



**UNIVERSITY OF NORTH CAROLINA AT CHAPEL HILL**  
**PUBLIC INFRACTIONS DECISION**  
**OCTOBER 13, 2017**

## **I. INTRODUCTION**

The NCAA Division I Committee on Infractions (COI) is an independent administrative body of the NCAA comprised of individuals from the Division I membership and the public. The COI decides infractions cases involving member institutions and their staffs.<sup>1</sup> This case centered on allegations stemming from a lengthy 18-year academic saga at the University of North Carolina at Chapel Hill (UNC), which has received significant media and public attention.<sup>2</sup> From its inception, the infractions case has been public in nature, including attacks on the membership's infractions process and individual members of the panel. The allegations within the NCAA's infractions process have taken multiple forms—but never academic fraud—and sparked numerous procedural challenges by the parties. The case also involved two former staff members' failure to cooperate, the only two individuals who knew the full extent of what occurred at UNC.

At its core, this NCAA infractions case involved allegations that UNC provided student-athletes with extra benefits via special access to and assistance in certain deficient courses. These courses have been commonly referred to as "paper courses." Although general knowledge of the courses existed widely, these courses have been the root of numerous reviews and investigations commissioned by UNC or the university system. All the reviews attempted to uncover what went wrong in one of UNC's academic departments. Significantly, all but one of these reviews were hindered by the noncooperation of the two individuals at the heart of the courses. Within the academic review of the classes outside the NCAA infractions process, UNC told its accrediting body that the 18 years of academic conduct was "long-standing and egregious academic wrongdoing." It also originally adopted its accreditor's characterization of the wrongdoing as "academic fraud."

Despite these early admissions, UNC pivoted dramatically from its position roughly three years later within the infractions process. UNC disavowed its earlier support of the findings and conclusions of an independent report, distanced itself from earlier statements to its accreditor and ultimately defended its courses as a matter of academic autonomy. UNC did so even as it acknowledged that the courses did not meet, involved little, if any, faculty engagement and were

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<sup>1</sup> Infractions cases are decided by hearing panels comprised of NCAA Division I COI members. Decisions issued by hearing panels are made on behalf of the COI.

<sup>2</sup> A member of the Atlantic Coast Conference, the institution has an undergraduate enrollment of about 16,000. It sponsors 15 women's and 13 men's programs. The institution had previous major infractions cases in 2012 (football) and 1961 (men's basketball).

frequently graded by a former curriculum secretary. Although UNC's current policies now prohibit such courses, UNC stood firmly by the courses in question with respect to the infractions process, indicating they did not violate policies existing at the time. UNC also claimed students and student-athletes were treated alike, they completed meaningful academic work and UNC did not remove course grades from students' transcripts or rescind degrees.

Given UNC's admissions, the panel had to consider whether either academic fraud or extra benefit violations occurred. A singular principle allowed UNC room to make its claims and, ultimately, limits the panel's ability to conclude that academic fraud occurred. Since 2014, the NCAA membership has acknowledged the question whether academic fraud occurred is one appropriately answered by institutions based on their own academic policies.<sup>3</sup> The membership trusts academic entities to hold themselves accountable and report academic fraud to the NCAA and has chosen to constrain who decides what constitutes academic fraud. Because of this limitation, UNC's decision to support the courses as legitimate combined with a stale and incomplete record that does not allow the panel to drill down to the course and assignment level—even if the panel had wanted to second guess the courses—it cannot conclude academic fraud occurred. Similarly, the panel cannot conclude that extra benefit violations occurred surrounding the offering or managing of the courses as alleged. The courses were generally available to the student body, and non-student-athletes took the courses. Further, the record does not include specific and identifiable examples of benefits at the student-athlete level not generally available to the student body. Based on the general availability and the lack of specific examples, the panel cannot conclude a systemic effort to impermissibly benefit student-athletes.

Although UNC repeatedly stressed the paper courses did not violate NCAA legislation, UNC agreed that a former academic counselor provided too much help to women's basketball student-athletes.<sup>4</sup> She held multiple roles during her career at UNC, complicating the panel's ability to analyze actions. Most pertinent to this case were her roles as a philosophy instructor and counselor with the women's basketball team. In total, her allegations involved 18 instances of assistance from 2003 to 2010. There are gaps in the nature of the assistance she provided where the record includes partial email chains and lacked all the completed work. These gaps clouded the context surrounding her actions and would have required the panel to assess edits, suggestions and content down to the line-by-line and word basis. The panel was not in a position to make those core academic determinations. Therefore, the panel cannot conclude that impermissible academic assistance occurred.

The enforcement staff also alleged the circumstances surrounding the nearly two decades of paper courses and the instructor/counselor's extra help demonstrated UNC's failure to monitor and lack of control. At the hearing, UNC acknowledged that it lacked critical academic policies with respect to monitoring and reviewing the department chair, his workload and the department. It argued, however, that those failures did not fall within the NCAA's purview. With respect to

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<sup>3</sup> In 2014, the NCAA membership began using the phrase "academic misconduct." Although there are minor nuances between the two, the panel utilizes "academic fraud," the phrase that applied at the time the conduct occurred.

<sup>4</sup> UNC, however, contested the NCAA's ability to timely process the conduct under the statute of limitations. The panel did not need to resolve the issue.

the instructor/academic counselor, UNC contested any control or monitoring violations because it believed the underlying conduct was barred by the statute of limitations. In the alternative, UNC admitted that, at most, it did not monitor her activities.

Even though the panel could not reach the academic conduct as academic fraud or extra benefit violations, the panel thoroughly considered whether UNC's admitted failures still amounted to free-standing NCAA constitutional violations. The panel's consideration focused on the conduct's intersection with core principles for conducting intercollegiate athletics programs. The panel recognizes that the deficient, and in some circumstances absent, policies may have had an advantageous effect on UNC's athletics programs—mainly, student-athlete eligibility. But given UNC's position that its courses were legitimate and not systemically created or abused to serve solely athletics interests and the information presented did not squarely refute that point, the panel cannot conclude that UNC lacked control of its athletics programs. Similarly, the panel cannot conclude that the institution failed to control or monitor the instructor/counselor.

Based on the nature of the case and the posture of the record, the panel concludes that the only violations in this case are the department chair's and the secretary's failure to cooperate. The infractions process requires the cooperation of all individuals with pertinent information. Here, both were key figures at the center of UNC's academic shortcomings. While others had suspicions, or knew something was occurring in the department, only they knew the true nature of the courses. Both initially refused to cooperate. The department chair never cooperated. After approximately three years of silence, the secretary changed her mind. The panel concludes that both violated ethical conduct and cooperation bylaws. The department chair's violation is Level I and the secretary's violation is Level II.

The panel classifies the department chair's violation as Level I-Aggravated. Although the secretary's participation was significantly late, she did ultimately participate and provide helpful information. Therefore, the panel classifies the secretary's violation as Level II-Mitigated. Because the only violations in this case occurred after implementation of the penalty structure, the panel utilized current Bylaw 19 and the penalty guidelines to prescribe appropriate penalties. In accordance with the penalty guidelines, the panel prescribes a five-year show-cause order for the department chair.

Separate from the formal allegations, the enforcement staff identified, but did not allege, two potential breaches of confidentiality occurring after it issued formal allegations. The first involved the secretary's counsel releasing case information and the second involved the UNC athletics director's participation in an interview related to the ongoing case. At the hearing, both individuals apologized for and provided context relating to their actions. Although troubled by these disclosures, the panel does not elevate the conduct to violations of NCAA legislation.

