PAY FOR PLAY: THE ROLE OF THE COURTS IN NCAA REGULATION OF AMATEURISM IN INTERCOLLEGIATE ATHLETICS

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ABSTRACT

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The National Collegiate Athletic Association and the manner in which it governs intercollegiate athletics has come under intense scrutiny in its recent history. The area within the NCAA's policy's and legislation that has come under fire the most is its regulation on student-athlete amateurism. Within the past few decades the NCAA has faced an ever growing demand for it to move away from the amateurism model of college athletics, and embrace a model of pay for play. During this time the NCAA has faced numerous lawsuits that challenge the manner in which it operates. For its part, the NCAA has responded to the lawsuits, win or lose, with legislative changes that have satisfied their critics to a degree, keeping them content until the next legal confrontation arises. The NCAA has shown reluctance in scrapping its amateurism model and instead has attempted to fend off the argument of pay for play by adopting new policies as tools of mitigation for the debate.

This study is an historical analysis of the court battles the NCAA has faced, and the strategic manner in which the NCAA has adopted new policies to quell the argument of pay for play in college athletics. This analysis takes a look at the cases and examines the mechanisms the NCAA uses to respond to and appease their critics, the institutions it represents, and the student-athletes. A major focus of this study is to examine how the NCAA has been able to make slight adaptions to their policies, along with introducing new programs that border on the concept of amateurism. This study shows that the policy changes made by the NCAA have been reactions to the legal conflicts they have faced and have pushed the limits of pay for play allowing the

NCAA to still proclaim that student-athlete amateurism is a sacrosanct concept within intercollegiate athletics.

I dedicate this dissertation to my wife Summer and my children Imogen, Lysander, and Portia. The unwavering love, support, and encouragement from Summer has been crucial in me achieving my PhD. And for my children to see the importance of education and that they can accomplish anything.

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Studying and ultimately completing a PhD is more than just writing a dissertation. It is an educational journey that has its challenges. It is even more of a demanding process when you are attempting to complete this journey while being a full time professional and helping raise a family. During this journey I had many people that gave support in ways that I will forever be grateful. Dr. Mike Zeig and Dr. Stefan Fletcher came into the program with me and I cannot give them enough credit for helping me navigate my way through the program and encouraging me to continue when I began to waver. I would also like to acknowledge Rick Shipman, my director

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Background to Study

Pay for play is a phrase used by many media outlets to describe a system of college athletics where the student-athletes at Division I colleges and universities can be paid for their participation in their college sport. The underlying theme and major argument for a pay for play structure is that big time college athletics generates millions of dollars for their respective institutions; however, the athletes who are playing the sport see little to no compensation for their participation. College and university athletic administrators contend that the full scholarship offered to these athletes is enough compensation for their participation and that some athletes over-value the contribution they make to the revenue generated by their particular sport. The issue of pay for play has been a great concern to the current and ex-athletes involved, the media outlets who feel the athletes have been and are being exploited, and the college and university administrators who feel that the student-athletes should be treated as amateurs and not be paid for their play.

This study is an historical analysis of the pay for play phenomenon and the legal battles that have emerged from the debate over the National Collegiate Athletic Association's (NCAA) amateurism rule. This study will include: (a) analysis of the origins of pay for play and how it has evolved, (b) the legal battles that have taken place with the NCAA, including several key rulings by the NCAA on member institutions, and (c) how the legal battles have affected the rule of amateurism and the manner in which the NCAA handles infractions and violations of the bylaws.

My motivation for conducting this research is based on my current role as a professional within a major research university where I work with athletes and college athletics, requiring me

to interpret NCAA policy as it pertains to intercollegiate athletic finances. I am also an avid fan of college athletics so my interest in this subject matter dates back to watching college athletics as a child. The idea of a system of pay for play as a structure for college athletics has interested me since I began working with college athletics and especially in recent years as the topic has gained momentum.

Judge Wilkin (2014) wrote in her decision on the *O'Bannon v. NCAA* case that "College sports generate a tremendous amount of interest, as well as revenue and controversy. Interested parties have strong and conflicting opinions about the best policies to apply in regulating these sports" (p. 98). She went on to write that other criticisms against the NCAA and its policies have been raised and that the inequities in college athletics should be challenged by reforms within the NCAA, its member institutions, or by Congress (2014). One could argue that Judge Wilkin was referring to the NCAA rule on amateurism for student-athletes and the pressure it (NCAA) has felt regarding pay for play in college athletics.

The NCAA is a complex organization that relies on its member institutions to vote on proposals for policy making and deciding new, or updating current, legislation. The NCAA is represented by over 1100 institutions, more than 100 conferences, tens of thousands of athletic administrators spread amongst its membership institutions, and almost 500,000 student-athletes. Each division within the NCAA governs itself on matters that concern their membership, which are the institutions of that division. Members of each division vote on policy matters and legislative affairs that will affect their institutions. Any change in legislation requires participation from each division. NCAA committees comprised of members from the institutions propose legislative changes to their respective divisions which are then debated and ultimately voted on by the members of that division through their legislative process. However, there are

times when issues arise that affect the entire NCAA membership population. When an issue presents itself that will affect the entire NCAA memberships, there is a group of committees representing all three divisions of the NCAA structure that make recommendations to the membership so each division is treated equally (NCAA.org).

Since the inception of the NCAA and its amateurism rule, the organization has been continually challenged through legal action and media pressure. The concept of pay for play for college athletes has been at the forefront of these challenges, yet the amateurism rule is still in place forbidding it. Kay Hawes (2000) writes that the amateurism rule has been full of issues that have come and gone since its inception in the early 1950s and that the debate over the application of the rules is far from over. Hawes (2000) goes on to explain that the debate in recent years has changed from the NCAA attempting to maintain purity of the athletes to questioning whether the athletes are receiving their fair share considering the revenue that is generated through athletics by the institutions. Courts have routinely confirmed restrictions to athletes that bolster the ideology of amateurism, yet the NCAA continues to be challenged in court based on its rules regarding amateurs (Lazaroff, 2007). In the past few years, cases such as the Ed O'Bannon antitrust lawsuit against the NCAA and the Northwestern University football team suing for the ability to unionize for workplace rights have added fuel to a fire that has been smoldering within the NCAA for some time. As these issues continue to grow, and because of the implications they have for student-athletes, institutions, and the NCAA, it is important for us to understand why the NCAA has rules such as amateurism in place and how potential changes to those rules might impact the future of collegiate athletics, student-athletes, and the institutions at which they participate in sports.

James L. Shulman and William G. Bowen in *The Game of Life: College Sports and Educational Values* (2001), stress that this is an important topic to study because intercollegiate athletics is one way higher education institutions gain visibility, utilizing this medium as a manner to communicate with parents, students, alumni and society. Framing this problem are the large amounts of revenue that college athletic departments bring to their institutions based on the performance of their student-athletes; the student-athletes themselves, who gain little to no monetary reward; the media outcry for college athletics to enact a pay for play system in college athletics; and the legal issues that have plagued the NCAA since its inception. In this study I will examine how pay for play has influenced college athletics, particularly how the legal battles have altered the policies of the NCAA. As I will explain, this issue is important to study because of the impact college athletics has on institutions of higher education.

This background examination will review both sides of the debate of a college athletics pay for play system by (a) providing evidence and opinions from many who feel college athletes deserve monetary payment for athletic performance; (b) providing the counter argument of those, including the NCAA, that wish to uphold the rule of amateurism; and (c) by analyzing the legal battles and the court cases with an underlying theme of the battle between pay for play and amateurism that have become commonplace for the NCAA. A theme that will be noticeable with this research is the manner by which the lawsuits have been filed by the plaintiffs against the NCAA. That would be the application of the Sherman Antitrust Act. Many of the court cases the NCAA has faced have been based on antitrust allegations, and the plaintiff's usage of the Sherman Antitrust Act has been an effective tool in bringing charges against the NCAA. Adopted in 1890 the Sherman Antitrust Act was originally enacted to stop businesses that were operating with monopolistic tendencies and to prohibit trusts. In recent decades institutions have

been adept at applying the Sherman Antitrust Act in their lawsuits against the NCAA due to the organizations operating procedure and what the institutions refer to as their cartel-like behavior. As I present the following cases the theme of the Sherman Antitrust act will be evident.

Most of the literature in this review is from the mainstream media reports/accounts. The basis for this debate and its resulting arguments has been circulated through the media for years, with the media being the driver of the debate, and with the NCAA and many within the institutions who work with college athletics not taking part. However, the debate has been gaining momentum in recent years and is gaining recognition by even the most high-ranking officials in the NCAA, postsecondary institutions across the United States, and the athletic conferences of which they are members.

Research Questions

Since the NCAA established the amateurism rule for college athletes in the 1950s, the rule has been challenged by member institutions in many forms, including the legal cases brought against the NCAA and institutions that test its limits. During these cases the NCAA has both staunchly defended its rule in the courts and levied heavy-handed penalties on the institutions that violate its rules. This is evidenced as Branch (2014) points to the colleges that have been able to win many liability cases utilizing the "student-athlete" defense. As the college sports culture has grown and media reports have fueled fan interest, more and more scrutiny has been focused on the NCAA and the way it handles its member institutions and their student-athletes. In this context, this study will examine the following research questions to determine how the NCAA and its amateurism rule have been affected:

1) How has the NCAA evolved during a time of persistent legal encounters due to the treatment of student-athletes?

2) How have the conditions in college athletics participation changed for student-athletes based on NCAA policy?
3) How does the debate about pay for play continue to raise questions about the cultural significance of intercollegiate athletics?

Significance of this Study

This issue is a vital and important topic to study within postsecondary education because college athletics play an important role within institutions of higher education, and because athletics have become a significant source of income. As Jordan Bass, Claire C. Schaeperkoetter, and Kyle S. Bunds (2015) point out, "Intercollegiate athletics, and the current NCAA governance model, is at a crossroads likely not seen in the long and elaborate history of the organization" (p. 88), which is why this topic is important and timely to study within the realm of postsecondary education. People who advocate for pay for play have argued for many years that the institutions for which a college athlete competes have exploited the athletes for the revenue they generate. On the other side of the argument, the opponents of pay for play specifically highlight the athletic scholarships that are given to college athletes to compensate them for their play (Haden, 2001).

I am presenting an historical analysis of pay for play vs. amateurism through a legal lens because I feel it provides the strongest framework for defining the problem. I initially planned to conduct a qualitative research study based on interviews of key stakeholders, but ultimately felt that access to essential and influential subjects would be limited. I also decided upon this avenue of research because I felt that even if I was able to interview important key stakeholders surrounding the pay for play vs. amateurism debate, I wouldn't get enough information to achieve recognition for the issue as an important topic within higher education.

Key Events in the History of the NCAA

The following chronological list details key events within college athletics and the modern NCAA, showing interaction between the NCAA, athletic programs of institutions of higher education, and the United States court system. These events are important to mention because they include violations by college athletic departments and the pattern of enforcement by the NCAA of its amateurism rule, which has contributed to the argument of pay for play (Smith, 2011).

In 1890, The Sherman Anti-Trust Act is enacted into law. The Sherman Antitrust Act prohibited monopolies forming within American industry. It would later be cited on several occasions in college athletics reform (Smith, 2011).

In 1952, the NCAA makes the first application of its new rules by levying the "Death Penalty" on the University of Kentucky basketball program for paying its players and utilizing ineligible players. The Death Penalty is the harshest form of punishment handed out by the NCAA. It can result in the loss of a sports season. The NCAA asks other institutional members to boycott playing Kentucky for a year and also bans Kentucky from the season-ending basketball tournament (Smith, 2011). The Southeastern Conference, along with the NCAA which was in its infancy at that point, decides to test their policing powers and eliminates Kentucky from competition for an entire season (Byers and Hammer, 1997).

In 1975, the seven major conferences and other independent institutions meet to discuss reorganizing the NCAA to assist the needs of major college football programs. In 1976, the College Football Association is formed to discuss reform for college football, but it is mostly concerned with promoting the college sport and increasing revenue for college football through television contracts (Smith, 2011).

In 1981, The Center for Athletes Rights and Education (CARE) adopts a bill of rights for college athletics. It determines that athletes can form unions to bargain for collective agreements (Smith, 2011).

In 1987, the NCAA levies the Death Penalty for a second time. This time, Southern Methodist University (SMU) football program is barred from playing for a year after an investigation reveals that the university was making cash payments to a number of players, which includes recruiting violations. Initially SMU is banned from post season bowl games for two seasons and loses 45 scholarships for both seasons as well, but when the NCAA investigation reveals that SMU has continued to pay its players after receiving the original penalty, the NCAA levies the death penalty (Dodds, 2015). This is an important ruling in the modern era of the NCAA because the decision to give SMU the death penalty was met with criticism. The mainstream media subsequently began to write about a pay for play model in college athletics based on the sports revenue that had been increasing over the years (Smith, 2011).

In 1989, The Knight Foundation creates a commission on college athletics to promote reform. It is led by university ex-presidents and is tasked with determining the best way to reform the institutional structure of college athletics (Smith, 2011).

In 1999, the NCAA moves its headquarters to Indianapolis, Indiana, and creates the "home" of amateur sports. It is important to note that a highlight of the new office in Indiana is continuing the "amateur" model of college athletics (Smith, 2011).

In 1999, The Drake Group Conference is formed to eradicate corruption in college athletics. Jon Ericson, the former provost of Drake University, organizes the group and creates the National Association for College Athletic Reform (Smith, 2011).

In 1999, The NCAA agrees to an 11-year, $6 billion contract with CBS television for coverage of the college basketball championship. Basketball reform thus becomes more difficult because the tournament contract generates nearly all of the funding of the NCAA. It again sparks a larger debate about the revenue generated by college athletics and pay for play for college athletes (Smith, 2011).

In 2003, NCAA President Myles Brand cites two major areas of concern: the low graduation rates in football and men's basketball, and how much college athletics has risen in cost. He specifically cites these two sports because they are the largest revenue streams for most institutions' athletic departments. He is concerned with the public outcry for adopting a professional model in college athletics where the athletes should be paid for their participation (Smith, 2011).

