UNIVERSITY OF TURKU
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The Application of the Sherman Act in Court and how the NCAA tried to argue against it

Rights-Thinking: Exploratory Workshop on Current Legal Issues in the U.S.A.
Bachelor's thesis

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Abstract page

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Subject: The Application of the Sherman Antitrust Act in Court, considering how the NCAA argued against antitrust laws application to its treatment of student-athletes.
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In this thesis I aim to outline the key methods of how antitrust law is applied in U.S. Courts after the enactment of the Sherman Antitrust Act in 1890. After establishing how antitrust law is generally applied, I shift the focus of the thesis to the interesting example of the legal battle between the NCAA and its student-athletes regarding whether the NCAA is mandated to compensate its student-athletes under antitrust law or not. This legal battle spans many decades and multiple cases, but in this thesis, I will focus on four of them: *NCAA v. Board of Regents of the University of Oklahoma (1984), McCormack v. NCAA (1988), O'Bannon v. NCAA (2015)*, and finally the latest case on the matter *Alston v. NCAA (2021)*. The emphasis of the case examination is on how the NCAA argued against the Sherman Act's application to its way of operating. This argumentation is found to rely heavily on the concept of maintaining amateurism in collegiate sports, as a way of solidifying the uniqueness of their product. This thesis, however, reaches a conclusion that the NCAA's decades long way of argumentation is faulty and that the Antitrust laws do in fact apply to the NCAA's way of operating much in the same way as other fields of commerce.

Key words: antitrust law, The Sherman Act, NCAA, amateurism.

Tässä ON-työssä pyrin hahmottelemaan keskeiset menetelmät sille, miten kilpailuoikeutta sovelletaan Yhdysvaltain tuomioistuimissa sen jälkeen, kun Sherman Antitrust Act säädettiin vuonna 1890. Selvitettyäni, miten kilpailuoikeuslainsäädäntöä yleisesti sovelletaan, siirrän työni painopisteen mielenkiintoiseen esimerkkiin NCAA:n ja sen opiskelija-urheilijoiden välisestä oikeudellisesta taistelusta siitä, onko NCAA:lla velvollisuus korvata opiskelija-urheilijat kilpailuoikeuden nojalla vai ei. Tämä oikeudellinen taistelu kesti useita vuosikymmeniä ja sisälsi useita tapauksia, mutta tässä työssä keskityn neljään niistä: *NCAA v. Board of Regents of the University of Oklahoma* (1984), *McCormack v. NCAA* (1988), *O'Bannon v. NCAA* (2015) ja lopuksi viimeisin tapaus asian tiimoilta *Alston v. NCAA* (2021). Tapaustutkimuksen painopiste on siinä, miten NCAA vastusti Sherman Actin soveltamista toimintatapoihinsa. Totean tämän argumentaation nojaavan vahvasti amatööriyden käsitteeseen yliopistourheilussa, jota NCAA käytti keinona korostaa tuotteensa ainutlaatuisuutta. ON-työssäni päädyn kuitenkin siihen, että NCAA:n vuosikymmeniä kestänyt argumentointi on viallista ja että kilpailunrajoituslait itse asiassa pätevät NCAA:n tapaan toimia paljolti samalla tavalla kuin muillakin kaupan aloilla.

Avainsanat: kilpailuoikeus, Sherman Act, NCAA, amatööriys

Table of contents

References

Bibliography

Burney, Nathaniel – Kim, Ginny O. – Lauerman, Colleen, Antitrust Violations. American Criminal Law Review, Vol. 32, Issue 2 - Annual Survey of White-Collar Crime, 1995, pp. 157–182.

Boliek, Babette, The Potential Reach of O'Bannon v. NCAA. Mississippi Sports Law Review, Vol. 5, Issue 1, 2015, pp. 28–42.

Carrier, Michael A., The Real Rule of Reason: Bridging the Disconnect. Brigham Young University Law Review, 1999, pp. 1265–1366.

Dickson, Peter R. – Wells, Philippa K., The Dubious Origins of the Sherman Antitrust Act: The Mouse That Roared. Journal of public policy & marketing, Vol.20(1), 2001, pp. 3-14.

Edelman, Marc – Holden, John T., Baseball's Anticompetitive Antitrust Exemption. Boston College Law Review, Vol. 65, Issue 5, 2024, pp. 1695–1754.

Ehrlich, Sam C., Remembering the Lessons of the Baseball Exemption in NCAA v. Alston, Rutgers Law Record, Vol. 48, 2021, pp. 222–232.

Ehrlich, Sam, A Three-Tiered Circuit Split: Why the Supreme Court Was Right to Hear NCAA v. Alston. Journal of Legal Aspects of Sport, Vol. 32, Issue 1, 2022, pp. 1–61.

Evans, Harold, Standard Oil and American Tobacco Cases**.** University of Pennsylvania Law Review and American Law Register, Vol. 60, Issue 5, 1912, pp. 311–323.

