

Collegiate Athletics Reform: Trilogy III

A Call for Federal Intervention

Intervention by the federal government is the only way to bring about desperately needed reform of big-time football and men's basketball.

It's Likely up to the Courts

Despite multiple appeals for action by the Legislative and Executive branches of the federal government, there has been no government action

Afterword: A Glimmer of Hope beyond the Courts

The efforts of the Rutgers' faculty and Congressman Roskam provide a glimmer of hope beyond the courts for collegiate athletics reform.

Evermore Likely up to the Courts

Hope for congressional action dimmed by silence

Prepared for distribution at the April 19-21, 2012, Scholarly Conference on College Sport, sponsored by the University of North Carolina at Chapel Hill's College Sport Research Institute, to be held at the William C. Friday Center for Continuing Education on the campus of the University of North Carolina-Chapel Hill

By Dr. Frank G. Splitt

February 28, 2012

America has the most to lose as it confronts new global realities with its STEMS gap and its institutional priority of athletics over academics – all the while handicapped by the public’s continued obsession with sports entertainment. America’s present-day position does not present a pretty picture.—From “Sports in America 2005: Facing up to Global Realities,” by the author, 2005, p. 4, http://thedrakegroup.org/Splitt_Sports_in_America_2009.pdf

If political gridlock and partisanship continue to paralyze public policy,...if they ignore the fact that America’s standing in the global pecking order may be in jeopardy, the anxious prognosis of America’s decline could become its historical diagnosis.—From *Strategic Vision: America and the Crisis of Global Power*, by Zbigniew Brzezinski, 2012, p. 64

Are We Rome? – Why does America have a failing education system? It’s because corrective action for the failing system has all too often required political will and abundant courage to change the status quo. Unfortunately, politicians of all stripes and levels have avoided getting in front of issues when there was no political capital to be gained—and possibly much to be lost, for example, loss of donations and loss of political office. So major issues have gone unresolved or ignored while the public is distracted from glum news about crises of the day such as terrorism, economic uncertainty, and pandemics, by games of all sorts—once again prompting the question: Are we Rome?—From “America’s Failing Education System: It Can Still Be Fixed,” by the author, 2009, http://thedrakegroup.org/Splitt_Failing.pdf

All states and nations, however great, bloom for a season and are replaced.—From the Introduction to *Vanished Kingdoms: The Rise and Fall of States and Nations* by Norman Davies, 2012

CONTENTS

A Call for Federal Intervention.....	1
It's Likely up to the Courts.....	4
Afterword: A Glimmer of Hope beyond the Courts.....	7
Evermore Likely up to the Courts.....	9
Open Letter to Congressman Peter Roskam.....	10

The slow but sure decline of America's educational system will continue, unless and until the growth of the professionalized college sports entertainment industry is restrained by forcing the NCAA cartel to comply with their tax-exempt purpose of keeping sports as "an integral part of the educational program and the athlete as an integral part of the student body.... To halt the NCAA cartel's abuse of its tax policies, the government needs to enforce its own rules on tax-exempt organizations—building into this nonprofit sector strong measures of transparency, accountability, and oversight adequate to the truth-finding purpose of these measures.— From "Reclaiming Academic Primacy in Higher Education: New Hope for the Future" by the author, 2009, http://thedrakegroup.org/Splitt_New_Hope.pdf

Collegiate Athletics Reform: A Call for Federal Intervention

a CLIPS Guest Commentary

By Frank G. Splitt, 01-10-12

It's obvious from the abuses we see that there's been no check on charities; big money, tax free, and no oversight have created a cesspool in too many cases.—Senator Charles Grassley, 2004

Our guest author believes that intervention by the federal government is the only way to bring about what he sees as desperately needed reform of big-time football and men's basketball.

A recent message to the Chief Democratic and Republican Tax Counsels for the Senate Finance Committee (SFC) concluded with an appeal to have its Chairman, Max Baucus, and its Ranking Member, Orrin Hatch, give thoughtful consideration to having the SFC follow up on the 2006 efforts of House Committee on Ways & Means (then) Chairman Bill Thomas and (then) SFC Chairman Senator Chuck Grassley. Their efforts focused on getting the NCAA to provide justification for the tax-exempt status of its big-time football and men's basketball programs.

This appeal was similar to previous appeals via open letters to President Barack Obama¹ and to Education Secretary Arne Duncan² that respectfully asked for support to help clean up the mess in collegiate athletics. Here was the message:

The American public's seemingly unbounded love of college sports entertainment at any cost can be readily exploited by skilled marketing professionals to the long-term detriment of the integrity and health of higher education in America.

The incremental cost of such exploitation to build an ever bigger college sports entertainment enterprise amounts to the cost of expanding a heretofore eminently successful business model, that is, the cost of further prostitution of America's compliant colleges and universities without any requirements for transparency and accountability, as well as with apparently acceptable artifacts of this prostitution—huge tax-free revenues, unbridled greed, manifold corruption, and blatant hypocrisy.

Based on over eight years of research on college sports reform, my experience indicates that intervention by the federal government is the only way to bring about desperately needed reform to help restrain the uncontrolled growth of big-time football and men's basketball programs with its potentially devastating impact on America's colleges and universities.

The time has come for a major overhaul. And whether the powers that be like it or not, big changes are coming. Threats loom on multiple fronts: in Congress, the courts, breakaway athletic conferences, student rebellion, and public disgust. Swaddled in gauzy clichés, the NCAA presides over a vast, teetering glory.—Taylor Branch, 2011

There follows a short list of authors and links to recent articles that could prove of value to members of the Senate Finance Committee for a bipartisan effort to end the subsidization of collegiate athletics via unjustified tax breaks that have provided huge amounts of easy tax-free money to help fuel said uncontrolled growth.

