Reggie had with McNair?

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LL: I mean, he was his coach but they were also friends. You know, outside of, outside the field.

RJ: Did they socialize?

LL: Yeah.

RJ: Besides when you guys --

LL: That's how we were at the club that night. I mean, yeah.

RJ: Was there any other occasions be, besides that, uh --

LL: The (unintelligible) October date though Brian.

RJ: That October 29th?

LL: That party that night when we went out and to eat and all that.

RJ: So that October 29th would've been, you know, the, the game, the day that you thought you were at the game?

LL: Yeah, we were at the game. Whenever that was, that's when I was in the locker room, that lets you know exactly who they were playing. All you've gotta do it look at their schedule.

RJ: Okay. Besides that time you, when you were out, you were out with him also at the Marshall Faulk party?

LL: Yeah.

RJ: McNair?

LL: Yeah.

RJ: There? Is there any other times that you were out with McNair?

LL: No, that's it, uh, that's it.

RJ: Just the, just those two occasions?

LL: Yeah.

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AC: Did you ever call McNair?

LL: Yeah, I called him a couple times.

AC: Do you know when or what the --

LL: Around this time.

AC: -- those conversations --

LL: Yeah, trying to get this resolved, just get my money back and make it right.

AC: So you called McNair in early July and vocalized to him that you wanted your money back?

LL: January.

AC: January of '06?

LL: Yeah.

AC: Okay. And when did you say you went back to jail?

LL: January 18th.

AC: January 18th. So before, prior to that --

LL: Yeah.

AC: -- you were making calls?

LL: Yes.

AC: Okay.

LL: I got calls with Reggie.

AC: So when, when did the deal start going bad?

LL: Uh, I mean, the deal started going bad when it got closer to him going and he realized that he was lying, I realized he was lying about everything. Uh, I'll tell you exactly when

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LL: Why, why, why should you believe me? What reason do I have to lie? I mean, the tapes speak for their self and that's why I got 'em.

AC: Okay.

LL: I mean, I can't make those things --

AC: Well, without listening to it that's why I, I, I just, you know, with the, just wanna get that on the record and ask that question. Uh, as to why we should --

LL: Because I don't have, I mean, I might've been in trouble for certain things in the past but no fraud-type crimes. I mean, I would never have knowledge to know the things I know about how much money he put down on the car, I just wouldn't know certain things that I know unless I was involved, you know.

AC: Anything else, I know we've asked you a million questions, that, that we might not have asked you today that you think are relevant or, or something that we would want to know?

LL: No, but if I think of any I'll give you a call.

AC: Okay.

RJ: Okay.

AC: And there might just be a time that we might have follow-up questions based on other interviews that we might do or other questions that we might ask and we just --

LL: (Unintelligible).

AC: -- would, would like to ask that we be able to call you guys and possibly --

BW: Sure.

AC: -- schedule something at a later date if need be.

LL: Okay.

RJ: And, and as we talked earlier, we would encourage you to, uh, at, at your convenience and at your proper time that, uh, apparently the things that you've told us here today certainly lead us to believe that there's a possibility that violations of NCAA legislation occurred. And we would, uh, strongly encourage you, as, as we mentioned at your convenience and not to jeopardize your civil lawsuit to cooperate with a representative

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from the University of Southern California, from the Pacific, uh, 10 Conference. So, I, I hope that you will all consider that and do so at the appropriate time.

LL: Okay.

RJ: All right. And --

AC: And again, just, this all remains confidential. We agreed, uh, we agreed not to share this information until such time that you guys, unless it is leaked to the media and, and again, that we would have share at that time. So we're all in agreement on that.

PW: We are in agreement on that.

RJ: Okay.

AC: Okay.

RJ: And with that, we're gonna conclude --

AC: Thank you for your time.

RJ: -- uh, we're gonna conclude the interview with Lloyd Lake. And Lloyd, on behalf of the NCAA, we greatly appreciate your cooperation.

LL: Uh-huh.

RJ: And, uh, with that it is approximately, uh, 20 to, uh, 20 to 7. We're gonna conclude the interview with Lloyd Lake. I'm Rich Johanningmeier, the date again is November 6, 2007.

[End of Recording]

RAJ:smc

Attachment(s)

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A0768

TRANSCRIPT OF RECORDED INTERVIEW

Agent, Gambling and Amateurism Activities
Case No. M295 - University of Southern California

SUBJECT: Martin Bayless, former teammate of assistant football coach Todd McNair.

DATE: August 19, 2009.

LOCATION: Telephone conference call.

PRESENT: Martin Bayless (MB), former teammate of assistant football coach Todd McNair
Angie Cretors (AC), NCAA associate director of agent, gambling and amateurism
activities.
Rich Johanningmeier (RJ), NCAA associate director of enforcement.
William King (WK), Lightfoot Franklin White LLC; outside legal counsel,
University of Southern California.
Ameen Najjar (AN), NCAA director of enforcement.

MB: No problem with that.

WK: And, uh, once, I'm sure the N-C-double-A will, and we will, too, we'll, we'll have the
interview transcribed. And, so, if you decide that you'd like a hard copy of it as well, uh,
I'll be happy to provide that to you as I'm sure they will. Uh, just whatever your
preference is. You can have either or both.

MB: Okay.

WK: All right. Y'all ready?

MB: No problem.

WK: All right. I'm gonna go ahead and turn on my tape recorder now. All right. This is
William King. Uh, today is August 19. It is 9:07 Pacific Time, and we're on the
telephone with Martin Bayless. Also on the line is Ameen Najjar, Rich Johanningmeier
and Angie Cretors from N-C-double-A. If everyone would, uh, state their names so, uh,
for voice identification purposes when we're transcribing this and listening to it. Uh, we
can start with you Martin.

MB: Martin Bayless Sr. M-A-R-T-I-N, Bayless, B-A-Y-L-E-S-S, Sr.

RJ: Rich Johanningmeier, NCAA staff.

AC: Angie Cretors, NCAA staff.

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A0769

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AN: Ameen Najjar, NCAA enforcement.

WK: All right. Martin, uh, we're here to ask you questions today about an investigation of the USC football program. And in particular, uh, a, an event that happened back in March of 2005. Uh, do we have your permission to record this interview?

MB: Uh, yes.

WK: All right. Uh, before we get to the event, if you would, Martin, just briefly tell us, uh, about your relationship with Todd McNair, including how you met and when you met and basically how long you've known Todd.

MB: Uh, my relationship with Todd started as a opponent of Todd's. Uh, I was playing with the San Diego Chargers, uh, and Todd was a member of the Kansas City Chiefs. Uh, this would've probably been, uh, late 80s, uh, when I met Todd. Uh, and then I joined the Kansas City Chiefs from, uh, '92 and '93, uh, where I was a teammate of Todd McNair's. Uh, so that's when I, I first met Todd.

WK: And have you and Todd remained in touch since you last played together for the Chiefs?

MB: Uh, yes. We're both in the same profession. Uh, uh, uh, I've coached, uh, in the National Football League and also in college football. And, uh, I've also been coaching in the National Football League. Uh, so, as coaches we have, uh, you know, shared phone calls here and there obviously because we're in the same profession. Uh, secondly 'cause my son was recruited, uh, by USC, uh, as a high school athlete. Uh, so, yes. I've known Todd for some time and he is a good friend of mine.

WK: All right. Uh, the, uh, the part, the, the event we want to talk about is a party that occurred in San Diego in early March of 2005. I believe it was on March the 5th of 2005. And, uh, the party I believe was a birthday party for Marshall Faulk, a former NFL player. Do you remember attending that party Martin?

MB: Uh, yes. I do remember attending that, that, the Marshall Faulk party. Uh, Marshall has a party every year here in San Diego, uh, somewhere around that time. Uh, and I've been to two or three of those parties before.

WK: Have you ever attended one of the Faulk birthday parties, uh, with Todd McNair?

MB: Uh, I have seen Todd at one of the parties. I did not attend with him. Uh --

WK: What --

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MB: -- it was one of --

WK: -- about that, what you recall about the party, uh, uh, when you saw Todd, where you saw him and what happened, uh, from that point that night.

MB: Uh, as I recall on, on, uh, the event that you're talking about, uh, it was at a location down, down in San Diego, uh, called On Broadway. Uh, it is a nightclub. Uh, the facility probably holds, hmm, at least 2,000 people I would think. Uh, it's a upstairs/downstairs facility. Uh, and there's, uh, I think one main room upstairs and probably four or five rooms downstairs. Hmm. It used to be a old bank, uh, so it is a pretty large facility. Uh, I saw Todd, uh, at this particular party, uh, just being, uh, I didn't go there to really see, uh, thinking of who was gonna be there because, uh, you know, obviously going to Marshall's party, there's a lot of people there. Uh, you can run into anybody. Uh, so, uh, I did see Todd. Uh, I think when I ran into Todd he was downstairs in one of the private rooms, uh, that they had, you know, they had a private room for the retired players, uh, NFL players and I think that's the room where I met, seen Todd at that evening.

WK: All right. And, uh, after you saw him, did the two of you stay together for the remainder of the party? And, and by together I mean not necessarily side-by-side the whole time, the whole time, but generally in the same area?

MB: Uh, I wouldn't've gotten to that party, uh, I wouldn't've gotten there before midnight on my end. Uh, so it was somewhere around midnight when I probably got in the doors. Uh, once again, I did see Todd downstairs. Uh, it is a very large facility. Uh, we probably, uh, once we, you know, saw each other, bumped into each other, uh, we probably talked maybe for 15-20 minutes, just catching up on some old news and just chit chatting. Uh, then I, I probably disappeared 'cause I don't stand in one place. I mingle around so I just walked around the facility, make sure, uh, you know, you have to, have to look to see everything and bumping into a few other people, uh, you hadn't seen in a long time. So, uh, that's pretty much, uh, what happened that evening.

WK: You said that there was a room that seemed to be for retired NFL players. Other than you and Todd, do you recall any other players who were in the room that night?

MB: Uh, I'm trying to think who would've been there. Uh, uh, obviously I saw Marshall, uh, then one named Robert Griffith. Uh, some local guys that are with the Chargers. A guy named, I don't want to say, a guy named Michael Ricks. Uh, I'm trying to think. Uh, I want to say Eric Dickerson was there. But I've been to so many parties, uh, so I could be running together. Uh, uh, Rodney Harrison, a former Charger. Uh, I can just keep going

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on with guys 'cause, I mean, it was a lot of retired players there. So, I mean, most, most of 'em were Charger guys. Uh, uh, just to remember off the top of my head.

WK: And that's fine. Uh, do you recall seeing Reggie Bush that night at the party?

MB: Uh, I saw, I saw Reggie briefly at, at the party. Yes, I did.

WK: Do you recall where and who was around when you saw Reggie that night?

MB: Uh, Reggie was upstairs. Uh, I didn't see him, I saw Todd prior to Reggie. Uh, but Todd, uh, Reggie was upstairs, uh, uh, with a group of people, uh, both male and female. But other than walking by, saying hello, uh, no, I didn't, I didn't hang around or anything like that to. But I did see him. And he was, actually he was, he wasn't even in the same room or same floor we were on when I saw him.

WK: Do, did you know any of people Reggie was with?

MB: No. Huh-uh. Uh, it was probably three or four guys and some girls. But no, I didn't, I didn't identify, I wasn't able to identify any of 'em, uh, or did not know any of 'em.

WK: Do you know a man by the name of Lloyd Lake or Michael Michaels?

MB: Uh, Lloyd Lake, uh, I know his name. Uh, wouldn't know him if I seen him. Uh, I know Lloyd Lake's name because his, uh, I think it's his sister she is a well-known, uh, a TV personality here in San Diego. Uh, and then his, her, her, I think it's her ex-husband now used to be a sports agent, uh, Lem, I want to say Lem Campbell is his name. And, so, I know, I know those two. Uh, but I do not know, I know Lloyd's name but I, I wouldn't know him if I saw him.

WK: Okay. And, uh, what about Michael Michaels, are you familiar with him?

MB: No, I don't, uh, I don't know that name at all.

WK: All right. So whether you wouldn't know either of them, recognize them by sight so you don't know whether they were with Reggie at the time you saw him or not.

MB: No.

WK: Okay. Uh, after or as, as you were, uh, preparing to leave the party, did you see McNair again?

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MB: Uh, yes. I, I spent most of my time downstairs, uh, that, that, that evening. Uh, I did see Todd a few other times but like I said, I wasn't, we just didn't stand together. You know, you walk around, mingle. Uh, but right before we left, uh, Todd did have a couple drinks and, uh, you know, he was heading back up the road to L.A. and, uh, I did, I told Todd that, that I wasn't going to let him get in the car. Uh, he had some, uh, I want to say he had a couple people hanging around him. I don't know who they are 'cause I didn't, you know, like I said I had some people with me, too, so I didn't get into all that. But I did tell Todd, he, it would be fine if he, uh, stayed at my house that, uh, that night before he got on the road 'cause he was not, he was not capable of driving I don't believe.

WK: And did he stay at your house that night?

MB: Uh, yes. He did.

WK: Did he ride with you from the party to your house?

MB: Yes. He did.

WK: And then the next day did you bring him back so he could get his car?

MB: Next day I just took him back to his car, dropped him off. Uh, that was pretty much the evening or the next day.

WK: Do you recall what time you, uh, you dropped him off on the next day, after the party?

MB: Uh, not exactly. It was in the morn, the next morning though.

WK: Okay. Uh, did you ever see Todd McNair and Reggie Bush together that night or the next day?

MB: No. No, I did not.

WK: All right. Do you recall Todd McNair making any phone calls to Reggie, uh, at, at the party while the two of you were together or after the party as you were headed --

MB: Uh --

WK: -- home?

MB: -- no. I, I don't. I don't know anything about that.

WK: Do you recall what time you left the party?

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NCAA 000916

A0773

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MB: Uh, it was after the doors closed. I think the party closed about 2 o'clock. Uh, so it was, you know, shortly after time frame.

WK: And you said that Todd, uh, Todd had some people around him toward the end of the party. Do you know any of those people and their names?

MB: No. No. I, I don't.

WK: All right. Do you know any information, Martin, about, uh, where Reggie Bush was staying during that weekend?

MB: Uh, no.

WK: And did you see Reggie Bush and any people he was with leaving the party that night?

MB: I, I saw Reggie once and that was probably for maybe a minute, uh, or so. Uh, and I didn't see him again the rest of the evening.

WK: And do you have any information about what Todd McNair did the day of the party before you actually saw him at the party?

MB: No. No. I, I had met him and talked, I saw Todd at the party. No.

WK: Okay. I believe that's all the questions I have, Martin. Thank you for your time. Uh, the, these other people may have some questions for you.

RJ: Okay. Martin, this is Rich Johanningmeier. And I just want to make --

MB: Uh-huh.

RJ: -- I just want to make sure, uh, for the record that, uh, we have the, uh, proper contact information for you. And prior to, uh, the recorder going on, you provided for us your, uh, mailing address as Martin Bayless, [REDACTED]; and a telephone contact number as [REDACTED]. Is that all correct?

MB: Yes, it is, sir.

RJ: Thank you. Martin, uh, since 2005, how often have you and McNair engaged in telephone conversations?



February 1, 2010

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Mr. Todd McNair
c/o Mr. Scott Tompsett
Stinson, Morrison, Hecker, LLP
1201 Walnut Street, Suite 2900
Kansas City, Missouri 64106-2150

RE: Case Summary, University of Southern California; Case No. M295.

Dear Mr. McNair:

You were named in the Indiana University of Southern California infractions case. Enclosed is the case summary that corresponds with those allegations.

Please contact this office if you have any questions.

Sincerely,

Ameen R. Najjar
Director of Enforcement

ARN:smc

Enclosure

cc: Mr. Scott Tompsett
Mr. Shep Cooper
President Steven Sample
NCAA Division I Committee on Infractions

National Collegiate Athletic Association

An association of over 100 members serving the student-athlete
Goal: Opportunity. Achievement. Honor. Triumph.

CASE SUMMARY

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February 1, 2010

Background

The institution goes to great lengths throughout its response to paint Lake as not believable due to his criminal record. The enforcement staff recognizes Lake's past criminal conduct and did weigh it in evaluating his credibility; but determined that Lake told the truth in this matter while attempting to recover the funds he spent on Bush for the following reasons:

1. Lake did not contact the enforcement staff. Only after a long, difficult and persistent effort did Lake consent to interview with the enforcement staff.
2. Lake made it known to the staff that he had prior legal issues, as well as a book deal to discuss his relationship with Bush and the Griffins.
3. Lake indicated that he had a relationship with Bush and the Griffins that has been substantiated by telephone records and by Bush during his April 2009 interview.
4. Lake stated that a sports agency was formed and provided incorporation documents for Aggressive Integrity LLC and documentation for New Era Sports. New Era Sports was a recognized sports agency by the NFLPA as evidenced in Case No. NFLPA 07-D1 Arbitration between the NFLPA and David Caravantes.
5. Lake was aware of specific and detailed information about Bush and the Griffin family that would otherwise not be known to the public. Several examples of this knowledge include:
 - a. Bush previously owned a Ford Ranger and bought a Chevrolet SS Impala in February 2005; Lake was aware of the approximate value of the Impala's purchase price and the approximate value of Bush's monthly car payment.
 - b. Lamar Griffin owned a green Cadillac.
 - c. Bush attended and rode in a limousine with Lake and Michaels to the Marshall Faulk party in 2005.
 - d. Bush was at the Hyatt Regency in San Diego the weekend of the Faulk party in 2005.
 - e. McNair attended the Faulk party in 2005, the only year McNair attended the party.
 - f. Bush vacationed in Las Vegas in March 2005.
 - g. Bush vacationed with a then girlfriend on Catalina Island.

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Allegation No. 3

3. [NCAA Bylaws 10.1-(d)]

It is alleged that on September 19, 2006, and February 15, 2008, assistant football coach Todd McNair violated the principles of ethical-conduct legislation when he knowingly provided false and misleading information to the institution and enforcement staff when questioned about his knowledge of Lloyd Lake, one of the founders of Aggressive Integrity Sports Management/New Era Sports and Entertainment. Specifically:

- a. Concerning the misleading information, during the September 19, 2006, interview attended by Angie Cretors, NCAA associate director of agent, gambling and amateurism activities; Richard A. Johanningmeier, NCAA associate director of enforcement; Ron Barker, associate commissioner of the Pacific-10 Conference; Ellen Ferris, associate provost for athletics compliance; Kelly Bendell, general counsel; and Noel Ragsdale, faculty athletics representative, McNair was questioned about former football student-athlete Reggie Bush and the young man's relationship with Lake and the New Era Sports Marketing firm. McNair denied that Bush ever told McNair that the young man had a relationship with Lake or New Era. In an effort to determine if McNair had a relationship with Lake, in response to questions posed by Cretors, McNair stated that to his knowledge, he had neither met nor spoken to Lake.
- b. Concerning the false information, during a February 15, 2008, interview attended by Cretors, Johanningmeier, Barker, Ferris, Bendell and Mark Jones from the law firm of Ice Miller, outside counsel to the institution, and after the investigation revealed that McNair had placed telephone calls to Lake, as well as appeared in a photograph with Lake, McNair was advised that his telephone records indicated that McNair had placed calls to Lake (██████████) on October 29, 2005, at 11:39, 11:52 and 11:56 p.m. In addition, McNair was advised that records indicated that he received a two minute and 32-second call from Lake on January 8. McNair, in response to a question posed by Johanningmeier as to why Lake's telephone number appeared on McNair's phone records when McNair previously reported that he neither met nor spoke to Lake, McNair denied that he knew Lake and had no idea why Lake's telephone number appeared on McNair's phone records. When asked by Johanningmeier how McNair had gotten Lake's telephone number, McNair stated that he had no idea. McNair continued that it was obvious that McNair called Lake's number but that McNair had not been calling Lake.

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McNair was provided with a photograph of McNair with three other individuals (Faison Love; friend of both Lloyd Lake and Todd McNair; Michael Michaels, one of the founders of Aggressive Integrity Sports Management/New Era Sports and Entertainment and Lake) and was asked by Johanningmeier to explain the photograph. McNair stated that he has posed for numerous photographs and did not know the other individuals in the photograph. McNair, when told that the photograph may have been taken on the night of October 29, stated: "I don't know. I, you know, there was some dudes that was with us, not with us, came with us, was staying or whatever, uh, this is my friend (Love). I'm with him, you know, I don't know." McNair continued that the photograph was of him and Love, and that the other two individuals in the photograph were standing behind them. When asked by Johanningmeier, McNair denied that he knew two of the individuals in the photograph.

Overview: The institution does not agree that McNair is guilty of unethical conduct in violation of NCAA Bylaw 10.1-(d). The institution also does not believe there is convincing proof that McNair knowingly provided the NCAA enforcement staff and institution false and/or misleading information concerning his involvement in or knowledge of matters relevant to a possible violation of NCAA legislation. McNair believes that there is no evidence that he lied when he said Bush never told him about his relationship with Lake or New Era. Further, McNair said he did not lie when he stated that to the best of his knowledge, he had neither met nor spoken to Lake. The enforcement staff believes that McNair, in an effort to prevent being implicated for knowledge of or involvement in possible NCAA violations, provided false and misleading information during his September 19, 2006, and February 15, 2008, interviews.

Remaining Issue: Did McNair provide false and misleading information in response to questions regarding his relationship with Lake; four telephone calls to/from Lake that appeared on McNair's phone records; and a photograph in which he and Lake appeared when he denied during interviews on September 19, 2006, and February 15, 2008, that he knew Lake and had no idea why Lake's telephone number appeared on his phone records?

Position of Institution: As noted in its response, the institution does not agree that McNair is guilty of unethical conduct, as alleged in Allegation No. 3.

Position of McNair: McNair denies the allegation.

Position of Enforcement Staff and Reasons for Position: The enforcement staff believes that McNair provided misleading information during his September 19, 2006, interview and that he provided false information during his February 15, 2008, interview, in violation of Bylaw 10.1-(d) based on the following:

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- Lake's statement that after Bush introduced Lake to McNair in a hotel room at the Hyatt, Lake had subsequent conversations with McNair March 5 and 6, 2005, at the Marshall Paulk, former NFL player, birthday party; October 29, 2005, while socializing with McNair; and during a telephone conversation January 8, 2006.
- [REDACTED], Lake's former girlfriend's, statement that Lake told her about the January 8, 2006, call to one of the institution's coaches and that Love was Lake's friend.
- [REDACTED] former football prospective student-athlete's, statement that after attending a postgame barbeque with Bush, he did not see Bush again on the night of October 29 until 11:30 p.m.
- Documents. McNair's telephone records from October 2005 and January 2006. [Institution's response, Exhibit Nos. 10 and 13]
- Photograph. A photograph provided by Lake's attorney of McNair, Love, Michaels and Lake.



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Relevant Information Reported/Obtained:

- Lake was interviewed by the enforcement staff November 6, 2007.

Angie Cretors (AC), associate director of agent, gambling and amateurism activities

Rich Johannngmeier (RJ), associate director of enforcement

Lloyd Lake (LL)

Brian Watkins (BW), Lake's attorney

Paul Wong (PW), Lake's attorney

[Excerpt from Page Nos. 15 and 16]

LL: Yeah, I'm good friends with Darryl.

PW: You might wanna explain.

BW: Yeah.

RJ: Yeah, explain.

LL: Yeah, his has a cousin name Darryl, that's my friend, that's just a --

AC: Is Darryl a last name?

LL: Uh, Horsell.

AC: Okay.

LL: Reggie's --

AC: Lives in San Diego?

LL: Yeah, he lives in San Diego and you know where, uh, like I said cousins or play cousins, I don't know but know but he's my friend, too. So, uh, that's another reason how the relationship. But, you know, we went out to a couple clubs. We went to Fasion Love, T-Mac, his runningback coach, uh, I don't even know the name of the dude.

RJ: Reg, Reggie's runningback coach?

LL: Yeah.

RJ: Reggie?

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AC: T-Mac?

LL: Yeah.

AC: Do you know his full name?

LL: Uh, McNair I think.

RJ: But did he call him T-Mac?

LL: Yeah.

RJ: And would Todd McNair make --

LL: Yeah, that's it, McNair. Yeah.

PW: (Unintelligible).

RJ: Okay. Okay. So, so he was with you when you socialized?

LL: One time we went to the club I got a picture.

AC: With?

LL: With, with, uh, Reggie wasn't in it but T-Mac and Fasion was in it. Reggie had got in a argument with, some girls were arguing and he wasn't in the picture but.

RJ: When, when did this exactly occur? When you were socializing with Todd McNair and Reggie?

LL: I mean it was two times. He came down for the Marshall Faulk party, too, and we got him that room, Reggie the room down there.

[Excerpt from Page Nos. 108 through 110]

LL: That was the night T-Mac was out with us, yeah.

AC: Uh-huh.

LL: So I figured T-Mac told that we were with Reggie and I figured he got, that's just, uh, how I'm thinking.

AC: Uh-huh.

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RJ: Let me go through this thing 'cause this might be in the same area. All right, I wanna, I, I wanna ask you, uh, on record, if in, uh, October 2005 was [REDACTED] your telephone number?

LL: Yes.

RJ: Okay. And the reason I ask you this is that in checking, uh, telephone records at USC, there shows a call on October 29th at 11:39 p.m. --

LL: Uh-huh.

RJ: -- to Todd McNair for a minute, another call at 11:52 p.m. for a minute, and another one on the same October 29th at 11:56 for one minute/

LL: They called me?

RJ: There was calls, uh, that call was made to your telephone number, correct.

LL: Yes.

RJ: From Todd McNair.

LL: Yes.

RJ: Can you tell us what those calls were about?

LL: Shh, I don't even recall. Uh, let me see. What was the dates on it?

RJ: October 29th.

PW: Is that the night of, of, uh --

LL: That's the night of that party I think.

PW: Yeah, of, uh, Marshall Faulk's party. Was it the 29th?

RJ: That would've been March.

AC: That would've been March.

PW: Oh, okay.

LL: No, no, I think that was the night, this is the night we were out.

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RJ: The, is this the night you're talking about --

LL: The club.

RJ: Right.

LL: Yeah. That's, that's that night. That's what it's gotta be 'cause we was trying to figure out where we were.

RJ: Somebody's got a computer we can figure out real quick --

AC: I'm trying to see if I can --

RJ: -- if that's a Saturday.

AC: -- find that.

RJ: I think it might be a Saturday.

LL: Oh.

RJ: October 29th on, uh, 2005. Do you, first of all, do you remember McNair making a call to you?

LL: Yeah, that's why I said that's what's it gotta be. Yeah, Saturday.

AC: Saturday.

LL: That was the night we went to the club I'm telling you guys about.

RJ: Okay.

LL: Hello. Oh, shit. Why don't, why, I'm looking for an important call for a reason.

RJ: Okay. So, so that Oct, so that October 29th, you remember the calls from McNair?

LL: Yes.

RJ: And what would he be calling you about?

LL: He was calling seeing what club we were at, where we were going.

AC: How did he have your number?

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LL: Uh, we had exchanged numbers I think from the Faulk party. He was aware what was going on.

AC: He was aware of what was going on?

[Excerpt from Page No. 112]

LL: He knew about the sports agency. I gave him a card and everything. That's how he called me from.

AC: What kind of card?

LL: A business card.

AC: And what was on the business card?

LL: New Era Sports.

AC: Do you have a copy of that card?

LL: I think, yeah, at home I do.

AC: Can we get a copy of that?

LL: Yeah.

[Excerpt from Page Nos. 112 through 114]

RJ: Well let me ask you this one, too, Lloyd, on, uh, January 8th, 2006, at 1:34 in the morning, there's a call, McNair call to you for two minutes and 32 seconds.

LL: What time was that?

RJ: This is January 8th, 2006, it's at 1:34 in the morning, and it's a call, uh, McNair --

AC: Coach doesn't understand why people are calling at 1:34.

RJ: -- McNair makes a call to you at 2:32. I was asleep at that time --

LL: Yeah.

RJ: -- personally, but, but in your case --

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LL: I think that was like, that was like him trying to resolve it, you know, and like Reggie's wrong, he should make it right and basically don't implement the school.

RJ: Because this, this is 2006 we're talking about.

LL: Yeah, that's when I went to jail, that's when everything started falling apart, I mean, it fell apart.

RJ: What can you tell us that you specifically recall about that conversation with him?

LL: Uh, just telling about Reggie and all, he knew about the money he took, he knew that he had an agreement and --

AC: Todd McNair indicated to you in the telephone conversation that he was aware that Reggie took money --

LL: I mean, he knew --

AC: -- from you?

LL: -- yeah bec, he knew Reggie took money from me. There's no doubt he knew about that.

RJ: And why do you say that?

AC: Yeah, we need to know why you, why you believe that he knew that?

LL: 'Cause he was around a lot and, you know, it's like he watched me get them guys, his friends, hotel rooms, Reggie told me he knew about certain things he was doing but he's cool. You know what I mean? It's like basically through Reggie --

AC: Reggie said he --

LL: -- 'cause I told Reggie you shouldn't be having the, no, he's cool, the coach, that's my, he's my friend. He's not --

RJ: What, what's your understanding of the relationship that Reggie had with McNair?

LL: I mean, he was his coach but they were also friends. You know, outside of, outside the field.

RJ: Did they socialize?

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LL: Yeah.

RJ: Besides when you guys --

LL: That's how we were at the club that night. I mean, yeah.

[Excerpt from Page No. 115]

AC: Did you ever call McNair?

LL: Yeah, I called him a couple times.

AC: Do you know when or what the --

LL: Around this time.

AC: -- those conversations --

LL: Yeah, trying to get this resolved, just get my money back and make it right.

AC: So you called McNair in early July and vocalized to him that you wanted your money back?

LL: January.

AC: January of '06?

LL: Yeah.

AC: Okay. And when did you say you went back to jail?

LL: January 18th.

AC: January 18th. So before, prior to that --

LL: Yeah.

AC: -- you were making calls?

LL: Yes.

AC: Okay.

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- McNair was interviewed by the enforcement staff September 19, 2006, and February 15, 2008.

Ron Barker (RB), associate commissioner, Pacific-10 Conference
Kelly Bendell (KB), general counsel
Angie Cretors (AC)
Ellen Ferris (EF), associate provost for athletics compliance
Rich Johanningmeier (RJ)
Todd McNair (TM)
Noel Ragsdale (NR), faculty athletics representative

[Excerpt from September 19, 2006, interview transcript, Page Nos. 35 and 36]

AC: And can, can you tell me if you've ever met Michael Michaels?

TM: No.

AC: Have you ever spoken with Michael Michaels?

TM: Not to my knowledge.

AC: Have you ever met Lloyd Lake?

TM: Not to my knowledge.

AC: So you might have but you're not sure and you might not have, is that to your knowledge, you never have met them, you don't know them or you're not sure --

TM: Not sure.

AC: -- whether you have?

TM: Not to my knowledge. If I came in here with, with my nephew and four of his little friends and I introduce you to 'em, this is my nephew Marcus, and say, hi Marcus, and that, that's Pete, and that's, what's your name again?

AC: Angie.

TM: And that's Angie, that's Bobbie, that's Angie, that's Steve, that's Angie. Say hey, hey, hey to all them and then they'll go about their way. So not to my knowledge. You know, and then if I asked you a month later have you met Pete or Bobbie or, you'll, I don't know. And then really I don't, I don't think I have, so.

AC: Okay.

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TM: So, but not to my knowledge.

AC: Has Reggie ever --

NR: It certainly, I mean, it sounds like, you certainly don't recall meeting them?

TM: I don't recall ever meeting them.

NR: Okay. Or was that speaking with him?

TM: Never.

AC: With either Lake or Michaels?

TM: Never.

[Excerpt from February 15, 2008, interview transcript, Page Nos. 43 through 48]

Ron Barker (RB)
Kelly Bendell (KB)
Angie Cretors (AC)
Ellen Ferris (EF)
Rich Johannigmeier (RJ)
Mark Jones (MJ), outside counsel for the institution
Todd McNair (TM)

RJ: I want you to read, for the record, I'm gonna hand you the document here that says New Era Sports and Entertainment, and I want you to read what it says on there and particularly the telephone numbers.

TM: Says Lloyd Lake.

RJ: Please speak up.

TM: It says New Era Sports and Entertainment, Lloyd Lake, senior director of operations, [REDACTED]

[REDACTED]; office, [REDACTED]; fax, [REDACTED]

RJ: Is that the same phone number that I asked you about just a few --

TM: Sounds --

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RJ: -- minutes ago.

TM: -- sounds like it.

RJ: So Lloyd Lake's number appears, that you made calls to Lloyd Lake and you denied to us that you know Lloyd Lake.

TM: I don't know Lloyd Lake.

RJ: Well why, what's his telephone number doing on your telephone call, uh, list and why are you calling him?

TM: I have no idea but I, I don't know Lloyd Lake.

RJ: Okay. And the number I asked you about in January is Lloyd Lake calling you for about a two minute and 32 second conversation, you follow up with a minute call to Reggie Bush and then there's a call, a 13 minute something call after that --

TM: Uh-huh.

RJ: --that Bush returns to you.

TM: Yup, I remember you said that. That's the number. I, I don't know and have never talked to Lloyd Lake.

RJ: Well, we have information Lloyd Lake gave you his business card at the, uh, at the Marshall Faulk party.

TM: I didn't see Lloyd Lake at the Marshall Faulk birthday party.

RJ: Well that's contrary what, uh, Lloyd Lake tells us.

TM: I don't care what it is. Just I didn't talk to Lloyd Lake, I didn't see Lloyd Lake, I didn't have his business card.

RJ: But you have Lloyd Lake's tel, you're making --

TM: That's the number.

RJ: -- telephone calls to Lloyd Lake.

TM: That's the number and --

RJ: Then how did you get that number?

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TM: I have no idea. And I don't know, I mean, obviously I called that number but I, I wasn't calling Lloyd Lake, so.

RJ: Okay.

MJ: Were there, there ever occasions that you called Reggie at telephone numbers other than his cell phone?

TM: I'm sure there was. Yeah, I'm sure there was.

RB: How about Lamar Griffin? Did you call him ever?

TM: Yeah, I've called him a couple times. Yeah, I've called him a couple times.

MJ: Before, before we go on, Rich, you, you read, there were several pages of transcript there, several minutes ago. Was the coach supposed to react to that?

RJ: Just a minute. We will go through. Let me, let me --

MJ: Oh, okay.

RJ: -- hear what he's saying.

MJ: Fine. All right. Sure.

RJ: Would you look at this photograph right here.

MJ: I thought we were done.

RJ: And who these individuals are?

TM: That's Faison, I don't know who they are. That's when we're out I guess.

RJ: So you don't know the other two individuals?

TM: No, is it supposed to be Lake, one of 'em supposed to be Lake?

RJ: That's what we're asking you.

TM: No, I don't know.

RJ: Could you tell us on this photograph, where this photograph would've been taken?