In 2003, the NCAA levies heavy sanctions on the University of Michigan basketball program after an investigation reveals major monetary violations from the 1990s. It is determined that a booster for the university had been supplying some of the players with regular cash payments throughout their time at the school. Aside from the removal of championship banners and vacated seasons (removing those seasons from the record books), the institution is also ordered to disassociate from the players for specific time periods during which the violations occurred. Once again, media sources claim that the student-athletes were only using the money to get by and that they should have been paid for the amount of revenue they brought to the institution (M.GoBlue.com, 2013).

In 2005, NCAA president Myles Brand reemphasizes the amateurism model of college athletics and reinforces that the student-first model of college athletics is the proper form for

participation. He reaffirms that this model is not based on financial considerations but is in response to more media scrutiny on the revenue created through college athletics (Smith, 2011).

In 2006, the *White v. NCAA* antitrust suit is filed by former college athletes, challenging the financial limitations set on athletic scholarships. The argument made in *White* is based on the fact that the amount of athletic scholarships is set below an institution's cost of attendance. The judge in the case sides with the ex-athletes in 2008, prompting the NCAA to create a student-athlete fund of $10 million (Smith, 2011).

In 2010, a lawsuit is filed charging the NCAA with violating the Sherman Antitrust Act of 1890. Former UCLA basketball player Ed O'Bannon originally files the suit, and it becomes known as the *O'Bannon v. NCAA* case. The suit alleges that video games producers illegally used college athletes' likenesses in their games without consent, and that college athletes should be compensated as such (Smith, 2011).

In 2011, a report is published by the National College Players Association claiming that the college athletic scholarship model is flawed and that many college athletes are living at or below the poverty level. The NCAA takes the report seriously and creates the Miscellaneous Expense Allowance for athletes that would cover up to $2,000 above the full scholarship amount. Shortly thereafter, a large number of schools that cannot afford to make the payments sign-on to override the legislation, stating it is a recruiting tool; the NCAA suspends the legislation indefinitely (Huma and Staurowsky, 2011).

In 2014, Electronic Arts (EA) and The Collegiate Licensing Company, which were both co-defendants with the NCAA in the *O'Bannon* suit, depart from the case and reach a $40 million settlement that would pay as much $4,000 to as many as 100,000 current and former athletes who had their likenesses copied in the EA video games since 2003. In August of 2014,

the judge rules against the NCAA, stating that it violated antitrust laws in the *O'Bannon* case. The judgment is a monumental decision because many in the media feel that the ruling will open the door to a more professional model of college athletics, in which the athletes can be paid for their performance (CBSSports.com, 2014). However, in 2015, a three-judge panel of the U.S. Court of Appeals for the Ninth Circuit rejects the ruling that the NCAA must pay current and former players for the use of their likenesses. The court went on to state that while the NCAA violated the antitrust rules, the dollar amount in the original ruling was arbitrary and violated the NCAA's amateurism model (Stripling, 2015).

Chapter Two: Brief Literature Review and Research Method

Literature Review

The NCAA. The idea of pay for play has been around since the beginning of college athletics. Intercollegiate athletics was originally designed to allow talented students the ability to engage in an extracurricular activity while they earned their academic degree that would lead them into a profession (Mitten, 2000). The first college athletic competition was a rowing regatta in 1852 between Harvard and Yale Universities, in which Harvard employed a coxswain who was not enrolled at the institution (Smith, 2011). Yale challenged the outcome of the race due to the non-student status of the coxswain, thus beginning the long-standing debate regarding college athletics and fairness. Athletes at institutions at the time were receiving payments or other forms of compensation to compete in athletic events. Many times these athletes were not even enrolled at the institution and were recruited to help gain an advantage. It wasn't uncommon for players to compete for non-collegiate teams as well and to receive payment for their play. College baseball players would play for town teams or at summer resorts for payment, and there was no agreed upon definition establishing these players as amateurs (Smith, 2011). Colleges had set up rules for the length of time a student could play to benefit them, thus creating advantages for times when certain players who excelled in their sport were being utilized by playing for sometimes up to eight years for an institution (Smith, 2011).

Throughout the early part of the century, college athletics could, at best, be described as being run with a win-at-all-costs mentality. Colleges would hire athletes who didn't attend their institutions to compete, bringing them in to attend college for financial advantages (Thelin, 1996). Baseball players were paid during the summer and athletes would cheat in the classroom to maintain enrollment so they could continue to play. Coaches were unethical, forcing their

athletes to play more than study, and there was also collusion between some faculty and athletes to allow them to stay on the field in exchange for good grades. Meanwhile, sports continued to grow in popularity, which resulted in the commercialization of college sports and the expansion of campuses by building costly stadiums (Smith, 2011). It became obvious that something needed to be done to regulate the college athletic scene and the athletes who participated.

The National Collegiate Athletic Association (NCAA) had been founded in 1905 to institute rules and regulations in college athletics, but it went largely ignored by the almost all of the large colleges and universities, beginning "as a small group of colleges lacking status, unity, or real power to lead intercollegiate reform" (Smith, 2011, p. 52). It was formed initially to institute rules for the brutal sport of football after many injuries and even deaths had occurred. The rules took effect; however, the major universities that competed in all athletic activities refused to join the NCAA, reasoning that they wouldn't want to relinquish any of their power to the smaller institutions (Smith, 2011). As college football grew in popularity, so did the revenue stream. After World War II, the NCAA adopted the "Sanity Code" as a means to regulate athlete recruitment and financial aid; the code, however, failed to stop institutions abusing the rules (Smith, 2011). Sperber (1998) points out that in the early 1950s, during a campaign to address the scandals that had been ever-present in college sports and to fight against court rulings that stated college athletes were in fact professionals, the NCAA created the term "student-athlete" and encouraged all of its member institutions to adhere to it. Starkey (2014) claims that the NCAA concocted the term "student-athlete as a way to exploit college athletes and to keep them from benefitting from their athletic talents. It was a way for the NCAA to espouse academia in a scandal riddled enterprise" (p. 1).

In 1951, the NCAA named Walter Byers as president and he wasted no time in establishing the current form of the amateurism rule for college athletes. The rule was incorporated to regulate the illegal payment to college athletes and to reform the college athletic landscape to one where college players were deemed separate from professional players. The model worked and soon the rules would be tested, resulting in NCAA intervention and investigation at institutions across America.

Collegiate Amateurism. The NCAA has upheld its ideal of amateurism since its founding. Upon accepting an offer to attend an institution, a student-athlete signs a National Letter of Intent (NLI) to the university. This NLI is a "binding agreement between a prospective student-athlete and an NLI member institution" (Nationalletter.org). This is the first step for a student-athlete to enroll at an NCAA institution as an amateur. The main point behind the principle of amateurism is, because these athletes are not professionals, they cannot be compensated for their participation in athletic competition. The actual rule as written by the NCAA in its manual states: "Member institutions' athletics programs are designed to be an integral part of the educational program. The student-athlete is considered an integral part of the student body, thus maintaining a clear line of demarcation between college athletics and professional sports" (2011, p.65). Many writers and researchers have challenged this notion, as the landscape of college athletics has changed and, in their view, made the idea of amateurism obsolete. Taylor Branch, an outspoken advocate for paying college athletes, feels that the rule of amateurism hurts college athletes while deepening the pockets of the other involved parties, such as the NCAA and the colleges and universities where these athletes attend and play. Branch recently wrote that, "Everything stands on the implicit presumption that preserving amateurism is necessary for the well-being of college athletes. But while amateurism – and the free labor it

provides – may be necessary to the preservation of the NCAA, and perhaps to the profit margins of various interested corporations and educational institutions, what if it doesn't benefit the athletes? What if it hurts them" (2011, p .7)?

With the universities, their conferences, and even the NCAA making billions of dollars every year on the sale of college athletics to the public, many people have challenged the rule of amateurism. Some argue that the athletes who compete in big-time athletics for institutions should be considered athletes first and students second since they were specifically recruited to that institution to play a sport first, and receive an education second. As Dave Kindred writes in *The Sporting News*, "Bigtime college athletics pretends to be holy amateurism even as it practices professionalism…If education happens to be a player, fine. But the player's first job - as his one-year, revocable scholarship tells him - is to play ball" (1999, p. 71). However, Nocera (2015) argues that institutions are not equipped to manage a multibillion-dollar entertainment venture without turning a blind eye to certain practices and taking care of the athletes who are not going to put much effort into earning a degree.

The amateurism rule does have benefits for university athletic departments. Hruby (2014) states that amateurism allows both larger and smaller schools to filter every dollar from ticket sales, television contracts, and gift money that isn't accounted for through scholarships toward their expanding facilities and the salaries of their coaches and administrators. However, there are varying views on the concept of the athletic scholarship. Dorfman (2013) highlights that student athletes in the revenue generating sports are on full athletic scholarships that cover tuition, fees, room and board, which equates to educational benefits and living expenses. He goes on to explain that the scholarship also includes access to professional coaching and state of the art training facilities to which, without a scholarship, they would not otherwise have access.

However, many feel the idea of a scholarship for an athlete is another form of pay, which also is in opposition to the amateurism rule. The argument is that institutions are awarding scholarships based on athletic ability, not educational value, which should be the very purpose for the student to be attending the institution in the first place. Ken Reed, a writer for Ralph Nadar's sport reform project, *The League of Fans,* writes, "Even Walter Byers, the NCAA's executive director from 1951 to 1987, is now calling for the banning of the athletics scholarship. Byers persuasively argues that assistance to athletes should be based on financial need and academic talents not athletic ability" (nadar.org, 2011, p. 1). Reed goes on to state, "It's time to end the lie that is big-time college athletics today. To do so, we're left with two choices: 1) Integrate athletics and athletes into the educational mission of colleges and universities by eliminating athletic scholarships along with special admissions for college athletes; or 2) Openly acknowledge the professionalism in big-time college sports…" (Nadar.org, 2011, p. 1).

So why has the NCAA and its rule on amateurism come under such scrutiny? The biggest argument against the idea of amateurism has everything to do with revenue. As Johnson (2014) argues, the NCAA is a fully commercialized multi-billion dollar business. All sources of income generated from college athletics go to the NCAA, the coaches, the schools, and all others involved, excluding the athletes. Many people are, and have been for quite some time, calling foul against the rule, arguing that universities are exploiting athletes for personal profit. They are calling for an end to amateurism so that college athletes can get paid for their contributions on the athletic fields, which generate so much revenue for not only the school, but also the conference for which they are a member and he NCAA.

However, it should be noted that not all college athletics generate revenue for the institutions. There are actually only a few sports at each college that are considered "revenue

generating" sports. For the purpose of this study I will be focusing on the two sports that generate the most revenue: men's football and men's basketball. The argument for paying college athletes has surrounded the revenue generating sports, but what about the rest of an institution's athletic programs? If the NCAA were to concede the amateurism rule, would the athletes in the non-revenue generating sports be compensated for their play on the field? What about the players on the revenue generating sports who do not start, or rarely play? Would they be compensated evenly with the players who contribute more success toward the team's performance? Seth Davis, writing in *Sports Illustrated*, argues this point using the University of Texas football team as an example: "Clearly the starting quarterback generates more revenue for Texas than does the third-string safety. Would the NCPA argue those two players should be paid the same? There's nothing fair about that" (sportsillustrated.cnn.com, 2011, p. 2). Davis also pokes some holes in the opposition view of changing the rule on amateurism by stating:

> The only place this idea is gaining momentum is in the media. There is no movement – none – within the actual governing structure of the NCAA to professionalize college athletes. It's not just that it would ruin the amateurism ideal. It's that from a business standpoint, it makes no sense. (sportsillustrated.cnn.com, 2011, p. 2).

Not only does keeping the amateur status principle alive in college sports help assure the competition remains pure, it also creates a good image for the institutions, which helps with enrollment. Lawrence Kahn points out in *Cartel Behavior and Amateurism in College Sports* (2007) that

> In this consumer-oriented era for higher education, universities need to maintain their appeal to future applicants, many of whom are future alumni or future voters for state legislatures, and having successful sports programs may be one way to do this. The

popularity of college sports events and of schools with big-time athletic programs suggests that the idea of amateurism may have some market value. (p. 224).

Pay for Play in Collegiate Athletics. In March of 2014 Shabazz Napier, a basketball player for the University of Connecticut (UConn), shined the spotlight back onto the pay for play debate when he admitted that he and other college athletes went hungry some nights because they didn't have enough money for food (Waldron, 2014). While this is a documented problem, it was the timing of his comments that put the NCAA on notice. Napier and UConn were one game away from winning the NCAA National Basketball title when Napier brought public attention to the pay for play debate (Waldron, 2014).

In the modern era of college athletics, the conversation about athletes earning compensation began to simmer among the media in the late 1980s after the NCAA levied the Death Penalty ban on SMU. Since that time more and more writers, both in the media and in academia, have asked the question whether college athletes should be paid and what their role is on their respective campuses. There is no denying that the revenue generated by big time college athletics is at the heart of the issue of pay for play. Rasche (1997) says that the increase in revenues generated by institutions through the student athletes and their athletic endeavors has aided the concept of compensating athletes beyond the scope of their athletic scholarship. The question at the center of the argument is the amateur status of the college athlete as defined by the NCAA in the 1950s. In 1989, Lee Goldman challenged the notion of college athletes as amateurs, an argument that has reached a boiling point in today's media. "The NCAA's amateurism rules are ripe for review" (Goldman, 1989, p. 207). Mondello and Beckham (2002) argue that amateurism is a falsehood that is meant to keep athletes from being considered employees and deny them the right to benefit from the revenue that is generated through

intercollegiate athletics. Amateur athletics at major Division I colleges is big business, and is marketed, packaged and sold as such. NCAA member schools gain additional income for their athletic programs from the sale of television and radio rights to their games, not to mention the direct recognition for successful teams that results in more alumni contributions and increased enrollments from students who want to be associated with successful intercollegiate athletics (Goldman, 1989).

