AN ANALYSIS OF THE NCAA APPEALS PROCESS AND THE NEW “ABUSE OF DISCRETION” STANDARD FOR APPEALING A PENALTY

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ABSTRACT

BREEN FARLEY TYLER: An Analysis of the NCAA Appeals Process and the New “Abuse of Discretion” Standard for Appealing a Penalty
(Under the direction of Barbara Osborne, Esq.)

This study examined LSDBi data for Division I Institutions who appealed NCAA investigations initiated between 2008 and 2013. Seventeen appealed investigations were compared with fifty one investigations that did not result in appeal. Appeals upheld by the NCAA were compared against those overturned in any way. This study furthers research conducted by Wong, Skillman and Deubert (2009) which reviewed twenty one public reports of appealed NCAA investigations between 2001 and 2008. This study advances the field because prior to 2008 an institution needed to show that penalties were “excessive and inappropriate” to successfully appeal. The current standard requires proving that penalties are “excessive such that it constitutes an abuse of discretion.” The NCAA defines four ways to prove this: the ruling was clearly contrary to the evidence; the individual or school did not actually break NCAA rules; there was a procedural error; or the penalty was excessive (NCAA Manual 2011-2012, p.405).
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LIST OF ABBREVIATIONS

COI.................................................................Committee on Infractions
FBS.................................................................Football Bowl Subdivision
FCS.................................................................Football Championship Subdivision
IAC.................................................................Infractions Appeals Committee
NCAA..............................................................National Collegiate Athletics Association
Despite spending nearly $300,000 in consulting and legal fees to appeal penalties imposed by the NCAA, Florida State University was involved in an academic fraud scandal that cost the institution the 2007 national championship in men's track, 12 football victories spread over two seasons, four years of NCAA probation, a loss of athletic scholarships and unquantifiable damage to its reputation (Carter, 2010).

In March 2007, institutional officials at Florida State University were made aware that the assistant director and learning specialist within the Athletics Academic Support Services (AASS) department had inappropriately assisted a student-athlete with an online quiz in a sports psychology course. Shortly thereafter, the institution’s internal auditors conducted an investigation of the AASS department to determine if the incident was isolated or if there was evidence of a more widespread pattern of similar behavior within the AASS. The investigation revealed that at least 22 student-athletes were involved in academic fraud. In February of 2008, the institution submitted a self-report to the NCAA enforcement staff that outlined violations of NCAA legislation and contained corrective and punitive actions imposed by the institution (Florida State University, 2009).

When the NCAA imposed additional penalties including the vacation of records in 10 sports including football, Florida State appealed. In its appeal, Florida State called the sanctions "excessive" and claimed the NCAA did not appropriately weigh its cooperation during the investigation. The school had already agreed to four years of probation and scholarship reductions. Furthermore, the institution’s President said that it was unfair to roughly 500 athletes and 52 coaches who had nothing to do with the violations (Sporting News, 2010).
In addition to costs associated with trying to block the records of this case from public access, the university paid a grand total of $228,863.41 to The Compliance Group, the Kansas-based consulting firm that assisted the university through its lengthy NCAA infractions case (Carter, 2010).

When a University is accused of violating NCAA rules, it must decide whether to accept the sanctions or if it is in their best interest to appeal the penalties levied by the NCAA. Appealing is expensive because it requires hiring legal services and may be more detrimental to the reputation of the University than the investigation alone. This study examined public reports of Division I Institutions who appealed NCAA infractions investigations that began between 2008 and 2013. A review of seventeen appealed investigations during that time was conducted in order to examine how these cases differed from the fifty-one investigations that did not result in appeal during the same time; appeals that were upheld by the NCAA were also compared with those that were overturned in any way.

The timing of this study is significant because prior to January 1, 2008, a University needed to demonstrate that the penalties imposed on them as a result of an NCAA investigation were “excessive and inappropriate” in order to be successful on appeal. The current standard of review requires showing that the penalties are “excessive such that it constitutes an abuse of discretion.” “Abuse of discretion” is a term of art, defined by the NCAA as, “the infractions appeals committees can reverse or modify a ruling of their respective divisional committee on infractions when the individual or school proves one of the following: the ruling by the committee on infractions was clearly contrary to the evidence; the individual or school did not actually break NCAA rules; there was a procedural error that caused the committee on infractions to find a violation of NCAA rules; or the penalty was excessive” (NCAA Manual 2011-2012, p.405).

Proving that penalties meet these new terms appears inherently more challenging than the former standard of proving penalties were “excessive and inappropriate” because subjectivity has been eliminated. This suggests that a University should carefully consider if, why, and how to appeal.
**Statement of Purpose**

NCAA investigations of rules violations are generally time and resource consuming, and throughout this time a dark cloud hangs over the reputation of the institution. Once the NCAA has made its decision, the institution must make a choice to accept the sanctions and hopefully move on, or appeal, which generates additional expense, prolongs the negative scrutiny on the institution and can further harm the reputation of a University. In order to determine whether or not a University is best utilizing resources by appealing, this study examined Division I Institutions that appealed NCAA infractions investigations that began between 2008 and 2013 under the new “Abuse of Discretion” NCAA standard. These seventeen cases were compared to fifty-one investigations that were not appealed during the same time. Furthermore, appeals that were upheld by the NCAA were compared against those overturned in any way in order to determine which penalties, if any, may be worth appealing. Finally, the research should help determine whether the “Abuse of Discretion” standard is an effective way for the NCAA to process appeals.

**Research Questions**

1. Is there a significant difference between the effect of any of the following independent variables and whether or not an institution decides to appeal?
   a. Specific penalties
   b. Total number of violations
   c. Specific sport
   d. Institutional classification
   e. Conference affiliation

2. Is there a significant difference between the effect of any of the following independent variables and whether or not an institution is granted a penalty reduction?
   a. Specific penalties
   b. Total number of violations
c. Specific sport  
d. Institutional classification  
e. Conference affiliation  

3. Is there a significant difference between the effect of any of the following independent variables (five prongs of the Abuse of Discretion standard for appeal) and whether or not an institution is granted a penalty reduction?  
   a. Cases not based on correct legal standard or based on a misapprehension of the underlying substantive legal principles  
   b. Cases based on a clearly erroneous factual finding  
   c. Cases that failed to consider and weigh material factors  
   d. Cases based on a clear error of judgment, such that the imposition was arbitrary, capricious, or irrational  
   e. Cases based in significant part on one or more irrelevant or improper factors  

**Null Hypothesis**  
1. There is not a significant difference between the effect of any of the independent variables and whether or not an institution decides to appeal.  
2. There is not a significant difference between the effect of any of the independent variables and whether or not an institution is granted a penalty reduction  
3. There is not a significant difference between the effect of any of the five Abuse of Discretion independent variables and whether or not an institution is granted a penalty reduction.  

**Research Hypothesis**  
1. There is a significant difference between the effect of any of the independent variables and whether or not an institution decides to appeal.
2. There is a significant difference between the effect of any of the independent variables and whether or not an institution is granted a penalty reduction.

3. There is a significant difference between the effect of any of the five Abuse of Discretion independent variables and whether or not an institution is granted a penalty reduction.

Assumptions

It is assumed that all investigation data and public reports compiled by LSDBi are accurate. It is assumed that five years of cases (2008-2013) resulting in a total of fifty-one investigations, out of which seventeen were appealed, is adequate for this research.

Limitations

LSDBi is the only database for the information compiled so there is no way to confirm if every penalty is correctly accounted for. The database is managed directly by the NCAA and the Enforcement staff. This could be a limitation but LSDBi is a primary resource for Compliance staffs and is reputable.

Delimitations

There is an overlap in cases between Wong’s study (2001) and this study. For this study, the clearest way to date investigations was based on the date an investigation report was published as noted by LSDBi, whereas Wong dated investigations based on when they began.

Cases prior to Wong’s study (2001) were not included in this research. These were deemed unnecessary to answer the research questions and could contaminate results because the number and type of potential violations and penalties have increased so much since 2001.

Investigation reports were not collected after November 15, 2013, so this study does not include all published investigations, reports and appeals in the year 2013. To date, the only investigation not included in this study is Fordham University. The public infractions report was published on November
26, 2013. Fordham University self-imposed many penalties and therefore an appeal is unlikely (NCAA COI, 2013, p. 8).

Definition of Terms

National Collegiate Athletic Association (NCAA): The NCAA is a member association composed mostly of higher education institutions. The NCAA is made up of three membership classifications that are known as Divisions I, II and III. Each division creates its own rules governing personnel, amateurism, recruiting, eligibility, benefits, financial aid, and playing and practice seasons – consistent with the overall governing principles of the Association. There are 1,066 active member schools in the NCAA membership – 340 in Division I, 290 in Division II and 436 in Division III. The NCAA also contains 95 member conferences in all three divisions. Overall membership – counting schools, conferences and related associations – is 1,273 (NCAA, 2013).

Division I: NCAA member institutions that are often the largest programs and provide the most athletically related financial aid for student-athletes (NCAA, 2013).

NCAA Enforcement Program: The mission of the NCAA enforcement program is to reduce violations of NCAA legislation and impose appropriate penalties if violations occur. The program is committed to the fairness of procedures and to the timely and equitable resolution of infractions cases. A fundamental principle of the enforcement program is to ensure that institutions abiding by NCAA legislation are not disadvantaged by complying with the rules. The enforcement staff holds member institutions accountable by seeking out and processing information about possible violations of NCAA rules, giving schools an opportunity to respond and presenting facts to membership-led committees. The enforcement process strives to be fair to the involved institution, its employees and student-athletes throughout the investigation, charging, hearing and penalty-assessment stages. Fairness to other institutions also is a consideration (NCAA, 2013).

Committee on Infractions: An independent group consisting of members drawn from the NCAA membership and the independent public who decides if NCAA rules have been broken and assigns
penalties. The Members serve three-year terms and can be reappointed for a maximum of three terms (NCAA, 2013).

**Infractions Appeals Committee:** The five infractions appeals committee members are appointed from the general public (one member) and the NCAA membership. The Infractions Appeals Committee can modify or reverse rulings made by the Committee on Infractions. Members serve three-year terms, up to nine years (NCAA, 2013).

**Abuse of Discretion:** An abuse of discretion in the imposition of a penalty occurs if the penalty: (1) was not based on a correct legal standard or was based on a misapprehension of the underlying substantive legal principles; (2) was based on a clearly erroneous factual finding; (3) failed to consider and weigh material factors; (4) was based on a clear error of judgment such that the imposition was arbitrary, capricious, or irrational; or (5) was based in significant part on one or more irrelevant or improper factors (Holiday, 2009).

**LSDBi:** Legislative Services Database is a tool for looking up NCAA Divisions I, II and III legislation, legislative proposals and searching for major infractions cases. Legislation (including bylaws), legislative proposals and major infraction searches are available without a user name or password. The information in LSDBi is updated continuously throughout the year (NCAA, 2013).

**Division I Football Subdivisions:** Division I is subdivided based on football affiliation. A total of 120 schools are members of the Football Bowl Subdivision (FBS). That subdivision is characterized by postseason play outside the NCAA championships structure and also by higher financial aid allocations. The second Division I subdivision is the Football Championship Subdivision, which contains 122 schools that participate in the NCAA’s Division I Football Championship. The remaining 98 Division I schools do not sponsor football (NCAA, 2013).

**Major violations:** NCAA Bylaw 19.02.2.2; Violations that result in major recruiting or competitive advantages (NCAA Manual 2011-2012, 320).

**Secondary violations:** NCAA Bylaw 19.02.2.1; Violations that are isolated or inadvertent in nature; provide or are intended to provide only minimal recruiting, competitive or other advantage; and do not
include any significant impermissible benefit. These secondary violations can then be divided into two levels.

**Level I:** These are reported to the NCAA national office as they occur and are discovered.

**Level II:** Processed by institutions and/or conferences as they occur and are discovered, then reported to the NCAA on a quarterly basis (NCAA Manual 2011-2012, 320).

**Television Ban:** The NCAA can ban a certain team or program from appearing on television. This penalty was determined illegal after the Clemson case in 1984 (The News and Courier, 1984).

**Post Season Ban:** The NCAA can ban a team from competing in the post-season for a defined number of years, despite having qualified.

**Probation:** A university must make regular reports to the NCAA indicating it is complying with all regulations for a set period of time.

**Reduction of Scholarships:** The NCAA can reduce the number or amount of scholarships on a given team for a defined number of years.

**Recruiting:** The NCAA can reduce the number of athletes to be recruited each year on a given team for a defined number of years.

**Show Cause:** NCAA penalties imposed on a coach involved in major rules violations at a university's athletic program will remain in force if he is hired by any other NCAA member institution. Both the school and coach are required to send letters to the NCAA agreeing to abide by any restrictions imposed, and report back to the NCAA every 6 months until the end of employment or the show-cause, whichever comes first. If the school wishes to avoid the NCAA restrictions imposed on that individual, it must appear before the NCAA Committee on Infractions and "show cause" as to why it should not be penalized for hiring him. The penalty is intended to follow a coach for violations that he had a role in committing. It is the most severe penalty that can be handed down to a coach (Katz, 2011).

**Vacation of Record:** The NCAA can require a team or program vacate (erase) their past seasons records for certain years or a defined number of seasons.
Significance of the Study

This study is significant to all NCAA Division I institutions. If a University is investigated by the NCAA and found to have violated rules, the University has the option to accept the sanctions or appeal. However, an appeal generally requires legal assistance, is expensive, and may bring increased negative attention to the University. This study analyzes the outcome of the most recent investigations resulting in appeal and should help compliance officers, athletics directors, and even institutional presidents or chancellors, determine if, why and how to appeal based on the first five years of the new NCAA appeals process. Furthermore, the NCAA may find this study useful as it provides an evaluation of the efficacy of the new “Abuse of Discretion” standard.
CHAPTER II
REVIEW OF LITERATURE

This chapter begins with the history of NCAA Enforcement and the Appeals process followed by an overview of the relationship between the NCAA and the legal system. This is elaborated on with an explanation of the current NCAA Appeals process and a description of the Abuse of Discretion standard of review. The next sections include a summary of the research conducted by Glenn Wong and Richard Hilliard (2001) that inspired this thesis. The final section looks at reputation and image repair, and concludes with an introduction to Coombs' research in developing Situational Crisis Communication Theory (SCCT) which emphasizes the importance of an organizational response in times of crisis.

History of NCAA Enforcement and the Appeals Process

The NCAA has taken many steps and undergone many changes to develop the existing enforcement program and appeals process. “Enforcement” was not the overwhelming duty of the NCAA when it began in 1906 because the number of member institutions was relatively small, and the scope of collegiate athletics relatively narrow. The current enforcement program is very thorough and not only provides for a formal hearing concerning allegations of violations before an administrative “jury of peers,” but also includes an appeals process. The current NCAA Infractions Appeals Committee provides NCAA members and directly impacted individuals an opportunity to seek review of a decision by the NCAA Committee on Infractions (NCAA, 2011, p. 321).
The NCAA was established in 1906 as a regulatory and enforcement body for intercollegiate athletics (NCAA, 2013). The Association strove to clarify and rewrite the playing rules for the game of football to make it safer for players, and avoid the elimination of the sport altogether (Wong, 2009, p.3). For the first half-century the NCAA relied on the “home rule” which vested regulatory authority and expectations for self-enforcement with individual member institutions. “It was expected that ‘a high standard of personal honor, eligibility and fair play’ would be preserved and any abuses would be remedied” (NCAA, 2013, ¶ 2). The original Executive Committee declined to support the idea of a central enforcement authority and did not want to be responsible for enforcing the stated expectations and standards for the member institutions.

Through the 1920s and 30s, the membership and public continued to raise concerns about intercollegiate athletics, including the recruitment and subsidization of athletes as well as their enrollment and eligibility as students (Wong, 2009, p.3). At the 1940 NCAA Convention, the Executive Committee was granted more investigative and interpretative powers with respect to protecting amateurism in response to an increase in violations (NCAA, 2013). This appeared to indicate the beginning of majority acceptance of the concepts of investigation and adjudication, but the intrusion of World War II kept the concept of enforcement from being enacted. The post-war years brought concerns about professional gambling on college football and basketball games and a marked increase in nationwide recruiting and scheduling. Federal funds made available to returning servicemen who chose to go to college under the G.I. Bill of Rights also seemed to create a more favorable acceptance of financial aid (Wong, 2009, p.4).

It wasn’t until 1948 when the “Sanity Code” was introduced that the NCAA actually attempted to enforce its rules. In an effort to “return to sanity” with regard to members following established rules, the “Sanity Code” contained strict regulations regarding financial aid, recruiting, academic standards, institutional control and amateurism. Anyone who violated the “Sanity Code” was subject to expulsion from the NCAA pending a two-thirds vote of Convention delegates. The “Sanity Code” was repealed three years later due to concerns over its efficacy. Seven schools were found guilty of violating the “Sanity Code” but were not expelled by the Convention delegates (NCAA, 2013).
The NCAA hired its first executive director in 1951 and in 1952 established a Membership Committee to examine complaints about violations, as well as a Subcommittee on Infractions to investigate them. Subcommittee findings were reported to the NCAA Council who could suspend an institution or place it on probation. The Subcommittee on Infractions was tested in its first year. The University of Kentucky men’s basketball team was charged with violations regarding impermissible financial aid. The NCAA Council, through its Membership Committee, banned Kentucky’s entire athletics program from intercollegiate athletics competition for one year. Kentucky accepted the penalty and in doing so, gave credibility to the NCAA’s ability to enforce its rules (NCAA, 2013).

In 1954, the NCAA appointed the first Committee on Infractions to handle enforcement cases and hired a full-time staff to fulfill these duties. This eliminated the need for a Membership Committee. Shortly thereafter, the Committee on Infractions recommended that a member institution must “show cause” why its membership should not be suspended or terminated if it retained a staff member found guilty of violating an NCAA rule. This penalty remains today (NCAA, 2013).

From 1964 to 1974, the NCAA made adjustments to the enforcement procedure, appointed a committee to recommend changes in the process, and adopted changes to the constitution, bylaws and procedures (NCAA, 2013). Significant revisions included that the Committee on Infractions began making the findings of violations and imposing penalties that were final unless appealed to the Council, the NCAA staff became the investigative arm of the enforcement program and was charged with gathering and presenting information, and the Committee on Infractions began to supervise the policies and procedures under which the enforcement program is conducted (Wong, 2009, p.5). The developments allowed the Committee on Infractions to issue punishments in 96 cases between 1975-1983, and these elements remain integral parts of the NCAA enforcement activities, which are intended to identify “violations of NCAA rules and impose appropriate penalties should violations occur” (Wong, 2009, p.5; NCAA, 2013).

