

**INITIAL RESPONSE
OF RICK PITINO
TO NCAA ENFORCEMENT STAFF'S
NOTICE OF ALLEGATIONS**

**CASE NO. 00527
JANUARY 17, 2017
SUBMITTED BY SCOTT TOMPSETT
KANSAS CITY, MISSOURI**

I. INTRODUCTION

Rick Pitino by and through his attorney Scott Tompsett submits this Initial Response to the NCAA enforcement staff's Notice of Allegations. Pitino cooperated fully with the staff's investigation. He is named only in Allegation 4.

The staff has alleged that Pitino did not monitor Andre McGee, a graduate assistant and later the director of basketball operations, who secretly arranged for women to come to the dorm late at night to perform strip shows and in some instances, to have sex with visiting prospects and enrolled student-athletes.

However, the staff's investigation actually shows that the violations committed by McGee did not result from anything that Pitino either did or did not do. Rather, McGee committed the violations in spite of everything that Pitino did as a responsible and rules compliant head coach to both promote an atmosphere of compliance and to monitor his program.

The enforcement staff has not identified one single red flag that put Pitino on notice of McGee's illicit activities. The staff also has willfully refused to inform Pitino and his counsel of specifically what the staff believes Pitino should have done differently. That is because there is nothing that Pitino reasonably could have done to either prevent the violations or to uncover the violations.

The investigative record is replete with testimony of Pitino, his staff, his student-athletes, prospects who visited the institution and residents of the dorm, which shows beyond any doubt that Pitino was a rules compliant coach who monitored his program.

The enforcement staff has overreached in this case. Pitino never should have been charged.

The Committee on Infractions has stated:

If the head coach sets a proper tone of compliance and monitors the activities of all assistant coaches in the sport, the head coach cannot be charged with the secretive activities of an assistant bent on violating NCAA rules.

See Principles of Institutional Control as Prepared by the NCAA Committee on Infractions at pp. 3-4 (emphasis added).

This is one of those cases.¹

Set forth below is an overview of Billy Minardi Hall and of Andre McGee.

¹ See, e.g., University of North Carolina, Chapel Hill Public Infractions Report (March 12, 2012) (Head coach not charged with failure to monitor despite assistant coach having a long-time and close relationship with a sports agent who provided impermissible benefits to student-athletes); University of Miami (Florida) Public Infractions Report (October 22, 2013) (Head football coach not charged with failure to monitor despite a well-known booster providing hundreds of thousands of dollars in impermissible benefits to dozens of student-athletes and prospects over an approximately ten-year period and the assistant coaches arranging for prospects to meet the booster during recruiting visits).

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Billy Minardi Hall

The men's basketball student-athletes have been housed in Billy Minardi Hall ("the dorm") since 2003. The dorm is named after Billy Minardi, Coach Pitino's best friend and brother-in-law, who was killed in the 9/11 attack on the World Trade Center. To create a memorial to Billy Minardi, Pitino donated his own money and raised money from others to finance the cost of constructing the dorm. The dorm is a living memory of Billy Minardi for Pitino and his family and of all the positive, life-affirming values that he embodied.

Pitino and the University wanted all of the men's basketball student-athletes living together in one facility on campus. Pitino, as well as director of athletics Tom Jurich and athletics department compliance officer John Carns, believed strongly that having all the student-athletes living in the same facility on campus would be ideal for monitoring the young men. Carns, senior associate athletics director for compliance, said the student-athletes living in the dorm "is a compliance person's dream" because it makes monitoring them much easier than if they were living off-campus.

The University's Housing Department and EdR, a self-administered and self-managed real estate investment trust, operate and manage the dorm. EdR advertises itself as "one of the largest developers, owners and managers of high-quality collegiate housing communities."

Neither Coach Pitino nor the athletics department have any involvement in the day-to-day operation and management of the dorm. Minardi Hall is operated in the same manner as the other dorms on campus. Neither Pitino nor the athletics department have any special influence on how the dorm is operated.

University Housing and EdR set the rules, policies and procedures for the operation and monitoring of the dorm. The Housing Department employs a full-time resident assistant who lives in the dorm, and is trained and paid to monitor the residents of the dorm. In addition, the Housing Department contracts with an independent security company to provide a trained security guard to sit at the front desk from 10 p.m. to 6 a.m. Monday through Thursday, and from midnight to 8 a.m. Friday through Sunday.

Thus, EdR and the Housing Department, first and foremost, have responsibility for the operation and management of Minardi Hall.

Andre McGee

Coach Pitino first met Andre McGee in 2004 when McGee was a junior in high school and the University began recruiting McGee. Pitino met McGee's parents and family and got to know them over the years. McGee came from a stable, supportive family.

McGee was a member of the men's basketball team from 2005 until 2009, and was the team co-captain during his senior season (2008-09). McGee was a model student-athlete and team leader.

To the best of Coach Pitino's recollection, McGee never had any academic or off-court issues. In fact, Pitino thought so highly of McGee that when then student-athlete _____ was having some disciplinary problems, Pitino had _____ room with McGee so that McGee could help _____, and serve as a role model. It worked.

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Pitino could provide more examples of McGee demonstrating leadership skills and good character, but in summary, McGee was a model student-athlete.²

After playing professional basketball overseas for one year after graduating from the University, McGee contacted Pitino and asked for a job. Pitino believes strongly in hiring former student-athletes. When possible, Pitino likes to hire young men who he has coached and knows their character and work ethic. Pitino made McGee a graduate assistant in 2010.

² Virtually every adult who knew McGee, from his former teammates to colleagues, told the investigators that they were shocked to learn that McGee had brought strippers to the dorm.

Allegation 1.

[NCAA Division I Manual Bylaws 13.2.1, 13.2.1.1-(e) and 16.11.2.1³ (2010-11 through 2013-14)]

It is alleged that from at least December 2010 through July 2014, Andre McGee (McGee), then men's basketball program assistant (2010-11 and 2011-12 academic years), director of basketball operations (2012-13 academic year through April 2014) and representative of the institution's athletics interests while a University of Missouri-Kansas City assistant men's basketball coach (April through July 2014), arranged for and/or provided impermissible inducements, offers and/or extra benefits in the form of adult entertainment, sex acts and/or cash at Billy Minardi Hall (Minardi), a campus dormitory, or Louisville, Kentucky, hotels to at least 17 then men's basketball prospective and/or current student athletes, two then nonscholastic men's basketball coaches and one then men's basketball prospective student-athlete's friend. The value of the impermissible inducements, offers and/or extra benefits was at least \$5,400. Specifically:

- a. During then men's basketball prospective student-athlete's unofficial visits to the institution, McGee arranged for and/or provided at least \$510 in impermissible inducements at Minardi in the form of at least \$40 in cash, females performing two striptease shows (\$310) and sex acts (\$160).⁴ [NCAA Bylaw 13.2.1 (e) and 16.11.2.1 (e)]
- b. During then men's basketball prospective student-athlete's official paid visit to the institution, McGee arranged for and/or provided (1) at least \$650 in impermissible inducements at Minardi, which included \$400 in cash to the then men's basketball prospective student-athlete and females performing a striptease show (\$250) and (2) an \$80 offer to

3 In August 2013, adopted proposal RWG-16-5 revised the term "relatives" in NCAA Division I Bylaw 16.11.2.1 to "family members." This revision had no substantive effect on Allegation No. 1.

4 Interviewee statements, receipts and additional information determined the violation values in Allegation No. 1. If an interviewee provided a range, the NCAA enforcement staff used the range's lowest number. If a student-athlete identified a then prospect as having possibly received an impermissible inducement, there was uncertainty regarding the identified prospect's involvement and the prospect did not participate in an interview, the enforcement staff did not name the then prospect in the allegation; however, the enforcement staff did account for the unnamed prospect when valuing the violations. Additionally, the enforcement staff accounted for prospects or student-athletes whose identities were not known by an interviewee but mentioned as having received an impermissible inducement or extra benefit.

5 The institution first learned of the allegations in August 2015. The first confirmed violation occurred in 2010 and second confirmed violation occurred in 2011. NCAA Division I Bylaw 19.5.11-(b) permits the inclusion of these two violations in the notice of allegations because they involved a pattern of willful violations on the part of McGee, which began before but continued into the four-year period (August 2011 through August 2015).

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, that he declined, in the form of a sex act with a female adult entertainer.
[NCAA Bylaw 13.2.1 (

c. During then men's basketball prospective student-athlete's
unofficial visit to the institution, McGee arranged for
and/or provided at least \$165 in impermissible inducements at Minardi
in the form of at least \$40 in cash and females performing a striptease show (\$125).
[NCAA Bylaw 13.2.1 (]

d. During the McGee arranged for and/or provided then men's
basketball student-athlete at least \$100 in extra benefits at Minardi in the
form of females performing a striptease show. [NCAA Bylaw 16.11.2.1 (

e. During then men's basketball prospective student-athlete's
unofficial and official paid visits to the institution,
McGee arranged for and/or provided at least \$335 in impermissible inducements
at Minardi in the form of \$25 in cash, females performing two striptease shows
(\$310) and an \$80 offer to that he declined, in the form of a sex act with a
female adult entertainer. [NCAA Bylaw 13.2.1 (and]

f. During then men's basketball prospective student-athlete's
official paid visit to the institution, McGee arranged for and/or
provided at least \$480 in impermissible inducements at Minardi in the form of
at least \$100 in cash, females performing a striptease show (\$140) and sex act (\$240).
[NCAA Bylaw 13.2.1 (]

g. From the academic year through the semester, McGee arranged
for and/or provided at least \$205 in extra benefits at Minardi to then men's basketball
student-athlete in the form of females performing at least one striptease
show (\$125) and sex act (\$80). [NCAA Bylaw 16.11.2.1 (and]

h. During then men's basketball prospective student-athlete's
unofficial visit to the institution, McGee arranged for and/or
provided s guardian and nonscholastic basketball
coach, at least a \$120 impermissible inducement at a Louisville hotel in the form of a
sex act with a female escort. [NCAA Bylaw 13.2.1 (;]

i. During then men's basketball prospective student-athletes
and official paid visit to the institution,
McGee arranged for and/or provided at least \$660 in impermissible inducements at
Minardi in the form of \$200 in cash to , females performing a striptease show
(\$300) and sex acts (\$160) with . [NCAA Bylaw 13.2.1 (

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- j. During then men's basketball prospective student-athlete _____ official paid visit to the institution, McGee arranged for and/or provided _____ and then men's basketball student-athlete _____ at least a \$350 impermissible inducement and extra benefit at Minardi in the form of females performing a striptease show. [NCAA Bylaws 13.2.1 and 16.11.2.1 _____]
- k. During then men's basketball prospective student-athlete _____ unofficial visit to the institution, McGee arranged for and/or provided _____ at least \$100 in impermissible inducements at Minardi in the form of a female performing sex acts. [NCAA Bylaw 13.2.1 _____]
- l. During then men's basketball prospective student-athlete _____ unofficial visit to the institution, McGee arranged for and/or provided _____ and _____, at least \$450 in impermissible inducements at Minardi in the form of females providing a striptease show (\$250) and sex acts (\$200). [NCAA Bylaw 13.2.1 _____]
- m. During then men's basketball prospective student-athletes _____ and _____ official paid visit to the institution, McGee arranged for and/or provided _____ and _____ at least \$330 in impermissible inducements at Minardi in the form of females performing a striptease show (\$250) with _____ and _____ and sex acts (\$80) with _____ [NCAA Bylaw 13.2.1 _____]
- n. During then men's basketball prospective student-athletes _____) unofficial and _____) official paid visits to the institution in _____ McGee arranged for and/or provided at least \$410 in impermissible inducements at Minardi in the form of females performing a striptease show (\$250) and a sex act (\$80) with _____, and a female performing a sex act with _____ (\$80). [NCAA Bylaw 13.2.1 _____]
- o. _____, McGee arranged for and/or provided at least \$400 in impermissible inducements at a Louisville hotel to _____ and _____ nonscholastic basketball coach, in the form of sex acts with two female escorts. [NCAA Bylaw 13.2.1 _____]

INITIAL RESPONSE

Pitino understands he is not named in this allegation and, therefore, is not expected to respond.

