

Collegiate Athletics Reform: Lessons from Penn State Redux

a CLIPS Guest Commentary

By Frank G. Splitt, 12-04-11

In a room where people unanimously maintain a conspiracy of silence, one word of truth sounds like a pistol shot—Czeslaw Milosz

Our guest author extends his 11-19-11 Clips Guest Commentary, reiterating his conclusion that if the Penn State scandal does not prompt government intervention, then antitrust and other cases before federal courts are likely to do so.

Two significant publications that bear directly on my previous CLIPS commentary¹ appeared shortly after its posting. The first was Johns Hopkins Professor Ben Ginsberg's commentary² on the benefit of having colleges and universities made subject to the requirements of the 2002 Sarbanes-Oxley Act.³ The second was an op-ed by Anne Neal, the president of the American Council of Trustees and Alumni.⁴

Ginsberg's view is consistent with my statement, "An alternative approach would have the feds not only apply a heavy surtax on all collegiate-athletics-related income, but necessitate compliance with the Sarbanes-Oxley Act—in effect, mandating rigor and accountability in the filing of all financial reports as well." Most likely Neal would agree that "...wealthy, powerful, and vociferous governing-board boosters are not prone to reform, and that colleges and universities have yet to step up to a leadership position..."

Ginsberg proposes the following:

Before they can police the administration, however, boards must police themselves. If they are to be effective, they must be held accountable for the administrators they appoint and must, especially, be subject to tough conflict-of-interest rules. To this end, let me offer a proposal: Sarbanes-Oxley. Colleges (and perhaps other nonprofits as well) should be subject to all the requirements of the 2002 Sarbanes-Oxley Act, from which they are now largely exempt. For most of them, this would entail enhanced board accountability for administrative actions, the creation of an independent audit committee, a formal process for the identification and selection of new board members, and a strengthening of conflict-of-interest rules.

As can be seen in the Appendix, Neal communicates a powerful message to governing boards: "Every college governing board should interpret Penn State's troubles as a clear warning of what happens when institutions lose sight of their educational mission." This message becomes even more powerful when read in the light of Ginsberg's commentary.

Both Ginsberg and Neal reveal truths that cast a bright light on the elephant in the governing board rooms of colleges and universities supporting revenue generating athletics programs. The elephant, of course, is the institution's highly commercialized sports entertainment business with its professionalized teams and related issues that warp the institution's educational mission.

Unfortunately, most, if not all, governing boards are populated with very wealthy boosters whose donations buy power to corrupt by compromising their school's integrity and core academic values so as to enable it to compete at the highest level in the murky world of big-time collegiate athletics. This corruption thrives in the dark where creative accounting can tell any story a school wants to tell when it is not bound by the Sarbanes-Oxley reporting requirements.

Finally, an excellent summary of the difficulty and the attendant glacial pace of collegiate athletics reform, as well as insights into the favorable federal tax benefits enjoyed by college sports programs, are provided in a video⁵ of a recent talk by Jim Duderstadt, President Emeritus of the University of Michigan and author of the Foreword to the sequel to "Reclaiming Academic Primacy In Higher Education."⁶

All of this begs the question: Who will not only listen to the Ginsberg-Neal-Duderstadt messages, but also act to get governing boards to focus on academics and their school's educational mission rather than athletics?

It appears that intervention by the federal government is the only way to bring about requisite action and reform. However, as concluded in my previous commentary, if the Penn State scandal does not prompt government intervention, then antitrust and other cases before federal courts are likely to do so.

In any case, the scandal could spark a shift in America's obsessive sports culture—with moral integrity and justice valued above winning via the fruits of bad behavior—a shift that could, over time, spawn systemic change in professionalized collegiate athletics that are presently driven by greed and sustained by corruption and hypocrisy.

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

NOTES

1. Splitt, Frank G., "Collegiate Athletics Reform: Lessons from Penn State," Nov. 16/19, 2011, http://www.thedorakegroup.org/Splitt_Penn_State.pdf

2. Ginsberg, Benjamin, "Sarbanes-Oxley Could Save Colleges From Themselves," *The Chronicle of Higher Education*, Nov. 25, 2011, p. A64, <http://chronicle.com/article/Sarbanes-Oxley-Could-Save/129832/>

For more see "Sarbanes-Oxley and Disclosure Can Fix Budget Problem" on page 1 of "A Collection of Recently Published Essays and Comments" at http://thedorakegroup.org/Splitt_Collection_of_Recent_Essays.pdf

3. Sarbanes-Oxley Act 2002, <http://www.soxlaw.com/>. The site provides information, guidance and resources covering the legislation.

