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Keeping Campuses Safe: The College Crime and Consequence Conundrum

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Journal of

NCAA Compliance

A sports law periodical by Hackney Publications

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Journal of NCAA Compliance is published
monthly by Hackney Publications, P.O. Box
684611, Austin, TX 78768. Postmaster send
changes to *Journal of NCAA Compliance*,
Hackney Publications, P.O. Box 684611,
Austin, TX 78768.

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**Journal of
NCAA COMPLIANCE**

Why Some Rules Are Meant to be Broken

In every type of business, there are rules and regulations guiding a variety of practices and processes to ensure the business operates safely, fairly, ethically and so on. Virtually all research into why businesses fail to follow these rules has focused on the organizations themselves.

A new study by Vanderbilt profes-
sors is one of the first to approach the
problem from the other direction, which
could prove relevant to NCAA member
institutions.

"What we wanted to know was whether
there was something about the rules them-
selves that makes an organization more
or less likely to violate them," said Ran-
garaj Ramanujam, Richard M. and Betty
Ruth Miller Professor of Management at
Vanderbilt's Owen Graduate School of
Management.

The paper, *The Effects of Rule Com-
plexity on Organizational Noncompli-
ance and Remediation: Evidence from
Restaurant Health Inspections*, has just
been published in the *Journal of Manage-
ment*. Ramanujam's co-authors are Bruce
Coolil, Dean Samuel B. and Evelyn R.
Richmond Professor of Management at the
Owen School, and University of Virginia
professor David Lehman. Lehman is the
first author.

The researchers theorized that the com-
plexity could make rules harder to follow.
They defined complexity in two ways—by
the number of components a rule had,
or the number of connections it had to
other rules. They then hypothesized that
rules with both features—many compo-
nents and many connections—would be
especially vulnerable. Furthermore, they
proposed that not only would complexity
make a rule harder to follow, it would also
make violations harder to fix.

Using an unusually detailed data set
that tracked 1,011 restaurant inspections

of 289 restaurants in Santa Monica, Calif.,
the researchers were able to observe more
than 80,000 instances of rule compliance
and noncompliance, including repeated
violations, over the course of three years.

Perhaps unsurprisingly, they found that
complicated rules were violated more of-
ten, and the combination of the two types
exacerbated the problem further. "The
interaction is super-additive," Coolil said.
"You don't just add the individual effects
of components and connections together.
It actually makes things even worse."

They then looked at the impact of
complexity on remediation. The first
thing they found was that a rule that had
been broken before was more likely to be
broken again.

But the pattern was different. To their
surprise, the researchers found that the
number of components actually raised the
likelihood of remediation, even though it
made a rule easier to violate to begin with.
That wasn't the case when complexity was
due to connections—as expected, the
number of connections lowered the odds
of remediation.

Even more surprisingly, they found that
while having both forms of complexity
made a rule much harder to follow, they
were not that much harder to remediate.
Essentially, the combination had an un-
expected braking effect. Those violations
were still harder to fix than average, but
they weren't as hard to fix as the research-
ers expected.

The researchers say that their findings
suggest that encouraging compliance may
require a more holistic look at how organi-
zations engage with the rules they're given.
"The takeaway here is that the way rules are
designed matters, too, and they should be
a subject of study in their own right," said
Ramanujam. ■

Keeping Campuses Safe: The College Athlete Crime and Consequence Conundrum

By Richard L. Bailey JD, Doctoral Candidate at The Ohio State University and Kristy L. McCray PhD, Assistant Professor at Otterbein University

(Editor's Note: The following is a peer-reviewed article, which has been vetted by some members of the JONC Editorial Board)

Recent cases of sexual assault and violence against women proliferate in intercollegiate athletics. Despite federal mandates under Title IX, universities may struggle to appropriately respond to such incidences due to fan bias and/or difficulty in prosecuting under the criminal burden of proof. As such, this article offers up the National Collegiate Athletic Association (NCAA) as an adjudicating body, which could appoint a tribunal to ensure safety on campus and just punishment for transgressors. Using retributive justice and procedural justice as theoretical frameworks, it is argued that the NCAA is best served to investigate instances of sexual assault and violence against women by student-athletes at member institutions. Further, the NCAA has the power to levy punishment against those found responsible for violence against women, leading to a zero-tolerance policy for sexual assault in college sport.

INTRODUCTION

With the many recent instances of sexual assault and domestic violence on college campuses, universities and the National Collegiate Athletic Association (NCAA) need to establish clear rules on how to fairly investigate, determine fault, and discipline student-athletes who commit these types of violent crimes. From 2011 to 2016, 108 intercollegiate student-athletes who were charged with serious crimes, such as rape and armed robbery, were permitted to transfer and continue playing inter-



Richard Bailey



Kristy McCray

collegiate sports at another school (Korn, 2017). This tally only considers individuals who were formally charged by criminal courts, yet there have been many more student-athletes who were the subject of informal proceedings or investigations by universities.

Additionally, the schools that allow these players to transfer do not appear to be consistently performing thorough background checks prior to admission (Levine, Cintron, & McCray, in press; Korn, 2017). This lack of oversight poses a security risk on college campuses, contrary to what should be a school's top priority. The numbers dictate that this situation must be addressed, but careful deliberation must be made to ensure fairness for all involved with the investigation, with special consideration for the victims and the difficulties they would face due to redundant investigations and processes.

On top of issues with student-athletes who have faced serious charges of violent acts, school officials, doctors, and coaches have also demonstrated extreme moral turpitude. The cases of Jerry Sandusky at Pennsylvania State University, Bernie Fine at Syracuse University, Larry Nassar at Michigan State University, and Zach Smith at The Ohio State University are clear indications that this issue goes beyond student-athletes and suggests that institutional oversight needs to be augmented to create a safe culture on college campuses.

There is clearly a cultural shift taking place and new procedures and punishments need to be implemented so the public will feel that institutions are taking these matters seriously.

The NCAA has a well-defined purpose to maintain the concept of amateurism and to emphasize academics for student-athletes, as well as to ensure the safety and well-being of student-athletes. The organization routinely hands down significant sanctions to players who commit academic misconduct, receive extra benefits, sell equipment, or improperly meet with agents and boosters (Lockhart, 2009). However, the NCAA should also play a role in meting out punishment to student-athletes who commit criminal misconduct. Often, the reprimands delivered to student-athletes who violate the NCAA's internal bylaws are as severe and, in many circumstances, more severe than what student-athletes would receive should they violate a criminal statute. This incongruity may be seen as counterintuitive. The issue of how to report and punish university employees for violent crimes, which in some cases have spanned decades, must be addressed as well.

In contrast to criminal misconduct, many NCAA bylaws focus on academic violations and issues of sportsmanship and fair play. The focus in article 10 of the NCAA regulations, "Ethical Conduct," is the use of banned substances, wagering on sports, academic fraud and misconduct, as well as providing false information to the NCAA or its member institutions (National Collegiate Athlete Association [NCAA], 2016, p. 57). These provisions stipulate that a violation can result in a student's indefinite suspension and a review of the conduct before a final punishment is handed out. While there is a degree of

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Keeping Campuses Safe: The Crime and Consequence Conundrum

Continued From Page 3

specificity regarding student-athlete conduct within the context of academics and athletics, the lack of precise regulations that deal with punishing student-athletes who violate federal, state, or local law creates a system that is devoid of guideposts that would assist the NCAA in standardizing punishments. Furthermore, this lack of coordinated enumeration has repeatedly resulted in sanctions that may appear whimsical and arbitrary. When it comes to punishing university employees there is even less codified regulations and no apparent consistency with how investigations are conducted and how punishments are issued.

For any organization to maintain credibility in the eyes of the public, rules regarding conduct that are easy for a layperson to understand and coincide with the general value system of the public and the organization itself are a necessity. Without such clear standards for justice, an organization will almost certainly lose credibility and be hampered in its enforcement of conduct rules. Therefore, a concise, but detailed, inventory describing improper conduct and the ramifications impossible must exist to properly deter its members. This is even more compulsory in the realm of college sports where business and education coexist.

There is a unique relationship between an institution of higher education and the NCAA's legal status as a voluntary association, which affords it the right to regulate its members outside the direct purview of the government. Thus, clear standards of justice for NCAA member institutions are feasible, but must be carefully considered to ensure justice is indeed just. Unfortunately, there is little definition of appropriate personal conduct and the nature of punishments that should be handed down for criminal behavior, such as violence against women, in the

NCAA handbook. This glaring omission is magnified by a closer look at the statistics regarding domestic violence and sexual assault.

THEORETICAL FRAMEWORK

There is specific terminology that can help provide a more articulate framework in regard to the punishment of student-athletes. Greenberg, Mark, and Lehman (1985) wrote about the relationships between the different organizational justice models. Specifically, the authors discussed distributive justice, retributive justice, and procedural justice and their role in sport. Matters of distributive, retributive, and procedural justice have been considered in a sports context in a variety of ways including defining competitive sport's purpose (Dixon, 1999), evaluating the appropriateness of deception in sports (Pearson, 1973; Fraleigh, 1982), ensuring equitable punishment on the field (Brickman, 1977), and payroll differences and their effect on motivation of professional athletes (Mizak & Anthony, 2004). However, in spite of the many applications of these justice principals, applying them to athletes outside of competition itself has not received the attention it is due.

Leventhal, Karuza, and Fry (1980) opined that "Stable procedures are likely to reduce distrust and competition" (p. 191). By utilizing stable procedures, distributive justice can be achieved. These distributive justice notions often focus on the way individuals are compensated and their value is determined but may also be utilized in regard to equity of punishment (Adams, 1965). In a collegiate context, there is a juxtaposition between efficient rulings and just results. However, while expediency is always a goal in conflict dispute resolution, "efficiency sometimes has its price and the most efficient procedures are not always the most preferred" (Leventhal et al.,

1980, p. 192). Leventhal and colleagues suggested that procedures should be (a) applied uniformly over time and through different groups of people; (b) be free from bias, specifically by third-party decision makers; (c) safeguard accurate information and ensure it is part of the decision making process; (d) utilize mechanisms to correct flawed or inaccurate decisions; (e) ensure that all groups affected by a decision have their opinions taken into account; and (f) obey personal and/or prevailing standards of ethics and morality. Another critical aspect of enforcement is interactional justice, which focuses on the nature of interpersonal treatment in the context of authorities treating people with respect and providing explanation of why specific procedures were used and why outcomes were distributed in a certain way (Bies & Moag, 1986).