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Allegation 2.

[NCAA Division I Manual Bylaws 10.01.1 and 10.1 (2010-11 through 2013-14 and 2015-16); 10.1-(c) (2010-11 through 2013-14); 10.1-(a) (2015-16); and 19.2.3 and 19.2.3.2 (2015-16)]

It is alleged that from at least December 2010 through July 2014 and in February and June 2016, Andre McGee (McGee), then men's basketball program assistant (2010-11 and 2011-12 academic years), director of basketball operations (2012-13 academic year through April 2014) and former institutional employee (April through July 2014 and February through June 2016), violated the principles of ethical conduct when he was knowingly involved in offering or providing then prospective and/or enrolled student-athletes impermissible inducements and/or extra benefits and failed to satisfy his responsibility to cooperate with the NCAA enforcement staff by refusing to furnish information relevant to an investigation of possible violations of NCAA legislation. Specifically:

- a. From at least December 2010 through July 2014, McGee knowingly offered or provided at least \$5,400 in impermissible inducements and/or extra benefits in the form of cash, adult entertainment and sex acts to at least 17 then men's basketball prospective and/or current student-athletes, two then nonscholastic men's basketball coaches and one then men's basketball prospective student-athlete's friend as detailed in Allegation No. 1. [NCAA Bylaws 10.01.1, 10.1 and 10.1-(c) (2010-11 through 2013-14)]
- b. In February and June 2016, McGee refused to participate in an interview or provide records after the enforcement staff requested him to do so during the institution and enforcement staff's investigation of the NCAA violations detailed in Allegation No. 1. [NCAA Bylaws 10.01.1, 10.1, 10.1-(a), 19.2.3 and 19.2.3.2 (2015-16)]

INITIAL RESPONSE

Pitino understands he is not named in this allegation and, therefore, is not expected to respond.

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Allegation 3.

[NCAA Division I Manual Bylaws 10.01.1, 10.1, 10.1-(a), 19.2.3 and 19.2.3.2 (2015-16 and 2016-17)]

It is alleged that from May through August 2016, Brandon Williams (Williams), a former men's basketball program assistant, violated the principles of ethical conduct when he refused to furnish information relevant to an investigation of possible violations of NCAA legislation. Specifically, Williams refused to provide telephone records after the institution and NCAA enforcement staff requested him to do so during the institution and enforcement staff's investigation of NCAA violations.

INITIAL REPOSE

Pitino understands he is not named in this allegation and, therefore, is not expected to respond.

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Allegation 4.

[NCAA Division I Manual Bylaws 11.1.2.1 (2010-11 through October 29, 2012);⁶ 11.1.1.1 (October 30, 2012, through 2013-14)]

It is alleged that from at least December 2010 through April 2014, Rick Pitino (Pitino), head men's basketball coach, violated NCAA head coach responsibility legislation, as he is presumed responsible for the violations outlined in Allegation No. 1 and did not rebut that presumption. Specifically, Pitino did not demonstrate that he monitored Andre McGee (McGee), then men's basketball program assistant (2010-11 and 2011-12 academic years) and director of basketball operations (2012-13 academic year through April 2014), in that he failed to frequently spot-check the program to uncover potential or existing compliance problems, including actively looking for and evaluating red flags, asking pointed questions and regularly soliciting honest feedback to determine if monitoring systems were functioning properly regarding McGee's activities and interactions with then men's basketball prospective and current student-athletes visiting and attending the institution.

INITIAL RESPONSE

II. Basis of Findings

Pitino and his counsel used the standard in Bylaw 32.8.8.2 to determine whether Pitino failed to monitor Andre McGee:

The committee shall base its decision on information presented to it that it determines to be credible, persuasive and of a kind on which reasonably prudent persons rely in the conduct of serious affairs.

This is a high standard.

As explained by Professor Josephine Potuto, a former chair of the Division I COI, the standard is equivalent to the **clear and convincing evidence standard** used in some civil lawsuits. Potuto explained the standard on May 10, 2011, at NCAA headquarters during the "NCAA Enforcement Experience," a presentation sponsored by the NCAA to explain the NCAA enforcement process to journalists and the public.

Thus, the COI must be persuaded by clear and convincing evidence that Pitino failed to monitor McGee.

III. The Allegation Does Not Allege that Coach Pitino Failed to Promote an Atmosphere of Compliance

The head coach control legislation (Bylaw 11.1.1) requires a head coach to: (1) Promote an atmosphere of compliance within his program; and (2) Monitor the activities of all assistant coaches and other administrators involved with the program who report, directly or indirectly, to the coach.

It is important to note that the staff has not alleged that Pitino failed to promote an atmosphere of compliance. Indeed, the record of the investigation conducted by the staff and the University shows clearly that Pitino promoted an atmosphere of compliance throughout his program.

Among other things, Pitino promoted an atmosphere of compliance within his program by:

- Meeting with his coaching staff every day during the season and regularly during the off-season to communicate his expectations that they comply with the rules and to discuss their activities to ensure they are being compliant.
- Meeting regularly with his staff and the staff from the compliance office to receive NCAA rules education. These meetings are mandatory.
- Meeting and communicating with Tom Jurich about his and the University's expectations for the men's basketball program, including academic success and NCAA rules compliance.
- Promoting and fostering a 24/7 open line of communication policy between his staff and the compliance staff to regularly seek and receive advice on compliance issues as they arise.
- Ensuring that his staff knows that he expects them to promptly report to him and/or the compliance staff any potential violations of NCAA legislation. Pitino understands and communicates to his staff that it is a good thing to promptly report inadvertent violations of NCAA rules.
- Making clear to all new hires that he will fire them immediately for any deliberate or intentional violation of NCAA legislation.⁷
- Meeting regularly with his student-athletes to communicate not only his expectations that they comply with NCAA rules and stay away from third-parties such as boosters, agents and runners, but also to teach them life lessons about the importance of treating women with respect and avoiding drugs and alcohol.

Pitino did everything that the NCAA and the University expected of him to promote an atmosphere of compliance within his program. Despite Pitino's efforts, one individual – Andre McGee – disobeyed Pitino and violated his trust.

⁷ Pitino tells every new hire, "If you knowingly break a rule, you will not be part of this staff the next day."

IV. Summary Response to the Staff's Allegation that Pitino Failed to Monitor Andre McGee

The staff has alleged only that Pitino failed to adequately monitor McGee's activities and interactions with prospective student-athletes visiting and current student-athletes attending the institution.

While this is a serious allegation, and Pitino takes it very seriously, the allegation is narrow in its scope. The staff alleged only that Pitino failed to monitor only one individual on his staff, McGee, by failing to frequently spot-check the program to uncover potential or existing compliance problems in that:

- 1) Pitino allegedly failed to actively look for and evaluate red flags; and
- 2) Pitino allegedly did not ask pointed questions and regularly solicit honest feedback to determine if monitoring systems were functioning properly regarding McGee's activities and interactions with the then men's prospective and current student-athletes visiting and attending the institution.

Pitino vehemently disagrees with the staff's allegation.

First, Pitino absolutely did actively look for red flags, but there never were any red flags giving any signs or even a hint of McGee's illicit activities. The enforcement staff and the University conducted an exhaustive investigation lasting over a year. The investigation did not reveal or uncover even a single red flag. Not one.

In fact, not only did Pitino never see or hear of a single red flag giving warning of McGee's illicit activities, but the University housing staff and security guards - who were trained and paid to monitor the dorm and look for signs of illicit activity - also never saw a single red flag of McGee's illicit activity. If the people who live in the dorm and people who are trained and paid to watch the dorm never saw a red flag, it is unreasonable to allege that the head coach should have seen red flags.

Second, as Pitino and others told the investigators, Pitino did ask questions of his staff and of student-athletes and prospective student-athletes and their families who were visiting the institution. No one - not a single person - ever told Pitino that McGee ever did anything inappropriate or questionable, much less that he was hosting stripper parties in the dorm.

In fact, even when confronted with the details of the activities, McGee and some of the young men who were involved in the parties lied to experienced and trained NCAA investigators. Thus, not only is the allegation factually inaccurate - Pitino did ask questions - it is also a red herring. The notion that Pitino could have ferreted out the illicit activities by asking "pointed questions" and soliciting "honest feedback" is belied by the fact that McGee and others denied and lied to the investigators even when confronted with the details of the illicit activities. Those who were involved knew that the activities were illicit and they certainly were not going to tell Pitino.

V. Head Coaches' Duty to Monitor

Bylaw 11.1.1 states:

11.1.1.1 Responsibility of Head Coach. An institution's head coach is presumed to be responsible for the actions of all institutional staff members who report, directly or indirectly, to the head coach. An institution's head coach shall promote an atmosphere of compliance within his or her program and shall monitor the activities of all institutional staff members involved with the program who report, directly or indirectly, to the coach.

The presumption of responsibility can be rebutted by the head coach showing that he promoted an atmosphere of compliance and monitored his staff. As noted above, the staff concluded that Pitino promoted an atmosphere of compliance, charging Pitino only with failing to adequately monitor McGee.

The duty of a head coach to monitor his program has been defined and explained in enforcement staff guidelines and COI case precedent. The staff has provided the following guidance on the duty to monitor:

Action Plan-Monitoring

A head coach should also demonstrate a commitment to compliance through monitoring his staff's activities in consultation with the compliance staff. The outline below was created to assist a head coach with managing his monitoring responsibilities.

