

The University of North Carolina at Chapel Hill
Faculty Athletics Committee
Minutes of Meeting: April 8, 2014

Present: **Committee Members:** Lissa Broome, Carol Folt, Beverly Foster, Barbara Osborne, Andy Perrin, Joy Renner, John Stephens, Deborah Stroman, Kimberly Strom-Gottfried

Athletic Department Personnel: Bubba Cunningham, Vince Ille

Other Advisers: Michelle Brown

Guests: Amanda Albright (DTH), Willis Brooks (History, emeritus), Bob Orr (attorney), Daniel Schere (DTH), Jonathan Weiler (Global Studies), Anne Whisnant (Office of Faculty Governance)

I. Introductions

Committee members and guests introduced themselves.

II. Remarks from the Athletics Director

Bubba Cunningham touched upon some of the important recent legal developments affecting intercollegiate athletics, including the *O'Bannon* lawsuit, the *Kessler* lawsuit, and the Northwestern football team decision that football players are employees. These developments are accelerating some important discussions about the time demands of intercollegiate athletics, meaningful education for student-athletes, representation of student-athletes in athletics governance, and how to fund the intercollegiate athletic department. In conjunction with these developments, the NCAA is expected to permit the five major athletic conferences to have autonomy on some important issues. The Chancellor and Mr. Cunningham have talked with ACC Commissioner Swofford about important principles that should guide the autonomy discussion. Final NCAA action on internal governance and the Conference autonomy issues is expected in August.

III. Remarks from the Chancellor

Chancellor Folt told the committee that the Carolina Commitment website would be launched the next day. She said the goal of all our efforts is to improve how we do things, but this is an important resource to catalog in one place all of these efforts.

IV. Student Discipline and Athletic Eligibility

Bob Orr, is a UNC graduate, a former North Carolina Supreme Court Justice, and a respected attorney in the state. Justice Orr has been involved in representing student-athletes on our campus and other campuses and wanted to discuss with FAC some of his observations related to

student discipline issues and athletic eligibility. Justice Orr began his remarks by thanking Chancellor Folt and Bubba Cunningham for their leadership in moving Carolina forward. Justice Orr said student-athletes should not be treated unfairly in the NCAA disciplinary process. He noted that this process can keep student-athletes from competing, deprive them of their scholarship, and result in public damage to their personal reputation. He cited the situation of his former client, Devon Ramsay, and an article about him in the April 7, 2014 issue of Sports Illustrated. Orr believes that the NCAA does not provide any rights for student-athletes. For Devon Ramsay to appeal his loss of eligibility by the NCAA he would have had to have admitted that an NCAA violation had occurred. Ramsay resisted that course and was successful in having his original determination reheard based on additional evidence.

Orr says the NCAA disciplinary process is driven by the eligibility concept. If a student-athlete competes while ineligible, then the University is punished. As a result, Orr believes that Universities hold student-athletes out of competition even if they are not certain that an NCAA violation has occurred. Orr also criticized the NCAA's investigative process as sometimes seeming like a fishing expedition with unduly intrusive inquiries into many areas, including family financial matters. He also noted the secrecy surrounding NCAA investigations, and the varying punishments in seemingly similar cases. Orr believed that there is a presumption of guilt in the NCAA enforcement process rather than a presumption of innocence.

Orr's main point was that student-athletes should receive additional rights and due process in the NCAA enforcement process. Lissa Broome noted that UNC and other schools were now assisting student-athletes involved in NCAA enforcement actions in paying for attorneys, following clarity from the NCAA about the propriety of using Student Assistance Funds for legal representation related to NCAA enforcement matters. Bubba Cunningham noted that NCAA enforcement and improving the enforcement process will continue to be topics of concern for our school and for others.

V. Communications

The committee discussed possible dates for two public forums to hear from faculty. It was noted that these discussion opportunities were in process before the retired faculty letter published in the News & Observer criticized the faculty for a lack of attention to issues related to athletics and academics. The forums will be on April 23 (3:30 – 5:00) and April 24 (9:30 – 11:00). In addition, additional information, including posting the committee's minutes, will be added to the FAC section of the faculty governance website. The committee may have a one-page information sheet available about reform efforts to date, for those interested. The committee will also have a moderator and timekeeper for each forum.

The committee unanimously adopted the following resolution to be presented at the next Faculty Council meeting:

The Faculty Athletics Committee reaffirms, and recommends that Faculty Council reaffirms, the principle that academic integrity is inviolable. It is never acceptable for any person or unit to compromise, or allow to be compromised, the integrity of the educational or research missions of the university.

The committee also unanimously adopted the following statement to be posted on the Committee's webpage and sent to the retired faculty who wrote the letter appearing in the News & Observer.

As a faculty who have consistently insisted upon integrity and reform, we would like to reassure our current and past colleagues that faculty governance is alive and well. Faculty have provided input, leadership, and critical guidance at every step of the extended inquiry and reform processes following the scandals. We invite current and former colleagues to join us at meetings, speak with us to learn more about the complexities of the situation, and offer input. Through the reforms put in place through faculty, administrative, and staff cooperation, we are striving to make Carolina a leader in transparency and openness.