Johnsen, D. Bruce, Property Rights to Cartel Rents: The Socony-Vacuum Story. Journal of Law & Economics, Vol. 34, Issue 1, 1991, pp. 177–204.

Keyte, James A., The What It is and How It is Being Applied: The Quick Look Rule of Reason. Antitrust, 11, 1996, pp. 21–25.

Kolasky, William, Chief Justice Edward Douglass White and the Birth of the Rule of Reason. Antitrust, Vol. 24, Issue 3, 2010, pp. 77–83.

McDermott, Richard B., History and Identity of the Relevant Antitrust Statutes. Tulsa Law Journal, Vol. 5, Issue 3, 1968, pp. 265-287.

Piraino Jr., Thomas A., Making Sense of the Rule of Reason: A New Standard for Section 1 of the Sherman Act. Vanderbilt Law Review, 47, 1994, pp. 1753–1806.

Redlich, Allen, The Burger Court and the Per Se Rule. Albany Law Review, 44, 1979, pp. 1–38.

Rowe, Karol K., NCAA v. Board of Regents: A Broadening of the Rule of Reason. Journal of College and University Law, Vol. 11, Issue 3, 1984, pp. 377–398.

Siegrist, Amanda – Czekanski, W. Andrew, Game Changer: The Legal Journey to Student-Athletes' Name, Image, and Likeness Rights. Wake Forest Journal of Business and Intellectual Property Law, 25, no. 1, 2024, pp. 52–79.

Shropshic, Kenneth, The Erosion of the NCAA Amateurism Model. Antitrust, Vol. 14 Issue 2, 2000, pp. 46-50.

Shulman, Max R., The Quick Look Rule of Reason: Retreat from Binary Antitrust Analysis. Sedona Conference Journal, 2, 2001, pp. 89–96.

Thurman, Arnold, Fair Fights and Foul. Antitrust Bulletin, Vol. 10, Issues 5–6, 1965, pp. 655–666.

Wilgus, H. L., Standard Oil Decision the Rule of Reason. Michigan Law Review, Vol. 9, Issue 8, 1911, pp. 643–670.

Wolohan, John, The Supreme Court's Decision in NCAA v. Board of Regents: Did the NCAA Really Misread It So Badly? Cardozo Arts & Entertainment Law Journal, Vol. 41, Issue 3, 2023, pp. 823–844.

Online references

Antitrust Supreme Court Cases. Justia 2026. https://supreme.justia.com/cases-by-topic/antitrust/ (Accessed 9.4.2026).

NCAA. Overview. https://www.ncaa.org/sports/2021/2/16/overview.aspx (Accessed 3.3.2026).

Cases

United States v. E. C. Knight Co. 156 U.S. 1 (1895).

Northern Securities Co. v. United States 193 U.S. 197 (1904).

Standard Oil Co. of New Jersey v. United States 221 U.S. 1 (1911).

United States v. American Tobacco Co. 221 U.S. 106 (1911).

Federal Baseball Club of Baltimore, Inc. v. National League of Professional Baseball Clubs 259 U.S. 200 (1922).

United States v. Socony-Vacuum Oil Co., Inc. 310 U.S. 150 (1940)

NCAA v. Board of Regents of the University of Oklahoma 468 U.S. 85 (1984).

NCAA v. Alston 594 U.S. __ (2021) (Slip Opinion) Gorsuch J., Majority Opinion

McCormack v. NCAA 845 F. 2d 1338 – Court of Appeals 5th Circuit (1988).

O'Bannon v. NCAA 802 F. 3d 1049 – Court of Appeals 9th Circuit (2015).

Statutes

Sherman Antitrust Act, 15 U.S.C. §§ 1–2 (1890).

List of Abbreviations

NCAA	National Collegiate Athletic Association
U.S.C.	United States Code
MLB	Major League Baseball
NFL	National Football League
SMU	Southern Methodist University
UCLA	University of California Los Angeles

1 Introduction

The Sherman Antitrust Act, which was enacted in 1890, was the first antitrust law passed in the U.S. And it ultimately criminalized all kinds of monopolies, contracts and conspiracies that could be deemed to cause unreasonable restraint to interstate trade.[1] It has categorized to be the single most important piece of federal legislation concerning commerce in the U.S. to this day. It's carrying principle of promoting competition and condemning any ways of obstructing it, has even been praised as being as important as the due process clause of the U.S. constitution.[2]

Given that the Sherman Act is held in such high prestige and it has been in force for well over a century, it is no surprise that it has been applied multiple times in all court instances in the U.S concerning many different fields of commerce. However, ever so often antitrust law is brought up regarding cases that one wouldn't characterize as a traditional field of commerce. One such instance is the antitrust litigation that has been brought up against the National Collegiate Athletic Association (NCAA), which is the focal point of this thesis.

