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FORMER HEAD MEN'S BASKETBALL COACH, UNIVERSITY OF MINNESOTA, TWIN CITIES PUBLIC INFRACTIONS APPEALS COMMITTEE REPORT

INDIANAPOLIS, INDIANA--This report is filed in accordance with NCAA Bylaw 32.11 and is organized as follows:

I. INTRODUCTION.

This appeal by the former head men's basketball coach at the University of Minnesota, Twin Cities (hereinafter referred to as Minnesota) requested the NCAA Division I Infractions Appeals Committee overturn all of the findings and vacate the penalties levied against him by the NCAA Division I Committee on Infractions. In this report, the Infractions Appeals Committee addresses the issues raised by the former head men's basketball coach (hereinafter referred to as head coach or former head coach).

II. BACKGROUND.

On October 24, 2000, the Committee on Infractions issued Infractions Report No. 176 in which the committee found violations of NCAA legislation in Minnesota's men's basketball program. On the basis of those findings, the Committee on Infractions determined that this was a major infractions case and imposed penalties accordingly. [Reference: November 6, 2000, edition of the *NCAA News*, page 11.]

This case primarily involved the men's basketball program at Minnesota and involved violations of NCAA bylaws governing academic fraud, extra benefits, academic eligibility, unethical conduct and lack of institutional control. The case centered around three individuals, one of whom was the former head coach, whose actions resulted in the violations found by the Committee on Infractions. There were also secondary violations in several sports programs at the university.

After the Committee on Infractions issued its report, the former head coach filed a timely Notice of Appeal on November 6, 2000, and his written appeal on December 6, 2000. The Committee on Infractions filed its response on January 11, 2001. The former head coach filed a rebuttal to the Committee on Infractions Response on January 29, 2001.

III. VIOLATIONS OF NCAA LEGISLATION AS DETERMINED BY THE COMMITTEE ON INFRACTIONS.

II-A. ACADEMIC FRAUD; UNETHICAL CONDUCT; PROVISION OF EXTRA BENEFITS. [NCAA Bylaws 10.1-(b), 10.1-(c), 16.02.3, 16.3.3-(a) and 16.12.2.1]

From 1994 to 1998, the secretary violated the NCAA Principles of Ethical Conduct when she prepared numerous pieces of course work for at least 18 men's basketball student-athletes. The course work performed by the secretary included typing, composing theme papers, completing homework assignments and preparing take-home exams. Her involvement with the course work preparation was arranged primarily by the academic counselor, who identified for the secretary the student-athletes with whom she worked during study hall sessions or at her home and was aware of the improper assistance provided by her. Further, the head coach knew of the secretary's preparation of course work on behalf of the student-athletes identified by the academic counselor. The head coach also knew that her work constituted academic fraud. Finally, as a result of this academic fraud, the men's basketball team competed with ineligible student-athletes in each year from 1994 through 1999.

II-C. ACADEMIC FRAUD; UNETHICAL CONDUCT; PROVISION OF EXTRA BENEFITS. [NCAA Bylaws 10.1-(b), 10.1-(c), 16.02.3, 16.3.3-(a) and 16.12.2.1]

In the fall of 1995, impermissible academic assistance was provided to men's basketball student-athletes G and O. Further, the academic counselor and the head coach were told that assistance had been provided to student-athlete G. Specifically:

1. In late October or early November 1995 a candidate for a job tutoring men's basketball student-athletes met with the academic counselor at his office during a study hall session. As part of the

interview process, the prospective tutor helped student-athlete G with his homework. The prospective tutor did the assignment herself after concluding that the young man was incapable of doing it. Immediately following the session the prospective tutor met with the academic counselor and the head coach and told them she had written the assignment but would be unwilling to write another paper for a student-athlete. The prospective tutor was not hired.

II-M. PROVISION OF EXTRA BENEFITS. [NCAA Bylaws 16.02.3 and 16.12.2]

From the 1994-95 through the 1998-99 academic years, members of the men's basketball coaching staff, arranged for the parents and friends of men's basketball student-athletes A, B, E, G and V to stay at a local Ramada Plaza Hotel (until August 1986 a Radisson Hotel) at the substantially discounted rate of approximately $30 per night. [Note: The September 1999 minimum daily room rate was $79 and the maximum daily rate was $139.] The head coach arranged a standing rate with the hotel's general manager and administrative assistant. The student-athletes or their parents were required to make their own reservations.

