Introduction

Good morning and thank you, Mr. Chairman, for this opportunity to testify about a highly important subject in private higher education. I currently serve as President and Chancellor of Baylor University in Waco, Texas. I have served as President and CEO of Baylor University since June 2010. I also have the privilege of serving on the Board of Directors for the National Association of Independent Colleges and Universities (NAICU) and President of the Southern University Conference.

The decision by the National Labor Relations Board (NLRB) Region 13 Director to characterize student-athletes as "employees" presents a fundamental paradigm shift with respect to the relationship between universities and their student-athletes. While limited by its terms to private institutions, the decision is bound to affect all Division I athletic programs – public and private alike. A variety of questions and unintended consequences arise out of this ruling with far-reaching legal, regulatory, and financial implications that may significantly affect the future of intercollegiate athletics.

About Baylor

Baylor University is a private Christian university. It is a nationally-ranked, comprehensive research institution, characterized as having "high research activity" by the Carnegie Foundation for the Advancement of Teaching. The university provides a vibrant campus community for 15,616 students (of whom 13,292 are undergraduates) from all 50 states and over 80 foreign countries. Baylor blends interdisciplinary research and educational excellence, buttressed by our dedicated faculty's commitment to teaching, mentoring, and scholarship.

Baylor is a founding member of the Big 12 Conference (established in 1994). It was a founding member of the Southwest Conference throughout the latter's storied 81-year history. Baylor sponsors 19 varsity athletic teams, including men's baseball, basketball, cross country, football, golf, tennis, and track and field; and women's basketball, cross country, equestrian, golf, acrobatics and tumbling, soccer, softball, tennis, track and field, and volleyball.

At Baylor, we are blessed to have student-athletes who seek to succeed in the classroom and on the playing field. Over the last three years, Baylor University has been the most successful Division I program in combined winning percentages of football, men's basketball, and women's basketball. During the current academic year, Baylor student-athletes have participated in the program's first BCS bowl game; reached the Elite Eight in women's basketball and the Sweet Sixteen in men's basketball; secured 7 Big 12 Conference championships; and won the national championship in the men's triple jump. This also marked the third consecutive year a women's basketball player won the prestigious Wade Trophy as national player of the year.

However, we do not count these accomplishments as our student-athletes' greatest successes. As our spring commencement approaches next weekend on Baylor's campus, we celebrate the academic success and graduation of our student-athletes. We gathered together at Baylor's Ferrell Center on Monday evening (May 5) to do exactly that – to honor our student-athletes' performance in the classroom. During the prior academic year, 86% of senior student-athletes at

Baylor received their undergraduate degrees. Many are going on to pursue advanced degrees. This past fall semester, Baylor student-athletes achieved a cumulative GPA of 3.27, an all-time high. During that same period, 347 Baylor student-athletes were named to the Big 12 Commissioner's Honor Roll.

In short, these are remarkable times for Baylor University and its dynamic athletic program. Yet, the reality is that even in these best of times, college athletics pursued at its highest institutional level is not a net profit-generating activity. It does not generate profits for Baylor – nor for most institutions of higher education. Unfolding legal developments threaten to add yet further to the considerable cost of intercollegiate athletics.

Employee Status

As the Committee knows, the NLRB Regional Director's recent decision in the *Northwestern* case has characterized scholarship student-athletes as "employees." This unprecedented ruling, in our view, is misguided.

For decades, the term "student-athlete" has been widely employed to describe the primary relationship of the student to the institution of higher learning – at bottom, an academic relationship which provides a college education during the students' formative years. Student-athletes at Baylor are first and foremost students of the University. We – along with our colleagues in higher education – are convinced that our athletic programs provide important co-curricular contexts for learning, teamwork, and leadership development.

Baylor University is emphatically not a professional sports franchise. Rather, it is a non-profit, educational institution which seeks, above all, to fulfill its educational mission of "educating men and women for worldwide leadership and service by integrating academic excellence and Christian commitment within a caring community." We are wholly dedicated to engaging each and every student in Baylor's educational mission and to ensuring that all our student-athletes benefit fully from a transformational educational experience. Regardless of the student's performance on the playing field or status as a scholarship or non-scholarship student-athlete, we are committed to providing educational opportunities for all of our students at the highest level. To that end, it has long been institutionally important to integrate student-athletes fully into the broader student body.

