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The Committee on Infractions Sets the Standard of Care for College Athletics Administrators Regarding Potential NCAA Rules Violations

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INTRODUCTION

An athletics director holds the most prestigious position in college athletics.¹ Athletics directors primarily concern themselves with issues like fundraising, coaching contract decisions, and NCAA rules compliance.² In fact, an athletics director's most important responsibility may be maintaining and ensuring compliance with NCAA rules.³

However, the NCAA Committee on Infractions ("COI"), which adjudicates most cases where the NCAA has accused a college athletics coach or staff member of an NCAA violation, recently made clear that athletics directors do not enjoy complete autonomy and discretion in determining NCAA violations on their campuses.⁴ The COI did so in a case stemming from the federal investigation into corruption in men's college basketball.⁵ One of Creighton University's then-assistant men's basketball coaches, Preston Murphy, met with, accepted money from, and returned the money to, a third party implicated in the scheme.⁶ After learning about the meeting and money changing hands,

¹ Glenn M. Wong et al., *NCAA Division I Athletic Directors: An Analysis of the Responsibilities, Qualifications and Characteristics*, 22 JEFFREY S. MOORAD SPORTS L.J. 1, 3 (2015) (describing an athletics director as a general manager of a portfolio of sports teams).

² *Id.* (explaining that athletics directors differ from their counterparts in professional sports, whose primary concerns include salary caps, player contract negotiations, drafts, and free agency).

³ *Id.* at 12 (noting vast number of NCAA rules "that, although designed to ensure fairness and to protect the tenets of amateurism, can also come across as silly and counterintuitive").

⁴ There are four means by which an infractions case involving a Division I member university resolves, and three of them conclude with a COI decision. NCAA, INSIDE THE DIVISION I INFRACTIONS PROCESS: WHO'S WHO IN THE INFRACTIONS PROCESS (2019), http://ncaa.org.s3.amazonaws.com/infractions/d1/glnccgrphes/D1INF_InfractionWhoisWho.pdf [<https://perma.cc/3D52-FXV3>] [hereinafter NCAA, WHO'S WHO IN INFRACTIONS] (describing individuals and their roles in the infractions process).

⁵ See COMM. ON INFRACTIONS, NCAA, CREIGHTON UNIVERSITY PUBLIC INFRACTIONS DECISION, 1 (2021), <http://web3.ncaa.org/lstdbi/search/miCaseView/report?id=102916> [<https://perma.cc/WC7G-RWQG>] [hereinafter CREIGHTON CASE] (describing broader scheme as involving money and influence at the intersection of collegiate and professional basketball).

⁶ See *id.* at 7 (noting that the assistant coach admitted his "colossally bad judgment" in attending the meeting). Creighton placed Murphy on administrative leave in March 2019

Creighton's long-time and well-respected athletics director, Bruce Rasmussen, unilaterally investigated and concluded that Murphy's actions did not violate NCAA rules.⁷ Rasmussen kept the information about Murphy to himself until March 2019, when the federal government issued a superseding indictment that specifically referenced both the assistant coach and Creighton.⁸

The enforcement staff alleged that Rasmussen's failure to report Murphy's actions constituted a Level I violation of NCAA rules.⁹ This is the NCAA's most severe violation categorization.¹⁰ When it adjudicated the case, the COI had to determine whether Rasmussen's actions, or lack thereof, violated NCAA legislation.¹¹ The COI

after a federal indictment implicated him in the college men's basketball bribery scandal. 6 Sports, *Creighton Assistant Preston Murphy Resigns*, WOWT (Nov. 22, 2019), <http://wowt.com/content/news/Creighton-Assistant-Preston-Murphy-Resigns-565361781.html> [https://perma.cc/NV68-YLQR]. Murphy resigned in November 2019. See *id.*

⁷ See CREIGHTON CASE, *supra* note 5, at 10 (noting that the athletics director did not share this information with any other Creighton official including its athletics compliance director, its general counsel, or his supervisor, Creighton's president). Rasmussen retired in August 2021, concluding a 27-year term as Creighton's athletics director, during which he received Under Armour's Athletic Director of the Year award four times and served a term on the esteemed NCAA Division I Men's Basketball Selection Committee. See Rob Anderson, *Athletic Director Bruce Rasmussen Announces Retirement Date*, CREIGHTON ATHLETICS (July 19, 2021), <http://gocreighton.com/news/2021/7/19/creighton-athletics-athletic-director-bruce-rasmussen-announces-retirement-date.aspx> [https://perma.cc/4UEZ-MYBD]. Case decisions written by the COI do not identify involved individuals' names. However, media has identified Murphy and Rasmussen as the involved individuals. For example, see Tom Shatel, *Shatel: A Stain on Creighton's Reputation—That Didn't Have to Happen*, OMAHA WORLD-HERALD (June 22, 2021), http://omaha.com/sports/college/creighton/shatel-a-stain-on-creightons-reputation-that-didnt-have-to-happen/article_ed2c900e-d38b-11eb-9e97-8b32876bc848.html [https://perma.cc/J4YF-X2A5].

⁸ See CREIGHTON CASE, *supra* note 5, at 10 (noting the compliance director stated it was "not typical" for the athletics director to receive information about a potential NCAA violation and not share it).

⁹ See *id.* at 14.

¹⁰ As part of a larger overhaul to its enforcement processes effective August 2013, the NCAA introduced a four-tier rules violation hierarchy under which rules violations range from severe breaches of conduct (Level I) to incidental infractions (Level IV). NCAA MEDIA CENTER, *New Violation Structure Introduced*, NCAA (Aug. 1, 2013), <http://ncaa.org/about/resources/media-center/news/new-violation-structure-introduced> [https://perma.cc/B9KW-B79Q]. Note the NCAA has since eliminated the Level IV classification of rules violations. See *Division I Proposal 2017-7*, NCAA, <http://web3.ncaa.org/lstdb/search/proposalView?id=100647> [https://perma.cc/38J5-LT92] (last visited Mar. 3, 2021) (identifying efficiency as the rationale for elimination since many member universities inappropriately treated and processed Level IV violations as Level III violations).

¹¹ See CREIGHTON CASE, *supra* note 5, at 14 (explaining that the enforcement staff alleged that Rasmussen's failure to report constituted a Level I violation, an allegation that both Creighton and Rasmussen disputed).

concluded that Rasmussen's actions in fact constituted an NCAA violation, albeit only a Level II violation.¹² In doing so, the COI examined Rasmussen's actions under a reasonableness standard and emphasized an individual's duty to report potential violations to other administrators and/or the NCAA—even when that individual holds the athletics department's highest-ranking position.¹³

Creighton's infractions received substantial publicity, but many headlines focused on Murphy's violations.¹⁴ However, this Article suggests that college athletics administrators and university administrators with responsibilities within athletics should also familiarize themselves with the COI's conclusion that Rasmussen violated NCAA legislation—as it effectively sets the standard of care for situations where they may learn of potential NCAA rules violations.¹⁵ Whether an athletics administrator's exercise of discretion in determining whether a staff member committed an NCAA violation can itself constitute an NCAA violation for the athletics administrator was a case of first impression for the COI.¹⁶ The fact that the COI concluded that an administrator, especially one of Rasmussen's stature, violated NCAA legislation should give other administrators pause,

¹² See *id.* at 16 (emphasizing that Creighton officials had utilized a group approach in investigating issues pertaining to its men's basketball program until Rasmussen departed from the approach by conducting a unilateral and insulated investigation). Level I and Level II violations are “severe” and “significant” conduct breaches, respectively, and replace what were formerly referred to as “major” violations. See *NCAA MEDIA CENTER*, *supra* note 10.

¹³ See *CREIGHTON CASE*, *supra* note 5, at 15–17.

