

MEMORANDUM

Date: January 12, 2021

To: Geoffrey T. Landward, Deputy Commissioner of Higher Education, General Counsel Utah System of Higher Education; Mica McKinney, General Counsel, Utah State University

From: Matthew Durham, Zachary Wiseman and Robert O. Rice

Re: Investigation Regarding December 8, 2020 Zoom Meeting with Athletes and Pres. Noelle Cockett and John Hartwell

I. Background

On December 11, 2020 an article was published by Brett McMurphy of “Stadium College Football Insider” detailing the decision of the Utah State University football team to “opt out” of their final game at Colorado State (the “Article”). The Article stated that the decision to opt out was based on comments by university Pres. Noelle Cockett during a Zoom meeting with members of the football team and Athletic Director John Hartwell on December 8, 2020 during which Pres. Cockett allegedly “voic[ed] her concerns about interim Head Coach Frank Maile’s religious and cultural background”

II. Scope of Investigation

The Utah State Board of Trustees retained the law firm of Stoel Rives (“Stoel”) and the Utah Board of Higher Education retained the law firm of Ray Quinney & Nebeker (“Ray Quinney”) (together, Stoel and Ray Quinney are referred to as the “Law Firms”) with instructions to conduct a coordinated investigation regarding the content of the December 8 Zoom meeting, paying particular attention to identifying, to the extent possible, the remarks made during the meeting. Neither law firm was asked to make any recommendations regarding the findings.

III. Investigation Procedure

As part of the investigation, the Law Firms obtained a record of the Zoom participants identified by the names (or nick names) used by the Zoom attendees and, where available, the attendees’ email address. The Zoom link was reportedly shared with members of the football team by the team’s Leadership Committee via the “team snap” app used by players to communicate with each other. The Zoom meeting convened at 5:46 p.m. on December 8, 2020 and lasted 73

minutes. The Law Firms were able to identify fifty-three athletes who participated in the Zoom meeting. Witnesses consistently indicated that other than Pres. Cockett and Hartwell, only current student athletes from the football team participated in the meeting. However, given the nature of Zoom meetings, it is possible that others attended, as well. All witnesses interviewed indicated that to their knowledge, the Zoom meeting was not recorded.

The Law Firms assigned random numbers between 1 and 100 to all of the student athletes on the football roster. The 53 student athletes identified as having participated in the Zoom meeting were then divided among six attorneys from the Law Firms who were responsible for attempting to contact and interview all of the athletes assigned to them using a common script of questions. Before any attempt was made to contact the athletes, the Utah State University Athletic Department (the "Athletic Department") notified the athletes that an investigation was underway and that each of them would be contacted by an attorney from the Law Firms. On December 17 and 18 the Law Firms made the first attempt to contact the athletes via email. On December 18, a second attempt to contact the athletes was made via text message. From December 19 to December 28 at least two attempts were made to contact each athlete by telephone. By December 28, the Law Firms were able to successfully contact thirty-six student athletes and successfully interview thirty student athletes, as well as a non-student who emailed Pres. Cockett after the December 8 meeting, but who said he did not participate in the Zoom meeting. Two athletes were contacted, but refused to participate in the investigation. Seventeen athletes never responded to any of the attempted contacts and four athletes failed or refused to return scheduled calls. The Law Firms contacted counsel for Coach Maile to arrange an interview, but his counsel did not respond.

IV. Witness Interviews

a. John Hartwell Interview

We interviewed John Hartwell, Utah State University Athletic Director, on December 17, 2020 at 2:00 p.m. by telephone conference call. We described the scope and purpose of the investigation and the roles of counsel. We discussed efforts undertaken to protect player anonymity and discussed avoidance of retaliation. Hartwell was cooperative during the interview.

Hartwell first learned of the meeting when he received a voice mail message from Nancy Hanks, an assistant to Pres. Cockett. Hartwell was traveling in connection with the hiring of the head coach. He was told [REDACTED] had contacted Pres. Cockett the previous Friday and requested a meeting. He then received a text on December 8 setting up the meeting.

Hartwell said he spoke with Pres. Cockett on the morning of December 8 and asked if he should be involved. He said he told Pres. Cockett he was "pretty

sure what this is about.” He knew that the players saw Coach Maile as a strong influence – a role model and father figure. He felt the players wanted to talk about hiring Coach Maile as head coach. Coach Maile had interviewed for the job on November 30, 2020.

Hartwell said that he does not have a record of the Zoom meeting participants, but he saw and recognized email addresses for many players. Hartwell had understood that the players wanted to include a group broader than current student athletes, but he asked athletes to limit it to that group. The players agreed. He believes Hanks asked for a list of participants in advance of the meeting but never received one. He said a lot of players listened in, with more than one person listening on some devices.