At Baylor and across the nation, student-athletes benefit from a wide array of services that seek to maximize their potential as students and to prepare student-athletes for their journeys in life. These services and programs contribute significantly to the ultimate academic success of Baylor student-athletes by providing academic advising, degree planning, and career counseling. Many institutions, including Baylor, provide high-quality academic support, such as tutoring services, computer labs, and study lounges. Baylor's goal, first and foremost, is for each student-athlete to reach his or her fullest potential for academic success and to prepare for success in life.

Student-athletes also receive specific financial benefits which help them progress toward degree completion. These traditional benefits include tuition, room, board, fees, books, and other educational expenses. Baylor's purpose in offering such financial assistance is to encourage student-athletes to carry on and complete their academic work. The same can be said when the

institution provides financial support to students in other areas of the university, such as music, theatre, or debate.

The NLRB itself has expressed a view that the legal issue of "employee" status is ultimately a matter of Congressional intent. In this case, however, the Regional Director has mechanically – and erroneously – applied a rigidly wooden test drawn from the common law, notwithstanding the absence of Congressional intent to include college athletics as an "employment venue."

In contrast to the traditional vision of institutional arrangements between a university and student-athletes, the Regional Director's decision holds that athletic grant-in-aid scholarship recipients are not "primarily" students. As indicated by Northwestern University in its petition for review, the Regional Director struggled to distinguish the NLRB's prior holding in *Brown University*, 342 NLRB 483 (2004), to be able to shift the analysis to only the common-law test instead of whether the student-athlete relationship is primarily an economic or academic relationship. The Board's decision in *Brown University* itself demonstrates a presumptive reluctance to "force the student-university relationship into the traditional employee-employer framework" that would, because of the issues discussed below, likely require negotiation of matters that are uniquely student issues.

This conclusion appears to be based largely on a comparison of the amount of time spent between academic effort and athletic effort and the relationship of the activity to "core" academic requirements. Inasmuch as those factors range widely both by student (and his/her individual choice) and by institution, they do not provide sound reasons for a legal or policy distinction between student-athletes and their fellow students.

In particular, a student-focused distinction based on time allocated to sports largely ignores the individual's status as a student as an irreducible condition precedent to the entire relationship between the university and its student-athletes. At the most basic level, but for their student status, student-athletes would not have any opportunity to participate in intercollegiate sports. Not only that, specific limitations are imposed on the amount of time a student-athlete may devote to intercollegiate athletics – 20 hours per week (and contests are counted as three hours maximum). As a full-time student, a student-athlete must carry at least 12 hours of academic credit. Accounting for class time, study time, official study hall and tutoring appointments, student-athletes predictably spend as much or more time as students than as athletes, even during the course of the playing season. Robust voluntary involvement in co-curricular activities could, of course, have academic consequences. However, as long as the student-athlete maintains the requisite standards of academic success (minimum grade point average, minimum course load, and progress toward a degree program), then the institution should not be in the position of dictating the total amount of time devoted by the student to his or her own personal development.

As a related matter, the Regional Director's analysis about what constitutes a "core" academic program is likewise problematic. Many institutions, public and private, take the institutional mission considerably beyond the classroom and into development of the entire person. Mission trips, service programs, student interest groups, physical and spiritual development are all part of the broader academic mission. Co-curricular activities have historically served as a pivotal part of academic life and student development; a myopic focus solely on the classroom component fails to reflect the wide ambit of higher education. These co-curricular activities, when coupled

with traditional classroom or laboratory experiences, provide virtually countless avenues for students' personal and professional growth as they prepare for lives beyond graduation. The attempt to separate out a "core" purpose from student-related development will create additional fact questions about what constitutes the "core" of any academic program. For example, will debate students who are obliged not only to practice, but to conduct research, likewise be considered employees because performance is not part of a narrowly defined educational experience?

What is more, even if the impact of the Regional Director's decision is limited to the National Labor Relations Act, the decision (if upheld) will raise significant questions for years to come. The NLRB regulatory enforcement process is itself cumbersome. It includes an administrative processing of complaints of alleged non-compliance to the regional agency office; administrative hearings; decisions by regional directors; review by the full National Labor Relations Board; and ultimately judicial review by the federal appellate courts and, at the final stage of appellate review, the U.S. Supreme Court. Collegiate athletic conferences stretch across several states and regions; therefore, regional decisions could create enormous complexity for ensuring equality across the athletic conferences.

