

VOLUNTARY LABOR ARBITRATION TRIBUNAL

In the Matter of the Arbitration between

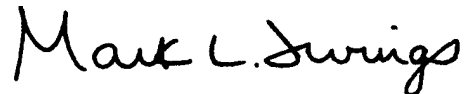
**THE UNIVERSITY OF CONNECTICUT CHAPTER
OF THE AMERICAN ASSOCIATION OF UNIVERSITY
PROFESSORS, FOR KEVIN OLLIE**

and

**THE BOARD OF TRUSTEES OF THE
UNIVERSITY OF CONNECTICUT**

AWARD OF ARBITRATOR

The University of Connecticut violated the collective bargaining agreement when it terminated Kevin Ollie without just cause from his position as head coach of the Men's Basketball Program. Pursuant to Section 10.2 of the November 10, 2016 employment agreement, the University of Connecticut shall pay Kevin Ollie \$11,157,032.95 within ten business days of the issuance of this award.



Arbitrator

January 20, 2022

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**OPINION
AND
AWARD**

On June 30, 2018, the parties submitted this matter to arbitration pursuant to the terms of their collective bargaining agreement effective July 1, 2017 through June 30, 2021. The parties selected Arbitrator Marcia Greenbaum. On July 29, 2019, at the request of the parties Arbitrator Greenbaum issued a preliminary ruling to determine the applicable just cause standard in this matter. Thirty-three days of hearings were held before Arbitrator Greenbaum, beginning with in-person hearings in East Hartford, Connecticut on February 25, 2020. The onset of the COVID-19 pandemic paused hearings after March 5, 2020, and the parties resumed hearings via video conference on August 12, 2020. Hearings concluded on November 12, 2020. Jacques J. Parenteau, Esq., and William G. Madsen, Esq., appeared on behalf of Mr. Ollie; Brian Doyle, Esq., appeared on behalf of the UConn-AAUP Chapter; Gabriel J. Jiran, Esq. appeared on behalf of the University of Connecticut ("UConn").

Post-hearing briefs were received from the parties on December 28, 2020, and reply briefs were received from the parties on January 11, 2021. Tragically, Arbitrator Greenbaum died on January 19, 2021 after contracting COVID-19. The parties subsequently selected Arbitrator Mark Irvings to decide this matter based on the existing record¹.

¹ In the course of working to gain a familiarity with the massive record, including the hundreds of pages of briefing, it became apparent that I could not issue a decision within the timeframe the parties had specified. The parties were presented with the option of an award without supporting opinion, an opinion without a statement of facts or

STIPULATED ISSUE

What disposition shall be made of the grievance filed by the UConn Chapter of the AAUP on behalf of Kevin Ollie?

If the grievance is granted, then the remedy shall be the remaining payments due under Section 10.2 of the November 10, 2016 agreement between the University of Connecticut and Kevin Ollie, which amount shall be agreed to by the parties prior to the close of the hearing. If the parties disagree on the amount, then the Arbitrator shall retain jurisdiction to determine the amount. Otherwise, the Arbitrator shall have no authority to deviate from Section 10.2.

RELEVANT CONTRACT PROVISIONS

UCONN-AAUP CBA DATED JULY 1, 2017 THROUGH JUNE 30, 2021

ARTICLE 37 – ATHLETICS

37.12 ...The parties agree that, except for serious misconduct, dismissal of a bargaining unit member ... should occur only as the final step in a progressive disciplinary system and each instance of misconduct shall be judged solely on its own factual situation merits. The level of proof shall be preponderance of the evidence...

A. Discipline or dismissal during the terms of an employment contract shall be for just cause. ... Just cause is defined to mean:

i. Neglect of assigned responsibilities, incompetence, or failure to fulfill professional commitments.

ii. Insubordination or serious noncompliance with the University of Connecticut By-Laws, (Revised August 15, 2015), with the Code of Ethics for Public Officials (Chapter 10 of the Connecticut Statutes), or with NCAA rules or regulations;

summary of the parties' respective positions, or a full traditional labor arbitration award, each option with a successively longer due date. The parties agreed on the opinion-only option. Once I began to draft the opinion I concluded that it would be much clearer if I set forth the factual background separately.

iii. The use of fraud, collusion, concealment, or misrepresentation of a fact material to obtaining employment with the University and/or obtaining promotion, salary increase, or other benefit;

iv. Sexual harassment, serious misconduct, or other conduct which impairs the rights of faculty, students, employees, or others who are engaged with the University in its business or operations;

v. Repeated, documented failure to meet generally expected standards of job performance based on written evaluations conducted in accordance with paragraphs 37.10 and 37.11 above.

B. Procedures to be followed for dismissal, demotion in rank and/or salary, or suspension without pay during the term of any employment contract:

i. The bargaining unit member shall receive in writing a statement of the reasons for the action being recommended.

ii. Within seven (7) calendar days of receiving the written statement in 37.12.B.1 above, the buy member may request a hearing being the Director of Athletics . . .

iii. Within seven (7) calendar days of receiving the recommendation in 37.12.B.ii above, the bargaining unit member shall have the right to submit a written appeal to the President . . .

iv. The decision of the President . . . may be appealed to arbitration on the merits under Article 10 of this agreement. . .

37.13 Immediate Suspension and Loss of Salary

. . .

B. In the event the discipline involves loss of salary and the decision is appealed to arbitration, the salary shall not be withheld until after the arbitration decision or four (4) months from the initiation of the discipline at 37.12.B.i, whichever is sooner. In the event the discipline is for serious misconduct (including job abandonment), this provision is not applicable.

INDIVIDUAL EMPLOYMENT AGREEMENT (“IEA”)
BETWEEN UCONN AND KEVIN OLLIE, DATED
NOVEMBER 10, 2016

ARTICLE 2 -TERM AND SALARY INCREASES

2.1 The term of this contract shall begin on June 1, 2016 and shall terminate on May 31, 2021 subject to the conditions stated herein. This Employment Agreement in no way grants the Coach a claim to tenure in employment or any years of employment attributable to tenure within the University.

ARTICLE 3 – COMPENSATION

3.1 In consideration for services and satisfactory performance of the conditions of this Agreement by the Coach, the University promises to pay the Coach an annual salary, payable in equal installments at the end of each regular University pay period, in accordance with the payment schedule set forth below:

| Period Payment | |
|----------------------|-----------|
| 6/1/2016 - 5/31/2017 | \$400,000 |
| 6/1/2017- 5/31/2018 | \$400,000 |
| 6/1/2018 - 5/31/2019 | \$400,000 |
| 6/1/2019 - 5/31/2020 | \$400,000 |
| 6/1/2020 - 5/31/2021 | \$400,000 |

3.2 The Coach shall accrue additional compensation in the amount of two hundred thousand dollars (\$200,000) per year on May 1 of each year this Agreement is in effect through and including May 1, 2019 (and, given that four hundred thousand dollars (\$400,000) was already accrued as deferred compensation under the Coach’s prior employment agreement with the University and shall therefore remain due to the Coach under this Agreement), the total amount of such additional compensation is one million dollars (\$1,000,000) (the “Deferred Compensation”). Unless otherwise paid under the manner and conditions set forth in Article 3.3 or 3.4, the total sum of the accrued Deferred Compensation shall be paid to the Coach on or before May 15, 2019.

3.3 If the University terminates the employment of the Coach pursuant to Article 10.2 before May 1, 2019, the total sum of Deferred Compensation provided for in this Agreement shall immediately vest and become non-forfeitable, and then be paid to the Coach within ten (10) business days of the effective date of said termination. For example, if the University terminates this

Agreement on June 15, 2017, then in addition to any other sum due to the Coach hereunder, the University shall be obligated to pay or cause to be paid to the Coach the sum of six hundred thousand dollars (\$600,000) within ten (10) business days of June 15, 2017. In the event that the Coach's employment is terminated prior to May 1, 2019 for just cause pursuant to Article 10.1(d), the Deferred Compensation accrued by the Coach as provided in this Article 3.3 will be forfeited in its entirety.

ARTICLE 10 – TERMINATION AND/OR DISCIPLINE

10.1 Notwithstanding Article 2, this Agreement shall terminate upon the occurrence of any of the following events, and except for the payment of any salary or other compensation, or installments thereof, earned as of the date of the termination, the rights and obligations of the parties shall cease:

(d) In the event the Coach is removed from the position or otherwise disciplined for just cause, as defined in the then existing and applicable Collective Bargaining Agreement between the University and the AAUP ("Collective Bargaining Agreement"), as it pertains to members of the unit not in a tenure track. The phrase "just cause" shall include, in addition to the definition contained in the Collective Bargaining Agreement: 1) a violation by the Coach of any law, rule, regulation, policy, bylaw, or official interpretation of the University, the Conference or the NCAA; and 2) a violation by a member of the Basketball coaching staff, or any other person under the Coach's supervision and direction, including student-athletes in the Basketball program, that the Coach knew as a violation, and takes no steps to address, correct and report the violation within a reasonable period of time which under no circumstances shall be longer than ten (10) business days.

10.2 In the event the University terminates this Agreement for any reason other than just cause as defined in Article 10.1 (i.e., the provisions of 10.1(a), 10.1(b), 10.1(c), and 10.1(d) are not applicable) the Coach shall be entitled to continue to receive the following payment in accordance with the effective date of termination and in full satisfaction of the University's obligation to the Coach:

| <u>Period</u> | <u>Payment</u> |
|----------------------|--|
| 6/1/2017 – 5/31/2018 | Remainder of compensation due (Articles 3 and 6) |
| 6/1/2018 – 5/31/2019 | Remainder of compensation due (Articles 3 and 6) |
| 6/1/2019 – 5/31/2020 | Remainder of compensation due (Articles 3 and 6) |
| 6/1/2020 – 5/31/2021 | Remainder of compensation due (Articles 3 and 6) |

The aforesaid payments shall include, without limitation, the additional compensation due under Article 3.3.

BACKGROUND

NCAA Enforcement Procedures. The National Collegiate Athletics Association (NCAA) governs competition among higher education institutions across three divisions, and enforces a detailed set of rules, regulations and bylaws affecting the full spectrum of collegiate athletics operations.

Violations of the rules are typically handled by the NCAA and member institutions according to the relative level of seriousness. Level III violations are less serious and are generally more prevalent within programs and across member institutions. The NCAA expects member institutions to self-report Level III violations; self-reports include an assessment of the violation as well as remedial measures taken by the member institution. The NCAA provides member institutions with general guidelines for the application of remedial measures. Remedies may include discipline levied on staff, coaches or student-athletes involved in the infraction. They may also include limitations on the number of recruiting days, scholarships, and participation in post-season tournaments.

Level II violations are more serious than Level III violations. The NCAA utilizes its own internal investigatory staff to pursue allegations at this level and issues findings after determinations by the Committee on Infractions. The Committee is a body comprised of representatives from member institutions across all three divisions of play, and is staffed by professionals including attorneys.

Level I violations are the most serious violations and are regarded as those that have a major impact on the level of fair play and competitive balance among member institutions. Certain major violations may, in and of themselves, constitute a Level I violation. For example, academic fraud, lack of institutional control, or unethical or dishonest conduct in athletic functions like recruiting or competitive play can constitute Level I violations. A pattern of Level III violations may also collectively constitute a Level I or II violation. Violations may be committed by employees of an institution, such as coaches or other staff, all of whom are bound as a condition of their employment at a member institution to comply with NCAA regulations and are subject to NCAA sanctions. The institutions themselves may also be found to have violated NCAA regulations and penalties may be assessed against the athletic program.

An NCAA investigation may be triggered by a self-report by a member institution or an attributed or anonymous allegation. Investigations are supposed to be cooperative efforts involving the NCAA enforcement staff and representatives of the involved member institution. The member representatives are entitled to attend all witness interviews and ask questions. Witnesses are not placed under oath during their interviews and interviews are not transcribed by certified court reporters but rather transcripts are prepared by the enforcement staff. The enforcement staff is not bound by any rules of evidence and may consider unsigned written statements. In contrast, neither a coach or other staff member who is the subject of an

investigation, nor their attorney or union representative, is permitted to attend witness interviews or request that certain people be interviewed. Given that the subject coach and their representative are not present, there is no opportunity for cross-examination of any witness.

Recruiting Violations Under Jim Calhoun. The University of Connecticut Men's Basketball Team has enjoyed national prominence as a marquee college sports program for more than three decades, winning four national championships since 1999. NCAA rules include extensive regulations relating to the recruitment of prospective student athletes ("PSAs"). In 2007, UConn received information that a former team manager who had become an agent for professional players, Calhoun, and members of his staff, including Assistant Coach Tom Moore, may have engaged in impermissible recruiting activities. The University began its own investigation of the program. Given the severity of the allegations and the likelihood of a Level I or II finding, the NCAA took over the investigation in 2009.

UConn supported Calhoun throughout the NCAA investigation, but issued a letter of admonishment to the coach in February 2010. Coaches are represented by the AAUP and are members of the bargaining unit covered by a collective bargaining agreement with UConn. Letters of admonishment are not considered to be discipline under the UConn-AAUP CBA.

