



**SOUTHEAST MISSOURI STATE UNIVERSITY**  
**PUBLIC INFRACTIONS REPORT**  
**August 13, 2009**

**A. INTRODUCTION.**

On April 17, 2009, officials from Southeast Missouri State University, the former head men's basketball coach ("former head coach") along with his legal counsel and a former assistant men's basketball coach ("former assistant coach"), with his legal counsel, appeared before the Division I Committee on Infractions to address allegations of NCAA violations in the institution's athletics programs, primarily men's basketball.

Only one year earlier, on April 18, 2008, the institution appeared before the committee for violations of NCAA legislation centering on the women's basketball program. (One finding in that case involved the men's basketball program under the previous head coach). In the 2008 case, the institution acknowledged a lack of institutional control while the former head women's basketball coach was found for failure to monitor. Prior to the release of the infractions report for the 2008 case, the committee was informed that additional violations had been discovered; the institution suggested that the issuance of the infractions report be delayed so that the recently discovered violations might be incorporated into it. The committee decided that the newly discovered violations should be made part of a separate case and the infractions report containing the findings from the April 2008 hearing was released on June 18, 2008. The institution considered the current case a "continuation" of its previous case.

Most of the allegations in the current case concerned the men's basketball program. Specifically, the alleged violations involved impermissible observation of out-of-season strength and conditioning activities in addition to the provision of extra benefits to two student-athletes. The information surrounding these violations was initially reported by the former assistant coach in response to a question from the then director of athletics concerning his (the former assistant coach's) knowledge of potential violations in the men's basketball program. There were also associated allegations of unethical conduct for knowing involvement by both coaches in violations of NCAA legislation as well as the provision of false and misleading information. A single violation in the women's basketball program involved an admitted payment of tuition by a booster for a student-athlete whose eligibility had been exhausted. Finally, there was an allegation that the institution failed to monitor its men's and women's basketball program.

A member of the Ohio Valley Conference, Southeast Missouri State University has an enrollment of approximately 9,000 students. The institution sponsors six men's and nine women's intercollegiate sports. This was the institution's fourth major infractions case. As previously mentioned, the institution appeared before the committee in 2008. Before that case, the institution appeared before the committee in 1998 for a case involving men's basketball. The remaining case occurred in 1979 and centered on violations in the men's basketball and men's track programs.

## **B. FINDINGS OF VIOLATIONS OF NCAA LEGISLATION.**

### **1. IMPERMISSIBLE EXTRA BENEFITS – TUITION PAYMENTS. [NCAA Bylaws 16.02.3 and 16.11.2.1 (2008-09 NCAA Manual)]**

On three occasions, from September 2007 through May 2008, a representative of the institution's athletics interests ("the representative") paid a total of \$7,078.61 in course expenses for a fifth-year women's basketball student-athlete whose eligibility had been exhausted ("student-athlete 1").

#### **Committee Rationale**

The enforcement staff and institution were in agreement as to the facts of this finding and that the violations occurred. The committee finds that the violations occurred.

As background, student-athlete 1 was an international student who graduated in the spring of 2005 from an American two-year institution prior to enrolling at Southeast Missouri State in the fall of 2005. She competed during the 2005-06 and 2006-07 basketball seasons.

The representative and her husband purchased men's basketball season tickets, primarily in order to also obtain admission to the women's basketball games. The representative frequently attended women's basketball games and assisted in the organization of at least one golf outing to benefit the women's basketball program. According to institution records, she and her husband donated approximately \$375 to the athletics department. In the summer of 2006, prior to student-athlete 1's senior year, the representative volunteered at the aforementioned women's basketball golf outing. The members of the women's basketball team also volunteered at the event, and it was on this occasion that student-athlete 1 first met the representative.

During the summer of 2007, after her final season of eligibility, student-athlete 1 traveled to her native country and returned to the institution in the fall to complete her undergraduate degree. The institution has a fifth-year scholarship program for student-

athletes with no remaining eligibility. The maximum funds provided to a fifth-year student each semester is an amount equal to the cost of in-state tuition for 12 hours. However, because she was an international student, she had to pay out-of-state rates. Her educational costs for each of her final three semesters (fall 2007, spring 2008, and summer 2008) generally were between \$4,000 and \$4,300. She applied for and received approximately \$2,370 as her in-state grant for the fall of 2007 and spring of 2008, but this grant-in-aid did not provide funding for the summer of 2008. To help offset the shortfall between what she received from the institution and what she actually had to pay as a non-resident, plus all tuition charges for the summer of 2008, student-athlete 1 worked in the athletics department approximately 20 hours per week and was paid \$6.50 per hour. Nevertheless, there was still a considerable deficit between what she received in financial aid and what she was ultimately required to pay for her continued schooling.

At the beginning of the fall 2007 semester, the representative had a conversation with an individual who had also volunteered at the institution's women's basketball golf outings. This individual informed the representative that student-athlete 1 had returned from her native country, was enrolled in school, but did not have sufficient funds to pay her bills due to additional course work and the necessity to pay out-of-state tuition. Shortly thereafter, the representative contacted student-athlete 1 directly and offered to pay her tuition, an offer the student-athlete accepted. The representative made payments on three occasions: on September 14, 2007, for \$1,502.11 (personal check), on January 3, 2008, for \$1,388.50 (credit card) and on May 14, 2008, for \$4,188 (credit card). The total of the three tuition payments made by the representative was \$7,078.61. She made all three payments directly to the institution bursar's office on most occasions, accompanied by student-athlete 1. Student-athlete 1 eventually completed the requirements for her undergraduate degree in recreation at the conclusion of the summer 2008 academic term.

The committee also decided that the institution did not take sufficient action to prevent at least some of these violations from occurring. Information developed revealed that members of the athletics department staff became aware that the representative was planning to pay course expenses for student-athlete 1. The representative was told not to make the payments, but did so nonetheless. This issue is discussed in greater detail in Finding B-6-a.