In 1985, the NCAA membership voted to distinguish between secondary and major violations and to establish specific penalties that were to be imposed for major violations (Wong, 2009). This was done
to address concerns that sanctions were not harsh enough when more significant infractions were found. A secondary violation was defined as one that is “isolated or inadvertent nature, provides or is intended to provide only a minimal recruiting, competitive or other advantage and does not include any significant recruiting inducement of benefit” (NCAA Manual 2011-2012, p.319). Secondary violations are reported by the involved institution and processed by the NCAA enforcement staff without the necessity of a hearing. All other violations would be considered major, according to Bylaw 19.02.2.2, specifically those that “provide an extensive recruiting or competitive advantage” (NCAA Manual 2011-2012, p.320). The Committee on Infractions was given the power to apply more stringent penalties to any institution found to have been responsible for a second major violation within five years of the starting date of a penalty for a previous major violation; also known as “repeat violators” (Wong, 2009, p.7). This violation structure was not challenged until January 2012 (NCAA.com, 2012, ¶ 2).

In 1991, the NCAA established a Special Committee to Review the NCAA Enforcement and Infractions Process chaired by former U.S. Solicitor General and then Brigham Young University President, Rex Lee. The Special Committee was comprised of individuals involved with NCAA member institutions and legal experts of national stature. It was responsible for conducting a thorough review of the enforcement and infractions process, including (a) the investigative process by the enforcement staff, (b) the function of the Committee on Infractions and (c) the release of information to the public regarding cases (Wong, 2009, p.9). The Special Committee issued a report including a suggestion that the role of the Committee on Infractions be refined and enhanced and that a “limited appellate process beyond the committee” be established (Wong, 2009, p.10). In January 1993, the NCAA membership voted to create the Infractions Appeals Committee. The Infractions Appeals Committee (IAC) was charged with “hearing and acting upon appeals of the findings of major violation by the Committee on Infractions involving member institutions” (Wong, 2009, p.10).

“For the first time, colleges and universities had the opportunity to seek review of Committee on Infractions’ decisions by a group that had the sole duties of hearing and acting upon appeals of the findings of major violations. Up until that point, appeals were made to the Council, which was too large a body, had a full agenda of other responsibilities and was not in a position to acquire expertise on the enforcement process” (Wong, 2009, p.10).
Between 1993 and 2009, over 40 major infractions cases involving Division I institutions have been appealed to the IAC (Wong, 2009, p.10).

**NCAA and the Legal System**

The NCAA investigations, hearings, sanctions, and appeals processes related to rules infractions is structured very similarly to our justice system, but as a private, voluntary membership organization, it is important to remember that NCAA rules are not laws and the NCAA itself has very limited legal authority. Terminology used during the enforcement and appeals processes sounds a lot like legal terminology, and reading through the NCAA manual is tedious. Athletic Departments often rely on skilled Compliance Office staff (often law school trained) to interpret the NCAA manual. While the NCAA investigation and enforcement process is not a “legal” process in the technical sense, attorneys frequently represent institutions in NCAA matters (Champion, 2013, p.1).

The NCAA’s enforcement authority was tested when a case involving the University of Nevada, Las Vegas (UNLV) took the organization through a long legal battle. In 1979, the NCAA charged UNLV with rules violations in more than 30 areas centering on the recruitment of former New York high school basketball star, Lloyd Daniels (Robbins, 1991). The penalties included a request that UNLV take action against their basketball coach, Jerry Tarkanian, or “show cause” why UNLV should not face additional sanctions. Tarkanian initiated a lawsuit in Nevada state court and alleged that he had been deprived of his due process rights under the Fourteenth Amendment of the U.S. Constitution (*Tarkanian v. National Collegiate Athletic Association*, 1987). The case proceeded through the Nevada Supreme Court and in 1987 (ten years after the committee decision), it held that the action of the NCAA was “state action” and therefore required procedural due process.

The Nevada Supreme Court further determined that Tarkanian was deprived of his due process rights, granted him injunctive relief against the NCAA show-cause order and awarded him attorney’s fees. The NCAA appealed the matter to the U.S. Supreme Court and in 1988, the U.S. Supreme Court
ruled that the NCAA was not a state actor, and is therefore not bound by federal constitutional due-

After this ruling, the state of Nevada adopted a law in 1991 that required the NCAA to use
defined due-process procedures in its investigations (NCAA files lawsuit to test Nevada's due process
law, 1991, ¶ 3). The NCAA sued in federal court to have the law overturned, especially because several
other states adopted the Nevada law which posed a serious threat to the NCAA’s ability to enforce its
rules equally in all states (National Collegiate Athletic Association v. Miller, 1993). The federal court
determined in 1992 that the law and others like it were unconstitutional. The ruling was confirmed when
the U.S. Supreme Court declined to review the case (NCAA, 2011).

As a result of this turbulence, the NCAA membership took steps to clarify the separation between
the investigative duties of the enforcement staff and adjudicative responsibilities of the Committee on
Infractions. Accordingly, “this furthered the evolutionary process of the enforcement program in which
the NCAA membership was already engaged” (Wong, 2009, p. 7).

The NCAA Appeals process today

Each NCAA division has its own infractions appeals committee. The committees are
independent bodies that serve as the final step in the rules enforcement process and consist of four
representatives from member institutions and one representative from the general public; normally a
lawyer with no connection to the NCAA (NCAA, 2011). Bylaw 19.2.1.2 was adopted in 1996 and states
that each member serves a three-year term which starts on the first day of September following their
election. A member may be reappointed but shall not serve more than nine years on the committee

Any school or individual who is penalized or named in a finding of violation may appeal in-
person or in writing. For a hearing to be in-person, the school or individual must have appeared in-person
before a committee on infractions. When a school and specific individuals are identified in the same case,
they appeal independently. The infractions appeals committee will not consider evidence that wasn’t
presented to their respective divisional committees on infractions. The process calls for the appellants, the involved committee on infractions and the NCAA enforcement staff to submit written information before the committee deliberates. The amount of time the infractions appeals process takes varies. The membership-approved process spells out a 110-day timeline, but it may take longer depending on the complexity of the case. The process is designed to be fair and impartial with no rush to judgment. A final report is shared with the involved schools and individuals before public release (NCAA, 2011).

Not only is the decision made by the Infractions Appeals Committee final; it overrides any decision made the Committee on Infractions (NCAA, 2011). Typically the Infractions Appeals Committee agrees with penalties imposed by the Committee on Infractions, however, in 1999, both the University of Louisville and Louisiana State University men’s basketball teams were suspended from postseason play by the Committee on Infractions, and last-second decisions by the Infractions Appeals Committee allowed the Cardinals and the Tigers to play in their conference tournaments. These were only the third and fourth instances in which the appeals committee had reduced substantial penalties that were imposed on institutions by the NCAA’s Committee on Infractions (Suggs, 1999).

**Abuse of Discretion**

The Abuse of Discretion standard of review was established in January 2008 under Bylaw 32.10.4, “Basis for Granting an Appeal.” Bylaw 32.10.4.1 states that “A penalty determined by the Committee on Infractions shall not be set aside on appeal except on a showing by the appealing party that the penalty is excessive such that it is excessive and it constitutes an abuse of discretion” (NCAA Manual 2011-2012, p.405). Bylaw 32.10.4.2 says that, “findings of violations made by the Committee on Infractions shall not be set aside on appeal, except on a showing by the appealing party that:

(a) A finding is clearly contrary to the evidence presented to the Committee on Infractions;
(b) The facts found by the Committee on Infractions do not constitute a violation of the Association’s rules; or
(c) There was a procedural error and but for the error, the Committee on Infractions would not have made the finding of violation (NCAA Manual 2011-2012, p.405).
Appealing a penalty is different than appealing a finding. The standard for appealing a penalty was refined following a 2008 investigation and its resulting appeal at Alabama State University in 2009. In December 2008, the NCAA Committee on Infractions issued a report for findings of violations in the football program at Alabama State University. The case involved violation of NCAA rules for offer and inducement of prospective student-athletes, recruiting, financial aid, extra benefits, student-athlete eligibility for practice and competition, playing and practice seasons, academic fraud, supplemental fund for the coaching staff, failure to monitor by the former head coach and a lack of institutional control (NCAA, 2009).

On appeal, Alabama State proclaimed that the five-year probation imposed by the Committee on Infractions was “excessive and constituted an abuse of discretion” per Bylaw 32.10.4.1. Furthermore, Alabama State proposed a three-part test to implement the new standard of review in the appeals process. The Infractions Appeals Committee adopted Alabama State’s three-part test and added two prongs. As a result, the Infractions Appeals Committee determined that an abuse of discretion in the imposition of a penalty occurs if the penalty: (1) was not based on a correct legal standard or was based on a misapprehension of the underlying substantive legal principles; (2) was based on a clearly erroneous factual finding; (3) failed to consider and weigh material factors; (4) was based on a clear error of judgment, such that the imposition was arbitrary, capricious, or irrational; or (5) was based in significant part on one or more irrelevant or improper factors (NCAA, 2009).

“Alabama State was the first NCAA member institution to obtain a penalty reduction under the abuse-of-discretion standard of review (NCAA Bylaw 32.10.4.1), which was adopted in January 2008” (Michael L. Buckner Law Firm, 2010, p.1).

The Wong Study

A study by Glenn Wong, Kyle Skillman and Chris Deubert, “The NCAA’s Infractions Appeals Committee: Recent Case History, Analysis and the Beginning of a New Chapter,” was published in the fall of 2009. The three authors combined their respective expertise; Wong, a professor of sports law at
the University of Massachusetts, Amherst; Skillman an attorney who concentrates his practice on the representation of those involved in NCAA infractions, eligibility and compliance-related matters; and Deubert, a J.D./M.B.A. candidate at the Fordham University School of Law and Graduate School of Business.

The study provides an overview and analysis of Appeals Committee standards of review and recent changes to those standards, the bases for appeal, and a statistical assessment of “success” on each of those bases through a detailed, historical summary of the Division I Appeals Committee decisions that resulted from major infractions cases heard by the Committee on Infractions from 2001 through 2008. The study follows the Infractions Appeals Committee decisions through 2009. Furthermore, there is an introduction to the new standard for the Appeals Committee’s review of an appeal of a penalty imposed by the Committee on Infractions, and a brief review of the few cases heard under that standard since its adoption in January 2008 (Wong, 2009, p.11).

Wong’s research serves as an extension of two previous articles. Kenneth J. Martin’s, “The NCAA Infractions Appeals Committee: Procedure, Precedent and Penalties” published in 1999, provides a detailed analysis of the authority, procedure and decision of the Infractions Appeals Committee (Martin, 1999, 125). The article summarizes the first fourteen decisions made by the IAC between 1993 and 1998. Martin reviews the pre-hearing and hearing procedures, and examines the prominent issues addressed by the IAC. Lastly, Martin assesses the importance of these decisions and their impact on the future of the IAC (Martin, 1999, p.126).

The other, “An Update on Recent Decision Rendered by the NCAA infractions Appeals Committee: Further Guidance for NCAA Member Institutions,” by Richard Hilliard, Angel F. Shelton, and Kevin E. Pearson in 2002 reviewed decisions made by the IAC between 1995 and 2001. In the end, the article concludes that the IAC has significantly improved the NCAA enforcement program because it serves as an, “independent appellate review that is meaningful, fair, and protects the fundamental concepts of due process (Hilliard, 2002, p.632). Because Hilliard’s research immediately precedes and
directly impacted the way in which Wong conducted his study, the article is included in this literature review.

Wong (2009) reviews each of the Division I Appeals Committee appeals decisions from 2001 to 2009. It includes a “Case Analysis” section that organizes and assesses the common issues on appeal; the various grounds for a coach or institution to bring an appeal under NCAA legislation; and, the relative success upon each of the grounds for appeal. It also evaluates selected cases brought to the Appeals Committee for procedural and evidentiary issues, as well as cases in which penalties imposed by the Committee on Infractions were challenged (Wong, 2009, p.12). Wong also includes a “Case Summary” and “Case Analysis” section per case detailing the findings of the Committee on Infractions and penalties imposed. There is also a case chronology, an examination of the issues presented before the Appeals Committee, the results, and a brief description of the Appeals Committee’s rationale for affirming, remanding to the Committee on Infractions, reversing, or amending the Committee on Infractions’ findings or penalties. Wong also informs the reader of the activities of the involved individuals and NCAA programs after the decision (Wong, 2009, p.13).

Wong briefly examines the first cases heard by the Appeals Committee under the new penalty standard, and discusses the impact of the Appeals Committee’s decisions in those cases. At the time of his article’s submission for consideration, just three Division I appeals cases had been heard by the Appeals committee under the new “abuse of discretion” standard. This included the Alabama State University case in 2009 when the “five-part test” was established to apply in cases involving the appeal of a penalty under the new standard.

“On its face,” said Wong, “the new standard appears more difficult for appellants to overcome, and seemingly provides the Committee much greater latitude to levy penalties upon coaches and institutions without concern about whether the Appeals Committee will set them aside” (Wong, 2009, p.30). Wong also anticipated that the new standard appears to give the Committee the opportunity and ability to begin imposing more significant penalties for rules violations without as much attention to case precedent (Wong, 2009, p.30).
Wong’s research is significant to this thesis as it provides a reliable foundation to this study. Furthermore, Wong made assumptions about the future of the IAC based on recent case history and the seemingly shatterproof new standard for appeal. In doing so, Wong opened the door for future research on the topic and therein, this study examines the first five years of the new standard. “As appeals are processed under the more stringent standard, those cases will be relied upon by institutions in considering whether to appeal and analyzing the possibility for success under that standard” (Wong, 2009, p.32).

The Hilliard Study

Hilliard (2002) provides an overview of significant cases handled by the Infractions Appeals Committee between 1995 and 2001 in “An Update on Recent Decisions Rendered by the NCAA Infractions Appeals Committee: Further Guidance for NCAA Member Institutions.” Hilliard selected cases based on their impact on Infractions Appeals Committee (IAC) procedures and in demonstrating the independence of the IAC from the Committee on Infractions (COI). For instance, the first case summarized is the University of Mississippi (1995) which resulted in the introduction of seven factors to be utilized in reviewing whether penalties should be reduced because they are “excessive or inappropriate” (Hilliard, 2002, p.608).

In Part Four of Hilliard’s article, he identifies some of the issues and concerns specifically discussed by the IAC in light of recent cases. These issues are lack of adequate notice, witness use and credibility, repeat violator, and reduction of penalties. Hilliard explains:

“Procedural due process claims made by member institutions and other individuals usually involve situations where the COI has failed to give adequate notice to the member institutions and other individuals that it was considering certain conduct as a possible violation. Due process concerns arise because inadequate notice affects the ability of the member institutions or other individuals to provide an adequate defense to the allegations” (Hilliard, 2002, p.623).

In response, the IAC developed three additional rules to determine if a member institution or other individual was given adequate notice in a way that did not step on the toes of the COI (Hilliard, 2002, p.625).
‘Witness use’ was appealed in two of Hilliard’s cases; FSU and Purdue. Both institutions appealed the use of a witness due to a procedural error affecting the reliability of the information used by the COI to support their findings. In the end, the IAC did not change any of the findings against FSU or Purdue. Both cases showed that the IAC will most likely uphold the findings of the COI (Hilliard, 2002, p.627).

The IAC had only handled two cases involving repeat violators when this article was published so the methods for handling repeat violators did not change. Based on minimal case precedent, it was agreed that the IAC defer to the COI in these situations (Hilliard, 2002, p.629). An institution found to have violated major rules within five years of a separate major rules violation is subject to Bylaw 19.6.2.3.2, the ‘repeat violator rule’; which provides that,

“in addition to the penalties for a major violation, the minimum penalty for a repeat-violator, subject to exceptions authorized by the COI on the bases of specifically stated reasons may include among other things, the prohibition of some of all outside competition in the sport involved in the latest major violation for one or two sport seasons” (NCAA, 2011).

Lastly, Hilliard re-visits the seven factors used by the IAC to determine if penalties are imposed by the COI are excessive or inappropriate. He also reveals a list of five separate facts that were specifically noted by the IAC in its decision to vacate or reduce penalties imposed by the COI (Hilliard, 2002, p.632). He adds that the, “list of facts is not an exhaustive list considered by the IAC nor will the satisfaction of those facts ensure that penalties imposed by the COI will be reduced or vacated by the IAC, they do provide further guidance to NCAA member institutions involved in the infractions appeals process” (Hilliard, 2002, p.632).

The procedures established and the issues highlighted by the IAC and COI between 1995 and 2001 are significant to the history of the appeals process. It was evident that the IAC strove to declare its independence from the COI without stripping the COI of its authority. The way the IAC accomplished this was to constantly add layers to their methods and reasoning. In effect, and through future testing of these elaborate methods for handling an appeal, the COI inevitably had to evolve, as did the IAC.
Reputation and Image Repair

In 1989, before procedures were in place for an institution to appeal penalties imposed by the NCAA, the NCAA investigated the football program at Oklahoma State University. They were put on probation for four years, given a three-year postseason ban, a two-year television ban, scholarship reductions, and recruiting limitations. “What happened got our attention," said Mike Holder, who was Oklahoma State's golf coach for more than 30 years until becoming athletic director in 2005. "It set our football program back for years" (McMurphy, 2011, ¶ 16).

In the five seasons before the 1989 NCAA sanctions, Oklahoma State had a 74.5 winning percentage. In the five seasons after the penalties, OSU had a 28.3 winning percentage, and averaged six fewer wins a season (McMurphy, 2011, ¶ 19). "The number one consequence of NCAA major infractions is the damage to your reputation, anything that questions your integrity," Holder said. "That's probably the most valuable thing you have -- your integrity" (McMurphy, 2011, ¶ 44).

When a university or coach is made aware that they are under investigation by the NCAA, they must decide whether or not to seek legal assistance, consider how to handle the situation, and agree on a desired outcome. While some may decide to deal with the situation in-house in an attempt to avoid public speculation, there comes a point in the process; particularly if the school or coach decides to appeal, when asking for help is worthwhile. A school or coach’s retention of legal counsel regarding the NCAA infractions enforcement process neither prevents the occurrence of a violation nor guarantees that an investigation will not result in significant negative consequences for the school or coach. However, there are many ways in which legal counsel can assist a school or coach regarding the infractions enforcement process. “The retention of quality legal counsel generally facilitates more efficient and less damaging outcomes for schools and coaches alike” (Brown, 2007, ¶ 42). Legal assistance can help a University decipher the allegations against them and choose the best course of action; it can also support the University while it navigates the inevitability of public scrutiny.

Athletes represent the institution for which they compete throughout their entire college career including occasions that prove difficult for an institution to monitor-- especially off the field-- and when
using social media. “Athletes in the NCAA today are coming under far greater fire than athletes in previous generations, largely due to actions that take place in the Internet sphere” (Kauffer, 2012, p.1). This, combined with the Freedom of Information Act, makes it extremely challenging for an athlete or institution to conceal actions that result in NCAA infractions and to repair their reputation in the aftermath.

