

Thoughts on the Whistleblower podcast concluding Episodes 9 and 10

Episode 9 – “The Bigger Thing”

Episode 9 of the current Whistleblower podcast features an interview with former FBI Supervisory Special Agent Phil Scala. For those who don't know, Scala headed the FBI's "Gambino (Crime Family) Squad" during the Bureau's probe of the NBA betting scandal. To date, he is the lone federal official who has commented publicly by name on the case. This is ironic and problematic, because the two agents (case agent Paul Harris and colleague Gerry Conrad, who succeeded Scala when he retired in 2008) who actually worked the case possess far greater knowledge, and much the same can be said of the two Assistant United States Attorneys (Tom Siegel and Jeff Goldberg) assigned to the probe. Indeed, Scala has openly explained he has been given too much credit for his role in this story.

With these basics established, here is needed context for the recent podcast episode – which producers unfortunately deprive their audience (because of the podcast's unyielding search for confirmation of preconceived notions).

In order of appearance in the episode:

- Donaghy's defense lawyer describes Scala thusly, "Phil is like a 3rd century Christian stoic. He takes virtue and honor and faith very seriously." I have heard others describe Scala similarly, and will revisit the issue of Scala's public focus on morality and faith momentarily vis-à-vis his relationship with Donaghy and his related controversial decisions in this regard.

- Scala explains, *as I have been begging people to realize for a decade*, the NBA betting scandal case “was not a big deal” to the FBI’s “Gambino Squad”. Left out of the podcast is *why* (I explain this in detail in *Gaming the Game*, but for the conspiracy-obsessed please know it is partly because there was no organized crime role in the scheme). Comically, in the podcast Scala says the FBI’s probe could also “have gone into the NCAA.” I say “comically” because Scala is obviously not alleging the NCAA was dictating college game outcomes for financial reasons, which is precisely what the podcast is choosing to suggest with its selective choices and edits when it comes to the NBA.
- After explaining (again) his arguments with Donaghy about Donaghy influencing games with money on the line (the FBI would not agree to a plea deal until Donaghy admitted at a minimum he may have “subconsciously” influenced game outcomes to advance his bets), Scala is quoted (**emphasis** added) as saying “**We** (the FBI) believed what (Donaghy) said was the truth (about the NBA manipulating outcomes). Scala uses “we” quite liberally when discussing the view of his FBI colleagues, and is not pressed on this. This is simply not true; at best, the agents who actually worked the case were originally willing to humor Donaghy’s conspiracy claims (please recall that at that time they had nothing else to go on – no wiretapped conversations, no betting records, etc.).
- Scala has been suspicious about the timing of the NBA’s 2007 television contract negotiation/deal since 2007-08 (he described this to me when I was researching *Gaming the Game*). Of course, in order to illustrate the television deal was brokered as part of a conspiracy of silence, you’d first need to establish that the timing of the negotiation/deal was even noteworthy. Listeners hopefully noticed there was no evidence or context provided in this regard. Even if the deal was struck

prematurely, that *may* be evidence of dubious (some would argue savvy) business practices (i.e., the NBA not being fully transparent with tv partners about the looking scandal) but it is not proof whatsoever of anything more.

- Scala notes, as is well known, the FBI (and the NBA) investigations found evidence of several NBA referees violating NBA policies. Importantly, gambling at casinos or betting on sports is wholly different than betting on NBA games, which is wholly different than fixing NBA games, which is wholly different than fixing NBA games at the behest of the NBA league office. Are listeners aware of these rather significant distinctions, and the manner in which this is all manipulated to suggest otherwise? Podcast listeners may be confused, and might be surprised about the following. Confronted with Donaghy's conspiracy claims (i.e., that other NBA referees were fixing games at the behest of the NBA but the feds chose not to pursue cases against them), Phil Scala told one newspaper in 2009, "If there were people that should have been indicted, they would have been, including other refs."
- The podcast views the NBA reaching out to the retiring Scala for his potential future employment (of what else?!) as part of a conspiracy to buy his silence. The voiceover of producer Livingston says, "The best way to silence someone with information that could hurt the NBA payroll? Put him on the payroll...Scala was a threat, but he wouldn't be a threat if the NBA was paying him hundreds of thousands of dollars a year." I hope listeners have considered how absurd this is. As noted above (and elsewhere), Scala wasn't even the most knowledgeable about the NBA betting cases among his FBI colleagues (who, of course, could quite easily "blow the whistle" on any supposed NBA conspiracy regardless of Scala's employment). This is to say nothing of the volumes of files (official and personal) that would

remain following Scala's departure from the Bureau.