II-N. RECRUITING INDUCEMENTS. [NCAA Bylaws 13.01.6, 13.02.12, 13.1.1, 13.1.2.1, 13.1.2.3-(h), 13.2.1 and 13.2.4]

During the 1995-96 academic year, the head coach and two representatives of the university's athletics interests provided recruiting inducements to a men's basketball prospective student-athlete. Specifically:

1. During the 1995-96 academic year, and while the prospective student-athlete was a junior in high school, the head coach entertained him at dinner at the coach's home. The dinner was also attended by several members of the men's basketball team.

II-O. PROVISION OF EXTRA BENEFITS; UNETHICAL CONDUCT. [NCAA Bylaws 10.1-(c), 16.02.3 and 16.12.2.1]

On several occasions during the 1995-96 and 1996-97 academic years, the head coach provided cash to men's basketball student-athletes B and M. In addition, student-athlete A received money from a member of the men's basketball coaching staff. Specifically:

1. At a meeting in the head coach's office during the 1997 Christmas holiday, the head coach gave student-athlete B $200 because his wallet had been stolen.

2. In the summer of 1995 the head coach gave student-athlete M $220 to pay his rent. Further, on several occasions during the

1995-96 and 1996-97 academic years the head coach gave the student-athlete $100 to $200.

3. In December 1996 a member of the men's basketball coaching staff gave student-athlete A at least $200.

II-P. VIOLATION OF SUPPLEMENTAL PAY PROVISIONS. [NCAA Bylaws 11.3.1 and 11.3.2.2]

From 1993 to June 1999 the head coach paid a monthly car lease for the academic counselor without the knowledge of university administrators. The head coach began making these payments after the senior associate director of men's athletics denied his request to provide a courtesy car to the academic counselor.

II-Q. UNETHICAL CONDUCT. [NCAA Bylaws 10.01, 10.1-(c) and 10.1-(d)]

The head coach failed to deport himself in accordance with the generally recognized high standards normally associated with the conduct and administration of intercollegiate athletics and violated the principle of ethical conduct by: (1) committing the violations alleged against him in this report; (2) providing false and misleading information during interviews with the university and enforcement staff; and (3) directing the four men's basketball student-athletes named in the *Pioneer Press* to give false and misleading information to the university regarding their involvement in the academic fraud.

1. Regarding his involvement, the head coach knowingly committed the violations as set forth in findings II-A, II-C, II-O and II-P of this report.

2. Regarding his providing false and misleading information, the head coach was interviewed on June 22, 1999, by the university and on March 22, 2000, by the enforcement staff, an interview at which the coach's lawyer was present. At both interviews the head coach denied paying $3000 to the secretary in June 1998.

However, in his July 12, 2000, response to the letter of official inquiry, the head coach acknowledged that in June 1998 he wrote a personal check to "cash" for $3,000 and that, as noted on the check, the money was paid to the secretary. He also described cashing the check and giving the cash to

the academic counselor who gave the money to the secretary for tutoring student-athlete B during the 1998 spring quarter.

3. Regarding his instructions to student-athletes to provide false and misleading information, on March 10, 1999, while the men's basketball team was in Seattle to compete in the 1999 NCAA Division I Men's Basketball Championship, the head coach told the team that university representatives would be interviewing student-athletes B, C, K and M about course work allegedly prepared for them. The head coach then had a separate meeting with the four student-athletes and told them to say that they had done all of their own academic work and that the secretary had not prepared course work for them. He also told student-athlete B to deny being tutored by the secretary during the 1998 spring quarter, and that, if asked about going to her house, to say only that he went there for occasional dinners. During their Seattle interviews with university general counsel, the associate general counsel and the former associate director of athletics for compliance, the student-athletes denied that the secretary prepared course work for them. Further, student-athlete B denied that he ever had been to the secretary's house.

SECONDARY VIOLATION [NCAA BYLAWS 16.02.3, 16.12.2.1]

The following secondary violation which involved the former head coach was reported:

In June 1996, the head coach gave a basketball to student-athlete A for his friend as thanks for transporting student-athlete A from his home to the university for summer enrollment. [NCAA Bylaws 16.02.3 and 16.12.2.1]

IV. PENALTIES IMPOSED BY THE COMMITTEE ON INFRACTIONS.

The Committee on Infractions imposed additional penalties because of the seriousness of the violations and "because they involved the active complicity of the head coach and because they involved a men's basketball program for which the university previously had been cited for a failure of institutional control." The penalties in which the former head coach were cited are:

III-B-6. Regarding the 1994, 1995 and 1997 NCAA Division I Men's Basketball Tournaments, and the 1996 and 1998 National Invitational Tournaments (NIT), and pursuant to NCAA Bylaw 19.6.2.2-(e)-(2), the university will vacate its team record as well as the individual records of any student-athlete who engaged in academic fraud as set forth in this report. Further, the university's records regarding men's basketball as well as the record of the former head coach will be reconfigured to reflect the vacated records and so recorded in all publications in which men's basketball records for the 1993-94 through the 1998-99 seasons are reported, including, but not limited to university media guides and recruiting material and university and NCAA archives. Further, any public reference to tournament performances won during this time shall be removed, including, but not limited to, athletics department stationery and banners displayed in public areas such as the arena in which the men's basketball team competes.