In consultation with the compliance director, create procedures to ensure your staff is monitoring your program's rules compliance. Suggested procedures:

- o Assign a staff liaison(s) to the compliance staff.
 - o Assign staff members to monitor specific areas of compliance (e.g., recruiting contacts; initial eligibility; amateurism; telephone contacts).
 - o Regularly evaluate staff members to ensure their areas of compliance are monitored and that all responsibilities are executed in a timely manner.
 - o Ensure that the entire program has adequate and on-going compliance training and that there is a plan in place for discussion of important information.
 - o Determine reporting lines for resolving actual and suspected NCAA rules issues.
 - o Determine reporting lines to alert compliance staff of issues involving prospective student-athletes and current student-athletes (e.g., agents; initial eligibility; pre-enrollment amateurism, etc.).
 - ☐ Regularly solicit feedback from your staff members concerning their areas of compliance and the program's overall compliance environment in order to ensure that the monitoring systems are functioning properly.
 - ☐ Ensure that the program immediately notifies the compliance staff when concerns or red flags occur related to suspected NCAA rules violations. A lack of immediate action by the head coach will be a significant factor in determining whether the head coach met the obligations imposed by Bylaw 11.1.2.1.
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See http://fs.ncaa.org/Docs/AMA/legislative_actions_issues/LSDBi/HeadCoachControl.pdf at pp. 2-3.

Pitino followed every single one of the staff's recommendations. He followed the guidance to assign a staff member to monitor specific areas of compliance by assigning McGee – a former student-athlete and team co-captain - to monitor the activities in the dorm. Pitino regularly solicited feedback from McGee, his assistant coaches, student-athletes and prospects making recruiting visits to campus about activities in the dorm. Pitino even visited the dorm regularly during the season.

Pitino went above and beyond the monitoring requirements of Bylaw 11.1.1. He has directed his staff to regularly monitor his student-athletes' social networking accounts to identify red flags for inappropriate or questionable activities or third-party relationships. That monitoring is above and beyond anything expected by the NCAA.

Despite these monitoring activities, McGee was able to conceal his illicit activities not only from Pitino, but also from the full-time resident assistant (RA), the security guards and several of the residents of the dorm.

There never was a single red flag or sign that did alert or should have alerted Pitino to the illicit activities. Under those circumstances, Pitino's monitoring certainly met the guidelines of the enforcement staff.

The COI has stated that head coaches who set a proper tone of compliance and monitor cannot be charged with failing to monitor a staff member who secretly violates the rules.

A head coach has special obligation to establish a spirit of compliance among the entire team, including assistant coaches, other staff and student-athletes. **The head coach must generally observe the activities of assistant coaches and staff to determine if they are acting in compliance with NCAA rules.** Too often, when assistant coaches are involved in a web of serious violations, head coaches profess ignorance, saying that they were too busy to know what was occurring and that they trusted their assistants. Such a failure by head coaches to control their teams, alone or with the assistance of a staff member with compliance responsibilities, is a lack of institutional control.

This is not to imply that every violation by an assistant coach involves a lack of institutional control. **If the head coach sets a proper tone of compliance and monitors the activities of all assistant coaches in the sport, the head coach cannot be charged with the secretive activities of an assistant bent on violating NCAA rules.**

See Principles of Institutional Control as Prepared by the NCAA Committee of Infractions at pp. 3-4 (emphasis added).

Pitino did more than "generally observe the activities" of his assistant coaches and staff. He asked questions, solicited feedback and looked for red flags, but there never was a single red flag to raise suspicion. He even actively monitored his student-athletes' social networking accounts.

While the staff has not identified a single red flag or explained what "pointed questions" Pitino should have been asking to solicit "honest feedback," the allegation suggests that the staff believes that despite the absence of red flags, Pitino had an obligation to regularly conduct mini-investigations to ferret out

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McGee's illicit activities, which were designed and intended to be kept secret and hidden. No such obligation exists for head coaches.

In the University of Connecticut men's basketball case, the COI explained a head coach's duty to monitor:

Bylaw 11.1.2.1 confers a duty upon head coaches to monitor their programs and establish an atmosphere for compliance. The bylaw was enacted to hold head coaches responsible for violations and establishes a presumption that they are aware of the activities of those working under them in their programs. **While it does not require them to investigate possible wrongdoing, it does require them to recognize potential problems, address them, and report them to the athletics administration.**

See University of Connecticut Public Infractions Report (February 2011) at pp. 18-19 (emphasis added).

Head coaches are required to have reasonable monitoring systems; to watch and observe and ask appropriate questions based on the likelihood that a certain situation holds potential for noncompliance or violations.

Pitino did all of those things. He did everything he reasonably could be expected to do to monitor McGee.

Significantly, the University of Louisville and Tom Jurich have told Pitino that they have carefully reviewed and analyzed his monitoring of the dorm and of McGee, and the University has concluded that **Pitino exceeded the University's expectations for monitoring the men's basketball program**. Thus, if there is something that the enforcement staff believes Pitino should have been doing but was not, one of the most experienced and respected athletic directors in the country disagrees.

Never in his worst nightmare could Pitino have imagined that his trusted former team co-captain would run strippers through the dorm that Pitino built in memory of his best friend and brother-in-law. It was not imaginable to Pitino.

VI. McGee's Duties

McGee was a GA during the 2010-11 and 2011-12 academic years and was promoted to director of basketball operations (DOBO) during the 2012-13 and 2013-14 academic years. As a GA, McGee was tasked with duties such as checking to ensure student-athletes were attending class, arranging logistics for prospects during recruiting visits and giving campus tours, and because he lived in the dorm, to keep an eye on what happens in the dorm and make sure the student-athletes do what they are supposed to do.

That system worked very well for Pitino since the dorm opened in 2003. And McGee, as a four-year student-athlete under Pitino, a team captain and a very good academic student-athlete, was very well-suited for the position. McGee knew Pitino's expectations for the program and his expectations for student-athlete behavior and conduct. McGee had lived in the dorm for four years and knew the dorm rules and expectations of the University for dorm residents. It would be difficult to imagine a candidate better qualified for the GA position than McGee.

As DOBO, McGee took on more responsibilities for completing compliance paperwork and team administrative responsibilities, and he continued to have responsibility for keeping an eye on the dorm.

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McGee was the staff liaison to the RA in the dorm. The Housing Department and RA had primary responsibility for ensuring the safety and appropriate conduct of dorm residents. The RA regularly communicated any issues to the GA so that the men's basketball staff was kept informed of any problems.

Other than giving campus tours, transporting prospects around campus or to restaurants or the airport during recruiting visits, speaking to prospects about his experience as a student-athlete under Pitino and generally keeping an eye on the dorm, McGee had no recruiting duties. Pitino relies on himself and his assistant coaches to recruit prospects to the University. McGee was little more than a campus tour guide and an eye in the dorm.

VII. Detailed Response to the Allegation that Pitino Did Not Monitor

A. Procedural Objection – The Enforcement Staff Willfully Failed and Refused to Provide Pitino and His Counsel with the Details of the Allegation

The staff has alleged that Pitino:

“[F]ailed to frequently spot-check the program to uncover potential or existing compliance problems, including actively looking for and evaluating red flags, asking pointed questions and regularly soliciting honest feedback to determine if monitoring systems were functioning properly regarding McGee's activities and interactions with then men's basketball prospective and current student-athletes visiting and attending the institution.”

After conducting a thorough review of the Factual Information identified by the staff which supposedly supports the allegation, Pitino and his counsel have been unable to identify:

- Any spot-checks the staff believes Pitino should have been conducting, but was not.
- A single red flag that actually gave or should have given Pitino warning or notice of McGee's illicit activities.
- Pointed questions that the staff believes Pitino should have been asking, but was not.
- Ways that the staff believes Pitino should have been soliciting honest feedback, but was not.

Bylaw 19.7.1 states that an institution and involved individuals “**shall be given notice...of the details of the allegations.**”

On December 20, 2016, Pitino's counsel sent the following email to the staff asking for the details of the allegation against Pitino:

Nate,

I hope you're well.

I'm writing to ask for clarification of the allegation that Coach Pitino failed to monitor Andre McGee. Specifically, it would help Coach Pitino and me to respond to the allegation if you would tell us:

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1. Specifically what spot-checks the staff believes Coach Pitino should have been doing to uncover existing or potential compliance problems;
2. Specifically what red flags the staff believes existed, but that Coach Pitino failed to look for and evaluate;
3. Specifically what pointed questions Coach Pitino should have been asking and of whom; and;
4. Specifically how Coach Pitino should have been soliciting honest feedback to determine if monitoring systems were functioning properly.

Answers to these questions will help Coach Pitino respond fully to the staff's allegation and make sure that the COI has complete information to adjudicate the allegation.

Also, if there are key interviews the staff intends to use to support its allegation, we would appreciate you identifying those interviews to us.

We appreciate your continuing cooperation.

Scott

The staff responded the same day, but did not provide Pitino and his counsel with any clarification of or insight to the staff's allegation that Pitino failed to monitor.

Scott,

Thank you for your message. The staff feels as though the allegation speaks for itself and will leave it up to you and Coach Pitino to respond as you see fit.

Please note that the allegation states your client failed to frequently spot check the program to uncover potential or existing compliance problems, including:

- Looking for and evaluating red flags;
- Asking pointed questions; and
- Regularly soliciting honest feedback to determine if monitoring systems were functioning properly.

If you and your client feel as though he did do these types of things in relation to Andre McGee's activities and interactions with then men's basketball prospective and current student-athletes visiting and attending the institution, you may want to inform the Committee of these activities in your response.

Pursuant to NCAA Bylaws 19.5.9 and 19.7.1, the information that the staff has relied on in support of Allegation No. 4 and the NOA's other three allegations is referenced in the NOA's FI chart and/or present in the secure web file, which the staff provided you access to on or about October 17.

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Regards,
Nate

The staff has failed and refused to give Pitino and his counsel the details of the allegation as required by Bylaw 19.7.1. The staff had over a year to conduct its investigation and it interviewed dozens of witnesses. The staff has alleged that Pitino committed a Level I violation - which carries very severe penalties, including a multi-game suspension - by failing to:

- Frequently spot-check the program
- Look for and evaluate red flags
- Ask pointed questions
- Solicit honest feedback

But the staff has not explained in any detail what spot-checks Pitino should have been conducting, what red flags he missed, what pointed questions he should have asked and of whom, and how he should have solicited honest feedback.

Pitino and his counsel should not have to guess at the staff's theory of how Pitino allegedly failed to monitor McGee; the staff is supposed to explain its allegation sufficiently so that Pitino can respond directly and squarely to the allegation so the COI has the benefit of full information.

