

O'Bannon and the Five Giants

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SPORT AND SOCIETY FOR ARETE

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At this point in August there are those who think that football season is already in full swing. They are probably deceived into thinking this by the increase in the number of assault arrests being made of both the professionals and the collegians. There seems to be little difference between the two, and indeed the myth of that difference was rejected this week by a federal judge in the O'Bannon Case. As if in anticipation of the decision, the NCAA itself negated its claim of amateurism once again by approving a change in its rules that will allow the five largest conferences to increase the amount of money they can spend in recruiting amateurs to play in the intercollegiate professional ranks.

The O'Bannon Case has been in the courts seemingly forever – actually five years – and the result has long been anticipated. The ruling in the case clearly creates some problems for the NCAA, although it is not likely to be fatal. The court ruled that the NCAA could not set rules prohibiting athletes from being compensated for the use of their images and likenesses in advertising, video games, and other commercial markets. The court did say that such compensation should be limited to \$5,000 per year and that the money be held in trust until the athlete leaves their place of athletic employment.

What this means is not entirely clear. It may mean that in the recruiting process the more popular programs that generate the most revenue and attention will be able to guarantee their recruits the maximum allowed compensation which would mean

\$20,000 or \$25,000 payouts for those who spend four or five years playing a sport on their campus.

It also seems likely that someone will challenge the \$5,000 yearly limit which seems to be a figure picked out of the air without any clear economic or educational rationale. The judge seemed to think the figure was somehow reasonable and not likely to cause some theoretical harm. If anyone thinks that the creation of such a fund will stop under the table payments to college athletes, they are naïve. Another challenge will certainly come over Title IX issues raised by this decision but not addressed by the judge.

The judge found the NCAA in violation of anti-trust law. This is probably the most dangerous aspect of the decision for the NCAA. If the anti-trust violations are found to be applicable beyond this case and these particular circumstances, life could become quite difficult for the NCAA.

On the other hand this limited ruling does not look backwards to compensate those athletes whose images were used in the past. This means that individual institutions rather than the NCAA will have to bear the new costs and that means institutions generating the most revenue will be further privileged in the intercollegiate marketplace. Of considerable significance was the judges' rejection of the notion that athletes should be allowed to market themselves through endorsements and other means.

The decision in O'Bannon also roundly rejected the notion perpetuated by the NCAA that somehow they were protecting amateurism in athletics. This claim was made several times by the NCAA, and the judge found such a claim unconvincing and

untenable. In fact this case, as with much of the discussion of amateurism, stumbles over the archaic definition of amateurism as if it has something to do with monetary compensation. It of course does not. A professional is someone who devotes the major portion of their life to mastering and practicing the highest standards in their chosen field. It is not defined by income, a holdover from 19th Century British definitions designed to maintain the British class system in sport.

The other major decision this week came from the NCAA. It will allow the five major conferences to increase benefits to their recruits and write their own regulations. The value of scholarships can be increased, greater health benefits can be offered to recruits, as well as other perks agreed upon by the conferences. It is clear that this will further increase the gap between the major programs and those running uphill to catch them.

The overall result is likely to be the enhancement of the elite tier within intercollegiate athletics and block new members from joining the elite. The Big Five will grow bigger and richer spending more on athletes, facilities, and coaches. The lesser conferences will try to keep up with the big boys but in the end it will be a futile struggle sending conferences and institutions into heavy debt with a high potential for bankruptcy. The end result could well be a diminishing number of universities involved in big time sport, forcing them to pay attention to education or some other more important activity. The mid-majors will become the low minors.

Perhaps the item coming out of the University of Oklahoma this week offers a peak into the future. The Sooner athletic director

announced this week that his department is moving to comply with the NCAA ruling that athletes were eligible to receive "unlimited snacks." OU will now have a food truck to make sure that their athletes will have what they want, when and where they want it. The AD noted that Oklahoma "will spend about \$1 million to provide a wider selection of food offerings beyond the typical granola bars and Gatorade. . ."

Will the new arms race on campus become a food fight? Probably not. There will be much more involved than food, and much more at stake for the high rollers of intercollegiate athletics.

On Sport and Society this is Dick Crepeau reminding you that you don't have to be a good sport to be a bad loser.

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