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UNIVERSITY OF CALIFORNIA, BERKELEY

PUBLIC INFRACTIONS APPEALS COMMITTEE REPORT

INDIANPOLIS, INDIANA

This report is filed in accordance with NCAA Bylaw 32.11 and is organized as follows:

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I. INTRODUCTION.

The University of California, Berkeley, (hereinafter referred to as California) appealed to the NCAA Division I Infractions Appeals Committee specific findings of violations and penalties as determined by the NCAA Division I Committee on Infractions. In this report, the Infractions Appeals Committee addresses the issues raised by the California.

II. BACKGROUND.

The Committee on Infractions issued Infractions Report No. 198 June 26, 2002, in which the committee found violations of NCAA legislation in the institution's football program. On the basis of those findings, the Committee on Infractions determined that this was a major infractions case and imposed penalties accordingly. [July 8, 2002, issue of The NCAA News]

This case centered on violations of NCAA bylaws governing ethical conduct (academic fraud), academic eligibility, the obligation to withhold ineligible student-athletes from competition, extra benefits, improper recruiting inducements and lack of institutional control.

After the Committee on Infractions issued its report, California filed a timely Notice of Appeal July 9, 2002. A written appeal was filed August 22, 2002. The Committee on Infractions filed its Response October 8, 2002. California filed its Rebuttal to the Committee on Infractions Response October 30, 2002. The case was considered by the Infractions Appeals Committee November 8, 2002 (Section VII below).

III. VIOLATIONS OF NCAA LEGISLATION AS DETERMINED BY THE COMMITTEE ON INFRACTIONS. [Please note that the citations below are the citations of violations as they appear in the Committee on Infractions report dated June 26, 2002.]

II-A. UNETHICAL CONDUCT – ACADEMIC FRAUD, ACADEMIC INELIGIBILITY, FAILURE TO WITHHOLD INELIGIBLE STUDENT-ATHLETES FROM COMPETITION. [NCAA Bylaws 10.1-(b), 14.4.3.1, 14.4.3.1.3 and 14.11.1]

In August 1999, student-athlete 1 and student-athlete 2 were involved in academic fraud when the professor awarded academic credit to the young men, even though they did not attend a sufficient number of class sessions or complete a sufficient amount of coursework to receive academic credit in the professor's courses. Additionally, the institution permitted the two student-athletes to compete during the fall of 1999, even though they had failed to maintain NCAA satisfactory progress and were ineligible for competition. Specifically:

1. In August 1999, the professor allowed student-athlete 1 to enroll retroactively in a course the professor taught during the 1999 spring semester, and subsequently awarded student-athlete 1 a grade of "C" for the course, even though the young man attended limited class sessions, if any, and completed little or no coursework. The professor's requirements for the course included a midterm exam worth 100 points, a final exam worth 100 points, two objective tests worth 50 points and class participation worth 50 points.
2. In August 1999, the professor allowed student-athlete 2 to enroll retroactively in a course taught by the professor during the 1999 spring semester and subsequently awarded student-athlete 2 a grade of "C" for the course, even though the young man attended limited class sessions, if any, and completed little or no coursework. The professor's requirements for the course included a midterm exam worth 100 points, a final exam worth 100 points, two objective tests worth 100 points and class participation worth 100 points.
3. During the fall semester of 1999, the institution permitted student-athlete 1 to compete, even though the young man had not maintained NCAA satisfactory progress, as he earned only nine credit hours during the 1998 fall semester, six credit hours during the 1999 spring semester and six credit hours during the summer session of 1999. Therefore, student-athlete 1 was three credit hours short of the minimum 24 credit hours student-athletes were required to complete during the fall and spring semesters of the 1998-99 academic year.
4. During the fall semester of 1999, the institution permitted student-athlete 2 to compete, even though the young man had not maintained NCAA satisfactory progress, as he earned only eight credit hours during the 1998 fall semester, six credit hours during the 1999 spring semester and six credit hours during the 1999 summer session. Therefore, student-athlete 2 was four credit hours short of the minimum 24 credit hours student-

athletes were required to complete during the fall and spring semesters of the 1998-99 academic year.