¹⁴ See e.g., Matt Norlander, *NCAA Penalizes Creighton Basketball Program for Violations Tied to Former Assistant Coach in FBI Probe*, CBS SPORTS (June 22, 2021, 11:50 AM), <http://cbssports.com/college-basketball/news/ncaa-penalizes-creighton-basketball-program-for-violations-tied-to-former-assistant-coach-in-fbi-probe/> [https://perma.cc/6TR4-PLSC]; see also Paula Lavigne & Myron Medcalf, *Ex-Creighton Bluejays Men’s Basketball Assistant Preston Murphy Gets Show-Cause Penalty; Program Put on Two Years’ Probation*, ESPN (June 22, 2021), https://www.espn.com/mens-college-basketball/story/_/id/31686732/ex-creighton-bluejays-men-basketball-assistant-preston-murphy-gets-show-cause-penalty-program-put-two-years-probation [https://perma.cc/4UEZ-MYBD].

¹⁵ Many university administrators work outside the athletics department but have responsibilities having to do with student-athletes and/or the athletics department. Examples include individuals who work in the financial aid office, the registrar’s office, the admissions office, and the provost’s office.

¹⁶ For its statement that the COI has previously concluded NCAA violations occurred when involved individuals failed to timely meet obligations related to developing potential infractions-related information, the COI cited to a case involving a volunteer *coach* and a “curriculum secretary,” neither of whom were athletics administrators. See *CREIGHTON CASE*, *supra* note 5, at 16–17. In fact, the citation to the case involving the curriculum secretary is peculiar, as her actions—initially refusing to participate in the investigation but eventually changing course—are completely different from Rasmussen’s.

illustrating the need to act cautiously with any knowledge of potential NCAA violations.

Part I of this Article describes the NCAA’s infractions process. Part II provides further analysis of, and takeaways from, Creighton’s case. Part III briefly concludes.

I THE NCAA DIVISION I INFRACTIONS AND ENFORCEMENT PROCESSES

To appreciate what the Creighton infractions case means for college athletics administrators and university officials with athletics responsibilities, it is necessary to have some understanding of the NCAA’s enforcement and infractions processes. This section describes these processes.

A. The NCAA Division I Infractions Process

The NCAA describes itself as a member-led organization that consists of over a thousand colleges and universities.¹⁷ Through the NCAA’s legislative process, its member universities propose and adopt rules regarding college athletics and implement them on campus.¹⁸ The NCAA notoriously does not lack for rules. For example, one such rule in the NCAA Division I Manual defines the term “business day” while others regulate when and how often coaches can call or write prospective student-athletes or even answer incoming calls from them.¹⁹

¹⁷ *What Is the NCAA?*, NCAA, <http://ncaa.org/about/resources/media-center/ncaa-101/what-ncaa> [https://perma.cc/AV2J-FZU7] (last visited Feb. 28, 2021) (providing basic information regarding the NCAA). The author acknowledges, yet avoids, contributing to the trend of criticizing the overall infractions process and structure. For a similar discussion, see Mike Rogers & Rory Ryan, *Navigating the Bylaw Maze in NCAA Major-Infractions Cases*, 37 SETON HALL L. REV. 749, 751 (2007) (referencing, for example, “the many procedural differences in NCAA enforcement proceedings” compared with the United States court system).

¹⁸ *Id.* (noting these rules include “everything from recruiting and compliance to academics and championships”).

¹⁹ NCAA, 2020-21 DIVISION I MANUAL §§ 13.02.1, 13.1.3, & 13.4.1 (2020), <http://ncaa-publications.com/productdownloads/D121.pdf> [https://perma.cc/3Y88-G5M4] [hereinafter MANUAL]. Division I is the highest division in NCAA’s structure. Wong, et al., *supra* note 1, at 5.

NCAA member universities and staff members that abide by NCAA legislation should not be disadvantaged by so doing.²⁰ Thus, NCAA member universities created the infractions process to help ensure fair play and integrity among members.²¹ One group of NCAA employees in particular bears this responsibility: the NCAA's enforcement staff ("enforcement staff").²² The enforcement staff consists of a few dozen individuals, including²³ former coaches, campus administrators, compliance staff members, student-athletes, and attorneys.²⁴

Many have described the enforcement staff as the NCAA's prosecutor.²⁵ It is the NCAA entity responsible for reviewing information about potential violations.²⁶ The enforcement staff receives information regarding potential rule violations from many sources (e.g., self-reports or third-party sources).²⁷ If a situation warrants further investigation, the enforcement staff issues a notice of inquiry to the involved member university and works with it to discover

²⁰ See Elizabeth Lombard, *Changes Are Not Enough: Problems Persist with NCAA's Adjudicative Policy*, 95 NOTRE DAME L. REV. 925, 928 (2019) (describing purpose of NCAA's infractions process).

²¹ See *Division I Infractions Process*, NCAA, <http://ncaa.org/enforcement/division-i-infractions-process> [https://perma.cc/KF2K-3BYD] (last visited Feb. 28, 2021) [hereinafter *Division I Infractions Process*] (illustrating the four means by which an infractions case involving a Division I member university resolves, and that three of them end with COI decisions). The author acknowledges, yet avoids, contributing to the trend of criticizing the overall infractions process and structure. For a similar discussion, see Mike Rogers & Rory Ryan, *Navigating the Bylaw Maze in NCAA Major-Infractions Cases*, 37 SETON HALL L. REV. 749, 751 (2007) (referencing, for example, "the many procedural differences in NCAA enforcement proceedings" compared with the United States court system).

²² See NCAA, DIVISION I INFRACTIONS 2019–20 ANNUAL REPORT 9 (2020), https://ncaaorg.s3.amazonaws.com/infractions/d1/2019D1Inf_AnnualReport.pdf [https://perma.cc/A5NV-T2MR] [hereinafter 2019–20 ANN. REP.] (describing the enforcement staff's role in the infractions process).

²³ Evaluations Show Infractions Process Improvements, NCAA (Aug. 1, 2016), <http://ncaa.org/about/resources/media-center/news/evaluations-show-infractions-process-improvements> [https://perma.cc/97US-TRUF] (describing efforts to improve infractions process and noting the enforcement staff consisted of 57 individuals in 2016).

²⁴ NCAA, WHO'S WHO IN INFRACTIONS, *supra* note 4.

²⁵ See Timothy Davis & Christopher T. Hairston, *Majoring in Infractions: The Evolution of the National Collegiate Athletic Association's Enforcement Structure*, 92 OR. L. REV. 979, 988 (2014) (describing the enforcement staff's actions to include presenting information to support allegations of rules infractions to the COI); see also Rogers & Ryan, *supra* note 17, at 753–54 (noting that enforcement staff members are full-time NCAA employees).

²⁶ See *Division I Infractions Process*, *supra* note 21.

²⁷ NCAA, INSIDE THE INFRACTIONS PROCESS: PATHS FOR HANDLING POTENTIAL VIOLATIONS (2020), http://ncaaorg.s3.amazonaws.com/infractions/d1/glnr_grphcs/D1INF_ResolutionPathsforViolations.pdf [https://perma.cc/RN7C-STVE] (illustrating various resolution paths for potential violations).

the facts.²⁸ By sending a notice of inquiry to the university, the enforcement staff signals the commencement of a formal, joint investigation of and with the university.²⁹ The enforcement staff must review information regarding potential violations in a fair, accurate, collaborative, and timely manner.³⁰

If the enforcement staff believes the information may substantiate violations, it alleges potential Level I or Level II violations (Level I is the more significant of the two).³¹ The enforcement staff makes its allegations in a formal document directed to the university called a notice of allegations (“NOA”).³² The enforcement staff bears the burden of proving these violations.³³

There are four means by which an infractions case involving a Division I member university resolves, and three of them conclude with a decision by the COI.³⁴ The COI is an independent administrative body that includes volunteers from NCAA member universities and conferences, as well as individuals with legal training from the general public.³⁵ More specifically, COI members’ professional profiles include current and former university presidents and chancellors, athletics directors, conference commissioners, former NCAA coaches,

²⁸ See *Division I Infractions Process*, *supra* note 21.

²⁹ See Jerry R. Parkinson, *Scoundrels: An Inside Look at the NCAA Infractions and Enforcement Processes*, 12 WYO. L. REV. 215, 226 (2012) (explaining that the investigation will go “wherever else the evidence leads”). The notice of inquiry is not an allegation; rather, it informs the university of a formal investigation. Rogers & Ryan, *supra* note 17, at 765.