One more important aspect regarding how rules in sports should ideally operate is the notion of retributive justice, which holds that penalties should be attributed to rule violators with the intent of creating an even playing field. Brickman (1977) stipulated that retributive justice has two functions, to restore equity and to deter certain types of improper conduct. An example of equity-based retributive justice would be a five-yard penalty for having too many players on the field in football, which is a necessary rule to ensure fairness and restore equity by punishing the violator in proportion to the degree of the infraction. Conversely, deterrent-based retributive justice would typically be more severe and be designed to prevent the actor, and other members of the population, from committing the same offense in the future. Some examples of a deterrent penalty are suspending a baseball player for using performance enhancing drugs or eject-

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Allen Helps Student-Athletes Navigate the Rules, Getting a Hand – Sometimes – From Compliance Directors

The name of his company says it all – Informed Athlete.

Rick Allen, who was one of the first full-time NCAA compliance directors in the country, is all about educating student-athletes and their parents. Specifically, it's about helping "Student-Athletes Navigate the Complex NCAA, NAIA, and Junior College Rules."

It's a void that isn't being filled. And Allen has created a business (www.informedathlete.com) around that mission. Along the way, he has picked up surprising allies – current compliance directors.

We wanted to learn more about his business and his relationship with compliance directors, so we set out to interview him.

Question: *At what point did you know you wanted to work in athletics?*

Answer: I majored in education in college and was initially considering becoming a teacher and coach. Ultimately, I decided that the teaching wasn't for me, but that I'd prefer to work in college athletics. I then went on to grad school and obtained my master's degree in athletic administration.

I guess I've gone full circle because now a big part of my practice is teaching the rules and their potential impact. When consulting with the athletes and families we discuss how the rules apply in their specific situation and talk about the different options they have available. The parents and athlete then have the information they need to make the most informed decision that's in their best interest.

Q: *Who was your biggest mentor along the way?*

A: My biggest supporter professionally was Terry Don Phillips, the athletic director who hired me to Oklahoma State

University. Terry Don liked the way I analyzed situations and one time told me "You should have gotten your law degree. You would have made an excellent lawyer."

Q: *How have university compliance departments changed since you started your career?*

A: I'm proud of the fact that I was one of the first full-time compliance directors in the country. During my time at Illinois and much of my time at Oklahoma State, I ran the entire program myself. Now, many colleges still have "one-person

**I'm proud of the fact that
I was one of the first full-
time compliance directors
in the country.**

shops" while others have between five-to-ten staff with each person specializing in one or two bylaws.

Technology has obviously improved immensely, and the training through compliance seminars, webinars, and NAAC is extremely helpful for compliance administrators.

Perhaps the biggest change is that many coaches now view the compliance office staff as educators and collaborators rather than as "the enforcer" as they did early in my career.

Q: *How did the idea of Informed Athlete*

come about?

A: Informed Athlete actually started with an idea from my wife Julie! When our son was playing high school and college baseball and we were sitting in the bleachers with the other parents, I would get a lot of questions about NCAA rules and how they applied to specific situations.

Julie suggested we combine her direct marketing skills with my background in NCAA compliance to help athletes and parents navigate the complex rules process. Our son was recruited and played DI baseball so that allows us to understand what it's like to be in the parents' shoes as well.

When we started in 2008, we initially focused on recruiting and specifically with baseball due to our son's recruiting and playing experience. Through the years, we evolved to what we are now. We help athletes and their parents in all sports navigate through the NCAA, NAIA, and Junior College rules on issues related to transfers, waivers and appeals, eligibility issues, scholarship strategies, and recruiting rules.

We work with student-athletes throughout the U.S. and internationally as well including Australia, Canada, Spain, France, England, Japan, Portugal and more.

Q: *How do you want compliance professionals to view you and your business?*

A: While we must put our clients first if there's a difference of opinion on a situation, we'd like to be viewed as complementary to campus compliance departments rather than adversarial. In fact, when authorized by our clients, we do communicate with a school's compliance department to work together and find a solution to their situation.

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NCAA Hires First-Ever VP of Hearing Operations

The NCAA has announced the hire of a proven internal senior leader with deep experience in legal and regulatory affairs to serve as the Association's first vice president of hearing operations. Naima Stevenson Starks, formerly NCAA deputy general counsel and managing director of academic and membership affairs, assumed her new role June 3. NCAA President Mark Emmert created the position following recommendations from the Commission on College Basketball.

"Naima brings to this critical role a wealth of knowledge of the issues facing the NCAA and a strong record of supporting the Association's infractions and regulatory processes," Emmert said. "Her experience will assist our membership in providing a more strategic direction and vision to our accountability processes, which will strengthen college sports."

As vice president of hearing operations, Stevenson Starks will serve as direct liaison to the NCAA Committees on Infractions and Infractions Appeals Committees in all three divisions and oversee the staffs that support these committees. These committees decide on penalties for member

schools and involved individuals who violate NCAA rules.

She also will provide strategic coordination for the NCAA's new Independent Accountability Resolution Process, which stems directly from the Commission on College Basketball's recommendation to bring more outside voices and expertise into the NCAA's infractions process.

Specifically, Stevenson Starks will serve as the NCAA's primary liaison with the new Independent Accountability Oversight Committee, Infractions Referral Committee and the Independent Resolution Panel. These new committees, along with a new group of independent investigators and advocates who will constitute the Complex Case Unit, begin their work Aug. 1.

In her new role, Stevenson Starks also will function as a primary spokesperson for the NCAA's infractions process. She will report directly to NCAA Chief Operating Officer Donald Remy.

"The NCAA's infractions process is one of the highest-profile elements of college sports, and we are fortunate that someone of Naima's experience and

caliber is right here with us to assume this vital new role," Remy said. "She has proven herself as an effective senior leader, is highly regarded by our membership, and I am confident she will immediately bring direction, stability and new energy to our strengthened efforts to hold rule breakers accountable."

Originally from Brooklyn, New York, Stevenson Starks joined the NCAA's office of legal affairs in May 2006 as assistant general counsel after a career as a private attorney at Arnold & Porter LLP in Washington, D.C. She was hired in part to provide legal support and expertise to the Association's infractions process. After being promoted to associate general counsel and deputy general counsel, she was also named managing director of academic and membership affairs in 2016 and combined those roles while keeping her deputy general counsel duties. Stevenson Starks is a graduate of Harvard Law School and earned her undergraduate degree at Maryland, where she majored in government and politics and Afro-American studies. ■

Allen Helps Student-Athletes Navigate the Rules

Continued From Page 5

Having been on campus for many years myself, I understand the stress and pressure that compliance staff are under. When I was on campus, I felt the need to "balance" the interests of the athletes with the coaches that I worked with. Now I don't have to worry about that type of internal conflict.

Q: *What is the most rewarding thing about your business?*

A: Every day we get calls from athletes and parents of athletes who are often in very stressful situations and they don't

know where to turn or who to trust for accurate information and advice. Helping ease the stress for these families and athletes is what is the most rewarding to us. They know we want the very best outcome for them—even if sometimes the answer is not what they want to hear.

Receiving a call or an email from an athlete or parent telling us that our advice and information helped achieve a good outcome for them is icing on the cake.

Q: *If you could change one NCAA rule, what would it be and why?*

A: I'd actually like to add an NCAA penalty to be imposed on any coach — especially those in Division I—who habitually cut scholarship athletes from teams and force them to transfer if they want to continue playing.

For example, the loss of a scholarship if athletes from that team submit year-in-residence waivers three years in a row because they've been told they aren't welcome back the following year (through no fault of their own). ■

NCAA Facilitates Use of Data in Decision Making, Policy Creation, and Strategic Planning

By Robert Greim and Jared Waldhoff

Many practices, procedures, and policies in collegiate athletics are based on tradition, hunches, and instinct. An administrator might have had a successful experience during her playing days and believe that replicating the experience will provide her staff or students with a similar outcome. A coach might believe a student will have more academic success with a certain course load in season versus out of season. A development officer might think a campaign that worked at a previous institution will work at his new university. However, when viewed critically with objective data, sometimes relying on intuition does not produce the intended outcome.

NCAA DATA SUMMIT

Following the Indianapolis session of Regional Rules, the national office offered a first-of-its-kind opportunity to the membership by hosting the NCAA Data Summit.

The purpose of the Data Summit was to bring campus and conference members together with industry experts to increase knowledge and develop best practices related to the use of data on campus. Data industry leaders SAS, a data analytics company headquartered in North Carolina, and Teradata, a data analytics company headquartered in California, both provided the staff with input and guidance for the inaugural event.

"We hope to create an ecosystem of colleagues who will move the profession forward by using data to address issues and find solutions," according to Steve Clar, Associate Director of Academic and Membership Affairs. "We hope this group of practitioners from campus and from the business community will grow each year, both in number and influence."

Presenters at the summit educated forward-thinking athletics administrators on how to use data to make better decisions in every aspect of their department.

ACADEMIC SUPPORT

Leading one of the most progressive academic support services offices in the nation, Tommy Powell, Assistant Provost at Syracuse University, revealed his department's use of predictive analytics to identify student-athlete academic performance indicators. Among many other practical applications, Syracuse uses this information to establish individualized remediation plans and to guide objective-based study tables in place of the traditional weekly required study hall-hours model.

SPORT PROGRAM EVALUATIONS

Athletics employees often work intensely for long hours with great passion and commitment when trying to solve a problem or change a procedure; unfortunately, according to Tricia Brandenburg, Deputy AD at Towson University, they often start their project without identifying the right problem. Using the NCAA's Institutional Performance Program (IPP), Towson Athletics leads its sport administrators and head coaches to ask the right questions by comparing key performance indicators with conference and aspirational peers. This approach allows Towson to identify where to allocate resources and energy, allowing employees to work more efficiently.