II-B. IMPERMISSIBLE EXTRA BENEFITS, FAILURE TO WITHHOLD INELIGIBLE STUDENT-ATHLETES FROM COMPETITION. [Bylaws 14.11.1, 16.8.2.5, 16.12.2.1 and 16.12.2.2]

During the 1997, 1998, 1999, 2000 and 2001 football seasons, 38 football student-athletes received extra benefits in the form of incidental expenses, values ranging from nominal to \$323.03, while lodging at hotels for competitions. Additionally, of those 38 student-athletes, 27 were permitted to compete prior to repaying the amount of benefit received and, therefore, competed while ineligible. Also, of those 27 student-athletes who were permitted to compete while ineligible, two of the student-athletes received benefits valued over \$100 and were permitted to compete prior to receiving formal restoration from the NCAA student-athlete reinstatement staff.

The following chart sets forth the incidental charges incurred by the student-athletes:

Student-Athlete	Year Expense Incurred	Amount of Incidental Expenses	Number of Competitions While Ineligible	Repayment Made (Y/N)
Student-athlete 3	1997	\$30	8	N
Student-athlete 4	1998	\$12.96	0	N
Student-athlete 5	1998/ 1999	\$5.43/\$51.16	12	N
Student-athlete 6	1998	\$7.51	11	N
Student-athlete 7	1998	\$6.05	0	N
Student-athlete 1	1999	\$48.41	3	N
Student-athlete 8	1999	\$17.55	0	N
Student-athlete 9	1999	\$14.46	0	N
Student-athlete 10	1999	\$6	1	N
Student-athlete 11	1999	\$12.91	0	N
Student-athlete 12	1999	\$.75	10	Y
Student-athlete 13	1999	\$42.46	1	N
Student-athlete 14	1999	\$1.50	0	N
Student-athlete 15	1999	\$7.66	0	N
Student-athlete 16	1999	\$48.51	1	N
Student-athlete 17	1999	\$.75	1	N

Student-athlete 18	1999/ 2001	\$.75/\$31.31	8	Y
Student-athlete 19	1999	\$36.72	8	N
Student-athlete 20	1999	\$170.42	10	N
Student-athlete 21	1999	\$323.03	11	N
Student-athlete 22	1999	\$2.07	10	Y
Student-athlete 23	1999	\$61.31	11	N
Student-athlete 24	1999	\$1.84	11	N
Student-athlete 25	1999	\$34.04	20	N
Student-athlete 26	1999	\$2.25	11	Y
Student-athlete 27	1999	\$3.35	10	Y
Student-athlete 28	1999	\$4.06	10	Y
Student-athlete 29	1999	\$37.76	11	Y
Student-athlete 30	1999	\$27.82	9	Y
Student-athlete 31	1999	\$2.27	1	N
Student-athlete 32	2000	\$.75	8	Y
Student-athlete 33	2000	\$39.13	11	N
Student-athlete 34	2000	\$21.19	9	N
Student-athlete 35	2000	\$93.40	7	N
Student-athlete 36	2000	\$35.42	0	N
Student-athlete 37	2001	\$11.89	0	Y
Student-athlete 38	2001	\$84.69	0	Y
Student-athlete 39	2001	\$5	0	N

[Note: If each of the above instances were considered in isolation, the value of most of these benefits would have rendered the individual violations as secondary. However, due to the number and scope of these benefits, which were provided over a five-year period, it was clear that there was a pattern of violations, which caused the violation, when considered as a whole, to rise to level of major.]

II-C. RECRUITING INDUCEMENTS, FAILURE TO WITHHOLD INELIGIBLE STUDENT-ATHLETES FROM COMPETITION [Bylaws 13.2.1, 13.2.2.1 and 14.11.1]

During the 2000-01 academic year, three prospective football student-athletes received improper inducements. Specifically, the prospective football student-athletes received incidental expenses, values ranging from \$22.81 to \$114.24, while lodging at a hotel for an official visit. Additionally, even though one of the prospective student-athlete's inducements was valued over \$100, the institution

permitted the young man prospect A to compete the following season without applying NCAA eligibility legislation and seeking formal restoration from the NCAA student-athlete reinstatement staff. Also, the institution permitted one other prospective student-athlete at the time prospect B to compete the following season prior to repaying the value of the inducement received.

