

College Sports Reform: The Likely End Game

a Clips Guest Commentary

By Frank G. Splitt, 01-28-13

Our guest author believes the beginning of the end game for serious collegiate athletics reform will stem from the antitrust lawsuits against the NCAA driven by Sonny Vaccaro.

BACKGROUND – This is an expanded version of prefatory remarks for the publication of a printed collection of four commentaries.[1-5] This collection of commentaries was considered revealing in the sense that it would likely lead open-minded readers to ask: How can college-conference officials and those at the NCAA and its member colleges and universities continue to get away with their ‘big lie’?

Simply stated, the big lie is that, for the most part, college athletes at big-time schools are counterfeit amateurs—passed off as legitimate students.[6] The objective is to create the illusion that NCAA and conference operations fit the academic mission of the participating schools. These athletes generate billions of dollars for said untaxed business operations—a tax scam involving the exploitation of so-called student athletes.

UNTAXED BUSINESSES – Despite the presently unrestricted growth of the professionalized college-sports entertainment industry that is fueled by massive amounts of untaxed income, there currently is no one in Washington who is willing and able to take on this industry. That is to say, there is no one willing and able to give serious consideration to conditioning the tax-exempt status of colleges and universities sponsoring big-time football and men’s basketball programs on the programs’ compliance with the federal requirements for this status. Without this compliance, the tax break amounts to a stealth entitlement.

The Drake Group has engaged in a nine-year, Sisyphean-like struggle in attempts to engage government officials on the tax-exempt status of the NCAA cartel with the aim of catalyzing corrective action not only to help restrain this growth, but also to help resolve related issues. This struggle has involved multiple communications and appeals to both the House and Senate sides of the U. S. Congress, the U. S. Department of Education, as well as two unanswered open letters to President Obama.[7]

The very latest effort involved the promulgation of "Collegiate Athletics Reform: On taxing college sports related revenues," the last in the above-mentioned set of commentaries. It begins with references to two front-page stories in the *Marketplace*-section of the December 10, 2012 issue of the *Wall Street Journal* and then goes on to include a postscript based on remarks made in e-mails covering the transmission of the pre-postscript commentary to the Chief Tax Counsels for the Senate Finance Committee, and to my congressional representative. [5]

Apparently, the tax-free moneymaking and blatant hypocrisy in the college-sports entertainment industry will continue to go unchallenged by elected politicians. Public sentiment is certainly not in favor of reform that would change the status quo.

PUBLIC SENTIMENT – Abraham Lincoln had something to say about this kind of circumstance. “In this and like communities, public sentiment is everything. With public sentiment, nothing can fail; without it nothing can succeed, said Lincoln in 1858 when describing why Stephen Douglas was so important to the alleged pro-slavery conspiracy, going on to say, “Consequently he who moulds public sentiment, goes deeper than he who enacts statutes or pronounces decisions. He makes statutes and decisions possible or impossible to be executed.”[8]

Lincoln’s remarks are of significant interest when considered in the light of the shame of college sports. Taylor Branch likens how college athletes are treated to the way plantation owners treated slaves.[9] In this case the “public” is the American tax-paying public.. The role of “Stephen Douglas,” the defender of chattel slavery, is played by officials at the NCAA and its member institutions as well as at the various college conferences. The profound wisdom of Lincoln’s remarks is reflected in the compelling story told in "The Abolitionists," a recent PBS program centered on the struggle to abolish slavery in America.[10]

The program provides a stark reminder that the great reform movements in American history took vast amounts of time-consuming effort, not only requiring strong public sentiment and decades to mature, but also requiring countermeasures to strong, sometimes violent opposition along the way....opposition from those with vested interests in maintaining the status quo. Furthermore, this and other domestic reform movements also provide

reminders that presidents and politicians are often among the last to support the reform effort, if not at times leaders of the opposition.

ELECTED OFFICIALS AVOID THE ISSUES – By casting a blind eye toward ever mounting evidence of cheating, academic corruption, and other collateral damage, government officials as well as school and conference officials choose to let sleeping dogs lie. In so doing they avoid the risk of losing contributions or getting turned out of office by boosters or sports fans who are addicted to being entertained by college teams that play at professional levels.