4. Neal, Anne, "Where Were Penn State's Trustees?" *The Wall Street Journal*, Opinion, Nov. 30, 2011. <http://www.goacta.org/press/Articles/2011Articles/11-11-30WSJ.cfm>

For more see "Cleaning up the Mess in College Sports: Demands More than Policy Statements," at http://thedorakegroup.org/Splitt_Cleaning.pdf

5. Duderstadt, James J., "Tilting at Windmills: The Challenge of Reforming Big-Time College Sports," *UC-Berkeley Videoconference*, Oct. 27, 2011. The video can be accessed by scrolling down to Duderstadt at <<http://priorities.weebly.com/guest-speaker-schedule-and-videos.html>>. The talk was part of a new UC-Berkeley course, "Priorities Under Pressure: A Critical Assessment of How the University's Core Mission is Affected by Intercollegiate Athletics," that featured several prominent speakers. Course details can be found at <http://inst.eecs.berkeley.edu/~cs39q>

6. Splitt, Frank G. "The Faculty-Driven Movement to Reform Big-Time College Sports," *IEC Publications*, July 13, 2004, http://thedorakegroup.org/Splitt_Sequel.pdf

Appendix: Anne Neal on another lesson from the Penn State scandal

Anne Neal opens her *Wall Street Journal* op-ed, “Where Were Penn State's Trustees?” with “Every generation or so, a scandal emerges that not only exposes the flaws of an institution but shakes entire industries to their foundations. For higher education, that scandal should be Penn State.” She goes on to say:

The unfolding events of the Penn State sports scandal show a major university that has been more interested in protecting itself than in educating students or serving the public. The institutional reckoning must begin and end with the governing board. It is responsible for the actions of university leaders, and its members owe taxpayers and students accountability and transparency.

The alleged sins of omission of football coach Joe Paterno, President Graham Spanier and others when it comes to Penn State's sports program are grave. And the board must address these tragic claims of child sexual abuse as a first priority.

But a larger question must be asked about governing boards generally: Are they fulfilling their responsibility to the students, families and taxpayers in a broader sense? Can the trustees guarantee that they are adhering to their educational purpose? The clear answer is no.

Edward Shils, distinguished service professor at the University of Chicago, saw the task of the university as the "discovery and teaching of truths about serious and important things." Could Penn State—or most other American universities for that matter—make such a claim today?

When the most highly paid employee is the football coach, not the president, it's clear something is awry. When football tickets and fancy student centers are the currency of the day, rather than affordable and quality education, clearly something is awry. When most classes are scheduled only between Tuesday and Thursday and the institutional answer is to build more buildings to accommodate the demand from 10 a.m. to 2 p.m.—as Penn State is doing—something is awry.

The health of our society depends directly on the health of our educational institutions, and we've got some work to do. In too many ways, the emphasis of higher education in general has become one of reputation building, not values or education. The instinct is to hide problems or pretend they don't exist rather than face them head on. At too many institutions around the country, we are graduating students who can't write or think critically and who won't be able to compete in the global marketplace.

It is that tragedy in education that prompted Professor Richard Arum and the American Council of Trustees and Alumni to write to 10,000 college and university trustees earlier this fall calling on them to act. In his letter, Mr. Arum did not mince words. He noted that "problems of learning in higher education are real, deepening, and demand urgent attention. . . . Institutions that fail to set meaningful expectations, a rigorous curriculum and high standards for their students are putting these students and our country's future at risk."

At the end of the day, we must hold boards accountable. Board members are acting in trust for taxpayers and students. If they do not act to ensure quality and integrity, then they are putting our students and our country's future at risk.

Faculty are typically committed to their disciplines. Administrators regularly focus on the growth of their institutions. It is the governing board's duty to address these competing priorities. It is the trustees' duty to ensure that the distinctive educational purpose of the American university remains at the forefront of every other activity.

Every college governing board should interpret Penn State's troubles as a clear warning of what happens when institutions lose sight of their educational mission.

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Telling the truth about a given condition is absolutely requisite to any possibility of reforming it.

—Barbara Tuchman

The day we see the truth and cease to speak is the day we begin to die.

—Martin Luther King Jr.