

Message

**From:** Cooper, Shep [/O=NCAA/OU=NCAA/CN=RECIPIENTS/CN=SCOOPER]  
**Sent:** 7/27/2012 12:33:38 PM  
**To:** McGormley, Joel [jmcgormley@ncaa.org]  
**Subject:** RE: Bench Brief

Gene said he "got in their shorts" about that issue. He said that Berst, who had a hand in writing much of the legislation in 19 and 32 over the course of many years during the 1970s,80s and 90s, insisted that the prohibition on competition ("death penalty") could be applied in the PSU case, even though legislatively, that doesn't appear true (PSU wasn't a repeat violator). May be one reason why they "backed off" applying it. According to media reports earlier this week, the Presidents comprising the Executive Committee and Board initially wanted to impose it on Penn State.

*Shep Cooper*

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**From:** McGormley, Joel  
**Sent:** Friday, July 27, 2012 8:29 AM  
**To:** Cooper, Shep  
**Subject:** Re: Bench Brief

Wow....

Sent from my iPhone

On Jul 27, 2012, at 7:24 AM, "Cooper, Shep" <[scooper@ncaa.org](mailto:scooper@ncaa.org)> wrote:  
Apparently he had a pretty heated conversation last week with Donald and David Berst regarding the application of the so-called "death penalty" penalty in the Penn State case.

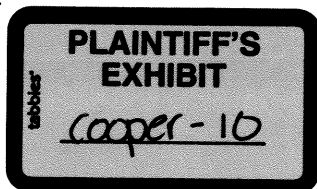
*Shep Cooper*

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**From:** McGormley, Joel  
**Sent:** Thursday, July 26, 2012 11:41 PM  
**To:** Cooper, Shep  
**Subject:** Re: Bench Brief

Gene begged off. We can talk about that conversation.

Sent from my iPhone



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On Jul 26, 2012, at 6:53 PM, "Cooper, Shep" <scooper@ncaa.org> wrote:

Will do. It did calm down somewhat later in the afternoon. Had an interesting conversation with Gene Marsh. Jim is going to "take a crack" at putting together the elements of a bench brief for Alleg. 8 (Tony Harvey unethical conduct.)

Sent from my iPhone

On Jul 26, 2012, at 4:19 PM, "McGormley, Joel" <jmcgormley@ncaa.org> wrote:

Please help work with Terri to get info referenced in prior emails and what you found. She will take a crack at synthesizing first draft of bench memo. We all then can talk but won't have lost 3-4 days. I can help tweak and format draft. Thanks! Hope it has been a bit more quiet.

Joel

Sent from my iPhone

On Jul 26, 2012, at 2:42 PM, "Cooper, Shep" <scooper@ncaa.org> wrote:

For me, I would find it helpful if you could provide a specific example of a topic/issue/question you and Greg identified in Allegation 6 that would lend itself to a Bench Brief discussion and how, in general terms, we would go about addressing that in a Bench Brief. I don't mind working on this after hours, I just can't do it on Monday as I have a dental appointment from 4-5 pm. However, I'm available any other evening next week, or this weekend, for that matter.

RE: [Redacted] attached is a draft of a memo to the current members of the COI who sat for that case. My thinking is that, sometime in the next few days, we email the memo to them along with the attachments referenced in the memo (1. [Redacted] appeal, 2. the COI's response and; 3. the IAC's decision) That would serve to "prep" them for the discussion during the "committee only" portion of the agenda session for the August meeting. Let me know what you think and if you have any edits to the memo.

Finally, we conducted the "brainstorming session" at 1:00 pm today. I was late because of the PSU "exempted contests fire" that needed to be addressed. Terri took notes and I think the discussion was fruitful.

*Shep Cooper*

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**From:** McGormley, Joel  
**Sent:** Thursday, July 26, 2012 2:55 PM  
**To:** Cooper, Shep  
**Subject:** Re: Bench Brief

Greg agreed with a bench brief working on 6 and 8. In fact, he overwhelmingly recognized how it would on 6. Everyone needs to start thinking about the "show" and less about the "tell." The enforcement staff does very little except rote

citing of cases and some very important rote assertions of history, alleged legislative history, and allegations on what the COI got wrong. We are not telling the COI what to do. We are informing and synthesizing important information so that they can make a more efficient and informed preparation, hearing, deliberations and decision. The paradigm has changed. If you can't make some conceptual progress, we can tackle it Monday. People can clear some evening time out after 5:00 and we can bang it out then. Your added info on 6 is spot on. Stop worrying about format and focus on what tools the COI needs to resolve a question, what they say, and what conclusions they can lead to. I will worry about the format. This goes hand in glove with reports not explaining enough but rather over-citation to facts and having the reader infer.