No matter how unjustified, elected officials and their appointees seem to consider the nonprofit status of the NCAA cartel and college football and basketball conferences to be a "3rd-rail" entitlement program—a program with dire long-term consequences ... consequences that appear beyond the collective ken of these officials who currently comprise our nation's polarized, dysfunctional government that will likely be locked in bitterly divisive politics over taxing and spending for the foreseeable future. No elected government official seems to be worried about the negative impact of this stealth entitlement as well as other pressing issues related to college sports.

A good example comes from the Penn State sex-abuse scandal.[3] No matter how horrific, this scandal did not motivate President Obama to risk political capital to speak out as he did after the Sandy Hook school killings and say that he would "use whatever the power this office holds to engage my fellow citizens" to halt the exploitation of college athletes and the hijacking of America's education system by the college-sports-entertainment industry.

Lee Hamilton, a member of the U.S. House of Representatives for 34 years and now the director of the University of Indiana's Center on Congress, said: "watching Congress now is painful. Congress has shown a dispiriting unwillingness to reckon with tax reform, rein in the deficit, find ways to spur economic growth, or make any of the other tough decisions that face it." [11]

THE UPSHOT – It should come as no surprise that with but few exceptions, the outcomes of the Drake Group's efforts to engage government officials have proved to be unsuccessful—most disappointing and frustrating to say the very least. Expect elected officials to continue to muddle along—avoiding any and all attempts to restrain the college-sports entertainment industry no matter what the collateral damage.

All the while, America's colleges and universities that sponsor big-time football and men's basketball programs continue on their march of folly: defiling academic integrity via rampant cheating, warping academic missions, fleecing American taxpayers who help pay multimillion-dollar salaries for coaches and many millions of dollars more for stadiums, arenas, and jocks-only academic eligibility centers— not to mention harboring violent athletes, providing weak testing and inconsistent punishment for schools that cheat and for athletes that use performance-enhancing drugs, as well as sponsoring games where players can suffer blown knees, paralyzing broken necks, and long-term concussive brain damage if not death.

America's colleges and universities are short changing our nation that deserves a world-class system of higher education that values academics well above athletics. Not only are our nation's colleges and universities academically adrift in a sea of sports,[12] but the sea is also filling with a flotsam of administrators. "Since the early years of the 20th century, America has boasted the world's finest universities, but that rosy picture is fading," wrote Benjamin Ginsberg. [13] He went on to say: "The lower quality of American college graduates, the shift of foreign students to Asian and European schools and the slippage in the global rankings of "American universities signal a serious decline – this at a time when higher education is essential for America's economic growth and ultimately for its survival as leading world power." Unfortunately, it is what it is—a sad testament to misplaced priorities in higher education as well as in Washington.

CONCLUDING REMARKS – I now have reluctantly come to agree with John Columbo, the Albert E. Jenner, Jr. Professor of Law at the University of Illinois, who has advised: "There are many things tax policy can accomplish. This isn't one of them." Why? Because elected officials fear retaliation by voters and vested interests so won't even challenge the justification for the college-sports "entitlement" of tax-breaks. Consequently, loop-hole-free taxation of college-sports revenues won't be given a chance to prove its effectiveness.[14]

With all of the above in mind, I see a long and likely-lonely journey ahead for college sports reform, that is, unless and until there is a radical change in public sentiment. This would be an unlikely event—tantamount to a change in the American public's sports loving culture—manifested in a fixation on sports-entertainment.

It is my view that the beginning of the end game for serious collegiate athletics reform will stem from the antitrust lawsuits against the NCAA driven by Sonny Vaccaro.[15-18] The commentary "The Tainted Glory of College Sports,"[4] and the postscript in "On taxing college sports related revenues,"[5] tell why this is so.

Finally, I believe the lawsuits will break ground that will help facilitate The Drake Group's mission as well as the missions of other reform-minded organizations such as the American Council of Trustees and Alumni (ACTA), the National College Players Association (NCPA), and the National Coalition Against Violent Athletes (NCAVA). Nonetheless, public sentiment being what it is, efforts directed toward serious reform to clean up the mess in college sports will still be extremely difficult if not impossible to implement.