It is therefore also important to understand what the NCAA is to begin with. The NCAA is an organization that operates and promotes collegiate sports. It has over 1,100 member school across all 50 U.S. states, District of Colombia, Puerto Rico, and even some in Canada.[3] So, it is an organization that drafts rules that apply to all collegiate athletic competitions organized by it, and there is no other such organization that operates in the same field as the NCAA.

For the purposes of this thesis the most important rules that the NCAA has forced upon its member schools, or its bylaws, are the ones that prohibit student-athletes from getting monetary compensation for their athletic performances. The reasoning behind this principle has long been the NCAA's desire to separate collegiate athletics from professional sports leagues. [4]

The questions this thesis aims to answer is firstly how the Sherman Antitrust Act is applied in court and this is done by examining the key methods applied in court while also taking a brief look into the history of the Sherman Act's application in Court. Secondly this thesis looks into

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[1] McDermott 1968, pp. 266.
[2] Dickson – Wells 2001, pp. 3–4.
[3] NCAA.
[4] Shropsic 2000, pp. 46–47.

the special antitrust litigation brought against the NCAA over many decades, while putting the emphasis on the NCAA's arguments against these antitrust violation accusations.

2 Materials and methods

The materials that I used in this thesis can be divided into two main categories legal articles, and legal cases.

The way in which I chose precisely the articles I ended up using my thesis was mostly centered around finding one good article and the going “down the rabbit hole” of its references and by rule of elimination choosing the ones that I deemed most useful to best service the big picture of my thesis.

The article that functioned as this “mother-article” was: Siegrist, Amanda – Czekanski, W. Andrew, Game Changer: The Legal Journey to Student-Athletes' Name, Image, and Likeness Rights. This article was easy to build around, since it outlined the chronological timeline of the different cases that were the most central to my thesis, and it even gave me a foundation from which I dove deeper into the Sherman Act.

When choosing the cases to cover in this thesis I took a look at each of the ones that were listed in the Siegrist and Czekanski’s article and picked the ones I deemed most important.

Board of Regents is the foundational case that you need to know in order to understand the rest of the cases. *McCormack* is the first case where *Board of Regents* was directly cited that was about the compensation of student-athletes. *O’Bannon* was the first case where the tide shifted against the NCAA, altering the decades-old legal standing. And finally, *Alston* was the Supreme Court Case that pretty much set what was already ruled in *O’Bannon* as the current day precedent.

My method when using the legal articles as my sources was mainly to find similarities between different articles about the same topic and base my thesis around that common ground.

For the legal cases I knowingly kept my focus on the majority opinions of the courts in question, since my main objective was to identify the main arguments used by the NCAA and I feel that the most important ones are the ones that the court mentions in its opinion. Additionally, I tried to find the similarities between the different cases’ arguments, to find out if it changed with the times or stayed the same throughout.

3 The Application of the Sherman Act in Court

Out of the eight total sections that the Sherman Act consists of the first two can be seen as the most important, especially when dealing with the issues rising from collegiate athletics.[5]

Section 1 of the Sherman Act (26 Stat. 290 (1890), 15 U.S.C) ultimately criminalizes all sorts of agreements that restrain trade, stating that:

> Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal.

Section 2 subsequently prohibits monopolies and attempts of them, stating:

> Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor.

The manners in which the U.S. courts apply these first two sections of the Sherman Act, when deciding whether there has been a breach of them, can be simplified to three different styles. The current day's most common way, the rule of reason analysis, the longest standing way of applying the per se rule, and less frequently used quick look analysis that falls between the two other methods.[6]

3.1 Rule of reason

When a case concerning antitrust law violations reaches a court, the court in question is likely to choose to apply the rule of reason analysis to resolve it. It is interesting to note however that this method only started to gain widespread usage in late 1970s and early 1980s, when the Supreme Court started to apply it to more and more different kinds of antitrust violation cases.[7]

In rule of reason analysis, the court generally begins by placing a burden on the plaintiff to show that the defendant's actions should in fact be interpreted as antitrust violations and that these actions have a restraining, negative, economic effect on the plaintiff. Additionally, if the plaintiff argues, for example, that the defendant has an illegal monopoly over a given

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[5] Siegrist – Czekanski 2024, pp. 57.
[6] *Id*, pp. 57–58.
[7] Piraino Jr. 1994, pp. 1757–1759.

industry, it also has to show that the defendant truly has enough power over the market to effectively practice a monopoly.[8]

If the plaintiff manages to present sufficient enough evidence regarding the defendant's actions illegality, the court then turns to the defendant. The defendant is given a chance to present legitimate procompetitive justifications for its actions, that at face value could be deemed to be illegal restraints of free competition.[9]

If the defendant manages to meet this burden to present procompetitive justifications for its actions, the court again shifts the burden to the plaintiff. This time the plaintiff needs to either show that the defendant's means to achieve the justifications it argued by are not really necessary or that there is a way to achieve it that places less restriction on competition.[10]

After these three steps the court then ultimately decides whether or not a violation of antitrust law has occurred. The process is often quite time-consuming but based on its thoroughness the rule of reason analysis can be seen to yield the most legitimate outcomes for antitrust case.