On May 21, 2010 the NCAA's enforcement staff issued a Notice of Allegations that included the contention that Calhoun failed to promote an atmosphere of compliance within his program and that the University failed to adequately monitor the program's compliance with NCAA regulations. In its response the University accepted the allegation that it had failed to adequately monitor compliance, resulting in the violations found, but asserted that it "has determined that there is insufficient evidence on which to conclude that" Calhoun failed to promote an atmosphere of compliance.

The NCAA Committee on Infractions issued its report in the Calhoun investigation on February 22, 2011, following a 14-month investigation. The findings included major infractions on the part of the UConn Men's Basketball program, resulting in Level I violations. The NCAA found that Calhoun failed to maintain a compliance atmosphere and failed to effectively monitor his staff. The recruiting violations included 2,081 impermissible calls and text messages to the agent, who was in close contact with a prized recruit, and to other recruits. Eighty-one of the offending calls and more than fifty text messages were sent by Assistant Coach Tom Moore and at least two improper calls were made by Calhoun. The agent also provided \$8,000 in material benefits to recruits, including payments for SAT testing, basketball training sessions, enrollment at a basketball academic, and the partial cost of a recruit's foot surgery. The coaching staff, including Calhoun, also distributed free tickets to people who were not allowed to receive them. The Committee on Infractions specifically rejected the contention that Calhoun was unaware of the actions of his staff and the inappropriate involvement of the agent with the recruit.

The NCAA found that the program failed to effectively supervise the recruiting function and issued sanctions that included a three-year probation, through 2014; and a reduced number of allowed telephone calls, official visits, and recruiting days. The NCAA levied a three conference game suspension on Calhoun himself.

At the time the NCAA issued its findings in the Calhoun investigation, the CBA provided that UConn coaches could be disciplined or discharged under the CBA for any instance of noncompliance with NCAA rules. Despite the penalties imposed on the University and Calhoun by the NCAA, the University took no further disciplinary action against Calhoun, Moore, or other members of the basketball staff. Calhoun remained as the head coach for the 2011-12 season and served his three game suspension at the beginning of the season. He went out on a

medical leave in February 2012 and did not return during the season. In the spring of 2012 the NCAA imposed a ban on post-season play in 2013 because of Calhoun's failure to maintain minimum academic standards for student-athletes in the program. Despite this additional sanction, Athletic Director Warde Manuel publicly indicated that no discussions had been held about whether Calhoun would return to coach the next season. Calhoun ultimately elected to take a voluntary retirement at the beginning of the next academic year.

The individual employment agreement (IEA) between Calhoun and the University that was effective from 2009 through 2014 provided that if the coach resigned or retired "in good standing" subsequent to the 2010-2011 season, he would have an option of an immediate payment of \$1 million or a contract for up to 5 years for employment as a non-tenured employee with duties to be determined at an annual salary of \$300,000. The contract had the same provision in Section 10.1 that defined just cause for termination without further compensation as including any violation of an NCAA regulation. Susan Herbst, who had become president of the University in June 2011, and Manuel, executed a contract in September 2012 with Calhoun after his retirement providing for continued employment. Herbst subsequently executed a second such contract in July 2014. In total, after his retirement Calhoun was paid \$3,030,000 over six years.

UConn Hires Kevin Ollie. Kevin Ollie first contributed to the success of the UConn Men's basketball program as a standout student-athlete, recruited out of Crenshaw High School in Los Angeles to play in the backcourt alongside future NBA Hall of Fame member Ray Allen during the early 1990s. Ollie went undrafted after graduating on-time with a communications degree and played two seasons for the Connecticut Pride, a team in the Continental Basketball Association – a professional league that fed prospects to the NBA. In 1997, Ollie was invited onto the roster with the NBA's Dallas Mavericks and played a reserve role for twelve franchises

over a 13-year career that ended with the Oklahoma City Thunder in 2010. Young players gravitated toward Ollie and looked up to him. He mentored a number of young stars, including Kevin Durant and LeBron James, and led a Christian fellowship ministry as a chaplain.

In 2010, Ollie turned down a front-office job offer with the Thunder to join the coaching staff at his *alma mater* as an assistant to Jim Calhoun. Ollie joined the men's basketball program as the NCAA's investigation that began in 2009 was winding down, and never participated in the investigatory process. Despite the ongoing investigation, UConn continued to compete at a high level and won its third national championship in 2011, the season after Ollie joined the coaching squad.

After Calhoun went out on his medical leave, Associate Head Coach George Blaney stepped in to lead the team for the remainder of the season. UConn men's basketball took a step back in performance that year, with a 20-14 record (and an 8-10 conference record). Prospectively, the program was facing a three-year probation, with curtailed recruiting due to the sanctions.

President Herbst and Athletic Director Manuel named Kevin Ollie as the interim head coach for the 2012-2013 season, following Calhoun's retirement. Herbst and Manuel hired Ollie to put a focus on academics and on compliance for the program, while maintaining some continuity for a team still reeling from the recent NCAA sanctions. The need to run a clean program was stressed to Ollie who made clear that he understood the importance of this directive.

Ollie's team outperformed the previous year's record: despite the ban from postseason play, the team improved to 20-10 and its conference record improved to 10-8. With the team performing beyond expectations, Ollie's position as head coach was made permanent midway

through the season in January 2013. The following season, Ollie led UConn to a 32-8 record (12-6 in the conference) and its fourth national championship.

The UConn Men's Basketball program also made significant progress in the classroom under Ollie. While the 2012-2013 squad sat out the postseason as a penalty for low academic performance at the end of the Calhoun era, under Ollie the team posted a perfect Academic Progress Rate and did so in two of the following three years as well. In the spring of 2017 the team received the NCAA's Public Recognition Award for academic performance in the top ten percent of Men's Basketball programs nationwide.

Miller and Illian Are Fired at the End of the 2016-2017 Season. Under Ollie, the UConn men's basketball program continued to compete as a nationally ranked team following its 2014 championship season. Over the next two seasons, the team had one post-season NCAA tournament appearance and was nationally ranked in top-25 preseason polls. After a preseason ranking at number 18, the 2016-2017 squad suffered a losing season at 16-17, with a .500 record in conference play. Ollie terminated Associate Head Coach Glen Miller and Strength and Conditioning Coordinator Travis Illian at the end of that season. Coaches and program staff work on year-to-year contracts. Player Development Director Danny Griffin was also let go by the program following the 2016-2017 season.

Glen Miller began his career in college coaching as an assistant to Jim Calhoun in 1986, Calhoun's first season as head coach at UConn. Miller was a Northeastern University alumnus, where Calhoun previously coached, and continued as an assistant with Calhoun through the 1993 season. Kevin Ollie played two seasons on the UConn team during Miller's first stint on the UConn coaching staff. Between 1993 and 2009, Miller was the head coach of three collegiate programs: first at Division III Connecticut College, then at two Division I Ivy League programs,

Brown and Penn. He returned as Calhoun's associate head coach in 2010 and remained in that role when Ollie took over as head coach in 2012. Ollie terminated Miller because he was concerned about Miller's increasingly confrontational nature on issues relating to recruiting, playing time for certain players, and Ollie's game calling. Miller described himself as angry about the termination.

Illian was hired by Calhoun as the strength and conditioning coach and continued in that role under Ollie, but when Ollie learned that he had been interviewing for a similar role at Utah State University during the 2016-2017 season, Ollie effectively told him that he would be terminated. Illian subsequently accepted the proffered job in Utah.

Ollie brought Griffin to UConn in 2014. The pair played high school basketball in Los Angeles and kept in touch intermittently over the two decades prior to Griffin joining Ollie in Storrs. Griffin played college basketball at the University of Nevada-Las Vegas and the University of Rhode Island. Griffin remained at URI following the expiration of his athletic eligibility to complete his degree and then returned to the Los Angeles area to teach and coach in youth and high school basketball. Griffin also became an entrepreneur, operating a number of chicken wing franchises across Southern California, and used his experiences and skills to become a motivational speaker for young black men.

As a mentor to young teammates during his NBA career, Ollie took notice that college athletics frequently left players unprepared for the business of professional basketball and life skills off the court. Ollie brought Griffin to UConn in an effort to reinforce the focus on academic achievement and to build the soft skills his players would need to succeed as adults. In his three years as player development director, Griffin created a diverse curriculum that included

topics ranging from how to open a checking and savings account and how to speak to authorities like campus police, to dining etiquette and lessons in how to properly tie a tie.

Amendments to the Collective Bargaining Agreement. As described in Arbitrator Greenbaum's interim award, the CBAs in effect prior to 2007 did not refer to NCAA violations in the definition of just cause. During the collective bargaining negotiations that led to the execution of the 2007 - 2011 contract, the parties amended the definition of just cause in Article 13 to include "insubordination or noncompliance . . . with NCAA rules and regulations." The parties further amended Article 13 in a May 16, 2012 memorandum of agreement signed by Herbst and then AAUP Executive Director Peter Nguyen to read as follows:

- A. Discipline, dismissal, and non-renewal of a multi-year appointment shall be for just cause such as:
 - . . .
 - 2. Insubordination or *serious* noncompliance with . . . NCAA Rules and Regulations; . . . [emphasis added]

No testimony was offered in the arbitration on the merits of the dispute regarding the bargaining history surrounding the adoption of the modifier *serious*.

Michael Bailey, who succeeded Nguyen as the executive director and was the chief negotiator for the AAUP during the negotiations that resulted in the 2017 – 2021 agreement, testified about the changes made in that round of bargaining. He recalled that the University proposed removing coaches and some other Athletic Department personnel from the coverage of Article 13 and creating a new article, which became Article 37. He asserted that as part of the negotiation of the language of that article the parties agreed to add the modifier *serious* to the just cause definition relating to noncompliance with NCAA rules and regulations, removing any type of lower level violations as the basis for immediate termination. Bailey further maintained that the parties explicitly discussed what *serious* meant and agreed it referred to Level I

violations, as opposed to significant Level II violations, or simple Level III violations.

Additionally, he recounted that the parties agreed lesser violations that were not the subject of progressive discipline could not be bundled at a later time to create a serious violation that would support a termination. The University offered no testimony to rebut Bailey's assertions.

The NCAA Receives an Anonymous Complaint amidst a Nationwide Recruiting

Probe. In September 2017, near the start of Ollie's sixth season as head coach, the NCAA received an anonymous complaint about recruiting violations in the UConn Men's Basketball program. The complaint alleged that the program violated NCAA regulations in its pursuit of a prized recruit, guard Hamidou Diallo from New York.

Diallo made an Official Visit to the program during the holiday season at the end of 2016. Unofficial and Official recruiting visits to college programs are heavily regulated by the NCAA, and recruits at the time were only permitted to make one Official Visit per program. NCAA regulations limit recruiting activities to coaching staff members only; in men's basketball, each program is limited to four coaches, including the head coach. At UConn, the associate head coach is the second-in-command and performs many of the duties of the head coach in his absence; two other assistant coaches are also on the staff. Official Visits are closely choreographed, with the coach assigned to recruit a particular prospect leading the planning process with program staff. Glen Miller was Diallo's lead recruiter, and worked with Ollie's executive assistant, Larib Omara-Otunnu, to plan the visit.

The schedule called for Miller to pick up Diallo at the airport and take him to a hotel in Hartford. Diallo would attend a game the following day at the XL Center in Hartford, a commercial venue where UConn plays some of its games. On the afternoon of Diallo's arrival, Miller brought him to a Christmas party at Ollie's house. The team and coaching staff were

gathered there for a catered dinner, and the coaches thought the setting would provide a relaxed atmosphere to pitch Diallo on joining the team. The coaching staff spent about an hour with Diallo in Ollie's upstairs living room, showing him a short video on "Brotherhood" and a PowerPoint presentation on the basketball program. Diallo and the coaches then joined the rest of the team for the party, which was taking place downstairs in a basement recreation room.

It is undisputed that Ray Allen called Omara-Otunnu looking for Ollie at some point during the party, although as will be discussed in greater detail in the Opinion section of this decision, the question of what role, if any, Ollie had in the call is greatly disputed. Following their playing days, Allen and Ollie remained close friends. In addition to playing alongside one another in the NBA for one season the two took family vacations with one another and frequently spoke on the phone about UConn, basketball, family, and life.

Omara-Otunnu brought her iPad to the party to work on assigning seating from the complimentary ticket allotment for coaches and staff for the next day's game. The iPad was tethered to her iPhone when Allen called using the FaceTime application, and she handed the video call on the iPad to Ollie. The iPad made its way around the party and Allen said hello to Ollie's children who were present and to other coaches and players. At one point, the iPad was also passed to Diallo, who stepped out into a hallway to hear Allen over the party. Allen spoke to Diallo about his own experiences at UConn for a few minutes, and the call ended.

NCAA regulations on PSA recruiting govern contact between recruits and program boosters like Ray Allen, a prominent alumnus and a Board member of the UConn Foundation. Boosters may not have contact with recruits, and any contact – even if it is inadvertent or unanticipated in nature – must be reported to the NCAA. Contact between a booster and a recruit is typically regarded as a minor violation and, without aggravating circumstances, such as

the promise of financial compensation for attending the institution, would typically be treated as a Level III violation for resolution by the institution. Examples include an unreported telephone conversation facilitated by then Ohio State University football coach Urban Meyer between a recruit and Tim Tebow, Meyer's former quarterback at the University of Florida. Ollie did not report the contact between Allen and Diallo.