- Oddly, without any lead-in or introduction, Scala is presented recounting a conversation with Donaghy in which Scala admonished Donaghy, "'First of all, don't call me your fucking friend. I'm not your fucking friend. I'm really not your friend.'" There is no context offered for this commentary, and we are left to guess Scala's motivation for telling Donaghy this, in such a harsh tone no less. My informed opinion is that Donaghy misinterpreted Scala simply supporting a much-needed cooperating witness as more than it was. Donaghy, of course, has experienced many interpersonal challenges his entire adult life. Scala then explains his support of Donaghy: "I stood by this guy when everyone wanted to throw him under the bus. (The U.S. Attorney's Office for the Eastern District of New York) wanted to throw him under the bus, I stood by the guy...John Lauro wanted me to testify about his credibility. I will stand by a cooperator so long as he doesn't lie to me. Listen, I was with Sammy Gravano, who killed nineteen people, until he got caught and we say 'Enough is enough'...I felt our relationship, before (Donaghy) went to jail, I don't think he ever lied to us."

I have addressed all of this elsewhere, but again one last time while it is timely. (1) Scala does not speak for his FBI colleagues. (2) I can understand why in 2007 Scala may not have realized Donaghy was lying to him/the FBI (although his colleagues do not share Scala's views on this). (3) Please note Scala makes a distinction between pre-prison Donaghy and post-prison Donaghy. I can imagine why producers didn't pursue this further and/or left it out of the podcast – Scala has assailed many post-prison Donaghy claims (in addition to high-profile interpersonal issues for Donaghy) even as Donaghy exploited Scala as a supposedly supporting figure to clueless and/or corrupt media. (4) Perhaps most importantly, in order

for Scala to critically revisit his 2007 actions dealing with cooperator Donaghy (which troubled Scala's colleagues), Scala would have to admit bias and error. I noted above that the podcast explains Scala is known for his religiosity and morality. Some believe these altruistic traits caused Scala, in one of his last cases with the FBI, to be insufficiently skeptical of – and overly sympathetic to – the disturbed and discredited Donaghy. Scala's later decision to write the foreword to Donaghy's fact-challenged book validated these concerns.

- As has occurred throughout the podcast, previously known information is presented as new or noteworthy. In this episode, producer Livingston asks, "Am I really the first person Phil Scala has told all this to? I just sat there thinking, 'Why me?'"

As I have written elsewhere, Scala was gracious to me with his time when he allowed me to interview him for *Gaming the Game*. I've also noted his significant criticisms of key Donaghy assertions and have documented how Scala's actions have confused the public. This is all discussed at the end of this post.

In sum, the "Scala Episode" fits with the rest of the podcast to date: vital information and context is left out, facts are interpreted in the worst light, and the evidence-light theme of conspiracy dominates. Those of us in academia and the media who cover cases and stories like this are awash in people with degrees of credibility making all sorts of assertions (some of whom may actually believe them). In my case, as someone who researches organized and white-collar crime for a living, I get unsolicited information frequently, and a majority of the correspondence focuses on conspiracies (most often with little to no supporting evidence). Indeed, when friends and colleagues learned of my work researching the NBA betting scandal I had plenty (!) of them explaining to me all sorts of theories. None of these individuals had

evidence, but that didn't stop them from having convictions of their beliefs. Rumors and street legends – especially if uttered by the right sorts – were enough, and some of those holding such conspiracy theories were law enforcement buddies. So, when I interviewed Scala more than a decade ago and heard him describe his evidence-free suspicions, it wasn't shocking to me at all and it certainly wasn't news. I was hoping for better from him and from this podcast.

Episode 10 – “What’s Afoul?”

