

Collegiate Athletics Reform: Lessons from Penn State

*a CLIPS Guest Commentary*¹

By Frank G. Splitt, 11-19-11

Our guest author says change is coming—precipitated by the sex-abuse scandal at Penn State that taught a valuable lesson in human behavior.... behavior illustrating the extremes to which highly regarded school officials will go to protect their sports-entertainment business.

If you want answers to questions surrounding the sex-abuse scandal at Penn State, don't think that its tragic situation is unique. Also, don't think the government isn't somewhat complicit by virtue of its subsidization of Penn State's money-making sports-entertainment business with favorable tax policy and its reluctance to impose requirements for transparency, accountability, and oversight on the NCAA cartel (the NCAA and its affiliated institutors).

The Penn State scandal is just the tip of an iceberg of cover-ups involving powerful organizations, none the least of which is the Catholic Church.²⁻⁴ Colleges and universities sponsoring big-time football and basketball programs are also powerful organizations where cover-ups are most likely to be related to the school's athletics program—involving cheating, academic corruption, physical injuries, deaths, and various forms of bad, if not ruinous, behavior.

The aim of the cover-ups is to protect the school's reputation/image and legacy, its money-making and prestige-enhancing athletics program, as well as to conceal bad judgments by school officials, neutralize material witnesses, and protect perpetrators.

Cover-ups of non-sex-related scandals are relatively easy to execute since the events don't generate the collateral damage and attention-getting headlines associated with child sex-abuse. Additionally, the more powerful and revered the institution, the more difficult it becomes for anybody within it to expose bad behavior and take action.

The sex-abuse scandal at Penn State provides a valuable lesson in human behavior as it illustrates the extremes to which widely respected school officials will go to protect their sports-entertainment businesses, their coaches, and, most importantly, big tax-free money.

*The NCAA doesn't just allow too big to fail. Perhaps most disgusting of all, the NCAA profits from it. You ask how this could happen? Start with Joe Paterno and don't stop until you reach the top of the NCAA. But above all else, follow the money.—Barry Rozner*⁵

Although bad behavior and cover-ups can have a disastrous impact on a school's students and its educational mission, these actions are not treated accordingly within and beyond campus walls. School and government officials act as if the schools are "too-big-to-fail," and/or, are "too-popular-for-government-intervention."

To be sure, our nation's colleges and universities, as well as its citizens, are caught in a vise-like grip of sports entertainment. America's culture is reflected in the near insatiable appetite for 24/7 entertainment by its public. As Steve Salzberg has said, "The reaction of Penn State students illustrates the pathology of football culture at U.S. universities today."⁶

The riotous scene at Penn State after the firing of Joe Paterno has been described as surreal but should have come as no surprise if due consideration is given to the frenzy exhibited by fanatic sports fans.⁷ Jim Dent's description of a 1964 Notre Dame pep rally is illustrative.⁸ World-renown Notre Dame President

Fr. Theodore Hesburgh was booed by a hyped-up student crowd that was whipped into a heated frenzy. Why? They were impatient to hear from their new hero, yet unbeaten ND Football Coach Ara Parseghian.⁹

This is about a culture that says the football team must be defended at all costs: a culture where the sexual assault of a 10-year-old is reported to Paterno before the police.... damn the fact that the billion-dollar logic of big-time college football leads to decisions as venal as those made in Happy Valley. —Dave Zirin¹⁰

Given that the NCAA cartel is incapable of reforming itself,¹¹ that wealthy, powerful, and vociferous governing-board boosters are not prone to reform¹² (Appendix 1), and that colleges and universities have yet to step up to a leadership position,¹³ one is led to ask about the role that can be played by the feds. Put simply, the federal government can clean up much of the mess for which it is partially responsible.

First of all, the government can cease its laissez faire approach to collegiate athletics that is characterized by its see-no-evil-hear-no-evil-speak-no-evil behavior¹⁴ as it subsidizes out-of-control athletics programs—the real elephant in the room— via favorable tax policies.

Specifically, the feds could work to drain the deep swamp of tax-free money via a change in the federal tax code. The change could be crafted to eliminate the unjustifiable tax-free status of most, if not all, big-time athletic programs by introducing measures of transparency, accountability, and oversight adequate to the task. The aim would be to assure that the NCAA cartel complies with federal requirements for tax-exemption as a nonprofit. A significant obstacle to be overcome is the U.S. Department of Education's reluctance to modify FERPA, the Family Educational Rights and Privacy Act, to block its use by the NCAA cartel to shield academic corruption in collegiate athletics.¹⁵

An alternative approach would have the feds not only apply a heavy surtax on all collegiate-athletics-related income, but necessitate compliance with the Sarbanes-Oxley Act—in effect, mandating rigor and accountability in the filing of all financial reports as well.