³⁰ See 2019–20 ANN. REP., *supra* note 22, at 9 (characterizing trust and collaboration between the enforcement staff, universities, and conferences as “vital” to the process).

³¹ See *id.* at 6–7 (providing overview of infractions process). There are three levels of violations. See *id.* at 5. The COI will hear and determine cases involving alleged Level I and II violations, whereas, for the most part, the enforcement staff and universities handle Level III violations. *Id.* at 9. For context, the enforcement staff alleged an average of ninety-one Level I or II violations per year between 2017 and 2019. See *id.* at 11 (providing data regarding enforcement staff allegations). For further context, the COI hosted six hearings over disputed allegations in 2019. See *id.* at 12.

³² Parkinson, *supra* note 29, at 226 (explaining that the enforcement staff directs the notice to the university’s president or chancellor).

³³ *Id.* at 224 (noting that the COI has concluded that the enforcement staff has not met its burden “plenty” of times).

³⁴ See *Division I Infractions Process*, *supra* note 21 (providing an illustration showing that three of the four means through which the process resolves allegations involve the COI).

³⁵ *Division I Committee on Infractions*, NCAA, <http://ncaa.org/governance/committees/division-i-committee-infractions> [<https://perma.cc/WV3A-YKGU>] (last visited Dec. 21, 2020) (describing COI).

and professors.³⁶ Thus, the COI touts the infractions process as peer reviewed.³⁷ There are up to twenty-four COI members at any given time, a smaller panel of which considers each case on the COI's behalf.³⁸

If the university and any other parties (e.g., coaches) agree with the enforcement staff on the facts, violations, level(s) of violations, and penalties, the enforcement staff and parties may pursue "negotiated resolution" to resolve the matter.³⁹ The enforcement staff and parties draft a report and submit it to the COI for review.⁴⁰ The COI reviews the appropriateness of the parties' agreed-upon penalties.⁴¹

When the parties agree to the facts and violation level but disagree on penalties, they may elect to forgo participating in a COI hearing and attempt to resolve their case via the "summary disposition track."⁴² When doing so, the enforcement staff, university, and any individual subject to a violation charge submit a report to the COI.⁴³ If the COI accepts the report, it issues penalties.⁴⁴ However, the COI may reject

³⁶ See NCAA, INSIDE THE DIVISION I INFRACTIONS PROCESS: DIVISION I COMMITTEE ON INFRACTIONS COMPOSITION (2019), http://ncaaorg.s3.amazonaws.com/infractions/d1/glnc_grphcs/D1INF_COIComposition-FactSheet.pdf [https://perma.cc/N62F-7PQC] [hereinafter INSIDE: DIVISION I COMMITTEE ON INFRACTIONS COMPOSITION] (noting that a panel's size is between three and seven COI members for each case).

³⁷ See 2019–20 ANN. REP., *supra* note 22, at 5 (describing framework of infractions process). For a discussion regarding the benefits of judgment by peers, see Gene A. Marsh, *A Call for Dissent and Further Independence in the NCAA Infractions Process*, 26 CARDOZO ARTS & ENT. L.J. 695, 709 (2009) (recommending, among other things, the inclusion of more independent members on COI).

³⁸ See INSIDE: DIVISION I COMMITTEE ON INFRACTIONS COMPOSITION, *supra* note 36.

³⁹ *Division I Infractions Process*, *supra* note 21 (describing means of resolving infractions cases).

⁴⁰ *Id.* (noting there is no opportunity to appeal a negotiated resolution).

⁴¹ NCAA, INSIDE THE DIVISION I INFRACTIONS PROCESS: NEGOTIATED RESOLUTION (2019), http://ncaaorg.s3.amazonaws.com/infractions/d1/glnc_grphcs/D1INF_InfractionsProcessNegotiatedResolution-FactSheet.pdf [https://perma.cc/PP7F-Q9LP] (describing the negotiated resolution track).

⁴² See NCAA, INSIDE THE DIVISION I INFRACTIONS PROCESS: INFRACTIONS PROCESS OVERVIEW (2019), http://ncaaorg.s3.amazonaws.com/infractions/d1/glnc_grphcs/D1INF_InfractionsProcessOverview-FactSheet.pdf [https://perma.cc/5GXK-77V3] [hereinafter INSIDE: INFRACTIONS PROCESS OVERVIEW] (illustrating different paths to resolve infractions cases). The summary disposition process should be streamlined and cooperative. Edward O'Brien, *NCAA Announces Results of Its Investigation into UM's Athletics Department*, MONT. PUB. RADIO (Jul. 26, 2013, 10:17 AM), <http://mtp.org/montana-news/2013-07-26/ncaa-announces-results-of-its-investigation-into-ums-athletics-department> [https://perma.cc/6FA8-JGN5] (quoting University of Montana President Royce Engstrom following the University's summary disposition case).

⁴³ See INSIDE: INFRACTIONS PROCESS OVERVIEW, *supra* note 38.

⁴⁴ *See id.*

the report and order a full hearing if it feels the enforcement staff failed to allege a pertinent violation.⁴⁵

In cases involving disputed allegations, a panel of COI members conducts a hearing and determines whether the enforcement staff's allegations are accurate and, if so, imposes penalties on the involved university and any staff member(s) accordingly.⁴⁶ The COI also has the authority to conclude that violations occurred even when the enforcement staff did not allege them.⁴⁷ A COI hearing combines elements of a legal trial, an administrative agency hearing, and an academic misconduct hearing on a university campus.⁴⁸

In summary disposition or contested cases, the COI follows NCAA member-legislated guidelines when issuing penalties.⁴⁹ “The penalties range from financial penalties and vacation of records to [athletics] scholarship reductions and postseason bans.”⁵⁰ The COI ultimately produces a written decision detailing the facts, violations, and penalties.⁵¹ A law review article co-authored by former COI Vice Chair Gene Marsh describes the COI as “the thousand pound gorilla, with the final word in the case.”⁵²

⁴⁵ See NCAA, DIVISION I COMMITTEE ON INFRACTIONS: INTERNAL OPERATING PROCEDURES, §§ 4-10-2-3, 4-10-3 (July 20, 2021), http://ncaaorg.s3.amazonaws.com/committees/d1/infraction/D1COI_IOPs.pdf [<https://perma.cc/BJW3-CAEF>] [hereinafter INTERNAL OPERATING PROCEDURES].

⁴⁶ See *Division I Infractions Process*, *supra* note 21.

⁴⁷ See INTERNAL OPERATING PROCEDURES, *supra* note 45, § 5-12.

⁴⁸ See Gene Marsh & Marie Robbins, *Weighing the Interests of the Institution, the Membership and Institutional Representatives in an NCAA Investigation*, 55 FLA. L. REV. 667, 678 (2003) (describing a COI hearing as “a unique process”). For a comparison between NCAA infractions proceedings and legal proceedings, see Rogers & Ryan, *supra* note 17, at 754–61. The COI affirms a staggering ninety-three percent of the enforcement staff’s allegations. JON DUNCAN, NCAA, ENFORCEMENT SELF-STUDY OPERATIONS AND COMPLIANCE 7 (2019), http://ncaaorg.s3.amazonaws.com/infractions/guides/2019ENF_SelfStudyOperComp.pdf [<https://perma.cc/V9MJ-HHEL>] (contending that this data shows that the enforcement staff makes well-supported charges). This has led some to question the COI’s neutrality and describes the COI as an arm of the enforcement staff that will not deviate from the enforcement staff’s recommendations. See Davis & Hairston, *supra* note 25, at 993 (pointing out that such accusations are difficult to substantiate).

⁴⁹ See 2019–20 ANN. REP., *supra* note 22, at 15 (describing penalty guidelines as increasingly serious).

⁵⁰ Nathaniel Richards, *The Judge, Jury, and Executioner: A Comparative Analysis of the NCAA Committee on Infractions Decisions*, 70 ALA. L. REV. 1115, 1116 (2019) (citing relevant NCAA legislation).