Sent from my iPhone

On Jul 26, 2012, at 9:06 AM, "Cooper, Shep" <[scooper@ncaa.org](mailto:scooper@ncaa.org)> wrote:  
Joel-

Conceptually, both Jim and I are struggling with what you're asking for vis-à-vis a "bench brief" and synopsisizing the material in the case summary in the Texas Southern case. I think it would be helpful if we were to meet on Monday so that we completely understand what you're looking for and so that we can ask clarifying questions. I'm not a "legal professional" so I've never seen a bench brief.

From our discussions, my understanding is that a bench brief lays out issues, "bones of contention," etc. so that the "finders of fact" (in this case, the COI) can focus on those areas in order to make informed decisions. It appears that the case summary does that with its format that identifies the issues, each parties position on the issues and then provides the "evidence" (case precedent etc.) which supports the enforcement staff's position while also applying the evidence addressing the position of the involved party/parties which are contesting the position. What else would the Bench Brief do? [I'm not saying it wouldn't be helpful, I simply need to get a better handle of how a bench brief would look and how it would differ from what is in the Case Summary and the involved parties responses. It might be helpful if you were to draft this Bench Brief, so that we can see exactly what you're looking for in future Bench Briefs]

In the meantime, I went into our archives and pulled Supplement #14 from the Agenda packet for the December, 2010 meeting. This supplement discusses the application of Bylaw 11.2.1.1 and I think it might be helpful in our discussion of a Bench Brief addressing Allegation 6 of the Texas Southern case.

I'll be working on the Boise State material for the COI's discussion during the August meeting. Feel free to give us call when you get a break from your meetings.

*Shep Cooper*

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**From:** McGormley, Joel  
**Sent:** Wednesday, July 25, 2012 11:25 PM  
**To:** Cooper, Shep  
**Subject:** Re: Update

There is a lot of "precedent", AMA Interp and legislative history addressed. If you or Jim could not synthesize it in a clear verbal paragraph now, as well as every committee member as well-- it's needed. Discussing both issues in bench memo concept with Sankey and Britton. Email me. Thanks.

Joel

Sent from my iPhone

On Jul 25, 2012, at 6:30 PM, "Cooper, Shep" <[scooper@ncaa.org](mailto:scooper@ncaa.org)> wrote:  
I'll take a look at it tomorrow am.

Sent from my iPhone

On Jul 25, 2012, at 5:35 PM, "McGormley, Joel" <[jmcgormley@ncaa.org](mailto:jmcgormley@ncaa.org)> wrote:  
On 1, not sure I agreed unneeded. If there is abbreviated way to address, that's fine. There are factual allegations embedded nonetheless. Jim needs to remember we will have new members in large numbers soon. I trust your secondary review. If you think no value at all to that issue--that's fine. If there is some value, I'd like it done. Thanks, Shep for the run down report.

Sent from my iPhone

On Jul 25, 2012, at 3:28 PM, "Cooper, Shep" <[scooper@ncaa.org](mailto:scooper@ncaa.org)> wrote:  
Joel-

I hope your trip is going well. Still seems "screwy" to me that one has to travel North (to Detroit) to go South (to Birmingham), but that's the world of air travel today. Couple of things . . .

1. Got your VM on the bench memo. I talked to Jim and he believes that the issue in Allegation 6 is something the committee has already dealt with and "settled" from past cases. However, the second issue you raised, re: Harvey, would be something that lends itself to a bench memo. I'll take a closer look at Allegation 6.
2. I talked to Terri about the Tennessee case. She has the report template, the penalty worksheet and the summary disposition report itself both in electronic and paper formats. I also gave to her a summary disposition report from last year involving Oklahoma that has some similarities to the Tennessee case (one assistant coach and limited recruiting violations with an attendant finding of unethical conduct.) She can use the OU report as a "guide" in drafting UT's. SDs lend themselves to extensive "cutting and pasting" because of the agreement required in these cases. We are still waiting for responses from the involved individual (Willie Mack Garza) on his show cause order and from the school regarding the additional penalties the COI imposed. Both responses are due NLT Friday.
3. Donald was planning to call Gene Marsh regarding the "exempted contest" question in the PSU post-season ban. I told him that I would be happy to call Gene, and he said that he might let me do that. He walked by my office about an hour ago with his bag, so I'm not sure if he's left for the day.
4. I scheduled the "brain storming" session for tomorrow (Thursday) at 1:00 pm.
5. Cheryl continues to work on the agenda for the August. Looks we'll need to add the Eastern Michigan summary disposition to the committee's line-up.

That's it for now.

*Shep Cooper*

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<Remand Memo to COI.doc>