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TM: That's the USC locker room.

RJ: Do, do you know who that individual is in there?

TM: No.

RJ: For the record, the enforcement staff and the, uh, agents, gambling and amateurism staff have, uh, reasons to believe that that's Lloyd Lake in the, uh, USC locker room. And, the NCAA also has reasons to believe that the photograph with you putting your fingers behind Faison Love's head is the gentleman next to Faison Love is Michael Michaels, also known as the Chief, along with Lloyd Lake. And according to our information, that picture was taken on the night of the 29th and 30th of 2005 during those telephone calls when you were calling to find out where Reggie Bush and, and Lake and those people were going to be out socializing.

TM: Hmm.

RJ: And that you then went out there with them. So as you can see from our standpoint, we're having a lot of problems with your credibility and I have to tell you that there's a good possibility that, uh, the NCAA could allege a, uh, ethical-conduct charge of providing us false, misleading information in the fact that you denied that you know him, we have the telephone calls and we have a photograph with you with people that you say that you don't know.

TM: I don't know 'em and I did not call him.

RJ: Well coach, how can you explain this photograph?

TM: You know, I can around there and pull a lot of pictures out of, out of our office, pictures after games posing with parents, and various friends, hangers on, this guy, that guy, I can take a, coach, take a picture with me; coach, take a picture, oh, hold on a minute. I can take, you can come, you can be outside our game, uh, hey, coach McNair, great game, could you take a picture with us? All right. Sure. You know what I mean? We, that happens to us constantly, all the time. I don't know these guys. Yes, that's the phone number that was on my phone. How it, how that happened, if, if somebody else had that phone or I thought I was calling somebody else or they called me, I don't know. But I don't know them dudes. That picture, that night, I don't, you know, I don't, I don't rem, is this supposed to be the night after the, the, uh, the game in, in question or whatever?

RJ: That's correct.

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TM: I don't know. I, you know, there was some dudes that was with us, not with us, came with us, was staying or whatever, uh, this is my friend, I'm with him, you know, I don't know.

AC: You had indicated he also --

TM: Wasn't with.

AC: -- knew Lloyd, correct, Faison?

TM: Yeah, he knew Lloyd. He knew Lloyd.

RJ: Help, help us what Lloyd Lake's doing in your locker room?

TM: I have no idea. I have no idea.

RJ: And when you take pictures with fans and that, do you usually put your fingers up behind their head and to --

TM: That --

RJ: -- everybody?

TM: -- that's my buddy. I'm making it funny, like a rabbit ear.

RJ: Well, these guys certainly are part of the group.

TM: They're standing a little ways behind. I mean, this, this is --

RJ: Okay coach.

TM: -- they're standing a little in the background. They're, they're, like, not in here with me. This, this looks like a picture of me and Faison and they're standing behind, you know.

RJ: So you, you still deny that you don't even know these people?

TM: I don't know these dudes. I don't know those guys. Had, let me ask you, have, has either, has Lake ever said that he had a conversation with me and told you what we talked about?

RJ: Yes, he has.

TM: He, he has said that we had a conversation?

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RJ: Yes.

TM: What, then, what were the details, what were we speaking about?

RJ: He says he's had conversations with you in the, uh, Hyatt Regency at the time of the Faulk party, and he says that he saw you and when you came over to the limousine that Reggie Bush was in with him and, uh, at the Faulk party. So he places you several times.

TM: Okay.

RJ: He talks about the telephone call that he made to you because the deal was falling apart. He called you because he told you about how he was in the agent business and actually, uh, was hoping to get some help out of you maybe to help guide him to some players and he talks about, uh, how, when this, he felt the whole Ornstein thing was moving in, that's why he called to complain to you in that January situation. And then shortly after that, Bush went with Ornstein.

TM: Oh, that's a crock of shit. He, I don't ever remember having a con, any conversation with him at all. Never. And then like I said, I don't, how that number got in my phone, I don't know.

RJ: Well coach --

TM: They were, I mean, that was, wasn't that the only two times, that night, wasn't that the only two times it was ever on the?

RJ: No. You have a call in January when he calls you. And the point is this, he produces some information to us that lends to his credibility. Right now, we're having a very difficult time with your credibility.

TM: Yeah, you would.

[Excerpt from February 15, 2008, interview transcript, Page No. 59]

RJ: Well help us with the phone --

TM: -- he sounded, he sounded like to me he didn't even like the guy. So, so even if, if they're around, he's not gonna be, well, this is my man. He really, you know, when he saying, he didn't even like the guy. He said he was a snitch.

RJ: But I wanna establish a fact though, does the photograph have those two other individuals in it?

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TM: It's a picture of me and Faison, and those two individuals are in the background. Yes, they're in the background of the picture. In the background --

RJ: And --

TM: -- of the picture.

RJ: -- we, and the business card that we presented to you that has Lloyd Lake, New Era Sports and Entertainment is the same number that's on your phone records?

TM: Apparently so.

RJ: And also a call from that number to your office on that January date, and you have no idea --

TM: It's my cell phone.

RJ: -- how those calls were made or who made 'em?

TM: I have no idea.

- Jones was interviewed by the enforcement staff March 31, 2008.

Angie Cretors (AC)
Rich Johanningmeier (RJ)
Maiesha Jones (MJ)

[Excerpt from Page Nos. 19 and 20]

RJ: Tell us about Faison Love.

MJ: Uh, Faison, I personally never met. Uh, I think I've talked to him on the phone a couple times. Uh, I don't really know.

RJ: What's Lloyd's relationship with --

MJ: They're just really good friends through Shug.

RJ: Okay. And how do you know --

MJ: I just know they're --

RJ: -- how do you know that?

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MJ: -- just from Lloyd and hearing Shug talk about it.

RJ: Okay. What's, uh, Love's relationship with Michael Michaels?

MJ: Uh, I'm not a, I don't think they have one.

RJ: Okay.

MJ: I'm not aware of one.

RJ: And I think you've already answered this but were you ever present when, uh, Lloyd socialized with, uh, Faison Love?

MJ: No.

[Excerpt from Page Nos. 56 through 58]

RJ: Do you have any knowledge --

MJ: His, oh --

RJ: -- of, uh, in, uh, of Lloyd making contact with anyone, uh, at USC about his concerns of, uh, about the deal falling apart and maybe calling to get their assistance? Do you have any knowledge of any contacts --

MJ: Uh.

RJ: -- he might've made?

MJ: I, if I'm not mistaken it might've been that guy. I don't, who is that guy? What, did he --

RJ: Todd McNair.

MJ: What is he?

RJ: He's an assistant football coach. He was the backfield coach for Reggie Bush.

MJ: For, yeah, I think it may've been him. Like, look, tell him, you know, he needs to, I know for sure it was somebody at USC.

RJ: Well, well, what --

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MJ: I know it wasn't Pete Carroll.

RJ: Okay.

MJ: You know.

RJ: Okay. Help me, help me set the whole scene.

MJ: Uh-huh.

RJ: What you remember

MJ: Uh, I just remember Ta-Ta making the calls. And then, uh, he was, like, you know, I hate to do this but I'm gonna have to 'cause I'm not about to get screwed. So he called, I just remember the word co, I just remember coach. So I'm just assuming it's him, but I'm not sure.

RJ: And what was the call about?

MJ: Just basically, like, somebody better talk to Reggie or this is gonna go public, you know, 'cause I'm not gonna lose my money.

RJ: And, and about what period of time would that call or calls --

MJ: This was at the, this was right when everything was getting dirty. When he was, uh, recording everything. So this was, he went to prison, I think, right after his birthday so it must've been, like, the beginning of February then when he went to prison or late January of '06. So, I mean, within a four-month frame before that.

RJ: There's a call on the record --

MJ: Uh-huh.

RJ: -- that shows a call around January 8th.

MJ: Okay.

RJ: What that've been in the same time frame?

MJ: That's four month, yeah, that would've been in the same time.

RJ: And why do you --

MJ: I don't know for sure if it was that guy though.

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Enforcement Staff Position on Refuting Information:

Contrary to McNair's and the institution's response, the enforcement staff believes that in an effort to prevent being implicated in knowledge of or involvement in possible NCAA violations that McNair, during both the September 19, 2006, and February 15, 2008, interviews with the enforcement staff, institution and Pacific-10 Conference, provided false and misleading information.

Faulk party. The enforcement staff believes that based on McNair's and Bush's close relationship and that McNair never attended a Faulk birthday party until 2005 when Bush did, it is reasonable to believe that individuals with such a close relationship saw each other in San Diego and most likely in the Hyatt hotel room. The staff's position is based on the following:

1. Telephone calls. McNair's failure to provide any specific information concerning the time he arrived in San Diego and the time he arrived at the party. When asked, McNair stated that he arrived in so "the night of the party or the day of the party." Concerning the time of his arrival at the party, McNair could not recall.
2. Prepaid ticket. Information developed from Martin Bayless', former NFL teammate of McNair's, interview refutes McNair's statements that Bayless personally called McNair and invited him to attend the party and subsequently attended the party with McNair. Bayless, when asked if he ever attended one of the Faulk parties with McNair, stated: "I have seen Todd at one of the parties. I did not attend with him." This is significant in that admission to the party was by prepaid ticket only; tickets were not available for purchase at the door. In addition, McNair no longer had a witness to corroborate that he was not at the Hyatt hotel room and did not see Bush or Lake at the party.
3. Hyatt hotel room. Contrary to Bush's statement, the enforcement staff believes that Bush stayed in the hotel room provided by Michaels for the following reasons:
 - a. Bush acknowledged that he called both Lake and Michaels about attending the party.

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- b. On March 5, there are numerous calls between McNair and Bush, and Bush and Lake.
 - c. Bush rode in a limousine with Lake and Michaels to the party.
 - d. Bush was in the hotel room.
 - e. Bush did not provide a credible answer as to how he obtained access to the hotel room in order to change clothes. If Bush did not stay in the hotel room, why did he call Lake and Michaels about the party and attend the party with them in a limousine?
4. Meeting Bush and Lake at the party. McNair's telephone records indicate that McNair and Bush had more than a player/coach relationship. McNair and Bush engaged in approximately 599 calls over a 14-month period and 92 calls in March 2005 [Exhibit No. 3-1]. McNair stated that he spent most, if not all, of the evening on the lower level of On Broadway. Jones reported that when they arrived at the party, she, Lake and Bush initially spent time on the lower level. Bayless reported that he saw and exchanged greetings with Bush at the party. If Lake did see McNair in the hotel room, it is logical to believe that they would have spoken to each other at the party.
5. Hotel receipt. The Hyatt hotel receipt for March 5 shows a charge for valet parking for three vehicles.
6. [REDACTED] During his February interview, when specifically asked, McNair stated that he had attended the Faulk party with Bayless and no one else. On November 18, 2009, [REDACTED] McNair's associate, reported that she attended the party with McNair. Based on [REDACTED]'s statements and McNair's telephone records, the staff does not believe [REDACTED] to be credible. In addition, during his interview Bayless never mentioned anyone else being with McNair.
7. October 29 phone calls. Concerning phone calls made October 29, the following chart lists the calls placed/received by McNair and Bush, as well as the given reason for the calls and the facts.

Time of Call	Length of Call	Call Placed/Received	Purpose	Facts
8:42 p.m.	2:53	Bush to McNair	Bush hosting [REDACTED]	From approximately 6 to 11:30 p.m., [REDACTED] was alone in his hotel room.
10:25 p.m.	1:00	McNair to Bush		
10:57 p.m.	1:00	McNair to Bush		
11:07 p.m.	1:41	McNair to Bush		

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Time of Call	Length of Call	Call Placed/Received	Purpose	Facts
11:39 p.m.	1:00	McNair to Lake	McNair does not know Lake and has never spoken to him.	Bush picks [REDACTED] up at his hotel at approximately 11:30 p.m.
11:52 p.m.	1:00	McNair to Lake		
11:56 p.m.	1:00	McNair to Bush	Bush hosting [REDACTED]	[REDACTED] recalled that Bush received a call from McNair at approximately 11:45 p.m.
11:56 p.m.	1:00	McNair to Lake	McNair does not know Lake and has never spoken to him.	Bush and [REDACTED] are on their way to a club.

8. As noted in its response, the institution contends that McNair's focus on October 29 was [REDACTED] recruitment. According to [REDACTED], Bush left [REDACTED] in his hotel room alone from approximately 6 to 11:30 p.m. Thus, the explanation of the calls made at 8:42, 10:25, 10:57 and 11:07 p.m. between McNair and Bush do not appear to be about [REDACTED] recruitment.

9. As noted in its response, the institution believes that it was very likely that McNair called [REDACTED] at 9:12 p.m. to check on him during his official visit. During his March 6, 2008, interview, [REDACTED] did not report having received any phone calls from McNair. If McNair had spoken with [REDACTED] at 9:12 p.m., McNair would have learned that [REDACTED] was alone in his hotel room.

10. The institution also contends that McNair got Lake's telephone number from Bush and that it was entirely possible, if not probable, that McNair did not speak with Lake during the three short phone calls and suggests that McNair hang up when he reached Lake's voicemail. However, on Page No. 45 of McNair's February 15 transcript, it was Mark [REDACTED], outside counsel for the institution, who suggested that McNair may have called Bush at other numbers after McNair had acknowledged that [REDACTED] was Lake's number, and that McNair had no idea how he got Lake's number. McNair stated that although it was obvious that he had called the number, McNair had not been calling Lake. The staff does not believe that the institution can assert that McNair did not speak to Lake because only Lake and McNair knew if they conversed; Lake reported that they had. In addition, the institution contends that McNair hung up when he reached Lake's voicemail. If McNair did not know Lake, why would McNair have placed three calls to Lake's voicemail?

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11. January 8, 2006, Lake-McNair telephone calls. As noted in its response, the institution contends that McNair would not have any reason to remember a two-minute and 32-second phone call at 1:34 a.m. January 8, 2006. The enforcement staff believes that the call is significant because (a) calls are not made at 1:34 a.m. to unknown individuals; (b) if it was a wrong number, it does not take two minutes and 32 seconds to disconnect; (c) a significant conversation can occur in two minutes and 32 seconds; (d) at 2:50 p.m., McNair placed a call to Bush; and (e) at 3:26 p.m., Bush returned McNair's call, and they engaged in a conversation that lasted 13 minutes and 23 seconds, the third longest phone conversation out of the 599 calls between Bush and McNair, likely discussing McNair's conversation with Lake.

The institution and McNair suggest that for the October 29 calls, Bush gave McNair Lake's phone number. The question that has not been answered is, how did Lake get McNair's cell phone number?

12. McNair, Love, Michaels and Lake photograph. The photograph is significant because it substantiates Lake's claim that he socialized with McNair. McNair and the institution both attempt to minimize the significance of the photograph, but the fact is that McNair appears in the photograph with Lake and Michaels, individuals whom he claimed that he did not know or had ever spoken to. McNair and Jones both reported that Lake knew Love. Jones reported that Lake and Love were good friends through their relationship with Shug Knight, music producer and friend of Lake. The fact that Love knew both McNair and Lake draws a strong inference that Love would have introduced them if McNair and Lake had not already known one another.
13. McNair/Lake credibility. If McNair is credible, then one has to believe that Lake planned and was involved in a conspiracy that required the arrangement of telephone records, photographs, meetings and other documents to substantiate the conspiracy; a scenario that is highly unlikely and certainly does not explain calls that were made from McNair to Lake.

Additional Matters that Relate to the Allegation:

During interviews September 19, 2006, and February 15, 2008, and on at least five occasions, when questioned pertaining to knowledge of or involvement in violations of NCAA legislation, McNair was not candid.

1. During McNair's September 19, 2006, interview concerning contact with Bush, when questioned as to what kind of contact or communication he had with Bush during the offseason, McNair replied, "A couple of times a week." McNair's telephone records list 599 phone calls with Bush from December 20, 2004, through February 17, 2006.

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2. Concerning Bush's internship with Mike Ornstein, representative of the institution's athletics interests and a sports marketing agent, McNair denied that he had any conversations with Bush about the internship with Sports Link. During his April 30, 2009, interview, Bush stated that at the time of his employment with Sports Link, McNair knew Bush was employed by Ornstein because Bush and McNair had a close relationship and they "talked about a lot of things."
3. McNair denied communicating with Ornstein by phone. McNair's phone records list three calls to Ornstein on December 27, 2004. As noted in the institution's response, the university's landline phone records do not reflect incoming calls and some local outgoing calls.
4. During McNair's February 15, 2008, interview concerning alleged impermissible contact with then prospective student-athlete [REDACTED] when questioned as to why [REDACTED] reported that McNair made contact with him in an attempt to talk [REDACTED] out of an oral commitment he made to the University of Oklahoma, replied: "I don't know. We never even offered [REDACTED] I didn't like [REDACTED] so I don't know why [REDACTED] said that. During a February 15, 2008, interview, head football coach Pete Carroll reported that [REDACTED] made an official visit to the institution and was offered a scholarship.
5. Concerning calls made to Bush March 6, 2006, the night of the Faulk party at 12, 1:21, 1:41, 2:12, 2:16, 2:19 and 2:28 a.m., McNair stated that if his phone was unlocked, the phone could have repeatedly made the calls because McNair had no recollection of making the calls.

Date and Time	Other Caller	Number	Call Length (min)
McNair Call Log (# [REDACTED])			
7/27/2005 9:41	Reggie Bush	[REDACTED]	3
Mc Nair Call Log from Cell Phone (# [REDACTED])			
Date and Time	Other Caller	Number	Call Length (min)
12-20-2004 8:04pm	Reggie Bush	[REDACTED]	1
12-21-2004 3:56pm	Reggie Bush	[REDACTED]	1
12-21-2004 4:13pm	Reggie Bush	[REDACTED]	1
12-21-2004 4:15pm	Reggie Bush	[REDACTED]	1
12-21-2004 5:56pm	Reggie Bush	[REDACTED]	1
12-26-2004 2:23pm	Reggie Bush	[REDACTED]	3
12-27-2004 1:25pm	Reggie Bush	[REDACTED]	1
12-27-2004 2:45pm	Reggie Bush	[REDACTED]	1
12-27-2004 3:08pm	Reggie Bush	[REDACTED]	2
12-27-2004 3:27pm	Mike Orenstein	[REDACTED]	2
12-27-2004 3:34pm	Mike Orenstein	[REDACTED]	1
12-27-2004 4:33pm	Mike Orenstein	[REDACTED]	1
12-29-2004 9:01pm	Reggie Bush	[REDACTED]	4
12-30-2004 7:58pm	Reggie Bush	[REDACTED]	1
12-30-2004 8:30pm	Reggie Bush	[REDACTED]	1
Total Calls to Bush in December of 2004: 12			
Total Calls to Orenstein in December of 2004: 3			
1-1-2005 12:01am	Reggie Bush	[REDACTED]	1
1-1-2005 5:47pm	Reggie Bush	[REDACTED]	2
1-1-2005 7:16pm	Reggie Bush	[REDACTED]	2
1-1-2005 8:05pm	Reggie Bush	[REDACTED]	5
1-3-2005 1:12am	Reggie Bush	[REDACTED]	1
1-3-2005 1:13am	Reggie Bush	[REDACTED]	1
1-3-2005 3:25pm	Reggie Bush	[REDACTED]	2
1-4-2005 2:06pm	Reggie Bush	[REDACTED]	1
1-4-2005 4:52pm	Reggie Bush	[REDACTED]	1
1-5-2005 1:47am	Reggie Bush	[REDACTED]	1
1-5-2005 5:31pm	Reggie Bush	[REDACTED]	1
1-6-2005 2:21pm	Reggie Bush	[REDACTED]	4
1-7-2005 1:42pm	Reggie Bush	[REDACTED]	1
1-7-2005 2:51pm	Reggie Bush	[REDACTED]	1
1-7-2005 2:53pm	Reggie Bush	[REDACTED]	7
1-12-2005 7:04pm	Reggie Bush	[REDACTED]	4
1-14-2005 11:24am	Reggie Bush	[REDACTED]	1
1-16-2005 10:54am	Reggie Bush	[REDACTED]	1
1-16-2005 12:37pm	Reggie Bush	[REDACTED]	1
1-16-2005 5:46pm	Reggie Bush	[REDACTED]	9
1-21-2005 5:54pm	Reggie Bush	[REDACTED]	1
1-21-2005 6:19pm	Reggie Bush	[REDACTED]	4
1-21-2005 7:08pm	Reggie Bush	[REDACTED]	1
1-22-2005 4:32pm	Reggie Bush	[REDACTED]	13
1-24-2005 8:23pm	Reggie Bush	[REDACTED]	4
1-24-2005 8:29pm	Reggie Bush	[REDACTED]	1
1-26-2005 12:52pm	Reggie Bush	[REDACTED]	3
1-30-2005 12:54pm	Reggie Bush	[REDACTED]	1
Total for January 2005 Calls to Bush: 28			

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NCAA 001303

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2-2-2005 11:41pm	Reggie Bush		14
2-3-2005 1:53pm	Reggie Bush		1
2-3-2005 3:11pm	Reggie Bush		4
2-4-2005 10:18am	Reggie Bush		4
2-5-2005 7:30pm	Reggie Bush		3
2-7-2005 2:33pm	Reggie Bush		1
2-7-2005 8:47pm	Reggie Bush		3
2-8-2005 1:54pm	Reggie Bush		1
2-8-2005 8:43pm	Reggie Bush		1
2-9-2005 12:11pm	Reggie Bush		1
2-9-2005 12:19pm	Reggie Bush		1
2-9-2005 11:29pm	Reggie Bush		4
2-10-2005 10:13am	Reggie Bush		1
2-10-2005 12:48pm	Reggie Bush		1
2-10-2005 2:58pm	Reggie Bush		1
2-10-2005 3:57pm	Reggie Bush		1
2-11-2005 5:15pm	Reggie Bush		1
2-14-2005 5:16pm	Reggie Bush		1
2-17-2005 2:57pm	Reggie Bush		1
2-18-2005 6:55pm	Reggie Bush		10
2-19-2005 3:27pm	Reggie Bush		1
2-19-2005 3:34pm	Reggie Bush		3
2-19-2005 3:43pm	Reggie Bush		3
2-19-2005 4:45pm	Reggie Bush		6
2-19-2005 6:20pm	Reggie Bush		2
2-19-2005 6:22pm	Reggie Bush		1
2-19-2005 6:24pm	Reggie Bush		9
2-19-2005 6:38pm	Reggie Bush		4
2-19-2005 6:43pm	Reggie Bush		1
2-19-2005 7:16pm	Reggie Bush		6
2-19-2005 7:22pm	Reggie Bush		2
2-19-2005 7:27pm	Reggie Bush		1
2-19-2005 7:43pm	Reggie Bush		1
2-19-2005 7:44pm	Reggie Bush		1
2-19-2005 7:50pm	Reggie Bush		1
2-19-2005 8:53pm	Reggie Bush		3
2-23-2005 10:08am	Reggie Bush		1
2-23-2005 2:31pm	Reggie Bush		1
2-24-2005 9:58am	Reggie Bush		1
2-24-2005 3:22pm	Reggie Bush		1
2-24-2005 3:23pm	Reggie Bush		1
2-24-2005 5:18pm	Reggie Bush		7
2-24-2005 5:26pm	Reggie Bush		17
2-24-2005 5:46pm	Reggie Bush		12
2-24-2005 3:06pm	Reggie Bush		1
2-25-2005 7:24pm	Reggie Bush		1
2-25-2005 7:29pm	Reggie Bush		9
2-26-2005 6:13pm	Reggie Bush		1
2-26-2005 6:15pm	Reggie Bush		2
2-28-2005 11:05am	Reggie Bush		1
2-28-2005 2:53pm	Reggie Bush		1
2-28-2005 5:17pm	Reggie Bush		1
2-28-2005 7:16pm	Reggie Bush		1
2-28-2005 7:17pm	Reggie Bush		13
Total for February Calls to Bush: 54			

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NCAA 001304

A0810

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3-2-2005 12:22pm	Reggie Bush	1
3-3-2005 1:55pm	Reggie Bush	1
3-3-2005 1:59pm	Reggie Bush	1
3-3-2005 6:07pm	Reggie Bush	1
3-3-2005 6:12pm	Reggie Bush	1
3-3-2005 7:42pm	Reggie Bush	5
3-3-2005 8:31pm	Reggie Bush	1
3-3-2005 9:01pm	Reggie Bush	2
3-4-2005 11:04pm	Reggie Bush	2
3-5-2005 1:48pm	Reggie Bush	1
3-5-2005 4:12pm	Reggie Bush	1
3-5-2005 4:15pm	Reggie Bush	8
3-5-2005 6:10pm	Reggie Bush	1
3-5-2005 7:21pm	Reggie Bush	1
3-5-2005 7:36pm	Reggie Bush	1
3-5-2005 7:37pm	Reggie Bush	2
3-5-2005 8:04pm	Reggie Bush	1
3-5-2005 9:52pm	Reggie Bush	2
3-5-2005 9:55pm	Reggie Bush	1
3-5-2005 9:56pm	Reggie Bush	1
3-5-2005 9:57pm	Reggie Bush	2
3-5-2005 10:13pm	Reggie Bush	2
3-5-2005 10:16pm	Reggie Bush	1
3-5-2005 10:31pm	Reggie Bush	1
3-5-2005 10:43pm	Reggie Bush	1
3-5-2005 11:58pm	Reggie Bush	1
3-6-2005 12:00am	Reggie Bush	1
3-6-2005 1:21am	Reggie Bush	1
3-6-2005 1:41AM	Reggie Bush	1
3-6-2005 2:12am	Reggie Bush	2
3-6-2005 2:16am	Reggie Bush	1
3-6-2005 2:18AM	Reggie Bush	1
3-6-2005 2:19am	Reggie Bush	1
3-6-2005 2:27am	Reggie Bush	1
3-6-2005 12:14pm	Reggie Bush	7
3-6-2005 1:44pm	Reggie Bush	2
3-7-2005 2:53pm	Reggie Bush	1
3-8-2005 11:57am	Reggie Bush	1
3-8-05 1:22pm	Reggie Bush	1
3-8-05 6:28pm	Reggie Bush	1
3-9-05 10:02am	Reggie Bush	1
3-9-05 12:26pm	Reggie Bush	1
3-9-05 12:38pm	Reggie Bush	2
3-9-05 2:09pm	Reggie Bush	1
3-9-05 2:21pm	Reggie Bush	1
3-10-05 7:46pm	Reggie Bush	1
3-10-05 9:20pm	Reggie Bush	9
3-10-05 9:29pm	Reggie Bush	7
3-11-05 11:10am	Reggie Bush	1
3-11-05 11:46am	Reggie Bush	1
3-11-05 1:40PM	Reggie Bush	1
3-11-05 2:36pm	Reggie Bush	1
3-11-05 8:21pm	Reggie Bush	1
3-11-05 8:21pm	Reggie Bush	1
3-12-05 2:38pm	Reggie Bush	2
3-17-05 8:22pm	Reggie Bush	1
3-17-05 8:37pm	Reggie Bush	1
3-17-05 10:32pm	Reggie Bush	1
3-17-05 10:42pm	Reggie Bush	12
3-17-05 11:06pm	Reggie Bush	2
3-20-05 7:01pm	Reggie Bush	1
3-21-05 12:26pm	Reggie Bush	2

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A0811

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3-21-05 1:00pm	Reggie Bush		1
3-22-05 8:28am	Reggie Bush		1
3-22-05 7:53pm	Reggie Bush		1
3-23-05 2:01PM	Reggie Bush		1
3-23-05 2:59pm	Reggie Bush		1
3-23-05 7:20pm	Reggie Bush		1
3-24-05 9:19pm	Reggie Bush		1
3-24-05 9:20pm	Reggie Bush		3
3-25-05 12:22pm	Reggie Bush		1
3-25-05 1:55pm	Reggie Bush		1
3-26-05 11:29am	Reggie Bush		4
3-26-05 11:47am	Reggie Bush		2
3-26-05 1:11pm	Reggie Bush		10
3-26-05 7:00pm	Reggie Bush		6
3-29-05 12:07pm	Reggie Bush		1
3-29-05 12:45pm	Reggie Bush		1
3-29-05 12:57pm	Reggie Bush		1
3-29-05 1:00pm	Reggie Bush		1
3-29-05 1:28pm	Reggie Bush		1
3-29-05 7:35pm	Reggie Bush		1
3-29-05 7:57pm	Reggie Bush		1
3-29-05 8:04pm	Reggie Bush		1
3-29-2005 8:09pm	Reggie Bush		1
3-29-05 8:09pm	Reggie Bush		1
3-30-05 12:25pm	Reggie Bush		1
3-30-05 2:04pm	Reggie Bush		1
3-30-05 8:54pm	Reggie Bush		7
3-31-05 10:37am	Reggie Bush		1
3-31-05 2:03pm	Reggie Bush		1
3-31-05 9:05pm	Reggie Bush		1
Total for March Calls to Bush: 92			

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NCAA 001306

A0812

PREVIOUSLY LODGED UNDER SEAL. FILED PURSUANT TO COURT'S 2/6/15 ORDER

Date	Time	Called	Number	Time
4/1/2005	13:15	Reggie Bush		1
4/2/2005	10:46	Reggie Bush		1
4/2/2005	12:08	Reggie Bush		1
4/2/2005	12:40	Reggie Bush		1
4/2/2005	20:40	Reggie Bush		2
4/3/2005	7:43	Reggie Bush		1
4/3/2005	7:43	Reggie Bush		1
4/3/2005	21:10	Reggie Bush		1
4/3/2005	21:31	Reggie Bush		5
4/5/2005	12:23	Reggie Bush		1
4/6/2005	11:16	Reggie Bush		1
4/6/2005	15:13	Reggie Bush		1
4/7/2005	9:28	Reggie Bush		1
4/7/2005	9:42	Reggie Bush		1
4/7/2005	11:36	Reggie Bush		1
4/8/2005	11:36	Reggie Bush		1
4/8/2005	7:58 PM	Reggie Bush		1
4/8/2005	10:08 PM	Reggie Bush		13
4/9/2005	7:28	Reggie Bush		9
4/12/2005	11:01	Reggie Bush		1
4/13/2005	10:18	Reggie Bush		1
4/13/2005	13:00	Reggie Bush		1
4/13/2005	16:21	Reggie Bush		2
4/13/2005	19:23	Reggie Bush		1
4/13/2005	19:28	Reggie Bush		9
4/14/2005	12:08	Reggie Bush		1
4/14/2005	12:09	Reggie Bush		2
4/15/2005	11:19	Reggie Bush		4
4/15/2005	21:30	Reggie Bush		1
4/16/2005	15:52	Reggie Bush		1
4/16/2005	21:11	Reggie Bush		1
4/16/2005	21:11	Reggie Bush		1
4/16/2005	22:01	Reggie Bush		1
4/16/2005	22:19	Reggie Bush		1
4/16/2005	22:25	Reggie Bush		1
4/16/2005	22:32	Reggie Bush		2
4/16/2005	22:24	Reggie Bush		1
4/17/2005	12:01	Reggie Bush		6
4/17/2005	18:55	Reggie Bush		1
4/18/2005	12:11	Reggie Bush		1
4/18/2005	15:48	Reggie Bush		3
4/20/2005	17:01	Reggie Bush		1
4/20/2005	17:03	Reggie Bush		1
4/21/2005	12:15 AM	Reggie Bush		1
4/21/2005	12:16 AM	Reggie Bush		1
4/21/2005	12:19 AM	Reggie Bush		1
4/22/2005	14:27	Reggie Bush		1
4/22/2005	14:52	Reggie Bush		14
4/27/2005	11:17	Reggie Bush		1
4/27/2005	16:16	Reggie Bush		1
4/27/2005	16:19	Reggie Bush		1
4/27/2005	17:48	Reggie Bush		1
4/27/2005	18:07	Reggie Bush		1
4/28/2005	12:25	Reggie Bush		1
4/28/2005	14:00	Reggie Bush		1
4/28/2005	15:28	Reggie Bush		1
4/29/2005	12:38	Reggie Bush		1
4/29/2005	13:19	Reggie Bush		1
4/29/2005	13:55	Reggie Bush		1
Total for April Calls to Bush: 59				

CONFIDENTIAL
PURSUANT TO PROTECTIVE ORDER

NCAA 001307

A0813

PREVIOUSLY LODGED UNDER SEAL. FILED PURSUANT TO COURT'S 2/6/15 ORDER

5/2/2005	18:51	Reggie Bush		1
5/9/2005	14:04	Reggie Bush		1
5/9/2005	15:41	Reggie Bush		4
5/13/2005	19:03	Reggie Bush		1
5/13/2005	19:05	Reggie Bush		1
5/13/2005	19:07	Reggie Bush		9
5/15/2005	12:00 AM	Reggie Bush		1
5/15/2005	12:24 AM	Reggie Bush		4
5/18/2005	7:57	Reggie Bush		1
5/18/2005	8:07	Reggie Bush		1
18-May	10:46	Reggie Bush		1
5/18/2005	12:20 PM	Reggie Bush		1
5/18/2005	20:45	Reggie Bush		2
5/19/2005	12:50	Reggie Bush		5
5/21/2005	15:37	Reggie Bush		1
5/21/2005	16:03	Reggie Bush		1
5/23/2005	9:30 AM	Reggie Bush		3
5/23/2005	21:36	Reggie Bush		1
5/24/2005	13:11	Reggie Bush		5
5/24/2005	17:36	Reggie Bush		2
5/24/2005	17:39	Reggie Bush		1
5/26/2005	23:59	Reggie Bush		2
5/28/2005	12:00 PM	Reggie Bush		2
5/31/2005	11:54	Reggie Bush		13
5/31/2005	17:37	Reggie Bush		1
5/31/2005	17:41	Reggie Bush		1
Total from May to Bush: 26				

CONFIDENTIAL
PURSUANT TO PROTECTIVE ORDER

NCAA 001308

A0814

PREVIOUSLY LODGED UNDER SEAL. FILED PURSUANT TO COURT'S 2/6/15 ORDER

6/1/2005	9:33	Reggie Bush		1
6/1/2005	10:08	Reggie Bush		1
6/1/2005	13:00	Reggie Bush		1
6/1/2005	15:06	Reggie Bush		1
6/1/2005	16:38	Reggie Bush		3
6/1/2005	16:57	Reggie Bush		1
6/1/2005	17:01	Reggie Bush		1
6/1/2005	17:13	Reggie Bush		1
6/1/2005	17:21	Reggie Bush		1
6/1/2005	17:34	Reggie Bush		1
6/1/2005	17:41	Reggie Bush		1
6/1/2005	20:30	Reggie Bush		1
6/1/2005	18:10	Reggie Bush		1
6/2/2005	10:13	Reggie Bush		1
6/3/2005	15:16	Reggie Bush		1
6/3/2005	15:17	Reggie Bush		1
6/3/2005	21:55	Reggie Bush		1
6/6/2005	10:44	Reggie Bush		1
6/6/2005	12:13	Reggie Bush		1
6/7/2005	10:07	Reggie Bush		1
6/7/2005	10:45	Reggie Bush		1
6/7/2005	10:58	Reggie Bush		1
6/7/2005	11:00	Reggie Bush		1
6/7/2005	12:54	Reggie Bush		1
6/7/2005	15:31	Reggie Bush		1
6/8/2005	7:47	Reggie Bush		1
6/14/2005	12:37	Reggie Bush		1
6/14/2005	16:00	Reggie Bush		1
6/14/2005	17:02	Reggie Bush		1
6/14/2005	19:40	Reggie Bush		1
6/15/2005	12:24 PM	Reggie Bush		1
6/18/2005	15:16	Reggie Bush		1
6/20/2005	12:12 PM	Reggie Bush		1
6/20/2005	16:14	Reggie Bush		1
6/27/2005	21:23	Reggie Bush		2
6/29/2005	16:47	Reggie Bush		7
6/29/2005	19:00	Reggie Bush		2
6/29/2005	19:48	Reggie Bush		1
6/30/2005	15:54	Reggie Bush		1