The Freedom of Information Act (FOIA) allows the media to both request and receive disclosure of information regarding investigations into the conduct of athletes and athletic departments. The Freedom of Information Act was enacted on July 4, 1966 and provides that any person has a right, enforceable in court, to obtain access to federal agency records, except to the extent that such records (or portions of them) are protected from public disclosure by one of nine exemptions or by one of three special law enforcement record exclusions (United States Department of Justice, 2011).

The Act is designed to provide full or partial disclosure of information and documents alike that are controlled by the federal government. In 1996, the FOIA was amended to add the Electronic Freedom of Information Act, which requires many of these records to be available electronically. The Freedom of Information Act has made some big changes in the way that NCAA investigations are handled and reported and also has had a major impact on other legal cases involving the NCAA. Athletes, employees, and firms or companies working with the NCAA need to be aware that any information contained in Internet Communications, if used as part of a lawsuit or investigation, may become public record (Kauffer, 2012).

When records are accessed, it is typically in order to call attention to the negative aspects of a situation. This kind of attention can be detrimental to the reputation of an individual, company or institution. It is important to remember that when faced with an accusation or attack, one may use publically accessible records to learn from mistakes made by others in the past and formulate an appropriate strategy to deal with the situation at hand.

Benoit (1995) published a study regarding how Sears’ Auto Service should restore its image after it was accused of false repairs in 1995 in order to provide direction to those in the corporate sector in a
similar situation. Benoit states that, “the natural tendency to assume a defensive stance when one’s image is threatened is just as evident in the behavior of organizations as it is in the behavior of individuals” (Benoit, 1995, p.90).

Benoit advises that image repair strategies are organized according to the type of accusation or attack. “A persuasive attack consists of two components:” explains Benoit, “a charge of responsibility of the accused for an act and a statement regarding the offensiveness of that act” (Benoit, 1995, p. 89). The first two general image repair strategies – denial and evasion of responsibility – address blame, while the second two – reduction of offensiveness and corrective action – concern offensiveness” (Benoit, 1995, p.89).

Benoit neither promotes nor advises against a specific way to handle image repair. Instead, he outlines ways to approach repairing ones image and reputation based on current circumstances and desired results. Benoit describes that in some scenarios, an entity who is at fault should admit this immediately because failure to accept responsibility for wrongdoing can lead to greater damage to one’s image” (Benoit, 1995, p.92). Mortification; expressing remorse for the wrongful act and asking for forgiveness, may be an effective tactic when an organization is clearly guilty, according to Benoit. Conversely, denial can be an effective strategy when an organization accused of wrongdoing is truly innocent. If denial can be sustained, it can help restore a tarnished image. Of course, says Benoit, some who are guilty can get away with using denial, but that is clearly unethical (Benoit, 1995, p.93).

Benoit explains that in certain situations, it can be extremely important to publicize plans to correct and/or prevent recurrence of the problem, and that publicly announced corrective action can be an effective strategy even for those who are innocent of wrongdoing. Benoit also suggests bolstering, when a company or organization attempts to strengthen the audience's positive feelings toward itself, in order to offset the negative feelings connected with the wrongful act. Businesses may describe positive characteristics they have or positive acts they have done in the past. He says this will likely be more effective when it relates directly to the charges or accusations against the accused. Finally, Benoit
recommends that in some cases the use of multiple image repair strategies can be ineffective (Benoit, 1995).

A University under investigation by the NCAA must be attentive to the inherent threat made to its reputation and strive to protect itself from reputational harm. In determining whether or not to appeal, a University must consider the effects of doing so; regardless of the outcome. It must also consider how to prudently communicate with and look after its stakeholders; who could include student-athletes, faculty, coaches, or most commonly, alumni, fans and those who contribute financially to the Athletics Department or specific program.

W. Timothy Coombs established the Situational Crisis Communication Theory (SCCT) which asserts that crisis managers should match strategic crisis responses to the level of crisis responsibility and reputational threat posed by a crisis. Furthermore, that the way an organization communicates during a crisis will affect people's perceptions of the organization.

Coombs defines crisis as:

“a sudden and unexpected event that threatens to disrupt an organization's operations and poses both a financial and a reputational threat. Crises can harm stakeholders physically, emotionally and/or financially. A wide array of stakeholders are adversely affected by a crisis including community members, employees, customers, suppliers and stockholders. Crises threaten to damage reputations because a crisis gives people reasons to think badly of the organization…the news media and the internet play a critical role” (Coombs, 2007, p.164).

Crisis Responsibility states that an organization has an ethical responsibility to protect stakeholders from harm. Safeguarding stakeholders must be prioritized above defending the organization’s reputation. An organization must be perceived as putting the stakeholders first. In the end, this will have helped defend the organization’s reputation.

Coombs defines a reputation as a collective evaluation that stakeholders make about how well an organization is meeting stakeholder expectations based on its past behaviors. Coombs explains that reputations are widely recognized as a valuable, intangible asset and that “reputational assets can attract customers, generate investment interest, improve financial performance, attract top-employee talent,
increase the return on assets, create a competitive advantage and garner positive comments from financial analysts” (Coombs, 2007, p.164).

Situational Crisis Communication Theory (SCCT) is meant to help crisis managers by providing them elaborate crisis response strategy guidelines to make beneficial decisions for the organization and their stakeholders. “Crisis response strategies are used to repair the reputation, to reduce negative affect and to prevent negative behavioral intentions” (Coombs, 170, 2007). According to SCCT, reputational threat is the amount of damage a crisis could inflict on the organization’s reputation if no action is taken. Coombs posits that there are three factors in a crisis situation that shape the reputation threat; (1) initial crisis responsibility, (2) crisis history and (3) prior relational reputation (Coombs, 2007, p.166).

According to Coombs, initial crisis responsibility is a measure of how much stakeholders believe organizational actions caused the crisis. “The reputational threat to an organization increases as stakeholders’ attributions of crisis responsibility to the organization intensifies” (Coombs, 2007, p.166). Crisis history is defined as whether or not an organization has had a similar crisis in the past. This would indicate that an organization has an ongoing problem that has not been addressed. Lastly, prior relational reputation is how an organization is perceived to have treated stakeholders in other contexts. If the organization has a history of treating stakeholders badly, it has a negative prior relational reputation and suggests the organization does not care about its stakeholders, whereas if the organization has a history of treating stakeholders well, it has a positive prior relational reputation and may rebound quicker from the crisis at hand (Coombs, 2007, p.164-165).

The way that people perceive an organization and a crisis is directly influenced by the words used and any actions taken by management. In turn those perceptions shape evaluations of the organizational reputation as well as affect stakeholders’ future interactions with the organization (Coombs, 2007, p.171).

Crisis situations usually result in negative publicity, which threatens the corporation’s image or reputation. A company’s reputation develops through the information stakeholders receive about the organization (Coombs, 2007, p.171). The news and internet share information constantly, and when an
NCAA Investigation begins and is instantly broadcast as a “scandal,” the involved University is already facing an uphill battle.

For example, the title, “North Carolina reputation suffers with NCAA violations,” of an article published in October 2012 on USAToday.com, completely contradicted its content. However, a headline is often all a reader sees before making a judgment on an organization and a headline is often how news is shared on social media sites like Twitter. The article outlines the suspected violations by the University of North Carolina at Chapel Hill (UNC) and explains that before announcing his resignation, the Chancellor suggested that the mounting problems with the NCAA would impact the reputation of the university (George, 2012).

The new athletic director, Bubba Cunningham, was quoted as saying, “All of the 200 years of history of building the reputation of the institution isn’t gonna be washed away by the misdeeds of a few” (George, 2012, ¶ 10). The article goes on to imply Cunningham may have been right based on the effects of the investigation.

“But several measurements, there seems to be little impact. Applications increased 24% for this year's freshman class and are up 10% over this time last year. For the 2012 fiscal year, UNC brought in $287 million in donations to mark its best fund-raising year ever. Donations to The Rams Club, which funds student-athlete scholarships and capital projects, increased to $33 million.

The Blue Zone, built to close Kenan Stadium into a bowl, features luxury boxes that cost $50,000 per year and club seating that ranges from $750 to $2,500 per year, plus the cost of tickets. UNC has sold 94% of the seats, which are attached to the back of the $68 million Loudermilk Center that houses the academic support facilities for athletes.

And the university jumped from 16th to ninth in federal research funding with $545.99 million” (George, 2012, ¶ 7).

Notably, the article shares information about the restructuring of jobs, the enforcement of rules, and new standards for athletes applying to UNC. Furthermore, it suggests that the faculty disapprove of the Athletics Department and the negative attention it brought to campus. “What has been most troublesome to me about this entire scandal, if we're going to call it that, over the last two years, is that it has called into question our institutional decision-making and our priorities,’ said Jay Smith, an associate history professor” (George, 2012, ¶ 44). These changes and attitudes may not have affected the global
reputation of the University but they have certainly had an impact on the image and character of the University of North Carolina locally.

Regardless of whether or not one’s reputation is truly at risk, a University involved in an NCAA investigation is under intense pressure due not only to the fact that it must tactically cooperate with the NCAA; it must also openly deal with the crisis at hand in the face of its stakeholders. Evidence regarding the NCAA Investigation and Appeals process is accessible to the public because of the Freedom of Information Act. Confidentiality is not a luxury afforded to anyone involved in an NCAA investigation and therefore every step towards resolution must be deliberate.

Situational Crisis Communication Theory helps explain the challenge faced by an institution when dealing with an NCAA investigation. Constantly monitoring the actions of athletes, coaches and athletics department personnel is impossible. These actions, whether good or bad, can easily be traced and rapidly affect the image of their source. To ensure image repair, SCCT implies that whether an institution predicts it will ever be involved in a major rules violation investigation, it is ultimately responsible for the crisis and should therefore be prepared to protect its stakeholders.

In order to best interpret the data presented in this study, it is essential to have a basic understanding of the purpose of the NCAA and recent investigations that have both helped and hindered enforcement. It is also helpful to have a grasp of theories that provide insight into the behavior of institutions, athletic departments, and coaches facing an NCAA major rules violation investigation. Protecting the student-athlete, the stakeholder, and one’s reputation are priorities of everyone involved in an NCAA investigation. This study intends to be a comprehensive resource for anyone facing an investigation who is considering an appeal.
CHAPTER III
METHODOLOGY

The purpose of this study is to determine whether there is a relationship between an institution deciding to appeal an NCAA investigation, and its resulting success or failure (whether or not penalties are reduced), under the new “Abuse of Discretion” standard of appeal. As stated in Chapter One, the research questions are:

1. Is there a significant difference between the effect of any of the following independent variables and whether or not an institution decides to appeal?
   a. Specific penalties
   b. Total number of violations
   c. Specific sport
   d. Institutional classification
   e. Conference affiliation

2. Is there a significant difference between the effect of any of the following independent variables and whether or not an institution is granted a penalty reduction?
   a. Specific penalties
   b. Total number of violations
   c. Specific sport
   d. Institutional classification
   e. Conference affiliation
3. Is there a significant difference between the effect of any of the following independent variables (five prongs of the Abuse of Discretion standard for appeal) and whether or not an institution is granted a penalty reduction?

   a. Cases not based on correct legal standard or based on a misapprehension of the underlying substantive legal principles
   b. Cases based on a clearly erroneous factual finding
   c. Cases that failed to consider and weigh material factors
   d. Cases based on a clear error of judgment, such that the imposition was arbitrary, capricious, or irrational
   e. Cases based in significant part on one or more irrelevant or improper factors

The framework of Wong’s study (2009) served as the model used in this study. Wong organized Division I Appeals Committee decisions from 2001-2008 based on common issues on appeal in the “Case Analysis” section of his study. These issues were:

   a. Cases appealed on the basis of evidence
   b. Cases appealed on the basis of a procedural error
   c. Cases appealing penalties imposed by the Committee on Infractions
   d. The new “Abuse of Discretion” standard for appealing a penalty

This study will begin where Wong left off, and in doing so, the “Case Analysis” section will likewise group together cases based on common issues on appeal. In an attempt to reduce penalties, many appeals include a request to set aside findings. These cases are included in the “Case Analysis” section. In the years that have passed since Wong’s study, the “Abuse of Discretion” standard has been refined and therefore the coding for this “Case Analysis” section will be divided into the five prongs that an institution may identify as an “Abuse of Discretion” in order to appeal penalties.
a. Cases not based on a correct legal standard or based on a misapprehension of the underlying substantive legal principles
b. Cases based on a clearly erroneous factual finding
c. Cases that failed to consider and weigh material factors
d. Cases based on a clear error of judgment, such that the imposition was arbitrary, capricious, or irrational
e. Cases based in significant part on one or more irrelevant or improper factors

Next, Wong included a “Case Summary” section that detailed the findings of the Committee on Infractions in Division I major infractions cases between 2001 and 2009 and the penalties imposed. This study will follow the same model for cases between 2008 and 2013. Any issues presented before the Appeals Committee in each case, and the resulting findings, are examined. There is also a brief description of the Appeals Committee’s rationale for affirming, remanding to the COI, reversing, or amending the Committee on Infractions’ findings or penalties. Lastly, there is a post-script section for each case to inform the reader of the involved individuals and NCAA programs after the decision (Wong, 2009, 13).

Population

The population of this study is all Division I institutions who have been involved in a major rules violation NCAA investigation from 2008-2013 - the first five years of the “Abuse of Discretion” Standard for appeal. For Research Questions two and three, the population will be narrowed to the Division I institutions who have been involved in, and appealed, a major rules violation NCAA investigation from 2008-2013. Collecting this data for every Division I major infractions case between 2008 and 2013 will allow for comparison between cases that resulted in a penalty reduction and those that did not.
**Data Collection**

For every Division I major infractions case between 2008 and 2013, data will be identified from the case summary found on LSDBi. Independent variables include specific penalties (e.g. Television, Postseason, Probation, Reduction in Financial Aid, Recruiting, Show Cause Action, and Vacation of Record); total violations categorized by bylaw article; sport, institutional classification (e.g. FBS, FCS, no football) and conference affiliation. In the first research question, the dependent variables are simply “yes” or “no.” The dependent variables for Research Question 2 relate to whether a penalty was reduced or not reduced. This will be represented by “reduction,” or “no reduction.”

**Data Analysis**

After data collection, data will be entered into a statistical computing program, SPSS, to conduct a series of Chi-Square analyses. A Chi-Square Test for Independence will be used because the variables are categorical, meaning data has been counted and divided into categories. The test will determine whether there is a significant difference between the effect of the categorical independent variables on the categorical dependent variables. A significance level of .05 will be used in order to accept or reject the null hypothesis. An example of a null hypothesis is, “Conference Affiliation and Penalty Reduction are independent,” with an alternative hypothesis of, “Conference Affiliation and Penalty Reduction are not independent.”
CHAPTER IV

RESULTS

Case Analysis

The “Case Analysis” section will group together cases based on common issues on appeal. Of the seventeen appealed cases, sixteen included an attempt to reduce penalties bestowed by the Committee on Infractions. The University of New Mexico is the only appellant who did not specifically identify a reason why their penalties should be reduced; and instead asked the Infractions Appeals Committee to retract all findings and subsequently reduce penalties. All appealed findings were upheld by the IAC from 2008-2013. Seven appellants addressed only penalty reduction; thereby accepting all findings for their misconduct. Nine appellants appealed both findings and penalties. Four cases were included in this study that align with the start of the Abuse of Discretion standard, but precede the implementation of the five prongs that began with the Alabama State case. Only five of the thirteen appellants seeking penalty reduction since then, including Alabama State, identified one or more prongs of the Abuse of Discretion standard for appeal. Three of these five were successful on appeal and the IAC reduced imposed penalties.

In order to successfully appeal COI findings, one must prove that (1) the ruling was contrary to the evidence; (2) that the individual’s or institution’s actions did not constitute an infraction of NCAA rules; or (3), there was a procedural error and but for the error, the Committee on Infractions would not have made the finding of violation (NCAA Manual 2011-2012, p.405).

All appealed findings were upheld by the IAC from 2008-2013. The cases that appealed Committee on Infractions findings are listed here:
1. Cases based on a ruling that was clearly contrary to the evidence:
   - Georgia Tech (2011)
   - USC (2010)
   - SE Missouri (2009)
   - Memphis (2009)
   - Texas Christian (2008)
   - Long Beach State (2008)
   - New Mexico (2008)

2. Cases based on an individual’s or institution’s actions did not constitute an infraction of NCAA rules:
   - USC (2010)
   - SE Missouri (2009)
   - New Mexico (2008)

3. Cases based on procedural error and but for the error, the Committee on Infractions would not have made the finding of violation:
   - SE Missouri (2009)
   - Memphis (2009)
   - New Mexico (2008)
   - IU Bloomington (2008)

In order to successfully appeal a penalty imposed by the Committee on Infractions, an institution or individual must show that the penalty assessed was excessive such that its imposition constitutes an abuse of discretion. This “Case Analysis” section will be divided into the five prongs that an institution may identify as an “Abuse of Discretion” in order to appeal. These prongs are (1) cases not based on a
correct legal standard or based on a misapprehension of the underlying substantive legal principles; (2) cases based on a clearly erroneous factual finding; (3) cases that failed to consider and weigh material factors; (4) cases based on a clear error of judgment, such that the imposition was arbitrary, capricious, or irrational; or (5) cases based in significant part on one or more irrelevant or improper factors (NCAA Manual 2011-2012, p.405).

The cases that appealed a penalty based on an “Abuse of Discretion” are listed here:

1. Cases not based on a correct legal standard or based on a misapprehension of the underlying substantive legal principles
   - Ball State Tennis Coach (2010) re: COI misconduct and due-process rights (unsuccessful)

2. Cases based on a clearly erroneous factual finding
   - Ball State Tennis Coach (2010) re: Major/Secondary violations (unsuccessful)
   - Alabama State (2008) re: 5 year probation was based on erroneous finding that institution took too long (successful)

3. Cases that failed to consider and weigh material factors
   - UCF (2012) re: that the COI did not adequately distinguish between the factors on which the football and basketball postseason bans were based (successful)
   - Florida State University (2009) re: COI didn’t consider their cooperation or corrective action. (unsuccessful)

4. Cases based on a clear error of judgment, such that the imposition was arbitrary, capricious, or irrational
   - Eastern Washington University (2009) re: competitive advantage was not ‘significant’ like COI said in report (successful)

5. Cases based in significant part on one or more irrelevant or improper factors
   - None
The following cases did not cite any of the five prongs in their appeal.