Still another approach would have Congress pass the collegiate-athletics-structure equivalent of the financial-structure-oriented Glass-Steagall Act to protect higher education from athletic program corruption. The structure would require large revenue-generating programs to operate independent of academic programs. In other words, students would function as students and athletes would function as fairly-compensated professional athletes. Gone would be contrived amateur student-athletes along with the NCAA's academic measures as well as its picayune rules and regulations—all designed to provide the illusion that the athletes are also bona fide students. For a fairly detailed 28-point outline of this approach, see Telander.¹⁶ A summary account of a similar recommendation by George Dohrmann can be found in Appendix 2.

No doubt all of the above forms of intervention would be vigorously opposed by the NCAA cartel. However, if the Penn State scandal does not prompt intervention, then antitrust and other cases before federal courts are likely to do so. In any case, the scandal could spark a shift in America's obsessive sports culture—with moral integrity and justice valued above winning via the fruits of bad behavior—a shift that could, over time, spawn systemic change in professionalized collegiate athletics that are presently driven by greed and sustained by corruption and hypocrisy.

Having heard all of this you may choose to look the other way, but you can never again say that you did not know.—William Wilberforce¹⁷

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A complete listing of links to his essays and commentaries on college sports reform can be found at <http://thedrakegroup.org/splittessays.html>

APPENDIX 1 -- Penn State Fiasco Should Remind Trustees of Their Inherent Responsibilities

By demanding new leadership of the university and the football team, the Penn State board of trustees set a decisive tone of responsibility and accountability for its top leaders. The trustees made it clear that those who smell smoke in College Station have the responsibility not just to yell “fire,” but to ensure help arrives. However, it shouldn’t take a scandal for boards to perform their inherent duties and to remain engaged and active on campus. In too many ways, the world of higher education is solely about reputation – not values or education. And that is why many boards and administrators end up reacting to press headlines, rather than responsibly addressing problems before they make the news. Despite massive public support, the world of universities is remarkably opaque – and that is why public support for them has been increasingly on the decline. The Penn State scandal should be a call to boards everywhere to examine their policies and procedures – from athletic department oversight to whistleblower protocols – to be certain they are fully undertaking their fiduciary responsibilities to their institutions and to the public.

The Penn State trustees have drawn a hard line to ensure that those who share even a whiff of the blame for these alleged atrocities are escorted to the door swiftly. As the smoke clears and new facts emerge about who knew what and when, let us hope that trustees across the country take note that trusteeship is, yes, an honor, but even more so, an obligation and responsibility that requires engagement and courage.

APPENDIX 2 – George Dohrmann’s ideas on cleaning up college sports

Here’s how Pulitzer Prize-winning author Buzz Bissinger¹⁸ presented George Dohrmann’s ideas on cleaning up the mess in college sports:

There must be changes to control the monster that college sports have become. The most radical idea, outlined in a series of recent articles by George Dohrmann in *Sports Illustrated*, is to have universities spin football and basketball programs into a separate entity, what Dohrmann calls “Football Inc.”

Players would not be full-time students because they really aren’t now anyway. (College sports have nothing to do with academics.) The teams, companies in effect, would still have university affiliation, and there would be a split of revenues at a negotiated price. Universities could rid their hands of what has become a colossal mess and just take in the money.

It is a complicated solution, maybe unworkable, but nothing is unworkable if the stakes are high enough, and the stakes are enormous. Too many universities are sports factories posing as academic institutions. The overemphasis on sports is a leading cause of America losing its competitive edge. Too many students are playing intercollegiate sports in what has become an absurdly demanding year-round commitment.

A more immediate and far easier solution would be for schools to drop teams that don’t make money. They could be turned into club teams, competitive and a lot more fun.

It would not solve the problem of the football monster, but at least tens of millions in revenue from the big-time programs, instead of going to support unprofitable sports teams as they do now, could provide more scholarship money and better faculty salaries to maintain educational programs that are being cut to the bone in the current economic climate.

This would require a change in rules by the most feckless organization in America, the National Collegiate Athletic Association, which now absurdly requires that universities maintain between 14 and 16 varsity sports to qualify for the national football championship. Athletes in the non-revenue generating sports would moan. Until they were reminded they are going to college to learn, not to swing a golf club. The best place to begin desperately needed reform? Penn State, which maintains 29 varsity teams.

