

Date: November 17, 2006

To: Congressman William Thomas, Chair, and Congressman Charles B. Rangel, member, House Committee on Ways and Means, U.S. House of Representatives

From: Jon Ericson, Ellis & Nelle Levitt Professor Emeritus and former Provost, Drake University

Subject: Reply to Mr. Myles Brand's [November 13, 2006] reply

In a criticism of President Bush's second inaugural address, Peggy Noonan said, "The most moving speeches summon us to the cause of what is actually possible." A faculty member who is critical of the corruption in college sports should focus on what it is actually possible for faculty to affect: academic integrity. That means to focus on "Questions Relating to the NCAA's Educational Mission," section 8, questions a, b, & c, and section 11, questions a, b, c, & d.

**Chairman Thomas:** [8.] In recent years, there have been many reports of athletes taking college courses that lack academic rigor. Several schools have reportedly steered athletes toward professors and academic majors that are less challenging.

a. What actions has the NCAA taken to assess the substance of the courses athletes are taking and, more generally, the quality of the education athletes receive?

**NCAA President Myles Brand:** The NCAA is in the process of collecting survey data in two projects with both recently graduated student-athletes and those who have graduated over the last decade about what degrees they selected, why those degrees were selected and whether they were steered toward specific degree programs. Those data have not been fully compiled and will not be available until the spring of 2007. It is important, however, to understand that the faculty of each college or university, rather than the NCAA, determines the courses that will be taught, the standards for instruction and the requirements for degrees. They are also responsible for monitoring against academic abuse or fraud, and they take these responsibilities seriously. It is unlikely that any intrusion by the NCAA into this realm would be either practical, successful or welcomed.

**Jon Ericson:** Mr. Brand and Athletics Directors are fond of reacting to any questions concerning academic misconduct related to athletics by pointing out that the faculty is responsible for the curriculum. Mr. Brand is, of course, dead-on correct. We call ourselves the guardians of the curriculum. It is not difficult to imagine an Athletics Director returning to his office, leaning back in his chair and feeling both pleased with himself and confident that the academic-fraud bullet had been dodged. Why not? His confidence is grounded in the almost unbroken track record of faculty indifference, unaccountability, and inattention to guard duty.

Given faculty indifference, the truism that faculty are responsible for the curriculum becomes a key tactic in the strategy of avoidance and evasion to any questions, charges, or examples of academic impropriety in college sports.

**Thomas:** [b.] Does the NCAA collect information from its member institutions to determine whether athletes are disproportionately taking certain professors, courses, or academic majors at individual schools?

**Brand:** Although the results are not available at the time of this writing, the NCAA is collecting data on the majors of student-athletes through our Academic Performance Program.

**Ericson:** The question was about professors and courses, not simply academic majors. Disclosing academic majors provides limited information; disclosing

courses and names of professors provides detailed information. Which would a scholar choose?

**Thomas:** [c.] Would requiring the public disclosure of the professors, courses, and academic majors of athletes help ensure that they receive a quality education?

**Brand:** Privacy provisions of the Family Education Right to Privacy Act (FERPA)<sup>6</sup> would prohibit such public disclosure, and it is not clear that such public disclosure would, in fact, ensure a better quality education. Likewise, if more student-athletes major in a specific discipline, it does not follow that such students receive an education of less quality or are subject to less rigorous academic standards, much less that there is academic fraud. As noted earlier in this letter, the standards for instruction and the integrity of academic offerings are the purview of the faculty and their responsibility, rather than the NCAA. Moreover, it would be contrary to the freedom of choice accorded all students to require that student-athletes take certain majors and not others.

6 Note: FERPA allows schools to release academic majors as directory information without the consent of the student. Only if the student affirmatively requests this information not be shared is the institution prohibited from giving it out.