III-B-7. The former head coach and the former academic advisor will be informed in writing by the NCAA that, due to their involvement in certain violations of NCAA legislation found in this case, if they seek employment or affiliation in an athletically-related position at an NCAA member institution during a seven-year period (October 24, 2000, to October 23, 2007), they and any involved institution shall be requested to appear before the Committee on Infractions to consider whether the member institution(s) should be subject to the show-cause procedures of Bylaw 19.6.2.2-(l), which could limit athletically-related duties of the head coach and academic advisor at any such institution for a designated period.

V. ISSUES RAISED ON APPEAL.

In his written appeal, the former head coach asserts that the findings of violations against him be set aside because the committee's findings are clearly contrary to the evidence presented to the committee; the facts found by the committee do not constitute a violation of the Associations rules; and that several procedural errors affected the reliability of the information that was utilized to support the committee's findings. (NCAA Bylaw 32.10.2) He further requests that the penalties be vacated because they are excessive and inappropriate.

VI. APPELLATE PROCEDURE.

In considering the appeal of the former head coach, the Infractions Appeals Committee reviewed the appellant's Notice of Appeal; the transcript of the August 11, 2000, hearing before the Committee on Infractions; and the several

submissions by the former head coach and the Committee on Infractions referred to in Section II of this report.

The appeal was submitted on the written record in accordance with procedures adopted by the Infractions Appeals Committee pursuant to NCAA legislation. The appeal was considered by the Infractions Appeals Committee on February 8, 2001 in Chicago, Illinois.

The chair of the Infractions Appeals Committee recused himself from this matter after the notices of appeal were filed because he represented the University of Minnesota in an earlier infractions case while a partner in the law firm which currently represents the institution. In addition, another member of the Infractions Appeals Committee recused himself from this matter due to his past service as the Faculty Athletic Representative at the University of Minnesota. Neither member took any part in the consideration or decision of the appeal. In the absence of the chair, the Infractions Appeals Committee was chaired by another member.

VII. INFRACTIONS APPEALS COMMITTEE'S RESOLUTION OF THE ISSUES RAISED ON APPEAL

In this appeal the Infractions Appeals Committee is faced with a number of issues. These issues may be divided into two major categories: A. Whether the Committee on Infraction's findings of violations should be set aside; and B. Whether the penalties imposed by the committee are excessive or inappropriate and should be set aside.

A. Whether the Committee on Infraction's Findings of Violations Should be Set Aside.

Bylaw 32.10.2 provides that:

A finding of violation by the Committee on Infractions may be set aside on appeal only if the Infractions Appeals Committee determines that:

1. The finding is clearly contrary to the evidence presented to the committee;

2. The facts found do not constitute a violation; or

3. A procedural error affected the reliability of the information that was used to support the finding.

There are really four general issues raised by the former head coach on appeal in his effort to support his position that findings of violations by the Committee on Infractions should be set aside:

1. Whether alleged procedural errors in the investigation and the decision by the Committee on Infractions adversely affected the former head coach's rights;

2. Whether the evidence was sufficient to sustain the findings on issues of academic integrity by the Committee on Infractions;

3. Whether the evidence was sufficient to sustain the findings on issues of unethical conduct by the Committee on Infractions; and

4. Whether the evidence was sufficient to sustain the findings on other issues by the Committee on Infractions. Each of these issues will be dealt with in this section of our opinion.

1. Procedural Matters

The former head coach raises the issue of whether alleged procedural errors in the investigation and the decision by the Committee on Infractions adversely affected his rights. In resolving this issue, we begin by addressing the former head coach's allegations that certain aspects of the investigation and the hearing before the Committee on Infractions significantly prejudiced his rights.

a. Access to pertinent documents during the investigation.

The former head coach alleges that the NCAA failed to comply with its own bylaws by failing to produce certain documents - chiefly, transcripts and audio tapes of witness interviews - in a timely fashion prior to the Committee on Infractions hearing. Bylaw 32.5.4 provides, in pertinent part, that, "within 30 days following the filing of an official inquiry in an infractions case, the enforcement staff shall make available to the member institution and to the involved individuals reasonable access to all pertinent evidentiary materials, including tape recordings of interviews and documents, upon which the inquiry is based."

