

PRIVILEGED AND CONFIDENTIAL

Indiana University

Response to

Allegation 6 as Alleged

by the NCAA Division I Committee on Infractions

September 26, 2008

Prepared by:

**Indiana University and
The Ice Miller Collegiate Sports Practice
One American Square, Suite 3100
Indianapolis, Indiana 46282**

TABLE OF
CONTENTS

TABLE OF CONTENTS

	<u>Page</u>
List of Exhibits to the Response to Allegation 6	ii
I. INTRODUCTION.....	1
II. EXECUTIVE SUMMARY OF PRIMARY ARGUMENTS.....	4
III. ALLEGATION 6 AND PROCEDURAL ISSUES.....	6
A. Committee on Infractions Allegation No. 6.....	6
B. Administrative/Procedural Issues	7
IV. REASONS WHY A FAILURE TO MONITOR IS NOT WARRANTED OR APPROPRIATE.....	11
A. Indiana University's Enhanced Two-Tiered Phone Call Monitoring System was Designed To and Did Provide Redundant, Timely Assessments of Recruiting Phone Calls.....	12
B. The Enhanced Monitoring System Worked - Indiana University Discovered and Self-Reported the Violations in a Timely Manner.....	32
C. A Failure to Monitor Finding is Not Appropriate Because the University Could Not Have Prevented the Intentional Wrongdoing of Its Coaches.....	41
D. The University Appropriately Investigated Secondary Violations.....	46
V. THE SELF-IMPOSED PENALTIES REMAIN APPROPRIATE GIVEN THAT THEY MORE THAN COMPENSATE FOR THE IMPERMISSIBLE CALLS, THAT THERE IS A NEW COACHING STAFF THAT WAS UNINVOLVED IN THE VIOLATIONS, AND THAT THERE IS ONLY ONE RETURNING SCHOLARSHIP MEN'S BASKETBALL STUDENT- ATHLETE	52
VI. CONCLUSION	55

LIST OF EXHIBITS TO THE RESPONSE TO ALLEGATION 6¹

28. June 19, 2008 letter notifying Indiana University of Allegation 6
29. Chronological listing of impermissible phone calls that exceeded the number of calls allowed
30. Summary of chronological chart of phone calls that exceeded the number of calls allowed (Exhibit 29)
31. Total impermissible phone calls – summary of calls IU could not have detected
32. August 14 and 20, 2008 e-mail exchange clarifying two aspects of Allegation 6
33. E-mail exchanges regarding phone monitoring software
34. Survey of FBS institutions
35. October 25, 2006 e-mail exchange
36. September 13-15, 2006 e-mail exchange
37. Additional e-mail correspondence regarding monitoring of telephone calls
38. September 15, 2008 letter from Jeff Meyer
39. Procedures for investigating and reviewing potential violations
40. Self-Imposed penalties (as contained in the University's May 8 Response)
41. CBSSports.com June 17, 2008 article

¹ To assist in locating information, attachments to this Response to Allegation 6 are labeled “Exhibits” and the numbering for these exhibits begins with number 28 as a continuation to the attachments to the May 8, 2008 Response, which are numbered 1 to 27. [Attachments to the October 3, 2007 report are indicated by letters.]

**Indiana University Response to Allegation 6
As Alleged by the NCAA Division I Committee on Infractions**

I. INTRODUCTION.

This document is submitted to the NCAA Division I Committee on Infractions (“Committee”) in response to the June 19, 2008 letter notifying Indiana University (“the University”) of the Committee’s decision to allege a failure to monitor, as set forth in its Allegation 6. (See **Exhibit 28.**) The University is disappointed the Committee has determined that such a charge is necessary and, as discussed in this Response, firmly believes the allegation is not supported by the evidence or the facts and circumstances of this case.

As discussed at length during the June 13-14 hearing, immediately upon hiring Kelvin Sampson (“Sampson”), the University refined its existing phone call monitoring system to put into place an enhanced monitoring system for men's basketball that not only satisfied its general monitoring obligations but also provided additional scrutiny of the men's basketball coaches' recruiting efforts in light of the penalties previously imposed on Sampson. The two-tiered enhanced monitoring system for recruiting phone calls exceeded compliance monitoring norms, as evidenced by a survey of Football Bowl Subdivision (“FBS”) Division I institutions², and was effective, as it revealed in a timely fashion the conduct that has resulted in the other allegations. The failure to identify these allegations more promptly does not rise to the level of a failure to monitor because the conduct of the coaches in withholding necessary information and concealing

² As discussed in more detail below, the Big Ten Conference, with the endorsement of the National Association for Athletics Compliance (“NAAC”), conducted a survey of all 119 FBS Division I institutions to compile data regarding the typical practices for monitoring recruiting phone calls. FBS institutions were selected to provide information as they typically have the larger compliance staffs and would thus have more resources to conduct detailed, regular and comprehensive phone call monitoring. Thus, the averages and results from this survey present a higher degree of monitoring than would have been reported if all Division I institutions had been surveyed and provide a higher standard that Indiana University exceeded with its phone call monitoring system for men's basketball.

their improper recruiting calls made the violations difficult, if not impossible, to detect. In particular, of the 117 telephone calls that exceeded the number of calls allowed under the sanctions (37 of which were also contrary to NCAA Bylaw 13.1.3.1.2), Indiana University could have detected only four phone calls (all in May 2006) from a review of information and records reported by the coaches. Once the University's enhanced year-round monitoring system had been fully refined and implemented,³ only two other calls could have been detected through a comprehensive, 100% review of phone bills, with the last of these calls occurring in early October 2006 and neither call violating NCAA Bylaw 13.1.3.1.2. **(See Exhibit 29 for a chart highlighting the non-detectable calls in chronological order and the reasons the University could not have identified the calls as impermissible. See also Exhibit 30 for a chart summarizing this information.)** Further, the other impermissible calls – three-way and "phone passing" – were difficult, if not impossible, to detect. **(See 31 for a chart summarizing why the vast majority of all impermissible calls were not detectable.)**

Of note, the NCAA Enforcement Staff agreed with this assessment and did not include a failure to monitor allegation in the Notice of Allegations, despite careful consideration. During the NCAA Enforcement Staff's investigation and evaluation of the sufficiency of the University's monitoring, on several occasions University staff members answered questions and provided additional information regarding the monitoring of telephone calls and how the system operated. Thus, although the University and the Enforcement Staff carefully assessed a potential failure to monitor allegation, the Enforcement Staff concluded that a failure to monitor charge was not appropriate under the facts and circumstances of this case. The Committee has, however, chosen to disregard the decision of the Enforcement Staff. It is the University's hope

³ See Section IV-A-2 below for a discussion of the circumstances beyond the University's control that delayed full implementation of the enhanced year-round phone call monitoring system by a few months.

that, based on the information in this Response, which directly addresses this allegation, the Committee will conclude that the Enforcement Staff was correct when it decided that a finding of failure to monitor is not supported by the evidence.

Further, although embarrassed, frustrated and disappointed that the actions of a few former coaches created a major infractions case, Indiana University takes pride in several facts. First and foremost is that it was the University's compliance staff that detected and immediately reported the potential violations, which then prompted the University to launch an immediate and comprehensive inquiry at the first indication of the potential violation. The University also cooperated fully with the NCAA Enforcement Staff during its follow-up investigation of the self-reported information. Indiana University has had a long history of and reputation for rules compliance – both actual compliance and a commitment to the spirit of compliance by its staff and coaches. This is the University's first major infractions case in almost half a century (48 years). When the compliance staff discovered the potential violations through its redundant second-tier review, the University, in short, did the right thing. A thorough investigation promptly ensued, which uncovered the impermissible phone calls that were the subject of Allegations 1 and 2. Further, the University imposed significant sanctions and corrective actions in the Fall of 2007 that had an immediate impact on and continue to impact the men's basketball program.

The University stands by the design and effectiveness of its compliance monitoring program, which is solely responsible for detecting and reporting the violations that are the foundation of this case, as well as its decision to adopt a conservative but aggressive approach, counting questionable calls as impermissible, even though that approach increased the number of

**EXECUTIVE SUMMARY OF
PRIMARY ARGUMENTS**

phone calls reported and possibly the magnitude of this case. The detection and reporting of these calls in a period of slightly more than one year and as part of the year-end review of the academic year in which they occurred is an example of effective monitoring, not a failure to monitor.

II. EXECUTIVE SUMMARY OF PRIMARY ARGUMENTS.

The following primary arguments regarding why a failure to monitor is not an appropriate finding are summarized in this executive summary and detailed in the remainder of this Response:

- The University strongly disputes the failure to monitor allegation.
- The University had a two-tiered, redundant monitoring system that detected improper calls in a timely manner.
- The vast majority of improper calls were not detectable because the former coaches provided false information and data.
- The University's system for compliance monitoring of phone calls exceeded the best practices of comparable athletic departments.
- When surveyed, the median audit standard among Division I FBS institutions was a 10% audit of coaches' phone logs, while Indiana University performed a 100% audit.
- Less than half of Division I FBS institutions had systems in place to collect office phone bills (46%), cell phone bills (44%), or home phone bills (2%), while Indiana University had a system to collect these bills.
- The NCAA's own trained, professional investigative staff did not believe that a failure to monitor charge was appropriate.
- The University's compliance staff monitored over 70,000 phone calls and there are only four (4) calls that could have been detected by a review of information reported by the coaches.
- The monitoring system met the University's obligation even with the former head coach's prior infractions history.
- The University's enhanced monitoring system worked – violations were discovered by Indiana University in a timely manner and self-reported.
- The University's self-imposed penalties are significant, appropriate and sufficient. Additional penalties are neither necessary nor appropriate.

During Sampson's tenure, the University had in place a redundant, two-tiered system for monitoring recruiting phone calls in men's basketball that included regular, year-round monitoring of the telephone records of all coaches and an additional, year-end review of those

records to identify any errors in the year-round monitoring process. This enhanced review system was more than appropriate to satisfy the University's general monitoring obligations, as it far exceeded the norm for telephone monitoring among similar institutions. Furthermore, the University's enhanced review system satisfied any obligation the University had to provide heightened scrutiny of the men's basketball program after Sampson's hire, by devoting substantial resources to the most thorough regular monitoring of the telephone records technology would allow, supplemented by a comprehensive annual review of those records to further identify impermissible calls in a timely fashion. This is evidenced by the fact that the overwhelming majority of other FBS institutions did not engage in the type of regular record review the University was conducting. The University required strict adherence to its enhanced monitoring systems and protocol, contrary to the failure to monitor allegation. The enhanced aspects of the monitoring systems and protocol are clearly evidenced by the fact that there are no other violations or actions contrary to the sanctions, and that there are no allegations that Sampson made any recruiting calls or spoke in front of prospects during any off-campus engagements.