As revenues increased over time, more scrutiny surrounding the college athletes and their contributions to colleges and universities gained increased attention from the media. Perhaps if the dollar amounts generated by college athletics weren't so great, there wouldn't be much argument. Wilbon (2011) argues that the money generated has even helped establish TV networks, as the best basketball and football players from the Big Ten Conference have helped produce a conference television network that is worth at least tens of millions of dollars. However, none of the athletes see a benefit from that. The issue that arises is one of exploitation, as some critics see it, of student-athletes by institutions. Despite more and more media coverage and increasing commercialization of college athletics, which generates millions of dollars for institutions, the NCAA sees no reason to compensate college athletes because by rule, they are amateurs. Pekron (2000) views this as the NCAA playing the role of a "money hungry tyrant" while the athletes serve as the indentured help. It is the amateurism rule that allows the NCAA to avoid litigation of antitrust laws due to the amateur status of the athletes and the educational goals tied to that status. The outcome produced by this model means that even though student-athletes are the main reason for the revenue stream in college athletics, they do not have the ability to reap the benefits (Chin, 1993).

One of the main reasons that the pay for play argument began to gain steam in the 1990s was the vast commercialization of college athletics and the notion that colleges and universities were exploiting the athletes as a revenue stream. Benford (2007) points out that commercialism in college sports is everywhere – from advertising all over sports arenas to the licensing and logo deals with apparel companies. The questions that surfaced during the 1990s were: Are these students first or athletes first? What is the primary reason for this student to be on the college campus? Is the reason to get an education or to compete on the field, win games, and thus generate dollars for the institution? The NCAA utilizes an amateur/education model, which is based upon the idea that college sports aren't commercial. Michael Acain (1997) writes in *Revenue Sharing: A Simple Cure for the Exploitation of College Athletes*, that college athletics is more of a commercial/education model and posits that as such college athletics is a commercial enterprise that should be privy to considerations such as other commercial industries. He goes on to state, "By recognizing that the student-athlete is an integral part of the college sports commodity, the model favors paying student-athletes for their contribution to the viability of the product" (Acain, 1997, p. 312).

The heart of the issue lies within the rules and regulations that the NCAA has held onto so tightly since the 1950s that detractors argue college athletics has completely outgrown. This has led to the modern-era pay for play argument. Christopher Parent (2004) summarizes this thought in *Forward Progress – An Analysis of Whether Student-Athletes Should Be Paid*: "The rallying cry of those advocating pay-for-play is that many athletes live below the poverty line, a fact which, in light of the revenue generated by college athletes, is simply unacceptable" (p. 237). The counter argument by the NCAA has always been that the student-athletes are compensated for their play through their athletic scholarship. However, Parent is skeptical: "The

more profound debate is whether the cost of a college education (whether it be full tuition or not) is adequate compensation for student-athletes (pp. 241-242).

College coaches' salaries is another topic that stirs the pay for play debate. Tsitsos and Nixon (2012) assert that successful college coaches are receiving multimillion dollar compensation packages so that institutions can have dominant athletic programs. These coaches' salaries have increased dramatically even while there is a debate over whether college athletes should be paid for their play (Baumbach, 2014). Yankah (2015) points out that countless college coaches are the highest paid public employees in their respective states, and that doesn't include endorsements and gifts. Even as the revenues generated for colleges and universities through athletics has skyrocketed into the millions, the NCAA still holds that college athletes cannot be paid for their participation in athletics because they are amateurs.

College athletics has become a big money making tool for colleges and universities across the United States. Over the past few decades college athletics has gained more relevance and increased profits drastically for all Division I colleges and universities. Gilbert Gaul (2015) notes that since the early 1980s, the Southeastern Conference (SEC) has paid around $2.2 billion to its member institutions and, in recent years, these numbers have increased annually from around $100 million, in the early 2000s, to $293 million today. In 2014, the amount was expected to reach over $300 million, which equates to $21 million a year for its member schools (Gaul, 2015). College athletics has generated billions of dollars not only for the institutions themselves, but also for the governing body of intercollegiate athletics, the National Collegiate Athletic Association. In April of 2010, Thomas O'Toole of *USA Today* wrote that the NCAA "announced it has reached a 14-year, nearly $11 billion agreement with CBS and Turner Sports for the TV rights to a 68-team tournament" (2010, p. 1) for Division I men's college basketball.

However, behind all this success for college athletics and the billions of dollars it generates, there is a disparity that cannot be overlooked. The idea of a scholarship seems fair in some instances, but in many cases, the scholarships provided by the institutions do not meet the complete cost of attendance for the student-athletes, which leaves them looking for other ways to get by. Ramogi Huma and Ellen J. Staurowsky explain in their report, "The Price of Poverty in Big Time College Sport" (2011), "….the study estimates the fair market value of big time football and basketball players to be in the hundreds of thousands annually while the NCAA restricts the value of the full scholarship to a level of compensation that is at or below the poverty level for the vast majority of athletes" (p. 6).

College athletes are given the task of representing their institution athletically, yet also maintaining themselves academically, all while being compensated at a level of poverty. Many writers, such as Taylor Branch, have gone so far as to point out that college athletes are being exploited by their institutions for their athletic ability so that the institutions may gain more revenue from their athletic performances. Branch (2011) says:

> For all the outrage, the real scandal is not that students are getting illegally paid or recruited, it's that two of the noble principles on which the NCAA justifies its existence—"amateurism" and the "student-athlete"—are cynical hoaxes, legalistic confections propagated by the universities so they can exploit the skills and fame of young athletes. (2011, p. 2)

Many feel that college athletes should be paid for their contributions to the institutions they represent. The better the product on the field, the more recognition the institution receives. The more a team wins, the more revenue the school generates in ticket sales and merchandise. For example, the University of Texas athletic department generated $165.7 million in revenue in

2013, of which $58.8 million came from rights and licensing (Gaines, 2014). Yet the athletes whose performances were the direct result of that increased revenue do not see any increase in their scholarship. So why is this? It goes back to the governing body of collegiate athletics, the NCAA and its stance on amateurism.

Research Method

Sample. I have identified the cases in the literature review of pay for play for which there is a consensus regarding them as the most important. I will review these cases thoroughly taking into consideration some of the rulings the NCAA has made against member institutions that have been found in violation of the rules and bylaws. In reviewing these cases I utilized the process of shepardizing to determine which cases were referenced in other cases. The process of shepardizing is using Shepard's Citations to identify cases that reference each other related to the topic or lawsuit one is researching. This process was an important tool for me in determining the lawsuits that make up my research. I began my research with a basis of cases that I wanted to research, however Sherpardizing the *O'Bannon v NCAA* case yielded results on other cases that warranted my attention. Shepardizing has been an important process for me in conducting this research. The essential cases are as follows:

1) NCAA v. Board of Regents of the University Oklahoma

2) White V. NCAA

3) O'Bannon v. NCAA and EA Sports

I will also give brief summaries of the following cases because they are important to the debate of pay for play vs amateurism:

4) Kent Waldrep Workers Compensation Lawsuit

5) Northwestern University Football Players Unionization Case

6) Jenkins v. NCAA

I am not conducting a deeper analysis of the Kent Waldrep and Northwestern cases because they were not lawsuits against the NCAA. They do have an impact on the pay for play debate, but did not directly involve the NCAA. I am not conducting a comprehensive review of the Jenkins case because it currently in process at the time of this writing, and hasn't approached any resolution. However, these cases are important to the pay for play debate which is why I am conducting a brief overview of them and the relevance they have to the topic.

The reason I studied The University of Oklahoma Board of Regents case is because this lawsuit set the precedent for the NCAA's amateurism rule. It was also the first case in which a major university challenged the NCAA directly based on the Sherman Act. Although the NCAA essentially lost its argument, the amateurism rule was stated by the court as an integral part of American college athletics. The NCAA has referred back to this judgment in other court battles since to justify its position on amateurism.

White v. NCAA was another case in which the athletes in the suit alleged the NCAA violated the Sherman Act. I am utilizing this case because it is a good example of athletes from different institutions filing a lawsuit together against the NCAA. This case is a good research tool because we begin to see athletes come together to take on the NCAA through legal action for what they believe are monetary injustices.

The Ed O'Bannon case is paramount to this study and is chosen due to its significance on the landscape of the NCAA and the perception of amateurism that it maintains. Not only is this a landmark case to study because of the outcomes, but also because of the opinions of everyone involved.

The Kent Waldrep case is a good example to study because of the number of years the case took working its way through the court system. This legal battle was an interesting case because it did not directly involve the NCAA, yet the NCAA was a key figure surrounding the debate in court. This case also is a good research tool because the basis of Waldrep's argument was that he was a university employee and thus didn't fall under the amateurism rule of the NCAA. I am choosing to incorporate the Northwestern Unionization case because it shines light on a different way to look at the concept of the amateurism rule and how it can be interpreted. Finally, I am studying *Jenkins v. NCAA* because of the ramifications that this case could have on the NCAA and college athletics as a whole from a revenue generating aspect. This case is still winding its way through the court system, but the attention it has gained gives the perception that this could change college athletics, which makes it too important to ignore.

Since the argument of pay for play is focused directly on Division I universities in the Power Five conferences, those institutions will be highlighted within my focus. The Power Five conferences are the Atlantic Coast Conference, the Big Ten Conference, the Big 12 Conference, the Pacific 12 Conference, and the Southeastern Conference. My research will also focus on the lawsuits that have been brought against the NCAA throughout the years that have affected the pay for play phenomena or have added to its legitimacy as a controversial issue that needs to be studied. By researching the legal battle surrounding pay for play, I can study how the NCAA has managed to emerge from each case and solidify the concept of a student-first athlete. The literature that I will use is mainly going to be driven by the court cases studied, media reports (both print and online resources), as well as scholarly and law journals that will enhance the research.

Documents and Sequence of Steps. Unlike most HALE dissertations, my research relied entirely on documents and reading rather than on surveys, interviews, or observations.

The method that I utilized in researching the court cases was to immerse myself into the court documentation to gain a better understanding of each case, and these court documents were the primary resources for my research. I utilized the Michigan State University Law College Library to access the court documents that were needed for my research. I approached each case with a basic understanding of what the case was about, but not fully knowledgeable of the circumstances surrounding the case and how the case transpired. I read each case thoroughly paying close attention to the arguments made by each side, the testimony from the experts for each side, and the opinion of the judge presiding over the case.

In writing about the cases, I put much of my focus on the opinion by the presiding judge. The White case was settled before a trial so the judge's opinion was important to determine the direction the case was heading. The judge's opinion in the other cases was integral in the outcome because they had the final say in the ruling, and each judge had strong opinions on both the plaintiffs and defendants.

The next step I used when researching each case was to read the secondary sources from outlets that reported on it both during and after the case had finished. I incorporated this process into my method because it gave me a good understanding of the climate surrounding both sides of the argument. In researching the secondary cases I utilized both scholarly journals, including law journals, and media reports because both reported on different aspects of the case that I felt were important to my research. The secondary sources were important because many of them were written from a standpoint that exhibited a biased opinion for one or the other side of the arguments. This aspect was crucial for my research because it helped me to understand why the

plaintiffs and defendants in each case were defiantly committed to their argument. In my final write up of each case I relied heavily on the court documentation, but also weaved the secondary sources in to give an understanding of why the case was argued in a certain manner.

The last step I took with my method was to include events that transpired outside the cases that had either a direct or an indirect impact on the case or were affected by the case. The events that I included, in some cases, gave insight to how the NCAA enforced its rules and also how institutions have adapted to the rules. I incorporated these events because they added credence to each case and strengthened my overall research.

Many of the resources I utilized for my research have been in an online format. Studying my cases and sources online gave me easy access to many of the materials needed. Although I did utilize some hard copy materials, most of my resources were online. I found that this method of research made it easier for me to find documents related to the older cases and to gain access to sources I didn't initially think of when starting my research.

Chapter Three: The Sherman Antitrust Act and Televising Collegiate Sporting Events

The first case I will be analyzing for this study is the *Board of Regents of Oklahoma v. NCAA.* This was the first case in which the NCAA was challenged on the basis of antitrust violations and ultimately created a roadmap on how to bring litigation against the NCAA. This case was also important due to the strong backing the concept of amateurism received from the Supreme Court Justices that wrote the dissenting opinion.

Sherman Antitrust Act History

On July 2, 1890, President Benjamin Harrison signed the Sherman Antitrust Act into law as legislation to prohibit trusts. The act, which was the first federal antitrust law, gave Congress the constitutional power to regulate and monitor interstate commerce and trade. Named for Senator John Sherman of Ohio, who served as Secretary of Treasury under President Rutherford B. Hayes, the Sherman Antitrust Act was the first federal law of its kind. The main goal of the act was to maintain fair trade by monitoring how trusts were set up within companies. Trusts were set up by stockholders in several different companies wherein they arranged their stocks into a single group of trustees. The trustees would then give the stockholders certificates that privileged them to individual shares of centralized earnings of the companies that were managed by said trustees. This method of business had become commonplace in most major industries which caused monopolies and became an obstacle to fair competition (ourdocuments.gov). Prior to this becoming a federal measure, many states had enacted similar legislation. However these smaller legislative acts were limited to intrastate businesses (ourdocuments.gov).

The Sherman Antitrust Act gave authorization to the federal government to seek out trusts and to expunge them. Any trust that was formed that caused a restraint in trade or commerce, and included several states or other nations, was deemed a violation of the Act and

determined to be illegal. Any person or company caught violating the Act faced fines and jail time, and any businesses or persons that suffered losses due to these established trusts could sue the violating companies in federal court for up to triple the damages (ourdocuments.gov).

Law INFO.com (2004) reports that the act was rarely used in the first decade after its adoption and, when it was invoked, the results were not successful. The only cases that were successful in utilizing the Sherman Antitrust Act were those that challenged labor unions; but, since labor unions were already considered illegal, the act played a small role. The main culprit behind the lack of results from the law was the terminology used in defining the law itself, by the way it was written and the application of the law, along with intense pressure from politicians that backed the trusts, and a clear lack of limited scope for judicial application (LINFO.com, 2004).