Because the staff willfully refused to provide Pitino and his counsel with the details of the allegation, Pitino respectfully requests that the COI preclude the staff from including those details in its Reply to Pitino's Response to the Notice of Allegations and be precluded and prohibited from attempting to add those details to the record at the hearing.

If the staff willfully refuses to tell Pitino and his counsel the details of the allegation so that Pitino may respond fully, then the staff should not be permitted to later add those details to the record.

B. Pitino Reasonably Believed the Monitoring System for Minardi Hall Was Working Effectively and As Intended

The staff's allegation is factually incorrect because Pitino did spot-check the program, ask questions and solicit feedback to determine if monitoring systems for the dorm were functioning properly. In fact, Pitino, his staff, student-athletes and prospects all told the investigators how Pitino monitored his program generally and how he monitored prospects' recruiting visits to campus.

While the staff has not provided Pitino and his counsel with even a single example of what the staff believes Pitino should have done differently, the staff's allegation seems to focus on the frequency of Pitino's monitoring as the issue, e.g., the staff has alleged that Pitino "failed to **frequently** spot-check the program," and that Pitino "failed to...**regularly** solicit honest feedback."

Thus, the staff's complaint seems to be not that Pitino failed to monitor McGee and the dorm - Pitino did monitor McGee - but that he did not monitor as frequently and regularly as the staff believes he should have monitored.

Pitino strongly disagrees.

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In determining if Pitino's monitoring was sufficient, the COI should take a close look at the overall environment of the dorm and the likelihood that major NCAA violations, and specifically those that occurred in this case, would occur in the dorm. The COI also should look at Pitino's overall experience with the monitoring system that had been in place since 2003 when the dorm opened.

That analysis will lead any objective observer to conclude: (1) Neither Pitino nor anyone else at the University ever had any reason to think that McGee might bring strippers to the dorm to entertain visiting recruits; and (2) Pitino had every reason to believe that the system for monitoring Minardi Hall was working effectively and as intended.

As the NCAA has made clear, the level of monitoring expected of member institutions and head coaches is dependent in large part on the likelihood that any given situation may result in violations. Situations ripe for violations require more monitoring, situations which present a low likelihood of violations require less monitoring.

In addition, heightened monitoring is required when red flags are present, of which there were none in this case.

Contrary to the staff's suggestion that the atmosphere at Minardi Hall required Pitino to conduct heightened monitoring, conduct frequent spot-checks, ask pointed questions and regularly solicit honest feedback to ensure that the monitoring system was functioning, the opposite is true.

Pitino had every reason to think the monitoring system at Minardi Hall was working because occasionally he received reports of misconduct or other questionable activities in the dorm. Among other things, over the years Pitino has been told of underage drinking in the dorm, marijuana use, student-athletes riding a hover board in the hallway and of a young man who kept trying to keep a dog in his room.

On a few occasions, Pitino has had to intervene when he learned that a student-athlete was having a girlfriend spend too many consecutive nights in the dorm or a student-athlete had a friend stay in the dorm for an extended period of time.

Once, Pitino was told that a visiting recruit stole basketball shoes from a student manager.

Pitino was paying attention to the dorm and he responded promptly and appropriately when he learned of misconduct or questionable behavior. The enforcement staff must agree that Pitino paid attention to Minardi Hall and when he was alerted to improper conduct, he responded.

Pitino also regularly visited the dorm during the season. He walked by the RA on duty at the front desk.

Thus, Pitino made himself available in-person for the RA to communicate any concerns or issues. The RA never expressed any concerns to Pitino, because he never had any concerns to report to Pitino.

But the RA did inform Pitino's staff in real time if any serious matters arose, and Pitino's staff always promptly informed him of the issues. In other words, Pitino was paying attention, and his staff and the Housing staff knew that Pitino expected to be informed promptly of any misconduct in the dorm.

Thus, Pitino reasonably believed that the system for monitoring Minardi Hall was working effectively and as intended. If Pitino had never heard of any misconduct in the dorm, that would have raised a red flag.

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Young men living away from home for the first time and transitioning to adulthood will occasionally break rules. That is expected.

But Pitino occasionally was told of dorm shenanigans. And when he learned that one of his student-athletes broke the rules of the Housing Department, he imposed appropriate discipline. He cracked the whip.

Pitino reasonably believed that the people who were trained and paid to watch the dorm were keeping him informed of any significant misconduct involving his staff or student-athletes. Pitino had absolutely no reason whatsoever to think that McGee was running strippers through the dorm and that the people who were paid to watch the dorm did not know about it.

C. Pitino Did Spot-Check, Look for Red Flags and Ask Questions

Pitino has a well-earned reputation as a hard worker. During the season, he starts every day meeting with his coaching staff at 7 a.m. and the work day does not end until well after the sun sets. He discusses practice planning, game planning and recruiting with his staff, but he also speaks regularly to his staff about compliance issues.

And Pitino solicits feedback about anything going on in the program that should be brought to his attention. He expects his coaches and staff to immediately report any serious issues or potential problems to him. And he specifically communicated his expectations concerning Minardi Hall.

Pitino also regularly met with his team and spoke to them about his expectations for their personal conduct. Many of the student-athletes told the investigators that Pitino spoke to them about life lessons and gave them fatherly advice, including telling them to treat women respectfully.

Pitino also emphasizes the importance of academic success to his team. Coach Pitino's teams regularly lead the conference in academic success, and receive national accolades and awards for academic excellence. Coach Pitino works hard to instill values of academic success in his student-athletes so they will be prepared for a successful life after basketball. A summary of Coach Pitino's teams' academic success and achievements is attached as Exhibit 1.

Regarding his monitoring of prospects' visits to the University, Pitino told the investigators that he warns the student hosts about keeping visiting recruits safe and out of trouble, and he also asks the recruits at breakfast how they spent the previous evening when they were with the student hosts.

Leffler: It appears as though, based on the information we received that [a visiting prospect] spent some time in Minardi. Did you ever ask about his time that he spent in Minardi?

Pitino: I ask every single recruit, "Did you have a good time? What did you do? Which players did you get along with? Which players did you hang out with?" Because we try to encourage, even though the host is responsible, he gets the money and he entertains, we try to get more involved than the host, so they interact with more, not just with a player who's not playing his position, we want him to meet everybody on the team.

See Pitino Tr. at p. 33 (emphasis added).

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Pitino told the investigators he asks the same thing of all visiting prospects: "Did you have a good time? What'd you think of the dorm? What did you think of your teammates?"

Leffler: OK, do you specifically ask the prospects what did you do last night in the dorm?

Pitino: Sometimes, I will say, "Did you have fun last night? Did you go to a party? Did you stay in?" But generally, more often than not, I'll ask the host, "What did you do last night?"

See Pitino Tr. at p. 40 (emphasis added).

Leffler: Between the hours of 10 p.m. and 6 a.m. when the coaches aren't necessarily there at Minardi Hall, was that when Andre, when he was working there in the capacity as a GA and the Ops person, was he responsible for monitoring those prospects when they were in Minardi?

Pitino: Well, obviously he was doing the wrong things. He was, he's supposed to be responsible for noise control, making sure they get up on time. He's not responsible, the host is supposed to be the one that's responsible.

Leffler: So the GAs and the Ops person...

Pitino: GAs are not supposed to go out with (the recruits), not supposed to do those things.

Leffler: OK. When the prospects are in Minardi, the GA is not supposed to, doesn't have a responsibility for making sure that the prospect and what they're doing are within NCAA rules?

Pitino: Yeah, he's to know what's going on in there, and we ask the next day when we have breakfast, "What did you do and where did you go?" You know, I tell the hosts constantly, "Stay away from Fourth Street Live. Stay away from there. Stay out of bars. No underage drinking. Nothing like that. Stay away from trouble."

I tell them exactly what I want them to stay away from. Not in a million years would or could I ever fathom in my wildest nightmare anything like this.

See Pitino Tr. at p. 47 (emphasis added).

Pitino told the investigators that he and his staff also call prospects' parents after the young men return home from a recruiting visit to confirm that they returned home safely and to ask how the young men enjoyed their visit to the University. Never once did parents of a prospect ever tell Pitino or his staff that McGee had provided inappropriate or questionable entertainment to their son.

Several of the young men who made recruiting visits to the University confirmed to the investigators that Pitino and/or his assistant coaches asked them about their activities during the night when the coaches were not with them, but not a single prospect told Pitino or his assistant coaches about the adult entertainment they received in the dorm. Not one.

Several of the student-athletes told investigators that there was no way that Pitino knew about the illicit activities in the dorm. In fact, many of the young men who knew about the illicit activities explained that they deliberately did not tell Pitino or his assistant coaches about the strip shows

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because they knew Pitino would be very upset and would impose serious consequences. One young man said he did not tell Pitino about the illicit activities because he wanted to protect McGee from getting in trouble with the NCAA and possibly going to jail.

In determining whether Pitino should have uncovered McGee's illicit activities, it is very important to know that some of the young men did not even tell the truth to the NCAA investigators when they initially were interviewed and confronted with the details of their involvement with the strip shows. In some cases, trained NCAA investigators, armed with the details of the illicit activities, struggled to get those who were involved to admit their involvement. Yet those same investigators allege that Pitino could have uncovered the illicit activities if he had only asked "pointed questions" and "solicited honest feedback."

To persuade some of the young men to tell them about the strip shows, the enforcement staff requested and obtained limited immunity from the Chairperson of the COI. Limited immunity is an investigative tool used by the enforcement staff to elicit truthful information from student-athletes who may have been involved in NCAA violations which could jeopardize their eligibility to compete. In exchange for truthful information, the enforcement staff agrees not to put the student-athlete at-risk for losing his eligibility.

The staff told the Chairperson of the COI that limited immunity was necessary to facilitate obtaining full cooperation and truthful information. Thus, trained NCAA investigators, armed with the details from the book, photos and Ms. Powell's journal, believed they needed to give the young men limited immunity to get them to tell the truth.

Pitino, of course, had not even an inkling that strip shows were going on in the dorm, much less all of the details of the illicit activities or the ability to give the student-athletes immunity from losing their eligibility. Yet according to the enforcement staff, Pitino would have uncovered the secret and deliberately concealed activities if he had only asked some "pointed questions" and "solicited honest feedback."

1. Prospect's Declaration Form

The Prospect's Declaration Form is one of the ways Pitino monitored prospects' visits to campus. He reviewed and signed every form himself to attest that he had reviewed the form and that based on the prospect's attestation, no NCAA violations had occurred during the prospect's visit.

The Form requires the prospect to confirm in writing that he did not engage in a variety of activities which violate NCAA recruiting legislation, including not accepting cash for entertainment purposes. A copy of the Form is attached as Exhibit 2.