**2. IMPERMISSIBLE PRESENCE DURING SUMMER CONDITIONING ACTIVITIES; IMPERMISSIBLE OBSERVATION OF OUT-OF-SEASON PICK-UP GAMES. [NCAA Bylaws 13.11.2.2, 17.02.1, 17.02.13, 17.1.6.2.1.1 and 17.5.6 (2008-09 NCAA Manual)]**

During 2006 and 2007, members of the men's basketball coaching staff were present during men's basketball student-athletes' participation in summer strength

and conditioning activities and, at times, required the student-athletes to report back on their participation in such activities. Additionally, members of the men's basketball coaching staff briefly observed men's basketball student-athletes' participation in a few out-of-season pick-up games. Specifically:

- a. During the summer of 2006, members of the men's basketball coaching staff, including the former head coach, were present during, and in some instances, briefly observed men's basketball student-athletes' participation in the team's strength and conditioning program. Additionally, student-athletes were sometimes required to report to a coach the reason they did not attend a conditioning session.
- b. During the summer of 2007, members of the men's basketball coaching staff, including the former head coach, regularly, but not to the extent of the prior summer, were present during, and in some instances briefly observed, men's basketball student-athletes' participation in the team's strength and conditioning program.
- c. During the fall of 2006 (August through October) and spring of 2007 (March through May), members of the men's basketball coaching staff briefly observed men's basketball student-athletes' participation in a few on-campus out-of-season pick-up games, including one occasion in the spring of 2007 (around April 24), when some coaches observed a prospective student-athlete, completing an official paid visit, participate in an on-campus pick-up game with some of the men's basketball student-athletes.

### **Committee Rationale**

In reference to Findings B-1-a and B-1-b, it was originally alleged that members of the men's basketball coaching staff "regularly observed" men's basketball student-athletes' participation in the team's strength and conditioning program during the summers of 2006 and 2007. Although the former head coach did not agree that he "regularly" observed men's basketball student-athletes' participation in the team's summer strength and conditioning activities, he conceded that he was present on occasion during both summers in question, including the summer of 2006, which included a period of time when he was physically limited because of hip replacement surgery. The former head coach also admitted that there were attempts to make student-athletes accountable for attending these supposedly "volunteer" sessions. The former assistant coach agreed that he often observed student-athlete's participation but that it was under duress and on the orders of the former head coach.

### **Finding B-2-a**

In specific reference to Finding B-2-a, the former head coach's position with regard to finding was this:

"The available information supports the conclusion that (the former head coach) and SEMO's assistant coaches visited the weight room before and after the men's basketball student-athletes' workouts during the summer of 2006, and that some coaches occasionally saw brief portions of the start or near the end of a workout. The available information also supports the conclusion that on a few occasions a coach called student-athletes who were not present at pre-workout meetings in order to check on the student-athletes' whereabouts."

The former assistant coach reported that, during the summer of 2006, he attended strength and conditioning sessions at the "direction and ultimately at the insistence of" the former head coach. The former assistant coach added that after he initially attended the first few sessions, he expressed concern to the former head coach that this activity could be contrary to NCAA legislation. The former assistant coach reported that, in response to being informed that observing these summer workouts could violate NCAA rules, the former head coach chastised the former assistant coach and in the former assistant coach's view, he (the former assistant coach) was put in a position to "either comply with (the former head coach's) demands to break the rules or lose his job."

### **Finding B-2-b**

In reference to Finding B-2-b, the former head coach's response to the notice of allegations stated that he

...did not watch, observe, or evaluate student-athletes' workouts in the summer of 2007...The available information supports the conclusion that (the former head coach) regularly met with SEMO's men's basketball student-athletes before and after the student-athletes' workouts, that SEMO's assistant coaches occasionally had similar contact with student-athletes, and that SEMO's men's basketball coaches occasionally had brief exposure to student-athletes' workout activities incidental to calling a student-athlete out of the weight room or checking how much workout time remained. However, the available information does not credibly indicate that (the former head coach) or any of SEMO's assistant coaches "regularly" observed student-athletes' summer workouts in 2007.

The former assistant coach reported that, similar to the summer of 2006, under orders from the former head coach, he observed men's basketball student-athlete's participation

in strength and conditioning program during the summer of 2007, but to a lesser extent than in 2006, due to an increase in recruiting-related activities on his part, which kept him away from the workout facilities.

Although there was conflicting information with regard to the extent of "observation," which occurred relative to the conditioning activities during the summers of 2006 and 2007, there was no dispute that the former head coach and the former assistant coach were present before, after and, to a lesser extent, at the beginning and/or end of these sessions. Despite the assertion that any observation of these workouts was limited or "brief," such a presence violates NCAA legislation and runs counter to the letter and "spirit" of what constitutes "voluntary" workouts in the eyes of the NCAA. The presence of coaches at "volunteer" workouts, whether it is before, after or during the sessions (however brief) obviates the volunteer nature of such workouts. If a student-athlete knows that a coach is going to be present, and therefore, is, in effect, "keeping tabs" on who attends, then the concept of these workouts being "voluntary" is destroyed. Moreover, the evidence reflected that coaches called student-athletes who missed the workout sessions to determine their "whereabouts." Such action on the part of coaches is tantamount to taking attendance, which is forbidden under Bylaw 17.02.3(c): "The student-athlete's attendance and participation in the activity (or lack thereof) may not be recorded for the purposes of reporting such information to coaching staff members or other student-athletes." This further undermines the notion that these workouts were "voluntary." Therefore, in reference to Findings B-1-a and B-1-b, the committee finds that the violations occurred.

### **Finding B-2-C**

Regarding Finding B-2-c, the former head coach and the former head coach were not considered to be "at risk" in this finding. The enforcement staff and institution were in agreement as to the facts of this finding and that the violations occurred. The committee finds that the violations occurred.

### **3. IMPERMISSIBLE EXTRA BENEFITS. [NCAA Bylaws 16.02.3 and 16.11.2.1 (2008-09 NCAA Manual)]**

In October 2006 and August 2007, the former head coach and the former assistant coach arranged for the provision of extra benefits to two men's basketball student-athletes. Specifically:

- a. In August 2007, the former head coach instructed the former assistant coach to pay approximately \$239 in unpaid institutional fees for a men's

basketball student-athlete ("student-athlete 2"). Failure to pay the fees was preventing student-athlete 2 from enrolling in fall classes.