FISCAL MANAGEMENT

A panel of athletics administrators highly respected in the field shared their experiences using data across the spectrum of administrative areas. Presenters referenced their use of the following software programs and primary sources:

- IPP
- WinAD
- EADA/IPEDs
- APR/GSR/FGR Databases
- Campus Institutional Research
- Tableau
- GridIron
- Turn-Key
- Teradata
- SAS

Lee DeLeon, Executive Senior Associate AD at Purdue University, applies quantitative research from WinAD, GridIron, and Tableau in his development, fundraising, and booster engagement efforts.

Dr. Nicki Moore, Director of Athletics at Colgate University, applies data from IPP, EADA, and IPEDs to create institutional profiles and program scorecards.

Traci Murphy, Director of Athletics at Daemen College, prepares team prospectuses to prepare candidates for best fit using IPP and sports information resources.

Dr. Roderick Perry, Director of Athletics at IUPUI, uses IPP in researching conference alignment, identifying aspirational peers, and setting strategic priorities.

FAN ENGAGEMENT

The 2011 Columbia Pictures feature film *Moneyball* told the story of the Oakland A's use of empirical metrics to build a winning roster. The A's organization has expanded its industry-leading use of data to enhance community engagement. Mark Bashuk, director of the A's business analytics, encouraged attendees to be smart with their own data and make use of a customer relations management system to set dynamic pricing for home contests

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NCAA Facilitates Use of Data in Decision Making and Policy Creation

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and establish in-game fan engagement promotions. With current technology, it is easy to establish a 360-degree view of individual fans and project a lifetime value for each; such profiles can lead an organization to make better use of its energy and resources. These fanbase analytics can also be applied to an institution's student-athlete population to enhance resource allocation and programming.

PARTNERING WITH ACADEMIA TO GUIDE BEST PRACTICES IN ATHLETICS

Dr. Dave Schrader, a board member at Teradata University Network, connects athletics departments with engaged students and faculty to create sports analytics projects on campus. Schrader outlined four projects showcasing the potential benefits of having students mining and analyzing data:

- An FBS conference discovered factors that did and did not impact home football attendance
- A DIII institution identified factors that did and did not impact PSA commitment decisions
- A football program identified defensive schemes which would likely surrender large amounts of yardage
- A wrestling coaches association reconfigured the most equitable regional championship assignments

Each study led institutions to rethink where they invest time and energy based on data, rather than intuition. The key to these successes, however, was having administrators who were willing to grant access to information.

REPORTS FOR BOARDS

Amy Perko, Chief Executive Officer of the Knight Commission on Intercollegiate Athletics, reminded attendees of two invaluable resources for preparing reports

for high-influence boards; aside from IPP, Perko walked through the custom reporting tool on the College Athletics Financial Information database and the AGB Board of Directors' Statement on Governing Boards' Responsibilities for Intercollegiate Athletics. Administrators who research these resources for strategic planning and information-sharing purposes will be able to explain where money comes from and where it goes in college sports.

DATA FOR MARKETING, ACADEMICS, AND STUDENT-ATHLETE PERFORMANCE

The Data Summit closed with co-presenters Sam Edgemon, a national expert in prediction models and analytics in higher education from the SAS Institute, and Rick Steinbacher, Senior Associate AD for Marketing and Corporate Sponsorships at the University of North Carolina. Together, the duo described the benefits of their real-world partnership of industry and campus athletics.

Given the advances in data availability, storage, memory, and computing, the experts at SAS led UNC to find meaningful patterns and relationships in its data in order to drive decision making in the following areas:

- Fan Engagement
- Ticket Sales
- Booster Club Memberships
- Recruiting Strategy
- Classroom Success
- Game Performance
- Injury Prevention

The resulting cultural shift toward data-based decision making within UNC Athletics has spurred collaboration across units within the department, interest from across the university, and measurable successes.

WORKING WITH THE OFFICE OF INSTITUTIONAL CONTROL TO IMPROVE APR SCORES

Although not covered directly during the NCAA Data Summit, a similar theme with both data and campus collaboration is playing out on college campuses this summer. Member institutions are currently tracking on Academic Progress Rate, scholarship expenses, sports sponsorship and demographics, and a host of other required reports concerning many aspects of NCAA membership. Moreover, grades from the spring semester are leading certifying officers to review the eligibility status and needs of continuing and departing student-athletes.

Engaging the campus office of institutional research (IR) is one way to enhance the reliability, objectivity, and institutional control of these reporting processes. Athletics departments that extend an offer to institutional research professionals to join their version of the campus compliance working group for athletics are encouraging transparency and reliability in their data. IR professionals, with their access to raw data, can locate student-athletes who might have returned to campus and graduated without the department's knowledge. IR experts can use the National Student Clearinghouse to verify transfer status of departing students in cases where coaching staff members lose touch. Compliance professionals can also collaborate with IR professionals to establish student-athlete academic performance indicators, DFW rates for high-enrollment courses, tutor effectiveness measures, and other data-based trends in order to help departments identify challenges specific to their needs.

The NCAA is currently contemplating a similar event in conjunction with the 2020 regional seminars. ■

Wisconsin-Stevens Point AD Says Lack of Communication Among Former Officials Led to NCAA Rules Violations

In a press conference, University of Wisconsin-Stevens Point Athletic Director Brad Duckworth defended the fact that his current men's basketball coach still has a job, even though the coach and his staff "routinely observed, influenced and, at times, participated in sport-specific activities outside the practice and playing season allowed by NCAA rules" over a five-year period, according to the NCAA, which led the Division III Committee on Infractions to punish the school with four years of probation.

Duckworth suggested that the cause of the violations was a miscommunication between the former athletic director and the coaching staff, according to the Stevens Point Journal. Furthermore, men's basketball coach Bob Semling, who was suspended for the first half of the 2016-17 season, was a relatively new coach during the violations and had a misunderstanding of NCAA Division III rules, the paper reported Duckworth as saying.

The NCAA said Semling "did not promote an atmosphere for compliance within his program due to his involvement in some of the violations.

"The committee found that over a five-year period, the men's basketball coaching staff routinely observed, influenced and, at times, participated in sport-specific activities outside the practice and playing season allowed by NCAA rules. The impermissible sessions occurred five days a week for five weeks each fall and five weeks each spring. The coaching staff distributed workout sheets detailing drills to be completed with provided space for the student-athletes to record their performances. The head coach also selected teams for scrimmages and authorized assistant coaches to participate in the occasional scrimmages. The coaching staff also allowed prospects visiting the

university to participate in the sessions, contrary to NCAA recruiting rules."

In its decision, the committee noted that the out-of-season activities provided the student-athletes extra practice opportunities and skill instruction and "gave coaches additional opportunities to assess student-athlete and team development." It continued that these violations "gave the university an unfair competitive and recruiting advantage over schools that follow the rules."

Semling "directly participated in the violations. While the head coach was not involved with previous violations, the committee found he demonstrated that rules compliance was not foremost on his mind as he ran his program. It continued that out-of-season activity rules are fundamental, and the head coach did not ask the former athletics director whether his involvement in the activities was permissible.

"The committee found the university did not recognize and adequately act on multiple indications that the program routinely conducted out-of-season activities and impermissible recruiting activity. The activity took place in a highly visible area near the former athletics director's office. The balcony where the coaching staff observed the workouts was a main pathway, and the coaches' actions were easily visible to athletics administration."

Hence, the Committee found the university's former athletics director "violated NCAA ethical conduct rules when he provided the NCAA enforcement staff and university false or misleading information about his knowledge of the violations."

Elaborating, the NCAA noted that "several athletics staff members alerted the former athletics director about the impermissible activity. Despite the alerts,

the former athletics director did not recognize, react to or stop the impermissible conduct. The athletics department did not give information about NCAA playing and practice seasons rules to those involved in scheduling facilities. Because of this, the schedulers did not recognize that holding courts for student-athletes during times where practices were impermissible created a risk of violations."

It added that "the failure to monitor the men's basketball program was significant considering the multiple red flags and alerts provided to the former athletics director over the five-year period."

The NCAA went on to suggest that the former AD was less than "truthful" when he said he did not know about the activities.

Besides the probation, the Committee also instituted:

- A three-year show-cause order for the former athletics director. During that period, he must attend two NCAA regional rules seminars and receive ethics training.
- A two-year show-cause order for the head coach. During that period, he must attend one NCAA regional rules seminar and receive ethics training. The committee acknowledged his 13-game suspension during the 2016-17 season and required attendance at the 2016 NCAA regional rules seminar. The committee noted it could have prescribed a more stringent show-cause order if the university had not taken this action.
- A postseason ban for the 2016-17 season (self-imposed by the university).
- A prohibition of men's basketball official visits during the probationary period. The committee acknowledged the university's self-imposed prohibi-

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Cal Poly Appeals NCAA Ruling Involving Textbooks

California Polytechnic State University has announced that it will appeal the NCAA Division I Committee on Infractions' (COI) decision to punish the school for allegedly giving too much money to student-athletes for their textbooks.

"The university has filed an intent to appeal with the NCAA. That gives the university 30 days to file an appeal," the Cal Poly athletic department said in a May 3 press release. "However, the university is still reviewing its options on how it will proceed, and we won't have any additional details to provide until that decision is made."

The university will likely try to show that the COI abused its discretion when penalizing the university.

In its original ruling on April 18, the COI found that Cal Poly did not monitor its book scholarship program to ensure that the administration of stipends followed NCAA rules.

At the time, the NCAA noted that the university provided 265 student-athletes in 18 sports an \$800 stipend, which was not equal to the actual cost of course-related books purchased. This was obviously contrary to NCAA rules. The committee found that the stipend exceeded the actual cost of books for 72 student-athletes by a total of \$16,180. The violations also caused 30 student-athletes to exceed their individual financial aid limits.

According to the panel's decision, Cal Poly lacked a fundamental understanding of NCAA rules about book stipends, which the university characterized as "misapplying" the rule. The university mistakenly treated the book stipend in the same manner as room and board stipends, which are used by student-athletes

as they see fit to cover off-campus living expenses. Instead, NCAA rules require book stipends equal the exact cost of the books required for coursework.