3.2 Per se rule

Using the per se rule when deciding antitrust cases in court differs quite a lot from applying the rule of reason analysis. The Latin expression of "per se" translates to "by itself". In antitrust litigation this means that the court merely looks at the action committed by the defendant and then proceeds to decide whether it is an illegal restraint on competition and a violation of antitrust law. The application of the per se rule generally requires a lot less time and weighing by the court, since the only thing that needs to be proven is that the conduct by the defendant actually took place.[11]

The rather obvious critique that the application of the per se rule often receives is that it isn't thorough enough and that it overly limits the possibilities to create arrangements within markets that have "common sense" justifications. But on the other hand, the application of the per se rule can be seen as a valid choice, since it invites strict compliance with the law and

[8] Carrier 1999, pp. 1268
[9] *Id*, pp. 1268–1269.
[10] *Id*, pp. 1269.
[11] Redlich 1979, pp. 1–4.

additionally it keeps the court from having to weigh in on pro- and anticompetitive effects on markets that it doesn't have enough understanding on.[12]

3.3 Quick look rule

In between applying merely, the per se rule and the full-blown rule of reason analysis is the more rarely used quick look rule. The application of the quick look rule, however, consists of elements from both of the so-called more traditional methods.

The application of the quick look rule begins similarly to the one of the per se rule, where the court assesses whether an action done by the defendant seems at face value to be a restraint on competition and a violation of antitrust law. However, the court then borrows from the rule of reason analysis's method by being open to hearing the defendant's procompetitive justifications. Though, the threshold to carry the burden of procompetitive justifications is higher than in the rule of reason analysis. So, the court is also less hesitant to deny the defendant's justifications as legitimate.[13]

Both the need for the quick look rule and the reason for its rareness can be explained with the same reasoning. The quick look rule is most commonly applied in situations where the market in question in the case is new to the court and previous precedent, or it can't otherwise in an obvious way determine the impact on the market by the actions in question.[14] Therefore it is important to have the alternative that doesn't immediately rule out the usage of either the per se rule or the rule of reason analysis.

[12] *Id*, pp. 4–5.
[13] Keyte 1996, pp. 21.
[14] Shulman 2001, pp. 89.

4 The History of Sherman Act litigation

4.1 The Beginning

The first case concerning the antitrust laws of the Sherman Act brought all the way to the Supreme Court took place only five years after the enactment of the Act in 1895, in the form of *United States v. E. C. Knight Company* (156 U.S. 1 (1895)).[15] It was an effort by the federal government to block the American Sugar Refining Company from acquiring other sugar refineries in such magnitude that the company would control near 100 percent of the industry and effectively creating a monopoly over the sugar manufacturing industry. This effort however felt short, since the Supreme Court ruled by a vote of 8–1, that although the circumstances created a monopoly, manufacturing could not in itself be considered to be part of interstate commerce and so the Sherman Act was not applicable in this case.[16]

This was understandably seen as a severe knock on the federal government's ability to act on antitrust violations and the whole antitrust movement centered around the Sherman Act. The movement and the federal government would however get their get back in form of the *Northern Securities Company v. United States* (193 U.S. 197 (1904)) case. In this case the Supreme Court effectively ruled by a narrow majority of 5–4 against a formation of a railroad cartel, even though the arrangement was construed in such way that the *Knight*, could have been seen as precedent to allow it. This was achieved by basically not forming a conspiracy that would directly affect prices, and that would rather happen as an indirect consequence. Similarly, to having a monopoly over an industry's manufacturing, which was the case in *Knight*.[17]

The U.S. government's stubbornness to pursue justice against the odds in *Northern Securities* is often credited to be led by the determination of the United States' 26th President Theodore Roosevelt's to crack down on big companies' attempts to illegally benefit on the average consumer's expense.[18]

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[15] Antitrust Supreme Court Cases.
[16] Kolasky 2010, pp. 78.
[17] Thurman 1965, pp. 661–663.
[18] *Id*, pp. 662.

4.2 The Standard Oil and the American Tobacco cases

The next important steps in establishing how the Sherman Act would be applied in Court came in the form of two Supreme Court cases from 1911, *Standard Oil Company of New Jersey v. United States* (221 U.S. 1 (1911)) and *United States v. American Tobacco Company* (221 U.S. 106 (1911)).