## **II. CASE HISTORY**

Issues related to this case first came to light in August 2011. With UNC scheduled to appear before the COI in October 2011 for conduct in its football program, the enforcement staff and a

UNC internal working group conducted a series of interviews. Ultimately, the enforcement staff decided not to amend any allegations existing at the time, and the COI conducted a hearing on October 28, 2011.<sup>5</sup>

Over the next three years, UNC continued to conduct numerous internal and external reviews, leading to a referral for a criminal investigation.<sup>6</sup> Although previous reviews uncovered some of the details relating to the courses, none had access to the department chair or the curriculum secretary (secretary). That changed in late 2013, when they became available for questioning stemming from the criminal investigation. In a continued effort to uncover facts and address previously unanswered questions, the university system retained the law firm of Cadwalader, Wickersham and Taft LLP (Cadwalader) in February 2014 to conduct an independent inquiry into the matter. Cadwalader was charged with following the facts to resolve previously unanswered questions. During those various inquiries, UNC had also been communicating with its accrediting body, the Southern Association of Colleges and Schools' Commission on Colleges (SACS). On June 2, 2014, the enforcement staff notified UNC that it was opening an investigation of the matter and provided a verbal notice of inquiry on June 30.

On October 21, 2014, Cadwalader issued its comprehensive report, prompting SACS to submit additional inquiries to UNC. UNC responded to those inquiries on January 12, 2015, and SACS placed UNC on one year of probation. On May 20, 2015, the enforcement staff issued its first notice of allegations (NOA). But on August 10, 2015, the parties notified the COI that they were reopening the investigation. The enforcement staff issued an amended notice (ANOA) on April 25, 2016.<sup>7</sup> The case then proceeded pursuant to the standard legislated procedural timeline. In its response, UNC challenged the posture of the case and the NCAA's authority to hear it. UNC claimed the case suffered from five primary deficiencies: (1) it fell outside the jurisdiction of the NCAA; (2) the infractions process previously resolved the issues in the March 2012 infractions decision and underlying investigation; (3) the allegations were barred by fundamental unfairness; (4) many allegations were untimely under the statute of limitations; and (5) the inclusion of portions of the Cadwalader Report as factual information were inappropriate. The instructor/counselor also raised generalized statute of limitations and fairness arguments. To resolve the issues, the panel held a procedural hearing on October 28, 2016. One month later, the panel issued a decision letter, resolving all but one challenge.<sup>8</sup> The panel also indicated it

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<sup>5</sup> The COI released its infractions decision on March 12, 2012.

<sup>6</sup> These reviews included the Hartlyn-Andrews Report (May 2, 2012), the Independent Study Task Force Report (May 2, 2012), the Faculty Executive Committee Report (July 26, 2012), the Governor James G. Martin report (December 19, 2012, with an addendum on January 24, 2013, and a clarification on February 5, 2013), the Baker Tilly report (December 19, 2012) and the Board of Governors Review Board (February 7, 2013). Following the release of the Hartlyn-Andrews Report, UNC referred the matters to the State Bureau of Investigation (SBI). The SBI conducted a criminal investigation, resulting in a December 2013 indictment of the department chair for obtaining property by false pretenses (i.e., payment for a class that never met).

<sup>7</sup> Among other adjustments, the ANOA removed Allegation No. 1 (impermissible academic assistance in multiple sport programs) from the May 20, 2015, NOA, added 12 additional instances of conduct related to the instructor/counselor, removed references to certain sport programs and reduced the number of years involved.

<sup>8</sup> Cumulatively, the panel decided on the face of the limited procedural record that the matter was within the NCAA's jurisdiction of the NCAA and that the allegations were not barred from the panel's consideration. The panel deferred consideration of the of the statute of limitations arguments until a hearing on the merits.

would proceed to a hearing on the merits of the allegations or, if necessary, the enforcement staff should issue a second ANOA to ensure the case was appropriately framed.

On December 13, 2016, the enforcement staff issued a second ANOA. On March 9, 2017, after roughly three years of noncooperation, the secretary submitted a response to the second ANOA. The parties interviewed the secretary on May 10, 2017. Six days later, UNC and the instructor/counselor submitted their initial responses to the second ANOA, followed later by supplemental responses. The enforcement staff submitted its written reply and statement of the case on July 17, 2017. In framing its position, the enforcement staff took the firm stance that this case was not about fake classes, easy courses or fraudulent activity. Instead, the enforcement staff took the position that this case was about special access to and assistance in certain courses that was not generally available to other students. The panel conducted an infractions hearing on August 16 and 17, 2017.

Leading up to the hearing, the parties submitted countless letters and requests, totaling hundreds of pages. These submissions strained a process predicated on cooperation. Moreover, they added to an already voluminous record that spanned 18 years and totaled millions of pages.<sup>9</sup> Some of the letters also appear to have been written for the sole purpose of discrediting the membership's infractions process and setting a public narrative through UNC's responses to public records requests. Although the COI understands that institutions must comply with appropriate requests, institutions should uphold their confidentiality requirements under NCAA bylaws where consistent with legal obligations.

### **III. FINDINGS OF FACT**

Generally, the facts of this case are not in dispute. They involve courses offered and administered in what was formerly known as the Department of African and Afro-American (AFRI/AFAM) studies. The trouble with the courses centered around the department chair and the secretary. In the background, but integrally involved in the conduct at issue, was UNC's Academic Support Services for Student-Athletes (ASPSA) personnel. ASPSA received funding from athletics and interacted with athletics staff, coaches and student-athletes on a daily basis. ASPSA, however, was organized and housed under the College of Arts and Sciences. While clear on paper, the mixed reporting lines perpetuated the continued and unchallenged use of the courses. To a lesser extent, the facts also surround the academic conduct of a long-time UNC staff member (instructor/counselor).

Various internal and external reviews have dubbed the courses different names. Most simply, they have become known as "paper courses." In short, the courses involved no class attendance; limited, if any, faculty oversight; and liberal grading. The paper courses included both

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<sup>9</sup> Although all the information UNC reviewed was not included in the final infractions record, UNC's chancellor indicated at the infractions hearing that, if stacked, the total number of printed pages related to this case would be as tall as the Willis Tower in Chicago. Nevertheless, those documents also lacked other key information related to the individual courses, the student-athletes who took them and the type of assistance and educational experience they received.

independent studies and courses listed as standard lectures but taught as independent studies. From 1989 to 2011, more than 6,000 students, including student-athletes, enrolled in courses that may have been administered as paper courses.<sup>10</sup> Although the exact number of paper courses is unknown, the Cadwalader report conservatively estimated 3,100 students took a paper course involving irregular instruction. The record in this case includes only estimates on the number of courses and student-athletes involved. Although voluminous, the record is limited in specificity related to individual courses and student-athletes.

### **Nature and Administration of the Paper Courses**

With respect to paper courses, there is little dispute. The classes did not meet. They rarely, if at all, directly involved a faculty member. They required the submission of a paper, occasionally two shorter papers. The papers were often graded by the secretary, who admitted she did not read every word and occasionally did not read every page. The papers consistently received high grades. At the hearing, UNC stood by its paper courses. UNC indicated that the work was assigned, completed, turned in and graded under the professor's guidelines. UNC also asserted that the grades are recorded on the students' transcripts and continue to count.

Generally, the AFRI/AFAM department offered paper courses in one of two ways: (1) independent studies; or (2) lecture courses structured as independent studies. Today, those courses appear on students' and student-athletes' transcripts as valid independent studies or lecture courses and were accepted to fulfill UNC's graduation requirements. UNC listed the courses in that manner in course bulletins.<sup>11</sup> Neither the transcripts nor the course bulletins identify how the courses were administered or taught.

While independent studies and lecture courses are regular experiences for students on college campuses, the paper courses were, as UNC defined them, "irregular." UNC's chancellor elaborated on that characterization at the infractions hearing, succinctly describing them as having "inconsistent professorial involvement in teaching and grading." She and others further explained that the courses failed to meet UNC's high standards and expectations. Although the courses failed to meet UNC's own expectations, UNC repeatedly stressed at the infractions hearing that nothing about the courses themselves, the way they were administered or the way they were graded, violated *then-existing* policies. UNC admitted the courses would violate its *current* policies.

Enrollment in the courses literally began, continued and ended with the secretary. Generally, she controlled the administration of department offerings, administration of courses and, eventually, grading of many of the submitted papers. In both her written response and at the infractions hearing, she identified that the courses were meant to assist all UNC students who had difficult circumstances. If any student had extenuating circumstances, the secretary would accommodate

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<sup>10</sup> The allegations in this case span the 2002-03 through 2010-11 academic years and only involve lecture courses taught in independent study format. The total enrollments and breadth of the course offerings, however, provides helpful context.

