



**CREIGHTON UNIVERSITY**  
**PUBLIC INFRACTIONS DECISION**  
**June 22, 2021**

## **I. INTRODUCTION**

The NCAA Division I Committee on Infractions (COI) is an independent administrative body of the NCAA comprised of individuals from the Division I membership and public. The COI decides infractions cases involving member institutions and their staffs.<sup>1</sup> The conduct at issue in this case was related to a broader scheme that involved money and influence at the intersection of collegiate and professional basketball. The scheme resulted in the arrest and prosecution of multiple individuals—including college basketball coaches—on conspiracy and bribery charges and led to significant reforms to strengthen the NCAA Collegiate Model.<sup>2</sup> This case involved the conduct of a former assistant men's basketball coach at Creighton University whose association and actions with the individuals in the scheme resulted in NCAA violations.<sup>3</sup> The case also involved missteps by Creighton's director of athletics after he became aware of his assistant coach's conduct.

The violations largely stem from individuals permitting personal relationships to cloud their judgment and influence their decision-making. Specifically, the assistant coach prioritized loyalty to his friend, the agent associate; and the director of athletics looked past alarming conduct based on his trust in the assistant coach. At different points in this case, both the assistant coach and director of athletics ignored red flags surrounding the assistant coach's attendance at and participation in a July 2017 meeting with a business management company in Las Vegas. Both believed that the conduct did not violate NCAA bylaws. Both were wrong.

The violations at issue in this case derive from the July 2017 meeting. The business management company, which represented professional athletes, was an emerging business seeking to identify new talent to represent. Although other conversations and meetings occurring before and after the July 2017 meeting provide additional context about how the business management company

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<sup>1</sup> Infractions cases are decided by hearing panels comprised of COI members. Decisions issued by hearing panels are made on behalf of the COI.

<sup>2</sup> In August 2018, the NCAA Board of Governors and the Division I Board of Directors adopted a series of significant policy and legislative changes based on the recommendations of the Commission on College Basketball. NCAA leaders announced that these changes would accomplish the following: (1) provide college basketball players more freedom and flexibility to decide their future; (2) minimize the leverage of outside influences on high school recruits and college athletes; (3) add independent voices in the areas of policymaking, investigations and case resolution; and (4) strengthen accountability and deter rule-breaking with harsher penalties for those who violate the rules.

<sup>3</sup> Although related to a broader scheme, the COI decided this case based solely on the facts and circumstances surrounding the conduct of the assistant coach and the director of athletics. A member of the Big East, Creighton has a total enrollment of approximately 8,800 students. It sponsors six men's and eight women's sports. This is the institution's first Level I, Level II or major case.

viewed the assistant coach's role, the violation occurred when the assistant coach accepted money from the management company in the context of the group discussing Creighton basketball players who could become future clients.

Going into the meeting, the assistant coach knew that he would be handed money by a representative of the management company in connection with his attendance. Despite this awareness and early reservations, the assistant coach attended the meeting out of loyalty to his agent associate friend who had organized the meeting. During the meeting, the assistant coach did not say much. However, representatives from the management company discussed specific Creighton men's basketball student-athletes and the "steady" flow of talent through the program. Likewise, the agent associate noted that the only thing the group needed to figure out was "how to get everything in [the assistant coach's] bank account." During the meeting, a representative from the management company handed the assistant coach an envelope of money. The assistant coach took the envelope and put it in his pocket.

This assistant coach's acceptance of money from representatives of the management company in the context of discussing potential clients for the management company established a Level I unethical conduct violation. Creighton agreed that the conduct violated unethical conduct legislation and that it was responsible for the Level I violation.

Approximately 15 months after the July 2017 meeting, Creighton's director of athletics learned about the meeting as a result of Creighton's October 2018 review of its men's basketball program. Upon learning of the meeting, the director of athletics decided to conduct his own investigation, without notifying or coordinating with the athletics compliance office. The director of athletics' handling of this matter marked a clear departure from how Creighton's leadership had monitored its men's basketball program in the wake of the public federal investigation and prosecution. In his investigation, the director of athletics determined that no violations occurred, arriving at his determination based, in part, on the personal trust he placed in the assistant coach. Although the director of athletics maintained a file documenting his investigation, he never shared the details of his investigation with other University officials until the government referenced the meeting in its March 2019 superseding indictment. The panel concludes that director of athletics' failure to disclose information related to potential NCAA violations constitutes a Level II violation for Creighton and the director of athletics.

During its fall 2018 review of the men's basketball program, Creighton issued a questionnaire to the men's basketball staff. On his questionnaire, the assistant coach represented that he had never received anything of value from an agent, financial advisor or apparel representative. The assistant coach's answers were false and misleading. The answers hid from the compliance staff the July 2017 meeting where the assistant coach accepted an envelope of money and placed it in his pocket. The assistant coach reaffirmed these representations when he was interviewed by the enforcement staff in May 2019. This failure to provide complete and truthful information, constituted an additional Level I violations for the assistant coach and Creighton.

The panel classifies this case as Level I-Mitigated for Creighton, Level I-Aggravated for the assistant coach and Level II-Mitigated for the director of athletics. Utilizing the current penalty guidelines and bylaws authorizing additional penalties, the panel adopts and prescribes the following principal penalties: two years of probation; a fine of \$5,000 plus one percent of the men's basketball budget; scholarship reductions; recruiting restrictions; and a two-year show-cause order for the assistant coach.

## II. CASE HISTORY

The events at the center of this case came to light on September 26, 2017, when the United States Attorney's Office for the Southern District of New York (SDNY) filed a criminal complaint detailing a "bribery scheme" within college basketball. The criminal charges fell into two areas: (1) payments made by representatives of an apparel company to prospective student-athletes, their family members or individuals otherwise connected to the prospects and (2) "bribery payments" by an individual who was formerly associated with a professional sports agent (agent associate) and other members of his business management company to college basketball coaches to steer their student-athletes to the management company. At that time, no one from Creighton was associated with or referenced in the criminal complaint.

The first trial associated with the federal investigation began in October 2018. On October 4, 2018, the father of a high-profile prospect testified that a Creighton assistant coach (assistant coach), through the agent associate, offered money and employment for the prospect's father in exchange for the prospect's commitment to Creighton. In response, Creighton initiated an internal inquiry into the specifics of the testimony, and later that month it expanded its inquiry to include SDNY-related matters.

On December 3, 2018, the NCAA enforcement staff notified Creighton's outside counsel that it received approval from the federal government to move forward with an inquiry into potential NCAA rules violations related to the father's testimony.<sup>4</sup> Eleven days later, the enforcement sent an initial records request to Creighton.

On March 7, 2019, the federal government filed a superseding indictment that referenced the assistant coach's attendance at a July 2017 meeting in Las Vegas, and further stated that he was "paid a bribe" in exchange for his agreement to steer certain student-athletes to the management company.<sup>5</sup> That same day, the director of athletics informed Creighton officials that he had previously learned of the assistant coach's attendance at the July 2017 meeting. A week later, the enforcement staff requested to interview the assistant coach, and on April 9, 2019, provided Creighton with a written notice of inquiry. After submitting a petition for immediate penalties

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<sup>4</sup> The enforcement staff did not actively investigate matters until granted permission to do so by the federal government.

<sup>5</sup> Neither Creighton nor the assistant coach were personally named in the superseding indictment. Rather, they were referenced under the identifiers "University-1" and "Coach-1," respectively.

on April 26, 2019, related to initial difficulties in scheduling the assistant coach's interview, the enforcement staff interviewed the assistant coach with representatives from Creighton present on May 29, 2019.

On November 22, 2019, the assistant coach resigned from Creighton. On December 13, 2019, the enforcement staff sent a notice of allegations (NOA) to the institution, assistant coach and director of athletics. On March 26, 2020, Creighton, the assistant coach and the director of athletics submitted their responses. On May 22, 2020, the enforcement staff amended the NOA, striking references to supplemental pay.<sup>6</sup> On May 26, 2020, the enforcement staff submitted its written reply and statement of the case.

The parties continued to work collaboratively in an effort to develop stipulated facts but were ultimately unable to reach the necessary agreement. Creighton, the assistant coach and the director of athletics submitted supplemental responses on March 29, 2021. The panel held a videoconference hearing on April 28, 2021.<sup>7</sup> Prior to the hearing, Creighton, for the first time, self-imposed penalties related to the allegations.

### **III. FINDINGS OF FACT**

The facts giving rise to this case are largely agreed upon. They originate from the assistant coach's longtime friendship with the agent associate and his involvement in the agent associate's emerging management company. The case centers on a single meeting on July 28, 2017, in Las Vegas, Nevada, between the assistant coach, the agent associate and representatives of his management company. Although events and conversations before and after the meeting provide further context around the agent associate's overall scheme and shed light as to how the management company intended to utilize the assistant coach, the July 28 meeting is the critical event. Other important conduct falls in two areas: (1) how the director of athletics responded once he learned about the meeting and (2) the assistant coach's interactions with investigators from the institution and the enforcement staff.

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<sup>6</sup> The enforcement staff amended the December 13, 2019, NOA following interpretive guidance issued in conjunction with another SDNY-related infractions case, *Oklahoma State University* (2020). Based on that guidance, the enforcement staff struck references to potential supplemental pay violations. Later, and at the request of the COI member designated to address all issues associated with SDNY-related infractions cases, the enforcement staff also confirmed that all remaining allegations were consistent with current interpretative guidance.

<sup>7</sup> The panel appreciates the parties' professionalism and participation in the videoconference. Although the COI has historically held in-person hearings for contested cases, Bylaw 19.7.7 contemplates the use of videoconference to resolve most infractions cases. The COI has previously utilized videoconference as a mode for infractions cases, and the circumstances related to the COVID-19 pandemic necessitate the use of videoconference to resolve pending matters. As with other recent COI hearings, the panel believes this case serves as an example for how active infractions cases can be resolved in a fair and efficient manner through videoconferencing.

### **The Assistant Coach and the Agent Associate**

The assistant coach and the agent associate grew up a few blocks away from each other in Saginaw, Michigan. As a child, the assistant coach looked up to the agent associate's father, who was a local basketball star. After a successful high school career, the agent associate's father played college basketball, and the assistant coach followed his career closely. After the agent associate's father concluded his basketball career, he returned to Saginaw and opened a local community center. In his interview with the enforcement staff, the assistant coach recalled spending time with the agent associate's father at the community center. The assistant coach also recalled that the agent associate's father served as a mentor for him and others.

After the assistant coach left to play college basketball, he maintained a relationship with the agent associate's father. At that time, the agent associate's father had become the local high school basketball coach. When the assistant coach would return to Saginaw in the summers, the agent associate's father would organize summer league games in which the assistant coach participated. In his interview, the assistant coach stated that the agent associate and his siblings were always around and involved in basketball related activity.

