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Michael Kessler

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Cover Page Footnote

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LET'S GIVE IT ARREST: WHY THE NCAA SHOULD ADOPT A UNIFORM DISCIPLINARY POLICY

MICHAEL KESSLER*

I. INTRODUCTION

Currently, each National Collegiate Athletic Association (NCAA) member institution can punish any student-athlete for criminal conduct consistent with each individual school's internal policies and head coach's discretion. The NCAA does not have the power to interfere at all with a school's disciplinary discretion regarding a troubled student-athlete. As a result, there recently have been far too many examples of one individual school punishing a player drastically different than another individual school for the same or similar crimes.¹ Some schools suspend a player for a few games, while other schools dismiss a player from the school for the same or similar criminal act.² At the same time, some schools punish a player when a criminal investigation is launched into an alleged criminal incident,³ some schools punish a player when a criminal complaint is filed,⁴ and some schools wait and see if a player is convicted of a crime before imposing potential punishment upon the player.⁵ In

* Michael Kessler is an associate of Morgan Legal, P.A. in Jacksonville, Florida where he represents lenders in mortgage foreclosure actions at the trial and appellate levels. He received his J.D. from Marquette University Law School in 2015 and his B.A. in Business Administration from the University of Florida in 2012. He is admitted to practice law in Florida and Wisconsin.

1. See *infra* Exhibit 1; *infra* Exhibit 2; *infra* Exhibit 3; *infra* Exhibit 4.

2. Compare Mark Schlabach, *Dunlap to Miss SEC Championship Game*, ESPN (Dec. 2, 2009), <http://sports.espn.go.com/nfl/news/story?id=4702788> (suspending Carlos Dunlap indefinitely following his driving under the influence arrest), with Parker Dismissed from Team, ESPN (Feb. 2, 2009), <http://sports.espn.go.com/nfl/news/story?id=3879281> (dismissing Preston Parker from the team following his driving under the influence arrest).

3. See Jeff Barlis, *Lawyers: Woman Was 'Aggressor'*, ESPN (Oct. 10, 2014), http://espn.go.com/college-football/story/_/id/11670416/lawyer-treon-harris-florida-gators-says-alleged-victim-was-was-sexual-aggressor.

4. See *Canes QB Marve Suspended for Incident Involving Smashing a Car Mirror in '07*, ESPN (Aug. 24, 2008), <http://sports.espn.go.com/nfl/news/story?id=3550482>

5. See *Jameis Winston Ruling: No Violation*, ESPN (Dec. 22, 2014), http://espn.go.com/college-football/bowls14/story/_/id/12062132/jameis-winston-florida-state-seminoles-did-not-violate-school-code.

addition, many punishments handed out by schools to players engaged in criminal acts involve internal punishments that are never announced publicly.⁶ As a result, the NCAA should adopt a uniform discipline policy for student-athletes to prevent the inconsistent discipline decisions of individual schools, promote accountability for student-athletes, and promote transparency by each individual school.

Part II will first discuss several prominent recent examples of drastic inequalities in punishment decisions by individual universities when disciplining their players for criminal conduct. Part III will compile a sample size of NCAA Division I football programs' student-athlete arrest history and punishment for the last ten years through independently conducted research. This data will be analyzed to exploit the extreme inequalities in the disciplinary punishments currently in place for NCAA member institutions when the discretion is left up to the individual universities. Part IV will explore the current governance structure of the NCAA and how it applies and passes its own rules through the law of private associations. Finally, Part V will propose a uniform disciplinary policy that the NCAA should adopt for student-athletes engaged in criminal conduct.

II. RECENT EXAMPLES OF INCONSISTENCIES

The Article begins by contrasting the handling of two sexual assault investigations of the quarterbacks from two prominent universities in the state of Florida. In 2013, Florida State University (FSU) was in the news for never disciplining its superstar (and eventual Heisman Trophy-winning) quarterback Jameis Winston, despite an open sexual assault investigation.⁷ Winston was eventually not charged in the case and not disciplined by the school, but a Title IX investigation launched into how promptly the school handled alleged sexual assaults involving students.⁸ Part of the reason Winston was never charged was because of the victim's memory lapses from the night of the alleged incident; however, the case was peculiar because it took eleven months from the date of the alleged incident for the case to reach the prosecutor's desk.⁹

The way FSU handled the case differs drastically from how the University

6. *E.g.*, *UGA Players to Face Internal Discipline*, ESPN (June 5, 2014), http://espn.go.com/college-football/story/_/id/11038572/2-georgia-football-players-face-internal-discipline.

7. Kevin Vaughan, *Attorney: Winston Will Cooperate with FSU Investigation*, FOX SPORTS (Sept. 23, 2014), <http://www.foxsports.com/college-football/story/attorney-jameis-winston-will-cooperate-with-florida-state-fsu-investigation-092314>.

8. *Id.*

9. Emily Bazelon, *Jameis Winston, Sexual Assault: How Did the Florida State Quarterback Evade a Rape Charge?*, SLATE (Dec. 6, 2013), http://www.slate.com/articles/sports/jurisprudence/2013/12/jameis_winston_sexual_assault_how_did_the_florida_state_quarterback_evade.html.

of Florida (UF) handled the case against its quarterback Treon Harris. Harris was suspended by UF and suspended indefinitely from the football team the day after “university police began an investigation into an accusation that Harris sexually assaulted a female student at an on-campus residence hall.”¹⁰ Harris was never charged in this instance because the victim withdrew her complaint several days later, but Harris still ended up missing a game and was suspended from UF for several days.¹¹ Thus, Harris was disciplined by UF without ever being arrested or charged in the matter. The manner in which UF handled a recent sexual assault investigation contrasts drastically with the manner in which FSU did: FSU allowed Winston to play while an open sexual assault investigation was launched against him, while UF suspended Harris as soon as a sexual assault investigation was launched against him.¹²

Other recent examples of schools disciplining student-athletes seem to be following a disturbing trend, especially when “star players” appear to receive favorable treatment in disciplinary sanctions. Moreover, in the cases of Jeremy Hill and Carlos Hyde, these student-athletes received what appeared to be rather light suspensions despite video evidence of a crime being committed.¹³ Louisiana State University (LSU) starting running back Jeremy Hill was suspended indefinitely in April 2013 after being arrested for sucker punching a man in the head outside a bar.¹⁴ Despite video evidence of the crime being released to the public and Hill already being on probation at the time of the incident, a judge decided to extend Hill’s probation sentence for an additional two years.¹⁵ As a result of this favorable sentence, LSU Head Coach

10. Barlis, *supra* note 3.

11. Jeff Barlis, *Sexual Assault Complaint Withdrawn*, ESPN (Oct. 14, 2014), http://espn.go.com/college-football/story/_/id/11676023/lawyer-says-accuser-withdraws-sexual-assault-claim-florida-gators-qb-treon-harris.

12. The immediate discipline of Harris by UF has been praised as the gold standard in the handling of the seriousness of alleged sexual assaults. See Mike Bianchi, *Rape Victim Advocate on Treon Harris: Gators, Muschamp Doing Right Thing*, ORLANDO SENTINEL (Oct. 8, 2014), <http://www.orlandosentinel.com/sports/open-mike/os-gators-muschamp-treon-rape-sexual-assault-20141008-post.html>. Others however, have criticized the immediate discipline of Harris as a lack of due process. See *Treon Harris, The New York Times, and the Fate of College Football*, PERRYDUBE (Oct. 10, 2014), <https://perrydube.wordpress.com/2014/10/10/treon-harris-the-new-york-times-and-the-fate-of-college-football/>.

13. Matt Hayes, *Carlos Hyde Saves Buckeyes, But Never Should Have Played*, SPORTING NEWS (Oct. 6, 2013), <http://www.sportingnews.com/ncaa-football/story/2013-10-06/ohio-state-vs-northwestern-carlos-hyde-suspension-charges-dropped-urban-meyer>; *LSU Suspends RB Jeremy Hill*, ESPN (Apr. 29, 2013), http://espn.go.com/college-football/story/_/id/9224487/jeremy-hill-lsu-tigers-suspended-indefinitely-arrest.

14. *LSU Suspends RB Jeremy Hill*, *supra* note 13.