Following are the incidental charges incurred by the prospective student-athletes:

Prospective Student-athlete	Amount of Incidental Expenses	Number of Competitions While Ineligible	Repayment Made (Y/N)
Prospect A	\$114.24	4	Y
Prospect B	\$72.03	11	Y
Prospect C	\$22.81	0	Y

II-D. LACK OF INSTITUTIONAL CONTROL. [NCAA Constitution 2.1, 2.8.1 and 6.01.1]

The institution demonstrated a failure to exert appropriate institutional control and monitoring in the conduct and administration of its athletics program in that it failed to investigate adequately the violations as indicated in Finding II-A of this report despite repeated warning signs that violations may have occurred. Further, the institution also demonstrated a failure to monitor its football program and/or exert appropriate institutional control in that systemic breakdowns led to the repeated ineligible competition of football student-athletes as outlined in Findings II-B and II-C.

With regard to the investigation of the academic fraud involving the professor and student-athletes 1 and 2, the following was found relative to institutional control:

1. Late in the spring semester of the 1998-99 academic year, an academic advisor for student-athletes academic advisor A called a meeting with the assistant to the faculty athletics representative another academic advisor for student-athletes 1 and 2, academic advisor B a third academic advisor for student-athletes academic advisor C and the director of academic services. In this meeting, academic advisor A made a statement that she had just learned from another football student-athlete that student-athletes 1 and 2 were planning to retroactively add 1999 spring classes taught by the professor, and she was concerned because student-athletes 1 and 2 may not have been attending the classes or doing the coursework. Academic

advisor B, the advisor for student-athletes 1 and 2, reported that he was not aware of this problem because student-athletes 1 and 2 might not been attending their required weekly academic progress meetings with academic advisor B. The meetings were required because the institution regarded student-athletes 1 and 2, who were freshmen, as academically at risk. At the meeting, the group decided to have the former faculty athletics representative communicate with the professor regarding these matters. The faculty athletics representative sent the professor two e-mails that made no reference to the two student-athletes. Copies of the e-mails were sent to others, including the director of athletics, but there was no further investigation of these matters. No one at the institution inquired specifically of the professor or student-athletes 1 and 2 about academic advisor A's concerns.

2. During the summer of 1999, the head football coach expressed concern to the director of athletics about possible improprieties involving student-athletes 1 and 2 retroactively adding the professor's spring classes to maintain NCAA eligibility. The director of athletics informed the head football coach that a professor's judgment could not be questioned as to whether a grade was earned. Further, the head football coach's concern was not forwarded to the compliance office.
3. In August 1999, the assistant to the faculty athletics representative informed the new faculty athletics representative of the concerns expressed about the grades earned by student-athletes 1 and 2 in the professor's classes the previous spring. The new faculty athletics representative had been appointed to the position in the previous month. The new faculty athletics representative telephoned the professor and asked, generally, if the professor's grades related to student-athletes were appropriate, to which the professor responded that all of his grades were appropriate. The new faculty athletics representative did not ask the professor any specific questions about student-athletes 1 and 2 or their spring classes.
4. In October 1999, the Pacific-10 Conference office advised the institution about information obtained by the NCAA, which indicated that the professor might have improperly awarded academic credit to student-athletes 1 and 2. Subsequently, the institution conducted an inadequate investigation and submitted a report to the Pacific-10, which was in part inaccurate and misleading. Specifically, regarding the institution's investigation, while the institution interviewed student-athlete 2, the

interview was brief, informal and over the telephone. The institution did not interview student-athlete 1 or even ask the professor whether the young men completed any coursework. Regarding the report of January 27, 2000, to the Pacific-10, the institution reported that both student-athletes 1 and 2 retroactively added the same course when, in fact, student-athlete 2 retroactively added a different course. The report to the Pacific-10 also stated that the institution interviewed the professor three times with respect to student-athletes 1 and 2 when, in fact, the faculty athletics representative had contacted the professor by telephone only once. The institution also reported that the young men completed the required coursework during the academic year to earn academic credit in the professor's courses when, in fact, the young men did not complete all of the required coursework.

