

Testimony of Taylor Branch
United States Senate
Committee on Commerce, Science, and Transportation
July 9, 2014

Thank you, Senator Rockefeller. Thank you, Senator Thune. Thank you, members of the Committee. I am honored to be here.

My name is Taylor Branch, from Baltimore, Maryland. My educational background includes an AB degree in history from the University of North Carolina at Chapel Hill (1968) and an MPA (Master of Public Affairs) degree from the Woodrow Wilson School of Public and International Affairs at Princeton University (1970). Since 1976, I have made my living primarily as an independent author of books.

Pertinent to the title for your session today, “Pursuing the Well-Being and Academic Success of College Athletes,” I wrote a capsule history of the National Collegiate Athletic Association (NCAA) for the October 2011 issue of *The Atlantic Monthly*, entitled “The Shame of College Sports.” Because of widespread public debate that ensued, I expanded the *Atlantic* article into a digitally published e-book called *The Cartel*, and I proposed a short “Three-Point Reform Agenda for Sports in Higher Education.” The agenda is available on my website at <http://taylorbranch.com/2012/06/14/a-three-point-reform-agenda-for-sports-in-higher-education/>.

What follows are summary comments for possible discussion under three headings: Amateurism, Balance, and Equity.

AMATEURISM

“Amateurism” has become the distinguishing feature of NCAA governance. It is identified in official pronouncements as “a bedrock principle of college athletics¹.” The NCAA Bylaws define and mandate amateur conduct as follows: “Student athletes shall be amateurs in an intercollegiate sport, and their participation should be motivated primarily by education and by the physical, mental and social benefits to be derived. Student participation in intercollegiate athletics is an avocation, and student athletes should be protected from exploitation by professional and commercial enterprises.²”

The word “amateur” reflects conflicted attitudes about money, youth, and the purpose of recreation. Its broad ambivalence has opened a muddled flexibility in public habits, allowing the United States to become the world’s only nation to develop commercialized sports at institutions of higher learning. Even the major universities involved, which were founded to uphold intellectual rigor, routinely ignore or excuse the contradictions of a multi-billion-dollar side-industry built on their undergraduate students.

Confusion and mythology begin with the word itself. Dictionary synonyms for “amateur” range from a wholesome “enthusiast” or “devotee” to a bumbling “dabbler” or “rookie.” Merriam-Webster gives a stinging illustration of the latter tone: “The people running that company are a bunch of amateurs.” Accordingly, the same word expresses praise and scorn without distinction. This ambiguity gains reinforcement in our uniquely designed world of sports, where fans are encouraged to cheer and boo without thinking objectively.

¹ Opening sentence of the NCAA website page headed, “Office of the President, Remaining Eligible, Amateurism,” at www.ncaa.com.

² NCAA Bylaw 2.9.

The ideal of ancient Greek amateurism has always been misleading, because the athletes of Olympus actually competed for huge prizes. Aristotle researched well-rewarded champions back through records of the earliest Olympic festivals, and modern scholars have confirmed evidence of high-stakes victory and loss³. “Ancient amateurism is a myth,” noted the classicist David Young⁴. “Purists who refused to mix money with sport did not exist in the ancient world,” concludes Michael B. Poliakoff, “and victors’ monuments boast of success in the cash competitions as openly as they boast of victory in the sacred contests⁵.”

Golf legend Bobby Jones is enshrined in modern sports history as the model amateur, and gentleman, who declined every championship prize he earned. His reputation fits the true definition of “amateur,” which is derived from the Latin “*amator*,” or “lover,” specifying one who chooses to pursue a skill out of subjective devotion rather than the hope of financial gain⁶. Some non-college sports still allow athletes to declare and renounce amateur status.

Significantly, students called themselves amateurs when they invented intercollegiate sports after the Civil War⁷. Until 1905, students retained general control of the new phenomenon in everything from schedule and equipment to ticket sales. They recruited alumni to construct Harvard Stadium in 1903 with zero funds from the college⁸. “Neither the faculties nor other critics assisted in building the structure of college athletics,” declared Walter Camp (Yale class of 1880), who became the “father” of college football in his spare time.⁹

³ Michael B. Poliakoff, *Combat Sports in the Ancient World*. New Haven: Yale University Press, 1987, pp. 3, 131.

⁴ David Young, *The Olympic Myth of Greek Amateur Athletics*. Chicago: Ares Press, 1985, p. 7.

⁵ Poliakoff, *Combat Sports in the Ancient World*, p. 19.

⁶ <http://www.merriam-webster.com/dictionary/amateur>.

⁷ Joseph N. Crowley, *In the Arena: The NCAA's First Century*. Indianapolis: The NCAA, 2006, p. 37.