However, the Form, which is one of the ways Pitino monitored prospects' visits to campus, did not help in uncovering the illicit activity because prospects did not complete the form truthfully; they attested that they had not received cash for entertainment purposes when, in fact, many of the prospects were given cash by McGee to tip the strippers.

Thus, contrary to the staff's allegation, the prospects were asked "pointed questions." The prospects were specifically asked whether they had received cash for entertainment purposes and they did not answer truthfully.

2. Pitino and His Staff Monitored the Student-Athletes' Social Networking Sites

Another way that Pitino monitored the activities of his student-athletes was by monitoring their social networking accounts. Pitino has his assistant coaches and DOBO regular monitor his student-athletes' social networking accounts. They also check the social networking sites of the prospects they recruit.

Pitino told the investigators, "We don't allow Twitter, which is a big blessing for us. But we're on their Facebook, we know what they're doing. We're on their Instagrams, we know what they're doing. We talk about any problems." See Pitino Tr. at p. 11.

Pitino and his staff looked specifically for any red flags on the young men's social networking accounts.

By monitoring student-athletes' social networking sites, Pitino and his staff went above and beyond and exceeded the NCAA's expectations for monitoring.

In the University of North Carolina, Chapel Hill Public Infractions Report, the COI stated:

The committee recognizes that social networking sites are a preferred method of communication in present society, particularly so among college-age individuals. **While we do not impose an absolute duty upon member institutions to regularly monitor such sites, the duty to do so may arise as part of an institution's heightened awareness when it has or should have a reasonable suspicion of rules violations.** If the membership desires that the duty to monitor social networking sites extend further than we state here, the matter is best dealt with through NCAA legislation.

See University of North Carolina, Chapel Hill Public Infractions Report (March 12, 2012) at p. 13 (emphasis added).

Pitino does not wait to monitor social networking sites until he has a "heightened awareness" of a risk for noncompliance or a "suspicion of rules violations;" he has his staff regularly monitor his team's social media accounts. And not once – not one single time – did his staff ever see any illicit activity posted on the young men's social networking accounts or any red flags.

Set forth below is what some of Pitino's staff members, including McGee, the student-athletes and prospects reported to investigators about Pitino's monitoring of the program and McGee's illicit activities.

3. Andre McGee

McGee refused to cooperate with the enforcement staff in this investigation, but he did interview with the staff in February 2014 as part of a separate inquiry of the operation of Minardi Hall.⁸ In his 2014 interview with the staff:

⁸ It is worth noting that McGee had arranged a stripper party for _____ just a few weeks before his interview with the enforcement staff. See Allegation 1(n).

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- McGee said he regularly attended rules education meetings with the compliance staff and took the NCAA recruiting tests. McGee said of the men's basketball staff, he interacts with compliance the most.
- McGee said there "definitely" is an atmosphere of compliance in the men's basketball program.
- McGee said he has a good understanding of NCAA rules.
- McGee said Coach Pitino built Billy Minardi Hall to honor his brother-in-law and that it is a privilege to live in the dorm.

See McGee Tr. (February 28, 2014) at pp. 3-4.

The investigators also asked McGee to describe his duties in Minardi Hall.

Huber: Can you go a little bit into what your responsibilities are with Minardi Hall now as the director of basketball operations?

McGee: Well, my responsibility is really just kind of a watchdog for our players, you know, to make sure, you know, to make sure they're not doing anything they're not supposed to be doing. That's probably my primary responsibility as far as the dorm, and making sure that, you know, they are complying with everything housing wants them to do.

Id. at p. 5 (emphasis added).

Thus, McGee told the investigators that he was well-educated on NCAA rules, he knew the rules, that Coach Pitino promoted an atmosphere of compliance, and that he was supposed to be "a watchdog" in the dorm to make sure the student-athletes did not do anything that they were not supposed to do. McGee is the embodiment of the assistant bent on secretly violating NCAA rules.

4. David Padgett

David Padgett was a member of the basketball team from 2004-08 and a teammate of McGee. Padgett replaced McGee as director of basketball operations in May 2014 and he was promoted to assistant coach in July 2016. Padgett explained Pitino's management style to the investigators and how Pitino is constantly asking questions.

You know, staff-wise, [Coach Pitino] is always wanting to know what's going on. I mean, he's texting or calling us...on a daily basis, even if he's out of town..."Is there anything going on? How is everybody doing? How are the players doing?" You know, all that kind of stuff. So, he definitely wants to know what's going on...

See Padgett Tr. at p. 8 (emphasis added).

5. Mike Balado

Mike Balado has been an assistant coach at the University since April 2013. Here is what he said about Pitino's instructions to the staff for monitoring the dorm:

Leffler: Have you ever heard [Coach Pitino] address his expectation that [GAs] are supposed to monitor Minardi for NCAA rules compliance?

Balado: Yes, he has said that with me present.

Leffler: Can you tell me what he said?

Balado: You know, "You guys are living there. Make sure that [the student-athletes] are not getting into trouble, make sure that there is no...suspicious things going on. You know, suspicious people walking in. If you have a question of who somebody is, make sure you ask them."

Balado also told the investigators that with regard to monitoring Minardi, he heard Pitino say, "If you see something suspicious going on, make sure you find out what's going on exactly and make sure you let me know."

Balado also reported that Pitino asks questions about what is going on in the dorm. Balado said Pitino asked if everything is OK with the dorm; "I haven't been over to the dorm lately, is everything alright?"

Balado said that when McGee was on staff and even now Pitino will ask, "Is everything okay with the dorm? Is anything going on in the dorms that we need to know about?"

See Balado Tr. at pp. 29-32 (emphasis added).

Balado was asked about Pitino's knowledge of what goes on in the dorm.

Leffler: Does [Coach Pitino] know what's going on in Minardi...based on your opinion and based on your opinion of the interactions you've witnessed...does Coach appear to be knowledgeable about what is going on in Minardi?

Balado: I don't think he's knowledgeable about everything, no. I think he's just generally...or what people tell him or what he sees when he goes over there. But every single thing that happens around there? No, I don't think he's knowledgeable of everything. No.

Leffler: Why do you say that?

Balado: Because we don't spend every waking minute at the building ourselves. We only go by for what we see ---

Balado's Attorney: Because we're sitting here today.

Balado: ---You know, I mean, well, for what we see. We go over there and watch film. We look around. I mean, that's what we know. You know, somebody that's monitoring tells us. But other than that, no, I can't say that he knows...not about everything.

See Balado Tr. at p. 33 (emphasis added).

6. Kenny Johnson

Kenny Johnson has been the associate head basketball coach since April 2014. He told investigators:

“You drop [a visiting prospect] off at a particular moment at night...after dinner is over, and then you pick them back up...the following morning for breakfast. And you ask what their activities were and hopefully you’re getting truthful answers as far as what they’ve done. And, you know, unless there’s any reason that otherwise, you know, comes up not to believe them, then you kind of go with what they say.”

See Johnson Tr. at p. 13 (emphasis added).

Johnson added that although he knows the graduate assistant is at the dorm and is supposed to be generally monitoring the prospects’ visits, he (Johnson) sometimes calls the dorm during the night to make sure the prospects are where they are supposed to be and are safe.⁹

7. Kevin Keatts

Kevin Keatts was an assistant coach at the University from May 2011 to April 2014. Keatts currently is a head coach at another NCAA DI institution.

Keatts said Pitino or the other assistant coaches asked McGee or the student-athletes about the prospects’ overnight visits and did they think the young men enjoyed their visit to the University. **Keatts said there was never one red flag in his communications with McGee or that was ever reported to him.** See Keatts Tr. at pp. 30, 37.

8. _____

_____ was a member of the team from _____

Leffler: Describe for us how Coach Pitino ran the program when you played for him.

Coach was strict as hell. Like, Coach was strict. He issued curfews. We had to get up early a lot. And he preached...he preached ego, humility. He preached a lot of stuff and he was honest with his stuff, too, way older stuff that had gone on. So it wasn’t like he was trying to be hypocritical and stuff because he told us everything that he did and how he embarrassed his family and so on. So he never wanted the same for any of us.

So I know for a fact that man ain’t have a clue about what was going on because Minardi was real close to him. Even when something would break in the dorm, he would bug out. Like if a cup dropped or a painting was crooked, he would get upset.

And he was always trying to renovate Minardi. “We need new computers” or “We need this.” He was always trying to renovate or fix something up there because he cared about Minardi Hall a lot, so he wouldn’t let stuff like that happen.

⁹ The investigation revealed some late night calls between assistant coaches and McGee or prospects on visits, thus corroborating Johnson’s statement that assistant coaches sometimes called McGee or the prospects to check in on them. Thus, even real-time monitoring via cell phone did not reveal the illicit activities in the dorm.

¹⁰ This is the same period covered by the underlying violations.

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Once [Pitino] found that shit out, I got in so much trouble...**So if he finds something out, you best believe it's going to be deep consequences.** I was just using it because it was convenient, but he thought I was using it just to get over because the dorm was broke and because it was close to where my building for class was; that's how he took it and I was up all week running.

See Tr. at p. 36-37 (emphasis added).

also told the investigators what he believes Pitino would have done if he had known that the strippers were coming to the dorm, but not known that they were coming to perform strip shows.

Leffler: Do you think it was a case where Coach Pitino knew these women were coming over but he just didn't know what they were coming for?

Hell, no. If he would have known that those women were coming over, that man would have did a background check and it would have been over.

See Tr. at p. 38 (emphasis added).

9.

made an official visit in ' reported that McGee arranged strippers for him, gave him cash to tip the strippers, and that he had sex with one of the strippers.

said he met with Pitino and assistant coach Keatts the next morning before he went home. The young man said Pitino and Keatts asked him whether he enjoyed his visit, but he did not tell them about the adult entertainment he received because, **"I just felt like I shouldn't tell them."**

In fact, also told the investigators that he never told anyone, including his friends back home, about the adult entertainment he received in the dorm. See Tr. at p. 45 (emphasis added).

10.

was a member of the University's basketball team during the and ' academic years reported that McGee arranged strippers for him during his Unofficial Visit to the University in , gave him cash to tip the strippers, and gave him a condom and arranged for one of the strippers to come to his room to have sex with him following the show. said he declined to have sex with the woman.

made an Official Visit in He said McGee arranged another strip show for him in the dorm, but he said McGee did not give him cash to tip the strippers on that occasion.

Following his visit, signed the University's Prospect's Declaration Form, which includes the statement, **"I have NOT received cash for entertainment purposes during the official visit."**

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Although _____ said he did not receive cash during his official visit, he did receive cash just a few months earlier during his unofficial visit. _____ told the investigators he knew it was wrong to accept the cash and, therefore, he concealed it from the University.

