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MY WORLD WITH SPORT

BURTON F. BRODY*

As I emerge from the Erewhon Tigers' dugout, a tip of the mortarboard to Professor Charles Black, whose *My World With Louis Armstrong*, 69 YALE REVIEW 145 (1979) let me clearly see the relationship between one's so-called outside interests and one's professional life.

I find it an interesting irony that the first lesson I learned from sport was a meteorological one. As a restless, bored five-year-old in the spring of 1942, I learned that it does not rain everywhere at the same time, when my older brother told me that I could listen to the Cubs' game in Cincinnati. I can recall my total wonder as I lay on the living room floor in front of that console radio with the big green eye listening to Bert ("It's a beautiful day for a ball-game!") Wilson do a ticker tape reproduction of the game while it poured rain in Chicago. I do not remember who won that game, but I do remember that it was my first inkling that the world was a big, amazing place.

All my very earliest memories of sport involve my father and the Cubs. My father, as a young immigrant, began following the Cubs when they played on Chicago's westside. The first memory I have involving him and the Cubs is being with him at Wrigley Field in the first base side upper deck on a sunny Sunday in 1943. I remember him pointing out that the manager, Jimmie Wilson, served as third base coach so that he could give signals to the players and better control the action on the field. I also recall the very grave discussion we had in 1944 when Charlie Grimm became the Cub manager. My father explained to me that it was probably a good thing because "Jolly" Charlie would supply the leadership the team needed. And of course my father was right; the Cubs won the pennant in 1945. I recall much more vividly the pain and disappointment in my father's eyes when he told me he had failed to get us World Series tickets. He did get us very good seats for the 1947 All Star Game at Wrigley Field; my memory is that the National League won 2-1 on a home run by Johnny Mize. The reality is that the American League won 2-1, but Mize did hit a

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homer. What really stands out in my memory is Ewell Blackwell, the buggy whip sidearmer from Cincinnati, striking out Ted Williams in the first inning.

My earliest heroes were almost exclusively Cubs of that era: Phil Cavaretta, Stan Hack, Johnny Schmitz, Bill Nicholson, and Lou Novikoff. The first souvenir I can recall having was a miniature baseball bat with second baseman Don Johnson's name burned into the barrel. But my special hero and role model was fancy fielding first baseman Eddie Waitkus. I can recall spending hours throwing a rubber ball against an alley wall, attempting to imitate his smooth footwork around the bag as I speared the rebounds. And I remember how proud I was the first time I wore the yellow sweatshirt with the big blue number "3" my mother had sewn on its back. (If I had only realized then what a big market there was for replica jerseys!) Waitkus remained my hero even after he became a Philadelphia Phillie and a folk hero by getting shot at the Edgewater Beach Hotel by an admiring female fan.

A very special hero was not a Cub, but a Bear. Sid Luckman, from Columbia University, the Bear's first great "T" formation quarterback, was a singular hero and role model to every young Jewish boy in Chicago. He, as a professional athlete, was everything our mothers told us we dared not become. As my horizons expanded to include basketball, Max Zaslofsky of the Chicago Stags also became a distinct source of ethnic pride.

Like most of the urban youth of the time, I participated in whatever sport was in season: baseball (mostly 16 inch Windy City softball) in summer, football (tag and tackle) in the fall, and basketball until it was time for spring training (*i.e.*, playing catch in muddy playgrounds and on sidewalks patched with ice). I was never good enough to be a varsity athlete. However, I prefer to think that the high school I attended had a large enough male enrollment that there were always just enough better players to keep me off the squad. I was, however, an active and respected intramural and sandlot player able to compete at the highest levels of this second tier. In my twenties, I began playing tennis and my level of achievement has remained the same; I am a decent club player but not a very good tournament player. Even though I did not achieve the kind of success and recognition all competitors long for, my sports participation has been a great source of joy. The competition and physical activity are things I need.

Much has come from my participation in sports. In addition to the sheer joy of participating, I learned the valuable lessons of

dealing with victory and defeat. I learned teamwork; it is not difficult to sit through a faculty meeting and pick those who have participated in team sports from those who have not. I learned competitiveness, the quality of trying one's best no matter the situation, no matter the score. I learned, and am still learning, the costs of victory. And added to the joy and the lessons learned are the friendships. Friendships forged in competition have a special, enduring quality.