Total Calls to Bush in June 2005: 39

CONFIDENTIAL
PURSUANT TO PROTECTIVE ORDER

NCAA 001309

A0815

7/4/2005	17:51	Reggie Bush		2
7/5/2005	11:41	Reggie Bush		1
7/5/2005	19:27	Reggie Bush		1
7/6/2005	23:39	Reggie Bush		1
7/7/2005	13:15	Reggie Bush		1
7/7/2005	15:19	Reggie Bush		1
7/7/2005	15:22	Reggie Bush		2
7/8/2005	19:32	Reggie Bush		3
7/14/2005	22:55	Reggie Bush		1
7/16/2005	15:07	Reggie Bush		22
7/27/2005	8:42 AM	Reggie Bush		1
7/27/2005	9:24 AM	Reggie Bush		3
7/27/2005	9:33 AM	Reggie Bush		1
7/27/2005	9:34 AM	Reggie Bush		5
7/27/2005	9:40 AM	Reggie Bush		1
7/27/2005	13:21	Reggie Bush		1
7/27/2005	13:39	Reggie Bush		1
7/27/2005	16:40	Reggie Bush		1
7/27/2005	18:55	Reggie Bush		1
Total Calls to Bush in July 2005: 19				

CONFIDENTIAL
PURSUANT TO PROTECTIVE ORDER

NCAA 001310

A0816

8/2/2005	19:36	Reggie Bush		1
8/3/2005	9:56 AM	Reggie Bush		2
8/3/2005	15:49	Reggie Bush		1
8/7/2005	19:17	Reggie Bush		1
8/8/2005	12:01 AM	Reggie Bush		1
8/10/2005	21:36	Reggie Bush		1
8/11/2005	12:41 PM	Reggie Bush		1
8/13/2005	22:06	Reggie Bush		1
8/14/2005	12:35 PM	Reggie Bush		1
8/14/2005	23:22	Reggie Bush		4
8/15/2005	19:00	Reggie Bush		1
8/15/2005	21:33	Reggie Bush		1
8/16/2005	8:13 AM	Reggie Bush		1
8/17/2005	7:57 AM	Reggie Bush		1
8/20/2005	22:29	Reggie Bush		1
8/20/2005	22:29	Reggie Bush		1
8/22/2005	19:51	Reggie Bush		1
8/23/2005	12:28 PM	Reggie Bush		1
8/26/2005	23:33	Reggie Bush		1
8/28/2005	9:51	Reggie Bush		1
8/28/2005	12:08	Reggie Bush		2
8/28/2005	13:39	Reggie Bush		1
8/28/2005	15:21	Reggie Bush		1
8/28/2005	15:40	Reggie Bush		1
8/28/2005	15:49	Reggie Bush		1
8/28/2005	16:15	Reggie Bush		1
8/28/2005	16:18	Reggie Bush		1
8/28/2005	16:19	Reggie Bush		1
8/28/2005	18:23	Reggie Bush		1
28-Aug	18:44	Reggie Bush		1
8/28/2005	20:09	Reggie Bush		1
8/29/2005	9:42 AM	Reggie Bush		1
8/29/2005	14:07	Reggie Bush		1
8/29/2005	14:08	Reggie Bush		1
8/29/2005	20:14	Reggie Bush		1
8/29/2005	20:21	Reggie Bush		1
8/30/2005	18:44	Reggie Bush		1
8/30/2005	19:13	Reggie Bush		1
8/30/2005	21:06	Reggie Bush		1
8/30/2005	23:33	Reggie Bush		2
8/30/2005	23:44	Reggie Bush		1
8/30/2005	23:46	Reggie Bush		1
8/30/2005	23:47	Reggie Bush		1
8/30/2005	23:59	Reggie Bush		1
8/31/2005	12:04 AM	Reggie Bush		1

Total Calls from August 2005 to Bush: 45

CONFIDENTIAL
PURSUANT TO PROTECTIVE ORDER

NCAA 001311

A0817

PREVIOUSLY LODGED UNDER SEAL. FILED PURSUANT TO COURT'S 2/6/15 ORDER

9/1/2005	12:15 AM	Reggie Bush		1
9/1/2005	17:41	Reggie Bush		2
9/2/2005	8:38	Reggie Bush		1
9/2/2005	13:42	Reggie Bush		1
9/5/2005	16:55	Reggie Bush		1
9/5/2005	16:56	Reggie Bush		1
9/5/2005	17:00	Reggie Bush		1
9/5/2005	17:13	Reggie Bush		4
9/5/2005	17:22	Reggie Bush		1
9/6/2005	11:28	Reggie Bush		3
9/7/2005	11:47	Reggie Bush		2
9/7/2005	19:06	Reggie Bush		2
9/8/2005	19:06	Reggie Bush		1
9/8/2005	20:57	Reggie Bush		1
9/8/2005	20:57	Reggie Bush		1
9/9/2005	11:24	Reggie Bush		2
9/12/2005	21:22	Reggie Bush		1
9/13/2005	18:25	Reggie Bush		1
9/13/2005	20:29	Reggie Bush		1
9/14/2005	20:17	Reggie Bush		1
9/16/2005	11:54	Reggie Bush		1
9/16/2005	12:46	Reggie Bush		1
9/16/2005	12:46	Reggie Bush		1
9/16/2005	12:47	Reggie Bush		1
9/16/2005	12:47	Reggie Bush		1
9/16/2005	13:06	Reggie Bush		1
9/16/2005	13:10	Reggie Bush		1
9/16/2005	17:44	Reggie Bush		1
9/24/2005	20:28	Reggie Bush		1
9/25/2005	15:09	Reggie Bush		6
9/25/2005	19:44	Reggie Bush		1
9/26/2005	13:46	Reggie Bush		1
9/28/2005	12:23 PM	Reggie Bush		1
9/28/2005	13:10	Reggie Bush		1

Total from September 2005 to Bush: 34

CONFIDENTIAL
PURSUANT TO PROTECTIVE ORDER

NCAA 001312

A0818

PREVIOUSLY LODGED UNDER SEAL. FILED PURSUANT TO COURT'S 2/6/15 ORDER

10/2/2005	2:09 AM	Reggie Bush		1
10/2/2005	12:07 PM	Reggie Bush		1
10/2/2005	13:13	Reggie Bush		15
10/6/2005	20:55	Reggie Bush		5
10/7/2005	21:51	Reggie Bush		1
10/8/2005	19:14	Reggie Bush		1
10/8/2005	23:53	Reggie Bush		1
10/9/2005	12:39 PM	Reggie Bush		1
10/9/2005	13:44	Reggie Bush		1
10/10/2005	12:53 PM	Reggie Bush		1
10/10/2005	13:32	Reggie Bush		1
10/10/2005	20:22	Reggie Bush		1
10/10/2005	20:33	Reggie Bush		1
10/10/2005	22:18	Reggie Bush		1
10/10/2005	22:53	Reggie Bush		2
10/12/2005	10:20	Reggie Bush		1
10/12/2005	12:30 PM	Reggie Bush		1
10/12/2005	13:10	Reggie Bush		1
10/16/2005	1:17 AM	Reggie Bush		1
10/16/2005	1:20 AM	Reggie Bush		2
10/17/2005	8:45	Reggie Bush		1
10/17/2005	11:01	Reggie Bush		1
10/17/2005	14:06	Reggie Bush		1
10/20/2005	13:26	Reggie Bush		1
10/20/2005	21:56	Reggie Bush		6
10/20/2005	22:05	Reggie Bush		3
10/23/2005	12:01 PM	Reggie Bush		1
10/26/2005	13:47	Reggie Bush		1
10/26/2005	14:02	Reggie Bush		1
10/26/2005	14:02	Reggie Bush		1
10/28/2005	9:40 AM	Reggie Bush		1
10/28/2005	9:40 AM	Reggie Bush		1
10/28/2005	17:34	Reggie Bush		1
10/28/2005	21:13	Reggie Bush		1
10/29/2005	20:42	Reggie Bush		3
10/29/2005	21:11	Reggie Bush		1
10/29/2005	22:25	Reggie Bush		1
10/29/2005	22:57	Reggie Bush		1
10/29/2005	23:07	Reggie Bush		2
10/29/2005	23:39	Lloyd Lake		1
10/29/2005	23:52	Lloyd Lake		1
10/29/2005	23:56	Reggie Bush		1
10/29/2005	23:56	Lloyd Lake		1
40 Total Calls to Bush in Oct				
5 Total Calls to Lake in Oct				

CONFIDENTIAL
PURSUANT TO PROTECTIVE ORDER

NCAA 001313

A0819

PREVIOUSLY LODGED UNDER SEAL. FILED PURSUANT TO COURT'S 2/6/15 ORDER

11/4/2005	13:36	Reggie Bush		2
11/5/2005	12:50 PM	Reggie Bush		1
11/5/2005	13:40	Reggie Bush		1
11/6/2005	11:26	Reggie Bush		1
11/6/2005	12:15 PM	Reggie Bush		1
11/6/2005	13:04	Reggie Bush		2
11/8/2005	13:18	Reggie Bush		1
11/8/2005	19:15	Reggie Bush		1
11/10/2005	12:29 PM	Reggie Bush		1
11/10/2005	12:33 PM	Reggie Bush		1
11/10/2005	13:54	Reggie Bush		1
11/10/2005	18:49	Reggie Bush		1
11/11/2005	10:40	Reggie Bush		1
11/13/2005	13:42	Reggie Bush		5
11/14/2005	11:18	Reggie Bush		1
11/14/2005	14:07	Reggie Bush		1
11/14/2005	14:07	Reggie Bush		3
11/14/2005	19:03	Reggie Bush		1
11/20/2005	12:55 AM	Reggie Bush		3
11/21/2005	11:02	Reggie Bush		1
11/22/2005	20:23	Reggie Bush		1
11/22/2005	20:40	Reggie Bush		1
11/23/2005	20:38	Reggie Bush		1
11/24/2005	19:57	Reggie Bush		1
11/28/2005	13:39	Reggie Bush		1
11/28/2005	14:06	Reggie Bush		1
11/29/2005	10:54	Reggie Bush		2
11/29/2005	10:54	Reggie Bush		1
11/29/2005	20:20	Reggie Bush		2
11/30/2005	7:58	Reggie Bush		1
11/30/2005	11:26	Reggie Bush		1
11/30/2005	13:54	Reggie Bush		1
11/30/2005	13:55	Reggie Bush		4

33 calls to Bush in Nov

CONFIDENTIAL
PURSUANT TO PROTECTIVE ORDER

NCAA 001314

A0820

PREVIOUSLY LODGED UNDER SEAL. FILED PURSUANT TO COURT'S 2/6/15 ORDER

12/2/2005	1:26 AM	Reggie Bush		4
12/2/2005	22:45	Reggie Bush		2
12/3/2005	19:44	Reggie Bush		2
12/3/2005	22:08	Reggie Bush		1
12/3/2005	22:17	Reggie Bush		1
12/3/2005	22:22	Reggie Bush		2
12/3/2005	23:00	Reggie Bush		3
12/4/2005	12:02 AM	Reggie Bush		2
12/4/2005	15:38	Reggie Bush		6
12/4/2005	19:46	Reggie Bush		1
12/4/2005	19:48	Reggie Bush		12
12/4/2005	21:08	Reggie Bush		1
12/5/2005	22:13	Reggie Bush		1
12/5/2005	22:20	Reggie Bush		5
12/7/2005	21:46	Reggie Bush		1
12/8/2005	12:22 PM	Reggie Bush		5
12/8/2005	12:47 PM	Reggie Bush		2
12/8/2005	15:11	Reggie Bush		2
12/8/2005	18:25	Reggie Bush		1
12/8/2005	18:35	Reggie Bush		1
12/8/2005	21:16	Reggie Bush		1
12/8/2005	21:23	Reggie Bush		1
12/8/2005	21:30	Reggie Bush		1
12/9/2005	14:43	Reggie Bush		3
12/10/2005	18:09	Reggie Bush		1
12/11/2005	15:30	Reggie Bush		4
12/11/2005	17:00	Reggie Bush		1
12/12/2005	16:27	Reggie Bush		1
12/13/2005	17:09	Reggie Bush		1
12/13/2005	19:59	Reggie Bush		2
12/13/2005	22:58	Reggie Bush		1
12/13/2005	23:17	Reggie Bush		3
12/17/2005	17:35	Reggie Bush		1
12/19/2005	15:53	Reggie Bush		4
12/19/2005	16:26	Reggie Bush		1
12/19/2005	19:02	Reggie Bush		2
12/20/2005	9:48 AM	Reggie Bush		1
12/20/2005	18:41	Reggie Bush		1
12/21/2005	16:23	Reggie Bush		1
12/21/2005	19:11	Reggie Bush		1
12/21/2005	19:13	Reggie Bush		1
12/22/2005	19:15	Reggie Bush		1
12/22/2005	19:44	Reggie Bush		1
12/22/2005	20:04	Reggie Bush		2
12/23/2005	7:09	Reggie Bush		1
12/23/2005	20:24	Reggie Bush		3
12/23/2005	20:36	Reggie Bush		3
12/26/2005	11:46	Reggie Bush		2
12/26/2005	11:48	Reggie Bush		5
12/28/2005	16:50	Reggie Bush		1
12/28/2005	19:38	Reggie Bush		1
12/30/2005	17:08	Reggie Bush		2
12/31/2005	22:27	Reggie Bush		1

53 calls to Bush in Dec 05

CONFIDENTIAL
PURSUANT TO PROTECTIVE ORDER

NCAA 001315

A0821

PREVIOUSLY LODGED UNDER SEAL. FILED PURSUANT TO COURT'S 2/6/15 ORDER

1/2/2006	20:33	Reggie Bush		1
1/2/2006	20:55	Reggie Bush		1
1/4/2006	10:53	Reggie Bush		1
1/5/2006	12:38 AM	Reggie Bush		1
1/5/2006	12:43 AM	Reggie Bush		1
1/5/2006	12:44 AM	Reggie Bush		1
1/5/2006	12:44 AM	Reggie Bush		3
1/6/2006	17:39	Reggie Bush		1
1/6/2006	18:39	Reggie Bush		1
1/6/2006	18:40	Reggie Bush		1
1/6/2006	18:41	Reggie Bush		6
1/8/2006	1:34 AM	Lloyd Lake		3
1/8/2006	14:50	Reggie Bush		1
1/8/2006	15:26	Reggie Bush		13
1/10/2006	17:00	Reggie Bush		6
1/10/2006	17:56	Reggie Bush		1
1/10/2006	19:00	Reggie Bush		1
1/10/2006	19:03	Reggie Bush		2
1/11/2006	13:29	Reggie Bush		3
1/14/2006	14:41	Reggie Bush		5
1/14/2006	18:32	Reggie Bush		24
1/14/2006	18:56	Reggie Bush		1
1/14/2006	18:58	Reggie Bush		2
1/14/2006	18:59	Reggie Bush		2
1/16/2006	23:35	Reggie Bush		1
1/18/2006	14:55	Reggie Bush		1
1/19/2006	14:34	Reggie Bush		1
1/20/2006	11:12	Reggie Bush		1
1/21/2006	12:34 PM	Reggie Bush		1
1/21/2006	12:35 PM	Reggie Bush		4
1/21/2006	12:55 PM	Reggie Bush		6
1/21/2006	16:30	Reggie Bush		1
1/22/2006	11:10 AM	Reggie Bush		1
1/22/2006	16:22	Reggie Bush		3
1/22/2006	18:44	Reggie Bush		1
1/22/2006	19:02	Reggie Bush		1
1/22/2006	19:27	Reggie Bush		1
1/22/2006	20:11	Reggie Bush		1
1/22/2006	20:27	Reggie Bush		1
1/22/2006	20:28	Reggie Bush		1
1/24/2006	16:54	Reggie Bush		7
1/28/2006	21:52	Reggie Bush		1
1/28/2006	21:54	Reggie Bush		1
1/28/2006	21:55	Reggie Bush		2
1/31/2006	17:07	Reggie Bush		1
1/31/2006	17:27	Reggie Bush		1

45 calls to Bush in Jan 06

1 call from Lake in Jan 06

CONFIDENTIAL
PURSUANT TO PROTECTIVE ORDER

NCAA 001316

A0822

PREVIOUSLY LODGED UNDER SEAL. FILED PURSUANT TO COURT'S 2/6/15 ORDER

2/4/2006	20:44	Reggie Bush		2
2/5/2006	17:30	Reggie Bush		20
2/7/2006	22:31	Reggie Bush		2
2/8/2006	17:04	Reggie Bush		1
2/8/2006	17:07	Reggie Bush		1
2/9/2006	21:39	Reggie Bush		1
2/10/2006	8:37	Reggie Bush		1
2/10/2006	21:02	Reggie Bush		1
2/10/2006	22:07	Reggie Bush		1
2/13/2006	19:39	Reggie Bush		6
2/14/2006	18:25	Reggie Bush		1
2/15/2006	20:40	Reggie Bush		1
2/15/2006	22:36	Reggie Bush		1
2/15/2006	22:53	Reggie Bush		1
2/16/2006	12:02 AM	Reggie Bush		1
2/16/2006	10:10	Reggie Bush		1
2/16/2006	14:14	Reggie Bush		1
2/16/2006	16:34	Reggie Bush		1
2/17/2006	11:08	Reggie Bush		1
2/17/2006	13:25	Reggie Bush		1

20 calls to Bush in Feb 06

CONFIDENTIAL
PURSUANT TO PROTECTIVE ORDER

NCAA 001317

A0823

In The Matter Of:

TODD McNAIR

v.

THE NATIONAL COLLEGIATE ATHLETIC ASSOCIATION

THOMAS, DENNIS - Vol. 1

August 28, 2012

CONFIDENTIAL

MERRILL CORPORATION

LegalLink, Inc.

20750 Ventura Boulevard
Suite 205
Woodland Hills, CA 91364
Phone: 818.593.2300
Fax: 818.593.2301

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DENNIS THOMAS - 8/28/2012

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1 input whatsoever in questionings or deliberations. You
2 just observe the process.

3 Q. And that's sort of your education in what
4 this is all about right at the beginning, correct?

5 A. In addition to reviewing the roles and
6 responsibilities of the committee.

7 Q. In the bylaws, you mean?

8 A. In the bylaws, in the manual.

9 Q. Then once you went through that process, you
10 were a full-fledged member of the committee, correct?

11 A. Yes, sir.

12 Q. Did you read the depositions of either
13 Mr. Johanningmeier or Mr. Cooper in this case?

14 A. No.

15 Q. So you said that when you are an observer at
16 the beginning, that you just observe and don't ask
17 questions, you don't participate in any way. Is that
18 what you said?

19 A. Yes, sir.

20 Q. If you are an observer, would it have been
21 appropriate, as you understood the rules, for you to
22 give your opinion to the voting members of the COI?

23 A. You can give your opinion, but that's it.
24 You have no influence on the committee in its
25 deliberations or its decision.

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1 Q. So why would you give your opinion if it was
2 not to have an influence?

3 A. I would say anybody can give their opinion.

4 Q. Well, but my question to you is, you said
5 that as an observer, you're not supposed to ask
6 questions, make comments, and things of that nature,
7 and I'm just wondering, as an observer, as opposed to
8 just some third party, but an observer coming on to the
9 COI, is it appropriate for you to be giving your
10 opinion to the full-fledged voting COI members?

11 A. Let me clarify something.

12 Q. Sure.

13 A. When I said not supposed to ask questions,
14 during the hearing, you're not allowed to ask questions
15 and that's what I was referring to.

16 Q. When are you allowed to ask questions --

17 A. As --

18 Q. -- as an observer?

19 A. -- as an observer?

20 Q. Yes.

21 A. It's been my experience that an observer can
22 ask the questions of a committee member, but that's it.

23 Q. But can the observer be telling the committee
24 members, particularly the voting members, what they
25 think about the case and what they think should be

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1 done? Is an observer supposed to be doing that under
2 the rules?

3 A. Well, an observer in deliberations, if I'm
4 understanding you correctly, in deliberations when the
5 committee actually sits down and talks about the case.

6 Q. Okay. So what are the rules then?

7 A. And it is my understanding -- it's absolutely
8 my understanding that an observer cannot participate in
9 the deliberations of a case, of a hearing, when the
10 committee is sequestered, and talk about the case.

11 Q. Okay. What about on conference calls? If
12 the committee has -- if it hasn't reached a decision
13 after being sequestered and it goes back to its
14 business and then has a conference call to further
15 discuss what should be done about a particular case,
16 are the observers supposed to be part of that call?

17 A. My understanding is that the committee
18 members are the ones that will talk about and
19 deliberate the case.

20 Q. What about the observer?

21 A. My understanding is the observer does not get
22 involved in that.

23 Q. So supposing that after deliberations start,
24 the observer starts providing e-mails with lengthy
25 discussions of how the observer sees the case.

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1 MS. WYTSMA: Objection. Incomplete and
2 improper hypothetical.

3 BY MR. BROILLET:

4 Q. Is that an appropriate thing for the observer
5 to be doing?

6 A. Wait a minute. I've got an objection here
7 and then you're asking a question.

8 Q. That's okay. You can disregard the
9 objection.

10 A. An observer, they can e-mail or do whatever
11 they want, but the chair normally lets everyone know
12 that deliberations is strictly with the committee
13 members. The chair normally -- that's his or her
14 responsibility to keep the committee on track in terms
15 of who is involved with these deliberations.

16 Q. Sir, you used the word "sequestered." What
17 did you mean by that?

18 A. Altogether.

19 Q. And separate from everyone else?

20 A. Yes. Outside points.

21 Q. Is it sort of like a jury deliberating?

22 A. I don't know about what happens when a jury
23 deliberates. Other than what you see on TV, I've never
24 been part of a jury.

25 Q. Well, other people are not coming in trying

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1 Q. So they can't participate in the
2 deliberations because they are still an observer,
3 right?

4 A. Yes.

5 Q. So is Mr. Cooper part of the deliberations?

6 A. Yes.

7 Q. Okay.

8 A. Shep Cooper.

9 Q. Yes. So does Shep Cooper -- he participates
10 in the deliberations. Is he a voting member of the
11 COI?

12 A. No.

13 Q. So is he the only nonvoting member of the COI
14 who is permitted to participate in deliberations in the
15 proceedings that you-all have had since you've been on
16 the COI?

17 MS. WYTSMA: Can I have that question read
18 back, please.

19 (Record read.)

20 MR. BROILLET: I'll do it again.

21 BY MR. BROILLET:

22 Q. Is Shep Cooper the only nonvoting member of
23 the COI who is permitted to participate in the
24 deliberations based on the way you've done things since
25 you've been on the COI?

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1 A. They don't participate in the deliberations.

2 Q. I misunderstood, then. So that's where I'm
3 trying to clear things up.

4 Is Mr. Cooper permitted to participate in the
5 deliberations of the COI since you've been on the COI?

6 A. No.

7 Q. So if Mr. Cooper were to participate in the
8 deliberations of the COI at some time since you've been
9 on the COI, that would be a violation of the rules as
10 you understood them, correct?

11 MS. WYTSMA: Objection. Calls for a legal
12 conclusion.

13 THE WITNESS: It's -- Shep Cooper and Jim are
14 there to provide historical perspective and provide
15 clarity in terms of policy for the committee. They are
16 not permitted to deliberate the case or vote on a
17 hearing.

18 BY MR. BROILLET:

19 Q. Are they permitted to be in the sequestered
20 meetings or telephone calls?

21 A. Yes.

22 Q. And that's for the purpose of providing
23 historical perspective and also for procedural matters,
24 correct?

25 A. Yes.

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1 A. Let me -- the chair of the committee has a
2 great deal of latitude in how they handle things. And
3 as a committee member, you don't always agree or
4 disagree with the chair. It just happens, and I'm sure
5 you're aware of that. So I'm giving you my opinion.

6 Q. I see. Okay. So the committee chairman at
7 the time was Paul Dee, correct?

8 A. Yes.

9 Q. And what position did you -- what position
10 did have at that time?

11 A. During the --

12 Q. During the SC case, did you have any
13 assistant chair or anything like that?

14 A. I was next in line as the chairman.

15 Q. So did you have a title during the USC case?

16 A. No. Not -- no.

17 Q. Did you have disagreements with Paul Dee
18 during the USC case?

19 A. No.

20 Q. Is the -- are Mr. Cooper and Mr. Elworth
21 supposed to remain neutral during the handling of the
22 case?

23 MS. WYTSMA: Objection. Vague and ambiguous.
24 Calls for a legal conclusion.

25 THE WITNESS: Could you tell me or define

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1 question, whether you're asking his personal opinion or
2 whether you're referring to what the bylaws permit or
3 require.

4 BY MR. BROILLET:

5 Q. I'm referring to the procedures as you
6 understood them. You've been on the COI all along, so
7 I'm just asking you from your perspective as a member
8 of the COI and proper procedures as you have understood
9 them, is the -- is the observer supposed to argue for a
10 particular position or outcome?

11 A. That's a question that I think is difficult
12 to answer, but I do know that the committee members do
13 not factor in the opinion of the observer.

14 Q. But coming back to my question, even though
15 it might be difficult for you to answer, I would like
16 you to answer it.

17 And by the way, I'll move to strike the
18 response as nonresponsive.

19 So what I'll do is, I'll have her read back
20 the question to you, and you've got to tackle it the
21 best you can, tackle being a metaphor that I didn't
22 intend to use just because it involves football, but
23 take your best shot at it.

24 MS. WYTSMA: If you can. If you can answer
25 the question.

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1 (Record read as follows: "I'm
2 referring to the procedures as you
3 understood them. You've been on the
4 COI all along, so I'm just asking you
5 from your perspective as a member of
6 the COI and proper procedures as you
7 have understood them, is the -- is the
8 observer supposed to argue for a
9 particular position or outcome?")

10 THE WITNESS: No.

11 BY MR. BROILLET:

12 Q. Do you know who Mr. Uphoff is?

13 A. Yes.

14 Q. And has Mr. Uphoff had the same position with
15 the NCAA relative to enforcement proceedings since
16 you've been on the COI?

17 A. Would you state that again for me, please.

18 Q. Sure. Mr. Uphoff is the coordinator of
19 appeals, correct?

20 A. Yes.

21 Q. And has he been the coordinator of appeals
22 since you've been on the COI?

23 A. Yes.

24 Q. To your knowledge, as you understand the
25 procedures --

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1 A. Excuse me.
2 Q. Yes.
3 A. Mr. Uphoff was my -- he came on while I was a
4 member --
5 Q. Got it.
6 A. -- of the infractions committee.
7 Q. Thank you for that clarification.
8 About when -- well, did he come on before the
9 USC-McNair case?
10 A. Oh, wow. I don't know at what date and time
11 he actually came on.
12 Q. Okay. All right. And what did you
13 understand the function of the coordinator of appeals
14 to be?
15 A. It's to listen to the hearing, and if there
16 were any appeals of any findings by the parties
17 involved, then they were responsible for writing up the
18 Committee on Infractions' response.
19 Q. Okay. So is Mr. Uphoff -- well, he's held
20 the same position as the coordinator of appeals since
21 he came onto the COI, correct?
22 A. Yes.
23 Q. Okay. Did he ever seek to become a voting
24 member of the COI, to your knowledge?
25 A. No.

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1 does Mr. Uphoff normally do during the
2 hearing itself? Does Mr. Uphoff ask
3 questions? Does he pose issues to the
4 committee? Does he ask questions of
5 witnesses? What does he normally do
6 during the hearing process?")

7 THE WITNESS: I don't know what he does
8 during that hearing, USC hearing, but he didn't -- it's
9 not appropriate for the coordinator of the appeals to
10 ask questions during the hearing.

11 BY MR. BROILLET:

12 Q. Okay. And then once the hearing is done and
13 deliberations start, what is the function or
14 involvement of Mr. Uphoff with regard to the USC
15 matter? Let me rephrase.

16 Under the procedures as they existed at the
17 time of the USC-McNair matter, what was Mr. Uphoff
18 supposed to do or not do once deliberations started?

19 A. Well, I can't tell you what they're supposed
20 to do or not do. All I can tell you is that as the
21 coordinator of appeals, they have to listen to the
22 deliberations so they will be able to, if the
23 findings -- some findings or findings are appealed, be
24 able to express the opinion of the committee.

25 Q. So is the committee -- excuse me, the

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1 BY MR. BROILLET:

2 Q. Do you want the question back?

3 A. No.

4 Q. Okay. Can you try to answer?

5 A. Yes, I will.

6 What I want to convey is that as it pertains
7 to Mr. Uphoff, he can express himself. The committee
8 did not take that under consideration.

9 Q. So, for example, if he was in the
10 deliberation room right after the hearing and he's
11 sitting there and he's listening to what's going on and
12 he hears the deliberations going on and he has a
13 different opinion, he could pipe up in the deliberation
14 room and say, Wait a minute, here's what I think?

15 A. I think I've indicated no, to my -- to answer
16 that question.

17 Q. And the reason is that the voters are not
18 supposed to be influenced by anything other than what
19 they've heard in their own deliberations, correct --
20 what they've heard on the record and their own
21 deliberations, correct?

22 MS. WYTSMA: Objection. Vague and ambiguous
23 as to "on the record."

24 THE WITNESS: The committee deliberates and
25 renders a decision based upon the information

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1 deliberation room and send an e-mail around to all the
2 voting members and tell them what he thinks when he
3 couldn't do it if he was sitting at the table?

4 A. That's left up to Uphoff.

5 Q. But I'm talking about the procedures as you
6 understood them. Did you understand that to be an
7 inappropriate act on his part in these proceedings?

8 MS. WYTSMA: Objection. Vague and ambiguous.

9 THE WITNESS: I guess I go off the premise
10 that any nonvoting member could e-mail and state their
11 opinion about anything. The voting --

12 BY MR. BROILLET:

13 Q. And I'm wondering --

14 MS. WYTSMA: Mr. Broillet, let him finish.

15 THE WITNESS: -- the voting members only go
16 off of our deliberations and the information presented.

17 BY MR. BROILLET:

18 Q. But what I'm asking you is whether it is
19 against proper procedure as you understood it for
20 Mr. Uphoff to be sending e-mails or memos like that --

21 A. Not to my knowledge.

22 Q. -- after deliberations started?

23 A. Sorry. I didn't mean to interrupt.

24 Q. After deliberations started?

25 A. Not to my knowledge. There is no written

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1 policy to prohibit a nonvoting member to send an
2 e-mail.

3 Q. Is there a written policy to prohibit
4 Mr. Uphoff from stating his opinion during sequestered
5 deliberations in the deliberation room?

6 A. There's no written policy.

7 Q. So I'm not asking about a written policy.
8 You told me that the procedure, as you understood it --
9 and I didn't ask whether it was written or not -- was
10 that he's not supposed to be expressing his opinion on
11 the case as he watches the deliberations in the
12 deliberation room. My question to you is:

13 As you understood the procedure, whether
14 written or not, was he not supposed to be sending his
15 opinion around, after deliberations have started, to
16 the voting members of the COI, either by e-mail or memo
17 or in some other form?

18 MS. WYTSMA: Asked and answered.

19 THE WITNESS: If I'm understanding it
20 correctly, I guess we keep coming back to the same
21 point. A nonvoting member of the committee -- and I go
22 back to the chairman of the committee and I go back to
23 the voting member of the committee. My opinion can be
24 different from the chair's and his discretion regarding
25 the hearing and where we are in deliberations. And

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1 that's left up to the chair to do that.

2 So any member, voting or nonvoting member,
3 can send an e-mail stating their opinion about
4 whatever.

5 BY MR. BROILLET:

6 Q. And then Mr. Dee would just decide whether
7 that was okay or not, right?

8 A. Well, I can't speak for him -- Paul Dee.

9 Q. I didn't ask that. I'm just saying, your
10 understanding is that the chairman in this case,
11 Mr. Dee, could just decide to go ahead and allow it to
12 happen in this instance if he thinks he wants to,
13 right?

14 A. Allow what to happen?

15 Q. Allow nonvoting members of the COI to try to
16 influence voting members of the COI in their
17 deliberations.

18 MS. WYTSMA: Objection. Misstates his
19 testimony. Lacks foundation.

20 THE WITNESS: No.

21 BY MR. BROILLET:

22 Q. Well, are you telling us that Mr. Dee can
23 allow nonvoting members of the COI to send their
24 opinions and memos and arguments to the voting members
25 during deliberations, that Mr. Dee had the power to let

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1 them do that?

2 MS. WYTSMA: Objection. Lacks foundation.

3 THE WITNESS: The chair -- I mean, the
4 chair -- when you say "had the power" --

5 BY MR. BROILLET:

6 Q. The discretion, whatever you say. Whatever
7 word you used. The power.

8 A. It is clear to me -- and I'll say this
9 again -- any voting or nonvoting committee member can
10 send an e-mail out to anybody, voting or nonvoting
11 member. But the bottom line to me is that the voting
12 committee members make our decision based upon the
13 information provided and the voting members'
14 deliberation. No outside entity, including nonvoting
15 members, play a factor into our decision.

16 Q. So if a voting member during deliberations
17 were to receive a -- an opinion memo or e-mail from a
18 nonvoting member of the COI, are they supposed to not
19 read it?

20 A. I don't know what -- I can't tell you whether
21 they're supposed to read it or not. All I can tell you
22 is that what we do in terms of making the decision
23 regarding hearings -- I can't tell you what voting -- I
24 can't even recall reading those e-mails.

25 Q. Okay. We'll --

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1 deliberations on the McNair matter?

2 A. No, I don't.

3 Q. Do you recall that the hearings ended and
4 that the committee immediately, either that day or the
5 first thing the next morning, went into its sequestered
6 session to start deliberating? Do you remember that?

7 A. I don't recall. All I recall, in terms of
8 the USC case -- obviously you've got bits and pieces
9 that come back to you.