**Other reasons for appeal:**

- Boise State (2011) said penalties didn’t follow precedent
- Georgia Tech (2011) said penalties were excessive based on vacated record and not following Missouri State precedent
- Arizona State (2010) gave no reason aside from excessive
- USC (2010) said that penalties didn’t follow precedent and were excessive
- IU Bloomington (2008) appealed that even revised penalties were excessive
- Texas A & M (2009) gave no reason aside from excessive
- Alabama (2009) said penalties didn’t follow precedent, and cooperation not considered
- Long Beach State (2008) gave no reason aside from excessive (note: before 5 prongs)

**Case Summaries**

1. **Texas Christian University “TCU” (February, 2008)**

   **Committee on Infractions Findings:**

   This case centered on violations of NCAA bylaws in men’s tennis governing impermissible phone contacts and failure to monitor (NCAA IAC, 2009, p. 2). The violations include 105 impermissible phone calls made by members of the men’s tennis coaching staff to 24 prospective student-athletes from summer 2002 through spring 2006. More than 70 calls came from the former head coach (NCAA COI, 2008, p. 1).

   In a press release, former head coach Joey Rivé said, "although my intent was not to gain a recruiting advantage, I made a mistake with regard to the rule that permits just one call per week. I take full responsibility for my actions and deeply regret that I have negatively impacted both TCU and the men's tennis program" (ESPN.com, 2006, ¶ 3).
TCU was a repeat violator and the committee noted that, as in the previous infractions case, the violations in this matter involved, at least in part, a failure to monitor international student-athletes. Penalties for the violations, including those self-imposed by the institution, included two years of probation, a reduction in recruiting activity, and a reduction in the number of men’s tennis scholarships for one academic year (NCAA, 2008, ¶ 3-4). Furthermore, Rivé was prohibited from serving on any committees of the Association from two years from the date of the release of the report (NCAA IAC, 2009, p. 2).

**Issues before Appeals Committee:**

No penalties were appealed in this case. On appeal, former head coach Rive insisted that Findings B-1 (From 2002-2006, the former head coach and members of staff made 105 impermissible calls to 24 PSAs or their parents), and B-3 (Failure to monitor regarding phone calls) be dismissed because they were contrary to the evidence and deemed that the COI erred in treating the violations as major. Rivé believed the findings should have been treated as secondary violations (NCAA IAC, 2009, p. 2). This appeal occurred prior to the establishment of the five prongs of appealing based on abuse of discretion

**Findings of Appeals Committee:**

The IAC decided that there was neither basis for determining that the findings of violation should be set aside as contrary to evidence nor any basis on which to conclude that the COI erred in determining that the violations were major rather than secondary. Therefore, both Findings B-1 and B-3 were affirmed (NCAA IAC, 2009, p. 3).
Postscript:

Former head coach Joey Rivé left TCU to suffer the penalties bestowed on the program during his tenure. Rivé was hired at TCU in August 2000. He coached a winning TCU team every season but one until he left TCU in 2006. Two years after Rivé’s departure in 2008, and still under NCAA probation, the team had one of its best seasons ever; finishing with a record of 20-8. Since then, the team has suffered losing seasons until 2013 when it finished the year 18-10 (TCU, 2013). Rivé now owns consulting business for tennis players interested in college (Rivé, 2008).

2. Long Beach State University (“Long Beach”) (March, 2008)

Committee on Infractions Findings:

The COI found violations of NCAA legislation in the men’s basketball program centered on violations of NCAA bylaws governing offers and inducements; extra benefits and telephone contacts; and unethical conduct by former assistant coach (NCAA IAC, 2008, p. 2).

The university allowed six athletes who had transferred to Long Beach from two-year institutions to compete even though they were ineligible for admission to the university. Lacking appropriate supervision, coaching staff members provided assistance to the transfer athletes in violation of NCAA rules. Findings included coaches paying for class expenses and talking with players before their respective interviews with the COI. The COI found that an assistant coach obtained an exam for an athlete and allowed him to complete the test without a proctor. The assistant coach then forged the name of a friend as the proctor before submitting the exam (Sander, 2008, ¶ 3-4).

Issues before Appeals Committee:

The former Long Beach Assistant Men’s basketball coach appealed findings B-1-a, B-1-b, B-1-d and B-3-b. These findings all pertained to paying for student-athletes’ classes and course expenses, as well as instructing members of men’s basketball team to provide misleading information to the NCAA. The appeal stated that these findings should be set aside because they are inaccurate. Furthermore, the 5-
year show cause penalty was appealed (penalty D-10) because it was excessive or inappropriate (NCAA IAC, 2008, p. 5). This appeal occurred prior to the establishment of the five prongs of appealing based on abuse of discretion.

**Findings of Appeals Committee:**

The IAC determined that they found no basis to conclude that any finding was clearly contrary to the evidence or that the penalty imposed was excessive or inappropriate. All findings and penalties were affirmed (NCAA IAC, 2008, p. 7).

**Postscript:**

An article published June 6, 2009 on the student news site for Long Beach shed light on the fact that CSU Stanislaus hired Larry Reynolds as its head basketball coach on June 5, 2009.

“If the name sounds familiar, then that’s because it is. Reynolds is the former Long Beach State coach who guided the 49ers to an NCAA Tournament appearance but watched the men’s basketball program get hit with three years of probation from the NCAA in 2008” (McDannald, 2009, ¶ 5-8).

The CSU Stanislaus Athletic Director chose Reynolds despite the fact that Reynolds’ hiring went against the wishes of two screening committees consisting of nine Stanislaus staff members and boosters (McDannald, 2009, ¶ 5-8). Reynolds is still coaching at CSU Stanislaus (California State University Stanislaus, 2013).

3. University of New Mexico “UNM” (August, 2008)

**Committee on Infractions Findings:**

The COI found violations of NCAA legislation in the football program regarding recruiting, extra benefits and unethical conduct (NCAA IAC, 2009, p. 1).

The NCAA concluded that in 2004, former UNM football assistant coaches improperly helped three recruits obtain fraudulent academic credits through online courses they never completed at Fresno
Pacific University, a fully accredited, four-year college in California that also offers online degrees. The COI said course registration materials at Fresno Pacific showed the home addresses for the three UNM recruits as the home address in California of a brother of one former assistant. Coaches' office or cell phone numbers were listed as the recruits' phone numbers. The recruits admitted to NCAA investigators that they received no course materials and did no work but received course credit. Furthermore, the recruits took courses from a Fresno Pacific instructor who was an acquaintance of one of the former UNM assistants (Bryan, 2008, ¶ 4-14).

The COI pointed out that New Mexico was the third school that had major rules violations involving courses from Fresno Pacific. "All institutions are cautioned that due diligence must be exercised prior to accepting courses from Fresno Pacific for academic credit and athletic eligibility purposes” (NCAA COI, 2008, p. 1).

The COI did not blame Head Coach Rocky Long who said that said the penalties would force his program to be more selective in its recruiting. He said he also would keep a tighter rein on his assistants. Sanctions also were imposed on the former assistants in their recruiting and coaching activities at any school where they worked in the future. Of the two former assistants, Long said: "When they're out on the road themselves and doing this sort of thing, they're trying to recruit the best they can. Sometimes you lose sight of what's important. I think they're two great guys who made some serious mistakes” (Bryan, 2008, ¶ 4-14).

**Issues before Appeals Committee:**

One former football assistant coach appealed findings B-1 and B-3 regarding impermissible inducement and extra benefits, as well as unethical conduct by a former assistant coach. He said they should be set aside because (1) they are clearly contrary to the evidence presented to the committee (2) the facts found by the committee do not constitute a violation of NCAA rules; and (3) procedural error affected the reliability of the evidence used to support the committee’s findings (NCAA IAC, 2009, p. 4).
The former assistant football coach argued that if the findings of violations were upheld, a penalty that would limit recruiting (C-8-a) should have been modified to allow him to engage in on-campus recruiting activities. The former assistant football coach also said that all penalties should be dropped if findings B-1 and B-3 were dismissed (NCAA IAC, 2009, p. 4).

**Findings of Appeals Committee:**

This was the University of New Mexico’s third major NCAA infractions case (Moser, 2008, ¶ 5). The IAC determined that the findings of violations were clearly not contrary to the evidence. They also found that no procedural error affected the reliability of the evidence on which the COI based its findings. Findings of violations B-1 and B-3 were affirmed. The IAC saw no reason to modify the recruiting penalty C-8-a (NCAA IAC, 2009, p. 5).

**Postscript:**

New Mexico athletic director Paul Krebs was asked if he felt the outcome was fair. "The only way for me to answer that is we broke the rules," he said. "I do not want anybody to accuse us of whining. I'll leave it for others to decide whether they think it's fair or not." Krebs said there is a trend in college sports toward increasing sanctions for rules violations "and unfortunately, we're one of the first cases experiencing that, if you will, get-tough policy" (ESPN, 2009, ¶ 7-10).

Former head coach Rocky Long coached at UNM for 11 years until resigning in 2008 and was hired in December as San Diego State's defensive coordinator (ESPN, 2009).

The two former assistants went on to continue coaching collegiate athletics. Lenny Rodriguez returned to his role as the Co-Defensive Coordinator at Mt. San Antonio College in California and is currently in his sixteenth season overall. Rodriguez served as defensive line and linebackers coach at UNM from 1998-2008 after having been at Mt. SAC from 1988-1997 (Mt. San Antonio College, 2013).

Grady Stretz had been at UNM for 8 years before the NCAA investigation and was hired to coach at Arizona State University in 2006. He was at ASU for five years before moving to the NFL; serving as
the Defensive Line Coach for the Tampa Bay Buccaneers for just one year before the Head Coach and his entire staff were fired in 2012 (Haller, 2011; Stroud, 2012). Stretz is currently working in medical device sales (Linked in, 2013).

4. Indiana University, Bloomington “IU” (November, 2008)

Committee on Infractions Findings:

The COI issued a report including findings of major violations in the Indiana men’s basketball program. The case involved violations of telephone recruiting rules, unethical conduct by two coaches, and a failure to monitor by the former head coach and the university. The violations were committed as the head coach served penalties imposed on him for similar violations in a prior case (NCAA IAC, 2009) (NCAA IAC, 2009, p. 1).

Sampson's was hired at IU in March 2006 while he was still under NCAA investigation for recruiting violations at Oklahoma. The resulting penalties followed him to Indiana. Until this investigation, IU had not had a major violation in any sport in 50 years (NCAA COI, 2008, p. 7). Sampson's contract allowed the university to suspend him without pay or to terminate him for NCAA violations (Garcia, 2008, ¶ 8-10).

The COI alleged that Sampson knowingly participated in three-way phone calls despite receiving notice that such calls were prohibited under sanctions imposed against him. Sampson also participated by speakerphone in calls made by former assistant Rob Senderoff and was present for other calls. “In interviews with the institution and the enforcement staff, the former head coach repeatedly denied knowing that former assistant coach A participated in three-way or handoff phone calls with him. These denials are belied by overwhelming evidence to the contrary” (NCAA COI, 2008, p. 17).

In addition, the investigation also resulted in unethical conduct findings against both the former head coach and a former assistant coach, as well as findings against the former head coach of failing to monitor his program and to promote an atmosphere of compliance within it (NCAA COI, 2008, p. 1).
**Issues before Appeals Committee:**

One of Sampson's assistant coaches (Senderoff) was accused of making recruiting calls in the presence of Sampson and handing the phone to recruits and recruits' parents and coaches on recruiting trips, so they could speak to Sampson. The NCAA made it clear to Sampson that these practices were banned when it handed down the punishment against Sampson at Oklahoma in May 2006 (ESPN, 2008, ¶ 9-10).

After a request from IU to reconsider the violations and penalty findings of the assistant coach based on procedural error, the COI issued a supplemental report on the case in February 2009. The COI revised the report, reduced the show cause order to 30 months instead of three years, changed the effective dates of the penalties and reduced the number of mandatory NCAA regional rules seminars (NCAA IAC, 2009, p. 2).

**Findings of Appeals Committee:**

On appeal, IU stated that the updated penalty reductions regarding the assistant coach were inadequate and that the decreased penalties were excessive. IU President Michael McRobbie asked the infractions committee to consider that Indiana had faced no allegations of major NCAA violations in nearly 50 years as it decided what punishment to impose (NCAA, 2008, ¶ 14-15). The IAC upheld all findings and penalties, including a failure to monitor charge against the school (Hutchens, 2008, ¶ 2).

**Postscript:**

Sampson resigned just days after the NCAA accused him of committing major rules infractions. IU said they never should have hired Sampson (ESPN, 2008, ¶ 15). IU President McRobbie released a statement saying, “Indiana University took a risk in hiring Coach Sampson and giving him a second chance following his problems at Oklahoma. It is now clear that this was a risk that should not have been taken and the university regrets doing so” (ESPN, 2008, ¶ 7).
McRobbie told IAC members that he believed "the evidence clearly demonstrates" that Sampson and an assistant coach tried to circumvent the sanctions against Sampson. “These coaches were entrusted not just with the success of our men's basketball program, but with the good name of Indiana University," McRobbie said. "I am not just saddened, I am angry, that they betrayed that trust." (ESPN, 2008, ¶ 12-13).

An article published on IndyStar.com in June 2008 stated that,

“For many IU fans, however, the penalties aren't as important as the school's reputation. IU hasn't had an NCAA violation since 1960, and none in basketball. The case already has cost the athletic department more than $200,000 in legal fees, and the bills for most of this year haven't come in yet. There was also the $750,000 buyout IU gave Sampson, the $66,000 buyout it gave Senderoff, and now the year's salary it will owe Greenspan. (Greenspan's contract was extended through 2013 by Herbert in March 2007, shortly before Herbert stepped down as president.) (Hutchens, 2008, ¶ 16-18).

Plus, Rick Greenspan, the athletic director who hired Sampson, announced that he would resign at the end of 2008 (ESPN, 2008, ¶ 16). This meant that IU needed to hire a new athletic director; the school's fifth since 2001 (Hutchens, 2008, ¶ 16-18).

When Sampson left IU, he became an assistant with the NBA’s Milwaukee Bucks for three years. He has repeatedly denied he was knowingly involved in three-way calls at Indiana and disputed the NCAA's contention that he did not tell investigators the whole truth (ESPN, 2008, ¶ 11). Sampson is currently serving his first year as the assistant coach for the Houston Rockets (NBA, 2013).

5. Alabama State University “Alabama State” (December, 2008)

Committee on Infractions Findings:

This case centered on violations of NCAA bylaws in football governing offer and inducement of prospective student-athletes; recruiting; financial aid; extra benefits, student athlete eligibility for practice and competition, playing and practice seasons, academic fraud, supplemental fund for coach, failure to monitor by coach, and institutional control (NCAA IAC, 2009, p. 2).

The COI found that university staff members arranged for fraudulent academic credits for eight football student-athletes when their original letter grades were changed; allowing these students to stay
eligible during 1999-00 to 2004-05 academic years. During the 1999-00 to 2002-03 academic years, numerous football, men’s and women’s basketball, and baseball student-athletes were allowed to practice, compete and receive athletics scholarships while ineligible. From the summer of 2000 to the end of the 2001-02 academic year, seven football student-athletes and six prospective football student-athletes received impermissible inducements and extra benefits in the form of lodging, utilities or meals at no cost (NCAA IAC, 2009, p. 3-6).

The COI accused Alabama State of 24 rules violations in four sports and charged the school with lack of institutional control (USA TODAY, 2008, ¶ 1). The COI found the university failed to employ an adequate and consistent procedure for certifying and monitoring the eligibility of student-athletes (The NCAA News, 2008, ¶ 6-8).

**Issues before Appeals Committee:**

Among other penalties including a post-season ban and vacated records, the COI imposed a five-year probation on Alabama State (Penalty C-2). The university appealed this penalty as excessive such that it constituted an abuse of discretion (The NCAA News, 2008, ¶ 13), (NCAA IAC, 2009, p. 22).

In particular, the institution said that in its report, the COI considered as an aggravating factor, “the long period of time it took to complete the case and bring it before the committee” (NCAA COI, 2008, p. 32) (NCAA IAC, 2009, p. 23).

**Findings of Appeals Committee:**

The IAC reviewed the timeline of the case and determined that the record did not support the COI’s conclusion of a five-year probation. The IAC noted that there was substantial activity during this time including institutionally conducted interviews, document reviews and audits (NCAA IAC, 2009, p. 23).

“But because the institution was engaged in an extensive investigation during the period identified by the COI, actively working with the NCAA enforcement staff, aggravating the penalty due to the length of time involved in investigating the case and the perception of inactivity during that
period was based on an erroneous factual determination. We find that the five-year probation imposed by the COI –the longest period of probation that has been imposed by any COI case, including cases involving repeat, and double-repeat violators –constituted an abuse of discretion. It is hereby reduced to a three-year period, ending December 2011” (NCAA IAC, 2009, p. 23, 25).

Postscript:

This was the fourth major infractions case for the university and the third for the football program (Sander, 2008, ¶ 2).

None of the coaches or the five athletic directors or interim athletic directors mentioned in the NCAA report still works at Alabama State. The Head football coach L.C. Cole was fired. "I don't have any comment about it," said Cole. "I've moved on and whatever comes out of it comes out of it" (ESPN, 2008, ¶ 8). Cole has since coached at Tennessee State and Stillman College. He is currently the head coach at Wilcox Central High School in Camden, Alabama, whose football team has a ten season losing streak (Bean, 2012, ¶ 5-7).


Committee on Infractions Findings:

This case centered on violations of NCAA bylaws in football governing coaching limits, eligibility for practice, coaching limitations; institutional control; failure to monitor; and promotion of an atmosphere of compliance (NCAA IAC, 2009, p. 2).

Thirteen football student-athletes were allowed to participate in practice despite the fact that they were non-qualifiers, and they did not have their eligibility certified by the university or the NCAA during the 2003-04 through the 2006-07 academic years. Two of these student-athletes were provided housing and meals during preseason practice prior to the first day of classes even though they were not eligible to receive such benefits.

Further, the university failed to withhold one of the student-athletes from competition after discovering his involvement in the NCAA violations. The football program also exceeded the maximum
number of 11 countable coaches from 2003-2007. During this time, anywhere from 13 to 15 individuals per year were allowed to perform coaching duties in the football program (NCAA COI, 2009, p. 4).

**Issues before Appeals Committee:**

Eastern Washington appealed the one year post-season ban (Penalty D-8) and said that it should be set aside as it was excessive such that it constitutes an abuse of discretion (NCAA IAC, 2009, p. 5).

**Findings of Appeals Committee:**

The wording of the penalty indicated that the COI believed that violations “bestowed a significant competitive advantage on the institution.” The IAC found, “that the particular circumstances of this case do not justify that conclusion. While the violations provided some competitive advantage, the conclusion that the advantage was ‘significant’ was a clear error of judgment, such that the imposition of the postseason ban was arbitrary.” Therefore, the postseason ban was vacated (NCAA IAC, 2009, p. 7).

**Postscript:**

Former head coach Paul Wulff, left Eastern Washington to serve as the head coach at Washington State. Wulff was fired from his position at Washington State in 2011, after compiling a four-year record of 9-40 (Sports Illustrated, 2011). He is currently the senior offensive assistant coach for the San Francisco 49ers (49ers.com, 2013).