1. Karl Taro Greenfeld³

"Since taking over the Pac-12 Conference (PAC 12) Conference Commissioner Larry Scott has brokered a multibillion-dollar TV deal and launched a revolution in the business of college sports. Now he's out to make college football as lucrative as the NFL," says Greenfeld. He then asks: How much bigger can college football get? He answers by quoting Scott and Chris Bevilacqua, a sports media consultant and co-founder of the College Sports Television network. Scott points out that "there are a hundred million households in the U.S. with cable or satellite subscriptions, paying an average of \$120 a month." "We are fishing in a \$100 billion-a-year pond that is essentially held together by live sports, must-carry programming is largely live sports," says Bevilacqua.

2. Steve Wieberg⁴

Wieberg provides a list of the top 10 football and basketball coaches' compensation for 2010-2011. He also quotes Miami (Fla.) President Donna Shalala as saying "I think everybody is doing a reassessment." Here, via an email exchange, is a statement Shalala might want to reassess:

I have used the 2004 Willie Williams situation as an example of the incredible pressure that athletic departments, trustees, and others can put on school presidents to get their way.

—Frank Splitt, February 11, 2010

Too bad you are dead wrong.

—Donna Shalala, February 11, 2010

Members of the NCAA cartel will most likely remain in their tried and proven hunker-down mode of behavior with talk of reassessment and serious reform by presidents and various other cartel supporters.

3. Christine Brennan⁵

Brennan writes: "The week after the Penn State news hit, why didn't 25 or so of the nation's top university presidents call a "crisis conference" to debate drastic changes in the way coaches and top athletic programs do business? They had just held a retreat in August; this was reason to meet again, immediately. They could have discussed common-sense payment for head coaches, a reduction in football scholarships, unprecedented academic reform, the works. An agenda that far-reaching — that's impossible, most would say — would have been taken seriously only after a news event of this magnitude. Instead, what did we hear from academia across the nation at this watershed moment? Silence for about three weeks, then finally, some news. Disgraced Ohio State had hired a new football coach — for three times the amount the university president makes."

4. Joe Nocera⁶

"The N.C.A.A. would have you believe that it is the great protector of amateur athletics, preventing college athletes from being tainted by the river of money pouring over college sports. In fact, the N.C.A.A.'s real role is to oversee the collusion of university athletic departments, whose goal is to maximize revenue and suppress the wages of its captive labor force, aka the players. Rarely, however, will the cartel nature of the N.C.A.A. be so nakedly on display as at this year's (NCAA) convention," says Nocera.

5. Shaun Assael⁷

Assael asks: "How did these guys (the bowl-game CEOs) get so rich and powerful without anyone knowing their names?" Here's his answer: "Like good party hosts, they fly under the radar while making sure everyone had a drink in their hand. The Orange Bowl holds cruises for athletic directors and conference execs. The Sugar Bowl holds parties. But in Phoenix, the Fiesta Bowl's former CEO John Junker may have gotten a little greedy. He is accused of reimbursing employees for donations they made to political candidates who could keep the gravy train rolling. A series of articles by Craig Harris of *The Arizona Republic* exposed that and more: lavish parties, bloated salaries and, inevitably, strip club bills. The feds are looking into the deposed Junker's reign, his former chief operating officer is under indictment, and a lobbying group known as Playoff PAC is asking the IRS to look at all of the bowls, alleging a pattern of frivolous spending, undisclosed lobbying payments and bloated salaries.... Marcus Owens, a former high-ranking IRS official who ran its Exempt Organizations Division, says unrelated business income "has always been a playground for tax lawyers." It appears to him that the bowls have gone too far in writing off advertising and sponsorship revenues. He is advising Playoff PAC, which plans to file a complaint with the IRS later this month alleging the BCS bowls serially underreport taxable income."

6. Rachel Bachman⁸ and Darren Everson⁹ (not part of original message)

Bachman focuses on much football matters in the nation's top programs. To find out how much football matters at these so-called football schools, *The Wall Street Journal* reviewed total campus revenues reported by 45 major conference schools to determine the percentage generated by football. A related piece by Everson tabulates the value in \$-millions of college football's major conference teams, plus Notre Dame.

It is of significance that the outrageous Penn State scandal has not triggered a meaningful government action such as those discussed in "Collegiate Athletics Reform: Lessons from Penn State."¹⁰

It is my view that the probability of an academic body emerging to rein in the runaway college sports entertainment industry is extremely low. Academic officials will most likely avoid taking on the powerful NCAA cartel and their governing boards so will continue to deal with related problems by looking the other way—muddling through will likely be their preferred option for safeguarding their vested self interests.

Outside the U.S. Judicial system, the only hope for real reform appears to be in the U.S. Congress' Senate Finance Committee. Hope will become a reality if the SFC follows up on the 2006 efforts of House Committee on Ways &

Means (then) Chairman Bill Thomas and (then) SFC Chairman Senator Chuck Grassley. Their efforts focused on getting the NCAA to provide justification for the tax-exempt status of its big-time football and men's basketball programs.¹¹

I respectfully requested that the SFC's Chief Democratic and Republican Tax Counsels bring this e-mail message to the personal attention of SFC Chairman Max Baucus and SFC Ranking Member Orrin Hatch with the hope that thoughtful consideration will be given to all of the above.

Needless to say, pessimism abounds re: the ability of the government to enforce compliance to its requirements for tax-exempt status. However, as Doug Lederman notes:

In a restructured college sports landscape in which the "haves" and the "have-nots" are much more clearly and formally separated, it is not too farfetched to envision a group of angry members of Congress looking very differently than they historically have at the question of whether big-time sports is truly an amateur enterprise that warrants tax exemption as an educational activity. And a "No" answer to that question – forcing colleges to pay taxes on their sports revenues, to pay athletes market wages and workmen's compensation, etc. – would truly transform college sports in a way that nothing being discussed now can.¹²

We will see what we will see.