The assistant coach's relationship with the agent associate and his family continued as the assistant coach transitioned into coaching. Specifically, while the assistant coach was coaching on the east coast, the agent associate enrolled at an east coast prep school. The agent associate's father reached out to the assistant coach and requested that he check in on his son. The assistant coach agreed. In his interview, the assistant coach said that he would spend time with the agent associate while he was at prep school by either seeing him at school or inviting him to his house. The close relationship continued, with the assistant coach serving as a key individual that supported the family during a personal tragedy. When asked about his relationship with the agent associate in his interview with the enforcement staff, the assistant coach reflected that they "have a very long history together" and "they're like family." Over the years, both the assistant coach and the agent associate pursued their separate careers in basketball and maintained regular contact.

As he embarked on his career, the agent associate was known within the Creighton men's basketball program from his time working for a well-known sports agent, who coincidentally had a relationship with the Creighton men's basketball program. In his interview with the enforcement staff, the Creighton head men's basketball coach explained that he led the agent selection process, requiring agents to work through him. Then, after the season, he would work with the student-athletes and their families to vet and schedule meetings with the prospective agents. The head coach previously brought the well-known agent in to be interviewed as part of the agent selection process. In addition, the head coach recalled bringing in the well-known agent in 2013 to be part of his son's agent selection process.

After separating from the well-known sports agent, the agent associate formed his own business management company in June 2017. Part of the management company's business model included partnering with notable college coaches who could identify and steer potential clients to sign with the company. The management company intended to leverage the agent associate's existing

connections and relationships with college basketball coaches. As part of the plan, the management company intended to pay some, but not all, of the coaches in exchange for steering players to sign with the management company. Although at times the agent associate questioned the viability of the model, he also developed a list of coaches and identified which coaches to pay.

Eager to begin making introductions, the management company sought to schedule meetings in late July 2017 in Las Vegas because, as the agent associate explained on federal surveillance when the group met to officially launch the management company, "every coach in the country is there" recruiting AAU basketball tournaments.<sup>8</sup> The agent associate recommended meeting with one coach at a time to make each feel special and so they would not know about each other.

During the initial shareholder meeting, the agent associate characterized the assistant coach as his "brother" and explained that "no one's gonna come in between us." A week earlier, the agent associate provided others in the management company with a list of coaches with whom he had existing relationships. On that list, he identified the assistant coach as one of his "main guys" and specifically designated the assistant coach as a "superstar" among the broader list of coaches.

A few weeks later, on June 20, 2017, representatives from the management company met with an individual who worked for an apparel company (apparel representative) to discuss the business model. An investor in the management company explained his desire to establish "schools of influence." During that meeting, the apparel representative identified Creighton as a school they would not historically target but acknowledged that it was a "one-off opportunit[y]" and that "we're going to invest some monies into Creighton." Later, on July 8, 2017, the agent associate and apparel representative discussed potential coaches they should introduce to the management company, identifying the assistant coach as an "obvious one."

At the infractions hearing, the assistant coach stated that the agent associate asked him a couple times to attend the meeting, and he initially declined. However, after the agent associate became pressed and suggested he would lose everything, the assistant coach agreed. The assistant coach stated that he believed his role was to vouch for the agent associate to his business associates and potential advisors. The assistant coach explained that the agent associate explicitly told him that the management company representatives would give him \$5,000 for his time. The assistant coach further claimed that the agent associate told him that he should give the \$5,000 to the agent associate immediately after the meeting.

In July 2017, the assistant coach traveled to Las Vegas on a recruiting trip. In preparation for the coaches' meetings, the agent associate and representatives from the management company met on the evening of July 27, 2017. During the meeting, which was captured on government

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<sup>8</sup> Pursuant to NCAA Bylaw 19.7.8.3.1, the NCAA infractions process treats evidence submitted and positions taken in outside processes different from facts established by a decision or judgment in outside processes. *See* Division I Proposal-2018-15. Evidence submitted and positions taken can be considered in an infractions case regardless of appeal. This case appropriately included factual information that resulted from evidence submitted and positions taken in the federal government's investigation and prosecution of conspiracy and bribery in college basketball.

surveillance, the agent associate identified that the group would meet with "[the assistant coach] from Creighton at 9:30" and that "he needs six [thousand dollars]."

On July 28, 2017, the assistant coach met with the agent associate and other representatives of the management company in a suite at a Las Vegas hotel. The government recorded this meeting as well. During the meeting, the assistant coach remained largely silent as the representative of the management company and the agent associate identified specific players, with the representative identifying a "steady" flow of talent at Creighton.<sup>9</sup> Additionally, the agent associate noted that the only thing left to figure out was how to get future payments to the assistant coach.

Although he did not say much during the meeting, the assistant coach took an envelope containing \$6,000 from the representative of the management company and placed it in his pocket. While the assistant coach was holding the money, the representative of the management company said that he would be coming to Omaha, but not on a monthly basis. During the infractions hearing, the assistant coach admitted that he left the room with the money. Throughout the processing of this case, however, he continually stated that he gave the money to the agent associate in a bathroom of the hotel lobby. At the infractions hearing, the assistant coach's attorney admitted that the assistant coach's decision to attend the meeting was "colossally bad judgment."

Representatives of the management company continued to discuss the assistant coach's role with the management company in the weeks following the July 2017 meeting. Specifically, the agent associate sent a text message to a member of the management company listing payment plans to coded individuals. Later, the agent associate called the member of the management company and explained that the coded initials related to the assistant coach at Creighton who's "got a guy who he has to basically pay for a kid...in New York."

In early September 2017, the agent associate emailed the company business plan to another member of the management company. Among other payments, the business plan specifically identified the assistant coach as an individual who would receive a \$6,000 monthly stipend. Another member of the management company, who served as a cooperating government witness, testified in federal court and when interviewed by the enforcement staff that the assistant coach was going to be on a monthly retainer and receive additional money as needed in exchange for "refer[ring] his relationships, his players and recruited players, our way for business." Approximately three weeks after sending the email, the federal government arrested the agent associate and others for their involvement in the scheme.

### **Creighton's Review of its Men's Basketball Program Following the Government's Arrests**

The public arrests sent shockwaves through college basketball, campuses and athletics departments. In response to these public and troubling arrests, on October 11, 2017, the NCAA Board of Governors and Division I Board of Directors directed all Division I programs to examine

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<sup>9</sup> The original transcripts from the federal investigation erroneously attributed this statement to the assistant coach. During the NCAA investigation, however, it was clarified and correctly attributed to the representative of the management company.

their men's basketball programs. Creighton followed suit. On October 19, 2017, Creighton's director of athletics emailed the men's basketball staff informing them that the institution would conduct individual interviews with all staff members and student-athletes.

On October 30, 2017, Creighton's associate athletics director for compliance (compliance director), the institution's general counsel and the director of athletics met to discuss the review and next steps. Contemporaneous notes from the meeting identified a heightened awareness to potential issues across the college basketball landscape. The notes detailed the director of athletics' observation that "every MBB program in the country should be worried—we have to deal with shady third parties[.]"

The notes also made clear that the head coach and director of athletics knew of the relationship between the assistant coach and the agent associate, and each had already discussed the relationship with the assistant coach. Specifically, the notes detailed that the agent associate was a longtime family friend of the assistant coach, that the two talked almost every day for the last few years, and that the director of athletics had "asked [the assistant coach] the question and doesn't think there is anything to worry about." During his conversations with the head coach and director of athletics, the assistant coach did not disclose his attendance at and participation in the Las Vegas meeting three months earlier.

On November 2, 2017, Creighton interviewed the assistant coach. Among other things, the assistant coach discussed his relationship with the agent associate and his recruitment of a high-profile prospect. The compliance director's contemporaneous notes identified that the assistant coach stated that he never accepted any money from anyone to recruit a prospect nor did he promise anything associated with recruitment. The 2017 internal inquiry largely focused on the basketball staff's relationship with individuals known to be associated with the federal investigation and Creighton's recruitment of the high-profile prospect, both of which involved the agent associate. Based on that inquiry, however, the athletics leadership did not identify any concerns. Again, the assistant coach did not disclose the Las Vegas meeting.

In October 2018, the federal trials began. On October 4, 2018, the high-profile prospect's father testified that the agent associate informed him that Creighton, through the assistant coach, was willing to offer \$100,000 and provide a job for the prospect's father if the prospect committed to and attended Creighton. Creighton's director of athletics, compliance director and general counsel immediately interviewed the assistant coach. Again, the compliance director's notes provide a detailed summary of the interview. During the interview, the assistant coach denied offering money or a job. The assistant coach acknowledged that during the recruitment of the prospect the agent associate disclosed what other schools were offering for the prospect's commitment. The assistant coach stated that when that subject matter came up with the agent associate, he would change the subject. During the conversation, the assistant coach inquired about his need to hire an



attorney. According to the compliance director's notes, the director of athletics responded that he "absolutely needed to hire an attorney, and a good one."<sup>10</sup>

The meeting ended, and the assistant coach left to call an attorney. The compliance director's notes detailed that the meeting did not make the group feel better about the situation, and that the assistant coach was incredibly nervous during the conversation. The assistant coach retained two attorneys who specialized in criminal law, and the group scheduled a meeting for the next day. On October 5, 2018, the group convened. When early questions turned to the recruitment of the prospect and the assistant coach's relationship with the agent associate, the assistant coach's attorneys ended the meeting. Later that afternoon, the assistant coach returned with his attorneys who indicated they would ask the questions, not Creighton's general counsel. The attorneys then read a prepared statement followed by a list of questions to which the assistant coach responded "yes" or "no." In summary, the assistant coach acknowledged his relationship with the agent associate and the agent associate's involvement in the prospect's recruitment but denied awareness of or involvement in offering recruiting inducements. Creighton does not appear to have initiated any further inquiry into the matter, and the assistant coach did not disclose any information related to the July 2017 Las Vegas meeting.

On October 26, 2018, and in response to the public information stemming from the federal investigation and ongoing trials, the NCAA executive vice president of regulatory affairs sent a memorandum to all schools instructing them to continue monitoring the men's basketball programs. In response, Creighton initiated another inquiry. This time, Creighton's compliance director provided the men's basketball staff members with a questionnaire that included 15 questions. The compliance director requested that staff members fill out the form at the compliance meeting the next day or no later than November 1, 2018. The questionnaire included the following two pertinent questions, Nos. 9 and 12, respectively:

*Have you accepted anything of value from anyone who identified themselves as an agent, financial advisor or apparel representative?*

*Have you ever accepted anything of value from an agent, financial advisor, apparel provider or other individual in exchange for an agreement to steer a prospective student-athlete or student-athlete to that individual's services?*

Notably, the questionnaire also included an NCAA Bylaw 10.1 advisement and required men's basketball staff members to certify and affirm that all answers were truthful, complete and fulfilled the requirements of Bylaw 10.1.