Wulff is currently named in a lawsuit by a former Washington State University offensive lineman, Timothy Hodgdon, regarding concussions sustained during Wulff’s “helmet-less practices”.

“Hodgdon had suffered two medically documented concussions before joining the WSU football program, according to the suit. Documentation shows that WSU trainers and doctors “knew about his history and allowed him to practice with no helmet on.” Kagan said his research shows that under Wulff, WSU was the only college or, for that matter, pro football program that allowed its players to participate in “helmet-less practices,” at “50 percent speed” in full pads. “Timothy recalls performing helmet-less practices at near 100 percent intensity, as was the culture and
custom of the coaches and the team at all time relevant to these claims,” the suit states (Pawloski, 2013, ¶ 11-14).

7. Florida State University (March, 2009)

Committee on Infractions Findings:

The COI found violations of NCAA violations in the football, men’s and women’s basketball, men’s and women’s swimming, men’s and women’s track and field, baseball, softball, and men’s golf programs. The case centered on violations of NCAA bylaws governing academic fraud, unethical conduct, extra benefits and failure to monitor (NCAA IAC, 2010, p. 2).

According to the report by the COI,

“a significant portion of the academic fraud violations involved a music course offered to students without incident for more than 10 years before its academic integrity was compromised in the fall semester of 2006, resulting in academic fraud occurring during this time, as well as the 2007 spring and summer semesters. In addition to the academic improprieties associated with the online music course, the former learning specialist provided impermissible assistance to at least three student-athletes by typing portions of papers assigned to them. She also provided answers to an online psychology course quiz for a student-athlete by instructing a second student-athlete to complete the quiz on behalf of the student-athlete enrolled in the course” (NCAA COI, 2009, p. 1).

Issues before Appeals Committee:

Florida State asserted that the vacation of all wins in which the 61 student-athletes in the sports of football, men’s and women’s basketball, men’s and women’s swimming, men’s and women’s track, baseball, softball, and men’s golf competed while ineligible during 2006 and 2007 (penalty C-4), should be set aside as it is excessive such that it constitutes an abuse of discretion (NCAA IAC, 2010, p. 9).

On appeal, FSU said that the COI’s failed to ‘consider and weigh material factors,’ namely, FSU’s cooperation and correction action (NCAA IAC, 2010, p. 11).

Findings of Appeals Committee:

The IAC determined that the cooperative efforts of the university did not outweigh the aggravating factors present in this case; namely the nature, number, scope and seriousness of the
violations. The IAC acknowledged that FSU had reason to question the report from the COI and suggested that in future cases, the COI must explain the evaluation and balancing of factors identified as relevant in setting penalties (NCAA IAC, 2010, p. 11). The IAC upheld penalty C-4 (NCAA IAC, 2010, p. 12).

Postscript:

“A look at some of college football’s biggest scandals,” an article published online by USA TODAY in August 2011 named Florida State number four out of twenty dirtiest programs in college football history (Weir, 2011). The number of times the NCAA has found the school guilty of major infractions, in all sports, is in parentheses; the highest number identified was nine.

“Florida State, aka ‘Free Shoes University’ (7): That nickname stuck when agents were found to have bought more than $6,000 worth of shoes for Seminoles players. There were much higher stakes in 2009, when Bobby Bowden had to vacate 12 victories because of an academic cheating scandal that included athletes from several FSU teams (Weir, 2011, ¶ 5).

8. Texas A&M University – Corpus Christi (March, 2009)

Committee on Infractions Findings:

Major violations were found in the women’s volleyball, men’s tennis and men’s basketball programs. The COI cited ineligible participation, recruiting inducements, impermissible recruiting calls, failure to report NCAA violations, lack of institutional control and unethical conduct against the former Athletics Director and Compliance Director (NCAA IAC, 2009, p. 1). Penalties imposed by the COI included four years of probation, postseason bans, scholarship reductions, recruiting restrictions and vacation of records (NCAA COI, 2009, p.1).

The COI finding of lack of institutional control was based on its determination that,

“the institution did not establish adequate systems of policies and procedures to ensure compliance with NCAA regulations. This was due, in large part, to the institution’s failure to devote the necessary resources for an effective Division I compliance program. Second, the institution failed to monitor and evaluate its athletic program to detect or deter instances of NCAA violations. Third, the institution failed to provide adequate NCAA rules education to
institutional staff members. Fourth, and most troubling, institution officials decided not to investigate and report information relating to NCAA rules violations. The decision not to report information appeared to be based on concern that, if major violations were reported, it could cast the institution and its administration in a negative light while also jeopardizing its recent acceptance as a member of a Division I conference” (NCAA COI, 2009, p. 2).

**Issues before Appeals Committee:**

The university asserted that the scholarship reductions in volleyball and men’s tennis and postseason ban for men’s tennis imposed by the COI should be overturned (NCAA IAC, 2009, p. 2).

**Findings of Appeals Committee:**

The IAC stated that the appeal had no basis and therefore upheld the penalties (NCAA IAC, 2009, p. 14).

**Postscript:**

In July 2008, Texas A&M University – Corpus Christi published a press release that explained the NCAA investigation process. The release did not imply that the University was accountable for the alleged violations or the failure to report violations. However, it did make it clear that there were personnel changes ahead, including the hiring of Scott Lazenby from Texas State University who would begin in August as associate athletic director for compliance (Collins, 2008, p. 3).

In 2013, Texas A&M – Corpus Christi finished its four years of NCAA probation. The local paper interviewed Lazenby, who was promoted to the position of Athletic Director in 2011, about changes made during probation (Texas A&M University – Corpus Christi, 2013, ¶ 2).

“‘One of the huge changes we made that first year was in the academic center,’ Lazenby said. ‘We created the academic center where there are four full-time workers. They and (current compliance director) Jason Hall report to a vice provost on campus. They work closely with me, but they report elsewhere so there’s no thought that the AD put pressure on them’” (Goddard, 2013, ¶ 13).
Scott Malone, the head baseball coach, was at Texas A&M – Corpus Christi, before the NCAA investigation. He was reported saying that the biggest difference during probation came from adding manpower (Goddard, 2013, ¶ 15).

9. University of Alabama (June, 2009)

Committee on Infractions Findings:

The COI found violations in softball, baseball, women’s gymnastics, football, men’s basketball, women’s basketball, men’s golf, women’s golf, men’s swimming, women’s swimming, men’s tennis, men’s track and field, women’s track and field, women’s soccer and women’s volleyball. Violations included impermissible benefits in the form of textbooks and supplies involving nearly 200 students in 16 separate sports with a total value of approximately $40,000 (NCAA IAC, 2010, p. 2). The COI deemed that the institution failed to effectively monitor the student-athlete textbook distribution system (NCAA IAC, 2010, p. 2). The penalties imposed by the COI included reprimand and public censure, three years probation, a $43,900 fine to the NCAA, and vacation of record in sports where there were “intentional wrongdoers,” meaning student-athletes who knowingly accepted benefits that were not allowed (football, men’s tennis, men’s and women’s track and field) (NCAA IAC, 2010, p. 5).

Issues before Appeals Committee:

Alabama asserted that the vacation of record in sports with intentional wrongdoers should be set aside as it is excessive such that it constituted an abuse of discretion.

“The institution’s principal arguments on appeal were that the vacation-of-wins penalty imposed by the Committee on Infractions constituted an abuse of discretion because the penalty: (a) failed adequately to consider the institution’s cooperation; (b) departed from textbook case precedent; and (c) departed from vacation-of-wins precedent (NCAA IAC, 2010, p. 6).
Findings of Appeals Committee:

The IAC stated that they did consider and weigh the institution’s cooperation yet they found no reason to change the COI’s determinations because they did not constitute an abuse of discretion. Regarding case precedent, the IAC acknowledged that similar facts were presented in an investigation at UC Boulder in 2007 and in that case the COI did not vacate wins. However, it its report, the COI noted aggravating factors in this case, such as the fact that Alabama was a repeat offender. The penalties were affirmed.

The IAC stated in its report, "while we reiterate that the Committee on Infractions must maintain consistency among its decisions over time, we also recognize, as have noted before, that the Committee on Infractions ‘must have latitude in tailoring remedies to the particular circumstances involved in each case’” (NCAA IAC, 2010, p. 6).

Postscript:

Six months following the IAC affirmed sanctions on the University of Alabama, the University failed to comply fully with COI orders involving the one issue it appealed; vacation of wins. Despite the fact that the names of the “intentional wrongdoers” were not released, it was evident, particularly in football, that the University website did not reflect the vacation of enough wins to fulfill the penalty imposed by the COI (Williams, 2010, ¶ 3).

10. Southeast Missouri State University “Southeast” (August, 2009)

Committee on Infractions Findings:

In April 2008, Southeast appeared before the committee for violations centering on the women’s basketball program. A preliminary report released by the school in June 2006, listed findings including improper transportation of prospective players from airports and on official visits, prospects receiving summer lodging without paying rent or paying an inappropriate amount, and members of the women's staff observing summer workouts of prospective and enrolled athletes (News OK, 2007, ¶ 5).
At that time, the institution acknowledged a lack of institutional control and the former head women’s basketball coach, B.J. Smith was found responsible for failure to monitor. Prior to the release of the report, more violations were discovered. The institution asked that the report be delayed and include the new violations, therefore this is a continuation of the previous case (NCAA COI, 2009, p. 1).

More recent findings revealed that a booster paid the tuition bill for a student-athlete who had exhausted her eligibility. The COI charged Southeast with failure to monitor both the men’s and women’s basketball programs (NCAA COI, 2009, p. 2).

Violations were also found in men’s basketball including impermissible observation of out-of-season strength and conditioning activities and extra benefits to two student-athletes. The COI charged the men’s basketball program with unethical conduct for knowing involvement by the coaches and providing false and misleading information (NCAA COI, 2009, p. 1).

**Issues before Appeals Committee:**

The former women’s basketball head coach argued that the findings of violations should be reversed because:

“(a) the Committee on Infractions’ factual findings (i) were clearly contrary to the evidence presented to the COI, and (ii) the facts found by the Committee on Infractions do not constitute a violation of NCAA rules; and (b) the reliability of the evidence was affected by procedural errors associated with (i) the participation in the case by a COI member who “had a conflict of interest arising from a professional relationship with ‘counsel’ for the former head coach’s institution,” and (ii) one Committee on Infractions member’s absence “from the room for approximately ten of the thirty minute presentation relative to a particular portion of the hearing” (NCAA IAC, 2010, p. 4).

Additionally, the former head coach asserted that the three-year show-cause penalty (Penalty D-8) was excessive such that it constituted an abuse of discretion” (NCAA IAC, 2010, p. 4).
Findings of Appeals Committee:

The IAC determined that the findings were not contrary to the evidence presented and that there was no procedural error which resulted in the findings. The findings and penalties were therefore affirmed (NCAA IAC, 2010, p. 5).

Postscript:

According the Southeast Women’s Basketball website, under new leadership the team won the Ohio Valley Conference Championship in 2007 and 2008; made an appearance at the NCAA Tournament in 2007; and earned a bid to the WNIT in 2008 (Southeast Missouri Sports Information, 2013). Penalties imposed by the NCAA went into effect in 2009. The program has not since advanced to postseason play and the coach was released in 2011 after finishing the 2010-11 campaign at 8-21 overall and 4-14 in the Ohio Valley Conference (Southeast Missouri State Sports Information, 2011).

Former coach, B.J. Smith was one of 16 people arrested by federal authorities in a multi-state car theft conspiracy that involved more than 100 vehicles. After resigning from Southeast in December 2006 during the NCAA investigation, Smith ran his own basketball academy in Cape Girardeau, Missouri. Charges include conspiracy, bank fraud, mail fraud, and receipt of stolen motor vehicle. If convicted, these charges carry penalties ranging from five to 30 years in prison and/or fines up to $1 million (Heartland News, 2013, ¶ 1-5, 14).

Smith is currently listed as the women’s basketball coach at Highland Community College in Highland, Kansas (Highland Community College, 2013).

11. University of Memphis “Memphis” (August, 2009)

Committee on Infractions Findings:

This case centered on major and secondary violations involving the men’s basketball and women’s golf programs. Findings included failure to monitor by the university, unethical conduct by the
former head women’s golf coach, impermissible benefits, ineligible competition and impermissible recruiting contact.

The COI found that a men’s basketball player (Derrick Rose) competed in the entire 2007-2008 season; including the 2008 NCAA Division I Men’s basketball championship, while ineligible due to an invalidated SAT score. The player allegedly had someone else take the SAT for him so that he could be eligible to play basketball in college. Educational Testing Services (ETS) sent letters to Rose's home in Chicago dated March 17 and April 10 informing him of a problem with his SAT and canceled his test score when it did not receive an answer (NCAA IAC, 2010, p. 2), (Wolken, 2010, ¶ 4-8).

Penalties included 3 years of probation, vacation of records, scholarship reductions, and forfeiture of championship revenue (NCAA IAC, 2010, p. 1). Specifically, the COI ordered Memphis to vacate its 38 wins from the 2007-08 season and forfeit roughly $615,000 in NCAA Tournament revenue, most of which was scheduled to be distributed in future years (Wolken, 2010, ¶ 4-8).

**Issues before Appeals Committee:**

Memphis appealed the vacation of records and forfeiture of championship revenue penalties, asserting that they were excessive.

Memphis said that violation B-5 (knowledge that they allowed an ineligible basketball player to play) should be set aside because it was contrary to the evidence presented to the COI and there were procedural errors. Furthermore, Memphis said that the vacation of records and financial penalty (penalties D-4 and D-6) should be set aside because they were excessive and constituted an abuse of discretion (NCAA IAC, 2010, p.10).

The University made two arguments as grounds for reversal of the financial penalty:

“(1) there was insufficient evidence to find that the university or the student-athlete knew, or had reason to know, that he would become ineligible; and (2) even if the evidence was sufficient to make such a finding, the COI erred by not specifically concluding that the university or student-athlete knew, or had reason to know, that he would become ineligible” (NCAA IAC, 2010, p.2).
Findings of Appeals Committee:

The IAC established that the testing agency wrote letters to the Memphis basketball player to ensure he was aware of the situation regarding his invalidated test scores. Therefore penalty D-6 regarding a financial penalty was upheld and the fact that the student-athlete had knowledge of his ineligibility was confirmed in order to support this penalty (NCAA IAC, 2010, p. 14).

Regarding the vacation of records, the IAC stated, “we have reviewed the institution’s arguments that, given these directions from this committee, factors sufficient to vacate the team record were not established by the evidence in this case. However we find no basis to conclude that the COI abused its discretion by imposing Penalty D-4” (NCAA IAC, 2010, p. 13-14).

Postscript:

Memphis expressed "strong disagreement" with the result of the appeal. "I am extremely disappointed with the findings," athletic director R.C. Johnson said in a statement. "However, the ruling has been handed down and we must move forward. The future of Tiger athletics is, indeed, very bright” (Wolken, 2010, ¶ 4-8).

Johnson said the school would consider recalling bonuses earned by former coach John Calipari during the 2007-08 season if the appeal failed. Calipari, now the coach at Kentucky, received $200,000 for making the Final Four and $160,000 for winning 81 percent of his games (Wolken, 2010, ¶ 4-8). Calipari agreed to donate his bonus to the University of Memphis scholarship fund. The agreement approximated the value of the bonus at $232,000. Rose, who plays for the NBA’s Chicago Bulls, was also to "consider ... making a suitable donation" to the scholarship fund sometime before 2015 (Veazey, 2011, ¶ 2-5).

Additionally, three local attorneys who claimed to represent, "certain ticket holders” threatened to sue Calipari, Rose, and athletic director R.C. Johnson because they believed that they were responsible for making their 2009-10 season tickets and future season tickets "potentially" worth less than they had
anticipated. Calipari, Rose and Johnson settled on May 28, 2010, and agreed to pay a total of $100,000 to the three attorneys (Veazey, 2011, ¶ 2-5).

12. University of Southern California “USC” (June, 2010)

Committee on Infractions Findings:

This case centered on violations of NCAA legislation in football, men’s basketball and women’s tennis. In women’s tennis, international phone calls were made using an athletics department long distance code.

In both football and men’s basketball, it was found that impermissible benefits were provided by sports marketers to football players, Joe McKnight and Reggie Bush, as well as basketball player, O.J. Mayo.

Findings by the COI included lack of institutional control, impermissible inducements, extra benefits and exceeding coaching staff limits (NCAA COI, 2011, p. 1). Penalties imposed on football included a two year post-season ban and the loss of 30 football scholarships over three years. USC was also required to vacate wins in football and basketball (NCAA COI, 2011, p. 1).

Issues before Appeals Committee:

USC requested that the penalties be reduced, asserting they were not supported by the facts and were excessive to an extent that they constituted an abuse of discretion. It also contended that the findings of violations should be set aside as contrary to evidence (NCAA COI, 2011, p. 2). Namely, USC stated that the COI erred in concluding that sports marketers in the case were USC boosters. USC claimed they had no connection to the marketers nor were they aware that the marketers’ actions were the same as those of a sports agent (NCAA COI, 2011, p. 2).

USC argued that the lack of institutional control finding should be set aside because some of the facts found by the COI did not constitute rules violations and that the COI did not consider a number of mitigating factors (NCAA COI, 2011, p. 3).
Findings of Appeals Committee:

This was the sixth major infractions case involving football and the institution had been before the COI in 2001 so it was a repeat offender (NCAA COI, 2011, p. 20).

In its appeal, USC specifically argued that, (a) the COI ‘has imposed significantly lesser sanctions in major violations cases based on similar violations,’ (b) ‘abused its discretion in imposing a two-year post-season ban and drastic scholarship reductions in football for the violations in this case;’ and (c) ‘the scholarship reductions are excessive, particularly when considering their unintended actual impact’ (NCAA COI, 2011, p. 19).

The IAC report spelled out the 5 prongs and, “guided by that standard, we find no error or abuse of discretion in the imposition of either the two-year postseason ban or the grants-in-aid reduction” (NCAA COI, 2011, p. 19).

In response to the institution’s appeal of lack of institutional control, the IAC said,

“The crux of the violations in this case occurred in football and men’s basketball, the two most high profile college sports and the ones with the most potential for lucrative playing and marketing contracts for elite student-athletes once they turn pro…Elite athletes in high profile sports with obvious great future earnings potential may see themselves as something apart from other student-athletes and the general student population. Institutions need to assure that their treatment on campus does not feed into a perception. In addition, elite athletes in high profile sports with obvious great future earnings potential draw to them unscrupulous agents, runners, and others seeking to share in the money to come…in this case, the institution failed to heed clear warning signs” (NCAA COI, 2010, p. 46).