The committee did not believe the university broke the long-standing rule on purpose but said, "There is no ambiguity in the wording of the legislation and thus no room for misinterpretation. Cal Poly simply failed to abide by this rule."

Because the university was unaware it was violating NCAA rules, the committee said Cal Poly did not provide rules education about book scholarships to the athletics department, financial aid office and others. Cal Poly also did not have policies and procedures to monitor use of the book stipend, such as requiring receipts, to make sure that the stipend was used for its intended purpose.

QUESTION OVER WHETHER THE VIOLATIONS WERE LEVEL III OR LEVEL II

Although the university agreed to the facts of this violation, it believed that the violation was Level III and disagreed with the failure-to-monitor allegation. The committee determined that the violations are Level II because they occurred for 3½ years and involved 265 student-athletes. Additionally, the committee concluded that the totality of these circumstances demonstrated the university failed to monitor its book stipend program.

The committee used the Division I membership-approved infractions penalty guidelines to prescribe the following measures:

- Two years of probation.
- A vacation of records in which student-

athletes competed while ineligible. The university must provide a written report containing the contests impacted to the NCAA media coordination and statistics staff within 45 days of the public decision release.

- A fine of \$5,000 (proposed by the university).

Members of the Committee on Infractions are Norman Bay, attorney in private practice and former chairman of the Federal Energy Regulatory Commission; Jason Leonard, executive director of athletics compliance at Oklahoma; Joyce McConnell, provost and vice president of academic affairs at West Virginia; Vincent Nicastro, chief hearing officer for the panel and deputy commissioner and chief operating officer for the Big East Conference; and Roderick Perry, athletics director at Indiana University-Purdue University Indianapolis.

WHAT THE APPEAL MIGHT LOOK LIKE

Cal Poly maintained through the investigatory process that the violation was an inadvertent error, which it self-reported when it was discovered.

"Cal Poly has cooperated in every way with the NCAA throughout this process that began in 2015," Cal Poly Athletic Director Don Oberhelman said in the release. "There was never an intent to violate NCAA rules, and when we discovered the issue, we self-reported it to the NCAA."

The COI, however, has stated that there is "no room for misinterpretation. Cal Poly simply failed to abide by this rule." ■

UPDATE: California SB 206 — Collegiate Athletics: Fair Pay to Play Act Moves Forward

By [Gregg E. Clifton](#), of Jackson Lewis

The Fair Pay to Play Act, introduced by California State Senate Majority Whip Nancy Skinner, has passed an initial hurdle toward becoming law when the California State Senate passed the proposed legislation by a 31-4 vote. The California Assembly will now consider the measure in the near future.

The proposed legislation (as discussed in our recent blog post on March 1, 2019) would prohibit a California public postsecondary educational institution, athletic association, conference, or any other organization with authority over intercollegiate athletics, from preventing student-athletes from earning compensation in connection with the use of the student-athlete's name, image, or likeness. Specifically, any such compensation would no longer affect a student-athlete's scholarship eligibility. The proposed legislation would prohibit direct payments from schools to athletes and would become effective in 2023.

Commenting on the Senate's approval of her proposed legislation, Skinner said "The California Senate has spoken loud and clear: Student athletes should enjoy the same right as all other students to earn income from their talent. SB 206 gives our college athletes the same financial opportunity afforded to Olympic athletes."

Senator Skinner asserts that the vast majority of full-scholarship athletes live at or below the poverty level while generating tens of billions of dollars for their colleges, corporate sponsors and television networks. In support of her legislation,

Skinner further alleges that, "NCAA rules disproportionately harm students from low-income families," and that the NCAA rules "are particularly unfair to female athletes, because for many young women, college is the only time they could earn income, since women have fewer professional sports opportunities than men."

The following is a glimpse into the most pertinent language of the proposed Act:

- A California public postsecondary educational institution shall not uphold any rule, requirement, standard, or other limitation that prevents a student of that institution participating in intercollegiate athletics from earning compensation as a result of the use of the student's name, image, or likeness. Earning compensation from the use of a student's name, image, or likeness shall not affect the student's scholarship eligibility.
- An athletic association, conference, or other group or organization with authority over intercollegiate athletics, including, but not limited to, the National Collegiate Athletic Association, shall not prevent a student of a California public postsecondary educational institution participating in intercollegiate athletics from earning compensation as a result of the use of the student's name, image, or likeness.
- A scholarship from the public postsecondary educational institution in which a student is enrolled that provides the student with the cost of attendance at that institution is not compensation for purposes of this section, and a scholarship shall not be revoked as a result of earning

compensation pursuant to this section.

For purposes of this section, "public postsecondary educational institution" means any campus of the University of California, the California State University, or the California Community Colleges.

The Fair Pay to Play Act would not add any specific costs to university athletic budgets or create any financial hardships. In fact, the proposed legislation is completely cost neutral to the higher education institutions while authorizing student-athletes to use their unique position to secure financial rewards while still performing at an amateur level and assuming all of the risk of season-long or career ending injury.

Despite the bill's strong bipartisan support within the California Senate, concerns have been raised by those who oppose the legislation becoming law.

Specifically, several legislators have raised concerns how the NCAA will treat California collegiate sports programs if they follow the requirements of SB 206 and ignore the specific directives and enforceability of relevant NCAA bylaws.

Senator John Moorlach said the bill could result in California schools being excluded from the NCAA, which could eliminate the ability of these programs to participate in specific NCAA events. The California State University systems, the University of California, USC and Stanford University have all publicly expressed opposition to the Fair Pay to Play Act. ■

NAAC SELECTS 2019-20 BOARD OF DIRECTORS

The NAAC has selected Kristine Fowler, senior associate athletic director at Indiana University, as president for the 2019-20 membership year.

"The opportunity to serve compliance professionals and the compliance industry through NAAC over the next year as president is truly a privilege," said Fowler. "The responsibilities of compliance professionals are ever-growing and I look forward to working with our great Board that serves the NAAC membership in building the credibility, voice and influence of our organization."

Additionally, Andrew Donovan, associate AD for compliance at the University of Tennessee, will move into the 1st vice president role; Jason Leonard, executive director of compliance at the University of Oklahoma, will take over as 2nd vice president; and Trace Wilgus, associate AD of compliance at Vanderbilt University will serve as the new 3rd vice president for the upcoming year, as announced in April. Immediate Past President Elizabeth Heinrich, executive senior associate AD and chief student development and compliance officer at the University of Michigan, will continue to serve in a leadership capacity throughout the next year.

Also announced in May, Kristy Bannon Sromovsky, Temple University and Tom Mitchell, Purdue University, will join the NAAC Board of Directors as at-large members.

Additionally, the following individuals will serve on the NAAC Board of Directors for the upcoming year: Lisa Archbald, Northeast Conference; Michelle Bronner, University of New Hampshire; Shoshanna Engel, Georgia Tech; Matt Jakobsze, University of Missouri; Tim Lanski, San Diego State University; Paul Perrier, Rutgers University; Kris Richardson, NCAA; Eric Schneider, University of Connecticut; Darnell Smith, University of Central Oklahoma; and Jackie Thurnes, NCAA.

NAAC ANNOUNCES AWARD WINNERS AT CONFERENCE

NAAC announced its 2019 award winners, who were recently honored at the conference in Orlando. The winners were: Frank Kara Leadership Award – David Reed, senior associate athletics director, compliance and student services, University of Kansas; Mike Cleary Organizational Leadership Award – Jacqie McWilliams, commissioner, Central Intercollegiate Athletic Association; Rising Star Award – Marra Hvozdovic, director of compliance, ACC and Anthony Francis, associate athletics director, compliance, McKendree University; and Division II Excellence Award – Scott Larson, deputy director of athletics, compliance,



David Reed

Lubbock Christian University.

Eric Schneider, Membership and Awards Committee chair, and assistant athletics director for compliance at the University of Connecticut, made the announcement.

The Frank Kara Award is NAAC's premier award. It is the highest honor that may be bestowed upon compliance professionals. This award, given annually, is named in honor of former University of Minnesota Director of Compliance Frank Kara who was a leader in the compliance field and best known for hosting the inaugural NAAC Workshop in 2006. Sadly, Frank lost his battle with cancer at the age of 40.

David Reed started at the University of Kansas in 2012 and was promoted to his current role as senior associate athletics director in 2015. Reed oversees the Compliance and Student Services Office, while serving as the lead person on all NCAA compliance related matters. Prior to Kansas, Reed held senior level leadership positions in compliance at the University of Miami, University of Pittsburgh and Marshall University. He also has been an active NAAC member serving on the Professional Development Committee, spearheading the ACE Mentoring Program.

The Rising Star Award recognized young compliance professionals who are considered to be emerging leaders within the compliance profession.

Marra Hvozdovic came to the Atlantic Coast Conference in 2016 as its director of compliance, from Florida State University. In her current role, she is responsible for developing proactive and creative education for the ACC membership, such as a monthly newsletter, managing ACC Compliance Twitter account and educational videos and presentations. Outside of the ACC, Hvozdovic is actively involved in NAAC as a member of the Marketing and Strategic Communications Committee and serves as a liaison to the Convention Committee. She is also a member of the CCACA and Women Leaders in College Sports, where she is currently chair of the Foundation Fund Committee.

Anthony Francis was named the associate director for compliance at McKendree University in 2017. Prior to his current position, he worked at California Baptist University in the compliance office for three years, advancing to assistant director of compliance. Francis earned his bachelor's degree from the University of Alaska Anchorage and his master's from Cal Baptist. He is currently working to obtain his Doctorate of Education in organizational leadership.

The Division II Excellence Award is a prestigious annual award given to a compliance professional who is a leader in the compliance field at the Division II level.

Scott Larson arrived at Lubbock Christian University (LCU)

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in 2012 to assist in LCU's transition to NCAA Division II. Arriving at LCU as its first-ever compliance individual, he has since initiated many compliance programs to ensure the university is compliant with the NCAA and Heartland Conference. Larson not only oversees compliance but also handles the management of game contracts, external relations activities and strategic planning. He currently serves as the NAAC Division II Committee Chair, in addition to being on the NCAA DII Legislation Committee and the Heartland Conference Compliance and Governance Committees.