⁸ Mark F. Bernstein, *Football: The Ivy League Origins of an American Obsession*. Philadelphia: University of Pennsylvania Press, 2001, p. 72.

⁹ Ronald A. Smith, *Sports & Freedom: The Rise of Big-Time College Athletics*. New York: Oxford University Press, 2006, pp. 83-88, 118.

The NCAA, created in 1906, slowly transformed the amateur tradition inherited from college athletes¹⁰. Its board declared a goal of “total faculty control” as late as 1922, and the weak NCAA organization could not hire its first full-time staff member until 1951¹¹. After that, however, burgeoning revenue from television contracts allowed NCAA officials to enforce amateur rules as an objective requirement rather than a subjective choice¹². This is problematic, because attempts to regulate personal motivation and belief commonly run afoul of the Constitution. Even if internal standards were allowed, and somehow could be measured, NCAA rules contradict their requirement that college sports must be an “avocation,” or calling (“*vocare*,” to call, from “*voc-*, *vox*,” voice), by denying athletes an essential voice. NCAA rules govern the players by fiat, excluding them from membership and consent.

BALANCE

Checks and balances are required for sound governance, and the NCAA structure is unbalanced in at least four respects. First, NCAA enforcement suffers an inherent conflict of interest between alleged violations in football, as opposed to basketball, because the organization lost its television revenue from college football and is almost wholly dependent on a sole-source broadcasting contract for the March Madness basketball tournament¹³.

Second, the NCAA structure creates a false impression of common practice between the few schools that aggressively commercialize college athletics—roughly 100-150 of some 1,200

¹⁰ Crowley, *In the Arena: The NCAA's First Century*, p. 44.

¹¹ *Ibid.*, p. 67.

¹² John Sayle Watterson, *College Football: History, Spectacle, Controversy*. Baltimore: The Johns Hopkins University Press, 200, pp. 265-276; Paul R. Lawrence, *Unsportsmanlike Conduct: The National Collegiate Athletic Association and the Business of Collge Football*. New York: Praeger Publishers, 1987, pp. 71-82

¹³ Lawrence, *Unsportsmanlike Conduct*, p. 148; Keith Dunnevant, *The Fifty-Year Seduction*. New York: St. Martin's Press, 2004, pp. 160-167.

NCAA members—and the vast majority of schools with small crowds and negligible sports revenue. An elastic NCAA “amateurism” stretches all the way from a Division III cross-country race to Notre Dame football on ESPN.

Third, NCAA officials resolutely obscure differences between commercialized sports and the academic mission on campus. In the classroom, colleges transfer highly valued expertise to students, but this traditional role is reversed in big-time sports. Athletes there deliver highly valued expertise to the colleges. This distinction is basic, and is fundamental to your committee’s stated purpose of promoting educational integrity. College athletes are, or should be, students in the classroom and competitors in the athletic department. They face multiple roles, like most Americans, but their conflicting demands cannot be managed or balanced until they are squarely recognized. The NCAA undermines this logical separation by insisting that sports are an educational supplement for a hybrid creature under its jurisdiction, called the “student-athlete.” Universities implicitly concur by offloading some of their academic responsibility to the NCAA.

Fourth, the NCAA and its member schools strip rights from athletes uniquely as a class. No college tries to ban remunerative work for all students, and no legislature could or would write laws to confiscate earnings from one targeted group of producers in a legitimate enterprise. On the contrary, universities sponsor extensive work-study programs, and student-citizens exercise freedom to market skills everywhere from bookstore jobs and pizza delivery to the entrepreneurial launch of Facebook—unless they are athletes. For college athletes alone, the NCAA brands such industry “unethical.”

EQUITY

Basic fairness requires attention to the rights and freedoms of participants above the convenience of observers. Applied to college sports, this principle would mean that no freedom should be abridged because of athletic status. While I am neither a lawyer nor a professional economist, I find ample historical evidence that experts object to collusion in the NCAA's regulatory structure.

In *Microeconomics*, a prominent textbook, professors Robert Pindyck and Daniel Rubinfeld make the NCAA a featured example of an economic cartel that reaps anti-competitive profit¹⁴. The courts have agreed in two landmark cases. In *NCAA v. Board of Regents of the University of Oklahoma* (1984), the U.S. Supreme Court struck down the NCAA's exclusive control of college football broadcasts as an illegal restraint of trade¹⁵. Overnight, the major football schools won freedom to sell every broadcast their markets would bear, without having to share the proceeds with smaller schools through the NCAA. ("We eat what we kill," bragged one official at the University of Texas.) In *Law v. NCAA* (1998), assistant coaches won a \$54-million settlement along with an order vacating the NCAA's \$16,000 limit on starting salaries¹⁶. The compensation of assistant football coaches has cracked the \$1 million barrier since then¹⁷, with salaries skyrocketing even in "non-revenue" sports. By 2010, the University of Florida paid its volleyball coach \$365,000¹⁸.