Pres. Cockett started the meeting by stating that [REDACTED] had reached out to her and asking how he would like to begin. Hartwell said [REDACTED] took the lead. [REDACTED]

[REDACTED] He stated that Coach Maile is a good coach, who focuses on consistency and accountability. [REDACTED] did not believe Coach Maile would see the job as a stepping stone to a “better” coaching position; he would be committed to staying at USU. Hartwell says that Pres. Cockett asked players where they were from, and what year they were.

[REDACTED] then spoke. In response to a question from Pres. Cockett, he said he was from [REDACTED]. The following players spoke, stating where they were from: [REDACTED], [REDACTED]. [REDACTED] players all spoke of Coach Maile’s coaching style and commitment, and his status as a role model.

Hartwell says somewhere near this point in the meeting, a player mentioned his own religious background and Coach Maile’s background. Pres. Cockett stated that religious diversity is important, noting that the football team is a very diverse group. She stated that Utah is an “interesting place to live.”

Referring to a notation in his notes, Hartwell says that Pres. Cockett spoke of the importance of diversity and inclusiveness. She spoke of a program developed for USU athletes in 2018 to help make sure all athletes had equal educational opportunities.

One of the players made reference to some of the coaching staff, including Coach Maile, who “did not come from the best part of Utah.” This was stated as a positive, in that Coach Maile is able to relate to students from less privileged backgrounds and that he could be a good influence for them.

[REDACTED] another athlete, stated that at some other schools, student athletes are seen as money makers, but that Coach Maile cares a lot about the players and treats them like family. [REDACTED]

[REDACTED]
[REDACTED] He, nevertheless, appreciates Coach Maile as a mentor. The last athlete to speak was [REDACTED].

[REDACTED] He said that Coach Maile was very respectful of his faith [REDACTED].

At some point, Hartwell said Pres. Cockett kind of “preempted” the conversation and said that she wanted to hear from other students. She called on students, but it was very positive, respectful and non-confrontational.

Hartwell closed the meeting by thanking the players. He told them it was important to hear what they had to say and pointed out that he had taken notes of the discussion.

Hartwell would not characterize any of the comments in the meeting as raising concerns about Coach Maile’s religious or ethnic background. He spoke with Pres. Cockett after the meeting and Pres Cockett asked if she had covered everything and said the right things. He noted that there had been some “eyes raised” when she made the comment about Utah/Cache Valley being an interesting place to live. He believes that Pres. Cockett was using that comment as a way to solicit information from the players about their experience living in Logan. He did not sense ill-will from the athletes in response to Pres. Cockett’s remark. Hartwell mentioned that the players all have his email and phone number, but that he got no feedback on the meeting from the players until after the new head coach was announced.

After the meeting, Hartwell traveled for another head coach interview. A handful of people asked him how the meeting went in a general way. Hartwell mentioned that Neil Abercrombie asked him how the meeting went and mentioned that someone had called him (Abercrombie) about it. This conversation probably occurred on Thursday, December 10. He spent most of that day finalizing interviews with then-applicant Blake Anderson and notifying unsuccessful candidates of the decision. He spoke with Coach Maile that day and, unlike with other candidates, told him who the successful candidate was. Hartwell felt Coach Maile responded unprofessionally, stating “What has he done?” Coach Maile was upset, which Hartwell acknowledged, but he urged Coach Maile to consider staying on and telling him he believed Coach Anderson wanted to talk to him about a coaching position.

On Friday morning, Jerry Bovee contacted Hartwell and said, “[w]e have a problem.” He told him that the players were not going to play the final game. Hartwell believed the players were upset about Coach Maile not being hired as head coach. Hartwell contacted Coach Maile (after some difficulty) and asked Coach Maile if he could get the players to reconsider. Coach Maile told Hartwell he could not stop them, and that he “was at peace with what they have done.” He

had other conversations that day about the decision regarding the game, and responded to a call from the media.

Hartwell became aware of a poll (the “Poll”) taken by the student athletes. He believes the Poll shows two major concerns: 1) The players’ unhappiness that Coach Maile was not hired as head coach; and 2) their frustration that an employee in the Athletic Department who allegedly made a racist comment had not been fired.¹

Hartwell later contacted one of the interviewers, indicating that he would like a follow-up call to discuss something he recalled after the initial telephone interview. We spoke with Hartwell again on December 18, 2020 at 8:30 a.m. by telephone. He mentioned that the University has a software platform called Real Response (formerly “Real Recruit”), which allows the University to solicit and gather feedback on a range of topics from student athletes. It allows for anonymous complaints about discrimination or harassment. The University sends out a monthly email reminder to student athletes about the availability of the program, as well as an annual year-end survey. Hartwell stated that the Athletic Department received a lot of feedback through Real Response, but had never received reports of discrimination from the football team. He identified Amy Crosbie as someone who could help us obtain relevant information from Real Response.²