The NCAA Begins an Investigation at UConn. Around the same time that the NCAA received the anonymous complaint about the Diallo conversation with Ray Allen, Division I member institutions with men's basketball programs were required by the NCAA to institute a compliance review. The governing body took this action following an FBI investigation into possible crimes involving college basketball recruiting and payments to student athletes from shoemakers. UConn interviewed Glen Miller in October 2017 as part of this review.

At the interview, Miller made explosive allegations regarding Kevin Ollie supposedly paying people to influence various players to come to UConn. Stephanie Garrett's son, Shonn Miller, was being recruited to transfer to UConn and play in the 2015-2016 season, his last season of college eligibility. Miller said that during the season Garrett told his wife – with whom she had become close – that Ollie had given her an envelope with \$30,000 in cash in connection with the recruitment of Shonn Miller. Glen Miller explained that his wife had first told him about the payment more than a year after it supposedly had transpired, and only after Ollie had terminated him in the spring of 2017. The October 2017 interview was the first time Miller surfaced this claim. At the same time he also said it was rumored that Ollie paid the coach of Terry Larrier, who ultimately came to UConn; and that he had heard Ollie was upset with Miller because Miller had not paid the trainer of another player Miller was in charge of recruiting.

During the course of the compliance review, the Compliance Office in the University's Athletics Department also received information that two players, Christian Vital and Sidney Wilson, received training from an outside trainer in the basketball program's on-campus practice facility, the Werth Center. NCAA regulations limit on-campus basketball instruction to coaches. Compliance reported this information to the NCAA, adding that Ollie was not aware of the training session and that students can provide access to the facility for outside individuals without seeking or receiving permission from coaches or staff.

The NCAA interviewed Glen Miller in November 2017, and proceeded to interview a number of other coaches, staff, student-athletes, parents, and alumni over the next several months. Ollie was told about the existence of an investigation around the same time, but was not informed of the specific allegations. He instructed his staff and players to cooperate with the investigation and to tell the truth in response to any questions.

As previously explained, NCAA investigations of rules infractions are intended to be cooperative inquiries between the enforcement staff and the member institution. Consistent with other similar inquiries, UConn representatives cooperated in the investigation by seeking out and providing information, documents, and other materials to the NCAA. UConn representatives were also allowed to attend all witness interviews and ask questions of the witnesses. Consistent with its regular operating procedures, Ollie was not made privy to the specific allegations, and neither he nor his representatives were allowed to attend witness interviews or ask questions of the witnesses. UConn did not inform the AAUP leadership about the investigation; Bailey later learned about the investigation when one of the team's coaches was summoned for an interview.

The NCAA interviewed Kevin Ollie on March 1, 2018. Witnesses are allowed to be accompanied by counsel or a union representative and Ollie was represented by both at the

interview. UConn's representatives were also present. The interview lasted about two hours and covered a limited number of topics. Ollie was asked about his December 2016 call with Ray Allen that included Hamidou Diallo, who by that time was in his second year at the University of Kentucky. Ollie told investigators that he did not participate in any advance planning for the call between Allen and Diallo and did not have any further information that the call was prearranged.

Ollie was also asked about his friendship with Derrek Hamilton, a former college basketball player at the University of Southern Mississippi who provides training and workout services to basketball players preparing for a professional career. Hamilton and Ollie were old friends. They frequently played golf together and their sons were best friends. The information that UConn received about the Wilson and Vital workouts implicated Hamilton as the outside trainer.

Ollie told UConn and the NCAA about his friendship with Hamilton and indicated that Hamilton had been on campus on a few occasions. As part of his transition to head coach in 2012, Ollie took over the leadership of a summer youth basketball camp on the UConn campus from Calhoun, who had run the program for a number of years. Student-athletes and student workers staffed the camp, which ran for a couple of weeks each summer with hundreds of local youths paying to attend and learn game skills. The proceeds from the camp were directed to charity. In 2015, Ollie asked Hamilton to attend the camp and help run the program. Ollie paid for Hamilton's lodging at UConn's Nathan Hale Inn, which is located on the campus grounds.

Ollie also told investigators that he asked Hamilton to attend some UConn's games and practices in January 2016 and to provide Ollie with some advice on training and managing players. Ollie also paid for Hamilton's stay at the Nathan Hale during this visit. Finally, Ollie later recalled a third campus visit, in April 2016 after the conclusion of the season, where

Hamilton visited to train Shonn Miller at the Werth Center. Ollie was unaware that Miller had asked Hamilton to come to campus for training. The on-campus, outside training was permitted under NCAA rules because Miller had exhausted his collegiate eligibility.

Information Emerges about an Offseason Training in Atlanta. During the course of the NCAA investigation, UConn's Assistant Athletic Director for Compliance Anne Fiorvanti learned that three UConn players had worked out with Hamilton in Atlanta during the summer of 2016. Sometime between February 26 and March 6, 2018, Fiorvanti searched social media sites and found pictures of Hamilton with three UConn players at a training site in Atlanta. Fiorvanti was present for the Ollie NCAA interview as a UConn representative, at which Ollie was not asked any questions about the Atlanta training. On March 6, Jalen Adams, one of the three players in the picture, was questioned by NCAA and UConn representatives about the trip to Atlanta. He said it was just to play pick-up games and did not involve any training sessions with Hamilton, although he stated that upon getting to Atlanta he called Hamilton, whom he had met casually in Storrs, and inquired about staying at his house. Adams had been given money for a hotel, meals, and transportation by his father but Jalen decided to keep the money for himself. Also on March 6, Terry Larrier, another of the three, was interviewed and he readily acknowledged that the three had gone to Atlanta to train with Hamilton. The following day Adams requested to be re-interviewed and he disclosed that he had not been truthful the prior day. Both Adams and Larrier stated to repeated questions that neither Ollie nor any other coach spoke to them before or after the trip and the coaches were unaware that they had trained with Hamilton.

Ollie was informed about the Atlanta training by someone in the Compliance Office on March 6 – five days after the interview, but was not asked about his knowledge of the training or

the surrounding circumstances. Nevertheless, Ollie contacted Hamilton and instructed him to cooperate with the investigation and to tell the truth in response to any questions. He also advised Hamilton to give the same instruction to the three players if he spoke with them.

The integrity of the investigation was paramount for Ollie and the program at that moment because UConn declared the players that participated in the training ineligible to play. The regular season had recently ended and UConn was in Orlando, Florida to participate in the American Athletic Conference tournament. UConn's next tournament game was scheduled for March 8.

Fiorvanti wrote to the NCAA on March 7 to obtain a waiver for the three ineligible athletes to travel to the tournament with the team. She explained that when Jalen told his father Sean about the possible trip, Sean called Ollie to confirm whether training in Atlanta was permissible. According to Sean, Ollie said that as long as the University was not involved in covering any associated costs the trip was permissible. Fiorvanti noted that Sean assumed, but could not definitively state, that he had mentioned Hamilton's name to Ollie. Fiorvanti's efforts on behalf of the three players was successful and they were declared eligible to participate about 30 minutes prior to tipoff in the team's first-round game. The players paid restitution of \$384, which was the calculated value of the benefits received during the trip to Atlanta.

Ollie Is Fired on March 10, 2018. By early March, the NCAA and UConn believed that several rules infractions had occurred in the men's basketball program on Ollie's watch. While the NCAA apparently did not believe Glen Miller's allegation about Ollie's \$30,000 payment to the mother of player Shonn Miller or to the other people mentioned by Glen Miller, UConn and the NCAA felt that the Ray Allen call with the recruit, Diallo, was an unreported violation and that Ollie knew about the violations as a result of the Atlanta trip, as well as Hamilton's alleged

impermissible on-campus workouts with student-athletes. UConn concluded that there were additional NCAA infractions, including that:

- Ollie had participated in an impermissible on-campus tryout with a recruit, James Akinjo. During Akinjo's Official Visit in the fall of 2017, Ollie and Akinjo took a few jump shots on the Werth Center basketball court while walking from the program's offices to lunch. Akinjo's aunt made a video recording and posted it to social media. Athletic Director David Benedict saw a newspaper story about the campus visit and alerted Compliance. Ollie reported the matter on November 13, 2017 after Compliance brought the video to his attention.
- Ollie had knowledge that two recruits – Diallo and Brandon Williams – received impermissible meals while on unofficial visits. Unlike Official Visits, where meals, transportation and lodging are paid for by the institution, recruits must pay for all travel-related expenses and meals during an unofficial visit.
- Danny Griffin, a non-coaching staff member, made impermissible recruiting calls to two prospects. Only coaches may participate in recruiting activities.
- Dave Sevush, the team's video and scouting coordinator, provided basketball instruction to players. The video coordinator is a non-coaching staff member; only coaches are permitted to provide basketball instruction to players.

Each of these individual allegations were likely Level III violations under the NCAA regulations.

Despite this information, UConn Athletic Director David Benedict told Ray Allen over the phone on or around March 7 that Kevin Ollie's job was safe. Ollie had dinner in his Orlando hotel room with Benedict on March 7, the night prior to UConn's semifinal round game in the

AAC tournament. Ollie also asked Benedict about his job security during the dinner; Benedict told him that his job was safe unless the NCAA found major violations.

The UConn Men's Basketball program had a down season in 2017-2018, with a 16-17 record, 9-9 in the conference. In Orlando, the team won early-round AAC tournament games against the University of South Florida and the University of Houston, but lost to the University of Cincinnati during the semifinals on March 8 and prepared to return to campus. In the meantime, a meeting took place between President Herbst, her Chief of Staff Rachel Rubin, UConn General Counsel Nicole Gelston, Assistant Director of Labor and Faculty Relations Kelly Bannister, outside counsel from the Lightfoot law firm (UConn's outside counsel regarding the NCAA investigation), Benedict and Fiorvanti. The administrators came to a unanimous decision to terminate Ollie for cause. The significance of the for cause designation was that it would free the University of the obligation to pay Ollie a sum in excess of \$11 million.

Under Herbst, UConn had previously terminated two head football coaches, Paul Pasqualoni and Bob Diaco, for losing records. Pasqualoni, Diaco, and Ollie had similar employment agreement terms on compensation payments in the event of a termination without cause. Pasqualoni's and Diaco's terminations resulted in compensation payouts for the remainder of their respective employment terms under each agreement.

On March 9, Rachel Rubin approached Ollie as the team was boarding a bus at their Orlando hotel for a ride to the airport for their flight to Connecticut. Rubin told Ollie that the University would pay him \$600,000 to buy out his contract in exchange for his resignation, or would terminate him for cause without further financial obligation. Ollie declined the University's proposal.

The following day, Benedict summoned Ollie to his office to inform him that he was being terminated for cause and would be put on a paid administrative leave pending a hearing. The meeting was short, and Benedict did not discuss the full nature of the allegations levied against Ollie. At the time, Ollie was only aware of the NCAA's concerns that were discussed during his March 1 interview: the Ray Allen call with Hamidou Diallo, the Akinjo shootaround, and his friendship with Derrek Hamilton. Benedict gave Ollie a termination letter during the meeting that set forth the alleged grounds for the termination with cause:

The initiation of this procedure is based on the University's determination that you violated NCAA bylaws and otherwise engaged in behaviors that violate the terms of your Employment Agreement and the AAUP contract. The University believes these violations include but are not limited to your failure to promote compliance, failure to timely report instances of noncompliance, intentional participation in an impermissible on-campus activity with a prospective student-athlete during an official visit, and/or your intentional facilitation of a prohibited contact between a prospective student-athlete and a representative of the institution's athletics interests for recruiting purposes. These behaviors and others violate the terms of your Employment Agreement, including but not limited to Article 4, and constitute, individually and/or collectively, just cause as defined in Article 10.1(d), and/or Article 37.12 of the AAUP contract.

The letter did not include additional details about the other allegations that appeared in subsequent correspondence; specifically, the meals for Diallo and Williams, recruiting calls made by Griffin, and the coaching instruction performed by Sevush, and the specific claims about Hamilton's on- and off-campus training activities with eligible student-athletes.

UConn issued a press release on the morning of Saturday, March 10, to announce Ollie's termination for cause:

The University of Connecticut has initiated disciplinary procedures to terminate the employment of Head Men's Basketball Coach Kevin Ollie for just cause. The University will have no further comment on the matter until the completion of both the

University's disciplinary process and the ongoing NCAA investigation.

University of Connecticut President Susan Herbst:

"The men's basketball program has a proud history and a tradition of excellence. Our goal, above all, is to ensure we have a program that UConn Nation can be proud of, including our students, alumni, fans, and all our committed supporters."

Director of Athletics David Benedict:

"It is unfortunate that this decision became necessary. As with all our programs, we hold men's basketball to the highest standards. We will begin a national search immediately to identify our next head coach."

UConn Moves Quickly to Replace Ollie. Within days, Benedict hired the Parker Executive Search firm to assist in hiring a new head coach. Parker was one of a few pre-approved search firms available to UConn administrators, and Benedict had used the firm on other recent athletic searches. At the same time, Benedict had a short list of possible candidates ready, given the typically active market for head coaches at the close of each regular season in college basketball.

