

Collegiate Athletics Reform: Looking to the Future

College Athletics CLIPS Guest Commentary

The execution of meaningful reform measures is not amenable to easy steps. It may very well be that the only hope for truth, justice, and reform in collegiate athletics will be via the courts.

By Frank G. Splitt, The Drake Group, January 11, 2011

Sally Jenkins penned the latest appeal to college and university presidents to reform college sports via the following “six easy steps.”¹

1. Cut the number of football scholarships from 85 to 70.
2. Cap the salaries of coaches, and suspend them if they get caught cheating; also, pass a two-strike rule for illegal recruiters: First strike earns a suspension; second strike; you surrender any claim to being an educator.
3. Make freshmen ineligible.
4. Reduce the regular season from 12 games to 10 games.
5. Abolish the Bowl Championship Series.
6. Toughen punishments on players who accept money, and agents who offer it to them.

Jenkins says all of these proposed reforms have one thing in common: “They need strong-minded administrators willing to enact them.” The Drake Group has advocated similar reform measures over the past several years^{2,3} with little if any results. Strong-minded administrators are few and far between. The presidents on the NCAA’s Executive Board serve as NCAA cartel’s apologists as do the current Knight Commission co-chairs. All presidents serve at the behest of their schools’ governing boards who are, in turn, most often led by wealthy sports boosters.

Powerful insights into the inability of presidents to institute reform were provided long ago by Murray Sperber who concluded the last chapter of his book *College Sports Inc.*⁴ (titled “The College Presidents Try to Reform the NCAA”) with this prescient statement:

Whether the presidents’ tepid cuts of 1990 will survive this (NCAA) convention is conjectural; whether, in future years, the Presidents’ Commission can institute real reforms, such as rules to end the financial and academic fraud in College Sports Inc., is about as likely as pigs slam dunking basketballs.

In the same chapter, Sperber gives an account of the mid-1980s presidential reform effort that reveals how the NCAA can literally manhandle distinguished, well-intended presidential reformers so to protect their vested interests.

I believe the same can be said of Department of Education officials, as well as elected government officials in the Congress and state houses -- all have a vested interest in maintaining the status quo so as to protect their jobs. Sadly, some of these officials seem to go out of their way to pander to sports fans.

Although faculty and faculty organizations, such as the Coalition on Intercollegiate Athletics (COIA) and The Drake Group (TDG), do not have vested interests in maintaining the status quo, occupy the moral high-ground, and have repeatedly advanced compelling arguments as well as strategies for reform, they do not have the wherewithal—financial resources and unified leadership—requisite to the institution of real reform.

More specifically, the COIA and TDG organizations do not as yet have robustly viable constituencies with the capacity to effectively force collegiate athletics reform. Not only are college and university faculty reluctant to actively participate in reform movements, but the same can also be said of the American public that is seemingly addicted to college sports entertainment. Furthermore, faculty, the public, and their representatives in government act as if they do not have a clue as to the long-term negative consequences of this addictive behavior on America’s system of higher education as well as on its leadership position on the world stage.

The NCAA cannot be expected to implement meaningful reform. Over the years, the NCAA has 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. On the contrary, the NCAA has made a number of rule changes that have emphasized athletics over academics so as to move their D-1A football and men's basketball programs to professional levels.²

More specifically, the NCAA has 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

It is most likely that real reform will come via the courts. As Ron Smith reminds us,⁶

The two major college athletic reforms of the 20th century were done by legislation or the courts. Bringing in women to a more equal status was from federal legislation (Title IX), and bringing in African Americans to greater equality came from federal courts (Brown v. Bd. of Education) and the 1960s Civil Rights legislation.

The NCAA cartel has the wealth and political power to stifle reform efforts in Washington as well as co-opt (originally) well-intentioned reform commissions/organizations and most of the media. TDG's and COIA's resources have been no match for the formidable economic, political, and legal forces that the NCAA cartel has mustered to defend the status quo. When coupled with extant greed, corruption, incompetence, deceit, and denial, these forces have impeded significant corrective action in big-time collegiate sports reform—this, no matter how eloquent and lofty-sounding the warnings, pleas and rhetoric about the need for change.

That is not to say that TDG and COIA should give up on telling the truth to the Congress and the Department of Education, but should recognize that there is an intrinsic relationship between wealth and power in the American culture—especially political power.

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.⁷

NOTES

1. Jenkins, Sally, "Six easy steps to football reform," *The Washington Post*, January 10, 2011, <http://www.washingtonpost.com/wp-dyn/content/article/2011/01/09/AR2011010902334.html>
2. Splitt, Frank G. "Reclaiming Academic Primacy in Higher Education: The Revised IRS Form 990 Can Accelerate the Process" NOTE 17, November 2007, http://www.thedrakegroup.org/Splitt_Reclaiming_Academic_Primacy_IRS.pdf
3. _____, "A Common Sense Approach to Recruiting Academically Disadvantaged Athletes," Jan. 2008, http://www.thedrakegroup.org/Splitt_Common_Sense_Approach.pdf
4. Sperber, Murray, *College Sports Inc.: Athletic Department vs the University*, Chapter 36, p 342, Henry Holt and Company, New York, 1990.
5. Currently, an athletic scholarship is an agreement between athlete and coach/athletic department, renewed based on ATHLETIC performance), or, replace athletic scholarships with need-based scholarships—agreements between a student and the institution based on academic performance. If the scholarship is need based, it will be awarded by the institution—just as the institution awards all other need-based aid—in that case, it does not need to be a five year award as students will continue to receive their need-based aid, even if they leave the team. A strong case for switching to need-based aid as the only way to break the cycle of sponsoring professional teams on college campuses is made by John Gerdy in his most recent book, *Air Ball: American Education's Failed Experiment with Elite Athletics*; and d) Require athletes to honor the terms of their multiyear athletic scholarship with appropriate penalties to the school and athlete for broken commitments such as 'one and out' to the NBA.
6. Smith, Ronald A., *Pay for Play: A History of Big-Time College Athletic Reform*, University of Illinois Press, 2011.
7. 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 LexisNexis.com: <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>