The University's enhanced monitoring systems worked as intended. Indiana University discovered and self-reported the violations, and did so in a timely and appropriate period consistent with its two-tiered monitoring system. It is important to note that the majority of impermissible phone calls that exceeded the limits imposed by the prior sanctions or NCAA bylaws could not have been detected. Further, the three-way calls involving Sampson were difficult to detect and the impermissible calls involving "phone passing" were not possible to detect under any monitoring system. Any perceived delay in identifying impermissible calls occurred largely because of the failure of members of the coaching staff to provide the

A

University with complete, accurate information regarding their recruiting calls and, specifically, the use of the home telephones for recruiting, all of which had been repeatedly requested by the University. Therefore, these impermissible calls are a reflection on the veracity of the coaches in question, not the strength of the monitoring system for recruiting calls. Indiana University could not have prevented the intentional wrongdoing committed by the former coaches, and appropriately discovered, investigated and self-reported these violations.

The failure to monitor allegation is both comprehensive and broad in scope. Given this, it is inconceivable that the NCAA Enforcement Staff – which is comprised of trained investigative professionals – could have missed this alleged failure to monitor, if in fact it existed. The University does not believe that it did.

Indiana University maintains its strong belief that its self-imposed penalties remain appropriate, given that they more than compensate for the impermissible calls, that there is a new coaching staff in place that was not involved in the violations, and that there is only one returning men's basketball scholarship student-athlete. In this context, these penalties are more than sufficient to address the number of impermissible calls and the violations that occurred, regardless of whether or not a failure to monitor is found.

III. ALLEGATION 6 AND PROCEDURAL ISSUES.

A. COMMITTEE ON INFRACTIONS ALLEGATION NO. 6.

For ease of reference, Allegation No. 6 is included below:

FAILURE TO MONITOR. [NCAA Constitution 2.8.1, NCAA Bylaws 13.1.3.1.2; Infractions Report No. 250 (University of Oklahoma) Penalties E, F and L; August 1, 2006 Indiana University Compliance Report, Part II-B]

B

From May 25, 2006 to July 31, 2007, the university failed to monitor's the men's basketball program in terms of (a) the general monitoring required of all NCAA member institutions; and (b) the heightened monitoring required by the prior infractions history of the former head coach; and (c) the required strict adherence to those additional processes it put in place pursuant to its adoption of penalties imposed in Infractions Report 250. Particular instances demonstrating the university's failure to monitor include:

- (a) The university's failure to adhere to its self-imposed corrective actions set forth in Part II B of its August 1, 2006 report to the committee on infractions;
- (b) the scope and nature of the violations set forth in Allegation 1 of the enforcement staff's case summary in Case No. M285 regarding violations of penalties E, F, and L of Infractions Report 250 that were adopted by the university;
- (c) the scope and nature of the violations set forth in Allegation 2 of the enforcement staff's case summary in Case No. M285 regarding violations of NCAA Bylaw 13.1.3.1.2;
- (d) its failure to uncover in a timely fashion violations of NCAA Bylaw 13.1.3.1.2 and of penalties E, F, and L of Infractions Report 250 that were adopted by the university;
- (e) its failure to provide meaningful follow-through when it knew that members of the men's basketball staff were not adhering to the additional processes the university put in place pursuant to its adoption of penalties E, F, and L of Infractions Report 250 and its self-imposed corrective actions set forth in Part II B of its August 1, 2006 report to the committee on infractions;
- (f) its failure to provide the extra close oversight and scrutiny of all aspects of the men's basketball program that was required by the prior infractions record of the former head coach, including the conduct of members of the men's basketball coaching staff in failing to document, or improperly documenting, recruiting calls, and the university's approach to investigation of secondary violations committed by members of the men's basketball coaching staff; and
- (g) the atmosphere of non-compliance in the men's basketball program.

B. ADMINISTRATIVE/PROCEDURAL ISSUES.

As an initial matter, there are two flaws in Allegation 6 that do not necessarily go to the merits of the allegation, but to the specifics of the allegation itself. First, the citation to NCAA Bylaw 13.1.3.1.2 (regarding telephone calls to men's basketball prospective student-athletes) is

not appropriate for a failure to monitor allegation, particularly when there is a separate allegation (Allegation 2) that addresses the actual violations of the legislated telephone call limitations. NCAA Constitution 2.8.1 would be the appropriate citation for a failure to monitor, not Bylaw 13.1.3.1.2. The University requests that the cite to Bylaw 13.1.3.1.2 be dropped from Allegation 6.

Second, the timeframe of the allegation should not extend until July 31, 2007, as alleged in the first paragraph. It is undisputed that the University discovered the potential violations earlier than that date (July 10), that the last impermissible phone call occurred on July 17 (placed from a home phone and not reported to compliance), that the last impermissible phone call not placed from a home phone occurred on June 27, and that the last impermissible phone call that Indiana University could have detected, as detailed below, occurred on October 2, 2006. Thus, the University suggests that the Committee adopt an earlier ending date for the allegation.

In addition, although the University understands NCAA bylaws give the Committee the right to make an allegation, a combination of factors concerning the manner in which Allegation 6 has been asserted raises significant procedural and due process issues involving the University's right of adequate notice and right to a fair hearing. First, the Committee appeared determined to hear this case during its June meeting, setting the date for the hearing before the NCAA Enforcement Staff had even issued its Notice of Allegations and declining several requests by the University for alternative dates.⁴ These alternative dates included the Committee's August meeting, which the Committee rejected on the basis that the August hearing

⁴ The June dates conflicted with significant obligations of the President regarding the University's Cream and Crimson weekend and the semi-annual meeting of the University's Foundation Board. Further, the June hearing date required preparation of a response to the Notice of Allegations during the anticipated maternity leave of the associate athletics director who was integral to the University's investigation and response.

was full. However, when an attorney for one of the coaches shared this concern about how the dates for the hearing had been determined, the chair of the Committee stated that the hearing could have occurred at several meetings, including August. **(See p. 121 of the hearing transcript on the NCAA custodial website.)** The University was frankly surprised at this statement, particularly given that the President was participating in the June hearing by video conference due to his significant conflicts and the University did not have the benefit of his in-person attendance. The availability of the August meeting was also apparent when one option for responding to this new allegation was to appear before the Committee at its August meeting.

Second, although no failure to monitor allegation was included in the original Notice of Allegations, the Committee spent several hours during the hearing, particularly at the beginning, focusing on the University's monitoring systems and the timeframe for the detection of the phone calls. Although the University expected some questioning in this area, it was taken aback by the extent of this focus on monitoring so early in the discussion of violations that clearly resulted from the intentional acts of a few coaches. In fact, throughout the hearing, the Committee's toughest questions generally appeared reserved for the University and not the coaches. As one Committee member aptly noted, cases that involve intentional acts of wrongdoing are either about ethical conduct or systems. **(See pp. 307 and 314 of the hearing transcript on the NCAA custodial website.)** Because the new allegation was issued only days after the hearing, it appears that the Committee had decided that this was a case about systems. Although it was never asked to or given the opportunity to address any specific concerns about its monitoring systems in its response to the Notice of Allegations, it is clear that the University was expected to address those issues at length during the hearing. As a result, the University was forced to present evidence and arguments in defense to an allegation that had not yet been made.

Third, Allegation 6 is impermissibly vague and does not provide the details required by Bylaw 32.6.1.2. Allegation 6 contains none of the detailed statements like those provided in support of the first five allegations. Even with the brief follow-up clarification provided by the Committee (See Exhibit 32), it is impossible for the University to adequately respond without more specifics to a failure to monitor allegation that is based on such vague claims as "the general monitoring required of all NCAA member institutions," "the scope and nature of the violations" contained in Allegations 1 and 2, the failure to provide "extra close oversight and scrutiny of all aspects of the men's basketball program," and the "atmosphere of non-compliance" in the men's basketball program. Moreover, the reference to "the evidence . . . as it existed at the conclusion of the June 13-14 hearing" provides little, if any, guidance to the University as to what information the Committee considers to be evidence that would support the new allegation. In preparing this Response, the University has done its best to attempt to identify the information it believes the Committee might be relying on, but in the absence of specific allegations and evidence similar to that identified in support of the first five allegations, it is impossible for the University to know exactly which facts the Committee believes support a failure to monitor claim. To the extent the Committee intends to rely on facts or arguments not specifically addressed in this Response, the University respectfully suggests that the Committee should solicit further input from the University before making a final determination.

Finally, the Enforcement Staff – trained investigators charged with evaluating in every investigation whether appropriate monitoring occurred – chose not to allege a failure to monitor. It did so after carefully analyzing the University's monitoring systems, requesting additional information and seeking clarifications from the compliance staff. Given the broad and all-

REASONS WHY A FAILURE TO MONITOR
IS NOT WARRANTED OR APPROPRIATE

encompassing scope of the Committee's failure to monitor allegation (including that Indiana University lacked the general monitoring required of all NCAA institutions), the Enforcement Staff could not have missed such a failure if it actually existed, which the University believes it did not. Thus, it is surprising that, despite concerns from several Committee members about the University's monitoring and the attention and hours spent discussing this issue during the two-day hearing, including numerous questions from the Committee to the University regarding its monitoring of phone calls, the Committee on Infractions never asked the Enforcement Staff to explain why it concluded that no failure to monitor had occurred. (See pp. 171, 206, 260, 266 of the hearing transcript on the NCAA custodial website.) Under these circumstances, if the Committee determines that the allegation should be found, it should detail why it has chosen to ignore the determination of the NCAA Enforcement Staff, which was based on a complete understanding of all relevant facts and where those facts fit within the standards of monitoring for institutions nationwide.

IV. REASONS WHY A FAILURE TO MONITOR IS NOT WARRANTED OR APPROPRIATE.

The University disagrees with the allegation that a violation of Constitution 2.8.1 occurred. In fact, the University has evaluated the appropriateness of a failure to monitor designation on several occasions throughout the processing of this case, including during the University's internal investigation, preparation of the self-reports to the NCAA, joint investigation with the NCAA, preparation of the response to the Notice of Allegations and the review of this new allegation. In each instance, after careful consideration and peer- and self-assessment, the University concluded that appropriate monitoring did occur, as evidenced by the enhanced monitoring system and the detection of the violations by the University's compliance staff.

A

In general, as detailed in the following four sections, a failure to monitor finding is not appropriate in this case because:

- A. There was an enhanced two-tiered system for monitoring phone calls in men's basketball that was designed to and did provide redundant, timely assessments, at a level surpassing peer monitoring in this area.
- B. The monitoring system worked, as Indiana University discovered and self-reported the violations.
- C. Indiana University could not have prevented the intentional wrongdoing of its coaches.
- D. The University appropriately investigated secondary violations.

A. INDIANA UNIVERSITY'S ENHANCED TWO-TIERED PHONE CALL MONITORING SYSTEM WAS DESIGNED TO AND DID PROVIDE REDUNDANT, TIMELY ASSESSMENTS OF RECRUITING PHONE CALLS.

The University monitored telephone calls in men's basketball through an enhanced two-tiered system of review. The system was designed to require redundancy through a combination of (1) regular and detailed year-round monitoring and (2) a year-end audit of records. The monitoring system successfully worked as intended: the designed redundancy – the second-tier year-end audit – detected the violations in a reasonable and appropriate timeframe. The enhanced two-tiered monitoring system exceeded the standard generally expected for Division I institutions (in fact, for FBS institutions which have more staff for more detailed monitoring) and the need for heightened scrutiny of the program due to Sampson's prior infractions history. Although there were a few limited oversights that occurred during the first few months of the first tier of the monitoring system – a margin of error that is inevitable in any audit performed manually and primarily resulting from the inability to immediately obtain itemized and electronic

phone records – there was no design flaw because the second-tier review detected the violations as intended. Thus, a failure to monitor is not warranted.