- b. In October 2006, the former head coach instructed the former assistant coach to drive a men's basketball student-athlete ("student-athlete 3") from campus to Memphis, Tennessee, (a one-way distance of approximately 171 miles) so that student-athlete 3 could travel to Atlanta, Georgia, for the purpose of seeing his newborn child.

### **Committee Rationale**

The enforcement staff, the institution and the former assistant coach were in agreement as to the facts of this finding and that violations of NCAA legislation occurred. The former head coach denied his involvement in the payment of student-athlete 2's fees (Finding B-3-a) and in the arrangement of transportation for student-athlete 3 (Finding B-3-b). The committee finds that the violations occurred.

### **Finding B-3-a**

In reference to Finding B-3-a, payment of delinquent fees for student-athlete 2, the former head coach reported that each year before fall classes began, he received an e-mail from the financial aid office, director of athletics or athletics compliance director that identified student-athletes who owed money to the institution and indicated that those student-athletes would not be permitted to register for classes if the money was not collected. He stated that he could not recall whether any men's basketball student-athletes previously appeared in those e-mail notifications. The former head coach said he was not aware that student-athlete 2 owed money to the institution in August 2007 and denied that he provided money to anyone to pay a bill for student-athlete 2.

The former assistant coach reported that, at the beginning of the fall 2007 semester, he (along with other coaches) received an e-mail containing a list of student-athletes with unpaid fees and the list included student-athlete 2. He reported that he discussed student-athlete 2's situation with the former head coach in his (the former assistant coach's) office and the former head coach instructed him to "take care" of the situation, indicating that the former head coach wanted him to pay the fees. The former assistant coach said he told the former head coach that he would not pay these fees for student-athlete 2. The former head coach later provided the former assistant coach three \$100 bills, which he, in turn, provided to student-athlete 2. The former assistant coach stated that he did not inform student-athlete 2 of the source of the \$300 nor did student-athlete repay him. The former assistant coach reported that he knew the payment of fees in this manner was a violation of NCAA rules, but that he did so because he feared his job would be in jeopardy if he did not obey the former head coach's orders.

The committee took into account several factors in making the finding. First, the committee was able not only to review the written responses of the former head coach and the former assistant coach, but was also afforded the opportunity to question both men at the hearing. In the end, the committee found the former assistant coach to be more credible. While the former head coach denied any involvement in the payment of student-athlete 2's fees, and further claimed he was unaware that student-athlete 2 had an outstanding debt, the former assistant coach provided a detailed account of the circumstances surrounding the situation, including how these fees were paid, and in doing so, implicated himself in a major violation of NCAA legislation.

Further, the investigation uncovered an August 14, 2007, electronic message from the institution's then compliance director to the former head coach (and other coaches as well) which contained a list of student-athletes (including student-athlete 2) who were delinquent in payment of fees and whose eligibility was in jeopardy. The subject of the e-mail was "Students Subject to Class Cancellation Fall 2007." The former head coach denied seeing this important message and that there was any discussion of it, despite the fact that the message was addressed to most of the men's basketball staff, in addition to coaches in other sports. In explaining how he could have missed this message, the former head coach stated that he was on vacation and out of town August 9 - 13, 2007, and that this particular message "did slip through the cracks..." The committee noted that the e-mail in question was dated August 14, the day *after* the former head coach concluded his vacation. The committee also noted that student-athlete 2 was an important member of the institution's men's basketball team, a consistent starter and the second leading scorer during the previous season. In the view of the committee, it appeared implausible that the former head coach would not be aware that one of his best players was in jeopardy of having his enrollment canceled due to a failure to pay fees. Moreover, at the opening of the hearing, the former head coach described himself as:

A perfectionist, a...coach, who demands a lot of himself, asks a lot of my assistant coaches ...and the student-athletes that I am in charge of. At times my desires for things to be done properly, precisely and correctly can rub people in the wrong way.

It was in that light, the following exchange occurred during the hearing:

**COMMITTEE MEMBER:** Coach, if I can interrupt you for one second and help you hone your response to this, because I am interested in this as well. The thing that I am having a little bit of problem along with the questions that we had before, you made a point to explain earlier that you are meticulous, you follow up on things, and nothing gets by you. I find it hard to understand how, although you are away and you don't have a (personal digital assistant device), when you get back you have all these e-

mails and you have got one that says your number two scorer is going to be thrown out of school, and you are telling me that you have ignored it, or are you telling me, well, I have got another one the next day, his name wasn't on it, so I assumed it was taken care of? For me, that flies in the face of what you are trying to explain before of how you operate meticulously and how you look at your job, how you coach these kids and the relationship that you have tried to develop with these kids. So, if you could continue with what you were saying, and again I apologize that I interrupted you. I do it at the invitation of your counsel to try to help you hone this. If you could just look at that and respond, I would appreciate it.

**FORMER HEAD COACH.** I did not see the e-mail on August 14th. I don't remember seeing one on the 15th that came the next day, whether his name was on it, or was not on it. I think those are things that assistant coaches ought to bring to the head coach's attention.

**COMMITTEE MEMBER:** Excuse me. But that is the problem I am having. If you didn't see them that day, the 14th, 15th, 16th, you just tell me you erased them and deleted them, or you just ignored them or skipped over them? How could you not look at something that came from the administration? That is where I am having a problem with it.

**FORMER HEAD COACH:** I am not saying I erased it.

**COMMITTEE MEMBER:** No, no.

**FORMER HEAD COACH:** Or ignored it.

**COMMITTEE MEMBER:** I am not saying that you did. That was just sort of rhetorical. How could you ignore something that came from the administration?

**FORMER HEAD COACH:** This is something that fell through the cracks. I know when I was an assistant coach, and I have been in quite a few places with quite a few very, very good coaches, and if something was going on I made them aware of it. This is something that I was not aware of. If I was aware of it, this would have been taken care of in the proper way through the proper channels. I was not aware of this situation...