The IAC affirmed all findings and penalties for USC (NCAA COI, 2011, p. 22). The assistant football coach appealed the show-cause order imposed on him in a report filed in April 2011. He said findings were contrary to the evidence and there was a procedural error. Also, he asked that the penalties imposed against him be set aside (NCAA IAC, 2011, p. 4). Nothing was changed. All findings and all penalties affirmed (NCAA IAC, 2011, p. 10).
Postscript:

"There is a systemic problem facing college athletes today: unscrupulous sports agents and sports marketers," Todd Dickey, USC's senior vice president for administration, said in a statement. "The question is how do we identify them and keep them away from our student-athletes" (ESPN.com, 2010, ¶ 18)?

In response to a question about lack of institutional control, Kevin O'Neill, the basketball coach hired to replace Tim Floyd, said, "We can't control people 24 hours a day. That's all there is to it. You cannot control people from the outside. You cannot control agents. You cannot control runners. Those kinds of things get away from you sometimes because you have no way of knowing. I do know this. We do the right thing every single day by the university, by the athletic department, by the student-athletes" (ESPN.com, 2010, ¶ 27).

In August 2012, a spokesman for the Heisman Trust confirmed that Reggie Bush finally returned his copy of the controversial 2005 Heisman Trophy. In December 2005, USC and Bush each received one copy of the trophy. When NCAA sanctions against the school were announced in June 2010, USC was asked to completely disassociate itself from Reggie Bush and his family. They returned their copy of the trophy, removed Bush’s jersey from the L.A. Memorial Coliseum and took out everything bearing his name from Heritage Hall. The next month, Bush announced he would "forfeit" his title of Heisman winner and return his trophy, but he ended up keeping it for two more years (Moura, 2012, ¶ 1-6).

According to an article published by The Daily Trojan in June 2013, the NCAA has been trying to keep private 700 pages of documents concerning its investigation of USC and former assistant coach, Todd McNair (Laws, 2013, ¶ 2).

In 2010, the COI imposed a one-year show cause penalty on McNair; banning him from working for any NCAA school or contacting any potential recruits. McNair has not been able to find a job in football ever since. McNair believes that the reason he hasn’t been hired is because the NCAA ruled that he lied to them during their investigation. McNair appealed this finding, but the IAC upheld the
sanctions. McNair sued the NCAA in June 2011, seeking to recoup damages from supposed libel and slander (Laws, 2013, ¶ 5-7).

The NCAA sought to have McNair’s defamation claims dismissed, but a Superior Court Judge (Frederick Shaller; a USC graduate) ruled in favor of McNair and said that “emails written by NCAA enforcement personnel related to McNair’s case ‘tend to show ill will or hatred,’ including one instance of a NCAA employee who called McNair, ‘a lying, morally bankrupt criminal’” (Laws, 2013, ¶ 8-10).

There is no ruling on the defamation case yet, but there is speculation about how the NCAA will handle requests for the investigation documents and what may be uncovered if they are released to the public.

“The sanctions bestowed upon USC and McNair have already been roundly disparaged by some members of sports media. In December of 2011, before Shaller ruled in favor of McNair in the initial trial, ESPN Pac-12 reporter Ted Miller wrote, “It’s become an accepted fact among informed college football observers that the NCAA sanctions against USC were a travesty of justice…That’s the take of all clear-thinking people.” If the documents, which also include interview and deposition transcripts, do give substantial evidence to claim that the NCAA unfairly targeted McNair, it’ll be another recent black mark for the NCAA, which has also come under fire for botching its investigation of the University of Miami. In January, the NCAA had to temporarily halt its investigation of Miami after admitting it improperly obtained information to look into alleged violations by the Hurricane’s football and men’s basketball programs (Laws, 2013, ¶ 12-14).

13. Ball State University “Ball State” (July, 2010)

Committee on Infractions Findings:

This case centered on violations in women’s tennis. The COI found that women’s tennis exceeded practice hour limitations during the 2007-09 fall semesters including additional hours beyond weekly limits, practices held before compliance paperwork was complete, not taking 2 days off during 8-hour weeks, and participating in an intra-squad tournament that meant each student-athlete played between 3.25 and 9.75 hours in a day. The program was also cited for impermissible try-outs, impermissible inducements (dorm fees), unethical conduct and that a coach texted athletes to ask them to lie about countable hours. Penalties included a three-year show cause for the head coach, a reduction in practice hours and 3 years of probation (NCAA IAC, 2011, p. 1-2).
Issues before Appeals Committee:

Ball State did not file an appeal. The former head women’s tennis coaching, Kathy Bull, appealed each of the findings of violations, including the unethical conduct finding. She also appealed the three year show-cause penalty. She said that because of COI misconduct she was denied due process and a fair hearing the violations were secondary rather than major; she was not provided sufficient information in the notice of allegations, and the findings are contrary to the evidence presented. She also said that the show-cause order should be considered excessive such that it constituted an abuse of discretion (NCAA IAC, 2011, p. 4).

Findings of Appeals Committee:

The IAC found no basis to conclude she was denied a fair hearing, and confirmed that the violations were major. They also determined that notice was sufficient and that the findings of violations supported the show-cause penalty. All findings and penalties were affirmed (NCAA IAC, 2011, p. 8).

Postscript:

Former head coach, Kathy Bull had been the coach at Ball State for twenty seasons before the University self-reported its violations to the NCAA (O’Brien, 2012). She claims she was held to unrealistic standards and forced out of her job.

“Bull was one of 12 women’s head coaches to leave the university in recent years. Ball State has been under investigation by the Office for Civil Rights for four years. The office received an anonymous tip in March 2008 charging the university with Title IX violations. According to Bull, one month after the OCR investigation started she received her first negative performance evaluation. Bull claimed that the evaluation imposed new standards of job performance not applicable to other BSU coaches. She asserted that Ball State officials had characterized her gender equity advocacy as promoting negativity within the department” (O’Brien, 2012, ¶ 4).

Former coach Bull and Ball State reached a settlement agreement in the summer of 2012 (O’Brien, 2012, ¶ 1).
Ball State submitted a Resolution Agreement to the Office for Civil Rights in 2010 in response to a letter listing the steps it should take to establish and confirm Title IX Compliance (Ball State University, 2010). Essentially, Ball State investigated itself. After a two-week inquiry, during which Ball State failed to interview a single coach, the university concluded that there was no evidence that any of the coaches had been unfairly treated or let go (Thomas, 2011, ¶ 2).


Committee on Infractions Findings:

This case centered on violations of NCAA bylaws in baseball governing recruiting, financial aid, coaching staff limitation, coaching duties, use of outside consultants, student-athlete employment and lack of institutional control (NCAA IAC, 2011, p.1).

Issues before Appeals Committee:

In its written appeal, Arizona State asserted that the findings of major violations in baseball (B-3, B-3-a, B-3-c, B-3-d, B-4, B-5, B-7, B-7-a, B-7-b, B-7-c, and B-7-d) against it should be set aside in that they are contrary to the evidence presented to the COI (NCAA IAC, 2011, p. 10). These findings included team managers participating in on-field coaching duties (B-3); the use of outside consultants; namely the use of a private facility and staff for physical conditioning (B-4); payment of student-athletes for work not performed (B-5); and lack of institutional control (B-7) (NCAA IAC, 2011, p.1-5).

The institution asserted that the penalties of three years of probation and no post-season play (penalties D-2 and D-3) were excessive such that the COI abused its discretion (NCAA IAC, 2011, p.7, 10).

Findings of Appeals Committee:

All findings (B-3, B-4, and B-5) were upheld by the IAC. The IAC agreed that while in this case, finding B-4 (the use of outside consultants) was a violation of Bylaw 11.7.1.1.1.4; it was a secondary
violation as opposed to a major violation (NCAA IAC, 2011, p.13). This is because the violation was (a) isolated and inadvertent; (b) provided only a minimal recruiting competitive or other advantage, and (c) did not include a significant recruiting inducement or extra benefit. The violation status was modified.

Despite this reduction in violation status from major to secondary, the IAC deemed that, “there remains sufficient basis for all of the penalties imposed by the COI” (NCAA IAC, 2011, p.13).

The IAC affirmed the show-cause order and post-season ban, as well as finding B-7; lack of institutional control. The IAC called attention to the fact that Arizona State was a repeat offender (NCAA IAC, 2011, p. 7, 13-15).

Postscript:

Arizona State Vice President for Athletics Lisa Love was disappointed in the IAC report. "The student employment and student manager violations that were appealed in this case were inadvertent and did not provide significant recruiting advantage, which is the definition that the NCAA uses for a secondary violation. While we appreciate the committee's decision to reduce the third violation to secondary status, we are concerned about its decision to uphold the other two. We believe that others who review the case will share our concerns about this outcome” (Metcalfe, 2011, ¶ 6).

New baseball coach, Tim Esmay, shared his disappointment about not being able to participate in the postseason in 2012.

“The goals for this program will not and have not changed. We will take the same approach towards every practice and every game, non-conference and Pac-12, that we have always taken. Our goal to be the best team in the Pac-12 remains our focus. Sun Devil baseball is and will remain one of the premier collegiate baseball programs in the nation. I am glad that this program can finally put an end to this chapter. This has been a five-year process and now we can move forward and put this behind us. Arizona State has a rich and wonderful baseball tradition that I am proud to have been a part of both as a student-athlete and a coach. This coaching staff and the 2012 team will do everything that we can to help continue the legacy of Sun Devil baseball” (Metcalfe, 2011, ¶ 7-8).

Arizona State baseball had a winning season streak of 49-15 (2007), 49-13 (2008), 51-13 (2009), 52-10 (2010), 43-18 (2011) leading up to 2012; the year of the postseason ban, when they had their worst season record in seven years of 36-20 (In 2005 the team record was 42-25; reflecting 37% of games lost).
They played at the College World Series in 2007, 2009, and 2010. In 2013, the team tied its lowest record in eight years, losing 37% of its games with a record of 37-22-1 (Arizona State Athletics, 2012).

15. Georgia Institute of Technology “Georgia Tech” (July, 2011)

Committee on Infractions Findings:

The COI found that this case involved several major violations of NCAA legislation involving football and men’s basketball. The committee also took into account the fact that the institution was considered a repeat violator (NCAA IAC, 2012, p. 5). The institution was cited for preferential treatment violations, a lack of cooperation during the investigation and a failure to meet the conditions and obligations of membership (NCAA IAC, 2012, p. 1).

Furthermore, Georgia Tech officials disobeyed explicit instructions from the enforcement staff to protect the integrity of the investigation such as sharing information about the case with a student-athlete prior to an interview with the enforcement staff and allowing a student-athlete to compete despite knowing that part of the investigation centered around whether or not this individual was eligible (NCAA IAC, 2012, p. 5).

Issues before Appeals Committee:

Georgia Tech appealed the failure to cooperate and conditions of membership violations, as well as the vacation of records penalty. In its appeal, Georgia Tech asserted the vacation of records penalty was not warranted based on its contention that it did not gain a competitive advantage (NCAA IAC, 2012, p. 1). Findings of violations failure to cooperate (B-2) and failure to meet the conditions and obligations of membership (B-3) should be set aside because they are contrary to the evidence presented to the COI.

Specifically, Georgia Tech asserted that they did not share information with an athlete before his NCAA interview (NCAA IAC, 2012, p. 1) and that they did not allow any student-athletes to play in a game when eligibility was questionable (NCAA IAC, 2012, p. 2). Georgia Tech also said that the vacation of records (Penalty D-7) should be set aside in that the penalty is excessive and an abuse of
discretion (NCAA IAC, 2012, p. 9). The penalty included vacating all contests won between 11/24/09 and the institution’s bowl game (the day that it was alerted that student-athlete eligibility was in question but he still played).

The only game Georgia Tech won in this time was the 2009 ACC Championship game. The individual record of the ineligible student-athlete and the head football coach were also to be vacated (NCAA IAC, 2012, p. 7).

**Findings of Appeals Committee:**

The NCAA noted that Georgia Tech continued to allow a player to compete in the final three games of the 2009-10 football season, in which Georgia Tech won the ACC and played in the Orange Bowl, despite the fact that the NCAA notified the school that it had questions about the eligibility of that player. Dennis Thomas, the head of the IAC, said Georgia Tech had enough information that they should have held back the player until it could investigate his eligibility (Roberson, 2011, ¶ 8-10).

“It appeared to the committee that the institution attempted to manipulate the information surrounding potential violations involving (the student-athlete) so there would be enough doubt about its validity to justify the decision not to declare him ineligible” (NCAA COI, 2011, p. 12).

In its initial report, the COI noted the serious nature of the case.

“Rather than fulfill its requirements under NCAA bylaws, Georgia Tech failed to cooperate in an apparent effort to avoid potential allegations of rules violations, thereby eliminating the need to withhold two highly talented football student-athletes from end of the season competition, including the ACC conference championship game and the institution's bowl appearance. In doing so, the institution compounded the seriousalness of this case, by adding onto what was originally an isolated instance of impermissible benefits and preferential treatment, extremely serious allegations that it failed to protect the integrity of the enforcement staff’s investigation, violated the cooperative principle and failed to meet the conditions and obligations of the membership (NCAA COI, 2011, p. 1)

The IAC found the facts of the case did support the findings of violations. The IAC also found it speculative to state a competitive advantage was not gained and therefore decided that the penalty was appropriate in this case. All findings and penalties were upheld (NCAA IAC, 2012, p. 1).
Postscript:

The football players whose eligibility was in question both went on to be drafted by the NFL that year, leaving the effects of an NCAA investigation in their wake. Demaryius Thomas was selected by the Broncos in the first round (22nd overall) of the 2010 NFL Draft and is still there (Denver Broncos, 2013). Morgan Burnett was selected by the Packers in the third round of the 2010 NFL Draft with the No. 71 overall pick and is still there (Green Bay Packers, 2013).

16. Boise State University “Boise State” (September, 2011)

Committee on Infractions Findings:

This case involved violations in men’s track and field, football, women’s track and field, and women’s tennis. The COI cited recruiting, financial and extra benefit violations committed in men’s track and field with one student-athlete between January-September 2005 (NCAA COI, 2011, p. 3). Recruiting violations, impermissible housing and transportation were found for football players during the summers of 2005-2009 (NCAA COI, 2011, p. 7). Recruiting violations, impermissible housing, meals and transportation were found in women’s tennis and men’s and women’s track and field as well as impermissible travel expenses, housing and transportation (NCAA COI, 2011, p. 11-12). The track coach was charged with unethical conduct for paying travel expenses (NCAA COI, 2011, p. 14). Women’s tennis hosted impermissible practice sessions with a prospective student athlete resulting in violations of ineligible competition and impermissible recruiting inducements (NCAA COI, 2011, p. 15-16, 28). The Women’s tennis coach was charged with unethical conduct, failure to monitor, and failure to promote an atmosphere for compliance (NCAA COI, 2011, p. 32, 36). The COI determined that the number and degree of violations indicated that Boise State lacked institutional control (NCAA COI, 2011, p. 54).

The penalties imposed included a 4-year show-cause order for the former head women’s tennis coach and a two-year show cause order for the former assistant track coach, a one-year postseason ban for
women’s tennis, recruiting restrictions, scholarship reductions, vacation of records, a $5,000 fine and three years of probation (NCAA IAC, 2012, p. 1).

**Issues before Appeals Committee:**

In its appeal, Boise State requested that the football spring practice penalty be reversed because the restrictions did not relate directly to a practice time violation. They also appealed the scholarship reduction in football (scholarships were reduced by 3 for three seasons). Boise State argued that the, “history of football scholarship reduction penalties imposed by the COI were inconsistent with the scholarship reduction penalties imposed in this case” (NCAA IAC, 2012, p. 2).

**Findings of Appeals Committee:**

The IAC upheld the football spring practice penalty. The IAC noted that precedent for scholarship reduction should have been more fully weighed and considered by the COI and remanded the penalty back to the COI for reconsideration (NCAA IAC, 2012, p. 24)

**Postscript:**

The COI released a Supplemental Report of Infractions Report No. 355 for Boise State University after considering the scholarship reduction penalty. The COI upheld the original penalty. They based this decision on Boise State’s failure to monitor prospects arriving on campus prior to enrollment, the serious nature of the violations, the competitive advantage, the failure to heed warnings, and the fact that the COI did not impose a postseason ban even though precedent would have allowed them to do so (NCAA IAC, 10/2012, p. 2-5). Boise State did not appeal again (Cripe, 2013).

An article published in the fall of 2013 not only highlighted a shift in the weekly schedule for Boise State Football, but also delved into the effects of the NCAA investigation.

“The Broncos’ lack of experienced depth can be traced to the 2011 recruiting class. Eight players in that class have washed out of the program, including two starters — safety Lee Hightower and
defensive end Sam Ukwuachu. That also was the first year of Boise State’s three-scholarship penalty as a result of NCAA violations. Combined, that’s 11 experienced players the Broncos could have but don’t” (Cripe, 2013 ¶ 20-21).

Head Football Coach Chris Petersen said, “You’re always going to lose a guy or two. You lose a handful of guys, especially if you think that they could have been players for you, there’s no question that takes a toll” (Cripe, 2013 ¶ 22).

According to the article, “Boise State will return to the 85-scholarship limit in 2014 after serving the three-year penalty. It took a couple years for the penalty to impact the program and Petersen expects it will take a couple years to erase that impact because the additional scholarships likely will go to newcomers” (Cripe, 2013 ¶ 23).

17. University of Central Florida “UCF” (July, 2012)

Committee on Infractions Findings:

The COI found that between March 2009 and July 2011, two representatives of the institution’s athletics interests committed violations of NCAA recruiting legislation, including telephone, in-person, and off-campus recruiting contact with men’s basketball and football recruiting contacts as well as impermissible benefits and impermissible recruiting inducement (NCAA COI, 2012, p. 4-5).

Typically, when an individual acts in a way that represents the institution’s athletic interests, such as a runner, handler, or sports agent, it is done in a way so that their actions go undetected by University officials. In this case, it became clear that not only were members of the Athletic Department aware of these events; they encouraged them. According to the COI, “The director of athletics’ acceptance of these individuals, served to “legitimize” them in the eyes of the institutions coaches” (NCAA COI, 2012, p. 1).

The COI pointed out that UCF was a repeat violator (NCAA IAC, 2013, p. 6). The Athletic Director was charged with unethical conduct based on knowledge of impermissible recruiting activity and provision of false and misleading information (NCAA COI, 2012, p. 33-34). In its report, the COI said, “Pleading ignorance of the rules does not excuse or even mitigate the violations. As the leader of a
program responsible for acting within a set of rules, the director of athletics must have a sufficient understanding of the rules to discharge his leadership obligations” (NCAA COI, 2012, p. 35).

The football coach was also charged with unethical conduct while the men’s basketball coach was charged with failure to monitor. The COI determined that UCF lacked institutional control.

Penalties included public reprimand and censure, 5 years probation, basketball post-season ban, a limit in football and men’s basketball scholarships and official visits, vacation of men’s basketball record, recruiting reduction, a $50,000 fine to the NCAA and a post-season ban in football (NCAA COI, 2012, p. 57).