15. See Randy Rosetta, *Troubled LSU Tailback Jeremy Hill Emerges from Suspension After Five Quarters: Notebook*, NOLA (Sept. 8, 2013), http://www.nola.com/lsu/index.ssf/2013/09/lsu_tailback_jeremy_hill_emerg.html.

Les Miles uncharacteristically allowed the team to decide whether Hill should be reinstated back to the team.¹⁶ To the surprise of no one, the LSU football team welcomed Hill back on the team with open arms.¹⁷

Similarly, Ohio State University (Ohio State) starting running back Carlos Hyde was seen on video hitting a female in a nightclub.¹⁸ The police eventually dropped their case against Hyde after the battered female decided not to press charges (not uncommon in domestic disputes, generally because of the female's fear of retaliation),¹⁹ however, Hyde was only suspended the first three games of the season for this incident.²⁰ While some have commended Ohio State's head coach Urban Meyer for punishing Hyde "for conduct not representative of [Ohio State University]" despite no charges being filed in the case,²¹ others have criticized Meyer for only suspending Hyde for three games.²² The critics felt that Meyer had the opportunity to send a clear disciplinary message to the Ohio State football team: treat women with respect or you will not be a part of this football team.²³ Further, Meyer had been criticized heavily in the past for his lenient disciplinary policies and the rampant arrest rate of his players when he coached at UF, so many felt that he had the perfect opportunity to change this stigma by dismissing Hyde from the team.²⁴

Overall, the Hill and Hyde cases demonstrate a larger problem in NCAA athletics today. It is always in the coach's best interest to do whatever it takes to keep the best players on the field each and every Saturday in order to maintain job security, so why leave the discretion to suspend or dismiss a player in the coach's hands? From an outsider's perspective, these cases seem cut and dry: the acts committed by Hill and Hyde are inexcusable, reprehensible, and worthy of severe punishment. However, from a coach's perspective, it is easy to see why a coach will do everything in his own power to keep a star player on the team when his job is dependent on how many games he wins or loses. Thus,

16. See Michael Felder, *Why LSU Coach Les Miles Let Team Vote on RB Jeremy Hill's Reinstatement*, BLEACHER REP. (Aug. 6, 2013), <http://bleacherreport.com/articles/1728659-why-lsu-coach-les-miles-let-team-vote-on-rb-jeremy-hills-reinstatement>.

17. *Id.*

18. Hayes, *supra* note 13.

19. *Id.*

20. *Ohio State's Carlos Hyde Suspended for Three Games*, USA TODAY (July 31, 2013), <http://www.usatoday.com/story/sports/ncaaf/bigten/2013/07/30/ohio-state-carlos-hyde-assault-case-closed/2600221/>.

21. Christopher Wilson, *Ohio State's Carlos Hyde Sees Charges Dropped, Still Faces Suspension from Football Team*, YAHOO SPORTS: DR. SATURDAY (July 31, 2013, 9:18 AM), <http://sports.yahoo.com/blogs/ncaaf-dr-saturday/ohio-state-carlo-hyde-sees-charges-dropped-still-131829162.html>.

22. See Hayes, *supra* note 13.

23. *Id.*

24. *Id.*

we should take the discretionary disciplinary power out of the hands of the people whose best interest it serves and hand it over to the overall neutral governing body, the NCAA.

III. COMPILED DATA

For this Article, I have compiled charts of every arrest from a select number of schools' football programs in the states of Florida and Oklahoma and the resulting disciplinary action taken by the schools from the last ten years. These charts are a compilation of my own independent research and are not based on research conducted and conclusions drawn from any other organization. These charts have provided me with a sample size to show the drastic inequalities in the disciplinary process at each school. The schools used for these charts include UF, FSU, the University of Miami, and the University of Oklahoma. The charts are attached to this Article in the Exhibits section.

Exhibit 1 includes data from the past ten years of each UF football player arrested, the charge each player was arrested for, and the discipline UF handed down to each player as a result of the arrest. Of note in Exhibit 1 is that in May 2006, Louis Murphy had a misdemeanor possession of marijuana charge and was suspended three games, while several other players later received the same charge and received different punishments.²⁵ For example, Jacques Rickerson was suspended one game for a misdemeanor possession of marijuana charge, while Brandon James was also suspended one game, but for a misdemeanor possession of marijuana charge along with felony marijuana purchase charge.²⁶ Additionally, Ronnie Wilson, Chris Martin, Kendric Johnson, De'Ante Saunders, Leon Orr, Jafar Mann, Loucheiz Purifoy, and Jalen Tabor were all charged with misdemeanor possession of marijuana, but the university never publicly announced their punishments.²⁷ Part of the problem with the system currently in place is the fact that many coaches will discipline their players internally and never announce to the public what sort of punishment these players receive for their criminal conduct.

Currently, the NCAA, as an organization, must trust each of its individual

25. *Court Records*, ALACHUA COUNTY CLERK CIR. CTS., https://www.alachuaclerk.org/court_records/gis/ (last visited June 9, 2016); Jeremy Fowler & Rachel George, *A List of Florida Gators Arrested During Urban Meyer's Tenure*, ORLANDO SENTINEL (Sept. 17, 2010), http://articles.orlandosentinel.com/2010-09-17/sports/os-florida-gators-arrests-list-20100915_1_frankie-hammond-second-degree-misdemeanor-charge-misdemeanor-possession.

26. *Court Records*, *supra* note 25.

27. *Id.*; Adam Silverstein, *Florida Gators Arrested Under Head Coach Will Muschamp from January 2011-Present*, ONLY GATORS (July 21, 2013), <http://www.onlygators.com/florida-gators-arrested-under-head-coach-will-muschamp-from-jan-2011-present/>.

members to implement their own individual rules consistently and fairly, while complying with each of the NCAA implemented rules; however, the public begins to raise eyebrows when punishments are handled internally and universities are not transparent when announcing discipline for criminal conduct. Another problem with the system currently in place is that other factors affect the decision to discipline a player after the player engages in criminal conduct. These factors include whether a player might be violating internal team rules or policies, whether a player might be in poor academic standing with the university, or whether a player might be deemed “injured” to potentially “cover-up” a disciplinary punishment. The public will never have access to internal team rules, a player’s private academic record, or the internal policies and procedures to determine if a player is injured. Thus, without knowledge of this type of information, it is hard for the public to hold a university accountable for its disciplinary decisions.

A perfect example of this was in August 2012, when the coach of UF, Will Muschamp, was asked at a press conference whether De’Ante Saunders would play in the season opening game. Muschamp responded, “He has a hamstring at this time, and he’ll sit the first two games right now. He’s got a hamstring, probably wouldn’t be able to go the first game at least anyways.”²⁸ This vague quote led to rabid speculation in the media as to whether Saunders was being held out of two games because of his hamstring injury or an internal team suspension.²⁹ Subsequently, a university spokesperson was asked whether Saunders was suspended for these two games and this spokesperson declined to comment on the issue.³⁰

Exhibit 2 includes the exact same data for football players arrested in the last ten years as Exhibit 1, but the school exemplified is FSU. Of note in Exhibit 2 is the curious tale of A.J. Nicholson.³¹ A disciplinary action was never publicly announced for Nicholson’s February 2005 arrest for driving under the influence.³² This is peculiar because almost every other player in this study was at least suspended one game for a driving under the influence offense.³³

28. Jason Lieser, *Florida DB De’Ante Saunders to Miss First Two Games*, PALM BEACH POST: GATOR BYTES (Aug. 27, 2012), <http://gatorbytes.blog.palmbeachpost.com/2012/08/27/florida-db-deante-saunders-to-miss-first-two-games/>.

29. *Id.*

30. *Id.*

31. *See infra* Exhibit 2.

32. *See generally* Wayne Drehs, *Seminole Vow to Move on After LB’s Suspension*, ESPN (Dec. 30, 2005), <http://sports.espn.go.com/ncf/bowls05/news/story?id=2275286>.

