

College Athletics, Academic Assessment, and the False Claims Act

A CLIPS GUEST COMMENTARY

Our author looks at academic accountability, and how that relates to student-athletes and big-time college athletics.

by Frank G. Splitt

MARGARET MILLER, director of the Center for the Study of Higher Education at the University of Virginia, tells of the (Spellings) Commission on the Future of Higher Education report's emphasis on accountability measures that has evoked some legitimate concerns [1]. However, steps toward some common indicators of educational progress make sense, and they're feasible, writes Miller.

But, like the disclosure advocated by The Drake Group to help reform collegiate athletics [2], assessment measures do not make sense to big-time (Div IA) college presidents and administrators who will likely resist these measures at all costs. Here's why:

The litany of concerns about assessment – that higher education is far too diverse to be measured by standardized tests; that common learning measures will lead inevitably to punitive, costly, and unnecessary federal intervention; and that if assessment is used as a consumer-information tool, it will oversimplify a complex higher-education system and lead to comparisons among unlike institutions – all contain a bit of truth. However, these stated concerns merely serve as chaff – masking the real, unstated concern of college presidents and administrators that assessment could expose their schools to False Claims lawsuits as well as jeopardize the basis for the huge tax-exempt revenues from their sports entertainment businesses [3, 4].

Lowering the admissions bar to woo the children of the rich and famous and the adoption of a SAT-optional strategy helps raise school endowments and enrollments [5, 6]. What's more, these kinds of tactics also help athletic departments admit and roster highly talented, but educationally disadvantaged, athletes ... athletes that are requisite to building cash-generating, competitive (quasi-professional) college sports teams [7]. Here, it is to be noted that many of these academically unprepared athletes will have a full-time athletic job, miss numerous classes, and likely come dead tired to others.

In any case, all the colleges have to say is that the students are admitted because they believe the students are qualified and can meet the demands of their academic programs. But who can trust that this is really so when it is in the school's vested self interest to make such statements? Who will challenge the schools?

WHAT COLLEGE PRESIDENT would ever want to approve, let alone introduce, academic assessment with metrics that could possibly expose chicanery and academic corruption – such as the likely abuse of direct-study courses – that could

be enabling his/her school to prosper as a federally subsidized business [8, 9]? Much the same can be said of boards, committees, and commissions populated with sitting presidents, that ostensibly serve to oversee, improve, and/or reform collegiate athletics, but work around the margins of the mess in collegiate athletics to maintain the status quo.

It would appear that athletic departments and school administrators have developed a new art form – achieving and maintaining eligibility for college athletes pretending to be students. Faculty members willing to game the academic system are all that is needed to gain eligibility and even graduation for these athletes, thus allowing their school to reap the financial benefits attendant to the athlete's participation in intercollegiate sports. What do the schools really have to worry about?

Just imagine a certified (trustworthy), independent assessment of what college athletes are really learning or have learned. Furthermore, imagine the financial consequence to America's colleges and universities of widespread False Claims suits. These suits, filed under the False Claims Act, would enable the government to recover federal funds that have been misspent on 'empty' educations for many college athletes ... athletes who have neither the time nor, in many cases, the inclination requisite to serious degree-track studies. Under the terms of the act, lawsuits can be brought by the government or by outside parties on behalf of the government. That's what the schools have to worry about – and intervention by the Congress as well.

However, it will take a tremendous amount of courage and resolve on the part of Congress to do the right thing and bring about disclosure and serious reform in big-time college sports. Unfortunately, it may be the only way it can happen. But, will it happen? Obviously, not immediately with elections on the near horizon ... perhaps it may never happen at all with world events overshadowing domestic affairs.

It will certainly not happen without strong leadership that can stand up to the huge amount of money as well as the very powerful legal and lobbying forces at the command of the NCAA cartel. To get a sense of the magnitude and ubiquitous nature of this power, we need only look back at the story of the cartel's suppression of the 1977 Unrelated Business Income Tax case brought against Texas Christian University by the Dallas office of the IRS [10].

Still all is not lost. There is a glimmer of hope in Brad Wolverton's story on how a congressional committee is scrutinizing the academic problems of athletics and the tax-exempt status of the NCAA and athletics conferences [11]. Lastly, there is always the looming threat of major financial hurt to miscreant schools – stemming from litigation based on the False Claims Act.

REFERENCES

1. Miller, Margaret A., "The Legitimacy of Assessment," *The Chronicle Review*, Sept. 22, 2006.
2. Salzwedel, Matthew and Ericson, Jon, "Cleaning Up Buckley: How the Family Educational Rights and Privacy Act Shields Academic Corruption in College Athletics," *WISCONSIN LAW REVIEW*, Volume 2003, Number 6, 2004. NOTE: For example, schools would publish aggregated

(Buckley-compliant) attendance records and academic data, including grades, from cohorts of football and basketball team athletes – providing the names of the faculty along with the title of the courses and course GPA.

3. Van der Werf, Martin, "Lawsuit U., The growing reach of the False Claims Act has lawyers fearing trouble everywhere," *The Chronicle of Higher Education*, Aug. 4, 2006.

4. Splitt, Frank G., "College Sports Tax Scam Revisited," *College Athletics Clips*, April 24, 2006, http://thedrakegroup.org/Splitt_Tax_Scam_Revisited.pdf.

5. Golden, Daniel, "How Lowering the Bar Helps Colleges Prosper: Duke and Brown Universities Rise in Prestige in Part by Wooing Kids of Hollywood and Business Elite," *The Wall Street Journal*, Sept. 9-10, 2006.

6. Diver, Colin S., "Skip the Test, Betray the Cause," *The New York Times*, Sept. 18, 2006.

7. Splitt, Frank G., "Athletes Who Are Not Real Students," *The Chronicle Review*, Mar. 10, 2006.

8. Stewart, Mark, "Independent study all the rage at UW, Athletic board explores noteworthy issues," *The Milwaukee Journal-Sentinel*, May 15, 2004.

9. Thamel, Pete, "Top Grades and No Class Time for Auburn Players," *The New York Times*, July 14, 2006.

10. Sack, Allen L and Staurowsky, Ellen J., *College Athletes for Hire: The Evolution and Legacy of the NCAA's Amateur Myth*, Praeger Publishers, 1998.

11. Wolverton, Brad, "Congress Broadens Inquiry into College Sports, Focusing on Academic Problems and Lucrative Programs," *The Chronicle of Higher Education*, Sept. 22, 2006.

This commentary was written by Frank G. Splitt and has been posted on College Athletics Clips on 9-24-06 with his permission.

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