The first major challenge to the Act occurred five years after its adoption when, in 1895, it faced intense scrutiny in front of the Supreme Court in the case of *United States v. E.C. Knight Company* (LINFO.com, 2004). In the ruling, the Supreme Court struck down the legal application of the Act when it (the Court) sided with the American Sugar Refining Company, ruling that it had not violated the Act even though, at the time, the company had almost a complete monopolization on the sugar refining industry in the United States (ourdocuments.com). The Supreme Court ruled that since the refineries were purchased within a single state, there was no interstate acquisition, which would violate the Act (LINFO.com, 2004). The E.C. Knight case appeared to be the demise of the Sherman Antitrust Act and the federal government's attempt at regulating trusts, until the turn of the century when President Theodore Roosevelt successfully used the Act in his trust busting campaigns (ourdocuments.com).

At the turn of the century trusts were becoming more commonplace and there was legitimate fear that large corporations would monopolize industry, regulate prices for goods and services, and put smaller companies out of business. Early on in his presidency, Theodore Roosevelt took action to tackle trusts, utilizing the Sherman Antitrust Act as legislation in his crusade. The largest trust that he took on, and the one that gave Roosevelt the most notoriety – earning him the nickname of the "trust buster," – was his takedown of the Northern Securities Company.

The Northern Securities Company was a railroad trust operated by J. P. Morgan, which included railroad moguls James Hill and E. H. Harriman, that controlled a large portion of the railroad shipping industry in the northern United States (ushistory.org). In 1902, President Roosevelt tasked the U.S. Justice Department with breaking up the Northern Securities Company on the grounds that it was a monopolistic corporation causing a restraint in trade. Relying on the Sherman Antitrust Act, the federal government dismantled the corporation. (theodorerooseveltcenter.org). The Northern Securities Company appealed the decision and the case made its way all the way to the Supreme Court, where the court narrowly ruled in favor of the government with a 5-4 decision. As a result, the Northern Securities Company was dissolved, breaking up the trust (ushistory.org).

The Sherman Antitrust Act continued to be applied successfully throughout the 20th century, including the 1911 case against the Standard Oil Trust and, in 1982, against the American Telephone and Telegraph (AT&T) monopoly (ushistory.org). Late in the 20th century, however, there was a new set of plaintiffs looking to apply the Sherman Antitrust Act as a means to break up another organization that was deemed by many to be operating as a monopoly. Colleges, universities, and the athletes that represent them on the playing field began to take

exception to the way the NCAA was administering their policies. In 1890, Congress could have never predicted that their antitrust act would play a pivotal role in the lawsuits that would be levied against the governing body of college athletics.

The Sherman Antitrust Act and College Athletics

The first challenge to the NCAA that utilized the Sherman Antitrust Act came in the early 1980s when two universities, backed by the College Football Association (CFA), felt that the NCAA's television plan for college football games constituted a restraint of trade. The two universities, the University of Georgia and the University of Oklahoma, felt that the NCAA's television plan unfairly fixed prices and didn't allow for universities to negotiate their own television rights. The case, which would come to be known as *The Board of Regents of Oklahoma v. NCAA*, would wind its way through the court system, ultimately making it all the way to the Supreme Court, who levied the final decision. In this section I will give a comprehensive review of the case and the impact it has had on the NCAA, college athletes, and the debate of pay for play versus the amateurism rule.

The Sherman Antitrust act is important to the pay for play debate in college sports because of the manner in which it has been applied to the legal cases against the NCAA and the rule of student-athletes as amateurs. In *The Board of Regents of Oklahoma v. NCAA*, it was applied as a means to break apart the monopoly that the NCAA held over broadcasting rights by not allowing competition to enter the broadcasting market; however, the Act would also be applied subsequently to cases where athletes felt the NCAA was restricting their rights to profit, arguing for compensation for their play.

College Football Association. The first live college football game to be broadcast on television was in 1938 (Siegfried and Burba, 2004). At the time the NCAA didn't regulate

individual universities on broadcast rights; the concept of universities televising games gained momentum throughout the 1940s along with the popularity of television. As this trend grew, conflict between NCAA members arose regarding broadcast rights in certain areas. In 1951, sensing that the situation was getting out of control, the NCAA revoked its policy that allowed individual universities the right to broadcast their games. The NCAA signed its first association-wide television contract with NBC in 1952. The contract allowed NBC to broadcast one college football game on Saturdays, which also ensured that no other network would broadcast another college football game, giving the NCAA a monopoly on the broadcast rights (Siegfried & Burba, 2004). The NCAA maintained this structure for over two decades although the revenue amounts and networks would change from contract to contract. Broadcast times were scarce since the contracts were limited to only one game per week; the number of times that a university could appear in the game of the week was also limited, thus creating acceptance from all member institutions anticipating that the broadcast would vary from school to school (Siegfried & Burba, 2004). However, schools being limited in the number of appearances wasn't always the case. The networks were allowed to select the schools that would play in the game, which resulted in many of the games featuring only a few popular schools known for their football programs. This meant that many teams never had the opportunity to play in the game of the week, which led to resentment of the NCAA and their broadcast plan, and eventually led to the CFA (Siegfried and Burba, 2004). This system of televising college football games would continue for many years until it was challenged in the *Board of Regents of Oklahoma v. NCAA case*.

In 1977, after years of operating within the NCAA televising rule, 62 of the larger member institutions of the NCAA formed the College Football Association (CFA) in an effort to lobby for better televising rights (Siegfried and Burba, 2004). The goal of the CFA was to meet

demand from local markets that wanted to see the most popular teams' games on television, which would also ensure that those programs would receive increased revenue from the broadcasts. Initially the CFA had some success, with an increase in TV appearances for the larger college programs, but the equal revenue allotment among all the NCAA member institutions remained the same due to the NCAA voting process (Siegfried & Burba, 2004). This meant that the larger and more popular college football programs were getting more games broadcast, but were not seeing a proportionally larger share to the revenues.

The CFA finally broke through in 1981 when it was offered a lucrative television deal by NBC to pull their games from ABC and sell them independently to NBC. The contract, a 4-year deal worth $180 million, was enticing for the CFA members; however, the NCAA warned the CFA members that all colleges that agreed to the NBC offer would be banished (Siegfried & Burba, 2004). The members of the CFA were hesitant to sign the contract with NBC because being expelled from the NCAA meant that they would lose out on the revenue that was generated through the men's basketball tournament. As Siegfried and Burba (2004) put it, "The CFA, designed to promote football, did not include enough popular teams to promise a successful basketball tournament independent of the rest of the NCAA" (p. 3). It would also mean that they wouldn't be allowed to play in any of the football bowl games over which the NCAA had total control. Facing these two harsh realities, the CFA finally relented and decided not to sign the contract with NBC. Instead, the CFA decided to pursue legal action against the NCAA for what it determined was cartel-like operations over the sale of football broadcast rights, constituting a restraint in trade (Siegfried & Burba, 2004). The case, which eventually became the *Board of Regents of Oklahoma v. NCAA* and included the University of Georgia as a plaintiff, was financed by the other members of the CFA (Siegfried & Burba, 2004). The overarching goal of

the CFA with the lawsuit was to break apart the monopoly that they felt the NCAA had with its broadcast plan.

The CFA's plans of signing a broadcast contract were put on hold while the *Board of Regents of Oklahoma v. NCAA* case wound its way through the courts. When the trial officially ended, in which the plaintiffs along with the CFA were able to prove its case thus winning out in court in the summer prior to the 1984 college football season, the CFA signed a one-year contract with ABC to broadcast college football games. The Big Ten and the Pac Ten, who were not members of the CFA, each signed a one year contract to broadcast their games on CBS (Siegfried & Burba, 2004). The following year, the CFA negotiated a two-year contract with ABC and ESPN for the 1985 and 1986 college football season, followed by two consecutive four-year contracts with CBS and ESPN (from 1987-1990) and with ABC (which at that time owned ESPN) for the 1991-1995 seasons (Siegfried & Burba, 2004).

The CFA was able to prosper beginning in 1984 due to the ruling in the *Board of Trustees of Oklahoma* case because individual institutions were able to cooperatively negotiate the television broadcast contracts at the time without venturing out on their own due to less risk. Not many schools had the experience that the CFA did in negotiating contracts so operating through the CFA made sense (Siegfried & Burba, 2004). However, that system began to change with the rise of cable networks and the demand for college football. By the early- to mid-1990s, the CFA began to lose ground in the broadcasting arena due to the rise of cable networks with more options for schools, which ultimately led to its demise. Another significant factor that aided in the downfall of the CFA was the addition of the Fox Network and other major cable networks that were able to provide programming for the college football audience. As Siegfried and Burba (2004) state, "the expansion of cable television in the 1980s and the entry of Fox as a fourth

over-the-air network acted as a catalyst for dissolution" (p. 9). They go on further to explain that "after the CFA lost its authority to contract with television networks on behalf of its members it temporarily returned to its role as an advocacy group in the NCAA" (p. 10). The increase in competition for broadcasting sports, combined with the individual institutions and the major conferences becoming increasingly more aggressive in pursuing broadcasting rights of their own games both had a hand in causing the CFA to fold (Siegfried and Burba, 2004). On June 30, 1997, the CFA officially closed its books and split the remaining revenues it had among the member institutions.

Board of Regents of Oklahoma v. NCAA. In 1981, the NCAA negotiated television broadcast contracts with both ABC and CBS to carry college football games on Saturdays for the 1982-1985 seasons. Each broadcast company paid compensation to the NCAA members that were being broadcast, the terms of which were negotiated directly with each institution (Board of Regents v. NCAA). The NCAA devised the contract so that the broadcast of live college football games would not have an adverse effect on the attendance for the games, limiting the number of appearances for each institution; no institution would be allowed to sell the broadcast rights of its team outside the guidelines that were set in the contract (Board of Regents v. NCAA). Many of the institutions involved in these contracts were also a part of the CFA, which had negotiated a contract with NBC for more liberal broadcasting rights for individual institutions. The NCAA decided to take action against any NCAA member that participated with the CFA-NBC contract, threatening disciplinary action. Both parties, not satisfied with the other's arguments, initiated legal action, taking their arguments to Federal District court, then to appeals courts, and finally to the Supreme Court of the United States (Board of Regents v. NCAA).

In the next few pages I will go into detail about the *Board of Regents of Oklahoma v. the NCAA* case, from the federal case, to the appeal, and then finally to the Supreme Court. I will discuss how the rulings have affected the college athletics landscape since the Supreme Court decision, the effect that the rulings had on the NCAA's amateurism rule, and how that has impacted the pay for play argument.

District Court. On September 8, 1981, with the backing of the CFA, the case of *The Board of Regents of Oklahoma v. NCAA* was filed in the federal District Court of Western Oklahoma with Judge Juan Guerrero Burciaga presiding. Over the course of the case, Judge Burciaga would become very familiar with the NCAA, its policies, and the substance of the television broadcast plan that was being targeted by the lawsuit. Burciaga would also come to understand why the member institutions of the NCAA that were also members of the CFA were dissatisfied with the broadcast plan, and why they felt that the plan created a restraint on trade that violated the Sherman Antitrust Act.

In his ruling, Judge Burciaga (1982) outlined the detail surrounding the NCAA broadcast plan, the reason why the lawsuit was filed, and the CFA members reasoning for wanting to pursue a new television plan. Burciaga investigated the fact that the NCAA had maintained that it was a voluntary organization and that at any time member institutions could leave the NCAA to rid themselves of the overarching control of the organization. However, Burciaga also stated that leaving the NCAA wasn't a viable option for any of the institutions because opting out of the NCAA meant that they could not compete in any of the other NCAA championships in other sports (Burciaga, 1982). Burciaga concluded that the lawsuit's reasoning was valid, since leaving the NCAA wasn't a "practical, feasible, nor desirable" (p. 7) option, proving that the NCAA had control over the member institutions by limiting their broadcast options and supporting the

plaintiffs claim that the NCAA had a restraint of trade (Burciaga, 1982). The NCAA argued that the plaintiff's lawsuit was unfair because the plaintiffs were willing to obey some of the rules of the NCAA but filed a lawsuit over other aspects of NCAA rules. Burciaga countered this allegation by stating that the plaintiffs weren't being spiteful with the lawsuit but, rather, challenging the NCAA rules and regulations that violated the Sherman Antitrust Act and, thus, the standards of fair play, amateurism, and academic integrity, upon which the NCAA prides itself (Burciaga, 1982).

In his opinion, Burciaga also questioned how the NCAA could separate itself from college sports when financial revenues that treat college athletics as professional sports and as a money making enterprise come into play. He opined that the NCAA's willingness to maximize revenues for itself through college athletics teems with professionalism even though the organization avows amateurism (Burciaga, 1982). He went on to explain that the institutions in the United States, even though they espouse higher education, are also business-like in nature, competing against each other for students, faculty, and government grants. Additionally, Burciaga wrote:

> The same is true of college football. It is a business, and it must behave in a businesslike manner to insure its future viability. The objectives and the past achievements of our institutions of higher learning have earned them great praise and an exalted position in our social fabric. Nonetheless, it is a business and a business operated by professionals. Like any business, the schools which play intercollegiate football seek to maximize revenue and minimize expense while at the same time maintaining the level of quality which makes their product attractive to the buying public. (p. 7)

By comparing college athletic operations with institutional goals of maximizing profits for higher education through competition, Burciaga explained that it is rational for the CFA members to want to maximize their profits through athletics. He concluded his thoughts by rejecting the NCAA's assertion that its college sports enterprise is amateur in nature with:

> Our society encourages maximization of revenue so long as the means are legal. The Court, therefore, cannot condemn the plaintiffs' desire to maximize revenue. NCAA's suggestion that profit maximization is not a worthy goal is truly disingenuous in light of the fact that the express purpose of NCAA's television controls is to maximize the football revenues of member schools. (p. 7)

Next Burciaga (1982) addressed the plaintiffs and CFA members allegations that the NCAA established their contracts in a manner that fixed prices. Burciaga (1982) stated in his opinion that had the NCAA not controlled the contracts for the games in previous seasons, the prices would have been completely different for the participating institutions and the networks wouldn't have had the same prices for different games depending on who was competing. He summed the issue up by writing, "It is quite obvious that were it not for the NCAA controls, no network decisionmaker would even consider offering the same price to the schools involved in last fall's Oklahoma-USC and Citadel-Appalachian State games" (p. 12). Burciaga also highlighted the NCAA's own witness, who admitted on the stand that in a free market the prices for each game would differ depending on the competing teams. Burciaga summarized his point on price fixing:

> The evidence is clear that NCAA controlled the price to be paid to participating teams, and made it impossible for the teams to negotiate any higher price by restricting dealings to a single network. The evidence is also clear that some teams would have received

> larger fees were they allowed to negotiate with any and all potential broadcasters. At the same time, the testimony made clear that many of the smaller schools would not have received as much as they did under the NCAA plans if they were forced to compete in a free market. (p. 12)

The NCAA argued that by employing a dual-network contract with their television plan, price-fixing was eliminated. However, in his written opinion, Burciaga (1982) wrote "after the network, having the right of first choice on any given date, has made its agreement with the teams playing the most attractive game of the week, the other schools are left in the same position as they were under previous contracts. They will be selling in a market where there is only one eligible buyer" (p. 12). Burciaga was adamant that price-fixing was created by having the networks compete with each other and by limiting each team's number of appearances. This system allowed the NCAA total control over everything (Burciaga, 1982).