33. *Compare see id.*, with Heather Dinich, *Receiver Owens Suspended Indefinitely*, ESPN (Apr. 6, 2009), <http://sports.espn.go.com/ncf/news/story?id=4045748>; *Gators Suspend Hammond After Arrest*, ESPN (June 13, 2010), <http://sports.espn.go.com/ncf/news/story?id=5281940>; *Parker Dismissed from Team*, *supra* note 2. *But see* Ryan Aber, *Oklahoma Football: How Londell Taylor Went from*

Additionally, Nicholson was again arrested in June 2005 for resisting arrest, but a public disciplinary announcement was never made.³⁴ Also of note is the amount of time several players have been arrested before a publicly announced suspension or dismissal was announced. Preston Parker was finally dismissed from the team after his third arrest,³⁵ Greg Reid's punishment after two separate arrests was never announced,³⁶ and James Wilder Jr. was arrested three separate times and was never dismissed from the team.³⁷

As much as FSU can be criticized for their inconsistent application of discretionary punishment given to players engaged in criminal conduct, they can be commended for making some of their internal discipline policies publicly available. FSU's drug testing discipline policy is that athletes are suspended from the team after two positive drug tests and dismissed from the team after three failed drug tests.³⁸ Similarly, FSU's class attendance policy

Being on His Last Straw to 'a Consummate Team Guy,' NEWS OK (Oct. 24, 2014), <http://newsok.com/oklahoma-football-how-londell-taylor-went-from-being-on-his-last-straw-to-a-consummate-team-guy/article/5360000> (suggesting that Londell Taylor was arrested twice for driving under the influence but never suspended or dismissed from the University of Oklahoma football team).

34. See Drehs, *supra* note 32.

35. Andrew Carter, *Star Receiver Preston Parker's Future Now in Doubt with the Florida State Seminoles*, ORLANDO SENTINEL (Apr. 23, 2008), http://articles.orlandosentinel.com/2008-04-23/sports/fbcfsu23_1_preston-parker-palm-beach-beach-county; Parker Dismissed from Team, supra note 2.

36. David M. Hale, *Greg Reid Arrested in Georgia*, ESPN (July 11, 2012), http://espn.go.com/college-football/story/_/id/8156868/greg-reid-florida-state-seminoles-arrested-charged-possession-marijuana; Melina Vastola, *FSU's Greg Reid Arrested on Perjury Charge*, USA TODAY, <http://usatoday30.usatoday.com/sports/college/football/acc/story/2011-09-26/greg-reid-florida-state-arrested/50560628/1> (last updated Sept. 27, 2011).

37. Coley Harvey, *James Wilder Florida State Jail: James Wilder, Jr., Florida State Running Back, Was Jailed for Parole Violation*, ORLANDO SENTINEL (June 22, 2012), http://articles.orlandosentinel.com/2012-06-22/sports/os-james-wilder-florida-state-arrest-0623-20120622_1_james-wilder-work-camp-parole-officer [hereinafter Harvey, *James Wilder Florida State Jail*]; *FSU's James Wilder Arrested Again*, ESPN (Jan. 7, 2013), http://espn.go.com/college-football/story/_/id/8821732/florida-state-seminoles-james-wilder-misses-court-arrested-again; Coley Harvey, *James Wilder Florida State Arrest: James Wilder, Florida State Running Back, Arrested Wednesday*, ORLANDO SENTINEL (Feb. 22, 2012), http://articles.orlandosentinel.com/2012-02-22/sports/os-james-wilder-florida-state-arrest-0222-20120222_1_felony-arrests-arrest-charge-jermaine-thomas [hereinafter Harvey, *James Wilder Florida State Arrest*]. The University of Oklahoma's Rhett Bomar was also arrested three times without any public announcement of a suspension or dismissal from the football team. See *OU's Bomar, 20, Cited with Beer at Hornets Game*, ESPN (Mar. 12, 2006), <http://sports.espn.go.com/nfl/news/story?id=2365246>; *Sooners QB Bomar Pleads Guilty to Alcohol Charge*, ESPN (May 30, 2006), <http://sports.espn.go.com/nfl/news/story?id=2463196>. Bomar, however, was dismissed from the program several months later after the team discovered that he violated NCAA rules by accepting payments at a job in excess of time actually worked. Sources: *Oklahoma Dismisses Starting QB Bomar*, ESPN (Aug. 3, 2006), <http://sports.espn.go.com/nfl/news/story?id=2537332>.

38. Scott Carter, *Parker, FSU's Top Receiver, Arrested on Gun and Drug Charges*, TAMPA TRIB. (Apr. 22, 2008), <http://tbo.com/sports/breaking-news-sports/2008/apr/22/parker-fsu-top-receiver-arrested-gun-and-drug-cha-ar-155931/>.

states that three unexcused absences in any one class will result in an automatic one game suspension.³⁹ Finally, FSU's criminal conduct policy states that any athlete facing misdemeanor charges is allowed to compete as long as the head coach and athletic director approve the player for competition; however, any athlete facing a felony charge must sit out until the charge is resolved.⁴⁰ While all of these policies are great ways, on paper, to regulate student-athlete behavior, they still leave the university too much discretion in the application of these policies. In fact, this discretion is not just a problem at FSU, but a problem nationwide.

University of Oklahoma coach Bob Stoops has been generally known to have an informal policy to suspend a player one game for a misdemeanor driving under the influence offense.⁴¹ Given this tendency, it was rather unusual when linebacker Londell Taylor was arrested twice in a three-year span for driving under the influence and Stoops never publicly announced a suspension or dismissal for Taylor.⁴² One would think that a crime as serious as driving under the influence would surely warrant a suspension—especially given Coach Stoops's history with dealing with this sort of offense and the fact that Taylor was a repeat offender—but no discipline was every publicly announced.⁴³ Situations like these are perfect examples of the inconsistencies in punishments given by collegiate coaches to players engaged in criminal conduct. Surprisingly or unsurprisingly, depending on how one looks at it, Taylor was not a “superstar” player either; he was merely a valuable member of the special teams unit.⁴⁴

As much as schools are criticized for the drastically different discretionary punishments they impose on their players who are engaged in criminal conduct, it is nice to see that schools have been taking harsher stances against players who commit sexual assaults since the Jameis Winston debacle of December 2013. In July 2014, a pair of University of Miami football players were dismissed from the football team after admitting to giving alcohol to, and sexually assaulting, an underage female in a dorm room.⁴⁵ In August 2014, a

39. Tim Linafelt, *FSU Coach Bobby Bowden Confirms WR Bert Reed's Suspension for Missed Classes*, ORLANDO SENTINEL (Oct. 23, 2008), http://articles.orlandosentinel.com/2008-10-23/sports/fsubeat23_1_ingram-missing-classes-miss-reed.

40. Andrew Carter, *Seminoles WRs Bert Reed, Cameron Wade Charged with Misdemeanor Battery*, ORLANDO SENTINEL (Nov. 27, 2008), http://articles.orlandosentinel.com/2008-11-27/sports/fsuar-rest27a_1_richard-goodman-reed-florida-state.

41. *See generally* Jake Trotter, *Stills, Jefferson Arrested on Misdemeanors*, NEWS OK (Jan. 22, 2011), <http://newsok.com/stills-jefferson-arrested-on-misdemeanors/article/3776566>.

42. *See* Aber, *supra* note 33.

43. *See id.*

44. *Id.*

45. Matt Porter, *Court Date Set for Former Hurricanes JaWand Blue, Alex Figueroa*, PALM BEACH

University of Oklahoma football player was suspended for one season after being found guilty of violating the university's sexual misconduct policy after the player sexually assaulted a female at an off-campus apartment earlier in the year.⁴⁶ This University of Oklahoma case is unique because the university levied its own punishment, despite the Cleveland County District Attorney's office declining to prosecute the case.⁴⁷ Finally, UF suspended quarterback Treon Harris indefinitely as soon as a sexual assault investigation was launched against him by the university police department.⁴⁸

Despite what seems to be a current consensus to punish players who commit a sexual assault harsher than those who commit other crimes, an overall refinement of the entire punishment system is needed. Currently, the NCAA gives each individual university too much discretion to decide what disciplinary punishment should be given to a student-athlete engaged in criminal conduct. As a result, the NCAA should adopt a uniform disciplinary policy for student-athletes engaged in criminal acts.