10 Q. Sure.

11 A. The chair, Paul Dee, indicated that we needed
12 to give Southern Cal and the participants, inclusive of
13 Coach McNair, an opportunity to present all of their
14 information and exhaust everything that they wanted to
15 say. And that's why we took the unprecedented action
16 of allowing three days for this to happen instead of a
17 one-day hearing.

18 And so everybody could have their say in
19 terms of responding to the allegations. And because
20 when I first received the schedule and I saw where
21 it -- we were going to spread this out over three days,
22 and I said, Wow, and Paul expressed to the committee
23 that we want to give them their full say -- everybody
24 their full say so there would not be any pause for them
25 to have concerns about not being able to present a full

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1 and complete hearing -- information.

2 Q. But my question to you is: Do you remember
3 the first day of deliberations?

4 A. No.

5 Q. Do you remember the final vote? Or was there
6 a vote, I should say, at the end? Was there a vote on
7 any of the findings or penalties?

8 MS. WYTSMA: Objection. Vague and ambiguous.
9 Are you speaking specifically to those against
10 Mr. McNair or USC generally?

11 MR. BROILLET: First whether there was any
12 voting at all, and then I'll parse it down, obviously.

13 THE WITNESS: I can't recall a voting, but I
14 can recall that in some or most instances, it was a
15 consensus by the voting members of the committee.

16 BY MR. BROILLET:

17 Q. When you say "consensus," you mean unanimous?
18 In other words, there was no dissent?

19 A. When I say "consensus," I cannot recall -- a
20 consensus to mean that it was an overwhelming majority.

21 Q. In other words, there wasn't a lot of
22 resistance?

23 A. It was an overwhelming majority. That's all
24 I can tell you.

25 Q. On many of the issues?

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1 A. Yes.

2 Q. Now, what about McNair? Was that an area
3 that drew some resistance, that you recall?

4 A. Let me -- I can't recall that. I just can't
5 recall about McNair in terms of resistance or anything.
6 But what I can say, from Dennis Thomas's perspective,
7 is that I had respect and admiration for his
8 accomplishments because he has had a very -- a very
9 productive professional career. And I could identify,
10 having been a former football coach, the kind of
11 success that he had sustained as a professional.

12 So Dennis Thomas's mind was open regarding
13 Coach McNair and let the information determine whether
14 or not he was in violation of any allegations against
15 him. And that was what my thinking was because I -- he
16 had a hell of a career.

17 Q. Was it your belief that these findings would
18 significantly harm his career?

19 A. If they were found to be true.

20 Q. That's why I asked the word as findings
21 because there were findings made against him of
22 unethical conduct.

23 Did you believe that the findings and the
24 penalty that was assessed by the NCAA against Coach
25 McNair would significantly affect his career

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1 negatively?

2 A. It would affect his career, but I've always
3 been mindful that one has to be accountable for his
4 actions. And when you are engaged in certain
5 activities, you should think about the consequence that
6 goes along with those activities.

7 I think that it had an effect upon one's
8 career, but the record clearly indicated that people
9 who have -- other people who have had a show cause have
10 recovered and been able to find gainful employment
11 moving forward.

12 Q. And did those people also have a finding of
13 unethical conduct that led to the show cause?

14 A. I don't know.

15 Q. And just so I'm clear, though -- and then
16 we'll take our break. I just -- because you've said a
17 lot of things in your last answer that I think were
18 nonresponsive, your second-to-the-last answer, so I
19 will move to strike as nonresponsive.

20 Here's the particular question: Did you
21 realize, at the time that the finding and penalty was
22 made and published by the NCAA, that that would have a
23 significant adverse effect on Coach McNair's career?
24 Yes or no?

25 MS. WYTSMA: Objection. Asked and answered.

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1 training?

2 A. Yes.

3 Q. Are you familiar with Jo Potuto?

4 A. Yes.

5 Q. Is she currently on the committee?

6 A. No.

7 Q. Is she -- when did she leave the committee,
8 to your recollection?

9 A. I can't specifically tell you what year it
10 was.

11 Q. All right. And -- but it was after the
12 USC-McNair infractions report came out, correct?

13 MS. WYTSMA: Objection. Lacks foundation.

14 THE WITNESS: I'm thinking, because Jo was
15 not the chair. I thought that when Jo -- Jo was the
16 chair before Paul Dee. So I thought that when she was
17 chair and rotated off as chair, that she rotated off
18 the committee. So that's -- that's my understanding.

19 BY MR. BROILLET:

20 Q. Okay.

21 A. So if she was on the committee, it was
22 substituting for somebody else, who I think that Jim
23 O'Fallon or somebody couldn't -- was recused because
24 they were from the Pac 10, Pac 12.

25 Q. I see. I see. Okay. So your understanding

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1 don't feel clear, very lucid about.

2 Q. Right.

3 A. And that's -- that's the reason why, if I
4 can't be absolutely sure about what I'm saying --

5 Q. Right.

6 A. -- I'm under oath here, and I have to be
7 truthful.

8 Q. I appreciate that. And I'm not trying to get
9 you to answer things that you don't know or don't
10 remember. I'm testing your memory, and I'm refreshing
11 your memory where I can, but if your memory is not
12 refreshed, you tell us. Okay? We're just trying to
13 get some information. That's all.

14 But let me come back to that thing you just
15 said. Well, let me ask you this first:

16 So do you have a belief that Jo Potuto is
17 honest and forthcoming in the things that she says?

18 A. Absolutely. Let me, if I may.

19 Q. Yes. Sure.

20 A. I don't mean to interrupt you. The veracity,
21 the integrity, and the probity of this committee, to
22 me, is beyond reproach. Having worked with this
23 committee, having deliberated, they've always
24 demonstrated for every case complete objectivity, the
25 benefit of the doubt, fairness, and what people have to

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1 say. And there were times when we thought that the
2 information presented by the Enforcement staff didn't
3 measure up to verify a finding. And so all the members
4 that I have worked with have demonstrated the highest
5 degree of integrity.

6 Q. Well, I'm going to move to strike that as
7 nonresponsive. I do hear what you're saying. But let
8 me ask you, then:

9 So, I assume, therefore, that the sort of the
10 standard of proof that you require is a pretty high
11 standard of proof. In fact, I think that's the term
12 Johanningmeier used, something like a high standard of
13 proof.

14 But let me just ask you: As a committee
15 member, is it your understanding that in order to make
16 a finding and impose penalties, you require a high
17 standard of proof?

18 MS. WYISMA: Objection. Bylaws speak for
19 themselves.

20 THE WITNESS: In order to make a finding, we
21 depend upon the information presented.

22 BY MR. BROILLET:

23 Q. Oh, I understand that. But when you're
24 evaluating that information, do you hold it to a pretty
25 high standard of proof?

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1 and I asked those questions simply because I was trying
2 to get to -- for Coach McNair, I was trying to be as
3 fair and question Enforcement, their ability, since
4 some of that information hinged upon Lake's testimony.

5 And that's why I wanted to be as fair to
6 Coach McNair, from Dennis Thomas's perspective, so that
7 I could make an objective and fair decision and that
8 those were, as I recall, the rationale for me asking
9 the Enforcement staff the credibility of Lake. And as
10 you just mentioned -- I think you mentioned -- about
11 Lake having a questionable past, and so I wanted to
12 give the benefit of the doubt to Coach McNair because,
13 as you just mentioned, he will be affected by the
14 decisions.

15 Q. Well, you had a lot of doubts about Lake's
16 credibility, right?

17 A. Based upon the information presented. I
18 can't tell you there was a lot of doubt. I can't
19 quantify it as that.

20 Q. Well, they answered that question, and then
21 you had asked to look at the next page, which is Bates
22 032270, and after they answered the question, you said
23 back to Enforcement: Well, I guess you didn't answer
24 the question.

25 Right? You just read that to yourself,

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1 Q. Look a little earlier in that paragraph.
2 With regard to the January 8, 2006 phone call, it says:
3 The assistant football coach claimed
4 that he did not remember the phone
5 call.
6 Do you see that?
7 A. Yes.
8 Q. The assistant coach was never even asked
9 about a phone call on January 8, 2006, was he?
10 A. I don't know. It seems to me that the
11 assistant coach you're talking about -- Coach McNair,
12 right?
13 Q. Yes.
14 A. It seems to me he was represented by whomever
15 and if there were some concerns about whatever as it
16 pertains to this allegation or this information, they
17 were given an opportunity to question it.
18 Q. Well, did you ever read the appeal?
19 A. The appeal?
20 Q. Yes. I don't know why you're laughing. Did
21 you ever read the appeal?
22 A. No.
23 MS. WYTSMA: Well, what do you mean by "the
24 appeal"? The appeal report? The appeal submissions?
25 Can we be more clear?

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1 said in any of the record that you have that he phoned
2 the assistant football coach on that January 8, 2006
3 call, if that's not an accurate fact, that means that
4 the committee got the fact inaccurate; then it went
5 over next for review by Enforcement that's supposed to
6 check the fact, and they left the fact inaccurate; and
7 then it went to the IAC, and after the appeal, they
8 left the fact inaccurate.

9 If that's all true, isn't it true that the
10 NCAA had made a decision to get McNair regardless of
11 the accuracy of the facts?

12 MS. WYTSMA: Assumes facts not in evidence.

13 THE WITNESS: Those are your interpretations.
14 I disagree with what you just stated.

15 BY MR. BROILLET:

16 Q. So that was three opportunities to get the
17 fact right, and they kept the fact the same way every
18 time, right?

19 A. I want to emphasize that the committee
20 believed that it got the facts correct.

21 Q. Well -- so as you're sitting here right now
22 and you're looking at this carefully and seeing phone
23 records versus what Lake said, seeing precisely what he
24 said and when he said it as compared to the phone
25 records, you still take the position that that

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1 statement on Page 26 of Exhibit 27 is accurate about
2 Lake claiming that he called McNair? You're still
3 taking that position?

4 A. I take the same position that I've always
5 taken here today.

6 Q. So the answer to my question is yes, correct?

7 A. Absolutely.

8 Q. If we look at the sentence above that, where
9 it says that the assistant football coach claimed that
10 he did not remember that call of January 8, 2006, he
11 was never even asked about a call from 2006, was he?

12 A. I don't remember.

13 Q. Well, look at Exhibit 35 -- excuse me. Look
14 at Exhibit 37. That's the second interview with
15 McNair. Cretors and Johanningmeier are doing the
16 interview. It's dated February 15, 2008.

17 A. Okay. 000661?

18 Q. That's correct. Now, if you would turn to
19 000696 in that exhibit, so down toward the bottom,
20 Johanningmeier. Do you see the RK?

21 A. Yes.

22 Q. And it says:

23 Okay -- this is January 2005 --

24 according to your telephone records on

25 Saturday, January 8, 2005, you had a

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1 of people that are the voters on the committee and
2 others, including yourself, correct?

3 A. Yes, sir.

4 Q. And it's from Mr. Uphoff to Eleanor. And
5 this is now March 2. That's Eleanor Myers. And he
6 writes:

7 Thanks for continuing the dialogue in
8 helping to focus the issue.

9 And then he also writes:

10 I personally think McNair lied to us
11 both times but thought his testimony
12 at the hearing was the bigger lie.
13 But that is just my read of the
14 testimony.

15 Does that refresh you that Rod Uphoff, along
16 with Roscoe Howard, was participating in the
17 deliberations?

18 A. No.

19 Q. You don't remember one way or another?

20 A. No.

21 Q. Do you remember the issue coming up of
22 whether Mr. McNair had ever been accused of or
23 convicted of dog fighting or anything about dogs? Do
24 you remember that issue coming up?

25 A. No, I don't.

In The Matter Of:

TODD McNAIR

v.

THE NATIONAL COLLEGIATE ATHLETIC ASSOCIATION

COOPER, SHEPARD - Vol. 1

August 21, 2012

***CONFIDENTIAL - PURSUANT TO
PROTECTIVE ORDER***

MERRILL CORPORATION

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1 don't recall. I do recall conversations about
2 the standard that's in the NCAA legislation.

3 Q The language of persuasive and --

4 A Such that reasonable and prudent people rely
5 on --

6 Q To rely on in the conduct of serious affairs --

7 A Yes.

8 Q -- right?

9 A Yes, yes, sir, right.

10 Q Okay. But you -- you are not aware that Jo
11 Potuto has said that that is similar to the
12 clear and convincing standard in civil cases?

13 Is the first time you're hearing that --

14 A I --

15 Q -- is today?

16 A Again, I don't read all the articles she writes
17 and numerous law reviews and simply don't have
18 the time to read everything she's written.

19 Q Do you have a PowerPoint at the NCAA that
20 discusses this?

21 MS. WYTSMA: Objection, vague and ambiguous
22 as to "you."

23 Q Did the -- I'll rephrase.

24 Did the NCAA prepare a PowerPoint for a
25 presentation that discusses, among other things,

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1 McNair issue; correct?

2 A Correct.

3 Q All right. So were you a member of the COI at

4 the time but a nonvoting member?

5 A I'm not a member of the COI.

6 Q What was your position?

7 A I'm a support staff liaison to the committee on

8 infractions.

9 Q Was Uphoff a nonvoting member at the time?

10 A He was a nonvoting member at that time.

11 However, he is allowed, as the appeals

12 coordinator, to express his opinion in the case.

13 Q Does that appear in the bylaws?

14 A I don't know that specifically appears in the

15 bylaws.

16 Q Does it somehow appear in the bylaws, that

17 Uphoff as the appeals coordinator can do what

18 you just said that he did?

19 A There's nothing in the bylaws that preclude him

20 from doing that.

21 Q Is there anything that permits it?

22 A I'd have to look at the bylaws specifically

23 to -- to see if that's the case.

24 Q Is there anything in the bylaws that permits the

25 voting members of the COI to have communications

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1 can get information from people that are not
2 voting members?

3 MS. WYTSMA: Objection. The bylaws speak
4 for themselves.

5 A The bylaws speak for themselves, and there's
6 nothing that precludes that from happening.

7 Q So if something isn't specifically excluded in
8 the bylaws, anything goes?

9 MS. WYTSMA: Objection, argumentative,
10 vague and ambiguous.

11 A I don't know what you mean by the term "anything
12 goes."

13 Q Is the COI permitted to do its own
14 investigation?

15 A I'm not sure what you mean by "investigation."
16 The -- the -- the enforcement staff conducts
17 investigations.

18 Q Well, then you know what I mean by
19 "investigation." Is the COI permitted to
20 perform its own investigation?

21 A They are allowed to read information. But
22 conduct their own investigation, per se, no.

23 Q Is the coordinator of appeals -- that would have
24 been Uphoff in this case; correct?

25 A That's correct.

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1 Mr. Uphoff participate in the deliberations?

2 MS. WYTSMA: The witness need not answer
3 the question with a yes or no if he's not able
4 to do so.

5 If you can -- and I believe the question's
6 been asked and answered several times, but you
7 can answer it again.

8 A He expressed his opinion during the course of
9 the committee's deliberations.

10 Q So he participated in the deliberations; right?

11 A Again, he expressed his opinion during the
12 course of deliberations.

13 Q Did Mr. Howard participate in the deliberations?

14 A He didn't that I recall participate in the post
15 hearing in-person deliberations, because he was
16 an observer. I do know that he sent an e-mail,
17 fairly lengthy e-mail to the members of the
18 committee expressing his opinion. And his
19 opinion really wouldn't matter, because he was
20 not on the committee at the time of the hearing.

21 Q So was it inappropriate for him to be sending
22 his opinion given that he was not on the
23 committee at the time that they were
24 deliberating?

25 MS. WYTSMA: Objection, calls for a legal

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1 conclusion, vague and ambiguous as to
2 "inappropriate."
3 Q Based upon your rules at the NCAA.
4 A Again, there's nothing that would preclude him
5 from expressing his opinion. It would not be
6 considered as part of the committee's decision
7 in the case, because he was not a member of the
8 committee at the time.
9 Q Who did he send his lengthy opinion to? It's
10 several pages; correct?
11 A I believe it was multiple pages.
12 Q Yeah.
13 A I --
14 Q Single spaced; right?
15 A As I recall I think it was single spaced.
16 Q Who did he send it to?
17 A I'd have to look at the e-mail to see. I
18 believe I received it. Excuse me. I think
19 other members of the committee may have. Again,
20 I'd have to specifically look at the to line to
21 see to whom it was sent.
22 Q Did you send it on to the entire committee?
23 A I don't recall.
24 Q Did you ever tell the COI voting members, you
25 know you're not to consider this, referring to

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1 MR. BROILLET: All right. So what was my
2 question? Just a second.
3 THE WITNESS: Roscoe Howard.
4 MR. BROILLET: Just a second.
5 BY MR. BROILLET:
6 Q All right. So Roscoe Howard was new to the COI;
7 correct?
8 A Correct.
9 Q And the procedure at the time at the NCAA was
10 that a new member should observe a proceeding
11 before they participate in one; correct?
12 A That's correct.
13 Q And so he was not permitted by the very rules
14 that you all had back then, as you understood
15 them, to participate in -- in the matter;
16 correct?
17 MS. WYTSMA: Objection, vague and
18 ambiguous.
19 A Again, there's -- there's nothing that would
20 prohibit him from expressing his opinion. But
21 he was not a member of the committee at that
22 time, and that opinion would not be part of the
23 committee's decision in the case.
24 Q Well, when you say "express his opinion," are
25 you saying that there -- that it was permissible

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1 for him as a new observing member to express his
2 opinion to the voting members after the hearing
3 and off the record?

4 A I don't think there's anything that precludes
5 it. I don't think there's bylaws that
6 specifically speak to that particular issue.
7 There's nothing that would prevent him from
8 expressing an opinion as an observer.

9 Q Is it appropriate for a nonvoting member and
10 nonparticipant in deliberations to attempt to
11 influence the vote of voting members of the COI
12 under the rules of the NCAA at the time?

13 MS. WYTSMA: Objection, calls for a legal
14 conclusion, vague and ambiguous as to
15 "appropriate."

16 A I'm sorry, could you repeat the question,
17 please.

18 MR. BROILLET: Would you read it back,
19 please.

20 (Record read.)

21 A First, I don't know that he was attempting to
22 influence. He was expressing his opinion on
23 some matters. Whether he was attempting to
24 influence, you would have to speak to Roscoe
25 Howard to that.

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1 Q What's the answer to my question, though?

2 MS. WYTSMA: I think he just provided it.

3 Q Let me give you the question back again.

4 MR. BROILLET: Would you read it to him
5 again?

6 (Record read.)

7 A Are you asking if Roscoe Howard attempted to
8 influence?

9 Q I've asked a specific question. Do you need it
10 again?

11 A Sure.

12 THE WITNESS: Say it again.

13 (Record read.)

14 MS. WYTSMA: Objection, calls for a legal
15 conclusion, vague and ambiguous.

16 A Again, I don't know that the bylaws speak --
17 speak specifically to that. Again, there's
18 nothing that would preclude him from expressing
19 an opinion. I don't know that he was attempting
20 to influence someone to come to his side. He
21 was expressing his opinion. So I don't know
22 that I can answer the question beyond that,
23 because I don't know that he -- he was -- you're
24 referring to Roscoe Howard, and you're saying
25 "attempt to influence." I don't know --

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1 Q Eleanor Myers also at that point after the
2 hearing was expressing significant reservations
3 about finding against Todd McNair; correct?
4 A I believe I recall that, yes.
5 Q Jim El- -- Elworth, what was his position?
6 A He was --
7 MS. WYTSMA: Objection, vague and
8 ambiguous. His position on what, Mr. Broillet?
9 Q Oh, I'm sorry, his position relative to the COI,
10 I'm sorry.
11 A He's one of the -- he was an assistant director
12 at the time.
13 Q An assistant director of?
14 A Of the committee on infractions.
15 Q Okay. Assistant to you?
16 A Yes.
17 Q Okay. You were the director?
18 A Correct.
19 Q And what was your role as the director at the
20 time?
21 A My role was to administratively support the
22 committees, three committees on infractions,
23 Divisions I, II, and III. It's a myriad of
24 tasks relating to generating correspondence,
25 setting up hearings, attending hearings,

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1 attending deliberations, taking notes, things of
2 that nature.

3 Q Do you still have your notes?

4 A No. As a matter of procedure, we discard
5 deliberation notes.

6 Q So were you permitted, as you understood it
7 under the rules at the time, to participate in
8 the hearing?

9 MS. WYTSMA: Objection, vague and
10 ambiguous.

11 A To participate in the hearing?

12 Q Actively participate in the hearing.

13 A No.

14 Q Were you permitted at the time, as you
15 understood it, to actively participate in the
16 deliberations?

17 MS. WYTSMA: Objection, vague and
18 ambiguous.

19 A I'm not a voting member, but if someone asks me
20 an opinion or question typically relating to
21 past infractions cases, I will respond.

22 Q But what about with regard to the infractions
23 enforcement action under consideration, were you
24 allowed to be an active participant in the
25 deliberations at the time?

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1 MS. WYTSMA: Objection, vague and
2 ambiguous.

3 A I don't know that it was inappropriate. I think
4 he felt that as he was joining the committee, he
5 could say -- use the word "we." Again, I'd have
6 to go back and look as to what his exact status
7 was, if he was actually a member observing -- it
8 would be a date issue as to when -- when he
9 joined exactly. It may have been that he
10 actually was a member of the committee but there
11 only as an observer. So in that -- if that's
12 the case, then perhaps "we" is appropriate.

13 Q But as an observer, he's not supposed to be
14 participating in deliberations; right?

15 MS. WYTSMA: Objection, vague and
16 ambiguous.

17 A There's -- there's nothing that prevents him
18 from stating his opinion.

19 Q But he's not supposed to be participating in the
20 deliberations; right?

21 MS. WYTSMA: Objection, vague and
22 ambiguous.

23 A I don't know that I would characterize this as
24 participating in deliberations. I would
25 characterize this as his opinion.

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1 Q Now, Paul Dee was a voting member; right?
2 A Correct. And the --
3 Q And --
4 A And the chair.
5 Q And Paul Dee -- just the very act of talking
6 with him about this memo -- if it was
7 inappropriate to be influencing voting members,
8 the very act of talking with Paul Dee about it
9 would be inappropriate; right?
10 A Again, I don't think it would be inappropriate.
11 It's not something that's precluded by the
12 bylaws. And as the chair of the committee, this
13 would be something that I would take to Paul for
14 discussion and for his input as to whether this
15 is something that should be shared.
16 Q And so at the top e-mail, you receive an e-mail,
17 still in Exhibit 2, from Mr. Uphoff, "Shep, here
18 is my draft."
19 Right?
20 A Correct.
21 Q So he did send you the draft?
22 A Uh-huh.
23 Q Yes?
24 A He did.
25 Q And do you know where it is now?

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1 A Not that I recall.

2 Q And what was the final vote on the Todd McNair
3 issue at the end of everything?

4 A I don't recall a final vote on that. I do
5 recall a consensus to make the finding.

6 Q Was a vote taken? Is a vote normally taken?

7 A Sometimes votes are taken.

8 Q Do you remember if one was taken in this case?

9 A I don't. I don't remember if one was taken in
10 this instance. I believe that by the end of
11 the -- the day, if you will, that all of the
12 committee members or certainly the vast majority
13 of the committee members agreed to make a
14 finding.

15 Q And "at the end of the day" meaning after all of
16 these memos and e-mails --

17 A Yes.

18 Q -- and Uphoff and Roscoe Howard and everything,
19 then there was a consensus; right?

20 A It would have been after this time frame.

21 Q After all of these e-mails and memos from Howard
22 and Uphoff that we've been talking about;
23 correct?

24 A As far as time -- time frame, yeah, it would
25 probably be after, yes.

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1 A No. We receive notification when there are
2 lawsuits that we need to preserve everything.
3 But it's -- again, it's standard, routine
4 procedure to discard notes either after the
5 infractions proceedings have run their course
6 and there's no appeal or after the appeal. It's
7 just standard procedure.
8 Q Did you do handwritten notes?
9 A Yes.
10 Q Did Mr. El- -- Elworth do handwritten notes?
11 A I believe so.
12 Q Did you do anything on a computer other than
13 e-mails?
14 A I did initial draft of the infractions reports.
15 Q You did those on the computer?
16 A I did.
17 Q And do you recall whether Mr. Thompsett ever
18 sent a preservation letter before the appeal was
19 final?
20 A I don't recall that.
21 Q So -- so if the lawsuit, then, was filed on
22 June 3rd, 2011, then you had destroyed your
23 notes within approximately a month after the
24 appeal; correct?
25 A That's --

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1 reasonable doubt."

2 Do you see that?

3 A Yes.

4 Q And he says, "My thought is to send it out to
5 get the conversation going, and hopefully Paul,
6 Roscoe, and others will weigh in."

7 Get what conversation going?

8 MS. WYTSMA: Objection, calls for
9 speculation.

10 A I'm not sure what he's referring to other than I
11 assume it might refer to his memo.

12 Q And by then, had you figured out that he was
13 doing this memo to try to influence the voting
14 members of the COI?

15 MS. WYTSMA: Objection, assumes facts,
16 mischaracterizes the witness' testimony.

17 A Again, he was expressing his opinion. Even
18 though he's a nonvoting member of the committee,
19 there's nothing that precludes him as a full
20 member of the committee to express his opinion.
21 It's just that at that time -- and since that
22 time it's been changed to allow courts of
23 appeals to vote. He was a nonvoting member, but
24 there was nothing at that time or at any time,
25 actually, to prevent him from expressing his

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1 opinion.

2 Q My question to you is: Was it clear to you by
3 that point, this e-mail of February 23, 2010,
4 from Mr. Uphoff on Exhibit 5 to you -- was it
5 clear to you by that point that he was trying to
6 influence the vote of the voting members of the
7 COI?

8 A He was expressing his opinion to the other
9 members of the committee. I guess you'd have to
10 ask him if he was trying to influence them.

11 Q I'm asking you if you had figured that out by
12 that point.

13 MS. WYTSMA: Objection, assumes facts.

14 A I don't recall having any thoughts one way or
15 the other as to whether he was in-- trying to
16 influence opinions or influence the committee.
17 He was providing his opinion.

18 Q And then it says, "Roscoe and others will weigh
19 in."

20 So it was clear to you that it was intended
21 that Roscoe Howard be part of the deliberations,
22 too; correct?

23 A Be part of expressing his opinion, but he's --
24 he was not a member of that particular committee
25 that heard the case. He was a member of the

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1 comments from Howard and Uphoff, are you telling
2 us that they had no influence on the committee
3 vote?

4 A I don't know what influence it had, if -- if
5 any. I mean, this -- they can express their
6 opinion. There's nothing in the bylaws that
7 precludes them from expressing their opinion.
8 Neither one of them were voting members, in
9 other words, would vote to make a finding or not
10 make a finding or to weigh in on penalties. I
11 can't speak to the -- to the extent that there
12 was influence. I mean, they did send out
13 this -- their opinions, their positions to the
14 entire committee.

15 Q So you don't know if it influenced any of the
16 committee members or not; right?

17 A I don't know specifically, no. I think you'd
18 have to ask them.

19 Q Okay. But by sending it to them, there's a
20 danger that it could have influenced one or more
21 opinions; correct?

22 A Well, I sup- -- I suppose there's a possibility
23 it could influence them. It's -- again, there's
24 nothing to preclude them from expressing
25 opinions. In the bylaws, they don't -- there's

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1 nothing to prevent them from expressing their
2 opinions on this.

3 Q So are you saying that -- are you saying that
4 after the first round of deliberations, that the
5 committee had made no findings regarding the
6 USC/McNair matter?

7 A I wouldn't say that there were no findings. I
8 believe, and as I recall, there were findings
9 that ultimately were admitted to by the
10 institution relating to benefits that had been
11 provided to Reggie Bush by agents. So I think
12 those were fairly easy. They concluded that
13 those were findings.

14 So no, to answer your question, it was not
15 a situation where there were no findings made by
16 the committee by the end of deliberations that
17 were at the hearing site.

18 Q In fact, there had been many findings by the
19 committee by the end of those deliberations, the
20 initial round of deliberations; correct?

21 A I'm not sure if "many" is a correct
22 characterization of it. There were some
23 findings, yes.

24 Q Well, let's look at the next exhibit, which
25 we'll mark as Exhibit 7.

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1 A He was a member of the committee at the time.

2 Okay. He did not sit with the committee. He

3 was an observer. But there's nothing in the

4 legislation that precludes him from expressing

5 his opinion. But as this e-mail indicates, he

6 was not included in the conference call.

7 Q Because he was not a member of the COI for this

8 particular case; right?

9 A That's correct.

10 Q Do you know where the attachment to the e-mail

11 described by Eleanor in e-mail 8 is located?

12 A I don't.

13 Q Have you searched for it?

14 A I have not.

15 Q Do you know of anybody that has?

16 A No.

17 Q Do you remember where -- rephrase.

18 Do you remember what it said?

19 A I don't.

20 MR. BROILLET: So the next exhibit is an

21 e-mail of March 1, 2010.

22 (Deposition Exhibit 9 marked for

23 identification.)

24 MR. BROILLET: It should be Exhibit 9?

25 THE REPORTER: Yes.

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1 don't influence the thinking of the committee.

2 Q You said earlier today that in reference to
3 these memos from Howard and Uphoff, that they
4 can say what they want to say and give their
5 opinions. There's nothing that precludes them
6 from doing that. But that it really wasn't
7 considered by the committee.

8 Remember that?

9 A From Uphoff or from --

10 Q From either of them.

11 A I don't recall saying it about Uphoff.

12 Q Well --

13 A I mean, he expressed his opinion. And he's a
14 member of the committee, and there's nothing to
15 preclude him from doing that.

16 Q So the voting members were considering his
17 opinion as part of their decision-making
18 process; correct?

19 A It's up --

20 MS. WYTSMA: Objection, calls for
21 speculation.

22 A It's up to them whether or not to consider what
23 weight they -- they have in their decision
24 process.

25 Q But you intended them to when you sent this to

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1 correct that the draft gets sent to enforcement
2 for factual corrections?

3 MS. WYTSMA: Objection, vague and ambiguous
4 as to whether you're speaking generally or with
5 respect to this particular report.

6 Q In this particular case, did the draft get sent
7 to enforcement for corrections?

8 MS. WYTSMA: Objection, vague and ambiguous
9 as to "the draft."

10 Q Any draft.

11 A As a matter of process, a draft is provided to
12 the enforcement staff to make checks of facts
13 such as dates, bylaw cites, names, titles,
14 et cetera. Substantive findings by the
15 committee on infractions are not subject to
16 change.

17 Q So in this case, the facts as described in at
18 least one of the draft reports was sent to
19 enforcement to double-check the facts; correct?

20 A Within the -- those constraints that I just
21 mentioned.

22 Q And did enforcement ever say, you've got the
23 facts wrong?

24 A I believe there were some corrections to the
25 facts. I don't recall specifically, again,

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1 this, I think.

2 MR. CARR: Yeah, I think that's the only

3 copy.

4 MR. BRCILLET: Yeah. So I'm going to mark

5 this, though, as Exhibit 25, and we can make a

6 copy afterwards for everybody.

7 MR. CARR: They can make copies after the

8 fact.

9 MR. BROILLET: Yeah. So we can make a copy

10 afterwards.

11 Q And I'll just show this to you, and I'll ask you

12 if this is the typewritten copy of Jo

13 Potuto's --

14 MS. WYTSMA: Let me take a look at that for

15 a second.

16 Q -- of Jo Potuto's notes.

17 (Deposition Exhibit 25 marked for

18 identification.)

19 A It appears to be the notes, yes.

20 Q Okay. So you had typed that up from her notes?

21 A You know, I -- I don't think that I did, because

22 the word "pithier" is used. I don't believe

23 I've used the word "pithier."

24 Q Well, it's -- it's from her notes; right?

25 A Yes. Again, it could have been -- I think she

CONFIDENTIAL - PURSUANT TO PROTECTIVE ORDER
SHEPARD COOPER - 8/21/2012

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1 STATE OF INDIANA)
2 COUNTY OF HENDRICKS) SS:
3

4 I, Debbi S. Austin, RMR, CRR, a Notary
5 Public in and for the County of Hendricks, State of
6 Indiana, at large, do hereby certify that SHEPARD
7 COOPER, the deponent herein, was by me first duly
8 sworn to tell the truth, the whole truth, and
9 nothing but the truth in the aforementioned matter;

10 That the foregoing videotaped deposition was
11 taken on behalf of the Plaintiff at the offices of
12 Connor Reporting, 1650 One American Square,
13 Indianapolis, Marion County, Indiana, on the 21st
14 day of August, 2012, commencing at 9:50 a.m.,
15 pursuant to the California Rules of Trial
16 Procedure;

17 That said deposition was taken down in
18 stenograph notes and afterwards reduced to
19 typewriting under my direction, and that the
20 typewritten transcript is a true record of the
21 testimony given by the said deponent; and that the
22 signature of said deponent to his or her deposition
23 was requested;

24 That the parties were represented by their
25 counsel as aforementioned.

CONFIDENTIAL - PURSUANT TO PROTECTIVE ORDER
SHEPARD COOPER - 8/21/2012

Page 261

1 I do further certify that I am a
2 disinterested person in this cause of action, that
3 I am not a relative or attorney of either party, or
4 otherwise interested in the event of this action,
5 and that I am not in the employ of the attorneys
6 for any party.

7 IN WITNESS WHEREOF, I have hereunto set my
8 hand and affixed my notarial seal on this _____
9 day of August, 2012.

10

11

12

NOTARY PUBLIC

13

14 My Commission Expires:

15 July 16, 2015

16 County of Residence:

17 Hendricks County

18

19

20

21

22

23

24

25

PREVIOUSLY LODGED UNDER SEAL. FILED PURSUANT TO COURT'S 2/6/15 ORDER

From: Najjar, Ameen
To: Cornley, Susan
Sent: 1/5/2010 5:37:19 AM
Subject: FW: Response of Todd McNair to Notice of Allegations
Attachments: Exhibit 1.PDF; Exhibit 2.PDF; Exhibit 3.PDF; Exhibit 4.PDF; Exhibit 5.PDF; Response of Todd McNair.DOCX

From: Tompsett, Scott [mailto:STompsett@stinson.com]
Sent: Monday, January 04, 2010 6:21 PM
To: Cooper, Shep; Walker, Amy
Cc: Price, David; Najjar, Ameen
Subject: Response of Todd McNair to Notice of Allegations

Shep and Amy,

Attached is Todd McNair's Response to the Notice of Allegations. Hard copies were shipped today to the individuals identified in Mr. Price's September 24, 2009 cover letter.

Regards,
Scott

Scott W. Tompsett
Partner

Stinson Morrison Hecker LLP
1201 Walnut Street, Suite 2900
Kansas City, MO 64106-2150
Direct: (816) 691-3318
Mobile: (816) 674-4141
Fax: (816) 412-9340
STompsett@stinson.com
www.stinson.com

Working for a Greener Tomorrow

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CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER

NCAA 004469

A0879

Account Name USC ATHLETIC DEPT
Acct/DAC number 110558028 - 0033915021
Statement date March 22, 2005
Billing period February 19 - March 16, 2005
Invoice number 110558028-031

TODD MCNAIR (213) 725-3180 continued...

