

# The Appearance of Impropriety and Conflicts of Interest Within Athletics Departments

by

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Notwithstanding their dismal standing in the Court of Public Opinion, lawyers are at least charged with avoiding the appearance of impropriety. Canon 9 of the American Bar Association Code of Professional Responsibility is entitled "A Lawyer Should Avoid Even the Appearance of Professional Impropriety" and is devoted entirely to that subject. Should the athletics departments of NCAA Division IA institutions of higher learning be held to an equivalent standard?

According to Funk (1991) the relationship between athletics departments and academic faculties can be described as follows:

Complicating the already gnarled mess of institutional attitudes, practices, and pressures on the student-athletes are the adversarial relationships between the academic faculties and athletic departments. Faculties sometimes view athletic department members as misguided clods intent on dehumanizing the academic environment and undermining everything intellectual (pp. 82-83).

This adversarial relationship exists because athletics departments of NCAA Division IA institutions are entities separate and apart from the academic side of the institution with an entirely different mission.

It is common for Division IA institutions to have detailed rules and procedures concerning

conflicts of interest by faculty and staff. Indeed, many have their conflict of interest policies posted on their official websites. Yet these very institutions apparently ignore blatantly obvious conflicts of interest within the athletics department. By ignoring these conflicts of interest, or by asserting shallow ringing justifications for their existence, these institutions foster the appearance of impropriety. This assertion rests on the premise that most, if not all, conflicts of interest, by their very nature, give rise to an appearance of impropriety. And what are these conflicts of interest?

The placement of academic support staffs and compliance officers under the ultimate control and authority of the athletics department creates two egregious conflicts of interest that give rise to an appearance of impropriety. These conflicts of interest are so obvious that no amount of asserted athletic department integrity can remove the appearance of impropriety.

With respect to academic support programs, Single (1989) wrote:

Academic-Assistance programs centered solely in athletic departments have failed not because there is no legitimate need for the services they provide, but because of the ways in which these services have been conceptualized, implemented, and justified. Such programs are inherently driven toward maintaining eligibility

rather than fostering education and toward “protecting” student-athletes from academic standards, faculty and deans rather than assisting and educating student-athletes to take advantage of the available resources (pp. 157-158).

Despite this observation, Single does not call for a removal of the ultimate administrative control the athletic academic support staff from the athletics department and locating it where it rightly belongs – under the academic side of the institution. However, there has been a call for removal of the student-athletic support function from the control of the athletic department. According to Gerdy (1997):

Most directors of student-athlete support programs report to the athletic directors. Such arrangements are clearly not in the best interest of the student-athlete. . . . the conflict between academic and athletic interests is problematic at best; . . . That being the case, institutions should adjust reporting lines for such programs from the athletic department to the office of student or academic affairs (pp. 76-77).

Therefore, it can be argued that maintenance of institutional integrity demands the separation of academic support staffs from the athletic department.

Under the present structure, the pressure to win at the Division IA level will not cease. Since, as will be discussed, the satisfactory progress rules no longer allow student-athletes to major in what amounts to freshman studies, there are an increasing number of head coaches demanding – and taking - control of their sport’s academic support functions. While the coach’s support in academic matters is necessary, having control results in having the coach’s people on and in charge of the academic support staff. Also significant is the relatively new tendency of head coaches taking their academic people with them when they accept a position at a new institution. In these situations, academic support staff personnel are beginning to look more and more like assistant coaches and less and less like student academic services personnel. While this model

works well with assistant coaches, it could be potentially disastrous with the academic support staff.

Not having academic support staff control and autonomy located within the academic administration of an institution dramatically increases the potential for academic abuse. According to Gerdy (1997) it brings about “. . . the temptation to compromise academic integrity in favor of athletic eligibility . . .”(p. 76). Furthermore, it is asserted that the closer a head coach is to controlling the academic function, the greater the potential for abuse. Therefore, a head coach should absolutely never control the academic decisions and function for his or her team.