While I was writing this post, the podcast released its final episode (#10, “What’s Afoul?”). As if to make my point, in Ep. 10 the podcast concludes that the unethical and illegal off-court actions by referees, along with (predictable and expected) questionable in-game calls, collectively illustrate the NBA – the league, as an institution – is consciously dictating game outcomes for business/financial motives. I challenge listeners to revisit the episodes, to ignore the ominous music, and to ask themselves: “What *evidence* – after all this effort – is presented to support such a claim?”

Toward the end of Episode 10, producer Tim Livingston laughably, though by now predictably, states the following (in which he revisits his stated pre-existing biases in support of Donaghy/his conspiracy claims and against the NBA):

“At the beginning, I asked whether I would remain friends with Tim Donaghy. I’d like to think I don’t care whether I ever talk to Tim again, but the truth is, I do. Because, with all of his flaws, he was the scapegoat...Tim Donaghy served his time. He was affected financially, his name – once respected – became a punchline. And Donaghy is not the problem. He never was. Donaghy says he’s learned from his mistakes, but what about the league?”

Please see below for more Scala-specific analyses, especially as they relate to Tim Donaghy’s claims and to the podcast’s

dubious shaping of information.

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From the latest Whistleblower pod episode re the NBA betting scandal – retired FBI SSA Phil “(Scala) is the most trustworthy voice on the subject. A man of integrity, a renowned investigator, and most importantly Scala has no implicit bias; he has zero dogs in this fight.” 1/3

– Sean Patrick Griffin (@spgauthor) October 16, 2020

To his credit, Scala later publicly called out Donaghy for his many absurd claims. Indeed Mr. Scala has assailed some of Donaghy's most significant assertions (i.e., didn't fix games, organized crime threats, involvement of other referees, etc.) 3/3<https://t.co/XbQxQFSSFr>

– Sean Patrick Griffin (@spgauthor) October 16, 2020

From Part I of my analysis of the February 2019 *ESPN the Magazine* article about the NBA betting scandal:

4. On the curious case of retired FBI Supervisory Special Agent Phil Scala

Scala is quoted on the pre-eminent issues of (1) whether the FBI “concluded” Donaghy didn’t fix games, and Scala (as he did when I interviewed him approximately 10 years ago for *Gaming the Game: The Story Behind the NBA Betting Scandal and the Gambler Who Made It Happen* once more explained the FBI and US Attorney’s Office refused to agree to a plea deal unless Donaghy acknowledged his on-court performance was necessarily affected by his bets on games he officiated (i.e., the feds *never came close* to concluding Donaghy didn’t fix games); and (2) why federal authorities accepted they were not going to be able to conclusively *prove* Donaghy was fixing games

(please see here for my assessment of this). Predictably, for those unfamiliar with *Gaming the Game*, this Scala quote in the ESPN article re: Donaghy fixing games was especially remarkable:

“Donaghy says he never threw a game,” Scala told me. “But you know what? That never really flew with us.” According to Scala, his and the FBI’s position has always been that Donaghy’s deals with Concannon and Battista irrevocably “tainted” his capacity for officiating, even if only subconsciously. (This notion even found its way into the Pedowitz report itself.) Scala recalls that he and Donaghy went around and around on the issue. “I said to him, ‘Listen, don’t tell me that you have some independent, decision-making ability in your mind’s computer that’s going to be unbiased, because that’s not going to f–ing happen. All those gray-area decisions you have to make, Tim? Because you’re betting on the game, your judgment is off – and you threw the game.’”

The quote was considered so newsworthy that in its formal statement on the matter the NBA wrote:

The ESPN Article includes several quotes from named and unnamed individuals. But these statements conflict with other evidence in the record and in many cases are based on speculation. For example:

- *ESPN quotes Phil Scala, a retired FBI agent who was part of the government’s investigation, as saying Donaghy’s claim that he did not manipulate games “never really flew with us.” But in 2009, Scala wrote a foreword to a book authored by Donaghy in which Scala characterized Donaghy’s cooperation as “unconditionally truthful” and stated that Donaghy “confess[ed] his sins, [took] full responsibility for his actions, pa[id] his debt to society, and [found] the humility to completely display his past vices.”*

Many interested parties were confused by Scala's seemingly conflicting stances re: Donaghy. For example, after reading the NBA's statement, Dan Feldman of NBCSports.com asked a question many have posed to me over the years (**emphasis** added):

...the league raises one question that seems particularly relevant: Why did former FBI agent Phil Scala vouch for Donaghy's honesty then express doubt over Donaghy's claim he didn't fix games?