NOTES

1. Otto, Kadence and Splitt, Frank G. "Open letters to the President and his administration," March 17, 2009, <http://thedrakegroup.org/Obama.pdf> and May 27, 2009, <http://thedrakegroup.org/Obama2.pdf>
2. Splitt, Frank G. "'Football's dangerous . . . and for what,'" page 5 of "Collegiate Athletics Reform: A Lesson Learned," http://www.thedrakegroup.org/Splitt_A_Lesson_Learned.pdf
3. Greenfeld, Karl Taro, "Head of the PAC," *Bloomberg Businessweek*, Dec. 15, 2011, <http://www.businessweek.com/magazine/head-of-the-pac-12152011.html>
4. Wieberg, Steve, "College coaches and power: How much is too much?" *USA TODAY*, Dec. 22, 2011, <http://www.usatoday.com/sports/college/football/story/2011-12-22/iconic-college-coaches-paterno-knight-miles-saban/52257024/1?loc=interstitialskip>
5. Brennan, Christine, "After year of scandal, little change in college sports," *USA TODAY*, Dec. 28, 2011, <http://www.usatoday.com/sports/columnist/brennan/story/2011-12-28/a-year-of-scandal-mars-2011-in-college-sports/52259180/1>
6. Nocera, Joe, "The College Sports Cartel," *New York Times*, Dec. 30, 2011 http://www.nytimes.com/2011/12/31/opinion/nocera-the-college-sports-cartel.html?_r=1todaypaper.
7. Assael, Shaun, "Following the big bowls' big money," *ESPN.Go.com*, Jan., 3, 2012, http://espn.go.com/espn/otl/blog/_/name/assael_shaun
8. Bachman, Rachel, "When Football Is an Economic Strategy," *The Wall Street Journal*, Jan. 6, 2012, <http://online.wsj.com/article/SB10001424052970203513604577143250385056524.html>
9. Everson, Darren, "'What's Your Team Worth?'" *The Wall Street Journal*, Jan. 6, 2012, <http://online.wsj.com/article/SB10001424052970203462304577138611484143588.html?KEYWORDS=Darren+Everson>
10. Splitt, Frank G., "Collegiate Athletics Reform: Trilogy II," *FutureVectors, Inc.*, Dec. 19, 2011, page 1, http://www.thedrakegroup.org/Splitt_Triology2.pdf
11. _____, "The U.S. Congress: New Hope for Constructive Engagement with the NCAA and Intercollegiate Athletics." Montana Professor, Spring 2007, <http://mtprof.msun.edu/Spr2007/splitt.html>, Also see "Comments by The Drake Group on the Draft of a Redesigned IRS Form 990," September 12, 2007, http://thedrakegroup.org/Splitt_TDG_IRS_Commentary_091207.pdf This paper was written at the behest of Dean Zerbe, the Chief Republican Tax Counsel for the SFC when it was chaired by Senator Chuck Grassley. He resigned in 2007, shortly after the Republicans lost control of Senate committees after the 2006 elections.
12. Lederman, Doug, "Calls for major reform of college sports unlikely to produce meaningful change," *Inside Higher Ed*, Jan. 10, 2012, <http://www.insidehighered.com/news/2012/01/10/calls-major-reform-college-sports-unlikely-produce-meaningful-change>

*Jon King, an antitrust lawyer at Hausfeld LLP in San Francisco, told me that Vaccaro "opened our eyes to massive revenue streams hidden in college sports." King and his colleagues have drawn on Vaccaro's vast knowledge of athletic-department finances, which include off-budget accounts for shoe contracts. Sonny Vaccaro and his wife, Pam, "had a mountain of documents," he said.—From "The Shame of College Sports" by Taylor Branch, *The Atlantic*, p. 104, October 2011*

Collegiate Athletics Reform: Most likely up to the courts

a CLIPS Guest Commentary, 01-27-12

AFTERWORD: A Glimmer of Hope beyond the Courts, 02-02-12

By Frank G. Splitt

Our guest author points out that despite multiple appeals for action by the Legislative and Executive branches of the federal government, discussed in his previous CLIPS commentary, there has been no government action—leaving it up to the courts to resolve reform related issues.

Education Secretary Arne Duncan's remarks at the 2012 NCAA Convention and silence on the part of members of Congress have reaffirmed my earlier conclusion that the federal government will be of no help in bringing meaningful reform to big-time collegiate athletics—more later.

In retrospect, it was really a bit too farfetched to expect—as discussed in my previous *CLIPS* commentary¹—that members of Congress would look very differently than they historically have at the question of whether big-time sports is truly an amateur enterprise that warrants tax exemption as an educational activity. It was also too farfetched to expect the Education Secretary to turn up the heat on the NCAA and its member institutions to drive collegiate athletics reform.

The Senate Finance Committee – There has been no response to requests to have the issues outlined in previous commentaries and e-mails brought to the personal attention of SFC Chairman Max Baucus and SFC Ranking Member Orrin Hatch, even after highly recommending a reading of Doug Lederman's "Calls for major reform of college sports unlikely to produce meaningful change."²

It was hoped that thoughtful consideration would be given to the premise that intervention by the federal government is the only way to bring about desperately needed reform to help restrain the uncontrolled growth of big-time football and men's basketball programs with its potentially devastating impact on America's colleges and universities.

Also, there has been no response to a related request to have the U.S. Congress' Senate Finance Committee follow up on the earlier efforts of House Committee on Ways & Means (then) Chairman Bill Thomas and (then) SFC Chairman Senator Chuck Grassley to get the NCAA to provide justification for the tax-exempt status of its big-time football and men's basketball programs.

This experience demonstrated that government officials practice their own Golden Rule when asked to respond to issues that could have a negative impact on their re-electability, to wit: silence is golden.