The Mike Cleary Organizational Leadership Award is named after former NACDA Executive Director, Mike Cleary, and is given to an organizational leader (i.e., athletics director, general counsel, provost, president, commissioner, NCAA executive) who has demonstrated NCAA compliance leadership and a strong commitment to fostering a culture of compliance to NCAA rules within their organization.

Jacqie McWilliams, who is just the third full-time commissioner of the Central Intercollegiate Athletic Association (CIAA) and first African American to hold the position, is in her seventh year as conference commissioner. Prior to coming to the CIAA, McWilliams spent nine years at the NCAA, managing NCAA championships. While at the NCAA, she served as the director of the Division I Women's Basketball Tournament, 2006-2009, and the Division I Men's Basketball Tournament, 2007-2012. She has a vast knowledge of compliance and governance, human resources and external relations. Commissioner McWilliams attended Hampton University and obtained her master's degree from Temple University, where she was inducted into its Gallery of Success.

SVSU ATHLETIC DIRECTOR RAILS AGAINST NCAA FINDING OF A LACK OF INSTITUTIONAL CONTROL

Saginaw Valley State University Athletic Director John Decker didn't mince words.

"We don't like what happened, and we don't like the perception people may have," Decker told the media. "When they use the term 'lack of institutional control,' we're lumped in with the worst transgressors of NCAA rules because of the number of violations."

Decker, previously the school's associate vice president and general counsel, was not part of the athletic department when 137 eligibility infractions (covering 130 athletes in 15 different sports) occurred. He was asked to be the interim AD at the end of 2017, and became the permanent AD in 2018.

By then, the handwriting was on the wall as the NCAA dished out four years of probation.

But the NCAA should have looked at the nature of the crime, not the number, he said.

"One or two would have been self-reported and taken care of ... but we had multiple cases," Decker said. "When we discovered multiple cases, we self-reported it. It wasn't just one or two cases, so the NCAA asked us to keep looking, which we did."

Where the NCAA and Decker found agreement was that the catalyst for the transgressions at the Division II school was a lack of resources.

"We only had one compliance officer, who we also asked to work as an academic advisor," Decker told the media. "It's not uncommon for a Division II school to have just one compliance officer. But we offer more sports and have more athletes than many other Division II schools, so that might not be a fair comparison."

SVSU now has the equivalent of two full-time compliance officers, which Decker believes has "fixed the problem."

"It was an oversight, which we found and self-reported, that mushroomed into something bigger than it should have been. To say it was just a paperwork problem isn't accurate and minimizes the problem. But there was nothing intentional about it. It was a lot of misdemeanors but not a felony."

GREEN PROMOTED TO ASSOCIATE AD FOR COMPLIANCE AT THE UNIVERSITY OF NEW HAMPSHIRE

Shawn Green has been named associate athletic director for compliance at the University of New Hampshire (UNH). His return to UNH followed four years (2015-19) as the assistant director of athletics for compliance at Southern New Hampshire University (SNHU) in Manchester, N.H. He previously worked at UNH from 2010-15. He started in the fall of 2010 as compliance coordinator and academic support assistant and was elevated to assistant athletic director for compliance in July 2013. Green earned a bachelor's degree in molecular, cellular and developmental biology from UNH in 1996 and a master's degree in kinesiology from Michigan State in 1998.

KARI WINTERS NAMED SWA AND COMPLIANCE DIRECTOR AT MUSKINGUM

Muskingum University head softball coach Kari Winters has been named the athletic department's senior women's administrator and compliance director. In her new roles, Winters will represent Muskingum at Ohio Athletic Conference league meetings and provide leadership in the areas of student-athlete and staff development. She will also help develop, implement, coordinate and administer NCAA, OAC, and Muskingum compliance initiatives. Winters graduated from Muskingum in 2008 with a B.A. in health/physical education. She completed her M.A.E. in adult education from Muskingum in 2010.

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ing a football player for the duration of a contest because of a helmet-to-helmet hit.

Justice theory also must focus on two distinct qualifications: the fairness of the outcomes and how they are distributed, and the fairness of the procedures used to obtain the distributions or procedural justice (Colquitt, Conlon, Wesson, Porter, & Ng, 2001). This critical concept of procedural justice helps to ensure equity-based and deterrent punishments enhance the perception of fairness. Furthermore, when considering how to hand down punishment for collegiate institutions, and their employees and students, it is important to note that when procedures are perceived as fair by participants, then the individuals are more likely to be willing to cede some level of control over the decision stage (Thibaut & Walker, 1975). This understanding provides support for

the idea that universities may be willing to outsource levying of punishments in certain contexts if the procedures in place are unambiguous and the circumstances warrant. Because of the sensitive nature of domestic violence and sexual assault, it is critical to avoid the appearance of impropriety by an institution. Due to recent instances of situations involving university officials like Jerry Sandusky and Larry Nassar, universities should endeavor for this regardless of the result due to the negative perception that is created when a scandal of this nature is revealed.

Ultimately, procedural justice is designed to protect the individuals participating from unfairness that may result from ill-conceived and inequitable rules. Rule makers in sport must focus on the procedural mechanisms of rules so that the implementation of these concepts

will be perceived as fair to all participants regardless of any fundamental difference in skill, resources, or unique circumstances (Thibaut & Walker, 1975). While these procedural elements are well defined in many sports, a distinct lack of demarcation exists when considering the eligibility of the players to actually participate in sport. Among other measures, the NCAA requires an amateur status and certain forms of academic progress, such as grade point average or progress toward degree requirements. However, there is absolutely no NCAA legislation or bylaws that specifically addresses how the organization shall be required to deal with criminal misconduct. This is an omission that creates confusion regarding penalties for a variety of off-the-field conduct issues.

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Dr. Robert Greim

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The NCAA's dearth of internal rules regarding criminal conduct demonstrates the need for new bylaws and regulations that standardize punishments so that the NCAA can consistently enforce its rules and apply them in a transparent and uniform way. Any rule created to clarify the behavioral expectations of student-athletes requires clear procedural elements to function. Absent this lucidity, colleges and the NCAA are left to consider most infractions on a case-by-case basis, relying on the limited amount of precedent and legislation to guide the punishments handed down.

PURPOSE

The aim of this article is to consider the creation of clear and harsh sanctions against criminal behavior committed by intercollegiate student-athletes and university employees. Specifically, the purpose is to demonstrate the need for independent investigation of these issues outside the purview of the university and additional NCAA bylaws that clarify violations and standardize sanctions for all kinds of criminal conduct, but especially domestic violence and sexual assault.

To promote proper conduct outside of athletic competition, there should be a clear segregation between violations of NCAA rules and punishments for breaking the law. This would augment the enforcement model to more accurately reflect the goals of distributive justice. Unfortunately, because the most severe punishments the NCAA can levy are suspensions, repayment of improper compensation, or community service, which are insufficient in many circumstances of criminal behavior, it is difficult to differentiate between the NCAA violations and more serious societal misconduct. To fix this problem, the NCAA could take two approaches. First, it could treat amateurism rules violations

less harshly; however, this seems untenable due to the NCAA's longstanding focus on amateurism and its perceived need for strong deterrent punishments to ensure this mission remains intact. Second, it could punish criminal action more severely by specifically implementing a zero-tolerance policy for perpetrators of violent crimes like sexual assault and domestic violence. In the current social climate, where scandals at Syracuse, Penn State, Michigan State, Ohio State, Baylor University, and even the United States Olympic Committee have forced people to reassess the safety of students on campus and when dealing with coaches, doctors, and other people of authority, this approach might be well received by the public at large and would establish a stronger retributive justice model the NCAA could utilize as a firm deterrent.

Through the presentation of the following examples, it will become clear that the best approach is to augment the NCAA rulebook. Furthermore, by creating an NCAA tribunal that promulgates the new NCAA rules and assesses individual situations whereby student-athletes commit criminal infractions and other severe character improprieties, the appearance of any potential bias of university officials involved in an investigation would be minimized and punishments could be further standardized. While there is always potential for bias, even in a group appointed by the NCAA to be impartial, having multiple actors from divergent backgrounds, vocations, and adjudicating bodies would help prevent haphazard or capricious investigations. This additional oversight would be a better alternative to the way many investigations have been conducted in the past by lone actors, or small groups, whose ability to dictate the nature and scope of the investigation may have been influenced by their own personal

biases or partiality.

The theoretical framework of retributive justice, specifically the need for strong general deterrence, would inform the public about what is and is not appropriate behavior, allow for harsher penalties regarding personal conduct, and would serve as notice to potential future rule breakers that certain types of behavior will not be tolerated (Brickman, 1977). As a result, a zero-tolerance stance by the NCAA – permanent suspension after the first offense – is not without merit. Three elements support a zero-tolerance culture: the privilege of playing intercollegiate athletics, recidivism rates, and a turning tide in public opinion. First, it is commonly held that participating in intercollegiate athletics is a privilege, not a right (Epstein, 2013; *Hart v. National Collegiate Athletic Association*, 2001). To support an athlete's expulsion on the first infraction, the NCAA tribunal must be committed to fair and proper due process; however, if an athlete is found to indeed have committed an act of domestic violence or sexual assault, losing the privilege of playing intercollegiate athletics is certainly not unjust. Second, many would argue that a first serious infraction should be punishable with a suspension and/or education, thus allowing the athlete to receive a second chance at playing. We argue that a second chance is unnecessary as research indicates that repeat offenders commit an average of 5.8 rapes each (Lisak & Miller, 2002). Further, Hanson and Morton-Bourgon's (2005) meta-analysis found that recidivism rates for sexual offenders range from 13% to 36%, including repeat sexual and/or violent offenses. They reported that while offenders who receive treatment may show lower recidivism rates than those who do not, there is also contrary empirical data

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indicating that many counseling programs have no effect on lowering repeat offenses (Hanson & Morton-Bourgon, 2005). If even long-term, cognitive-behavioral therapy cannot reduce repeat offenses, it is unlikely that an educational program doled out as “punishment” would reduce a student-athlete’s chances of sexually assaulting another student. When considering how to punish university employees such as coaches and doctors, among others, immediate termination makes even more sense given the power dynamic that exists between university employees and students.

