

REFLECTIONS ON THE ROLE OF A LAW PROFESSOR AS FACULTY ATHLETICS REPRESENTATIVE

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Having served five years as Faculty Athletics Representative (FAR) at the University of Mississippi (Ole Miss), I am pleased to report that the University has not had to respond to any important sanction cases. Michael Harvey, who served as FAR at Southern Methodist University shortly before the NCAA imposed the so-called “death penalty” on SMU, now teaches at Ole Miss. I took him to lunch just to hear his story. I never want my institution to go through anything like that.¹

Despite the lack of any serious sanctions, I have taken part in several decisions and actions that raise very interesting questions. A couple of them even made national or regional news. As such, the personalities involved are already well-known or could easily be discovered. Nevertheless, and even though this paper is intended to prompt discussion, I have opted not to identify any of the involved student-athletes by name, and in one case I have also withheld the position held by a staff member.

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¹ See DAVID WHITFORD, *A PAYROLL TO MEET: A STORY OF GREED, CORRUPTION, AND FOOTBALL AT SMU* (1989).

I. HELPING A STUDENT-ATHLETE GRADUATE

For those “in the know” about NCAA matters, the FAR position is very important. Around campus, people tend to ask, “You’re a what?” I sometimes try to explain the position by talking about its history, explaining that it is one of the five positions on campus that can contact the NCAA, or discussing my duties as a means of communication between athletics and academics. Usually the puzzled look remains on the other person’s face until I say, “I chair the Athletics Committee.” I don’t think they know what the Athletics Committee does, but they recognize that chairing it must be a big deal.

Not long after I became the FAR at Ole Miss, the NCAA conducted a review of our athletics program. We came through fine, but one thing they noted was that most student-athletes did not know who the FAR was or what the position did. I knew that I had to increase my visibility, at least among the student-athletes.

Other FARs that I know recommend keeping a low profile, and in general that makes me quite happy. I once went to an alumni event with our Athletics Director (AD), our head football coach, and our head basketball coach. While standing off to the side of the crowd, I spoke with the basketball coach and mentioned that they were celebrities while everyone was wondering who I was with a knowing smile he just said, “Sometimes anonymity is a good thing.”

I still tend to aim for a low profile (though membership on search committees for a new AD and a new football coach have made that difficult), but I have made a special effort to assure that the student-athletes have an opportunity to meet me. My increased visibility really helped one of our rifle team members when a glitch developed in her academic planning.

It was the spring of the student-athlete’s senior year, and she was planning to graduate on schedule. Her major required her to take a history course concerning a “non-European” nation. She enrolled in a class on Russia and the former Soviet Union and began attending class. After a couple of weeks, someone brought to her attention that this class would not satisfy her degree requirement. As she later explained to me, after a half hour of utter panic and several phone calls, a teammate told her to call

her academic advisor. She knew me, however, and she felt that I would be better able to help her.

Time was of the essence since she needed to get into a qualified class. Fortunately, I knew the dean in her department, and he helped identify a satisfactory class with a professor who would be flexible in accepting a late admission. (He also explained to me that the requirement was more than just a history course concerning a non-European nation; it had to be approved by the faculty.) We got the student-athlete into an appropriate class; she graduated that spring, and consequently saved the athletics department the cost of supporting her over the summer or following fall. This is a prime example of the importance of making sure that student-athletes understand the FAR position and know who holds that position.

II. MONITORING ABSENCES

The Southeastern Conference (SEC) has a rule that requires each school to adopt a policy on unexcused absences from class. The policy must impose sanctions on violators up to and including loss of playing time. While each school has its own policy, and they vary slightly in detail, our policy is fairly common. If a student-athlete misses 10% of his or her classes, he or she will have to sit out 10% of the team's games. Lesser penalties are imposed before the student-athlete reaches the 10% mark, and an additional 10% suspension is imposed for each absence beyond the first 10%.

There is, of course, an appeals process. In an effort to avoid creating friction between himself and the head coaches, our former AD asked me to handle the appeals process. This task consumed a significant portion of my time over the past few years.

After spending over a decade as associate dean of the law school, I was used to dealing with student appeals, but these were of an entirely different nature. Some athletes would show up and make only a simple statement: "I appeal." They had no argument or explanation; they just wanted me to overturn their punishment. Needless to say, I did not grant these appeals.

There were, however, two appeals that are at least worth mentioning. The first came before the first football game of the season. The student-athlete involved was a sophomore slated to be a starting offensive lineman, but due to a number of absences

during the previous semester, he faced several sanctions. His argument was essentially that three starting linemen were facing suspension, and I could not deprive the team of all three of them.