1. Existing and Enhanced Year-Round and Year-End Phone Call Monitoring Systems Were Sound, Appropriate and Functioning.

The University had in place sound educational and monitoring systems prior to the hiring of Sampson, which were peer-competitive in the Big Ten Conference and nationally.⁵ Despite these strong monitoring systems, upon Sampson's hire and the resulting sanctions, Indiana University immediately made significant staffing and structural changes to strengthen the monitoring of the men's basketball program and began implementing enhancements to the existing compliance monitoring system, primarily in two areas – phone calls and off-campus engagements. The following significant staffing and structural changes were made:

- a) A director of basketball operations position was added, with the primary job responsibility of managing the basketball staff through the successful completion of the sanctions and interfacing with the director of compliance.
- b) The director of compliance position was modified to allow a significant amount of the individual's time to be devoted to monitoring and education for men's basketball.
- c) The associate athletics director for student development and compliance/senior woman administrator became more deeply engaged in regular oversight of the compliance staff.
- d) The senior associate athletics director, who was the liaison to men's basketball, was involved in the oversight of the monitoring of Sampson's off-campus engagements.
- e) The director of athletics met weekly with the head men's basketball coach to reinforce the importance of rules compliance.
- f) A men's basketball assistant office manager position was created to provide clerical assistance for recruiting, including entry of phone call information into the recruiting database and quality control of the accuracy of the handwritten phone logs.

⁵ See Section IV-A-3-a below for data regarding the standards/norms for phone call monitoring at FBS institutions.

Recognizing the need for heightened monitoring due to Sampson's prior violations, upon his hire Indiana University immediately began enhancing the existing monitoring system for men's basketball. It is important to note that not only is it expected and understood among compliance professionals that monitoring systems will change based on experience, advancements in technology and compliance trends, but also that high quality monitoring systems take some time to refine and fully implement. Sampson began working for Indiana University the same day he was announced as head coach, as is customary with hires of this nature, leaving no lead time for the compliance staff to phase in the enhanced monitoring prior to the time the coaches began recruiting. Nonetheless, the University monitored phone calls using existing monitoring procedures, even while enhancements were being designed and implemented, as Sampson and his newly hired assistant coaches, including Rob Senderoff ("Senderoff") quickly began recruiting during the Spring of 2006.

The University's May 8 Response contains a summary outlining the procedures for monitoring men's basketball recruiting phone calls, as well as the education provided to and the meetings with the men's basketball staff related to phone call monitoring. **(See May 8 Response, pp. 2-15 to 2-19; 2-21 to 23.)** The University has not repeated in this Response the details of the information and education regarding the penalties that were provided to the men's basketball staff on numerous occasions, as it is clear and undisputed that the coaches were aware of the sanctions and the allegation does not allege any failures in the education provided.⁶ **(For**

⁶ In fact, as former director of basketball operations, Jerry Green noted during his December 13, 2007 interview with the NCAA Enforcement Staff, he did not see how the issues with the sanctions could have occurred accidentally and believed that they had to have occurred purposely because the coaches had too much information. **(See Green Interview Transcript, p. 18, located on NCAA custodial website.)** Further, Senderoff's apparent determination to find a supposed gray area regarding three-way calls and the unreported use of his home phone for recruiting evidence his knowledge of the rules, sanctions and the University's monitoring policies and systems, and the extent of his intent to avoid detection by the University's monitoring system.

information specific to the rules education meetings, see the **October 3 report, pp. 8-12, Attachment 1 to the May 8 Response; Attachment D to the October 3 report; and Attachment 10 to the May 8 Response.**) Similarly, information noted in the May 8 Response regarding the monitoring of compliance with other penalties is not included here as that monitoring is not the subject of the alleged failure to monitor.

The following provides additional details regarding the two-tiered system for monitoring men's basketball recruiting phone calls during the period of the sanctions, which involved multiple cross checks of handwritten phone logs, itemized office and cell phone bills detailing approximately 70,000 phone calls, and information from the recruiting database ("Cybersports"):

- From June 2006 through the end of the original sanctions, the men's basketball coaches were required to submit a weekly phone call log to the director of basketball operations ("DOBO") each Monday morning. These logs included a column for the coaches to indicate the phone that was used for each call. (See **Attachment 17 to the May 8 Response for sample handwritten logs.**)
- The DOBO served as the primary liaison to compliance and was responsible for collecting phone records and performing the initial quality control on those records before supplying them to the compliance staff.
- Photocopies of these handwritten call logs were then provided to the director of compliance during the weekly compliance meetings to review the sanctions.
- The assistant office manager for men's basketball entered the handwritten call log information into Cybersports and assisted the DOBO with quality control efforts by reviewing recruiting call declarations on the phone logs against coaches' phone bills.
- When this initial quality control was completed, the assistant office manager generated a monthly printout of the recruiting database. (See **Attachment F to the October 3 report.**) In August 2006, it became apparent the database had grown too large to render this monthly printout useful, particularly as the compliance staff could access the database itself. Thus, beginning in September 2006, the compliance staff directly reviewed the information in the database, rather than hard-copy printouts.

- The director of compliance checked the Cybersports reports/database and handwritten logs each week for compliance with NCAA legislation and the sanctions.
- The director of compliance also cross-referenced the phone logs, the recruiting database and the monthly itemized phone bills (office and cell) for compliance with NCAA legislation and the sanctions. He also checked the phone bills against all known recruiting numbers, as reported by the coaches.
- The recruiting database was created virtually from scratch due to the entirely new coaching staff and little overlap with the previous staff's recruiting efforts. As such, the compliance staff was wholly reliant upon the coaches to provide accurate and thorough recruiting numbers on all prospects, their families and coaches. With up to ten recruiting numbers per prospect, after several months the database contained approximately 100 prospects – 40 to 50 of which were being actively recruited – and approximately 350 phone numbers that required monitoring.
- The men's basketball administrative assistant was required to provide the coaches with a phone usage declaration sheet by the first business day of each month. **(See Attachment G to the October 3 report for these statements.)** The phone usage declaration sheets asked the coaches to record which, if any, phones they used for recruiting purposes, choosing between office, cell, home or "other" phones. These sheets were a redundancy designed to check against the phones reported on the coaches' phone logs.
- The compliance staff checked the monthly cell phone bills for each coach and the office phone bills for the approximately 10 men's basketball phone lines regardless of whether or not a coach had declared usage of these phones. As Indiana University is a public institution in an open records state, home phone use by all coaches is always discouraged due to monitoring and privacy issues, and records are only collected if a coach declares use of the home phone for recruiting purposes. This protocol was applied consistently to the men's basketball coaching staff, as well as coaches in other sports, and the coaches knew that their records would need to be submitted for monitoring if they declared use of their home phone.⁷
- After initially receiving summary cell phone bills, the University worked with the cell phone provider to obtain by July 2006 itemized hard copy bills for the prior months.
- The University was quickly able to secure electronic records of the phone calls on the office lines, but the vast majority of men's basketball calls occurred on the

⁷ This policy regarding home phones is consistent with the practice at FBS institutions, as only 2% of the survey respondents stated that they collected home phone bills. (See Exhibit 34).

cell phone lines (65,000 calls on cell phones during the period of the sanctions versus 6,500 on the office lines).

- Although the University requested electronic versions of the phone bills from the cell phone provider in July/August 2006 after realizing that there were thousands of cell phone calls a month (on average, approximately 4,650), it took several months to receive these records electronically. In the meantime, the University relied on paper versions of the cell phone bills. In mid-September, the cell phone provider provided the University with electronic bills, making the review of phone calls from that point forward easier and less prone to error because the thousands of monthly cell phone calls could be searched electronically against the approximately 350 known recruiting numbers. However, the cell phone company was able to provide the records only in a format that required separate searches for each month, rather than searches of a particular phone number for several months at one time.
 - The director of compliance, with assistance from other compliance staff, spent a significant number of hours each week monitoring men's basketball phone records. With a total of approximately 65,000 cell phone calls and 6,500 office calls for men's basketball alone, resulting in approximately 1,600 pages of cell phone bills and 630 pages of office phone bills, this monitoring quickly added up to hours and hours of work.
 - In addition to this regular and detailed monitoring, a comprehensive annual audit occurred, consistent with the University's existing all-sport practice. It was this planned, year-end checking of phone records that identified in a timely manner several of the impermissible calls from that academic year, thereby initiating the University's investigation and subsequent self-reports.
- 2. Challenges Beyond the University's Control Justifiably and Reasonably Delayed the Full Implementation of the Enhanced Phone Call Monitoring System By a Few Months.**

There were a number of challenges that were outside the control of the compliance staff and other University administrators and that delayed by a few months full implementation of the enhanced year-round phone call monitoring system. These challenges, which made the initial monitoring process more arduous, dramatically slower and more prone to human error, must be considered in evaluating the appropriateness of the failure to monitor allegation. Because the

University recognized and was trying to rectify these early challenges, a failure to monitor finding is even more unwarranted and inappropriate.

The most significant unavoidable challenges were related to technology and access to electronic telephone records. In the Spring of 2006, technology in this area was evolving but only a few institutions had access to computerized or electronic systems for monitoring phone calls. For instance, the compliance staff investigated the purchase of phone monitoring software in May 2006, but products were still in their test phases and not available for purchase. (See **Exhibit 33**.) Only six institutions (7.1%) participating in the survey of FBS institutions used phone-monitoring software during the 2006-07 academic year (see **Exhibit 34**) and the only institutions that had the software in place during the May through September timeframe in question were test-pilot institutions for the software.⁸ Thus, the University, like the vast majority of Division I institutions (93% of those responding to the survey), relied on a manual review of phone records.⁹

In addition, this manual review was hampered by the initial inability to obtain records from the cell phone provider in the format best suited for monitoring – itemized and electronically. For the first few months, the coaches' cell phone bills contained only monthly usage totals rather than an itemization of phone calls. The compliance staff and athletics administration worked diligently with Sprint and Grant Communications, the company providing the cell phones, until itemized records of the initial months were received by July 2006. By that

⁸ In fact, only 20 institutions (less than 25%) reported using such a software program for the 2008-09 academic year.

⁹ Further, 71% of responding institutions did not include in their review a cross check of phone numbers against actual phone bills, which Indiana University incorporated as a fundamental component of its review, as discussed elsewhere in this Response.

time, several months of paper phone bills had to be manually reviewed simultaneously, making the task even more daunting.