Lastly, there has been some recent change in public opinion on how to respond to sexual assault and violence against women by college student-athletes. Despite the fan bias shown in cases like Ohio State, Penn State, Baylor, or FSU, public opinion is shifting to acknowledge that athletes who commit violence against women are not welcome on the playing field. A recent survey noted that 87% of football fans “oppose their favorite NFL team drafting a top college prospect with a history of physical violence against women” (The Marist Poll, 2017). Additionally, in 2016, the Southeastern Conference (SEC) and the Pac-12 Conferences both initiated bans on transfer students with a history of “serious misconduct” issues, including sexual assault and stalking (ESPN news services, 2016). In 2017, Indiana University announced a similar policy, expanding beyond transfer students to include any student-athlete, such as an incoming freshman (Osterman, 2017).

Even collegiate coaches now believe in stronger punishment. In 2014, University of Oklahoma running back Joe Mixon was suspended from play for one year after punching a woman, resulting in her broken jaw and cheekbone, after a verbal altercation in a deli. Bob Stoops, then the head

football coach for Oklahoma, reflected on allowing Mixon a second chance:

In reversing course, Stoops said he believed that the then-18-year-old Mixon could redeem himself. He said times have changed, and society now has a no-tolerance policy on domestic violence incidents. He said that’s a good thing. “Two-and-a-half years later, dismissal is really the only thing that is possible,” Stoops said. “A young guy having an opportunity to rehabilitate and to have some kind of discipline and come back from it is really not there anymore. Hopefully that message goes down even to the high school level, that these things are just unacceptable to any degree.” (Associated Press, 2016)

Public opinion, including that of football coaches, is reflecting an acceptance—a promotion, even—of a zero-tolerance policy for perpetrators of sexual assault and violence against women. Indeed, even the NCAA has recently recognized the need for more effective action to end sexual assault in college athletics. In August 2017, the organization adopted a new policy on campus sexual violence, requiring that university administrators annually attest to the sexual assault prevention education received by all student-athletes, coaches, and staff. This is a positive step in the right direction for considering the NCAA’s reflection of public opinion on the harms of violence against women. Combined with research on recidivism rates and prevailing legal opinion on the privilege of playing sports, an NCAA tribunal that finds athletes have violated policies on sexual assault and violence against women should enact a punishment of expulsion from athletics, creating a zero-tolerance culture in intercollegiate sports. To ensure the perception of procedural fairness, this zero-tolerance philosophy absolutely must extend to university employees as well.

The implementation of new policies

and procedures designed in this vein would produce a mechanism for significant change in punishments, create a substantial and general deterrent effect, keep potential conflicts of interest out of future investigations, and help repair the damaged reputation of the NCAA’s member schools.

DISCUSSION

There are certainly circumstances where NCAA rules violations have warranted long suspensions or permanent ineligibility. For instance, University of North Carolina (UNC) football players Robert Quinn and Greg Little were found permanently ineligible by the NCAA for receiving impermissible financial benefits from an agent and then lying about it to NCAA investigators (Associated Press, 2010). The issue of lying about conduct, as well as receiving impermissible benefits, is of paramount importance to the NCAA. For instance, while at Oklahoma State, Dez Bryant was fearful that he committed a violation, so he lied about his conduct and was ruled ineligible for lying (Schad, 2009). As such, permanent suspensions in the above situations were warranted and the product of well-conceived and established precedent. However, because of the amateurism mandate, rules violations such as those by the UNC football players are often punished more severely than some criminal violations (i.e., driving under the influence, sexual assault, and domestic violence). But is this the proper message the NCAA should send to the public? In the current climate of #MeToo this question seems to have an obvious answer.

The first set of rulebook changes should deal with formally standardizing punishment for minor amateurism rules viola-

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tions, such as improper contact with an agent or the receipt of extra benefits, and non-violent criminal misdemeanors such as underage drinking, minor drug infractions, and other victimless crimes. The second expansion of rules should stipulate specific, harsh penalties for the commission of severe and/or violent crimes, specifically those resulting in injury to others such as sexual assault and domestic violence. In many ways, the NCAA may be better equipped to sufficiently penalize and deter student-athletes from committing these heinous acts than universities or the police and prosecutors exercising jurisdiction on campuses. While it is recommended that the scope of authority for the NCAA is expanded, individual higher education institutions should also retain power to penalize student-athletes under their own campus conduct policies, and, most importantly, take a more active role in prevention education and raising awareness regarding the epidemic of sexual assault on college campuses.

Additionally, the judicial system and law enforcement must continue to have an active role in the investigation and pursuit of convictions regarding criminal acts. However, the courts are limited by the criminal burden of proof (i.e., beyond a reasonable doubt) and, as a result, punishments for sexual assault are inconsistent, while cases are frequently dismissed due to lack of evidence, cooperating witnesses, and prosecutorial discretion. This was extremely evident in the recent scandal at Ohio State involving alleged claims of domestic violence claims against Zach Smith (Sullivan, 2018). These shortcomings create a vacuum that the NCAA could fill, specifically in punishing student-athletes who have evaded the brunt of the justice system by utilizing different standards of proof and investigative procedures.

The NCAA has a multi-faceted and

nuanced way of punishing student-athletes for minor violations of rules. In many cases, initiation of punishment is by the school self-reporting the violation to the NCAA (Buckner, 2015). When this occurs, the school will typically detail the nature of the violation, the code(s) violated, and the recommendation for punishment based on existing precedent. The NCAA will then decide if the proposal is sufficient; if so, it will be accepted, and if not, the NCAA may choose to add further sanctions.

Alternatively, when dealing with major rules violations, the infraction is often more difficult to discover. A student-athlete may be inclined to try obscuring the truth in regard to the receipt of impermissible benefits or improper contact with an agent, as athletic compliance offices typically provide significant education to student-athletes regarding these transgressions. Similarly, if a student-athlete commits academic impropriety, or a criminal act like domestic violence or sexual assault, there will not likely be a self-report by the university to the NCAA unless that person is caught or someone reports the conduct. This reality is even more unsettling when an employee of the university obscures the truth.

The nature of academic or amateurism rules violations, along with the diametric opposition of these actions to the NCAA's credos, justifies swift and/or severe action by the NCAA. However, with renewed national focus on sexual assault and domestic violence, the deterrent effect of the NCAA's punishments should be exceedingly substantial. Therefore, the NCAA needs to recalibrate its focus towards larger problems facing its constituency, specifically sexual assault and domestic violence, rather than amateurism, eligibility concerns, and profits.

In considering NCAA punishments for student-athletes' improper conduct related

to rules violations and school policy, there are several large-scale conclusions that can be drawn. First, the NCAA is looking at a variety of issues related to student-athlete conduct and needs to focus on and define certain problematic areas more than others. Second, there are areas of concern that would be better policed by the institutions themselves, with the NCAA essentially responsible for policing the institution if it loses control, specifically in regard to systemic academic misconduct issues. Third, the time required to conduct such large-scale investigations often takes too long for timely deterrent action, therefore original transgressors may go completely unpunished. Finally, and perhaps most importantly, there are situations where the university itself may have a conflict of interest, or at minimum, a concern for an appearance of impropriety when investigating certain issues. For these, and other reasons, the NCAA should step forward to be an extra-judicial wing of the institution to ensure that serious offenses are met with serious consequences.

When looking specifically at sexual assault and domestic violence issues in the context of the NCAA, an individual's criminality may well manifest itself outside the purview of the university and its oversight entities, making the collaboration between the accused student-athlete and the university itself next to impossible. This fractured relationship also makes it difficult to determine the role a university, or its employees, may have had in a cover-up or other inappropriate action.

While there may be circumstances in which schools take widespread issue with criminal conduct, the adult who commits the crime is the perpetrator and, as such, deserves appropriate punishment. Should an individual be found by a preponderance

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of evidence to have committed a violent crime, the punishment levied against him, or her, must be swift and severe. The NCAA is not bound to the criminal standard of proof beyond a reasonable doubt, and, due to its status as a voluntary association as opposed to a state actor (*NCAA v. Tarkanian*, 1988), it has the power to set its own standards when determining a student-athlete's eligibility.

As we have seen in other sports that also enjoy status as a voluntary association, namely Major League Baseball (MLB), there is a recent trend of punishing athletes who have not had criminal charges pressed against them stemming from instances of domestic violence. For example, prior to Spring Training in 2016, Aroldis Chapman was suspended for 30 games due to an incident in which he allegedly fired a gun into the ceiling of his garage during an argument with his girlfriend (Nightingale, 2016). Of note about this case is that no criminal charges were filed against Chapman. The prevailing issue with domestic violence and sexual assault is the difficulty in successfully criminally prosecuting the accused beyond a reasonable doubt. In these situations, there are often conflicting stories and significant problems in obtaining cooperation from witnesses. In sexual assault cases, many victims are uncomfortable coming forward and testifying, whereas in domestic violence cases the complicated relationship between the people involved makes it unlikely that the victim will cooperate in the prosecution (Dawson & Dinovitzer, 2001; Konradi, 2010).

In spite of the lack of significant evidence, and the fact that the prosecutor's office in Miami decided not to pursue charges, MLB still gave a suspension to Chapman that cost him \$1.9 million dollars in lost salary (Nightingale, 2016). This is a landmark decision because it shows

that voluntary associations, like the MLB and NCAA, can severely punish athletes for abhorrent criminal conduct in a significant way, even if there is a lack of prosecution from the criminal justice system. A more recent example is the 75-game suspension of the Toronto Blue Jays' Roberto Osuna at the beginning of the 2018 MLB season due to domestic violence allegations, which were later dropped by law enforcement (West, 2018). Even with the difficulties of proving instances of violence, it is obvious that MLB is taking these allegations very seriously and enhancing punishments, even when comparing cases that occurred in the last few years.