<sup>11</sup> At the hearing, UNC claimed that all lecture courses "except one or two" appeared in course bulletins and were publicized.

them with a paper course. For students, those circumstances included schedule and work conflicts, campus obligations and, on occasion, difficult personal circumstances. For student-athletes, those circumstances included athletic obligations (i.e., practice, meetings, games and other athletically related activity). These arrangements started with a case-by-case approach, but as word spread and popularity soared, the secretary had to adjust her approach to handle the demand. To facilitate that demand, the secretary relied on academic counselors (both academic counselors for students and ASPSA counselors) to identify extenuating circumstances. Eventually the secretary began requesting that ASPSA counselors consolidate their student-athlete class requests into a list and submit it to her rather than individually sending over each of the student-athletes. She did not request lists from other academic counselors. On occasion, ASPSA personnel would email the secretary, asking what paper courses AFRI/AFAM (or the secretary) would be offering and requesting that she offer others.

Once enrolled in the courses, student-athletes or ASPSA staff usually received the assigned topic from the secretary. During her interview, she acknowledged that she would provide paper topics but indicated that all paper topics were faculty approved. ASPSA records indicate that while student-athletes may not have met with faculty members, they did work with ASPSA staff on writing and structuring research papers. Further, sometimes ASPSA staff turned in student-athletes' completed papers. As it relates to the quality of the work, at least some interviewees suggested that the courses required little academic work and substance.

Most ASPSA counselors knew that papers would likely receive an A or a B. Others knew, or had suspicions, that the secretary actually graded the papers. In fact, when word circulated about the secretary's retirement, an ASPSA learning specialist circulated a memo identifying an upcoming due date with an urgent message:

Your paper is DUE FRIDAY, JULY 17<sup>th</sup>

[The secretary] IS RETIRING THE FOLLOWING WEEK SO IF YOU WOULD PREFER THAT SHE READ AND GRADE YOUR PAPER RATHER THAN [the department chair] YOU WILL NEED TO HAVE THE PAPER COMPLETED **BEFORE** THE LAST DAY OF CLASSES, TUESDAY, JULY 21<sup>ST</sup>.

Grading was but one of many tasks delegated to the secretary by the department chair who traveled frequently. As a result, he delegated much of the department's managerial responsibilities to the secretary. Among other things, this included formatting syllabi, proofreading correspondence and manuscripts and attending chair-only meetings in his place. Over time, it grew to include signing grade sheets, providing ASPSA counselors with paper assignments, receiving completed papers and ultimately grading them. In her interview, the secretary indicated that she was not originally comfortable with those responsibilities, but like other things, the department chair told her to "handle it." As far as her grading method, the secretary admitted that she did not read every word of every paper submitted. But in following the department chair's instructions, if the paper met his stated requirements, she gave it an A or a B.

ASPSA personnel recognized the positive impact the paper courses had on student-athletes' grade-point averages (GPAs). Around the time of the secretary's retirement, a former ASPSA associate director met with the football staff regarding promoting academic responsibility among its student-athletes. In that presentation, she included a slide that indicated the paper courses were part of the "solution in the past" but no longer existed. The slide specifically indicated four characteristics of the courses where student-athletes were not required to: (1) go to class; (2) take notes or stay awake; (3) meet with professors; and (4) pay attention or necessarily engage with the material. The presentation also included comparisons of student-athletes' GPAs with and without paper courses. Of the eight examples, all had AFAM GPAs of 3.2 or higher and other GPAs lower than 2.036, with six of the eight student-athletes' other GPAs falling below 2.0.

After the secretary's retirement, the classes all but stopped. However, after repeated requests from ASPSA staff members, the department chair offered a limited number of courses from 2009 through 2011.

### **On-campus Knowledge and Concern Related to the Courses**

The classes were not a secret on campus during their use. In fact, at different points from 1993 through 2011, academics and athletics staff and leadership were aware of the courses. The depth of that knowledge varied, as did individuals' reactions to the courses.

Upon learning of the classes, some voiced concern. In fact, multiple ASPSA staff members reported that upon learning of the paper courses, the former dean of the College of Arts and Sciences (under which AFRI/AFAM fell) attempted to cut back on their volume. In another example, a former ASPSA associate director acknowledged that she questioned student-athletes receiving high grades with no faculty involvement, and although it was not "ideal," it was the environment at UNC. She further elaborated that based on the approval of her superiors and her assumption that the courses had been approved and structured by the faculty, she believed they were appropriate. The premise—that faculty had the authority to structure and teach courses under academic freedom—fostered an environment that did not welcome questioning the courses and permitted the paper courses to continue.

Knowledge of the courses was not limited to the College of Arts and Sciences, the AFRI/AFAM department and ASPSA personnel. Other faculty members and the athletics department also were aware of the courses. This included coaches and staff, athletics leadership and compliance. They, too, assumed the courses were approved.

At least two individuals were concerned enough to escalate the issue to athletics and academics leadership. The former director of ASPSA (director of ASPSA) and a former senior associate director of athletics (who had previously served as a director of ASPSA) (senior associate AD) brought the issue to UNC's Faculty Athletics Committee (FAC) in early 2007.<sup>12</sup> The two were alerted to potential issues after media reports surfaced related to another university's use of

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<sup>12</sup> The senior associate AD reported that he presented information to the FAC on two different occasions. The first, in the early 2000's, related to independent studies. The second occurred around late 2006 or early 2007. The former director of athletics also attended the latter FAC meeting.



independent studies. Thereafter, they spoke with the former director of athletics about bringing the topic to the FAC. The former director of athletics also attended the meeting.

Although there are varying recollections of what occurred, the senior associate AD recalled informing the FAC members about the department chair teaching regular courses as independent studies. He also vividly recalled FAC members making it clear to him that "faculty have complete freedom in the classroom and that's protected."<sup>13</sup> The director of ASPSA had a similar recollection, adding that after the meeting, the senior associate AD looked at him, shook his head and said, "[W]ell, they can't say we didn't say anything." Regardless of what was discussed at the meeting, it is clear from the interviews that both athletics and academic staff believed the courses had faculty approval and that they had no authority to second guess faculty judgment. Stated simply, the notion of academic freedom colored characterizations and perceptions of the courses. And so the classes continued.

While ASPSA and athletics staff hesitated to question faculty judgment, the classes also continued because of policies in place that allowed the AFRI/AFAM department to go unchecked. As UNC's chancellor explained at the hearing, the university had two large holes in its internal review processes. First, it did not review department chairs. As a result, UNC did not review the department chair's actions, course loads and administration of the department. Similarly, UNC only reviewed departments with graduate programs. AFRI/AFAM did not have a graduate program. Therefore, UNC never reviewed its course offerings and administration.

### **Formal Discovery and Investigation of the Paper Courses**

Although many individuals, including athletics and academics leadership, knew about and utilized the courses during their existence, formal knowledge did not emerge until summer 2011. Shortly before UNC was scheduled to appear before the COI on allegations of academic fraud, extra benefit and amateurism violations in its football program, potential issues came to light from public media reports surrounding two football student-athletes who had taken AFRI/AFAM courses. After first discussing the reports with the department chair, UNC informed the NCAA of potential issues regarding the courses identified in the media. Considering the imminent infractions hearing, the enforcement staff and UNC immediately conducted 16 interviews over approximately two months. During this brief investigation, the enforcement staff and UNC uncovered some basic elements of the paper courses. The full scope and breadth, however, remained unknown. With a hearing weeks away, the enforcement staff opted to move forward with the then existing football allegations. The COI held a hearing in October 2011. The parties did not present any allegations or information focused on the courses at the hearing.