I immediately knew that I would uphold his suspension. The argument was weaker than weak, and the cavalier way in which he presented it showed that the student-athlete did not have the proper priorities. On the other hand, I did recognize that to suspend all three of the linemen would seriously hurt the team. The first game was against the University of Memphis, a team that we should have been able to beat, but one that considers Ole Miss a rival and would certainly be up for the contest. Since the SEC designed the penalty to be imposed on the individual and not the team, I reasoned that it would be acceptable to space the penalties out and decided to let the coach do so.

At first, everyone except the senior women's administrator seemed to think this was a good and responsible compromise. I think we all assumed that the three linemen would each sit out one of the first three games. Soon, however, it became clear that the football coach was planning to suspend all of them for a game later in the season against a smaller Division II school. I suppose that with support from the AD I could have forced the issue, but events unfolded before I fully understood what was happening.

I came to deeply regret this accommodation that I had given the football team; I felt that the system had been taken advantage of. The next year we agreed to require that all suspensions be served at the first possible opportunity, even though this could result in multiple suspensions being imposed during any one game. That remains our rule today.

The other interesting absence case involved a track student-athlete who came to the University from an African nation. It seems he told his advisor that he wanted to drop a particular course within the first week or two of classes. He failed, however, to go through the necessary steps to remove himself from the class roll. Thinking that he had dropped, he did not attend class. Unfortunately, since he had not officially dropped the class, he accumulated numerous unexcused absences before someone brought the issue to his attention.

Under our policy, dropping a course does not negate the absences or eliminate the sanctions. Accordingly, not only was he

facing a 10% suspension, he had essentially lost the rest of his season, which was almost over by the time of appeal. The big concern was that the NCAA qualifications were coming up, and he was hopeful about his chances. If I enforced the rule to the maximum, he would miss that opportunity.

I decided to require the student-athlete spend ten hours in study hall. I did not think his offense was the same as skipping class, and I thought that language issues might have contributed to the problem. I was surprised by the track coach's attitude when he called me. I think he was ready for an argument, and he got out a few harsh words before what I said sunk in.

III. THE DOUBLE-TRANSFER STUDENT-ATHLETE

Other appeals that I handle on campus are when our athletics department has refused to grant a request by a student-athlete who wishes to transfer to a different institution. In particular, the issue often seems to be whether the athletics department will waive the requirement that a transferring student has to sit out for a year at the new school before he or she can participate in athletics.

In order to transfer to another institution after the athletics department has refused the request, the student-athlete has to request an appeal. When that happens, I have to assemble a committee (two to three faculty members and one student-athlete). The appealing student-athlete can appear before us in person or by phone, and he or she can have an advisor present.

Before the first appeal I chaired, we had to decide on a standard of review, which has since been formally adopted as part of our procedure. The key to understanding it is that we view the decision not to grant a waiver as having been made by the athletic department (not by a coach or a team), and we use a deferential standard of review. We will overturn the decision only if the department acted unreasonably. One would think this means that the department's decision is always upheld, but that is not the case. I have been involved in two such hearings, and each has gone a different way.

The first transfer case that I sat on involved a sophomore basketball player who, for family reasons, decided that he wanted to go back to his home state of South Carolina. As a top player,

there were two schools that interested him: South Carolina (which was closer to his home) and Clemson. Everyone involved understood that the department would not grant the waiver if he transferred within the SEC, so the real issue was Clemson.

Clemson was on our schedule for the next year, and from our athletic department's perspective, that was a mark against granting a waiver. The real problem, however, was that newspaper accounts convinced our coach that Clemson had contacted the student-athlete without first obtaining permission, per NCAA rules. As such, the coach was strongly opposed to granting the waiver if the student-athlete chose Clemson, and the athletics department concurred.

After listening to both sides, the committee agreed that, due to our standard of review, we would affirm the decision; the department had not been unreasonable. Had it been *de novo*, we might have gone the other way. Our senior women's administrator handled the appeal for the department. I remember telling her that by making him sit out a year at Clemson, we guaranteed that he would end up at South Carolina. She disagreed, but that is exactly what happened.

The student-athlete returned home and worked out with the Gamecocks, but he was not eligible to play. I think he even had to pay his way at South Carolina that year.² Interestingly enough, his family resolved their situation after the year was up, and the student-athlete wanted to return to Ole Miss. Our coach was happy to have him back, and there was a spot on the roster. The only problem was that this was another transfer, and unless he received a waiver from the NCAA, the rules required him to sit out another year before he could play at Ole Miss.

The University of South Carolina was very cooperative, but we would still need NCAA approval, and that seemed to be somewhat in doubt. Our basketball coach turned into a lawyer. He gave me the citation to a court case that seemed to support his argument, and he asked about hiring a law student to do some research. (I do not think he actually hired one).