The background for both of these cases was essentially that few big companies in their respective fields of producing oil and tobacco merged into giant companies that practically controlled their whole entire markets. This practice of companies merging into one was not viewed as per se illegal under the Sherman Act or any other statute.[19]

However, in both of these instances the Supreme Court ended up ruling that the Sherman Act should be interpreted in such a manner that it outlaws all means that produce unreasonable restraints on trade.[20] More importantly the Court also ruled that the only way to determine which level of restraint is trough reason.[21]

In practice this meant that the Court would need to thoroughly look into the causality of actions when determining whether or not an action is unreasonably restraining trade and thus in violation of the Sherman Act. This emphasis is not to be mistaken with the rule of reason analysis which goes much further in-depth in the Sherman Act's application process. Although, this can be seen as an early form of applying the rule of reason analysis in such cases.

4.3 The Socony-Vacuum Oil case

One case that is often noted to be the best example of the per se rules dominance over the earlier applications of the Sherman Act is the *United States v. Socony-Vacuum Oil Company, Inc.* (310 U.S. 150 (1940)) case.[22]

To simplify, the case was brought by the federal government against a grand total of twenty-four major oil refineries with the accusation of them being involved in illegal price-fixing in the Midwestern United States. The Supreme Court ultimately ended up ruling in favor of the

[19] Evans 1912, pp. 312–316.
[20] Wilgus 1911, pp. 645.
[21] *Supra note* 19, pp. 317.
[22] Burney – Kim – Lauerman 1995, pp. 159–160.

plaintiffs and deemed the actions of the oil refineries illegal under the Sherman Act. When deciding on the matter, the Court applied the per se rule and subsequently deemed the oil refineries' price fixing scheme per se illegal. This analysis gained notable support from economics experts at the time, which in turn properly solidified the per se rule as a respectable go-to application of the Sherman Act in court.[23]

4.4 The Baseball Exemption

Another interesting part of the history of antitrust legislations' application in Court is what is known as the baseball exemption, that is based on the early 1920s case *Federal Baseball Club of Baltimore, Inc. v. National League of Professional Baseball Clubs* (259 U.S. 200 (1922)).

The background of the case begins in the late 1910s in the world of United States' professional baseball, since back then more than one league existed which basically competed with each other for players and fans. The important leagues for this case were the National League which became the defendant in the lawsuit and the Federal League whose Baltimore based club became the plaintiff of the case. It is important to note that the National League triumphing over its competitor in terms of player and fan popularity is widely seen as one of the key reasons behind the whole antitrust litigation brought against it.

However, the legitimacy of the litigation had some real backing. It's also widely recognized that practically all the professional baseball leagues had practiced at least some form of trade restricting monopolies or price fixing since even before the enactment of the Sherman Act. Nevertheless, this did not prevent the Supreme Court from ruling that baseball leagues were exempt from antitrust litigations. The Court justified its ruling by arguing that professional baseball and its games were not the "trade or commerce" described in the Sherman Act.[24]

Somewhat unsurprisingly this decision has later been viewed as at the very least questionable by the Court, it has held for more than a hundred years. The exemption still applies today to the current North American professional baseball league Major League Baseball (MLB), mainly due to the strong stare decisis principle. However, other professional sports' league such as the American football's National Football League (NFL) were later denied from

[23] Johnsen 1991, pp. 177–179.
[24] Edelman – Holden 2024. pp. 1714–1718.

similar exemptions, which further strengthens the idea that the Court feels at least some remorse for its ruling in *Federal Baseball Club*.[25]

The baseball exemption has often been brought up in regards of the conversation surrounding the NCAA and the antitrust litigation brought against it. It is important to note however that first and foremost the NCAA operates in an entirely different field in the world of collegiate athletics in contrast to professional sports leagues like in the *Federal Baseball Club* case. Furthermore, neither the NCAA nor the plaintiffs bringing suites against it never bring up the baseball exemption in their litigation, so it should not be considered relevant in itself in regards to my thesis, but it is still important to know the so called other instances where sports and antitrust law collide and the baseball exemption is by far the most notorious one.[26]

[25] *Id*, pp. 1718–1719.
[26] Ehrlich 2021, pp. 227–230.

5 NCAA v. Board of Regents of the University of Oklahoma (1984)

5.1 Background

NCAA v. Board of Regents of the University of Oklahoma (468 U.S. 85 (1984)) can be recognized as the first major antitrust litigation filed against the NCAA, that made it all the way to the Supreme Court. It is noteworthy that this case is not directly deciding on earning opportunities of the student-athletes while actively participating in athletics competitions organized by the NCAA, unlike the other cases examined in this thesis. Nevertheless, it is important to know the facts of this case in order to fully understand the latter ones.

The timeline of this case begins all the way back in the early 1950s when the NCAA founded a committee to regulate the television broadcasting of college football games. In practice, this meant that the committee controlled the number of games each college football team would get televised per season and also made the deals regarding them with the broadcasting networks. This went on up until the early 1980s when bigger and more athletically successful universities such as the University of Oklahoma realized that they would be able to make a lot more profit if they would be able to negotiate their own broadcasting deals, since their output on the field was better and therefore the demand for it was also larger compared to some of the smaller schools.[27]

These bigger schools then tried to do just that and independently make broadcasting deals of their own, without the NCAA interfering. The NCAA, however, fired back by threatening to issue sanctions to these schools with the reason that they were breaking its bylaws by negotiating deals without the television committee's permission. The schools then proceeded to take the issue to court claiming that the NCAA was in violation of the Sherman Act.[28]

5.2 NCAA's arguments

For the most part the NCAA maintained the same key arguments to justify its actions throughout the lower courts and up until the Supreme Court.