To its credit, UNC's inquiry into the matter did not end in summer 2011. In an effort to understand what had occurred in its AFRI/AFAM department, the university or university

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<sup>13</sup> There is some dispute over the degree to which the attendees discussed the paper classes at the early 2007 FAC meeting. Both the director of ASPSA and the senior associate AD have a consistent recollection of what occurred. To a large extent, the former director of athletics also corroborates the events. However, the minutes from the meeting do not specifically address the topic in detail. Similarly, when interviewed by UNC and the enforcement staff, the former faculty athletics representative could not recall the specifics of the meeting.

system conducted six total reviews through early 2013. All the while, UNC continued to update SACS, its accreditor. It also communicated with the NCAA. In its review process, SACS reviewed information limited to what the internal and external investigations uncovered. In June 2013, SACS decided not to sanction UNC. That, however, was not the end of the story. Approximately two years later, SACS altered its original decision.

While completed reviews were informative, they merely peeled back additional layers surrounding the paper classes. Each review revealed more information related to inconsistent educational experiences in the AFRI/AFAM department and faculty's and staff's knowledge of the courses. Each, however, was hamstrung by the lack of participation of the two central actors—the department chair and secretary. Their absences prevented the inquiries from uncovering the true nature of the courses. That all changed in late 2013 when they became available for questioning after events connected to a criminal investigation. In early 2014, the university system retained the Cadwalader firm to conduct yet another inquiry into the matter. Distinct from past inquiries, this review included the secretary's and the department chair's participation.<sup>14</sup> After an extensive inquiry, the Cadwalader firm released its report. Among other observations, the report identified a new depth of understanding of the paper courses that occurred for approximately 18 years. Further, based on the firm's review of data and interviews with current and former staff members, the Cadwalader report found that the classes disproportionately favored student-athlete enrollments, the courses had a recognizable positive impact on GPAs and ASPSA personnel colluded with the AFRI/AFAM department to benefit student-athletes.

This development prompted SACS to submit additional inquiries to UNC, roughly 17 months after initially determining not to sanction UNC. In its response to SACS, UNC embraced the Cadwalader investigation, describing it as "monumental." UNC further explained the report provided "significant new information" related to the origin, breadth and scope of the conduct surrounding the courses. And UNC was "confident that not only was the investigation thorough and complete but that it covered a great deal of ground not possible previously." In its January 12, 2015, written response to SACS' additional inquiries, UNC also embraced SACS' characterization of the conduct as academic fraud. Specifically, UNC admitted that the Cadwalader report demonstrated that, "the academic fraud was long-standing and not limited to the misconduct of just [the department chair] and [secretary]." Based on the new information and UNC's January 2015 response to SACS' additional inquiry, SACS sanctioned UNC with one year of probation.

UNC's strong support of the Cadwalader report to its accreditor drastically shifted roughly three years later when UNC appeared before the COI. The institution disavowed the report, including its conclusion that ASPSA and AFRI/AFAM personnel colluded to benefit student-athletes.

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<sup>14</sup> Similarly and albeit tardy, the panel also benefitted from the participation of the secretary in the infractions process. At the infractions hearing, she credibly answered the panels questions and provided insightful context regarding the origin, intent and administration of the paper courses.

UNC also disavowed its previous use of the phrase academic fraud to SACS, telling the panel that it was merely a "typo" or oversight. UNC wholly reframed its position on the report.<sup>15</sup>

Notwithstanding UNC's ultimate position on the Cadwalader report before the COI, UNC informed SACS that its students deserved better. Further, UNC relied in part on the report's findings and conclusions to implement more than 70 corrective measures that were absent when the paper courses existed. Contemporaneous with the release of the Cadwalader report, UNC also initiated employment action with respect to involved employees.

### **The Instructor/Counselor's Interaction with the Women's Basketball Program**

Both prior to and during the time UNC offered the paper courses, the instructor/counselor served UNC in various positions. She worked at UNC for over 25 years. Among other capacities, she taught philosophy, served two terms as chair of the faculty, was the director of the ethics center and also the director of undergraduate studies in the philosophy department and advised women's basketball student-athletes as an ASPSA counselor.

Over her tenure at UNC, the instructor/counselor encountered, taught and advised many students. Some were student-athletes. At the hearing, the instructor/counselor estimated that her ASPSA counselor responsibilities took up approximately 10 percent of her time. She further indicated that while she met individually, often for many hours, with women's basketball student-athletes, she provided the same type of support to non-athletes. For example, she explained that as director of undergraduate studies in the philosophy department she had 125 advisees and met with them all.<sup>16</sup> In the end, the record does not establish that she provided different assistance to women's basketball student-athletes versus regular students.

In her written responses and during the hearing, the instructor/counselor elaborated on her approach to educating and helping her students. Among other examples, she indicated that she provided her students and student-athletes with reference materials, outlines, model papers and other resources. In addition to the model papers, the instructor/counselor stated that she would require students to "reconstruct" arguments. She explained that if any students would send her their argument, she would reconstruct it to help them and show them how to do it. Although she did not specifically distinguish between the type of assistance she provided students in her courses versus those that she advised, she consistently articulated that she provided the same assistance to students and student-athletes alike. She provided her assistance both through in-person meetings and email communication.

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<sup>15</sup> The first time UNC challenged the statistics in the Cadwalader report was in its response to the second ANOA. Originally, UNC only challenged the panel's reliance on statements attributed to and conclusions derived from interviews with the department chair and the secretary. At the procedural hearing, UNC stated it had no objection to the reliance on emails and/or statistical information, only conclusory or witness statements. Then, in its response to the second ANOA and at the August 2017 infractions hearing, UNC challenged the data and underlying statistics contained in the report, essentially disavowing the report altogether.

<sup>16</sup> In her response, the instructor/counselor inconsistently identified the year she became the director of undergraduate studies for the philosophy department. On one occasion, she identified 1996. Another occasion indicated 1994. Her role as director of undergraduate studies ended in 2006.

### **Confidentiality of Infractions-Related Information**

Beginning in 2011, the circumstances surrounding the paper courses in the AFRI/AFAM department (and later, the instructor/counselor's conduct) have received extensive media attention. UNC acknowledged at the hearing that it has been transparent about what occurred in the AFRI/AFAM department. UNC made over one million documents available for the public, including internal and external reviews, emails and other information.

Regardless of UNC's openness about what occurred in the AFRI/AFAM department, the NCAA membership requires that all participants maintain strict confidentiality about infractions matters from the beginning of the enforcement staff's investigation through the release of the public infractions decision. In its written reply, the enforcement staff identified two instances in which participants in the infractions process may have violated confidentiality requirements. First, after years of noncooperation, the secretary filed a response to the second ANOA in March 2017. Approximately one month later, the secretary's counsel provided the media with infractions-related information, including letters dated April 4 and 11, 2017. Similarly, the enforcement staff also noted UNC's athletics director's participation in a media interview where he discussed matters related to the ongoing infractions case. Among other things, UNC's athletics director spoke about underlying substantive issues and UNC's positions, clearly indicating the conduct at issue was academic fraud under normal, but not NCAA, standards. At the infractions hearing, the panel questioned both individuals about the enforcement staff's identification of potential confidentiality issues. Each apologized for and explained the context surrounding their actions.

## **IV. ANALYSIS**

The majority of the panel's substantive analysis is contained in Section V. Violations Not Demonstrated. That section addresses the paper courses and the instructor/counselor's conduct and how the applicable bylaws apply to the facts surrounding those circumstances.

Prior to that analysis, the panel addresses two instances of unethical conduct and failure to cooperate by the two key individuals at the center of the conduct—the department chair and secretary. While the department chair never cooperated or participated in this process, the secretary eventually participated after approximately three years of noncooperation. The panel concludes that Level I and Level II violations occurred.

### **UNETHICAL CONDUCT AND FAILURE TO COOPERATE [NCAA Division I Manual Bylaws 10.1, 10.1-(a) and 19.2.3 (2014-15)]**

Two former institutional staff members failed to cooperate in the investigation. The department chair and the secretary were the two individuals with the most intimate knowledge of what occurred in this case. Their failures to cooperate in the investigation violated ethical conduct expectations of current and former institutional staff members and their obligations under the membership's infractions process. Although the secretary eventually participated, her belated participation does not absolve her nearly three years of refusals. UNC agreed that both

individuals failed to cooperate. Although the secretary requested that the panel conclude a violation had not occurred, she acknowledged that she did not participate until March 2017. The panel concludes that both institutional staff members committed violations. The department chair committed a Level I violation and the secretary committed a Level II violation.