⁵¹ 2019–20 ANN. REP., *supra* note 22, at 22.

⁵² See Marsh & Robbins, *supra* note 48, at 677 (describing COI’s vast authority in cases that a party does not appeal).

Finally, the enforcement staff, member universities, and other parties to an infractions case may choose to resolve a disputed case through the independent accountability resolution process (“IARP”).⁵³ The IARP was created in August 2019 and seeks to draw on the expertise of independent experts—with no university affiliation—to review, hear, and decide select “complex” Division I cases.⁵⁴ Complex cases may include those involving allegations of core NCAA values, such as failing to prioritize academics or student-athlete well-being, the possible imposition of significant penalties, or conduct that is contrary to the NCAA’s cooperative principles.⁵⁵ Universities, the COI chair, or the vice president of the enforcement staff may request the independent review of a case.⁵⁶ The University of Louisville, University of Arizona, Louisiana State University, University of Kansas, and North Carolina State University chose to resolve recent cases involving their men’s basketball programs through the IARP.⁵⁷

B. Athletics Directors and the Application of NCAA Rules

Athletics directors are full-time administrators who oversee their respective university’s athletics enterprises.⁵⁸ Their jobs are 24/7, and their responsibilities may include negotiating multimillion-dollar media and licensing rights agreements, managing highly paid coaches, acting as fundraising and development specialists, balancing budgets, and mastering applicable compliance standards.⁵⁹

While ultimate responsibility lies with an athletics director, it is essential that an athletics department possess a strong compliance department.⁶⁰ The overall mission and everyday task of a university compliance department is to keep the athletics department and student-

⁵³ See *Division I Infractions Process*, *supra* note 21.

⁵⁴ *Independent Accountability Resolution Process*, IARP, <http://iarpc.org> (last visited Sept. 13, 2021) (describing IARP).

⁵⁵ *Id.*

⁵⁶ *Id.* (noting the Infractions Referral Committee reviews the request for referral).

⁵⁷ *IARP*, NCAA, <http://ncaa.org/themes-topics/iarp> [<https://perma.cc/X5DK-FGLC>] (last visited Mar. 1, 2021) (providing links to IARP-related stories).

⁵⁸ Martin J. Greenberg & Alexander W. Evrard, *Athletics Directors*, 26 MARQ. SPORTS L. REV. 735, 735–36 (2016) (explaining that athletics directors’ profiles may not loom as large as their head men’s basketball or football coaches, but they have enhanced their public profile).

⁵⁹ See *id.* at 736 (referring to an athletics director’s job as “more sophisticated and pedigreed” because it requires experience and more formalized education).

⁶⁰ Wong et al., *supra* note 1, at 12–13.

athletes compliant with NCAA rules.⁶¹ Most, if not all, NCAA member universities have a compliance department.⁶² However, the responsibility of maintaining and ensuring compliance with NCAA rules still falls on athletics directors.⁶³

While they are responsible for the compliance of athletics departments and enjoy significant prestige and power, athletics directors' actions are not above NCAA rules.⁶⁴ Several NCAA bylaws impose requirements on all athletics department staff members:

- Bylaw 10.1(a)'s requirement that, in relevant part, athletics department staff members furnish information relevant to investigations of possible NCAA violations upon the NCAA's or a university's request;⁶⁵
- Bylaw 11.1.1's statement that university staff members who fail to abide by NCAA regulations are subject to disciplinary or corrective actions;⁶⁶ and
- Bylaw 11.2.1's requirement that contractual agreements between universities and their staff members, such as athletics directors, include stipulations that the individuals fully cooperate with NCAA investigations and are subject to discipline and corrective actions when they violate NCAA rules.⁶⁷

A review of COI decisions shows that the COI has concluded, albeit infrequently, that athletics directors were involved in NCAA rules violations. For example, in 2011, the COI concluded that the athletics director of Georgia Institute of Technology ("Georgia Tech") violated

⁶¹ See *id.* (noting that this includes ensuring student-athletes are eligible, that their universities' recruitment of student-athletes was appropriate, and that student-athletes refrain from accepting impermissible benefits).

⁶² *Id.*

⁶³ *Id.* (identifying that an athletics director's most important responsibility is maintaining and ensuring compliance with NCAA rules).

⁶⁴ Athletics directors' salaries reflect their extreme value to their universities. A 2020 study showed that the average annual compensation for an Autonomy 5 Conference (Southeastern, Big Ten, Pac-12, Big 12, and Atlantic Coast) athletics director exceeds \$1,000,000. See Robert Lattinville & Roger Denny, 2020 *FBS Athletics Directors' Compensation Survey*, ATHLETICDIRECTORU, <http://athleticdirectoru.com/articles/2020-fbs-athletics-directors-compensation-survey/> [https://perma.cc/2LTG-HNK9] (procuring, analyzing, and summarizing NCAA Football Bowl Subdivision athletics directors' employment contracts).

⁶⁵ MANUAL, *supra* note 19, § 10.1(a).

⁶⁶ See *id.* § 11.1.1.

⁶⁷ See *id.* § 11.2.1 (explicitly stating that the regulation applies to presidents or chancellors and athletics directors). Most, if not all, Division I athletics directors have employment contracts with their universities. See Lattinville & Denny, *supra* note 64.

NCAA rules when he shared with the university's head football coach information about an NCAA investigation regarding a football student-athlete's potential impermissible interactions with a sports agent.⁶⁸ The football coach then discussed the matter with a student-athlete whom the enforcement staff sought to interview.⁶⁹ This may have tainted the student-athlete's testimony in the enforcement staff's interview.⁷⁰ As a result, the COI cited Georgia Tech for a failure to cooperate with an NCAA investigation.⁷¹ The COI imposed several penalties, including a requirement that the athletics director attend an NCAA Regional Rules Seminar.⁷²

II

ANALYSIS OF, AND TAKEAWAYS FROM, CREIGHTON'S MAJOR INFRACTIONS CASE

A. Background and Relevant Facts

1. Procedural Background

In September 2017, the United States Attorney's Office for the Southern District of New York filed a criminal complaint detailing a bribery scheme in men's college basketball.⁷³ The charges pulled back the curtain on the sport's seedy recruiting underworld.⁷⁴ The investigation implicated coaches for prominent men's college

⁶⁸ See COMM. ON INFRACTIONS, NCAA, GEORGIA INSTITUTE OF TECHNOLOGY PUBLIC INFRACTIONS REPORT 8 (2011), https://learn.uvm.edu/wordpress_3_4b/wp-content/uploads/Georgia-Tech-public-report.pdf (quoting the athletics director as describing his decision as "managerial" and made in the interest of maintaining "communication and trust" with the head football coach).

⁶⁹ See *id.* (noting that the enforcement staff was scheduled to interview the student-athlete regarding possible impermissible activity with a sports agent).

⁷⁰ See *id.* at 10–11 (describing the relevant timeline and student-athlete's testimony).

⁷¹ See *id.* at 7 (citing Georgia Tech with violations of NCAA bylaws 19.01.3 and 32.1.4, which required NCAA member universities' representatives to fully cooperate with the enforcement staff and to protect an investigation's integrity, respectively).

⁷² See *id.* at 20. NCAA Regional Rules Seminars provide an opportunity for employees at NCAA member universities to discuss NCAA rules, policies, and procedures; share best practices; and connect with peers. *Regional Rules Seminar*, NCAA, <http://www.ncaa.org/2021-regional-rules-seminar> (last visited Oct. 10, 2021) (providing information regarding Regional Rules Seminars).

⁷³ CREIGHTON CASE, *supra* note 5, at 3 (describing two areas of criminal charges: payments from an apparel company to prospective student-athletes and payments from an individual formerly associated with a sports agent to men's college basketball coaches).

