

The Student-Athlete: An NCAA False Claim?

a CLIPS GUEST COMMENTARY

House Ways and Means Committee Chairman William Thomas had questions, NCAA President Myles Brand had answers, and now The Drake Group's Frank Splitt presents an incisive interpretation to one of the responses to use it as a means to amplify calls for the disclosure of the academic records of college athletes.

by Frank G. Splitt

BACKGROUND – According to Walter Byers, who served as NCAA executive director from 1951 to 1987, the term 'student-athlete' was coined by the NCAA in the 1950s to counter the threat that its newly implemented play-for-pay, grant-in-aid athletic scholarship policy could result in NCAA athletes being considered paid employees by Workers Compensation Boards and the courts. The term was immediately embedded in all NCAA rules and interpretations as a mandated substitute for words such as players and athletes [1].

Subsequently, NCAA marketing and PR departments have effectively branded the term to serve the public relations and advertising needs of the NCAA. It is apparent that the term is now used – mantra-like – by NCAA officials in speeches and interviews, as well as in NCAA press releases and other official communications as a means of brand extension. As a case in point, the term appeared no less than 68 times in NCAA President Myles Brand's November 13, 2006, letter to House Committee on Ways & Means Chairman Bill Thomas.

The NCAA's seemingly incessant use of the contrived student-athlete term is a deceptive way of getting their listening and reading audiences – the general public, the media, and especially NCAA-school athletes and government officials – to believe that big-time NCAA-school athletes are students rather than school employees working as athletic entertainers. Put another way, the obvious aim of this NCAA gambit has been to imprint in the minds of all, that college athletes are first and foremost students. But how can the NCAA really know this is so? It can't. The answer lies in the last part of NCAA President Myles Brand's response to a question by Chairman Thomas.

THE QUESTION AND RESPONSE – Thomas' Question # 8.a. followed his context-setting remark: *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.*

Chairman Thomas: *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 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.

COMMENT – As my TDG colleague, Jon Ericson has said: *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.*

Unfortunately, notwithstanding the efforts of the Coalition on Intercollegiate Athletics, most college faculty are attending to their own vested interests and non-provocative business – giving scant, if any, attention to their duties as guardians of the curriculum and academic integrity as it applies to their school's athletes. Some of these faculty are indeed intimidated by their administrations, athletic directors, and coaches, some are rabid sports fans who enjoy the entertainment and excitement, some just don't care, while still others can't make the connection between the apparent priority of athletics-over-academics at their schools and its negative impact not only on their schools, but also on America's long-term economic health and well being.

In any case, the fact that faculty are indeed responsible for the curriculum but, generally speaking, lack the power and the will to stand up to school presidents and their governing boards is a glaring weakness in academe. This weakness has become a tactical focal point in the NCAA's avoidance-and-evasion strategy that is aimed at countering questions, charges, or examples of academic impropriety in college sports. Therefore, Brand's response was not at all surprising.

A CONVENIENT TRUTH – The NCAA's ability to employ its avoidance-and-evasion strategy is based on a convenient truth. As a consequence of its hands-off policy with respect to oversight of academics, the NCAA does not have access to tangible and verifiable evidence on the academic performance of athletes. More to the point, it does not have the facts, as for example, on the courses taken by the athletes, the average grades for the athletes and the average grades for all students in those courses, the names of advisors and professors who teach those courses and whole-period class attendance by athletes. The simple truth is this: the NCAA does not have indisputable evidence that these athletes are really college students as opposed to school employees that have a full-time athletic job while participating in an alternative educational experience.

As a matter of fact, Robert and Amy McCormick, from the Michigan State University College of Law, argue in their *Washington Law Review* paper, "The Myth of the Student-Athlete: The College Athlete as Employee, that grant-in-aid athletes in revenue-generating sports at NCAA Division I institutions are not "student-athletes" as the NCAA asserts, but are, instead, "employees" under the National Labor Relations Act [2].

In many, if not most, instances, the aforementioned alternative educational experience is not part of the school's serious academic life, but rather a customized pseudo-academic experience engineered by academic support center staff members who work at the behest of the school's athletic department to maintain the eligibility of the school's athletes. See Palaima [3] for insights into the separate worlds of campus athletics and academics.

It can also be argued that, just like the government, the NCAA must take the word of school administrators that athletes are really students on track to receive a bona fide, rather than a "pretend" college education. The fact that the NCAA has never endorsed proposals for academic disclosure by its member schools [4, 5], seems to indicate that NCAA officials do not want to have public evidence that could prove embarrassing to their cartel's business interests. As far as the NCAA is concerned, its ignorance is bliss.

Simply stated, in the absence of indisputable facts, the NCAA is in a position where it can say that it must trust schools in academic matters. In many instances, these schools give every appearance of being secretive and untrustworthy in matters related to the eligibility of their athletes, for examples see Salzwedel and Ericson [4]. Besides the potential loss of big-money,

there is a compelling need for some schools to report very high graduation rates and passing Academic Progress Rates to justify/rationalize their high-profile programs and their extraordinary investments in academic support center staffs and facilities. And that brings us back to the NCAA's extensive use of the term 'student-athlete.'

AN NCAA FALSE CLAIM? – Without facts obtained by independent parties, disclosure, and external oversight, how can the NCAA ever know that athletes are really students receiving a bona fide, rather than a “pretend” college education? Without an unequivocal answer to this question that is supported by verifiable evidence – indicating that athletes are progressing on accredited-degree tracks – there appears to be no rational basis for the NCAA to use the term 'student-athlete' when referring to college athletes who are, in effect, full-time employees of their schools. The NCAA's use of the term may very well represent a false claim in violation of laws governing truth in advertising [6].

Finally, without external oversight and a requirement for Buckley-compliant disclosure [4, 7], there will be no serious reform, only a veil of secrecy shrouding a continuing national scandal that is characterized by exploitation of college athletes, academic corruption, and distortion of the mission of our institutions of higher education ... institutions that are now beholden to the out-of-control college sports entertainment business.

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