_____ said he knew at the time he was participating in the strip show and accepting cash from McGee to tip the dancers that he was violating NCAA rules. Although he claimed he did not read the form before signing it, he also said that he was in fear that if he reported receiving cash from McGee, **"I would've jeopardized...my chance to play...because I made a bad decision."** See _____ Tr. at p. 93 (emphasis added).

_____ is one example of a prospect who received cash from McGee and participated in an illicit strip show in the dorm, but lied to Pitino about his activities. But _____ was not the only prospect who received cash from McGee and lied on the University's Prospect Declaration Form by falsely attesting that he did not receive cash for entertainment purposes. **None of the prospects who received cash from McGee to tip the strippers completed the Prospect Declaration Form truthfully.**

11.

_____ made an Unofficial Visit in _____. McGee arranged a strip show for the young man and gave him cash to tip the strippers.

_____ said he met with Pitino the following morning and Pitino asked him how he enjoyed spending time with the student-athletes the previous evening.

The young man said he told Pitino, "I just chilled with them and played video games." He said he did not tell Pitino about the strip show because, "I just felt...it was something to keep to myself." See _____ Tr. at pp. 29-30 (emphasis added).

_____ accompanied him on the visit but spent the night in a hotel. _____ said he also never told his father about the strip show.

12.

_____ made an Unofficial Visit to the University in _____. He said McGee arranged for him to have sex with a woman in the dorm and gave him a condom.

_____ said then assistant coach Wyking Jones picked him up the next morning to take him to his parents, who accompanied him on the visit. The young man said Jones asked him about his night in the dorm. _____ said he told Jones he had a good time, but did not tell Jones that McGee had arranged for him to have sex. See _____ Tr. at pp. 44-45.

_____ also said he may have told a few friends and his brothers about the incident after he returned home, but he said, "I definitely didn't tell my parents." See _____ Tr. at p. 53 (emphasis added).

Thus, the young men concealed the illicit activities from their parents. Yet the staff believes _____ and the other young men would have told Pitino about the strip shows in the dorm if Pitino had only asked "pointed questions."

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13.

_____ made an Unofficial Visit in _____ reported that McGee arranged a strip show for him and gave him a condom to have sex with one of the strippers. _____ said he left with _____ to return home the following morning without meeting with Pitino or any of the assistant coaches. _____ **said he never told _____ nor anyone else what happened in the dorm because "it was kind of embarrassing."** See _____ Tr. at p. 25 (emphasis added).

More than one of the young men told the investigators that their experience with the strippers was uncomfortable or embarrassing. Some of the student-athletes who lived in the dorm and were aware of McGee's illicit activities told the investigators that McGee's activities were distasteful to them.

In fact, a young man _____ told the investigators that on one occasion, McGee offered to arrange for strippers to come to a hotel and entertain him ;

The young man said he told McGee not to send the strippers "because I know females that I go to high school with and we're not trying to mess with any...older girls that look disgusting, that look like they carry diseases." See _____ Tr. at p. 55 (emphasis added).

14.]

_____ made an Official Visit in _____ He said McGee arranged a strip show for him and _____ who was also visiting campus. In fact, _____ stayed in bedrooms in the dorm with a shared living space. Their bedrooms were across from each other.

_____ did not recall if McGee gave him cash to tip the strippers, but he thought there was money tossed at the strippers. _____ said McGee gave him a condom after the show was over and arranged for one of the strippers to come to his room and have sex with him.

_____ said the next morning he avoided speaking to _____ about what happened the previous night because it was an awkward topic.¹¹ See _____ Tr. at p. 38. **The young man also said he never spoke to Pitino, the assistant coaches or anyone other than his best friend about his night in the dorm.** _____ said, "[I]t's awkward. I just forgive and forget." See _____ Tr. at p. 33 (emphasis added).

Finally, _____ told the investigators that although he really liked the University and its basketball program, the strip show and McGee's arrangement for him to have sex with one of the strippers turned him off of the University and was the deciding factor in his decision not to attend the University. See _____ Tr. at pp. 33-34.

Thus, as a result of McGee's illicit activities, Pitino and the University lost a top recruit.

¹¹ Thus, some of the young men who were exposed to McGee's illicit activities were embarrassed by what they experienced and did not discuss it even with each other. Yet the enforcement staff believes that these young men would have told Pitino of their embarrassing experiences if Pitino had only "solicited honest feedback."

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15.

_____ enrolled at the University _____. The young man initially was interviewed by Chuck Smrt, the University's consultant, and he denied ever seeing anything in the dorm that resembled a strip show.

Smrt: So you've never seen anybody do a strip act here in the dorm?

_____. No, sir.

See _____ Tr. (Sept. 9, 2015) at p. 14.

_____ was re-interviewed the following month by the enforcement staff and he was represented by legal counsel at the interview. **For over an hour and fifteen minutes, the young man was asked pointed questions by an experienced NCAA investigator about whether he ever witnessed a strip show in the dorm, and he repeatedly denied ever seeing a strip show.**

Then toward the end of the interview, the young man finally admitted that on one occasion, McGee brought women and prospects to his room and that he saw the women "dancing and doing what strippers do." See _____ Tr. (October 26, 2015) at p. 55. Thus, it took two interviews by experienced NCAA investigators to get _____ to admit that he saw a strip show in the dorm.

It strains credulity to allege that _____ or any of the young men would have told Pitino about the strip shows if Pitino had only asked some "pointed questions" or "solicited honest feedback."

In fact, _____ told the investigators that before he was interviewed by Smrt, Pitino met with him and asked him if he knew anything about prostitutes coming to the dorm to have sex with student-athletes, and he told Pitino that he did not.¹²

Following _____ interview with Smrt but before the young man was interviewed by the NCAA, Pitino met with the entire team to tell them about the allegations in the book and he asked the team if anyone had any knowledge of the activities described in the book, including the allegation that McGee brought strippers to the dorm. Pitino wanted to know the truth, so he asked very directly and pointedly whether anyone on the team knew anything about the illicit activities described in the book.

_____ did not tell Pitino he saw a strip show in his room.

Thus, even when Pitino asked _____ point blank if he had any knowledge of the strip shows described in the book, _____ did not step forward and tell Pitino the truth. He concealed his knowledge from Pitino. Yet the enforcement staff wants the COI to hold Pitino guilty of the most serious level NCAA violation for not asking "pointed questions."

Finally, _____ told the investigators that the coaches asked him what he did with prospects who visited campus and spent the night in the dorm. _____ said he told the coaches that they went to a

¹² Pitino's recollection is that he asked _____ if he knew anything about either strippers or prostitutes in the dorm and _____ said no.

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party or stayed in and played video games, but he never told the coaches that he saw McGee bring prospects to his room and witnessed women "dancing and doing what strippers do."

16.

_____ was a member of the basketball team during the _____. _____ told the investigators that he witnessed strip shows in the dorm and saw young men throwing money at the strippers. He also said McGee paid one of the strippers to have sex with him on one occasion. The young man said he deliberately never told Pitino about the strippers.

Leffler: Did you ever talk to Coach Pitino about any of (the strip shows)?

No way.

Leffler: Why do you say that?

He would have flipped out, I felt like.

See _____ Tr. at p. 27 (emphasis added).

17.

_____ was a member of the basketball team during the _____. _____ also was interviewed initially by Smrt and he flatly denied knowing anything about strippers or prostitutes in the dorm and he specifically denied being entertained by strippers during his recruiting visit to the University.

But when he was interviewed a month later by the NCAA enforcement staff, _____ admitted that McGee arranged for him to be entertained by strippers in the dorm during his recruiting visit and that he had sex with one of the women. The young man told the investigators that the following day, Pitino asked him about his activities the previous night, but he did not tell Pitino about the strippers. See _____ Tr. at p. 31.

Moreover, _____ also told the investigators that in the weeks before his interview with the NCAA, Pitino asked him and some of his teammates whether they knew anything about the allegations in the book about strippers in the dorm. _____ did not tell Pitino about his experience with the strippers and he explained why he did not.

Strothkamp: Your head coach is asking you about (strippers in the dorm) and you're not telling him what had happened with you?

I guess I didn't want the consequences or if there's going to be any consequences, I just didn't want it.

Strothkamp: And you didn't tell Mr. Smrt this information during your first interview. Why didn't you tell him about this the first time?

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: Because I didn't know who he was. I didn't trust him and I was trying to protect Andre.

See Tr. (October 26, 2015) at p. 45 (emphasis added).

explained that he thought McGee was "a cool dude" and he believed that if he had told the truth, Pitino would be angry at McGee and that McGee would get in trouble with the NCAA and might even go to jail.

18.

was a member of the basketball team during the told the investigators that he saw the ending of a strip show in the dorm during his recruiting visit and that after he enrolled at the University, he knew that McGee entertained prominent recruits with strippers.

Regarding his recruiting visit, he said he met with Pitino and the assistant coaches the day after he saw strippers in the dorm and they asked him about his activities the previous night. told the investigators he did not tell Pitino that he saw strippers in the dorm.

also told the investigators that he and his teammates who knew about the strip shows deliberately did not tell the coaches about the illicit activities because they did not want Pitino to find out about the shows.

said:

"[W]e really didn't trust the coaching staff to tell them anything because we knew that it would automatically get back to Coach P. So with that situation, why would you tell that you had strippers in the dorm if you know that it's going to get reported back to Coach P?"

See Tr. at p. 66 (emphasis added).

19.

was a member of the basketball team from

said on one occasion, he walked into a room on the first floor of the dorm and saw women wearing lingerie and dancing like women would dance at a house party, but not necessarily at a strip club. He said McGee was there and ' said he stayed for only a few minutes and then left.

said that other than that one time, he never saw or heard of actual strip shows in the dorm. He said he never heard his teammates talk about attending parties in the dorm with strippers, but that after reading the book, it appears a lot more went on than what he knew while he was living there.

also said that Pitino "ran a pretty tight ship" and he "always tried to provide fatherly advice to us." See Tr. at p. 28 (emphasis added). told the investigators that Pitino did a good job of keeping informed of what was going on with the team, but that Pitino could not know every single thing.

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“I didn’t see any stripping. But I wouldn’t consider, you know, [Coach Pitino] to find out about any of that...I feel like Coach Pitino...had a good grasp on everything, but I don’t think he could – he’s not God. He can’t...see everything. He can’t find out everything...But I felt like [Coach Pitino] tried to...do what he could and do it best. But like I said, he’s not God. He can’t see everything and know everything.”

See Tr. at p. 30 (emphasis added).

20.

_____ was a member of the basketball team during the _____ reported to the investigators that McGee arranged a strip show in the dorm for him on his recruiting visit and gave him cash to tip the strippers.