The first of these arguments is that by having a collective broadcasting deal that covers all its member schools it creates a "joint venture". The NCAA continues to argue that a joint venture

[27] Wolohan 2023, pp. 829–830.
[28] Rowe 1984, pp. 380.

helps all of its members to equally get their "product", which is athletics, better out in the market and so secures everyone's earning opportunities.[29]

The second argument that the NCAA makes is that by regulating the number of broadcasted games the NCAA is able to protect live attendance numbers and through that ticket sale revenue. It argues that if more games were broadcast that would tank the number of people showing up to watch the games live.[30]

The third and final key argument that the NCAA makes to justify its actions, is that by not allowing individual schools to negotiate their own broadcasting deals it is able to maintain a competitive balance among the amateur athletic teams, which its member schools are.[31]

5.3 The Court's Ruling

The Supreme Court ended up affirming the lower courts' judgement with a 7–2 majority, that the NCAA's actions were indeed in violation of the Sherman Act.[32] The Court found that the NCAA's actions were a form of price fixing, and that the anticompetitive consequences of this were "apparent".[33] The Court also didn't find the procompetitive justifications that the NCAA's presented in its arguments legitimate enough to outweigh the anticompetitive effects.[34]

However, the most important part of the whole Opinion of the Court is its final paragraph, which states:

> The NCAA plays a critical role in the maintenance of a revered tradition of amateurism in college sports. There can be no question but that it needs ample latitude to play that role, or that the preservation of the student-athlete in higher education adds richness and diversity to intercollegiate athletics and is entirely consistent with the goals of the Sherman Act. But consistent with the Sherman Act, the role of the NCAA must be to preserve a tradition that might otherwise die; rules that restrict output are hardly consistent with this role.

Special notice should be given to the part where the NCAA is stated to need "ample latitude" playing its role maintaining amateurism in sports.

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[29] *NCAA v. Board of Regents of the University of Oklahoma*.
[30] *Id*, pp. 115–116.
[31] *Id*, pp. 117.
[32] Wolohan 2023, pp. 833.
[33] *Supra* note 29, pp. 106–107.
[34] *Supra* note 27, pp. 832.

It is also noteworthy that in accordance with the timeline of the evolution of the usage of both the rule of reason analysis and the quick look rule, the Supreme court decided to not apply merely the per se rule when deciding the *Board of Regents* case, unlike the lower courts had done. The Court reasons this decision by stating that the NCAA is a unique market in which the Court can't undoubtedly know the effects of actions on the market without a more thorough examination.[35]

[35] *Supra* note 29, pp. 100–101.

6 McCormack v. NCAA (1988)

6.1 Background

McCormack v. NCAA 845 F. 2d 1338 – Court of Appeals 5th Circuit (1988) on the other hand can be recognized as the first major case where the problem concerning possible antitrust law violations in regard to the student-athletes earning opportunities while participating in NCAA organized athletics was first brought to court.

The background of this case begins in 1987 when the NCAA, in accordance with its bylaws, suspended the whole football program of the Southern Methodist University (SMU) and heavily sanctioned it for the 1988 season. The NCAA justified this decision after it found out that SMU's football players had been receiving payments from the university's boosters for their athletic performances, which violated NCAA bylaws as one of its founding principles was that its sports leagues were composed of amateur student-athletes.

This punishment led to many current and former SMU football team members and cheerleaders filing a lawsuit against the NCAA claiming that it was in violation of the Sherman Act by limiting the earning opportunities of student-athletes, which they claimed to be a form of price fixing.[36]

6.2 NCAA's arguments

The carrying argument that the NCAA makes in *McCormack* is that despite the ruling in *Board of Regents* being against it, it points out the Supreme Court mentioning the "ample latitude" it needs to operate and maintain its identity promoting amateurism in its athletics competitions. Especially when its objective is "purely and primarily" noncommercial.[37]

6.3 The Court's Ruling

The Court of Appeals of the 5th Circuit, which is the highest court instance the case went to, ruled in favor of the NCAA. Effectively stating that the NCAA's way of operating by limiting the student-athlete's opportunities to earn was neither in violation of the Sherman Act nor antitrust law in general.

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[36] *McCormack v. NCAA.*
[37] *Id*, pp. 1343.

