

The Congressional Challenge to the NCAA Cartel's Tax-Exempt Status

Sunlight is said to be the best of disinfectants.
—Supreme Court Justice Louis Brandeis

by Frank G. Splitt

BACKGROUND – The cover story for the March 23, 2007, issue of the *National Catholic Reporter*, headlined "March Madness highlights sports vs. academics dispute," carried the tone-setting subtitle, "Big money, pressure to perform distort purpose of athletics, critics claim."¹ Prominent mention of The Drake Group (TDG) within the story prompted several inquiries concerning TDG's congressional initiative. Here's what's going on:

THE TDG CONGRESSIONAL INITIATIVE – Simply put, the initiative is aimed at restoring academic and financial integrity in big-time collegiate athletics. It was triggered by the 2004 publication of "The Faculty-Driven Movement to Reform Big-Time College Sports."² To accomplish this aim, TDG is now advocating for a follow up on the congressional challenge to the NCAA cartel's tax-exempt status initiated by the 109th Congress' House Committee on Ways & Means, beginning with a focused hearing on intercollegiate athletics.

TDG believes that such a hearing would expose the "real" mission of the NCAA and the intercollegiate athletic departments of its member institutions (especially those with NCAA Division I football and men's basketball programs). This mission is to attract fans, win athletic contests and generate revenue in order to realize often unrealistic financial goals; and, more often than not, this mission compromises the educational mission and the academic integrity of the host university.

A hearing would also expose the NCAA's secretive ways to the light of day. Furthermore, a hearing would call attention to the need for corrective actions that stress transparency (with related academic disclosure), accountability, and oversight – all consistent with the recommendations of Secretary of Education Margaret Spellings' *Commission on the Future of Higher Education*.

TDG RECOMMENDED CORRECTIVE ACTIONS AND COMMENTS

Action #1 – Address the perverse government subsidization of the NCAA and big-time intercollegiate athletics.

Comment. This action would not only help realign priorities at America's colleges and universities, but also help flip the apparent athletics-over-academics priority at many schools and provide substantial incremental revenues besides. Serious consideration should be given to a quid pro quo.³ The quid would be a continuation of the NCAA's tax-exempt status, while the quo would be NCAA cartel compliance to specified congressional requirements that would increase the transparency, accountability and oversight of their operations. Holding the NCAA cartel accountable for the substantial financial support it receives from America's taxpayers would be part of this action as would taking a hard look at tax policies governing seat licenses, luxury skyboxes, corporate sponsorships and other unrelated business income that help fuel the current athletic arms race.

Action #2 – Add interpretive wording to the student privacy provisions in the Family Educational Rights and Privacy Act (FERPA) to make clear that such legislation does not prohibit release of information on the academic performance of individual athletic teams, so long as the data do not identify individual team members.

Comment. This action is intended to promote transparency – stripping the NCAA cartel of its excuse for not providing evidence of institutional misbehavior. The acquisition of ‘padded’ data, can be minimized by limiting the requirement for record disclosure to FERPA compliant cohorts representing 50% of the school’s football and basketball team players with the most playing time. Recommended records would consist of courses taken by the cohort, average grades for the athletes and the average grades for all students in those courses, the names of advisors and professors who teach those courses, and whole-period class attendance for the athletes.

Action #3 – Require the NCAA and its member institutions to set up guidelines that will permit athletes to function as real students—having the institutions provide tangible evidence that they practice what they preach, i.e., evidence that their athletes attend regular whole-period classes on accredited degree tracks and that the athletes are maintained as an integral part of the institution’s student body where academic standards of performance for athletes are the same as for all other students.

Comment. Allen Sack TDG has outlined the following three representative guidelines: 1) Freshman should be ineligible for varsity basketball and football, 2) Require students to maintain a 2.0 grade point average, and 3) The NCAA should require schools to provide five-year scholarships that cannot be terminated for reasons unrelated to academics.¹

TDG CONCERNS – One of our primary concerns is that the issues surrounding the big-time college sports mess could be drowned out in Washington by issues related to the wars in Iraq and Afghanistan, elections, health care and other pressing domestic problems, and political scandals du jour.

Another major concern is the launching of powerful (potentially overwhelming) defensive counter measures by the richly resourced NCAA. Why? Although the corrective actions would work to reclaim academic primacy as well as restore academic and financial integrity in America’s institutions of higher education, they would, no doubt, be considered by the NCAA to be detrimental to the financial interests of their cartel’s big-time commercialized college sports entertainment businesses. So, it is expected that these interests will be defended at all costs.