On October 31, 2018, the day after receiving the questionnaire, the assistant coach approached the head coach and told him about the July 2017 meeting with the agent associate in Las Vegas. The assistant coach also told the head coach that he received an envelope of money at the meeting but

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<sup>10</sup> During the director of athletics' interview with the enforcement staff, Creighton's general counsel confirmed that the assistant coach asked the group if he needed an attorney, and the group encouraged him to retain one.

provided it to the agent associate following the meeting. The head coach immediately informed the director of athletics. The director of athletics instructed the head coach to document what he had been told in writing. On November 6, 2018, the head coach provided the director of athletics with the requested written documentation.

Around the same time, the assistant coach returned his completed questionnaire. He circled "no" on both Question Nos. 9 and 12. In his interview with the enforcement staff, in his response and supplemental response to the NOA, and at the infractions hearing, he answered that (1) he never accepted anything because he was not going to keep the money and (2) he never agreed to arrange any future meetings with the management company and prospects or student-athletes. He also explained that he answered those questions based on the advice of counsel.

In his interview with the enforcement staff, the director of athletics stated that he met with the head coach and assistant coach later on November 6, 2018, after receiving the head coach's document. The director of athletics stated that he asked the assistant coach a number of questions and told the assistant coach that he needed to be complete and honest. The director of athletics also told the assistant coach that if he lied, he would be fired. The assistant coach reiterated what he had told the head coach, including that he knew he would be handed money, was provided money by a representative of the management company, but insisted that he gave the money to the agent associate after the meeting was over.

The director of athletics did not share any of this information with any other official at Creighton, including its athletics compliance director, its general counsel or his supervisor, Creighton's president. During his interview, the director of athletics admitted that he had never handled another matter in this way during his time as director of athletics. He explained that he wanted to make sure a NCAA violation had occurred. Ultimately, the director of athletics determined that no NCAA violation occurred, and he kept the information to himself until March 2019 when the federal government issued the superseding indictment specifically referencing the assistant coach and Creighton. When questioned about the director of athletics' inquiry and why he was not notified, the compliance director noted it was "not typical" for the director of athletics to receive compliance-related information and not pass it along to the compliance office.

During his interview and at the infractions hearing, the director of athletics shared his support and respect for the assistant coach. He emphasized that the assistant coach came to Creighton with "unbelievably high recommendations." The director of athletics also recalled that the assistant coach was someone whom he observed on a daily basis and had grown to trust. He also noted that the assistant coach held high credibility nationally in the coaching ranks.

### **NCAA Enforcement Staff's Involvement**

Approximately one month later, on December 14, 2018, the enforcement staff submitted a records request to the institution as part of its investigation. Importantly, the enforcement staff requested "all recordings, transcripts, written summaries and/or notes of interviews" as a result of the complaints, trial or other media reports. Although the director of athletics did not disclose

information—written or other—related to his individual inquiry, Creighton sought to collect potentially relevant information.

To assist the enforcement staff's request, Creighton developed a telephone and electronic device disclosure statement. The form specifically requested that individuals identify all telephones and electronic devices and identify whether they were ever used for recruiting purposes. Like the earlier questionnaire, the form included a Bylaw 10.1 advisement and required individuals to attest to its accuracy. The assistant coach completed the form and identified both a Creighton-issued and personal cellphone. With respect to his personal cellphone, the assistant coach represented that he had never used it for recruiting calls or text messages.

On January 28, 2019, the assistant coach signed the form attesting to its accuracy. On March 9, 2019, the investigation took a turn when the government issued a superseding indictment that included details of the assistant coach's attendance at the July 2017 meeting in Las Vegas. Although the superseding indictment did not specifically name the assistant coach or Creighton, it alleged that he received a \$6,000 bribe in exchange for steering student-athletes to the agent associate and his management company. At this point, the director of athletics for the first time informed Creighton's general counsel about what he had learned in his inquiry five months earlier. The following day, Creighton placed the assistant coach on administrative leave.

In light of the indictment, the enforcement staff sought to interview the assistant coach. The enforcement staff made its original request on March 14, 2019. The enforcement staff continued its attempts to coordinate an interview with the assistant coach and his legal and infractions counsel from March 14 through April 26, 2019. Many of the enforcement staff's inquiries went unanswered. Other times, after reaching agreement, new scheduling conflicts on the assistant coach's end delayed the enforcement staff's ability to hold the interview. In communication related to the repeated attempts to coordinate scheduling and logistics, Creighton's general counsel characterized the behavior as "a lack of professionalism and a pattern of avoidance."

During this time, the assistant coach, through his counsel, asserted Fifth Amendment concerns regarding his participation in an NCAA interview. After repeated unsuccessful or unanswered attempts to schedule an interview, the enforcement staff submitted a petition for immediate penalties to the COI on April 26, 2019. At the time of the enforcement staff's filing, potential interview dates that the parties had previously discussed remained open. Ultimately, and presumably motivated by the enforcement staff's petition, the parties reached agreement to interview. As a result, the COI member designated to address all issues associated with SDNY-related infractions cases closed the matter prior to resolving it on the merits.

On May 29, 2019, the assistant coach participated in a five-hour interview with the enforcement staff and Creighton representatives. During the interview, the assistant coach admitted to being presented with and taking possession of an envelope containing money. He also admitted that Creighton student-athletes with professional potential were discussed by the agent associate and representatives of his management company during the July 2017 Las Vegas meeting. However, the coach continued to deny that he accepted any money from the business management company

or that he agreed—either expressly or implicitly—to steer Creighton student-athletes to the agent associate or his management company. When presented with the questionnaire, the assistant coach maintained his answers were accurate.

During the interview, the assistant coach also discussed his use of his personal cell phone and his responses to the telephone and electronic devices disclosure form. Specifically, the assistant coach acknowledged that because he has had the same personal cell phone number for a long time, it was possible that he used that phone to engage in recruiting calls and text messages with individuals with whom he had past relationships.<sup>11</sup> He specifically identified that he may have used his personal cell phone in the recruitment of the high-profile prospect.

#### **IV. ANALYSIS**

All violations in this case relate to individuals failing to meet legislated standards of conduct. Those violations fall into three areas: (1) the assistant coach's attendance at the 2017 Las Vegas meeting; (2) the director of athletics' response once he learned about the meeting; and (3) the assistant coach's actions during Creighton's and the enforcement staff's investigation. The panel concludes that the assistant coach's conduct establishes Level I violations. The director of athletics' conduct establishes a Level II violation. All violations also apply to Creighton.

##### **A. UNETHICAL CONDUCT [NCAA Division I Manual Bylaws 10.01.1 and 10.1 (2016-17)]**

The assistant coach attended a meeting with the agent associate and representatives of the agent associate's new business management company where he accepted money in the context of a discussion regarding the company's business plan. Specifically, representatives from the management company discussed Creighton men's basketball players as potential clients as well as future payments to the assistant coach. Creighton agreed that the conduct established a Level I violation. The assistant coach disputed the violation. The panel concludes that an unethical conduct violation occurred, and the violation is Level I for both Creighton and the assistant coach.

All parties agree that the conduct occurred.

##### **1. NCAA legislation relating to unethical conduct.**

The applicable portions of the bylaws may be found at Appendix Two.

##### **2. The assistant coach violated legislation related to ethical conduct when he accepted money from representatives of a management company.**

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<sup>11</sup> Creighton did not prohibit the use of personal devices to engage in recruiting activity. However, if coaches used their personal devices to recruit, they were required to report that activity. Based on the retention policy of the assistant coach's personal cell phone provider, the enforcement staff was unable to obtain cell phone records for the time period in question.

On July 28, 2017, the assistant coach accepted money at a meeting with the agent associate and his management company. At the meeting, representatives discussed Creighton men's basketball players who had professional potential and logistics around future payments to the assistant coach. At the conclusion of the meeting, the assistant coach accepted \$6,000 from a representative of the management company. The assistant coach's conduct violated Bylaw 10.

Bylaw 10 governs ethical conduct in collegiate athletics, with Bylaw 10.01.1 generally requiring student-athletes and athletics staff to act with honesty and sportsmanship at all times. Bylaw 10.1 identifies several categories of unethical conduct, including the receipt of benefits by an institutional staff member for facilitating or arranging a meeting between a student-athlete and an agent, financial advisor, or representative of an agent or financial advisor.<sup>12</sup>

The assistant coach went to Las Vegas to recruit on behalf of Creighton. While there, he took a meeting with the agent associate and representatives of the agent associate's management company. He then accepted \$6,000 cash from those individuals. His actions during the meeting violated NCAA standards of conduct.

Prior to the meeting, the agent associate informed the assistant coach that he would be paid for attending the meeting. The assistant coach claimed that he believed he was being compensated for his time. He also claimed the purpose of the meeting was to vouch for the agent associate to his business associates and investors. Regardless of his initial belief, the management company had a different understanding of the assistant coach's role in the meeting and in the broader business plan. As evident by the agent associate's representations and conversations amongst those involved in the broader scheme, the management company viewed the assistant coach as an investment and an individual who could steer clients to the services of the management company.

The substance of the meeting reflected the management company's intentions. The agent associate and a representative from the management company began discussing current Creighton players who had professional potential, with the representative commenting that Creighton produced a "steady" flow of talent. Perhaps more troubling was the agent associate's comment that the only thing left to figure out was how to get future payments to the assistant coach. Thereafter, the representative handed the assistant coach \$6,000 in an envelope and indicated that he would be coming to Omaha, just not on a monthly basis. The assistant coach took the envelope and placed it in his pocket. Although the assistant coach claimed that he gave the money to the agent associate after the meeting, there is no information in the record that either proves or disproves this claim. To the contrary, video surveillance clearly shows the assistant coach accepting money from the representative and placing it in his pocket. Other record information also clearly demonstrates that all other attendees believed that the money was the first in a series of payments that established a

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<sup>12</sup> Case-specific interpretative guidance in the recently decided *University of Alabama* (2020) case identified that general Bylaw 10.1 rather than Bylaw 10.1-(d) would apply where institutional staff members receive benefits for facilitating or arranging a meeting with a parent or family member of a student-athlete. However, case-specific interpretive guidance *in this case* identified that Bylaw 10.1-(d) could also apply to the assistant coach's conduct. Given the unique facts of this case, Creighton questioned whether Bylaw 10.1-(d) was appropriately cited. The assistant coach contested all bylaws. For reasons further explained in Section V., *Violations Not Demonstrated*, the panel does not determine that a violation of Bylaw 10.1-(d) occurred.

business relationship with the assistant coach. Thus, the panel concludes that in accepting the \$6,000, the assistant coach entered into an agreement with the management company to assist them in securing Creighton men's basketball student-athletes as future clients.

