

# College Sports: National Priorities and Unplugged Loopholes

a Clips Guest Commentary

*Our guest author looks to the feds for what he feels is long overdue overhaul of big-time college athletics.*

By Frank G. Splitt

**Kudos to Professors Tom Palaima and Nathan Tublitz** – The professors from the University of Texas-Austin and the University of Oregon make several noteworthy points using President-elect Obama's uninformed and widely-reported comments—favoring a playoff series to determine the national college football championship—to help focus attention on what's really going on in the college sports entertainment business.<sup>1</sup>

- Rather than fret about a college football playoff, the president-elect should be encouraged to focus on getting priorities right re: academics and sports at American institutions of higher education;
- Other countries are beating us in education by wisely using their financial resources not for sports entertainment, but on classrooms, libraries and laboratories;
- American children are less well educated and have fewer career opportunities than their parents;
- There is a serious decline in U.S. student academic performance compared to other countries;
- University leaders have increased athletic spending, while academic programs suffer.

The authors express hope that the new president will use his influence to get Congress to close the loopholes that have perverted our higher educational priorities, and that he directs our new Education Secretary to work to get university leaders across the country to focus on what truly matters: education. But there is much more to their story.

**Unplugged Loopholes** – Palaima and Tublitz also illuminate artifacts of the college sports tax scam:<sup>2</sup>

By making skybox rental fees and mandatory donations for ticket-purchasing privileges tax deductible, our government actually encourages universities to build stadiums and arenas laden with luxury sky-boxes and other kinds of preferred seating. That's where the big "tax-deductible" money is.

Wealthy sports boosters like Phil Knight (the University of Oregon) and T. Boone Pickens (Oklahoma State University) can write off their gifts of \$100 million or more to sports programs as donations to higher education.

Congressional committees have examined these loopholes recently and not made any moves towards changing them.

In view of these comments it is only natural to ask: Why haven't Congressional committees who have examined these loopholes not made any moves towards plugging them? The answer to this question not only provides insights into today's golden rule—*They who have the gold rule*— but also insights into the limitations of a democratically elected government to effect change Here's why:

**The NCAA Cartel Can Muster Powerful Legal and Lobbying Forces** – In early 2006, the book, *College Athletes for Hire: The Evolution and Legacy of the NCAA's Amateur Myth*, by Allen Sack and Ellen Staurowsky, was recommended to House Committee on Ways & Means staffers. Why? Because it provided a good sense of the magnitude and the ubiquitous nature of the NCAA cartel's powerful legal and lobbying forces that Rep. Bill Thomas (R-CA, Ret.), the 109<sup>th</sup> Congress' House Ways & Means Committee Chairman, would confront in his end-of-term effort to have the NCAA provide justification for its tax-exempt status.<sup>3</sup>

There is little doubt that members of Congress are reluctant to confront the formidable forces that can be arrayed to defend a business that epitomizes hypocrisy and greed. It goes without saying that the NCAA's first line of defense of its money machine is its own high-power/high-paid executive team and its 24/7 PR machine.

**Politicians Fear Confrontation and Risk of Political Suicide** – Members of Congress likely hesitate for fear of political backlash if they dare deny the American public access to entertainment via games played by professional-level college football and men's basketball teams, or, even for fear of a negative public reaction to an investigation into what this educational-resource-draining, billion-dollar industry really does to justify its tax exemption.

Put another way, members of Congress simply don't want to risk committing political suicide via association with efforts that would impose requirements that would compromise the NCAA cartel's ability to operate/manage minor-league teams for the NFL and NBA—no matter the long-term, devastating impact of this self-serving position on America's institutions of higher learning.

**Fear and Risk Aversion Prompt Collective Conflict Avoidance** – Unfortunately, when individual political-suicide avoidance spans the entire Congress, the end result is collective conflict avoidance—a potentially fatal flaw shared by all democratically elected governments. In this case, deciding by not deciding can lead to the stifling of any hope of taking back our nation's system of higher education that has been hijacked by the unregulated, out-of-control college sports entertainment industry.

**Feds in the dark** – As incredible as it may seem, without transparency, oversight and accountability mechanisms, the federal government is in a position where it must accept the claims of schools that they are compliant with the requirements of their tax-exempt status. In all too many instances, these schools give every appearance of not only being secretive, but untrustworthy as well. Investigative reports by *The New York Times*, *USA Today*, *The Ann Arbor News* and *The Atlanta Journal Constitution* as well as the Palaima-Tublitz piece speak to this untrustworthiness—illustrating the widespread academic corruption in big-time college sports.<sup>4</sup>

Besides the potential for congressional scrutiny and the loss of big-money, there is a compelling need for big-time schools to cheat—for example, by inflating graduation and academic progress rates to justify their high-profile programs and their extraordinary investments in staff and 'jocks-only' facilities for alternative 'education-lite' programs for their counterfeit amateurs (a.k.a. student-athletes).