We conducted a follow-up interview with Hartwell on December 30, 2020 at 8:30 a.m. by telephone conference. The purpose of this interview was to clarify some entries in Hartwell’s notes in light of other interviews that had been conducted. We asked Hartwell directly about the following entries in his notes, and his responses are summarized below:

- **“talks about LDS Churchnot inclusive.”** Hartwell did not specifically recall Pres. Cockett making this comment. He later said that he did not remember any student athlete saying it, and that if he wrote it down, someone would have said it. Hartwell noted that if Pres. Cockett made such comments, it would have been in the context of whether students from outside Utah students integrate comfortably into the local community.
- **“Religious Diversity.”** Hartwell cannot recall Pres. Cockett using this phrase, but again said that if he wrote it down, someone said it during the meeting.

¹ Because the matter involving the Athletic Department employee was referenced in the Poll, we collected information from witnesses about the incident, as explained below. However, we did not investigate this incident or what actions the University took in response any further.

² We confirmed that there had been no anonymous complaints from the football team submitted through Real Response in 2019 or 2020.

- “**interesting place to live.**” Hartwell recalls Pres. Cockett making this statement. She may have said “unique” or something similar. It was not said in a negative or derogatory way, but simply in recognition that Logan/Cache Valley is different from where some of the athletes had come.

In addition, we asked Hartwell about any reference to Coach Maile’s Polynesian heritage, including use of the term “Poly.” We specifically asked if Pres. Cockett had used the term “Poly” and then asked others whether that term was appropriate. Hartwell did not recall such comments, but said Polynesian heritage might have been discussed during the meeting. He noted that the term “Poly” is used among the athletes. Finally, we asked Hartwell about statements about the University hiring a local person or “true blooded Aggie” as a coach and it “not working out.” Hartwell recalled discussion by participants in the meeting about Coach Maile being a “true blooded Aggie,” or terms to that effect, but did not recall a statement about such hires not working out.

b. Pres. Noelle Cockett Interview

We interviewed Pres. Noelle Cockett via Microsoft Teams at 9:00 a.m. on December 22, 2020. During that interview, we described the scope and purpose of the investigation and the roles of counsel. We discussed efforts undertaken to protect player anonymity and discussed avoidance of retaliation. We conducted a follow-up interview at 8:30 a.m. on December 31, 2020 via Zoom. Pres. Cockett was cooperative during the interviews.

Pres. Cockett first became aware of the football team’s interest in a meeting when she received a text message from team member [REDACTED]. [REDACTED] text indicated that the team wished to discuss the “future of this football program.” Pres. Cockett responded approximately two and a half hours later that she would “[m]ost definitely” like to hear from the team and asked if Athletic Director John Hartwell could join. [REDACTED] agreed that Hartwell could join. [REDACTED] and Pres. Cockett corresponded via text again on Monday, December 7, 2020 to finalize arrangements for a Zoom meeting. Pres. Cockett’s staff then scheduled a Zoom meeting and circulated a Zoom link via email to [REDACTED]. The Zoom link was apparently shared with other student athletes and ultimately, the Zoom meeting convened at 5:46 p.m. on December 8, 2020.

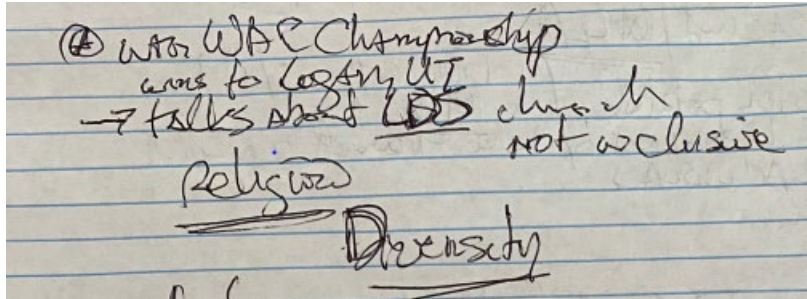
Pres. Cockett said that at the onset of the meeting she did not know what the athlete’s specific agenda was. She was under the impression the meeting would be about the difficulties the athletes experienced during 2020 with respect to the COVID-19 pandemic and Coach Gary Andersen’s departure from the program. [REDACTED] began the meeting by introducing several other athletes who spoke about their support for Coach Maile and advocated that Coach Maile be selected as USU’s new football coach. At the time, USU was recruiting a coach to replace the departed Coach Andersen. After the fourth athlete spoke in favor of Coach

Maile, Pres. Cockett said she realized the meeting was about the athletes' support for Coach Maile's application for the USU head football coach position.