The contention by the former head coach that he "was not aware of this situation" was further contradicted by student-athlete 2 who reported that he discussed his financial predicament with the former head coach. Specifically, student-athlete 2 reported that he

was first notified that he owed bookstore fees to the institution by the former assistant coach and that if the payment was not made, his classes would be dropped. He stated that the former head coach later found out that he owed money and that the former head coach called him into his office to speak with him about the matter. Student-athlete 2 said that while in the former head coach's office, the former head coach asked him whether he would be able to pay the bill and student-athlete 2 assured the former head coach that he would be able to make the payment. However, student-athlete 2 reported that he was unable to get the money from his parents and could not pay the bill on his own. He stated that the former assistant coach ultimately provided the money to pay the fees, but he was not told of the source of these funds.

### **Finding B-3-b**

With regard to Finding B-3-b, involvement in the transportation of student-athlete 3 to Memphis, the former head coach denied involvement in this violation. The former assistant coach was the original source of this information. The former assistant coach reported that he transported student-athlete 3 from the institution's campus to the young man's home in Memphis at the behest of the former head coach. Student-athlete 3 stated that he was transported by automobile to Memphis by the former assistant coach and that the former head coach was aware that he wanted to leave town in order to be present during the birth of his child. The committee finds the violation occurred.

The former head coach reported that the mother of student-athlete 3's child resided in Atlanta and that his child was born there in the fall of 2006. He stated that around the time of the baby's birth, student-athlete 3 made him generally aware that his girlfriend could have the baby at any time. The former head coach said he told student-athlete 3 that he needed to see the baby born and that he could leave for Atlanta any time he thought was appropriate. The former head coach believed that student-athlete 3's parents drove from their home in Memphis to Cape Girardeau, picked him up and then drove student-athlete 3 from Cape Girardeau to Atlanta for the birth of his child. When asked, the former head coach said he did not have any conversations with student-athlete 3's parents about the young man's transportation arrangements to Atlanta and assumed they provided him the ride because they had previously driven him to and from Cape Girardeau on several occasions.

The former assistant coach reported that near the end of October or early November 2006 and after practice, the former head coach called him into his office, and, in a private conversation, told the former assistant coach to drive student-athlete 3 to Memphis and, in doing so, gave the former assistant coach \$50 for gasoline to be used on the trip. The former assistant coach recalled that student-athlete 3's girlfriend had just given birth and that student-athlete 3 was going to Atlanta to see his girlfriend and the baby. He stated that he did not want to drive student-athlete 3 to Memphis because he had other things to

do, but did it because the former head coach instructed him to do so. The former assistant coach said that, after the former head coach told him to give the ride to student-athlete 3, he then contacted student-athlete 3 and told him he would drive him to Memphis. He picked up student-athlete 3 at his dorm and drove him to Memphis. The former assistant coach noted that he was surprised that the former head coach asked him to drive student-athlete 3 to Memphis because student-athlete 3 was not assigned to him, but rather to another assistant coach who had recruited the young man. Further, the assistant coach who had recruited student-athlete 3 had Memphis as part of his recruiting territory.

Student-athlete 3 was interviewed on two occasions and, although he provided some conflicting information with regard to certain details of the transportation, the information he provided with respect to the essential circumstances of the transportation were consistent: a) that he had a conversation with the former head coach in the former head coach's office about his need to leave campus for the birth of his child; b) that he told the former head coach during that conversation that his father was unable to pick him up and drive him to Memphis; c) that the former head coach and the former assistant coach had a private conversation immediately after he told the former head coach that his father could not drive him to Memphis and d) that the former assistant coach emerged from the former head coach's office and told student-athlete 3 that he would drive him to Memphis.

Again, as with previous findings, the committee found that the former assistant coach's account of this violation, combined with the information provided by the involved student-athlete, was more credible than the denials of the former head coach. It defies logic that the assistant coach would reveal this information and implicate himself in a potential major violation of NCAA legislation unless it was true. It also appeared extremely unlikely that the assistant coach would, on his own initiative, provide an extra benefit to a student-athlete for whom he was not assigned responsibility, and had not recruited, unless told to do so by the former head coach.

**4. UNETHICAL CONDUCT. [NCAA Bylaws 10.01.1, 10.1, 10.1-(c) and 10.1-(d) (2008-09 NCAA Manual)]**

The former head coach failed to deport himself in accordance with the generally recognized high standards of honesty and sportsmanship normally associated with the conduct and administration of intercollegiate athletics for (a) his knowing involvement in NCAA violations outlined in Finding B-3 and (b) providing false and misleading information to the institution and enforcement staff when questioned about his involvement in and knowledge of possible NCAA violations set forth in Finding B-3. Specifically:

- a. Regarding his involvement, the former head coach knowingly violated NCAA legislation, as set forth in Finding B-3.
- b. Regarding providing false and misleading information, during his May 23, 2008, and August 26, 2008, interviews, the former head coach provided false and misleading information to investigators:
  - (1) The former head coach reported to investigators that he was not aware that the former assistant coach paid institutional fees for student-athlete 2 when, in fact, he provided the former assistant coach cash to pay such fees, as outlined in Finding B-3-a.
  - (2) The former head coach reported that he was not aware that the former assistant coach, provided a ride to student-athlete 3 from campus to Memphis, Tennessee, when, in fact, he (the former head coach) had arranged the ride with the former assistant coach as outlined in Finding B-3-b.

### **Committee Rationale**

The enforcement staff and institution were in substantial agreement as to the facts of this finding and that violations occurred. The former head coach did not agree that he was involved in the violations outlined in Finding B-3 and, therefore, did not agree that he intentionally violated NCAA legislation. Additionally, the former head coach maintained that he did not provide false and misleading information as set forth in Finding B-4-b. The committee finds that the violations occurred.