IV. THE NCAA'S ORGANIZATIONAL STRUCTURE AND RULE MAKING

The NCAA is a membership-driven, private organization composed of colleges and universities "dedicated to safeguarding the well-being of student-athletes and equipping them with the skills to succeed on the playing field"⁴⁹ The member institutions of the NCAA formulate the association's purpose, how the association will operate, who may join the association, the rules governing the association's member institutions, and the prohibited conduct of the association.⁵⁰ Thus, the NCAA member institutions can pass their own rules and bylaws; however, these rules and bylaws are not unbounded.⁵¹ NCAA rules and bylaws cannot permit the commitment of crimes or torts, must generally comply with federal and applicable state laws, and must comply with the public policy of good faith and fair dealing.⁵² These rules and

POST: CANES WATCH (July 9, 2014), <http://caneswatch.blog.palmbeachpost.com/2014/07/09/court-date-set-for-former-hurricanes-jawand-blue-alex-figueroa/>.

46. Jake Trotter, *Frank Shannon Faces 1-Year Ban*, ESPN (Aug. 11, 2014), http://espn.go.com/college-football/story/_/id/11340234/frank-shannon-oklahoma-sooners-facing-one-year-suspension.

47. *Id.*

48. Barlis, *supra* note 3.

49. *About*, NCAA.ORG, <http://www.ncaa.org/about> (last visited June 9, 2016).

50. Josephine (Jo) R. Potuto, *The NCAA Rule Adoption, Interpretation, Enforcement, and Infractions Processes: The Laws That Regulate Them and the Nature of Court Review*, 12 VAND. J. ENT. & TECH. L. 257, 267 (2010).

51. *Id.* at 266–67.

52. *Id.* at 266.

bylaws also cannot be arbitrary, capricious, unfair, or discriminatory in nature.⁵³

Only the NCAA member institutions are bound by the rules they pass and only NCAA member institutions can change, repeal, or request a waiver from these rules.⁵⁴ NCAA member institutions are required by membership to monitor the conduct of their employees and sanction their employees accordingly for any violations.⁵⁵ Thus, NCAA member institution staff members and student-athletes are affected by NCAA bylaws that must be enforced by the individual member institution.⁵⁶ The NCAA is also a multi-state institution, which means that state law cannot be enforced against the NCAA unless the state law “(1) is generally applicable, (2) is not targeted at bylaws and policy decisions of the multi-state association, (3) is consistent with the strictures of the Dormant Commerce Clause, and (4) imposes no extra-territorial effects.”⁵⁷ Finally, in the landmark case *NCAA v. Tarkanian*, the U.S. Supreme Court held that the NCAA is not bound by the U.S. Constitution because it is not a state actor.⁵⁸

As a result of the discretion generally granted to the NCAA in passing its own rules and bylaws, the NCAA has the right to control its rules’ enforcement and interpretation.⁵⁹ Courts will not generally interfere with private associations, unless the court must “nullify substantial disciplinary action taken against a member in violation of its constitution and bylaws.”⁶⁰ Moreover, courts generally find that “private associations require a certain degree of freedom from external intervention in order to achieve their purposes.”⁶¹ The reason courts are reluctant to interfere in voluntary associations are based on the following principles:

- (1) individuals should have the freedom to choose their associations and their rules;
- (2) judicial review of private associations would impinge on the right to freedom of association;
- and (3) rules and regulations of private associations are often unclear and are better evaluated by the

53. *English v. NCAA*, 439 So. 2d 1218, 1222 (La. Ct. App. 1983).

54. Potuto, *supra* note 50.

55. *Id.*

56. *Id.*

57. *Id.* at 269.

58. *NCAA v. Tarkanian*, 488 U.S. 179, 195 (1988).

59. Potuto, *supra* note 50, at 271–72.

60. *Trs. of the Cal. State Univ. & Colls. v. NCAA*, 147 Cal. Rptr. 187, 192 (Ct. App. 1978).

61. William Thomas McLain, Note, *NCAA Actions Do Not Constitute State Action for Federal Constitutional Purposes: NCAA v. Tarkanian*, ____ U.S. ____, 109 S. Ct. 454, 102 L. ED. 2d 469 (1988), 20 TEX. TECH L. REV. 1345, 1356 (1989).

association rather than by the courts.⁶²

There are several exceptions to the general rule that courts will not interfere in the voluntary affairs of membership organizations. The first of these exceptions is when “*the position of a voluntary association is so dominant in its field that membership in a practical sense is not voluntary but economically necessary.*”⁶³ The second exception is “where the private association's laws are themselves illegal, or where they are incompatible with one another.”⁶⁴ The third exception applies when a private association “has failed to follow the basic rudiments of due process.”⁶⁵ The final exception is when the rules of the association violate public policy.⁶⁶

Overall, the NCAA is free to pass whatever regulations it would like, provided those regulations do not violate any of the exceptions detailed above. An NCAA uniform discipline policy would probably not violate the exceptions to the general practice that a court not interfere in the affairs of a voluntary association. The only exception that could potentially be problematic is the requirement that the basic fundamentals of due process cannot be violated. For example, if the NCAA implemented a rule disciplining players whenever they are being investigated for a crime and have not ever been arrested or charged with a crime, that would probably violate fundamental due process.

Due process generally has two components: procedural and substantive.⁶⁷ Procedural due process requires the procedure to have notice and an opportunity to be heard, while substantive due process prohibits the NCAA from depriving a student-athlete of a property interest regardless of the procedure in place.⁶⁸ Thus, as long as the proposed policy provides a student-athlete with notice and the opportunity to be heard, the policy will pass muster under procedural due process. The substantive due process issue would be an interesting question because courts have held that student-athletes have no cognizable property right to compete in NCAA amateur athletics.⁶⁹ A student-athlete challenging the NCAA policy would have to show that he had a

62. Stephen F. Ross et al., *Judicial Review of NCAA Eligibility Decisions: Evaluation of the Restitution Rule and a Call for Arbitration*, 40 J.C. & U.L. 79, 88 (2014).

63. *Id.* at 89 (quoting *Bd. of Regents v. NCAA*, 561 P.2d 499, 504 (Okla. 1977)).

64. *Id.* at 90.

65. *Id.* at 90–91 (quoting *Charles O. Finley & Co. v. Kuhn*, 569 F.2d 527, 544 (7th Cir. 1978)).

66. *Id.*

67. David Hughes, *Looking Behind the Due Process Label on Land Use Decisions*, COLO. LAW., Apr. 2003, at 59, 59.

68. *See id.*

69. *Bloom v. NCAA*, 93 P.3d 621, 624 (Colo. App. 2004).

protected property interest to play whatever sport he plays at whatever NCAA member institution he attends. I personally do not think that a due process property interest claim would be successful given the case law currently out there; however, with some creative lawyering a substantive due process claim could be successful.

Another concern would be if the proposed uniform rule were too arbitrary without properly weighing a number of factors of the actual individual involved in the criminal conduct. If the rule was deemed too arbitrary, it might be deemed illegal as well. Thus, if the proposed rule targets a certain race, ethnicity, or gender in its enforcement, it will be deemed illegal. For example, a classic challenge in courts is whether having a stricter punishment for crimes dealing with crack cocaine rather than pure cocaine is targeting African-Americans because African-Americans are more likely to possess crack cocaine than pure cocaine.⁷⁰ As a result, if the proposed rule raised a similar issue of certain races being punished more severely than others, than the proposed rule may be deemed illegal. Overall, the proposed NCAA uniform discipline policy will need to provide procedural and substantive due process safeguards to prevent a judicial challenge that the rule is illegal. The NCAA is given much deference to pass and enforce its own legislation; however, the NCAA must be sure to enforce its rules routinely and fairly. The NCAA should provide notice and an opportunity to be heard to each student-athlete that is disciplined under the new policy.

V. PROPOSED NEW NCAA DISCIPLINE POLICY

A. Structure

The NCAA uniform discipline policy should be structured similarly to the four-level violation structure the NCAA uses to review its member institutions' violations of rules.⁷¹ A four-tiered structure would provide the enforcement committee an opportunity to review each criminal case that comes across its table and to place the specific case in one of the tiers. Thus, this new policy will not automatically label certain crimes, such as misdemeanor petty theft, in the lowest tier or felony sexual assault in the highest tier; instead the enforcement committee will review each case under the totality of the circumstances. Surely, after several years, the committee can use precedent to initially group the charge into one of the tiers; however, the committee will also

70. See generally Paul J. Larkin, Jr., *Crack Cocaine, Congressional Inaction, and Equal Protection*, 37 HARV. J.L. & PUB. POL'Y 241 (2014).