Most importantly, although the compliance and athletics administrative staffs had consistently worked with the cell phone carrier on the provision of itemized and then electronic bills, it took until mid-September 2006 to receive the bills electronically. After the bills were provided electronically, searching phone records for known recruiting calls was dramatically streamlined, as the PDF version of the bills could be downloaded and searches conducted for all occurrences of a specific phone number. Despite this improvement, which allowed computerized cross checks of sorted phone numbers against Cybersports records, the cell phone company was only able to provide the phone records in a format that required separate searches for each month, rather than searches of a particular phone number for several months at one time. **(See Exhibit 35, Item 3, for an October 25, 2006 email exchange among the compliance staff regarding this issue, which was initially included in Attachment H to the October 3 report.)** Of course, the compliance staff and the efficacy of the monitoring system were still reliant upon the integrity of the coaches to provide accurate and thorough recruiting numbers on all prospects, their families and coaches, not to mention the identification of telephones they were using to place these calls. Unfortunately, this did not always occur in a timely fashion and often not at all, as discussed below.

Even with the electronic cell phone bills, a manual review (i.e., not automated via a computer program) was still required during the 2006-07 academic year to identify recruiting calls by downloading a file, electronically searching the phone calls for each known recruiting number, and then manually assessing the permissibility of the recruiting calls under NCAA

legislation and the sanctions. In addition, upon the receipt of the electronic records in mid-September, the compliance staff attempted to re-check the records for the prior months. (See **Exhibit 36 for September 13-15, 2006 email exchange.**) To provide context for the arduous nature of this review of all phone calls, in one month during the Summer of 2006 the four coaches totaled almost 5,000 calls on their cell phone lines.¹⁰ Further, even though Sampson was precluded from making any recruiting phone calls, the compliance staff had to review his phone calls against known recruiting numbers to ensure compliance with that prohibition. Given the approximately 350 known recruiting numbers, the approximately 100 pages of recruiting database logs through August 2006, the handwritten phone logs, and the approximately 5,000 cell and office phone calls each month, the monitoring of phone calls for just one sport quickly became enormous, with occasional mistakes or oversights difficult, if not impossible to avoid.

To illustrate the impact of these challenges, after the University was able to fully implement all refinements to its monitoring system, there were only two phone calls that might have been detected prior to July 2007 through a review of phone bills and other records. These two limited and isolated oversights do not justify a failure to monitor finding. (See **Exhibits 29 and 30.**) Two missed calls out of 117 is greater than a 98% success rate, and less than a 2% error rate. The few and understandable human errors do not warrant a failure to monitor, particularly when the University was conducting a 100% audit of the coaches' phone calls, and not just spot checking phone records, which is the accepted compliance monitoring standard, as discussed in the next section. Further, the year-end review that identified the impermissible phone calls was part of the monitoring system and was intended as a systemic redundancy – a safety net designed to do exactly what it did: catch calls missed during the year-round review.

¹⁰ Sampson had approximately 900 calls, none of which were outgoing recruiting calls; the three assistants had approximately 1450 calls, 800 calls, and 1700 calls, respectively.

3. The University's Redundant Two-Tiered System for Monitoring Recruiting Phone Calls in Men's Basketball Was Appropriate.

Even with the challenges that temporarily delayed the full implementation of the enhanced year-round system for monitoring men's basketball recruiting phone calls, the University's monitoring protocol was appropriate, both in terms of the typical monitoring conducted by other Division I institutions at that time and in terms of the need for increased scrutiny upon men's basketball phone calls in light of Sampson's prior involvement in phone call violations. Further, the University required strict adherence to its monitoring system.

a. The University's two-tiered system exceeded its monitoring obligations.

Contrary to section (a) of the first paragraph of the allegation, both components of the University's phone call monitoring system for men's basketball were appropriate in terms of "the general monitoring required of all NCAA member institutions." Given the thorough and redundant nature of the University's year-round and year-end monitoring systems, including a 100% review of all phone calls and not just a spot-check audit, Indiana University was surprised at the broadness of this aspect of the charge. Therefore, the University confirmed with the Committee that it had intended to allege that the University did not meet the standards required generally (i.e., without the hiring of Sampson). (See Exhibit 32.) The University strongly and unequivocally disputes the accuracy of this aspect of the allegation.

Indiana University's two-tiered system for monitoring recruiting phone calls in men's basketball far exceeded the norm for monitoring by Division I institutions and was more than sufficient to satisfy the University's obligations. The Big Ten Conference, with the endorsement of National Association for Athletic Compliance (NAAC), recently conducted a survey of FBS

institutions to determine the typical practices for phone call monitoring.¹¹ (See Exhibit 34 for the survey results for 2006-07 (the year at issue in the failure to monitor allegation), and the emails and survey questionnaire distributed to FBS institutions.) The survey results show that Indiana University exceeded compliance monitoring norms in these areas when compared to other Division I FBS members.¹² To give some examples:

Coaches' Phone Logs

- 61% of the respondents were collecting phone logs monthly in 2006-07. By comparison, Indiana University collected and reviewed logs more frequently – weekly.
- 62% of the respondents were auditing 10% or less of phone logs in 2006-07. By comparison, Indiana University performed a 100% audit.

Phone Bills

- Less than half of the respondents collected office bills (46%) and cell phone bills (44%), and only 2% of respondents collected home phone bills during the 2006-07 academic year. Most notably, 45% of respondents didn't collect any type of phone bills during this period.
- The majority (61%) of respondents collected coaches' phone bills less regularly than monthly (as compared to Indiana University's monthly collection of all cell and office phone bills).

¹¹ 88 out of the 119 FBS institutions participated in the survey, a 74% response rate. Because some respondents skipped certain questions, the results presented in this Response and in Exhibit 34 are based on the number of respondents who answered each question, ranging from 79 to 88 respondents. In addition, survey research indicates generally that there is a participation bias that leads to greater participation in surveys by institutions with defined and developed programs in the area of inquiry.

¹² The survey purposely focused on FBS institutions, which typically have larger compliance staffs and more resources for compliance monitoring than other Division I institutions. Thus, given that the University exceeds the norms reported by FBS institutions, it would also exceed, by a greater degree, the standards for all Division I institutions.

Thoroughness of the Review Process

- Only 20% of responding institutions required coaches to sign a statement verifying which phone(s) they were using to make recruiting calls during the 2006-07 academic year.
- Only 29% of responding institutions were cross-referencing phone bills against each recruit's phone number from the coaches' logs and/or a recruiting database during the 2006-07 academic year (as compared to Indiana University's 100% audit and cross-referencing).
- Approximately three-quarters (76%) of the respondents had two (2) or fewer layers of review of telephone monitoring. By comparison, Indiana University had at least three (3) layers – the two tiers of the monitoring system and a review by internal auditors – as well as a potential fourth layer (the men's basketball clerical staff conducted an initial records review by comparing phone logs to phone bills).

Thus, it is readily apparent that Indiana University far exceeded these industry norms in its monitoring of men's basketball phone calls.

In fact, the Committee has accepted spot checks as a valid component of institutional monitoring.¹³ Specific to phone call monitoring, in the University of Oklahoma case the Committee found a failure to monitor due to infrequent spot checking but appeared comfortable with the concept of regular spot checks. **(See pp. 18-20, Attachment 24 to the May 8 Response.)** In this case, Indiana University clearly implemented more than just spot checking as

¹³ The Committee's acceptance of spot checks as a sufficient component of telephone call monitoring dates at least as far back as the 1996 University of Mississippi infractions case where the Committee accepted the institution's corrective actions to institute spot check of phone records.

the compliance staff conducted regular (at least weekly and monthly) reviews of all phone call records, including all cell and office phone calls, and performed a comprehensive review even during the year-end redundant review. This 100% monitoring of phone records was being performed by only 13% of institutions responding to the survey, while the median response was a 10% audit and the average was less than a 10% audit.

If the Committee has any doubt regarding the sufficiency of the University's monitoring program, Indiana University encourages members to check with their own institutional compliance staffs to assess the extent of the phone call monitoring that occurs on their own campuses and particularly the monitoring that occurred during the 2006-07 academic year, as monitoring practices have changed during the past two years as technology has evolved.¹⁴ The evidence supports a determination that the University had established an appropriate and adequate system that exceeded general monitoring standards and that, in fact, detected the violations at issue here. This evidence contradicts the claim that the University failed to adequately monitor recruiting calls in its basketball program.

b. The University's enhanced monitoring system satisfied its obligation to provide for heightened monitoring as a result of Sampson's prior infractions history.

As detailed above, as soon as Sampson was hired, the University recognized that the sanctions previously imposed on him created the need for even more detailed monitoring of recruiting phone calls in men's basketball. As a result, the University designed and implemented an enhanced system as soon as practical, placing a higher degree of attention and care to men's

¹⁴ Examples of these changes in typical monitoring practices from 2006-07 to 2008-09 include: the percentage of respondents collecting phone bills greatly increased (from 46% to 68% for office phones and from 44% to 69% for cell phones); the percentage of respondents collecting phone bills on a monthly basis increased from 36% to 55%; and those cross-referencing phone bills against phone logs and/or recruiting databases increased from 29% to 59%.

basketball monitoring than other sports. For example, the University recognized the need to cross check handwritten phone logs against phone bills, as the Committee had identified such a failure in the University of Oklahoma infractions report, and decided to err on the side of thoroughness by conducting a complete, 100% audit of phone calls during the year-round monitoring, even though spot checking would have met compliance monitoring norms.¹⁵ Within six months of Sampson's hire, the enhanced phone monitoring system had been fully implemented as planned, with the bulk of the delay caused by the cell phone company initially providing only summary phone bills without itemized calls and then not providing electronic bills until mid-September, despite repeated requests by the University. Thus, "heightened monitoring" as "required by the prior infractions record" of Sampson occurred, contrary to section (b) of the first paragraph and subparagraph (f) of the allegation, and a finding of failure to monitor is not warranted.

c. The University required strict adherence to its monitoring systems and protocol.

Contrary to several statements in the allegation, the University adhered to its enhanced system and procedures for monitoring recruiting phone calls, particularly when the entire time frame of the violations is considered. As detailed above, aspects of the enhanced monitoring system took a few months to implement due to circumstances outside of the University's control. Further, athletics department staff members regularly requested needed information from the coaching staff and the cell phone provider in an attempt to ensure full compliance with the procedures put in place by the University.

¹⁵ As noted above, 62% of respondents were auditing 10% or less, as compared to the University's 100% review.

Specific to section (c) of the first paragraph of the allegation, the University, as it does with all compliance policies, “required strict adherence to those additional processes it put in place pursuant to its adoption of penalties.” The fact that some members of the coaching staff did not always comply with these procedures in an accurate or timely fashion does not indicate a failure to monitor, particularly when the University required and followed-up regarding the submission of the needed information (e.g., weekly submission of phone logs, monthly phone usage sheets). The University cannot and should not be held responsible, via a finding of failure to monitor, for the inaccuracies in the phone logs and phone numbers submitted by the coaching staff, particularly when some, if not most, of those errors or omissions appear to have been intentional to avoid the University’s comprehensive monitoring systems (e.g., not reporting the use of home phones for recruiting, not recording all phone numbers used for recruiting, not listing all recruiting calls in the phone logs). Further, the University’s 100% audit of phone bills provided an important second check and negated the impact of the inaccuracies in the handwritten phone logs submitted by the coaches.