On March 19, Benedict and President Herbst visited the home of Dan Hurley, the head coach of the men's basketball team at the University of Rhode Island and one of the individuals on Benedict's short list. One of Hurley's assistant coaches at URI was Tom Moore, the former assistant to Jim Calhoun. UConn announced the hiring of Dan Hurley as the new head coach of its Men's Basketball program on March 22, twelve days after the Ollie's termination was announced. Moore also returned to UConn alongside Hurley as an assistant coach, despite his substantial involvement in the recruiting activities that led to the program's 2011 sanctions.

NCAA Investigation Continues. Despite UConn's announcement of Ollie's termination, the NCAA continued its investigation into the allegations against the program and Coach Ollie. NCAA investigators interviewed Illian for a second time on March 22, and interviewed Danny Griffin for the first time on April 12. In his interview Griffin indicated that Glen Miller contacted him shortly after both were terminated from UConn, and that Miller was angry with Ollie about his termination and was seeking others who may have felt similarly about Ollie. Griffin believed that Miller was recruiting him for that purpose, indicating that Miller said he would "get that motherfucker [Ollie]" and that "Ollie will pay."

Griffin also spoke to the investigators about his contact with recruit Shawn Olden and with Chris Wright, the father of another recruit, Brandon Williams. Both were implicated in the allegations against Ollie as impermissible recruiting contacts, given Griffin's non-coaching status on the staff. Griffin told investigators that Chris Wright, whom he knew from basketball circles in Los Angeles, contacted him about Williams after Griffin began working at UConn. Griffin directed Wright to contact Ricky Moore, one of the assistant coaches covering West Coast recruiting, a permissible contact under NCAA regulations. Griffin also told investigators that Olden contacted him after he had committed to attend another institution to offer condolences on the passing of Griffin's sister. It was well known during the time that Griffin was at UConn that his sister was battling cancer.

Illian's second interview also highlighted a number of inconsistencies with his first interview and unsubstantiated claims that he made about Miller refusing to make payments to Diallo as a reason for his termination, as well as claims about the team practicing on an additional day beyond what is allowed under NCAA regulations. Illian's second interview contained significant additional details about Derrek Hamilton's alleged on-campus training

sessions with eligible student athletes that contradicted his recollection about Hamilton's presence on campus in the first interview. Illian also indicated during his second interview that Ollie "must have known" about the Atlanta training incident, but did not provide further evidence to support his allegation.

Post-Termination Proceedings. Shortly after the termination was announced, Ollie requested a hearing on his termination and Bailey requested a full explanation of the charges against Ollie and documentation to support the allegations. The University originally scheduled the hearing with Benedict for March 15 but the AAUP requested a number of postponements so they could receive the requested explanation and documentation. On March 19, UConn provided the Union and Ollie's counsel with 1,200 pages of redacted transcripts. The University did not provide a key to decode the redactions.

On March 22, Gelston, UConn's general counsel, emailed Ricky Lefft, one of Ollie's lawyers supporting him in the NCAA investigation, and disputed Lefft's assertion that Ollie had a property right in his position. This characterization related to whether Ollie was entitled to the due process protections established by the United States Supreme Court decision in *Cleveland Board. of Educ. v. Loudermill*, 470 U.S. 532 (1985), a topic that will be discussed below. Gelston also challenged Lefft's contention that Ollie was entitled to contest his termination under the collective bargaining agreement just cause standard. She asserted:

. . . .
In the event the termination decision is based on just cause as defined in 10.1, as was the decision concerning Mr. Ollie's termination, then he is afforded the ability to contest the grounds for just cause pursuant to Article 37.12 of the collective bargaining agreement. The right to contest the grounds for dismissal does not amount to a property interest in his continued employment. Rather, if Mr. Ollie is successful in proving there was no just cause for his

termination, then he will have been terminated for "any reason other than just cause as defined in Article 10.1" and entitled to the recourse provided within Article 10.2 of his employment agreement. The grievance and arbitration process cannot overturn the termination decision.

. . .

On April 6 Benedict sent a letter that repeated the general allegations that he had made in his March 10 letter, but added new contentions:

Furthermore, there is substantial evidence that during the ongoing NCAA investigation into the Men's Basketball Program, you may not have been completely truthful or forthcoming in the information you provided. Such conduct, if established, violates University policies, including, but not limited to, the *Code of Conduct* and may also be a violation of NCAA By-Law I 0,1 (Unethical Conduct - Failure to Provide Complete and Accurate Information to the NCAA).

These behaviors, individually and/or collectively, constitute just cause as defined in Article 10.1(d) of your Employment Agreement and/or Article 37.12 of the AAUP contract.

This was the first time UConn had claimed that Ollie had lied or not been forthcoming, an allegation that would prompt a Level I violation of NCAA regulations if proven.

The letter further detailed each of the substantive allegations, including UConn's reliance on Miller as a witness to the Diallo call and Illian as a witness to the Hamilton training sessions on campus. The letter alleged that Illian spoke to Ollie about the training trip to Atlanta. UConn specifically relied on Miller and Illian to support the claim that Ollie was not forthcoming about the Akinjo shootaround and his relationship with Hamilton.

Benedict set forth UConn's specific allegations relating to Ollie's failure to monitor compliance and its further reliance on Miller and Illian to support the allegations of rules violations including the meals for recruits on an unofficial visit – Diallo and Williams – and the

recruiting calls made by Griffin to Olden and Williams. Finally, the letter provided information about the coaching instruction provided by Sevush, the video and scouting coordinator.

Ollie and his representatives met with Benedict for a post-termination hearing on April 11 that they contended was a *Loudermill* hearing. The hearing was brief. Ollie came with a prepared statement that was read into the record by his AAUP representative. Benedict had intended to inquire of Ollie using a list of questions prepared by UConn's outside counsel in the NCAA investigation that were framed as admissions to various allegations. Ollie declined to answer questions during the hearing.

Bailey wrote to Benedict following the hearing to contest UConn's use of the just cause standard in Ollie's employment agreement, rather than the one found in the CBA. He also protested the University's failure to provide timely explanation of the allegations against Ollie, and referenced what he termed the disparate treatment provided Ollie in comparison to Jim Calhoun, who received a letter of admonishment from UConn in 2009 but was otherwise supported throughout an NCAA investigation of recruiting violations in the men's basketball program. Benedict confirmed the decision to terminate Ollie in an April 24 letter, which included specific references to transcript passages to support the allegations previously summarized in the April 6 letter. Benedict's letter also sought to distinguish UConn's treatment of Ollie against its treatment of Calhoun on the basis of the April 6 allegation that Ollie violated NCAA Bylaw 10.1 regarding untruthfulness.

Ollie appealed Benedict's decision, following the process established under the AAUP CBA. President Herbst heard the appeal on June 11 in another brief meeting attended by a number of UConn lawyers and staff and Ollie and his Union representatives and counsel. Ollie again refused to answer questions on the advice of counsel, and Herbst upheld the decision to

terminate in a decision issued on June 19. Among the points Herbst addressed in her letter was the applicable just cause standard that the University was applying:

. . . .
Your representatives next argue that only Level I violations found by the NCAA rise to the level of "serious misconduct" or "serious noncompliance" sufficient to constitute just cause. As a contractual matter, this argument is unpersuasive as it is based on the definition of just cause in the AAUP contract which has been supplemented by the Employment Agreement. Nevertheless, Mr. Bailey goes to great lengths in his letter to downplay the severity or consequence of many of the violations cited by Mr. Benedict. Several violations are characterized as "de minimis," "isolated," or "inadvertent." However, a determination of just cause under the Employment Agreement is not contingent upon the severity of the violation and even one "de minimis" violation may suffice.
. . . .

The University continued to pay Ollie through July 10, 2018, four months after the notice of termination given March 10. The AAUP filed for arbitration June 30, 2018.

Auriemma Violation. In September 2018, Women's Basketball Coach Gene Auriemma hosted a dinner at his house for two PSAs and their family during an Official Visit. While the visit was occurring Boston Celtics star Kyrie Irving came to Auriemma's house and he interacted with the recruits. Auriemma did not report the contact with an unauthorized individual during an Official Visit to the UConn Compliance Office. The incident was subsequently discovered and the NCAA deemed it to be a violation of its regulations. On June 17, 2019, Fiorvanti wrote the coach and stated that the "NCAA mandated that you receive a letter of admonishment and that rules education be provided to the entire women's basketball staff." No further disciplinary action was taken against Auriemma.

The NCAA Process. The NCAA issued its Notice of Allegations to UConn and Ollie on September 28, 2018, more than six months after UConn terminated Ollie. The NCAA's Notice

contained substantially the same allegations that were detailed in Benedict's April 24 hearing decision. Such Notice is intended to provide the basis for the Committee on Infractions to make a determination about the allegations of wrongdoing against a member institution and implicated individuals.

The Committee on Infractions held a one-day hearing on the allegations in Indianapolis on May 2, 2019. In its pre-hearing submission to the Committee, UConn defended its actions, asserting that as soon as it received information about potential rules violations it began its investigation and that it has been uncompromising in its efforts to discover the truth and deal with potential violations. The University assigned all culpability for the infractions to Ollie. It attributed the violations to Ollie's supposedly cavalier attitude towards compliance and declared

. . . the investigation revealed instances in which Ollie engaged in unethical conduct (Allegation No. 4). While Ollie initially submitted to an interview, the evidence supports that he provided false and misleading information to the enforcement staff and UConn during that interview, including the denial of personal involvement in established violations and taking affirmative steps to conceal the misconduct and prevent the detection of others. He refused follow-up requests by the enforcement staff for an interview to address his misconduct, inconsistencies, and misstatements.

The University argued that once it discovered the collection of violations, it took "decisive and appropriate actions to hold those responsible accountable, including promptly terminating Ollie's employment." The University maintained that the Ollie termination was a mitigating factor for the Committee to consider in assessing sanctions against the institution.

The Committee made its findings on July 2, 2019, citing the University for a mix of Level II and Level III violations. UConn received a two-year probation, a fine and reductions in scholarships and recruiting. The Committee came down much harder on Ollie for failure to maintain control of the UConn men's basketball program, and cited him for a Level I violation

for failing to be forthcoming in his interview during the investigation and for declining to participate in a second interview. Ollie received a three-year show-cause order for his infractions, meaning that any institution seeking to hire Ollie in an athletics role during the period following the decision would need to petition the NCAA for permission to do so.

As support for its findings, the NCAA found that up to five improper recruiting calls occurred, including the calls between Allen and Diallo and between Griffin and Wright and Olden. The NCAA also found that \$30 in impermissible meals were provided to Brandon Williams and his family during an unofficial recruiting visit, and that the three student-athletes that traveled to Atlanta to work out with Derrek Hamilton received \$384 in impermissible housing, meal, and transportation benefits. The NCAA declined to take action on the Akinjo shootaround. Ollie appealed the findings to the NCAA's Appeals Committee but the prior decision was upheld on May 6, 2020.

HOLDING ON JUST CAUSE STANDARD

Arbitrator Greenbaum defined the preliminary questions before her to be whether there was a conflict between Article 37.12 of the collective bargaining agreement and Article 10.1(d) of Ollie's IEA regarding the applicable just cause standard. The AAUP argued that the "serious noncompliance" with NCAA regulations justifying dismissal language in the collective bargaining agreement was a stricter standard than that imposed under the IEA, and that because of this conflict the standard in Article 37.12 governed this proceeding. UConn argued that the provisions were not in conflict, but rather that the parties had effectively agreed that for coaches the just cause language in the IEA satisfied the just cause requirement in Article 37.12.

Greenbaum found in her July 29, 2019 interim award that Article 37.12 and Article 10.1(d) did conflict, in that the language in the collective bargaining agreement provided greater protection to a coach than did the language in the IEA. She rejected the argument advanced by the University that a coach could be terminated for just cause for any violation of an NCAA rule or regulation, even if that violation did not constitute "serious misconduct" –behavior that excused the University from engaging in progressive discipline before it could dismiss a bargaining unit member – or "serious noncompliance" with NCAA rules and regulations that would support immediate termination for just cause.

OPINION

The Standard of Review. There is no dispute that on March 9, 2018, when the administrative team made the decision to terminate Ollie and had Rubin convey the "resign and be paid \$600,000 or be terminated for cause" ultimatum; or on March 10, when the University issued a public announcement of Ollie's termination for cause, the University had the absolute right to end Ollie's employment without cause. UConn had the prerogative to decide that it no longer wanted to employ a coach who had a couple of losing seasons. If it did not have just cause for the termination, however, it would have been obligated to promptly pay Ollie the balance due under his IEA, a sum in excess of \$11 million.

Kevin Ollie was an employee of the University of Connecticut and a member of the UConn-AAUP chapter. As such, he was entitled to the protections of the CBA between the Union and the University as well as UConn's policies and procedures for employee discipline and discharge. At the time UConn decided to terminate Ollie supposedly for just cause, it was operating under a number of incorrect assumptions. As articulated by Gelston in her March 22 email to Lefft, the University believed just cause was defined by the IEA and that the burden was

on Ollie to prove that there was no just cause for the termination. The notion that the University could terminate Ollie even for a *de minimis* violation of an NCAA rule or regulation was emphasized by President Herbst in her denial of Ollie's grievance appeal. While the University referenced Article 37.12, it believed that if it satisfied the just cause standard in the IEA, it would therefore satisfy the Article 37.12 requirement of just cause.