Simply put, the Regional Director's decision will result in uncertainty and instability across the higher education landscape. Here are a few of the myriad issues we foresee:

Scope of the Decision: The decision apparently applies only to private institutions of higher education. This dichotomy creates at least two potential disparities in the impact on various colleges and universities. For example, the decision rightly notes that Northwestern is a non-sectarian university. The NLRB has been struggling for years with religious-liberty limitations on its jurisdiction. We should reasonably expect some private, religiously-affiliated universities to challenge the Board's authority to regulate institutional missions expressly grounded in a religious worldview.

The second – and more structurally significant – disparity is the decision's implicit exclusion of state institutions. In intercollegiate athletics, private universities compete with state institutions. This will likely create additional discrepancies among the nation's universities, although there is likely some foreseeable impact on state institutions and their student-athletes (which will be addressed below) if student-athletes are "employees" who may (or may not) organize under the laws of fifty States. It is likely that the pro-competitive purposes of intercollegiate athletics will be substantially undermined by the potential for differing degrees of potential unionization within the large pool of universities that field intercollegiate teams.

Scope of Bargaining: As to the National Labor Relations Act itself, the Regional Director's decision will likely leave in its wake years of litigation with respect to the appropriate scope of bargaining as to "wages, hours, and other terms and conditions of employment." In view of the threshold requirement of student status, that status would seem to constitute a bedrock condition of employment subject to mandatory bargaining.

For example, a student-athlete must maintain the proper grade point average and make satisfactory progress toward receiving an academic degree. Because these requirements could well be considered "conditions of employment" under the Regional Director's decision, those requirements would likely fall within the scope of mandatory bargaining. If such fundamental

academic issues do indeed fit within mandatory bargaining's scope, then academic hours and hours of athletics could all become compensable and thus lead to bargaining about (or statutory entitlement to) employment benefits impacting the academic setting. If some student-athletes could unionize and bargain about academic issues that constitute "conditions of employment," it will predictably create division and friction within the student body, inasmuch as the university (by definition) will be required to treat some students differently than others.

As a further example, if maintenance of "student" status is a condition of employment as a student-athlete, then all rules relating to student status may become negotiable (with respect to student-athletes). For example, while student conduct administration has historically been viewed rightly as an internal process, it is foreseeable that issues of misconduct, including academic and honor code violations, may become negotiable for some (but not the vast majority of) students. In short, in light of the Regional Director's decision, it appears that institutions would be required to treat student-athletes differently as students, not just as "employees."

It would also appear that such basic issues as the length of practice sessions and the season schedule itself may likewise fall within the scope of mandatory bargaining. Even more troubling, the ultimate tools of the employee-employer bargaining relationship are the strike and lockout. Not only that, schedules may be disrupted because of impasses reached during the course of the bargaining process. Additionally, the most traditional academic activities of a student-athlete may be threatened. For example, would student-athletes on strike sit out of classes and avoid other university-related functions? Would they be protected in doing so?

Collective bargaining could also extend beyond "conditions of employment" during employment and reach into post-eligibility – or "post-employment" – benefits that relate to welfare benefit plans. These types of issues further delineate a special class of students who have "benefits" that exceed those available to the general student population.

Appropriateness of the Bargaining Unit: Historically, the NLRB has applied a "community of interest" standard to determine the appropriateness of a bargaining unit. Among other things, this means that an appropriate unit neither embraces those with conflicting interests nor omits those with similar economic interests.

Putting aside the common-law analysis of "control," the core economic interests relate to student scholarships. For the vast majority of institutions, there is no overall economic profitability in which to have an interest. In addition, because only one or two percent of athletes in some sports, notably football and men's basketball, become professionals, little common interest exists in the economics of use of images. In fact, that limited economic interest on the part of a handful of student-athletes arguably creates a conflict of interest within the purported unit. This overall lack of common interest – beyond scholarships as students – undermines not only the appropriateness of any bargaining unit, but triggers the very basic question about being classified as "employees" with an economic interest in the undertaking of intercollegiate athletics.