A democracy cannot exist as a permanent form of government. It can only exist until the voters discover that they can vote themselves largesse from the public treasury. From that moment on, the majority always votes for the candidates promising the most benefits from the public treasury with the result that a democracy always collapses over loose fiscal policy.— Usually attributed to the 18th-century Scottish historian Alexander Tytler

ENDNOTES (Added endnotes 14 through 18 include references that were published subsequent to *CLIPS* posting)

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10. "The Abolitionists," *American Experience PBS*, <<http://www.pbs.org/wgbh/americanexperience/films/abolitionists/>>. This three-part documentary, first aired on Jan. 8, 2013, traces the abolitionist movement across almost 40 tumultuous years—showing how Frederick Douglass, William Lloyd Garrison, Harriet Beecher Stowe, John Brown and Angelina Grimké turned a despised fringe movement against chattel slavery into a force that literally changed the nation.
11. Hamilton, Lee, "Suggestions for improving Congress," *The Daily Herald*, January 27, 2013, <http://www.dailyherald.com/article/20130127/discuss/701279975/>
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17. Wolff, Alexander, "When Worlds Collide: Reviled and legally besieged, the NCAA faces the stiffest challenge yet to its power," *Sports Illustrated*, page 18, February 11, 2013, <<http://www.sportsillustratedeverywhere.com/issues/protected/com.timeinc.si.web.inapp.02112013/when-worlds-collide-20879.html>>. Questions about amateurism, eligibility, third party travel expenses, tattoos, and \$25,000 payments will not matter unless the NCAA is able to derail the O'Bannon class action lawsuit that has the potential to blow everything to pieces.
18. Staples, Andy, "Ranking the 10 most powerful people in college sports," *SI.com, Viewpoint*, March 6, 2013. The author ranks Ed O'Bannon behind SEC commissioner Mike Slive, Big Ten commissioner Jim Delany, and NCAA president Mark Emmert, with a strong caveat, saying:

As I wrote above, this entry should be above Emmert. Come June, it might also need to be moved above Delany and Slive. By himself, O'Bannon, the former UCLA forward who has spent the past few years working at a Las Vegas Toyota dealership, isn't that powerful. But as the named party in a lawsuit that could change the way the business of college sports operates, the mere mention of O'Bannon's name makes administrators around the country quake. Either because they don't want to divulge their legal strategy or because they don't actually have one, the NCAA's leaders have dodged athletic directors' questions about what might happen as a result of Ed O'Bannon v. the NCAA.

When federal judge Claudia Wilken ruled in January that the O'Bannon plaintiffs could proceed with the class certification process, the panic level among the people who actually run college sports on a daily basis -- the athletic directors and commissioners -- rose to DEFCON 2. The plaintiffs have altered their legal strategy so that this case isn't just about the use of former athletes' likenesses in video games and DVDs. Now, it's about whether the NCAA and its schools have the right to market the likenesses of former and current athletes for big money. If the class is certified in June, the NCAA would be fighting for its life in an antitrust trial that, if won by the plaintiffs, could bankrupt the NCAA. The other option is to settle, but that would also require a paradigm shift. To get the plaintiffs to drop the suit, the NCAA would have to allow athletes to get a chunk of the massive television money now flowing into college sports. That probably would require the big-money conferences -- at the moment, the ACC, Big 12, Big Ten, Pac-12 and SEC -- to at least form their own division within the NCAA and could force them to break away and form their own organization. Even at the top of the food chain, schools would have to change the way they budget. Instead of building a new weight room, a school might need to hold back on capital improvements to meet payroll. Such a settlement would get messy, but it would finally stick a knife in the NCAA's sham notion of amateurism in major college sports.

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He is a member of The Drake Group, a member of the College Sport Research Institute's Advisory Committee, University of North Carolina at Chapel Hill, and was the Vice President Emeritus of Educational and Environmental Initiatives for NTI, the U.S. subsidiary of Nortel Networks, formerly known as Northern Telecom Limited.

As a Director of the International Engineering Consortium, he chaired the Consortium's Committee on the Future and its Fellow Awards Committee. He was also a member of the Accreditation Board for Engineering and Technology (ABET) inaugural Industry Advisory Council, the Institute of Electrical and Electronic Engineers (IEEE) Educational Activities Board, and the IEEE's Corporate Recognition's Committee.

His professional career covered research & development, marketing, administration, teaching, and public service. He has authored numerous technical papers, as well as articles on public affairs. He is a Fellow of the International Engineering Consortium, a Life Fellow of the Institute of Electrical and Electronic Engineers, an Eminent Engineer of Tau Beta Pi, the recipient of The Drake Group's 2006 *Robert Maynard Hutchins Award*, and has been recognized by the state of Wisconsin for Outstanding Lake Stewardship.

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