## **1. NCAA legislation relating to unethical conduct and cooperation.**

**10.1 Unethical Conduct.** Unethical conduct by a prospective or enrolled student-athlete or a current or former institutional staff member, which includes any individual who performs work for the institution or the athletics department even if he or she does not receive compensation for such work, may include, but is not limited to, the following:

- (a) Refusal to furnish information relevant to an investigation of a possible violation of an NCAA regulation when requested to do so by the NCAA or the individual's institution.

**19.2.3 Responsibility to Cooperate.** Current and former institutional staff members or prospective or enrolled student-athletes of member institutions have an affirmative obligation to cooperate fully with and assist the NCAA enforcement staff, the Committee on Infractions and the Infractions Appeals Committee to further the objectives of the Association and its infractions program. The responsibility to cooperate requires institutions and individuals to protect the integrity of investigations and to make a full and complete disclosure of any relevant information, including any information requested by the enforcement staff or relevant committees. Current and former institutional staff members or prospective or enrolled student-athletes of member institutions have an affirmative obligation to report instances of noncompliance to the Association in a timely manner and assist in developing full information to determine whether a possible violation has occurred and the details thereof.

## **2. During the investigation, the department chair and the secretary failed to cooperate with the investigation.**

The department chair and the secretary were central actors in this case. Each had pertinent information. Neither met their obligation to cooperate with the NCAA investigation. As the administrators of the paper courses, each had intimate knowledge of what occurred in the AFRI/AFAM department for 18 years. Although the secretary ultimately participated, it was late in the process. Neither met their obligations under Bylaws 10 or 19.

A foundational principle of the infractions process is the cooperation of individuals with information related to the case. Among other individuals, current and former institutional employees have an obligation to provide information relevant to an investigation of possible NCAA rules violations when requested to do so by the enforcement staff or the individual's institution. Failure to do so may amount to unethical conduct under Bylaw 10.1-(a). Bylaw 19.2.3 also requires individuals to make full and complete disclosures of any relevant information when requested by the enforcement staff.

Neither the department chair nor the secretary met their obligations to cooperate. Although neither remained employed by the institution, each still had an obligation to cooperate as former institutional staff members. Both failed to meet that obligation. In July 2014, the enforcement staff contacted both individuals' separate attorneys to schedule an interview related to their knowledge of potential violations. Both replied that they would not participate in the NCAA's investigation. After nearly three years of refusing to cooperate, however, the secretary decided to participate in the process. She filed a limited response to the second ANOA, sat for an interview and later participated in the infractions hearing. The department chair never participated.

Both the department chair's and the secretary's participation was essential. As the two individuals at the center of this case, their participation was vital to the investigative and allegation phases of the case. The infractions process is rooted in the participation of individuals with knowledge of potential violations. It is through active participation that the COI is best positioned to find facts and conclude whether violations occurred. The best information derives from, but is not exclusively limited to, the participation of those knowledgeable of the core issues. The membership has specifically identified a failure to cooperate as unethical conduct. Likewise, the COI has consistently concluded that failing to participate in the infractions process violates ethical conduct and cooperation bylaws. See *University of Louisville* (2017) (concluding that a former director of basketball operations' refusal to participate in an interview, file a response or attend the infractions hearing violated Bylaws 10 and 19) and *Georgia Southern University* (2016) (concluding that a former compliance officer's refusal to participate in interviews, respond to the allegations and participate in the infractions hearing violated Bylaws 10 and 19).<sup>17</sup> Therefore, the panel concludes that both the department chair and the secretary violated Bylaws 10.1, 10.1-(a) and 19.2.3 when they refused to participate in the investigation.

Bylaw 19.1.1-(c) identifies a failure to cooperate as a Level I violation. Failing to cooperate with an investigation seriously undermines and threatens the integrity of the membership's infractions process. This is particularly true when key individuals at the center of the issues refuse to cooperate. Consistent with Bylaw 19.1.1-(c), the panel concludes that the department chair committed a Level I violation when he refused to cooperate with the investigation. The secretary eventually cooperated. While her tardy participation does not overcome her failure to meet her initial obligation, it is an appropriate factor to consider when assigning an appropriate level to the violation. Further, as one of the two key individuals at the center of the paper courses, her participation at the infractions hearing greatly benefitted the panel and its ability to decide this case. Previously, the COI has considered untimely participation to constitute Level II unethical conduct. See *Syracuse University* (2015) (concluding that an academic coordinator's tardy participation in an interview and in the infractions hearing constituted a Level II unethical conduct violation). Therefore, pursuant to Bylaw 19.1.2 and consistent with *Syracuse University*, the panel concludes that the secretary committed a Level II violation.

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<sup>17</sup> Portions of *University of Louisville* are under appeal for different reasons. The former director of basketball operations did not appeal the COI's conclusion that he failed to cooperate.

## **V. VIOLATIONS NOT DEMONSTRATED**

The case involved three other allegations: (1) unethical conduct and extra benefits related to student-athletes' access to and assistance in the paper courses; (2) unethical conduct by the instructor/counselor for providing impermissible academic assistance to student-athletes; and (3) a failure to monitor and lack of institutional control.<sup>18</sup> In addition to the formal allegations, the case involved conduct after the second ANOA that the enforcement staff noted violated confidentiality bylaws. The panel also addresses that conduct in this section.

### **The Paper Courses and Academic Legislation**

#### *Formal Allegations—Unethical Conduct and Extra Benefits*

The enforcement staff alleged that the secretary and department chair committed unethical conduct and provided extra benefits to student-athletes in connection with offering and administering the paper courses. Additionally, the enforcement staff alleged that athletics personnel leveraged their relationship with the secretary to provide special arrangement courses for student-athletes, which ASPSA staff members managed. In short, the enforcement staff alleged that student-athletes received access to and assistance in paper courses not generally available to the student population. Based on the nature of the courses and the lack of identifiable examples in the record supporting individual or systemic efforts to impermissibly benefit student-athletes, the panel cannot conclude that violations of Bylaw 10 and 16 occurred. The panel also considered whether other Bylaw 10 violations occurred—mainly, academic fraud. But principles of academic autonomy and UNC's recent positions surrounding the validity of the courses do not permit the panel to conclude academic fraud occurred. The panel's inability to conclude that academic fraud occurred is also restricted by the lack of identifiable examples of fraudulent activity in specific courses or assignments or by specific individuals in the record.

The allegations involved Bylaw 10.01.1, which requires individuals employed by or associated with a member institution to administer, conduct or coach intercollegiate athletics to act with honesty and sportsmanship. They also involved general Bylaw 10.1, which defines unethical conduct through a nonexhaustive list of behaviors. Likewise, the parties also addressed the application of Bylaws 16.11.2.1 and 16.3.1.1 to the facts of the case. Generally, Bylaw 16.11.2.1 prohibits extra benefits and Bylaw 16.3.1.1 requires member institutions to make general academic counseling and tutoring available to student-athletes. Bylaw 16.3.1.1 also provides institutions discretion to finance additional academic and support services. The panel also determined that Bylaw 10.1-(b), addressing the knowing involvement in arranging for fraudulent academic credit and the related recent April 2014 official interpretation are also pertinent to the analysis of whether violations occurred in this case.