At the outset, we note that the former head coach alleges no specific prejudice and we perceive none. Simply to say, for example, as the former head coach does that certain statements were provided to him "just four days" before his response was due to the Committee on Infractions is insufficient. For us to find a violation of Bylaw 32.5.4, we must conclude that former head coach was denied "reasonable access" to these materials. A respondent in former head coach's position has the burden of showing that he was denied reasonable access. If, for example, a respondent could show that he first received the statement of a witness four days before his response was due, that the witness's statement or involvement was pertinent to the charges or defenses, that the respondent was unable to communicate with the witness in a meaningful way before the response

was due, that a timely request for a delay in filing his response was made and denied, and that as a result the respondent was actually unable to present certain pertinent information to the Committee on Infractions, we would be in a position to decide whether the respondent was in fact denied reasonable access to the materials described in the bylaw. The former head coach attempts no such showing here, and thus we conclude that he was not denied the reasonable access guaranteed by Bylaw 32.5.4.

b. Contact between the NCAA and federal law enforcement authorities.

The former head coach devotes a considerable portion of his rebuttal to an allegation that a member of the enforcement staff spoke to an attorney in the U.S. Department of Justice and several FBI agents on February 28, 2000, in reference to possible federal law enforcement interest in the allegations of impropriety in the University of Minnesota basketball program. The former head coach contends that he "just recently discovered" an internal NCAA memorandum of this conversation and that he was prejudiced in that he "should have been allowed to delay" the Committee on Infractions hearing, which was held on August 11, 2000 "pending the completion of the federal investigation."

There are several difficulties with this contention. First, it is made for the first time in the former head coach's rebuttal, filed on January 29, 2001, ten days before the Infractions Appeals Committee met to consider this appeal, and there is no showing of when the former head coach first learned of this February 28, 2000 conversation. The former head coach's contention that he "just recently discovered" the memorandum is vague. It also does not address whether he was aware of the substance of the contact apart from the memorandum itself. We note that the former head coach's attorney was well aware of federal interest in these events prior to the hearing by the Committee on Infractions: on July 31, 2000 his attorney notified the Director of the Committee on Infractions that the former head coach would not appear at the August 11 hearing "based on a pending federal criminal investigation."

Even if we give the former head coach the benefit of the doubt on both of these points, he has not met the new evidence requirement. In order for new evidence to be considered on appeal, it must not only be "evidence that could not reasonably be ascertained" prior to the hearing by the Committee on Infractions (Bylaw 19.02.3); it must also be "directly related to the findings in the case" (Bylaw 32.10.7). The former head coach has not shown how this conversation is related, directly or indirectly, to any of the findings of the case.

[We note that the memorandum appears simply to have recorded an exploratory inquiry from the Department of Justice (hereinafter "DOJ") and the FBI "about the scope of the case and about the time frame of the investigative staff's investigation." According to the memorandum, the DOJ attorney gave "some indication that the Justice Department was seriously considering an investigation." Considering the extensive publicity surrounding these events (which were first disclosed nearly a year earlier in the St. Paul *Pioneer-Press*), the fact that federal authorities expressed a general interest in the NCAA's investigation and some inclination to investigate for themselves seems to us neither

surprising nor especially significant. To date, we are not aware that there has been any formal action by the Justice Department nor, for that matter, any other public agency.]

We have in the past made an exception to these standards when the alleged new evidence was not made available to the Committee on Infractions and the material was both "directly related to the findings of the case" and "[could] be considered favorable" to the respondent. [*See* Baylor University, May 20, 1996, at 8.] Even assuming here, however, that the memorandum itself was not made known to the Committee on Infractions, it meets neither of the other two criteria. The fact that federal authorities may have had an interest in the events giving rise to these proceedings, and that they may have spoken to NCAA representatives about the NCAA investigation establishes very little. Indeed, the former head coach asserts only that this conversation, if earlier known, would have justified a delay in the hearing pending the conclusion of the federal investigation. But there is no indication that there was any formal federal investigation (e.g., a grand jury proceeding) and, more importantly, no showing of why, had there been, it would have demanded a delay in the Committee on Infraction's hearing. We perceive no prejudice or unfairness in the fact (if it is a fact) that the former head coach did not learn until after the Committee hearing that there had been incidental contact between the NCAA enforcement staff and law enforcement authorities on February 28, 2000.

c. Participation in the hearing by the former head coach's attorney alone.