My interest in sports has helped me understand genius of all kinds. I remember as a twelve-year-old helping to introduce a younger friend to basketball on Wednesday, and then realizing on Saturday that he was the best basketball player in camp. He went on to achieve outstanding success in basketball and quick, great success in every sport he attempted. I also remember my amazement the first time I ever saw Marquis Haynes of the Harlem Globetrotters dribble a basketball. It took longer and many more viewings to realize the mastery of welterweight and middleweight champion Sugar Ray Robinson's efficient skill and grace. I, like anyone who has ever tried to hit a baseball, was awestruck watching Ted Williams. By the time I saw Bill Russell play for the University of San Francisco, I knew enough about basketball to know that I was seeing something unique. And a few years later when I saw Elgin Baylor, I knew that basketball would henceforth be played above the rim. Seeing Gale Sayers' grace as he ran with a football added an esthetic dimension to my appreciation of athletes. Trying to learn tennis as an adult let me fully understand the unique gifts of Rod Laver, Bjorn Borg, and John McEnroe. I know now that genius is exceptional talent combined with extraordinary dedication; it changes its world.

Sports are supposed to build character in a special way. As a life-long Cub fan, associating with other true Cub fans, I think I understand commitment better than those who have affiliated themselves with more successful teams. The Cubs are mine no matter what, and it is that shared understanding that makes the Wrigley Field bleachers a special place. I have long maintained that being a Cub fan has more to do with honor than it does with baseball.

I have gained a great deal by observing athletes in difficult situations. No one from a deprived background, or from a good one for that matter, has dealt with victory and defeat with greater courage and equanimity than Floyd Patterson, the heavyweight champion. Everyone my age can only admire the dignity, seren-

ity, and patriotism of Joe Louis who served this country in many ways and better than it served him. I learned lessons in competitiveness and dedication watching DePaul's legendary Ray Meyer coach his outmanned Blue Demons against the nation's best. The Denver Broncos' Floyd Little, with whom I was acquainted, showed me new levels of courage and fortitude when he turned down secure, well-paying jobs offered him when he retired from football to pursue only those opportunities that offered equity participation. He was determined to become an owner because he was resolved to partake fully in the American Dream as only owners can. Keith Bishop, another Bronco, gave a great lesson in dignity and self esteem when he retired at his choosing and on his terms without any public statement of any kind; he just stopped coming to work.

Athletes who compete at the highest level of their sport are gifted and dedicated. The worthiest among them develop discipline and commitment that transcend athletic ability. They know better than most the price of success. On occasion, I have used this understanding in my work by voting to admit to the law school such an athlete whose admissions statistics might not otherwise earn my vote. I have done so confident that the athlete will outperform the admissions numbers. So far, I have not been disappointed.

It became inevitable that such-life long devotion to sport would eventually take a prominent place in my professional life. In the early seventies, as legal education began to break out of tradition-bound curricula, I began to teach a course on sports and the law. The initial area of interest was representation of professional athletes and I developed materials covering contracts, torts, labor law, antitrust, and constitutional questions in professional sports. In 1974, the University of Denver conducted one of the first continuing legal education programs in the representation of athletes. Justice Goldberg, in the midst of his representation of Curt Flood,¹ and Bob Woolf, the pioneer sports lawyer, were among the participants in the program. But around this time an incident occurred that changed my passing interest in amateur athletics to what was to become a consuming one.

A young quarterback at the University of Oklahoma, Kerry Jackson, starred as a freshman. After the season, it was discovered

1. See generally *Flood v. Kuhn*, 407 U.S. 258 (1972) (deciding whether the exemption from antitrust laws should continue for professional baseball argued for petitioner by Arthur J. Goldberg).

that his high school transcript had been altered to permit him entrance to and athletic eligibility at the university. Consistent with the National Collegiate Athletic Association (NCAA) policy, because he had received a season of eligibility to which he had not been entitled, Jackson was declared ineligible for football for the following year. Coaches and administrators responsible were scrutinized and some of them even changed jobs, but at worst their moves were lateral and for some a step up; the head coach moved on to a head coaching position in professional football. As I recall, the high school coach involved was demoted to a custodial job in the school district for one year until he became a film evaluator for a professional team, certainly a career advancement. Though Jackson returned to the university and the football team, his career never fulfilled the promise of his freshman year.

It struck me as exceedingly unjust that everyone touched by a college recruiting violation came through it with minimal damage, except for the athlete. And although I am not naive enough to believe that recruits do not have some idea of the rules, it is clear that the athlete, given the situation and violation, had to have been the least culpable. As a teacher, I was also struck by the fact that no one asked the obvious question. How could a student, so academically deficient as to require an altered high school transcript to gain admission to the university, successfully complete his first year at a major institution of higher education even while devoting so much of his time to the demands of national collegiate football competition?