In alleging violations in this case, the enforcement staff took a narrow approach. At the most basic level, the allegations involved too much help in student-athletes' access to and assistance in the paper courses. The enforcement staff argued that the creation and administration of the

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<sup>18</sup> In its response to the second ANOA and at the hearing, the institution (and, where applicable, the instructor/counselor) claimed that the violations were barred by Bylaw 19.5.11 Statute of Limitations. Because the panel did not conclude violations occurred, it did not need to resolve the statute of limitations issue.

paper classes violated extra benefit and ethical conduct legislation. In grappling with that question, the panel benefitted from the secretary's in-person participation at the hearing. She credibly explained that she provided the same degree of assistance to UNC students in need, regardless of their student-athlete status. Likewise, the record does not establish that the courses were created, offered and maintained as an orchestrated effort to solely benefit student-athletes. While the record demonstrates popularity in the use of admittedly deficient courses, the panel would be required to discredit the secretary's answers and assume a motivation behind the courses. Given the secretary's statements at the hearing and gaps in the record, the panel cannot conclude that the secretary acted unethically with respect to the creation or administration of the courses. Similarly, the panel cannot conclude that the department chair acted unethically or provided extra benefits simply because he delegated authority to the secretary. Nor does Bylaw 10.01.1 apply to them, because they were not involved in administering, conducting or coaching intercollegiate athletics.

The enforcement staff also alleged that ASPSA personnel leveraged relationships with the secretary to gain special arrangements for student-athletes in paper courses that ASPSA personnel managed. Based on the nature of the assistance provided and the general availability of the academic counseling on campus, the panel cannot conclude that ASPSA personnel managed student-athletes' courses in violation of Bylaw 16.

The enforcement staff identified six actions that taken alone or in combination purportedly constituted active management of the courses and extra benefit violations.<sup>19</sup> In part, UNC claimed that there were no extra benefit violations because its actions were required and/or permitted under Bylaw 16.3.1.1. UNC mischaracterized the bylaw and its obligations. Bylaw 16.3.1.1 is not without limits. And it is not intended to be used as a shield for an academic program gone awry. It is intended to support, not replace, student-athletes' academic efforts. Supplanting student-athletes' academic efforts, responsibilities and educational experiences can violate NCAA legislation. Regardless, the panel cannot conclude that ASPSA's or athletics personnel's actions taken alone, in combination or in totality resulted in extra benefits. The record covers nearly two decades of information. It touches broad concepts but fails to establish specific or systemic activities limited to student-athletes. While student-athletes certainly benefited from the courses and ASPSA assistance, the record indicates that similar assistance was generally available to all students. Therefore, the panel cannot conclude that violations occurred.

#### *The Panel's Further Consideration—Academic Fraud*

Although not formally charged by the enforcement staff, the academic nature of this case combined with UNC's initial admissions to SACS led the panel to review whether academic fraud violations occurred. While UNC did not have policies that prohibited the paper courses, it undertook a nearly three-year process to understand what occurred in its AFRI/AFAM department. That process involved numerous thorough reviews. At the conclusion of those

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<sup>19</sup> The six factors identified by the enforcement staff included: (1) ASPSA personnel contacting the AFRI/AFAM department to register student-athletes for courses, even after the deadline to enroll had passed; (2) obtaining assignments on behalf of student-athletes; (3) suggesting assignments; (4) submitting papers completed by student-athletes; (5) requesting certain course offerings; and (6) recommending course grades for student-athletes.



reviews, UNC reported to its accreditor that what occurred for nearly 18 years on its campus was academic fraud. The panel identified and explored with the parties whether academic fraud occurred under the member-adopted bylaws and interpretations. Given the legislation and the absence of specific examples of fraudulent activity, the panel cannot second guess UNC's altered position and conclude that academic fraud occurred within the infractions process.

Stated directly, the NCAA defers to academics on matters of academic fraud. As institutions of higher education, the NCAA membership trusts fellow members to hold themselves accountable in matters of academic integrity. If an institution concludes under its policies that academic fraud has occurred involving a student-athlete, the NCAA membership requires institutions to report those instances to the enforcement staff.<sup>20</sup>

At the hearing, UNC acknowledged that the courses failed to meet its standards and expectations. Previously, it characterized the conduct as long-standing and egregious academic wrongdoing to SACS. More significantly, UNC previously described the conduct as academic fraud. In doing so, UNC used what it had learned from the internal and external reviews, including the Cadwalader report—a report it now vehemently disavows. Following Cadwalader and the other reviews, however, UNC developed and implemented more than 70 corrective actions. These included permitting affected students to take a course or resubmit work if they believed the quality of their education was compromised. It also developed policies and procedures that now prohibit the structure and administration of the paper courses. UNC also acknowledged the courses would violate its new policies.

The panel is skeptical of UNC's modified positions—particularly that the use of "academic fraud" was merely a typographical error in the report submitted to SACS. It is also skeptical of UNC's recent complete repudiation of the Cadwalader report. After all, less than three years ago, UNC described the report as "monumental," and "critical" to its accreditor, summing up its position that UNC was "confident that not only was the investigation thorough and complete but that it uncovered a great deal of ground not possible previously." The panel is troubled by UNC's shifting positions, including its positions related to the Cadwalader report, depending on the audience. The Cadwalader report included damning facts and conclusions of what had occurred in the AFRI/AFAM department for nearly two decades. After boasting of the report's importance to its accreditor and using it, at least in part, to take disciplinary action against personnel and to implement significant corrective measures, UNC attacked the same report in the infractions process. As the panel indicated after the October 2016 procedural hearing, the panel finds the Cadwalader report credible. However, the panel acknowledges that the Cadwalader firm conducted interviews without the participation of UNC or the enforcement staff and, in later interviews conducted by UNC and the enforcement staff, some interviewees acknowledged that they felt intimidated or questioned how the information they provided was characterized in the report. Further, at the hearing, the parties identified potential factual inaccuracies. In light of these considerations, the panel balanced the weight of the report against the record and other information presented at the hearing. In assessing the full record, the panel discounted some of the report's findings and conclusions for purposes of this infractions hearing.

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<sup>20</sup> Generally, reporting academic fraud falls into two categories: (1) arranging for fraudulent academic credit; or (2) the fraud results in an erroneous declaration of eligibility and competition. Both could have potentially applied here.

But given UNC's early admissions, its implementation of corrective measures and its recent distancing of itself from the Cadwalader report, the panel concludes that it is more likely than not that student-athletes received fraudulent credit by the common understanding of what that term means. It is also more likely than not that UNC personnel used the courses to purposely obtain and maintain student-athletes' eligibility. These strong possibilities, however, are not the operative or controlling starting points to the membership's academic fraud analysis. What ultimately matters is what UNC says about the courses. In addition to rejecting its early admissions and distancing itself from the Cadwalader report in the infractions process, UNC took the firm position that the courses were permissible and UNC will continue to honor the grades. Despite the fact that the courses failed to meet, involved little, if any, faculty engagement, and were often graded by the secretary, UNC argued the courses violated no UNC policy. UNC further claimed that work was assigned, completed and graded, and the grades counted towards a UNC degree.

Despite the conflicting record on whether UNC had acknowledged the fraud and the enforcement staff's position that the case did not involve fraudulent activity, the panel still strongly considered conforming the allegations or issuing its own notice pursuant to Bylaw 19.7.7.4. *See California State University, Northridge* (2016) (conforming unethical conduct extra benefit and impermissible academic assistance allegations to unethical conduct academic fraud violations based on the nature of the violations and the institution's president's admission that the conduct violated institutional policies).<sup>21</sup> The COI, however, has not conformed allegations on such a broad and convoluted set of facts or on academic allegations where the institution repeatedly affirms during the infractions process that the conduct did not violate its policies in place at the relevant time.

UNC has offered two diametrically opposed characterizations of the courses, seemingly dependent on the venue. Even if the panel were to assign more credibility to UNC's initial admissions to SACS, the case record does not support overriding UNC's recent positions. The record was voluminous. It also included information spanning nearly two decades and interviews where subjects had difficulty recalling circumstances and events. This lack of specificity inhibited the panel's ability to test and probe certain theories. Therefore, the panel cannot conform the allegations and conclude that academic fraud occurred. Further, the record's limitations did not establish a firm basis for the panel issuing new allegations.