On July 31, 2000, prior to the Committee on Infractions hearing, the former head coach's attorney notified the Committee on Infractions that the former head coach would not attend the hearings, but that his attorneys would. On August 1, 2000 the chair of the Committee on Infractions replied that the attorneys would not be allowed to attend the hearing unless they accompanied the former head coach. The former head coach now argues that this was error.

We disagree. Bylaw 32.7.4.1 states that institutional officials who have been requested to appear at a Committee on Infractions hearing "are expected to appear in person and may be accompanied by personal legal counsel." There is no provision for appearance by attorneys alone. In his appeal, the former head coach notes that Bylaw 32.7.2 allows "a member" to "have representatives appear" before the Committee on Infractions, and he argues that the same rule should apply to individuals. But this bylaw simply recognizes the obvious: an institution by its nature can "appear" only by sending representatives, such as its president or athletic director. There is no reason to apply this rationale to individual respondents.

If, as his attorneys said at the time, the former head coach was unwilling to appear at the hearing because of a pending criminal investigation (an indirect reference, we assume, to his unwillingness to risk that his testimony at the hearing might be used against him in a subsequent criminal proceeding), his proper course of conduct was to come to the hearing with his attorneys and then to invoke his concerns about self-incrimination in response to questions that might be put to him at the hearing. [Generally, courts have not read the Fifth Amendment as insulating individuals from adverse consequences if they refuse to

provide testimony in proceedings unrelated to law enforcement. *See, e.g.*, Baxter v. Palmigiano, 425 U.S. 308, 317-18, 96 S.Ct. 1551, 1557-58 (1976) and S.E.C. v. Graystone Nash, Inc., 25 F.3d 187 (3d Cir. 1994). We leave for another day the question of what actions, if any, the Committee on Infractions or the NCAA might properly take in such a situation.] We emphasize that we do not have occasion, in this case, to hold that an individual's right against self-incrimination justifies his refusal to answer questions put to him at a Committee on Infractions hearing; we hold only that his concern about possible self-incrimination does not warrant an exception to Bylaw 32.7.4.1 that would enable his attorneys to attend in his absence.

The former head coach argues that, had his attorneys attended in his absence, they would have been able to make opening and closing statements and to "discuss his response to the official inquiry" including the allegations, previously discussed here, about the production of documents. But his attorneys provided voluminous written arguments and briefs to both the Committee on Infractions and this committee, and a transcript of the Committee on Infractions hearing was promptly made available to him. We also note here that, while the bylaw states that individuals are "expected" to appear, the former head coach's refusal to appear at the Committee on Infractions hearing was not used adversely against him. Finally, the former head coach declined the opportunity to appear, with or without his attorneys, before the Infractions Appeals Committee.

2. Academic Integrity

The most serious charges against the former head coach are those that he knew of the secretary's fraudulent assistance to student-athletes. The findings of the Committee on Infractions bear repeating here:

"The numerous violations found by the committee are among the most serious academic fraud violations to come before it in the past 20 years. The violations were significant, widespread and intentional. More than that, their nature - academic fraud - undermined the bedrock foundation of a university and the operation of its intercollegiate athletics program. By purposeful acts of commission, and, through the absence of effective oversight, serious acts of omission, these violations damaged the academic integrity of the institution."

The Committee also found that the former head coach "knew of the secretary's preparation of course work on behalf of the student-athletes identified by the academic counselor. [He] also knew that her work constituted academic fraud." In support of its findings, the Committee on Infractions discussed at length the facts and circumstances that led it to conclude that the former head coach "knew and was complicit in" the fraudulent activities. These facts included the former head coach's payment of $3000 to the secretary (a payment he consistently denied making until he turned over a $3000 check used for the payment, at which point he "corrected" his earlier denials); the secretary's constant and open contact with student-athletes (including her attendance at study halls) of which the former head coach could not have been ignorant; her own admissions that she told the former head coach that she was assisting the student-athletes;

his caution to her that the papers she was writing "can't be too good"; his apology to her after a student-athlete had admitted to the associate director of athletics that she was giving him academic assistance; another student-athlete's statement that he told the former head coach that the secretary was working with him on course work; evidence that the secretary's assistance to student-athletes was common knowledge in the basketball program; and, evidence that the former head coach tightly controlled the academic counselor and indeed "all aspects of the men's basketball program." In addition, the Committee found that the secretary was generally credible, in that much of her information was independently corroborated by other evidence, and that the former head coach's credibility was undermined by his untruthful denials of payments to the secretary.

"When viewed collectively," the Committee on Infractions stated, "and linked together, the cumulative effect of the evidence evaluated by the committee leads inexorably to the very firm conclusion that the former head coach knew about and supported the activities of the secretary and academic counselor."