² He was ineligible for athletics aid. He may have had other financial support available.

From the student-athlete's perspective, the equities seemed to be on our side. After all, not only would the rules force him to sit out two years in a row, he would also lose a year of eligibility since this would be two years sitting during his five years of eligibility. On the other hand, we did not waive the year for Clemson, and South Carolina mentioned that we did not grant the waiver request for the transfer there, either.³

The NCAA kept us in the dark for longer than we liked, but ultimately they ruled that he would be permitted to play. He had a good season on the court as well as in the classroom, and I am glad that he came back.

IV. THE QUARTERBACK

This next scenario began with a rule change by the NCAA and a related change in the SEC bylaws. The NCAA change permitted a student-athlete who had completed his or her undergraduate degree and had remaining eligibility to move to a new school to pursue a graduate degree and use any remaining eligibility at that new institution. One provision was that the graduate degree must not have been available at the student-athlete's original school.

Despite the NCAA rule change, an SEC bylaw prevented any athlete from transferring to an SEC institution (and being eligible to play) unless he or she had at least two years of eligibility remaining. Given that the NCAA rule required the student-athlete to have graduated, it would be unlikely that any qualifying athlete would have two years of eligibility remaining. Accordingly, the SEC had to decide whether to modify this bylaw.

A fellow SEC FAR, who is also a law professor, once made a statement about counseling a football player through his first year of law school. That surprised me because I once had a football player talk to me about attending law school during his last year of eligibility, and I told him that it struck me as a bad idea. The first year of law school is hard enough; I could not imagine trying to play SEC football at the same time. The other FAR, who had

³ While that is surely true in the big picture, I reviewed my records of the appeal, and it appears that the student-athlete never appealed the South Carolina decision, just the Clemson decision.

more experience than myself, disagreed and said he had helped a few players through their first year in law school.

The SEC FARs eventually voted to change our bylaws to take advantage of the new NCAA rule. Our thought was that this rule would rarely be applicable. It would likely only affect a handful of athletes; probably all from individual sports like golf, track, and tennis. The SEC associate commissioner who was in the meeting with us was less enthusiastic. He said something to the effect of: "I know you are all thinking about a golfer or distance runner, but what are you going to think when it is a star football player who wants to transfer?" I had no idea how quickly that would happen. Before the start of the next football season our coaching staff had identified a player – a star quarterback – who seemed to qualify under the new rule and bylaws.

The player in question had been the starting quarterback at a major program, but he had run into disciplinary problems and his coach kicked him off the team. He had, however, already earned his degree. He sent information about his release to several schools, and our coaching staff wanted him. The Chancellor, the AD, and I were all less certain.

The Chancellor told me the immediate reaction among our fan base was negative. Then, in a day or two, after they had time to see his films on YouTube, the tone changed. Even some of the fans who originally opposed acquiring the new quarterback called back to let the Chancellor know that they thought this young man deserved a second chance. There were, however, some hurdles to clear.

First of all, in order to meet the NCAA rule, he had to be admitted into a graduate program that was not available at his former institution. While his grades were not bad, they were not typical of most graduate school applicants. I believe there was also some scrambling to take or retake the GRE. I later spoke to a staff member who told me it had been her duty to find a program not available at his old school that would admit him. She was eventually successful.

Because of the disciplinary nature of his departure from his former team, the NCAA denied his application for eligibility at Ole Miss. In a press release, the NCAA stated that the transfer exception exists to provide relief to student-athletes who transfer

for academic reasons to pursue graduate studies, not to avoid disciplinary measures at the previous university. This set up an appeal to the *ad hoc* NCAA Subcommittee for Legislative Relief; the only proceeding before the NCAA in which I have been involved.

We conducted the appeal over a conference call, and our AD took the lead. I reviewed the documents and went over the arguments beforehand, but my actual role during the hearing was very limited. I did note a mistake in a timeline that NCAA investigators had prepared, and I wrote a note about it to our AD. He read it and incorporated it into his argument like a seasoned litigator. In fact, he did a great job throughout the hearing, but the real reason I think we won, was that the student-athlete himself was bright, articulate, and made a convincing case about how hard he worked to graduate and how much he wanted to pursue this opportunity.

That evening ESPN was talking about our NCAA appeal. In fact, they set up a little mock trial with moderators playing the roles of the judges and an advocate on each side of the issue. Lou Holtz argued in favor of immediate eligibility at Ole Miss. It was entertaining, but I'm glad he did not handle the real hearing.

The decision came in just days before our first game. With the uncertainty surrounding the starting quarterback, we got off to a bad start, being upset in our season opener. The quarterback did not create any problems on campus, and he did his job on the field, but the team had a very disappointing year. The quarterback went on to sign an NFL contract, and he currently plays in the CFL.