In accordance with the example set by the Supreme Court in *Board of Regents* the Court in this case similarly applied the rule of reason analysis. Leaning on the principles of the rule of reason analysis the Court went on to state that the NCAA's actions here were indeed legitimately procompetitive in maintaining the uniqueness of the "product", which is amateur sports. The Court further explained that these means by the NCAA are not only justifiable but even necessary to allow their product to survive. The Court of Appeals also agrees with the NCAA's argument that *Board of Regents* effectively granted it the "ample latitude" to create and enforce these rules to maintain amateurism in its athletics.[38]

[38] *Id*, pp. 1344–1345.

7 O'Bannon v. NCAA (2015)

7.1 Background

The next noteworthy case regarding the issue of student-athletes' earning opportunities rose in the form of *O'Bannon v. NCAA* (2015) some 27 years after *McCormack*. It should still be noted that between these two cases there were multiple cases with similar situations to *McCormack* and so they subsequently had similar outcomes to *McCormack*, that the court in question ruled in favor of the NCAA.[39]

This case, much like many other similar ones, was a class action antitrust lawsuit against the NCAA led by former University of California Los Angeles (UCLA) basketball player Ed O'Bannon. The lawsuit ultimately rose out of general dissatisfaction with the way student athletes were economically restricted by the NCAA.[40] And O'Bannon himself was especially irritated how he was portrayed in a popular college basketball video game without receiving any sort of compensation for it.[41]

7.2 NCAA's arguments

In *O'Bannon* the Court of Appeals identifies four key arguments made by the NCAA:

> preserving "amateurism" in college sports, promoting competitive balance in FBS football and Division I basketball, integrating academics and athletics, and increasing output in the college education market.[42]

The NCAA's first argument of restricting student-athletes' compensation to maintain the products unique characteristic amateurism, shares a lot of similarity with their reasoning in cases like *McCormack*. The NCAA also goes on to add that without amateurism college sports popularity would take a huge hit.[43]

Promoting competitive balance between bigger and smaller schools the NCAA reasons by stating that without any restraints the richer schools would be able to outcompete the poorer

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[39] Siegrist – Czekanski 2024, pp. 66–69.
[40] Boliek 2015, pp. 30–31.
[41] *Supra* note 39, pp. 69
[42] *O'Bannon v. NCAA*.
[43] *Id*, pp. 1058–1059.

ones, if the players were allowed to make money, which would ultimately hurt the common good of the whole product.[44]

The third argument made by the NCAA was integrating athletics and academics where it emphasizes that student-athletes should still prioritize their education over anything else. [45] This can be seen as the NCAA shifting away from the whole narrative of this even being a matter of competition within a market environment, but rather first and foremost enabling students to partake in athletics in addition to their studies.

The fourth and final argument made by the NCAA is the increase of output. By this it means that by maintaining restrictions on student-athletes' earnings it enables more of its member schools to participate in its competitions, since costs shouldn't rise too high.[46]

7.3 The Court's Ruling

Both the District Court and the Court of Appeals end up ruling in favor of O'Bannon. In both instances the Court concludes that by performing a rule of reason analysis the NCAA's actions are in violation of antitrust law and the Sherman Act and that its procompetitive justifications do not outweigh the anticompetitive effects caused by them. This understanding is reinforced when the plaintiff is able to present a less strictive alternative to achieving NCAA's desired outcomes, mainly maintaining the amateurism status in its athletics.[47]

More importantly the Court found that the "ample latitude", that the NCAA was mentioned to be required to have in *Board of Regents* when making and enforcing its rules in order to maintain the uniqueness of its product, didn't mean that all of its rules were automatically in line with the Sherman Act. Rather the Court interprets that this means that no antitrust case concerning the NCAA should be decided without applying the rule of reason analysis. The Court goes on to state that the whole "precedent" set by *Board of Regents* is no precedent at all, but merely dicta and it should be interpreted as such moving forward.[48]

The Court also takes a stance on the fact that even though the NCAA wants to claim that its rules limiting student-athlete compensation are not commercial, they in fact are. The Court

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[44] *Id*, pp. 1059.
[45] *Id,* pp. 1059–1060.
[46] *Id*, pp. 1060.
[47] *Id,* pp. 1072–1074.
[48] *Id*, pp. 1063.

elaborates that substance of the rules matters a lot more than their styling. And in practice the compensation rules limit the student-athletes' ability to receive performance-based compensation from schools and their boosters, in other words the rules limit real commercial transactions which violates antitrust law.[49]

[49] *Id*, pp. 1064–1065.