The former head coach's chief argument on appeal is that the Committee on Infractions erroneously based its findings on what the former head coach *should have* known rather than on what he actually knew. This error, he argues, violates Bylaw 10.1, which provides that unethical conduct consists among other things of "[k]nowing involvement" in academic fraud. He essentially argues that since there was no direct evidence of his "knowing" involvement in fraud, he should have been exonerated.

We disagree and uphold the Committee on Infractions' findings and conclusions. In doing so, we make the following observations:

a. The Committee on Infraction's standard.

It is clear from the Committee on Infractions' decision that it applied the subjective standard of the former head coach's actual knowledge and not the objective standard of what a head coach in the former head coach's position should have known. As noted above, the Committee concluded that the former head coach "knew of the secretary's preparation of course work" and "also knew that her work constituted academic fraud." It stated its "very firm conclusion" that the former head coach "knew about and supported" the illicit activities. At no point in its decision does the Committee on Infractions refer to what the former head coach "should have known."

b. The difference between an objective and a subjective standard proven.

At the heart of the former head coach's argument that the Committee on Infractions applied an objective "should have known" standard is his confusion between an objective standard and a subjective standard proven by indirect or circumstantial evidence. The applicable standard of knowledge that is an element of wrongdoing, and the means of proving that standard, are entirely separate matters.

"Knowingly" is a subjective standard, which requires that the individual actually have knowledge of the matters at issue. "Should have known" is an objective standard, that is, it considers what a person in the individual's position should have known based on all the facts and circumstances, whether the actual respondent knew it or not. The latter is the broader standard, and both standards are familiar in criminal and civil law.

Like any other element of an offense, the standard of knowledge - objective or subjective - must be proven. Proof can be by direct evidence, or by indirect (sometimes called "circumstantial") evidence. Direct evidence is that evidence that, in and of itself, demonstrates the requisite element. Indirect or circumstantial evidence is that evidence that properly justifies an inference that the element exists. For example, in a drunken driving case, direct evidence of intoxication would be the defendant's statement, "I am drunk" or a level of blood alcohol in excess of legal limits. Circumstantial evidence would be observations that the defendant drank a great deal before driving, was unsteady on his feet, slurred his speech and was unable to do simple tasks that sober people do easily. Circumstantial evidence is not inferior to direct evidence; it is simply a different kind.

c. The evidence in this case.

In this case, there was both direct and circumstantial evidence. The direct evidence consisted of the secretary's statements that she discussed with the former head coach her academic assistance, including fraudulent assistance such as the writing of papers for students, and that he warned her that her papers couldn't be "too good," and a student-athlete's statement that he likewise discussed with the former head coach the improper nature of the secretary's academic assistance. This evidence, if credible (and the Committee on Infractions found that it was), directly establishes the former head coach's knowledge of the academic fraud. The circumstantial evidence included the former head coach's payment, without satisfactory explanation, of $3000 to the secretary; the testimony that the coach tightly controlled the men's basketball program and that it was common knowledge in that program that the secretary was writing papers for students; the extensive and unconcealed contact between the secretary and the student-athletes, including her presence in study halls; and, the extended period (1994 to 1998) that this conduct covered. In appraising this evidence, both direct and circumstantial, the Committee on Infractions properly took into account its conclusion that the secretary was much more credible than the former head coach.

We agree with the Committee on Infractions that this evidence satisfactorily established, both directly and by permissible inference from the circumstances, the former head coach's knowing involvement in academic fraud.

d. An objective standard of knowledge of academic fraud.

Although it is not necessary for us to decide whether Bylaw 10.1 permits a finding of unethical conduct based on what a head coach should have known, we address that

question in light of the former head coach's argument that the bylaw does not allow it, and also because we think the question is an important one.

First, it is not at all clear that Bylaw 10.1 requires actual knowledge of academic fraud and thus precludes a finding of unethical conduct against an individual who should have known of fraud. The bylaw states that unethical conduct "may include, but is not limited to" actual knowledge of the academic fraud. This at least leaves open the possibility that an objective standard may be applied.

We believe that the objective, "should have known" standard may well be appropriate to assess the responsibility of a person, such as the head coach of an athletics program, who is expected to know what those in the program are doing. To conclude otherwise would be to encourage coaches or others in similarly responsible positions to close their eyes and ears to what is happening in areas for which they are accountable. It would be irresponsible for this committee, the NCAA, or any member institution to tolerate, let alone encourage, such intentional ignorance.