In addition, contrary to the statements in subparagraphs (a), (e) and (f), the University provided “meaningful follow-through when it knew that members of the men’s basketball staff were not adhering to the additional processes the University put in place . . . and its self-imposed corrective actions set forth in Part II B of its August 1, 2006 report” and appropriately provided “extra close oversight and scrutiny” of “the conduct of members of the men’s basketball coaching staff in failing to document, or improperly documenting, recruiting calls.” First, Part II B of the August 1, 2006 report outlined the monitoring program that the University put in place regarding men’s basketball recruiting phone calls due to the heightened scrutiny it recognized was necessary in light of Sampson’s prior infractions history. These monitoring procedures were

not "corrective actions," contrary to the references in subparagraphs (a) and (e), as the University had nothing to correct. The prior infractions occurred at another institution, not Indiana University.

Second, the University adhered to the procedures set forth in the August 1, 2006 report to the Committee. As discussed above, the telephone monitoring procedures were enhanced and revised throughout the late spring and early summer of 2006 and by August 1 the University had obtained the itemized paper phone bills for the coaches' cell phones, as well as electronic versions for the office lines. The August 1, 2006 report identified the University's telephone monitoring procedures as of that date and probably should have also noted that some changes had occurred since May. Nonetheless, the University relied upon these general procedures to conduct the searches of the hard copies of the cell phone bills (and the electronic searches of the office phone bills) available up to and including August 1. In addition, the University continued following these procedures throughout the sanction period, even as the electronic provision of cell phone records in mid-September made the monitoring easier. Email correspondence shows that adequate monitoring procedures were in place as reported, including cross checking of records and auditing the itemized phone bills against all known recruiting numbers. (See **Exhibit 37, Attachment 13 to the May 8 Response and Attachment H to the October 3 reports for sample emails, including several with the director of athletics and faculty athletics representative, as well as the compliance staff.**) Further, the Committee accepted the University's August 1, 2006 report, including the University's process for monitoring phone calls, and did not indicate that additional monitoring was expected or needed.

As to the “meaningful follow-through” with the men’s basketball staff when the University was aware that the required phone logs were not always provided in a timely or accurate manner, the compliance staff and other athletics administrators engaged in timely and repeated follow-up communications. Such actions included in-person requests and reminders by various individuals in one-on-one settings and at the weekly meetings with the director of basketball operations. **(See Exhibit 38 for a letter from former Assistant Men's Basketball Coach Jeff Meyer confirming that this follow-through occurred.)** The director of compliance also asked questions about specific phone calls when he noted inaccuracies or needed clarification. On occasion, when the communications did not produce the required documents, the director of athletics was informed for immediate follow-up with Sampson and the records were provided as required.

In addition, the monthly phone usage sheets **(See Attachment G to the October 3 report)** were designed to be a second check of the phones used for recruiting. The weekly phone call log sheets **(see Attachment 17 to the May 8 Response)** provided the coaches a column to record the phone used for each recruiting phone call as the call was made. The monthly usage sheets provided the coaching staff a second opportunity to identify phones used for recruiting by specifically asking each coach to verify if he used his home phone, office phone, cell phone, or any "additional phone" for recruiting. The compliance staff went beyond even these forms to search the phone bills for all 10 office lines and for the coaches' cell phones, regardless of the declarations on the monthly phone usage sheets.¹⁶ Although it is disappointing that even a few forms were filed incompletely or not completed at all, this did not change how the actual

¹⁶ The failure by the coaches to report – at anytime – the use of their home phones for recruiting, when combined with the personal and private nature of these records and the concerns that these records could be subject to a public records request, led the University to not request or collect home phone records, consistent with the standard practice at other institutions.

monitoring of cell or office phones occurred and therefore had no direct impact on the extra close oversight and scrutiny provided to men's basketball recruiting phone calls.

- d. **The broad, non-specific and conclusive nature of the statements that comprise subparagraphs (b), (c), (f) and (g) of the allegation suggest a strict liability standard that is not appropriate given the facts and circumstances of this case.**

It appears that the Committee has imposed a strict-liability standard in several subparagraphs of the allegation, adopting the position that because there were impermissible phone calls a failure to monitor must have occurred. This approach does not attempt to assess the University's actual culpability for the violations or the fact that the compliance staff performed in-depth monitoring in many different areas, not just with regard to recruiting phone calls, as evidenced by the fact that there are no allegations that Sampson himself made any recruiting phone calls or spoke in front of prospects during off-campus speaking engagements. Further, this strict-liability allegation does not take into consideration the fact that the University's two-tiered monitoring system did not allow or cause the occurrence of the impermissible phone calls or the fact that the University could not have prevented those calls from occurring, particularly given the actions of Sampson and Senderoff, discussed at length in the University's May 8 Response and at the hearing.

Subparagraphs (b) and (c) are the clearest examples of this strict liability standard. There, the Committee has alleged that a failure to monitor is evidenced by the mere occurrence of phone calls that were contrary to the sanctions and NCAA rules, as set forth in Allegations 1 and 2, respectively. These allegations lack any specific information that would lead to the conclusion that there was a failure to monitor because the facts simply do not support such a claim. The University had an enhanced monitoring system in place. That system was

circumvented by the coaches' actions in failing to report required information, which in turn caused all but four of the impermissible calls to be undetectable through a review of phone logs and Cybersports data. The fact that those four calls made it through the enhanced monitoring system undetected does not warrant a finding of failure to monitor.

In addition, the broad indictments contained in subparagraphs (f) and (g) are inappropriate and inaccurate and provide further indications of this strict-liability approach. These allegations seek to hold the University responsible for a failure to monitor simply because some of its coaches chose to circumvent the monitoring systems. Specifically regarding subparagraph (g), the fact that there may have been an "atmosphere of non-compliance in the men's basketball program" does not warrant a failure to monitor finding without any evidence or indication as to how additional monitoring – beyond the extensive monitoring already in place – would have changed the coaches' actions and attitudes toward NCAA rules and the sanctions. As detailed above and in the May 8 Response, the University educated the coaches, emphasized the importance of compliance and monitored their activities at a higher level than the monitoring that was occurring at most FBS peer institutions during the 2006-07 academic year – certainly at a level sufficient to satisfy its obligations. The failure here is not the failure of the University to educate, train and monitor its coaches. It is the failure of the coaches to comply with the education and training provided by the University and the concerted effort by some coaches to avoid the University's monitoring. Having done all it could to educate and monitor its coaches, the University should not be found guilty of failure to monitor because of the intentional actions of some of its coaches.

Further, adopting such a strict-liability approach under these facts would have a significant negative impact on compliance professionals at other Division I institutions. A failure to monitor finding would send a message that institutions and their compliance staffs are at risk for a failure to monitor any time violations occur, without assessment of actual fault or culpability, even if violations were the result of the intentional misconduct of others and even if sufficient monitoring was in place and could not have prevented the violations. Such a finding directly impacts the reputations and careers of compliance and other athletics professionals. Compliance, in particular, is already an area where it is difficult to hire and retain good, qualified individuals, particularly at the senior levels. A failure to monitor finding in this case would further impede the ability to retain talented compliance professionals, who would see themselves as vulnerable despite the implementation of monitoring systems that met or even exceeded compliance monitoring standards.

Finally, contrary to subparagraph (f), the University did “provide extra close oversight and scrutiny of all aspects of the men’s basketball program” (emphasis added). However, as this case involved only the University’s monitoring of the compliance with the sanctions and NCAA rules regarding phone calls, detailed information regarding the University’s monitoring of other aspects of the men’s basketball program (e.g., Sampson's off-campus speaking engagements, playing and practice seasons, academic eligibility, etc.) has not been provided, although it is available for the Committee’s review upon request. Further, as there have been no violations other than those contained in Allegations 1 and 2 regarding phone calls, the failure to monitor cannot cover “all aspects” of the men’s basketball program because no failures have been alleged or found in other areas. At a minimum, the Committee should not make such a broad-sweeping conclusion.

B

B. THE ENHANCED MONITORING SYSTEM WORKED – INDIANA UNIVERSITY DISCOVERED AND SELF-REPORTED THE VIOLATIONS IN A TIMELY MANNER.

The University recognizes the Committee has questions as to whether the violations were caught in a timely fashion. However, the University's redundant year-end audit was purposely designed to catch, in a timely manner, the almost inevitable human errors from the detailed, year-round review. And, the violations were detected in a timely fashion immediately following the academic year in which they occurred. Relying on a year-end review, particularly as a double-check, is not only appropriate, but it is similar to NCAA reporting in a variety of areas, including EADA and sports sponsorship information. Further, the compliance staff could not have detected the majority of the impermissible calls, primarily due to the calls from home not reported by the coaches, the calls to unreported recruiting numbers, and the coaches' failure to document all calls for inclusion into Cybersports.

1. The University Discovered the Violations Consistent With the Design of its Two-Tiered Monitoring System and in a Timely Manner.

The two-tiered system for monitoring men's basketball recruiting phone calls, as described above and in the May 8 Response and attachments, worked as designed to detect the impermissible calls in a timely manner. The redundancy built-in to serve as a double-check and to catch, shortly following the academic year, occasional omissions that were almost inevitable during the laborious and detailed year-round review of thousands of phone calls a month, did in fact detect and lead to the reporting of the impermissible phone calls in a timely fashion.¹⁷ The fact that the violations were not immediately discovered during the year-round monitoring is

¹⁷ In fact, the discovery of impermissible calls occurred prior to the submission of the University's report to the Committee regarding the monitoring of and rules education for the men's basketball staff and the University's compliance with the sanctions, which the Committee had required as part of the sanctions from Sampson's prior violations.

attributable to inaccurate and incomplete records submissions by some of the coaches, by the initial unavailability of electronic itemized cell phone records as noted above, and by limited human error in the review of all cell and office phone calls¹⁸. However, contrary to subparagraph (d) of the allegation, the University “uncover[ed] in a timely fashion violations of NCAA Bylaw 13.1.3.1.2 and of Penalties E, F and L of Infractions Report No. 250” and self-reported these violations to the NCAA as part of the year-end review for the academic year in which the calls occurred. Thus, this infractions case came to the NCAA because the University’s system for monitoring recruiting phone calls in men’s basketball worked as designed. Without the University’s two-tiered system, specifically including the year-end component of the monitoring for that academic year, these impermissible phone calls would likely have remained undetected.

Further, the discovery of the violations in July 2007, rather than some earlier date, did not result in competition, practice or receipt of financial aid by any ineligible student-athletes. The University gained no extra competitive advantage from the discovery date of the violations and any recruiting advantage that might have resulted has been more than negated by the significant self-imposed penalties. In fact, it is these penalties – and not a failure to monitor finding for violations that were self-discovered and reported immediately following the academic year in which they occurred – that appropriately address the violations that occurred.

2. The Majority of Impermissible Phone Calls Could Not Have Been Detected.

As set forth below and summarized in **Exhibit 31**, of the approximately 132 impermissible phone calls (including three-way calls, phone passing and calls that exceeded the

¹⁸ Only two phone calls that could have been detected occurred after the receipt of electronic cell phone records, the last of which was October 2, 2006.

limits set by NCAA rules or the sanctions),¹⁹ the vast majority of phone calls could not have been detected by the compliance staff.

a. Three-way recruiting calls involving Sampson were difficult to detect.