⁷⁴ Mark Schlabach, *Your Guide to College Basketball's Ongoing NCAA Investigations*, ESPN (Nov. 6, 2020), http://espn.com/mens-college-basketball/story/_/id/30262819/your-guide-college-basketball-ongoing-ncaa-investigations [https://perma.cc/CR5C-54MR].

basketball powerhouses like Auburn University, Oklahoma State University, the University of Southern California, the University of Arizona, the University of Kansas, and the University of Louisville.⁷⁵ The investigation led to the arrests of ten men, the convictions of three, and guilty pleas from seven others.⁷⁶ The public arrests sent shock waves through college athletics.⁷⁷ Prosecutors brought charges of accepting bribes against six assistant men's basketball coaches, all of whom resigned or were fired by their respective universities.⁷⁸

The criminal complaint did not explicitly reference anyone associated with Creighton.⁷⁹ The first trial associated with the federal investigation commenced in October 2018.⁸⁰ A few days into the trial, the father of Brian Bowen, a highly-recruited, prospective student-athlete, testified that Murphy, through a sports agent's associate named Christian Dawkins, offered him \$100,000 and employment in exchange for Bowen's verbal commitment to attend Creighton.⁸¹ After federal authorities released their criminal complaint, Creighton publicized a statement mentioning that it had conducted a thorough review of its men's basketball program in 2017 and noted that neither the FBI nor the NCAA had contacted Creighton at that time.⁸²

Creighton initiated an internal inquiry regarding matters related to Bowen's father's testimony and the broader scheme.⁸³ In December 2018, the enforcement staff notified Creighton that it would pursue an inquiry into potential violations of NCAA rules regarding Bowen's father's testimony and sent Creighton a records request.⁸⁴

⁷⁵ See *id.*

⁷⁶ *Id.* Federal authorities did not arrest any Creighton employees. *Id.*

⁷⁷ CREIGHTON CASE, *supra* note 5, at 7.

⁷⁸ Schlabach, *supra* note 74 (noting that every assistant coach charged is Black).

⁷⁹ CREIGHTON CASE, *supra* note 5, at 3.

⁸⁰ *Id.*

⁸¹ See Matt Norlander, *College Basketball Corruption Trial: Brian Bowen's Father Makes Explosive Allegations Against Several Schools*, CBS SPORTS (Oct. 4, 2018, 6:27 PM), <http://cbssports.com/college-basketball/news/college-basketball-corruption-trial-brian-bowen-father-makes-explosive-allegations-against-several-schools> [https://perma.cc/V3M7-K6BM] (noting that Bowen's verbal commitment to attend the University of Louisville helped fortify federal authorities' case). The NCAA never cleared Bowen to play due to eligibility issues, and he instead began his professional career for an Australian team. *See id.*

⁸² *Id.*

⁸³ CREIGHTON CASE, *supra* note 5, at 3.

⁸⁴ *Id.*

In March 2019, the federal government filed a superseding indictment stating that Murphy was paid a bribe at a July 2017 meeting in Las Vegas in exchange for agreeing to steer certain student-athletes to Dawkins's management company.⁸⁵ On the same day that authorities filed the superseding indictment, Creighton athletics director Bruce Rasmussen informed other Creighton officials that he had previously known of Murphy's attendance at the July 2017 meeting.⁸⁶

In April 2019, the enforcement staff provided Creighton with a written notice of inquiry.⁸⁷ The enforcement staff interviewed Murphy in May 2019.⁸⁸ Murphy resigned in November 2019.⁸⁹ In December 2019, the enforcement staff sent a Notice of Allegations to Creighton, Murphy, and Rasmussen.⁹⁰

2. Murphy's and Rasmussen's Actions

Information gathered throughout the enforcement staff's investigation showed that Murphy and Dawkins grew up a few blocks from each other in Saginaw, Michigan.⁹¹ In fact, Dawkins's father served as a mentor to Murphy when Murphy was younger.⁹² Murphy later developed a close relationship with Dawkins, with Dawkins describing Murphy as his "brother."⁹³ The two remained in contact while they pursued their respective careers in basketball.⁹⁴

In June 2017, Dawkins was working for a well-known sports agent when he quit and embarked on a new endeavor: forming his own business management company.⁹⁵ Dawkins's business model included partnering with men's college basketball coaches and paying them to identify student-athletes and persuade them to sign with Dawkins's

⁸⁵ *Id.* at 3 n.5 (noting that the superseding indictment did not explicitly name Creighton or Murphy; rather, the indictment referenced them as "University-1" and "Coach-1," respectively).

⁸⁶ *Id.* at 3.

⁸⁷ *Id.*

⁸⁸ *Id.* at 4 (noting that Creighton representatives attended the interview).

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.* at 5.

⁹² *Id.* (describing the basketball nexus of Murphy's relationship with Dawkins).

⁹³ *Id.* at 5–6.

⁹⁴ *Id.* at 5.

⁹⁵ *See id.*

company.⁹⁶ During a prominent nonscholastic basketball tournament in July 2017, Dawkins set up meetings with various basketball coaches who were in attendance.⁹⁷

When Murphy was initially contacted by Dawkins to schedule a meeting, he declined.⁹⁸ However, after Dawkins warned that Murphy could lose everything, Murphy agreed to attend.⁹⁹ Murphy believed his role at the meeting was to vouch for Dawkins to Dawkins's business associates and potential advisors.¹⁰⁰ Murphy knew that management company representatives would give Murphy \$5,000 for his time, but he also claimed that Dawkins told him that he should return the \$5,000 to Dawkins immediately following the meeting.¹⁰¹

Dawkins and Murphy met in a Las Vegas hotel suite on July 28, 2017.¹⁰² Unbeknownst to them, the government recorded the meeting.¹⁰³ Murphy was relatively silent during the meeting while Dawkins and management company representatives identified specific Creighton men's basketball student-athletes and discussed Creighton's steady flow of talent.¹⁰⁴ Dawkins also noted that the group needed to determine how to provide future payments to Murphy.¹⁰⁵

Though he was relatively quiet at the meeting, Dawkins took an envelope containing \$6,000 from the management company's representative.¹⁰⁶ Murphy left the room with the money and maintained throughout the infractions case that he gave the money back to Dawkins in a hotel lobby restroom immediately following the meeting.¹⁰⁷ Evidence at trial indicated that Murphy would receive monthly stipends of \$6,000 in exchange for referring student-athletes

⁹⁶ *Id.* at 5–6 (explaining that Dawkins intended to leverage his connections and relationships with the coaches).

⁹⁷ *See id.* at 6 (noting that Dawkins stated on federal surveillance that “every coach in the country is there” to recruit at the tournaments).

⁹⁸ *See id.* (noting that Dawkins asked Murphy to attend the meeting “a couple times” before Murphy agreed).

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.* at 7.

¹⁰³ *See id.* at 6–7.

¹⁰⁴ *See id.* The student-athletes that the group discussed had professional potential. *See id.* at 11.

¹⁰⁵ *See id.* at 7.

¹⁰⁶ *Id.* (noting that Murphy placed the envelope in his pocket).

¹⁰⁷ *See id.* (quoting Murphy’s attorney admitting that Murphy’s attendance at the meeting was “colossally bad judgment”).

to the management company.¹⁰⁸ Federal authorities arrested Dawkins and others in the fall of 2017.¹⁰⁹

In October 2017, and in response to the federal arrests, the NCAA directed all Division I universities with men's basketball teams to examine their programs.¹¹⁰ Rasmussen notified Creighton's men's basketball staff that administrators would interview all staff members and student-athletes.¹¹¹ Creighton's compliance director and general counsel met with Rasmussen to discuss the review and how to proceed.¹¹² According to notes from the meeting, Rasmussen acknowledged that "every [men's basketball] program in the country should be worried—we have to deal with shady third parties."¹¹³ The notes also make it clear that Rasmussen knew of Murphy's relationship with Dawkins,¹¹⁴ but Rasmussen was apparently unconcerned by the relationship, stating at the meeting that he did not think there was anything to worry about.¹¹⁵ However, Murphy had not yet disclosed his attendance at and participation in the Las Vegas meeting to Rasmussen.¹¹⁶

Creighton officials interviewed Murphy on November 2, 2017.¹¹⁷ Murphy discussed both his relationship with Dawkins and Bowen's recruitment.¹¹⁸ Murphy explicitly stated in the meeting that he never accepted any money to recruit a prospective student-athlete, nor did he promise anything associated with recruitment.¹¹⁹ Again, Murphy did not disclose the Las Vegas meeting during the interview.¹²⁰

Creighton's compliance director and general counsel and Rasmussen reinterviewed Murphy after Bowen's father's testimony in

¹⁰⁸ See *id.* (describing the management company's business plan and trial testimony).