The CFA alleged that the NCAA worked to create a horizontal limit on production with its broadcast plan. The argument laid out by the CFA was that the NCAA made agreements with the networks for the exclusive rights to nationally televised games, restricting local broadcasts (Burciaga, 1982). Burciaga (1982) also went on to write that, "It is clear from the evidence that were it not for the NCAA controls, many more college football games would be televised" (p. 13). This was even true with the local broadcasts because without the NCAA controls, local stations could broadcast other games. But, because the NCAA plan restricted that practice, it was prohibited. The result of this practice meant that there were hardly any games broadcast on local networks, which was the effect of the horizontal limit by the NCAA broadcast plan. Burciaga (1982) wrote, "this horizontal agreement to limit the availability of games to potential broadcasters is the very essence of NCAA's agreements with the networks" (p. 13). In his

opinion, the evidence showed that the networks were happy to pay the higher fee for broadcast rights because of the limitations set by the NCAA broadcast plan. The networks agreed to pay the higher fees because they were assured there would be no head-to-head competition from other networks due to the broadcast plan. This held true for both other national networks and the local networks (Burciaga, 1982). Burciaga summarized his opinion on the horizontal limits by stating, "Therefore, the Court concludes that the membership of NCAA has agreed to limit production to a level far below that which would occur in a free market situation" (p. 13).

Burciaga next took aim at the charge that the NCAA's broadcast plan operated as a cartel and worked as a group boycott. Burciaga (1982) pointed out that the NCAA's broadcast plan worked as a cartel in two different ways. The first way was by giving exclusive rights to broadcast games to only certain networks, which in effect prevented other broadcasters from having the ability to broadcast games. By doing this, the NCAA basically eliminated any chance of negotiating a contract with any other network. If an institution attempted to negotiate a contract with a broadcaster that didn't comply with the NCAA plan, the NCAA would threaten sanctions and penalties toward that institution. This sort of intimidation is exactly what the NCAA exhibited toward the CFA when it attempted to negotiate contracts, which is classic cartel-like behavior (Burciaga, 1982). The second manner in which the NCAA's plan worked as a cartel was by the way in which the NCAA would penalize any institution with sanctions if it made itself available to other broadcast interests. Expulsion from the NCAA was one of these sanctions. Since one team cannot play a game on its own, and it is against NCAA rules to play a non-NCAA member, no team would agree to play a team that had been expelled from the conference. The expelled institution would then find itself without any competitors, thus creating a systematic group boycott by the NCAA (Burciaga, 1982). Essentially, any school that did not

agree with the NCAA broadcast plan and attempted to contract with another broadcaster would find itself expelled from the NCAA and ostracized by the other NCAA members.

Burciaga next analyzed the NCAA's defense of its broadcast plan policies. The NCAA's principal defense was that it was trying to protect the gate attendance during live competition (Burciaga, 1982). The judge was not convinced that television broadcasts had any effect on live game attendance, rejecting the NCAA's argument (p. 13). Burciaga was extremely suspect of the NCAA's data and the fact that it relied so heavily on the National Opinion Research Center (N.O.R.C.) studies on the effects of televised college football games on gate attendance. The NCAA argued that the studies showed that televised football games resulted in a decrease in live game attendance (Burciaga, 1982). Burciaga challenged this argument because he felt the studies were untrustworthy. Burciaga questioned the studies since they were over twenty-five years old, conducted in 1957, and because they were controlled by the NCAA studying the controlled market of college football. Burciaga believed the studies failed to provide proof that televised football games were the cause of declining gate attendance because it appeared that the N.O.R.C. studies didn't take into consideration the rapid growth of the television industry as a whole (Burciaga, 1982). The N.O.R.C. studies also showed that national college enrollment had declined during the years of the study, but did not make any attempt to find a correlation between the declining enrollments and live game gate attendance (Burciaga, 1982). Burciaga was not persuaded by the NCAA's argument that gate attendance is affected by televising games, calling the NCAA's argument "either an ill-founded belief at best, or at worst, a deception employed to make the majority of the NCAA membership believe that they should control football television out of self-interest" (p. 14). He summarized his findings on the NCAA's N.O.R.C defense with:

> In short, because of the N.O.R.C. study's failure to account for the effect of circumstances which logic says would negatively impact college football attendance, and the inadequate data base upon which it relies, the reliability of the conclusions is suspect. Yet the N.O.R.C. studies are the only empirical evidence supporting NCAA's conclusion that football television harms gate attendance. (p. 14)

Burciaga suggested that this system completely undermines the goals of institutions whose athletic departments rely heavily on the revenue from their college football programs (Burciaga, 1982).

The plaintiff's last argument against the NCAA was that their broadcast plan was operated as a monopoly; due to NCAA control over broadcasts it would be impossible to determine the free market for these broadcasts. Burciaga felt that because the NCAA commanded total control over the college football television market, he had to rely on factors such as geographic area, the times when games can be broadcast, and the buyers and sellers of the product of live college football broadcasts to determine the fair market value of a college football broadcast if operating in a free market (Burciaga, 1982). Understanding that the geographic area was dependent on who was competing in a contest, that Saturday's are the most suitable day on which games are played, and that the NCAA is the seller of the product while the networks and the public are the buyers, Burciaga felt that the NCAA was in violation of antitrust laws, exercising control over football broadcasts (Burciaga, 1982). However the NCAA argued that the controls were adopted with no intent to violate antitrust laws. Burciaga disagreed with that assertion:

> In summary, the Court concludes that the NCAA controls over college football make NCAA a classic cartel. This cartel has an almost absolute control over the supply of

> college football which is made available to the networks, to television advertisers, and ultimately to the viewing public. Like all other cartels, NCAA members have sought and achieved a price for their product which is, in most instances, artificially high. The NCAA cartel imposes production limits on its members, and maintains mechanisms for punishing cartel members who seek to stray from these production quotas. The cartel has established a uniform price for the products of each of the member producers, with no regard for the differing quality of these products or the consumer demand for these various products. (p.18)

With this summarization, Burciaga handed down his judgement on September 15, 1982, ruling in favor of the plaintiffs that the NCAA did violate antitrust laws.

Court of Appeals. In 1983, the NCAA filed an appeal with the United States Court of Appeals Tenth Circuit in an attempt to get the Circuit Court's decision overturned. The case was heard by Chief Judge James E. Barrett and Judges James K. Logan and Stephanie K. Seymour. The court upheld the District Court's decision that the NCAA broadcast plan did, in fact, violate the Sherman Antitrust Act. Circuit Judge Logan wrote the opinion for the court with Judge Barrett filing the dissenting opinion. Barrett's (1983) tone was stern in his opinion, writing:

> I would reverse the judgment of the district court, quash the injunction and hold that the NCAA television regulations and contracts are valid and lawful…I am convinced that although there is evidence to support the trial court findings, my review of the entire evidence leads me to a firm conviction that a mistake has been committed. (pp. 11-12)

Barrett (1983) felt that the findings in the case did not address the goals and ideals of the NCAA, which are "preserving a competitive balance in intercollegiate athletics, insuring the amateurism of college athletics and avoiding the aura of professional sports" (p. 12). Barrett felt

that the NCAA broadcast plan was not anti-competitive but, rather, organized in a manner that promoted the ideals of amateurism and protected the academic virtues of the member institutions (Barrett, 1983).

Barrett also felt that the trial court ignored the purpose and values of the NCAA and its mission of preserving amateurism and promoting academics, relying solely on viewing college football as a big-time business for the institutions (Barrett, 1983). Barrett concluded that the institutions that were arguing over the NCAA broadcast plan were more concerned with utilizing college athletics as a priority for their institutions rather than academic excellence. He also believed that these institutions that were fighting to break free from the controls of the NCAA broadcast plans were insisting on having the best of both aspects of the NCAA – adhering to all other NCAA rules and regulations while also creating their own television contracts in order to invalidate the NCAA broadcast plan and enjoy the financial gain from their own (Barrett, 1983). Furthermore, Barrett did not find that the restraints were put in place purposefully to fix the process but rather to make institutions adhere to the NCAA guidelines of amateurism and academic values. He also felt that the restraints placed by the broadcast plan on the institutions constituted an injury to the consumer, which is the viewing public. Barrett believed that the broadcast plan, in conjunction with the amateurism goals of the NCAA, actually enhanced the viewership of intercollegiate athletics (Barrett, 1983). He concluded his opinion with:

> I agree with NCAA's contention that, in the context of the Association's goals and purposes, this is no more "price fixing" than that involved in a law partnership's division of profits. The NCAA provisions on the division of television proceeds simply allocate those revenues among member institutions. This distribution does not affect television output. It does, however, foster competition among its members in keeping with its goal

> to assure amateurism in intercollegiate athletics and to maintain the primary status of the athlete as a student…. I would reverse the judgment of the district court. (p. 17)

In his opinion upholding the lower court's ruling, Judge Logan wrote that the plan suppressed product diversity, restrained output, and operated as a group boycott that exhibited price fixing behaviors (Logan, 1983). Logan (1983) put the view of the court into perspective when he wrote:

> The price distorting restraints are broader than necessary to promote the efficiencies of the integration. And while the ancillarity of the exclusive franchise restraints cannot be fully assessed without a rule of reason inquiry, the plan contemplates an impermissible integration: a combination of virtually all the producers, actual or potential, of a differentiated product—commercially salable intercollegiate football. In these circumstances we conclude that the television plan is one "that would always or almost always tend to restrict competition and decrease output……. We affirm the district court's ruling that the television plan constitutes per se illegal price fixing. (p. 6)

In reviewing the television plan, Logan wrote that there were a few factors in considering how the broadcast plan violated the Sherman Antitrust Act. After analyzing the characteristics of the broadcast plan, the judges determined that there was no competition for the sale and purchase of television rights. The court further determined that NCAA members could only sell their broadcast rights as mandated by the NCAA broadcast plan, which was controlled by the NCAA (Logan, 1983). Additionally, the buyers of the broadcast – the networks – had price restrictions for individual games based on the bylaws of the broadcast plan. This resulted in no price competition among the institutions or the networks once the contracts had been awarded, which translated to price fixing. Furthermore, because the NCAA plan mandated that the networks

purchase the entire package offered, this created a limited number of buyers since not all networks could afford the plan (Logan, 1983). In summary, Logan wrote that, "This creates a potential for vertical foreclosure because only certain broadcasters have the resources necessary to become buyers of NCAA football rights" (p. 7).

The next aspect of the case that court analyzed was whether the NCAA possessed market power with its broadcast plan. The court (Logan, 1983) determined that, due to the Saturday time slot, the demographics of college football viewership, and the price for the product, "The record supports the trial court's conclusion that, considering price, use, and quality, NCAA football is a product for which there are no readily available substitutes" (p. 8). Logan (1983) continued that the court found, based on the broadcast plan and the NCAA's total control over broadcasting rights, that the NCAA did have market power:

> Even assuming that the market definition is too narrow, the NCAA's total control over televised intercollegiate football, when combined with NCAA football's apparent uniqueness from the perspective of broadcasters, supports the inference that the NCAA possesses some degree of market power. Because the NCAA possesses market power the risks of cartelization and price enhancement are imminent. Also, because there exist no readily available substitutes for NCAA football the television plan creates substantial vertical foreclosure. Both these results are anticompetitive. (pp. 8-9)

The court's opinion continued, explaining the importance of the CFA's argument against the NCAA plan and its effects, which were felt among the member institutions. In the opinion, Judge Logan (1983) detailed how the broadcast plan restricted NCAA members that compete in Division I-A, of which there are less than 100, because those programs have a commercially viable product. Of those, sixty-one of them were CFA members, which is the group that had

brought the suit against the NCAA (Logan, 1983). It was clear that the programs whose competitions are viably commercial were displeased with the NCAA broadcast plan and the prices that are being affixed to these competitions. Based on these charges by the CFA in District Court, Logan (1983) agreed to affirm the lower court's decision:

> We affirm the district court's conclusion that the television plan is unreasonably restrictive of competitive conditions and therefore unlawful. It increases concentration in the marketplace; it prevents producers from exercising independent pricing and output decisions; it precludes broadcasters from purchasing a product for which there are no readily available substitutes; it facilitates cartelization. Against this array of antitrust injuries the NCAA's justifications are insufficient. (p. 9)

Supreme Court. On March 20, 1984, *the Board of Regents of Oklahoma v. NCAA* was argued in front of the Supreme Court. On June 27, 1984, a 7-2 decision was handed down, upholding the decision of both the District Court and the court of appeals and agreeing with the plaintiffs in the case, finding the NCAA in violation of the Sherman Antitrust Act. In the final decision in the case, the high court held that:

> (1) although plan constituted horizontal price fixing and output limitations, it was inappropriate to apply a per se analysis as restraints on competition were essential if the product was to be available at all; (2) plan on its face constituted a restraint on operation of a free market; (3) relevant market was college football; and (4) restraints were not justified on basis of procompetitive effect, protecting live attendance or maintaining competitive balance among amateur athletic teams. (Stevens, 1984)

In the majority opinion for the court, Justice John Paul Stevens wrote that the NCAA's television broadcast plan operated in a manner that constituted a restraint in trade that violated

the Sherman Antitrust Act (Stevens, 1984). The high court ruled that the NCAA television plan operated as a constraint on the free market and agreed with the District Court's assertion that the plan was governed in a way that raised prices and reduced output, both of which negatively affect the consumer (Stevens, 1984). The court also agreed with the District Court in rejecting the NCAA's argument that its broadcasting plan was not anticompetitive in nature because it lacked market power. The Supreme Court asserted that the District Court's decision supported that the NCAA maintained market power (Stevens, 1984).