Again, timing and context matter, and each is lacking in the ESPN piece. When I interviewed him for *Gaming the Game*, Scala explained why he initially believed Donaghy back in 2007:

You always try to corroborate, but there are other things, but there are other things you can't corroborate that are "he-said-she said". When you sign someone up, until something's proven to be a lie, you gotta go with the person who signs the agreement.¹

The Scala foreword to Donaghy's book (which importantly focuses exclusively on the FBI probe and on Donaghy's cooperation, and which makes no assessment of Donaghy's book or related claims) is technically accurate in that, as far as Scala knew (or at least wanted to believe) Donaghy had cooperated with authorities in good faith. As noted above and elsewhere, Scala (and his colleagues) had already disagreed with Donaghy on the preeminent issue of game outcome influencing, starting with Donaghy's plea negotiations. In 2007, rather than viewing Donaghy as a manipulative hustler and liar, Scala was humoring that Donaghy may somehow not have been *consciously* fixing games. This is largely why the government's plea deal included tortured language stating Donaghy acknowledged that he "compromised his objectivity as a referee because of his personal financial interest in the outcome of NBA games, and that this personal

interest might have subconsciously affected his on-court performance.”

Please recall the FBI could not rely on the words of government cooperator Tommy Martino (who only flipped after perjuring himself before the grand jury) and had no access to the third co-conspirator, pro gambler Jimmy Battista. Just as, if not more, significantly, the FBI didn't have access to Battista's electronic betting records and never researched betting line data. Collectively, then, there were little means available to assess the validity of Donaghy's claims. It is true Scala's colleagues didn't share his confidence in Donaghy's sincerity (and didn't particularly care for the manner in which Scala personally dealt with Donaghy), but Scala had no factual basis (beyond the statements emanating from perjurer Martino's proffer sessions) to conclude Donaghy was spouting outright falsehoods. What little Scala knew about the logistics of the scandal as of the 2007 Donaghy plea deal largely remained when Donaghy concluded his federal prison sentence and published his 2009 book.²

Interested parties (such as Dan Feldman) may be shocked to learn that since 2009 Scala has mocked or outright debunked these key Donaghy claims: (1) the FBI concluded Donaghy didn't fix games; (2) Scala (indeed, the FBI as an institution!) supports Donaghy's version of events; (3) “the mob” extorted him/forced him to bet on his own games/beat him in prison; and (4) the FBI planned to arrest other NBA referees (based on Donaghy's insights) but the prosecuting US Attorney's Office decided against it for political reasons.

Unfortunately, the majority of the media have somehow missed practically all of this.

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1. Scala added, “You gotta go with the cooperator's sincerity in things that are painful to him, and there

were a lot of things Donaghy told us that we felt he was being honest about.” Scala was referencing Donaghy’s (shrewd, self-serving, and ingratiating) statements about causing harm to his family. Donaghy’s savvy tactics of (1) claiming gambling addiction and (2) expressing sorrow for causing grief to his family – which collectively serve to distract from his actions and to shield him from a more caustic grilling when presenting his many demonstrable falsehoods– have become Donaghy staples, starting with his post-prison 2009 media appearances.

- 2. I am only focusing on Scala because he is featured in the ESPN piece (which then resulted in the NBA commenting on Scala). I sense, however, many if not most journalists and news readers are unaware Scala knows far less about the case than the agents, Harris (lead) and Conrad, who conducted the probe. Comically, given Scala’s inflated role in the media about all this, Scala discusses this himself in the foreword to Donaghy’s (factually-challenged) book.

For more info re Scala, see here.

Scala, of course, is discussed throughout *Gaming the Game*.

Or my prior assessment of the Whistleblower podcast, see here.