A typical NCAA Division IA Athletic Department organizational structure reveals the actual conflict of interest. At the head of the athletics department is the athletic director. These well-paid individuals increasingly have some type of business background and are now less likely to be an active coach or former coach. However, that background does not suggest that athletics directors are totally in tune with reality concerning current issues. Indeed, one well-respected athletics director was referred to as being “arrogantly ignorant” by Judge Rebecca Doherty in the case of *Pederson v. Louisiana State University*, (1996). The issue about which the athletics director was called “arrogantly ignorant” was his understanding of Title IX and gender equity issues. If an athletics director can be “arrogantly ignorant” about an issue which has received as much public debate as Title IX, can one not also be nonobservant concerning the more mundane and abstract issue of conflicts of interest created by the athletics department administering academic advisement of athletes? Furthermore, it is suggested that athletics directors, like coaches, have dominant personality characteristics wherein they seek total control of their environments. As the size of the academic support staff grows, so grows the size of the athletics director’s department and its budget, all requiring a higher salary for – the athletics director.

Any number of assorted associate athletics

directors work directly for the athletics director and while there are numerous titles used, at least one will be in charge of academic support services. Working under the supervision of an associate athletics director charged with academics, are one or more assistant athletic directors, either in charge of a specific sport or divided between so called revenue and non-revenue sports. In lieu of an assistant athletic director, some institutions employ academic coordinators. Working under the direction of the assistant athletic directors/coordinators are myriads of individuals filling positions such as academic counselors, basic skill counselors, reading/writing counselors and interns. And somewhere, in this organizational jungle, tutors are hired, trained and supervised. While it may vary somewhat from institution to institution, it is clear that in all cases where tutors are hired, trained and retained by permanent employees of the athletics department, they fall under the athletics department's sphere of influence.

Probably no areas are as ripe for potential abuse as are the functions of academic counseling and tutoring. Numerous high profile cases clearly evidence the dangers associated with the academic counseling area and the loss of institutional integrity that naturally follows. An example of an academic tale of woe is found in the factual findings in the case of *Ross v. Creighton*, (1992). Basically, Ross attended Creighton University from 1978 until 1982. He acquired 96 of 128 credits needed to graduate. However, when he left Creighton he had the overall language skills of a fourth grader and the reading skills of a seventh grader.

In response, the National Collegiate Athletic Association enacted a satisfactory progress rule – BYLAW, Articles 14.4.3.2.1 and 14.4.3.2.2. Both were adopted 1/10/92 and made effective 8/1/92. However, this merely altered the method of maintaining eligibility. The enactment of the satisfactory progress rules merely intensified the existing practice of hunting for the easy degree and professor; a process hereafter referred to as the path of least resistance.

If the athletic department employs, and thus

ultimately controls the academic counselor, the environment is conducive for the employee to think in terms of eligibility/availability first and real academic progress and success second. Indeed, Funk (1991) suggests that keeping key players eligible is “. . . the single greatest source of pressure for the academic advisor . . .” (p.127). In reality, it could be suggested that eligibility becomes an unwritten requirement. Academically ineligible student athletes are of no use to a coach. Funk (1991) put it this way: “Also, there is the matter of employment to consider: A Ballplayer X or two missing a much-anticipated senior season will result in the academic adviser's seeking job opportunities elsewhere” (p.127).

Therefore, is it surprising to find that, in order to maintain a high percentage of eligibility and a corresponding zero percentage of personal firings, academic counselors will push for degree programs, classes and professors that are less academically taxing and more compatible with the athletic requirements of student-athletes? This is at the heart of the path of least resistance advising and could potentially have a negative impact on academically gifted student athletes.

The path of least resistance approach to degree selection and academic advising affords the academic advisor another benefit; namely, it reduces the amount of maintenance required of the advisor. Maintenance refers to the amount of time spent with the student athlete for advising and guidance purposes. Regardless of the ability of the student, the easier the academic program, the easier the life of the academic advisor.

In either event, according to Funk (1991), the academic advisor would rationalize. So what if the student-athlete's major is not what the student-athlete desires. So what if the student-athlete does not take the best, albeit more difficult professors? So what if the student athlete does not take certain afternoon classes that conflict with practice time? So what, why complain? After all, the student-athlete is eligible to participate, is available to practice and requires less maintenance. Eligibility is very important to the relationship between the coach and the academic

advisor, regardless of how many organizational positions separate them. And let us never forget which one of these two wields real power within the athletic department.

As the primary mission of eligibility permeates the entire fabric of the academic advisor's cloak of morality, the path of least resistance model affords the perfect alibi for not seeing a tutor's handiwork in research papers bearing an academically deficient student-athlete's signature. See no evil - hear no evil can become the academic advisor's modus.