Associated with the extra benefits resulting from incidental expenses incurred during hotel stays, the following was found relative to institutional control:

5. During the 1997-98, 1998-99 and 1999-00 academic years, the football staff and business office staff became aware that football student-athletes received extra benefits as outlined in Finding B but failed to notify the compliance office of the violations. Additionally, the football staff failed to recognize the eligibility reinstatement requirements for student-athletes who receive extra benefits.
6. During the 1997-98, 1998-99 and 1999-00 academic years, the associate athletics director with football oversight failed to report the extra benefits violations outlined in Finding II-B because he believed that the institution's policy was that if repayment was collected from student-athletes, the violation did not need to be reported. This belief was also shared by the institution's faculty athletics representative at the time. The associate athletics director also assumed that the assistant athletics director for compliance and the director of athletics were aware of the violations when, in fact, they were not.
7. In November 2000, the assistant athletics director for compliance failed to recognize eligibility reinstatement requirements for student-athletes and thus failed to ensure that football student-athletes were declared ineligible and withheld from competition after the business office provided documentation indicating that the young men had received hotel incidental expenses. Also, during the 2000-01 academic year, the assistant athletics director for compliance became aware that prospective football student-

athletes received inducements as outlined in Finding II-C but failed to report the violations. Additionally, the assistant athletics director for compliance failed to recognize the eligibility reinstatement requirements for prospective student-athletes who receive inducements valued over \$100.

IV. CORRECTIVE ACTIONS TAKEN AND PENALTIES (PROPOSED OR SELF-IMPOSED) BY THE UNIVERSITY AND CONFERENCE.

In determining the appropriate penalties to impose, the committee considered the institution's self-imposed corrective actions and penalties, in addition to those sanctions imposed by the Pacific-10. Among the actions the university has taken or will take are the following:

A. Corrective Measures and Self-Imposed Penalties.

1. The university has identified a certain date, early in each semester, after which no student-athlete may "drop" or "add" a course without prior substantive review and written approval, first by the student-athlete's athletics study center advisor and second by the faculty athletics representative. Further, both the athletics study center advisor and the faculty athletics representative have been required to make and maintain a separate written record of the basis for their approvals.
2. The university's enrollment system has been amended to ensure that college administrators and the registrar's office are aware when a drop or add petitioner is a student-athlete, in order for the college and the registrar to ensure compliance with the faculty athletics representative's approval requirement on the form used to effect the drop or add.
3. The position description of the assistant athletics director for compliance has been amended to more fully describe and specify authority for investigating and reporting potential NCAA and Pacific-10 violations. Further, in order to ensure the independence of this investigation function and the quality of reports to the Pacific-10 and/or the NCAA of possible major rules violations, the assistant athletics director for compliance should report to and be supervised by the office of the assistant chancellor for legal affairs with respect to those functions.
4. The athletics study center advising staff has been required to maintain detailed and comprehensive records of all meetings, discussions,

conferences, etc., relating to any interim change in a student-athlete's academic course load and other matters that may impact the student-athlete's eligibility.

5. Each college and the office of the registrar has been required to maintain copies of all petitions and related paperwork for approved adds and drops by the institution's student-athletes.
6. The retroactive add procedure has been modified to ensure appropriate substantive review and approval by a responsible level of authority in the dean's offices.
7. Findings of academic violations on the part of any university faculty member has been subject to the institution's misconduct procedure for appropriate action.
8. In compliance with NCAA guidelines, the professor in this case has been disassociated from further involvement with the university's athletics programs. A letter of this disassociation has been sent to the involved professor.
9. The findings of academic violations on the part of the two student-athletes involved in this case were forwarded to the university's student conduct office for appropriate action. No punitive action was taken because both student-athletes have since dropped out of school.
10. The university's intercollegiate athletics program has been placed on institutional probation for two years, with periodic reports to be prepared for the chancellor and the Pacific-10, detailing the implementation and monitoring of corrective measures.
11. Letters of admonishment have been issued to those institutional officers identified as sharing responsibility for the failure to adequately investigate possible NCAA rules violations and to ensure that a complete and accurate investigation report was submitted to the Pacific-10.

B. Corrective Measures and Penalties Imposed by the Conference.

1. The university has adopted a compliance oversight plan/organizational structure that clearly delineates the communication lines and division of responsibilities among all persons with compliance oversight

responsibility, including the assistant vice-chancellor for legal affairs, the faculty athletics representative, the athletics director, the assistant athletics director for compliance and the director of eligibility.

2. The university has been required to issue a follow-up report to the conference's Compliance and Enforcement Committee after two years, describing how that structure is working, and report any changes made in organization, procedures or responsibilities.
3. The university has been placed on conference probation for one-year beginning March 8, 2001.
4. The university has reduced the number of initial counters in football by a total of four during the 2001-02 and 2002-03 academic years in any combination the university chooses. The university has also reduced the total number of football counters by four during the above two-year period. [Note: The university imposed the four initial grant reduction and total grant reduction all in the 2001-02 academic year.]
5. The university has issued letters of reprimand to the current faculty athletics representative and to the assistant athletics director for compliance.
6. The university has forfeited its victory against Arizona State University (September 25, 1999) due to the contributions of student-athletes 1 and 2 to that victory.

