



Nobody likes the NCAA. Seriously, do you know anyone who has a good word to say about the National Collegiate Athletic Association? I'm sure some wonderful people work there, but for some of us, it's the private sector institution that most closely resembles the federal government...top-heavy, opaque and unaccountable. And those are some of its good points.

Its many nit-picky rules and maddening inconsistencies aside, the NCAA has come under increasing criticism in recent years, as its revenues have skyrocketed while its "product", the student-athletes of its member schools, has not shared in the bounty. *The Atlantic's* Taylor Branch ripped the organization a new orifice in his [eye-opening 2012 piece](#)

that among other things, exposed as laughable the definition of amateurism the NCAA relies on to keep the status quo in place.

Of course a legitimate case can be made that a full four-year college scholarship in this day and age is not exactly pocket change, and it certainly counts as "compensation" for the student athlete in anyone's book. And the current arrangement strikes one as at least somewhat reasonable until you start throwing around the numbers of dollars we're talking about in NCAA TV revenues, the athletes' share of which is zip.

As most fans of college sports know by now, there is a lawsuit against the NCAA currently working its way through the court system, and the case known by the name of the lead plaintiff, former UCLA basketball player Ed O'Bannon, had a day in court last week. The trial itself is probably a year away, but on this day the lawyers for both sides were presenting arguments to Judge Claudia Wilken to determine if the plaintiffs constitute a class, which would make the case a class action, and potentially draw in hundreds or even thousands of new plaintiffs from

the ranks of former and current college athletes.

Without wading too far into the weeds of the case detail (*PBS Frontline* has an excellent [backgrounder](#)

, and

SI

has covered the case

[here](#)

, and last week's developments

[here](#)

) I'll just say that the plaintiffs are claiming a restraint of trade under federal antitrust law, because the NCAA has restricted their rights to earn money from the use of their names and likenesses after they leave school (in video games, for example), revenues that the NCAA reserves to itself.

The case started out involving former players only...O'Bannon (*pictured at top*) has since been joined by several other high-profile athletes, including Bill Russell and Oscar Robertson...but the judge last week asked the plaintiffs why there were no current college student-athletes among the plaintiffs, and

[one or more may soon be added](#)

to the list. And as happens in lawsuits of this sort, the plaintiffs want to go where the money is, and the direction their case takes evolves over time.

Licensing rights to video games and apparel are counted in real dollars, but the really big money is in TV rights. About 85% of the [NCAA's 2012 total revenue](#) came from TV rights...almost all of that from the three weekends in March that are the NCAA men's basketball tournament. The TV contract for March Madness 2012, for example, paid the NCAA \$771 million. As Branch put it, "That's three-quarters of a billion dollars built on the backs of amateurs—on unpaid labor. The whole edifice depends on the players' willingness to perform what is effectively volunteer work." From the sounds of things, it is from this fountain of cash that the O'Bannon plaintiffs propose to take a healthy sip.

Stewart Mandel [reported](#) this week that expert witness, economist Roger Noll filed a paper with the court for the plaintiffs, arguing that athletes should be paid 50% of all broadcast revenue, shared equally by all members of the team roster. Not only would this kind of arrangement turn the NCAA and college sports business model on its head, it would open up a whole new set of issues of "fairness". Imagine the lowliest walk-on benchwarmer who never

even gets into a game receiving the same payment as the star of the team playing all 40 minutes every night. Judge Wilken quickly pointed out the practical flaws in that proposal.

The New York Times' Joe Nocera, who for years has been regaling his blog's readers with accounts of the [inane](#) and the [stupid](#) from the NCAA, has been [following the week's developments](#) in Judge Wilken's courtroom. His sources report that the NCAA's legal arguments on Thursday were "laughably weak", as they make their case, essentially "that college athletes must continue to be amateurs because, well, that's the way it's always been."

The NCAA remains confident that they will prevail in the end, but the prospect that the whole house of cards might come tumbling down was enough to prompt Moody's investor service to [downgrade the NCAA's credit outlook](#) to "negative" on Monday. The more plaintiffs in the class, the greater the risk.

The problems with the current college athletics business model are bigger than the NCAA. The athletic departments of the great majority of FBS (Div 1) schools cannot support themselves on the revenue they generate from ticket sales, merchandise sales and TV rights, and must be subsidized out of general school funds...which is to say, from non-athlete student fees and increased tuition costs for those students not receiving scholarships. The unfairness of the status quo begins right there.

It becomes apparent as one looks into the details of the O'Bannon lawsuit, that the proposed answers to the alleged unfairness of the current system present a whole new raft of questions, none of which have easy answers.

Do we really want to begin compensating college athletes more like we do professional athletes? Wouldn't a system of distributing cash to college players present its own set of logistical and accounting problems, to include a very real potential for abuse? What would the college sports landscape look like in the aftermath of total victory by the O'Bannon plaintiffs? Would we recognize it? Would we like what we see?

Nobody likes the NCAA. Its arrogance and its inconsistency are some of the reasons [why we](#)

[hate the games we love](#)

. It is a cartel that relies for its continued existence on denying that the players generating billions in revenue for it are not in any legal sense its employees. There are compelling arguments that the whole institution deserves to die a painful death. Moreover, some smart people argue that setting up a system to pay college athletes would be a seamless transition that would preserve the games in much the same form we see them in today.

Let's just say I have my doubts.

I know I'm not alone in instinctively tending to root for the underdog plaintiffs in their fight against the exploitative behemoth from Indianapolis. I'm just not sure that the O'Bannon case provides the roadmap to effective reform. It's not at all clear to me that college athletics will be a better, fairer enterprise if the big, bad behemoth goes boom.