Professional sports organizations, as well as the NCAA, possess the ability to employ different burdens of proof when determining culpability for misconduct. As a result, these types of entities can set their own standards. When considering the definition and creation of new methods to punish members of a voluntary association for criminal conduct, retributive justice's deterrent effect on the other members of the organization is of the utmost importance. Fundamentally, the purpose of punishment is not only to ensure people pay a price for their crimes, but also to show anyone else who may consider acting in a similar way that the specific conduct will be dealt with harshly and swiftly. Thus, when considering how to handle punishing a student-athlete, the NCAA should look to create transparent and articulable standards. This is something that has not happened to this point. To better understand what is missing from the NCAA's policy of punishment, it is important to consider some recent examples.

Jameis Winston, 2013 Heisman Trophy winner and the first overall pick of the 2015 NFL draft to the Tampa Bay Buccaneers, was accused of sexual assault while attending Florida State Univer-

sity (Hanzus, 2015; Hayes, 2014). Upon Winston's accuser filing a police report, an investigation began by both the Tallahassee Police Department and FSU. The criminal justice system in the United States operates in a realm where the accused's rights are enumerated and protected through the Constitution. Similarly, FSU, as a public institution and state actor, must provide due process for students accused of impropriety. These limitations are intrinsic to the judicial process: the American citizenry's constitutional rights should not, under any circumstances, cease to exist. However, these constitutional rights do not protect the alleged offender when addressing athletic eligibility, a privilege; therefore, the NCAA has broad latitude to set forth its own rules regarding the punishment of student-athletes.

The difficulties in the Winston case that became a source of public outcry did not revolve around the constitutional protections afforded to him as an accused individual. Rather, the concern was the specter of disingenuousness by both university officials and the police department. Throughout the Winston inquiry, it appeared to the public that both FSU and Tallahassee law enforcement officials were more concerned with results on the football field and the school's reputation than pursuing justice in a timely fashion. First, the Tallahassee Police Department had ties to FSU's booster club and did not investigate the rape accusation for a year. Second, it was more than two years, and after Winston had completed his college career, until the school conducted a hearing on the matter. These issues were the product of intentional conduct by the very people charged with the safekeeping of FSU students and citizens of Tallahassee. If the police department and university

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cannot be counted on to properly handle a situation like this, then who can be trusted? While the NCAA has had issues with timely investigations and improper evidence collection (Lockhart, 2009), it is in a unique position of power to step in and levy a punishment. If the NCAA were to take on this responsibility, it would send a message that conduct of this type is intolerable, helping to ensure that student-athletes who commit violent crimes, such as sexual assault and domestic violence, will not easily return to the playing field.

Another case that illustrates the magnitude of violent crimes against women within intercollegiate athletics is the case of former Boise State University and Baylor football player Sam Ukwuachu, who was sentenced to 180 days in jail and 10 years probation for sexual assault in 2015 (Witherspoon, 2015). However, in early 2017, Ukwuachu was granted a new trial after an appellate judge determined that text message evidence should have been admitted (Lavigne & Schlabach, 2017). This case demonstrates several of the issues that have been discussed above. First, it shows that the judicial system's procedural safeguards make it extremely difficult to prove in a timely manner beyond a reasonable doubt that sexual assault has occurred. Moreover, it shows how a timely investigation by the NCAA and a swift punishment could have prevented a sexual assault if the principal actors involved in Ukwuachu's transfer had more knowledge or acted differently. Ukwuachu was charged with sexual assault in 2013 while a student at Baylor, where he transferred after being kicked off the Boise State football team for undisclosed reasons. While attending Boise State, Ukwuachu was allegedly involved in a case of domestic violence with his then-girlfriend (Witherspoon, 2015). This was a known incident, although no charges were filed against him, when he

matriculated to Baylor in 2013. However, Baylor's athletic department and head football coach Art Briles failed to conduct a thorough investigation into Ukwuachu's past, which should be viewed as a breach of the institution's fiduciary duty to the student population.

Again, it is clear that when dealing with crimes of this nature, the court system has a great deal of difficulty pursuing and obtaining convictions, as evidenced by the fact Ukwuachu did not face charges in Idaho for alleged domestic violence and has been granted a new trial stemming from the sexual assault incident in Texas. Perhaps if the NCAA had stepped in after the initial report of domestic violence in Idaho and punished Ukwuachu pursuant to a unique set of standards established by the NCAA, he may have learned his lesson. Even if Ukwuachu failed to realize the ramifications of his transgression, at least Baylor may have noticed the red flags surrounding Ukwuachu's character and not permitted him to transfer. If so, the subsequent sexual assault may not have occurred in Texas.

Another troubling facet of the culture of violence towards women in intercollegiate athletics is when people of authority perpetrate acts of sexual assault and domestic violence. In 2012, Jerry Sandusky, a football coach at Penn State for 32 years, was convicted on 45 counts of sexual abuse, many of which were on Penn State's campus and in their facilities (Chappell, 2012). Even more troubling is the fact that multiple school officials not only failed to report suspected child abuse but also perjured themselves in an effort to cover it up. Similarly, Bernie Fine, an assistant basketball coach at Syracuse, was alleged to have molested multiple children over the course of his career at Syracuse from 1976 to 2011. While these incidents weren't reported until many years later

and criminal prosecution never occurred, he was ultimately fired as a result of the scandal (O'Brien, 2015).

Outside coaching abuse, Larry Nassar, a doctor and professor at Michigan State, was convicted of seven counts of criminal sexual misconduct in accordance with a plea agreement in 2017 (USA Today, n.d.). Allegations of Nassar's abuse, while working for U.S.A. gymnastics and Michigan State, extend as far back as 1994, with reports made in 2000 to Michigan State, but the university "failed to take any action" according to a lawsuit filed in 2017.

One more example of university officials' misconduct is the Zach Smith situation at Ohio State. On several occasions, Smith had been accused of domestic violence, beginning in 2009 when he was an assistant coach for the University of Florida (Wetzel, 2018). This case was not pursued by the courts, but Urban Meyer, Smith's boss, knew of the allegations at that time. In 2011, Meyer hired Smith to be a wide receiver coach at OSU, and in 2015 additional reports of domestic violence were filed against Smith (Bielik, 2018). In 2018, a protection order was filed for by Smith's ex-wife, and Smith was terminated only after reports surfaced about the 2009 and 2015 allegations. The question is: Why was he hired at Ohio State in 2011 – and retained in 2015 – if Meyer knew of these allegations?

The NCAA is a source of information and a national clearinghouse for all student-athletes across hundreds of member institutions. If it were to expand its hegemony to specifically punish violent crimes of the aforementioned nature, not only would there be a significant deterrent effect from suspending violators from athletic participation, but there would also be more transparency between universities

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and more information available to assist in decisions regarding transfers. This would also help eliminate any implicit bias that a university employee may have towards the school, its athletes, or its athletic programs.

The various cases described above demonstrate that there are endemic problems with universities conducting investigations into their own employees' and student-athletes' alleged misconduct as there is clearly the potential for institutional impropriety if the individual has enough value to the institution. Moreover, city, local, and university officials may also be blinded by university fandom or affiliations. An independent arbiter of justice would prevent these criticisms of the NCAA and its member schools and, in the future, assist in the information-gathering process.

The two instances at FSU and Baylor are just a few of the many situations involving sexual assault by student-athletes. As has been discussed, situations of sexual assault and domestic violence have been historically difficult to prosecute (Karapetian, 2014). Unfortunately, difficulties relating to these types of prosecutions have only been exacerbated by those university officials who, in the past, have rebuffed allegations against student-athletes and stifled investigations. Sadly, the Winston case was not the first or only time this occurred. The longstanding history of these issues is well documented throughout the last 40 years (Murphy, 2013) and more recent incidences of sexual assault and domestic violence perpetrated by student-athletes have received similar treatment, in which the university and/or local law enforcement do not hold individuals accountable for their actions. There have been similar occurrences at the University of Washington in 2000-2001, Notre Dame in 2010, the University of Missouri in the late 2000s, the University

of Montana in 2011-2012, and many more (see Armstrong & Perry, 2010; Krakauer, 2016; Luther, 2016; McCray, 2015). These examples are just the tip of the iceberg and show a culture of rape and violence against women by student-athletes that has been largely ignored by the NCAA and its member-universities, and this epidemic must be changed immediately.

Thus, a strong argument can be made for a new adjudication system for student-athletes, specifically one that deals with violent crime. However, due to the variety of individuals involved in investigations, there would need to be multiple procedural safeguards that should be explicitly designed to avoid even the appearance of impropriety. This falls in line with the notions of procedural justice, as clarity in investigations and potential ramifications for misconduct must be clearly comprehensible to all individuals involved and serve a logical purpose. There must be a universality principle in the creation of rules, which should contain two prongs: first, any rule should be easy to understand by all individuals affected by it; and second, it must be universally applicable to all individuals and without loopholes.

RECOMMENDATIONS

To begin, the NCAA should appoint a national panel of law makers to reconceive aspects of the NCAA bylaws. There must be a clear addition to the bylaws regarding violent crime, such as domestic violence and sexual assault, and may include other violent crimes that would warrant swift action (e.g., murder, kidnapping). The new bylaws would authorize the NCAA to indefinitely suspend a student-athlete upon determining that a violent crime has been committed based on the preponderance of evidence standard of proof. This would allow a quick determination and, critically, may prevent problems that arise

when an institution must forfeit games due to the use of players later rendered ineligible. The creation of these new bylaws falls in line with retributive justice as it ensures an equal playing field by attempting to remove ineligible players quickly and before a player who will subsequently be ruled ineligible is allowed to participate. As the NCAA is a voluntary organization, due process rights are not held to the same scrutiny as those institutions who are deemed to be state actors. While it is imperative to provide any accused student-athlete with due process – as well as an investigation that maintains privacy concerns for both the accused and the victim – the modern reality of these criminal actions requires swift consequences for perpetrators to create a strong deterrent for others who may consider committing these offenses while doing everything possible to ensure a fair and complete investigation process.