On July 28, 2017, the assistant coach's personal and professional lives intersected. The assistant coach permitted his loyalty to his friend to place himself in a compromising position. The assistant coach ignored repeated red flags and demonstrated a recurring lack of judgment that resulted in his failure to meet NCAA standards of conduct. His engagement, although limited, ran afoul of the honesty, integrity and ethical standards required of institutional staff members. Regardless of his intentions, the assistant coach understood that his position of authority—a well-respected Division I coach—was significant to establishing credibility for the agent associate and his management company. The assistant coach failed to heed caution and his conduct violated Bylaws 10.01.1 and 10.1. The panel concludes that the violation is Level I for the assistant coach and Creighton.

Pursuant to Bylaw 19.1.1, the violation is Level I because the conduct seriously undermined or threatened the integrity of the Collegiate Model and involved an ethical conduct violation. Creighton agreed that the conduct established an ethical conduct violation and was Level I. Relevantly, the COI has also concluded that similar conduct establishes Level I violations for involved individuals and their institutions. *See University of Southern California (USC) (2021); University of South Carolina (2021); University of Alabama (2020); and Oklahoma State University (2020).*<sup>13</sup> In these cases, the COI specifically concluded that institutional staff members who accepted money from individuals affiliated with the agent associate, his business management company or other professional services organizations committed Level I violations for the actor and the institution. Here, Creighton agreed and accepted responsibility for the Level I violation committed by its employee. Accordingly, and consistent with Bylaw 19.1.1, the violation is Level I for both the assistant coach and Creighton.

**B. FAILURE TO REPORT A POTENTIAL VIOLATION [NCAA Division I Manual Constitution 2.8.1 (2018-19); NCAA Division I Bylaws 19.2.2 and 19.2.3-(a) and 19.2.3-(c) (2018-19)]**

Creighton's director of athletics failed to act in accordance with the requirements of NCAA legislation with respect to reporting potential violations. The enforcement staff alleged that the director of athletics' failure to report established a Level I violation. Creighton and the director of athletics disputed that a violation occurred. In the alternative, they argued that any violation should be attributed to Creighton only. The panel concludes that a violation occurred, that it applies to both the director of athletics and Creighton, and that the violation is Level II.

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<sup>13</sup> *Oklahoma State* is currently under appeal. Similarly, the involved individual is appealing portions of his case in *University of Southern California* (2021). Further, although *Alabama* and *South Carolina* were decided through the summary disposition process and may be viewed as less instructive under COI Internal Operating Procedure (IOP) 4-10-2-2, the panel cites to them because they involved similar underlying conduct and violations.

**1. NCAA legislation relating to reporting and cooperation.**

The applicable portions of the bylaws may be found at Appendix Two.

**2. The director of athletics failed to meet his affirmative obligation to report a potential NCAA violation involving the assistant coach.**

The director of athletics assumed the responsibility to investigate Creighton's investigation into potential violations involving the assistant coach and his relationship with the agent associate. The director of athletics undertook this responsibility by himself, without informing or seeking assistance from other Creighton officials, including the athletics compliance office. As part of his investigation, the director of athletics learned about the July 2017 meeting in Las Vegas. Yet without consulting with any other Creighton officials, he determined that no violations occurred. His determination was incorrect. In addition, he kept what he had learned to himself until information related to the meeting came to light in the government's superseding indictment. The director of athletics assumed the responsibility to investigate the potential violations, but his investigation was inadequate, and in the process he failed to meet his obligations and affirmative responsibilities under Constitution 2 and Bylaw 19.

Constitution 2.8.1 requires all institutions to monitor their programs to ensure compliance and to identify and report to the Association any instances of noncompliance. Further, Bylaw 19.2.2 places an affirmative obligation on each institution to report all instances of noncompliance in a timely manner. Expanding upon that obligation, Bylaw 19.2.3 requires all institutional staff members to cooperate fully with the NCAA and further the objectives of the Association and its infractions program. Among others, these obligations include affirmatively reporting issues of noncompliance in a timely manner; assisting in developing full information to determine whether a possible violation has occurred and the details thereof; and making a full and complete disclosure of relevant information, including the timely production of materials or information requested, and in the format requested. *See* Bylaws 19.2.3-(a) and (c), respectively.

The director of athletics' personal relationship with the assistant coach, as well as the trust he placed in the assistant coach, influenced his decision-making. In doing so, he ignored a series of events that should have prompted him to dig deeper and notify others. The government's public arrests—which included the agent associate—on September 26, 2017, shook college athletics. Shortly thereafter, the Board of Directors instructed all institutions to review their men's basketball programs. Stated simply, campus leaders across the NCAA were on high alert.

The director of athletics knew of the agent associate based on his involvement in Creighton's recruitment of the high-profile prospect. He also knew about the assistant coach's personal relationship with him but, based on Creighton's fall 2017 review, did not believe there was "anything to worry about." About a year later in early October 2018, the prospect's father publicly testified that he had been promised money and a job if his son signed with Creighton. The trials prompted the NCAA to again instruct institutions to monitor their men's basketball programs.

On October 31, 2018, the director of athletics learned through his individual inquiry that the assistant coach attended a meeting in Las Vegas with the agent associate and others involved in a scheme where the assistant coach was presented with and took possession of money. Again, the director of athletics determined that nothing was contrary to NCAA rules. He kept that information to himself until the facts related to the Las Vegas meeting appeared in the March 7, 2019, superseding indictment. Given the environment at the time, it was unreasonable for the director of athletics not to share what he had learned about the assistant coach with other Creighton officials, including the compliance director, to determine whether NCAA violations may have occurred. Up until that point, the compliance director and other Creighton officials had been intimately involved in the institution's efforts to review and monitor its basketball program. The panel is troubled by the shift from joint review to the director of athletics' unilateral, insulated review and decision-making.

To be sure, institutional leaders, athletics administrators, coaches and staff members can be wrong. People make mistakes. But the panel determines that the director of athletics' decision-making was not reasonable under the circumstances at the time, which included the heightened attention to issues in Division I college basketball, the director of athletics' knowledge of the assistant coach's personal relationship and engagement with the agent associate, and the director of athletics' affirmative obligations under the NCAA bylaws. After the public arrests and the Division I Board's directive to institutions to monitor their basketball programs, the director of athletics told his compliance director and Creighton's general counsel that college basketball programs "should be worried" based on dealings with third parties. In that way, the director of athletics failed heed his own concern when he learned that his basketball coach met with third parties. He should have reported what he learned at the time he learned it.

The obligation to report potentially violative behavior has been a longstanding cornerstone of the membership's infractions process. This obligation became even more relevant due to the August 2018 enhancements to the legislated responsibility to cooperate that were part of broader reforms stemming from the Commission on College Basketball recommendations. These enhancements placed more explicit and express requirements on institutional staff members to further the objectives of the membership's infractions program. The director of athletics' conduct failed to meet his and Creighton's obligations under Constitution 2.8.1 and Bylaws 19.2.2, 19.2.3-(a) and 19.2.3-(c).

The enforcement staff alleged the conduct as Level I, but the panel concludes that the violation is Level II. The panel views the director of athletics' mistake in the context of the other proactive efforts where he collaborated with Creighton's general counsel and the compliance director. For approximately one year, the group worked together to ensure compliance within the men's basketball program. These efforts demonstrated effective and admirable leadership. However, in October 2018, the director of athletics departed from this approach and acted unilaterally. The panel concludes that the violation is Level II for the director of athletics and Creighton.

Previously, the COI has concluded that Level II violations occur when involved individuals fail to timely meet obligations related to developing potential infractions-related information. *See*



*Sacramento State University* (2018) (concluding that a volunteer coach's failure to cooperate fully constituted Level II violations of Bylaw 10 and 19) and *University of North Carolina, Chapel Hill (UNC)* (2017) (concluding that a curriculum secretary committed Level II violations of Bylaws 10 and 19 when she refused to participate in an investigation for nearly three years but eventually responded to allegations, interviewed and participated in the hearing). Thus, pursuant to Bylaw 19.1.2, the panel concludes that the violation is Level II.<sup>14</sup>

### **C. UNETHICAL CONDUCT DURING THE INVESTIGATION [NCAA Division I Manual Bylaws 10.01.1, 10.1, 10.1-(c), 19.2.3-(b) and 19.2.3-(c) (2018-19)]**

The assistant coach committed unethical conduct during Creighton's and the enforcement staff's investigation when he repeatedly denied that he accepted money in conjunction with the July 2017 meeting. First, in fall 2018, the assistant coach provided false and misleading information on an institutional questionnaire with regard to whether he ever accepted anything of value from an agent, financial advisor or apparel representative. Similarly, he provided false and misleading information during his May 29, 2019, interview with the enforcement staff when he denied that he accepted anything of value. Creighton and the assistant coach contested the violations. The panel concludes that violations occurred, and they are Level I.

#### **1. NCAA legislation relating to unethical conduct and the responsibility to cooperate.**

The applicable portions of the bylaws may be found at Appendix Two.

#### **2. The assistant coach violated legislation related to ethical conduct when he inaccurately completed an institutional questionnaire and during an interview with the enforcement staff denied accepting money and entering into an agreement with the management company.**

On two occasions, the assistant coach failed to meet the membership's expectations for conduct during an investigation. First, he provided false and misleading information on an institutional questionnaire. Later, he denied accepting money and entering into an agreement with the management company in an interview with the enforcement staff. Both are refuted by video surveillance. The panel concludes that the assistant coach's actions violated Bylaw 10 and 19 and establish Level I violations for the assistant coach and Creighton.

As mentioned, Bylaw 10 establishes ethical conduct standards and Bylaw 10.01.1 requires all staff members act with honesty and sportsmanship. Among other examples, Bylaw 10.1-(c) states that the provision of false or misleading information constitutes unethical conduct. Similarly, Bylaw

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<sup>14</sup> The panel's conclusion is specific to the unique facts and circumstances in this case. The panel's determination on Level takes into consideration the full scope of the director of athletics' involvement in investigating and monitoring the Creighton men's basketball program. Under different facts and circumstances, unilateral behavior and failure to report potential violations could easily establish Level I violations.