Telecommunications Services Call Detail (213) 725-3180

Table with columns: Item #, Date, Time, Call To, Number, Facility, Min/Sec, Usage, Long Distance/Other, Total Charges. Contains call records for various numbers and times.

continued...

Account Name USC ATHLETIC DEPT
Acct/DAC number 110558028 - 0033915021
Statement date March 22, 2005
Billing period February 19 - March 16, 2005
Invoice number 110558028-031

TODD MCNAIR (213) 725-3180 continued...

Telecommunications Services Call Detail (213) 725-3180

Table with columns: Item #, Date, Time, Call To, Number, Facility, Min/Sec, Usage, Long Distance/Other, Total Charges. Contains call records for various numbers and times.

continued...



Account Name USC ATHLETIC DEPT
 Acct/DAC Number 110556026 - 0020915021
 Statement date March 23, 2005
 Billing period February 19 - March 18, 2005
 Invoice number 110556026-031

TODD MCNAIR (213) 725-3180 continued...

Telecommunications Services Call Detail (213) 725-3180

Hour	Date	Time	Call To	Number	Extrac	Min/Sec	Usage	Long Distance	Total Charges
608	Mar	07	07:10	PA	608-685-1000	PP	0:21	0.00	0.21
609	Mar	07	07:10	PA	608-685-1000	PP	0:23	0.00	0.23
610	Mar	07	07:20	PA	608-685-1000	PP	0:23	0.00	0.23
611	Mar	07	07:30	PA	608-685-1000	PP	0:43	0.00	0.43
612	Mar	07	07:35	PA	608-685-1000	PP	1:15	0.00	1.15
613	Mar	07	07:40	PA	608-685-1000	PP	2:14	0.00	2.14
614	Mar	07	07:45	PA	608-685-1000	PP	0:23	0.00	0.23
615	Mar	07	07:50	PA	608-685-1000	PP	0:23	0.00	0.23
616	Mar	07	07:55	PA	608-685-1000	PP	0:23	0.00	0.23
617	Mar	07	08:00	PA	608-685-1000	PP	0:23	0.00	0.23
618	Mar	07	08:05	PA	608-685-1000	PP	0:23	0.00	0.23
619	Mar	07	08:10	PA	608-685-1000	PP	0:23	0.00	0.23
620	Mar	07	08:15	PA	608-685-1000	PP	0:23	0.00	0.23
621	Mar	07	08:20	PA	608-685-1000	PP	0:23	0.00	0.23
622	Mar	07	08:25	PA	608-685-1000	PP	0:23	0.00	0.23
623	Mar	07	08:30	PA	608-685-1000	PP	0:23	0.00	0.23
624	Mar	07	08:35	PA	608-685-1000	PP	0:23	0.00	0.23
625	Mar	07	08:40	PA	608-685-1000	PP	0:23	0.00	0.23
626	Mar	07	08:45	PA	608-685-1000	PP	0:23	0.00	0.23
627	Mar	07	08:50	PA	608-685-1000	PP	0:23	0.00	0.23
628	Mar	07	08:55	PA	608-685-1000	PP	0:23	0.00	0.23
629	Mar	07	09:00	PA	608-685-1000	PP	0:23	0.00	0.23
630	Mar	07	09:05	PA	608-685-1000	PP	0:23	0.00	0.23
631	Mar	07	09:10	PA	608-685-1000	PP	0:23	0.00	0.23
632	Mar	07	09:15	PA	608-685-1000	PP	0:23	0.00	0.23
633	Mar	07	09:20	PA	608-685-1000	PP	0:23	0.00	0.23
634	Mar	07	09:25	PA	608-685-1000	PP	0:23	0.00	0.23
635	Mar	07	09:30	PA	608-685-1000	PP	0:23	0.00	0.23
636	Mar	07	09:35	PA	608-685-1000	PP	0:23	0.00	0.23
637	Mar	07	09:40	PA	608-685-1000	PP	0:23	0.00	0.23
638	Mar	07	09:45	PA	608-685-1000	PP	0:23	0.00	0.23
639	Mar	07	09:50	PA	608-685-1000	PP	0:23	0.00	0.23
640	Mar	07	09:55	PA	608-685-1000	PP	0:23	0.00	0.23
641	Mar	07	10:00	PA	608-685-1000	PP	0:23	0.00	0.23
642	Mar	07	10:05	PA	608-685-1000	PP	0:23	0.00	0.23
643	Mar	07	10:10	PA	608-685-1000	PP	0:23	0.00	0.23
644	Mar	07	10:15	PA	608-685-1000	PP	0:23	0.00	0.23
645	Mar	07	10:20	PA	608-685-1000	PP	0:23	0.00	0.23
646	Mar	07	10:25	PA	608-685-1000	PP	0:23	0.00	0.23
647	Mar	07	10:30	PA	608-685-1000	PP	0:23	0.00	0.23
648	Mar	07	10:35	PA	608-685-1000	PP	0:23	0.00	0.23
649	Mar	07	10:40	PA	608-685-1000	PP	0:23	0.00	0.23
650	Mar	07	10:45	PA	608-685-1000	PP	0:23	0.00	0.23
651	Mar	07	10:50	PA	608-685-1000	PP	0:23	0.00	0.23
652	Mar	07	10:55	PA	608-685-1000	PP	0:23	0.00	0.23
653	Mar	07	11:00	PA	608-685-1000	PP	0:23	0.00	0.23
654	Mar	07	11:05	PA	608-685-1000	PP	0:23	0.00	0.23
655	Mar	07	11:10	PA	608-685-1000	PP	0:23	0.00	0.23
656	Mar	07	11:15	PA	608-685-1000	PP	0:23	0.00	0.23
657	Mar	07	11:20	PA	608-685-1000	PP	0:23	0.00	0.23
658	Mar	07	11:25	PA	608-685-1000	PP	0:23	0.00	0.23
659	Mar	07	11:30	PA	608-685-1000	PP	0:23	0.00	0.23
660	Mar	07	11:35	PA	608-685-1000	PP	0:23	0.00	0.23
661	Mar	07	11:40	PA	608-685-1000	PP	0:23	0.00	0.23
662	Mar	07	11:45	PA	608-685-1000	PP	0:23	0.00	0.23
663	Mar	07	11:50	PA	608-685-1000	PP	0:23	0.00	0.23
664	Mar	07	11:55	PA	608-685-1000	PP	0:23	0.00	0.23
665	Mar	07	12:00	PA	608-685-1000	PP	0:23	0.00	0.23
666	Mar	07	12:05	PA	608-685-1000	PP	0:23	0.00	0.23
667	Mar	07	12:10	PA	608-685-1000	PP	0:23	0.00	0.23
668	Mar	07	12:15	PA	608-685-1000	PP	0:23	0.00	0.23
669	Mar	07	12:20	PA	608-685-1000	PP	0:23	0.00	0.23
670	Mar	07	12:25	PA	608-685-1000	PP	0:23	0.00	0.23
671	Mar	07	12:30	PA	608-685-1000	PP	0:23	0.00	0.23
672	Mar	07	12:35	PA	608-685-1000	PP	0:23	0.00	0.23
673	Mar	07	12:40	PA	608-685-1000	PP	0:23	0.00	0.23
674	Mar	07	12:45	PA	608-685-1000	PP	0:23	0.00	0.23
675	Mar	07	12:50	PA	608-685-1000	PP	0:23	0.00	0.23
676	Mar	07	12:55	PA	608-685-1000	PP	0:23	0.00	0.23
677	Mar	07	13:00	PA	608-685-1000	PP	0:23	0.00	0.23
678	Mar	07	13:05	PA	608-685-1000	PP	0:23	0.00	0.23
679	Mar	07	13:10	PA	608-685-1000	PP	0:23	0.00	0.23
680	Mar	07	13:15	PA	608-685-1000	PP	0:23	0.00	0.23
681	Mar	07	13:20	PA	608-685-1000	PP	0:23	0.00	0.23
682	Mar	07	13:25	PA	608-685-1000	PP	0:23	0.00	0.23
683	Mar	07	13:30	PA	608-685-1000	PP	0:23	0.00	0.23
684	Mar	07	13:35	PA	608-685-1000	PP	0:23	0.00	0.23
685	Mar	07	13:40	PA	608-685-1000	PP	0:23	0.00	0.23
686	Mar	07	13:45	PA	608-685-1000	PP	0:23	0.00	0.23
687	Mar	07	13:50	PA	608-685-1000	PP	0:23	0.00	0.23
688	Mar	07	13:55	PA	608-685-1000	PP	0:23	0.00	0.23
689	Mar	07	14:00	PA	608-685-1000	PP	0:23	0.00	0.23
690	Mar	07	14:05	PA	608-685-1000	PP	0:23	0.00	0.23
691	Mar	07	14:10	PA	608-685-1000	PP	0:23	0.00	0.23
692	Mar	07	14:15	PA	608-685-1000	PP	0:23	0.00	0.23
693	Mar	07	14:20	PA	608-685-1000	PP	0:23	0.00	0.23
694	Mar	07	14:25	PA	608-685-1000	PP	0:23	0.00	0.23
695	Mar	07	14:30	PA	608-685-1000	PP	0:23	0.00	0.23
696	Mar	07	14:35	PA	608-685-1000	PP	0:23	0.00	0.23
697	Mar	07	14:40	PA	608-685-1000	PP	0:23	0.00	0.23
698	Mar	07	14:45	PA	608-685-1000	PP	0:23	0.00	0.23
699	Mar	07	14:50	PA	608-685-1000	PP	0:23	0.00	0.23
700	Mar	07	14:55	PA	608-685-1000	PP	0:23	0.00	0.23

continued...

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TODD MCNAIR (213) 725-3180 continued...

Telecommunications Services Call Detail (213) 725-3180

Hour	Date	Time	Call To	Number	Extrac	Min/Sec	Usage	Long Distance	Total Charges
627	Mar	08	08:15	PA	610-718-0900	PP/AM	1:04	0.00	0.38
628	Mar	08	08:15	PA	610-718-0900	PP/AM	1:07	0.00	0.38
629	Mar	08	08:15	PA	610-718-0900	PP/AM	1:00	0.00	0.38
630	Mar	08	08:15	PA	610-718-0900	PP/AM	1:00	0.00	0.38
631	Mar	08	08:15	PA	610-718-0900	PP/AM	1:00	0.00	0.38
632	Mar	08	08:15	PA	610-718-0900	PP/AM	1:00	0.00	0.38
633	Mar	08	08:15	PA	610-718-0900	PP/AM	1:00	0.00	0.38
634	Mar	08	08:15	PA	610-718-0900	PP/AM	1:00	0.00	0.38
635	Mar	08	08:15	PA	610-718-0900	PP/AM	1:00	0.00	0.38
636	Mar	08	08:15	PA	610-718-0900	PP/AM	1:00	0.00	0.38
637	Mar	08	08:15	PA	610-718-0900	PP/AM	1:00	0.00	0.38
638	Mar	08	08:15	PA	610-718-0900	PP/AM	1:00	0.00	0.38
639	Mar	08	08:15	PA	610-718-0900	PP/AM	1:00	0.00	0.38
640	Mar	08	08:15	PA	610-718-0900	PP/AM	1:00	0.00	0.38
641	Mar	08	08:15	PA	610-718-0900	PP/AM	1:00	0.00	0.38
642	Mar	08	08:15	PA	610-718-0900	PP/AM	1:00	0.00	0.38
643	Mar	08	08:15	PA	610-718-0900	PP/AM	1:00	0.00	0.38
644	Mar	08	08:15	PA	610-718-0900	PP/AM	1:00	0.00	0.38
645	Mar	08	08:15	PA	610-718-0900	PP/AM	1:00	0.00	0.38
646	Mar	08	08:15	PA	610-718-0900	PP/AM	1:00	0.00	0.38
647	Mar	08	08:15	PA	610-718-0900	PP/AM	1:00	0.00	0.38
648	Mar	08	08:15	PA	610-718-0900	PP/AM	1:00	0.00	0.38
649	Mar	08	08:15	PA	610-718-0900	PP/AM	1:00	0.00	0.38
650	Mar	08	08:15	PA	610-718-0900	PP/AM	1:00	0.00	0.38
651	Mar	08	08:15	PA	610-718-0900	PP/AM	1:00	0.00	0.38
652	Mar	08	08:15	PA	610-718-0900	PP/AM	1:00	0.00	0.38
653	Mar	08	08:15	PA	610-718-0900	PP/AM	1:00	0.00	0.38
654	Mar	08	08:15	PA	610-718-0900	PP/AM	1:00	0.00	0.38
655	Mar	08	08:15	PA	610-718-0900	PP/AM	1:00	0.00	0.38
656	Mar	08	08:15	PA	610-718-0900	PP/AM	1:00	0.00	0.38
657	Mar	08	08:15	PA	610-718-0900	PP/AM			

Allegation 1.b(3)

What Staff Alleged	What Lake Said
During the conversation, Lake asked McNair to intercede with Bush and convince the young man to adhere to the agreement for professional representation that Bush had made with Lake	I think [the Jan. 8, 2006 call] was like, that was like [McNair] trying to resolve it, you know, and like Reggie's wrong, he should make it right.
Lake also told McNair that Lake did not intend to lose the money that Lake had given Bush and the young man's parents	[McNair] just telling about Reggie and all, he knew about the money he took, he knew that Bush had an agreement and...he knew Reggie took money from me.
Lake told McNair that he did not want to go public with the matter and implicate the institution	[McNair said] basically don't implement the school

2160264.1

Los Angeles Times

YOU ARE HERE: LAT Home - Collections - University Of Southern California

LSC REPORT

Bush Meets With Agent and Carroll

January 24, 2004 / Gary Klein

Running back Reggie Bush met with Coach Pete Carroll and a prominent agent for about an hour on campus Monday, but the Heisman Trophy winner said he still had not decided whether he would turn pro.

Bush, a junior who is regarded as the possible top pick in the NFL draft, met with David Dunn, who negotiated Heisman winner Carson Palmer's contract when the former USC quarterback was selected by the Cincinnati Bengals with the top pick in 2003. Carroll, Trojan running backs coach Todd McWair and Jaylon Pearson, a former NFL player who is Bush's cousin, also attended the meeting at Herwig Hall.

Players have until Sunday to declare for the April draft.

"I'm still trying to figure everything out and put everything in perspective before I make my decision," Bush said after the meeting.

Bush said the meeting with Dunn would be his last with agents, but he emphasized that he had not chosen who would represent him if he turns pro.

"I'm far from making my decision," he said.

Dunn, who was accompanied by several associates, declined to comment.

While cognizant of the deadline, Bush said there was no timetable for an announcement about his plans.

"I've just got to be 100% sure of what I'm going to do before I make my decision," he said. "That could be as early as (today) or it could take as long as up to the end of the week, or until Sunday, the actual day."

Running back LenDale White, offensive linemen Winston Justice and Fred Mervis, flanker Steve Smith and safety Darnell Bing are other draft-eligible USC juniors.

After an afternoon team meeting, Carroll said White had left him a phone message, but that he had not spoken to him Monday. White said last week he would announce his decision Thursday.

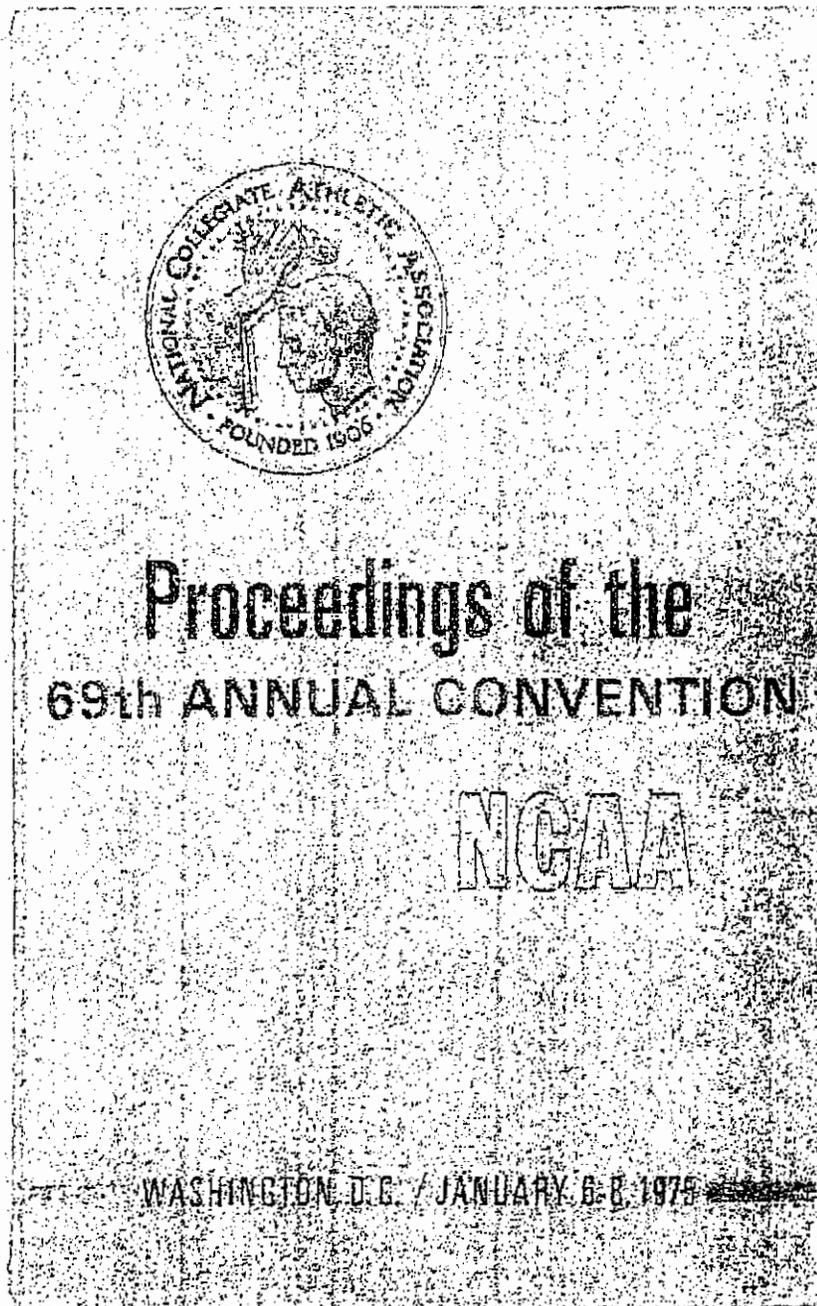
Justice said he was "still up to the air" and that he planned to meet with Carroll. Mervis also said he was undecided. "It would take a lot for me to leave this university," he said.

Smith said the NFL had evaluated him as a possible third-round pick and that he would talk to his family about a possible decision on Monday night.

Bing did not attend the team meeting, but Carroll said he would meet with him this afternoon.

Running back Michael Coleman will have hip surgery today but could be ready to participate in spring practice, Carroll said. Linebacker Brian Cushing is scheduled to have shoulder surgery in the next few days. Running back Desmond Reed, who had knee surgery Nov. 7, said he was ahead of schedule in his recovery and that he hoped to be running near full speed by June. Safety Antwanne Perez graduated early from high school in New Jersey and is enrolled for the spring semester. Tight end Gerald Washington, a transfer from Chaffey College, also has enrolled. Defensive lineman Walker Lee Ashley, who signed a letter of intent last year but did not qualify, also is attempting to enroll. Walk-on receiver Brad Walker said he was preparing to make a block when Bush ill-advisedly attempted to lateral to him and fumbled after a 37-yard pass reception against Texas in the Rose Bowl. "We made eye contact but I thought he was going to cut back toward me because I thought he could make those two guys miss," Walker said. "I took my eyes off him and all of a sudden you see the ball flying at you." Running back Chauncey Washington, who was ineligible the last two seasons and is also ineligible to participate in spring practice, will remain in school and attempt to play in the fall, Carroll said. Receiver Whitney Lewis denied published reports that he was considering transferring. "I'm here to stay. I've never been a quitter," he said.

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lution which does not seem to me to be appropriate. That is that the resolution calls for a joint committee between we and the women. I don't know that we can commit them to such a committee.

Mr. Horn: I don't know either, but we can make the offer. At that point the ball is in their court.

[Proposal No. 169 (page A-83) was approved by voice vote.]

Restitution

Mr. Swank: I am sure glad the Council assigns me all the easy ones. [Laughter] Mr. President, I move the adoption of Item No. 82.

[The motion was seconded.]

This amendment to the Enforcement Procedure would enable the Council to take one of several specific actions against a member institution which gained something improperly.

What this amendment seems to do is require that there be fairness to the other institutions. We have talked a great deal about fairness in certain performers. If an institution uses an ineligible athlete, then the Council could take certain action.

I would point out that this is not a shall but a may situation. Obviously, it would depend upon the type of ability, I suppose, that the individual performer had. I am sure that in some instances there would be very little contribution by that individual for the overall performance of the team or the group. If there is, then of course, they could take this action. I would urge its adoption.

[Proposal No. 63 (page A-33) was approved by voice vote.]

Penalty Structure

Jack Sawyer (Wake Forest University): At the request of the Council, I move the adoption of No. 64.

[The motion was seconded.]

This is one of those extremely, legal technicalities, which probably will be better presented by a lawyer. The idea here is, as you know, the NCAA is an organization of institutions rather than individuals. We have run into some difficulty legally in saying that we can enforce specific actions directly from the Infractions Committee to a student without any violation by the institution.

For example, a student is declared eligible by an institution. His eligibility would have to be taken away by his institution and not by the Infractions Committee. This will have no effect on the infractions procedure, but it will simply keep us from getting in legal difficulties.

[Proposal No. 64 (page A-35) was approved by voice vote.]

Institutional Eligibility

Ferdinand Geiger (Brown University): I move the adoption of Item No. 65.

[The motion was seconded.]

The intent is to require each athletic department staff member to sign an annual statement concerning rules violations as a part of the chief executive officer's annual certification.

John Harbaugh (Stanford University): I object to the rather loose language phrase that is used in this. The athletic staff member covers many people, such as trainers, team physicians, groundskeepers and equipment managers. Surely, it is not the intent to include these people. I presume the Council would have to make the interpretation.

Mr. Geiger: Yes, the Council whom it would involve. I would not but not groundskeepers.

[Proposal No. 65 (page A-35) and by Division II and Division Frank Broyles (University of in this, that the coach does not ha President Chapman: I believe t Mr. Broyles: Well, I would like in regard to No. 65.

[The motion was seconded ar I just don't believe as a footba gentleman, and say that I am goi president to sign and not ask the school to sign. I just can't believ to do.

If we are looking for deterre strengthen ourselves against the I am appealing to you to give me other active coaches are here bu chance to tell my staff they are sign it, and I want them to sign and my president is going to sign Don Warhurst (California Sta tutions, and I assume most of the and athletic directors sign such certainly could be interpreted, connected with the department, was not the concept we don't w stitutions are requiring this alre of legislation to get them to do place.

Mr. Broyles: I feel the first pe is the athletic director to assu. rectly. As the athletic director, going on. I want assurances fr lutely refuses to sign that petit think it is in order to do that.

J. D. Margan (UCLA): I wou Is it possible to make the edito ing staff members and athletic terminology that is used here?

President Chapman: I would s is too much, probably, of an edi The Council can make note of it that has gone on from the floor.

Cliff Speegle (Southwest Atl be remis as delegates to this C respects in the rules that we hav

Mr. Harbaugh: There is anothe able. The bold face type in the knowledge of. Now, I dare say of violations elsewhere, in vario

to be appropriate. That is that the
line between us and the women. I
went to such a committee.
and we can make the offer. At that

was approved by voice vote.]
motion

Council assigns me all the easy
over the adoption of Item No. 63.

ment Procedure would enable the
specific actions against a member
improperly.

to require that there be fairness
talked a great deal about fairness
you uses an ineligible athlete, then
n.

not a shall but a may situation.
the type of ability, I suppose, that
I am sure that in some instances there
by that individual for the overall
group. If there is, then of course,
urge his adoption.

was approved by voice vote.]

structure
iversity): At the request of the
64.

legal technicalities, which probably
over. The idea here is, as you know,
institutions rather than individuals.
legally in saying that we can en-
force the Infractions Committee to a
an institution.
and eligible by an institution. His
away by his institution and not
this will have no effect on the in-
sincerely keep us from getting in legal

was approved by voice vote.]

Eligibility
iversity): I move the adoption of Item

athletic department staff member to
enforcing rules violations as a part of
certification.

iversity): I object to the rather loose
us. The athletic staff member covers
in physicians, groundskeepers and
is not the intent to include these
I'd have to make the interpretation.

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Mr. Geiger: Yes, the Council would have to interpret this, as to
whom it would involve. I would say perhaps trainers and physicians,
but not groundskeepers.

[Proposal No. 65 (page A-35) was defeated by Division I, 68-129,
and by Division II and Division III, each by voice vote.]

Frank Broyles (University of Arkansas, Fayetteville): Am I right
in this, that the coach does not have to sign?

President Chapman: I believe that is right.

Mr. Broyles: Well, I would like to move to reconsider that motion
in regard to No. 65.

[The motion was seconded and approved.]

I just don't believe as a football coach that I can look at myself,
gentlemen, and say that I am going to ask the player to sign and the
president to sign and not ask the staff and the athletic director of the
school to sign. I just can't believe that that is what we are wanting
to do.

If we are looking for deterrents against the abuses and ways to
strengthen ourselves against the abuses, then we would vote this way.
I am appealing to you to give me as a coach—I don't know how many
other active coaches are here but I would like to hear from them—a
chance to tell my staff they are going to have to sign. I am going to
sign it, and I want them to sign it. My players are going to sign it,
and my president is going to sign it.

Don Warhurst (California State Polytech University): Our insti-
tutions, and I assume most of the others, currently are having coaches
and athletic directors sign such statements. This piece of legislation
certainly could be interpreted, as has been pointed out, as anyone
connected with the department. I thought what we saw in the vote
was not the concept we don't want coaches to sign, but that the in-
stitutions are requiring this already, and they don't need this piece
of legislation to get them to do what is obviously proper in the first
place.

Mr. Broyles: I feel the first person the president is going to look to
is the athletic director to assure him the program is being run cor-
rectly. As the athletic director, I do not know all the things that are
going on. I want assurances from my coaches. Our president abso-
lutely refuses to sign that petition unless our coaches sign it, and I
think it is in order to do that.

J. D. Morgan (UCLA): I would like to know if this is in order?
Is it possible to make the editorial change of using the general coach-
ing staff members and athletic directors, rather than the general
terminology that is used here?

President Chapman: I would say it would be possible. I do think it
is too much, probably, of an editorial change to make from the floor.
The Council can make note of it and will be guided by the discussion
that has gone on from the floor. I don't know any other way to do it.

Cliff Speagle (Southwest Athletic Conference): I think we would
be remiss as delegates to this Convention to not be consistent in all
respects in the rules that we have laid down.

Mr. Harbaugh: There is another element here that I find objection-
able. The bold face type in the following phrase, *Has reported his
knowledge of*. Now, I dare say that every coach has some knowledge
of violations elsewhere, in various degrees and rumors.

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Is it the intention of the proposers of this legislation to require him to report this knowledge and violations outside his institutions? It seems to me it is not. They actually want him to report his own involvement in the violations but not others. Maybe I am wrong.

President Chapman: I presume you are correct.

Mr. Geiger: I believe the legislation clearly says your own institution.

[Upon reconsideration, Proposal No. 65 (page A-35) was approved by each division by show of paddies.]

President Chapman: You see what happens when Broyles wakes up. [Laughter]

Personnel

Franklin Lindsey (University of California, Riverside): In behalf of the Council, I move the adoption of Item No. 67.

[The motion was seconded.]

Very briefly, this would amend Recommended Policy 6. This is a good management procedure.

[Proposal No. 67 (page A-36) was approved by voice vote.]

Obligations of Membership

Stephen Horn (California State University, Long Beach): I move the adoption of Proposal No. 68.

[The motion was seconded.]

This amendment is offered because especially in the public institutions—but even increasingly in the private institutions—courts, state laws, boards of trustees and academic university centers have insisted on some known procedure of due process in the case of the infractions by students, be they student academic or athletic affairs, or any other aspect of the university.

This proposed language would state that if a student-athlete were ineligible under our Constitution, Bylaws or other legislation, prior to the act falling on that student-athlete—who might later be found to be innocent either by the NCAA Committee on Eligibility or the courts—the student-athlete, just as any other human being in our Anglo-Saxon judicial oriented society, would have to receive notice and have an opportunity for a hearing with respect to his ineligibility.

In order to keep an institution from fudging on this, we wrote in a 30-day limitation for a due process hearing. If a student-athlete is accused of something and the institution immediately rules him ineligible and it takes time for the NCAA hearing apparatus, you have students running off to the courts to get a temporary restraining order. This is to make sure that the student-athlete gets a hearing and not be deprived of a fourth of his amateurism life and in no case could that decision take more than 30 days.

William Matthews (University of Kentucky): Despite the lateness of the hour and despite the obvious support that President Horn has generated for his thoughtful proposal, as I read that and understand this proposed amendment, it seems to suggest that there is some relationship in due process between the NCAA and the student-athlete. O.I. 28 does not speak to the loss of ineligibility through infractions by the institution. This is the basic O.I. that places on the institution the obligation to determine eligibility without ever coming to the Infractions Committee or coming through that process.

There is whether I am opposing the obligation to student's re

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hieved during par- shall be abrogated osing institutions; am awards earned ent-athlete shall be the competing insti-

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ch has been repre- such a student-ath- s from such compe- mbursement; or if ment that they be

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NO. 54 PENALTY STRUCTURE

Enforcement Procedure: Amend Section 7-(a)-(12), pages 107-108, as follows:

"(12) Requirement that a member institution which has been found in violation show cause why:

"(i) a penalty or an additional penalty should not be imposed if, in the opinion of the Committee (or Council), it does not take appropriate disciplinary or corrective action against athletic department personnel involved in the infractions case, any other institutional employee if the circumstances warrant, the student-athlete involved or representatives of the institution's athletic interests; or

"(ii) a recommendation should not be made to the membership that the institution's membership in the Association be suspended or terminated if, in the opinion of the Committee (or Council), it does not take appropriate disciplinary or corrective action against the head coach of the sport involved, any other institutional employee if the circumstances warrant, the student-athlete involved or representatives of the institution's athletic interests.

"'Appropriate disciplinary or corrective action' may include, for example, termination of the coaching contract of the head coach and any assistants involved; suspension or termination of the employment status of any other institutional employee who may be involved; declaration of ineligibility for any student-athlete involved for a specific period;"

[Remainder of paragraph remains unchanged.]

Source: NCAA Council.

Intent: To eliminate references to disciplinary or corrective actions against student-athletes.

Effective Date: Immediately.

Action: Approved by voice vote.

NO. 65 INSTITUTIONAL ELIGIBILITY

Bylaws: Amend Article 4, Section 6-(d), page 56, as follows:

"(d) A member institution shall not be eligible to enter a team or individual competitors in an NCAA-sponsored meet or tournament unless its chief executive officer certifies annually on a form and by a date approved by the NCAA Council that (1) he or his designated representative has reviewed with all athletic department staff members the rules and regulations of the Association as they apply to the administration and conduct of intercollegiate athletics; (2) the policies, procedures and practices of the institution, its staff members and representatives of athletic interests are in compliance at the present time with the Association's legislation insofar as he can determine; (3) a current statement has been filed with the chief executive officer, as a part of the institution's annual certification, which is signed by each athletic department staff member (except for

clerical personnel) attesting that the staff member has reported his knowledge of and involvement in any violations of NCAA legislation involving the institution, and (4) it is the intention of the institution to maintain such compliance."

Source: NCAA Council (Special Committee on Enforcement, Special Committee on Recruiting).

Intent: To require each athletic department staff member to sign an annual statement concerning rules violations, as a part of the chief executive officer's annual certification.

Action: Defeated by each division: Division I, 68-124; Division II, voice vote; Division III, voice vote. Motion to reconsider approved by all three divisions by single voice vote. Reconsideration: Approved by each division by show of paddles.

NO. 66 INSTITUTIONAL ELIGIBILITY

Bylaws: Amend Article 4, Section 5-(d), page 56, as follows:

"(d) A member institution shall not be eligible to enter a team or individual competitors in an NCAA-sponsored meet or tournament unless its chief executive officer certifies annually on a form and by a date approved by the NCAA Council that (1) he or his designated representative has reviewed with all athletic department staff members the rules and regulations of the Association as they apply to the administration and conduct of intercollegiate athletics, and that within the preceding three years no member of the institution's coaching staff has been found by the Committee on Infractions, the Council or the annual Convention following an official inquiry to have violated any of the principles of ethical conduct enunciated in Constitution 3-6-(a); (2) the policies, procedures and practices of the institution, its staff members and representatives of athletic interests are in compliance at the present time with the Association's legislation insofar as he can determine, and (3) it is the intention of the institution to maintain such compliance."

Source: California State University, Long Beach.

Intent: To make effective sanctions on professional coaching staff members who have violated the fundamental standards of conduct enunciated by the NCAA.

Effective Date: Immediately.

Action: Approved as amended (see No. 148) by all three divisions by single voice vote. Motion to reconsider defeated by voice vote.

NO. 67 PERSONNEL

Recommended Policies: Amend Recommended Policy 6, page 101, by adding a new Section 4, as follows:

"Section 4. Prior to a person's possible employment as a member of the department of intercollegiate athletics, a member institution should give careful consideration to whether he previously has been involved in violations of NCAA legislation."

Source: NCAA Council (Special Committee on Enforcement).

Intent: To encourage playing of Association
Effective Date
Action: Approved

NO. 68

Constitution: as follows

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ement).

Intent: To encourage member institutions to exercise caution in em-
ploying individuals who have been involved in violations of
Association legislation.

Effective Date: Immediately.

Action: Approved by voice vote.

NO. 68 OBLIGATIONS OF MEMBERSHIP

Constitution: Amend O.I. 20, following Constitution 4-2-(a), page 18,
as follows:

"O.I. 20. If a student-athlete is ineligible under the terms of
the Constitution, Bylaws or other legislation of the Association,
the institution shall be obligated immediately to apply the ap-
plicable rule to the student-athlete and withhold him from all
intercollegiate competition, except, where required by institu-
tional policy, the student-athlete shall receive notice and an
opportunity for hearing with respect to his ineligibility but in
no case shall such a hearing and a final decision extend beyond
thirty days from notification by the NCAA. Subsequent to this
action, the member institution may appeal to the NCAA Coun-
cil, or a subcommittee designated by the Council to act for it, if
the member concludes that the circumstances warrant restora-
tion of the student-athlete's eligibility.