In reference to Finding 4-a, unethical conduct for knowingly violating NCAA legislation, as set forth in the committee rationale for Finding B-3-a, it was found that the former head coach provided \$300 to the former assistant coach with instructions to use the funds to pay outstanding fees owed by student-athlete 2, an action the former head coach knew violated NCAA legislation. Similarly, as set forth in Finding B-3-b, and the rationale the committee used in making the finding, it was found that the former head coach instructed the former assistant coach to drive student-athlete 3 to Memphis, an action the former head coach knew was a violation of NCAA rules.

In both of the above instances, the former head coach provided false and misleading information regarding his involvement in the violations and in doing so, violated ethical conduct legislation as set forth in Findings 4-b-(1) and 4-b-(2).

**5. UNETHICAL CONDUCT. [NCAA Bylaws 10.01.1, 10.1 and 10.1-(c) (2008-09 NCAA Manual)]**

It was found that the former assistant coach failed to deport himself in accordance with the generally recognized high standards of honesty and sportsmanship normally associated with the conduct and administration of intercollegiate athletics for his knowing involvement in NCAA violations outlined in Finding B-3.

**Committee Rationale**

The enforcement staff and institution were in substantial agreement as to the facts of this finding and that violations occurred. The former assistant coach agreed with the underlying violations outlined in Finding B-3 but did not believe his actions were contrary to ethical-conduct legislation. The committee finds that the violations occurred.

The former assistant coach admitted that when he provided cash to student-athlete 2 so that the young man could pay outstanding institutional fees, he knew such action violated NCAA legislation. Similarly, the former assistant coach reported that when he provided automobile transportation for student-athlete 3 to Memphis, he also knew it was an NCAA violation. As stated in NCAA Bylaw 10.1-(c), knowing involvement in providing extra benefits to a student-athlete is conduct that is contrary to ethical-conduct legislation. The former assistant coach reported that he became involved in the violations only because the former head coach instructed him to do so and that, if he did not do as he was told, he could lose his job.

The committee was faced with a similar situation in a case involving Jacksonville University in 2001. In the committee's August 30, 2001, infractions report for that case, the committee wrote:

The committee recognized that the former director of athletics had an affirmative obligation under NCAA legislation to "go above the president's head" and report his knowledge of possible NCAA violations directly to either the conference office or the NCAA. But evidence presented to the committee reflected that the former president of the institution threatened to relieve the former director of athletics if he did not explicitly follow the former president's directives.

The committee concluded that the former head coach instructed the former assistant coach to give student-athlete 2 the cash to pay delinquent fees owed to the institution and to provide student-athlete 3 transportation to Memphis. Although the committee found that the former assistant coach violated ethical conduct legislation, the penalty the

committee imposes upon him was mitigated due to the circumstances surrounding the violations and, more specifically, the involvement of the former head coach in initiating the violations. (See Penalty D-9)

**6. FAILURE TO MONITOR. [NCAA Constitution 2.8.1 (2008-09 NCAA Manual)]**

The scope and nature of the violations detailed in Findings B-1 and B-2 demonstrate that the institution failed to monitor its men's and women's basketball programs in 2006, 2007 and 2008. Specifically:

- a. Regarding Finding B-1 and the violations in the women's basketball program, during the fall of 2007 and in May 2008, some members of the athletics department became aware that a representative of the institution's athletics interests had intentions of paying for course expenses for student-athlete 1, a women's basketball student-athlete who had exhausted her eligibility but was still attempting to complete the requirements for her undergraduate degree. Despite those concerns, the institution did not take adequate measures to prevent the payment, partly resulting in the violations set forth in Finding B-1.
- b. Regarding the men's basketball program, from 2006 through 2008, some members of the athletics department had information related to men's basketball coaches being present during portions of, and briefly observing the team's summer strength and conditioning program and observing out-of-season pick-up games contrary to NCAA legislation, as described in Finding B-2. However, those individuals failed to forward this information to the compliance office, which resulted in an inadequate investigation into the matters.

**Committee Rationale**

The institution and the enforcement staff were in disagreement with respect to Finding B-6-a, a failure to monitor the institution's women's basketball program. The enforcement staff and institution were in substantial agreement as to the facts of Finding B-6-b, failure to monitor the men's basketball program. The committee finds that the violations occurred.

With regard to Finding B-6-a, the failure to monitor the women's basketball program, the investigation revealed that the athletics representative had conversations with athletics department personnel at two different times in which she said that she was assisting

student-athlete 1. The first conversation occurred in October 2007 and involved the representative and the head women's basketball coach ("head women's coach"). In response to a question from a committee member about the conversation which took place in the fall of 2007, the following exchange occurred:

**COMMITTEE MEMBER:** Okay. So you were aware that (student-athlete 1) had a shortage that needed to be covered? When you had a conversation with (the athletics representative), that is referenced as kind of a cryptic conversation, was it specific enough for you to know that (the athletics representative's) help included helping with that tuition difference?

**HEAD WOMEN'S COACH:** In the reference you are asking the question, no. My thought process, it was -- when you say conversation, it was a brief passing (as he was entering the athletics department offices and the athletics representative) is coming out... She tells me she just bought her season tickets. I thanked her for doing that. "Hey, I appreciate how you are going to help us with our team (fundraisers)." Her response is "I would love to, but I am already helping (student-athlete 1). "My response is, "Hey, thank you for everything that you do." Now, my thought process is our booster club brochure mentions things like cash donations to help fund scholarships, gifts in kind, endowments, et cetera. My thought process was she is coming out of that building. If she is helping with something that is what she is doing. She is doing it the correct way. I thanked her and went about my business.

Later, in May 2008, there were additional conversations between the representative and athletics department personnel, as well as internal discussions regarding the athletics representative. The first conversation occurred on Thursday, May 8, in the office of a student-athlete academic advisor ("advisor") and involved the advisor, the representative, student-athlete 1 and a woman introduced to the advisor as student-athlete 1's mother. The advisor was unaware of the representative's status relative to the women's basketball program or her identity, other than the representative's first name. During the conversation the representative aggressively asked questions about student-athlete 1's financial aid package and specifically requested an explanation as to why student-athlete 1 would not be receiving financial aid that summer. At several points in the conversation, the representative stated that she wanted to pay for student-athlete 1's tuition for the summer 2008 session.