A head coach's responsibility goes beyond merely acting upon academic fraud that comes to his attention. A coach should take reasonable steps to see that it does not happen in the first place. This is not to say that he is absolutely liable for every instance of academic fraud that might occur; it is to say, however, that his accountability should be measured by more than what he actually knew. It should be measured by what a reasonably vigilant, observant, and diligent person in his position should have known. If he does nothing to discourage academic fraud, nothing to observe those circumstances in which it might be occurring, and nothing to see that those in the program are carrying out their responsibilities honestly, he should not be shielded from accountability merely because his inaction insulates him from knowledge of what is happening. To do so would be to encourage the evasion of responsibility on the part of those of whom the institution, the NCAA, and the public expect responsibility.

It is no answer to say, as the former head coach does in this case, that the secretary who took part in illicit activities reported to an academic counselor who was not in the former head coach's direct line of command as a basketball coach. The responsibility of a head coach is not based on a chain of command; it arises from the fact that he is one of those who are responsible for the integrity of the program and, specifically, for the welfare of student-athletes in the program. Surely if the student-athletes on a basketball team were being enticed by those who would sell them drugs or bribe them to fix games, the coach could not responsibly ignore it on grounds that he cannot control, and has no authority over, the dealers or fixers. His accountability derives not from any relationship with the wrongdoers but from his relationship with his student-athletes and his responsibility for the integrity of the program.

We see no difference here. This is not a case in which a secretary provided isolated or well concealed assistance that a vigilant and responsible coach could not reasonably have been expected to uncover. The evidence was uncontroverted that her assistance was extensive, visible and notorious. We agree with the Committee on Infractions that the

evidence taken as a whole establishes that the former head coach in fact knew of it. But even if we were somehow persuaded that he lacked actual knowledge, we have no doubt that he should have known of it, and we would find in Bylaw 10.1 sufficient warrant to conclude that a head coach's unethical conduct consists not only of the academic fraud he knows of, but also that of which he clearly should have known.

3. Unethical Conduct

In challenging the findings of unethical conduct made by the Committee on Infractions, the former head coach asserts that the Committee erred in finding:

> 1. That the former head coach provided false and misleading information regarding the $3,000 payment to the secretary; and
>
> 2. That the former head coach gave instructions to student-athletes to provide false and misleading information to University officials on March 10, 1999, while the men's basketball team was in Seattle competing in the men's Division I basketball championship.

As to the first point, the former head coach argues that "the committee did not find that the $3,000 payment to the secretary was a violation of NCAA rules, nor was the $3,000 payment an indicator that the former head coach knew the secretary was involved in academic fraud." Given that we have upheld the Committee's findings regarding academic fraud, including the fact that the former head coach was aware that the payment was being made for fraudulent purposes, there is no remaining support for the former head coach's argument that he did not provide false and misleading information regarding the secretary payment.

With regard to the second point, the former head coach offers support for his assertion that, "the overwhelming evidence was that the former head coach told the players to be truthful during their meetings with investigators, and is contrary to the findings of the Committee on Infractions." Once again, the former head coach is simply disagreeing with the weight of the factual basis supporting the Committee on Infractions' finding that the former head coach told the students to give false or misleading statements. The Committee itself had concluded that "the evidence is not fully consistent," but it found that the clear weight of the evidence showed that the former head coach attempted to influence the four young men to provide false and misleading information and, in doing so, violated NCAA standards of ethical conduct. Moreover, his attempt to influence them was initially successful as all four denied receiving academic assistance from the secretary. Student-athletes B and M [two of the four student-athletes] later admitted that they lied while student-athlete K modified his statement to acknowledge typing assistance.

The Committee on Infractions' finding in this regard is not clearly contrary to the evidence presented to the Committee.

4. Other Issues

The former head coach challenges virtually every finding of the Committee on Infractions. He asserts that the following findings were clearly contrary to the evidence:

> 1. That he arranged hotel rooms for student-athletes and their families at a substantially discounted rate;
>
> 2. That he provided various recruiting inducements to prospective student-athletes and improper benefits to student-athletes; and
>
> 3. That he made payments on a car lease for the academic counselor in violation of NCAA rules.

Once again, we uphold the Committee on Infractions' findings in each of these areas on the grounds that they are not clearly contrary to the evidence presented in the case.

The Committee on Infractions found that the former head coach had provided extra benefits to student-athletes and their families from 1994-1999, by helping to arrange for parents and friends of men's basketball student-athletes to stay at the Ramada Plaza Hotel at a discounted rate. The evidence certainly supports the Committee's finding in this regard, given that parents and friends of five student-athletes stayed at the Ramada Plaza Hotel at a rate of $30 per night, which is substantially less than the $79 per night minimum daily rate.