In its defense, the NCAA had tried to argue that its plan was procompetitive, but failed to prove that in District Court, which the Supreme Court affirmed. The NCAA tried to explain its broadcasting plan as a joint venture in order to justify the manner in which it operated; but in the opinion Justice Stevens wrote that the findings from the District Court refuted that argument (Stevens, 1984). The NCAA also argued that its television plan maintained a competitive balance among amateur athletic teams; however, the court ruled that it could not find a correlation with that argument (Stevens, 1984). The Supreme Court reasoned that the television plan was not organized in a manner that would assist competitive balance, as it doesn't define how much an institution can spend on its football programs or even the manner in which athletic revenues are allocated. The NCAA only enforced a restriction on the stream of revenue through its broadcasting plan, which is more beneficial to some teams than others (Stevens, 1984). The majority opinion went on to state that there was no evidence that supported the argument that the restriction on the revenue stream from the broadcasting plan created more equality throughout the NCAA member institutions than would a restriction on any other means of institutional revenue (Stevens, 1984).

Furthermore, the Court found that the opinion of the District Court substantially supported a restraint of trade by the NCAA broadcasting plan, stating that, in a free market system, many more games would be televised than the NCAA's broadcasting plan allowed and that the NCAA plan did not encourage a procompetitive atmosphere in college football (Stevens, 1984). The NCAA had been relying on its amateurism rule as a defense in the case to show the courts that the television plan was set up in a manner that would help preserve amateurism within college athletics. Justice Stevens noted the District Court's finding that the NCAA imposed numerous other rules to preserve amateurism and that, when applied, fared far better at promoting competitive balance than the broadcasting plan (Stevens, 1984).

In the final paragraph of the opinion, Justice Stevens addressed the amateurism rule held by the NCAA, writing that it, the rule on amateurism, is necessary to preserve and promoting tradition in college athletics. Furthermore, the opinion stated that the NCAA maintains the freedom to promote amateurism, adding that student-athletes boost engagement and diversity in college athletics, which complies with the Sherman Antitrust Act. However, the Court also noted that the NCAA must adhere to the rules of the Sherman Antitrust Act while preserving the tradition of college athletics, and must not create rules that restrict output and do not promote competitive balance. In the end, the Supreme Court supported the District Court's decision that by restricting consumption and not allowing member institutions of the NCAA to search for a suitable alternative, the NCAA stunted competitive balance rather than promoted it (Stevens, 1984).

Writing the dissenting opinion for the Supreme Court, Justice Byron Raymond White disagreed with both the rulings of the District Court and the Court of Appeals. Justice White wrote a strongly worded and lengthy opinion on his disagreement with the District Court's

decision in favor of the plaintiffs, and also referred to the Court of Appeals' decision. Justice White, who was also an All-American collegiate athlete during the late 1930's, argued that the television broadcasting plan adopted by the NCAA was created in a style that meant to preserve amateurism while supporting the combination of athletics and education (White, 1984). White continued that he believed that the television broadcasting plan didn't cause a restraint in trade and shouldn't have been subjected to an antitrust suit because the plan worked similarly with the NCAA's other anti-competitive aspects of its regulations (White, 1984).

Justice White was not convinced that the NCAA television broadcasting plan had any anticompetitive effect on the NCAA and the member institutions utilizing the plan. Nor was he convinced that the District Court's ruling was based on a proper measure of output in justifying its ruling (White, 1984). Justice White was not satisfied with the lower court's finding that many more college games would be televised if the NCAA hadn't exerted total control of the television rights of its member institutions. Justice White addressed the District Court's finding that eliminating the NCAA broadcast plan would reduce the amount of games televised on network television while increasing the number of games being aired on regional and local channels. Justice White's contention was that the District Court made no finding on the effect of eliminating the plan on total viewership, which he felt was the more adequate measure of output, nor did the District Court issue an opinion on the whether the NCAA plan operated in an anticompetitive nature (White, 1984). Essentially Justice White backed the NCAA's argument that the NCAA broadcast plan was set up in a way to utilize network broadcast at the expense of local broadcast to gain more exposure for the member institutions by reaching a larger viewing audience. Based on these factors, the dissenting opinion of the Supreme Court believed NCAA's

broadcast plan did not have a negative effect on output and did not operate in an anticompetitive manner (White, 1984).

With regard to the issue of amateurism, the dissenting justices believe the broadcast plan promoted the ideal of amateurism in college football by sharing the revenues earned from the plan amongst the member institutions. The model for the broadcast plan would, rather, decrease financial incentives that were geared toward professionalism (White, 1984). Justice White continued his opinion by writing that the NCAA's plan lined up with restrictions the NCAA mandated in other areas of its policies, and that these mandates all worked within the core of the NCAA's values of limiting the rewards of professionalism. Taking into account these aspects, the dissent strongly supported the view that the NCAA's broadcast plan promoted the concept of amateurism, which allowed the member institutions to adhere to and focus on the educational missions for their athletes rather than focusing on athletic achievement (White, 1984).

As a result of the ruling by the Supreme Court, the CFA was allowed to bargain with other networks and televise more college football games (Siegfried & Burba, 2003). This opened up the broadcasting of college athletics, which has grown to the state that it is in today. The ruling also had some lingering effects on college athletics – positive outcomes for institutions and the athletes that play college sports, and an adverse effect on the perception of amateurism and the rule of it governed by the NCAA. On the positive side for the athletes and institutions, the NCAA lost a case that went all the way to the Supreme Court, damaging its perception of having impenetrable armor. This case also created the blueprint of using the Sherman Antitrust Act as a weapon to file charges against the NCAA, which other plaintiffs would utilize for their own lawsuits. However, on the negative side for the athletes and institutions, this case also solidified the amateurism rule for the NCAA, which used the language

from Justice Stevens and Justice White regarding the importance of amateurism in college athletics. The NCAA has utilized both the affirming and dissenting language from this case in successfully defending amateurism in court battles since to showcase that although the high court ruled against it, amateurism should still be promoted and adhered to as a sacred tenet of college athletics.

Pay for Play

In this chapter I have analyzed the *Board of Regents of Oklahoma vs. NCAA* case, the financial concerns that many of its member institutions had regarding its broadcast plan, how the NCAA was held responsible for violations of the Sherman Antitrust Act, and the effect all of this had on the NCAA's amateurism rule. At the onset this case was about institutions feeling that the NCAA broadcast plan was a monopoly that restricted them from financial gain for the product they put on the field. By the end of the case, deeper questions emerged surrounding college athletics and athletes as purely amateur based on the amount of revenue realized through television contracts. Since the end of the trial the amount of revenue had increased due to institutions having the ability to negotiate contracts, sparking the pay for play debate. As the revenue increased so did the debate on whether college athletes should be considered amateur and whether they should be paid; thus bringing into focus the current debate on pay for play and the outcry of many that believe college athletes should be paid.

The pay for play v. amateurism argument can be tied directly back to the *Board of Regents of Oklahoma v. NCAA.* This case set the precedent on amateurism that the NCAA has maintained for years as its standing argument against a system of pay for play. Both Judge Barrett in the appeals case and Justice White of the Supreme Court held strong opinions on the value and sanctity of amateurism being an important asset in college athletics. The NCAA has

reverted back to this case on numerous occasions to point out how the courts have espoused amateurism while downplaying the idea of professionalism in college athletics; the NCAA has been stout in using these judgements as a basis for shooting down pay for play.

Although Justices White and Barrett, as dissenters for the Supreme Court in this case, voiced strong wording in their beliefs for amateurism having a firm presence in realm of college athletics, the plaintiffs were still successful in proving their case. And although the *Board of Regents of Oklahoma vs. NCAA* wasn't about paying college athletes for their performances on the field it was successful in showing that the NCAA could be held responsible for antitrust violations, laying the groundwork for future lawsuits. This case was also pivotal in bringing to the forefront the financial concerns many institutions had around the amount of revenue the NCAA was generating through its contracts.

Chapter Four: History of the NCAA Men's Basketball Tournament and College Athlete Scholarship Issues

The next case that I am analyzing for this study is *White v. NCAA*. This case was important because it drew attention to the fact that full student-athlete scholarships did not cover a student-athletes entire cost of attendance. This case is also important because it never went to trial. Instead the NCAA settled the lawsuit with the class essentially admitting that its policy on full athletic scholarships needed to change. Ultimately, a few years after the suit, the NCAA did adopt a policy to allow a full athletic scholarship to cover a student-athletes full cost of attendance.

White v. NCAA

In February 2006, former Stanford University football player Jason White filed a lawsuit against the NCAA, alleging that the NCAA Grant-in-Aid (GIA), or full scholarship, imposed a cap limiting the amount of scholarship a student-athlete could receive to below what an institution sets as its cost of attendance (COA) (*White v. NCAA*, 2008). The complaint was based on the fact that a university sets its COA at a higher amount than what a full GIA will cover. Every institution includes the components of tuition & fees, room & board, books, and personal & miscellaneous costs when configuring their COA's. A full GIA scholarship would only cover the components of tuition & fees, room & board, and books, leaving the personal & miscellaneous costs out of that calculation. Jason White and his attorneys filed their complaint based on that shortage.

The plaintiffs wanted the court to hold the NCAA responsible for the gap between the GIA and the COA and to stop the NCAA from enforcing its GIA policy, which would allow for student-athletes to receive their athletic scholarship up to the COA (Baker III, Maxcy& Thomas,

2011). In addition to holding the NCAA responsible for the GIA to COA gap, the plaintiffs were also pursuing monetary damages on behalf of the class they represented. On August 29, Jason White and his attorneys had filed a motion to have the case certified as a class action lawsuit and to be appointed as the representatives of the class (*White v. NCAA*). The motion was officially filed on September 8, 2006, with the class being made up of Division I student-athletes. The NCAA filed a motion to have the class action dismissed. On October 19, the court certified the lawsuit as a Class action (*White v. NCAA*). The certification defined the class as:

> the individuals who received athletic-based GIAs from colleges and universities that sponsor (i) football programs included in NCAA Division I-A; or (ii) men's basketball programs sponsored by colleges or universities in the ACC, Big East, Big 10, Big 12, Pac-10, SEC, Mountain West, WAC, Atlantic 10, Conference USA, Mid-American, Sun Belt, West Coast, Horizon League, Colonial Athletic Association, or Missouri Valley Conferences, at any time between February 17, 2002 and the entry of judgment in this matter. (*White v. NCAA*, 2008, p. 2)

Other Division I athletes who joined Jason White as named Plaintiffs for the class were Brian Polak, a former Football player for the University of California at Los Angeles (UCLA); Chris Craig, a former basketball player from the University of Texas at El Paso (UTEP); and Jovan Harris, a former basketball player at the University of San Francisco (Zapata, 2008).

Progress of the Lawsuit

In April of 2006, the NCAA filed a motion to have the case dismissed. At that point the plaintiffs filed a memorandum opposing the dismissal. However, in June of 2006, the court agreed with the NCAA and the motion to dismiss, although the dismissal left room to amend for the plaintiffs (*White v. NCAA*). At the end of June, the plaintiffs filed their First Amended

Complaint (FAC) and in July the NCAA moved to dismiss. Once the again the plaintiffs filed a memorandum supporting their opposition to the dismissal, and on September 20th, the court agreed with the plaintiffs, issuing an order denying the NCAA's motion (*White v. NCAA*).

Earlier in September the plaintiffs filed their Second Amended Complaint (SAC) on behalf of anyone who received a full GIA

> from any of the (1) football programs sponsored by colleges and universities included in NCAA Division I-A or (2) men's basketball programs sponsored by colleges or universities in the ACC, Big East, Big 10, Big 12, Pac-10, SEC, Mountain West, West Coast, Horizon League, Colonial Athletic Association, or Missouri Valley conferences, at any time between February 17, 2002 and the date of judgment in this matter. (*White v. NCAA*, 2008, p. 1-2)

The SAC alleged that the NCAA violated the Sherman Antitrust Act by capping the amount of athletics aid that a student-athlete could receive at the full GIA level. It also alleged that if the NCAA hadn't capped the GIA, student-athletes would be able to receive athletic aid up to the full COA, based on their institution (*White v. NCAA*, 2008). As normal procedure for the case, the Class Counsel investigated thoroughly the allegations made by the plaintiffs in the SAC and the NCAA's defense. During the investigation the Class Counsel subpoenaed the NCAA and other related parties for documents related to the case. Also during the discovery phase the Class Counsel took 18 depositions and conducted interviews to gain pertinent information related to the case (*White v. NCAA*).

The result of the investigation came in the form of several negotiations between the Class Counsel and the NCAA. The court documents (*White v. NCAA*) show that, "The process included several in-person mediation sessions supervised by the Hon. Daniel Weinstein, Judge of

the Superior Court (Ret.), and numerous telephonic and email exchanges" (p. 2). And after all the negotiations were completed the court (*White v. NCAA*) shows that "Plaintiff's and Class Counsel believe that the investigation described above provides an adequate and satisfactory basis for the Settlement described herein" (p. 2).

White, the other plaintiffs, and their counsel understood the time and expense that a trial would incur when pressing action against the NCAA. They also acknowledged that not only would the trial be extensive and financially burdensome, but that the NCAA would likely also appeal a decision against them, further extending the case (*White v. NCAA*). The plaintiffs had considered that the outcome of the case was not certain and there was risk in pressing such action against the NCAA, which carried no guarantees. That along with the difficulties of proof in a federal antitrust case and the problems that could arise with the possible defenses they would face, the plaintiffs understood that there would be no assurances for the outcome of the trial (*White v. NCAA*). Based upon the investigations and their evaluations, the plaintiffs and their counsel decided the best course of action was to settle the case based on stipulations that they felt were fair, reasonable, and in the best interests of the class (*White v. NCAA*).