Several other issues arise with respect to the appropriateness of the bargaining unit. Under the Regional Director's decision, members of a team who have no grants-in-aid could be subjected to the full panoply of rules negotiated by the exclusive bargaining representative, even though no duty of "fair representation" would exist as to those adversely affected by the university-union negotiations. Not all sports provide full grants-in-aid; football happens to do so. However, the

logic of the Regional Director's decision (that scholarship funds are compensation for services) would extend to all players with partial grants-in-aid. This, in turn, spawns fundamental questions about what is an appropriate bargaining unit within an institution with many students competing in numerous (non-football) sports with full or partial grants-in-aid.

A separate but related question is whether some topics are non-negotiable at the institutional level because of the lack of institutional discretion in setting the competitive rules. Universities do not act unilaterally in many matters related to intercollegiate athletics. They are members of the NCAA and of conferences. This possibility also creates a situation where it may well be in the institution's best interest to eliminate all partial grants-in-aid in order to avoid legal gray areas. To state the obvious, a loss of partial grants-in-aid would harm literally tens of thousands of student-athletes nationwide, virtually all of whom are participating in sports (with no meaningful professional athletic prospects) but who are relying on partial grants-in-aid to help fund their college education.

Other Labor Organizations: It is not uncommon for universities to create student-athlete advisory committees to provide a voice for student-athletes with respect to the student-athlete experience. Baylor has such a committee, which does important work. Under the NLRA, it is possible that such communication channels will be prohibited as an asserted labor organization (other than the certified collective bargaining representative) that "deals with" the institution as "employer."

Unintended Consequences

If a determination is ultimately reached that student-athletes are "employees" and that a grant-in-aid constitutes "wages" as compensation for services, myriad related legal and regulatory issues will immediately arise. I will identify a few, although the following is by no means exhaustive. As one would expect, as with any employee relationship, potential employment issues include disabilities, workers compensation, unemployment compensation, statutory leave entitlements, wrongful discharge, and non-compete agreements.

Residual Impact if No Union: If student-athletes are deemed "employees," they would still – even if there was no union – be "employees." As a result, significant collateral questions arise simply by virtue of the employee-status determination. In short, numerous employee-related issues will arise even in the absence of a union. So too, it is possible that a student-athlete could constitute an "employee" for some purposes but not for others.

Antitrust: Payment of wages is directly contrary to a guiding principle of the collegiate model to preserve the competitive model of intercollegiate athletics. What are the antitrust implications when pro-competitive justifications are eliminated from the traditional business model? If antitrust principles and collective bargaining eliminate pro-competitive limitations on payments and benefits, there may literally be no "competitive" intercollegiate sports.

Impact on Student-Athletes: If payment is considered "wages" (even in the absence of a union), then it would logically follow that student-athletes and the universities (even public institutions) will be required to treat such payments as wages, subject to withholding for federal income taxation, Social Security, and Medicare. Equally worrisome, institutional contributions may be required in addition to withholding obligations.

For example, a Baylor football player receiving a football scholarship would possibly be required to pay taxes on the full scholarship (tuition, fees, room, board and books). The student-athlete may also be subject to taxation on "soft" benefits, such as academic counseling and medical services that are not as fully available to other students. That same student-athlete may likewise be obligated to pay taxes on the gift package at a bowl game. This situation would be further complicated by two additional factors – state taxes and school discount rates. Student-athletes at Northwestern, for example, would face the specter of paying state taxes on the value of their scholarship while student-athletes in Texas would not (since no state income tax exists here in Texas). Thus, the value of a scholarship – and the tax consequences of that scholarship – would become a factor to be weighed in deciding where (and, in particular, what State) to attend college.

As for discounted tuition, student-athletes would presumably be taxed on the full sticker price of tuition, room and board even though the average payment for students (at least in private higher education) is actually discounted well below the listed "sticker" price. Since college athletics has often served as a vital facilitator for low-income students who availed themselves of a scholarship (and thus perhaps being the first in their family to attend college), it would be particularly problematic if one of the long-term outcomes of the Regional Director's decision was a tax regime rendering it more difficult for low-income families to accept athletic scholarships.