Source: California State University, Long Beach.

Intent: To allow 30 days for a due process hearing by the institution
on questions of student-athlete eligibility where the institution
has established procedures on questions of student discipline
and sanctions.

Effective Date: Immediately.

Action: Defeated by show of paddies.

NO. 69 INSTITUTIONAL HEARING

Enforcement Procedure: Amend Section 5, page 106, by adding the
following to the present language:

"... except that where a penalty is to be imposed on a stu-
dent-athlete or staff member, the student-athlete or staff mem-
ber shall be entitled to receive notice and an opportunity for
hearing if such is required by the student disciplinary or per-
sonnel procedures of the student-athlete's or staff member's
institution, but in no case shall such a hearing and final decision
extend beyond thirty days from notification by the NCAA."

Source: California State University, Long Beach.

Intent: To provide 30 days for a due process hearing by the institu-
tion on questions of student-athlete and staff personnel disci-
pline where the institution has established procedures which
require utilization of such processes prior to the imposition of
sanctions.

Effective Date: Immediately.

Action: Withdrawn.

NO. 70 DISCIPLINE OF MEMBERS

Bylaws: Amend Article 7, Section 5-(c), page 67, as follows:

"(c) The Committee on Infractions shall determine whether it

PRINCIPLES OF INSTITUTIONAL CONTROL
AS PREPARED BY THE NCAA DIVISION I COMMITTEE ON INFRACTIONS

A. "CONTROL" IS DEFINED IN COMMON-SENSE TERMS.

In determining whether there has been a lack of institutional control when a violation of NCAA rules has been found it is necessary to ascertain what formal institutional policies and procedures were in place at the time the violation of NCAA rules occurred and whether those policies and procedures, if adequate, were being monitored and enforced. It is important that policies and procedures be established so as to deter violations and not merely to discover their existence after they have taken place. In a case where proper procedures exist and are appropriately enforced, especially when they result in the prompt detection, investigation and reporting of the violations in question, there may be no lack of institutional control although the individual or individuals directly involved may be held responsible.

In a situation in which adequate institutional procedures exist, at least on paper, a practical, common-sense approach is appropriate in determining whether they are adequately monitored and enforced by a person in "control." Obviously, general institutional control is exercised by the chief executive officer of a member institution. However, it is rare that the chief executive officer will make decisions specifically affecting the operations of the institution's athletics program. Instead, the day-to-day duties of operation, including compliance with NCAA rules, will have been delegated to subordinates either by specific action or by the creation of appropriate job descriptions. Moreover, it is usually left to senior subordinates, such as the director of athletics, further to delegate various duties regarding compliance with NCAA rules.

In most institutions, especially those with large and varied athletics programs, such delegations are made to a number of individuals who are expected to exercise control over compliance with regard to specific aspects of the program. The specific obligations of such individuals should be in writing, and not merely an understanding among the senior officials of the university and the athletics department. Not only the director of athletics, but other officials in the athletics department, the faculty athletics representative, the head coaches and the other institutional administrators outside of the athletics department responsible for such matters as the certification of athletes for financial aid, practice and competition, are expected to assume a primary role in ensuring compliance. Even though specific action has been taken to place responsibility elsewhere, these individuals will be assumed to be operating on behalf of the institution with respect to those responsibilities that are logically within the scope of their positions. Their failure to control those matters so as to prevent violations of NCAA rules will be considered the result of a lack of institutional control.

B. VIOLATIONS THAT DO NOT RESULT FROM A LACK OF INSTITUTIONAL CONTROL.

An institution cannot be expected to control the actions of every individual who is in some way connected with its athletics program. The deliberate or inadvertent violation of a rule by an individual who is not in charge of compliance with rules that are violated will not be considered to be due to a lack of institutional control:

- if adequate compliance measures exist;
- if they are appropriately conveyed to those who need to be aware of them;
- if they are monitored to ensure that such measures are being followed; and
- if, on learning that a violation has occurred, the institution takes swift action.

C. ACTS THAT ARE LIKELY TO DEMONSTRATE A LACK OF INSTITUTIONAL CONTROL.

The following examples of a lack of institutional control are not exclusive, but they should provide important guidance to institutions as to the proper control of their NCAA compliance affairs.

1. **A person with compliance responsibilities fails to establish a proper system for compliance or fails to monitor the operations of a compliance system appropriately.**

When an individual is responsible for ensuring that a particular rule or set of rules is not violated, that person will be considered to be exercising institutional control. That individual must not only ensure that the rules are known by all who need to know them but must also make proper checks to ensure that the rules are being followed.

It is important for institutions to understand that the mere compilation and distribution of rules and regulations, along with written compliance procedures, is not sufficient if no one regularly checks on the actual operations of the system.

2. **A person with compliance responsibilities does not take steps to alter the system of compliance when there are indications the system is not working.**

If a system of control is in place, a single deviation by a member of the athletics staff or a representative of the institution's athletics interests will not be considered a lack of institutional control. However, if there are a number of violations, even if they all are minor, indicating that the compliance system is not operating effectively, the person(s) responsible cannot ignore the situation, but must take steps to correct the compliance system.

3. **A supervisor with overall responsibility for compliance, in assigning duties to subordinates, so divides responsibilities that, as a practical matter, no one is, or appears to be, directly in charge.**

The failure to designate who is responsible for ensuring compliance with NCAA rules is a serious breach of the obligations of a university athletics administrator. Individuals are unable to operate appropriately if they are uncertain of their duties and obligations. Moreover, those subordinates who are not in charge must know who is. They need to know the person or persons to whom they can turn for advice before taking an action that may be questionable. They also need to know to whom and how to report violations that come to their attention.

4. **Compliance duties are assigned to a subordinate who lacks sufficient authority to have the confidence or respect of others.**

A supervisor may be acting in good faith when assigning responsibility for compliance to an athletics department secretary, or a student intern, or to someone who does not have stature in the organization. Nevertheless, that very action often makes it appear that the institution is not serious about compliance. If coaches, alumni, boosters and others do not respect the person responsible, they may well ignore that individual. Violations that occur may then be considered the result of a lack of institutional control.

5. **The institution fails to make clear, by its words and its actions, that those personnel who willfully violate NCAA rules, or who are grossly negligent in applying those rules, will be disciplined and made subject to discharge.**

Any operating compliance system may be thwarted by an individual who acts secretly in violation of the rules or who fails to ascertain whether a questionable

action is or is not permissible. If an institution does not make clear that individual violations of NCAA rules will result in disciplinary action against the involved individual, and if it does not actually discipline those who are found to have violated such rules, it has opened the door to permitting further violations. In such a case, future violations of an individual nature will constitute failures of institutional control.

6. **The institution fails to make clear that any individual involved in its intercollegiate athletics program has a duty to report any perceived violations of NCAA rules and can do so without fear of reprisals of any kind.**

Compliance is everyone's obligation. Loyalty to one's coworkers, student-athletes, or athletics boosters cannot take precedence over loyalty to the institution and its commitment to comply with NCAA rules. There is a lack of institutional control if individuals are afraid to report violations because they have reason to fear that if they make such a report there will be negative consequences.

7. **A director of athletics or any other individual with compliance responsibilities fails to investigate or direct an investigation of a possible significant violation of NCAA rules or fails to report a violation properly.**

When a director of athletics or any other individual with compliance responsibilities has been informed of, or learns that there exists a possible significant violation of NCAA rules, and then fails to ensure that the matter is properly investigated, there is a lack of institutional control. Similarly, if an actual violation of NCAA rules comes to the attention of the director of athletics or a person with compliance responsibilities and there is a failure to report the violation through appropriate institutional channels to a conference to which the institution belongs and to the NCAA, such failure constitutes a lack of institutional control.

8. **A head coach fails to create and maintain an atmosphere for compliance within the program the coach supervises or fails to monitor the activities of assistant coaches regarding compliance.**

A head coach has special obligation to establish a spirit of compliance among the entire team, including assistant coaches, other staff and student-athletes. The head coach must generally observe the activities of assistant coaches and staff to determine if they are acting in compliance with NCAA rules. Too often, when

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assistant coaches are involved in a web of serious violations, head coaches profess ignorance, saying that they were too busy to know what was occurring and that they trusted their assistants. Such a failure by head coaches to control their teams, alone or with the assistance of a staff member with compliance responsibilities, is a lack of institutional control.

This is not to imply that every violation by an assistant coach involves a lack of institutional control. If the head coach sets a proper tone of compliance and monitors the activities of all assistant coaches in the sport, the head coach cannot be charged with the secretive activities of an assistant bent on violating NCAA rules.

D. COMPLIANCE MEASURES IN PLACE AT THE TIME OF VIOLATION AS A FACTOR IN DETERMINING WHETHER OR NOT THERE HAS BEEN A LACK OF INSTITUTIONAL CONTROL.

Institutions are eager to learn what measures can be taken to reduce the likelihood that in the event a violation does occur, it will result in a finding of a lack of institutional control. The following are some of the steps that assist an institution in avoiding such a finding. It must be emphasized, however, that the presence of such measures are not a guarantee against such a finding. The way in which the measures are carried out and the attitude toward compliance within the institution are vital factors.

1. The NCAA rules applicable to each operation are readily available to those persons involved in that operation.

Those individuals involved in recruiting activities should have ready access to the recruiting rules, and those university staff members engaged in determining eligibility for financial aid, practice and competition should have ready access to the NCAA rules governing those matters.

2. Appropriate forms are provided to persons involved in specific operations to ensure that they will properly follow NCAA rules.

With respect to certain operations, specific forms or checklists can be of great help in assuring compliance with NCAA rules. Clerical employees may find the rules themselves daunting. But if they can follow a form, many problems can be obviated. This is certainly true with regard to such matters as ensuring that

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student-athletes do not receive excessive financial aid individually or by sport, that initial eligibility standards are met, and that continuing eligibility standards are properly enforced.

3. **A procedure is established for timely communication among various university offices regarding determinations that affect compliance with NCAA rules.**

For example, there should be a method of direct communication between the registrar and the department of athletics so that the latter learns at once if an enrolled student-athlete drops a course that brings that student-athlete below the required number of units for eligibility to participate.

4. **Meaningful compliance education programs are provided for personnel engaged in athletically related operations.**

It is important that new personnel, both coaches and administrative staff members, receive training regarding NCAA rules that are relevant to their positions shortly after beginning employment. The institution should also continue to educate its staff by conducting compliance sessions on a regular basis for all involved personnel as refresher courses, with an emphasis on changes in NCAA rules. Not infrequently, persons who have been involved in intercollegiate athletics for many years and who violate long-standing rules attempt to excuse their actions on the grounds that they were unaware that their activities constituted a violation. On occasion such personnel rely on long outdated interpretations of legislation that have been eliminated or dramatically altered for a number of years.

Obviously the nature and strength of the compliance education program is of significance. Educational programs run by the NCAA and by various conference offices may, because of the expertise of those involved, be superior to training by in-house personnel.

5. **Informational and educational programs are established to inform athletics boosters of the limitations on their activities under NCAA rules and of the penalties that can arise if they are responsible for rule violations.**

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Distribution of rules education materials (e.g. brochures and articles) to season ticket holders is significant as are special programs for booster organizations.

6. **Informational and educational programs are established for student-athletes regarding the rules that they must follow.**

All institutions conduct information sessions for student-athletes and obtain the required signed statements from each. However, the extent to which these are truly informative and are taken seriously varies. The extent to which these sessions are made important by the institution is a significant factor.

7. **An internal monitoring system is in place to ensure compliance with NCAA rules.**

It is of significance if, on a regular basis, a person (or persons) charged with monitoring compliance frequently checks operations throughout the athletics department and related departments of the university. Such a person should make certain that required forms are being utilized and utilized properly. A compliance person should speak with all coaches frequently and regularly to find out if they have any concerns or questions about what they can or cannot do or what they have already done. A compliance person should be aware of what actions have been taken with regard to a variety of areas, including recruitment, awarding of financial aid, practice requirements and travel arrangements. From time to time the compliance person should meet with student-athletes in the various sports to see if any problems exist. All potential violations must be reported and an investigation must ensue in accordance with appropriate institutional procedures.

Other internal monitoring measures are also of significance, including one-on-one meetings between coaches and the athletics director, and meetings of university committees on athletics in which student-athletes and others are involved.

8. **An external audit of athletics compliance is undertaken at reasonable intervals.**

An important control exists if an independent university or outside unit undertakes audits of the athletics enterprise to determine if there have been violations of NCAA rules and to suggest changes in operating methods and procedures wherever such action could eliminate the danger of future violations.

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9. **The chief executive officer and other senior administrators make clear that they demand compliance with NCAA rules and that they will not tolerate those who deliberately violate the rules or do so through gross negligence.**

It is an important factor when the senior administrators in an institution by word and, when necessary, by action make clear that compliance is vital. The pressure to run a winning program must not overcome the dedication of the institution to ethical conduct in all aspects of its athletics program and to compliance with NCAA regulations.

10. **The institution and its staff members have a long history of self-detecting, self-reporting and self-investigating all potential violations.**

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**RESPONSE OF TODD MCNAIR
TO NCAA ENFORCEMENT STAFF'S
NOTICE OF ALLEGATIONS**

**CASE NO. M295
JANUARY 4, 2010**

DB04/638183.0002/2101367.1 NC07

CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER

NCAA 004490

A0900

RESPONSE OF TODD MCNAIR
Case No. M295
Page I-1

INTRODUCTION

Todd McNair appreciates the opportunity to respond to the NCAA enforcement staff's September 24, 2009 Notice of Allegations. McNair cooperated fully with the enforcement staff's investigation. He is surprised and disappointed to be named in any allegations. The allegations directed at him are without merit and are based on information that is not credible, not corroborated and not persuasive. Moreover, the sole witness who reported the information is contradicted by several other witnesses. McNair is confident that after full and careful consideration, the Committee will exonerate him of all charges.

McNair's Background

McNair has been an assistant coach at USC since February 2004. He coaches the running backs and also was the special teams coordinator from 2005 through 2008. Before coming to USC, McNair coached the running backs for the Cleveland Browns from 2001-03. He was a high school coach in New Jersey from 1998-2000.

Before he began his coaching career, McNair was a running back and special teams standout for eight seasons in the NFL, first with the Kansas City Chiefs (1989-93), followed by two seasons with the Houston Oilers (1994-95) and then back with the Chiefs in 1996. He retired as the Chiefs' 10th all-time receiver.

McNair lettered four years (1985-88) at Temple University. He was a 1987 All-American honorable mention. He finished his college career third on Temple's all time rushing list with 2,383 yards and 16 touchdowns.

RESPONSE OF TODD MCNAIR
Case No. M295
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Overview of Allegations

The allegations against McNair are:

1. That he violated the principles of ethical conduct because he allegedly knew or should have known that USC student-athlete Reggie Bush was violating amateurism legislation by accepting benefits from individuals who wanted to represent Bush professionally and McNair failed to alert USC compliance; and
2. That he violated the principles of ethical conduct when he stated during interviews with the enforcement staff: (1) Bush had not indicated to him that he had a relationship with Lloyd Lake, one of two individuals who allegedly provided benefits to Bush, or New Era, Lake's company; and (2) that to the best of his knowledge, he had neither met nor spoken to Lake.

McNair's detailed response to the allegations is set forth infra at 1-1 to 1-42 and 3-1 to 3-11.

First, though, the Committee should be made aware of some important facts.

1. There is no allegation nor any evidence that McNair arranged, participated in or facilitated the alleged provision of benefits to Bush. The staff has alleged only that McNair knew or should have known about the impermissible benefits and failed to report it. McNair had no involvement in the violations he is charged with not reporting.
2. The two individuals who allegedly provided the impermissible benefits to Bush, Lloyd Lake and Michael Michaels, had no relationship or connection to USC or its football

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- program. Lake and Michaels did not attend USC, were not representatives of USC's athletics interests and did not live in the Los Angeles area.
3. Lake and Michaels also were not sports agents. While they may have aspired to represent Bush once he turned pro, Lake and Michaels had no experience representing athletes at any level.
 4. Lake and his family knew Bush and Bush's parents long before Bush enrolled at USC. They all are from the same area in San Diego. It was this pre-existing relationship that led to Lake and Michaels attempting to become agents for Bush once he turned pro. This is not a case of a professional sports agent initiating contact and attempting to develop a relationship with a promising student-athlete. The relationship existed long before Bush enrolled at USC. Thus, this is a case of a family friend with no athlete representation experience trying to ride the coattails of Bush as he achieved success at USC and readied himself to become a professional athlete.
 5. Lake, like Bush, is black and is from the same San Diego neighborhood as Bush. Lake was approximately 30 years old at the time he was allegedly providing benefits to Bush. In appearance and demeanor, Lake resembles someone who Bush would be expected to associate with while he was enrolled at USC. Anyone who saw the two young men together would not think they did not belong together or that something was amiss.
 6. Lake is the *only* witness who claims McNair knew that Bush was accepting impermissible benefits. The staff interviewed Lake's girlfriend, mother and sister. Each of them said they were involved in the arrangement Lake had with Bush and were aware

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that Lake had provided benefits to Bush. In fact, Lake's mother and sister claimed they gave Lake substantial amounts of their own money to give to Bush. However, no one other than Lake claimed that McNair knew about the impermissible benefits. Lake is the only one.

7. Lake is a convicted felon. Moreover, he believes—albeit without a shred of evidence—that McNair accepted money to persuade Bush to sign with an agent other than him and Michaels. In other words, Lake blames McNair for not having signed Bush. Thus, Lake is not a disinterested witness. He has a self-admitted motive to damage McNair's career and reputation.

Standard of Proof

In determining whether the allegations are supported by the evidence, the Committee must use the standard of proof in Bylaw 32.8.8.2 (Basis of Findings):

The Committee on Infractions shall base its findings 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 reported by Lake that McNair knew of the impermissible benefits is neither credible, persuasive nor of a kind on which reasonably prudent persons rely in the conduct of serious affairs.

- Not Credible: The information is not credible because not only is it not corroborated, but in many instances the information is internally inconsistent or contradicted by other information. For example, Lake claims he met McNair in March 2005 at the San Diego

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Manchester Grand Hyatt when he provided a hotel room to Bush for the weekend. Not only do both McNair and Bush dispute Lake's claim, but Lake's own girlfriend said that Lake told her he did not meet McNair for the first time until October 2005. In another example, Lake claims he gave McNair a business card in March 2005 but the business represented on the card was not formed until November 2005. Information that is internally inconsistent or is contradicted by other reliable information is not credible.

- Not Persuasive: The information is not persuasive because it lacks sufficient weight to be reliable. As stated above, Lake is the only witness to claim that McNair knew of the impermissible benefits. To find the allegations, the Committee would have to reject the testimony of numerous witnesses who do not support Lake's claims and also ignore circumstantial evidence that squarely contradict his allegations. Information that is heavily outweighed by other information is not persuasive.
- Not of a Kind on Which Reasonably Prudent Persons Rely in the Conduct of Serious Affairs: The determination of whether McNair violated the principles of ethical conduct has life altering consequences for McNair. Before making such a finding, the Committee should be satisfied that its decision is based on serious evidence. The information reported by Lake is nothing more than speculation, conjecture, innuendo and conclusory statements. Moreover, there is not a single admission from McNair that supports the allegations; McNair categorically denies the allegations. Further, McNair has reported credible information to refute the allegations and much of McNair's information is corroborated by other witnesses and/or circumstantial evidence. Even if the Committee finds that Lake reported the information in good faith and that Lake truly believes

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McNair knew or should have known of the benefits, the information still is not of a kind on which reasonably prudent persons would rely to make a finding of unethical conduct. The information is simply too weak, inconsistent and unreliable to support a finding of unethical conduct.

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1. [NCAA Bylaws 10.1-(d), 12.01.1, 12.1.1, 12.1.2-(a), 12.3.1, 12.3.1.2 and 30.3.5 (2009-10 NCAA Division I Manual)]

Beginning in October 2004 and continuing until November 2005, Lloyd Lake (San Diego) and Michael Michaels (San Diego), while in partnership with then football student-athlete Reggie Bush and the young man's parents, Lamar and Denise Griffin, to establish a sports agency and marketing company, gave both Bush and the Griffins impermissible benefits in the form of cash, merchandise, lodging and transportation. Bush subsequently competed for the football team during the 2004-05 and 2005-06 seasons. Further, on at least three occasions, assistant football coach Todd McNair knew or should have known that Bush, Lake and Michaels were engaged in possible violations. Specifically:

- a. Concerning the partnerships and impermissible benefits Lake and Michaels provided the Griffins and Bush:
 - (1) In the fall of 2004, while Bush was competing for the institution, Lamar Griffin told Lake that he desired to form a sports agency and marketing company involving Bush. Subsequently, Bush entered into an oral agreement with Lake and Michaels to establish a sports agency, which would negotiate future marketing and professional sports contracts. [Bylaw 12.3.1]
 - (2) In December 2004, the Griffins asked Lake for money to pay credit card debt. Lake obtained \$28,000 cash from Michaels for the Griffins, who used the money to satisfy credit card debt (\$15,000) and purchase a used green Cadillac (\$13,000). [Bylaw 12.3.1.2]
 - (3) In January 2005, at the request of the Griffins, Lake instructed Lemuel Campbell, Lake's former brother-in-law, to arrange round-trip airline transportation on American West Airlines between San Diego and Ft. Lauderdale, Florida, a value of approximately \$1,200 for Lamar, Denise and Jovan Griffin, Bush's brother, to attend the Orange Bowl BCS national championship game. [Bylaw 12.3.1.2]
 - (4) During a telephone conversation in February 2005, Bush informed Lake that Bush was embarrassed to drive his truck and needed a different vehicle. Lake agreed to provide the cash to purchase a vehicle. A couple of days later, Bush located a vehicle to purchase, and Lake gave Lamar \$13,000 cash. Bush called Lake from the dealership to thank Lake for the money and to request additional money needed to purchase rims for the vehicle. Lake then drove from San Diego to Los Angeles and gave Bush approximately \$5,000 cash. Approximately one week later, Lake gave Bush an additional \$3,500 in cash, which Bush used to pay for a new alarm and audio system for the vehicle. [Bylaw 12.3.1.2]

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- (5) In March 2005, after a request from Bush to attend Marshall Faulk's, former NFL player's, birthday party in San Diego, Lake contacted Michaels to arrange for two night's lodging (March 4-5) and incidentals for Bush at the Manchester Grand Hyatt a value of approximately \$1,574. [Bylaw 12.3.1.2]
- (6) On the night of March 5, Lake provided round-trip limousine service from the Manchester Grand Hyatt to On Broadway, a night club in San Diego at no cost for Bush to attend the Faulk birthday party. [Bylaw 12.3.1.2]
- (7) In March 2005, after a request from Bush to vacation in Las Vegas, Lake gave Bush an undetermined amount of cash and contacted Michaels, who arranged for two night's lodging (March 11-12) and incidentals for Bush at the Venetian Resort Casino a value of approximately \$564. Subsequently, Lake gave Bush an undetermined amount of cash for an overnight trip to Catalina Island with then girlfriend Stacie Brewer. [Bylaw 12.3.1.2]
- (8) In March 2005, Lake and Bush agreed that in lieu of various amounts of cash payments, Lake would give Bush approximately \$3,000 in cash each month. Some of the payments, which continued through October 2005, were made on the institution's campus after football practice sessions and at the young man's campus apartment. [Bylaws 12.1.2-(a) and 12.3.1.2]
- (9) In March 2005 and after the Griffins were evicted from their Paradise Valley Road residence, Bush, Lake and Michaels agreed that Michaels would purchase a property located at 9715 Apple Street, Spring Valley, for the Griffins. The agreement called for the Griffins to pay Michaels \$1,400 per month (of the approximately \$4,500 monthly cost) plus utilities until such time when Bush would repay Lake and Michaels with money from his professional contract. However, the Griffins resided at the property at no cost until their eviction in April 2006. [Bylaw 12.3.1.2]
- (10) In the spring of 2005, Michaels provided the Griffins with approximately \$10,000 in cash to purchase furniture for the Apple Street residence. [Bylaw 12.3.1.2]
- (11) In April 2005, Barbara Gunner, Lake's mother, purchased a washer and dryer for the Griffins at the San Diego Naval Exchange. [Bylaws 12.3.1.2]
- (12) In June 2005, while Lake was incarcerated, Bush made telephone contact with Maiesha Jones, Lake's girlfriend, and requested cash. Jones subsequently deposited at least \$500 in cash of Lake's funds into Bush's account at the Washington Mutual Bank located on Jamacha Road (El Cajon) for the young man's personal use. [Bylaw 12.3.1.2]

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- (13) Prior to the institution's September 3 football contest at the University of Hawaii, Manoa (Hawaii) Lamar told Gunner during a telephone conversation that he needed \$5,000 for the Griffin family to travel to Hawaii to attend the game. Early the next morning, Lamar went to Gunner's home in El Cajon where Gunner gave Lamar \$5,000 in cash. [Bylaw 12.3.1.2]
 - (14) On October 29 and after attending the institution's home football contest with Washington State University, Lake and Michaels (a) provided Bush, the young man's parents and brother dinner at a Chinese restaurant; (b) purchased approximately \$3,000 of clothing for Bush; and (c) socialized with Bush and McNair at a Hollywood area night club. [Bylaw 12.3.1.2]
- b. Concerning McNair's knowledge that Bush, Lake and Michaels were engaged in possible violations:
- (1) In March 2005, when Bush was in San Diego to attend the Faulk birthday party, Lake met Bush at the Manchester Grand Hyatt to check Bush into Room No. 477. When Lake returned to the room a short time later, McNair was in the room with Bush. Bush introduced Lake to McNair and noted that Lake provided Bush his hotel room. [Bylaw 10.1-(d)]
 - (2) On the night of March 5, while at the Faulk party, Lake and McNair engaged in conversation. Lake told McNair that he was establishing a sports agency and asked if McNair could recommend any potential clients. [Bylaw 10.1-(d)]
 - (3) On January 8, 2006, at 1:34 a.m., Lake engaged in a telephone conversation for two minutes and 23 seconds with McNair. During the conversation, Lake asked McNair to intercede with Bush and convince the young man to adhere to the agreement for professional representation that Bush made with Lake. Lake also told McNair that Lake did not intend to lose the money that Lake had given Bush and the young man's parents, and that Lake did not want to go public with the matter and implicate the institution. Finally, McNair failed to alert the institution's compliance administration of this information. [Bylaws 10.1-(d) and 30.3.5]

Please indicate whether this information is substantially correct and whether the institution believes that violations of NCAA legislation occurred. Submit evidence to support your response.

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CONCLUSION

McNair understands that Allegation 1.a is not directed at him.

Concerning Allegation 1.b(1), McNair denies the allegation. The allegation is based only on information from Lake and it is refuted by information reported by McNair, Bush and Brooke Augustin, a friend of McNair who was with him during the events in question. Moreover, McNair's phone records prove he was not in San Diego when Lake claims he was. Lake's claim also is contradicted by information reported by Lake's girlfriend that Lake did not meet McNair until October 2005—eight months after Lake claims he met McNair in the hotel room. Finally, Lake's claim is contradicted by his own admission that his provision of benefits to Bush was always done in secret so as not to jeopardize Bush's eligibility.

Concerning Allegation 1.b(2), the allegation does not constitute a violation of NCAA legislation. There is nothing improper or against NCAA rules for a sports agent to introduce himself to a coach and solicit client referrals. Further, although the allegation alleges "Lake and McNair engaged in conversation," there is no evidence—even from Lake—that McNair said a single word to Lake at the Faulk party. Moreover, McNair does not recall speaking with Lake at the Faulk party and he does not think the facts alleged actually occurred. Lake's girlfriend and sister, who were with him at the Faulk party, do not support Lake's story. Finally, as explained above, Lake's girlfriend said Lake did not meet McNair until October 2005, which was eight months after the Faulk party.

Concerning Allegation 1.b(3), McNair denies the allegation. McNair denies that Lake ever informed him that he had provided impermissible benefits to Bush and that he was considering

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going public with the information and implicating USC if he was not repaid. If Lake had told McNair that information, McNair would have informed USC. Further, the facts alleged are inconsistent with and contradict Lake's description of the call. Specifically, Lake claimed McNair called him but the phone records show that it was Lake who called McNair. Moreover, the staff has grossly mischaracterized the information Lake reported about the call. The staff also failed to vigorously question Lake so as to test the credibility of the information he reported. Moreover, the staff misled McNair about the date of the call and as a result, McNair never was given an opportunity to fully address the call before the staff charged him with unethical conduct. Finally, it is not credible that the conversation alleged to have occurred took place in two minutes and 23 seconds.

REVIEW AND ANALYSIS OF THE EVIDENCE

1. **Allegation 1.b(1) – Allegation That McNair Knew Lake Provided Bush With a Hotel Room During Faulk Birthday Party Weekend**

This allegation involves Marshall Faulk's birthday party, which was held in San Diego the night of Saturday, March 5, 2005. Faulk was a football student-athlete at San Diego State and is a former NFL star who now lives in San Diego. The party is held annually in early March and is advertised as "Party of The Year." It is held at the On Broadway Event Center, which is a 30,000 square foot venue capable of accommodating up to 2,000 guests. The party is attended by at least several hundred and possibly as many as 2000 people each year, including many current and former professional athletes, performers and celebrities. Bush attended the party in 2005.

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According to Lake, he and Michaels arranged and paid for a room at the San Diego Manchester Grand Hyatt for Bush during the weekend of the party (March 4-6, 2005). Bush denied the allegation. Bush said he drove from Los Angeles to San Diego a day or two before the party and attended the party with Lake and Michaels but denied that he stayed in the room. Bush said he was in the room before and after the party, but he said he stayed at his parents' house that weekend.

The receipt produced by Lake shows that Michaels paid for a room at the Hyatt for the nights of March 4 and 5, 2005. Lake said he (Lake) met Bush at the hotel and got him checked into the room. As set forth in Lake's testimony below, he claims McNair visited Bush in the room *shortly after Bush checked in* and that Bush introduced him to McNair and explained that he (Lake) had paid for the room.

Cretors: And, and was, was McNair aware that you or Michaels was, were paying for the suite that Reggie was staying in?

Lake: Yeah, I mean, yeah.

Johanningmeier: How, how—

Cretors: And how, how would he know that?

Lake: I mean because—

Cretors: Or why would you assume that he knew?

Lake: I mean, if I can recall when Reggie, when, when I came in the room that the introduction I think Reggie said this is my man I was telling you about that got me the room, you know? I mean, he knows Reggie couldn't afford the room.

Cretors: And Reg, who else was staying in that room?

Lake: I don't know if McNair was staying in there with him or not.

Cretors: Did you stay in the room?

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Lake: No, no, no.

Cretors: Did Michaels stay in the room?

Lake: No.

Cretors: And did anyone else from Reggie's friends up in L.A. or anybody else stay there that you—

Lake: I don't know.

Cretors: --were aware?

Lake: I don't know 'cause like I said, when I went in there, I went and got the room for him, took him in the room, went somewhere else and I came back for a minute to talk to him, McNair was in the room with him, did a introduction, I left, I never knew who was in the room, I never went back to the room again, just to pick him up in the limo to go to the club but I didn't go in the room.

Cretors: You paid, you went and registered the room in your name at the Hyatt?

Lake: It was in Mike's name but he left it where I could pick the keys up, too.

Cretors: Okay.

Lake: So I can give Reggie the key.

Cretors: So Michaels arranged the room and paid for the room?

Lake: Yes.

Cretors: And then left at the front desk that Lloyd Lake could come to pick up the key?

Lake: Yes, or he either gave, or either gave me a key.

Cretors: Okay.

Lake: I'm not sure.

Cretors: Did Reggie drive—

Lake: But I had the key.

Cretors: --down from L. A.?

Lake: Yes.

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Cretors: And then was, he meet, did he meet you at the hotel?

Lake: Yes.

Cretors: Okay. And was it just the two of you when you went up to the room?

Lake: Yes.

Cretors: And then McNair came?

Lake: McNair was in there the second time I came back in.

Lake Transcript at 28-30.

The staff did not ask Lake which day he checked Bush into the room,¹ but according to Lake the room was for Bush and the receipt shows that Michaels paid for Friday and Saturday nights. Thus, if Bush used the room – which as explained above is in dispute – Lake would have checked Bush into the room on Friday, March 4, the first day the room was checked out to Michaels. Lake's girlfriend, Maiesha Jones, is familiar with the events surrounding Bush's trip to San Diego that weekend and his attendance at the Faulk party. She also believes Bush probably checked into the room on Friday. However, as explained below, McNair was not in San Diego on Friday, March 4, and thus could not have met Bush in the room shortly after Lake got him checked in.

McNair attended the Faulk party in March 2005 but he never visited the Hyatt that weekend nor did he see Bush while he was in San Diego.² McNair drove from Los Angeles to San Diego in

¹ Lake did not permit USC representatives to participate in the interview and, therefore, USC was unable to question Lake.

² McNair knew Bush was going to be in San Diego that weekend and knew Bush was going to be at the Faulk party. McNair's phone records show many calls to Bush that weekend and all but a few were one minute in length or less, indicating there was little or no conversation. McNair called Bush 17 times between 9:52 p.m., Saturday evening

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the late afternoon or early evening of Saturday, March 5 (the day of the party and the day after Bush would have checked into the room). McNair's friend, Brooke Augustin, was with McNair and corroborated that they did not arrive in San Diego until the evening of March 5.³ Augustin said they did not visit the Hyatt or see Bush at anytime that weekend. Upon arriving in San Diego, McNair and Augustin went to a restaurant for dinner, drove around San Diego for awhile to see the city and then went to the party. Thus, McNair was not at the Hyatt either the day Lake claims he checked Bush into the room or the next day.

McNair's cell phone records also prove he was not in San Diego on Friday, March 4, the day the room was checked out. McNair's cell phone records designate calls made or received outside of the Los Angeles metro area as "NN," meaning the calls either originated or were received on the carrier's National Network. Calls that McNair made or received within the Los Angeles metro do not contain the NN designation.⁴ The records show calls throughout the weekend of March 4-6, 2005. See Exhibit 1. However, the only calls designated NN occurred during a continuous period from 9:52 p.m., Saturday until 2:52 p.m., Sunday. That period of time corresponds to the

and 2:27 a.m., Sunday. Many of those calls occurred while McNair was at the Faulk party. If McNair had been with Bush, either at the hotel or the party, McNair certainly would not have been calling Bush on his cell phone.

³ McNair was asked about attending the Faulk party during his second interview on February 15, 2008 and he did not disclose that Augustin attended the party with him. McNair had no prior notice or reason to believe that he would be questioned about a purely personal event that had nothing to do with his duties as a USC coach. When he was unexpectedly asked about the events surrounding his attendance at the party, he did not disclose that Augustin was with him because he thought it was not relevant and he wished to protect her from what he viewed as unnecessary involvement in this investigation. However, after the Notice of Allegations was issued, McNair through his attorney arranged for an interview of Augustin and invited the staff to attend. McNair regrets not disclosing Augustin's involvement in the first instance because she would have corroborated that he did not visit the Hyatt during the Faulk party weekend. Her corroboration may have dissuaded the staff from naming McNair in the Notice of Allegations. McNair apologizes to the enforcement staff for any inconvenience he caused.