It is my view that the probability of the U.S. Congress emerging to rein in the runaway college sports entertainment industry is extremely low. Members of Congress will most likely avoid taking on the powerful NCAA cartel and their wealthy donors so will continue to deal with related problems by looking the other way—safeguarding their vested self interests. The same could be said about the U.S. Department of Education. Here's why.

The Education Secretary's 2012 NCAA Keynote Address – There follows my comment on the *Inside Higher Ed report*³ on Education Secretary Arne Duncan's Keynote address to the 2012 NCAA Convention.⁴

Duncan's Words for NCAA Not Harsh by a Long Shot – It is difficult for me to believe that these remarks did not originate in the NCAA's PR department. Furthermore, it appears that Secretary Duncan unwittingly served as a surrogate speechmaker for NCAA President Mark Emmert—doing a superb job of delivering the NCAA's party line wrapped in bits of his own personal story with fulsome praise for the NCAA's shallow reform initiatives. It is even more difficult to believe that he could be so naive. Or is he?

Perhaps Duncan isn't naive at all but simply wants to help his boss who is now running a populist reelection campaign. How many votes would Obama lose if he announced that his administration is supporting a full-scale investigation of the NCAA and hugely popular big-time collegiate athletics?

Secretary Duncan's remarks reaffirmed my conclusion that the U.S. Department of Education will be of no help in promulgating meaningful reform in big-time collegiate athletics. Furthermore, as Duncan said: "If any of us are looking for Congress to solve this, good luck." So, it is likely in this election year that no one with the responsibility and authority to act will do anything to provide corrective action—no matter how bad things may be.

After the election, it is a safe bet that neither the President nor Congress will take on the powers that be—the NCAA and the athletic conferences, as well as wealthy alumni and booster organizations. Governing boards will fire presidents who attempt to moderate their big-time football and men's basketball programs and won't hire candidates who could possibly threaten the status quo.

Today it seems that no one with real power cares enough about higher education to protect its colleges and universities from money-driven prostitution by the sports entertainment industry.

The above comment reflected deep disappointment with what appeared to be uninformed remarks and suggestions that avoid the real issues surrounding the professionalized college sports entertainment industry. These issues were discussed in two Open Letters to the President⁵ with Secretary Duncan and members of his staff copied on both letters. A thoughtful review of these letters will cast a different light on the Secretary's remarks.

The Secretary's criticisms of the NCAA have certainly been in the right direction; however they are simply variations on the tepid themes of his previous remarks; see Duncan⁶ and my comment thereon. If the truth be told, the vast majority of coaches at colleges and universities supporting big-time football and men's basketball programs only **pay** lip service to academic values. They value winning above all else – that's what they are paid millions to do. NCAA, school, as well as conference officials, and a relatively small number of college athletes who make it to the pros, will also get rich; however, many of the athletes will likely pay a terrible price re: incipient damage to their long-term mental and physical well being.⁷

A Response and Further Comment – The following response to my January 17 e-mail message to Secretary Duncan and his staff was received on January 27, 2012:

Dear Mr. Splitt,

The Secretary received your latest note on January 17 with the link to your response to the Inside Higher Ed piece on the Secretary's recent speech to the NCAA. The Secretary continues to encourage college sports programs - especially major football and basketball programs - to strike a healthier balance between athletics and academics.

Thank you for continuing to share your concerns with us.

Sincerely,

Cynthia Dorfman
Director, Regional Operations
Office of Communications and Outreach

It seems that Secretary Duncan and his staff keep missing the main message: The college sports entertainment industry continues to operate as a very large, powerful, and politically connected enterprise that simply does as it pleases—seemingly not accountable to anyone, least of all the federal government—while **the** quality of higher education in America is declining relative to education in nations that prioritize academics over athletics.⁸

One wonders how Secretary Duncan can buy into the NCAA's shallow reform mechanisms and not take the opportunity to press the NCAA for answers to the following questions:

1. What is the NCAA's collegiate model and how does this model square with actual practice?
2. Why has the NCAA made a number of rule changes that have emphasized athletics over academics thus moving its big-time football and men's basketball programs to professional levels?
3. Why has the NCAA resisted reform efforts that would help realign big-time college sports with its stated mission of maintaining athletes as an integral part of the student body and retaining a clear line of demarcation between collegiate and professional sport?

4. More specific to the above, why has the NCAA resisted providing college athletes meaningful opportunities to function as real students by: a) Not restoring first-year ineligibility for freshmen with expansion to include transfer athletes; b) Not reducing the number of athletic events that infringe on student class time, with class attendance made a priority over athletics participation including game scheduling that won't force athletes to miss classes; c) Not restoring multiyear athletic scholarships—five-year scholarships that can't be revoked because of injury or poor performance?
5. Why should the federal government subsidize the athletic activities of educational institutions when that subsidy is being used to help pay for escalating coaches' salaries, costly chartered travel, and state-of-the-art facilities?⁹
6. Why has the NCAA forced everyone to take its word and the word of school administrators that athletes are really students on track to receive a bona fide, rather than a "pretend" college education by not agreeing to calls for transparency, accountability and oversight?
7. Why does the NCAA mask the suspected poor academic reports of many big-time college athletes by bundling the reports with those of the tens of thousands of other college athletes with good academic records who participate in a myriad of other non-revenue generating sports?
8. What is the NCAA doing to minimize incipient damage to the long-term mental and physical well being of college athletes?

Answers to these questions should be of interest not only to Secretary Duncan and other officials at the Department of Education, but also to members of Congress, the IRS, the media, reform-minded organizations, and U.S. taxpayers above all.

Do-Nothing Government Officials – Milton Friedman once said, “The proper role of athletic activity at a university is to foster healthy minds and healthy bodies, not to produce spectacles.” Nonetheless, the most important products from some of our nation's most prestigious colleges and universities appear to be entertainment venues for a sports-obsessed public and athletes that hope to graduate to the NFL or NBA, rather than prioritizing the transmission of understanding, ideals and values to students while adding to the body of intellectual knowledge and know-how.