**Issues before Appeals Committee:**

In its written appeal, UCF requested that the football post-season ban (penalty D-3) should be vacated in that it was excessive such that it was an abuse of discretion. UCF asserted that the COI did not adequately distinguish between the factors on which the football and basketball postseason bans were based (NCAA IAC, 2013, p. 12).

**Findings of Appeals Committee:**

The IAC agreed with UCF that the COI seemed to base the finding of a lack of institutional control on basketball infractions instead of football infractions.

“As such, the committee determines these ambiguities within the infractions report in favor of the institution and concludes the penalty in question was based in significant part on irrelevant factors resulting in an abuse of discretion. Further, when reviewing the imposition of an additional postseason penalty in light of the totality of the penalties imposed on both the football and basketball programs, and the university overall, the football postseason penalty is inconsistent and excessive relative to the overall circumstances presented” (NCAA IAC, 2013, p. 13).

The IAC determined that the COI abused its discretion by failing to appropriately consider and weigh material factors. Therefore, penalty D-3 was vacated (NCAA IAC, 2013, p. 14).
Postscript:

The fact that the NCAA granted UCF’s appeal of a one-year postseason ban in football was significant because it allowed the team to participate in the Beef O’Brady’s Bowl in 2012 and therefore to be eligible for a bowl berth in their first season in the American Athletic Conference in 2013 (ESPN ¶, 3, 8). UCF won the 2012 Beef O’Brady’s Bowl against Ball State University (USA TODAY, 2012).

Head Football Coach, George O’Leary is in his 10th year at UCF (UCF Knights, 2013). Regarding the successful appeal, O’Leary said that the most immediate impact would be felt in recruiting where O’Leary said his coaches had been hearing that other schools were using UCF’s possible postseason ban as a means to steer players away from UCF (ESPN, 2013, ¶ 18).

The IOC penalized former Athletic Director Keith Tribble with a 3-year show-cause order. Tribble resigned shortly thereafter and garnered a lot of negative attention for his behavior at UCF (ESPN, 2013, ¶ 13).

“We’re not talking about renegade boosters or sleazy agents here; we’re talking about the highest level of UCF athletic administrators and coaches getting nailed by the NCAA. The fact that Tribble, the school’s AD, not only committed violations but lied to investigators is the most devastating part of the NCAA’s 16-page notice of allegations against UCF. Tribble not only failed to raise the bar, he lowered it into the sewer. His regime as AD can only be described as an unmitigated disaster. He did not have a good working relationship with football coach George O’Leary. He did not have a close relationship with the big-money boosters. As a fundraiser, he was a flop. As an administrator, he presided over a dysfunctional athletic department. And the worst part of all, he will be the man mostly responsible for getting UCF put on NCAA probation” (Bianchi, 2011, ¶ 7, 10).

According to the UCF Athletics website, the University named Todd Stansbury Vice President and Director of Athletics on Jan. 10, 2012. He officially began his duties at UCF on March 1, 2012. Since joining the Knights, Stansbury has overseen an athletic department that has had significant success in competition, in the classroom and in the community (UCF Athletics, 2013, ¶ 1). Meanwhile, Tribble runs a management consulting firm in Atlanta (LinkedIn, 2013).
Statistics Results

Research Question 1: Is there a significant difference between the effect of any of the following independent variables (Specific penalties, Total number of violations, Specific sport, Institutional classification, Conference affiliation) and whether or not an institution decides to appeal?

A chi-square test of independence was performed to determine if there was a significant difference between the effect of specific penalties imposed by the COI and whether or not an institution decides to appeal. The penalties examined were (a) postseason ban, (b) probation, (c) scholarship reduction, (d) recruiting, (e) show cause, (f) vacation of records. The independent variable of (a) postseason ban had a significant effect on whether or not a school chose to appeal as 58.3% of institutions who were imposed a postseason ban decided to appeal, $\chi^2 (1, N=68) = 8.64, p = .003$. Furthermore, the independent variable of (f) vacation of records had a significant effect on whether or not a school chose to appeal as 40.7% of institutions who were required to vacate their records decided to appeal, $\chi^2 (1, N=68) = 5.91, p = .02$.

The difference between the effect of (b) probation and whether or not an institution decides to appeal was not significant, $\chi^2 (1, N=68) = .69, p = .41$. The difference between the effect of (c) scholarship reduction and whether or not an institution decides to appeal was not significant, $\chi^2 (1, N=68) = 3.34, p = .07$. The difference between the effect of (d) recruiting restrictions and whether or not an institution decides to appeal was not significant, $\chi^2 (1, N=68) = 3.32, p = .07$. The difference between the effect of (e) show cause and whether or not an institution decides to appeal was approaching significance, $\chi^2 (1, N=68) = 3.84, p = .05$.

Table 4.0 provides a complete list of the percentages of institutions that decided to appeal based on specific penalties imposed by the COI.
Table 4.0

Cross-tabulation of Appeal or No Appeal and Specific Penalties

<table>
<thead>
<tr>
<th>Specific Penalties</th>
<th>(a) Postseason ban</th>
<th>(b) Probation</th>
<th>(c) Scholarship Reduction</th>
<th>(d) Recruiting Restrictions</th>
<th>(e) Show Cause</th>
<th>(f) Vacation of Records</th>
</tr>
</thead>
<tbody>
<tr>
<td>Appeal</td>
<td>58.3% (2.9)</td>
<td>24.2% (-0.8)</td>
<td>35.5% (1.8)</td>
<td>34.3% (1.8)</td>
<td>35.3% (2.0)</td>
<td>40.7% (2.4)</td>
</tr>
<tr>
<td>No Appeal</td>
<td>41.7% (-2.9)</td>
<td>75.8% (0.8)</td>
<td>64.5% (-1.8)</td>
<td>65.7% (-1.8)</td>
<td>64.7% (-2.0)</td>
<td>59.3% (-2.4)</td>
</tr>
</tbody>
</table>

Note. Adjusted standardized residual frequencies appear in parentheses below observed percentages.

A chi-square test of independence was performed to determine if there was a significant difference between the effect of the number of years (0, 1, or 2) the institution was banned from postseason competition and whether or not an institution decided to appeal. The difference between the effect of these variables was significant, \( \chi^2 (2, N=68) = 9.65, p = .01 \). The following table shows the percentage of institutions that decided to appeal based on the length of their postseason ban. Of the 68 investigations between 2008 and 2013, eleven institutions were imposed a one year postseason ban and only one was imposed a two year ban. The seventeen appealed cases include six postseason bans of one year. Table 4.1 shows that the only institution that was imposed a two year postseason ban decided to appeal.

Table 4.1

Cross-tabulation of Appeal or No Appeal and Postseason Ban Length

<table>
<thead>
<tr>
<th>Postseason Ban Length</th>
<th>None (0 Years)</th>
<th>One Year</th>
<th>Two Years</th>
</tr>
</thead>
<tbody>
<tr>
<td>Appeal</td>
<td>17.9% (-2.9)</td>
<td>54.5% (2.5)</td>
<td>100.0% (1.7)</td>
</tr>
<tr>
<td>No Appeal</td>
<td>82.1% (2.9)</td>
<td>45.5% (-2.5)</td>
<td>0.0% (-1.7)</td>
</tr>
</tbody>
</table>

Note. Adjusted standardized residual frequencies appear in parentheses below observed percentages.

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A chi-square test of independence was performed to examine if there was a significant difference between the effects of the total number of years (0, 1, 2, 3, 4 or 5) of a probation penalty decided by the COI and whether or not an institution decided to appeal. The difference between these variables was significant, $\chi^2 (5, N=68) = 13.67, p = .02$. Of 68 investigations between 2008 and 2013, only two did not result in a probation penalty. A majority (59%) of the seventeen institutions who appealed had been imposed a three year probation penalty. Table 4.2 shows the percentage of institutions who decided to appeal based on the length of their probation penalty. Table 4.2 shows that 44.4% of the institutions who were imposed a four year probation penalty decided to appeal.

Table 4.2

Cross-tabulation of Appeal or No Appeal and Probation Penalty Length

<table>
<thead>
<tr>
<th>Probation Length</th>
<th>None (0 Years)</th>
<th>One Year</th>
<th>Two Years</th>
<th>Three Years</th>
<th>Four Years</th>
<th>Five Years</th>
</tr>
</thead>
<tbody>
<tr>
<td>Appeal</td>
<td>50.0%</td>
<td>0.0%</td>
<td>3.6%</td>
<td>40.0%</td>
<td>44.4%</td>
<td>50.0%</td>
</tr>
<tr>
<td></td>
<td>(.8)</td>
<td>(-0.8)</td>
<td>(-3.4)</td>
<td>(2.2)</td>
<td>(1.4)</td>
<td>(0.8)</td>
</tr>
<tr>
<td>No Appeal</td>
<td>50.0%</td>
<td>100.0%</td>
<td>96.4%</td>
<td>60.0%</td>
<td>55.6%</td>
<td>50.0%</td>
</tr>
<tr>
<td></td>
<td>(-.8)</td>
<td>(0.8)</td>
<td>(3.4)</td>
<td>(-2.2)</td>
<td>(-1.4)</td>
<td>(-0.8)</td>
</tr>
</tbody>
</table>

*Note. Adjusted standardized residual frequencies appear in parentheses below observed percentages.*

A chi-square test of independence was performed to examine if there was a significant difference between the effect of the total number of violations and whether or not an institution decided to appeal. The difference between these variables was not significant, $\chi^2 (3, N=68) = 3.29, p = .35$.

A chi-square test of independence was performed to see if there was a significant difference between the effects of specific sports involved in the COI report and whether an institution decided to appeal. These sports were categorized into (a) Football, (b) Men’s Basketball, (c) Women’s Olympic Sports, (d)
Men’s Olympic Sports. The difference between whether an institution decides to appeal and the effects of specific sports involved was not significant.

(a) Football, $\chi^2 (1, N=68) = 1.66, p = .20$.
(b) Men’s Basketball, $\chi^2 (1, N=68) = .716, p = .40$.
(c) Women’s Olympic Sports, $\chi^2 (1, N=68) = .08, p = .77$.
(d) Men’s Olympic Sports, $\chi^2 (1, N=68) = .61, p = .44$.

A chi-square test of independence was performed to examine if there was a significant difference between whether an institution decides to appeal and the effect of institutional classification. This includes (a) FBS, (b) FCS, and (c) No football. The difference between these variables was not significant, $\chi^2 (2, N=68) = 1.80, p = .41$.

A chi-square test of independence was performed to examine if there was a significant difference between whether an institution decides to appeal and the effect of an institution’s conference affiliation. Twenty-six different conferences were represented. The difference between these variables was not significant, $\chi^2 (25, N=68) = 23.47, p = .55$.

**Research Question 2:** Is there a significant difference between the effect of any of the following independent variables (Specific penalties, Total number of violations, Specific sport, Institutional classification, Conference affiliation) and whether or not an institution is granted a penalty reduction?

A chi-square test of independence was performed to examine if there was a significant difference between whether an institution was granted a penalty reduction and the effect of specific penalties imposed by the COI. The penalties examined were (a) postseason ban, (b) probation, (c) scholarship reduction, (d) recruiting, (e) show cause, (f) vacation of records.

The difference between whether an institution was granted a penalty reduction and (a) postseason ban was significant, $\chi^2 (1, N=17) = 5.20, p = .02$.

The other penalties examined were not significant.

(b) Probation, $\chi^2 (1, N=17) = .23, p = .63$. 

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(c) Scholarship Reduction, \(\chi^2 (1, N=17) = .01, p = .94\).

(d) Recruiting Restrictions, \(\chi^2 (1, N=17) = 1.52, p = .22\).

(e) Show Cause, \(\chi^2 (1, N=17) = .03, p = .87\).

(f) Vacation of Records, \(\chi^2 (1, N=17) = .01, p = .94\).

Table 4.3 shows what percentage of institutions was granted a penalty reduction based on the specific penalty imposed by the COI. Of the institutions that received a Postseason ban, 42.9% were granted a penalty reduction on appeal.

**Table 4.3**

*Cross-tabulation of Penalty Reduction or No Penalty Reduction and Specific Penalties*

<table>
<thead>
<tr>
<th>Specific Penalties</th>
<th>(a) Postseason ban</th>
<th>(b) Probation</th>
<th>(c) Scholarship Reduction</th>
<th>(d) Recruiting Restrictions</th>
<th>(e) Show Cause</th>
<th>(f) Vacation of Records</th>
</tr>
</thead>
<tbody>
<tr>
<td>Penalty Reduction</td>
<td>42.9% (2.3)</td>
<td>18.8% (0.5)</td>
<td>18.2% (0.1)</td>
<td>25.0% (1.2)</td>
<td>16.7% (-0.2)</td>
<td>18.2% (0.1)</td>
</tr>
<tr>
<td>No Penalty Reduction</td>
<td>57.1% (-2.3)</td>
<td>81.3% (-0.5)</td>
<td>81.8% (-0.1)</td>
<td>75.0% (-1.2)</td>
<td>83.3% (0.2)</td>
<td>81.8% (-0.1)</td>
</tr>
</tbody>
</table>

*Note.* Adjusted standardized residual frequencies appear in parentheses below observed percentages.

A chi-square test of independence was performed to examine if there was a significant difference between whether an institution was granted a penalty reduction and the effect of the total number of years of a postseason ban decided by the COI. The difference between these variables was significant, \(\chi^2 (2, N=17) = 6.68, p = .04\). The following table show the percentage of institutions who decided to appeal based on the length of their Postseason Ban. Table 4.4 shows that of the institutions that received a one-year Postseason ban, 50% were granted a penalty reduction on appeal.
Table 4.4

Cross-tabulation of Penalty Reduction or No Penalty Reduction and Postseason Ban Length

<table>
<thead>
<tr>
<th>Postseason Ban Length</th>
<th>None (0 Years)</th>
<th>One-Year</th>
<th>Two-Years</th>
</tr>
</thead>
<tbody>
<tr>
<td>Penalties Reduced</td>
<td>0.0%</td>
<td>50.0%</td>
<td>0.0%</td>
</tr>
<tr>
<td></td>
<td>(-2.3)</td>
<td>(2.6)</td>
<td>(-0.5)</td>
</tr>
<tr>
<td>Penalties Not Reduced</td>
<td>100.0%</td>
<td>50.0%</td>
<td>100.0%</td>
</tr>
<tr>
<td></td>
<td>(2.3)</td>
<td>(-2.6)</td>
<td>(0.5)</td>
</tr>
</tbody>
</table>

Note. Adjusted standardized residual frequencies appear in parentheses below observed percentages.

A chi-square test of independence was performed to examine if there was a significant difference between whether an institution was granted a penalty reduction and the effect of the total number of years of a probation penalty decided by the COI. The difference between these variables was not significant, $\chi^2 (4, N=17) = 5.99, p = .20$.

A chi-square test of independence was performed to examine if there was a significant difference between whether an institution was granted a penalty reduction and the effect of the total number of violations. The difference between these variables was approaching significance, $\chi^2 (3, N=17) = 7.17, p = .07$. Table 4.5 shows that of the institutions cited for 31-40 violations, 100% were granted a penalty reduction on appeal.

Table 4.5

Cross-tabulation of Penalty Reduction or No Penalty Reduction and Total Number of Violations

<table>
<thead>
<tr>
<th>Total Number of Violations</th>
<th>1-10</th>
<th>11-20</th>
<th>21-30</th>
<th>31-40</th>
</tr>
</thead>
<tbody>
<tr>
<td>Penalty Reduction</td>
<td>0.0%</td>
<td>28.6%</td>
<td>0.0%</td>
<td>100.0%</td>
</tr>
<tr>
<td></td>
<td>(-1.8)</td>
<td>(1.0)</td>
<td>(-0.5)</td>
<td>(2.2)</td>
</tr>
<tr>
<td>No Penalty Reduction</td>
<td>100.0%</td>
<td>71.4%</td>
<td>100.0%</td>
<td>0.0%</td>
</tr>
<tr>
<td></td>
<td>(1.8)</td>
<td>(-1.0)</td>
<td>(0.5)</td>
<td>(-2.2)</td>
</tr>
</tbody>
</table>

Note. Adjusted standardized residual frequencies appear in parentheses below observed percentages.
A chi-square test of independence was performed to examine if there was a significant difference between whether an institution was granted a penalty reduction and the effect of the specific sport involved in the COI report. These sports were categorized into (a) Football, (b) Men’s Basketball, (c) Women’s Olympic Sports, (d) Men’s Olympic Sports. The difference between whether an institution is granted a penalty reduction and the effect of the specific sport involved was not significant.

(a) Football, $\chi^2(1, N=17) = 3.24, p = .07$.
(b) Men’s Basketball, $\chi^2(1, N=17) = .56, p = .45$.
(c) Women’s Olympic Sports, $\chi^2(1, N=17) = 2.55, p = .11$.
(d) Men’s Olympic Sports, $\chi^2(1, N=17) = 1.99, p = .16$.

However, it is notable that the relationship between whether an institution is granted a penalty reduction and (a) football is approaching significance, $\chi^2(1, N=17) = 3.24, p = .07$. Table 4.6 shows that of the institutions where football was a specific sport involved in the COI report, 33.3% were granted a penalty reduction on appeal.

**Table 4.6**

Cross-tabulation of Penalty Reduction or No Penalty Reduction and Specific Sports

<table>
<thead>
<tr>
<th>Specific Sports</th>
<th>(a) Football</th>
<th>(b) Men's Basketball</th>
<th>(c) Women's Olympic</th>
<th>(d) Men's Olympic</th>
</tr>
</thead>
<tbody>
<tr>
<td>Penalty Reduction</td>
<td>33.3%</td>
<td>11.1%</td>
<td>0.0%</td>
<td>0.0%</td>
</tr>
<tr>
<td></td>
<td>(+1.8)</td>
<td>(-0.7)</td>
<td>(-1.6)</td>
<td>(-1.4)</td>
</tr>
<tr>
<td>No Penalty Reduction</td>
<td>66.7%</td>
<td>88.9%</td>
<td>100.0%</td>
<td>100.0%</td>
</tr>
<tr>
<td></td>
<td>(-1.8)</td>
<td>(-0.7)</td>
<td>(1.6)</td>
<td>(1.4)</td>
</tr>
</tbody>
</table>

*Note.* Adjusted standardized residual frequencies appear in parentheses below observed percentages.

A chi-square test of independence was performed to examine if there was a significant difference between whether an institution is granted a penalty reduction and the effect of institutional classification. This includes (a) FBS, (b) FCS, and (c) No football. The difference between these variables is
approaching significance, $\chi^2(2, N=17) = 6.12, p = .05$. The table below shows that of the institutions classified as FCS, 66.7% were granted a penalty reduction on appeal.