V. THE PERSONNEL ISSUE

My final scenario was the most disconcerting of them all, and it is also the one that requires the most confidentiality. It began when a staff member in one of the University's units called me. He said that his supervisor was a tyrant who mistreated and abused underlings, and it was interfering with the educational process of many students, including student-athletes.

I was not the logical person to approach about something like this, so I asked the staff member why he approached me. He said that he had previously seen me speak to a group and decided that

he could trust me. He felt that his supervisor was closely allied with others in the chain of command, and if he went that way, word would get back to the supervisor and the ramifications could put his job in jeopardy.

The allegations did not involve NCAA-type violations, but they were very serious. I quickly concluded that either the supervisor had to go, because of terrible management, or the staff member had to go, for manufacturing a story like this. I had been around the supervisor on an occasional basis, and never noticed the kinds of things the staff member spoke of. I told the staff member that I needed some confirmation of his story. He understood and set up a meeting with a fairly influential person on campus. That person supported what the staff member said.

Of course, the person providing the confirmation might have had his own reason to dislike the supervisor, and the two of them could have colluded; however, with two reports of a serious situation that was significantly affecting student-athletes, I felt it was the FAR's duty to take some action. I called the Chancellor and asked for a meeting. I also asked him to have the university attorney available.

Complicating matters, neither the staffer nor the person who provided the confirmation wanted me to use their name. The staffer was afraid of losing his job. The other person felt it would complicate his situation at that time, and he wanted to stay out of it. I told the staffer that he would have to give me some names of people that could back up the story, so he developed a list of about six names, including his own.

My meeting with the Chancellor and the university attorney was very awkward. It was important to deal with this situation, but none of the "witnesses" were willing to come forth (though they wanted me to present the case). I told the Chancellor and the attorney what I knew. The Chancellor asked whether it involved sex with students or theft of money. I assured him that neither of those matters was behind my scheduling of the meeting (though there were some allegations that remotely touched on these issues). He correctly concluded that my concern was primarily about management issues.

I told the Chancellor and the attorney that I did not feel it was my role to investigate these matters, but someone needed to. I

gave the attorney the list of suggested witnesses. He asked me to get a written report from the staff member in question, which I did about a week later. It did not seem nearly as horrific as what the staffer had verbally told me, but it still raised some important issues.

Both the staffer and I waited for something to happen, but nothing did. Business went on as normal. The staffer asked me what happened, but I did not know. It was in the administration's court.

From outside appearances, the staffer and the supervisor seemed to be getting along. After some personnel changes, the staffer was assigned a more important role than he had before. Apparently, however, he was not happy. Once or twice he asked me about the investigation. I did not know, but I suspected that his written report simply did not inspire a high level of concern. Eventually, about six months after this matter first came to my attention, the staffer resigned from his position.

A week or so after the staffer left I tried to send an email to the supervisor, but it bounced back. Surely I had the correct email address, but I pulled up the online directory to check. The supervisor was no longer listed. Within an hour or so I received a phone call from someone in the administration. The supervisor had resigned. This resignation did not flow directly from my report, but the person who called me thought it had. Allegations had surfaced through a different channel. The supervisor's resignation avoided further investigation and possible unpleasantness.

Within a few days, the staffer reapplied for and was rehired into his old job. Almost immediately, people from within the department began to open up and tell the same horror stories that the staffer had told me from the beginning. I asked why they had not come forward earlier. The standard reply was that the supervisor had them all convinced that, because of contacts throughout the administration, no complaint would result in any disciplinary action, and the person making the complaint would be fired or driven off; as they said had happened to several other employees. When there was no immediate action on my report to the Chancellor and university attorney, which some of them had

learned about, they were further convinced that influential people in the administration were protecting the supervisor.

From my perspective, I had gotten along well with the supervisor, so I was not happy to find out that the allegations were based in fact. I was, however, in some ways relieved. After all, I had made this matter into a pretty big deal. When there was no action for several months, I assumed that the Chancellor concluded that I was a nut! In some way, this at least seemed to justify my earlier concern.

VI. LOOKING FORWARD

None of the issues discussed above have been of enormous importance to our University, but several of them were important to individual student-athletes. I think my legal background has served me well. At the roundtable that spawned these papers, Jo Potuto talked about how important seniority was for a FAR. She was correct. The ability to stand up to a coach, work with an AD, or call a meeting with the university president requires a level of knowledge and confidence that can only come with time. The University of Mississippi Chancellor, Dan Jones, recently re-appointed me to a second term as the Ole Miss FAR. I am proud to serve in that role and honored by his confidence.

As for my abilities, at the very least, I seem to be able to recognize mistakes after I have made them!