Members of Congress and Secretary Duncan are apparently unaware of the chilling evidence that America's colleges and universities are helping to lead the way as our country slithers toward second-rate nationhood. There should be no mystery here. For all intents and purposes, government at all levels stands idle while many of its most prestigious schools prostitute themselves in a mostly futile quest for fame and fortune via their sports entertainment businesses.

Football is American religion, and for the few lucky enough to attend a game, it is a chance to see gods in action and miracles performed. — Nick Summers¹⁰

The Upshot – Based on the above, I would not recommend that anyone hold their breath waiting for a substantive reply from either the Department of Education or the Senate Finance Committee on the matter of college sports reform.

After almost nine years of effort to have these bodies address the manifold issues in big-time collegiate athletics, I have found that with few exceptions government officials seem to abide by their own version of the Hippocratic Oath: First do no harm to the chances of keeping your job.

The vast majority of members of Congress have chosen to do nothing, apparently believing they would violate this 'oath' by mandating: 1) Compliance of big-time college sports with its stated mission of maintaining athletes as an integral part of the student body and retaining a clear line of demarcation between collegiate and professional sport and 2) Disclosure of data on the academic performance of big-time college athletes—making the continuation of the not-for-profit status of the NCAA and its member institutions contingent on this disclosure without which no one knows not only who is doing the work for college athletes in their exclusive academic resource centers, but also why the feds continue to put up with the charade of self-reported “graduation rates.”

Lacking help from the Education Department and the Congress, reform-minded individuals and organizations can only hope for meaningful corrective action via the courts—not a new conclusion as can be seen from the following excerpt from an earlier commentary.¹¹

So, in the end, it may very well be that the only hope for truth, justice, and reform in collegiate athletics will be via the courts, as in the March 10, 2010, Consolidated Amended Class Action Complaint captioned *In re NCAA Student-Athlete Name & likeness Licensing Litigation* in the District Court for the Northern District of California.¹²

Absent meaningful corrective action via the courts, college sports, like a runaway train, will continue to overwhelm everything in its way with the Legislative and Executive branches of the federal government operating in an irresponsible manner by looking the other way (not enforcing compliance and not requiring disclosure) while supporting minor leagues for the NFL and NBA by allowing NCAA programs to benefit from a lack of oversight, favorable tax policies, and unabashed pandering by top officials who live in fear of the NCAA since they recognize college sports are hugely popular with the American public (voters).

In the meantime, Asian countries are rapidly closing ranks on U.S. leadership and the U.S. will continue to lose high-tech jobs as R&D shifts toward Asia. The recent National Science Board report and Jim Hagerty's *Wall Street Journal* article are just the latest word on the subject.¹³ For the back story see Splitt.¹⁴

Concluding Remarks – Led by the NCAA and its member colleges and universities, the big-time college sports entertainment industry continues to distract the public, its elected officials, and others from serious issues confronting our nation. The industry continues to operate as a very large, powerful, and politically connected enterprise that simply does as it pleases—seemingly not accountable to anyone, least of all the federal government. The weak recommendations by Secretary Duncan and congressional silence are testaments to this fact.

Professionalized college sports entertainment rules, no matter how negative its impact on America's education system and how damaging its effect on our nation's future position on the world stage. The quality of higher education in America is declining relative to education in nations that prioritize academics over athletics. America could very well be losing its economic and technological preeminence.

The loss of academic primacy at all too many colleges and universities supporting big-time football and men's basketball programs has not gone unnoticed by America's Asian and Middle-eastern competitors. They have prioritized the education of their citizenry above all else as they build world-class universities with laser-like focus on academics, especially science, technology, engineering, and mathematics, rather than building facilities for the entertainment of spectators or the employment of “student-athletes.”

Here's the take-away: Big-time college football has an ugly side, one that has been a perennial source of embarrassment for otherwise upstanding American universities and government officials. The many forms of collateral damage resulting from overzealous efforts to have winning teams and bowl invitations are a price these universities and officials are willing to pay. It's also the price the public is willing to pay for their entertainment. America needs to wake up and face reality; this nation cannot compete in the 21st-century global marketplace by being the least-educated industrial nation in the world ... a nation in which its colleges and universities serve as prostitutes for the sports entertainment industry—focusing resources on athletics at the expense of academics so its best and most important future products could eventually be limited to athletic sports entertainment venues and world-class athletic entertainers.

AFTERWORD: A Glimmer of Hope beyond the Courts

Subsequent to the January 27, 2012, posting of the commentary at *College Athletics Clips*, two articles were published that provide additional context for the 6-year old “global-reality” message in the last paragraph of The Upshot and the Concluding Remarks sections. The first article appeared in the *New York Times*.¹⁵ The second article appeared in the *Wall Street Journal*¹⁶ with the following comment (reflecting the author's experience) posted January 30 at the *Journal's* online story site.

Don't hold your breath waiting for politicians

Mark Mills and Julio Ottino ask: What should our politicians do to help usher in this new era of entrepreneurial growth? With tectonic technological shifts promising a tech-led boom, they believe the answer lies with politicians somehow assuring liquid financial markets, sensible tax and immigration policy, and balanced regulations that will allow the next boom to flourish. Unfortunately, U.S. politicians have a world view that does not comport with this answer.

U.S. politicians see the world as geographic blocs of voters and their jobs as not only maximizing the economic benefits for their bloc of voters, but also maximizing the chances of keeping their own jobs. The ongoing mortgage debacle and debt crisis are testaments to the inability of politicians to help resolve tough issues. So too are the sad states of K-12 and post secondary education in America and the shallowness of remarks by elected officials who are forever campaigning rather than working to learn what's really going on in the world.

Don't hold your breath waiting for politicians to deliver what it takes for the U.S to exploit the promise of new technologies. It will be left to the private sector to do what it does best—capitalize on its fecundity of innovation and develop global outreach.