**March of folly** – Left to their own devices (as they are now), the NCAA and its member institutions won't poison their tax-exempt money well by implementing meaningful measures of transparency, accountability, and oversight. Without the threat of a poke by the tip of a federal bayonet, they will continue on their march of folly—valuing athletics over academics as they wholeheartedly support professionalized sports programs. That is precisely why The Drake Group specifically called for these measures in its letter commentary on the Draft of a Redesigned IRS Form 990, submitted to the IRS on September 12, 2007.<sup>5</sup>

Simply put, without federal intervention, America's colleges and universities will continue to: defile their academic integrity and warp their academic missions, deny academically qualified citizens access to a college education because of preferential admission of recruited athletes, fleece American taxpayers who help pay for multimillion-dollar coaches salaries, jocks-only academic eligibility centers, stadiums, and arenas, as well as short change our nation that deserves a world-class system of higher education that values academics well above athletics.

**Concluding Remarks** – The cash registers at the NCAA and its member institutions will continue ringing up ill-gotten gains and college athletics will continue to preempt academics so long as the

federal government continues to look the other way—effectively refusing to plug tax loopholes that help fuel the unregulated college sports entertainment industry—avoiding a follow-up on the investigative work of the 109th Congress' Senate Finance Committee Chairman Chuck Grassley and House Committee on Ways & Means Chairman Bill Thomas.

If America is going to continue to maintain a position of leadership on the 21st century's world stage, then it needs to get its priorities right in our institutions of higher education. Members of top-ranked BCS football teams and the NCAA's Final-Four basketball teams will not likely be eligible to play in the Palaima-Tublitz International Education Bowl. For more, see “Sports in America 2007: Facing Up to Global Realities,”<sup>6</sup> and “Time for accountability in sports.”<sup>7</sup>

*January 12, 2009*

## **AFTERWORD**

**A Sign of Progress** – In a recent column, “The I.R.S. Considers Pressing Schools to Further Reveal Their Business Activities,”<sup>8</sup> Lynnley Browning writes:

The **Internal Revenue Service** is considering expanding its scrutiny of colleges and universities to focus on billions of dollars associated with academic research, federal financing and intellectual property, a senior agency official said....

The expansion of an investigation would put pressure on the schools to further disclose their inner financial workings as the I.R.S. undertakes a major effort to learn more about whether academic institutions are improperly using their nonprofit status to avoid paying certain taxes....

The investigation is modeled upon similar scrutiny of hospitals that began in 2006 and has prompted audits, legislative hearings and stricter tax-filing requirements. The idea is to give the I.R.S. a clear view of how the business of academia operates in the 21st century....

Under its review, the I.R.S. is looking at whether universities and colleges are properly paying any special federal taxes owed on transactions, investments or businesses that are unrelated to their core nonprofit activities.

This is not a new idea. It harks back to the June 22, 2004, Senate Finance Committee hearing—on nonprofit practices, abuses, and ways to improve oversight—chaired by Senator Grassley.<sup>9</sup> To be sure, it is a politically-smart approach to getting at the school's revenue-producing sports entertainment business without triggering an explosive reaction by the NCAA cartel. .

An isolated, direct attack on the heavily-resourced NCAA cartel's tax-exempt status would never work no matter how well justified and how persuasive the argument. The I.R.S. approach is likely the only one that has a chance of producing results within the context of today's political realities.

Actually, this may very well be as good as it gets re: eliminating the federal subsidization of professional college sports and its related arms race. Nevertheless, it could be good enough if, and only if, the I.R.S. continues to press for details in all of the school's businesses that are unrelated to their core nonprofit activities—including (of course) the school's sports entertainment business.

**Worry about Fiscal Realities** – In her report on the January 15, 2009, standing-room-only session on the economy at the NCAA's annual meeting,<sup>10</sup> Libby Sander quotes Tim Curley, athletic director at Pennsylvania State University at University Park, as saying:

There's a real opportunity now to get refocused and streamline some of the craziness we've gotten ourselves into. We can put our competitive hats aside and look at the fiscal realities all of us are faced with.

According to Sander, the 3,000-plus athletics officials attending the convention were more than worried about fiscal realities “they were practically consumed by them.” She reported that Wallace Renfro, an NCAA vice president and a top adviser to the association’s president, Myles Brand, said that as many athletics officials seek ways to cut back on their expenses they should also look for ways to increase their revenue, writing:

With fund-raising and allocations from state governments slackening, Division I athletic directors should consider increased commercial activity as a way to boost income, said Renfro in the "state of the association" speech Thursday afternoon.

Selling the rights to present and distribute sporting events is one way to boost revenue in difficult economic times, Mr. Renfro said, mentioning a “limitless” array of new-media outlets as potential customers. Other ways include marketing merchandise with team logos, or having a coach endorse a commercial product, or selling signage in an arena or stadium. And all of those could be done without exploiting individual athletes, he said.