¹⁰⁹ See *id.*

¹¹⁰ See *id.* at 7–8 (noting that the NCAA's Board of Governors and Board of Directors ordered the examination).

¹¹¹ See *id.* at 8.

¹¹² *Id.*

¹¹³ *Id.* (stating that the notes identified a heightened awareness to potential issues across college men's basketball's landscape) (alteration in original).

¹¹⁴ *Id.* (noting that Rasmussen had previously discussed the relationship with Murphy).

¹¹⁵ See *id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.* (explaining Creighton's 2017 internal inquiry focused largely on the men's basketball staff's relationship with individuals associated with the federal investigation and Creighton's recruitment of Bowen).

¹²⁰ *Id.*

October 2018.¹²¹ Murphy denied offering money or a job to secure Bowen's verbal commitment to attend Creighton.¹²² The compliance director's notes detailed that the meeting did not make the group feel better about the situation and that Murphy was incredibly nervous.¹²³ The group reconvened the next day, along with Murphy's newly hired criminal defense attorneys.¹²⁴ When Creighton officials began asking Murphy questions about Bowen's recruitment and Murphy's relationship with Dawkins, Murphy's attorneys terminated the meeting.¹²⁵ Murphy again did not disclose any information regarding the July 2017 Las Vegas meeting.¹²⁶

In late October 2018, and in response to the federal investigation and ongoing trials, the NCAA sent a memo to all universities instructing them to continue monitoring their men's basketball programs.¹²⁷ Creighton initiated another inquiry by providing its men's basketball staff members a questionnaire that included fifteen questions.¹²⁸ On October 31, 2018, the day after receiving the questionnaire, Murphy disclosed the July 2017 Las Vegas meeting to Creighton's head men's basketball coach.¹²⁹ Murphy told the head coach that he received an envelope of money at the meeting but returned it to Dawkins following the meeting.¹³⁰ The head coach immediately informed Rasmussen, who instructed the head coach to document Murphy's disclosure.¹³¹ The head coach provided Rasmussen with the requested written documentation a week later.¹³²

¹²¹ See *id.* (describing the interview as immediately following Bowen's father's testimony).

¹²² See *id.* (noting that Murphy disclosed that Dawkins had told him what other universities offered for Bowen's verbal commitment to attend their universities).

¹²³ *Id.* at 9 (noting that Rasmussen advised Murphy to hire a good attorney and that Murphy retained two criminal attorneys).

¹²⁴ See *id.*

¹²⁵ *Id.* (noting that Murphy returned with his attorneys later that day and read a statement that acknowledged his relationship with Dawkins and denied awareness of or involvement in offering recruiting inducements).

¹²⁶ *Id.*

¹²⁷ See *id.* (noting that the NCAA's executive vice president of regulatory affairs sent the memo).

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.* at 9–10.

¹³¹ *Id.* at 10.

¹³² *Id.*

Around the same time, Murphy returned his completed questionnaire, in which he indicated that he never accepted anything from someone who identified as an agent, financial advisor, or apparel representative, including to steer a student-athlete to that individual's services.¹³³ Murphy rationalized his answers that he never "accepted" anything, because he was not going to keep the money he received in the Las Vegas hotel room and he never agreed to arrange meetings between the management company and student-athletes.¹³⁴

Rasmussen met with the head coach and Murphy after the head coach submitted his document.¹³⁵ Rasmussen asked Murphy a number of questions, advised him to be complete and honest, and threatened to fire him if he lied.¹³⁶ Murphy reiterated what he had told the head coach, stating that he knew that management company representatives would hand him money and that he gave the money to Dawkins after the meeting.¹³⁷

Rasmussen did not share any information from his meeting with Murphy with any other Creighton employees.¹³⁸ Rasmussen explained to the enforcement staff that he wanted to determine whether an NCAA violation had occurred and admitted that he had never handled another matter in this manner.¹³⁹ Ultimately, Rasmussen determined that no NCAA violation occurred.¹⁴⁰ Rasmussen kept this information to himself for four months, until the federal government issued its superseding indictment that specifically referenced Creighton and Murphy.¹⁴¹

Rasmussen repeatedly voiced his support and respect for Murphy throughout his interview with the enforcement staff and during the

¹³³ See *id.* at 9–10.

¹³⁴ See *id.* at 10 (noting that Murphy answered the questions based on his attorneys' advice).

¹³⁵ See *id.*

¹³⁶ *Id.* (noting that Rasmussen advised Murphy "to be complete and honest").

¹³⁷ *Id.*

¹³⁸ See *id.* (explaining that this includes Creighton's athletics compliance director, general counsel, and president).

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ See *id.* (noting that the compliance director characterized Rasmussen's failure to share compliance-related information with the compliance staff as "not typical").

infractions hearing,¹⁴² basing his observations on trust that Murphy earned during years of working with Rasmussen.¹⁴³

In December 2018, the enforcement staff requested records from Creighton, including “all recordings, transcripts, written summaries and/or notes of interviews” resulting from the complaints, trial, or other media reports.¹⁴⁴ Rasmussen did not disclose his individual inquiry in response to the NCAA’s request.¹⁴⁵

In March 2019, the federal government issued its superseding indictment that included details of Murphy's attendance at the July 2017 Las Vegas meeting.¹⁴⁶ Although the indictment did not identify Murphy or Creighton by name, it mentioned that Murphy received a \$6,000 bribe in exchange for steering student-athletes to Dawkins and his management company.¹⁴⁷ At this point, Rasmussen first disclosed what he had learned in his inquiry five months earlier to Creighton's general counsel.¹⁴⁸ Creighton placed Murphy on administrative leave the next day.¹⁴⁹

B. The COI's Application of NCAA Legislation

The COI described the violations in Creighton's case as failures to meet legislated standards of conduct.¹⁵⁰ The COI categorized Murphy's violations as Level I and Rasmussen's as Level II.¹⁵¹

1. Murphy's Violations

The COI concluded that Murphy violated NCAA legislation regarding ethical conduct when he accepted money from the

¹⁴² *Id.* (noting that Rasmussen emphasized Murphy's "unbelievably high recommendations" when Creighton hired Murphy).

¹⁴³ See *id.* (noting that Rasmussen also described Murphy as holding high credibility nationally in the coaching ranks as a coach).

¹⁴⁴ *Id.* (describing the wording of the enforcement staff's request as important).

¹⁴⁵ *Id.* at 10–11 (explaining that Creighton sought to collect potentially relevant information).

¹⁴⁶ *Id.* at 11 (explaining that “the investigation took a turn” with the superseding indictment).

147 *Id*

148 *Id*

149 *Id*

¹⁵⁰ See *id.* at 12 (explaining that the violations fell into three areas: (1) Murphy's attendance at the Las Vegas meeting; (2) Rasmussen's response upon learning of the meeting; and (3) Murphy's actions during Creighton's and the enforcement staff's investigation, which is less relevant to this Article).

¹⁵¹ See *id.* (noting that all violations also apply to Creighton).

management company's representatives.¹⁵² More specifically, NCAA legislation generally requires athletics staff members to act with honesty and sportsmanship at all times.¹⁵³ Further, NCAA legislation prohibits university staff members from receiving benefits in exchange for facilitating or arranging a meeting between a student-athlete and an agent or agent's representative.¹⁵⁴

The COI explained that Murphy's attendance at the Las Vegas meeting and acceptance of \$6,000 violated NCAA standards of conduct.¹⁵⁵ The COI emphasized that Murphy knew he would receive the money for attending the meeting, and that management company representatives viewed Murphy as an investment who could steer student-athletes to the company.¹⁵⁶ The meeting attendees' discussion of specific Creighton student-athletes during the meeting particularly troubled the COI, as did Dawkins' comment that the parties needed to figure out how to continue to pay Murphy.¹⁵⁷ The COI also cast doubt on Murphy's claim that he returned the money to Dawkins following the meeting.¹⁵⁸

The COI chastised Murphy for permitting his loyalty to Dawkins to place him in a compromising position.¹⁵⁹ The COI concluded, "Regardless of his intentions, [Murphy] understood that his position of authority—a well-respected Division I coach—was significant to establishing credibility for [Dawkins] and his management company."¹⁶⁰

The COI also concluded that Murphy's actions during the investigation constituted a Level I violation.¹⁶¹ First, Murphy provided false and misleading information on Creighton's questionnaire when he denied accepting money from an agent or an apparel

¹⁵² See *id.* at 12–13.