Frank G. Splitt
Former McCormick Faculty Fellow of Telecommunications
McCormick School of Engineering and Applied Science
Northwestern University

It is disappointing to see the lack of leadership on the part of Catholic schools in collegiate athletics reform, particularly so re: the ethics of their continuing sponsorship of football programs in spite of growing concerns about the incipient damage caused by repeated blows to the head; see Briggs.¹⁷ “At stake is no less than the long-term physical and mental health of young Catholic men who naturally love sport,” said Dennis Coday, editor of *The National Catholic Reporter*.

As bleak as things may seem, the situation is not entirely hopeless.

It was encouraging to see the faculty at Rutgers University make one of the strongest moves yet made by any university faculty against Div IA sports corruption by calling for cuts to athletic program subsidies; see Renshaw.¹⁸

Also, although partisan infighting and pre-election-year politics have led to political paralysis that could continue to keep Congress from acting on substantive issues there is always some hope that things will change. House GOP Chief Deputy Whip Peter Roskam (IL, 6th) believes that change can be brought about by building consensus. He pointed to history to suggest that the time might be ripe for major changes, including tax-code reform as he outlined his legislative and political priorities for the year ahead to the *Daily Herald*.¹⁹ Those priorities include guiding House members to consensus.

Roskam also serves on the House Ways and Means Committee's Subcommittee on Select Revenue Measures—a position that allows him to focus effort on getting much-needed reform of the debilitating federal tax system. He said, “What we have right now is a tax code that nobody can defend. The whole concept is to make the tax code more competitive. There's a real opportunity to reform the tax code and that will create jobs and buoyancy.”

Perhaps Congressman Roskam will see that everything is put on the agenda for tax-code reform—including the tax-exempt, nonprofit status for the NCAA and the sports entertainment businesses at colleges and universities supporting revenue-generating football and men's basketball programs, as well as for end-of-season bowl games and the NCAA's basketball tournaments.

The efforts of the Rutgers' faculty and Congressman Roskam provide a glimmer of hope beyond the courts for collegiate athletics reform.

NOTES

1. Splitt, Frank G., “Collegiate Athletics Reform: A Call for Federal Intervention,” *College Athletics Clips*, Jan. 11, 2012, http://www.thedrakegroup.org/Splitt_Federal.pdf
2. Lederman, Doug, “Calls for major reform of college sports unlikely to produce meaningful change,” *Inside Higher Ed*, Jan. 10, 2012, <http://www.insidehighered.com/news/2012/01/10/calls-major-reform-college-sports-unlikely-produce-meaningful-change>
3. Editors, “Duncan's Harsh Words for NCAA,” *Inside Higher Ed Quick Takes*, Jan. 12, 2012, <http://www.insidehighered.com/quicktakes/2012/01/12/duncans-harsh-words-ncaa>.
4. Duncan, Arne, “Time to Bring Your ‘A’ Game—in Academics and Athletics,” *U.S. Department of Education*, Jan. 11, 2012, <http://www.ed.gov/news/speeches/time-bring-your-game-academics-and-athletics>.
5. Otto, Kadence and Splitt, Frank G. “Open letters to the President and his administration,” March 17, 2009, <http://thedrakegroup.org/Obama.pdf> and May 27, 2009, <http://thedrakegroup.org/Obama2.pdf>
6. Duncan, Arne, “What's Missing from March Madness? Better Academics,” *U.S. Department of Education*, March 17, 2011, <http://www.ed.gov/blog/2011/03/whats-missing-from-march-madness-better-academics/>
Also see “Duncan Challenges NCAA to Change,” *Inside Higher Ed*, Jan. 15, 2010, <http://www.insidehighered.com/news/2010/01/15/ncaa>. My comments, “Professionalized College sports entertainment rules “and” Casting More Light on the Secretary's Remarks”(posted after the story) bear directly on subsequent personal communications to Secretary Duncan's senior staff.
7. Splitt, Frank G. “‘Football’s dangerous . . . and for what,” page 5 of “Collegiate Athletics Reform: A Lesson Learned,” http://www.thedrakegroup.org/Splitt_A_Lesson_Learned.pdf
8. Splitt, Frank G. “‘Academically Adrift’ in a Sea of Sports,” *The Chronicle of Higher Education*, Letters, March 8, 2011, <http://chronicle.com/article/Academically-Adrift-in-a-Sea/126643/>