My sports law course shifted to intercollegiate athletics as administered by the NCAA. Soon I was called upon to help represent my university in a dispute over the recruitment of hockey players. This gave me firsthand experience in dealing with the pious bureaucracy of the NCAA enforcement division. It also introduced me to NCAA concepts of justice. Eventually I became the University's faculty representative to the NCAA and the Western Collegiate Hockey Association and gained an insider's view of intercollegiate athletics. In these roles, I met some of the most dedicated, capable, and productive people it has ever been my privilege to know; but it troubled me that they would, when in "Convention assembled," tolerate and support positions I knew they did not personally hold. It puzzled me that people who were committed to education, academic values and student achievement would, when operating their league or association, vote to extend playing and practice seasons, schedule to accommodate tel-

evision and thus require arduous school year travel of students, and permit coaches to terminate academic aid because of poor athletic performance. It was then that I began to realize that the pursuit of sports prominence clouds judgment and perverts values.

There is a fundamental flaw even in the most successful, cleanest big-time intercollegiate athletic programs. There seems something inherently wrong in using an institution's students to produce revenue for the institution. Even if those revenues are used to support the rest of the athletic program, or recreation for all students, or even in the rare case where the revenues support academic programs, it does not seem appropriate that one group of students should be responsible for funding the education of others. Revenue production to fund other institutional programs cannot justify anything in intercollegiate athletics. It is the university administration's responsibility to fund programs, and using students to create revenues undermines the teacher-student relationship the institution has with its students.

Revenue production deforms intercollegiate athletics in many ways. Academic years and student schedules are altered to maximize television exposure. Winning coaches in revenue producing sports have incomes and sources of income that embarrass their institutions.² Winning coaches and programs distort the public persona of an institution by causing the public to see the university as something other than an educational institution and too often raising questions about institutional integrity.³ Association commitments are ignored and athletic conference loyalties are abandoned to acquire better television packages. Notre Dame abandons the College Football Association, itself an organization of NCAA defectors, for a more lucrative television contract.⁴ Tradition, a major attraction of college sports, is eagerly forsaken for revenue. We will know that college football has wrung the last dollar it can from corporate America when our New Year's morning is spent staring at college football's "1000 FLUSHES PORCELAIN BOWL"! The new billion dollar television contract for the NCAA basketball tournament offers so much revenue that a special commission was created to create a formula for its distribu-

2. See generally M. SPERBER, *COLLEGE SPORTS INC., Part Two: Greed City: College Coaches' Salaries, Perks, Deals & Scams* 149-201 (1990) (describing college coaches' salaries).

3. See *Valvano Survives Wolfpack Probation*, *Sporting News*, Jan. 1, 1990, at 40, col.1 (where the reactions to the NCAA probe of the North Carolina State University basketball program by news writers from around the country are reported).

4. *Notre Dame's TV Deal Upsets CFA Apple Cart*, *Sporting News*, Feb. 19, 1990, at 47, col.1.

tion.⁵ What educational values do you think the formula seeks to implement?

Do major intercollegiate athletics have educational value beyond income production? Are they and the athletes who play them really an integral part of the educational environment? Recently, when a task force at a school that perceives itself a major athletic power recommended that recruited athletes meet the same admissions criteria as other students, the basketball and football coaches threatened to resign.⁶ They asserted that if such a policy were adopted, they could not maintain competitive programs and were not about to subject themselves to a "no-win" situation.⁷ The abiding pursuit of athletic prominence and the revenues prominence generates, disfigure the face of higher education; too often it creates the image that the sole mission of higher education is to produce a national champion in each of the revenue producing sports.

Protecting the integrity of intercollegiate athletic competition and the income it produces are the rules and regulations of the NCAA and their enforcement. These rules treat athletes in much the same way certain orthodox and fundamentalist cultures treat women. As I understand it, these cultures demand that women cover themselves completely when out in public because men are so filled with lust. Similarly, because recruiters are so consumed with lust for quality athletes, NCAA rules place numerous strict limitations on student athletes.⁸ The rule requiring a student-athlete, who transfers from one school to another to attend the new school for one year before playing on the new school's team, has more to do with attracting a competing coach's attention than it does with the student's education.⁹ The rule limiting even non-

5. Rhoden, *\$1 Billion Isn't What It Used to Be*, N.Y. Times, (National Ed.) June 22, 1990, at B14, col.3.

6. *ISU Coaches Threaten to Resign*, Rocky Mountain News, Aug. 25, 1990, at 99, col.1.

7. *Id.*

8. See generally NCAA BYLAW art. 13, NATIONAL COLLEGIATE ATHLETIC ASSOCIATION MANUAL 1991-92, at 79-116 (recruiting); *Id.* art. 14, at 117-155 (eligibility, academic and general requirements); *Id.* art. 15, at 157-78 (financial aid); *Id.* art 16, at 179-195 (awards, benefits and expenses for enrolled student-athletes).