It is to be noted that the seriousness of big-time collegiate sports related issues is being downplayed by the NCAA’s lobbyists and their PR spin masters. The most prominent NCAA spinner is their president, Myles Brand, who not only seems to believe that he ‘got away’ with his disingenuous response to Bill Thomas’ inquiry, but also continues to trivialize the inquiry. For example, Brent Schrotenboer reported recently that Brand blames last year’s congressional inquiry into the NCAA’s tax-exempt status on “critical faculty members who prompted a staff member in the congressman’s office to do this, saying: “That’s what happened there. That’s gone away.”

CONCLUDING REMARKS – NCAA and university public service announcements are not “proof” of the fulfillment of their educational missions. Without transparency, accountability, and oversight, no other college-sports “problem” can be resolved. TDG believes that once this fundamental management problem is addressed, the likelihood of other college-sports problems being remedied is greatly enhanced. No disclosure, no reform!

As George Will opined on potential congressional hearings on the tax-exempt status of the NCAA: “Such hearings will be embarrassing, if people who operate football and basketball factories are capable of embarrassment.”⁵ One thing is certain, the NCAA and its member institutions will not take responsible action unless and until they are ‘motivated’ by the Congress to do the “right thing” so as to retain their tax-exempt status.

March 26, 2007

NOTES

1. Feuerherd, Joe, "March Madness highlights sports vs. academics dispute," *National Catholic Reporter*, March 23, 2007. Note: The following URL is accessible only to *NCR* subscribers. http://ncronline.org/NCR_Online/archives2/2007a/032307/032307a.php. See the appendix for a text-only copy of this article.
2. Splitt, Frank G., "The Faculty-Driven Movement to Reform Big-Time College Sports" http://thedrakegroup.org/Splitt_Sequel.pdf, Sequel to the Brief "Reclaiming Academic Primacy in Higher Education, http://thedrakegroup.org/Splitt_Reclaiming_Academic_Primary.pdf
3. _____, "How About a Quid Pro Quo," http://thedrakegroup.org/Splitt_How_About_a_Quid_Pro_Quo.pdf
4. Schrottenboer, Brent, "'NCAA's profits get more scrutiny,'" *San Diego Union Tribune* March 14, 2007, http://www.signonsandiego.com/sports/college_basketball/20070314-9999-1s14ncaa.html:
5. Will, George, "Question time for tax-exempt status of football factories," *Washington Post*, Oct. 25, 2006.

APPENDIX – March Madness highlights sports vs. academics dispute: *Big money, pressure to perform distort purpose of athletics, critics claim*

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By Joe Feuerherd

Washington – To millions of Americans, not least those rooting for one of the nine Catholic universities participating in this year's men's National Collegiate Athletic Association (NCAA) Division I basketball tournament, March Madness is a time of near nirvana: Crack open a beer, curl up on the couch and watch endless hours of highly skilled undergraduates soaring over 10-foot rims. It doesn't get any better.

But to others, including some increasingly vocal university faculty members, it could hardly be worse. March Madness, they say, is not innocent fun and games, but an aptly named symptom of an insanely organized and increasingly commercialized college sports system badly in need of an intervention.

The problem is most severe, critics say, among the "revenue-generating" programs -- men's football and basketball. CBS Television, for example, paid \$6 billion in 1999 for the rights to broadcast the NCAA tournament through 2014.

"In the last 10 years bigtime college sports has definitely swamped academic values and transformed bigtime college athletes into paid employees in a multibillion dollar industry," said Allen Sack, a University of New Haven sociologist and coauthor of *College Athletes for Hire: The Evolution and Legacy of the NCAA's Amateur Myth* (Praeger Publishers, 1998). Sack's views were shaped as much on the gridiron as in the ivory tower: He was a starting defensive end for Notre Dame's 1966 national championship football squad.

A critical juncture was reached last year, Sack told *NCR*, when NCAA president Myles Brand "crossed the line" by embracing the commercial aspects of university athletic programs.

In his annual "state of the association" address, Brand said, "Commercial activity, meaning for example, the sale of broadcast rights and logo licensing, is not only acceptable, but mandated by the business plan, provided that [emphasis in the original text] it is done so in a way that fully respects the underlying principles of the university.