19.2.3 obligates current and former institutional staff members to cooperate with the objectives of the Association and its infractions program. Full cooperation includes the timely participation in interviews and complete and truthful responses. *See* Bylaw 19.2.3-(b). Likewise, individuals are required to make a full and complete disclosure of relevant information. *See* Bylaw 19.2.3-(c). In response to the NCAA leadership's instruction that all institutions monitor their men's basketball programs, Creighton's compliance director circulated a questionnaire to the men's basketball coaches and staff. The questionnaire included two specific questions related to accepting anything of value from individuals who were involved in the ongoing SDNY-investigation and trials, Question Nos. 9 and 12, respectively.

After consulting with outside criminal defense counsel, the assistant coach answered "no" to both questions. Later, in his May 29, 2019, interview with the enforcement staff, the assistant coach continued to assert that he did not accept any money in conjunction with the meeting. The assistant coach stated that he never "accepted" any of the money because it was never intended for him. He also asserted that he never entered into an agreement to steer players to the management company.

The panel disagrees and concludes that the assistant coach provided false and misleading information in both circumstances. The assistant coach knew the agent associate was an aspiring agent and starting a management company, and he knew the individuals in the room were associated with agency or professional representation and management. Further, video surveillance shows the assistant coach being handed an envelope containing \$6,000, taking the envelope and placing the envelope in his pocket. This all occurred in the context of other meeting attendees discussing Creighton players with professional potential, logistics related to future payments to the assistant coach and a representative of the management company's intent to come to Omaha on a regular basis. As described above, the payment solidified the business relationship.

When completing the institution's questionnaire, which included a Bylaw 10.1 advisement, and later denying all involvement with the agent associate and his management company in his interview with the enforcement staff, the assistant coach knowingly provided false and misleading information as prohibited by Bylaw 10.1. The conduct also fell short of the assistant coach's responsibility to cooperate expressly outlined in Bylaw 19.2.3-(b) and (c).

The panel recognizes that the assistant coach acted on the advice of counsel. That is a legitimate consideration. However, an individual's decision made in the context of an outside legal proceeding does not relieve him from his obligations under NCAA bylaws. When an individual chooses to prioritize their interests in outside proceedings, there can still be consequences under NCAA legislation. *See University of Connecticut* (2019) (stating that "[t]here is no automatic exception for reliance on the advice counsel" and concluding that the former head men's basketball coach violated Bylaw 19.2.3 when he refused to participate in a second interview on the advice of counsel due to his involvement in separate legal proceedings) and *University of Minnesota, Twin Cities* (2000) (concluding an academic counsel violated Bylaw 19.01.3—precursor to Bylaw 19.2.3—when he refused to participate in an interview on the advice of counsel due to an ongoing federal investigation). Because he was actively employed at Creighton at the time of the conduct, the violations apply to both the assistant coach and Creighton.

Although each case is unique, the panel considered the COI's recent decision in *USC* when evaluating the specific facts and circumstances in this case. In assessing the assistant coach's conduct, *USC* was instructive in both its similarities and differences. In this respect, the assistant coach's conduct is distinguishable from conduct of the associate head coach in *USC*. In that case, the COI did not conclude that the associate head coach provided false and misleading information. In *USC*, the associate head coach admitted that he received payments in exchange for directing basketball players from *USC* to retain the services of certain financial advisors and business managers.<sup>15</sup> He further acknowledged that his conduct could be viewed as developing a tacit understanding of an agreement. Although the associate head coach stated that the amount of money he actually received was different than the amount referenced in his plea agreement, the COI found this variance immaterial and not rising to the level of failure to cooperate or unethical conduct.

Here, however, when completing the questionnaire and when interviewed by the enforcement staff, the assistant coach did not acknowledge that his conduct ran afoul of core principles and standards of conduct. As such, the assistant coach's failure to acknowledge such conduct establishes further violations.

Pursuant to Bylaw 19.1.1, the violations are Level I because they seriously undermine and threaten the integrity of the collegiate model. *See* Bylaw 19.1.1-(d) (identifying individual unethical or dishonest conduct as an example of Level I behaviors). The COI regularly concludes that Level I violations occur when individuals provide false or misleading information. *See Georgia Institute of Technology* (2019) (concluding that the assistant coach committed Level I violations when he lied in an interview and denied involvement in the underlying violations and attempted to persuade a student-athlete to lie) and *University of the Pacific* (2017) (concluding that Level I violations occurred when a head coach and assistant coach were untruthful in their interviews). The assistant coach's actions in filling out the questionnaire and his later denials during his interview were false and misleading. As such, Level I violations occurred.

## **V. VIOLATIONS NOT DEMONSTRATED**

As part of the allegations, the enforcement staff alleged that the underlying conduct established a Bylaw 10.1-(d) violation. Further, the enforcement staff alleged that the assistant coach committed additional unethical conduct when he (1) filled out Creighton's telephone and electronic device disclosure statement and (2) delayed his interview with the enforcement staff. The panel concludes that these violations were not demonstrated.

With respect to the application of Bylaw 10.1-(d), the record does not demonstrate that the assistant coach *took any further action* after the July 28, 2017, meeting where he accepted money from the business management company. As an example of unethical conduct, Bylaw 10.1-(d) expressly

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<sup>15</sup> Pursuant to Bylaw 19.7.8.3.1, that information was accepted as true based on the associate head coach's guilty plea as part of the federal government's criminal prosecution.

identifies an institutional staff member accepting money from agents or financial advisors in exchange for arranging or agreeing to arrange meetings between agents/advisors or their representatives and student-athletes. Past cases have stated that an actual meeting is not a requirement in order for a Bylaw 10.1-(d) violation to occur.<sup>16</sup> *See USC.*

Unlike other SDNY cases, the assistant coach took little to no action during and following the July meeting. During the meeting, the assistant coach remained silent during the meeting. He never discussed Creighton prospects or players, and after the meeting he took no further action with respect to the management company. In this respect, this behavior is less egregious than that of the associate head coach in *USC*, where the associate head coach openly discussed USC prospects and players, continued to have contact regarding potential clients with the agent associate, and attended a second meeting where he continued to talk about his participation in the scheme and was informed about the management company's meetings with players affiliated with the USC program.

At the same time, the panel concludes that his acceptance of money in the context of the discussion and actions by the representatives of the management company resulted in the assistant coach entering into a business relationship with the management company. That conduct supports a general Bylaw 10.1 violation. However, the panel determines that the absence of any further representations or actions by the assistant coach aimed at furthering the management company's intent to meet with student-athletes does not demonstrate a Bylaw 10.1-(d) violation.

With regard to information the assistant coach provided during investigation, the panel does not conclude that (1) the assistant coach provided false and misleading information on Creighton's telephone and electronic device disclosure statement or (2) that the assistant coach failed to cooperate due to a minimal delay in scheduling an interview with the enforcement staff.

As explained above, Bylaws 10.1 and 19.2.3 require current and former institutional staff members to provide full, complete, truthful and timely responses in developing information related to potential violations. Bylaw 19.2.3 also requires individuals to disclose and provide access to all electronic devices used for business purposes.

To be clear, by his own acknowledgement, the assistant coach did not fill out Creighton's telephone and electronic device disclosure statement accurately. Specifically, on the form he identified that he did not use his personal cell phone for recruiting purposes. Later, in his interview with the enforcement staff, he acknowledged that because he maintained that number for a long time, there may have been circumstances where he engaged in recruiting conversations related to the high-

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<sup>16</sup> Interpretive guidance related to this case also came to the same conclusion. However, that interpretation did not include facts related to the assistant coach's complete lack of action following the meeting. The panel determines that this is a material fact. Pursuant to COI Internal Operating Procedure (IOP) 5-9-2, the panel determines that the facts evolved such that the interpretation does not directly apply to the facts developed. Thus, the COI is not bound by the original case interpretation. Additionally, the panel determines that its conclusion that a Bylaw 10.1-(d) violation did not occur falls within the reasonable scope of conduct contemplated by the legislation and past cases. Thus, the panel is not required to seek an additional interpretation pursuant to COI IOP 5-9-4.

profile prospect. The assistant coach, the prospect, the prospect's family and the agent associate (who was a friend of the prospect's family and heavily involved in the prospect's recruitment) were all from the same hometown and had existing relationships that predated the assistant coach's recruitment of the prospect. As such, the assistant coach was unable to expressly identify if any of his personal conversations on his personal phone with these individuals may have also involved recruiting communication.

Although questions remain unanswered, the panel is unable to conclude that the uncertainty rises to unethical conduct, or that the assistant coach failed to meet his responsibility to cooperate.<sup>17</sup>

The enforcement staff also alleged that the assistant coach failed to timely participate in an interview, which prompted the enforcement staff to file a petition for immediate penalties. The panel does not determine that a violation occurred. Bylaw 19.2.3 requires current and former institutional staff members' timely participation in interviews. The bylaw does not define timely.

The enforcement staff originally presented this allegation in a petition for immediate penalties. At the time the COI received the petition, not all of the potential interview dates discussed by the parties had passed. Shortly after submission, the parties reached agreement on a date. As such, the COI closed the matter.

The panel recognizes that challenges can arise when criminal proceedings and infractions proceedings converge. Part of the short delay in scheduling an interview appears to have resulted from the assistant coach following the advice of his criminal defense attorneys because his conduct was identified as potential criminal behavior, but he had not been charged. As the COI has stated in previous cases, the COI recognizes those considerations, but they do not relieve individuals from their obligations set by the NCAA membership. *See Connecticut* and *Minnesota*. Once the assistant coach's infractions attorney took a more active role, the assistant coach scheduled his interview with the enforcement staff. It should not have taken a petition for immediate penalties to trigger that action. However, given the relatively short window of delay involved in this case, the panel declines to conclude that a Bylaw 19.2.3-(b) violation occurred. Previously, the COI has stated that untimely participation does not cure an earlier decision not to participate. *See UNC*. The panel reiterates the importance of timely participation and notes that future similar facts under different circumstances could result in significant violations and penalties either through the petition for immediate penalties process or in the resolution of a case on the merits.

## **VI. PENALTIES**

For the reasons set forth in Sections III, IV and V of this decision, the panel concludes that this case involved Level I and II violations of NCAA legislation. Level I violations are severe breaches

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<sup>17</sup> The assistant coach attempted to secure his cell phone records for the relevant time period. However, the assistant coach's cell phone provider no longer maintained the records for the pertinent time period. Thus, the panel was unable to verify the frequency with which the assistant coach may have used his personal cell phone to conduct recruiting activity.

of conduct that undermine or threaten the integrity of the Collegiate Model, including violations that provide or are intended to provide substantial or extensive advantages or benefits. The conduct at the center of this case undermines and threatens the foundation of the Collegiate Model. Level II violations are significant breaches of conduct that provide or are intended to provide more than a minimal but less than a substantial benefit or involve conduct that may compromise the integrity of the Collegiate Model.