The Settlement

Due to the settlement, the NCAA was afforded the ability to issue a denial of wrongdoing, which allowed them to deny the charges claimed by the plaintiffs. The settlement gave the NCAA the chance to continued its denials that it had committed any violation of law or taken part in antitrust violations; the NCAA contended that it had, at all times, acted in a lawful manner. The NCAA also made it known it had agreed to the settlement to avoid the expense of a long, time-consuming lawsuit and the distraction of litigation that would keep it from its normal

business (*White v. NCAA*). The NCAA's denial was summarized by the court (*White v. NCAA*) with:

> NOW, THEREFORE, IT IS HEREBY STIPULATED, CONSENTED TO AND AGREED, by Plaintiff's, for themselves and on behalf of the Class, and by the NCAA that, subject to the approval of the Court, the Action shall be settled, compromised and dismissed on the merits and with prejudice and that the Released Claims shall be fully and finally compromised, settled and released as to the Released Persons, in the manner and upon the terms and conditions set forth herein. (p. 3)

The agreement included several provisions that defined who would qualify for the settlement. The "Class" for this settlement (*White v. NCAA*) was:

> all persons who received athletic-based GIAs from any of the (1) football programs sponsored by colleges and universities included in NCAA Division I-A; or (2) men's basketball programs sponsored by colleges and universities in the ACC, Big East, Big 10, Big 12, Pac-10, SEC, Mountain West, WAC, Atlantic 10, Conference USA, Mid-American, Sun Belt, West Coast, Horizon League, Colonial Athletic Association, or Missouri Valley Conferences, at any time between February 17, 2002 and the entry of Judgment in the Action, which period shall include the entire academic year 2007-2008. (p. 3)

These definitions shed light on who was able to apply for the settlement and from what time period. It also outlined the stipulations behind the settlement; it also contained several considerations that the NCAA agreed to provide for the members of the class.

First, the NCAA agreed to make a total of $218 million available to all Division I member institutions for the academic years 2007-2008 through 2012-2013 to use as a benefit for

student-athletes and to pay student-athletes from the Student-Athlete Opportunity Fund (SAOF), a fund designed to assist student-athletes with educational expenses not covered by their athletic scholarships, and making sure the institutions adhere to the policies set forth for SAOF (*White v. NCAA*). The NCAA also reserved the right to use the funds currently utilized for the Special Assistance Fund (SAF) and the Academic Enhancement Fund (AEF) for this purpose (*White v. NCAA*). The NCAA strongly urged the member institutions to utilize the funds provided by the settlement for student-athletes that demonstrate financial or academic needs, while following the NCAA guidelines for reporting the usage of the funds back to the NCAA via internal reports. Per the NCAA, this article of the settlement would not impact the Academic Performance Program (APP), a program designed to assist student-athletes academically, which would still be administered by the NCAA to the Division I institutions to use for their student-athletes with certain academic needs (*White v. NCAA*).

Second, the NCAA made a total of $10 million available over a three-year timeframe to student-athletes who qualified as class members who made claims on the settlement. The claims were reimbursed to the class members who could prove they were for educational expenses, such as tuition and fees, books and supplies, career development, and other class-related expenses incurred by the student-athlete (*White v. NCAA*). The stipulations surrounding the payments were that the payment would be a one-time payment of up to $500 from the NCAA to cover career development services, such as from career counseling, resume preparation, and/or job placement (*White v. NCAA*). Another stipulation was that the NCAA would cover up to $2,500 per year for a maximum of three years to reimburse class members who could prove educational expenses from a program at an accredited institution that led to a two- or four-year degree or for an accredited professional graduate, post-graduate degree, or a professional certificate.

The settlement also stipulated that if, at the end of the three-year timeframe, any amount of the $10 million that had not been utilized would be redistributed by the NCAA over three subsequent years to the Division I institutions that have the same goals for academic programs that were listed in the first consideration (*White v. NCAA*). The NCAA also agreed not to utilize any of the funds for its degree completion program or its graduate scholarship program. The NCAA also agreed to create and maintain a website over the three-year period that would be available to the class members so they could apply for the settlement, review the benefits, and submit the proper documentation needed to be included in the class (*White v. NCAA*). The NCAA imposed a deadline of six months prior to the end of the three year timeframe by which student-athletes would have to apply? if they wanted to be considered for the class and the benefits (*White v. NCAA*).

Third, the NCAA made accommodations by creating legislation in which the Division I member institutions could provide accident insurance coverage for student-athletes who may be injured while participating in athletics (*White v. NCAA*). Fourth, the Board of Directors for the NCAA Division I institutions approved a rule by which institutions could provide year-round health insurance to their student-athletes (*White v. NCAA*). The fifth and final stipulation was for the NCAA to explore the possibility for institutions to allow aid through graduation for student-athletes who were no longer eligible for athletics scholarships. They also began to explore the possibility for institutions to provide multi-year scholarships to student-athletes (*White v. NCAA*). At the time, multi-year scholarships were not an option, so all student-athletes were signed to one year scholarships that left the option open for non-renewal in the subsequent years.

In the notice of settlement, the court ruled that the plaintiffs were responsible for alerting any Class Members of the settlement. As an added section to the settlement, the court also ruled

that the NCAA would pay up to a maximum of $100,000 to the Class Counsel for expenses incurred while making the class members aware of the settlement, once proper documentation was provided to prove actual costs for administering the notice of the settlement (*White v. NCAA*). The Plaintiffs were also required to provide the NCAA with proper identity information for the members of the class who had been sent notification of the settlement so that the NCAA could properly track which of the class members took action and which opted out (*White v. NCAA*). Finally, the NCAA was granted the ability to terminate the settlement if more than three percent of the Class decided to opt out of the settlement (*White v. NCAA*).

In the settlement, the NCAA agreed to pay the Class Counsel's fees of $7.5 million and to reimburse Counsel's $1.1 million in fees (*White v. NCAA*). The plaintiffs were also allowed to apply for incentive payments of $5,000 each for being named in the case and also for any student-athletes that gave testimony in a deposition (*White v. NCAA*). The NCAA agreed not to oppose these judgements and

> to pay the amounts awarded by the Court in response to them in addition to the Settlement Consideration described above. Thirty days after entry of the Preliminary Approval Order the NCAA will deposit into an interest bearing account the sum of $8.6 million to be disbursed in accordance with the Court's order on the application of Class Counsel for an award of attorneys' fees and expenses. Any portion of the sum so deposited which is not awarded to Class Counsel shall be returned to the NCAA. (*White v. NCAA*, 2008, p. 8)

This agreement was settled upon between the plaintiffs, the NCAA and the court at Fairness Hearing to assure that all parties involved agreed to the terms (*White v. NCAA*).

The settlement in *White v. NCAA* helped make the case that the full scholarship institutions offered based on NCAA rules and regulations was not enough to cover what the institutions had set as the cost of attendance. Had both sides not reached the settlement and the case went to trial, Baker III, Maxcy, & Thomas (2011) believe that the NCAA would have lost control over the purpose of their GIA program. The settlement afforded the NCAA the ability to maintain its policies surrounding the GIA program, allowing changes to the program to be made by the NCAA. With the settlement, the plaintiffs were able to force the NCAA to accept and admit that a full scholarship did not meet the cost of attendance and, therefore, needed to be addressed. It also gave student-athletes that were a part of the class the ability to be reimbursed for funds used previously to purchase items that were part of what their institution had previously determined a normal cost of attendance.

Since the NCAA avoided a trial, it was able to once again avoid a challenge to its longstanding amateurism rule through antitrust action. The NCAA was able to continue the status quo as it pertained to student-athletes. As Baker III, Maxcy & Thomas (2011) point out, with this case "The NCAA has retained complete control over major college football and major college basketball in regard to the regulation of student-athletes" (p. 95). With this settlement, and rulings in previous cases, the courts allowed the NCAA to maintain its regulations preserving amateurism in college athletics, which makes it distinct from professional sports (Baker III, Maxcy, & Thomas, 2011). In their review of the case, Baker III, Maxcy, & Thomas (2011) advise that the NCAA should update its policies based on the facts that came out of the *White v. NCAA* case; doing so would strengthen the NCAA's vulnerability from antitrust lawsuits in the future. They concluded their review with an assessment on the future of antitrust lawsuits and challenges to the NCAA policy on amateurism:

> By modifying grant-in-aid to include the full cost of attendance, the NCAA will further fortify its regulations from antitrust scrutiny. If grant-in-aid included the full cost of attendance, the NCAA would have an educationally-related reason for the amount set for athletics-based aid. It would be extremely difficult for future classes of plaintiffs to challenge that amount without having to convince the court to reject decades of precedent, including *Board of Regents,* recognizing the preservation of amateurism as a justification for NCAA regulations. If plaintiffs were to win that legal battle, they would arguably be party to the greatest upset in the history of college sports. (p. 96).

Ultimately the NCAA did change its policy on the GIA to COA gap, which allowed institutions to offer full scholarships up to the COA. However, the NCAA continues to face challenges to its rules and regulations, including questions surrounding its amateurism rule. *White v. NCAA* was the vehicle that brought the issue of the GIA to COA gap to light, and in so doing, helped to pressure the NCAA to make the change to its policy.

NCAA March Madness Basketball History and Contracts

The NCAA men's basketball tournament puts the financial aspect of the White case into context because it lends an understanding as to why the athletes sued the NCAA and the reasons there is such an outcry of a pay for play system in college athletics allowing student-athletes to get paid for their performances in the arena and on the field.

Held every March, and carrying the nickname March Madness, the NCAA's Division I men's basketball tournament is the largest intercollegiate athletics event in the United States. The event is the pinnacle of men's college basketball, with the winner of the tournament anointed as the National Champion of men's college basketball for the year. The television ratings for the games during March Madness each year are high and the advertising revenue generated during

the event often surpasses that of the Super Bowl and the World Series (Southall, Nagel, Amis & C. Southall, 2008). It is one of the two most prestigious college sports championships that an institution's athletic department can achieve (the other being the National Champion of college football). With the massive popularity of the sport and the desire by institutions to achieve the highest honor of becoming the National Champion, it is no surprise that the NCAA would capitalize financially on the popularity that surrounds its tournament.

In 1999, the NCAA signed a $6 billion contract with CBS to televise the men's basketball tournament. CBS had the exclusive rights for the NCAA men's basketball tournament since 1982; the new contract signed in 1999 carried the network through 2014 (CNNMoney.com, 1999). The 11-year contract, which at the time was one of the largest sports contracts in United States history, expanded on its current contract that would have expired in 2002 (CNNMoney.com, 1999). CBS was able to outbid all the other major networks to win the contract with the NCAA, which would pay at around $545 million per year (CNNMoney.com, 1999).

The NCAA Men's Basketball Tournament began in 1939 with eight teams with the championship game being played in Evanston Illinois (sportsbusinessdaily.com, 2013). It culminated with the University of Oregon defeating Ohio State University to become the first champion. Since its inaugural tournament in 1939, the tournament has expanded in size and grown so much in popularity that by 2005, it was the second-most popular athletic event for gamblers behind the Super Bowl (History.com). Although the tournament started out with only eight teams participating, it grew steadily – to 40 teams in 1979 and 48 in 1980 – until 1985, when it reached 64 invitees. In 2011, the tournament hit its current team invitee list with 68 teams (NCAA.com, 2016). The teams that are selected for the tournament are based on two

separate criteria – automatic qualifiers and at-large qualifiers. The automatic qualifiers win their way into the tournament by winning their respective conference, while the at-large qualifiers are selected by a committee through a process based on their performance throughout the season, an addition that took place in 1975 (NCAA.com, 2016).

The championship game wasn't televised until 1946, when it was shown locally in New York City with an estimated 500,000 viewers. Regional broadcasts first took place in 1952, and the first national telecast of the championship came occurred in 1954 from Kansas City (sportsbusniessdaily.com, 2013). As the tournament grew, so did the media coverage, adding to the popularity of the sport. In 1957, the media coverage of the tournament expanded to its largest coverage since its inception – over 60 newspapers, radio broadcast on over 70 stations that spanned 11 states, and an 11-station television network (sportsbusinessdaily.com, 2013).

In 1963, the NCAA signed a contract with "Sports Network" for the rights to televise the championship game nationally for a five-year period ending in 1968 at a total cost of $140,000. By 1966, the net income from the entire tournament exceeded half a million dollars since the tournaments existence, prompting adoption of a television blackout policy that required a 48-hour advance sellout in order to broadcast games (sportsbusinessdaily.com, 2013). The tournament's total net income exceeded the million dollar mark for the first time in 1969 and the television income, with NBC being selected to carry the tournament, exceeded the half a million dollar mark, showing the exponential growth of the tournament. By 1971, the popularity of the tournament grew, as NBC recorded the largest television viewership of a basketball telecast with over nine million households tuning into the championship game (sportsbusinessdaily.com, 2013). Just four years after setting record numbers in television revenues, the 1973 tournament television rights exceeded the million dollar mark for the first time. During that same

tournament, NBC televised the championship game in prime time, earning a television rating of 20.5, with 13.6 million television households viewing the championship game, reaching an audience of 39 million people (sportsbusinessdaily.com, 2013).

The phrase "Final Four" was first introduced in 1975 to indicate the four teams that advanced to the semi-final round as the final teams of the tournament. Reporter Ed Chay of the *Cleveland Plain Dealer* is credited with coining the phrase; in 1981, the NCAA registered the term "Final Four" as a trademark (sportsbusinessdaily.com, 2013). In 1979, NBC set a one-game record with a 24.1 share as Michigan State University defeated Indiana State University to earn the title (sportsbusinessdaily.com, 2013).