After approximately four athletes had spoken about their support for Coach Maile, Pres. Cockett asked what the group wanted to do, to which [REDACTED] responded that they could proceed however Pres. Cockett wished. Pres. Cockett said she wanted to talk about how the players were doing. During the investigation interview, Pres. Cockett said that there were things that she had experienced that she wanted to talk about with the athletes. So, she explained that during the Zoom meeting she remarked that "it could be a little different and a little tough to live here." Pres. Cockett's statement in this regard is generally consistent with Hartwell's notes, inasmuch as Hartwell indicated that his notes state that Pres. Cockett said that Logan is an "interesting place to live." When asked to explain what she meant by this remark, Pres. Cockett said that she had lived in Utah for 30 years and that 30 years ago, Utah could be "insular." Nowadays, Pres. Cockett said that the Cache Valley community has "limited diversity" that creates issues for some. For example, members of a university diversity committee had recently reported to Pres. Cockett that they were "scared" by recent "Trump parades" in the area and that one committee member was recently the subject of a racial slur while off campus. In addition, according to Pres. Cockett, some USU athletes must make adjustments to living in Cache Valley, where social norms regarding, for example, sexual activity and alcohol may require an adjustment. As another example, Pres. Cockett reported that some USU athletes of color are discouraged by the fact that people perceive that because they are persons of color, they must be athletes. Pres. Cockett explained in her interview that because of these issues, USU recently adopted an inclusion program.

Pres. Cockett suggested the program provided some foundation for her remarks about the area being "a little different and a little tough" After the interview, Pres. Cockett provided the Law Firms a document entitled "Proposal for Legal, Professional and Cultural Education for Incoming Student Athletes." The document states that "[o]ne of the most difficult things for incoming student athletes from outside of Utah is to adjust to the cultural changes associated with living in a predominantly white, rural, conservative and religious culture." The proposal, according to Pres. Cockett, led to the 2019 adoption of a program called Reaching our Capacity (the "ROC Program"). The program, developed by a retired Utah judge, among others, was put in place "to help our Aggies have the information and tools to optimize their opportunity at Utah State." The ROC Program states that "Cache Valley has as unique culture and can create unseen barriers. Former student-athlete Jontrell Rocquemore identified some of the barriers he faced coming to Utah State[,] such as a difference in culture (LDS religion, lack of diversity), laws regarding substances; how to advocate for himself; and how to balance his busy schedule and mental health.")

Hartwell's notes of the Zoom meeting include the following reference:



When questioned about Hartwell's notes during her December 31 interview, Pres. Cockett denied that she said that the LDS Church is not inclusive. "I would never say that about members of the Church of Jesus Christ of Latter-day Saints," she said. Instead, she said "I talked about Cache Valley not being inclusive." She provided further context for this observation by noting that the demographics of the rural, Cache Valley area are predominately white and LDS. She went on to observe that there is nothing wrong with that demographic, but that that ratio meant that USU had to work hard to make others feel included in the community. To the extent she used the term "religious diversity," the phrase referenced in Hartwell's notes, Pres. Cockett said it would have been in the context of explaining the demographics of Cache Valley, which causes some students to struggle with feeling included and welcomed. Pres. Cockett explained that her conclusion that some student athletes struggle with their experience in Cache Valley is verified by a 2019 climate survey that demonstrated USU students have a higher concern about diversity than other students at universities around the nation. She also explained that she has in the past openly discussed with local leaders of the Church of Jesus Christ of Latter-day Saints the question of how to better connect non-members with members. Pres. Cockett emphasized that having open discussions about inclusion is appropriate.

During the Zoom meeting, and after Pres. Cockett told the athletes she wanted to talk about how they were doing, the athletes continued to discuss their support for Coach Maile. Sometimes, Pres. Cockett called on athletes, a process she managed by viewing the Zoom screen and looking for individuals who looked engaged. She would call on individuals and ask them where they were from; Pres. Cockett said she likes to know where people are from and often asks this question of students. Generally, athletes who spoke praised Coach Maile as a father figure and someone who was a strong mentor for athletes.

One athlete, according to Pres. Cockett, spoke and

Pres. Cockett stated that the athlete's reference to religion was the first time that anyone had raised the topic of religion during the meeting. Pres. Cockett denied being the first to discuss religion and denied asking athletes about their religious

affiliation. In fact, she stated that the only question she recalled asking was whether the team was interested in winning. In her December 22, 2020 interview, Pres. Cockett denied raising the topic of religion at all during the meeting. In her December 31, 2020 interview, she acknowledged generally discussing the topic of religious diversity during the Zoom meeting in the context of Cache Valley demographics.

We asked Pres. Cockett whether she said during the meeting that she had “concerns” about Coach Maile’s ability to recruit because he was a member of the Church of Jesus Christ of Latter-day Saints. She responded, “absolutely not.” When specifically questioned about the leadership council’s allegation in the Stadium report that she and Hartwell raised concerns about Coach Maile’s religious and cultural background, Pres. Cockett said “[t]hat is not an accurate statement,” explaining that the athletes never asked her opinion about Coach Maile.