As noted in the May 8 Response (see pp. 1-7 to 1-9) and discussed at the hearing (see pp. 151-152 of the hearing transcript on the NCAA custodial website), the University did not discover the three-way recruiting phone calls involving Sampson until July 10, 2007 because they were difficult if not impossible to detect. This was especially true during the regular review of thousands of phone calls, which focused primarily on identifying phone calls that exceeded the number allowed under the sanctions or NCAA rules. In undertaking the year-round laborious and time-consuming review of all phone calls (approximately 70,000 office and cell phone calls during the period of the sanctions), the compliance staff had to remain focused on the areas of greatest potential risk. Thus, during the manual and computerized searches of phone bills, the compliance staff targeted the declared recruiting phone numbers being called and the frequency of calls to these numbers.

On the phone bills, the three-way notation ("3W") always appeared on the same line as a local phone number (Sampson's cell or home phone), and not with the recruiting number being reviewed, and thus would not have stood out during the review and search of recruiting phone calls. (See Attachment 5 to the May 8 Response for a sample phone-bill page showing a three-way call.) In particular, these 3W codes and the associated local numbers would not have been highlighted during the electronic review of and search for reported recruiting numbers. As

¹⁹ As explained in detail in the University's May 8, 2008 Response, during the investigation, the University took a conservative and strict approach in counting questionable calls as impermissible, including calls to an unknown number in the area code of a prospect, "message" calls of three minutes or greater, incoming three-way calls from unknown numbers and calls that might have appeared to be permissible (e.g., one or two minute calls after a message call that was deemed countable due to its length).

a result, the eight three-way calls that occurred following the receipt of electronic records in mid-September 2006 would not have been identified. Of the remaining 10 three-way calls reported by the University (**See Attachment 11 to the May 8 Response**), six were attached to unknown phone numbers, which would not and should not have caused concern during the monitoring of phone records for impermissible recruiting calls.²⁰ The remaining four three-way calls occurred during dates on which only paper cell phone records were available and the phone company provided several months of these records at one time, resulting in an even more complicated and time-consuming review of thousands of phone calls. Thus, the fact that these three-way calls remained undetected until July 10, 2007, shortly after the academic year in which all of these calls occurred, does not warrant a failure to monitor.

Further, as detailed in the May 8 Response (**see May 8 Response, pp. 1-8 to 1-9; 1-12, 3-13 to 3-14, 3-27 and 4-4 to 4-5**), the coaches had each been clearly instructed that Sampson was forbidden to participate in any recruiting phone calls via three-way technology. At a May 30, 2006 meeting, the compliance staff informed the coaches that Sampson could not be connected to a recruiting call by three-way technology. After several questions from the coaches regarding the permissibility of variations of three-way calls, the compliance staff reminded the coaches that Sampson should not be included in any three-way recruiting calls of any kind, pending confirmation from the Committee on one particular type of three-way call. After the response from the Committee was received, the compliance staff again provided the coaches with written confirmation regarding the impermissibility of any three-way calls. (**See Attachment 3 and Attachment 4, Item No. 8 to the May 8 Response.**) Given the University's

²⁰ The NCAA Enforcement Staff did not include these calls of unknown origin in its allegation (**see p.139 of the hearing transcript on the NCAA custodial website**). The University had presumed them to be recruiting calls during its investigation as part of its aggressive yet conservative approach to count questionable calls as impermissible and to report all such calls to the NCAA.

attention to this issue and the clear, repeated instruction that three-way calls were impermissible, three-way calling should not have been an issue; the coaching staff was fully aware that Sampson could not participate in three-way calls with recruits. In their interviews, both Sampson and Senderoff admitted that they knew three-way recruiting calls involving Sampson were impermissible (see **May 8 Response**, pp. 1-10, 3-14, 3-27, 4-5). Their denials that three-way conversations occurred (see **May 8 Response**, pp. 3-6 to 3-12, and 3-23 to 3-24) provide further evidence that they intentionally participated in these calls, knowing they were not allowed. The fact that then assistant coach Jeff Meyer never made a three-way phone call, including any that involved Sampson, also evidences that the coaches knew the rule and that three-way calling should not have been an issue because it had been fully and explicitly addressed by the University.

b. Impermissible recruiting calls involving “phone passing” were impossible to detect.

Other impermissible recruiting calls involving Sampson, Senderoff, prospective-student-athletes, or their parents or legal guardians did not involve three-way calls (i.e., three phone lines) but instead involved the passing of a phone either from Senderoff to Sampson with a prospect or relative on the other line, or from Senderoff to a prospect or the prospect’s parents or legal guardians with Sampson on the other line (i.e., two phone lines). Stated simply, this “phone passing” was impossible for the compliance staff to detect. A review of phone records would only have revealed either calls between Sampson and Senderoff or calls between Senderoff and prospects, all of which would have appeared permissible. Once the coaches decided to engage in this behavior, there was nothing – short of providing each coach with a 24-hour monitor – the University could do to prevent it or detect it. A member institution should

not be found guilty of failure to monitor when nothing it could have done would have prevented a violation. Thus, a failure to monitor is not warranted for these undetectable calls.

- c. **The majority of the other impermissible phone calls could not have been detected due to Senderoff's failure to report all of the recruiting phone numbers for each prospect and the use of his home phone for recruiting.**

The University could not have detected the majority of the other impermissible phone calls because of Senderoff's failure to cooperate with the University's enhanced monitoring efforts. As detailed below and in **Exhibits 29 and 30** to this Response, because Senderoff failed to provide all of the information requested by the University, 113 of 117 impermissible phone calls could not have been reasonably detected by the University as part of its regular review of phone logs and Cybersports information, leaving only four calls (all in May 2006) that were detectable based on these records. **(See Exhibit 29 for a chart of impermissible phone calls organized chronologically, rather than by prospect, and indicating the calls that the University could and could not have detected.)** In addition, 31 of the 37 calls that resulted in an NCAA violation (or their permissible trigger calls) were not recorded in Cybersports.²¹

Moreover, even with a review of all phone records (e.g., itemized phone bills as well as phone logs and Cybersports), the vast majority of the calls (84) were not detectable and all but two of the phone calls that the University might have been able to detect occurred prior to the receipt of the electronic cell phone records in mid-September. Because only four calls could have been detected by the information reported by the coaches and only two detectable calls occurred after the full implementation of the enhanced year-round monitoring – the last one only a couple of weeks later on October 2 – the University's monitoring system was effective and

²¹ Those violation calls that the coaches recorded in Cybersports included only one actual phone call (to Demetri McCamey on May 9, 2006) and five message calls (to Robbie Hummel), which the Committee determined should not result in a major finding regarding Meyer.

accurate after it was operating as designed. Moreover, because these were limited and early oversights and the delay in full implementation of the enhanced monitoring was outside the control of the University, a failure to monitor finding is not warranted.

(i) Undocumented Calls Could Not Have Been Detected and They Caused Other Documented Calls to Appear Permissible.

As detailed in the University's May 8 Response, Senderoff repeatedly failed to report that he was using his home phone for recruiting, including on two required forms: the weekly recruiting phone log sheets containing a column to record the phone used for each call and the monthly phone use sheet. **(See Attachment 17 to the May 8 Response and Attachment G to the October 3 report.)** The coaching staff was aware that records for any phones used for recruiting, including home phones, would need to be submitted to the compliance staff for monitoring. **(See May 8 Response, p. 1-31; see also Attachment 10 to the May 8 Response for notes from the May 25, 2006 meeting between the compliance staff and the DOBO.)** Nonetheless, Senderoff made approximately 75 recruiting phone calls over several months from his home without reporting any of those calls or the use of his home phone to the compliance staff. Approximately 41 of these calls were contrary to the sanctions²² and approximately 23 were contrary to NCAA Bylaw 13.1.3.1.2. In turn, these unrecorded and unreported home phone calls caused 16 otherwise permissible calls, which the compliance staff had no reason to question during phone call monitoring, to be counted as impermissible during the investigation. In addition, eight other impermissible calls could not have been detected because Senderoff failed to list a recruiting number for the uncle of Ayodele Coker ("Coker"). This error was not discovered until Coker's interview during the investigation. One additional call was not found because Senderoff provided an incorrect phone number in Cybersports for one prospect (Michael

²² The majority (26) of these calls were to one prospect.

Thompson). Thus, Senderoff's failure to report all of his recruiting phone calls, the use of his home phone, and all of the phone numbers used for recruiting account for approximately 66 of the impermissible phone calls. Three other impermissible phone calls were made from Meyer's home phone and were also not detectable, for a total of 69 phone calls that could not have been caught by any monitoring system. (See Exhibit 29, calls highlighted bright green.)

(ii) Calls Marked as "Left Message" and Some Calls to Twins Would Have Appeared to be Permissible.

Further, there were 11 short phone calls recorded with the notation "left message" (to Hummel and Frease). It is understandable that the compliance staff might have either missed these short message calls or dismissed them as noncountable calls, particularly as all 11 of these calls occurred during the paper review of records and well before the recent national discussions and clarifications regarding how to handle short (i.e., less than three minute) or message phone calls. In addition four phone calls to the Morris twins would have appeared as permissible during the review of Cybersports records because at that time the compliance staff could have reasonably concluded that calls to the mother could have been presumed to be on behalf of only one brother²³. Thus, the total number of calls that the University could not have reasonably detected is 84. (See Exhibit 29, calls highlighted bright green and off-green, and Exhibit 30.)

²³ The Morris twins' mother reported during the investigation that she never talked to a coach without discussing both brothers, resulting in a determination that all calls to the mother needed to count for both brothers. This information was not available to the compliance staff during the 2006-07 academic year.

(iii) The Receipt of Electronic Cell Phone Bills in Mid-September and the Full Implementation of the Designed Year-Round Monitoring System Dramatically Enhanced the Accuracy of the Monitoring.

After the enhanced year-round monitoring system for men's basketball recruiting phone calls was fully implemented upon the receipt of electronic cell phone records in mid-September, only two impermissible phone calls occurred that could have been detected by reviewing phone logs, itemized phone bills, or other documentation. (See Exhibit 29, two calls highlighted yellow in September and October, and Exhibit 30.) Neither of these calls resulted in a violation of NCAA Bylaw 13.1.3.1.2. Further, these two calls occurred within a few weeks of the full implementation, with the second and final such call on October 2, 2006. As detailed above, the full implementation of this enhanced monitoring system was delayed for a few months due to a number of factors beyond the control of the University, primarily the receipt of the itemized and electronic cell phone bills.²⁴

The University recognizes that it is accountable for the effectiveness of the monitoring that occurred when cell phone records were available only in paper form. In fact, this is in part why the existence of the year-end monitoring was even more critical – it was designed as a redundancy to catch omissions during the year-round review and it served its intended purpose by detecting the violations. There were only 33 impermissible phone calls that, although 29 of these calls were not detectable by a review of Cybersports or phone logs, could have been detected through the review of telephone bills. These calls were thus more difficult to identify during the compliance staff's review, due to the thousands of calls (approximately 5,000) that needed to be reviewed each month by hand via the paper phone bills against approximately 350 recruiting phone numbers. Given that the calls that could have been detected by a review of

²⁴ It is also important to note that at this time (Spring/Summer 2006), over two years ago, electronic cell phone records were not readily available, particularly depending on the carrier and the region.