Arbitrator Greenbaum's July 29, 2019 preliminary ruling established that the applicable just cause standard was that set forth in Article 37.12.A.ii and that the University had the burden of proof to demonstrate by a preponderance of the evidence that Ollie engaged in "serious noncompliance" with NCAA rules or regulations or other "serious misconduct." If UConn could not meet that burden, it was obligated to honor the compensation agreement. She effectively rejected the idea that the IEA just cause standard was incorporated into Article 37.12.

Just cause under a collective bargaining agreement includes a number of important due process protections. An employer must show that at the time it made the decision to terminate it possessed the grounds upon which the termination was supposedly based. An employer cannot first terminate an employee and then undertake an investigation to establish the factual grounds supporting its predetermined conclusion. Part of the rationale for this tenet is that investigating before reaching and implementing a decision increases the likelihood, although there is no guarantee, that the investigation will be full and fair. Once management makes a decision and that decision is made known, there is a great danger that the recollections of relevant witnesses will be consciously or unconsciously altered. The motivation of a witness may no longer be to recall what occurred as best as they possibly can, but to avoid incurring the wrath of the powerful party who already committed to a decision. Further, once a decision is announced the dynamics of defending a decision and not admitting an error come into play.

While there are limited occasions when after-acquired evidence will be allowed to buttress or corroborate previously articulated grounds, such evidence may not be used to add significant new grounds that were not articulated at the time the termination decision was announced. The substance of the charge that Ollie was dishonest will be dealt with below, but the reliance on this claim by UConn was procedurally fatally defective. Benedict did not cite this conceivably Level I violation as a basis for the termination for cause in his letter of March 10. It was not until the Union representatives challenged UConn's assertion that the relevant just cause standard was that set forth in the IEA, and insisted that the test of "serious noncompliance" was operative, that Benedict added this allegation as justifying termination in his April 6 letter.

This was not because the administration first learned of the basis for the charge after it had terminated Ollie and hired his replacement. The dishonesty allegation was largely predicated on the assertion that Ollie was not honest and forthcoming at his March 1 interview regarding Hamilton's activities on campus and his training of three active players in Atlanta. Fiorvanti was present at the interview. Virtually every relevant fact regarding Hamilton was learned by Fiorvanti no later than March 6 and 7 when Jalen Adams and Terry Larrier set forth the full picture in their multiple interviews. Fiorvanti was intimately familiar with the facts because she presented them to the NCAA in an effort to get the players' eligibility restored to play in the tournament game, including Sean Adams's statement about having spoken to Ollie ahead of time to insure the trip would not be problematic. She had also heard Ollie's recollection of the number of times Hamilton had been on campus and the circumstances. That Fiorvanti may have located some hotel receipts after March 10 was at best a minor supporting detail. If at the time UConn decided to terminate Ollie the administrators believed Ollie had been dishonest or not forthcoming in his March 1 interview, it should have articulated that as a basis for the decision.

Adding a Level I violation, the most significant element to proving "serious noncompliance," after publicly firing Ollie was an impermissible breach of a fundamental concept of due process.

As will be set forth in detail below, UConn's dismissal of Kevin Ollie was predicated on an incomplete investigation, inadequate process, and ultimately a collection of unproven or minor, isolated infractions for which termination was far too severe a sanction. The entire decision was tinged with UConn's self-interest of avoiding additional institutional penalties and escaping the obligation to pay Ollie the amounts agreed to in his IEA.

Irrelevance of NCAA Investigation and Sanctioning Process. At the outset, it must be made clear that the existence of the NCAA investigation, or its ultimate conclusion, could not be relied upon by UConn to justify its decision to terminate Ollie. It is true that by agreeing to coach at a member institution of the NCAA, Ollie agreed to be bound by the NCAA's rules, regulations, and enforcement procedures. The due process deficiencies in the NCAA procedures will be briefly described below, but the reality is that had UConn waited to take action against Ollie until the completion of the NCAA proceedings, and the issuance of the Level I violation finding, UConn would have had just cause under Article 37.12 to terminate Ollie for cause. That the sanctions against Ollie were grossly disparate when compared to those imposed on Calhoun and many other high-profile coaches who were found to have committed far more serious infractions would have been irrelevant. The ultimate NCAA finding represented serious noncompliance with NCAA rules and regulations and Ollie would have been stuck with that resolution.

UConn could not have based its discipline against Ollie on the NCAA findings because on March 10, 2018, the NCAA proceeding was still in its investigatory stage. The NCAA did not

proffer its Notice of Allegations until September 2018 and its decision was not issued until July 2019, about 16 months after the measuring date for the validity of UConn's decision.

The University's alternative argument is that the NCAA findings should be considered as proving the reasonableness of the conclusions UConn had drawn at the time it terminated Ollie. This claim cannot be accepted because the NCAA proceedings bear little relationship to an impartial adjudicatory process. The enforcement staff does not take witness testimony under oath and witnesses are not subject to cross-examination. Cross-examination has long been recognized as an essential element of due process because it has the salutary effect of incentivizing witnesses to not make unsubstantiated or exaggerated claims, and it serves the purpose of clarifying ambiguities or exposing bias and incapacity. When one reads the interview of Glen Miller, it is apparent that the enforcement staff was not focused on getting reliable evidence but rather on proving violations were committed by Ollie. At various times Miller denied actual knowledge or equivocated about statements, but the staff repeatedly pressed him to finally make a definitive claim. The enforcement staff did not engage in a serious and critical analysis designed to test Miller's motivation for providing damaging accusations about Ollie. Despite the fact that if the violations that he claimed had occurred were true – such as that Hamilton often pulled aside as many as a half dozen players aside at the end of practices for additional work, an assertion that not a single player, coach, or team manager corroborated – Miller repeatedly violated his obligation to notify the Compliance Office. Rather than fairly evaluate Miller's credibility, or that of Illian, another self-interested accuser, the NCAA gave Miller blanket immunity for any violation he may have committed.

Another major structural deficiency of the NCAA process is that representatives of the member institution have the right to sit in on all witness interviews. This is despite the fact that

the institution itself is supposedly a potential target of the investigation. In contrast, a coach such as Ollie, who is the focal point of the investigation, is not allowed to have any representatives in the interviews or to even suggest potential witnesses to be interviewed. Under usual circumstances, coaches have some protection. Typically a university will support its coach during the investigation, so the coach has a virtual representative who is empowered to ask questions and to potentially make some impact on the investigation to insure it is thorough and balanced. That is exactly what UConn did when Calhoun and his program were the subject of the investigation in 2009. UConn fell on its proverbial sword, acknowledging its own institutional culpability, but arguing that there was insufficient evidence to conclude that Calhoun should have had knowledge of the blizzard of infractions that were committed by his staff and related persons. The Committee on Infractions ultimately dismissed the defense of Calhoun, highlighting his own improper actions and the fact that he most definitely should have known about and controlled the thousands of improper calls and financial benefits given to a prized recruit.

In marked contrast, UConn not only did not seek to protect Ollie in any way, but it essentially turned into the most vigorous prosecutor. In its submission to the Committee on Infractions, UConn accused Ollie of being cavalier regarding compliance. Even more damaging, the University argued he had engaged in unethical conduct and had provided false and misleading information to the enforcement staff and UConn, and had refused to sit for a follow-up interview. Given these very damning statements from the institution itself, it is hardly surprising that the Committee viewed the evidence in the most negative light and focused its compliance rage on Ollie. UConn also cited its precipitous termination of Ollie, implemented before it had afforded Ollie even the semblance of due process, as a mitigating factor to avoid

institutional penalties. This patent and damaging self-interest further undermines any argument that the subsequent NCAA findings should be given any probative weight.

UConn's Failure to Engage in a Full Investigation. The NCAA does not restrict or otherwise prevent member institutions from conducting independent, internal employment-related investigations during a simultaneous NCAA investigation of potential rules infractions. Here, UConn substantially relied upon an incomplete NCAA investigation to assert a factual basis for terminating Ollie on March 10, 2018. The NCAA's investigation concluded with the issuance of a Notice of Allegations six months *after* Ollie's termination, and the NCAA and UConn continued to seek information from witnesses and Ollie himself during the intervening period.

UConn's own internal policies and procedures require the supervisor to conduct an investigation *prior* to initiating disciplinary action against an employee. Director of Athletics Benedict was Ollie's direct supervisor. Benedict contended that he delegated the investigation to Fiorvanti, but she disputed that characterization. UConn nevertheless contended that it conducted a full investigation in partnership with the NCAA, a requirement when allegations of major rules violations arise at a member institution. There are several problems with UConn's position.

UConn's participation in the investigation was scattershot. The University claimed that it began an investigation in October 2017. However, the action that UConn took to review the Men's Basketball program prior to the start of the NCAA's inquiry in November 2017 was not an investigation, but an effort to "confirm compliance" under an NCAA directive to all Division I member institutions following an unrelated law enforcement action earlier that summer. By the

time the NCAA stepped in, UConn had only spoken to Glen Miller – who had been terminated by Ollie earlier that year.

UConn's Compliance Office staff – Fiorvanti was the lead participant for most investigatory activities – played little more than a supporting role to the NCAA's investigators in this matter. During the course of the NCAA investigation, the University had at least one representative attend each of the witness interviews conducted by the NCAA's investigators, and those representatives occasionally asked questions. When she was asked whether UConn conducted any independent investigation into Ollie prior to terminating his employment, Fiorvanti provided two examples: the retrieval of credit card receipts and logbooks from the University's Nathan Hale Inn, and a review of social media. These records, however, were simply provided to the NCAA for use in its investigation, and in any event they were relatively insignificant details.

While employers frequently rely in part on third party investigators to support inquiries that result in discipline, the NCAA's investigation was neither complete at the time of UConn's decision to terminate Ollie nor based on a fulsome process. In contrast to this arbitration tribunal, the individuals interviewed by the NCAA were not sworn under oath; the interview transcripts were compiled by NCAA staff rather than an independent court reporter; and some statements used by the University to support the allegations against Ollie – most importantly, Sean Adams's – were unsigned. Key witnesses changed their statements. Jalen Adams, who was interviewed four times by the NCAA, gave dramatically different stories each time he was interviewed. His father had given him money for transportation, food, and lodging, but the player elected to pocket the money and get the improper benefits from Hamilton. Jalen's own motivation to try and hide his deceitful behavior from his father, behavior that potentially

jeopardized his eligibility, was never fairly considered by UConn or the NCAA. Illian gave conflicting statements over the course of several interviews. All of these interviews were conducted without any opportunity for Ollie or the AAUP to conduct cross-examination.

The NCAA conducted its only interview with Ollie about a week prior to the University's decision to terminate his employment with Fiorvanti in attendance. The interview, which lasted a little over three hours, covered practice time, strength and conditioning work, preseason pickup games, and general recruiting practices. The interview also covered specific allegations regarding the team's video coordinator, Dave Sevush, and Player Development Director Danny Griffin; Ollie's relationship with outside trainer Derrek Hamilton; the call between Ray Allen and recruit Hamidou Diallo; and the alleged payments to representatives of a couple of players and the mother of Shonn Miller as inducements for the athletes to attend UConn. Despite a prompt from lead NCAA investigator Russell Register at the conclusion of each interview topic, Fiorvanti asked few questions. Her queries were limited to seeking clarity about the allegations that coaches directed players to "go see Dave [Sevush]" for help with logging into the Hudl app used to view video clips of key games and plays. Clint Speegle and Henry Gimenez, lawyers for the Lightfoot law firm retained by UConn to defend the institution in the NCAA's inquiry, were also present during that interview and asked some questions of Ollie – but their questions only sought other minor clarifications on issues that were raised by the NCAA's investigators during the session.

Investigators failed to follow up on potentially exculpatory information. For instance, the University conducted little investigation to determine whether Ollie knew anything about his players' training sessions with Derrek Hamilton in Atlanta during the summer of 2016. Ollie's single interview with the NCAA and UConn did not include any questions about the Atlanta trip.

Even if the University was unaware of the trip at the time of the March 1 interview, UConn representatives became aware of the trip no later than March 6, 2018. The University failed to question Ollie about the training sessions at any point over the next two days as members of the Compliance Office, the Men's Basketball program, and others worked tirelessly to get two of the players involved in the training reinstated in time for a March 8 post-season conference tournament game. In the two days after players Jalen Adams and Terry Larrier were reinstated, University representatives did not question Ollie about the trip prior to his termination.

On the contrary, UConn surmised that Ollie was aware of the trip based essentially on his long friendship with Hamilton. It relied on the NCAA interview of Sean Adams. Sean Adams told investigators that he asked Ollie about whether the training would be permitted under NCAA regulations, but did not recall whether he mentioned Atlanta as the location for the training or Hamilton by name. The University credited a statement from Illian, who said Ollie "must have known" about the trip to Atlanta. However, Illian admitted that he never spoke directly to Ollie about the trip and, moreover, the interview where Illian spoke to investigators about the Atlanta trip occurred after UConn terminated Ollie. It also occurred after Illian had spoken a number of times with Glen Miller, raising the strong suspicion of coordination of allegations by the two primary accusers. That Illian was relied upon as a source to prove Ollie's advance knowledge of the Atlanta trip demonstrates the exceedingly weak basis for the University's conclusion.