Another important consideration, as noted above, is the privacy rights of the accused and the victim. As we are recommending an independent tribunal investigate these claims, it is necessary to require that this NCAA tribunal use discretion in all aspects of the investigation. While it will be necessary as part of an investigation to review official records and interview those involved, under no circumstances should the tribunal have any media contact or publicly disclose the names of the individuals being investigated. If a member of the tribunal were to be asked a direct question, whether by a member of the media or a random person on the street, the response must always be “no comment.” While it is impossible to conduct investigations and interview individuals without some potential of information being leaked, the new NCAA bylaws should be extremely clear about dictating the tribunal's obliga-

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tion to maintain privacy.

But who should be on this tribunal? We propose there be one national tribunal, appointed by the NCAA and utilized in any situation where there is an accusation of sexual assault, domestic violence, and other violent crimes, particularly those against women. This tribunal, consisting of former law enforcement officials, attorneys, and other investigators, would be deployed to the university where the alleged criminal action took place to complete an investigation. At the conclusion of an expedited investigation, the tribunal must make a determination based on the preponderance of the evidence to either suspend the accused student-athlete indefinitely or clear the student-athlete of any violations.

The proposed tribunal would take the burden of the investigation process and determination of violation away from individual compliance and/or Title IX officials at a university who may have bias, although working in concert with Title IX offices may still be necessary to ensure compliance with federal statutes. However, the appearance of any potential NCAA tribunal impropriety must be avoided at all costs. To ensure this, the NCAA tribunal must automatically recuse any members with ties to the individual – including university and/or locale – under investigation. Thus, if Baylor and its football players were to be investigated for their recent conduct, no member of the NCAA panel who attended Baylor could participate. Similarly, the panel appointed in the Zach Smith investigation by Ohio State should not have included any members of the university's board of trustees. Additionally, anyone with family at the school (e.g., a current or former student or employee) or anyone who is a current resident of the city where the campus is located would be recused. Due to the serious nature of these

allegations, every effort should be made to ensure that there is absolutely no appearance of any improper conduct on behalf of the investigating tribunal.

As far as utilizing the preponderance of evidence standard of proof, it should be used to permanently suspend a student-athlete. This is an augmentation of a recent argument suggesting that a full Title IX or criminal investigation should first be conducted and, only upon a guilty finding, the perpetrator would be suspended indefinitely (Meyer, 2017). Our proposal centers around swift adjudication to ensure minimum invasion into individuals' private lives, maintain the integrity of subsequent athletic contests, while also providing a student-athlete an opportunity to mount a defense to be cleared of bylaw violations. If the tribunal finds a student-athlete responsible for violating the NCAA bylaw, of course an appeals process should be accessible. But when should an appeal be heard? The reality is that in the world of sexual assault and domestic violence, evidence is often difficult to come by and exculpatory evidence may simply not exist. As a result, we propose that at any point any time after the tribunal recommends suspension, a student-athlete may request an appeal hearing to consider reinstatement; however, this would be a one-time occurrence.

An accused student-athlete may feel rushed to fight for reinstatement, but the appointment of a representative ad litem may help the accused, who might not understand the judicial process in general or the nuances of the new NCAA bylaws and tribunal. This representative may help the accused student-athlete compile evidence and determine the proper time to file for appeal based on new evidence. While the NCAA is not required to uphold the Sixth Amendment's right to counsel, it should recognize this legal principle and create

a similar requirement that provides accused student-athletes with the right to a representative for the adjudication process by the tribunal. This representative could be either a licensed attorney hired by the student-athlete or a representative available for appointment by the NCAA, much like a public defender's office.

Finally, when considering an appeal, an appropriate burden of proof must exist. As we have proposed using a lower burden of proof than beyond a reasonable doubt to justify a suspension, it seems equitable to require the accused to satisfy the same burden of the preponderance of evidence to establish innocence. The incorporation of the NCAA tribunal and the aforementioned burdens of proof are expected to be strong deterrents for student-athletes, and are designed to aid in the education process that university officials are constantly engaged in. Removing some of the investigative burden from a university's compliance office thus allows the university to allocate resources towards further sexual violence prevention education.

Ultimately, the primary concern of this tribunal should be to provide a fair and efficient way of quietly investigating claims of sexual assault, domestic violence, and other violent crimes. To ensure that the focus of the investigation remains on the individuals involved, there is a need for recusal for anyone involved in the investigation that would have any potential for bias whatsoever. This will focus the reactionary discussion on the incident itself and the individuals involved, as opposed to the speculation of institutional impropriety. The point is to remove even a shadow of doubt regarding the intentions and motivations of the tribunal, ensuring a high level of procedural justice.

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LIMITATIONS

This paper does not focus on Title IX and other related federal statutes because this panel is proposed to be extrajudicial and nongovernmental. Nonetheless, for the proposed tribunal to effectively investigate, it is imperative to obtain the cooperation of law enforcement. As a result, all members of the tribunal must be experts on and adhere to all relevant local, state, and federal statutes, even if the parameters of these legislations do not directly apply to the NCAA's query.

Furthermore, anytime an investigation has extra actors involved, special consideration should be given to the victim. Given the extremely sensitive nature of these types of crimes, and the types of evidence that would be utilized by defense counsel at trial, many victims are hesitant to come forward and proceed with criminal charges. Under no circumstances should this tribunal exacerbate the victim's concerns. At all times, the proposed tribunal should work to utilize already prepared and completed investigative reports and transcripts of interviews, whether prepared by law enforcement or the institution itself. Only when absolutely necessary should the tribunal conduct separate interviews. While it is imperative to ensure that no extraneous or duplicative investigation occurs, we must also consider the rights of the accused and conduct a thorough and impartial investigation. Thus, an oversight role of the proposed tribunal is necessary to assess the fairness of the inquiry as a whole, while simultaneously gathering information for the NCAA's investigation. In no way should this investigative body stifle the important goal of promoting a culture of reporting this type of crime. Sexual assault and domestic violence perpetrators evade justice too often (Truman & Morgan, 2016) and, in creating this tribunal, careful attention must be given to the reporting process and the potential chilling effect

that an additional investigation may have on the victim.

CONCLUSION

Regret tably, as evidenced by recent scandals, universities may be viewed as untrustworthy purveyors of justice. A university's affinity for athletics, as well as the revenue that football and men's basketball teams may bring to their coffers, may result in lax and potentially non-existent investigations into allegations of student-athlete sexual assault and domestic violence. Because of the potential, no matter how slight, for impropriety by the university and the inherent constitutional considerations in a criminal investigation and trial, a new option is necessary. There are few remaining entities to fulfill the societal requirement of punishment and deterrence, one of which is the NCAA. As the NCAA is a national organization with more than 1,000 member institutions, it should be immune to the university-specific fan biases that may deleteriously impact investigations by local police and colleges. While the NCAA currently prioritizes different mandates (i.e., amateurism), it does possess the requisite power to punish student-athletes for criminal actions by expelling them from future intercollegiate athletic pursuits.

The revocation of eligibility to participate in college athletics or termination of employment, while not as powerful as incarceration, is a significant price to pay as it can impact future professional pursuits, serve as a public castigation, and warn others of the consequences of their actions. Revoking an athlete's eligibility to participate is clear demonstration of retributive justice, in which the NCAA attempts to deter improper conduct.

Thus, by taking away the permissive culture of tolerance shown to student-athletes, a change in thinking can ensue. While the NCAA is already stretched thin

and handles a variety of issues, creating a tribunal specifically to handle these types of investigations is well within its means. The NCAA recently signed a deal with Turner Broadcasting that extends their basketball championship tournament coverage contract through 2032, paying out \$1.1 billion dollars annually (Sherman, 2016). The Turner Broadcasting contract is in addition to the \$7.3 billion dollar deal the NCAA signed in 2012 with ESPN to broadcast the College Football Playoff (Pallota, 2015). As a result of these contracts, there is no doubt that the NCAA has the financial capability to hire and retain elite attorneys, investigators, and arbitrators who will be independent and unbiased. Moreover, these same individuals could be contracted to conduct on-site investigations and hearings to determine the validity of future claims utilizing different standards than the established methods available to criminal courts.

The proposed NCAA tribunal would create the transparent and articulable standards necessary to uniformly punish student-athletes who commit crimes like sexual assault and domestic violence. The punishment should be based upon a determination of fact, a standard more akin to the preponderance of evidence threshold utilized in a civil case. A punishment for an infraction of this new code would need to be viewed carefully to ensure that there is no false allegation, which research suggests occurs in only about 2% to 8% of accusations (Lonsway, Archambault, & Lisak, 2009). However, as intercollegiate student-athletes are not compensated at the level of a professional athlete, or any other celebrity, the likelihood of an allegation stemming from the accuser's desire for financial compensation is comparatively less likely than a false accusation against

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a professional athlete.

Nonetheless, the potential accusation must be thoroughly vetted. Using the preponderance of evidence standard should be sufficient to eliminate many false allegations, as it would require a significant enough burden of proof to establish if there is a motive for a falsified accusation. As far as specific punishments, if a student-athlete were found by the tribunal to have committed sexual assault or domestic violence, that individual would be permanently suspended from all future NCAA athletics, without exception. Creating a zero-tolerance policy such as this allows the NCAA to establish procedural justice on matters of sexual assault and domestic violence infractions.

ETHICAL COMPLIANCE

- This study received no funding.
- The authors declare they have no conflict of interest.
- There were no individual participants involved in this study, thus no informed consent was obtained

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- tion since Jan. 1, 2017.
- A delay in the first men's basketball practice date for the 2017-18 season by three days and a three-day delay of the first practice in the 2018-19 and 2019-20 seasons (self-imposed by the university).
 - The university forfeited three men's basketball practices at the beginning of the 2016-17 season (self-imposed by the university).
 - Outside audit of the college's athletics policies and procedures, with an emphasis on compliance and rules education.
 - A \$2,500 fine (self-imposed by the university).
- The members of the Division III Committee on Infractions who reviewed this case included Christopher Bledsoe, assistant vice president for student affairs/athletics director at New York University; Gail Cummings-Danson, athletics director at Skidmore; Effel Harper, an associate professor and faculty athletics representative at Mary Hardin-Baylor; Tracey Hathaway, athletics director at Salem State; and Gerald Houlihan, committee chair and attorney in private practice. ■