In responding to questions about the Stadium report’s reference to Coach Maile’s religious and cultural background, Pres. Cockett volunteered that Coach Maile texted her in November, 2020, to schedule a meeting with her on an unannounced topic. Pres. Cockett agreed to the meeting, which they convened on November 23, 2020. At the meeting, it became clear to Pres. Cockett that Coach Maile had scheduled the meeting to promote his application for the head football coach position. Coach Maile explained his “three pillars” of recruiting, which Pres. Cockett said were, according to Coach Maile: “Utahns, Polynesians and missionaries.”³ Pres. Cockett said she understood these three pillars to mean that Coach Maile’s recruiting strategy would be heavily focused on Utahns, Polynesians and those serving missions for the Church of Jesus Christ of Latter-day Saints. Pres. Cockett said Coach Maile’s statement made here “a little worried he would not be inclusive in his recruitment strategy.” When asked if she expressed this concern during the Zoom meeting, Pres. Cockett denied doing so. However, when asked if, given that she had a personal concern about Coach Maile’s recruiting strategy, she may have vocalized that concern during the meeting, she acknowledged it was possible. She also denied using the term “religious diversity,” but said “it would have been inclusion.”

In her December 31, 2020 interview, we questioned Pres. Cockett further about this topic, given that she had previously acknowledged that she had personal concerns about Coach Maile’s recruiting strategy. She reported that during the Zoom meeting it became clear that Coach Maile had shared his recruiting strategy with some athletes because some athletes described it as a “great strategy.” In her second interview, Pres. Cockett said she still did not recall talking about Coach Maile’s recruiting strategy with the athletes, but that if she had done so, her focus would have been on “inclusion.” She went on to say that

³ In her December 31, 2020 interview, Pres. Cockett clarified that the term “three pillars” was Hartwell’s description of Coach Maile’s recruiting strategy and that Coach Maile used the term “blue print,” “game plan” or similar nomenclature during his November 23 discussion with her.

“if I did ask that, I don’t think that is wrong to ask,” repeating that Coach Maile’s three-pillars recruiting strategy was still “a little bit of a concern” to her. She added that she perceived her role as identifying and preventing discrimination and that her comments, if any, on the topic of Coach Maile’s recruiting strategy, would have been focused on that ideal. Pres. Cockett also reported that the athletes uniformly reported that Coach Maile was inclusive of all athletes.

She denied making reference to whether Coach Maile was Polynesian and she denied using the term “Poly.” In her December 31, 2020 interview, we questioned Pres. Cockett about this topic again, explaining that some athletes reported that she indeed use the term “Poly” and asked during the meeting if her use of the term was appropriate. Pres. Cockett again denied she used the term and recounted that one student described that he came from [REDACTED] Pres. Cockett said that she could “see herself” asking in the context of that part of the meeting whether the use of the term “Poly” was appropriate. But she denied using the term herself, indicating that she considered the term “slang” and that “[t]hat word does not come off my tongue.” She volunteered that her husband is Hawaiian.

Pres. Cockett denied discussing a timeline for hiring a new football coach with the athletes. She said that she was not involved in the recruiting process, which was led by Hartwell. Pres. Cockett said she was only expected to meet with the final candidate recommended by Hartwell.

After the Zoom meeting, Pres. Cockett spoke with Hartwell by phone. Pres. Cockett denied asking Hartwell if he had any concerns about what she said during the meeting. She denied that Hartwell highlighted any remarks she made as concerning or strange. Instead, she said the conversation she had with Hartwell about how positive she felt the meeting was.

In her December 22 interview, Pres. Cockett expressed genuine remorse that her remarks were negatively perceived. When the meeting ended, she “had absolutely no worries” and she was relieved that the athletes seemed to be doing well despite the effects of COVID-19 on the season and the departure of Coach Gary Andersen. She left the meeting “feeling like I had connected.” Notwithstanding her conclusion in this regard, she acknowledged that she was at “cross purposes” with the athletes because “I could not get them to help me help them,” and the athletes only wanted to talk about Coach Maile. Now that she has become aware of what she characterized as “anger” in the aftermath of the meeting, she said “I just want to say, that’s not my heart an that’s not my head,” explaining that she would not have made the remarks attributed to her.