8 Alston v. NCAA (2021)

8.1 Background

Much like in *O'Bannon*, *NCAA v. Alston* 594 U.S. 69 (2021) was also a class action lawsuit raised by many former student-athletes claiming that the set of the NCAA's rules limiting the compensation opportunities of student-athletes' to be in violation of the Sherman Antitrust Act.[50]

The *Alston* case has a lot of similarities to the *O'Bannon* case, since it was first filed in District Court all the way back in 2014, almost the same time as *O'Bannon*.[51]

8.2 NCAA's arguments

In the lower court instances the NCAA's argumentation is much of the same that can be seen in other previous cases such as *McCormack* and even *O'Bannon*. These main arguments include the need to retain competitive balance and amateurism as means to secure the uniqueness of the product. Additionally, both of these are ultimately justified with the "ample latitude" statement made by the Court in *Board of Regents*.[52]

In the Supreme Court the NCAA offers mainly three key justifications for its actions. First of which is that the NCAA is a joint venture, whose members need to create collaboration amongst each other to benefit the entirety of the product they produce, which is collegiate sports.[53]

The second argument is nearly a carbon copy of what can be seen in *O'Bannon*, as the NCAA argues that *Board of Regents* gave its internal rules practically immunity from antitrust litigation.[54]

Lastly the NCAA argues yet again similarly to its argumentation in previous cases that it and its member schools aren't "commercial enterprises", but rather merely promoting and

[50] *NCAA v. Alston*, pp. 8.
[51] *Id, supra* note 39, pp. 74.
[52] *Supra note* 50, pp. 10–13.
[53] *Supra* note 50, pp. 15–16.
[54] *Supra* note 50, pp. 19.

enabling intercollegiate athletics, which further reinforces their claim that antitrust litigation should be brought up against its rules regarding student-athlete compensation.[55]

8.3 The Court's Ruling

The Supreme Court ended up unanimously ruling in favor of Alston and affirming the lower court instances' judgements.[56]

The Court found, following much of the same guidelines as the Court of Appeals in *O'Bannon*, that the NCAA effectively practices a monopoly over its market, since there is no other such alternative provider for collegiate athletics in existence. The Court also found, similarly to *O'Bannon*, that the way the NCAA's rules practically work does subject them to antitrust law, no matter how it tries to present them. The Court even goes on to state that it is not its job to assess whether the NCAA should be exempt from antitrust laws, but rather the Congress'.[57]

Furthermore, the Court denies the NCAA's claim that *Board of Regents* gave its compensation rules immunity from antitrust litigation pointing out that that wasn't even the issue in *Board of Regents*. Additionally, the Court also states that the market of collegiate sports has vastly changed from what it was in 1984 compared to the 2020s. The Court elaborates that the revenue of college athletics has gone from a few hundred million dollars to well over ten billion in the span of time between these two cases. This increased revenue is also relevant when assessing does the NCAA operate as commercial entity or not, and with this much money changing hands, the commercial aspect is hard to decline.[58]

Even though this case shares a lot of similarities with *O'Bannon*, its significance shouldn't be diminished even when compared to *O'Bannon*. *Alston* was overall more broad of the two and it finally gave the much-needed precedent on the matter of whether or not student-athletes can earn monetary compensation while participating in NCAA organized competitions, and as it stands the answer is yes.[59]

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[55] *Supra* note 50, pp. 21–22.
[56] *Supra* note 50, pp. 35–36.
[57] *Supra* note 50, pp. 15–19.; *Supra* note 39, pp. 21–24.
[58] *Supra* note 50, pp. 19–21.
[59] Erlich 2022, pp. 2.

9 Conclusion

At this point of the thesis it has been established how the Sherman Act is commonly applied in Court and how that application has developed throughout the past century from only using the per se rule to the rise of the rule of reason analysis and even a concrete example on of the first times the quick look rule was applied in the Supreme Court. Moreover, I have taken a look into key cases that can be categorized as landmark cases during the early years of the Sherman Act's application in Court.

Additionally, the thesis covered the key facts of the antitrust litigation brought against the NCAA, that was decades long and spanned across multiple cases. The main focus of the cases was on the way the NCAA argued to justify its actions facing the antitrust scrutiny, and to also find whether there were similarities with these different cases' justifications.

It is now evident that there truly are similarities, notably the concept of maintaining amateurism in collegiate athletics, which the NCAA leaned heavily on. But perhaps the most interesting finding was the "ample latitude" statement in *Board of Regents,* which was treated almost as precedent not only by the NCAA but also the courts for decades. Until in *O'Bannon* when the Court ultimately deemed it as mere dicta, that shouldn't exclude the NCAA's compensation rules from antitrust litigation.

Another interesting question is posed by the future as well. Given that *Alston* is just a recent ruling the whole collegiate sport landscape has changed a lot in the past few years and the change is still ongoing. Only the future will tell however whether one will see some sort of limit on how much the student-athletes are allowed to earn or could the NCAA even get the Congress granted exemption from the Sherman Act applying to it only partially.

Apart from the interesting questions that the specific collegiate athletics market sets, I'll also be intrigued to follow how the application of the Sherman Act in courts will develop in the future. Because even though the methods might feel complete now, one must keep in mind that the Sherman Act itself is 136 years old and its application received two new methods during the first 90 years but not much has happened after that. Not to mention the constantly developing new market environments that create their own unique challenges, like the whole NCAA saga has shown us.