C

approximately 560 pages of phone records occurred during a four-month period while the University was diligently trying to monitor via paper records approximately 20,000 phone calls and while the University was attempting to overcome as quickly as possible obstacles beyond its control that delayed by a few months full implementation of the year-round system, a failure to monitor should not be found. Moreover, even if these phone calls had been identified prior to July 10, 2007, their discovery would not have stopped the three-way or phone-passing calls, or the approximately 69 impermissible phone calls caused by the coaches, primarily Senderoff, not reporting all recruiting calls.

C. A FAILURE TO MONITOR FINDING IS NOT APPROPRIATE BECAUSE THE UNIVERSITY COULD NOT HAVE PREVENTED THE INTENTIONAL WRONGDOING OF ITS COACHES.

There should be no finding of a failure to monitor because the coaches' intentional misconduct circumvented the enhanced monitoring system put in place by the University. The University is properly being held accountable for the number of impermissible phone calls that occurred. This has become a major infractions case – with significant publicity and detrimental effects – and the University has self-imposed penalties that more than compensate for the number of impermissible phone calls that occurred. These penalties are not only appropriate, they are sufficient to penalize the University for the conduct of its coaches. However, the substantially more significant finding of a failure to monitor is not appropriate where the number of impermissible calls is almost entirely attributable to the coaches' failure to comply with the enhanced monitoring system and efforts to conceal their actions. This is an unethical conduct case, not a failure to monitor case.

Even if Indiana University had been able to detect some of the impermissible phone calls earlier than July 2007, it would not have been able to prevent the intentional circumvention of

the University's policies and enhanced monitoring system regarding recruiting phone calls. Although the final disposition of this case has not occurred, the University believes that a strong case has been made to support the unethical conduct allegations regarding Sampson and Senderoff, including for knowingly violating the sanctions, as detailed in the May 8 Response, the NCAA case summary and during the hearing. Their actions, including their statements to the University and the NCAA during their interviews and the demonstrated attempts to conceal their misconduct by using home phones or remaining silent on three-way calls, evidence their intent to circumvent University policies and the phone call monitoring system. (See e.g., **May 8 Response, pp. 1-10 to 1-13, 3-14 to 3-17, 4-4 and 4-7.**)

If individuals are determined to circumvent monitoring systems, it is difficult, if not impossible, to stop, prevent or detect the violations. In fact, the Committee has recognized this point in a prior infractions case: "Any system designed to provide institutional control, no matter how well conceived, organized, and implemented, can be undermined for a period of time by an individual determined to violate NCAA rules." (Chicago State University Public Infractions Report, December 18, 2003, Section III.) Based on this conclusion, the Committee did not find a lack of institutional control (or failure to monitor) against Chicago State, despite the fact that the head coach involved in the violations had been involved in similar violations at her prior institution and had engaged in actions contrary to restrictions imposed upon her by the Committee. Instead, the Committee recognized that, although the best safeguard to assure no such undermining occurs is to retain staff members who have integrity and that the hiring of individuals with notice of past problems is a relevant consideration to the determination of institutional control, such a determination "must recognize fully that staffing decisions are those of the individual institution. The Committee on Infractions neither is nor can it be empowered

with authority to interfere with those judgments.” (Chicago State Public Infractions Report, Section III.) The Committee also noted that after the hearing Chicago State concluded that the level of violations was not serious enough to require it to cease its relationship with the coach.

Unfortunately, it now appears that the Committee may be ignoring the counsel it provided to the membership in the Chicago State infractions report and has instead determined that a failure to monitor is appropriate simply because Indiana University hired Sampson and because violations similar to those Sampson had committed in the past occurred while he was employed by the University. Those facts are not sufficient to support a finding of failure to monitor. Indiana University hired Sampson after careful consideration. Sampson appeared to be contrite, repeatedly stated in an apparently earnest and heartfelt manner that he had learned his lesson, and had no record of other infractions during a long tenure as a Division I head men’s basketball coach. The University decided to give him a second chance. The University had a spotless infractions record for the past 50 years and a history of good hires who were and are committed to NCAA compliance. The Committee did not seem to object to this hiring decision when its infractions report was released in May 2006, as the show-cause penalty limiting Sampson's duties did not preclude Indiana University from employing him as head men’s basketball coach. Further, at no point during the prior hearing or in the May 2006 infractions report was there any indication that the Committee believed Indiana University should not have hired Sampson.²⁵

²⁵ It is important to note that Sampson's prior penalties, and the corresponding obligations on the University, are much less than those recently imposed by the Committee on the University of New Mexico. (University of New Mexico August 20, 2008 Public Infractions Report, Section C. No. 7.) Those more substantial reporting and monitoring obligations are not at issue here and cannot reasonably be included within the University's general obligations, or those specific to Sampson. Retroactively imposing the same monitoring and reporting obligations on the University would go far beyond the language of Penalties E, F, and L of Infractions Report No. 250 and would be an ex post facto application of a new policy.

Nonetheless, despite the enhanced monitoring systems Indiana University implemented to address the prior violations, a strict liability approach seems to have been used in this allegation. That approach to this allegation, particularly if it is found, seems to send a message to institutions, even those with excellent infractions and compliance records, that if they take the risk of hiring a coach with prior violations, any ensuing violations are the institution's fault, regardless of the monitoring that occurred. This message is tantamount to a prohibition on hiring coaches with show cause penalties and the University questions if it is a message the Committee really wants to send.

A strict-liability approach in this case is not appropriate. The University did not ignore Sampson's history of prior violations. As noted at length above, immediately upon Sampson's hiring, the University implemented enhanced monitoring systems – in several areas, not just recruiting phone calls – as a result of his prior violations and the sanctions. These enhanced systems worked – the violations at issue in this case were detected and no other major violations of NCAA rules or sanctions occurred. It was not foreseeable that a coaching staff knowledgeable of the sanctions, the prior violations and the University's monitoring procedures, would intentionally circumvent these processes and commit further violations, thereby putting themselves at great personal and professional risk. A failure to monitor is not warranted for the actions of those who were determined to circumvent well-designed monitoring systems.

In light of the coaches' intentional, knowing wrongdoing, what more could the University have done to prevent these violations? Could a better system have been put in place? It is hard to imagine how the University could have developed a system that would have allowed it to obtain any better information about the coaches' activities – if the coaches had truthfully

provided all of the requested information. Could the University have immediately forced the coaches to turn over their home records? Not without violating the coaches' privacy interests and exposing their home phone records to disclosure under the public records act. Moreover, on what basis should the University have known such a drastic step was necessary? The coaches were repeatedly asked, in more than one format, whether they used their home phones for recruiting calls. Every time they were given the opportunity to provide that information, the coaches indicated that their home phones were NOT used. That information turned out to be false and, in the end, led to the majority of the impermissible calls. It is simply not reasonable to conclude that a public university, subject to public records laws, needs to satisfy its monitoring obligations by demanding the home phone records of its coaching staffs especially when those coaches have explicitly and on numerous occasions represented to the university that they have never used their home phones to make recruiting calls. Even if, in retrospect, it were possible to conclude that obtaining the coaches' home phone records would have prevented these violations (or at least most of them), the failure to do so cannot possibly be considered a failure to monitor.

Perhaps, as the questions of the Committee members seemed to suggest at the hearing, the University could have caught the violations sooner. There are several valid reasons why this did not occur, as explained at the hearing and as discussed above, but perhaps an argument could be made that earlier detection could have limited the scope of the violations. But, again, what was the University supposed to do? Despite all the efforts of the University to educate and monitor the coaches, including exhaustive 100% reviews of their office and cell phone records, some of the coaches elected to engage in conduct that they knew violated the penalties previously imposed, intentionally withheld information that would have made early detection of the violations easier, and actively concealed the impermissible calls.

D

A university should not be found guilty of failure to monitor where sufficient processes are in place (as they undoubtedly were here) yet individuals still decide to intentionally violate the rules. Admittedly, in theory some of the calls could have been identified sooner, even with the limited information provided by the coaches. But the failure to catch the violations during the regular record review – as opposed to during the year-end cross check of the records when the violations were actually detected – cannot possibly amount to a failure to monitor, especially when the overwhelming majority of other FBS schools do not even engage in the type of regular record review the University was conducting. Even allowing for the heightened scrutiny that was necessary due to Sampson's prior violations, a failure to monitor cannot be found merely because some impermissible phone calls were detected at the end of the academic year, rather than one or two months after they occurred. The failure to detect some of the calls sooner was a mistake, and may explain why the coaches continued their pattern of misconduct for as long as they did, but that failure is not sufficient to support a finding that the University failed to monitor its men's basketball program.

D. THE UNIVERSITY APPROPRIATELY INVESTIGATED SECONDARY VIOLATIONS.

Contrary to the final clause of subparagraph (f) of the allegation, the University provided “extra close oversight and scrutiny of all aspects of the men’s basketball program that was required by the prior infractions record of the former head coach, including . . . the university’s approach to investigation of secondary violations committed by members of the men’s basketball coaching staff.” Given the broad nature of the statement with no specific examples or details provided and the fact that the concerns had not been raised previously by either the NCAA Enforcement Staff or the Committee, the University through its outside counsel requested

clarification as to which violations the Committee was referring and the relevant timeframe. (See Exhibit 32 to this response.) In response, the Committee through its staff provided as an example a reference to the two secondary violations that comprised Allegation 5 and noted that the Committee had concerns about the University's initial reaction to information pertaining to these violations and the means by which the compliance staff attempted to obtain information regarding these violations during late Summer and early Fall 2007.

The University was frankly surprised to see this component included in the failure to monitor allegation and to learn that Allegation 5 was an example of the Committee's concern, particularly since this aspect of the allegation references secondary violations completely unrelated to the substance of the phone call violations and since no such issues were raised during the hearing. In the absence of any other information, the University is able to respond only to the example provided by the Committee (Allegation 5) as it has no knowledge of any secondary violations not properly investigated or any other concerns on the part of the Committee.²⁶

Allegation 5 concerned two secondary violations committed by then assistant men's basketball coach Meyer, who was informed by the Committee after the hearing that the violations in which he was involved were secondary in nature. The first part of the allegation was related to one impermissible on-campus recruiting contact by Sampson and Meyer with one prospect at the conclusion of the first day of a two-day camp on the University's campus. The second part of the allegation addressed the provision of one or two T-shirts and drawstring

²⁶ The Committee identified Allegation 5 as "an example" of how the University's approach to secondary violations warranted a charge of failure to monitor. No other specific instances have been cited by the Committee. To the extent the Committee makes a finding of failure to monitor based on any other secondary violations, such a finding would constitute a procedural error, as well as violate Indiana University's due process rights, due to lack of proper notice.

backpacks, at most a total value of \$64, to the prospect's coach the next day at the conclusion of the camp.