On or about May 9 the advisor informed the assistant athletics director for compliance ("compliance director") about the previously described conversation and, specifically, that the unidentified woman wanted to pay student-athlete 1's educational costs for the

ensuing summer session. Neither she nor the compliance director knew if the woman in question was a representative of the institution's athletics interests (booster), and it was in that light that the compliance director asked the advisor to determine if the woman was, in fact a booster, if the two spoke again.

In a subsequent conversation on either the following Monday or Tuesday (May 12 or 13) the advisor learned from the woman that she was a booster and had previously paid student-athlete 1's tuition. The advisor instructed the representative not to make any additional payments. That same day the advisor informed the compliance director that the woman in question was indeed a booster and that she had previously paid student-athlete 1's tuition.

The compliance director informed the senior woman administrator of the information the advisor reported to him. Shortly thereafter, the compliance director contacted the institution's booster club and confirmed that the woman who had been asking about student-athlete 1's financial aid was indeed a representative of the institution's athletics interests. The senior woman administrator and the compliance coordinator continued to research the information about the representative.

On May 14 the representative attempted to contact the institution's director of athletics, but because he was not available, her call was routed to the senior woman administrator. During the call, the representative was "adamant" that she was going to pay the tuition costs for student-athlete 1. In response, the senior woman administrator instructed the representative not to make the payment because it was an NCAA violation. The representative responded that she did not care if her actions violated NCAA rules. This conversation occurred around 1:18 p.m.

The head women's coach reported that he received a message on his cell phone from the representative on Wednesday, May 14. He said when he returned the representative's call, the representative indicated that she had previously paid some of student-athlete 1's course expenses. The head women's coach told the representative he did not think she could do that and immediately went to the compliance coordinator's office to inform him of the situation. The compliance coordinator confirmed that the representative could not pay student-athlete 1's expenses and if she was planning to do so, the head women's coach should contact her and tell her not to do so. The head women's coach attempted to contact the representative on two occasions but the representative did not pick up the calls. According to the head women's coach's telephone records, those calls occurred at 1:35 and 1:50 p.m. He left messages instructing the representative not to make the payments. Institution financial office records reflect that the representative's payment for student-athlete 1 was made at 1:53 p.m.

The compliance director reported that after the head women's coach left messages for the representative May 14, he obtained contact information for student-athlete 1. The committee notes that at this time, none of the athletics department staff members, including the compliance director, were aware that the representative had already made the May 14 payment for student-athlete 1. The compliance director stated that he left messages for student-athlete 1 and did not hear back from her until Tuesday, May 20. The compliance director did not attempt to call the representative until after he had spoken to student-athlete 1. The compliance director said that when student-athlete 1 returned his call on May 20, she denied that the representative had paid her tuition expenses. The compliance director said he then called the representative and that the representative readily admitted making payments on student-athlete 1's behalf. The compliance director said that later, after speaking with the representative, student-athlete 1 left him a message and confessed that the representative had paid her tuition expenses. The compliance director said that the following day, May 21, he went to the financial aid office to obtain student-athlete 1's account information. He said it was then that he confirmed the representative had made three payments on student-athlete 1's behalf.

The enforcement staff argued that athletics department staff members had at least three opportunities to inquire about the representative's relationship with student-athlete 1 and to prevent further payments made by her for the student-athlete:

1. Fall of 2007 – The representative thought she told the head women's coach in the fall of 2007 that she was assisting student-athlete 1 in the payment of her tuition expenses. Under questioning by the committee, the head women's coach recalled that he had a conversation with the representative, and that she told him she was assisting student-athlete 1, but he assumed the assistance was proper and was not concerned about a possible NCAA violation. The committee notes that the head women's coach did not pursue the issue with the representative about her involvement with student-athlete 1 and did not inform anyone about his conversation with her.
2. May 8, 2008 – The representative told an academic advisor about her intent to pay student-athlete 1's expenses. The advisor only knew the representative by her first name and did not know she was a representative of the institution's athletics interests. The advisor did not obtain this critical information at that time or question the representative or student-athlete 1 about their relationship.
3. May 9, 2008 – The advisor notified the compliance director of her conversation with the representative. Further, according to the compliance director, the head women's coach notified him that the representative was asking questions about student-athlete 1's summer school expenses and that the head women's coach was

concerned about the representative's aggressiveness. The compliance director did not follow up with the representative at that time.

The committee notes that, in reference to the spring of 2008 notifications, it was not until May 12 or 13, four or five days after the representative first made her intentions known, that an athletics department staff member told the representative that she should not make any payments on student-athlete 1's behalf. It appears that the only reason the representative was notified of such, at that time, was because she placed a call to an academic advisor (no one in the athletics department was proactive and initiated contact with the representative). It was at that time the representative was first told that the payments could be contrary to NCAA rules. The representative's identity and status as a representative of the institution's athletics interests was confirmed during a second conversation with the academic advisor. However, it was not until May 14 that any athletics department staff members placed a call to follow up with the representative to instruct her not to make any payments for student-athlete 1 and that any such payments would result in an NCAA violation. Additionally, the committee notes that the athletics department did not discover the representative's May 14 payments until May 20. Finally, the committee found it noteworthy that the athletics department did not attempt to contact student-athlete 1 until, at the earliest, May 14, seven days after being put on notice about the representative's impermissible activity, to inquire about their relationship and to question the student-athlete about the representative's possible involvement in paying her tuition expenses.

**C. SECONDARY VIOLATION.**

**IMPERMISSIBLE FINANCIAL AID. [NCAA Bylaws 14.5.4.2 and 15.01.5 (2008-09 NCAA Manual)]**

In the fall of 2008, the institution impermissibly allowed a two-year college men's basketball transfer student-athlete to receive an athletics grant-in-aid for approximately one month and participate in men's basketball practice on a few occasions. The compliance office erroneously certified that the student-athlete had completed his associate's degree and instructed the financial aid office to award an athletics grant, even though the young man had not completed his degree.