⁴ For example, the records show that none of the calls made or received during home game weekends in 2005—weekends when McNair definitely was in Los Angeles—contain the NN designation. Conversely, calls McNair made during away game weekends do contain the NN designation. Thus, the records are reliable evidence of when McNair was in Los Angeles.

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time McNair and Augustin reported they were in San Diego for the party. Moreover, the calls on Friday, March 4—the day Lake claims he met McNair at the San Diego Hyatt—begin at 7:21 a.m. and continue throughout the day until 1:08 a.m. Saturday morning. None of those calls carry the NN designation, meaning they were made in the Los Angeles area. Thus, McNair was not in San Diego the day Lake claims he met McNair at the Hyatt.

Moreover, Bush said he never saw McNair in San Diego that weekend. Bush specifically denied seeing McNair at the hotel. Thus, two of the three people who would have direct knowledge of the alleged meeting deny that it occurred.

There are other reasons that Lake's story is not credible or reliable:

- His claim is not corroborated by a single person. Lake's vague statement about meeting McNair at the Hyatt, which he prefaced with "I mean, if I can recall . . .," is the *only* evidence supporting the allegation. No one else has said or even suggested that McNair met Bush and Lake at the Hyatt.
- Lake's girlfriend, Maiesha Jones, said Lake told her that he did not meet McNair until October 29, 2005, almost eight months after the Faulk party. Jones specifically recalled that after Lake returned to San Diego following the USC-Washington State game on October 29, 2005, Lake told her that Bush had introduced him to some of the USC coaches following the game. Moreover, Lake had a photograph of himself, Michaels, McNair and Faizon Love⁵ that was taken at a club that night. Lake showed the

⁵ Love is an actor who lives in Los Angeles.

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- photograph to Jones and identified McNair as someone very important in Bush's life. Jones reported that Lake told her that Bush was "an idiot" for introducing him and Michaels to McNair because Bush was supposed to be hiding his involvement with Lake and Michaels. Thus, Lake's own girlfriend at the time of the events reported detailed, credible information that flatly contradicts Lake's claim that he met McNair in early March 2005.
- It is illogical and defies common sense that Bush would tell McNair that Lake provided him with a hotel suite. Bush had everything to lose by informing McNair that he was receiving impermissible benefits in violation of NCAA amateurism legislation. McNair would have told USC if he became aware that Bush was receiving benefits in violation of NCAA legislation. Bush could have been ruled permanently ineligible thus ending his college football career and significantly damaging his prospects for a career in the NFL. Bush certainly knew that and thus had a strong incentive not to tell McNair about the hotel room.
- Lake said that his provision of benefits to Bush was always done secretly. Lake said the transactions were so secretive that they reminded him of a drug deal. In fact, they were so secretive that Bush's father did not even know about most of the benefits Bush received because Lake and Bush intentionally concealed them from him. Conversely, Lake did not tell Bush about most of the benefits that were provided to Bush's parents. This self-admitted secret conspiracy contradicts Lake's claim that he and Bush would nonchalantly tell McNair that Bush had been provided a hotel suite for the weekend.

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In summary, Lake's story is corroborated by no one and contradicted by Bush, McNair and Augustin. Moreover, Lake told his girlfriend that he did not meet McNair until eight months after the Faulk party. McNair's phone records prove that he was not in San Diego the day Lake claims to have met him. Finally, Lake's claim defies logic and Lake's own admission that everything was done in secret.

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2. Allegation 1.b(2) – Alleged Conversation Between Lake and McNair at Faulk Party

a. The Facts Alleged Do Not Constitute a Violation of NCAA Legislation

Here is the information upon which Allegation 1.b(2) is based:

Cretors: How did he (McNair) have your number?
Lake: Uh, we had exchanged numbers I think from the Faulk party. He was aware what was going on.
Cretors: He was aware of what was going on?
Lake: The sports company.
Johanningmeier: How do you –
Cretors: McNair was aware?
Lake: Yeah.
Johanningmeier: How do you know that?
Lake: I had told him about it.
Cretors: When?
Lake: Uh, I think at the Faulk party, uh.
Cretors: When is that? We need details on what exactly was relayed during that conversation.
Lake: I just told him we were starting a sports company and if he knew any athletes, you know, that, that were coming up, up and coming in the league to send them our way basically.
Johanningmeier: Did you tell him that Reggie was involved with you?
Lake: I didn't tell him Reggie had, I don't know. I don't know if I told him Reggie had ownership in the company.

Lake Transcript at 110.

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Neither the facts alleged in the allegation nor the statement Lake claims to have made to McNair constitute a violation of NCAA legislation. There is no rule that prohibits an agent from asking a coach if the coach can recommend any potential clients.⁶ The allegation does not allege that Lake and McNair discussed Bush or Bush's involvement with Lake and Michaels. Lake said he does not know whether he mentioned Bush. Even if Lake made the alleged statement to McNair, McNair had no obligation to report the information to USC because nothing Lake allegedly said suggested that Lake had violated or was going to violate NCAA legislation; Lake merely asked McNair if he could recommend prospective clients.

Moreover, although the allegation alleges "Lake and McNair engaged in conversation," there is no evidence that McNair said a single word to Lake. Lake reported only making statements to McNair. There is no evidence that McNair understood, acknowledged or responded to Lake's alleged statement, much less "engaged in conversation." Given that Lake's alleged statement to McNair was made late at night in a loud dance club after McNair – and probably Lake – had been drinking, if Lake said anything to McNair it likely was a "one-way conversation" in which Lake was talking but McNair was not listening. McNair is not guilty of unethical conduct merely because Lloyd Lake recalls approaching him late at night in a loud dance club and asking if McNair could recommend potential clients.

⁶ NCAA coaches in revenue sports regularly assist student-athletes in choosing professional representation as their college careers are ending and they are preparing to begin a professional career. There is nothing improper with coaches communicating with agents to learn and inform themselves which agents to recommend.

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b. McNair Has No Recollection of Speaking With Lake at the Faulk Party

As explained above, McNair attended the party with his friend, Brooke Augustin. The party was held at the On Broadway Event Center, which can host 2000 people. It was not a small event. The party was attended by many professional athletes, performers and celebrities. There was drinking, dancing and loud music. McNair went to the party to be with friends and acquaintances and to enjoy himself. He spent the evening socializing with several of his NFL buddies. He did not arrive until sometime late in the evening, probably after 11 p.m., and he left sometime around 2 a.m. He and Augustin had intended on returning to Los Angeles that night but instead stayed at the house of McNair's friend, Martin Bayless, because they both felt they had too much to drink to drive safely and legally.⁷ The following morning, Bayless drove them back to On Broadway where McNair and Augustin retrieved McNair's vehicle and then drove back to Los Angeles.

Given this backdrop, it is easy to understand how McNair has no recollection of Lake speaking to him that night, assuming Lake said anything to McNair. If Lake did approach McNair and made statements about wanting to be a sports agent or asking for referrals, it would not have alerted McNair to anything improper. McNair is accustomed to being approached in public by all sorts of people wanting to engage him in conversation. McNair is a former NFL player and current coach with one of the highest profile college football teams in the nation. Uninvited and unwanted public encounters are not unusual for McNair. He is not required to investigate every person who approaches him in public on his personal time to determine whether the person may

⁷ Bayless attended the party and also is an NFL veteran.

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be involved in a violation of NCAA rules. However, the credible evidence strongly suggests the conversation Lake described never happened.

- Lake's girlfriend, Maiesha Jones, squarely contradicts Lake's story. Jones was with Lake that entire evening. She was shown a picture of McNair and said she did not think she had ever seen him and specifically said she did not see him at the Faulk party.
- As described in the response to Allegation 1 b(1), Jones said Lake did not meet McNair until after the USC-Washington State game on October 29, 2005, when someone took a photograph of Lake, Michaels, McNair and Love at a club. Specifically, Jones said Lake called her from Los Angeles in the middle of the night after returning to his hotel and was "very excited" because he had met some people close to Bush, including McNair.⁸ Considering the alacrity with which Lake told his girlfriend about meeting McNair that night, it is hard to believe she would not have known that Lake had met McNair at the Faulk party in March 2005 if that had actually happened.
- Jones said that although Lake wanted people at the Faulk party to see him with Bush, Lake was not talking in depth with people about New Era "because, you know, it really wasn't supposed to be going on." This is consistent with Lake telling Jones in October 2005 that Bush was an idiot for introducing Lake to McNair because their agent arrangement was supposed to be secret. More importantly, it contradicts Lake's claim

⁸ As explained supra at 1-10 to 1-11, Jones said Lake showed her the photograph the next day when he returned to San Diego and said Bush was "an idiot" for introducing him to McNair.

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that he spoke to McNair at the Faulk party and requested McNair to recommend prospective clients for representation.

- According to Lake, he gave McNair one of his New Era business cards at the party. However, New Era was not even formed until November 2005, over eight months after the Faulk party. It is not credible that Lake gave McNair a business card for a company that did not even exist, but that is precisely what Lake claims to have done. The fact that the staff did not include in Allegation 1.b(2) Lake's claim about giving McNair a business card shows the staff recognizes this material inconsistency in Lake's story but has chosen to support Lake's claim anyway.
- Lake's sister, Lisa Lake, also was at the Faulk party and like Jones (Lake's girlfriend), she has no recollection of meeting any USC coaches at the party or of her brother talking to any USC coaches. In fact, even though she allegedly had given \$30,000 of her own money to her brother to give to Bush and his parents, she said she has no knowledge that anyone at USC, including McNair, was aware that her brother and Michaels had provided any benefits to Bush and his parents.

In summary, the *only* evidence supporting the allegation is Lake's vague recollection that he said something to McNair about starting a sports agency and asking if McNair could recommend potential clients. Not a *single* person corroborates Lake. Lake's story is completely undermined by his claim that he gave McNair a New Era business card at the party when, in reality, New Era was not even formed until eight months later. Moreover, Lake's own girlfriend and sister – who

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both were at the party – do not support his story. Finally, even if Lake made the statement to McNair he claims he made, McNair had no obligation to report the information to USC.

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3. Allegation 1.b(3) – Alleged Two Minute 23 Second Telephone Call to McNair Asking Him to Intercede

This allegation, like the prior two, is based on information reported by Lake. However, the enforcement staff mischaracterized the phone call during their interviews of Lake and McNair and as a result, the testimony concerning this call is inaccurate and unreliable. Moreover, Lake's testimony concerning who placed the call is squarely contradicted by the record of the call. Thus, Lake's testimony is not accurate and not credible.

Lake Described A Call That Never Happened

The staff told Lake that McNair's phone records show that *McNair called Lake* at 1:34 a.m. on January 8, 2006, and that the call lasted two minutes and 23 seconds. Lake then responded by stating that *McNair called him* to try to resolve the dispute between him and Bush concerning the money Bush owed. However, McNair did not call Lake at 1:34 a.m. on January 8, 2006. Rather, *Lake called McNair*. Thus, Lake described a call that *never happened*, i.e., McNair allegedly calling Lake in an effort to mediate the dispute between Lake and Bush. The relevant excerpts from Lake's interview are below.

Johanningmeier: Well let me ask you this one, too, Lloyd, on, uh, January 8, 2006, at 1:34 in the morning, there's a call, *McNair call to you* for two minutes and 32 seconds.⁹

Lake: What time was that?

Johanningmeier: This is January 8, 2006, it's at 1:34 in the morning, and it's a call, uh, McNair--

Cretors: Coach doesn't understand why people are calling at 1:34.

⁹ The staff incorrectly stated that McNair called Lake.

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Johanningmeier: --*McNair makes a call to you at 2:32.*¹⁰ I was asleep at that time--

(Many people laughing)

Lake: Yeah.

Johanningmeier: --personally, but, but in your case--

Lake: I think that was like, *that was like him trying to resolve it, you know, and like Reggie's wrong, he should make it right and basically don't implement the school.*¹¹

Johanningmeier: Because this, this is 2006 we are talking about.

Lake: Yeah, that's when I went to jail, that's when everything started falling apart, I mean, it fell apart.

Johanningmeier: What can you tell us that you specifically recall about that conversation with him?

Lake: Uh, just telling about Reggie and all, he knew about the money he took, he knew that he had an agreement and--

Cretors: Todd McNair indicated to you in the telephone conversation that he was aware that Reggie took money--

Lake: I mean, he knew--

Cretors: --from you?

Lake: --Yeah bec, he knew Reggie took money from me. There's no doubt he knew about that.

Cretors: Did you ever call McNair?

Lake: Yeah, I called him a couple times.

Cretors: Do you know when or what the--

¹⁰ Here the staff again misstated who made the call and also the time of the call.

¹¹ Here Lake is saying that McNair called him to try to resolve the dispute and ask Lake not to implement (sic) USC.

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Lake: Around this time.

Cretors: --those conversations--

Lake: Yeah, trying to get this resolved, just get my money back and make it right.

Cretors: So you called McNair in early July and vocalized to him that you wanted your money back?

Lake: January.

Cretors: January of '06?

Lake: Yeah.

Cretors: Okay. And when did you say you went back to jail?

Lake: January 18.

Cretors: January 18. So before, prior to that--

Lake: Yeah.

Cretors: --you were making calls?

Lake: Yes.

Cretors: Okay.

Lake: I got calls with Reggie.

Lake Transcript at 112-113 and 115 (emphasis added).

The staff's inaccurate description of the call together with Lake's claim that McNair called him to resolve the dispute make the record inaccurate and unreliable. This confused record does not come even close to the standard in Bylaw 32.8.8.2 required to support a finding of unethical conduct. Moreover, as explained below, the staff did not test Lake's story and the staff has grossly mischaracterized Lake's testimony. The circumstantial evidence also does not support Lake's story.

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- As mentioned above, Lake said McNair called him at 1:34 a.m. on January 8, 2006, but that did not happen. McNair's phone records show clearly that Lake called McNair. The call takes on an entirely different meaning if it was Lake calling McNair rather than McNair calling Lake. Rather than mischaracterizing the call as having been made by McNair, the staff should have questioned Lake about the facts and circumstances concerning why *he called McNair* in the middle of the night. For example, the staff should have asked:

- Why did you call McNair at 1:34 a.m.?¹²
- Where were you when you made the call?
- What had you been doing that night?
- Was there anyone with you when you made the call?
- What specifically did you say to McNair and what did he say to you?
- How and when did you get McNair's number?
- Why did the call last only 2 minutes and 32 seconds?
- What was the result of the call?

¹² This call is the one and only call from Lake to McNair's phone. It is more than a little curious that the only call Lake made to McNair occurred in the middle of the night. The staff should have questioned Lake about the unusual timing of the call.

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But instead of asking relevant questions to test Lake's credibility and the reliability of the information he reported, the staff blindly accepted his story that McNair called him to resolve the dispute between him and Bush. The phone records prove that Lake's story is not credible.

- The staff has taken unjustified liberties in interpreting Lake's testimony and forming it into an allegation. For example, Lake never said in words or substance that during the call on January 8, 2006 that he "asked McNair to intercede with Bush and convince the young man to adhere to the agreement for professional representation that Bush made with Lake." According to Lake, McNair called him to try to resolve the dispute – not the other way around. Further, Lake did not say that he told McNair that he "did not want to go public with the matter and implicate the institution." According to Lake, McNair called him and said "Reggie's wrong, he should make it right and basically don't implement (sic) the school." Attached as Exhibit 2 is side-by-side illustration contrasting what the staff alleged occurred during the call with what Lake claimed was said during the call. It illustrates that the staff's allegation is not supported by the information Lake reported. Thus, not only are the staff and Lake mistaken about who placed the call upon which Allegation 1.b(3) is based, the staff has grossly mischaracterized how Lake described the conversation that allegedly occurred.
- Lake's testimony that he called McNair "a couple times" in January 2006 to "just get my money back and make it right" also is not supported by the record. The only call from Lake to McNair is the call at 1:34 a.m. on January 8, 2006, and it lasted a mere two minutes and 23 seconds. There is not a single other call from Lake to McNair. Thus, he

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did not call McNair "a couple of times...just to get my money back and make it right."

If Lake did call McNair to get his money back from Bush, McNair would have promptly notified USC. Moreover, the conversation certainly would have lasted more than two minutes and 23 seconds. It is unfathomable that a conversation over Bush's alleged debt of tens of thousands of dollars and how Lake wanted it repaid or he would implicate USC could take place in less time than it takes to order a pizza for delivery.

- Moreover, if Lake had called McNair to "just get my money back and make it right" and McNair was of a mind to cover that up and conceal it from USC—as the staff has alleged—there would have been immediate calls to Bush to discuss the matter and then calls back to Lake. That calling pattern did not occur. The only activity involving Bush following the call was a one minute call to Bush at 2:50 p.m. and a 13 minute and 23 second call from Bush at 3:26 p.m. the next afternoon. These calls were more than 12 hours after the call from Lake and thus do not indicate that the call from Lake impressed any sense of urgency or alarm on McNair. In fact, there is no evidence McNair's calls to Bush were prompted by or had any connection to the call from Lake. McNair and Bush spoke frequently by phone during the entire time Bush was enrolled at USC. Further, Bush, McNair, Pete Carroll and Jayice Pearson, a former NFL player who is Bush's cousin, were scheduled to meet with a prominent agent the following day, Monday, January 9, on the USC campus to discuss Bush's decision to turn pro. See Exhibit 3. Thus, not only is there nothing unusual about the calls between McNair and Bush on January 8, it is highly likely that the purpose of the calls was to discuss the meeting scheduled for the following day.

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- There *never* was another call from or to Lake. It is not credible that Lake called McNair to try to involve McNair in his efforts to get his money back and the conversation lasted only two minutes and the two men never spoke to each other ever again. Thus, the phone records do not reflect the type of activity one would expect if Lake called McNair threatening to jeopardize USC football if Bush did not pay Lake the money Lake felt he was owed.
- Lake's claim that McNair knew Bush accepted cash from Lake is not supported by any credible evidence.¹³ The enforcement staff recognizes that Lake's claim is not credible because the staff has not alleged that McNair knew about and failed to report the cash Lake allegedly gave to Bush. Thus, the staff knows that Lake has reported information that is not credible. Moreover, if McNair did not know about Lake's alleged provision of cash to Bush, McNair would not have called Lake—as Lake claims—and tried to intercede or mediate the dispute. It makes no sense. Lake's claim and the staff's allegation are fraught with inconsistencies and contradictions.

The Staff Misled McNair About the Call

Finally, not only did the staff mischaracterize the call to Lake during his interview, the staff also mischaracterized the call during McNair's interview. Specifically, although the staff correctly told McNair that Lake called him, the staff incorrectly told McNair the call occurred on January 8, 2005. In reality, it occurred a year later on January 8, 2006.

¹³ Lake said "(McNair) knew Reggie took money from me. There's no doubt he knew about that."

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Johanningmeier: This is January 2005. According to your telephone records on Saturday, January 8, 2005, you had a 2 minute and 32 second telephone conversation with that same San Diego number, that 619. And for the record, let me read that into the record. The number is 619-726-9713. Tell us about that.

McNair: I have no idea. I don't recognize that number.

Johanningmeier: Okay. And then subsequently on January 8, the same date, at 2:50 p.m., you placed a 1 minute call to Bush and at 3:26 p.m. Bush called you and that call lasted for 13 minutes and 23 seconds. Help us with that. So again, on the record here, the call to the San Diego number comes to you, it's a 1 minute and 34 second conversation.¹⁴

McNair: Right.

Johanningmeier: You place a call to Bush for 1 minute. Bush then returns that call and there's a 13 minute, almost a 13 ½ minute conversation that occurs.

McNair: And this is when?

Johanningmeier: This is on January 8, 2005.

McNair: January 8? I have no idea.

Johanningmeier: Okay. You still don't know?

McNair: It's 2005? That's the um, it's the 2005, that's after the Orange Bowl. That's a week after the Orange Bowl. Um, I couldn't, I don't know. I couldn't, I don't know. I mean, I could be on the road, I could be on the road recruiting. The Orange Bowl probably. National Championship game is probably a week after 1st, 7th. I'm probably on the road, I don't know. I'm probably on the road recruiting, I don't know.

Thus, the staff materially mischaracterized a key fact about the call and misled McNair into believing the call from Lake's phone was made in January 2005, rather than January 2006 when it was actually made. McNair's answer was premised on his mistaken belief that the call

¹⁴ The staff again mischaracterized the call. The call actually was made at 1:34 a.m. and the length of the call was 2 minutes and 32 seconds. Further, the staff failed to inform McNair that the call from Lake occurred at 1:34 a.m. on January 8 and the calls involving Bush did not occur until the following afternoon, over 12 hours after the call from Lake. The staff's questioning suggests the calls were close in time thus indicating that the call from Lake and the calls with Bush were related. The calls were not close in time to each other.

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occurred in January 2005, i.e., he said that date meant the call occurred after USC competed in the Orange Bowl – which occurred in January 2005 – and he had no idea why Lake would have called him at that time.

Without going back to McNair and correcting the record and giving him an opportunity to supplement his previous answer, the staff has lodged two unethical conduct allegations against McNair concerning the very call that the staff misled McNair about. Thus, two unethical conduct allegations have been brought against McNair based on answers he gave in response to a misleading and factually inaccurate question.

While McNair recognized the staff's error after receiving the Notice of Allegations and reviewing the staff's Case File, McNair has already been substantially prejudiced. He has been charged with unethical conduct based on an answer he gave in response to a misleading question. If McNair had been told the call in question was placed on January 8, 2006, he still would have told the staff that he did not recall speaking to Lake, but he would have offered that Lake probably was calling to ask McNair to recommend to Bush to sign with New Era. Lake knew Bush, Carroll and McNair were scheduled to meet with prospective agents to represent Bush once he declared for the upcoming NFL draft. As explained supra at 1-24 and Exhibit 3, one of those meetings occurred on January 9, 2006, the day after Lake called McNair. Lake and New Era were not invited to the meeting but Lake still hoped Bush would decide to sign with New Era.

That Lake would have called McNair as Bush's position coach and tried to get McNair to persuade Bush to sign with New Era is more plausible than Lake calling McNair out of the blue

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to try to get his money back. However, because the staff misled McNair at his interview, McNair was misinformed about the date of the call and thus did not offer this alternative explanation. McNair should have been able to offer this explanation before the staff completed its investigation and issued a Notice of Allegations.

The staff has now moved from the information gathering phase to the prosecution stage. As such, the staff cannot possibly evaluate this alternative explanation objectively. Consequently, McNair has suffered substantial prejudice and the Committee should dismiss Allegation 1.b(3) and that part of Allegation 3 which is based on the January 8, 2006 call.

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4. The Facts Alleged In Allegation 1.b Do Not Constitute a Violation of NCAA Legislation

McNair denies knowing that Lake was providing impermissible benefits to Bush in violation of NCAA amateurism legislation. However, even if McNair did become aware of the potential violations, he did not violate Bylaw 30.3.5.

The Staff's Allegation

The staff has cited Bylaws 10.1(d) and 30.3.5 for Allegation 1.b.

Bylaw 10.1(d) (Unethical Conduct) states that a staff member commits unethical conduct by:

Knowingly furnishing the NCAA or the individual's institution false or misleading information concerning the individual's involvement in or knowledge of matters relevant to a possible violation of an NCAA regulation.

Bylaw 30.3.5 (Report of NCAA Violation Involving Institution) states:

A current statement has been filed with the president or chancellor, as a part of the institution's annual certification, which is signed by each athletics department staff member (including part-time and clerical staff members), attesting that the individual has reported any knowledge of involvement in any violations of NCAA legislation involving the institution.

Thus, the staff is alleging that McNair committed unethical conduct when he signed USC's annual statement attesting that he had reported any knowledge of involvement in any violation of NCAA legislation involving USC. In other words, the allegation is that McNair committed unethical conduct by failing to report that Bush had received impermissible benefits from Lake and Michaels. There are two significant flaws with the staff's allegation.

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Bylaw 30.3.5 Requires Only Disclosure of Involvement in Violations

First, Bylaw 30.3.5 requires only that a staff member attest that he or she has reported any *knowledge of involvement* in any violations. The current version of the bylaw and the version in place in 2005 and 2006 does not require a staff member to attest that he has reported any knowledge of violations in which the staff member *was not involved*. McNair was not involved, nor has the staff alleged that he was involved, in providing any impermissible benefits to Bush. Thus, McNair did not violate Bylaw 30.3.5 when he attested that he had reported any knowledge of involvement in violations.

Bylaw 30.3.5 was originally enacted in 1975. At that time, the relevant language of the proposed bylaw read:

a current statement has been filed with the chief executive officer, as a part of the institution's annual certification, which is signed by each athletic department staff member (except for clerical personnel) attesting that the staff member has reported *his knowledge of and involvement in any violations of NCAA legislation involving the institution*.

See Exhibit 4 (Proceedings of the 69th Annual Convention at A-35-36 (emphasis added)).

During the debate, John Harbaugh objected to the phrase "has reported his knowledge of" and then President Chapman of the NCAA Management Council recognized the validity of the objection.

Mr. Harbaugh: There is another element here that I find objectionable. The bold face type in the following phrase, Has reported his knowledge of. Now, I dare say that every coach has some knowledge of violations elsewhere, in various degrees and rumors.

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Is it the intention of the proposers of this legislation to require him to report this knowledge and violations outside his institution? It seems to me it is not. *They actually want him to report his own involvement in the violations but not others.* Maybe I am wrong.

President Chapman: I presume you are correct.

See Exhibit 4 (Proceedings of the 69th Annual Convention at 151-52 (emphasis added)).

Thus, the Management Council which first enacted the legislation agreed that the intent was to require a staff member "to report his own involvement in...violations but not others." At some point, the bylaw was amended to make clear that staff members must attest only that they have "reported any *knowledge of involvement* in any violations of NCAA legislation involving the institution."¹⁵ Thus, the bylaw simply does not require a staff member to report his knowledge of a violation if the staff member was not involved in the violation. It does not compel a staff member to be a whistleblower.

No Legislative or Case Precedent

Second, no NCAA bylaw or case precedent states that an assistant coach violates the principles of ethical conduct by failing to report a violation in which the coach was not involved. Indeed, this appears to be the first time in the history of the NCAA that a coach has been charged with unethical conduct for not reporting a possible violation in which the coach *had no involvement*.¹⁶

¹⁵ McNair's counsel has requested the staff to provide him with all documents concerning the legislative history of Bylaw 30.3.5. These documents are not available on LSDBi. As of the date McNair submitted his Response, the staff had not provided documents concerning the amendment.

¹⁶ The cases where a coach was found to allow a student-athlete to compete while ineligible are inapposite. Those cases all involve coaches who knew objectively that a student-athlete was ineligible yet allowed the student-athlete to compete to gain a competitive advantage. In contrast, McNair is charged with not reporting that Bush received or may have received benefits from an agent so that USC could investigate the matter.

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McNair is not charged in any of the allegations alleging that Lake and Michaels provided benefits to Bush in violation of NCAA amateurism legislation. In other words, McNair was not involved in providing benefits to Bush in violation of NCAA amateurism legislation. The staff has charged McNair with unethical conduct in Allegation 1.b *only* because the staff believes McNair knew or should have known about some of the alleged impermissible benefits and failed to report it. That is an unprecedented charge to be made against an assistant coach and it reveals the imaginative lengths the staff has gone to in this case in an attempt to somehow connect USC to the secret arrangement between Bush and Lake.

Indeed, even where a coach has been found to have knowingly committed a serious violation, the coach has never also been charged with unethical conduct for falsely attesting per Bylaw 30.3.5 that he has reported any knowledge of involvement in any violations. See e.g., Oklahoma State University Infractions Report (Nov. 4, 1992) (head coach committed numerous violations of NCAA recruiting, extra benefit and ethical conduct legislation and falsely signed the institution's annual statement but coach was not charged with unethical conduct for reporting false and misleading information to the institution concerning his knowledge of or involvement in a violation); Auburn University Infractions Report (August 18, 1993) (two assistant football coaches and an administrative assistant erroneously signed the university's certification of compliance forms indicating they had reported their knowledge of or involvement in any violations when, in fact, they had not done so, yet the individuals were not charged with unethical conduct for reporting false information).¹⁷

¹⁷ These are two of the 12 major infractions which include a violation of Bylaw 30.3.5. None of those 12 cases included an unethical conduct violation for failing to report a violation.

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If the NCAA does not charge coaches with unethical conduct for failing to report violations in which the coaches were involved and orchestrated and committed, why in this case is the NCAA charging McNair with unethical conduct for failing to report violations in which he was not involved?

Assistant Coaches Are Not Primarily Responsible for Ensuring Compliance

There are cases in which high level administrators have been found to have violated the principles of ethical conduct by knowingly and willfully failing to report an obvious or known violation. See, e.g., Texas A&M University – Corpus Christi Infractions Report (March 25, 2009) (finding unethical conduct where an obvious violation was brought to attention of institution's athletics director and he made a deliberate decision not to report the violation to the conference or NCAA). However, those cases involved a head coach or high level administrator who had a primary role in ensuring compliance. Further, those cases involved an intentional cover-up and the evidence was beyond dispute that an underlying violation had occurred. In contrast, McNair is an assistant coach, not a head coach or high level administrator with primary compliance responsibilities. Further, the evidence that he knowingly and deliberately failed to report a violation is weak.

The duty to monitor and report is based in the NCAA Constitution, Article 2.8.1 (The Principle of Rules Compliance – Responsibility of Institution). The duty is primarily an institutional obligation and in most instances where the duty is breached, a finding is made against the institution for a failure to monitor or lack of institutional control. Of course, institutions exercise control over compliance through individuals. In the document "Principles of Institutional Control As Prepared By the NCAA Division I Committee on Infractions," the Committee stated:

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Not only the director of athletics, but other officials in the athletics department, the faculty athletics representative, the head coaches and the other institutional administrators outside of the athletics department responsible for such matters as the certification of athletes for financial aid, practice and competition, are expected to assume a primary role in ensuring compliance. Even though specific action has been taken to place responsibility elsewhere, these individuals will be assumed to be operating on behalf of the institution with respect to those responsibilities that are logically within the scope of their positions. Their failure to control those matters so as to prevent violations of NCAA rules will be considered the result of a lack of institutional control.

See Exhibit 5 (Principles of Institutional Control As Prepared By the NCAA Division I Committee on Infractions at 1).

The Committee also identified specific examples of acts that are likely to demonstrate a lack of institutional control, including a failure to investigate or report.

A director of athletics or any other individual with compliance responsibilities fails to investigate or direct an investigation of a possible significant violation of NCAA rules or fails to report a violation properly.

When a director of athletics or any other individual with compliance responsibilities has been informed of, or learns that there exists a possible significant violation of NCAA rules, and then fails to ensure that the matter is properly investigated, there is a lack of institutional control. Similarly, if an actual violation of NCAA rules comes to the attention of the director of athletics or a person with compliance responsibilities and there is a failure to report the violation through appropriate institutional channels to a conference to which the institution belongs and to the NCAA, such failure constitutes a lack of institutional control.

See Exhibit 5 (Principles of Institutional Control As Prepared By the NCAA Division I Committee on Infractions at 4).

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Thus, the Committee has made clear that the duty to investigate and report is an institutional obligation that is carried out by individuals with compliance responsibilities like a director of athletics, faculty athletics representative or head coach. Assistant coaches are responsible for ensuring their own activities comply with NCAA legislation and self-reporting instances of noncompliance, but they are not held to the same level as head coaches or other department heads when it comes to investigating and reporting violations committed by others.

In 1996, the NCAA Infractions Appeals Committee ruled that assistant coaches may not be held individually responsible for failing to monitor, investigate and report suspicious activities indicative of academic fraud. See Former New Mexico State University, Assistant Men's Basketball Coach, Public Infractions Appeals Committee Report (December 20, 1996). In the New Mexico State case, the Committee on Infractions found the assistant coach individually responsible for a lack of institutional control and imposed a three-year show cause order. The Committee said the head coach relied on the assistant coach to supervise the recruitment of several junior college transfer student-athletes who all needed to earn a high number of credit hours in the summer prior to initial enrollment. The Committee found that the assistant coach delegated the monitoring to a restricted earnings coach and did not supervise the coach. Further, the Committee found that the assistant coach *knew or should have known* that at least two of the prospects likely had received improper assistance but the coach did not report his knowledge to the institution.

Even after [the assistant coach] became suspicious that at least two prospect student-athletes could not have achieved the grades that they received in the summer courses without improper assistance, the assistant men's basketball coach never reported his suspicions to the head coach nor took any steps that might have disclosed

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academic fraud. When he learned of the formal investigation in February 1995, a cursory search by his wife produced obviously fraudulent course materials in stored files that had been located in the assistant coach's office while he was employed at New Mexico State University.

Former New Mexico State University, Assistant Men's Basketball Coach, Public Infractions Appeals Committee Report at 22-23.

The Infractions Appeals Committee vacated the finding and the penalty against the assistant coach. In a lengthy analysis, including a discussion of the document Principles of Institutional Control As Prepared By the NCAA Division I Committee on Infractions, the Appeals Committee ruled that assistant coaches may not be held individually responsible for institutional control, i.e., failing to monitor, investigate and report suspicious activity of a possible violation. The committee summarized its ruling as follows:

The Infractions Appeals Committee believes that the principle of institutional control is intended to place responsibility on the institutional administration to establish reasonable procedures, to provide sufficient personnel and support to make these procedures functional, and to monitor the procedures in a reasonable manner. It has reservations about applying institutional control findings to any individual, but acknowledges that a history of institutional control findings against head coaches exists. Inasmuch as the head coach can be categorized as a department head, the person primarily responsible for the supervision of others in the department, a logical case can be made that some institutional control responsibility rests with that individual. However, in the judgment of the Infractions Appeals Committee, that logic cannot be extended to include assistant coaches. It thus vacates the institutional control finding against a former New Mexico State assistant men's basketball coach.

Former New Mexico State University, Assistant Men's Basketball Coach, Public Infractions Appeals Committee Report at 14.

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The staff's allegation against McNair is an institutional control allegation against an assistant coach masked as an unethical conduct allegation. In the New Mexico State case, the Appeals Committee said an assistant coach cannot be held individually responsible for failing to investigate or report possible academic fraud that was brought to his attention. In this case, the staff is trying to do that exact same thing. The staff is trying to hold McNair individually responsible for failing to report possible amateurism violations involving a student-athlete and an agent. Calling it unethical conduct rather than lack of institutional control does not change anything. The Appeals Committee has rejected an attempt to penalize an assistant coach for failing to report knowledge of academic fraud violations in which the coach was not involved.