Table 4.7

<table>
<thead>
<tr>
<th>Classification</th>
<th>FBS</th>
<th>FCS</th>
<th>No Football</th>
</tr>
</thead>
<tbody>
<tr>
<td>Penalties Reduced</td>
<td>8.3%</td>
<td>66.7%</td>
<td>0.0%</td>
</tr>
<tr>
<td></td>
<td>(-1.6)</td>
<td>(2.5)</td>
<td>(-0.7)</td>
</tr>
<tr>
<td>Penalties Not Reduced</td>
<td>91.7%</td>
<td>33.3%</td>
<td>100.0%</td>
</tr>
<tr>
<td></td>
<td>(1.6)</td>
<td>(-2.5)</td>
<td>(0.7)</td>
</tr>
</tbody>
</table>

*Note.* Adjusted standardized residual frequencies appear in parentheses below observed percentages.

A chi-square test of independence was performed to examine if there was a significant difference between whether an institution is granted a penalty reduction and the effect of an institution’s conference affiliation. Twenty-six different conferences were represented. The difference between these variables was not significant, $\chi^2(12, N=17) = 13.56, p = .33$.

**Research Question 3: Is there a significant difference between the effect of any of the five prongs of the Abuse of Discretion standard for appeal and whether or not an institution is granted a penalty reduction?**

A chi-square test of independence was performed to examine if there was a significant difference between whether an institution is granted a penalty reduction and the effect of the five prongs of the Abuse of Discretion standard for appeal. The five prongs examined were (a) cases not based on correct legal standard or based on a misapprehension of the underlying substantive legal principles, (b) cases based on a clearly erroneous factual finding, (c) cases that failed to consider and weigh material factors, (d) cases based on a clear error of judgment, such that the imposition was arbitrary, capricious, or irrational, (e) cases based in significant part on one or more irrelevant or improper factors.
The difference between an institution being granted a penalty reduction and (d) cases based on a clear error of judgment, such that the imposition was arbitrary, capricious, or irrational was significant, $\chi^2(1, N=17) = 4.96, p = .03$.

The difference between an institution being granted a penalty reduction and the other prongs was not significant.

(a) Cases not based on correct legal standard or based on a misapprehension of the underlying substantive legal principles, $\chi^2(1, N=17) = .23, p = .63$.

(b) Cases based on a clearly erroneous factual finding, (c) cases that failed to consider and weigh material factors, $\chi^2(1, N=17) = 1.63, p = .20$.

(c) Cases that failed to consider and weigh material factors, $\chi^2(1, N=17) = 1.63, p = .20$.

(e) Cases based in significant part on one or more irrelevant or improper factors, 0.

Table 4.8 shows that of the institutions who appealed on the basis that (d) the case were based on a clear error of judgment, such that the imposition was arbitrary, capricious, or irrational, 100% were granted a penalty reduction. There were no appeals based on (e) cases based in significant part on one or more irrelevant or improper factors.

Table 4.8

Cross-tabulation of Penalty Reduction or No Penalty Reduction and five prongs of the Abuse of Discretion standard for appeal

<table>
<thead>
<tr>
<th>Basis of Appeal (5 Prongs of Abuse of Discretion)</th>
<th>(a)</th>
<th>(b)</th>
<th>(c)</th>
<th>(d)</th>
<th>(e)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Penalty Reduction</td>
<td>0.0%</td>
<td>50.0%</td>
<td>50.0%</td>
<td>100.0%</td>
<td>0.0%</td>
</tr>
<tr>
<td></td>
<td>(-0.5)</td>
<td>(1.3)</td>
<td>(1.3)</td>
<td>(2.2)</td>
<td></td>
</tr>
<tr>
<td>No Penalty Reduction</td>
<td>100.0%</td>
<td>50.0%</td>
<td>50.0%</td>
<td>0.0%</td>
<td>0.0%</td>
</tr>
<tr>
<td></td>
<td>(0.5)</td>
<td>(-1.3)</td>
<td>(-1.3)</td>
<td>(-2.2)</td>
<td></td>
</tr>
</tbody>
</table>

*Notes.* Adjusted standardized residual frequencies appear in parentheses below observed percentages.
CHAPTER V
DISCUSSION

Summary

Deciding to Appeal

Between 2008-2013, 68 NCAA Division I major rules violations investigations took place. Seventeen institutions appealed findings and penalties imposed by the NCAA Committee on Infractions (25% of investigations led to appeal). This study was inspired by research conducted from 2001-2008 by Glenn Wong about the appeals process before the new abuse of discretion standard of appeal. Wong’s study examined twenty-one appeals out of 77 total investigations (27% of investigations led to appeal). The average number of investigations per year during Wong’s study was 10.71, while the average during this study was 11.12. The average number of appeals during Wong’s study was 2.86, and in this study it was 2.83. This represents a slight decrease in the percentage of appeals per investigations over time.

Most notably, the number of appeals has decreased every year since 2010, and there were zero appeals in 2013. Based on these figures, it appears that the new standard may have taken some time to become effective, and it could be the reason that institutions undergoing more recent NCAA investigations have decided not to appeal.
Figure 5.0

Total investigations and total appeals per year 2001-2013

Fordham was not included in 2013 investigations
Success rate of appeals was not compared because standards are so different from 2001-2008; 2008-2013.

Penalty Reduction

Of the seventeen appeals between 2008 and 2013, only three were successful at penalty reduction (Alabama State, Eastern Washington State, and University of Central Florida). The three successful appeals did not appeal findings. Only five of the seventeen appeals after the new Abuse of Discretion standard of appeal was enacted actually cited one of the prongs in their appeal. Of those that did, three were successful. Those that did not cited reasons that are not recognized by the IAC and were unsuccessful. To compare the success rate of appeals between Wong’s study and this one would not provide accurate data as the standards for appeal are so different; however at first glance, the percentage of appeals granted a penalty reduction for any reason is only slightly lower from 2008-2013 (18%) than it is from 2001-2008 (20%).
Research Question 1: Is there a significant difference between the effect of any of the following independent variables (Specific penalties, Total number of violations, Specific sport, Institutional classification, Conference affiliation) and whether or not an institution decides to appeal?

The difference between whether an institution decided to appeal and the effect of specific penalties was significant. This strength of the difference indicates how likely an institution is to appeal. The most significant difference between the variables was if a postseason penalty is imposed by the COI (.003); followed by vacation of records (.02). Show-cause (.05), Scholarship reduction (.07) and recruiting restrictions (.07) were approaching significance. Probation was not significant (.41).

An institution is forced to act quickly and when faced with the findings of an NCAA investigation and penalties imposed by the COI. It is beneficial to know recent case history in order to best decide whether to appeal. Furthermore, this data is valuable to an institution’s stakeholders in order to justify an institution’s decision to appeal. It is important for both the institution and its stakeholders to recognize that if a Postseason ban or Vacation of Records penalty is imposed by the COI, it is common for an institution to appeal.

An institution is more likely to appeal if the penalties imposed affect its reputation and image. Postseason play is lucrative for an institution and its affiliated conference. The opportunity to compete in the postseason has a positive effect on recruiting and fundraising. A penalty that vacates records erases recent success and is a disappointment to current stakeholders, including current athletes, program alumni, and season ticketholders. Coombs’ Situational Crisis Communication Theory (2007) states that an organization has an ethical responsibility to protect stakeholders from harm. An organization must be perceived as putting the stakeholders first. In the end, this will help defend the organization’s reputation.

Furthermore, this information is helpful for the COI in deciding penalties. If the COI hopes to avoid the report going to the IAC on appeal, it may be in its best interest to impose less significant penalties.

To take it a step further, the difference between whether an institution decides to appeal and the effect of the total number of years of a Postseason ban decided by the COI was significant, $\chi^2(2, N=68) = 9.65, p = .01$. Of the institutions that were impacted by a two year Postseason ban, 100% decided to
appeal. A chi-square test of independence was also performed to examine if there was a significant difference between whether an institution decides to appeal and the total number of years of a probation penalty decided by the COI. The difference between these variables was significant and the data shows that of the institutions imposed a four-year Probation penalty, almost half of them (44.4%) decided to appeal. This data could be used by the COI to determine lesser probation lengths to avoid appeal; or to standardize probation penalties so that an institution can self-impose this penalty or predict the probation duration based on the COI findings.

The difference between whether an institution decides to appeal and the effect of the total number of violations was not significant, $\chi^2(3, N=68) = 3.29, p = .35$. While some institutions appealed findings of violations, most appeals focused on attempting to reduce penalties so the number of violations did not matter.

The difference between whether an institution decides to appeal and the specific sport involved in the COI report (Football, Men’s Basketball, Women’s Olympic Sports, and Men’s Olympic Sports) was not significant. This indicates that the penalties imposed; and not the specific sport involved; is the primary focus during an appeal.

The difference between whether an institution decides to appeal and the effect of institutional classification (FBS, FCS, and No football) was not significant, nor was the difference between whether an institution decides to appeal and the institution’s conference affiliation. There were 26 conferences represented in this study, meaning institutions from 26 different conferences underwent NCAA major rules violations investigations between 2008-2013. Thirteen conferences were represented out of seventeen appeals. At the beginning of 2013, there were a total of 25 Division I FBS and FCS conferences. This suggests that the majority of conferences were represented in this study. The fact that 76% of the institutions who appealed represent a different conference implies that there could not be statistically significant data connecting conference affiliation and the decision to appeal. This begs the question to what degree conference offices advise their members during an NCAA investigation and if any conferences have protocols in place to help members determine whether or not to appeal.
Research Question 2: Is there a significant difference between the effect of any of the following independent variables (Specific penalties, Total number of violations, Specific sport, Institutional classification, Conference affiliation) and whether or not the institution is granted a penalty reduction?

The difference between whether an institution was granted a penalty reduction and specific penalties imposed by the COI (postseason ban, probation, scholarship reduction, recruiting, show cause, vacation of records) was examined and only the difference between whether an institution was granted a penalty reduction and postseason ban was significant, \( \chi^2 (1, N=17) = 5.20, p = .02 \).

Based on the findings of Research Question 1, this information suggests that not only is an institution more likely to appeal based on having received a postseason ban penalty by the COI; it is also more likely to be successful in having penalties reduced.

The difference between whether an institution was granted a penalty reduction and the effect of the total number of years of a postseason ban decided by the COI was significant, \( \chi^2 (2, N=17) = 6.68, p = .04 \). Of the institutions that received a one-year postseason ban, 50% were granted a penalty reduction on appeal.

Of 68 investigations between 2008 and 2013, postseason bans penalties ranged from 0-2 years with the average ban of .19 years (standard deviation .432). This further suggests that it may be worth appealing a postseason ban in order to reduce penalties.

The difference between whether an institution was granted a penalty reduction and the effect of the total number of years of a probation penalty decided by the COI was not significant. Between 2008 and 2013, the range of imposed probation penalties was 0-5 years with an average penalty of 2.63 years. A probation penalty requires that a university must make regular reports to the NCAA indicating it is complying with all regulations for a set period of time. There was a significant relationship between the duration of a probation penalty and that an institution would appeal. The lack of relationship here suggests that the COI and IAC agree that a probation penalty is non-negotiable consequence of an NCAA investigation.
The difference between an institution being granted a penalty reduction and the effect of the total number of violations is approaching significance, $\chi^2 (3, N=17) = 7.17, p = .07$. The data shows that of the institutions cited for 31-40 violations, 100% were granted a penalty reduction on appeal. At first glance, this relationship seems backwards but it is likely a perceptual issue. It is common for one violation to fall under multiple articles and bylaws in the NCAA manual and it was therefore reported as multiple violations. The NCAA should take into consideration that citing an institution for one violation that subsequently falls under multiple categories is counterintuitive to enforcement.

It is notable that the relationship between whether an institution was granted a penalty reduction and football being cited as having violations by the COI is approaching significance, $\chi^2 (1, N=17) = 3.24, p = .07$. A third (21/68) of COI investigations between 2008 and 2013 cited football as the only sport having violations. This suggests that the violations are isolated to football and that the issues may not permeate to other sports or components of an athletic department. While this may bode well for an institution during an NCAA investigation, it implies a lack of cohesion within an athletic department. Institutions should strive to integrate football into the environment of compliance.

The difference between an institution being granted a penalty reduction and the effect of institutional classification is approaching significance, $\chi^2 (2, N=17) = 6.12, p = .05$. The data reveals that an FCS institution is most likely to be granted an appeal. This may be a result of the limitations of this study.

This study covers only the first five years of the new abuse of discretion standard of appeal. The study was limited to the seventeen appeals during this time; only three of which were successful. Of the three successful appeals, one was an FBS institution (UCF) and two were FCS institutions (Eastern Washington, Alabama State).
Research Question 3: Is there a significant difference between the effect of any of the following independent variables (five prongs of the Abuse of Discretion standard for appeal) and whether or not an institution is granted a penalty reduction?

The difference between an institution being granted a penalty reduction and the effect of “cases based on a clear error of judgment, such that the imposition was arbitrary, capricious, or irrational” was significant, $\chi^2 (1, N=17) = 4.96, p = .03$.

Out of all the prongs, this is the most ambiguous. The COI strove to narrow the appeals process by implementing the five prongs of the new abuse of discretion standard of appeal, however, this prong seems to echo the former standard of appeal which included the ability to say that the COI had abused their discretion by imposing “excessive” penalties. As a result, this is the most familiar and flexible prong and is more likely to result in a penalty reduction.

“As a general overview, nearly every Appeals Committee case since 2001 involved the appeal – by the university, a coach, or both – that a penalty issued by the Committee was “excessive or inappropriate” – the pre-January 2008 standard. In fact, all 11 instances in which the institution raised an appeal since 2001, the appellant institution argued that at least one of the penalties imposed by the Committee was excessive or inappropriate. Similarly, in the 18 total appeals made by coaches, 72 percent argued that the penalty imposed met such a standard. Overall, 61 percent of their appeals were successful, at least in some part, in convincing the Appeals Committee that the penalty for which they were seeking relief was excessive or inappropriate given the findings in the case” (Wong, 2009, p. 24).

Three out of seventeen appealed cases between 2008 and 2013 resulted in a penalty reduction; Alabama State (2008), Eastern Washington University (2009) and University of Central Florida (2012). These institutions shared one commonality in their approach to appeal however they did not identify the same prong. Each institution isolated specific language in the COI report that fulfilled one of the five prongs of the new abuse of discretion standard of appeal.

Alabama State identified the prong, “Cases based on a clearly erroneous factual finding” and was very specific in its appeal by only citing a logistical “flaw” in the COI report. Among other penalties including a post-season ban and vacated records, the COI imposed a five-year probation on Alabama State (Penalty C-2) (NCAA IAC, 2009, p. 22). The university appealed this penalty by showing that the COI had written in its report that it considered as an aggravating factor, “the long period of time it took to complete the case and bring it before the committee” (NCAA COI, 2008, p. 32) (NCAA IAC, 2009, p.
23). When the IAC reviewed the timeline of the case, it determined that the record did not support the COI’s conclusion of a five-year probation because there was substantial activity during this time including institutionally conducted interviews, document reviews and audits (NCAA IAC, 2009, p. 23). As a result, the IAC reduced the probation penalty to three years.

Eastern Washington University is another case, like Alabama State, where the wording of the COI was used specifically to successfully appeal. Eastern Washington identified the prong, “Cases based on a clear error of judgment, such that the imposition was arbitrary, capricious, or irrational.”

Eastern Washington University pointed out that in its report, the COI wrongly asserted that violations committed by the football program, “bestowed a significant competitive advantage on the institution.” The IAC agreed that the while the violations provided some competitive advantage, the word, “significant” was based on a clear error of judgment, such that the imposition of the postseason ban was arbitrary (NCAA IAC, 2009, p. 7). The postseason ban penalty was vacated.

Lastly, the University of Central Florida identified the prong, “Cases that failed to consider and weigh material factors.” In its written appeal, UCF requested that the football postseason ban (penalty D-3) should be vacated because the COI did not adequately distinguish between the factors on which the football and basketball postseason bans were based (NCAA IAC, 2013, p. 12). The IAC agreed with UCF that the COI seemed to base the finding of a lack of institutional control on basketball infractions instead of football infractions and determined that the COI abused its discretion by failing to appropriately consider and weigh material factors. Therefore, the postseason ban was vacated (NCAA IAC, 2013, p. 14).

**Recommendations**

This study analyzes the outcome of the most recent investigations resulting in appeal and should help compliance officers, athletics directors, and institutional presidents or chancellors, determine if, why and how to appeal based on the first five years of the new NCAA appeals process. Furthermore, the
NCAA may find this study useful as it provides an evaluation of the efficacy of the new “Abuse of Discretion” standard.

Statistical data collected and analyzed in this study is limited to the first five year of the new abuse of discretion standard of appeal. As a result, the sample size is not large enough to create or recommend a defined strategy for appeal. However, the information collected in this study does provide institutional staff members facts that should help determine if, why and how to appeal. In particular, it is not uncommon to make, nor is it difficult to legitimize, the decision to appeal if the penalties affect an institution’s reputation and image. Moreover, if an institution can specifically identify language within the COI report that fulfills one of the five prongs of the new abuse of discretion standard for appeal, it is more likely to be granted a penalty reduction.

The fact that the number of appeals has decreased each year since 2010 suggests that the new standard of appeal is effective. Furthermore, the data collected in this study can be used by the COI to pay closer attention to the language used in their reports to prevent future appeals. It may help both the COI and institutions for the NCAA to simplify each violation in order to minimize the number of perceived violations, clarify the reason for penalties, and streamline COI reporting. In effect, this change would likely reduce the number of institutions that decide to appeal, as well as decrease the rate of penalty reduction.

Future Research

This research was inspired by the work of Glenn Wong (2009) and following the first five years of the new abuse of discretion standard of appeal.

“…the progression and development of the cases decided under the new standard will be a significant focus for the future of the NCAA appellate process. As appeals are processed under the more stringent standard, those cases will be relied upon by institutions in considering whether to appeal and analyzing the possibility for success under that standard. Time will define whether the Appeals Committee’s five-part test in the Alabama State case will evolve into greater clarity of the Appeals Committee’s application of the abuse-of-discretion standard” (Wong, 2009, p. 32).
It is recommended that similar research be conducted in the future to further test the efficacy of the new standard; particularly with the new refined penalty structure implemented by the NCAA.

The following questions are also potential future research opportunities:

- How much did each investigation cost? How much did each appeal cost? Who paid for the appeal? Is there a relationship between how much an appeal costs and penalty reduction?
- Should the NCAA continue to allow self-imposed penalties for major violations?
- Nearly all conferences were represented in five years of NCAA investigations; is there a way for conferences to better monitor their member’s behavior?
- What law firm was hired to conduct each appeal and did this relate to penalty reduction?
- Should repeat violators appeal?
- How many coaches who are penalized with show-cause order resign/are fired/hired and is this penalty an effective rules violation deterrent?
- Do COI reports and/or IAC findings change based on COI or IAC membership?
- How do bowl bans (postseason bans) affect NCAA revenue sharing? How does this differ per institution, classification, conference?
REFERENCES


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