It would seem that Renfro’s remarks will do little to help justify the NCAA’s tax exemption as an institution of higher education. Also, it seems ironic, in view of fiscal realities and the widespread academic corruption in big-time college sports, that the 2009 NCAA Convention was themed *Engaging Our Communities Through Academics, Athletics & Leadership* and held at a Washington area resort hotel.

**A Hope for the Future** – It is hoped that the "unusually detailed questionnaires sent by the I.R.S. to 400 private and public universities and colleges about their executive compensation policies and their business activities," is but the first in step in making the schools more transparent, accountable, and subject to oversight.

It has taken The Drake Group 5-years to get to this point. This effort included work with the offices of Director LeRoy Rooker, U.S. Department of Education-Family Policy Compliance, Congressional Representatives Henry Hyde, Janet Schakowsky, Bill Thomas (House Committee on Ways & Means), as well as with the offices of Senators Chuck Grassley and Max Baucus (Senate Finance Committee), that eventually led to:

- House Ways & Means Chairman Bill Thomas' October 2, 2006, letter to NCAA President Myles Brand aimed at ascertaining the justification for the tax-exempt status of the NCAA and its member schools;
- The Drake Group's September 12, 2007, comments on the Draft of a Redesigned IRS Form 990.<sup>5</sup>

When the I.R.S. presses schools for details (as well as for transparency, accountability, and oversight) in their college sports business activities, the schools will have much more to worry about than bleak economic conditions. The I.R.S. will most likely find that many of these schools are not compliant with the requirements of their tax-exempt status and act accordingly. This action could force compliance with the requirement that the schools and their business partners treat athletes like other students, and not as commodities, or, exploited as poorly-paid professionals.

Now that would be a real sign of progress.

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## NOTES

1. Palaima, Tom and Tublitz, Nathan, "Barack Obama and the International Education Bowl," <http://www.insidehighered.com/views/2009/01/09/palaima>. This essay is, in part, based on the author's posted comment at this URL.
2. Splitt, Frank G., "Ongoing College Sports Tax Scam Puts Madoff to Shame," [http://www.thedrakegroup.org/Splitt\\_Ongoing\\_.pdf](http://www.thedrakegroup.org/Splitt_Ongoing_.pdf)
3. \_\_\_\_\_, "The U.S. Congress: New Hope for Constructive Engagement with the NCAA and Intercollegiate Athletics," [http://thedrakegroup.org/Splitt\\_Montana\\_Professor.pdf](http://thedrakegroup.org/Splitt_Montana_Professor.pdf).  
Also, at the time, Senator Charles Grassley (R-IA), the past Chairman and now Ranking Member of the Senate Finance Committee, was looking to significantly improve the transparency, accountability, and oversight of the NCAA's operations. It was Senator Grassley who once said: "Big money, tax free, and no oversight have created a cesspool in too many cases."
4. Another example comes from Professor Palaima who reviewed the Hagen case covering independent studies for athletes at the University of Michigan. The flimsy reasoning in the university's Dean of Undergraduates' letter of defense prompted him to post a comment titled "Hagen and Independent Study" on Elia Powers' report, "When Independent Study Raises Red Flags," at <http://insidehighered.com/news/2008/03/18/michigan>
5. "Comments by The Drake Group on the Draft of a Redesigned IRS Form 990," [http://thedrakegroup.org/Splitt\\_TDG\\_IRS\\_Commentary\\_091207.pdf](http://thedrakegroup.org/Splitt_TDG_IRS_Commentary_091207.pdf)
6. Splitt, Frank G., "Sports in America 2007: Facing Up to Global Realities," [http://thedrakegroup.org/Splitt\\_Sports\\_in\\_America\\_2007.pdf](http://thedrakegroup.org/Splitt_Sports_in_America_2007.pdf)
7. \_\_\_\_\_, "Time for accountability in sports," *The National Catholic Reporter*, Nov. 14, 2008, [http://www.thedrakegroup.org/Splitt\\_Time\\_for\\_Accountability.pdf](http://www.thedrakegroup.org/Splitt_Time_for_Accountability.pdf)
8. Browning, Lynnley, "The I.R.S. Considers Pressing Schools to Further Reveal Their Business Activities," *The New York Times*, Jan. 14, 2009, <http://www.nytimes.com/2009/01/14/education/14tax.html>.
9. Strom, Stephanie, "Charities Face Increased Reviews by I.R.S. as Senate Considers Strengthening Oversight," *The New York Times*, June 22, 2004. It was Strom's coverage of the hearing that focused my attention (and that of The Drake Group) on the tenuous basis for the tax-exempt status of the big-time college sports entertainment business.
10. Sander, Libby, "As Athletics Officials Meet, Talk Keeps Turning to the Economy," *The Chronicle of Higher Education*, Jan. 16, 2009, <http://chronicle.com/daily/2009/01/9711n.htm>.