71. *New Violation Structure*, NCAA.ORG (Aug. 1, 2013), <http://www.ncaa.org/about/resources/media-center/news/new-violation-structure>.

look at all of the facts and circumstances in the case to move the charge up or down the tiers accordingly.

B. Disciplinary Enforcement Committee

Each NCAA member institution will have a duty to report to the newly created NCAA Disciplinary Enforcement Committee (Committee) any student-athlete that has been arrested, cited for, or charged with any crime, excluding parking violations. The student-athlete will have thirty-six hours to compile a memorandum of all the facts of the case, including any legal documents, such as a complaint, and any other document or statement the student-athlete deems relevant, and submit this memorandum to the Committee. The Committee will consist of nine attorneys who each have at least ten years of experience working as prosecutors. The Committee will review the memorandum and question the student-athlete as to the facts of the case. The student-athlete will have the right to remain silent during this conversation; however, the memorandum and its attachments will be solely used to determine the punishment, if any, if the student-athlete chooses to remain silent. The student-athlete will be allowed to have his or her attorney present during the conversation.

The Committee will have twenty-four hours after receiving the memorandum and conducting the follow-up phone call to determine a decision as to the tier of the punishment level. As indicated earlier, the Committee will review the memorandum under a totality of the circumstances analysis, which means they can weigh certain aggravating or mitigating factors of the crime to determine which tier the specific criminal conduct falls into. Aggregating factors include, but are not limited to, the number of past arrests for this student-athlete, whether there was aggressive behavior toward law enforcement officers, or whether there was a weapon involved. Mitigating factors include progress in school and the student-athlete's general conduct record (character references are allowed). Additionally, precedential cases will also be used to initially place this specific case in a tier. The Committee must notify the student-athlete and the NCAA member school by e-mail within twenty-four hours of receiving the memorandum. The Committee also will release the decision to the general public.

C. Punishment

The Committee will have twenty-four hours after receiving the memorandum and conducting the follow-up phone call to determine a decision as to the tier of the punishment level. The punishments for each tier are as follows:

*Level I—Severe Breach of Conduct*⁷² - dismissed from the athletic team and recommended expulsion from the university.

*Level II—Significant Breach of Conduct*⁷³ - eight-game suspension and a suspension from all team activities.

*Level III—Breach of Conduct*⁷⁴ - four-game suspension with a suspension from fifty percent of team activities.

*Level IV—Incidental Infraction*⁷⁵ - one-game suspension with no suspension from other team activities.

D. Appeals

If a student-athlete does not agree with the decision of the Committee, there will be an appeals process where the student-athlete will have the right to have an expedited hearing in Indianapolis to determine his or her NCAA eligibility. The student-athlete will have forty-eight hours after the decision is e-mailed to file an appeal with the Committee. The student-athlete will have the right to a hearing within seven days from the date of appeal. At this hearing, the student-athlete will sit in front of a three-judge panel composed of retired senior judges. The student-athlete will have the opportunity to pick one of the judges out of a pool for the panel, the Committee will have the opportunity to pick one of the judges out of a pool for the panel, and together the student-athlete and the Committee will pick one of the judges out of a pool for the panel. The student-athlete will have the right to an attorney at this hearing; however, the attorney may not speak on behalf of the student-athlete. The student-athlete will also have the opportunity to call witnesses to this hearing who do not have to physically appear in person and hearsay will be admissible at this hearing. Once a decision has been reached by the three-judge panel, the punishment will be final.

72. 2015-16 NCAA DIVISION I MANUAL, art 19.1.1 (2015).

73. *Id.* art 19.1.2.

74. *Id.* art 19.1.3.

75. *Id.* art 19.1.4.

E. Member School's Rights

The NCAA member school of the student-athlete who is punished under the new NCAA uniform discipline policy does have the right to increase the punishment in any manner that it sees fit; however, the NCAA member school may not reduce the punishment handed down by the Committee. Each NCAA member institution that decides to increase the punishment handed down by the Committee must clearly state to the public what internal policy or rule is violated and provide a brief justification for the punishment in a press release.

VI. CONCLUSION

The NCAA needs a uniform disciplinary policy because of the terribly inconsistent application of individual member schools' policies and procedures when a student-athlete gets into criminal trouble. Some schools will bench a player for the first half of a football game, while other schools will suspend him indefinitely or dismiss him from the team for the same exact criminal act. It may depend on the gravity of the alleged offense or aggravating circumstances, but it also may not. Currently, each school's high-ranking officials and/or head coach has the discretion on how they should discipline a player alleged of committing a crime. Some schools discipline a player when a criminal investigation is launched, some wait until a criminal complaint is filed, some wait until an arrest of the player occurs, and some wait to let the entire criminal justice process play out to determine the player's guilt to determine whether disciplinary action is necessary. Schools' internal disciplinary policies and punishment decisions vary based on the part of the country in which the school is located and, unfortunately, the skill of the athlete involved in the alleged crime. Some teams have been criticized for lightening the school's punishment on superstar players compared to role players on the team as well. To minimize all of the favoritism and discretion of each member school, the NCAA should adopt a uniform disciplinary policy. This policy would prevent the inconsistent discipline decisions of individual schools, promote accountability for student-athletes, and promote transparency by each individual school.

Exhibit 1

University of Florida			
Date	Player	Charge	Discipline
July 2005	Dawayne Grace	Misdemeanor battery, Misdemeanor theft	Unannounced
Oct. 2005	Dawayne Grace	Misdemeanor disorderly conduct	Suspended indefinitely
May 2006	Louis Murphy	Misdemeanor marijuana possession	Suspended 3 games
July 2006	Avery Atkins	Felony false imprisonment, Misdemeanor domestic battery	Suspended indefinitely
Sept. 2006	Jon Demps	Misdemeanor driving with suspended license	Unannounced
Feb. 2007	Jacques Ricker-son	Misdemeanor marijuana possession	Suspended 1 game
Apr. 2007	Jamar Hornsby	Misdemeanor criminal mischief, Misdemeanor property damage	Unannounced
Apr. 2007	Ronnie Wilson	Felony aggravated assault, Misdemeanor battery, Felony use of deadly weapon during felony	Suspended for season
Apr. 2007	Dustin Doe	Misdemeanor disorderly conduct	Unannounced
May 2008	Dorian Munroe	Felony larceny	Unannounced
May 2007	John Curtis	Misdemeanor violation of probation	Unannounced
June 2007	Brandon James	Felony marijuana purchase, Misdemeanor marijuana possession	Suspended 1 game
Oct. 2007	Tony Joiner	Felony theft	Unannounced
Dec. 2007	Jermaine Cunningham	Misdemeanor battery	Unannounced
Jan. 2008	Torrey Davis	Misdemeanor underage drinking	Unannounced
Jan. 2008	Ronnie Wilson	Misdemeanor marijuana possession	Unannounced
Apr. 2008	Torrey Davis	Misdemeanor driving with suspended license	Unannounced
May 2008	Jamar Hornsby	Felony fraudulent use of credit cards, Misdemeanor larceny	Dismissed from team
June 2008	Dustin Doe	Misdemeanor driving with suspended license	Unannounced