In her December 31 interview, she elaborated on this theme, saying “I know for a fact that I did not say anything negative or derogatory about Frank.” She explained that the topic of inclusiveness may have arisen, but only in the context of her questions about the “well-being” of student athletes. She added that

while the Poll suggested athletes had concerns about the status of an Athletic Department employee and the departure of Gary Andersen, athletes did not raise these issues when she asked how they were doing; instead, they restricted their comments to their support for Coach Maile. Pres. Cockett said “[i]t’s been an incredibly sad time for me” when she perceived that her participation in the meeting was focused on the well-being of athletes and yet she was being accused of “doing the exact thing that I would never tolerate” from others. She also stated it would be “weird” if one could not discuss the Church of Jesus Christ of Latter-day Saints’ presence in the community or that fact that African Americans make up a small percentage of the Cache Valley community, saying “I don’t want to *not* talk about it. I’m going to talk about it.”

c. Athlete Interviews

We interviewed thirty athletes who gave, of course, varying accounts of comments made at the December 8 meeting. This section summarizes those interviews in an attempt to identify, to the extent possible, comments expressed during the Zoom meeting.

i. Coach Maile’s Cultural Background

The student athletes used the term “culture” in many different ways. Some used the term in a very general and vague way to describe or identify the culture in the state of Utah or in Cache Valley. Others used the term to describe the Church of Jesus Christ of Latter-day Saints. Of the thirty student athletes who were interviewed, sixteen recalled specific references to “Polynesian” or “Poly” or offered comments regarding Coach Maile’s Polynesian heritage. Of these student athletes, six recalled either direct statements or, in the case of one student athlete, implications that Coach Maile’s Polynesian heritage created “concerns.” Four of these six student athletes recall Pres. Cockett raising concerns about how Coach Maile’s Polynesian heritage would impact his ability to recruit. One of the student athletes recalled unspecified concerns being raised by Pres. Cockett and another student athlete recalled Pres. Cockett referencing Coach Maile’s Polynesian heritage and alluding to concerns about how that may impact his ability to create an inclusive environment. Two of these six student athletes also recalled Pres. Cockett using the term “Poly” and asking the students whether it was “okay” for her to use the term “Poly.”

Another five of the sixteen students who recalled reference to or the use of the term “Polynesian” were more equivocal. Of these five student athletes, one recalled Pres. Cockett referencing both Coach Maile’s religious and Polynesian identity, but stated that “being ‘LDS’ was a bigger focus of her comments.” Another student athlete recalled only a reference to Coach Maile’s Polynesian heritage and said it “seemed strange and disrespectful,” but this student athlete did not recall any specific links between this reference and any “concerns.” A third student athlete recalled Pres. Cockett using the term “Poly,” but could not recall

any concerns being raised about Coach Maile's Polynesian heritage. A fourth student athlete recalled that Pres. Cockett's comments "alluded to concerns about Frank Maile being . . . 'Poly,'" but believed her comments "seemed to be centered around Frank Maile's religious beliefs" and how that could make some out-of-state recruits feel "uncomfortable" or "intimidated."

The remaining five student athletes among the sixteen who recalled Pres. Cockett referencing or alluding to Coach Maile's Polynesian ethnicity were dismissive. Two of these five student athletes had vague memories of a reference to Polynesians, but one could not recall any details of how the term was used and another stated it was used in reference to Coach Maile's ability to recruit Polynesians. Two other student athletes vaguely recall a reference to Polynesians, but stated that the term was not used in a "negative" way. A final student athlete recalled the reference to Coach Maile's Polynesian heritage and admitted that some of his teammates took the comments as discriminatory, but this student athlete who self-identified as Polynesian stated, "It didn't offend me and I know she didn't mean it that way."

ii. Coach Maile's Religious Background

Twenty six of the thirty student athletes interviewed recalled references by Pres. Cockett about either hiring a coach who is a member of the Church of Jesus Christ of Latter-day Saints or Coach Maile's membership in the Church of Jesus Christ of Latter-day Saints. Fifteen of those student athletes recalled an express or implied concern about how Coach Maile's religious affiliation would impact recruiting. Some of these fifteen athletes characterized these concerns as being related directly to Coach Maile with statements like, "[she] was concerned about how being a member of the church would affect recruiting" and "Pres. Cockett was unsure if Coach Maile would be able to recruit or connect with student athletes that were not LDS or Polynesian." The other athletes who recalled concerns about recruiting were more general and characterized the comments with statements like, "I don't recall a concern about recruiting being explicitly brought up, but [Pres. Cockett] implied that was what the concern was about" or "she said [USU] wanted to recruit from a diverse group and she had these concerns" or "she asked a question about how recruits from out-of-state or who were not members of the church would feel at Utah State."