In considering penalties, the panel first reviewed aggravating and mitigating factors pursuant to Bylaws 19.9.2, 19.9.3 and 19.9.4 to determine the appropriate classifications for the parties. The panel then used the current penalty guidelines (Figure 19-1) and Bylaws 19.9.5 and 19.9.7 to prescribe penalties.

The parties had limited agreement on the application of aggravating and mitigating factors, including virtually no agreement that any aggravating factors could apply to this case. The panel recognizes that parties have a significant interest in the lowest possible classification because the classification sets the range of potential core penalties under the penalty guidelines. But it is incredibly rare that no aggravating factors will apply in any given case. This is particularly true in circumstances like this case where Creighton admits to a Level I unethical conduct violation. Aggravating and mitigating factors were implemented to provide more certainty to parties going through the infractions process. Past COI decisions also provide guidance for parties on when certain factors may be applicable. The COI expects parties to seriously and honestly assess potential factors. Arguing that no factors are appropriate is unhelpful and unrealistic. The panel accepts some of the parties' agreements and identifies other applicable factors pursuant to Bylaw 19.9.2.

The panel determined that the below-listed factors applied and assessed the factors by weight and number. Based on its assessment, the panel classifies this case as Level I-Mitigated for Creighton, Level II-Mitigated for the director of athletics and Level I-Aggravated for the assistant coach.

### **Aggravating Factors for Creighton**

19.9.3-(a): Multiple Level I violations by the institution; and

19.9.3-(h): Persons of authority condoned, participated in or negligently disregarded the violation or wrongful conduct.

Creighton disagreed with the factors. The facts of this case and past COI decisions support both factors. The enforcement staff also proposed Bylaw 19.9.3-(j), *Conduct or circumstances demonstrating an abuse of positions of trust*. The panel determines that Bylaw 19.9.3-(j) does not apply.<sup>18</sup>

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<sup>18</sup> The enforcement staff also originally proposed Bylaw 19.9.3-(m), *Intentional, willful or blatant disregard for the NCAA constitution and bylaws*, for Creighton but withdrew it at the hearing.

With respect to Bylaw 19.9.3-(a), this case involves two Level I violations—the assistant coach's attendance at the July 2017 meeting where he accepted money and his later failure to meet conduct and cooperation standards during the investigation. Both violations also apply to Creighton.

This factor applies when more than one Level I violations occurs. Creighton argued that the factor should not apply because the multiple violations derived from the same underlying conduct. Although the initial unethical conduct violation began the series of events in this case, the assistant coach's subsequent conduct involved separate and independent actions, which established separate and independent violations.<sup>19</sup> Furthermore, the COI has not previously discounted derivative violations (*e.g.*, unethical conduct, head coach responsibility, failure to monitor and lack of institutional control) as they are stand-alone violations. The COI has previously applied Bylaw 19.9.3-(a) to institutions when an institutional employee committed Level I unethical conduct and then committed subsequent Level I unethical conduct and failure to cooperate violations during the investigation. *See Georgia Tech.* The panel determines that the factor applies.

Regarding Bylaw 19.9.3-(h), this case involved two persons of authority committing violations—the assistant coach and the director of athletics. The COI has regularly concluded that coaches are persons of authority and has consistently applied this factor in recent cases involving similar circumstances. *See USC, OSU, and South Carolina.*<sup>20</sup> The COI also recently applied the factor when a senior administrator committed violations. *See Alabama.* In addition to the assistant coach, Creighton's director of athletics participated in a violation as a result of his negligent disregard for the assistant coach's wrongful conduct. By his own admission, he is the top authoritative figure in the athletics department. In accordance with the Division I Board of Directors' and the NCAA's instruction, he was furthering Creighton's obligations and efforts to continue monitoring the basketball program and committed a violation in the process. The panel determines that the factor applies.

The enforcement staff proposed that Bylaw 19.9.3-(j), *Conduct or circumstances demonstrating an abuse of a position of trust*, applied to Creighton. Consistent with similar cases involving similar factual predicates, the panel does not apply Bylaw 19.9.3-(j) to Creighton. The panel determines that Bylaw 19.9.3-(h) more appropriately captures the conduct. *See USC* (applying Bylaw 19.9.3-(h) in place of Bylaw 19.9.3-(j)). The COI applied similar analysis in *Oklahoma State, Alabama* and *South Carolina*.

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<sup>19</sup> Creighton also noted that the factor did not apply in *OSU, Alabama* or *South Carolina*. Those cases, however, are not relevant to the panel's analysis because the subsequent unethical conduct violations were post-separation violations, *i.e.*, the conduct occurred after the involved individual separated from the institution.

<sup>20</sup> Although *Alabama* and *South Carolina* were decided through the summary disposition process and may be viewed as less instructive under COI IOP 4-10-2-2, the panel cites to them throughout this section because they involved similar underlying conduct and violations. Thus, the COI's application of aggravating and mitigating factors in those cases is relevant.

### **Mitigating Factors for Creighton**

19.9.4-(c): Affirmative steps to expedite final resolution of the matter;

19.9.4-(d): An established history of self-reporting Level III or secondary violations;<sup>21</sup> and

19.9.4-(h): The absence of prior conclusions of Level I, Level II or major violations committed by the institution.

In addition to these three agreed-upon mitigating factors, Creighton proposed two additional mitigating factors: (1) Bylaw 19.9.4-(e), *Implementation of a system of compliance methods designed to ensure rules compliance and satisfaction of institutional/coaches' control standards*; and (2) Bylaw 19.9.4-(g), *The violations were unintentional, limited in scope and represent a deviation from otherwise compliant practices by the institution*. The panel determines that neither applies. Further, the panel applies significant weight to Bylaw 19.9.4-(h).

The facts and violations do not support Bylaw 19.9.4-(e). Creighton admitted that if a violation related to the director of athletics' conduct occurred, it should be an *institutional* violation. As explained above, the panel determines that the violation applies to both Creighton and the director of athletics. By Creighton's own concession, albeit an alternative argument, there was a failure in its compliance and reporting process.<sup>22</sup> This case is also distinguishable from the COI's recent decisions in *USC, Alabama* and *South Carolina*, where the enforcement staff agreed that the mitigating factor applied. Here, Creighton's general compliance program may have met industry standards, but the underlying conduct and violations do not support application of Bylaw 19.9.4-(e). The panel determines that the factor does not apply.

The panel also determines that Bylaw 19.9.4-(g) does not apply because Creighton cannot meet each of the required three elements. Bylaw 19.9.4-(g) expressly identifies that for the factor to apply, three things must be present: (1) the violations were unintentional; (2) the violations were limited in scope; and (3) the violations represent a deviation from otherwise compliant practices by the institution. Creighton cannot satisfy the first two elements.

The conduct in this case was intentional. The assistant coach knowingly attended the July 2017 meeting with agents or those working in the representation industry where he would be paid. What happened at that meeting at best blurred the lines of acceptable behavior but more accurately called into question appropriate conduct and relationships. Regardless, the assistant coach then remained silent about his involvement for over a year—even through the arrest of individuals who attended the meeting. When the assistant coach finally came forward, the director of athletics made a conscious decision not to tell anyone else about what he had learned. He too remained silent until potentially incriminating information became public. Thus, the conduct at issue was neither

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<sup>21</sup> Creighton self-reported 41 Level III violations over the last five years, an average of approximately eight violations per year.

<sup>22</sup> The panel acknowledges that Creighton's primary position was that no violation occurred. Creighton's own alternative acceptance of an institutional violation in its compliance reporting process contradicts the application of Bylaw 19.9.4-(e).



unintentional nor limited in scope. The COI has previously declined to apply Bylaw 19.9.4-(g) when an institution could not satisfy all three elements. *See California Polytechnic State University (2019) and University of Tennessee at Chattanooga (2018).*<sup>23</sup> The panel determines that the factor does not apply.

Finally, the panel applies significant weight to Bylaw 19.9.4-(h). It is noteworthy that in the 100-year history of Creighton's participation in Division I athletics, this is Creighton's first Level I, Level II or major infractions case. As it relates to institutions, the absence of an infractions history is rare. As such, the panel affords significant weight to this factor.

### **Aggravating Factor for the Director of Athletics**

19.9.3-(h): Persons of authority condoned, participate in or negligently disregarded the violation or related wrongful conduct.

The director of athletics acknowledged that if the panel concluded that a violation occurred, Bylaw 19.9.3-(h) would apply. It is clear that he is a person of authority. He is the top athletics administrator. Upon learning of the facts and circumstances related to the assistant coach's attendance at the July 2017 meeting, he individually determined that no violation occurred. He did not seek any further input from those who had been involved in Creighton's continued monitoring efforts and who had previously interviewed the assistant coach with the director of athletics. Although it does not appear that he intended to commit a violation, his intentional action nonetheless resulted in a violation. In that way, he participated in a violation and negligently disregarded the assistant coach's wrongful conduct.

Albeit under different circumstances, the COI recently applied this aggravating factor to an administrator who was involved in underlying violations. *See Alabama* (applying Bylaw 19.9.3-(h) when the associate director of athletics received money in exchange for access to Alabama student-athletes and their parents). The panel determines that the factor applies to the director of athletics' conduct.

### **Mitigating Factor for the Director of Athletics**

19.9.4-(h): The absence of prior conclusions of Level I, level II or major violations committed by the involved individual; and

The director of athletics and the enforcement staff agreed that Bylaw 19.9.4-(h) applied to the director of athletics' conduct. The director of athletics also proposed Bylaw 19.9.4-(g), *The violations were unintentional, limited in scope and represent a deviation from otherwise*

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<sup>23</sup> Recent cases involving similar circumstances have also not involved Bylaw 19.9.4-(g). *See USC, Oklahoma State, Alabama and South Carolina.* Those infractions decisions, however, are silent on Bylaw 19.9.4-(g). Therefore, their value with respect to this factor is limited, at best. The panel's citation is solely related to its observation that in cases involving similar circumstances, the non-application of Bylaw 19.9.4-(g) was a non-issue.

*compliance practices by the involved individual.* The panel agrees that Bylaw 19.9.4-(h) applies but determines that Bylaw 19.9.4-(g) does not apply.

The panel determines that Bylaw 19.9.4-(g) does not apply to the director of athletics individual conduct for reasons similar to why the factor does not apply to Creighton. The director of athletics cannot establish all three elements of the mitigating factor. The director of athletics' conduct was intentional and was not limited in scope. Although the director of athletics did not think the assistant coach's conduct was a violation, he intentionally made an isolated decision to not report it, a deviation from past joint efforts. Administrators can be wrong but given the magnitude of the situation—including the fact that it involved the agent associate who had been arrested and was actively standing trial—and the climate in college basketball at the time, the director of athletics' intentional actions resulted in a violation.