Ollie's termination also came before the NCAA interviewed Danny Griffin, who provided information in his April 12 statement that called into question the motives of Glen Miller. Griffin and Miller were both terminated from employment in 2017; in Griffin's case, the University chose not to renew his one-year contract as director of player development. Griffin

contended that Miller contacted him after his tenure ended seeking information that could be used against Ollie, and that Miller was angry with Ollie about his termination and was seeking others who may have felt similarly about Ollie. Griffin believed that Miller was recruiting him for that purpose, indicating that Miller said he would “get that motherfucker” and that Ollie “will pay.” Knowledge of Miller’s animus toward Ollie arguably should have influenced the assessment of Miller's assertions. The fact that Miller had been willing to recount very serious allegations about Ollie paying off people to get recruits, lacking all proof but ascribing the claims to rumor and a supposed delayed disclosure by his wife, should have led UConn to question the reliability of its star witness. Unfortunately, instead of undertaking a careful and deliberate investigation, the University had already fired Ollie, publicly announced Ollie’s termination for cause, hired his replacement, and refused to consider reinstatement.

UConn Failed to Provide Adequate Due Process. Cumulatively, the University’s passive approach to the investigation provided little basis for termination at the time that the decision was made to fire Ollie. The collective bargaining agreement’s requirement that an employee subject to discipline be given an opportunity to be heard prior to final action is designed to test the assumptions developed in an investigation and, in some cases, result in a decision to either rescind or modify the contemplated discipline.

UConn, a public employer, is required to provide adequate due process for employees facing discipline and discharge. In *Loudermill*, the U.S. Supreme Court interpreted the due process clause of the 14th Amendment to the Constitution to require that a public employee receive “notice of the charges against him, an explanation of the employer’s evidence, and an opportunity to present his side of the story” prior to discharge or the receipt of significant discipline. 470 U.S. 532, 546 (1985). Individuals employed by a public entity have a property

right in continued employment, and certain other benefits that arise from such employment. Given the profound impact that a loss of employment can have on an individual, the pre-deprivation right to notice and an opportunity to be heard allows the individual to defend their actions prior to the employer's final determination on discharge – and perhaps result in a different outcome.

UConn has contended that Ollie was not entitled to *Loudermill* due process because he did not have a property right to continued employment. Specifically, UConn has argued that because the IEA between Ollie and the University provided an option for UConn to terminate Ollie without cause, it was absolved of *Loudermill*'s pre-deprivation notice and hearing requirements. An individual is entitled to due process if a state actor intends to deprive the individual of a property right. *See generally Loudermill*, 470 U.S. at 546. It is evident that Ollie had a property right in not only his continued employment with the institution, but the compensation to be paid out in the event of a termination without cause. Article 10.2 in the IEA between UConn and Ollie provided for a payout of all base compensation, media fees, and accrued deferred compensation payments under Articles 3 and 6 of the employment agreement – totaling more than \$11 million at the time of his separation. UConn cannot credibly contend that the contractual entitlement to a payout of \$11 million in the event of a termination without cause is not a property right. Because the University moved forward with a termination for cause and Ollie exercised his right to challenge the grounds proffered to support those grounds, the University should have afforded Ollie the notice and opportunity to be heard that is required by Article 37.12 of the CBA and the University's parallel policies and procedures.

UConn's *Loudermill* process for the discipline or discharge of athletic team coaches, who are members of the AAUP faculty bargaining unit, is found in Article 37.12 of the CBA.

Specifically, the provision requires that the coach receive a written statement of the reasons for discipline, followed by the opportunity for a hearing with the Athletic Director and a second hearing with the President. UConn also publishes “The University Administrator’s Guide to Progressive Discipline and Corrective Action” for employees, which directly references the *Loudermill* decision. Significantly, the Administrator’s Guide states that “[t]he right to due process must be clearly provided before the action is imposed. The right to a grievance process after disciplinary action is taken, does not fulfill the employer’s obligation.”

The *Loudermill* hearings envisioned by the CBA and the Administrator’s Guide should have taken place prior to the announcement of Ollie’s termination on March 10, 2018. In the nine-day period following the NCAA’s interview and leading up to Ollie’s termination, UConn turned its focus to the reinstatement of Jalen Adams and Terry Larrier prior to the March 8 AAC tournament game. Despite several opportunities to do so during that time, neither Fiorvanti, Benedict, nor any other UConn representatives sought Ollie’s input on what he knew about the details of the off-season Atlanta training that Adams and Larrier participated in with Derrek Hamilton.

When UConn terminated Ollie, he had little knowledge of the charges against him and had not been given an opportunity to respond to those charges. At the March 10 meeting to inform Ollie of his termination, Benedict provided an incomplete notice of the charges against Ollie in the letter that was given to him. The letter was vague in its references to the James Akinjo violation, which was not discussed during the March 1 interview, and the Ray Allen call with Hamidou Diallo. Ollie was aware of the concerns about his friendship with Derrek Hamilton and knew that the NCAA and the University had investigated the off-season training trip to Atlanta, but the balance of the other allegations relating to Ollie’s termination were not

revealed or discussed in greater detail until Benedict's letter dated April 6. By that time, the April 11 hearing with Benedict was fast approaching and the AAUP had yet to receive a key from UConn to decode the 1,200 pages of redacted transcripts that were provided on March 19.

The University's assertion that the April 11 hearing satisfied its obligations under *Loudermill* is not cogent. The purpose of a *Loudermill* hearing is to give an employee the opportunity to respond to employer's contentions, so that the evidence against the employee and the employee's perspective are fairly weighed by the employer before it has made a decision. Once a decision is made, the dynamics of defending that decision come into play - minimizing the possibility that the employer will objectively consider what the employee is stating.

Even if one accepts that the AAUP delayed the April 11 hearing for the purpose of gaining some advantage, as opposed to needing time to review the undifferentiated dump of documents, the University does not gain from the argument. Article 37.12 requires that the hearing be held within 15 days following delivery of the termination notice. Robust post-termination procedures can remediate a lack of pre-termination process. *Loudermill*, 470 U.S. at 546. UConn had so distorted the normal disciplinary process, however, that no remediation was possible. UConn aggressively issued a press release to publicly announce Ollie's termination for cause on the same day that Ollie was notified. The University captured the narrative before Ollie ever had a chance to respond, forever damaging Ollie's reputation within "UConn Nation" and the national basketball community. While the public announcement claimed UConn had merely initiated disciplinary procedures and would have no further comment, Herbst and Benedict in fact provided comments that left no doubt that Ollie was guilty of terrible misconduct and he was being replaced immediately. They portrayed the University as the bruised and aggrieved party. UConn announced on March 22, a mere 12 days after trumpeting Ollie's termination, that it had

hired Hurley as his replacement. In a March 22, 2018 email, Gelston told Lefft that reinstatement would not be an option for Ollie. Perhaps the lack of pre-termination process could have been remediated had UConn genuinely been willing to consider reinstatement; however, the University's statements and actions forcefully eliminated any such opportunity.

Taking these steps well before April 11 guaranteed that the hearing was a futile exercise. UConn's public insistence that Ollie was being terminated for cause and Hurley's hiring on March 22 rendered any further process a meaningless *fait accompli*. Moreover, that Benedict came to the hearing with a list of questions prepared by outside counsel designed to elicit a confession and bolster elements of the University's case against Ollie demonstrated that the University had no intention of listening to Ollie's response to the allegations and evidence the University believed supported its allegations. The hearing was nothing more than an opportunity for the University to perfect its charges as a means of avoiding payment of the balance of Ollie's contract.

These procedural defects would be enough to sustain the Union's grievance on their own and result in the award of the stipulated remedy. Given that UConn chose to prematurely publish its personnel decision, severely damaging Ollie's professional reputation, justice requires that the substance of the allegations also be addressed. Ollie deserves to win his grievance on more than procedural technicalities.

UConn Failed to Establish Just Cause for Ollie's Termination. UConn's decision to terminate was based on deeply flawed information provided in large part by two individuals who were recently estranged from Ollie following their own terminations. Throughout the investigation, Glen Miller and Travis Illian gave incomplete, inconsistent, and often contradictory information about the alleged violations that formed the basis for the NCAA's

inquiry and Ollie's termination. The most salacious charges leveled by Miller and Illian – rumors and hearsay about tens of thousands of dollars in illicit payments to players Hamidou Diallo, Alterique Gilbert, and the mother of Shonn Miller, Stephanie Garrett – did not ultimately result in charges. Much of the information about impermissible meals for recruits on unofficial visits and Derrek Hamilton's activities and whereabouts on campus was not corroborated by other witnesses.

Moreover, the parties' agreement requires evidence of serious noncompliance with NCAA rules and regulations or other serious misconduct in order to sustain a dismissal. The AAUP provided un rebutted evidence that the parties' addition of the term "serious" to the noncompliance trigger in the Article 37.12 just cause provisions was intended to reserve discharge for major offenses. Bailey, the AAUP's executive director, testified that the change in the 2017-2021 CBA was made to eliminate the possibility of discharge for simple noncompliance on low-level offenses. With the addition of the term "serious," the parties intended to assign management the right to dismiss without the need for prior progressive discipline only for more significant NCAA infractions at Level I and possibly Level II. UConn's evidence against Ollie at the time of his termination lacked sufficient cause to warrant termination. At best, on March 10, 2018 UConn had facts sufficient to support a finding that no more than three or four minor, Level III violations occurred in the UConn Men's Basketball program. These were precisely the types of compliance oversights that should have been addressed with progressive discipline.

Duty to Report Possible Violation. *Hamidou Diallo.* Ollie himself participated in only one of the violations known to UConn at the time of his termination – the FaceTime call between Ray Allen and Hamidou Diallo. Ollie has admitted his culpability for that incident,

acknowledging that he should have known that the call represented more than simply inadvertent contact and should have reported the call to the NCAA. The NCAA's rules prohibit contact between recruits and "boosters" like Allen, an NBA Hall of Fame member, UConn alumnus and member of the UConn Foundation's Board of Directors. In seeking discipline against Ollie, the University relied on vague assertions that the call was preplanned with his knowledge and tacit assent.

The coach in charge of planning Diallo's high-profile Official Visit was Glen Miller. Ollie fired Miller roughly seven months prior to Miller's first interview with UConn. While UConn argued that Miller and Illian may have feared retaliation from Ollie if they came forward with evidence of NCAA infractions while still employed by the University, the University offered no evidence to support such assertions. Neither of the former coaches testified that Ollie ever made statements that would have supported such a fear, and both said Ollie never asked or directed them to do anything that was contrary to NCAA regulations.

In disciplining Ollie for the Diallo call, the University surmised that Ollie knew that Allen would call during the Christmas party where prized recruit Diallo would be present. In reaching this conclusion, the University relied on Allen's status as a decades-long friend of Ollie, and the further belief that Allen's status would have an outsized impact on the program's ability to recruit Diallo – who plays the same position as Allen did. Friendship alone and an assumption about the value of speaking with Allen do not imbue Ollie with advance knowledge about or complicity in preplanning for the call. In fact, Miller, the lead recruiter for Diallo, denied during his arbitration testimony that any preplanning involving Ollie had taken place. This was after first telling NCAA investigators that Ollie had been involved in preplanning. While testifying he talked vaguely about possible discussions at planning sessions regarding a call with some past

player. He did not say those discussions involved Ollie, mentioned Allen by name, or ever progressed beyond throwing out a range of ideas. While Larib Omara-Otunnu, Ollie's executive assistant, recalled that there was some discussion about arranging a call between Allen and Diallo prior to Diallo's Official Visit, she did not recall that Ollie was part of those discussions. In fact, she said the only coach who asked her to arrange a call with Allen was Miller, the coach leading the recruiting effort of Diallo. Coaches typically discuss high-profile recruiting visits during daily staff meetings, yet not one other member of the program staff could recall any preplanning of a call to Allen. Ollie denied any knowledge that the call would take place prior to the party.

In the absence of any evidence that Ollie participated in or knew of a preplanned call between Allen and Diallo, UConn was reduced to pointing out what it termed remarkable coincidences – the call was made when Diallo was at Ollie's home for a party; it went to Omara-Otunnu's iPad, rather than her iPhone; Allen and Ollie were close friends; the call came after Diallo had been shown a video regarding The Brotherhood, which includes clips with former UConn players who were in the NBA; when the iPad was handed to Diallo he and Ollie went into a quieter room away from the main party. There is no question that Ollie should not have allowed the iPad to be given to Diallo so he could talk with Allen and that Ollie should have promptly reported this as an improper call to Compliance. None of those "coincidences" established that this was more than an unplanned holiday call from Allen to his close friend Ollie that got passed to Ollie's children and players, and inappropriately to a recruit on an Official Visit. As was evidenced by how the subsequent interaction of Kyrie Irving with recruits during an Official Visit with Geno Auriemma was handled – the issuance of a Letter of Admonishment by Fiorvanti – this was a Level III violation that merited no further discipline by UConn.

Impermissible Meals. The other three potential violations known to UConn at the time of Ollie's termination included one impermissible meal for a recruit, Brandon Williams, and his mother and stepfather Chris Wright during an unofficial visit. NCAA regulations restrict institutions from providing benefits to recruits during unofficial visits, including lodging, transportation, and meals. The total assessed value of that meal – plates of chicken eaten in the team's dining hall at the practice facility – was \$30. Ollie credibly asserted that he reminded Ricky Moore, the coach in charge of recruiting Williams, and Williams and his family about the rules for meals during an unofficial visit, and that he reminded Williams and his family later that same day that they had to pay their own way when Ollie dined with them at a restaurant.