#### **D. PENALTIES.**

For the reasons set forth in Parts A and B of this report, the Committee on Infractions found that this case involved several major violations of NCAA legislation. The committee was troubled that the institution has appeared before the committee on two occasions in a one-year period of time. Moreover, the committee was concerned by the fact that the current case involved both unethical conduct and a failure to monitor. In determining the appropriate penalties to impose, the committee considered the institution's self-imposed penalties and corrective actions. [Note: The institution's corrective actions are contained in Appendix Two.] The committee also considered the institution's cooperation in this case. The committee determined that the cooperation exhibited by the institution was consistent with Bylaw 32.1.4, Cooperative Principle, which requires member institutions to cooperate in investigations, and did not warrant consideration by the committee for a possible reduction in penalties. The committee imposes the following penalties (the institution's self-imposed penalties are so noted):

1. Public reprimand and censure.
2. Three years of probation to be added to the institution's current two-year probationary period, which was to conclude on June 17, 2010. With the addition of three more years of probation, the institution's probationary period will now end on June 17, 2013.
3. The number of grant-in-aids in men's basketball for the 2009-10 academic year will be reduced by one from the NCAA maximum limit of 13 to 12. (Institution imposed)
4. The number of off-campus contact and evaluation recruiting opportunities in men's basketball during the 2009-10 academic year was reduced by 15. (Institution imposed)
5. During the summer of 2009 the number of occasions in which men's basketball student-athletes may be supervised by strength and conditioning staff was limited to no more than two occasions per week during the months of May, June, July and August. This is a reduction of 28 opportunities that generally are conducted during this time period for its student-athletes. (Institution imposed)
6. The institution disassociated the representative of the institution's athletics interests for a period of three years due to her involvement in Finding B-1 and for disregarding instructions from institutional employees to not pay tuition costs for student-athlete 1. (Institution imposed)

7. Pursuant to NCAA Bylaws 19.5.2.2-(e)-(2) and 31.2.2.3-(b), and due to the violations in which they were involved as set forth in Findings B-3-a and B-3-b, the institution will vacate all wins in which student-athletes 2 and 3 competed during the 2006-07 and 2007-08 men's basketball seasons. [**Note 1:** The violation in which student-athlete 2 was involved occurred in August 2007. As a result, the vacation of wins for student-athlete 2 applies to the 2007-08 season. **Note 2:** The violation in which student-athlete 3 was involved occurred in October 2006. Accordingly, the vacation of wins for student-athlete 3 applies to the 2006-07 season.] The individual records of the two student-athletes shall be vacated as well. Further, the institution's records regarding the two specified men's basketball seasons, as well as the record of the former head men's basketball coach, will reflect the vacated records and will be recorded in all publications in which men's basketball records are reported, including, but not limited to, institution media guides, recruiting material, electronic and digital media plus institution and NCAA archives. Any public reference to these vacated contests shall be removed from athletics department stationery, banners displayed in public areas and any other forum in which they may appear.

Finally, to ensure that all institutional and student-athlete vacations, statistics and records are accurately reflected in official NCAA publication and archives, the sports information director (or other designee as assigned by the director of athletics) must contact the NCAA director of statistics, to identify the specific student-athlete(s) and contest(s) impacted by the penalties. In addition, the institution must provide the NCAA statistics department a written report, detailing those discussions with the director of statistics. This document will be maintained in the permanent files of the statistics department. This written report must be delivered to the NCAA statistics department no later than forty-five (45) days following the initial Committee on Infractions release or, if the vacation penalty is appealed, the final adjudication of the appeals process.

8. The former head coach was involved in the provision of extra benefits to two student-athletes intentionally and with knowledge that that these actions were violations of NCAA legislation (Findings B-3-a B-3-b). Violations so committed are more serious than the same violations committed inadvertently or with lack of knowledge that they are violations. He acted unethically both in his commission of these violations and by providing false and misleading information to investigators. For these and other reasons, more fully set forth throughout this report, the committee imposes a three-year show-cause period beginning on June 30, 2009, and ending on June 29, 2012, during which, as set forth in (a) and (b) below, its penalties will restrict the athletically related duties of the former head coach at any employing NCAA institution.

- a. From June 30, 2009, through June 29, 2012, the former head coach shall not be allowed to have any in-person contact with any employing institution's men's basketball team members during the summer break periods encompassing the aforementioned period of time.
  - b. If employed at a member institution during the period June 30, 2009, through June 29, 2012, the former head coach shall attend, at his own cost, an NCAA Regional Rules Seminar during each of the years he is employed at a member institution concluding in June 2012. He shall certify in writing which sessions of the seminars he attended and, within 30 days of his return to the campus of the employing institution, his employing institution shall send a letter to the committee certifying the attendance of the former head coach at the seminar.
9. The former assistant coach was also involved in the provision of extra benefits to the two student-athletes with knowledge that these actions were violations of NCAA legislation (Findings B-3-a B-3-b). However, the committee concluded the former assistant coach's involvement in these violations was the result of orders by the former head coach. As a result, the committee concluded that the former assistant coach's penalty should be mitigated. For these and other reasons, the committee imposes a one-year show-cause period beginning on June 30, 2009, and ending on June 29, 2010, during which, as set forth in (a) and (b) below, its penalties will restrict the athletically related duties of the former assistant coach at any employing NCAA institution.
  - a. From June 30, 2009, through June 29, 2010, the former assistant coach shall not be allowed to have in-person contact with any employing institution's men's basketball team members during the summer break periods encompassing the aforementioned period of time.
  - b. If employed at a member institution during the period June 30, 2009, through June 29, 2010, the former assistant coach shall attend, at his own cost, an NCAA Regional Rules Seminar which takes place during that period. He shall certify in writing which sessions of the seminar he attended and, within 30 days of his return to the campus of the employing institution, his employing institution shall send a letter to the committee certifying the attendance of the former assistant coach at the seminar.
10. During this period of probation, the institution shall:
  - a. Continue to develop and implement a comprehensive educational program on NCAA legislation, including seminars and testing, to instruct the

- coaches, the faculty athletics representative, all athletics department personnel and all institutional staff members with responsibility for the certification of student-athletes for admission, retention, financial aid or competition;
- b. Submit a preliminary report to the office of the Committees on Infractions by October 15 setting forth a schedule for establishing this compliance and educational program; and
  - c. File with the office of the Committees on Infractions annual compliance reports indicating the progress made with this program by April 15 of each year during the probationary period. Particular emphasis should be placed on compliance with NCAA legislation applicable to off-season workouts and proper procedures relating to financial aid for fifth-year student-athletes. The reports must also include documentation of the institution's compliance with the penalties adopted and imposed by the committee.
11. The above-listed penalties are independent of and supplemental to any action that has been or may be taken by the Committee on Academic Performance through its assessment of contemporaneous, historical, or other penalties.
12. At the conclusion of the probationary period, the institution's president shall provide a letter to the committee affirming that the institution's current athletics policies and practices conform to all requirements of NCAA regulations.