In summary, the plain language of Bylaw 30.3.5 requires only that staff members attest that they have reported any knowledge of violations in which they were involved. McNair was not involved, nor has the staff alleged that he was involved, in providing impermissible benefits to Bush. Further, there is no legislative or case precedent for finding an assistant coach guilty of unethical conduct for not reporting a violation in which the coach was not involved. Finally, the Infractions Appeals Committee has ruled that an assistant coach may not be penalized for not reporting knowledge of a violation in which the coach was not involved even where the coach was responsible for monitoring the activity that resulted in the violation.

Also, please provide the following:

- a. A statement explaining the relationship between Lake, Bush and the Griffin family and the date the relationship began. In addition, include a statement explaining the relationship between Michaels, Bush and the Griffin family and the date the relationship began.
- b. A statement indicating the relationship between Michaels and the Sycuan Indian tribe.
- c. A statement indicating the relationship between Lake and Michaels.

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- d. A copy of the photograph of Lamar Griffin; Lake; and Lisa Lake, Lake's sister, attending a meeting with members of the Sycuan tribe.
- e. A chart listing the dates, time and length of all telephone calls that Lake placed or received from Bush and Lamar Griffin during the period December 2004 through August 2005. Please indicate the purpose of these calls.
- f. A copy of the Operating Agreement of Aggressive Integrity Sports Management Group adopted January 20, 2005.
- g. A copy of the Articles of Incorporation of Aggressive Integrity Sports Management, Inc., dated July 10, 2005.
- h. A copy of the State of California Limited Liability Company Articles of Organization dated November 23, 2005, for New Era Sports and Entertainment, LLC.
- i. A statement indicating where Lamar and Denise Griffin were employed and their occupations at the time Bush was enrolled at the institution.
- j. A statement indicating whether Lamar Griffin owned or drove a green Cadillac and, if so, documentation as to how the vehicle was purchased and financed.
- k. A copy of the institution's pass list for the 2005 Orange Bowl BCS national championship game (Miami, Florida) showing that the Griffin family attended the contest with tickets left by Bush.
- l. A copy of all receipts for the cost of round-trip airline transportation between San Diego and Ft. Lauderdale for Lamar, Denise and Jovan Griffin to attend the 2005 Orange Bowl BCS national championship game and documentation as to the form of payment for these tickets.
- m. A statement indicating whether Bush registered a 1996 Chevrolet Impala Super Sport with the institution's athletics department and, if so, the date the vehicle was registered.
- n. A statement indicating if the institution obtained documentation on how the Chevrolet Impala was purchased and financed and, if not, the reason the institution did not do so.
- o. A statement indicating the date Bush's Chevrolet Impala was purchased, from whom the vehicle was purchased, the cost of the vehicle, copies of all bills of sale and title documents, and any loan documents, as well as documentation as to the form of payment.
- p. A copy of Gunner's carbon check receipts numbered 163, 173, 175, 176, 177, 195 205, 210, 225, 227, 1088 and 2427.
- q. A statement indicating where Bush resided during the 2004-05 and 2005-06 academic years, the monthly cost and the amount of the stipend the institution provided for the cost

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- of room and meals, and whether Bush received a Pell Grant during this period and, if so, the amount Bush received.
- r. A statement indicating if the institution obtained a copy of all DUB Magazine agreements with Bush that authorized Herman Flores, DUB Magazine executive, to install a custom stereo sound system and custom rims on Bush's Chevrolet Impala in exchange for Bush appearing on the cover of DUB Magazine.
- s. Copies of all work orders, invoices and authorizations to Flores from Bush or DUB Magazine in order for Flores to procure and install the custom stereo and custom rims on Bush's Chevrolet Impala. Please include an itemized list of all parts and labor for this installation.
- t. A statement indicating if Bush attended the March 5, 2005, Faulk birthday party in San Diego and, if so:
- (1) Where Bush stayed while in San Diego.
 - (2) Whether Bush was at the Manchester Grand Hyatt at any time and, if so, for what purpose.
 - (3) How Bush was transported to On Broadway.
- u. A copy of a March 6, 2005, Manchester Grand Hyatt receipt (Folio No. 577831) for \$1,574.86 for M. Chief Michaels.
- v. A statement indicating if McNair attended the March 5, 2005, Faulk birthday party in San Diego and, if so:
- (1) Whether McNair attended previous and subsequent Faulk birthday parties.
 - (4) The reason McNair attended the 2005 Faulk party.
 - (5) The approximate time McNair arrived in San Diego and an account of what McNair did until his departure.
- w. A statement indicating the relationship between McNair and Martin Bayless, former NFL teammate of McNair. In that regard, did Bayless attend the March 2005 Faulk birthday party and, if so:
- (1) Whether Bayless invited McNair to attend the Faulk party with him.
 - (6) Whether Bayless saw Bush at the party.
 - (7) The approximate time that Bayless first saw McNair at the party.
 - (8) The reason McNair stayed at Bayless' home the night of the Faulk party.

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- x. A chart listing the dates, time and length of the telephone calls made between Bush and Lake, and Bush and McNair February 28 through March 12, 2005. Please indicate the purpose of these calls and the nature of the conversations.
- y. A statement indicating whether Michaels was interviewed by the institution, conference or enforcement staff and, if not, the reason(s) why.
- z. A copy of an April 9, 2007, Settlement Agreement, Release and Covenant Not to Sue agreed and accepted by Michaels, Bush, and Lamar and Denise Griffin.
- aa. A copy of a reservation (ID 384213477253) for the Venetian Resort Hotel Casino made by Michael Pettiford, aka Michael Michaels, for March 11, 2005, at a rate of \$282.31 per night.
- bb. A copy of the Venetian credit card authorization form in Michaels' name dated March 12, 2005.
- cc. A copy of a March 13, 2005, Venetian guest receipt (Folio ID 384213525456) for \$623.63 for Pettiford.
- dd. A statement describing how the institution monitored visitors at football practice sessions during the 2004 and 2005 football seasons and if it would have been possible for Lake to attend the football practice sessions.
- ee. A statement indicating where Lamar and Denise Griffin resided (addresses and time periods) while Bush attended the institution.
- ff. A copy of the May 30, 2005, Agreement for Lease of Residence for the property located at 9715 Apple Street, City of Spring Valley, County of San Diego, State of California, executed between Michaels (landlord), and Lamar and Denise Griffin (tenants).
- gg. Provide copies of all receipts of the monthly payments and documentation for the Griffins' residence located at 9715 Apple Street, Spring Valley, during the period March 2005 through April 2006 as to the form of payment.
- hh. A statement indicating whether Lamar or Denise Griffin were interviewed by the institution, conference or enforcement staff and, if not, the reason(s) why.
- ii. A copy of Case No. NFLPA07-D1 in the matter of arbitration between National Football League Players' Association and David M. Cervantes, a professional sports agent.
- jj. A statement indicating whether Bush, while enrolled at the institution, had a Washington Mutual bank account.
- kk. A copy of the institution's pass list for its contest vs. Hawaii, September 3, 2005, showing that the Griffin family attended the contest with tickets left by Bush.

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- ll. A copy of all receipts for the cost of round-trip airline transportation between San Diego and Honolulu for Lamar, Denise and Jovan Griffin to attend the institution's September 3, 2005, football contest against Hawaii; a copy of all receipts for lodging and ground transportation in Honolulu; and documentation as to the form of payment for these items.
- mm. A copy of a November 22, 2005, Nextel Cellular service record for McNair beginning with Call No. 603 dated October 29, at 6:07 p.m., and concluding with Call No. 712 dated October 31, 2005, at 6:44 p.m., which indicates that McNair placed three calls to Lake (619/729-9713) at 11:39, 11:52 and 11:56 p.m. October 29.
- nn. A copy of Lake's New Era Sports and Entertainment business card indicating that Lake's mobile telephone number was 619/726-9713.
- oo. A statement indicating the relationship between McNair and Faison Love, a friend of both Lake and McNair. In this regard, please indicate whether McNair socialized with Love. In addition, include a statement explaining the relationship between Lake and Love.
- pp. A color copy of the photograph of Love, McNair, Michaels and Lake.
- qq. A statement indicating the reason that McNair appears in a photograph with Love, Lake and Michaels.
- rr. Color copies of the photographs of Lake and Lamar Griffin in the institution's football locker room.
- ss. A copy of Ameen Najjar's, NCAA director of enforcement's, May 7, 2009, letter to Shawn Chapman Holley and Rick Evrard, current co-counsel for Bush, regarding Bush records and documents, and Holley's June 12 letter of reply to Najjar.
- tt. A copy of William David Cornwell Sr.'s, Bush's former counsel's, January 20, 2006, e-mail to Lisa Lake.
- uu. A chart listing the dates, time and length of all telephone calls McNair placed or received from Bush during the period April 2005 through January 2006. Please indicate the purpose of these calls and if McNair made similar calls to any other football student-athletes.
- vv. In regard to the information regarding the telephone calls between McNair and Bush, a statement indicating the relationship between McNair and Bush. In this regard, please indicate whether McNair had more than a player/coach relationship with Bush.
- ww. A copy of a January 22, 2006, Nextel Cellular service record for McNair beginning with Call No. 1,136 dated January 1 at 9:14 p.m., and concluding with Call No. 1,245 dated January 11, 2006, at 1:19 p.m., which indicates that McNair received a call from Lake (619/729-9713) at 1:34 a.m., January 8.

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- xx. In regard to the phone calls between McNair and Lake (619/729-9713) October 29, 2005 (11:39, 11:52 and 11:56 p.m.) and January 8, 2006 (1:34 a.m.), a statement explaining the nature of those conversations.
- yy. A copy of McNair's attestation required by NCAA Bylaw 30.3.5 for the 2005-06 and 2006-07 academic years.
- zz. A statement indicating whether McNair failed to report his knowledge of or involvement in any violations of NCAA legislation involving the institution during the period March 2005 through January 2006 and, if so, why.

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2. [NCAA Bylaws 12.3.1.2, 16.02.3 and 16.11.2.1]

On a number of occasions from November 2005 to January 2006, Michael Ornstein, his associate Jamie Fritz and Sports Link, their sports marketing agency located in Santa Monica, all of whom are representatives of the institution's athletics interests, in an effort to obtain representation in future professional marketing negotiations, provided impermissible benefits in the form of cash, lodging, merchandise and transportation to former football student-athlete Reggie Bush; the young man's parents, Lamar and Denise Griffin; his brother, Jovan Griffin; friends Chanti Bloomer and DaSean Cunningham; and aunt, Valarie Packard. Specifically:

- a. Concerning Sports Link (Ornstein and Fritz) being representatives of the institution's athletics interests, in April 2005, Fritz contacted Magdi El Shahawy, associate director of athletics, to determine if any of the institution's student-athletes would be interested in a summer internship with Sports Link. El Shahawy asked Keith Miller, then director of compliance, if it was permissible for a student-athlete to intern for a sports marketing group. After Miller's April 26 approval, two of the institution's football student-athletes were hired by Sports Link. Shortly thereafter, Fritz informed El Shahawy that Sports Link had also hired Bush.

In accordance with NCAA Constitution 6.4.2, the internships during the summer of 2005, a permissible benefit, made Sports Link (Ornstein and Fritz) representatives of the institution's athletics interests inasmuch as the employment opportunities were created only for the institution's student-athletes and with the knowledge and assistance of the institution's athletics department staff members.

- b. Concerning the impermissible benefits provided by Ornstein, Fritz and Sports Link to Bush, the young man's parents and friends:
- (1) During the weekend of November 11-13, 2005, Sports Link provided the Griffin family round-trip airline transportation on Southwest Airlines between San Diego and Oakland, a value of \$595; round-trip limousine service by International Chauffeured Service between the Oakland airport and the San Francisco Ritz Carlton Hotel, a value of \$250; and two night's lodging at the Ritz Carlton, an approximate value of \$500, to attend the institution's away football contest at the University of California, Berkeley (California). [Bylaws 12.3.1.2, 16.02.3 and 16.11.2.1]
 - (2) Beginning in November 2005 and continuing to January 2006, Ornstein provided various amounts of cash to Bush, and Lamar, Denise and Jovan Griffin. [Bylaws 12.3.1.2, 16.02.3 and 16.11.2.1]
 - (3) On or about November 28, 2005, Sports Link provided Bloomer a round-trip airline ticket on Continental Airlines between Las Vegas and Newark, New Jersey, a value of \$405.05. [Bylaws 12.3.1.2, 16.02.3 and 16.11.2.1]

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- (4) On or about November 28, 2005, Sports Link provided Cunningham a round-trip airline ticket on American Airlines between Los Angeles and New York City, New York, a value of \$368.50. [Bylaws 12.3.1.2, 16.02.3 and 16.11.2.1]
- (5) On or about November 30, 2005, Sports Link paid a \$150 service fee for Denise and Jovan Griffin. [Bylaws 12.3.1.2, 16.02.3 and 16.11.2.1]
- (6) In December 2005, while in New York City for the Heisman Trophy presentation, Ornstein paid for two tailor-made suits for Lamar and Jovan Griffin, and salon expenses for Denise Griffin. [Bylaws 12.3.1.2, 16.02.3 and 16.11.2.1]
- (7) In December 2005, Ornstein provided two night's lodging (December 30-31) for Packard at the Sir Frances Drake Hotel in San Francisco, an approximately value of \$500. [Bylaws 12.3.1.2, 16.02.3 and 16.11.2.1]
- (8) In December 2005, Ornstein paid an undetermined amount to repair Bush's 1996 Chevrolet Impala automobile, which was damaged in an accident. [Bylaws 12.3.1.2, 16.02.3 and 16.11.2.1]

Please indicate whether this information is substantially correct and whether the institution believes that violations of NCAA legislation occurred. Submit evidence to support your response.

CONCLUSION

McNair understands Allegation 2 is not directed at him.

Also, please provide the following:

- a. A statement describing the arrangements made for Bush to serve as an intern at Sports Link during the 2005 summer.
- b. A statement indicating whether Ornstein was interviewed by the institution, conference or enforcement staff and, if not, the reason(s) why.
- c. A statement describing the relationship of Fritz to the university and the intercollegiate athletics program. In that regard, please indicate whether Fritz has or had a personal relationship with El Shahawy or Miller and, if so, a description of that relationship. Also, please indicate if the institution believes Fritz to be a representative of its athletics interests.

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- d. A statement indicating if the institution, subsequent to the summer of 2005, permitted football student-athletes to be employed as interns at Sports Link and, if not, the reason(s).
- e. The identities of all athletics department staff members knowledgeable of the 2005 summer Sports Link internships and a description of the knowledge prior to, at the time of and subsequent to the internships.
- f. A statement indicating if assistant football coach Todd McNair engaged in any conversations with Bush in regard to the young man's employment at Sports Link and how and from whom McNair learned about Bush's Sports Link employment. In that regard, please provide a statement indicating if Bush engaged in any conversations with McNair about his Sports Link employment.
- g. A statement explaining the relationship between McNair and Ornstein.
- h. A statement describing Ornstein's associations with the institution's athletics department staff and football program. In this regard, please indicate whether Ornstein has:
 - (1) A personal or professional relationship with any current or former members of the football team and/or the athletics department staff
 - (9) Employed student-athletes and, if so, the approximate number and reasons for their employment, and a statement as to how the jobs were arranged. Also, a statement indicating if the institution believes Ornstein to be a representative of its athletics interests.
- i. A statement explaining the relationship between Ornstein, Bush and the Griffin family, and the date the relationship began.
- j. A receipt from International Chauffeured Services (Confirmation No. 223107) for transportation November 11, 2005, for Lamar Griffin in the amount of \$130.92.
- k. A receipt from International Chauffeured Services (Confirmation No. 224115) for transportation November 13, 2005, for Lamar Griffin in the amount of \$119.73.
- l. A copy of the institution's pass list for the contest vs. California on November 12, 2005, which indicates that the Griffin family attended the contest with tickets left by Bush.
- m. A copy of a Southwest Airlines receipt and itinerary (Confirmation No. 9HNJIL) charged to American Express Card No. XXXX4007 for the Griffin family to travel round trip November 11-13, 2005, between San Diego and Oakland, a value of \$595.20.

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- n. A copy of a November 13, 2005, Ritz Carlton hotel receipt indicating how the cost for the Griffins' room was satisfied.
- o. A statement indicating the relationship between Ornstein and Ed Mady, the general manager of the Ritz Carlton.
- p. A statement indicating the relationship between Bloomer, Bush and Sports Link. In that regard, please indicate whether Bloomer attended the December 2005 Heisman Trophy presentation and, if so, whether Bloomer used the Continental Airlines ticket purchased by Sports Link November 28, 2005, to travel to the event.
- q. A statement indicating the relationship between Cunningham, Bush and Sports Link. In that regard, please indicate whether Cunningham attended the December 2005 Heisman Trophy presentation and, if so, whether Cunningham used the American Airlines ticket purchased by Sports Link November 28, 2005, to travel to the event.
- r. A copy of Page Nos. 11 and 12 from the Uniglobe Dazey Travel Sales Activity by Invoice Record for the period November 1-30, 2005, indicating that Sports Link purchased airline tickets for Bloomer and Cunningham November 28 and that Sports Link paid a \$150 service fee for the Griffins November 30.
- s. A statement indicating if in December 2005, Ornstein was in New York at the time of the Heisman Trophy presentation and, if so, whether Ornstein had any contact with Bush and the young man's parents.
- t. A copy of the Kempton Hotel reservation (Confirmation No. 01091527630) for Packard dated December 27, 2005.
- u. A copy of the Kempton credit card authorization form in Ornstein's name for the Sir Frances Drake Hotel in San Francisco in the amount of \$453.72 for Packard.
- v. A statement indicating whether Packard was interviewed by the institution, conference or enforcement staff and, if not, the reason(s) why.
- w. A statement indicating the relationship between Packard; Ornstein; and Alonia Richardson, Packard's niece. In that regard, please indicate whether Packard:
 - (1) Had a major credit card in December 2005 and, if so, the reason Ornstein guaranteed with his Master Card two nights's lodging for Packard at the Sir Francis Drake Hotel.
 - (10) A copy of a January 1, 2006, Sir Francis Drake Hotel receipt indicating that the cost for Packard's room was paid with a Master Card issued to Richardson.

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- x. A statement indicating if in December 2005, Bush owned a 1996 Chevrolet Impala automobile. In that regard, please indicate if, during that period, the vehicle was damaged and, if so, provide the name and address of the establishment that repaired the vehicle and the appropriate documentation as to how the repair costs were paid.

- y. A statement indicating the relationship between Ornstein and Bob DeMartino, a memorabilia dealer. In that regard, did DeMartino meet Ornstein in New York in December 2005 at the time of the Heisman Trophy presentation and, if so:
 - (1) The reason DeMartino met with Ornstein.
 - (11) An account of what Ornstein told DeMartino regarding the impermissible benefits Ornstein provided Bush and the young man's parents.
 - (12) Copies of the following documents:
 - (a) December 14, 2005 - E-mail from DeMartino to Ornstein regarding Bush and former football student-athlete Matt Leinart.
 - (b) December 15, 2005 - Promissory Note of \$500,000 for Bush.
 - (c) December 27, 2005 - Athlete Shares, Bush.
 - (d) December 29, 2005 - Athlete Shares, Bush (6 years) analysis.
 - (e) December 29, 2005 - 8:14 a.m. e-mail from DeMartino to Ornstein regarding Bush.
 - (f) December 29, 2005 - 9:47 a.m. e-mail from DeMartino to Ornstein regarding Bush.
 - (g) December 29, 2005 - 11:33 a.m. e-mail from Ornstein to DeMartino regarding Bush.
 - (h) December 29, 2005 - 12:54 p.m. e-mail from Ornstein to DeMartino regarding Bush.
 - (i) December 29, 2005 - 1:22 p.m. e-mail from Ornstein to DeMartino regarding Bush.
 - (j) December 30, 2005 - Athlete Shares, Bush analysis.
 - (k) January 1, 2006 - Athlete Shares, Bush analysis.
 - (l) January 2, 2006 - E-mail from DeMartino to Ornstein regarding Bush.

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- (m) January 9, 2006 - E-mail from DeMartino to Ornstein regarding Bush/Leinart.
- (n) January 28, 2006 - 7:18 a.m. e-mail from DeMartino to Ornstein regarding Bush.
- (o) January 28, 2006 - E-mail from DeMartino to Ornstein.

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3. [NCAA Bylaws 10.1-(d)]

It is alleged that on September 19, 2006, and February 15, 2008, assistant football coach Todd McNair violated the principles of ethical-conduct legislation when he knowingly provided false and misleading information to the institution and enforcement staff when questioned about his knowledge of Lloyd Lake. Specifically:

a. Concerning the misleading information, during the September 19, 2006, interview attended by Angie Cretors, NCAA associate director of agent, gambling and amateurism activities; Richard A. Johannngmeier, NCAA associate director of enforcement; Ron Barker, associate commissioner of the Pacific-10 Conference; Ellen Ferris, associate provost for athletics compliance; Kelly Bendell, general counsel; and Noel Ragsdale, faculty athletics representative, McNair was questioned about former football student-athlete Reggie Bush and the young man's relationship with Lake and the New Era Sports Marketing firm. McNair denied that Bush ever told McNair that the young man had a relationship with Lake or New Era. In an effort to determine if McNair had a relationship with Lake, in response to questions posed by Cretors, McNair stated that to his knowledge, he had neither met nor spoken to Lake.

b. Concerning the false information, during a February 15, 2008, interview attended by Cretors, Johannngmeier, Barker, Ferris, Bendell and Mark Jones from the law firm of Ice Miller, outside counsel to the institution, and after the investigation revealed that McNair had placed telephone calls to Lake, as well as appeared in a photograph with Lake, McNair was advised that his telephone records indicated that McNair had placed calls to Lake (619/726-9713) on October 29, 2005, at 11:39, 11:52 and 11:56 p.m. In addition, McNair was advised that records indicated that he received a two minute and 32-second call from Lake on January 8. McNair, in response to a question posed by Johannngmeier as to why Lake's telephone number appeared on McNair's phone records when McNair previously reported that he neither met nor spoke to Lake, McNair denied that he knew Lake and had no idea why Lake's telephone number appeared on McNair's phone records. When asked by Johannngmeier how McNair had gotten Lake's telephone number, McNair stated that he had no idea. McNair continued that it was obvious that McNair called Lake's number but that McNair had not been calling Lake.

(1) McNair was provided with a photograph of McNair with three other individuals (Faison Love; friend of both Lloyd Lake and Todd McNair; Michael Michaels and Lake) and was asked by Johannngmeier to explain the photograph. McNair stated that he has posed for numerous photographs and did not know the other individuals in the photograph. McNair, when told that the photograph may have been taken on the night of October 29, stated: "I don't know. I, you know, there was some dudes that was with us, not with us, came with us, was staying or whatever, uh, this is my friend (Love). I'm with him, you know, I don't know." McNair

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continued that the photograph was of him and Love, and that the other two individuals in the photograph were standing behind them. When asked by Johanningmeier, McNair denied that he knew two of the individuals in the photograph.

Please indicate whether this information is substantially correct and whether the institution believes that violations of NCAA legislation occurred. Submit evidence to support your response.

CONCLUSION

McNair denies the Allegation. There is no evidence that McNair was lying when he said Bush never told him about his relationship with Lake or New Era. Further, McNair did not lie when he said that to the best of his knowledge, he had neither met nor spoken to Lloyd Lake.

REVIEW AND ANALYSIS OF THE EVIDENCE

Overview

Allegation 3 involves a simple issue: did McNair knowingly provide false and misleading information when:

- (1) He stated that Bush had not indicated to him that he had a relationship with Lake or New Era; and
- (2) He stated that *to the best of his knowledge*, he had neither met nor spoken to Lloyd Lake.

The relevant testimony from McNair's interview is below.

Cretors: Okay. And are you aware of Reggie's relationship with Michael Michaels or Lloyd Lake?

McNair: No.

Cretors: Did Reggie ever indicate to you that he had a relationship with either of those individuals?

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McNair: No.

Ragsdale: Did he ever mention either of those names to you?

McNair: No.

Ragsdale: Do you recall, did either of Reggie's parents ever mention either of those names to you?

McNair: No.

Cretors: Did Reggie ever mention New Era?

McNair: No.

Cretors: Have you ever met Lloyd Lake?

McNair: Not to my knowledge.

Cretors: So you might have but you're not sure and you might not have. Is that to your knowledge, you never have met them, you don't know them or you're not sure whether you have?

McNair: Not to my knowledge. I'll come in here with my nephew and some of his old friends and I introduce you to them. As my nephew Marcus would say, hey Marcus, that's Pete. What's his name again?

Cretors: Angie.

McNair: That's Pete. That's Angie. Bobby, that's Angie and Steve. That's Andrew, so hey, hey, hey. All of 'em then they'll go about their way, so not to my knowledge. If I asked you a month later, have you met Pete or Bobby or, your, I don't know. I mean really, I don't, I don't think I have, so not to my knowledge.

Cretors: Has Reggie ever ...

Ragsdale: And certainly it sounds like you certainly don't recall meeting them.

McNair: Don't recall ever meeting them.

Ragsdale: Okay. What about speaking with him?

McNair: No.

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Cretors: With either Lake or Michaels?

McNair: No.

Ragsdale: Have you ever met David Caravants?

McNair: I don't remember.

Ragsdale: Have you ever talked with David Caravants?

McNair: No.

Cretors: Not to your knowledge or never?

McNair: Never. Can I ask a quick question?

Cretors: Yes.

McNair: Who's David Caravants?

[Laughter]

McNair: No, I'm serious.

Cretors: He's an agent.

McNair: No. I've never heard of him.

Cretors: And just so I'm clear, never met him and you can state definitively that you never met him but with Michaels, only not to your knowledge?

McNair: I've never, well, I never heard of [inaudible], no.

Barker: There's a difference because in the news stories you've read about Lake to Michaels you know their names but Caravants you don't recall ever ...

McNair: I never, I never, I never heard that. I never heard that, the David Caravants.

Barker: So you've heard of Lloyd Lake and Michael Michaels but you never heard of David Caravants?

McNair: Yeah. I'm aware that, that, that either Lake or Michaels, one of them said that they met me, I'm aware of that. I don't recall meeting them.

Bendell: Okay.

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McNair: So I mean, so, in actuality, I don't recall meeting the Caravants guy either. I'm just aware that with Michaels and Lake, you know, either one or the other had said that they met me or somethin' so, but, so, not to my knowledge. The same with Caravants, the same answer.

McNair Transcript at 28-29 and 26-28.

Both Bush and McNair deny that they ever had a conversation about Bush's relationship with Lake or New Era. As set out in detail in response to Allegation 1, Lake claims he spoke to McNair at the Faulk party about "starting a sports company and if he knew any athletes....to send them our way basically." But Lake did not claim that he told McNair about his relationship with Bush or about Bush's involvement in New Era. Lake's claim that Bush told McNair about the hotel room is contradicted by McNair, Bush, Augustin and Lake's girlfriend who said Lake did not meet McNair until October 2005. There simply is no credible evidence that McNair was lying when he said Bush never told him about his relationship with Lake or New Era.

Concerning the second part of the allegation, the *only* evidence that McNair *may have* met or spoken to Lake is:

- Three one-minute calls from McNair to Lake's phone late in the evening following the USC-Washington State game on October 29, 2006.
- A photograph of McNair and Faizon Love with Lake and Michaels in the background, apparently taken the same night.
- A two-minute and 32-second call from Lake's phone to McNair at 1:34 a.m. on January 8, 2006.

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Before addressing the evidence, McNair wants to underscore that he said he had neither met nor spoken to Lake *to the best of his knowledge*. McNair clearly qualified his answer to account for the possibility he had met or spoken to Lake in passing. McNair is a sociable person who is frequently in social settings where he meets many people. He is introduced to people all the time through mutual acquaintances. As a former NFL player and current coach at USC, he is well known in the Los Angeles area and many people approach him to introduce themselves. McNair does not record or keep track of every person he meets.

McNair still has no recollection of ever meeting or speaking to Lake. However, based only on the photograph referenced above, it appears that McNair was in the same club on the night of October 29, 2005, and certainly may have been introduced to Lake. However, a brief public meeting does not constitute a violation of NCAA legislation nor does not it prove that McNair was lying when he said he had not met or spoken to Lake to the best of his knowledge.

Three One Minute Calls on October 29, 2005

USC played Washington State at home on October 29, 2005. McNair's phone records show the following activity relevant to this allegation.

<u>Time</u>	<u>Call</u>	<u>Length</u>
8:42 p.m.	from Bush	2 minutes, 53 seconds
9:11 p.m.	to Bush	1 minute
9:12 p.m.	to 757-348-0069 ¹⁸	1 minute
9:13 p.m.	from 757-348-0069	1 minute
10:25 p.m.	to Bush	1 minute
10:57 p.m.	to Bush	1 minute

¹⁸ This is a Norfolk, Virginia, number, which was where then prospective student-athlete Percy Harvin lived at the time, and McNair is certain it was Harvin's cell phone number.

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11:07 p.m.	to Bush	1 minute, 41 seconds
11:39 p.m.	to Lake	1 minute
11:52 p.m.	to Lake	1 minute
11:56 p.m.	to Bush	1 minute
11:56 p.m.	to Lake	1 minute

While McNair does not have a clear recollection of making the calls, he is certain he was attempting to communicate with Bush about hosting then prospective student-athlete Percy Harvin. Harvin was one of the top prospects in the nation and Bush was assigned to host him during the afternoon and evening following the Washington State game on October 29, 2005.

The game started at 12:30 p.m. Following the game, Harvin and the other recruits were hosted at a barbeque outside the stadium. Harvin said he then returned to his hotel between 7 and 8 p.m. because Bush had to do something with his family. Harvin then waited for Bush to retrieve him and take him out to a party. Harvin said he waited several hours and Bush finally arrived sometime close to midnight. Harvin said Bush then took him to a club where they stayed for a couple hours before Harvin asked to be taken back to his hotel. Harvin said Bush was with him the entire time and he did not recall seeing McNair at the club.

When the staff questioned McNair about the calls to Bush and Lake's phone the night of October 29, McNair repeatedly said he was probably checking in on Bush because Bush was probably hosting a recruit. That is not unusual for McNair and he was particularly vigilant the night of October 29 because Harvin was one of the top recruits in the country. No one involved in the interview knew at the time whether Bush was, in fact, hosting a recruit and no one suggested that possibility; McNair volunteered it on his own. In fact, the enforcement staff discounted

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McNair's explanation and said it was quite confident that Bush was not hosting a prospect that night. The staff was wrong and McNair was right.¹⁹

McNair believes he called Lake's number because Bush must have told him to try to reach him on that number, perhaps because the battery in Bush's cell phone was low or dead. In fact, according to Lake, he took Bush out for dinner and then shopping during the time Harvin was back at the hotel waiting for Bush to return to take him out. Thus, Bush was with Lake when McNair was trying to reach him. Moreover, the calls to Bush and to Lake's phone stopped just before midnight which is about when Harvin said Bush finally returned to the hotel to take him out to the club.

Given this backdrop, McNair's explanation for the calling pattern is not only plausible, it is exactly what occurred. McNair was not calling Lake's number to speak with Lake; he called Lake's number to get in contact with Bush and make sure he was fulfilling his responsibility to host Harvin. As soon as Bush picked up Harvin from the hotel, the calls to both Bush and Lake stopped. Thus, the three one minute calls to Lake's phone on October 29, 2005, do not refute McNair's statement that he had not met or spoken to Lake to the best of his knowledge.

¹⁹ This is not the only time the staff engaged in questionable tactics during McNair's interview. Twice during McNair's February 15, 2008, interview the staff asked McNair to explain why Lake was in "your locker room" following the Washington State game on October 29, 2005. First, it is not McNair's locker room and he does not control who is given access; it is USC's locker room and USC controls who is allowed to enter. Second, and more importantly, Lake had already told the staff that Bush arranged for his access – McNair had nothing to do with it and was not even aware Lake was in the locker room. The staff knew this but nonetheless badgered McNair by repeatedly suggesting McNair was responsible for Lake having gained access to the USC locker room.

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Photograph of McNair, Love, Lake and Michaels

McNair was out at clubs with his friend, Faizon Love, the night of October 29. It is not unusual for McNair to go to clubs with friends and McNair has no specific recollection of where they went or what they did the night of October 29. As far as McNair recalls, that night was no different than any other night spent out with friends. McNair also does not recall meeting Lake or having his picture taken with Love, Lake and Michaels. However, the photograph does not prove that McNair lied when he said he never met or spoke to Lake to the best of his knowledge.²⁰

It is not uncommon for McNair—or many people—to pose for pictures with friends and friends of friends while at clubs, parties or other social gatherings. Since electronics manufacturers started equipping cell phones with cameras, taking photographs in public has become commonplace. Appearing in a photograph taken at a social public gathering does not denote a close or special relationship between the people in the photograph.

The record concerning the photograph of McNair, Love, Lake and Michaels does not establish anything more than that the four men appear in the same photograph. The staff's interview of Lake does little to enlighten the circumstances surrounding the photograph or what interaction, if any, occurred between McNair and Lake.²¹ For example, the staff never asked Lake:

²⁰ Like USC, McNair questions whether the photograph has been altered. McNair incorporates here UCS's objections to the photograph.

²¹ As stated above, USC representatives were not permitted to participate in Lake's interview.

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- To describe the circumstances surrounding the photograph including why was it taken, where was it taken, what time was it taken and who took it.
- To describe what conversation, if any, took place between him and McNair that night.

Without this information, the record shows only that Lake and McNair were in the same photograph on the night of October 29. The record does not refute McNair's statement that he does not recall meeting or speaking to Lake. Thus, the staff has not met its burden of proof to show that McNair knowingly provided false and misleading information when he stated that to his knowledge, he had neither met nor spoken to Lake.

Two Minute and 23 Second Call on January 8, 2006

This call is discussed extensively in response to Allegation 1.b(3) and McNair incorporates that discussion here by reference.

The information Lake reported about this call is demonstrably false. Lake said McNair called him to intercede in the dispute with Bush but the phone records prove that did not happen. Rather, it was Lake who called McNair. Lake's entire description of the call makes no sense. It is not credible.

McNair has no recollection of the call and there is no reason he should remember it. It was a two minute call late at night when McNair probably was sleeping or trying to sleep. Lake probably called to talk to McNair about Bush's decision to go pro and who Bush would retain as his agent.

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There is no reason McNair would have or should have remembered such a call; Bush had just won the Heisman Trophy and many people were pursuing him.

Finally, the staff misled McNair about the call when they told him the call occurred in January 2005. The staff never went back to McNair to correct its mistake. Instead, it brought two unethical conduct charges against McNair based on a response to a misleading question. The record is simply too confused and unreliable to support a finding that McNair lied when he said he never spoke to Lake to the best of his knowledge.

CONCLUSION

The allegations directed at McNair are without merit. They are based on information that is not credible, not reliable and not persuasive. For all of the reasons stated above, the Committee should dismiss the allegations.