_____ said after the show, McGee told him to keep what happened between them and “don’t let nobody know.”

_____ said he met with Pitino the next day and Pitino asked him if he got along with the guys on the team and things like that, but _____ did not tell Pitino about the strippers. See Tr. at pp. 24-25 (emphasis added). _____ told investigators he thinks, “[Coach Pitino] had no idea any of this was going on.” See Tr. at p. 39 (emphasis added).

D. The Resident Assistants and Security Guards Who Were Trained and Paid to Monitor Minardi Hall Did Not Know About the Illicit Activities

As explained above, the University’s Housing Department and EdR operated and managed Minardi Hall. Those entities designed and implemented the monitoring system for the dorm and they hired a full-time resident assistant (RA) and an outside independent security company to monitor the dorm. The Housing Department makes the day-to-day decisions about the operation of the dorm and the people in that department do not consult with the athletics department or Pitino about the operation of the dorm.

The RA does inform the basketball staff when one of the student-athletes violates the Housing rules.

As detailed below, neither the RAs who lived in the dorm and were paid to monitor the dorm, nor the security guards, ever saw or heard about any of the strip shows.

1.

_____ was the RA in Minardi Hall from _____ He lived on the same corridor on the first floor as McGee.

_____ sat at the front desk for two evening shifts during the week and he said he also worked a lot of weekends. When he worked the front desk, he was responsible for signing guests in and out. _____ said every time he worked the front desk, he would do a walk-through of the dorm at 10 p.m. and check all of the common areas to make sure nothing was going on that should not be and that everyone was safe. He said it was his job to make sure everyone followed the rules.

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reported that he had a good relationship with all of the residents and that he interacted with them in and outside of the dorm. He told the investigators he never had any issues with McGee.

said he never saw nor heard of any adult entertainment or sex being arranged by McGee for any of the student-athletes or prospects visiting campus.

“It’s very, very shocking given the fact that I lived there, I did everything there, right? I watched movies there, I played video games there, I never heard or seen any of [the illicit activities] when I lived at Billy Minardi Hall.” See Tr. at p. 42 (emphasis added).

said if he had been made aware of the illicit activities, he would have reported it to the director of housing and the dean of students.

“But what I’m saying is I do checks every day at 10 p.m., right? I spent a lot of time – I spent a lot of time with these guys in the dorm, right? I knew every little detail about what’s going on with their families, how they’re doing, how they’re feeling about [Coach Pitino], what’s going on – I was there. I was a part of that dorm. I would hear about it at dinner. I just – I would think I would have heard something if I – since I lived there.” See Tr. at p. 47 (emphasis added).

2.

became an RA in , but he lived in a different dorm on campus until when he moved into Minardi Hall. However, even when he lived in a different dorm, worked two evening shifts per week from 6 p.m. to 10 p.m. at the front desk in Minardi. continued to live and work in Minardi through the period of the illicit activities and when he was interviewed by the NCAA investigators in February 2016.

With respect to McGee, said he had to ask McGee to lower the volume on his music a couple times. said McGee complied and he never had any other issues with McGee as a resident of the dorm.

said he occasionally had to file Incident Reports when a resident violated the rules. said he does not recall ever filing an Incident Report on a men’s basketball student-athlete when the men’s basketball staff did not follow up and ask about what had occurred that gave rise to the Incident Report.¹³

said that on weekend nights it was common to see scantily clothed women walk through the dorm. supervisor, told the investigators that women walking into the dorm is not a violation of the housing rules and neither is women taking their clothes off in a resident’s room.

“If [an RA] sees women scandalously dressed, that’s a Friday night at U of L and most other schools for that matter. See Tr. at p. 26 (emphasis added).

But added, if had seen women getting paid to strip, he “absolutely would have said something to me.” Id. (emphasis added).

¹³ This is further evidence that Pitino did, in fact, monitor Minardi Hall.

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said McGee sometimes brought women in to the dorm, but he did not observe anything that seemed out of the ordinary to him with the women that McGee brought to the dorm and he never had to deal with any issues with the women McGee brought to the dorm.

said he never heard about or saw any of the illicit activities described in the book. told the investigators that shortly after the story became public knowledge, Pitino was pretty upset and asked him if he had ever seen any of the illicit activities.

said he and Pitino expressed **“how big of a surprise it was to both of us that this happened in...my building that I () take care of and take responsibility for it and that...I () just had no knowledge of it.”** See Tr. at p. 39 (emphasis added).

The investigators asked () if perhaps () was aware of the activities described in the book, but that he never wrote up an Incident Report.

Strothkamp: Did () ever talk to you about similar issues (as described in the book) that maybe did not reach the scale of having to write up an Incident Report?

(): No, () is — () is extremely ethical and very black and white, and if anything was warranted or deserving to be in an Incident Report format, he would have absolutely written one, and he knows that that’s the expectation. He was trained very well and he goes to training every single year. And we always talk about Incident Report writing and conflict mediation and things of that nature. So he would have written an Incident Report.

See () Tr. at p. 25.

3.

() worked as a security guard in Minardi Hall from January 2013 to August 2015. () sat at the front desk from 10 p.m. to 6 a.m. Tuesday, Wednesday and Thursday. He said he signed guests in and out of the dorm and monitored the security cameras throughout the dorm.

() told the investigators that he never saw McGee bring women in to the dorm and he has no knowledge of any of the illicit activities described in the book.

4.

() has been a security guard since 2008 and he has been posted in Minardi Hall since March 2013. () said he worked the front desk in the dorm from 10 p.m. to 6 a.m. Monday through Thursday and from 12 a.m. to 8 a.m. on the weekends.

() said he signed guests in and out of the dorm and monitored the security cameras. He told the investigators that () “pretty much” runs the dorm and that () “has his act together and does not suffer fools gladly.” See Tr. at p. 12.

() told the investigators that he does not recall seeing McGee ever bring women in to the dorm, although he did sometimes see women dressed provocatively come to the dorm and he believed they were girlfriends of the dorm residents.

said he never saw or heard of any adult entertainment activities in the dorm and that he does not believe the allegations of illicit activities as described in the book.

E. Several of the Student-Athletes and Managers Who Lived in Minardi Hall Did Not Know About the Illicit Activities

Not only did the people who were trained and paid to monitor the dorm not know about McGee's illicit activities, but several of the student-athletes and team managers who lived in the dorm also did not know about the illicit activities.

1.

was a member of the basketball team from

, and room in the dorm McGee's room.

said he never saw or heard of any strip shows in the dorm.

Leffler: When you heard [that a woman was claiming that she was paid to go to the dorm and strip for student-athletes and recruits], what did you think about that?

I thought it was a joke. I thought it was...somebody trying to make a quick buck at the expense of the program. I didn't think it was anything. I didn't think it was a big deal. I kind of laughed at it.

Leffler: Why was that your reaction, I guess?

: Because if something like that would have been going on, I would have heard about it and I just know that something like that wouldn't happen under Coach P.

Leffler: Why would you say that? That it wouldn't happen under Coach Pitino?

Because Coach is, you know, he's by the book. I mean, he doesn't cheat. He doesn't break the rules, especially when it comes to recruiting. And he talks to us a lot at the beginning of the season...about being careful, about not breaking rules, and respecting women, especially.

See Tr. at p. 10 (emphasis added).

said, "It's very shocking" and "kind of blows my mind...that this whole thing happened." He said, "I still don't believe it." See Tr. at p. 15 (emphasis added).

2.

was a member of the team during the years. he lived in the dorm all years. told the investigators he never saw any strip shows in the dorm or heard his teammates or recruits talk about strip shows in the dorm. said he was close with all of his teammates and he never heard them talk about the illicit activity described in the book, but he also said it would be very easy to keep that activity secret by doing it behind closed doors.

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3.

_____ was a member of the basketball team from _____ and lived in the dorm _____ years. _____ told the investigators he was not aware of any strip shows taking place in the dorm and that he never heard any rumors or locker room talk about that happening.

4.

_____ was a member of the basketball team during the _____ told the investigators that he had a lot of interaction with McGee when he was enrolled at the University, but he said he never knew or heard anything about strip shows in the dorm.

Leffler: During your time at the University of Kentucky (sic), were you aware of any type of parties with women occurring in Minardi?

Honestly, that threw me for a surprise, because I did live in Billy Minardi Hall and when everything came out, it was really hard for me to believe because...I'm not the type who goes out and parties. I've never tasted alcohol in my life. But still, **I never heard anything and I never seen anything.**

And I just thought that, you know, anyone that's played at that level knows that we're together 24/7. I mean, we're in class together. We go to study hall together. We got individual workouts together. You got weightlifting. You got practice. You got film session. Then you got dinner. And, you know, by the time you get done with all that, you know, you're in the dorm and it's time to go to bed.

And I just thought that if something was going on and some of these guys were involved, I thought that maybe they would be bragging and I would have heard something.

And that's why I just thought, man, for me to never hear anything was – if it was going on, it would surprise me.

See Tr. at p. 9 (emphasis added).

added:

“[S]omething could have happened and I just didn't know about it. I just thought that if something was going on, I would have at least heard something. I mean, we all know how guys are. If, you know, if all this is going on and they're one of the guys that feel like they're lucky to be in there and be involved, I felt like they'd be bragging about it or something. And, you know, as much as we're together, and I just thought it was odd that I never heard anything about it.” See Tr. at p. 18 (emphasis added).

5.

_____ was a member of the basketball team from _____ and lived in the dorm _____ years.

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said he never saw or heard about any adult entertainment or strip shows in the dorm. **The young man told the investigators that “it was pretty shocking” to learn of the allegations in the book.**

6. _____

_____ with the basketball team from _____ and he lived in the dorm _____ years. _____ said he never saw or heard about any of the illicit activities described in the book until after the book was published. He also told the investigators that he wishes he had known about the illicit activities when they were occurring because he would have told the coaches.

Strothkamp: I guess the one question, are you surprised by the allegations in the book?

Yeah.

Strothkamp: And why is that?

: Because I didn’t see any of it. That’s what bothers me the most. If I would have been able to see one thing, I would have been able to say something to somebody, and it would not have been like this. It wouldn’t have blown up like this.

Strothkamp: So if you would have seen something like this occurring, what would you have done? Who would you have told?

. I wanted to get into coaching. I want to get into coaching still. So if I had known something like this was happening and I could have taken it to the coaching staff, that would’ve been great for me. I feel like that would show how loyal I was to the program. I don’t know. I wish that me or somebody else would have saw something, if that was really happening.

See _____ Tr. at p. 33 (emphasis added).

7. _____

_____ from _____ and lived in the dorm _____ years. _____ told the investigators he never witnessed any of the events described in the book and never heard rumors of those types of activities.

Strothkamp: Are you surprised by the allegations – what those allegations involve? Are you surprised by it?

: Yes.

Strothkamp: And why is that?