A similar number of student athletes recalled either express or implied "concerns" raised by Pres. Cockett about how Coach Maile's religious identity could impact inclusivity, welcomeness or the ability of the coaching staff to "connect" with student athletes. Many of these student athletes were the same student athletes who identified concerns about the impact of Coach Maile's religion on recruiting. The concerns about inclusivity were interesting, because most of the student athletes who recalled this concern interpreted Pres. Cockett's comments as a general concern about the religious homogeneity in Cache Valley. Student athletes characterized these comments in various ways, including "the

culture change of coming to Utah” and “making sure Utah State is a place that is comfortable for everybody.”⁴ The connection of many of Pres. Cockett’s comments to Coach Maile tended to be by implication. In other words, larger concerns about “LDS culture” often seemed to be applied by implication to Coach Maile by the student athletes in the context of the conversation and based on their knowledge of Coach Maile’s religion. Only three of the student athletes characterized concerns about inclusivity with statements that specifically tied the concerns to Coach Maile’s religion. For example, these student athletes characterized their recollections by stating, “she asked about Coach Maile being a member of the church and said he was not a good fit.” Another student athlete recalled Pres. Cockett questioning how she would “explain that the coach is LDS . . . and . . . how Maile was supposed to relate to out-of-state people.”

In summary, many student athletes recalled that Pres. Cockett at least made reference to religion, including concerns about religious homogeneity in Cache Valley and how that would impact inclusivity. Most seemed to interpret her comments to refer directly or indirectly to Coach Maile. However, we could not clearly establish from the interviews whether Pres. Cockett raised specific concerns about whether Coach Maile’s religious identity would disqualify him as a coach.

iii. The Poll

The Poll revealed athlete responses about the departed Athletic Department employee. Accordingly, although not within the contemplated scope of the investigation, the Law Firms prepared a series of questions in the event student athletes voluntarily referenced the employee. During the investigation, ten student athletes made references to that employee. None of the student athletes who referenced this incident personally witnessed the matter, but it is clear that this is a subject that was discussed by the team in meetings that occurred after the December 8 Zoom meeting. Student athletes who volunteered comments about the incident were of the opinion that it was initially “swept under the rug” and that the incident was something the “program has not seemed to care about.” Others mentioned how the employee never apologized for his actions and they expressed anger because Hartwell failed to meet personally with the players after the incident was investigated by outside counsel. Some student athletes also referenced an offensive text message by a former player and expressed their view that the issue was not adequately investigated or appropriately dealt with. Finally,

⁴ Interestingly, four student athletes used the word “inclusive,” but appear to have misused the word in a way that, in context, would actually mean the opposite. For example, one student athlete remembered Pres. Cockett questioning whether out-of-state recruits would be comfortable at Utah State when “Logan can feel like a very inclusive environment and . . . the LDS community can cause an inclusive environment.” Another student athlete remembered Pres. Cockett stating that the “LDS community is very inclusive,” but the same student athlete appeared to be implying the opposite based on a follow-up statement in which the student athlete alleged that Pres. Cockett said, “they’ve gone with a true-blooded Aggie before” and suggested that decision did not work well.

some mentioned a rumor that the Athletic Department employee was returning to the facility in January 2021. These players expressed frustration with this decision and one student athlete stated that this rumor “pissed a lot of people off.”

While most of the student athletes recounted the December 8 meeting in a very professional and unemotional manner, those student athletes that recalled the incident involving the Athletic Department employee or the offensive text incident were much more emotional and irritated. The investigation revealed that these incidents likely influenced the way some student athletes interpreted and characterized the December 8 Zoom meeting during the meetings that took place in the days after the Zoom meeting. For example, while discussing the Athletic Department employee, one student athlete stated that he did “not believe Pres. Cockett meant to be derogatory or do harm, but her tone was disrespectful and it brought up past discrimination issues.” Based on the inclusion of the incident involving the Athletic Department employee in the Poll and the un-solicited comments from the student athletes about that incident and the offensive text, it appears that the student athletes generally feel that these issues remained unresolved.

V. **Reconciliation of Facts**

The investigation revealed that the athletes met together as a team on at least two occasions after the December 8 Zoom meeting for extended discussions regarding their perceptions of and thoughts about the Zoom meeting. These team meetings occurred on December 9 and again on the morning of December 10. Many athletes also spoke in smaller groups. While the athletes generally seemed to be genuine and truthful in their meetings with investigators, it appears that the post-Zoom discussions may have had some impact on the athletes’ perception of the meetings as evidenced by some remarkable consistencies. While many of the athletes expressed confidence in their recollection of the meeting, the effect of these post-meeting discussions raises questions about those recollections.

- The Article states that Pres. Cockett and Hartwell’s “primary concern was [Coach Maile’s] religious and cultural background.” Our investigation did not confirm this broad allegation. Pres. Cockett admitted having personal concerns about Coach Maile’s recruiting strategy, as he described it to her, and whether it was sufficiently inclusive. While she denies expressing criticism of Coach Maile or concerns about his personal religious or ethnic background, she concedes it is possible she vocalized her concerns about Coach Maile’s recruiting strategy. As noted above, approximately half the athletes interviewed recalled either an expressed or implied concern about how Coach Maile’s religion would impact recruiting. Many students said that comments made by many players during the meeting addressing Coach Maile’s inclusive approach were in response to the concerns they perceived Pres, Cockett expressed.