¹⁵³ *Id.* at 13 (citing NCAA Bylaw 10.01.1).

¹⁵⁴ *Id.* (citing NCAA Bylaw 10.1).

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ *Id.* ("The substance of the meeting reflected the management company's intentions.").

¹⁵⁸ See *id.* at 13–14 (citing a lack of evidence either proving or disproving the claim but concluding that Murphy's acceptance of the \$6,000 constituted an agreement with the management company to assist it to secure Creighton men's basketball student-athletes as future clients).

¹⁵⁹ See *id.* at 14 (stating that Murphy "ignored repeated red flags and demonstrated a recurring lack of judgment").

¹⁶⁰ *Id.* (noting that Murphy failed to heed caution).

¹⁶¹ *Id.* at 17 (citing NCAA Bylaws 10 and 19).

representative.¹⁶² Second, Murphy later made the same denial during an interview with the enforcement staff.¹⁶³

2. Rasmussen's Violation

The enforcement staff alleged that Rasmussen's failure to timely report Murphy's involvement in the Las Vegas meeting constituted a Level I violation.¹⁶⁴ Creighton and Rasmussen disputed that a violation occurred and, alternatively, argued that the COI should attribute the violation to Creighton only.¹⁶⁵ The COI concluded that Rasmussen committed a Level II violation applicable to both Rasmussen and Creighton.¹⁶⁶

The COI described the obligation to report potential violations as "a longstanding cornerstone of the membership's infractions process."¹⁶⁷ The COI cited myriad NCAA authorities that it felt applied to Rasmussen's handling of the information regarding Murphy's involvement in the meeting:¹⁶⁸

- Constitution provision 2.8.1 requires member universities to monitor their programs and report instances of noncompliance to the NCAA.¹⁶⁹
- Bylaw 19.2.2 requires universities to report violations in a timely manner.¹⁷⁰
- Bylaw 19.2.3 requires staff members to cooperate fully with the NCAA and further the objectives of both the NCAA and its infractions program.¹⁷¹ These obligations include fully and completely disclosing relevant information, including timely production of any materials or information that the NCAA requests.¹⁷²

The COI's analysis of Rasmussen's actions emphasized that Rasmussen assumed responsibility to investigate the violation by

¹⁶² See *id.* at 17–18.

¹⁶³ See *id.* at 17 (explaining that video evidence refutes both of Murphy's denials).

¹⁶⁴ *Id.* at 14.

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ *Id.* at 16 (explaining that this obligation was even more relevant due to the circumstances that existed at the time).

¹⁶⁸ *Id.* at 15–16.

¹⁶⁹ *Id.* at 15.

¹⁷⁰ *Id.*

¹⁷¹ *Id.* (explaining that Bylaw 19.2.3 expands on Bylaw 19.2.2's obligations).

¹⁷² *Id.*

himself, without informing or seeking assistance from other Creighton officials, including the athletics compliance staff.¹⁷³ Thus, the COI characterized Rasmussen's investigation as "inadequate."¹⁷⁴ Rasmussen unilaterally determined that Murphy's involvement in the Las Vegas meeting did not violate NCAA legislation—a conclusion with which the COI disagreed.¹⁷⁵ The COI also took issue with the fact that Rasmussen did not share information regarding the meeting until information related to it came to light in the federal government's superseding indictment.¹⁷⁶ Thus, the COI determined that Rasmussen violated NCAA Constitution 2 and Bylaw 19.¹⁷⁷

The COI felt that Rasmussen's personal relationship with Murphy, and the trust he placed in him, influenced his decision-making.¹⁷⁸ Further, this occurred during a time when campus leaders were on high alert due to the federal government's public arrests.¹⁷⁹ Those arrested included Dawkins, who Rasmussen knew from both Creighton's recruitment of Bowen and Murphy's personal relationship.¹⁸⁰ The COI concluded that, given the environment in college athletics at the time, it was unreasonable for Rasmussen not to share what he had learned about Murphy's participation in the Las Vegas meeting with other Creighton officials, including the compliance director, to determine whether an NCAA violation occurred.¹⁸¹ Notably, the compliance director and other Creighton officials had been intimately involved in Creighton's previous efforts to review and monitor its men's basketball program, a fact that troubled the COI when Rasmussen's unilateral review and determination were insulated from their inclusion and input.¹⁸²

The COI acknowledged that university administrators make mistakes and can be wrong.¹⁸³ However, the COI felt that Rasmussen's decision-making was not reasonable under the circumstances, which included the heightened attention regarding corruption in men's college

¹⁷³ See *id.* at 15.

¹⁷⁴ *Id.*

¹⁷⁵ *Id.* ("His determination was incorrect.").

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ See *id.* (explaining that this led Rasmussen to ignore a series of events that should have prompted him to dig deeper and notify others).

¹⁷⁹ See *id.* (emphasizing that the government's arrests had shaken college athletics).

¹⁸⁰ See *id.*

¹⁸¹ See *id.* at 16.

¹⁸² See *id.* (describing other officials' prior involvement as intimate).

¹⁸³ *Id.*

basketball and Rasmussen's knowledge of Murphy's relationship with Dawkins.¹⁸⁴ Thus, Rasmussen's conduct failed to meet his obligations under Constitution 2.8.1 and Bylaws 19.2.2 and 19.2.3.¹⁸⁵

While the enforcement staff charged Rasmussen with a Level I violation, the COI concluded that the violation was Level II, explaining that it viewed his mistake in the context of other proactive efforts where he collaborated with other administrators.¹⁸⁶ Per the COI, "These efforts demonstrated effective and admirable leadership."¹⁸⁷

C. Sanctions

The COI imposed sanctions on Creighton, including placing it on probation for two years, issuing a fine, reducing the number of athletics scholarships that the men's basketball program may award for two years, and restricting the recruiting activities of the men's basketball staff.¹⁸⁸ The COI imposed a two-year show-cause order on Murphy.¹⁸⁹

A less tangible result of the case is the embarrassment suffered by Creighton and the involved individuals.¹⁹⁰ Scandals are extremely harmful to a university's stakeholders because they may severely damage both individuals' and the university's reputations.¹⁹¹ They ruined Creighton's previously pristine record regarding infractions cases, as the COI had never determined that Creighton—in its hundred-year history of Division I athletics participation—committed a major infraction (Level I or II).¹⁹² One writer local to Creighton's campus believes the case tarnished Rasmussen's legacy and is an affront to the

¹⁸⁴ See *id.* (pointing out that Rasmussen had previously told other administrators that men's college basketball programs "should be worried" due to dealings with third parties).

¹⁸⁵ *Id.*

¹⁸⁶ See *id.* (describing the group's efforts as working together to ensure compliance within the men's basketball program).

¹⁸⁷ *Id.*

¹⁸⁸ See *id.* at 30–31 (noting that Creighton's scholarship and recruiting penalties were self-imposed, and the COI accepted them).

¹⁸⁹ See *id.* at 31. For additional information on NCAA show-cause penalties, see Josh Lens, *Voiding the NCAA Show-Cause Penalty: Analysis and Ramifications of a California Court Decision, and Where College Athletics and Show-Cause Penalties Go From Here*, 19 U.N.H. L. REV. 21 (2020).

¹⁹⁰ See Shatel, *supra* note 7.

¹⁹¹ See Greenberg & Evrard, *supra* note 58, at 820 (referencing several recent scandals).