9. This question was addressed to former NCAA President (the late) Myles Brand by former Congressman William Thomas (R-CA), past Chair of the House Committee on Ways and Means in his October 2, 2006 letter aimed at ascertaining the justification for the tax-exempt status of the NCAA and its member schools.
10. Summers, Nick, "ESPN: Big, Bigger, Biggest," *Newsweek*, Jan. 23, 2012.
11. Splitt, Frank G., "Collegiate Athletics Reform: Looking to the Future," *College Athletics Clips*, Jan. 11, 2011, http://www.thedrakegroup.org/Splitt_Future.pdf
12. Branch, Taylor, "The Shame of College Sports," *The Atlantic Monthly*, Oct. 2011, <http://www.theatlantic.com/magazine/archive/2011/10/the-shame-of-college-sports/8643/>
Also see: Gullo, Karen, "NCAA Accused in Rice Player's Suit of Antitrust Violations on Scholarship," *Bloomberg News*, Oct 25, 2010, <http://www.bloomberg.com/news/2010-10-25/ncaa-accused-in-rice-player-s-suit-of-antitrust-violations-on-scholarships.html>, and Stippich, Kristal S. and Otto, Kadence A., "Carrying a Good Joke Too Far? An Analysis of the Enforceability of Student-Athlete Consent to Use of Name and Likeness," *Journal of Legal Aspects of Sport*, Vol. 20, No. 2, Summer 2010, accessible at <https://litigationessentials.lexisnexis.com/webcd/app?action=DocumentDisplay&crawlid=1&doctype=cite&docid=20+J.+Legal+Aspects+Of+Sport+151&srctype=smi&srcid=3B15&key=14b98de17d8523812fe10607fc1ebf6a>
13. "New Report Outlines Trends in U.S. Global Competitiveness in Science and Technology," *National Science Board*, Jan. 17, 2012, http://www.nsf.gov/nsb/news/news_summ.jsp?cntn_id=122859&org=NSB&from=news
Also see Hagerty, J. R., "U.S. Loses High-Tech Jobs as R&D Shifts Toward Asia," *The Wall Street Journal*, Jan. 18, 2012, <http://online.wsj.com/article/SB10001424052970204468004577167003809336394.html>
14. Splitt, Frank G. "Sports in America: Facing Up To Global Realities." http://thedrakegroup.org/Splitt_Sports_in_America_2009.pdf
15. Friedman, "Made in the World," *The New York Times*, Jan. 29, 2012, http://www.nytimes.com/2012/01/29/opinion/sunday/friedman-made-in-the-world.html?_r=1
16. Mills, Mark P. and Ottino, Julio M., "The Coming Tech-led Boom," *The Wall Street Journal*, Jan. 30, 2012, <http://online.wsj.com/article/SB10001424052970203471004577140413041646048.html#articleTabs%3Darticle>
The published comments on this article, "Technology Alone Can't Save Us," include the last paragraph of the author's online comment, <http://online.wsj.com/article/SB10001424052970204652904577195834067572116.html> (Note added Feb. 6, 2912.)
17. Briggs, Ken, "Catholic silence on football risks," *The National Catholic Reporter*, Feb. 3-16, 2012, <http://ncronline.org/node/28694/>
18. Renshaw, Jarrett, "Rutgers University faculty calls for cuts to athletic department subsidies," *The Star-Ledger*, Feb. 1, 2012, http://blog.nj.com/ledgerupdates_impact/print.html?entry=/2012/02/rutgers_university_faculty_cal.html
19. Lester, Kerry, "Roskam: Time ripe for tax-code reform, building consensus," *The Daily Herald*, Jan. 30, 2012, <http://www.dailyherald.com/article/20120130/news/701309738/>

Collegiate Athletics Reform: Evermore Likely up to the Courts

Clips Guest Commentary

Hope for congressional action on collegiate sports reform has been dimmed by the lack of response from Congressman Roskam to the guest author's entreaties.

By Frank G. Splitt, 02-27-12

If America is to do well in the 21st Century's globalization game, then it needs to get its priorities right, especially at our universities and government institutions. However, according to Henry Kissinger, the entire government system "is now much more driven by short-term political calculations, the need to keep powerful and vocal constituencies happy, and an eye on the next election."—From "Sports in America 2007: Facing up to Global Realities," p 18, http://thedrakegroup.org/Splitt_Sports_in_America_2009.pdf

Subsequent to the February 2, 2012, posting of the College Athletics Clips commentary, "Collegiate Athletics Reform: Most likely up to the courts," an open letter was sent to Congressman Peter Roskam, Subject: Federal tax-code reform and the tax-exempt status of big-time NCAA programs; see the Appendix for a copy of the letter.

The purpose of the letter was to attempt to determine just how serious the congressman is about his bipartisan approach to tax-code reform as well as to attempt to gauge his appreciation of tax-related issues surrounding big-time collegiate athletics.

To date there has been no response from the congressman or his staff. As a consequence, one is left to wonder if this silence is a reflection of his true beliefs. That is to say the congressman's remarks (during his visit with the Daily Herald editors) about his bipartisan approach to tax-code reform could very well have been typical congressional demagogic rhetoric in this presidential election year, when politicians of all stripes are clamoring for simplification of the tax code and closure of tax loopholes.

"To get comprehensive tax reform, you have to have tremendous presidential leadership. There's no way around that to be successful," said Douglas Holtz-Eakin, the director of the Congressional Budget Office from 2003 to 2005 and who now heads the American Action Forum, a conservative public policy institute.

"Washington should stop subsidizing millionaires," Obama said in his State of the Union address—no doubt unaware of tax subsidies for numerous millionaire coaches and NCAA cartel as well as conference officials.

Economist Bruce Bartlett, author of *The Benefit and the Burden: Tax Reform – Why We Need It and What It Will Take* (Simon & Schuster, January 2012) is not optimistic about major tax reform no matter who wins the election. "I think the most we can hope for is a modest improvement to fix some glaring problems in the code," he said.

Congressman Roskam's silence could also reflect political risk avoidance. Who would ever want to jeopardize a promising political career by doing the right thing? Revisiting former House Ways and Means Committee Chair Bill Thomas' and The Drake Group's 2006 effort to determine whether these sports programs are truly an amateur enterprise that warrants tax exemption as an educational activity or is a profit-making, tax-avoiding commercial enterprise structured to provide the illusion of an educational activity would be politically risky business.

If political gridlock and partisanship continue to paralyze public policy,...if they ignore the fact that America's standing in the global pecking order may be in jeopardy, the anxious prognosis of America's decline could become its historical diagnosis.—From Strategic Vision: America and the Crisis of Global Power, by Zbigniew Brzezinski, 2012, p. 64

Concerning Congressman Thomas' sharply-worded, October 2, 2006, letter to the late Myles Brand who was then president of the NCAA, the highly-regarded sports commentator Frank Deford said "Representative Thomas' barbed inquiry was the first real evidence I had that the Republicans knew that they were going to lose the House. Would any politician dare take on the college football and basketball constituency if he knew he was staying in power?"

Not surprisingly, Congressman Charles Rangel, Thomas' successor as the chair of the House Ways and Means Committee, dropped the inquiry like the proverbial hot potato—withstanding his statement on January 7, 2007, This Week program when he said: "I will be taking a look at all tax exemptions. And that, certainly, I join with Bill Thomas on that in taking a hard look at that as well as many, many other tax-exempt organizations."