Thus, the supervisors of college sports won economic freedom, and they enjoy

¹⁴ Robert S. Pindyck and Daniel L. Rubinfeld, *Microeconomics* (Eighth Edition). New York: Prentice Hall, 2001, pp. 480-481.

¹⁵ Dunnevant, *The Fifty-Year Seduction*, pp. 160-167.

¹⁶ *Law v. NCAA*, 134 F.3d 1010 (10th Cir. 1998).

¹⁷ Kevin Zimmerman, "USC's Monte Kiffen's Salary Highest Among NCAA assistant coaches," *SB Nation*, Dec. 18, 2012.

¹⁸ Joe Drape and Katie Thomas, "As Colleges Compete, Major Money Flows to Minor Sports," *New York Times*, Sept. 2, 2010.

enormous largesse from a distorted cartel market that now shackles only the most vital talent: the players. “To reduce bargaining power by student athletes,” wrote Pindyck and Rubinfeld, “the NCAA creates and enforces rules regarding eligibility and the terms of compensation¹⁹.” NCAA officials, of course, steadfastly assert that their whole system is devoted to the educational benefit of college athletes. “Football will never again be placed ahead of educating, nurturing, and protecting young people,” NCAA president Mark Emmert vowed when he announced NCAA sanctions for the recent scandal at Penn State²⁰. Such professions must be reconciled with NCAA rules that systematically deny college athletes a full range of guaranteed rights—from due process and representation to the presumption of innocence. These rules can turn words on their head, like Alice in Wonderland. The NCAA’s bedrock pledge to avoid “commercial exploitation” of college athletes, for instance, aims to safeguard them from getting paid too much, or at all, rather than too little in the ordinary usage of the word exploit: “to use selfishly for one’s ends—employers who exploit their workers.²¹”

In closing, I would suggest one hopeful precedent from the past work of your Commerce Committee. This is not the first time that the governance of amateur sports, together with the education of college athletes, has presented a daunting tangle of passions and vested interests. Fifty years ago, an early bonanza in sports revenue intensified a bitter feud between the NCAA and the Amateur Athletic Union (AAU), which controlled access to the Olympic Games. AAU leaders accused an “unpatriotic” NCAA of sabotaging U.S. chances to win medals. They claimed that college athletes already were “paid,” and therefore not amateurs at all, once the NCAA approved athletic scholarships in 1956. NCAA officials retorted that AAU coaches were

¹⁹ Pindyck and Rubinfeld, *Microeconomics*, p. 455.

²⁰ Emmert quoted in Taylor Branch, “The NCAA Entrenches Itself as Part of the Problem,” *The Chronicle of Higher Education*, August 1, 2012.

²¹ Listing for “exploit” at www.dictionary.reference.com.

“parasites” on college training facilities. The two sides nitpicked, boycotted, sabotaged, and disqualified each other until President Kennedy enlisted no less a mediator than General Douglas MacArthur to mediate U.S. hopes for the 1964 Tokyo Olympics. The squabbling exhausted MacArthur, who recommended Blue Ribbon commissions that brought proposals eventually to this Committee.

Your predecessors shaped what became the Olympic and Amateur Sports Act of 1978²². One key provision of that law secured for active athletes a twenty-percent share of the voting seats on each of the thirty-nine new U.S. Olympic Committees. Though small, this representation soon transformed amateur sports. Granted a voice, athletes tipped the balance on governing committees in the United States and inexorably around the globe. Marathon races, then tennis tournaments, recognized a right for players to accept prize money and keep their Olympic eligibility. New leagues sprang up to popularize volleyball and other games with corporate sponsors. Olympic officials came to welcome “professional” competitors in every sport except boxing. By 1986, when the International Olympic Committee expunged the word “amateur” from its bylaws, the modified Games defied every prediction of disaster. Indeed, most people scarcely noticed the change. Some of you helped recognize success in the revised Ted Stevens Olympic and Amateur Sports Act of 1998.

This example suggests a good place to start. Wherever possible, make the athletes true citizens rather than glorified vassals in college sports. Challenge universities in turn to make wise, straightforward decisions about the compatibility of commercialized sports with education.

Thank you.

²² Kenny Moore, *Bowerman and the Men of Oregon*. New York: Rodale, Inc., 2006, p. 349; Joseph M. Turrini, *The End of Amateurism in American Track and Field*. Urbana: University of Illinois Press, 2010, pp. 74-83, 140-147.