**Ericson:** First, FERPA does not prohibit disclosure [as surely Mr. Brand knows];<sup>1</sup> second, disclosure would meet more clearly, specifically, descriptively, and completely “the goal of the NCAA academic reform initiatives [such as the APR] . . . to change behavior and improve academic performance.” Third, it follows that disclosure would provide information from which to draw conclusions about the rigor of academic programs selected by athletes. Fourth, what avenue other than review of an academic record is available to determine whether academic fraud exists? Finally, Mr. Brand pulls a world-class irrelevancy when he suggests that those of us who advocate disclosure wish to deny a student “freedom of choice” in selecting an academic major.

There is no shortage of examples where disclosure changed behavior. When an Auburn University professor blew the whistle on excessive directed independent study credits given by a colleague, Mr. Brand turned to the playbook [see above] and called the Auburn situation an “institutional problem . . . not an athletics problem.” Again, true. And an institutional problem calls for an institutional solution. In other words, disclosure is not directed at athletics, it is directed to the academic integrity *of the institution*. Disclosure is not about student behavior, it is *about institutional behavior*. Make no mistake about it, concern over disclosure is not, as Mr. Brand tries to suggest, a concern for a student’s privacy; it is that behavior by faculty, administrators, and presidents will be exposed. The result would be good for the academic integrity of the institution and, in the long run, good for college athletics.

As efforts by whistleblowers have demonstrated, there is no reward for the individual faculty member to take seriously the role of guardian of the curriculum. As Theodore White pointed out: “To go against the dominant thinking of your friends, of most of the people you see every day, is perhaps the most difficult act of

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<sup>1</sup> See Matthew R. Salzwedel & Jon Ericson, “Cleaning Up Buckley: How the Family Educational Rights and Privacy Act Shields Academic Corruption in College Athletics,” *Wisconsin Law Review*, Volume 2003, Number 6, 1053-1113. Reprint enclosed. Electronic or hard-copy available. Contact ERICSONJL@MSN.COM.

heroism you can have.” People become professors to be teachers and scholars, not heroes. The result is that an overwhelming number of faculty become members of the silent majority. For those faculty, disclosure is their friend. Disclosure is the friend of faculty who want the academic corruption to end. Without disclosure, faculty members who want to end the corruption—and its concomitant poison, cynicism—have to fight the system, have to be an adversary, have to be a whistleblower ("disloyal," "not a team player," "hurting the university," "against athletics"). For those faculty who are tired of the corruption, who are embarrassed by the few who allow themselves—and thus the university—to be a part of the exploitation, who see the cynicism that the corruption produces, disclosure is an ally.

Graduation rates and the APR—requiring thousands of staff hours and hundreds of thousands of dollars to compile—give *the appearance* of facing the problem. They provide pretend accountability. Disclosure is the solution for those who believe it is time to come clean.

**Thomas:** [11]. During the last few decades, the NCAA has increased the maximum number of football and men’s basketball games that each member institution can play. This year, the NCAA changed the rules to allow schools to play an additional, twelfth football game. Also this year, the NCAA approved an increase in the maximum number of basketball games teams can play in a season and lengthened the season by one week. Including preseason and postseason tournaments, basketball teams can now play more than forty games in a season.

- a. Why did the NCAA make these rule changes?
- b. How do these rule changes further the educational mission of the NCAA and your member institutions?
- c. How do these proposals help athletes improve academic performance?
- d. At what point does playing additional games have a detrimental impact on academic performance?