Similarly, the former head coach's assertion that the Committee's findings that he had provided cash to student-athletes was clearly contrary to the evidence is unfounded. In his own brief, the former head coach "admitted that he gave [the student-athlete] a $200 loan, based on the fact that the [student-athlete's] wallet had been stolen just prior to his return home for Christmas." Bylaw 16.02.3 provides that, "An extra benefit is any special arrangement by an institutional employee or representative of the institution's athletics interests to provide a student-athlete . . . a benefit not expressly authorized by NCAA legislation." Certainly, a cash payment to a student-athlete would violate this provision. Even if this were a loan, and there is no evidence to indicate that it was a loan that was ever memorialized or paid back, it would constitute an extra benefit, because it is not "expressly authorized by NCAA legislation." By the same token, there was sufficient evidence in the record to support the committee's findings relative to the former head coach's payments to another student-athlete. This is another instance of the evidence being conflicted, but the committee's finding was not clearly contrary to existing evidence. The committee relied upon statements by the student-athlete and could legitimately find that they believed the student-athlete rather than the former head coach under these circumstances. Finally, the record was sufficient to support the committee's finding that the former head coach

provided improper recruiting inducements to a prospective student-athlete by having the prospect over to his home for dinner. The former head coach asserts that the prospect was a family friend. In support of his position, the former head coach argues that the prospect "was a friend of [the former head coach's] family since he was in the 5th grade," when he first attended a basketball camp offered by the former head coach. Given that the former head coach came to know the prospect through the basketball program and was involved in recruiting him, the committee was warranted in finding that the prospect was not a "family friend" for the purposes of the dinner.

The former head coach also contends that the evidence was insufficient to support the Committee on Infraction's finding that the former head coach's making of car lease payments to an academic counselor, who was an employee of the academic counseling center rather than the athletics department, was a violation of NCAA rules. Once again, the former head coach is asserting that he did not know that making the lease payments was a violation of NCAA rules. The Committee did find that the former head coach knew that he was not permitted to supplement the salary of a university employee in this manner, particularly in an instance in which the University had deemed it inappropriate for the counselor to be provided a car.

B. Whether the Penalties Imposed by the Committee Are Excessive or Inappropriate and Should Be Set Aside.

The Committee on Infractions noted Minnesota's "prompt and decisive" corrective actions and self-imposed penalties. It nonetheless imposed additional penalties on Minnesota and upon the former head coach and certain other individuals. Only the penalty imposed on the coach is before us. That penalty is a seven-year period (until October 24, 2007) during which the former head coach is subject to the show-cause procedures of Bylaw 19.6.2.2-(l). He asks us to set this aside under Bylaw 32.10.2, which authorizes us to reduce or vacate a penalty that is "excessive or inappropriate based on all the evidence and circumstances."

The former head coach's argument is based on a number of factors, including his age, his belief that the penalty "essentially prohibits [him] from ever being able to coach at an NCAA institution again" (Br. 44), the fact that previous cases have imposed shorter periods under Bylaw 19.6.2.2-(l), the fact that the Committee on Infractions imposed lesser penalties in this case on others who were involved and his assertion (which we have rejected) that the evidence failed to establish his "knowing" violation of NCAA rules.

We have considered all these factors carefully, and we have also considered, independent of the former head coach's arguments, whether the penalty was either "excessive" or "inappropriate" based on all the evidence and circumstances.

We affirm the penalty. We recognize, as the Committee on Infractions did, that the penalty is a serious one, but it is commensurate with the conduct that gave rise to it. We adopt the characterization of the Committee on Infractions: "[T]his case involved numerous and repeated violations that occurred over many years and whose nature, academic fraud, strikes at the heart of institutional integrity. Furthermore, the academic fraud clearly violated the principles relating to the educational welfare of student-athletes and the maintenance of sound academic standards as set forth in NCAA Constitution 2.2.1 and 2.5."

The most severe penalties are appropriate when the academic mission of the university has been compromised. The former head coach was not the only one who bears responsibility for the damage; as the Committee on Infractions' report demonstrates, others in the program, and Minnesota itself, also failed in their responsibilities. The former head coach's appeal is the only one before us. We have no doubt that his conduct, fully established by the evidence in this case, justifies the penalty imposed.

VIII. CONCLUSION.

As discussed in the preceding section, we affirm each of the findings made by the Committee on Infractions. We also affirm the penalty imposed against the former head coach.

NCAA Infractions Appeals Committee

Katherine Noble, Acting Chair

Terry Don Phillips

Allan A. Ryan, Jr.

Rodney K. Smith