"Instances in which advertising is offensive, in which it is crass or overwhelming, are incompatible with these values," he continued. "But commercialism per se [emphasis in the original text] is not. It depends entirely on how the commercial activity is conducted."

Sack does not buy the notion that the hunt for big bucks has little impact on the academic life of college athletes or the culture of a university. "Making billions of dollars and making more and more every year heightens the pressure on college coaches to win, makes television ratings far more important than ever before, and thereby takes this pressure that is now on the coaches to win, or else they will be fired, and pushes that pressure down to the athletes. That's inevitable."

Corruption is nothing new to collegiate men's basketball and football.

In 1906, the NCAA was created at the behest of President Teddy Roosevelt to combat the brutality present in men's football. Among the group's first findings: Athletic scholarships were incompatible with higher education and amateur intercollegiate athletics because they amounted to payments to players.

In 1950, players for the national championship City College of New York basketball squad were charged with "shaving points" -- intentionally scoring less than they might have otherwise to allow gamblers to "cover the spread" on their bets. Similar gambling-related scandals hit St. Joseph's of Philadelphia in 1961 (the school was stripped of its third-place finish in the championship tournament as a result), Boston College in the late 1970s, and Northwestern and Arizona State in the 1990s.

More recently, in 2004, Colorado State University was rocked by a recruiting scandal in which prospective football players, teenagers all, were supplied with alcohol and prostitutes as an inducement to sign with the Rams. That type of recruitment technique, frequently the product of overzealous alumni boosters, led former University of Nevada-Las Vegas head basketball coach Jerry Tarkinian to comment that he preferred transfer students to incoming freshman because "their cars are already paid for."

NCAA's harshest critic

Founded in 2000, the Drake Group (so named because it was the brainchild of retired Drake University professor Jon Ericson) has emerged as both the NCAA's harshest critic and chronicler of collegiate athletic corruption. Among its more vocal members is Frank Splitt, a one-time semi-pro baseball pitcher, holder of nine patents, and, until recently, a faculty fellow in engineering at Northwestern University.

His indictment of college sports is both well-informed and harsh. It includes:

- Admission standards for athletes that often have more to do with tackling, blocking, throwing, shooting and dribbling skills than SAT scores.
- Skyrocketing athletic budgets (including long-term debt associated with the construction of new football stadiums and basketball arenas) at the expense of academic programs. Spending on athletic programs has increased at about twice the rate of other university spending.
- Pressure on faculty to pass nonperforming students who are key to the success of a schools' basketball or football programs.
- Retaliation against faculty members who blow the whistle on plagiarism and other academic abuses by athletes and their athletic department-sponsored tutors.

- Programs that require time and travel commitments from players that make class attendance sporadic at best, impossible at worst.
- Seven-figure salaries (and separate product endorsement deals that flow from their position at the university) for the most coveted coaches.
- Scandalously low graduation rates for Division I basketball and football players.

The only way to true reform, says Splitt, is for Congress to intervene. Lawmakers should use the stick of potentially withholding a school's valuable tax exemption, says Splitt, in return for concrete steps to guarantee that student-athletes are students first and foremost.

His efforts have gotten some attention in Congress and from the NCAA.

In a 25-page October 2006 letter, then-House Ways and Means Committee Chairman Bill Thomas, R-Calif., wrote to NCAA president Brand, "Educational organizations comprise one of the largest segments of the tax-exempt sector, and most of the activities undertaken by educational organizations clearly further their exempt purpose."

He continued, "The exempt purpose of intercollegiate athletics, however, is less apparent, particularly in the context of major college football and men's basketball programs.

"Corporate sponsorships, multimillion-dollar television deals, highly paid coaches with no academic duties, and the dedication of inordinate amounts of time by athletes to training lead many to believe that major college football and men's basketball more closely resemble professional sports than amateur sports," wrote Thomas. "Beyond rules prohibiting compensation for college athletes, what actions has the NCAA taken to 'retain a clear line of demarcation' between major college sports and professional sports?"

Brand responded, "The lessons learned on the football field or men's basketball court are no less in value or importance to those student-athletes than the ones learned on the hockey rink or softball diamond -- nor, for that matter, than those learned in theater, dance, music, journalism or other non-classroom environments.