#### **Unethical Conduct, Impermissible Academic Assistance and Extra Benefits by the Instructor/Counselor**

The enforcement staff also alleged that the instructor/counselor provided impermissible academic assistance and extra benefits to women's basketball student-athletes over approximately seven years. The enforcement staff specifically identified 18 instances of potential impermissible academic assistance. UNC agreed that impermissible academic assistance and extra benefits violations occurred for 15 of the 18 allegations but claimed they were untimely and therefore barred by the statute of limitations. The instructor/counselor

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<sup>21</sup> This case is currently under appeal for different reasons. The institution did not appeal the COI's decision to conform allegations.

contested the allegations and also claimed that they were untimely. Because the record only establishes sporadic examples that would require the panel to make after-the-fact individualized academic judgments on whether the instructor/counselor provided impermissible academic assistance, the panel cannot conclude the instructor/counselor violated Bylaws 10 and 16.

As the panel previously noted, the NCAA's role in academic violations is limited. While the NCAA defers academic fraud determinations to member institutions, there is no such deference requirement for impermissible academic assistance.<sup>22</sup> But there are circumstances where the question whether impermissible academic assistance occurred itself requires academic judgments. In those circumstances, the COI must tread carefully. A violation must be clear on its face. Here, there are gaps in the record in the nature of the assistance the instructor/counselor provided. The record includes partial email chains, iterations of draft papers and lacks complete and final work. The record required the panel to assess the edits and suggestions down to the line-by-line and word basis. The panel was not in a position to make these academic judgments. The facts are further complicated by the many roles in which the instructor/counselor served during her tenure at the institution. At the hearing, she maintained that whether she was the director of the ethics center, an instructor, ASPSA counselor for women's basketball student-athletes or an advisor for non-athletes, she approached each student in the same manner and provided each with the same amount of assistance. Mainly, that included providing her students and student-athletes with reference materials, outlines, model papers and exercises involving reconstructing arguments.

Considering the record and the instructor/counselor's credible statements at the hearing, the panel cannot conclude that she committed unethical conduct. Similarly, because she thoroughly explained her approach to all students and student-athletes she encountered, which is not refuted by the record material, the panel cannot conclude that she provided women's basketball student-athletes with extra benefits. It is not clear on the face of the record that the conduct supported impermissible academic assistance. The dual role as instructor and academic counselor is a significant issue, one that member institutions must approach with caution. Proper policies and procedures regarding appropriate behaviors are essential to ensure individuals have a clear understanding of what is appropriate and what is not.

### **Failure to Monitor and Lack of Institutional Control**

The enforcement staff also alleged that UNC failed to monitor and demonstrate appropriate controls with respect to the paper courses and the instructor/counselor. As it relates to the paper courses, the enforcement staff alleged that individuals' knowledge of the courses and failure to act, along with inadequate education, guidance and supervision of ASPSA personnel, demonstrated a lack of control. Regarding the instructor/counselor, the enforcement staff alleged that the institution failed to heed concerns regarding her relationship with women's

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<sup>22</sup> While impermissible academic assistance legislation applicable to this case fell under the April 2014 official interpretation and Bylaw 16, current impermissible academic assistance falls under Bylaw 14.02.10 (2017-18 Division I Manual). Under the current legislation, impermissible academic assistance occurs, among other limited circumstances, when a current or former institutional staff member or representative of the institution's athletics interest provides substantial assistance not generally available or otherwise authorized by Bylaw 16.3, which results in the certification of a student-athlete's eligibility to participate in intercollegiate athletics, receive financial aid or earn an Academic Progress Rate point. See Bylaw 14.02.10.

basketball student-athletes and that those failures permitted her to provide extra benefits and impermissible academic assistance to women's basketball student-athletes. UNC contested the allegations. However, in the event that the panel concluded that impermissible academic assistance occurred, UNC admitted in the alternative that it failed to monitor the instructor/counselor. Because UNC firmly backed its courses and the record lacked information demonstrating the courses were systemically created or maintained to benefit athletics, the panel cannot conclude that UNC violated Constitution Articles 2 or 6.

As a starting point, the panel could not conclude that underlying violations occurred. However, that did not end the panel's analysis. The panel carefully considered whether the admitted conduct, failures and shortcomings, standing alone, demonstrated that the institution lacked control and failed to monitor. Constitution 6.01.1 places the control and responsibility for the conduct of intercollegiate athletics on the institution and conference. The bylaw further defines institutional control as administrative control or faculty control, or a combination of the two.

UNC repeatedly stressed that the conduct and courses failed to meet its standards and expectations. UNC also admitted that it permitted the conduct and courses to occur for 18 years because of institutional shortcomings. UNC acknowledged that those shortcomings included its failure to review the AFRI/AFAM department and its chair, based on policies existing at the time. By its own admissions, UNC appears to neither have had administrative control of the paper courses nor faculty control of the department chair. Considering these admitted failures, the panel explored whether UNC's shortcomings demonstrated a free-standing lack of control or failure to monitor.

Similarly, it is undisputed that the classes were not a secret. Individuals in both academics and athletics knew about the courses. Many questioned them. Generally, all assumed they were acceptable under the principle of academic freedom. Both academic and athletic administrators did not believe they had the authority to question how a faculty member structured and taught a course. The panel respects the importance of academic freedom in higher education. But it is not boundless, and it cannot be utilized as a shield from responsibility in circumstances that involve student-athletes. For example, if a faculty member arranged for a student-athlete to receive credit in a course in which they did not enroll or attend or created a fake course that had no requirements but resulted in a grade, the NCAA Constitution would require anyone who became aware of that arrangement to report it.

The record, however, does not establish specific, intentional or systemic efforts tied to athletics motives. The record was full of email chains, missing academic work and interviews conducted, in some circumstances, more than five years after the classes ceased. Those materials, required the panel to, at best, infer motives based on the large number of student-athletes who took the courses and received high marks. While student-athletes and athletics programs likely benefitted from utilizing the courses for eligibility purposes, regular students likely benefitted from them as well. Without the proper athletics touchpoints, however, the COI cannot conclude free-standing failure to monitor or lack of institutional control violations occurred based solely on deficient administrative structures. Here, absent the attenuated fact that potentially around two thousand student-athletes took these courses, the record does not demonstrate that those failures had an athletics motive. Based on the posture of the record and in light of the secretary's statements at

the hearing related to the nature of the courses, the conduct did not involve those athletics touchpoints.

In a more limited inquiry, the enforcement staff also alleged UNC failed to monitor and lacked control with respect to the instructor/counselor's conduct. The panel acknowledges that her multiple positions complicated her reporting lines and roles within UNC. The panel recognizes UNC employed questionable oversight with regard to her various activities. However, based on the record that required the panel to parse isolated sentences and potential suggested changes to draft papers within partial email chains, the instructor/counselor's testimony that she treated all students equally and the panel's not substituting its judgment on pure academic matters, the panel could not conclude the instructor/counselor committed violations. As such, the panel cannot conclude UNC failed monitor the instructor/counselor or that it lacked control.

Although the panel could not conclude academic, failure to monitor or lack of institutional control violations occurred, UNC originally adopted SACS' characterization of the conduct as academic fraud. UNC also admitted that the courses did not meet its standards and it let its students down. Bylaw 19.9.10 permits panels to recommend that the NCAA president forward a copy of the public infractions decision to accrediting bodies when the panel determines academic violations or questionable academic conduct occurred. Those circumstances are present here. Therefore, the panel will recommend that the NCAA president forward a copy of the public infractions decision to SACS.

### **Breaches of Confidentiality**

In its written reply, the enforcement staff identified two individuals associated in the case may have breached confidentiality requirements. The first involved counsel for the secretary who, on two occasions, released infractions-related information to the media. The second involved the institution's athletics director and comments he made to a reporter from a well-known media outlet. The enforcement staff noted the occurrences as potential confidentiality violations.

Bylaw 19.01.3 requires individuals subject to the NCAA constitution and bylaws, including any representative or counsel, to not make any public disclosures until a final decision has been released. The bylaw is intended to protect the membership's infractions process in three main areas: (1) the integrity of the investigation; (2) individuals associated with or subject to the investigation; and (3) those involved in the process, including the COI. Bylaw 19.5.2 permits a minor exception for individuals to confirm, correct or deny information that has been made public.