July 2008	Torrey Davis	Misdemeanor driving with suspended license	Unannounced
Oct. 2008	Ronnie Wilson	Misdemeanor battery, Misdemeanor assault, Misdemeanor negligent exposure to harm	Dismissed from team
Nov. 2008	Cam Newton	Felony burglary, Felony larceny, Felony obstruction of justice	Suspended for rest of season
Nov. 2008	Jacques Ricker-son	Felony battery domestic violence, Felony obstruction of justice	Dismissed from team
Feb. 2009	Carl Johnson	Misdemeanor violation of domestic violence restraining order	Unannounced
Feb. 2009	Riley Cooper	Misdemeanor resisting an officer, Misdemeanor failure to comply with police order	Unannounced
Apr. 2009	Marquis Hannah	Felony burglary	Dismissed from team
May 2009	Janoris Jenkins	Misdemeanor disorderly conduct, Misdemeanor resisting arrest	Unannounced
July 2008	Dustin Doe	Misdemeanor driving with suspended license	Suspended indefinitely
Dec. 2009	Carlos Dunlap	Misdemeanor driving under the influence	Suspended 1 game
Feb. 2010	Gary Brown	Misdemeanor battery	Dismissed from team
Jun. 2010	Frankie Hammond Jr.	Misdemeanor driving under the influence, Misdemeanor underage drinking	Suspended 1 month, lost scholarship
July 2010	Matt Elam	Misdemeanor underage drinking	Unannounced
Aug. 2010	Solomon Patton	Misdemeanor underage drinking	Unannounced
Sept. 2010	Chris Rainey	Felony aggravated stalking	Dismissed from team
Jan. 2011	Janoris Jenkins	Misdemeanor marijuana possession	Unannounced
Jan. 2011	Chris Martin	Misdemeanor marijuana possession	Unannounced
Jan. 2011	Kendric Johnson	Misdemeanor marijuana possession	Unannounced
Feb. 2011	Leon Orr	Misdemeanor driving with suspended license	Unannounced
Apr. 2011	Janoris Jenkins	Misdemeanor marijuana possession	Dismissed from team

May 2011	De'Ante Saunders	Misdemeanor marijuana possession	Unannounced
July 2011	Matt Elam	Misdemeanor underage drinking	Unannounced
Sept. 2011	Dee Finley	Misdemeanor resisting arrest, Misdemeanor driving with suspended license	Suspended 1 game
Sept. 2011	Marcus Roberson	Misdemeanor underage drinking	Unannounced
Jan. 2012	Leon Orr	Misdemeanor marijuana possession	Unannounced
Feb. 2012	A.C. Leonard	Misdemeanor domestic battery	Suspended indefinitely
May 2012	Leon Orr	Misdemeanor driving with suspended license	Unannounced
June 2012	Trip Thurman	Misdemeanor of fake ID	Unannounced
Sept. 2012	Trip Thurman	Misdemeanor underage drinking	Unannounced
Nov. 2012	Jafar Mann	Misdemeanor marijuana possession	Unannounced
Jan. 2013	Jessamen Dunker	Felony grand theft of a motor vehicle, Misdemeanor driving with suspended license	Suspended indefinitely
Feb. 2013	Loucheiz Purifoy	Misdemeanor marijuana possession	Unannounced
June 2013	Antonio Morrison	Misdemeanor simple battery	Unannounced
July 2013	Antonio Morrison	Misdemeanor resisting arrest, Misdemeanor harassing an on-duty animal	Suspended 2 games
May 2014	Jalen Tabor	Misdemeanor marijuana possession	Unannounced
Oct. 2014	Treon Harris	Sexual assault investigation	Suspended indefinitely

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Exhibit 2

Florida State University			
Date	Player	Charge	Discipline
Feb. 2005	AJ Nicholson	Misdemeanor driving under the influence	Unannounced

76. *Court Records*, *supra* note 25; *Bianchi*, *supra* note 12; *Fowler & George*, *supra* note 25; *Silverstein*, *supra* note 27.

June 2005	AJ Nicholson	Misdemeanor resisting arrest	Unannounced
July 2005	Ernie Sims	Misdemeanor domestic battery, Misdemeanor resisting arrest without violence	Unannounced
Dec. 2005	AJ Nicholson	Sexual assault investigation	Suspended 1 game
Nov. 2006	Preston Parker	Misdemeanor petty theft	Unannounced
Sept. 2007	Joseph Surratt	Felony battery on a law enforcement officer	Suspended indefinitely
Sept. 2007	Eugene Hayes	Misdemeanor disorderly conduct, Misdemeanor resisting arrest without violence, Misdemeanor assault on a police officer	Suspended indefinitely
Apr. 2008	Preston Parker	Felony carrying a concealed weapon, Misdemeanor marijuana possession	Suspended 2 games
Nov. 2008	Bert Reed	Misdemeanor simple battery	Suspended 1 game
Nov. 2008	Cameron Wade	Misdemeanor simple battery	Suspended 1 game
Jan. 2009	Preston Parker	Misdemeanor driving under the influence	Dismissed from team
Apr. 2009	Rod Owens	Misdemeanor driving under the influence	Suspended indefinitely
May 2009	Richard Goodman	Felony aggravated battery with a deadly weapon causing great bodily harm	Suspended indefinitely
May 2009	Cameron Wade	Misdemeanor failure to appear	Unannounced
Aug. 2009	Mister Alexander	Misdemeanor driving without a valid driver's license	Unannounced
June 2010	Ed Imeokparia	Felony grand theft	Suspended indefinitely
July 2010	Nigel Carr	Misdemeanor marijuana possession	Unannounced
July 2010	Nigel Carr	Felony burglary of a structure, Felony property damage, Felony theft of a credit card, Felony fraud	Dismissed from team
Sept. 2010	Mister Alexander	Misdemeanor failure to appear	Unannounced
Feb. 2011	Jermaine Thomas	Misdemeanor driving with suspended license	Unannounced
Feb. 2011	Jermaine Thomas	Misdemeanor driving with suspended license	Unannounced

Sept. 2011	Greg Reid	Misdemeanor resisting an officer, Misdemeanor perjury	Unannounced
Dec. 2011	Avis Commack	Felony grand theft	Suspended 1 game
Dec. 2011	Arrington Jenkins	Felony vehicular theft	Suspended 1 game
Feb. 2012	James Wilder Jr.	Felony resisting arrest, Felony battery on a law enforcement officer	Suspended indefinitely
June 2012	James Wilder Jr.	Misdemeanor violation of parole	Unannounced
July 2012	Greg Reid	Misdemeanor possession of marijuana, Misdemeanor driving with suspended license, Citation for seatbelt violation	Unannounced
Jan. 2013	James Wilder Jr.	Misdemeanor failure to appear	Unannounced
June 2013	Gregory Dent	Felony sexual battery	Suspended indefinitely
Mar. 2014	Ira Denson	Felony fraudulent use of a credit card, Felony petty theft	Dismissed from team
Apr. 2014	Jameis Winston	Citation for shoplifting	Suspended 3 baseball games
June 2014	Jesus Wilson	Felony grand theft of a motor vehicle	Suspended 1 game

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77. Andrew Carter, *Florida State RB Jermaine Thomas Charged Again with Driving with a Suspended License*, ORLANDO SENTINEL (Feb. 14, 2011), http://articles.orlandosentinel.com/2011-02-14/sports/os-jermaine-thomas-arrest-20110214_1_license-leon-county-sheriff-s-office-tallahassee-police; Andrew Carter & Bianca Prieto, *FSU Linebacker Nigel Carr Arrested on Burglary, Fraud Charges*, ORLANDO SENTINEL (July 26, 2010), http://articles.orlandosentinel.com/2010-07-26/sports/os-fsu-nigel-carr-arrested-20100726_1_tallahassee-police-fraud-charges-burglary; Andrew Carter, *Goodman Faces Felony Charge*, ORLANDO SENTINEL (May 28, 2009), http://articles.orlandosentinel.com/2009-05-28/sports/fsu_1_richard-goodman-fsu-football-police-department; Bob Ferrante, *FSU Starting Linebacker Mister Alexander Charged with Failure to Appear in Court*, PALM BEACH POST (Sept. 8, 2010), <http://www.palmbeachpost.com/news/sports/college-football/fsu-starting-linebacker-mister-alexander-charged-w/nL9rg/>; Gary Fineout, *FSU Football Player: Tasered, Arrested, Suspended*, MIAMI HERALD: NAKED POL. (Sept. 21, 2007, 12:50 PM), <http://miamiherald.typepad.com/nakedpolitics/2007/09/fsu-football-pl.html>; *Florida State Seminoles Cut Ties to Troubled Linebacker Nigel Carr*, TAMPA BAY TIMES (Aug. 18, 2010), <http://www.tampabay.com/sports/college/florida-state-seminoles-cut-ties-to-troubled-linebacker-nigel-carr/1116160>; *FSU's Sims Pleads No Contest to Lesser Charge*, ESPN (Aug. 10, 2005), <http://sports.espn.go.com/ncf/news/story?id=2130702>; *Jimbo Speaks About LB's Arrest Warrant*, WSWG (Sept. 9, 2010), <http://www.wctv.tv/wswg/wswgsports/headlines/102505549.html>; T.J. Mcaloon, *Florida State's Arrested Players Must Sit Out Bowl Game vs. Notre Dame*, BLEACHER REP. (Dec. 19, 2011), <http://bleacherreport.com/articles/989328-florida-states-arrested-players-must-sit-out-bowl-game-vs-notre-dame>; Julie Montanaro, *FSU Receiver Cameron Wade Fails to Appear in Court*, WCTV, <http://www.wctv.tv/home/headlines/44012062.html> (last updated May 4, 2009); Natalie Pierre, *Jameis Winston Reinstated to Florida State Baseball Team*, USA TODAY (May 4, 2014), <http://www.usatoday.com/story/sports/college/baseball/2014/05/04/jameis-winston-reinstated-florida->