Moreover, and practically speaking, Ollie was the head coach of a Division I powerhouse college basketball program, and was paid millions of dollars per year to recruit athletes, mold young men, and win games. The notion that his duty as a head coach to monitor for compliance extended as far as asking each recruit about whether he paid for all of his meals during an unofficial visit strains credulity. First, he had a staff that takes the lead on unofficial visits – Moore was dining with Williams and his family at the time of the alleged violation. Second, the Athletics Department's Compliance Office – with a full-time staff of five that grew from two following the Calhoun-era infractions, put into place a form used to verify compliance with NCAA regulations at the conclusion of an athlete's unofficial visit. That form includes a question to verify that the recruit has paid for all incidental expenses like meals during the visit. Even the NCAA report on the Calhoun-era infractions makes clear that the expectation of head coaches to monitor compliance measures within their programs has limits, and does not create a duty to investigate. Fiorvanti herself testified to the NCAA that the Compliance Office did not see this area as one of concern.

A second Miller claim that Diallo received an impermissible meal during a previous unofficial visit was unable to be verified by the NCAA or UConn. Hence, the University was only able to prove that over the seven years Ollie was head coach Ollie had failed to catch one impermissible meal during an unofficial visit. This was the very type of *de minimis* violation Herbst wrongly asserted could support termination for cause. That Ollie failed to report a violation of which he was not aware could not be considered serious noncompliance.

Dave Sevush. The allegation of on-court coaching instruction by a non-coaching staff member, Video and Scouting Coordinator Dave Sevush, was similarly isolated and minor in nature and there was no evidence Ollie knew of the one proven instance that might conceivably have been improper. Christian Foxen, the student-athlete who allegedly received instruction from Sevush, knew that Sevush was not a coach because Sevush told him that. Foxen disputed the characterization that their interaction constituted coaching or instruction. Foxen asserted that he worked with Sevush on the Gampel Pavilion practice court to learn a play once during his 2014-2015 freshman season as a walk-on player. Foxen further indicated that it was the only time he worked one-on-one with Sevush, and the interaction had lasted less than 10 minutes.

The University also relied on a vague allegation that Ollie and coaches told players to “go see Dave” for help with plays. Ollie credibly told investigators during the March 1 interview, and subsequently during the arbitration hearing, that players were told to speak with Sevush for help with accessing the program’s video applications. Sevush’s role as video coordinator included assisting players to use proper identification and passwords to access Hudl, the app used for video replays of game clips, and a related app used to diagram plays. UConn relied on Foxen to support the allegation that Ollie was directing players to receive impermissible coaching instruction from a non-countable coach under the NCAA’s regulations.

During the February 26, 2018 interview, Foxen told NCAA investigator Russell Register that Ollie and other coaches told him and other players to “go see Dave” for assistance with learning plays. However, Register failed to ask follow-up questions that may have provided clarity about the limited nature of those directions. Later in the interview, Foxen responded to questions from the University’s outside counsel, Clint Speegle, by indicating that no coach ever told him to go to Sevush in order to review plays, but that Foxen “took initiative and went up to [Sevush] and tried to figure it out on my own.” In any event, UConn proffered no proof that any other player other than Foxen received any instruction from Sevush other than how to use the video equipment. One isolated event, even if it were improper, cannot be attributed to Ollie's lack of attention to compliance or a failure to report a known or suspected violation.

Atlanta. UConn relied on questionable evidence to assert that Ollie had knowledge of the off-season trip that players Rodney Purvis, Jalen Adams, and Terry Larrier took to train with Derrek Hamilton in Atlanta during the summer of 2016. UConn cited to Illian’s statement, made on March 22 after Ollie’s firing, that Ollie “must have known” about the trip and concluded that Ollie’s friendship with Hamilton was further evidence of his awareness of the training. As it did with Ollie's longtime relationships with Allen and Griffin, UConn unfairly attempted to assign guilt based on the common reality that many people within the basketball world intersect with each other over the terms of their careers. UConn also relied on the statement of Sean Adams that he spoke to Ollie prior to the trip to obtain information about the permissibility of off-season training. UConn failed to ask, and Adams could not later recall, whether he ever mentioned Atlanta or Derrek Hamilton during the conversation. Ollie recalled a conversation with Adams about the training but denies that Atlanta or Hamilton’s name were ever mentioned – he only recalled telling Adams that the players would need to pay for the training in order to comply with

NCAA rules. This guidance did not manifest a disregard for compliance generally, or trigger an obligation to notify the Compliance Office of some red flag event, but rather showed Ollie was mindful of the need for his players to comport themselves appropriately.

If UConn had asked Ollie about the trip at any point prior to his termination, the University would have learned that Ollie and Hamilton had a falling out in April 2016 – a few months prior to the Atlanta trip. Ollie testified during the arbitration that he had become upset with Hamilton over criticism that he shared with the mother of UConn player Rodney Purvis during the 2015-2016 season. Purvis was a transfer student and played only one season with the team. Ollie had a pointed conversation with Hamilton about the nature of the criticism and its effect on his ability to lead the team.

Later that month, following the end of the season, Ollie came across Hamilton in the Werth Center gym. Ollie had not been aware that Hamilton was on campus, and did not know that Shonn Miller, a player who had exhausted his eligibility, had engaged Hamilton to train him on campus. NCAA regulations permit off-season, on-campus training performed by outside trainers for student-athletes like Miller who have exhausted their eligibility and are training in preparation for a professional career. Ollie was upset to find Hamilton using the facility without first asking for permission. Ollie told Hamilton to stay away from the campus and from UConn players, and testified that he did not speak with Hamilton again until learning about the Atlanta trip on March 6, 2018.

On March 8, two days before Ollie's termination and less than 30 minutes prior to tipoff in UConn's next AAC tournament game, the NCAA reinstated Adams and Larrier to the team after they made restitution of \$384, the value of the housing, meals and transportation received from Hamilton during the Atlanta trip. At most, the incident offers another example of a low-

level, isolated violation that does not come close to meeting the just cause standard of the CBA for a dismissal. In reality, UConn failed to prove Ollie knew or should have known about the violation and that he should have violated it.

James Akinjo. UConn inexplicably included Ollie's shootaround with James Akinjo, a recruit on an Official Visit during the previous fall semester, as a charge in support of his termination. UConn knew about the shootaround within days of the visit, and Benedict directed Ollie to file a report on the incident. Ollie did so in November 2017, stating that he was walking from a recruiting presentation through the gymnasium to lunch when Akinjo challenged him to a shoot-off. The coach and the recruit, both in street clothes, took a few shots while Akinjo's aunt made a video recording and posted it to social media. Akinjo had, in fact, already been offered a spot on the team earlier that day – further rendering moot the notion that the shootaround was an impermissible tryout under NCAA regulations. UConn took no further action – disciplinary or otherwise – following Ollie's report, yet the incident appeared nearly six months later in the March 10 termination letter. The NCAA declined to find a violation relating to the Akinjo incident.

This was a primary example of what is forbidden by Article 37.12. Benedict had all the facts regarding this situation in November 2017, yet he imposed no progressive discipline. It was therefore improper for the University to subsequently try to bundle this allegation with other low level claimed violations to bolster its argument that it had just cause to terminate Ollie.

Other Allegations About Hamilton and Griffin Were Unfounded. In Benedict's April 24 letter to further detail the charges against Ollie following the April 11 hearing, UConn relied

solely on Illian for the uncorroborated assertion that Derrek Hamilton provided illicit, after-hours on-campus training to eligible student-athletes. Illian did not claim that he ever personally witnessed such a workout, but supposedly learned about them because players told him they were tired from those workouts or could not eat a meal. However, one of the team's members, Sterling Gibbs, swore in an affidavit that the trainings never took place and UConn produced no evidence from any player who supported the claim that any such workouts ever occurred. Hence, Illian's purely hearsay statements were and are deserving of absolutely no weight.

It is correct that there is proof that Hamilton was on campus a number of times up until April 2016. Once was in June 2015 when Ollie permissibly hired Hamilton to work at Ollie's community basketball camp. The next time was in January 2016 when Ollie asked Hamilton to observe some practices and attend some games to provide Ollie with advice. There was no credible evidence provided that Hamilton worked with eligible players during that time and there was nothing improper about his presence then. The third time was when Ollie discovered Hamilton had come without informing him to work with Shonn Miller. UConn tried to weave these few occasions, all of which involved no untoward or violative activity, into a narrative showing Ollie had introduced an impermissible coach into the community and was therefore likely aware of, and in any event responsible for, any inappropriate contacts involving Hamilton and eligible players. The smoke UConn sought to create was not proven evidence of a fire, but of its obfuscation of a lack of actual evidence of misconduct. Even Fiorvanti testified that neither Hamilton's presence on campus nor his friendship with Ollie created a 'red flag' for the Compliance Office at UConn.

Benedict's April 24 letter also detailed UConn's assertion that Danny Griffin engaged in impermissible recruiting activities during phone calls with Chris Wright, the stepfather of recruit

Brandon Williams, and with recruit Shawn Olden. However, neither UConn nor the NCAA interviewed Griffin prior to Ollie's termination – and never asked Ollie about the allegations that were first proffered by Glen Miller. Griffin was first interviewed on April 12, the day after Ollie's purported *Loudermill* hearing with Benedict. He told investigators that Chris Wright contacted him when Wright learned that Griffin – an acquaintance from the Los Angeles basketball scene, had begun working for UConn. Griffin told Wright that he could not speak with him about recruiting matters and directed him to the coach in charge of West Coast recruiting, Ricky Moore. Griffin also explained that Shawn Olden, whom he met when Olden was on an Official Visit to UConn, contacted Griffin to offer his condolences after learning about the death of Griffin's sister following a prolonged battle with cancer. By that time, Olden had already committed to play at another institution.

The reliance of UConn on the assertions made by Glen Miller on this issue illustrate the problems with basing employment decisions on information gathered through the NCAA enforcement process. During the arbitration, where Miller had to testify under oath and face cross-examination, Miller was asked by University counsel if Griffin made any calls to potential student athletes. He initially answered:

I think we made calls to coaches. I don't know that he made. I can't recall. I don't know if he made a call to a recruiter themselves.

Unhappy with that answer, University counsel sought to rehabilitate his own witness by showing him what he termed the transcript from his NCAA interview:

Q Okay. So in your answer to that question, "I knew he made recruiting calls." What was the basis for your answer there?

A Yeah. Okay. I forget the prospect's name, but there was one prospect from the west coast that he had – he was involved in arranging for the prospect to come for an – it was either an official or unofficial visit. If I had the prospect's name, it would register.

He at least, I believe, talked to the father. And I think he had a preexisting relationship with the father. I don't – that is my recollection.

Q Was that recruit Brendon Williams?

. . .

A Brandon Williams.

. . .

Q Okay. Did Mr. Griffin say to you specifically that he had talked to any potential student athletes?

A I don't recall. Today I don't recall.

What becomes immediately apparent is that Miller was a lot more confident in his accusations when he was in a friendly, nonchallenging environment, and that his testimony under oath quickly devolved into equivocation and supposition. Given the very flimsy basis for the claim that Griffin made improper recruiting calls, Ollie clearly had no obligation to report such calls to Compliance.

Duty to Promote Compliance. Benedict's April 24 letter contended that Ollie violated Article 4.3 of his IEA with UConn, which incorporated NCAA Bylaw 11.1.1.1 (Responsibility of a Head Coach), by failing to "promote an atmosphere of compliance within the program supervised by the Coach." The alleged violation was based on UConn's conclusion that Ollie committed infractions by participating in the Akinjo shootaround and the Diallo call and for failing to report his purported knowledge of the Hamilton training sessions with student-athletes on- and off-campus. Because those underlying allegations are defective, the allegation that Ollie violated a duty to promote compliance must also fail.

What the full record shows is that the UConn Men's Basketball program rebounded from its Calhoun-era violations under Ollie's leadership. Manuel, the former UConn athletic director, hired Ollie for his commitment to academic achievement for scholar athletes and for his focus on

compliance – a sentiment that was reinforced by President Herbst. While Ollie received a letter from Manuel during his first year as head coach for a minor recruiting days violation, the University did not take disciplinary action given that the program’s recruiting days were reduced as one of the sanctions for the Calhoun-era infractions. Manuel, who has led the University of Michigan’s athletic department since leaving UConn in 2015, “wasn’t concerned” with the isolated infraction. Ollie never received a letter of admonishment or discipline over his seven-year head coaching tenure prior to his termination.

Throughout his time as head coach, the Compliance staff agreed that Ollie made his staff available for training on NCAA regulations. Men’s Basketball program staff agreed that Ollie made compliance a regular meeting agenda item and was diligent in making staff aware of requirements and encouraging staff to contact the Compliance Office for guidance. Ollie also relied on the Compliance Office for support and guidance. Compliance staff were frequently present in the Werth Center for practices and program activities, and at games at the Gampel Pavilion on campus, the XL Center in Hartford, and even on the road at away games. The office facilitated compliance through the use of recruiting software and forms to manage highly regulated events like prospective student athlete visits to campus.