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As required by NCAA legislation for any institution involved in a major infractions case, Southeast Missouri State University shall be subject to the provisions of NCAA Bylaw 19.5.2.3, concerning repeat violators, for a five-year period beginning on the effective date of the penalties in this case, August 13, 2009.

Should Southeast Missouri State or any involved individual appeal either the findings of violations or penalties in this case to the NCAA Infractions Appeals Committee, the Committee on Infractions will submit a response to the appeals committee.

The Committee on Infractions advises the institution that it should take every precaution to ensure that the terms of the penalties are observed. The committee will monitor the penalties during their effective periods. Any action by the institution contrary to the terms of any of the penalties or any additional violations shall be considered grounds for extending the institution's probationary period or imposing more severe sanctions or may

result in additional allegations and findings of violations. An institution that employs an individual while a show-cause order is in effect against that individual, and fails to adhere to the penalties imposed, subjects itself to allegations and possible findings of violations.

Should any portion of any of the penalties in this case be set aside for any reason other than by appropriate action of the Association, the penalties shall be reconsidered by the Committee on Infractions. Should any actions by NCAA legislative bodies directly or indirectly modify any provision of these penalties or the effect of the penalties, the committee reserves the right to review and reconsider the penalties.

NCAA COMMITTEE ON INFRACTIONS

Britton Banowsky

Paul T. Dee, chair

Eileen K. Jennings

Alfred J. Lechner, Jr.

Dennis E. Thomas

## APPENDIX ONE

### **CASE CHRONOLOGY AS PREPARED BY THE INSTITUTION AND THE NCAA ENFORCEMENT STAFF**

#### **2006**

April 13 – Southeast Missouri State hired the former head men's basketball coach.

Summer – The men's basketball coaches, including the former head coach, observed men's basketball student-athletes' participation in strength and conditioning activities.

October – The former head coach and the former assistant coach arranged transportation for student-athlete 3 from Cape Girardeau, Missouri, to Memphis, Tennessee.

#### **2007**

March – Student-athlete 1 exhausted her eligibility after competing during the 2006-07 season.

Summer – The men's basketball coaches, including the former head coach, observed men's basketball student-athletes' participation in strength and conditioning activities, but to a lesser degree than the summer of 2006.

August – The former head coach and the former assistant coach arranged a payment of \$239 in institutional fees for student-athlete 2. Student-athlete 1 enrolled at the institution as a fifth-year student with no eligibility remaining.

September 14 – The representative paid \$1,502.11 in course expenses for student-athlete 1.

#### **2008**

January 3 – The representative paid \$1,388.50 in course expenses for student-athlete.

March 31 – The former assistant coach reported the alleged extra-benefit violations involving student-athletes 2 and 3. Shortly thereafter, the athletics department began a review of the information.

April 18 – Southeast Missouri State appeared before the NCAA Division I Committee on Infractions for matters pertaining primarily to its women's basketball program, as well as one matter pertaining to the men's basketball program.

April 21 – The assistant athletic trainer who worked with men's basketball submitted a written, signed statement to the athletics department partly alleging potential violations in the men's basketball program.

May 8 – The representative, student-athlete 1 and student-athlete 1's mother visited the office of the student-athlete academic advisor, and indicated that the representative intended to pay the remainder of student-athlete 1's summer tuition expenses.

May 20 – The enforcement staff and institution conducted their first cooperative interview pertaining to the men's basketball matters.

August 4 – The enforcement staff provided the institution a notice of inquiry letter.

October 3 – The enforcement staff issued a notice of allegations to the institution, the former head coach and the former assistant coach.

December 2 – The institution requested an extension for the submission of its response. The NCAA Division I Committee on Infractions granted an extension to the institution for its response deadline and changed the response date to February 6, 2009.

## **2009**

February 6 – The institution, the former head coach and the former assistant coach submitted responses to the notice of allegations.

February 26 – The enforcement staff and the former assistant coach conducted a prehearing conference.

February 27 – The enforcement staff and the former head coach conducted a prehearing conference. Also, the enforcement staff and institution conducted a prehearing conference.

April 17 – The institution appeared before the NCAA Division I Committee on Infractions.

August 13 – Infractions Report No. 302 was released.

## **APPENDIX TWO**

### **CORRECTIVE ACTIONS AS IDENTIFIED IN THE INSTITUTION'S February 6, 2009, RESPONSE TO THE NOTICE OF ALLEGATIONS.**

1. The former director of athletics was relieved of his duties and placed on administrative leave until the end of contractual period.
2. The former head coach was placed on administrative leave and then terminated in December 2008.
3. Reinforced to all athletics department staff members the institution's policy that all information concerning potential violations of NCAA legislation should be forwarded to the appropriate supervisor.
4. Added information to the athletics department Web site concerning NCAA legislation for representatives of its athletics interests.
5. Reinforced and increased the amount of information concerning NCAA legislation applicable to summer workouts to all coaching and other athletics department staff members;
6. Instituted policy that information concerning source of payments to student-athlete accounts other than athletics aid would be forwarded to the assistant athletics director for compliance on a monthly basis; and
7. Reviewed and clarified policies regarding fifth-year aid for student-athletes.