Further, the conduct was not limited in scope. The information the director of athletics chose not to disclose was significant, relevant and material to Creighton's continued monitoring of its men's basketball program and the NCAA's known attentiveness to the government's investigation and subsequent trials. Although the director of athletics recognized the significance of what he had been told when those facts appeared in the government's March 7, 2019, superseding indictment, his disclosure of those facts was delayed nearly five months.

The COI has regularly declined to apply Bylaw 19.9.4-(g) to involved individuals when they are unable to demonstrate all three required elements. *See Siena College (2020)* (declining to apply the factor to the head men's basketball coach when, although he did not have past violations in his 27-year career, his violations were not unintentional or limited in nature) and *University of Oregon (2018)* (declining to apply the factor to both the men's and women's head basketball coaches when they knew conduct in their programs resulted in NCAA violations and, in some instances, the conduct occurred over multiple years). Here, the conduct was intentional and, given the climate at the time the conduct occurred, was unreasonably delayed. As such, the panel determines that Bylaw 19.9.4-(g) does not apply to the director of athletics' conduct.

### **Aggravating Factors for the Assistant Coach**

- 19.9.3-(a): Multiple Level I violations by the assistant coach;
- 19.9.3-(e): Unethical conduct, failing to cooperate during the investigation;
- 19.9.3-(h): Persons of authority condoned, participated in or negligently disregarded the violation or wrongful conduct;
- 19.9.3-(l): Conduct intended to generate pecuniary gain for the involved individual; and
- 19.9.3-(m): Intentional, willful or blatant disregard for the NCAA constitution and bylaws.

The enforcement staff proposed five aggravating factors, Bylaws 19.9.3-(a), (e), (j), (l) and (m), for the assistant coach's conduct. The assistant coach disagreed with all five factors. The panel concludes that five aggravating factors apply, agreeing with four of the factors identified by the enforcement staff but substituting Bylaw 19.9.3-(h) for Bylaw 19.9.3-(j).

With respect to Bylaw 19.9.3-(a), the panel's analysis is uncomplicated. It is a one-plus-one analysis. In this case, the panel concludes that the assistant coach committed multiple Level I violations. Thus, the factor applies. The COI regularly applies this factor to involved individuals when their conduct results in more than one Level I violation. *See Georgia Tech, Oklahoma State, South Carolina and Alabama.* The panel determines that the factor applies.

Regarding Bylaw 19.9.3-(e), the panel's analysis is also uncomplicated. This assistant coach's conduct established multiple unethical conduct violations, including his provision of false and misleading information on two occasions. The panel is not indifferent to the frequent arguments that application of this factor results in "double dipping" or holding a party accountable for the underlying conduct and then aggravating the party's case for the same conduct. That, however, is how the NCAA membership has constructed its infractions program. The membership was intentional in identifying certain behaviors that were unacceptable and the mere presence of a violation could result in the application of an aggravating factor. Unethical conduct is one of those behaviors. The COI has regularly applied Bylaw 19.9.3-(e) in similar circumstances where underlying conduct established unethical conduct violations. *See USC, Oklahoma State, Georgia Tech, South Carolina and Alabama.*

The enforcement staff originally identified Bylaw 19.9.3-(j), *Conduct or circumstances demonstrate an abuse of position of trust.* However, the panel determines that Bylaw 19.9.3-(h), *Persons of authority condoned, participated in or negligently disregarded the violation or wrongful conduct,* is more appropriate. Undoubtedly, the assistant coach was a person of trust. In fact, in providing rationale for his actions, the director of athletics stated that he trusted the assistant coach. However, in recent decisions involving similar underlying facts, the COI has applied Bylaw 19.9.3-(j) when the involved individual's actions violated the trust of student-athletes by involving them in violations or putting them in compromising positions. *See Oklahoma State* (applying Bylaw 19.9.3-(j) when the associate head coach admitted at his sentencing hearing that he abused his position of trust for his own personal gain); *Georgia Tech* (applying Bylaw 19.9.3-(j) to the assistant coach after he attempted to use his position to influence a student-athlete to change what the student-athlete previously told the enforcement staff); *Alabama* (applying the aggravating factor when the associate director of athletics took money and then used his position to introduce the financial advisor and the financial advisor's representative to a high-profile Alabama student-athlete's father over dinner); and *South Carolina* (applying the factor when the assistant coach accepted bribe payments in exchange for his agreement to arrange a meeting for an agent and a prominent student-athlete who was expected to enter the NBA draft and the student-athlete's family). Unlike those cases, there is no information in the record that suggests the assistant coach abused his position of trust in the eyes of prospects, student-athletes or their families.

On the other hand, there is overwhelming support in favor of Bylaw 19.9.3-(h). The assistant coach was a person of authority and he participated in violations. Even under the assistant coach's version of events, he admits that he was a person of authority. According to the assistant coach, he was invited to the room to establish credibility for his friend, the agent associate. Similarly, the director of athletics described him as having high credibility nationally. More is expected of individuals in authoritative roles. The COI has regularly applied Bylaw 19.9.3-(h) when coaches

commit violations. *See USC, Oklahoma State, Georgia Tech, Siena and DePaul University (2019); see also Alabama and South Carolina.* The panel determines that the factor applies.

As it relates to Bylaw 19.9.3-(l), the panel determines that the factor applies because the assistant coach took the meeting knowing he was going to receive a monetary payment. The assistant coach has consistently said that he did not keep the payment and gave it to the agent associate shortly after the meeting. As previously explained, there is no information in the record that corroborates these statements. There is, however, irrefutable information showing the assistant coach accepting an envelope of money and putting it in his pocket. The factor applies and aligns with recently decided cases involving similar facts and circumstances. *See USC, Oklahoma State, Alabama and South Carolina.*

Finally, the COI applies Bylaw 19.9.3-(m) to the assistant coach's conduct. The assistant coach knowingly and willfully agreed to meet with the agent associate and representatives of his management company. The assistant coach listened as the group discussed Creighton players with professional potential and other commentary about how money would get into his account. Throughout these conversations the assistant coach never showed his discomfort or disagreement. The assistant coach also accepted money from a representative of the management company. Later, when individuals he was in the room with were publicly arrested for participating in a bribery scheme, the assistant coach intentionally kept his involvement with those individuals a secret until his conduct was specifically referenced in a superseding indictment. Even then, the assistant coach denied any involvement in potential NCAA violations.

At best, the assistant coach's conduct reflects his blatant disregard for fundamental principles of the Collegiate Model. At worst, his conduct demonstrates intentional and willful engagement in the management company's business plan. Either way, Bylaw 19.9.3-(m) applies to his conduct. The panel's application of the factor is also consistent with the COI's analysis for involved individuals in recent cases involving similar behaviors. *See USC, Oklahoma State, Alabama and South Carolina.*

### **Mitigating Factors for the Assistant Coach**

19.9.4-(h): Absence of prior conclusions of Level I, Level II or major violations committed by the involved individual; and

19.9.4-(i): Other factors warranting a lower penalty range.

The enforcement staff and the assistant coach agreed that Bylaw 19.9.4-(h) applies. The panel agrees. Additionally, the assistant coach proposed, but the enforcement staff disagreed with, three additional factors: (1) Bylaw 19.9.4-(a), *Prompt self-detection and self-disclosure of the violation*; (2) Bylaw 19.9.4-(g) *The violations were unintentional, limited in scope and represent a deviation from otherwise complaint practices by the involved individual*; and (3) 19.9.4-(i), *Other factors warranting a lower penalty range*. The panel applies Bylaw 19.9.4-(i) but determines that the facts do not support Bylaws 19.9.4-(a) or (g).

With respect to Bylaw 19.9.4-(a), there no information demonstrating that the assistant coach promptly self-detected or self-disclosed the violations. To the contrary, the evidence demonstrates that the assistant coach intentionally kept the details of his July 2017 Las Vegas meeting a secret.

Again, the assistant coach did not disclose the circumstances of his attendance at the 2017 meeting for 15 months despite the fact that roughly six weeks after the meeting, individuals who attended the meeting were arrested. He continued to withhold this information when questioned about his relationship with the agent associate—one of the individuals at the center of the government's case. And he continued to withhold this information when questioned by Creighton about his relationship with the agent associate after information potentially implicating him came out through trial testimony. It was only after he was specifically asked about accepting money on the Creighton questionnaire when the assistant coach approached the head coach and told him what had occurred 15 months earlier. At the time of the arrests and in the months that followed, the assistant coach was the only individual who could have self-disclosed information related to the July 2017 meeting. He chose not to do so.

The COI has applied this factor to an involved individual on one prior occasion when a head coach reported off-campus visit violations to the compliance staff as soon as he realized they were impermissible. *See University of Utah* (2019). The assistant coach's position that he did not believe his conduct violated NCAA bylaws does not excuse his delay in reporting potentially serious conduct. As such, the panel determines the factor does not apply.

With regard to Bylaw 19.9.4-(g), the assistant coach is unable to establish the required elements of the mitigating factor. The assistant coach knowingly participated in the July 2017 meeting. He intentionally did not disclose the information. And, when he finally did disclose the information, he knowingly provided false or misleading information to Creighton and the enforcement staff. Thus, his violations are neither unintentional nor limited in scope. The COI does not apply this factor under these circumstances. *See Siena* and *Oregon*. The panel determines the factor does not apply.

The panel does apply Bylaw 19.9.4-(i) because the assistant coach's actions are different than those of involved individuals in previously decided SDNY-related infractions cases. It is not credible that the assistant coach did not understand he was being paid money by the management company to form a relationship whereby the management company could have access to future clients. That said, the assistant coach's actions during the July 2017 meeting are different than other involved individuals in similar circumstances. Notably, the assistant coach remained largely silent during the July 2017 meeting. Unlike the associate head coach in *USC*, here the assistant coach did not discuss Creighton players with professional talent let alone boast about his ability to deliver players to the management company. Further, there is no information that suggests that the assistant coach arranged or facilitated any additional meetings after the July 2017 meeting, or took any steps to arrange or facilitate such meetings.

The involved individuals in *USC*, *Oklahoma State*, *Alabama* and *South Carolina* all either facilitated meetings, expressly agreed to facilitate meetings, learned of meetings or personally

introduced individuals involved in the broader scheme to student-athletes or their family members. Those additional steps are absent in this case. The panel is persuaded that the assistant coach was largely motivated by misguided loyalty to his long-time friend. The panel still holds him accountable through a Bylaw 10.1 violation and a related penalty. However, by comparison, his conduct is demonstrably different. Therefore, the panel applies Bylaw 19.9.4-(i) and affords it significant weight.