**Brand:** These are all fair and important questions to ask, and they are the same questions the NCAA membership must ask itself as it addresses issues around playing and practice seasons. It may be helpful to respond to these questions as a group rather than individually. NCAA member colleges and universities clearly believe there is educational value to having athletics as part of the comprehensive campus experience. Previous responses address this belief specifically. As discussed in Appendix A, the Congress, the courts and the Internal Revenue Service also share this belief. Athletics contests are the laboratory for lessons taught in practice in the same way theatrical or musical performances provide practical application of the lessons taught in rehearsals. Since graduation rates and academic performance have continued to make steady progress over the last two decades, there is little reason to believe that the current length of practice and playing seasons is detrimental to academic performance. In fact, graduation rates for both football and male basketball student-athletes have steadily risen over the last five years as the number of contests increased. It is also true that the increase in the number of contests in football and men’s basketball will grow revenue that helps support a broad range of sports that might not otherwise exist. Athletics, like every other department on campus, cannot operate without sufficient revenues to meet expectations. Increasing revenue, however, is not the only reason. Some but not all teams were already playing 12 games in football. Permitting a 12<sup>th</sup> game for all teams was more fair. The stabilization of games in basketball eliminated similar unfair practices in that sport. The length of practice and playing seasons, however, will continue to be a carefully monitored subject for the leadership of intercollegiate athletics, and it was identified by the Presidential Task Force, noted earlier in this letter, as an issue for further review.

**Ericson:** 312 words to avoid the questions. Mr. Brands opens and closes wrapped in “fairness.” Note how fairness is defined: If some schools play 12 games and most schools play 11 games, *fairness* dictates that the season be extended to 12 games. Who can argue against fairness? Stabilization too is good. How to have stabilization? Lengthen the season. So, long seasons give “little reason to believe that the current length of practice and playing seasons is detrimental to academic performance.” Maybe missing class is not detrimental when taking pretend courses. But real university courses? What professor begins class by stating that class attendance matters not or little? How many professors come down hard the first day on the importance of class attendance?

Yet Mr. Brand would have us believe that a professor can take a student who, with an 890 SAT score, is academically unprepared for higher education, who has a job that requires 20 to 30 hours a week that causes him to miss numerous classes and come dead tired to others, and provide him with a *university* education.

Take, for example, the Graduation-Rates Report, 1996 classes, for Duke University, the SAT average for all students was 1,392. For the men’s basketball team: 887. (For the University of Nebraska men’s basketball team: 920). What Duke professor can take a student who has an 890 SAT—clearly and overwhelmingly academically unprepared for a Duke education—who will miss numerous classes and come tired to others, and provide the student with a Duke education? [Ask coach Krzyzewski if he can teach his players if they don’t come to practice. Oh my, will you get an earful of the importance of attending practice, even when the coach has selected his own students and they are blue chip—highly prepared for higher education athletics.]

Today, no topic in education receives more attention than the achievement gap. If Duke University can provide a Duke education for these academically unprepared students who will miss classes and have a demanding job, the university has a responsibility to share their program with educators everywhere.<sup>2</sup>

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<sup>2</sup> Duke senior associate athletics director Christopher Kennedy says you just need a new paradigm:

Duke University's men's basketball team has found a solution to the problem of players quitting college for the National Basketball Association draft:

Get them their degrees faster.

All the players have to do is stay in class year-round for three years, after which time they will have enough credits to graduate. . . .

"College basketball has changed in ways that are not at all good for higher education, but it's the world we live in," says Christopher Kennedy, senior associate athletics director at Duke. "You need to be flexible, and the old paradigm might not be the thing for the modern basketball world." . . . .

Jason Williams and Carlos Boozer, both rising juniors and potential first-round draft picks, have been attending summer school and plan to graduate in three years. SIDELINES, "Duke U. Begins Effort to Keep Basketball Players From Turning Pro Without Their Degrees," *The Chronicle of Higher Education*, August 10, 2001, A53.

About summer school and Duke’s new paradigm:

(Delsohn) Last summer, Williams and Boozer each took four summer school classes, even though Boozer spent part of his summer traveling, both in the U.S. and Japan, . . . A Duke official declined "Outside the Line's" request to interview Boozer, as well as head coach Mike Krzyzewski. But the same official confirmed that Boozer played USA Basketball for three of the six weeks he was enrolled in Duke's second summer session. ESPN's OUTSIDE THE LINES, "Zero Percent: College Basketball's Graduation Crisis," March 1, 2002.