: Because I lived in the dorm for, you know, _____ that Andre was here and I never heard, nor ever saw anything that was mentioned in the book. And like I said, the first time I did was when, you know, Mr. Smrt interviewed me and I was kind of taken aback by that.

See Tr. at p. 24-25 (emphasis added).

8. Wayne Turner

Wayne Turner played for Pitino at the University of Kentucky and was hired by Pitino as a program assistant at Louisville in August 2013. Turner lived in the dorm during McGee's last year at the University (2013-14).

Turner told the investigators he never saw any strip shows in the dorm and never heard rumors of that type of activity.

9. Anthony Wright

Anthony Wright is a former DI football student-athlete and he has been on the University's men's basketball staff since 2008 and has been the staff's director of academic services since 2011. Wright never lived in the dorm, but he was McGee's academic counselor when McGee was a student-athlete and then he worked with McGee as a colleague after McGee was hired as a GA and later promoted to the DOBO position. Wright also socialized with McGee outside of the work setting.

Wright told the investigators that McGee was a very good academic student-athlete and that McGee was an integral part of the team's overall academic success after McGee became a member of Pitino's staff and had responsibilities for doing class checks and other things to monitor academics. Wright said he worked with McGee every day.

Wright said he never heard McGee or any of the student-athletes ever say anything about strippers in the dorm. Wright told the investigators, "**I don't see [Andre] doing that, knowing Andre...I don't see him doing that for prospective or current student-athletes.**" See Audio of Wright's Interview.

F. The Monitoring System Implemented By the Housing Department May Not Have Worked As Intended

1. Security Cameras Did Not Work

The security guards who worked the front desk at Minardi Hall were required to complete a Daily Activity Report which, among other things, detailed the times that residents and/or their guests entered or exited the building and any other noteworthy activity.

EdR provided nearly one-thousand (1000) pages of Daily Activity Reports to the NCAA investigators.¹⁴ A cursory review of those Reports shows that the security guard frequently noted that some of the security cameras were not working. It appears that malfunctioning security cameras was a frequent problem in 2013 and 2014. Thus, one of the front-line mechanisms for monitoring Minardi Hall was not fully functioning during the period of McGee's illicit activities.

¹⁴ However, EdR did not provide any Daily Activity Reports prior to 2013, which is when many of McGee's illicit activities occurred.

As noted above, EdR did not provide Daily Activity Reports to the NCAA investigators for the period before 2013, so EdR has not provided records that would show whether the security cameras were fully functioning when McGee was hosting strippers in the dorm in 2010, 2011 and 2012.

2. McGee Was Able to Disarm the Alarm on the Emergency Exit Door to Sneak the Strippers into the Dorm

The NCAA investigators also were told that McGee may have been able to have the strippers enter the dorm without being detected through an emergency exit door that was on the side of building and away from the front entrance where the security guard was stationed.¹⁵

Powell told the investigators that she and the strippers entered the dorm through a side door on some of their visits to the dorm. That door was supposed to be used only for emergencies and an alarm was supposed to sound whenever the door was opened. However, McGee had a key that allowed him to disarm the alarm.

_____, the Housing supervisor in charge of the dorm, told the NCAA investigators that his predecessor made the decision to give the men's basketball GA a key to disarm the emergency exit door. _____ said he did not learn until October 2015 when allegations surfaced about strippers in the dorm that McGee had a key that disarmed the alarm on the emergency exit door.

_____ said, "In my opinion, they wouldn't need access to that whatsoever," and "When I found out that basketball had...the ability to [disarm the alarm], I immediately said we need to fix that and we need to get the core changed to where only maintenance and/or my staff would have the access to be able to do that." See _____ Tr. at p. 6-13.

3. A Security Guard Slept While on Duty

One resident of the dorm told the investigators that McGee always brought the strippers in to the dorm late at night after the RA was off-duty and the security guard **"would usually literally be asleep at the door."** See _____ Tr. at pp. 61-63 (emphasis added). _____ also said he never was required to sign guests in after the RA was off-duty and the security guard was on duty.

4. Another Security Guard Drank Alcohol and Made Unwanted Sexual Advances Toward a Female Guest

Moreover, an Incident Report filed in 2012 strongly suggests that a security guard who worked at Minardi may have been willing to overlook strippers being brought in to the dorm.

An EdR Incident Report filed by RA _____ on October 28, 2012, describes an unwanted sexual advance in the middle of the night by the security guard on duty on a female guest of one of the student managers who lived in the dorm.

According to the Report, after the student manager returned to the dorm with two female guests late at night, the guard repeatedly came to the student manager's room, drank alcohol and then made unwanted

¹⁵ In fact, some apparently colloquially referred to the emergency exit door as the "dancers' or strippers' door."

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sexual advances on one of the females in the common area while the student manager and the other female were asleep in the bedroom. When the young woman resisted, the guard tried to force the two females to leave the dorm and the student manager called for help.

The NCAA enforcement staff never interviewed anyone about the security guard's alleged misconduct to see what light it might shed on the efficacy of the monitoring system in the dorm during the period of McGee's illicit activities. There was not a single interview to see whether the security guard who drank on the job and tried to have sex with a young woman might have overlooked McGee's illicit activities.

It does not require a huge stretch of the imagination to think that a security guard who was willing to drink alcohol with dorm residents and make unwanted sexual advances might also be willing to look the other way if he saw strippers in the dorm.¹⁶

No one ever told Pitino that the security cameras in Minardi Hall frequently did not work, that McGee was disarming the emergency exit alarm to sneak people into the dorm, that a security guard slept on the job or that one of the guards made an unwanted sexual advance on a female guest.¹⁷

The security monitoring of the dorm was designed and managed by EdR and the Housing staff. Those entities are experts in monitoring campus housing. They are not required to keep the basketball coach in the loop on the day-to-day monitoring of the dorm. But if Pitino had known about the security lapses described above, he would have brought it to the attention of the University administration.

Minardi Hall was and is Pitino's pride and joy. The building is a memorial to Pitino's best friend and brother-in-law who died in 9/11. Pitino's heart has been broken that his best friend's legacy has been sullied by the illicit actions of a young man who Pitino trusted and had every reason to trust.

G. A Failure to Monitor Finding Against Pitino Would Be An Arbitrary and Capricious Application of Bylaw 11.1.1.

In all of the cases investigated by the enforcement staff and adjudicated by the COI since the head coach control legislation was implemented in 2004, there has never been a case in which a failure to monitor finding was made against a head coach where the facts were even remotely similar to the facts in this case. In other words, there has never been a failure to monitor case against a head coach in which there was not some fact, sign or red flag putting the head coach on notice that a situation under his watch was ripe for NCAA violations.¹⁸

The failure to monitor cases can be summarized in two categories: (1) Those cases in which the head coach was actually involved in or knew of the underlying violations, but failed to take steps to prevent or address the violations; and (2) Those cases in which the coach did not have actual knowledge of the underlying violations, but he either willfully ignored his staff's conduct or he knew of or should have

¹⁶ In fact, the enforcement staff's investigation file does not even contain a complete copy of the Incident Report. Thus, it is not clear how the complaint against the guard was resolved.

¹⁷ The enforcement staff did not investigate these lapses in the monitoring system for Minardi Hall. The staff's focus and agenda was to build a narrative to hold Pitino, and only Pitino, responsible for McGee's illicit activities.

¹⁸ According to LSDBi, there have been 27 head coach control cases since the legislation was implemented in 2004. Not one of those cases even remotely supports the staff's allegation against Pitino.

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known of some red flag that should have caused him to take action to prevent or address the underlying violations.

Because Pitino had absolutely no involvement in or knowledge of McGee's illicit activities, the COI can find that Pitino failed to monitor McGee only if: (1) Pitino was willfully ignorant; or (2) Pitino knew of or should have known of some clear red flag of McGee's illicit activities that required follow-up, but Pitino did not follow-up.

As explained above, the staff has willfully refused to tell Pitino and his counsel: (1) what spot-checks the staff believes Pitino should have been conducting; (2) what red flags he missed; (3) what pointed questions he should have asked and of whom; and (4) how he should have solicited honest feedback.

Pitino did everything he reasonably could have done and more to monitor McGee and the dorm, yet McGee was able to keep his illicit activities concealed not only from Pitino, but also from the RA who lived in the dorm and was trained and paid to monitor the dorm, the security guards, and many of the residents who lived in the dorm.

There is no factual basis whatsoever to find that Pitino failed to monitor.

VIII. CONCLUSION

Coach Pitino cooperated fully with the enforcement staff's investigation. The staff has alleged that Pitino committed a Level I violation by failing to monitor McGee, but the staff has willfully refused to give Pitino and his counsel the details of what the staff claims Pitino failed to do. Pitino and his counsel truly are at a loss to understand exactly what the staff believes Pitino should have done differently.

Dozens of witnesses told the NCAA investigators that not only did Pitino not know about McGee's illicit activities, but also that he could not have known about them. The illicit activities were deliberately kept secret and out of view. The people who were trained and paid to watch the dorm while Pitino was sleeping did not know about the strip shows.

Full-time residents of the dorm – including one who lived across the hall from McGee - did not know about the strip shows. Friends of McGee did not know about his illicit activities.

Security guards, with security cameras and professional security guard training to detect security issues, had no idea that McGee was bringing strippers in to the dorm.

A full-time RA did not know about the strip shows. The RA's boss described him "as extremely ethical and very black and white, and if anything was warranted or deserving to be in an Incident Report format, he would have absolutely written one, and he knows that that's the expectation. He was trained very well and he goes to training every single year."

Yet according to the enforcement staff, Pitino should have known.

The prospects and student-athletes who were involved in the illicit activities told the NCAA investigators that they deliberately kept McGee's illicit activities from Pitino, and also from their own parents and friends.

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Some were embarrassed by McGee's illicit activities. The young men did not want others to know about their experience with the strippers.

Others told the investigators that they did not tell Pitino because they knew their involvement was wrong and they did not want to jeopardize their NCAA eligibility.

One young man told the investigators he kept McGee's illicit activities from Pitino because he did not want McGee to get in trouble with the NCAA and possibly go to jail.

Some of the young men lied to experienced NCAA investigators when asked if they knew about strip shows in the dorm. The NCAA investigators even had to request and obtain limited immunity to persuade the young men to tell the truth.

But the enforcement staff, without even a scintilla of evidence, asks the COI to find that Coach Pitino committed a Level I violation by failing to discover McGee's illicit activities, the same illicit activities which the enforcement staff itself had to work at to uncover the details. The enforcement staff is asking the COI to suspend Coach Pitino for up to a full season for not uncovering secretly concealed violations that the enforcement staff itself struggled to uncover.

Coach Pitino takes this case very seriously. He and his counsel will meet with the COI at the hearing for a full and vigorous discussion of the issues.