"If the educational purpose of college basketball could be preserved only by denying the right to telecast the events, students, university faculty and staff, alumni, the institutions of higher education themselves and even the American taxpayer would ultimately lose," he continued. "The scale of popularity and the media attention given to football and men's basketball do not forfeit for those two sports the educational purpose for which they exist."

He removed Bobby Knight

Brand, in fact, has positioned himself as a reformer. As president of Indiana University in 2000, he led the charge to remove controversial basketball coach Bobby Knight as coach of the Hoosiers perennially winning and much beloved basketball team. Brand says the NCAA has instituted new programs, including the loss of athletic scholarships for schools with failing grades in athlete graduation rates, that are making university presidents more accountable and athletes more academically oriented.

Brand notes, for example, that the "Graduation Success Rate" -- a measure developed by the NCAA to track athlete progress -- is higher among Division I athletes (with 77 percent graduating within six years) than among the general student population. "There is little that frustrates me more than critics of college sports who get the facts wrong and make derogatory comments about the academic accomplishments of student-athletes," Brand said in his January "state of the association" speech.

He continued, "Critics pounce on the point that football and male basketball student athletes graduate at lower rates than the general male student population. They are right, and improvement is needed. But they very often fail to note some key exceptions and overall improvement," including the fact that African-American football and basketball players are more likely to graduate than their counterparts in the general student population. "We do need to do better in higher education in graduating African-Americans, but in athletics, we have, in fact, made genuine progress," said Brand.

Still, argue Splitt and others, it will take more than incremental changes from the NCAA to counter the so-called "Flutie Effect" -- the positive impact a high-profile sports program is thought to have on the quality of an admissions pool, alumni morale and fundraising. The trend bears the name of former Boston College quarterback Doug Flutie, whose last minute "Hail Mary" pass in the 1984 Orange Bowl resulted in both a victory for the Eagles and widespread positive publicity for the Jesuit-run school, which experienced a spike in both admissions and the quality of applicants as measured by their SAT scores.

Meanwhile, the pressure to perform is felt acutely at the University of Notre Dame, said Sack of his alma mater. And though the school has a justified reputation for academic achievement among athletes, he said, "they are hanging on a very thin thread." The university's multiyear, multimillion dollar television contracts with NBC and ESPN increases the pressure to win so that those games remain popular with viewers and the contracts are renewed.

That pressure was evident in late 2004 when the university fired football coach Tyrone Willingham in the third year of a five-year contract. Willingham's teams finished 21-15 during his tenure, not good enough for a school that traces its gridiron roots to Knute Rockne and hopes to keep the television revenue pouring in. Willingham's dismissal was a first for the Fighting Irish, which had not previously let a football coach go prior to the end of his contract.

On one level, at least, the move seems to have paid off. Under coach Charlie Weis the team finished 10-3 in 2006.

Notre Dame's Golden Dome is a far cry, perhaps, from the two Division III schools, the University of Scranton and The Catholic University of America, where Jesuit Fr. William Byron served as president. The football coach at Scranton, recalled Byron, held practice for two hours each day, from 6:30 in the morning until 8:30, because a number of the players were premed majors who needed to be in the laboratory in the afternoon. "It was a great balance between academics and athletics," he said.

Byron served on the NCAA presidents' committee in the 1980s, a body designed to move some of the decision-making authority for sports from university athletic directors to university presidents. He's convinced that there is no absolute contradiction between bigtime sports and bigtime academics, noting that schools such as the University of Michigan and Penn State are renowned for both their athletic prowess and their capabilities as research and teaching institutions. It's not brain surgery, said Byron: "If you're going to have a college athletic program, you have to stick to your principles and stay within the guidelines."

Guidelines should change

Those guidelines, however, should change, argues Sack. Though the NCAA considers such reforms "radical," he said that three changes in NCAA rules would go a long way toward restoring the balance he says is missing in universities that mount major sports efforts.

First, freshman should be ineligible for varsity basketball and football. "It's unconscionable for a young man or women with marginal academic skills" to have to deal with the pressure of Division I competition while adjusting to the changes inherent in the first year away from home, Sack said.

Next, he said, require students to maintain a 2.0 grade point average. It's not too much to expect a legitimate student to have a "C" average, said Sack.

Finally, the NCAA should require schools to provide five-year scholarships that cannot be terminated for reasons unrelated to academics. Such a move, said Sack, would demonstrate the school's commitment to the student athlete is not contingent on performance on the basketball court or football field.

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