This case was public in nature. After all, the substance of the case originated from a media story that identified potential issues involving AFRI/AFAM courses. It also involved public attacks on the membership's infractions process that, at times, appeared to only further the public interest in the infractions case. The public narrative of a case, however, does not supersede the membership's strict confidentiality rules. To the contrary, the enhanced public nature of a case only reinforces the need for participants' commitment to confidentiality.

The panel directly addressed the identified disclosures with the individuals at the infractions hearing. Both apologized and provided context surrounding their actions. Although it is within

the panel's authority to conclude a violation occurred and prescribe an appropriate penalty, the panel concludes neither is appropriate here given the posture of this case.

The COI remains deeply concerned about breaches of confidentiality occurring at any point during the infractions process. Moreover, the COI is troubled by the attacks on the membership's infractions process and individual COI members who volunteer to serve its important mission. The panel appreciates the enforcement staff for bringing the conduct to the panel's attention. The enforcement staff remains in the best position to identify potential breaches of confidentiality. The COI retains the authority to consider confidentiality breaches identified by the enforcement staff after the issuance of an NOA. Based on that information, the panel may conclude violations occurred and that such conduct constitutes an aggravating factor and may thereby penalize conduct in future cases.

## **VI. PENALTIES**

For the reasons set forth in Sections III, IV, and V of this decision, the panel concludes this case involved Level I and Level II violations of NCAA legislation. Level I violations are severe breaches of conduct that seriously undermine or threaten the integrity of the NCAA Collegiate Model. Level II violations are significant breaches of conduct that may compromise the integrity of the Collegiate Model.

Pursuant to Bylaw 19.9.1, the panel prescribes penalties under the current penalty structure because the only concluded violations in this case occurred after October 30, 2012. In considering penalties, the panel first reviewed aggravating and mitigating factors pursuant to Bylaws 19.9.2, 19.9.3 and 19.9.4 to determine the appropriate classifications for the parties. The panel then used the current penalty guidelines (Figure 19-1) and Bylaw 19.9.7 to prescribe penalties.<sup>23</sup>

The panel determined the below listed factors applied and assessed the factors by weight and number. Based on its assessment, the panel classifies the department chair's violation as Level I-Aggravated and the secretary's violation as Level II-Mitigated.

### **Aggravating Factors for the Department Chair**

19.9.3-(e) unethical conduct and failing to cooperate.

### **Mitigating Factors for the Department Chair**

None.

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<sup>23</sup> The membership recently expanded the ranges in the penalty guidelines related to scholarship reductions and the duration of postseason bans, probation and show-cause orders. The adjusted guidelines became effective on August 1, 2017. Because the panel considered this case after the effective date of the adjusted guidelines, the panel used the adjusted guidelines to prescribe penalties.

### **Aggravating Factors for the Secretary**

19.9.3-(e) unethical conduct and failing to cooperate during an investigation.<sup>24</sup>

### **Mitigating Factors for the Secretary**

19.9.4-(h) The absence of prior conclusions of Level I, Level II or major violations.

All of the penalties prescribed in this case are independent of and supplemental to any action the NCAA Division I Committee on Academics has taken or may take through its assessment of postseason ineligibility, historical penalties or other penalties. The institution's corrective actions are contained in Appendix One. After considering all information relevant to the case, the panel prescribes the following:

### **Core Penalties for Level I-Aggravated Violations (NCAA Bylaw 19.9.5)**

1. Show-cause order: The department chair acted unethically and violated his responsibility to cooperate when he refused to cooperate with the institution and the enforcement staff's investigation. The department chair was one of two individuals at the center the conduct at issue in the case. As UNC identified to its accreditor, access to both he and the secretary was "monumental" to answer lingering questions about the scope and extent of the conduct. While he participated in the Cadwalader independent inquiry, he refused to participate in the institution's and the enforcement staff's investigation. Therefore, the department chair shall be subject to a five-year show-cause order from October 13, 2017, to October 12, 2022. The department chair shall be informed in writing by the NCAA that if he seeks employment or affiliation with an athletically related position at an NCAA member institution during the five-year show-cause period, any employing institution shall be required to contact the Office of the Committees on Infractions (OCOI) to make arrangements to show cause why restrictions on athletically related activity should not apply.

### **Penalties for Level II-Mitigated Violations (NCAA Bylaw 19.9.7)**

2. The secretary violated ethical conduct and cooperation bylaws when she refused to cooperate with UNC and the enforcement staff's investigation. She was a principle actor in the academic saga that occurred and had first-hand pertinent knowledge regarding the creation, growth, administration, access and grading of the courses at issue in this case. Her refusal to initially cooperate hindered both the institution's and the enforcement's staff ability to understand the full breadth and scope of what occurred at UNC. Although untimely, she eventually submitted a response to the second ANOA, participated in an interview with the parties and physically attended the in-person infractions hearing. Consistent with the ranges identified in the penalty guidelines for Level II-Mitigated conduct, the panel does not

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<sup>24</sup> Originally, the secretary failed to cooperate in the investigation. Although untimely, she ultimately participated and personally attended the infractions hearing despite personal circumstances. The panel factors this information into the weight of the aggravating factor.

prescribe a show-cause order. However, a record of the secretary's failure to cooperate will be maintained in the OCOI. The administrative record will be available to member institutions who inquire into the secretary's infractions history. *See COI Internal Operating Procedures 6-4-1 and 6-4-2.*

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The COI advises the institution that it should take every precaution to ensure that it observes the terms of the penalties. The COI will monitor the penalties during their effective periods. Any action by the institution contrary to the terms of any of the penalties or any additional violations shall be considered grounds for extending the institution's probationary period, prescribing more severe penalties or may result in additional allegations and violations.

NCAA COMMITTEE ON INFRACTIONS PANEL

Carol Cartwright

Alberto Gonzales

Eleanor Myers

Joe Novak

Jill Pilgrim

Greg Sankey, Chief Hearing Officer



## **APPENDIX**

### **CORRECTIVE ACTIONS IDENTIFIED IN UNC's APRIL 22, 2016, RESPONSE TO THE NOTICE OF ALLEGATIONS**

[UNC identified general items included in its January 15, 2015, annual report to the COI from its March 12, 2012, infractions decision.]

Specific examples of the University's corrective actions and its efforts to monitor, educate and enhance the ASPSA program include:

- The appointment of a new Director of ASPSA and the removal of individuals who formerly oversaw the program. The new director has appropriate credentials and background related to higher education and advising.
- In conjunction with the appointment of the new director, ASPSA began reporting directly to [the] University Provost, UNC's chief academic officer, instead of the College of Arts and Sciences.
- Centralizing all ASPSA operations and counselors to a single facility.
- Replacing a dotted-line relationship by designating a senior associate athletics director as a liaison with the ASPSA and the Office of Undergraduate Admissions to provide contextual information related to compliance with the clear understanding that academic functions are independent of athletics.
- Eliminating the ASPSA student mentoring program.
- Beginning in 2014, the University began offering reimbursement for ASPSA personnel and counselors to attend national meetings concerning industry standards, best practices, NCAA rules, etc. to encourage education and participation in those opportunities. Participation has increased each academic year since the commitment to funding professional development opportunities was made.
- The Provost's Office and Faculty Athletics Representative (FAR) began hosting regular meetings including the Department of Athletics, Registrar and ASPSA to improve communication and coordination. The "CARE" meeting (Compliance, Academics, Registrar for Excellence) facilitates discussion between key parties regarding current national topics, NCAA rule interpretations, educational scenarios, and processes that cross over several divisions. The meeting is chaired by the FAR. [UNC included Meeting agendas and sample educational materials shared during those meetings as an exhibit in the response.]

- Launching the Academic Processes for Student-Athletes website ([www.apsa.unc.edu](http://www.apsa.unc.edu)). The website provides detail of the Student-Athlete Academic Initiative Working Group's review and analysis of 21 comprehensive processes related to student-athletes and academics at the University. One such process, Process 7 – Academic Support for Student-Athletes, includes guiding principles for the role(s) and conduct of ASPSA employees.