The NCAA’s report on the Calhoun-era infractions was explicit in noting that a head coach’s duty to monitor for compliance does not include a duty to investigate all possible infractions. It would follow as reasonable that Ollie would rely on the Athletic Department’s Compliance Office to promote knowledge about and compliance with NCAA rules and by-laws among the Men’s Basketball program staff. While isolated, minor violations occurred over the course of his seven years as head coach, Ollie did not have a duty to proactively seek out all potential violations.

Spurious Charges of Dishonesty Arose in the Post-Termination Process. Benedict's April 6 letter to the AAUP laid out the charges against Ollie in full for the first time. It included, as explained earlier, a new allegation of dishonesty. Section 10.1 of the NCAA bylaws defines unethical conduct as "knowingly furnishing . . . false or misleading information concerning an individual's knowledge of matters relevant to a possible violation . . ." By that time, UConn had hired Ollie's replacement and Ollie and his representatives had made clear their intentions to challenge the substantive nature and seriousness of the known violations that were alleged to have occurred. Likewise, UConn had declared that reinstatement was not under consideration. For the due process reasons already explained, UConn could not retroactively base its assertion of just cause on a claimed violation of Section 10.1.

Even assuming the charge could be considered, UConn failed to prove this Level I violation occurred. The three-plus hour interview conducted by the NCAA was the only time that Ollie was asked about any of the activities that resulted in his termination and NCAA sanction. UConn's dishonesty charge relied substantially on Ollie's recollection about the number of times that Derrek Hamilton had been on campus. At one point in the interview Ollie was asked by Russell Register of the NCAA: "Has Derrek ever been on campus here?" The answer and follow-up questions were as follows:

A: Yes, he has.

Q: What was that for?

A: You know, he's one of my good friends. He came on campus one time, I believe. He's been to my golf tournaments. He's one of my golf buddies. His – his son, Tyler Hamilton and my son are best friends. And I think he came up through his travels up to Pennsylvania to go see his son at UPenn.

Q: Okay. Has Derrick ever done any workout with players here at UConn on the men's basketball team?

A: No.

Q: Have you ever put him in contact with a player at UConn?

A: No, I haven't.

Q: I think you mentioned before that he has stopped by.

A: Uh-huh.

Q: Possibly.

A: Yeah.

Q: Do you recall when that was?

A: I don't recall. I'm not aware of that. Not aware of that. I know he's – not aware of what time that he's came up.

Q: Was it – do you recall was that just in the offices that you talked with him or where that was at that you saw him?

A: Yeah, Offices. I know he's been at a basketball game. Came to the game, spent about two days up, something like that I just don't know the time. Other thing, I know he worked out Shonn Miller. After he exhausted his eligibility, they hooked up. I really like to stay away from all that, workout guys for natural guys, agents. Because I don't want to be involved in none of that. I want to be involved with the student athlete, getting them better. You know, anything they conjure up on their own, that's nothing that I try to – try to set up because I just want those entities to be different because that a personal friend of mine – he's like family to me, so I don't want to get involved in that in our relationship.

Ollie was asked a few more questions about how Hamilton hooked up with Shonn Miller; Ollie said he did not know. He was asked if Hamilton had worked with former players named Sterling Gibbs and Daniel Hamilton and Ollie said he was not aware if that happened. He was asked if Hamilton ever worked out other former players or any current players and Ollie said he had not. He also denied having seen Hamilton in the weight room in Werth. At no time did the examiners

return to the question of how many times Hamilton had been on campus and they never sought to clarify if his initial estimate of Hamilton having been on campus once included the times he had come to some games and when he trained Shonn Miller.

The fact that Ollie was imprecise in his initial answer regarding the number of times Hamilton had been on campus did not establish that Ollie had knowingly furnished false or misleading information. A lack of precision or a failure to accurately recall is not the equivalent of perjury. If it were, virtually every witness who ever testified would be guilty. Ollie volunteered that Hamilton had been on campus to see some games and to train, without Ollie's advance knowledge, a player who had exhausted his eligibility. There was nothing improper about either of those visits. Ollie neglected to mention Hamilton's presence in Storrs to work at Ollie's basketball camp, but one could argue that the situs of an out-of-season camp unrelated to UConn basketball was not actually "campus." It is possible that Hamilton was in fact on campus other times, and that he visited the weight room on occasion, as had friends of Calhoun. In the absence of proof that Ollie knew of those appearances by Hamilton, the fact he did not mention them may only be evidence of his truthful lack of knowledge.

UConn further alleged that Ollie had not been sufficiently forthcoming because he did not volunteer any information about Hamilton training the three players in Atlanta. As has been previously detailed, there is no credible evidence that on March 1 Ollie knew Hamilton had trained the three players in Atlanta, so by definition his failure to mention this connection of Hamilton to UConn players was not evidence of Ollie being deceitful. UConn also argued that the fact Ollie denied having prearranged the Allen call was evidence of dishonesty, but since there is no evidence he in fact played any role in arranging the call, this claim is baseless. Disagreeing with an employer's erroneous conclusion is not lying.

UConn's attempt to rely on the fact that Ollie declined to sit for a second interview with the NCAA to prove serious noncompliance to justify termination fails for the previously stated due process reasons. The demand for a second interview arose well after Ollie had already been terminated. Further, Ollie had entirely valid reasons for declining to be examined again, similar to why he declined to answer questions posed by Benedict and Herbst. Ollie's counsel had been engaged in an effort over several months to establish ground rules for a second interview, which the NCAA was seeking to schedule during the post-termination period while Ollie and the AAUP pursued the grievance process at UConn. Practically speaking, much like the April 11 *Loudermill* hearing in which Benedict came prepared with a roster of questions intended to further build the University's case against him, Ollie had little incentive to provide unrestricted cooperation with the NCAA investigation. Ollie had more than \$11 million at stake and, by the time UConn hired Hurley 12 days after his own termination, reinstatement was certainly off the table. It was entirely reasonable for Ollie to decline to respond to Benedict's queries at the April 11 hearing or participate in the NCAA inquiry, particularly given UConn's role as an investigatory partner.

Ollie's Punishment was Arbitrary, Capricious, and Disparate. The scattered, low-level NCAA violations that occurred over the course of Ollie's seven-year head coaching tenure at UConn were comparable in number and frequency to other major athletic programs at the institution. Between 2012 and 2018, Men's Basketball had 13 Level III violations, including one self-report. During the same period, Geno Auriemma's Women's Basketball program had 11 Level III violations that included two-self reports. The football program had nine Level III

violations and four self-reports. Neither Auriemma nor leaders in the football program received discipline for these infractions.

Conduct similar to what occurred at UConn had happened at other institutions without penalty for the head coach. At The Ohio State University, football coach Urban Meyer was cited for a Level III violation when he arranged a call between a prospect and his former quarterback at the University of Florida, Tim Tebow. Meyer was not disciplined by the NCAA or his institution. At UConn, just a few months after Ollie's firing Geno Auriemma arranged for NBA star Kyrie Irving to visit his house while recruits for the women's team were present. Pursuant to the NCAA's direction, Fiorvanti issued Auriemma a Letter of Admonishment, but no discipline followed.

At UConn, the 2011 sanctions that followed Level I infractions committed in the program led by former Head Coach Jim Calhoun were based on the NCAA's findings that program staff exchanged more than 2,000 impermissible calls and text messages with a professional player representative and more than \$8,000 in impermissible benefits were provided by the representative to a prized UConn recruit. UConn supported Calhoun throughout the investigation, despite an observation by former Athletic Director Jeff Hathaway that "it was the most intense I've ever seen [Calhoun] about the recruitment of any particular student-athlete." Rather than engage in the disciplinary process, UConn addressed the matter internally by issuing a non-disciplinary Letter of Admonishment to Calhoun. The NCAA later issued a three-game suspension to Calhoun, but the UConn program sanctions for these infractions were far more serious: a three-year probation, a loss of scholarships and recruiting days. The NCAA subsequently issued a one-year post-season ban for protracted poor academic performance while Calhoun was in charge. The sanctions that resulted from these serious infractions pervaded the

program's operations for years following the NCAA's 2011 ruling, extending into Ollie's first two years as head coach. Calhoun voluntarily retired as head coach after the basketball season in the year after sanctions were levied and health issues intervened, and the University honored his contract by retaining his services for six more years at a cost of more than three million dollars.

The CBA at the time defined just cause for dismissal as noncompliance with NCAA regulations, without the "serious" modifier, and Calhoun's IEA similarly exposed him to termination for cause, which would have relieved UConn from its contractual commitment to provide Calhoun with lucrative post-retirement sinecures. UConn argued that one cannot compare how Calhoun was treated with the discipline imposed on Ollie because neither Herbst nor Benedict were in charge at the time the infractions report was issued in the spring of 2011. It is true that Herbst came to UConn a few months later, but nothing stopped her from seeking to void Calhoun's IEA after the team was notified in 2012 that it would be banned from post-season tournaments because under Calhoun's stewardship the team had failed to meet required academic standards. Further, to the extent the administration felt free to reach back years to harvest minor violations allegedly committed by Ollie, such a harvest would have been far more bountiful concerning Calhoun personally and his failure to monitor the program.

Appropriate Remedy. For any UConn employee without an IEA who had been terminated without just cause, the classic remedy would be retroactive reinstatement with full back pay. As stated at the outset, however, the IEA gave to the University the right to terminate the coach without just cause, but to then pay him the balance of what would be owed under the

Article² 10.2 of the contract. The parties in fact stipulated that this would be the appropriate remedy in the event it were found the termination was without just cause.

The remaining base compensation due Ollie under Article 3.1 is \$1,157,032.95, and the remaining media fees due Ollie under Article 6.1 are \$9,400,000.00. The subtotal of these components is \$10,557,032.95. Where UConn and Ollie differ is the trigger for deferred compensation payments under Article 3.2 and 3.3. The AAUP claims Ollie is due the entire \$1 million of deferred compensation while UConn claims he is limited to a \$600,00 payment.

Article 3.2 and 3.3 of the IEA are not models of clarity. The example provided in Article 3.3 demonstrates, however, that it was the intent of the parties that in addition to the \$400,000 that accrued under Ollie's prior IEA, \$200,000 in deferred compensation would vest on each May 1 that Ollie continued to be employed. If UConn terminated Ollie's employment before May 1 of any succeeding year, he would not accrue the additional \$200,000. As explained in the example, because Ollie was still employed after May 1, 2017, he was clearly entitled to a total of \$600,000 in deferred compensation. The dispute here as to whether he is entitled to more than \$600,000 arises because of differing views of when Ollie was effectively terminated.

The AAUP argues that Ollie was not actually terminated as an employee of UConn until either Herbst issued her decision denying his grievance on June 19 or his salary was stopped on July 10, 2018. This argument is unpersuasive. The entire thrust of the due process claims correctly advanced by the AAUP was that Ollie was effectively terminated on March 10 when Benedict issued him the termination letter. All the procedural steps that occurred after the effective termination were futile and meaningless. Given that the University had the right to

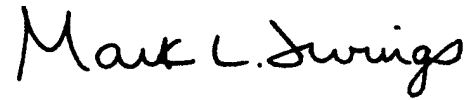
² The parties' stipulated issue makes reference to Section 10.2, although the IEA uses Article 10.2. Honoring their stipulation the Section designation will be retained in the award.

terminate Ollie without cause there was no doubt that Ollie's tenure as the head coach was over as of March 1, 2018. If there were any doubt in anyone's mind, that doubt was extinguished when Hurley was hired as Ollie's replacement on March 22, well before May 1, 2018. The fact that Ollie appealed his termination and he continued to receive his regular salary for an additional four months was pursuant to the provision in Article 37.13.B. It mandates that if a discipline resulting in loss of salary is appealed to arbitration, salary must continue until the issuance of an arbitration decision or for four months, whichever occurs sooner. The salary continuation benefit provides a form of income protection, and the right to grieve a termination provides a legal recourse, but neither convey on-going employment status. Hence, the total owed to Ollie is \$11,157,032.92.

UConn argued that this entire amount, which would have compensated Ollie for working through May 31, 2021, should be truncated because, as a result of the NCAA sanctions imposed on July 2, 2019, Ollie could not have fulfilled his head coaching responsibilities as of that date. This argument fails for two reasons. First, as was mentioned the parties stipulated that the appropriate remedy would be the "remaining payments under Section 10.2." UConn cannot at the end of the arbitration seek to modify the stipulated remedy. Second, as soon as the University terminated Ollie without just cause, which occurred on March 10, 2018, the entitlement to the entirety of the remaining payments vested. This point is made crystal clear in the example of a without cause termination on June 15, 2017 set forth in Section 3.3. In that situation, the parties were explicit that the total deferred compensation would be paid "within ten (10) business days of June 15, 2017." There is no reason why the payment of deferred compensation should be treated differently than the base compensation and media fees.

AWARD

The University of Connecticut violated the collective bargaining agreement when it terminated Kevin Ollie without just cause from his position as head coach of the Men's Basketball Program. Pursuant to Section 10.2 of the November 10, 2016 employment agreement, the University of Connecticut shall pay Kevin Ollie \$11,157,032.95 within ten business days of the issuance of this award.

A handwritten signature in black ink that reads "Mark L. Swings". The signature is written in a cursive, flowing style.

Arbitrator

January 20, 2022