Because of their diverse backgrounds and equally diverse reasons for being tutors, once they are allowed free, unsupervised reign, academic integrity is lost. Indeed Funk (1991) notes that some players:

. . . may come to see his tutor as an automatic free ticket to academic success. When this happens, the onus of responsibility for class work shifts from the player to the tutor, . . . Such a situation is not only detrimental to the educational growth of the player, but it is unethical as well (p 131).

In such cases, an old agency law saying seems very appropriate, albeit dangerous, "there is no joy like that of a servant out on a frolic of his own." Once the advisor ceases direct supervision over the tutor - student athlete relationship, the tutor can assume control of a student-athlete's academic destiny. At that point, all institutional control over academic integrity is lost. If academic integrity is maintained, it will certainly not be because of institutional control or oversight.

Regardless of the truth concerning recent allegations of academic malfeasance at the University of Minnesota (Associated Press, 1999) and the University of Tennessee, (Farrey, 1999) the mere allegations, present crystal clear examples of the possibility of academic fraud and wrongdoing that could be wrought by coaches and academic support staffs acting with autonomy and with impunity. While the athletics department should financially and morally support athletic academic advising and tutoring

staffs, it should not be charged with hiring, firing, directing, controlling or supervising athletic academic advisors or their work functions. This control and authority belongs to the academic side of the institution and should operate, completely and entirely, autonomously from the athletics department. Indeed, this very conclusion was reached by Dr. Susie VanHuss. (Smith, 2000) In reaction to the Minnesota allegations, VanHuss, the University of South Carolina Faculty Athletic Representative, conducted a review of South Carolina's academic support system. In addition to calling for tutors and counselors reporting to the academic arm of the university, her report considered academic support to be ". . . the area where a university is most vulnerable to a lack of institutional control . . ." (Smith, 2000).

It is conceded that this separation would not completely eliminate academic fraud involving athletes. However, this separation would greatly reduce, if not outright eliminate, the appearance of impropriety since it will place the academic control of student athletes on the academic side of the institution. In essence, the assertion is simple: the provost, as the chief academic officer, and not the athletics director or coach, should be in ultimate charge of a student athletes academic progress. Instill in academic advisors that their first obligation is academic integrity and not eligibility.

Such is also the logic for having compliance officers answering directly to the university President, not the athletics director. Loyalty, despite being an admirable trait, also is embodied with the potential of placing personal relationships in front of institutional obligations. Head coaches are seeking compliance officers who are "their sport" friendly. Since the position of "compliance officer" is relatively new, why would institutions of higher learning raise the appearance of impropriety by allowing compliance officers to work under the control of the very department they are designed to monitor? Under no circumstances should that administrative structure be allowed. At some point the outside auditor must be from the outside.

At an absolute minimum, the compliance officer should work and report directly for the university president. Indeed, as the saga at Southern Methodist University would suggest, having the compliance officer accountable to any school official or any other state official would not stop those absolutely determined on breaking the rules. It could be argued that a far better system would be for all compliance officers to work either directly for the NCAA or a school's conference. Compliance officers could be assigned to a school for a period of years. They would work on campus and would handle all the day to day compliance questions and issues. They would have authority to correct all minor violations and would be tasked with training, certification and oversight of staff members.

In such a system, the Southern Methodist University fiasco could have probably been avoided. Paying the salary of the compliance officer would be rather simple; the NCAA could assess each school or conference for the cost of the compliance officer. Since many schools currently have a compliance officer, this should not be an economic hardship on the schools or the conferences.

While critics might argue that such a system would increase the massive bureaucracy known as the NCAA, I would only suggest that any organization with a billion dollar television contract is by definition, a big bureaucracy.

Are there other ways to correct these two problems? Yes, indeed there are. However, with report after report after report of leaders, be they organizational, educational, political or religious, losing site of their moral compass, it is simply indefensible for university presidents to leave in place an organizational framework that is, on its very face, a conflict of interest. To do so is to undermine the overall faith in the leadership abilities of those charged with responsibility of operating institutions of higher learning. That loss of faith is exacerbated when those very leaders demonstrate a naivete not expected of college and university presidents.

Institutions of higher learning must be as zealous in guarding against conflicts of interest

and appearances of impropriety within the athletics department as they are with the administration, faculty and staff. These are only suggested changes; far better ones most probably exist. However, these changes would result in a far better system than currently exist.

However, in the final analysis, it is up to the presidents. As with all organizations, leadership flows down from the top, it does not well up from the bottom.

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