- We could not confirm that Pres. Cockett used the term “Poly” or made discriminatory remarks about Coach Maile’s cultural background or ethnicity. Although some student athletes mentioned such comments, including very specific usage of and questions about the term “Poly,” many did not. Moreover, neither Hartwell nor Pres. Cockett remember her using these terms.
- As discussed above, Hartwell’s notes suggest that Pres. Cockett made reference to the Church of Jesus Christ of Latter-day-Saints and that in connection with this comment, she also discussed the topic of “inclusiveness.” While Hartwell explained he could not remember who specifically made this remark, he stated that he would not have written the phrase down if someone had not said it, and that it was not athlete who said it. Thus, it is likely that Pres. Cockett made reference to the Church of Jesus Christ of Latter-day-Saints. It is less clear whether she said the Church was “not inclusive.” Pres. Cockett vehemently denies making such a statement, instead stating that she said that Cache Valley was not inclusive. As further context for this remark, Pres. Cockett explained that this was not meant as negative statement, but reflected the challenges some out-of-state students might face in integrating into a rural community that was relatively homogenous with respect to race and religion.

VI. Conclusion

This is an instance where we are forced to reconcile very different accounts of the same conversation from parties who all seem to have provided honest and genuine responses to our questions. Unfortunately, because there is no recording of the meeting and a very limited written record, our investigation depends upon the after-the-fact impressions of the participants. While this task is almost always daunting, three factors further complicate the process in this instance. First, our investigation made clear that the primary parties to the conversation – the athletes and Pres. Cockett – had very different understandings of the purpose of the meeting that colored their impressions and interpretations of what was said, especially by Pres. Cockett. Second, a significant number of players attended the meeting with strong feelings about what they viewed as recent incidents of discrimination unrelated to Coach Maile but, in their view, not appropriately addressed by the University. While there is no evidence that these past allegations of discrimination were discussed during the Zoom meeting, the investigation revealed these incidents strongly influenced the interpretations and impressions of the athletes when they met as a team and in small groups in the days following the Zoom meeting. Finally, before any interviews occurred with the players, they held at least two team meetings during which nearly all the players expressed their opinions, impressions and conclusions of the December 8 meeting. This may be one explanation for the propensity of athletes we interviewed to characterize the December 8 Zoom meeting in what were

sometimes remarkably consistent ways, despite the inability of most athletes to provide specific language or statements.

With this context in mind, it is clear that Pres. Cockett and the players started the meeting intent on discussing two different topics. The athletes wished to campaign for Coach Maile to be hired as the next head coach at Utah State University; Pres. Cockett wanted to discuss the athletes' well-being. Top of mind for Pres. Cockett was her genuine concern that USU meet its goal of being an inclusive environment for all, a concern informed by the fact that Pres. Cockett perceives the local area as a unique community where some athletes might not feel included. During the Zoom meeting Pres. Cockett described Logan and Cache Valley as unique communities that can sometimes seem to not be inclusive to outsiders. Because the athletes were focused on expressing their support for Coach Maile, we conclude that it is likely they understandably interpreted Pres. Cockett's comments as a criticism of or commentary on Coach Maile, which triggered a number of athletes to defend Coach Maile as being inclusive and supportive of athletes regardless of their religious background. Pres. Cockett acknowledged to us during the investigation that she had a personal concern that Coach Maile may not be inclusive in his recruiting efforts, given the three-pronged recruiting strategy he articulated in his private meeting with Pres. Cockett. Thus it is likely that during the meeting, Pres. Cockett may have questioned to herself whether Coach Maile would meet her standards for inclusiveness, and perhaps vocalized this concern during the meeting to some extent.

We conclude that neither Pres. Cockett nor Hartwell expressly stated that their "primary concern" about Coach Maile was his religious or cultural background, nor that his background would disqualify him as a coaching candidate. Instead, we conclude that the inclusivity concerns raised by Pres. Cockett were designed to promote a discussion with athletes about the degree to which they felt included and welcomed at Utah State. Unfortunately, likely due to some of the complicating factors expressed above, Pres. Cockett's intent was not effectively communicated to or understood by the athletes, who genuinely felt that Pres. Cockett's general concerns about inclusivity expressed or implied reservations about Coach Maile.

We could not confirm that Pres. Cockett used the term Poly. To the extent such a remark was made, most athletes stated that they did not believe Pres. Cockett spoke with racially discriminatory animus. Instead, the athletes' primary concern focused on Pres. Cockett's comments about religion, a topic that Pres. Cockett appears to have addressed in the context of expressing her desire that USU be inclusive with respect to religious background.