9. NCAA BYLAW art. 14.6, NATIONAL COLLEGIATE ATHLETIC ASSOCIATION MANUAL 1991-92, at 141. Bylaw article 14.6.1 of the National Collegiate Athletic Association Constitution provides in relevant part:

A student who transfers . . . to a member institution from any collegiate institution is required to complete one full academic year of residence before being eligible to compete for the member institution, unless the student satisfies the applicable transfer requirements in this section or receives an exception or waiver as set forth in this section.

Id. There are eight additional pages of definitions and rules explicating the general principle. *Id.*

recruited student-athletes who qualify for academic scholarships beyond the amount of the athletic grant-in-aid to the amount of the athletic scholarship,¹⁰ contradicts educational values and punishes academically gifted athletes. However this rule, like too many of the others, is based on the certain knowledge gained from embarrassing experience that without it other even more shameful abuses would take place.

It seems inherently unjust to seek to control the weaknesses and conduct of one group, coaches, by limiting the freedom and opportunity of a different group, their students. It parodies justice to do so in the educational arena. Higher education does not seem able to sustain its mission and values against the onslaughts of sports prominence. It is also troubling that the same kind of thinking is creeping into scholastic sports as local school budgets tighten. All levels of education espouse the educational value of athletics. The true test, invariably failed, is whether there is a willingness to fund this form of learning in ways that will protect its educational value from its revenue producing potential.

Sacrifice of athletic values to revenue production is more tolerable in professional sports, because the essence of professional athletics is entertainment and profit. Further, the values surrendered are not nearly so meaningful as education. Nonetheless the desire for professional sports prominence can cloud judgment. Boosters seeking baseball expansion franchises for their cities are like adolescent males; no demand by the coy lords of baseball is too great. In the Denver metropolitan area, voters, who oppose any tax increases on philosophical grounds and who defeat school bond issues on a regular basis, voted to increase the sales tax to fund the construction of a baseball stadium.¹¹

The owners of professional sports franchises are like the railroad robber barons of an earlier day. They demand land, buildings, rent concessions, luxury suites, parking income, practice facilities and anything else they can think of to locate their sports business in a particular city. And once located, they have no qualms about threatening relocation to maximize profit. It has

10. NCAA Bylaw art. 15.1, NATIONAL COLLEGIATE ATHLETIC ASSOCIATION MANUAL 1991-92, at 160-61.

11. See Rocky Mountain News, Aug. 16, 1990, at 38, col.1 (reporting that Jefferson County voters passed the baseball stadium sales tax increase by a vote of 51,139 to 38,917); and Hernandez, *Jeffco School Officials Agonize Over Tax-Hike Defeat*, Rocky Mountain News, Nov. 8, 1990, at 23, col.1 (where it is reported, "Jefferson County school officials yesterday struggled to understand the third defeat of a school tax measure since 1987 — while facing yet another round of budget cuts and employee layoffs").

been called the "stadium game." It is lamentable that it is so successfully played.

The allure of television income affects all professional sports. Will there ever be another world series or all-star baseball game played in daylight? Professional football now plays Sunday and Sunday night, Monday night, Thursday night, Saturdays, and on every national and religious holiday during the season in order to meet network and cable needs for sports programming. It strikes me that the NFL's desire for three hour games is as much a desire to preserve television doubleheaders and to keep them from encroaching on the prime time schedule as it is an attempt to protect stadium attendees from extended exposure to the cold. After all, professional football can survive countless drinking and drug scandals, but could it endure another incursion on prime time programming like the "Heidi" incident? Basketball has its TV timeouts and boxing has its alphabet soup of sanctioning bodies so that almost every televised card has at least one "championship" bout.

Concentrated focus on profit makes athletic competition subservient to its ability to produce income. Sportsmanship, fairplay, and teamwork are pushed to the background. Athletes and athletic ability have no worth beyond the ability to generate revenue. Professional sports have more to do with American corporate culture and its desire to be a part of major events than they have to do with anything related to athletics or athleticism. Corporate America wants its services and products associated with sports success. Great athletes are more hucksters than they are talented, skilled competitors. Fans have gained much entertainment from the growth of professional sports, but the point is approaching when the cost of that entertainment may well be sport itself.

Sports have been, and it is to be hoped, will continue to be, a big part of my life. My concern is the ability of sport, sports competition, sports prominence, and the profit it produces to cloud judgment and distort values. It is one thing to sacrifice sports and competition, it is quite another to sacrifice higher education. As a spectator and participant, I am saddened; as a teacher, I am disgusted.

Happily for him, Professor Black's commitment to Mr. Armstrong's genius was both personally and professionally more fulfilling than was mine to sport.