V. PENALTIES IMPOSED BY THE COMMITTEE ON INFRACTIONS.

The Committee on Infractions imposed additional penalties because of the involvement of California in a number of the violations. The penalty in which California was cited was III-B.

- A. The university shall be publicly reprimanded and censured.
- B. The university shall be placed on five years of probation beginning March 8, 2001, and concluding March 7, 2006. The committee considered the five-year probationary period to have begun March 8, 2001, the date of the Pacific-10's Compliance and Enforcement Committee's infractions report, and the starting date for the one-year conference probationary period, for which the committee credited the university.

- C. The institution's football team shall end its 2002 season with the playing of its last regularly scheduled, in-season contests and shall not be eligible to participate in any bowl game or take advantage of the exemption provided in Bylaw 17.10.5.3 for preseason competition.
- D. In addition to the conference-imposed reduction of four initial grants and four total counters in football which were taken during the 2001-02 academic year, the institution shall further reduce the permissible limit of initial grants in the sport of football by a total of nine during the 2002-03 through 2005-06 academic years, with not less than two grant cuts in any given year.
- E. Pursuant to Bylaw 19.6.2.2-(e)-(2), the committee confirms that the university will vacate its team record as well as any individual records of the two student-athletes who participated in football contests while academically ineligible during the 1999 season as set forth in Finding II-A of this report. In conjunction with this penalty, the university's records regarding football will be reconfigured to reflect the vacation of the 11 contests in which the two student-athletes competed during the 1999 season. This vacation of performances shall be recorded in all publications in which football records for that season are reported, including, but not limited to, university media guides, recruiting material, and university and NCAA archives.
- F. In accordance with Bylaw 19.6.2.7, the NCAA president shall forward a copy of the public infractions report to the appropriate regional accrediting agency.
- G. During this period of probation, the institution shall:
 - 1. Continue to develop and implement a comprehensive educational program on NCAA legislation, including seminars and testing, to instruct the coaches, the faculty athletics representative, all athletics department personnel and all university staff members with responsibility for the certification of student-athletes for admission, retention, financial aid or competition;
 - 2. Use an outside independent agency to conduct a comprehensive audit of the athletics department with particular focus on academic standards and practices involving student-athletes and proper compliance procedures including monitoring and reporting of potential violations.

3. Submit a preliminary report to the director of the NCAA Committees on Infractions by July 15, 2002, setting forth a schedule for establishing this compliance and educational program; and
4. File with the committee's director annual compliance reports indicating the progress made with this program by April 15 of each year during the probationary period. Particular emphasis should be placed on adherence to NCAA academic standards, certification of initial eligibility, monitoring of expenses provided to student-athletes and prospects, proper investigating and reporting of potential NCAA violations and ethical conduct expectations for staff members at NCAA member institutions. The reports must also include documentation of the university's compliance with the penalties (adopted and) imposed by the committee. Documentation relating to late and retroactive adding of courses by student-athletes should be included. Further, the committee directs that the report to the Pacific-10 referenced in conference penalties/corrective actions number two (2) be included in the appropriate annual report submitted to the NCAA, in addition to the outside audit specified in Penalty III-B-7-(b).
5. At the conclusion of the probationary period, the university's president shall provide a letter to the committee affirming that the university's current athletics policies and practices conform to all requirements of NCAA regulations.

VI. ISSUES RAISED ON APPEAL.

In its written appeal, California asserted that the finding of violation II-D-1, insofar as it involves the former faculty athletics representative should be set aside as clearly contrary to the evidence presented, and that those facts found by the Committee on Infractions do not constitute a violation of NCAA legislation. Additionally, California asserted that two of the penalties assessed against it – III-B-3, a ban on postseason competition by its football team following the 2002 season; and III-B-4, a reduction in the permissible number of initial grants-in-aid by nine in football during the 2002-03 through 2005-06 academic years – should be set aside as excessive or inappropriate. (Bylaw 32.10.2)

VII. APPELLATE PROCEDURE.

In considering this appeal, the Infractions Appeals Committee reviewed the Notice of Appeal; the transcript of the institution's April 12, 2002, hearing before the Committee on Infractions; and the submissions by California and the Committee of Infractions referred to in Section II of this report.