NOTES

1. This commentary is an update of the commentary posted Nov. 16, 2011 on collegeathleticscpi.com. In large part, the commentary is based on a series of messages sent to the Senate Finance Committee as well as to the executive director of the Knight Commission. The back story for these messages can be found in "Collegiate Athletics Reform: A Trilogy," http://thedrakegroup.org/Splitt_Trilogy.pdf
2. Roberts, Tom, "Abuse and cover-up: Penn State's Catholic-like scandal," *National Catholic Reporter*, Nov. 10, 2011, <http://ncronline.org/news/accountability/abuse-and-cover-penn-states-catholic-scandal>
3. Nocera, Joe, "The Institutional Pass," *The New York Times*, Nov. 11, 2011, http://www.nytimes.com/2011/11/12/opinion/nocera-the-institutional-pass.html?_r=1&partner=rssnyt&emc=rss
4. Douthat, Ross, "The Devil and Joe Paterno," *The New York Times*, Nov. 12, 2011, <http://www.nytimes.com/2011/11/13/opinion/sunday/douthat-the-devil-and-joe-paterno.html?src=me&ref=general>
5. Rozner, Barry, "Want answers? Just follow the money at Penn State." *The Daily Herald*, Nov. 11, 2011, <http://www.dailyherald.com/article/20111111/sports/711119907/>
6. Salzberg, Steven, "Get Rid of the Game, Period," *The New York Times*, Nov. 11, 2011, <http://www.nytimes.com/roomfordebate/2011/11/10/should-penn-state-cancel-its-season/penn-state-should-cancel-its-season>
7. Guarino, Mark, "Penn State Riot: If university can't fire Joe Paterno, is something wrong?," *The Christian Science Monitor*, Nov. 10, 2011, <http://www.csmonitor.com/USA/Sports/2011/1110/Penn-State-riot-If-university-can-t-fire-Joe-Paterno-is-something-wrong>
Guarino quotes Dave Zirin of *The Nation* as saying the riot represents the "warped moral atmosphere" that is created when "universities look to college football as the financial engine of campus that bends the will of the campus."
8. Dent, Jim, *Resurrection: The Miracle Season That Saved Notre Dame*, St. Martin Press, 2009.
9. The perpetuation of the notion, that Notre Dame's future is vested in its football program, in light of the deaths of Declan Sullivan and St. Mary's College student Elizabeth Seeberg, must be anguishing to Fr. Hesburgh who, during his tenure as president, was dedicated to shedding the school's image as a "football factory" while developing it as a world-class university.
10. Zirin, Dave, "College Football's Logic: Why Joe Paterno and Penn State Would Shield a Child Molester," *The Nation*, Nov. 7, 2011, <http://www.thenation.com/blog/164433/college-footballs-logic-why-joe-paterno-and-penn-state-would-shield-child-molester>
11. See the Trilogy[1].and Libby Sander's October 26, 2011, *Chronicle* piece, "NCAA Reforms Won't Produce 'Systemic Change' in College Sports, Administrators Say," <http://chronicle.com/blogs/players/ncaa-reforms-wont-produce-systemic-change-in-college-sports-administrators-say/29152>
12. The American Council of Trustees and Alumni (ACTA) must certainly be aware of this situation. See Appendix 1 – "Penn State Fiasco Should Remind Trustees of Their Inherent Responsibilities," a statement posted on ACTA's home page at <http://www.goacta.org/> and Dave Zirin's Nov. 16, piece in *The Nation*, "Penn State Alum/Leader of NOW Calls Out Penn State's Trustees for Toothless Internal Investigation," at <http://www.thenation.com/blog/164633/penn-state-alumleader-now-calls-out-penn-states-trustees-toothless-internal-investigatio>
13. Wendler, Walter V., "Public leadership vs. private morality," *The Chicago Tribune*, Nov. 17, 2011 <http://www.chicagotribune.com/news/opinion/ct-perspec-1117-academics-20111117,0,2869730.story>
Many Catholics are left to wonder why it is that Catholic colleges and universities are not leaders in collegiate athletics reform—working to eliminate the injustices and bring rectitude to big-time athletics—rather than being among the leaders in revenue generation.
14. Zerubavel, Eviatar, *The Elephant in the Room: Silence and Denial in Everyday Life*, Oxford University Press, 2006.
15. Salzwedel, Matthew R. and Ericson, Jon, "Cleaning Up Buckley: How The Family Educational Rights and Privacy Act Shields Academic Corruption In College Athletics," *WISCONSIN LAW REVIEW*, 2004, http://thedrakegroup.org/Salzwedel-Ericson_Buckley.pdf
16. Telander, Rick, *The Hundred Yard Lie: The Corruption of College Football and What We Can Do to Stop It*, University of Illinois Press, Chicago and Urbana, Illinois, 1989, Paperback Edition with Afterword, pages 213-217, 1996.
17. William Wilberforce (24 August 1759 – 29 July 1833) was a British politician, a philanthropist and a leader of the movement to abolish the African slave trade.
18. Bissinger, Buzz, "Open Secrets: It isn't just Penn State. College sports are a mess. It's time to sideline them," *Newsweek*, Nov. 21, 2011, page 4, <http://www.thedailybeast.com/newsweek/2011/11/13/joe-paterno-scandal-shows-need-for-reform-of-college-sports.html>