Title IX: Title IX prohibits sex discrimination in college athletics and thus facilitates enhanced educational opportunities for women student-athletes. Under current principles of Title IX, the amount of financial aid awards for student-athletes must be in the same proportion as the intercollegiate sports' participation rate of male and females. The impact of the Regional Director's decision is not clear in this respect, but if left undisturbed, the ruling runs the risk of mandating (under Title IX) substantial increases in financial aid awards in non-revenue generating sports. Providing "employees" who play football a package benefits not afforded to other student-athletes – and specifically to women – raises serious questions under Title IX. At a minimum, the NLRB-enforced disparity in treatment would predictably result in widespread litigation and, at a minimum, adverse reaction from various advocacy groups. Other unintended consequences are possible, especially by limiting intercollegiate opportunities for men and women in an effort to maintain overall compliance.

At the other end of the spectrum, compensated "employees" arguably should not even count as "student" participants for purposes of Title IX. This odd consequence would result, ironically, in males becoming significantly underrepresented in the mix of student-athletes under what remains of Title IX, which could lead to (unanticipated) curtailed opportunities for female athletes.

Employment Non-discrimination Principles: It seems likely that "employee" status will also implicate principles of employment non-discrimination with respect to race, color, national origin, sex, and other protected characteristics under Title VII of the 1964 Civil Rights Act, as well as other federal statutes. Also implicated would be Executive Order 11246 with respect to affirmative action. It seems unlikely that the various requirements to maintain applicant flow data and to articulate legitimate, non-discriminatory reasons for a particular decision will easily fit within in a world of intercollegiate athletics – and coaches' efforts to recruit talent needed to create a highly competitive team.

Fair Labor Standards Act: Will student-athletes be deemed "employees" for purposes of the Fair Labor Standards Act? If so, will student-athletes be exempt or non-exempt, subject to recordkeeping, minimum wage requirements, and overtime? Also, will non-scholarship students on a team be considered "volunteers" excluded from coverage? If being a student is a bedrock condition of "employment," then it may also follow that time spent in class and in studying will require compensation, as would any and all voluntary athletic efforts an employer "suffers or permits" under the FLSA.

Occupational Safety and Health: Will the Occupational Health and Safety Administration assert jurisdiction? Unfortunately, physical injuries are an inherent part of intercollegiate athletics (and indeed in any sport). Regardless of the sport, Baylor is fully committed to the long-term health and safety of every student-athlete. Nonetheless, OSHA's potential assertion of authority to regulate rules of contact in certain sports is entirely conceivable.

Immigration Law: As a matter of national policy, immigration principles would seem to contradict the Regional Director's decision. International student-athletes who enter the United States on a student visa face significant limitations on the amount and location of employment. If the student-athlete relationship ceases to be grounded in student status, will international student-athletes – classified as "employees" – be required to secure an employment-based visa to enter the country which also permits full-time status as a student?

Worker Adjustment and Retraining Notification Act: Triggered by instances of layoffs, this federal statute could apply in the event a university determines to eliminate one or more sports.

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These important legal issues raise the specter of a sea change in the fundamental relationship between a university and its student-athletes. A university's primary obligation to all students, including student-athletes, is to help equip these young men and women with the skills needed to succeed in the marketplace of life. That journey begins with a commitment by the student-athlete to study and to graduate. There are different obligations and responsibilities an employer owes to an employee, and for his part, the employee has clear obligations and responsibilities to his/her employer. The conflict between obligations to employees, on the one hand, and obligations owed to students, on the other, will ultimately create tension within the core mission of the university.

Financial Impact on Institutions and Intercollegiate Athletics

Aside from myriad legal and regulatory issues suggested above, the potential financial impact of the Regional Director's decision for higher education institutions – and their athletic departments – is deeply worrisome. At a minimum, the financial impact of college-athlete unionization and collective bargaining would significantly impact any institution's operating budget.

Baylor University does not profit – and has never profited – from its athletic department's admirable success. Baylor's two revenue-generating sports – football and men's basketball – subsidize the remaining 17 non-revenue-generating sports and other important student support programs. In fact, only 23 Division I institutions generated a profit from their athletics programs during the last fiscal year. To allow unionization (and thus further increase costs) will

inexorably lead to unfortunate outcomes, including programmatic cutbacks or escalating tuition – at a time when many institutions of higher learning are struggling to keep costs low and thereby better maintain college affordability.