An appeals hearing on the appeal was held by the Infractions Appeals Committee November 8, 2002, in Chicago, Illinois. The representatives of California present at the hearing included the chancellor, vice-chancellor and general counsel, athletics director and associate athletics director. California was also represented by its attorneys. The Committee on Infractions was represented by the coordinators of appeals and the director of the NCAA Committees on Infractions. Also present were the vice-president of enforcement services and director of enforcement services. The chair of the NCAA Division I Committee on Infractions attended as an observer. The hearing was conducted in accordance with procedures adopted by the committee pursuant to NCAA legislation.

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

In reviewing the report in this case, the Infractions Appeals Committee may overturn a determination of fact or finding of violation only if:

- A. The committee's finding clearly is contrary to the evidence presented to the committee;
- B. The facts found by the committee do not constitute a violation of the Association's rules; or
- C. A procedural error affected the reliability of the information that was used to support the committee's finding. [Bylaw 32.10.2]

“A showing that there was some information that might have supported a contrary result will not be sufficient to warrant setting aside a finding nor will a showing that such information might have outweighed the information on which the committee based a finding. The Infractions Appeals Committee . . . will set aside a finding only on a showing that information that might have supported a contrary result clearly outweighed the information on which the Committee on Infractions based the finding.” (University of Mississippi, Public Infractions Appeals Committee Report, at page 10, May 1, 1995.)

A penalty imposed by the Committee on Infractions may be set aside on appeal if the penalty is “excessive or inappropriate based on all the evidence and circumstances.” [Bylaw 32.10.2]

There are two primary issues in this case. The first issue is whether the Committee on Infractions properly relied on the actions of former faculty athletics representative in its finding of a lack of institutional control. The second issue is whether the certain penalties are excessive or inappropriate.

- Lack of Institutional Control.

In the hearing before the Committee on Infractions, in its written appeal to this committee, and in the hearing before this committee, California repeatedly acknowledged that it failed to exercise institutional control, as demonstrated by the uncontested portion of finding II-D-1 and by findings II-D-2 through II-D-7. However, it contends that the former faculty athletics representative’s actions set forth in finding II-D-1 were proactive and appropriate, and did not, demonstrate a lack of institutional control.

We agree that, though the former faculty athletics representative’s lengthy June 10, 1999, e-mail to did not name the two student-athletes whom academic advisor A had mentioned, it was explicit enough to alert the professor to the possibility of academic fraud. Specifically, the former faculty athletics representative said, “I want to warn you” that student-athletes might try to seek a “retroactive add” for courses they did not actually take and that such tactics would violate university rules. The professor replied June 14, 1999, that he “appreciated the former faculty athletics representative’s counsel, and I will be much more vigilant about this matter in the future.” (California’s written appeal, exhibit 5) Later that day, the former athletics representative answered him in a second e-mail, further describing the problem and pointing out that, as California’s faculty athletics representative, he had a duty to certify the eligibility of student-athletes and necessarily relied on a professor’s word that the requisite work had been done.

Given these events, the professor’s improper “retroactive add” and assignment of fraudulent grades to the two student-athletes in October 1999 cannot be attributed to any inaction by the former faculty athletics representative. Therefore, the finding in II-D-1 regarding the former faculty athletics representative is set aside because those facts do not constitute a violation of the NCAA’s legislation on institutional control.

That said, however, the fact remains that California – as it has acknowledged – failed to exercise institutional control when, subsequent to the former faculty athletics representative’s warning, it did not detect the professor’s false “retroactive add”; when it certified the two student-athletes’ eligibility and allowed them to compete throughout the 1999 football season; when it conducted a patently inadequate investigation following the conference inquiry into the eligibility of the two student-athletes; and when it falsely reported to the conference that no impropriety had occurred. Thus, even excluding consideration of the former faculty athletics representative’s actions, the Committee on Infractions’ finding of a lack of institutional control is amply supported by the evidence.

This is not a case in which the football program failed the university; in this case the university failed itself. For example, in the summer of 1999, the head football coach expressed concern to the athletics director about the improper use of “retroactive adds” by student-athletes 1 and 2 to maintain eligibility. As a member of the university’s senior management, the athletics director had a responsibility to pursue these concerns. Regrettably, he did not.

