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ECONOMIC REALITIES & ISSUES AMATEUR ATHLETES ENCOUNTER

*Chris Deubert*¹

To begin, when talking about being a student-athletes, it is important to know who it is were talking about. Fortunately, the NCAA has a tremendous research department. And they do take things like this pretty seriously. So most of these numbers I will discuss are from the NCAA's GOALS study. In baseball, 82 percent of student-athletes are white, which is much higher than the general student population. Not surprisingly, in the revenue-producing sports like basketball and football, the percentage of black student-athletes is much higher than the general student population. A couple other interesting ones: the percentage of non-resident aliens is much higher in sports like golf and tennis, where there is a large immigrant population. Unfortunately, the NCAA does not have figures on socio-economic data, which most likely follows racial and ethnic lines, which is important in understanding what student athletes go through. The NCAA should find the zip codes of its student-athletes, which would probably then make it possible to find a median income of that zip code, and you would have a starting point for knowing where student athletes are coming from.

In terms of what a student-athlete experiences, the NCAA has actually done a pretty good job of keeping this data. The average hours that athletes spend on athletic activities varies. It is not surprising that, in Division I, student-athletes participating in sports likes football, basketball, and baseball report having participated in upwards of 40 hours of athletic activity a week, a little less than in the other divisions, but still certainly substantial. It is substantial especially in light of NCAA Bylaws that limit athletic activities to 20 hours a week. The University of Michigan and Rich Rodriguez got in trouble a couple years ago with this and most schools consider the Bylaws very difficult

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to follow. What probably occurs with most major Division I programs in revenue-producing sports is that athletes have practices where coaches are not allowed to be there so it does not count for athletic-related activity. It is understood, however, that practice is required and that the student manager or someone else will be taking attendance and reporting back to the coach who was there. This goes on throughout the season and into the off-season.

Thus, on a weekly basis, student-athletes spend about 40-hours of activity in those major sports. This is more than they spend on their academics. In total, a student-athlete spends upwards of about 80 hours on athletic and academic related activities. How can a student athlete have a job with which he or she can live on a daily basis, especially in light of NCAA regulations, which often make it very difficult for student athletes to have jobs and the reporting requirements related thereto which make sure they are not being paid an excessive amount based upon their athletic ability.

Another problem the NCAA is aware of (and has done some recent scholarship on) is major bundling. At many colleges it happens to be the case that of the 80 or 100 students on the football roster, 50 of them are majoring in Liberal Studies or Sociology. Well that is likely because they have been pushed there by the Athletic Department or the institution. Twenty percent of student-athletes state that their coaches recommended which classes to take (though I find this percentage is somewhat low). My experience with student-athletes who were turning professional has been that percentage is a little higher. Perhaps student-athletes on the bottom of rosters actually care about what classes they take.

There is a reasonable percentage of student-athletes that would not have chosen that major if it they were not college athletes. As an aside, the NCAA and the NBA have had an issue with the one-and-done rule in terms of whether those players are actually student-athletes. Many times, student-athletes, during their in-season, are probably going to take the minimum amount of classes, maybe four or five. With basketball players, who know they are going to leave college after their first year of school to become professionals, what they can easily do is take four general education classes in the first semester. Then in the second half of the second semester, as they are going through the March Madness tournament, or whatever the case may be, they know that they are going to leave before the school year is over. So they can essentially mail it in, they will have taken four general education courses, and would have technically been a student-athlete.

How do student-athletes identify themselves? You can see in nearly every sport student-athletes identify more as an athlete than as a student. However, the difference is not so disparate, except for maybe baseball, such that you could not consider them student-athletes.

What do student-athletes do on a daily basis? Obviously, they have to deal with practice, games, and all their athletic-related activities. When student-athletes are asked what they want to have changed, time demands is, by far, the number one thing that made their experience as a student-athlete more difficult. Additionally, for football student-athletes, finances are a major concern. When considering the race, ethnicity, socio-economic status of student-athletes, football athletes are, and this is mostly speculation of which many would agree with, probably the most impoverished student-athletes based on socio-economic demographics.