Exhibit 3

University of Miami			
Date	Player	Charge	Discipline
Aug. 2006	Ryan Moore	Assault and battery investigation	Unannounced
Oct. 2007	Robert Marve	Misdemeanor resisting arrest without violence, Misdemeanor criminal mischief	Suspended 1 game
May 2011	Jeffrey Brown	Felony sexual battery on a physically helpless victim	Dismissed from team
Mar. 2011	Ramon Buchanan	Felony resisting a police officer with violence, Felony battery on a police officer, Misdemeanor trespassing, Misdemeanor disorderly conduct, Misdemeanor resisting arrest without violence	Suspended 3 weeks
Dec. 2012	Thomas Finnie	Felony grand theft, Felony burglary	Suspended indefinitely and later dismissed from team
Apr. 2013	Gabe Terry	Felony marijuana possession, Misdemeanor resisting arrest	Dismissed from team
July 2014	JaWand Blue	Felony sexual battery on a physically helpless victim	Dismissed from team
July 2014	Alex Figueroa	Felony sexual battery on a physically helpless victim, Felony possession of a fake or stolen driver's license	Dismissed from team
Sept. 2014	Kevin Olsen	Misdemeanor driving under the influence, Felony possession of a fake or stolen driver's license	Dismissed from team

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state-seminoles-baseball/8700201/; Natalie Pierre, *WR Jesus Wilson Returns for Florida State*, TALLAHASSEE DEMOCRAT (Sept. 1, 2014), <http://www.tallahassee.com/story/sports/college/fsu/football/2014/09/01/jesus-wilson-returns/14932287/>; Sean Rossman, *Former FSU WR Dent Guilty of Misdemeanor Battery*, TALLAHASSEE DEMOCRAT (Sept. 30, 2014), <http://www.tallahassee.com/story/sports/college/fsu/football/2014/09/30/former-fsu-wr-dent-guilty-battery/16491937/>; Jared Shanker, *FSU Dismisses Ira Denson After Arrest*, ESPN (Mar. 19, 2014), http://espn.go.com/college-football/story/_/id/10635363/florida-state-seminoles-ol-ira-denson-dismissed-arrest; Carter, *supra* note 35; Carter, *supra* note 40; Dinich, *supra* note 33; Drehs, *supra* note 32; *FSU Football Player Faces Judge in Bay County*, *supra* note 4; *FSU's James Wilder Arrested Again*, *supra* note 37; Hale, *supra* note 36; Harvey, *James Wilder Florida State Arrest*, *supra* note 37; Harvey, *James Wilder Florida State Jail*, *supra* note 37; *Parker Dismissed from Team*, *supra* note 2; Vastola, *supra* note 36.

78. *Canes QB Marve Suspended for Incident Involving Smashing a Car Mirror in '07*, *supra* note 4; Michael Casagrande, *Former Miami Hurricane Thomas Finnie Expecting to Have Charges Dropped After Pretrial Diversion*, SUN SENTINEL (Jan. 16, 2013), <http://www.sun-sentinel.com/sports/miami->

Exhibit 4

University of Oklahoma			
Date	Player	Charge	Discipline
Sept. 2005	Rhett Bomar	Misdemeanor underage drinking	Unannounced
Nov. 2005	J.D. Quinn	Misdemeanor driving under the influence under age 21	Unannounced
Dec. 2005	Demarrio Pleasant	Misdemeanor domestic abuse assault and battery	Unannounced
Mar. 2006	Rhett Bomar	Misdemeanor underage drinking	Unannounced
July 2006	Rhett Bomar	Misdemeanor hosting a nuisance party	Unannounced
Oct. 2006	Rufus Alexander	Misdemeanor disturbing the peace, Misdemeanor interference with official process	Unannounced
Aug. 2007	Ryan Broyles	Misdemeanor attempted larceny	Suspended 1 year
June 2008	Phil Loadholt	Misdemeanor driving under the influence, Misdemeanor transporting an open container	Suspended 1 game
Apr. 2009	Keenan Clayton	Misdemeanor failure to appear	Unannounced
Apr. 2009	Donald Stephenson	Misdemeanor failure to appear	Unannounced
Apr. 2009	Jermaine Gresham	Misdemeanor failure to appear	Unannounced
Sept. 2010	Tavaris Jeffries	Misdemeanor domestic abuse assault and battery	Suspended indefinitely
Jan. 2011	Kenny Stills	Misdemeanor driving under the influence	Suspended 1 game

hurricanes/sfl-former-miami-hurricane-thomas-finnie-expecting-to-have-charges-dropped-after-pre-trial-diversion-20130116-story.html; Michael Casagrande, *Gabe Terry Dismissed from Miami Football Program*, SUN SENTINEL (Apr. 25, 2013), <http://www.sun-sentinel.com/sports/miami-hurricanes/sfl-gabe-terry-dismissed-from-miami-football-program-20130425-story.html>; Steve Gorten, *Miami Hurricanes Reinstate LB Ramon Buchanan After Arrest*, SUN SENTINEL (Apr. 7, 2011), http://articles.sun-sentinel.com/2011-04-07/sports/sfl-miami-ramon-buchanan-reinstated-arrest-11_1_felony-charges-police-officer-arrest; Jerry Hinnen, *Miami Reserve QB Kevin Olsen No Longer Enrolled After DUI, Suspension*, CBSSPORTS (Sept. 15, 2014), <http://www.cbssports.com/collegefootball/eye-on-college-football/24710762/miami-qb-kevin-olsen-charged-with-dui>; *Miami QB Marve Arrested on Misdemeanor Charges*, ESPN (Nov. 3, 2007), <http://sports.espn.go.com/espn/wire?section=nfc&id=3093456>; Jorge Milian, *Miami Hurricanes Redshirt Freshman Jeffrey Brown Arrested, Accused of Raping Female Student*, PALM BEACH POST (May 5, 2011), <http://www.palm-beachpost.com/news/sports/college/miami-hurricanes-player-jeffrey-brown-arrested-acc/nLr9m/>; *Police: Miami WR Moore Grabbed, Pushed Woman*, ESPN (Aug. 29, 2006), <http://sports.espn.go.com/nfl/news/story?id=2565403>; Porter, *supra* note 45.