Congressman Roskam's issue-ducking silence has dimmed the faint glimmer of hope for congressional action on collegiate athletics reform. Perhaps, like the debt-crisis ducking by the 2010 congressional supercommittee, this might very well be another symptom of failed governance—where political gridlock and partisanship renders Congress incapable of acting responsibly no matter how dire the need.

The conclusion: collegiate athletics reform is ever more likely up to the courts that need only follow the money.

APPENDIX: Open letter to Congressman Peter Roskam

February 6, 2012

The Honorable Peter Roskam
United States House of Representatives
227 Cannon House Office Building
Washington, DC 20515

Dear Congressman Roskam:

Subject: Federal tax-code reform and the tax-exempt status of big-time NCAA programs

Reference: The College Athletics Clips commentary, "Collegiate Athletics Reform: Most likely up to the courts," <http://www.thedrakegroup.org/Splitt_Courts.pdf>.

The following excerpt from the referenced commentary relates to your discussions at the offices of the *Daily Herald* as reported in "Roskam: Time ripe for tax-code reform, building consensus," <<http://www.dailyherald.com/article/20120130/news/701309738/>>.

Also, although partisan infighting and pre-election-year politics have led to political paralysis that could continue to keep Congress from acting on substantive issues there is always some hope that things will change. House GOP Chief Deputy Whip Peter Roskam (IL, 6th) believes that change can be brought about by building consensus. He pointed to history to suggest that the

time might be ripe for major changes, including tax-code reform as he outlined his legislative and political priorities for the year ahead to the Daily Herald. Those priorities include guiding House members to consensus.

Roskam also serves on the House Ways and Means Committee's Subcommittee on Select Revenue Measures—a position that allows him to focus effort on getting much-needed reform of the debilitating federal tax system. He said: "What we have right now is a tax code that nobody can defend. The whole concept is to make the tax code more competitive. There's a real opportunity to reform the tax code and that will create jobs and buoyancy."

Perhaps Congressman Roskam will see that everything is put on the agenda for tax-code reform—including the tax-exempt, nonprofit status for the NCAA and the sports entertainment businesses at colleges and universities supporting revenue-generating football and men's basketball programs, as well as for end-of-season bowl games and the NCAA's basketball tournaments.

The efforts of the Rutgers' faculty and Congressman Roskam provide a glimmer of hope beyond the courts for collegiate athletics reform.

As you must know, the questionable tax-exempt status of nonprofits was an abiding concern of Senator Chuck Grassley who has said: "It's obvious from the abuses we see that there's been no check on charities; big money, tax free, and no oversight have created a cesspool in too many cases." That was back in 2004 when he was the chair of the Senate Finance Committee and Dean Zerbe was his chief tax counsel.

Today there is growing concern that the tax-exempt status of the NCAA's big-time (revenue-generating) college sports programs has not only come to be treated as an entitlement—beyond the need for justification and congressional oversight—but also a contributing factor in the uncontrolled growth and corruption of these professionalized sports programs.

By addressing tax-reform in a comprehensive, bipartisan manner, you will create a window of opportunity to revisit former House Ways and Means Committee (HW&MC) Chair Bill Thomas' and The Drake Group's 2006 effort to determine whether these sports programs are truly an amateur enterprise that warrants tax exemption as an educational activity or a profit-making, tax-avoiding commercial enterprise structured to provide the illusion of an educational activity. No matter how justified the reason, an effort to build bipartisan consensus for this determination will evoke protests by many of your congressional colleagues and officials at the NCAA and affected schools, as well as football boosters and fans.

As you well know, overcoming partisan gridlock on entitlement issues will be a daunting task. The failure of the congressional Joint Select Committee on Deficit Reduction to come to bipartisan agreement speaks volumes about related difficulties. Illuminating as well is the troubling situation where vested money interests and the popularity of football-centered entertainment have prevented mitigating action commensurate with the seriousness of the reported threat by medical researchers of long-term mental and physical damage to football players. A good sense of this issue can be obtained from "Catholic silence on football risks" at <http://ncronline.org/news/people/catholics-silent-football-risks>.

Finally, as one of your constituents, it would be my pleasure to provide you with historical perspectives on this important but contentious subject as well as answer questions related to my work with Dean Zerbe and staffers for former HW&MC Chairman Bill Thomas.

I look forward to your response.

Respectfully submitted,

Frank G. Splitt
Former McCormick Faculty Fellow
McCormick School of Engineering and Applied Science
Northwestern University

E-mail copies to: The Senate Finance Committee, Senator Dick Durbin, Senator Mark Kirk, Senator Chuck Grassley, Congresswoman Jan Schakowsky, The Chicago Tribune National Catholic Reporter,, The The Wall Street Journal, The Washington Post, The Congressman Bobby Rush, *The Daily Herald*, *The Chronicle of Higher Education*, *Inside Higher Ed*, *The New York Times*, *USA TODAY*, *The Chicago Sun Times*, *Associated Press*, *The Christian Science Monitor*, and *College Athletics Clips* among others.

If Rome and Sparta could perish, what state could hope to live forever?—From On The Social Contract by Jean-Jacques Rousseau, 1762

Frank G. Splitt is the former McCormick Faculty Fellow of Telecommunications, McCormick School of Engineering and Applied Science, Northwestern University, and Vice President Emeritus of Educational and Environmental Initiatives, Nortel Networks. He is a member of The Drake Group and the College Sport Research Institute's Advisory Committee, University of North Carolina at Chapel Hill, and recipient of The Drake Group's 2006 *Robert Maynard Hutchins Award*. A complete listing of links to his essays and commentaries on college sports reform can be found at <http://thedrakegroup.org/splittessays.html>

FutureVectors, Inc.
Mount Prospect, Illinois