- Penalties.
 1. Postseason Ban on Competition.

Both student-athletes who engaged in the academic fraud with the professor dropped out of California after the 1999 season. Thus, the university argues that the brunt of the postseason ban will be borne by members of the university’s 2002 football team, who largely are innocent of any wrongdoing.¹ To add to the unfairness, the university points out that at least one of the involved student-athletes transferred to another Division I institution and, with his eligibility restored, can now play in the postseason for that school.

The committee has consistently recognized that in most cases a ban on postseason competition will affect innocent student-athletes. As we have pointed out before, this is inherent in the nature of the penalty (see University of Nevada, Las Vegas, Public Infractions Appeals Committee Report, page 11, February 16, 2001; University of Alabama, Tuscaloosa, Public Infractions Appeals Committee Report page 18; September 17,

¹ Some present members of the football team received improper incidental hotel expenses, as detailed in the Committee on Infractions’ finding II-B. However, the Infractions Appeals Committee did not consider that this violation was central to the imposition of the postseason ban.

2002; University of Kentucky, Public Infractions Appeals Committee Report page 20, September 17, 2002). The NCAA's legislation provides that a ban on postseason competition is a presumptive penalty for a major violation. (Bylaw 19.6.2.1.)

In considering this issue, the Infractions Appeals Committee noted that a penalty would allow a postseason competition to take place, but deny the university the financial rewards of that contest, might be a more appropriate sanction under Bylaw 19.6.2.1. Such a penalty would minimize the adverse impact on student-athletes, who individually have done nothing wrong, and instead would penalize the institution, which has failed in its responsibilities. Neither the Committee on Infractions nor this committee has authority from the NCAA to fashion such a penalty. Accordingly, we suggest that legislative authorities of the NCAA consider possible postseason competition penalties that would permit the Committee on Infractions to fashion penalties more appropriate to the violation in particular cases.

This problem is especially evident in this case because the findings of the Committee on Infractions demonstrate that the lack of institutional control was not primarily in the football program, but in the academic administration of the university. These shortcomings arose in two stages. First, two student-athletes were given credit for, and grades in, courses they did not attend and for course work they did not do. They were improperly certified as eligible and played in a combined total of 19 contests. (California's written appeal, page 10) The institution's review and monitoring mechanisms were plainly inadequate to detect this serious violation of NCAA legislation. Second, when the Pacific-10 learned of these violations independently and passed the information to the university for appropriate investigation in October 1999, the university conducted a woefully inadequate inquiry and then falsely informed the conference that it had performed an investigation and that there was no wrongdoing.

The Committee on Infractions emphasized, as does this committee, that a principal basis for the penalties imposed was the university's status as a repeat violator. Accordingly, the university must accept, as it has, responsibility for its failure to institute adequate institutional controls and recognize that its failure to do so resulted in these violations and the penalties imposed by the committee.²

2. Reductions in Initial Grants-in-Aid.

In addition to the ban on postseason competition, which we have addressed and upheld, the institution argues that the reduction in the permissible number of initial football grants-in-aid by a total of nine during the 2002-03 through 2005-06 academic years is excessive. The Infractions Appeals Committee agrees that, when these additional penalties are viewed with those already self-imposed by the institution, and imposed by the Pacific-10 and the Committee on Infractions, they are excessive. In that regard, this committee notes favorably the actions of the Pacific-10 in furtherance of its mandated responsibilities for institutional control and considers the grant-in-aid reductions imposed by the Pacific-10 to be reasonable and sufficient.

IX. CONCLUSION.

We set aside finding II-D-1, insofar as it concludes that former faculty athletics representative's actions demonstrate a lack of institutional control. The remainder of that finding is affirmed. The penalty of a postseason ban on competition is affirmed. The additional reduction of grants-in-aid imposed by paragraph III-B-3 of the Committee on Infractions' report is set aside.

NCAA Infraction Appeals Committee

Terry Don Phillips, chair
Christopher L. Griffin
William P. Hoye
Allan A. Ryan Jr.
Rodney K. Smith

² This lack of institutional control was further exhibited by the failure to properly address student-athletes' improper incurring of incidental expenses, resulting in a separate violation found by the Committee on Infractions and not contested by the university in this appeal. Normally, these incidental expenses would have been treated as secondary infractions if discovered and reported in a timely fashion.