After applying and weighing all appropriate aggravating and mitigating factors, the panel classified Creighton's case as Level I-Mitigated. The panel classifies the director of athletics' conduct as Level II-Mitigated. Finally, the panel classifies the assistant coach's conduct as Level I-Aggravated. Based on these classifications, the panel prescribes penalties consistent with the ranges identified in the membership's penalty guidelines. Consistent with those ranges, the panel does not prescribe a show-cause order for the director of athletics' conduct. As further explained below, the panel deviates downward from the core ranges for the assistant coach.

All the penalties prescribed in this case are independent and supplemental to any action the NCAA Division I Committee on Academics has taken or may take through its assessment of postseason ineligibility, historical penalties or other penalties. In prescribing penalties, the panel considered Creighton's cooperation in all parts of this case. Institutionally, the panel determines that Creighton met its obligations notwithstanding the director of athletics' error in judgment. The panel also considered Creighton's corrective actions, which are contained in Appendix One. The panel prescribes the following penalties (self-imposed penalties are so noted):

**Core Penalties for Level I-Mitigated Violations (Bylaw 19.9.5)<sup>24</sup>**

1. Probation: Two years of probation from June 22, 2021, through June 21, 2023.<sup>25</sup>
2. Financial penalty: Creighton shall pay a fine of \$5,000 plus one percent of the men's basketball budget.<sup>26</sup>
3. Scholarship reductions: Creighton shall reduce by two the total number of grants-in-aid awarded in men's basketball during the term of probation. One scholarship shall be taken for the 2021-22 academic year and one scholarship shall be taken in the 2022-23 academic year. (Self-imposed.)

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<sup>24</sup> If an opportunity to serve a penalty will not be available due to circumstances related to COVID-19, the penalty must be served at the next available opportunity. With the exception of postseason bans, probation and general show-cause orders, this methodology applies to all penalties, including institutional penalties, specific restrictions within show-cause orders and head coach restrictions, unless otherwise noted.

<sup>25</sup> The COI's methodology for penalties impacted by COVID-19 does not apply to probation. Creighton proposed a two-year probationary period. Creighton tethered its other self-imposed penalties to the proposed two-year probationary term.

<sup>26</sup> Creighton self-imposed a \$5,000 fine. Consistent with recently decided cases involving similar underlying facts, circumstances and violations, the panel adds one percent of the men's basketball budget. *See USC, Oklahoma State and Alabama*. The fine from the program must be calculated in accordance with COI IOPs 5-15-4 and 5-15-4-1.

4. Recruiting restrictions:

- a. Creighton shall reduce the number of official visits in men's basketball by six over the 2021-22/2022-23 rolling two-year period. (Self-imposed.)
- b. Creighton shall reduce recruiting person days by ten percent from the previous four-year average in each year of the probationary term (i.e., a ten percent reduction off the four-year average in 2021-22 and a ten percent reduction off the four-year average in 2022-23). (Self-imposed.)
- c. Creighton shall prohibit all prospective student-athlete and coach complimentary admissions for all home games in the month of November 2021. (Self-imposed.)

**Core Penalties for Level I-Aggravated Violations (Bylaw 19.9.5)**

5. Show-cause order: The assistant coach engaged in unethical conduct when he accepted money in connection with the July 28, 2017, meeting in Las Vegas with the agent associate and representatives of the agent associate's business management company. Later, during the investigation, the assistant coach provided false and misleading information on a Creighton-issued questionnaire and during his interview with the NCAA enforcement staff. Therefore, the associate head coach shall be subject to a two-year show-cause order from June 22, 2021, through June 21, 2023. Pursuant to COI Internal Operating Procedure (IOP) 5-15-3-1, if the assistant coach seeks employment or affiliation with any athletically related position at an NCAA member institution during the two-year show-cause period, any employing institution shall be required to contact the Office of the Committees on Infractions (OCOI) to make arrangements to show cause why restrictions on all athletically related activity should not apply.

Pursuant to Bylaw 19.9.6, the panel's two-year show-cause order is a deviation from the membership-approved range for Level I-Aggravated violations of three years to lifetime. The panel's decision to deviate downwards is specific to the unique facts and circumstances of this case. The panel deviates downwards by one year for two reasons: (1) the assistant coach's conduct is distinguishable from other involved individuals in the SDNY-related infractions cases and (2) he received poor guidance from his director of athletics.

As previously explained in the panel's analysis related to mitigating factor Bylaw 19.9.4-(i), the assistant coach's conduct is demonstrably different from the involved individuals in *USC*, *Oklahoma State*, *Alabama* and *South Carolina*. Simply stated, outside of his unethical conduct violation related to attending the meeting, the record does not demonstrate that the assistant coach took further action during or after the July 2017 meeting in furtherance of the management company's scheme. As a result, the assistant coach's conduct appears to be more limited when compared to other coaches and administrators involved in SDNY-related infractions cases.

Additionally, the panel notes that the assistant coach was not appropriately advised by Creighton leadership after he reported the information. The panel does not excuse the assistant coach's nearly 15-month delay in reporting his attendance at the meeting. However, once he reported the information, his two immediate superiors advised they did not believe a violation occurred. At that point, all information sharing stopped. The director of athletics' unilateral determination that no violation occurred essentially prevented the assistant coach from discussing the conduct with the compliance staff. The assistant coach is still held accountable for his provision of false and misleading information; however, the director of athletics' intervention presents a unique circumstance warranting deviation.

#### **Additional Penalties for Level I-Mitigated Violations (Bylaw 19.9.7)**

6. Public reprimand and censure through the release of the public infractions decision.
7. During the period of probation, Creighton shall:
  - a. Continue to develop and implement a comprehensive educational program on NCAA legislation to instruct coaches, the faculty athletics representative, all athletics department personnel and all institutional staff members with responsibility for recruiting and certification legislation.
  - b. Submit a preliminary report to the Office of the Committees on Infractions (OCOI) by August 15, 2021, setting forth a schedule for establishing this compliance and educational program.
  - c. File with the OCOI annual compliance reports indicating the progress made with this program by April 20, during each year of probation. Particular emphasis shall be placed on rules education and monitoring related to staff interaction with agents and advisors.
  - d. Inform prospects in the men's basketball program in writing that Creighton is on probation for two years and detail the violations committed. If a prospect takes an official paid visit, the information regarding violations, penalties and terms of probation must be provided in advance of the visit. Otherwise, the information must be provided before a prospect signs a National Letter of Intent.
  - e. Publicize specific and understandable information concerning the nature of the infractions by providing, at a minimum, a statement to include the types of violations and the affected sport programs and a direct, conspicuous link to the public infractions decision located on the athletic department's main webpage "landing page" and in the media guides for men's basketball. The institution's statement must: (i) clearly describe the infractions; (ii) include the length of the probationary period associated with the case; and (iii) give members of the general public a clear indication of what happened in the case to allow the public (particularly prospects and their families) to make informed, knowledgeable decisions. A statement that refers only to the probationary period with nothing more is not sufficient.



8. Following the receipt of the final compliance report and prior to the conclusion of probation, Creighton's president shall provide a letter to the COI affirming that Creighton's current athletics policies and practices conform to all requirements of NCAA regulations.
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The COI advises Creighton and the assistant coach that they should take every precaution to ensure that they observe the terms of the penalties. The COI will monitor Creighton while it is on probation to ensure compliance with the penalties and terms of probation and may extend the probationary period, among other action, if Creighton does not comply or commits additional violations. Likewise, any action by Creighton, the director of athletics or the assistant coach contrary to the terms of any of the penalties or any additional violations shall be considered grounds for prescribing more severe penalties and/or may result in additional allegations and violations.

NCAA COMMITTEE ON INFRACTIONS PANEL

Jody Conradt

Rich Ensor

Stephen Madva

Joel Maturi

Roderick Perry

Jill Redmond

Sankar Suryanarayan, chief hearing officer

**APPENDIX ONE**

**CREIGHTON'S CORRECTIVE ACTIONS IDENTIFIED IN ITS  
RESPONSE TO THE NOTICE OF ALLEGATIONS**

Creighton did not identify an express list of corrective actions in its response or supplemental response to the NOA. Creighton directed the panel to its substantive response to Allegation No. 1. Within its response(s), Creighton identified its investigative and other efforts. The panel acknowledges those efforts throughout its infractions decision.

**APPENDIX TWO**  
**Bylaw Citations**

**Division I 2016-17 Manual**

**10.01.1 Honesty and Sportsmanship.** Individuals employed by (or associated with) a member institution to administer, conduct or coach intercollegiate athletics and all participating student-athletes shall act with honesty and sportsmanship at all times so that intercollegiate athletics as a whole, their institutions and they, as individuals, shall represent the honor and dignity of fair play and the generally recognized high standards associated with wholesome competitive sports.

**10.1 Unethical Conduct.**

Unethical conduct by a prospective or enrolled student-athlete or a current or former institutional staff member, which includes any individual who performs work for the institution or the athletics department even if he or she does not receive compensation for such work, may include "[examples from the bylaw omitted.]"

**Division I 2018-19 Manual**

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

**10.01.1 Honesty and Sportsmanship.** Individuals employed by (or associated with) a member institution to administer, conduct or coach intercollegiate athletics and all participating student-athletes shall act with honesty and sportsmanship at all times so that intercollegiate athletics as a whole, their institutions and they, as individuals, shall represent the honor and dignity of fair play and the generally recognized high standards associated with wholesome competitive sports.

**10.1 Unethical Conduct.**

Unethical conduct by a prospective or enrolled student-athlete or a current or former institutional staff member, which includes any individual who performs work for the institution or the athletics department even if he or she does not receive compensation for such work, may include, but is not limited to, the following:

(c) Knowingly furnishing or knowingly influencing others to furnish the NCAA or the individual's institution false or misleading information concerning an individual's involvement in or knowledge of matters relevant to a possible violation of an NCAA regulation;

**19.2.2 Member Responsibility to Report Noncompliance.** Each institution has an affirmative obligation to report all instances of noncompliance to the Association in a timely manner.

**19.2.3 Responsibility to Cooperate.** Current and former institutional staff members, and prospective and enrolled student-athletes of member institutions have an affirmative obligation to cooperate fully with and assist the NCAA enforcement staff, the Complex Case Unit, the Committee on Infractions, the Independent Resolution Panel and the Infractions Appeals Committee to further the objectives of the Association and its infractions program, including the independent accountability

- (a) Affirmatively reporting instances of noncompliance to the Association in a timely manner and assisting in developing full information to determine whether a possible violation has occurred and the details thereof;
- (b) Timely participation in interviews and providing complete and truthful responses;
- (c) Making a full and complete disclosure of relevant information, including timely production of materials or information requested, and in the format requested;