VI. Updates

Professor Renner is still trying to arrange time for focus group discussions with SAAC representatives from Softball and Baseball.

The Student-Athlete Academic Initiative Working Group circulated a draft document regarding principles guiding contact between faculty and ASPSA staff, Faculty and Coaches, and ASPSA staff and student-athletes. The draft also includes a list of resources to use if there are any problems with these communications. Professor Deborah Stroman expressed concern about not allowing coaches and their staff to contact instructors with whom they may have a prior relationship. FAC members were asked to review this draft and provide input to the Working Group.

The meeting adjourned at 4:45 p.m.

Minutes respectfully submitted by Lissa Broome

MEMO

TO: UNC FACULTY ATHLETIC COMMITTEE

FROM: ROBERT F. ORR

RE: NEED FOR REFORM IN STUDENT DISCIPLINE MATTERS ON ATHLETIC ELIGIBILITY

DATE: APRIL 8, 2014

INTRODUCTION: Over the course of the last several years a host of issues pertaining to college athletics and its governing membership organization, the NCAA, have received enormous amounts of national attention. Whether it's the "pay the players" issue; union organization rights as articulated in the recent NLRB ruling for Northwestern football players; or educational issues surrounding college players, these major policy issues are resonating throughout the national media and the public's dialogue. However, one of the most important issues not being talked about and not being considered for reform is the methodology of discipline imposed on these students by the schools and the NCAA.

My perspective has been driven by my representation of numerous students playing college athletics and the eligibility issues they faced. These athletes included football players at UNC, basketball players at UCLA and St. John's University, and a soccer player at San Diego University. While each of these cases ultimately resulted in restoration of eligibility the process and application of the NCAA Bylaws and the resulting application of those Bylaws by the schools involved and the NCAA have lead me to join the growing ranks of reform advocates of the system. The following is a brief bullet point summary of the issues that need to be addressed in my opinion both internally at member schools and at large by the NCAA.

ENFORCEMENT MODEL OF THE NCAA: While my characterizations of the enforcement model are colored by my experiences with it, I do not hesitate in categorizing it as fiendishly clever. It is set up with the complicity of the member institutions through a 400 plus page Manual that begins with Principles and evolves into Bylaws that govern the system. The key component of the enforcement of these Bylaws is the concept of "Eligibility: Academic and General Requirements" found in Article 14 of the Operating Bylaws. For a student to participate in an NCAA sanctioned athletic event he or she must be "eligible". Participation by an "ineligible" student constitutes a violation of the Bylaws and puts the school at risk of punishment by the NCAA. (The large hammer applied is forfeiting of revenue earned in games in which "ineligible" athletes participated, forfeiting of games and championships etc.) Thus, when a school believes or thinks or suspects that a student may have somehow violated a Bylaw, the prudent course is to hold the student out of any competition in order to protect the school and its revenues. This decision to withhold from competition or suspend the player pending determination is made without any process in the Bylaws or from my experience by the schools. And if a student is later determined to have not committed a violation or a minimal one but has missed numerous games or a season, then that's just too bad for the student. The enforcement model operates on the premise that schools, boosters, outside persons, friends of the student – whomever – may "cheat" and thereby provide an unfair competitive advantage to the school. Therefore, the system is set up to catch these entities prior to a student actually enrolling in college through their period of time as an enrolled student and encompasses virtually the entire circle of individuals who might have contact with the student. However, the

punishment system is also set up to primarily punish the student – not the adult(s) involved in creating the violation circumstances.

It is obvious that the entire NCAA system is based upon the talent and efforts of students that compete in athletics at the college level. However, the NCAA Manual of Bylaws (and all rules and regulations derived from the Bylaws) provides no rights for the students in the disciplinary process. This conclusion is irrefutable since the Manual is geared exclusively toward punishment of the member institutions and all rights provided in the Bylaws pertain to the schools not the students. For example: PJ Harriston had no right to appeal the decision made that he had received improper benefits and was ineligible to play. UNC opted not to appeal which was its right but Harriston had no such right. In addition NCAA legal counsel has consistently argued in various court cases that the students have no rights in the collegiate system.

A student who is faced with the potential loss of the opportunity to compete in college athletics as well as the potential loss of his or her scholarship due to an alleged NCAA violation should be entitled to the following minimal rights:

- The student should be fully and honestly informed at the beginning of the facts surrounding the alleged violation; the implications if found guilty of the violation; and the procedural process that will be employed in determining guilt and if guilty the punishment.
- The student should not just be informed of the right to have an attorney as part of the process but the school should give the student ample time to secure an attorney before the determination of guilt. The NCAA has intimated that a pro bono attorney for a student playing college sports would be considered an improper benefit and thus a Bylaw violation. This policy should be rejected by the member schools and a student should be allowed to have adequate representation reflective of their economic circumstances and rights in the process. Schools are permitted by NCAA Bylaws to have an attorney hired by the school to represent the student if the issue is eligibility. Few schools are willing to do this plus it needs to be made clear that the attorney has only one professional responsibility and that is to the student regardless of whether the school is paying the attorney. The student should not in any case be represented or counseled by a school attorney since that presents an immediate and inherent conflict of interest.
- The student should be entitled to a reasonable hearing in which he or she while adequately represented by legal counsel should they choose to use an attorney, can contest the evidence, interpretation and application of the NCAA Bylaws before a determination of a violation of NCAA Bylaws.
- The process should be open and transparent. If FERPA issues are present the student in consultation with his or her attorney should be able to waive the right so that the process and actions of the schools and the NCAA cannot be buried in secrecy.
- Alleged academic violations by the student should be handled by the standard Honor Court process employed by the school for all students. The determination by the Honor Court or school process should be the final determination as opposed to a determination by the NCAA staff. Simply because the academic violation involves a school

employee should not make it an NCAA violation. For example Notre Dame QB Golson admitted to cheating on a test for one of his classes. He was disciplined by the school but is eligible to play this fall. Had a tutor helped him cheat on the test it would be an NCAA violation under current interpretation and potentially would result in permanent loss of eligibility. Absent an institutional academic violation a student should be subject to the school's academic process not the NCAA's and even then it should be the institution involved in disciplinary issues with the NCAA not the student.

- A student should not be required under any circumstances to waive FERPA rights by the NCAA or the school in order to either participate in college athletics or to appeal a determination of a violation of NCAA Bylaws.
- As part of an NCAA investigation, the NCAA and the schools should not be permitted to require a student to divulge personal records and information and particularly should not subject the student to inquiries by the NCAA and schools about his or hers family's personal and financial information.
- The student should have a right to appeal separate and apart from the school over any determination that an NCAA Bylaw has been violated by the student and a penalty imposed effecting his or her eligibility. The appeal should be open and transparent before an impartial body with defined procedural rights for the student. The student under any circumstance should not be forced to admit the violation before an appeal can take place.

These points are only a few of the kinds of fundamental reforms needed in the NCAA disciplinary process. However, there is much that can and should be done by UNC and all other schools who are members of the NCAA. In the NCAA Manual under the Constitution, Article 2.2 says: "Intercollegiate programs shall be conducted in a manner designed to protect and enhance the physical and educational well-being of student-athletes." A disciplinary system shrouded in secrecy, intimidation and a lack of fundamental rights for those students falls woefully short of any real compliance with this principle. The improvements and reforms considered by this Committee should include as a primary goal, the creation of a system that treats a student who participates in college athletics with the same rights and process that all other students receive in all of their collegiate activities.

DRAFT

Friday, March 28, 2014

Principles Guiding Contact Between Faculty and Academic Support Programs for Student-Athletes (ASPSA) Staff

- Student-Athletes are students first
- Decisions about academic content, requirements, and expectations are the exclusive domain of faculty, subject to University, College and department rules.
- Contact between ASPSA Staff and faculty should focus on ways to foster student learning
- ASPSA Staff may not pressure faculty for special treatment or for grades.
- Faculty may not impose standards or requirements on student-athletes that are greater than those required of other students in the same classroom
- Faculty may not ask advisors what final grade a student-athlete requires to remain Eligible

Principles Guiding Contact Between Faculty and Coaches

- Coaches and their support staff (including, but not limited to: director of operations, administrative assistants) are prohibited from initiating communication with student-athletes' course instructors for the purpose of soliciting or discussing information related to grades and/or academic performance.
- This prohibition extends to any academic personnel (including, but not limited to: teaching assistant, etc.) who is responsible for assigning or grading a student-athlete's course work.
- All such communication regarding student-athletes' grades or academic performance must be coordinated through ASPSA.

Principles Guiding Contact Between ASPSA Staff and Student-Athletes

- Student-Athletes are students first
- Discussions between ASPSA Staff and student-athletes should focus on ways to foster student learning.
- Discussions also should focus on the student-athlete's well-being and on pursuing individual academic interests and career plans. To this end, ASPSA Staff can offer advice and guidance with respect to courses and majors.

Resources

When an instructor, administrator, or student has a question or concern, s/he may use any or all of the following resources:

- UNC-Chapel Hill Athletics Compliance Guidelines for Faculty <http://faculty.web.unc.edu/>
- Contact the appropriate Director of Undergraduate Studies, Department Chair, or Dean <https://college.unc.edu/undergraduateed/directors-of-undergraduestudies/>
- Contact the Director of ASPSA, Dr. Michelle Brown (mbrown3@email.unc.edu)

- Contact the Honor System (for matters of possible academic or student conduct infractions) <http://studentconduct.unc.edu/honor-system>
- Contact the University Ombuds Office <http://www.ombuds.unc.edu/>
- Contact the Senior Associate Dean for Undergraduate Education or the equivalent person in the instructor/student's professional school <https://college.unc.edu/administrationcontacts/bobbi-owen-senior-associate-dean-for-undergraduateeducation/>
- As a last resort, contact the Provost <http://provost.unc.edu/>