NCAA Amateurism and the *O'Bannon* Litigation

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- Introduction
- History of "Amateurism"
- Early legal challenges
- Reforms wrought by the *O'Bannon* litigation
- The future of college athletics and the likely legal landscape for athletes, schools, and the NCAA

History of "Amateurism"

- Shifting conceptions of amateurism over the last century
- 1929 Carnegie Foundation report found that 81 of 112 schools surveyed provided various inducements to college athletes, *including pay*.
- 1951 Judge Saul Streit similarly found that college athletes were "bought and paid for."
- Walter Byers, the first Executive Director of the NCAA, coined the term "student-athlete" out of concerns about creating an employment relationship with the schools.
- (I try not to use that loaded term.)

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History of "Amateurism" (Continued)

- Since its inception, the NCAA has continually modified its definition of "pay" and impermissible benefits---*e.g.*, what can and cannot be included in athletic scholarships, including stipends.

- This malleability is at the core of the NCAA's tradition of "amateurism."

- Tennis players can receive professional winnings before becoming "amateurs."

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Early Legal Challenges

- *NCAA v. Board of Regents of the University of Oklahoma*, 468 U.S. 85 (1984)
  - SCOTUS held that the NCAA's football television plan, which restricted the total number of games schools could televise, violated the antitrust laws.
  - Justice Stevens suggested, in dicta, that the NCAA "needs ample latitude" to maintain "a revered tradition of amateurism in college sports," but "rules that restrict output are hardly consistent with this role."
  - Also, "[i]n order to preserve the character and quality of the [NCAA's] 'product,' athletes must not be paid."

Early Legal Challenges (Continued)

- The NCAA wielded that dicta to defeat early antitrust challenges to its amateurism rules (notwithstanding its defeat):
  - *Smith v. NCAA*, 139 F.3d 180, 185-86 (3d Cir. 1998) ("the Sherman Act does not apply to the NCAA's promulgation and enforcement of eligibility requirements") (playing at a second school after graduation)
  - *Bassett v. NCAA*, 528 F.3d 426, 433 (6th Cir. 2008) (finding recruiting rules "noncommercial" and therefore not subject to Sherman Act) (challenge to coaching prohibition across schools)
  - *Agnew v. NCAA*, 683 F.3d 328, 341 (7th Cir. 2012) ("most [NCAA] regulations will be a 'justifiable means of fostering competition among amateur athletic teams', and are therefore procompetitive") (challenging cap on number of scholarships per team and prohibition on multi-year scholarships)

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