¹⁹² CREIGHTON CASE, *supra* note 5, at 25 (applying this fact as a mitigating factor when determining penalties under the COI's relevant procedure).

reputation of both Creighton's athletics department and its men's basketball program.¹⁹³

D. The COI's Imposition of a Standard of Care on Athletics Administrators Aware of Potential NCAA Violations

Athletics directors can learn valuable information from COI decisions. Though they are written with the benefit of hindsight, the decisions provide valuable insight into the COI's application of NCAA legislation and expectations.¹⁹⁴ Athletics department staff members should learn from their colleagues' mistakes as a way to improve NCAA rules compliance strategies.¹⁹⁵

The Creighton case provides college athletics administrators with valuable information regarding how they should act when they become aware of potential NCAA violations. While the COI points to several authorities relevant to Rasmussen's actions once he learned of Murphy's participation in the Las Vegas meeting, these authorities all explicitly impose requirements regarding how to act upon instances of noncompliance, not *potential* noncompliance¹⁹⁶—and Rasmussen concluded there was no instance of noncompliance to report.¹⁹⁷ The COI later disagreed with his determination, while acknowledging that individuals can be wrong and make mistakes.¹⁹⁸

Therefore, the COI took issue more with the process through which Rasmussen came to his conclusion rather than the conclusion itself. In doing so, the COI examined whether Rasmussen's actions were reasonable under the circumstances, effectively imposing a reasonable person standard of care on college athletics administrators who learn of potential NCAA violations.¹⁹⁹

In the legal context, more specifically tort law (unless the actor is a child or insane person), the standard of conduct to which an individual

¹⁹³ See Shatel, *supra* note 7 (stating that Creighton should not have even recruited Bowen).

¹⁹⁴ See Greenberg & Evrard, *supra* note 58, at 823–24 (explaining that athletics directors can use COI written decisions “to fix weaknesses in compliance”).

¹⁹⁵ See *id.* (explaining that scandals are a way to lose jobs, donor support, reputation, and integrity).

¹⁹⁶ See CREIGHTON CASE, *supra* note 5, at 15 (explaining application of various NCAA Constitution provisions and bylaws).

¹⁹⁷ See *id.* at 16.

¹⁹⁸ See *id.* at 15–16 (describing Rasmussen's conclusion that Murphy's involvement in the Las Vegas meeting was not an NCAA violation as “incorrect”).

¹⁹⁹ See *id.* at 16 (“[T]he panel determines that [Rasmussen's] decision-making was not reasonable under the circumstances at the time.”).

must conform to avoid being negligent is that of a reasonable individual under like circumstances.²⁰⁰ The words “reasonable person” denote a person exercising those qualities of attention, knowledge, intelligence, and judgment that society requires of its members to protect their own interests and others’ interests.²⁰¹ The reasonable care standard enables decision makers to express their judgment in terms of human conduct when determining liability for harmful conduct.²⁰² The fact that the judgment is personified calls attention to the necessity of taking into account human fallibility.²⁰³

In the Creighton case, the COI likewise acknowledged that individuals make mistakes, stating, “To be sure, institutional leaders, athletics administrators, coaches and staff members can be wrong. People make mistakes.”²⁰⁴ The COI, however, examined the reasonableness of Rasmussen’s actions while factoring in the circumstances under which Rasmussen acted.²⁰⁵ Specifically, the COI explained, “But the panel determines that [Rasmussen’s] decision-making was not reasonable under the circumstances at the time, which included the heightened attention to issues in Division I college basketball, [Rasmussen’s] knowledge of [Murphy’s] personal relationship and engagement with [Dawkins], and [Rasmussen’s] affirmative obligations under the NCAA bylaws.”²⁰⁶

After the Creighton case, college athletics administrators should be on heightened alert for potential NCAA violations. The Creighton case should teach them that all college athletics administrators—even athletics directors—need to report any potential violations to compliance staff members who can then determine whether an NCAA violation occurred.²⁰⁷ Doing so should mitigate, if not eliminate, the likelihood that the enforcement staff would allege that the staff member committed an NCAA violation for failing to report. Reporting to the compliance staff and including others in the review of information is in opposite of what the COI perceived as Rasmussen’s “unilateral,

²⁰⁰ RESTATEMENT (FIRST) OF TORTS § 283 (AM. L. INST. 1934).

²⁰¹ *Id.* at cmt. a.

²⁰² *See id.*

²⁰³ *Id.*

²⁰⁴ CREIGHTON CASE, *supra* note 5, at 16.

²⁰⁵ *See id.* at 15–16.

²⁰⁶ *Id.*

²⁰⁷ Reporting information regarding potential NCAA violations in writing likely provides athletics department staff members optimal protection.

insulated review and decision-making.”²⁰⁸ Further, it eliminates the possibility that an administrator’s relationship with the staff member will influence their decision whether a violation occurred, which is something that troubled the COI in Creighton’s case.²⁰⁹

It would not be surprising if the enforcement staff, emboldened by the COI’s validation of the failure to report the charge against Rasmussen, made similar allegations in the future.²¹⁰ Further, the COI has the ability to bring charges against individuals.²¹¹ With several upcoming infractions cases involving high-profile coaches and universities, it will be interesting to see whether the enforcement staff or the COI pursues charges against administrators for failing to report potential NCAA violations of which they have knowledge.²¹²

Further, college athletics administrators should be extra vigilant and cautious and lean toward reporting if they become aware of a potential NCAA violation involving a coach, staff member, or sport program with a history of NCAA violations. The involvement of such an individual or sport program would likely be part of the circumstances that the COI would examine when evaluating the reasonableness of the administrator’s actions or inactions.²¹³

²⁰⁸ See CREIGHTON CASE, *supra* note 5, at 16.

²⁰⁹ See *id.* at 1 (“The violations largely stem from individuals permitting personal relationships to cloud their judgment and influence their decision-making.”). In instances involving potential violations of significance, an athletics director may wish to enlist the assistance and review of a consultant external to the university to mitigate institutional bias.

²¹⁰ While the enforcement staff alleged a Level I violation against Rasmussen, the COI deemed it a Level II violation. Regardless, both Level I and II violations are considered “major” violations (opposed to Level III violations, which are considered “secondary”). See *id.* at 24 (analyzing mitigating factors for Creighton’s penalties).

²¹¹ The COI may reject a summary disposition report and order a full hearing if it feels the enforcement staff failed to allege a pertinent violation. INTERNAL OPERATING PROCEDURES, *supra* note 45, §§ 4-10-2-3, 4-10-3. Further, the COI also has the authority to conclude that violations occurred even when the enforcement staff did not allege them. See *id.* § 5-12.

²¹² The University of Arizona, University of Kansas, University of Louisville, Louisiana State University, and North Carolina State University are among those whose cases have yet to be heard. See Schlabach, *supra* note 74.

²¹³ In the University of Indiana’s 2008 major infractions case, the COI concluded that the university failed to monitor its basketball program. See COMM. ON INFRACTIONS, NCAA, *Indiana University, Bloomington Public Infractions Report* 6 (2008), <http://web3.ncaa.org/lstdb/search/miCaseView/report?id=102283> [https://perma.cc/7EU8-8WYN]. Indiana, though it had hired Kelvin Sampson, a prior offender, as its head coach, was shocked at the COI’s conclusion, and then-Big Ten Commissioner Jim Delany described the COI’s finding as imposing a strict liability standard on universities who hire coaches with checkered backgrounds. See T.J. Clifton, *Does the Crime Justify the Punishment? An In-Depth Look at the Indiana University Phone Call Scandal*, 6 DEPAUL J. SPORTS L. & CONTEMP. PROBS. 73, 78 (2009).

III
CONCLUSION

The Creighton case should garner college athletics administrators' attention for the fact that the COI concluded that a long-time, well-respected athletics director committed an NCAA violation by failing to report information regarding a potential NCAA violation. However, given the number of important roles that athletics directors play, they should be happy to enlist others' assistance in investigating and evaluating potential improprieties. Doing so should satisfy the standard of care and mitigate the likelihood that the enforcement staff will charge them individually with an NCAA violation.