The University takes very seriously its responsibility for thoroughly investigating any allegation of a violation in any sport, but given the sanctions on the men's basketball program and the prior infractions history of Sampson, it paid even more attention and provided closer scrutiny to men's basketball, as evidenced by the allocation to men's basketball of a significant portion of the duties of the director of compliance to the oversight and monitoring of the men's basketball program and compliance with the sanctions. As is common with a high-profile program like Indiana University men's basketball, the University receives information on a regular basis regarding potential violations from a variety of sources, including the media, anonymous calls and messages, fan websites, the Big Ten Conference and the NCAA national office. All such credible and/or specific information is immediately and thoroughly investigated. Further, the University regularly investigates and reports secondary violations, including a total of 16 involving men's basketball from 2003 to 2007. **(See Attachment 25 to the May 8 Response for a summary of the University's reporting history.)**

As to the first part of Allegation 5, as is customary when the NCAA Enforcement Staff receives allegations of a potential secondary violation, the NCAA Secondary Enforcement Staff informed the University via a July 12, 2007 letter that it had received information that the institution had extended a verbal scholarship offer to a prospective student-athlete during his participation in the University's summer camp when he was taken to a separate room during the camp. The letter requested that the University review this information and submit the results of its inquiry in writing. The University received this letter only days after the compliance staff had

discovered the potential impermissible phone calls and during the initial, intense investigatory phase of those calls. Nonetheless, the University utilized its normal procedures in carefully reviewing and assessing all available information regarding this allegation and requesting clarification for unclear or conflicting information. **(See Exhibit 39 for the University's procedures for investigating and reviewing potential NCAA violations.)** Specifically, the compliance staff contacted Sampson and Senderoff, who was the assistant coach charged with the oversight and management of the camp, to inquire about the information reported. The issue was also discussed at one of the weekly meetings with the director of basketball operations. Initially the coaches stated they were not aware of the alleged circumstances. When the assistant director of athletics for compliance began to draft the report, she realized that additional follow-up was needed and met with the basketball coaches, including Meyer, whom she learned had recruited the prospect, to ask more specific questions. Based on the information that the coaches provided, it was apparent that a secondary violation of Bylaw 13.12.1.3 should be reported. Due to the focus on providing the NCAA with the October 3 and 25 self-reports regarding the impermissible phone calls, the self-report of this secondary violation was not submitted until October 26, 2007. **(See Attachment 22 to the May 8 Response.)** Given that a violation had been confirmed and was going to be self-reported, and that the coaches appeared to be forthcoming regarding the nature of the interaction with the prospect during the camp, there was no reason for the compliance staff to pursue this matter further based on the information known at that time.²⁷

²⁷ It should be noted that customary practice is for compliance staffs to contact their coaches regarding secondary violations and that additional contacts (e.g., with prospects) is usually not necessary, particularly when a violation is confirmed by the coaches' information.

Shortly after the submission of the self-report, which had been released publicly pursuant to requests made under the State of Indiana Access to Public Records Act, a compliance staff member at another institution contacted the University's assistant director of athletics for compliance to suggest that the high school coach had other information. On or about the same day, the NCAA Student-Athlete Reinstatement Staff requested statements from the prospect and his high school coach. The assistant director of athletics for compliance contacted the high school coach. Upon talking to the prospect's coach and obtaining the written statements from the coach and prospect on November 9, the assistant director of athletics for compliance realized additional review and information from Sampson and Meyer was needed to resolve the discrepancies. Accordingly, she requested that the coaches respond to 11 specific questions. After receiving the responses from the coaches on November 29, it was apparent that some miscommunication had occurred regarding the conversations between Meyer and the prospect's coach. The University submitted a revised secondary infractions report to reflect the fact that, although the same bylaw was violated, an impermissible contact rather than the initially reported verbal scholarship offer had occurred. **(See Attachment 21 to the May 8 Response for the revised secondary report and the statements from Sampson, Meyer, the prospect and his high school coach.)**

Thus, the University appropriately investigated the information that was reported as soon as the information was known and immediately corrected the information submitted to the NCAA, even though it had no substantive impact on the processing of the violation (i.e., the prospect's eligibility was reinstated). Further, the additional information collected did not change the fact that a violation of Bylaw 13.12.1.3 had occurred or the appropriateness of the

corrective actions. Thus, the evidence does not support a failure to monitor finding for the University's investigation of this matter.

As to the second part of Allegation 5, regarding the provision of the T-shirt(s) and drawstring backpack(s), the University had no information regarding this potential violation prior to the January 17, 2008 interviews with the prospect and his high school coach conducted by the NCAA Enforcement Staff as part of this investigation. This allegation was developed only because the NCAA had received specific information following the submission and public release of the University's October self-reports, and the NCAA Enforcement Staff thus directly asked the high school coach during his interview whether he had received clothing to give to the prospect or his family. The coach and the prospect provided details regarding the facts underlying Allegation 5.b and the University readily admitted the secondary violation in its May 8 Response.

Given that this information did not surface during the University's investigation of the first part of Allegation 5 and was not mentioned by the high school coach at that time, a failure to monitor is not warranted. There was no reason for the compliance staff to ask questions about the provision of clothing during its review of information about the offer of a scholarship and an impermissible contact. To expect such questioning about issues not alleged would needlessly require extended "fishing expeditions" on routine inquiries.

In the absence of any indication or specifics, either at the hearing or in the allegation, that a different approach or additional review should have occurred and would have been more effective, and in light of the University's appropriate review of and response to the violations,

THE SELF-IMPOSED PENALTIES
REMAIN APPROPRIATE

this aspect of subparagraph (f) of the failure to monitor finding is not supported by the evidence and should not be found.

V. THE SELF-IMPOSED PENALTIES REMAIN APPROPRIATE GIVEN THAT THEY MORE THAN COMPENSATE FOR THE IMPERMISSIBLE CALLS, THAT THERE IS A NEW COACHING STAFF THAT WAS UNINVOLVED IN THE VIOLATIONS, AND THAT THERE IS ONLY ONE RETURNING SCHOLARSHIP MEN'S BASKETBALL STUDENT-ATHLETE.

As discussed in the May 8 Response, the University imposed significant sanctions on the men's basketball program that were designed to more than counter the number of impermissible phone calls that had occurred, as well as any positive impact they may have had on the men's basketball program's recruiting efforts. (See Exhibit 40 to this response; May 8 Response, pp. 6-9; and Section D for detailed information on these self-imposed penalties.) Recognizing that very strong penalties were warranted as a result of the phone calls that were contrary to the sanctions adopted and imposed by the Committee, the University ensured that the calling opportunities forfeited due to the penalties (approximately 1800)²⁸ far exceeded the total number of impermissible calls (approximately 132). Penalties were imposed not only on the coaches involved in the violations, but also on the men's basketball program as a whole, and have remained in effect as coaching changes occurred.

The self-imposed penalties continue to have a significant, detrimental impact on the University's current men's basketball coaching staff, none of whom were involved in any of the impermissible calls. After the upheaval following Sampson's resignation during the season, the hiring of current Head Men's Basketball Coach Tom Crean ("Crean"), and the complete turnover of the men's basketball coaching staff, the University realized that the penalties imposed in the

²⁸ One penalty (c) reduces the number of calling opportunities by 700 for the program plus an additional 350 for Sampson and the subsequent head coaches, and another penalty (d) reduces calling opportunities for Sampson and the subsequent head coaches by approximately 885.

Fall were having detrimental and unintended consequences on the current men's basketball coaching staff and their ability to rebuild a decimated team. Accordingly, in April 2008 the University slightly modified two of the penalties, regarding the limit on the number of off-campus recruiting days for the head men's basketball coach and the number of official visits,²⁹ while also adding a new penalty reducing the number of recruiting days allowed in July 2008. Penalties remained in these areas, even with the limited relief provided, and all of the phone call penalties stayed intact. (See Exhibit 40.)

These self-imposed penalties remain more than sufficient to address the violations that occurred, regardless of whether a failure to monitor is found. In assessing appropriate sanctions in this case, the Committee should consider the current status of the men's basketball program as a result of this matter, in addition to the fact that the penalties more than counter the impermissible calls. Practically speaking, the fallout from this self-reported infractions case has been a devastating sanction in and of itself. There has been tremendous negative national publicity surrounding this case since the release of the self-reports in October 2007, rising to an almost frenzied state in February 2008 following the issuance of the NCAA Notice of Allegations. The Allegations led to the departure of Sampson and, for all intents and purposes, the end of the University's men's basketball season as there was a corresponding and immediate drop off in the team's competitiveness when its morale understandably plummeted. In addition, the fact that there is only one returning scholarship student-athlete on the team literally means the current head coach and his staff are rebuilding a program from square one.

²⁹ The modification to the official visit penalty is consistent with the waiver available under NCAA Bylaw 13.6.2.6.7, which allows institutions to provide additional official visits after a new head coach is hired if the prior coach has used 75% or more of the permitted official visits.

Importantly, as a member of the Committee noted during a recent appearance at a meeting of the Knight Commission in June 2008, sanctions are not meant to cripple a team. He was quoted as noting that rather than handing down penalties intended to make teams weaker competitively, “[e]verything that we do ought to be focused on making the institutions better.” (See Exhibit 41 to this response for the CBSSports.com June 17, 2008 article; the reference to Professor Gene Marsh is at the end of the article.)

Indiana University concurs with this philosophy. In this case, in addition to the penalties served by the former coaches, Coach Crean and his staff had 27 fewer days when they could recruit off campus (approximately 30% less than other institutions), fewer official visits (limited to only two), one less coach who could recruit, and fewer financial aid awards. In addition, Coach Crean was limited to 10 days of off-campus recruiting, as opposed to basically no limit for other head coaches. With only one scholarship student-athlete returning to participate for the 2008-09 academic year,³⁰ the team truly has been decimated by the actions of the prior coaching staff. Coach Crean and his staff and the current student-athletes deserve the chance to rebuild the Indiana University men’s basketball program, unfettered by additional recruiting or other sanctions, particularly given the extent of the University’s self-imposed penalties that more than account for the number of impermissible phone calls and that have already hampered the recruiting of the current coaching staff. The University recognizes that a probationary period will likely be imposed and suggests that it begin on the date of the hearing, rather than on the date the infractions report is released, to account for the delay in the release of the infractions report as a result of this new allegation. Further, the intense scrutiny and negative public relations of the past year has been tantamount to a probationary period.

VI. CONCLUSION.

For the reasons set forth in this Response and summarized in the Executive Summary above, the failure to monitor finding should not be found because: the University had in place an enhanced two-tiered monitoring system that detected the impermissible phone calls; this system for monitoring recruiting phone calls in men's basketball was appropriate in accordance with national standards and the heightened scrutiny required by Sampson's prior infractions history; the allegation is not supported by the evidence, is overly broad, and imposes an inappropriate strict liability standard; and the majority of the impermissible phone calls could not have been detected due to the intentional actions of a few coaches.

Further, additional sanctions that would impact the uninvolved current coaching staff and student-athletes are not warranted due to the University's significant self-imposed penalties that more than compensate for the number of impermissible phone calls. In addition, given that the impact of these penalties continues to be borne by the current coaching staff, additional penalties should not be imposed, whether or not a failure to monitor is found.