Other than the 23 enviably-positioned athletic programs, institutions are heavily reliant on two revenue streams to make up the deficit. First, contributions from alumni and university supporters; second, student-athletic fees charged to the general student population. As to the first, it is reasonable to believe that donors' gifts to collegiate athletics may decline as student-athletes are legally redefined as university "employees" who earn taxable income. Any significant decline in donor support has the unfortunate potential to trigger a downward spiral as to an athletic department's ability to support a full range of teams and athletic activities. As to the second, while student fees have generally been readily accepted by the student body, this funding source could well become a source of division (or at least friction) if students perceive they are paying to provide athletes with enhanced (employment-based) benefits not available to the general student body.

The Regional Director's decision could thus add a significant number of "employees" to the employment roles at any university. For Baylor, this decision could mean 402 additional employees (scholarship student-athletes) to the staff of the university, representing a significant staff increase (14.7 percent). This sudden growth will undoubtedly add to the administrative costs at a time when universities are being severely criticized for the rising costs of tuition and asserted administrative bloat.

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Closing Statement

By virtue of the Regional Director's decision, a host of complex legal questions arise for private universities. These issues will likely take years to sort out if the Regional Director's decision is allowed to stand. A number of unintended consequences will likewise arise. Collegiate athletics does not provide a profit center for the vast majority of institutions of higher education. This decision has the potential to impact significantly the financial and academic support that can be granted to student-athletes.

As the president of a private university, I can assure the Committee that student-athletes are first and foremost students of our university. Our primary goal with students-athletes is to provide them with an empowering educational experience (through curricular and co-curricular activities) to prepare them for their lives after a collegiate playing career. The Regional Director's decision presents a substantial paradigm shift on the relationship between a university and its student-athletes, which threatens the entire model of intercollegiate athletics. We hope and trust that the decision will not stand.

Thank you for the opportunity to address the Committee. I warmly welcome your questions.

Appendix A

Biography of President & Chancellor, Ken Starr

A distinguished academician, lawyer, public servant and sixth-generation Texan, Judge Ken Starr serves as the chief executive officer of Baylor University, holding the titles of President and Chancellor. On June 1, 2010, Judge Starr began his service as the 14th president to serve Baylor University and was named to the position of President and Chancellor on November 11, 2013. In providing the additional title, he is charged with the task of increasing Baylor's influence in the nation and around the world.

Judge Starr also serves on the faculty of Baylor Law School as The Louise L. Morrison Chair of Constitutional Law and teaches a seminar on current Constitutional issues. Judge Starr is a member of the Board of Directors for the National Association of Independent Colleges and Universities (NAICU) and currently serves as President of the Southern University Conference. In addition, he serves as a member of the Board of Trustees for the Baylor College of Medicine and the Board of Trustees for Baylor Scott & White Health.

In September 2010, Judge Starr established his first fundraising priority: The President's Scholarship Initiative, a three-year challenge to raise $100 million for student scholarships which was completed five months ahead of its goal. He also is leading Baylor into the future under Pro Futuris, a new strategic vision developed with the collective wisdom of the extended Baylor family.

Judge Starr has argued 36 cases before the U.S. Supreme Court, including 25 cases during his service as Solicitor General of the United States from 1989-93. He also served as United States Circuit Judge for the District of Columbia Circuit from 1983 to 1989, as law clerk to Chief Justice Warren E. Burger from 1975 to 1977 and as law clerk to Fifth Circuit Judge David W. Dyer from 1973 to 1974. Starr was appointed to serve as Independent Counsel for five investigations, including Whitewater, from 1994 to 1999.

Prior to coming to Baylor, Judge Starr served for six years as The Duane and Kelly Roberts Dean and Professor of Law at Pepperdine, where he taught current constitutional issues and civil procedure. He has also been of counsel to the law firm of Kirkland & Ellis LLP, where he was a partner from 1993 to 2004, specializing in appellate work, antitrust, federal courts, federal jurisdiction and constitutional law. Judge Starr previously taught constitutional law as an adjunct professor at New York University School of Law and was a distinguished visiting professor at George Mason University School of Law and Chapman Law School. He is admitted to practice in California, the District of Columbia, Virginia and the U.S. Supreme Court.

Judge Starr is the author of more than 25 publications, and his book, "First Among Equals: The Supreme Court in American Life," published in 2002, was praised by U.S. Circuit Judge David B. Sentelle as "eminently readable and informative…not just the best treatment to-date of the Court after (Chief Justice Earl) Warren, it is likely to have that distinction for a long, long time."