Jan. 2011	Tony Jefferson	Misdemeanor interference with official process	Unannounced
Feb. 2011	Stacy McGee	Misdemeanor marijuana possession	Suspended 1 game
May 2011	Marquis Anderson	Misdemeanor petty larceny	Unannounced
Aug. 2011	Jonathan Miller	Misdemeanor failure to appear	Unannounced
Sept. 2011	Londell Taylor	Misdemeanor driving under the influence, Misdemeanor leaving the scene of an accident	Unannounced
Nov. 2011	Stephen Good	Misdemeanor assault and battery	Unannounced
Dec. 2011	Roy Finch	Misdemeanor property molestation	Unannounced
Dec. 2012	Stacy McGee	Misdemeanor driving under the influence, Misdemeanor driving with a suspended license	Suspended 1 game
Dec. 2012	Cortez Johnson	Misdemeanor marijuana possession	Suspended 1 game
Dec. 2012	Jalen Saunders	Misdemeanor marijuana possession	Unannounced
May 2013	Kendal Thompson	Misdemeanor public intoxication, Misdemeanor interference with official process	Unannounced
June 2013	Chuka Ndulue	Misdemeanor driving under the influence	Suspended 1 game
July 2013	Londell Taylor	Felony driving under the influence, Misdemeanor driving with a revoked license	Unannounced
Aug. 2013	Jake Reed	Felony burglary, Misdemeanor assault and battery, Misdemeanor domestic abuse	Suspended indefinitely
Sept. 2013	Trey Metoyer	Felony indecent exposure, Felony indecent exposure	Suspended indefinitely
Nov. 2013	Daniel Brooks	Misdemeanor assault and battery	Unannounced
June 2014	Steven Parker	Misdemeanor public intoxication	Unannounced
Aug. 2014	Frank Shannon	Sexual assault investigation	Suspended for season
Aug. 2014	Joe Mixon	Misdemeanor assault	Suspended for season
Jan. 2015	Hatari Byrd	Misdemeanor possession of drug paraphernalia, Misdemeanor underage drinking	Unannounced

79. Silas Allen, *OU Offensive Lineman Arrested, Accused of Breaking into Ex-Girlfriend's House and Assaulting Two People*, NEWS OK (Aug. 26, 2013), <http://newsok.com/ou-offensive-lineman-arrested-accused-of-breaking-into-ex-girlfriends-house-and-assaulting-two-people/article/3876229>; Brandon Chatmon, *Ryan Broyles Matures to Greatness*, ESPN (Aug. 29, 2011), http://espn.go.com/colleges/oklahoma/football/story/_/id/6902934/ryan-broyles-matures-one-oklahoma-sooners-all-time-greats; Tyler Dunne, *DUI Was a Wake-Up Call for WR Kenny Stills*, MILWAUKEE J. SENTINEL (Apr. 11, 2013), <http://www.jsonline.com/sports/kenny-stills-learned-from-dui-kv9h0i6-202637151.html>; Zac Ellis, *Oklahoma Suspends Linebacker Frank Shannon for Entire 2014 Season*, SPORTS ILLUSTRATED (Aug. 11, 2014), <http://www.si.com/college-football/2014/08/11/oklahoma-sooners-frank-shannon-suspended-season>; Guerin Emig, *OU's Finch Cited for Property Damage*, TULSA WORLD: OU SPORTS EXTRA (Dec. 13, 2011), http://www.tulsaworld.com/sportsextra/ou/ou-s-finch-cited-for-property-damage/article_8cb864e5-455e-5c00-b4ff-4d37689ed2a6.html; Guerin Emig, *OU's Trey Metoyer Charged with Felony Indecent Exposure*, TULSA WORLD (Oct. 16, 2013), http://www.tulsaworld.com/sportsextra/ou-s-trey-metoyer-charged-with-felony-indecent-exposure/article_147bc406-8213-541b-888b-7e2a9c11a32c.html; Guerin Emig, *UPDATE: OU Freshman Steven Parker Arrested*, TULSA WORLD (June 23, 2014), http://www.tulsaworld.com/sportshomepage3/update-ou-freshman-steven-parker-arrested/article_7b6c7bd0-3d49-55be-8f15-31d9c658172c.html; Tim Griffin, *Clayton Arrested; Missed Court Date*, ESPN (Apr. 30, 2009), <http://sports.espn.go.com/ncf/news/story?id=4116210>; John Helsley et al., *OU Football Notebook: Trio of Sooners Miss Opener*, NEWS OK (Aug. 31, 2008), <http://newsok.com/ou-football-notebook-trio-of-sooners-miss-opener/article/3291362>; Paige Hill, *OU's Londell Taylor Arrested for Suspicion of DUI*, KFOR (July 23, 2013), <http://kfor.com/2013/07/23/ous-londell-taylor-arrested-for-suspicion-of-dui/>; Jason Kersey, *Oklahoma Football: Stacy McGee Will Miss Cotton Bowl; Jalen Saunders Will Play*, NEWS OK (Dec. 28, 2012), <http://newsok.com/oklahoma-football-stacy-mcgee-will-miss-cotton-bowl-jalen-saunders-will-play/article/3741358>; Jason Kersey, *Oklahoma Redshirt Freshman Running Back Daniel Brooks Cited on Assault and Battery Complaint*, NEWS OK (Nov. 15, 2013), <http://newsok.com/oklahoma-redshirt-freshman-running-back-daniel-brooks-cited-on-assault-and-battery-complaint/article/3905000>; Jason Kersey, *OU Football: Hatari Byrd Cited on Misdemeanor Drug, Alcohol Complaints*, NEWS OK (Jan. 27, 2015), <http://newsok.com/ou-football-hatari-byrd-cited-on-misdemeanor-drug-alcohol-complaints/article/5388157>; Jason Kersey, *Report: Oklahoma's Cortez Johnson, Chuka Ndulue Suspended for Season Opener*, NEWS OK (Aug. 20, 2013), <http://newsok.com/report-oklahomas-cortez-johnson-chuka-ndulue-suspended-for-season-opener/article/3874040>; Jeremy Mauss, *Cotton Bowl: WR Jalen Saunders in, DT Stacy McGee out for Oklahoma*, SB NATION (Dec. 28, 2012), <http://www.sbnation.com/2012/12/28/3813292/jalen-saunders-stacy-mcgee-cotton-bowl-oklahoma>; Robert Medley & George Schroeder, *Sooner Arrested on Abuse Claim*, NEWS OK (Dec. 3, 2005), <http://newsok.com/sooner-arrested-on-abuse-claim/article/2922364>; *Oklahoma DL Quinn Arrested, Charged with DUI*, ESPN (Nov. 4, 2005), <http://sports.espn.go.com/ncf/news/story?id=2213611>; *Oklahoma's Top Tackler, Captain Alexander Arrested*, ESPN (Oct. 16, 2006), <http://sports.espn.go.com/ncf/news/story?id=2627506>; *OU Running Back Jonathan Miller Arrested Late Thursday*, NEWS OK (Aug. 23, 2011), <http://newsok.com/ou-running-back-jonathan-miller-arrested-late-thursday/article/3597393>; *Sooners Suspend Joe Mixon*, ESPN (Aug. 19, 2014), http://espn.go.com/college-football/story/_/id/11372291/joe-mixon-oklahoma-sooners-suspended-season; *Stacy McGee Arrested, Cited*, ESPN (Feb. 23, 2011), <http://sports.espn.go.com/ncf/news/story?id=6148835>; Jake Trotter, *Freshman LB Londell Taylor Arrested*, ESPN (Sept. 29, 2011), http://espn.go.com/colleges/oklahoma/football/story/_/id/7035203/freshman-lb-londell-taylor-arrested; Jake Trotter, *G Tavaris Jeffries Arrested*, NEWS OK (Sept. 9, 2010), <http://newsok.com/g-tavaris-jeffries-arrested/article/3788378>; Jake Trotter, *OU Freshman Football Player Marquis Anderson Arrested*, NEWS OK (May 2, 2011), <http://newsok.com/ou-freshman-football-player-marquis-anderson-arrested/article/3564074>; Jake Trotter, *OU Lineman Stephen Good Arrested*, ESPN (Nov. 8, 2011), http://espn.go.com/colleges/oklahoma/football/story/_/id/7203283/oklahoma-sooners-stephen-good-arrested; Jake Trotter, *OU's Kenny Stills, Tony Jefferson Arrested*, NEWS OK (Jan. 22, 2011), <http://newsok.com/ous-kenny>

stills-tony-jefferson-arrested/article/3534703; Jake Trotter, *Sooners' Kendal Thompson Arrested*, ESPN (May 10, 2013), http://espn.go.com/college-football/story/_/id/9261961/oklahoma-sooners-qb-kendal-thompson-arrested-public-intoxication; Jake Trotter, *Sooners WR Jalen Saunders Arrested*, ESPN (Dec. 2, 2012), http://espn.go.com/college-football/story/_/id/8701872/oklahoma-sooners-jalen-saunders-cortez-johnson-arrested-pot-charge; Scott Wright, *OU Lineman Loadholt Arrested*, NEWS OK (June 26, 2008), <http://newsok.com/ou-lineman-loadholt-arrested/article/3262380>; *OU's Bomar, 20, Cited with Beer at Hornets Game*, *supra* note 37; *Sooners QB Bomar Pleads Guilty to Alcohol Charge*, *supra* note 37.