The NCAA, being oft-criticized and oft-litigated, recently proposed some changes. An important point to keep in mind when people want to criticize the NCAA as an ivory tower in Indianapolis, the NCAA consists of about 1,300-member institutions. The NCAA exists for them and by them. The NCAA does not engage in any activity or action that is not suggested, recommended, and approved by the presidents of the member institutions. For those seeking to blame the NCAA or its activities, it is important to remember that the NCAA is an agent of the individual presidents' coordinated activity. Sometimes, people might want to look a little closer to home at their institution's president, who undoubtedly has revenue maximization for the university at the forefront of his or her mind.

There have been recent changes to try and promote the idea that student-athletes are more of the *student* than the *athlete* in the phrase student-athlete(s). The minimum GPA for entering freshmen is increasing, starting in 2015. The Academic Progress Rate (APR) you might have heard about because UConn's most recent men's basketball championship team will not be able to play in the NCAA Tournament next year. UConn asked for a waiver, including removing some scholarships and other things. The NCAA denied that request. The NCAA is raising the APR to a 930, which only requires about a 50 percent graduation rate, which should not be too difficult.

Additionally, UConn had an interesting situation in recruiting a very valuable recruit this past recruiting cycle or off-season. UConn already had sanctions so they did not have scholarships left. UConn convinced the athlete on the end of the roster to give up his scholarship and they gave it to the prized recruit. UConn then said it would find a way to make sure the athlete (whose scholarship was taken) was

able to get an education. I imagine the NCAA is likely going to close this loophole because certainly it allows for abuse.

The NCAA is also going to start having stipends. The stipend is supposed to cover the difference in what student-athletes receive in scholarship versus the full cost of attendance. The stipend is going to be \$2,000. There are Title IX issues with this. I think this a bad idea; a slippery slope. For many years now, a scholarship has been a one-year deal. It is up to the school whether to renew or not. There was a case, *Agnew v. NCAA*, that involved a student-athlete at Rice, a football player, he sued after his scholarship was not renewed. The NCAA won that case. The student athlete alleged the NCAA's one-year scholarship rule was an illegal price-fixing arrangement and the Southern District of Indiana ruled that the athlete was not able to define a relevant market. He tried to define it as a labor market for student-athletes who play in collegiate sports. However, since NCAA athletes are amateur athletes, there is no relevant product market that the NCAA could control.

In what ways could the NCAA allow student-athletes to possibly receive more money? One method resembles an Olympic model. There is lots of litigation about using student-athletes' likenesses without permission, for example, *O'Bannon v. NCAA*. It would be a titanic shift if the NCAA were no longer able to control student-athlete likenesses and images. If student-athletes could control those themselves, they might be able to market them and make money off of them and still maintain their amateur status.

Additionally, the NCAA is very strict about insurance. They do have some programs, which because there are so many member institutions, helps keep premiums down, such as the Catastrophic Injury Policy. There is another program where if you are good enough to go professional, so about 100 athletes in football and maybe 50 in hockey, you are able to obtain disability insurance. Another idea is to have the NCAA or the school pay for the insurance premiums, and then, if there are no NCAA violations, the student-athlete will not have to reimburse the institution.

The last suggestion relates to due process and subpoena power. The NCAA is not a state actor; it does not have to comply with due process, see *NCAA v. Tarkanian*, 488 U.S. 179 (1988). When the NCAA issues sanctions, the default presumption is guilty until proven innocent. The NCAA can tell the school that they cannot play a particular player, otherwise the school risks having those games forfeited and the money from those championships, or whatever the case may be, forfeited. The NCAA often has problems investigating some sorts of

alleged violations because it does not have subpoena power. Thus, getting people to cooperate, people or entities who are not employees of the institutions, is difficult. The NCAA Bylaws state that it strives for due process when it sanctions a school. It has a Committee on Infractions and an Infractions Appeals Committee, both of which are very thorough. They overturn a reasonable amount of cases and have a fairly legitimate appellate process. Through congressional action, perhaps a statute, the NCAA could commit themselves to due process and gain subpoena power.

In conclusion, the NCAA is currently facing many issues which should cause it to consider more creative responses and options. The general public seems to be increasingly getting behind student-athletes and understanding what their experiences are like. As student-athletes seek enforce their rights more often, there will be major changes in how the NCAA responds and operates.