CBS again earned the broadcast rights to the tournament in 1982, agreeing to a three-year television contract, which allowed CBS to televise the tournaments through the 1984 season. That year also marked the first year that the tournament "Selection Show" – the unveiling of the teams that have been selected to play in the tournament – was broadcast on live television (sportsbusinessdaily.com, 2013). In 1983, the National Championship game between North Carolina State and Houston University set a record for a CBS broadcast, reaching 18.6 million households and holding a television rating of 22.3. The growing popularity of the tournament and the growing attendance prompted the NCAA to require that the venue that hosts the Final Four has a seating minimum of 17,000 (sportsbusinessdaily.com, 2013).

CBS hit another viewership record in 1984, with 19.8 million homes viewing the championship game. In 1985, CBS and the NCAA extended their contract for three more years, allowing CBS to carry the tournament through 1987. The NCAA also found listening success with its radio network that drew 21 million listeners for the championship game (sportsbusinessdaily.com, 2013). The 1988 tournament saw another three-year contract extension

between the NCAA and CBS; it also marked the first year that all regional games were broadcast in prime time (sportsbusinessdaily.com, 2013). In 1989, the NCAA increased the requirement for seating capacity in host facilities up to 30,000 for the Final Four to meet the demands and the popularity of the event (sportsbusinessdaily.com, 2013). CBS once again renewed its television contract with the NCAA in 1991, this time for seven years to the tune of $1 billion dollars. CBS also agreed to broadcast live coverage of all sessions of the championship in that contract (sportsbusinessdaily.com, 2013). A sitting president of the United States attended the tournament for the first time in 1994, when then-President Bill Clinton attended one of the regional championships and the national semifinal (sportsbusinessdaily.com, 2013). In 1995, two years before their contract was to expire, the NCAA and CBS renewed the television contract once again. This time the contract is worth $1.725 billion for five years, extending until 2002 (sportsbusinessdaily.com, 2013).

The digital age came to the basketball tournament when, in 1996, the NCAA created the first online page dedicated to the Final Four. Its web presence expanded the following year when the NCAA included the preliminary tournament rounds on its webpage (sportsbusinessdaily.com, 2013). In 1999, the NCAA and CBS once again renewed their contract, three years before it expired; this time they strove for an unprecedented number, settling on an 11-year, $6 billion dollar agreement. The agreement, which included television rights, over-the-air, cable, satellite, digital and home video, also encapsulated marketing, promotions, internet sources, radio, fan festivals, and licensing (sportsbusinessdaily.com, 2013).

In 2000, the phrase “March Madness” was coined when the NCAA, in conjunction with the Illinois High School Athletic Association, formed the “March Madness Athletic Association” and applied for a trademark for the “March Madness” phrase (sportsbusinessdaily.com, 2013). In

2002, the Entire Sports Programming Network (ESPN) televised the opening round game of the tournament for the first time (sportsbusinessdaily.com, 2013). Westwood One, America's largest radio network with over 150 programs, took over administration of the tournaments radio rights in 2003. In the same year, the NCAA once again increased its capacity requirement for Final Four host venues from 30,000 up to 40,000 (sportsbusinessdaily.com, 2013).

In 2005, CBS entered a two-year agreement with CollegeSports.com (CSTV.com) for internet streaming video rights for out-of-market games for the first 58 games of the tournament. Originally this was set up as a subscription model for internet viewership of the games, but changed to a free product in 2006 (sportsbusinessdaily.com, 2013). In 2007, CBS doubled its bandwidth to accommodate the high volume of traffic it received from online viewership of the tournament. Dubbed "March Madness on Demand," the internet service offers free live video streaming online for the games in the first three rounds of the tournament (sportsbusinessdaily.com, 2013). Ancillary events surrounding the Final Four increased tremendously in 2008 in the host city, making the Final Four an entertainment destination, not just a few basketball games. Such events as Hoop City, the Big Dance, and other festivities draw large crowds to the city above and beyond attending the playoff games (sportsbusniessdaily.com, 2013). In response to this growing trend and the extensive migration of fans to the host city, the NCAA put more effort into planning events around the Final Four, turning the event into a four-day celebration. Also in 2008, to accommodate ever increasing online viewership of the games, CBSSports.com and March Madness on Demand developed an online platform that granted over 200 separate websites to broadcast live games to internet viewers of the tournament. For the first time, viewers were able to watch all 63 games online; CBS saw its online viewership jump from almost two million to over four million (sportsbusinessdaily.com, 2013). The digital age had

officially become a part of the NCAA men's basketball tournament, giving the fans and viewers the ability to basically watch the games anywhere.

By 2009, the tournament was drawing record numbers of fans attending both the tournament and the events that surrounded the Final Four weekend. Over 72,000 fans attended both the national semifinals games and the national championship game that were held in Ford Field in Detroit. Records were also established for the events of Hoop City and the Big Dance, with over 300,000 fans in attendance over the three-day period (sportsbusinessdaily.com, 2013). In 2010, the NCAA, utilizing a clause in its 1999 contract with CBS, opted out of the contract to sign a new deal with CBS Sports and Turner Broadcasting. The contract was a 14-year deal worth $10.8 billion (sportsbusinessdaily.com, 2013). The extensive contract also stipulated that CBS and Turner Broadcasting collaborate with the NCAA and its marketing program. For the first time in the history of the tournament every single game was televised live across the country on several networks (sportsbusinessdaily.com, 2013). The ancillary events that surround the Final Four were also revamped to accommodate more fans. Hoop City was rebranded as Bracket Town, featuring many temporary basketball courts with events for fans to participate in games and be more involved in the celebration (sportsbusinessdaily.com, 2013). Over 140,000 fans attended the games of the Final Four weekend that year. Although the attendance for the games was high, it still did not reach the levels set during the Final Four games the previous year (sportsbusinessdaily.com, 2013).

A tournament record for fans was set on the semifinal on Saturday, 2011, as over 75,000 fans attended the games. Over 70,000 fans attended the national championship game, bringing the total fans at the Final Four games to over 145,000 (sportsbusinessdaily.com, 2013). Also in 2011, March Madness on Demand was offered free to other platforms, such as iPad and iPhone,

and was available free through NCAA.com. Even though all of the games of the tournament are available live on television, the total visits to online platforms, including mobile use, increased by over 60 percent; over 13 million hours of streaming video were expended through broadband, and iPad and iPhone usage (sportsbusinessdaily.com, 2013).

The NCAA men's basketball tournament, as I have detailed in the history of the tournament, has grown exponentially since its inception in 1939. In recent years, especially since 1999 and as detailed in the history, the tournament has grown massively in popularity, viewership and, most noticeably, financial benefits including revenues. As mentioned earlier, the contract between the NCAA and CBS in 1999 was the largest in sports history at the time in the United States. However, the NCAA continued to re-negotiate that contract, signing an even larger one in 2011. The 2011 contract was signed with both CBS and Turner Broadcasting and was built around a 14-year agreement, assuring that the tournament would continue to be carried through television and digital media into the 2020's.

The 2011 television contract also encompassed internet and wireless rights for CBS and Turner Broadcasting and continued through the 2024 men's basketball tournament. By announcing the contract through an NCAA press release (2010), the NCAA believed that it would help to strengthen the long term financial stability of the organization (ncaa.com). In that release the NCAA stated that 96% of the revenue generated from the contract would be used to benefit student-athletes through a multitude of programs already established within the NCAA structure, and to assist with services or direct contributions to member conferences or individual institutions (ncaa.com, 2010). The NCAA stated that the agreement would also provide support to all of the NCAA divisions, giving them the opportunity to play in a wide range of

championships and providing them the means for funding personal and educational costs attributed to their academic pursuits (ncaa.com, 2010).

With the new contract, the NCAA formed a committee that would review allocation of the funds that were generated from the tournament to assure that the funding moving forward would still be utilized in a manner that benefits the individual institutions and the student-athletes (ncaa.com, 2010). Using the new contract as the backdrop for organizing the reform committee allowed the NCAA to also explore academic review for student-athletes as it relates to their educational endeavors. The committee was charged with investigating options to find a balance for student-athletes between their basketball championship performances and academic achievement through their progress rate or graduation rate (ncaa.com, 2010). Jim Isch, who was the NCAA interim president at the time, stated:

> The economic challenges of the day are being felt on campuses across the country. The amount of revenue from this agreement isn't the focus of this moment, rather it is the long-term security it provides as well as what is done with the money. We put our money where our mission is…supporting student-athletes so they can be successful in the classroom and in life. (ncaa.com, 2010, p. 1)

In April of 2016, the NCAA, CBS, and Turner Broadcasting announced that they were once again extending their broadcasting contract. The extension would lock up the NCAA, CBS, and Turner for eight years longer than the current contract that was set to expire in 2024, carrying it through 2032 (espn.com, 2016). The financial arrangements of the deal were set to pay around $1.1 billion per season, an increase from around $770 million per season in the previous contract. The contract had the same provisions that the previous contract had regarding

television and online platforms, but also included a provision for technologies that hadn't yet been invented (espn.com, 2016).

The link that connects the *White v. NCAA* case to the NCAA Men's Basketball Tournament is the amount of revenue generated by the tournament, and student-athletes claims that they should be compensated for their participation while representing their institution through their sport. The NCAA amateurism rule doesn't allow a pay-for-play structure in college athletics. This is partially the reason behind the lawsuit, the student-athletes do not feel that they are being treated fairly by the rules the NCAA sets for them. The argument that the student-athletes have is that they NCAA has the ability to negotiate contracts worth billions of dollars to the organization while the student-athletes are not allowed to negotiate the amount of their scholarship. In the mind of the student-athletes, and many others, that system is unfairly biased toward the NCAA and flawed in that manner.

Pay for Play Ramifications

In April of 2014, just before and just after he led his team, the University of Connecticut, to the National Championship, Shabazz Napier drew attention to himself not only for his performance on the court, but also for comments he made about being a student-athlete. As CBS.com (2014) reported, Napier was quoted as saying:

> We as student athletes get utilized for what we do so well, and we're definitely best to get a scholarship to our universities. But at the end of the day, that doesn't cover everything. We do have hungry nights that we don't have enough money to get food in. Sometimes money is needed. I don't think you should stretch it out to hundreds of thousands of dollars for playing, because a lot of times guys don't know how to handle themselves with money. (CBS.com, 2014, pg. 1)

Napier wasn't the first student-athlete to bring attention to the financial questions that have arisen in an era when college athletes are sometimes viewed as professionals, while the NCAA makes billion dollar deals for broadcast rights. In an era of college sports in which a large segment of the media and fan base feel that college athletics should adopt a pay-for-play format, Napier's comment and the NCAA television deal came under heavy scrutiny.

The NCAA stated that 96% of the money made in the deal with CBS and Turner Broadcasting for the March Madness tournament would go back to the student-athletes and institutions in the form of programs and services (ncaa.com, 2010). However, Rodger Sherman questions the numbers and the reporting that the NCAA utilizes in coming up with that figure, stating that it does not equal 96%, but is closer to 90%. Sherman (2016) also states that the NCAA claims all the money is used to benefit the student-athletes, by which one could infer that every single dollar goes toward the betterment of the student-athlete; Sherman asserts this is not true. When breaking down the NCAA claim, Sherman (2016) says the numbers just don't add up:

> But when you break down that phrasing, it doesn't really check out. For starters, they're arguing all money that's part of "direct distribution to member conferences and schools" is included in that "90 percent." Between grants based on the amount of sports schools offer, grants based on the amounts of scholarships schools offer, conference grants and "the basketball fund" distributed to schools based on tournament performances, over 60 percent of the money the NCAA makes from the tournament goes directly to schools and conferences. (p. 1)

Sherman (2016) goes on to question how the NCAA can be certain that the money it sends to conferences and institutions is going directly into funding for the student-athlete:

> College sports programs spend billions on buildings, millions on coach contracts and hundreds of thousands of dollars on search firms that choose which coaches to spend millions of dollars on. They also tend to be phenomenally inefficient users of money. The NCAA is arguing that every penny spent by schools helps student athletes. How can money paid to a coach or search firm benefit student athletes? (p. 1)

However, Sherman doesn't end there. He also raises questions about the grants that the NCAA gives to the conferences that have institutions represented in the March Madness tournament. Sherman (2016) states that the money sent to the conferences is earmarked for compliance-related issues, officiating programs, enforcement, and other programs that occur at the conference level. That money from the NCAA does not go directly to benefit the student-athlete, yet the NCAA reports it that way.

The questions that Sherman raised aren't new yet remain valid, considering the amount of money that the NCAA makes on contracts like those detailed previously related to the men's basketball tournament and the outcry that has continued for years that college athletes should be paid for their services. Sherman (2016) then brings up the point that even if the NCAA is sending 90% of its proceeds from the media deals related to the men's basketball tournament to the institutions to benefit the student-athlete, what about the other 10% that doesn't go to the student-athletes that the NCAA says does (which is equal to around $1 billion)? (Sherman, 2016). Sherman (2016) summarizes his thoughts by stating:

> The NCAA's best argument for why it gets to make $1 billion every year to put on a basketball tournament starring unpaid basketball players is that it only keeps $100 million for itself. It's bad enough for the NCAA to hold a billion-dollar event without paying the

> people that make it happen. It's even worse when they try to make it seem like they're generous for doing it. (p. 1)

Sherman may speak strongly about his views on the NCAA and the amount of money that it makes from the March Madness contract, but the points he raises are questioned by many people about college athletics, especially when it is brought to the forefront by someone like Shabazz Napier, who utilized the big stage of the March Madness tournament to bring attention to the disparity of the finances surrounding college athletics.

Chapter Five: Names, Images, Likenesses, and Paying College Athletes

The next case I am analyzing is *O'Bannon v. NCAA.* This case is important because of the mainstream media press it received and the popularity of the main plaintiff in the case, Ed O'Bannon. It is also important because not only was the NCAA named in the lawsuit, but the EA video game corporation was a co-defendant in the case. Ultimately this case exposed the inner workings of the NCAA, exposing some credibility issues within the organization and opening it up to more criticism from a public that was already weary of the organizational processes.

Ed O'Bannon vs. NCAA

On July 21, 2009, Ed O'Bannon, a former college basketball player, sued the NCAA and Electronic Arts and Collegiate Licensing Company (EA Sports) over their use of former student-athletes' images in video games, DVDs, photographs, and other media without the consent of the former athletes (Solomon, 2014). The case, which came to be known as *O'Bannon vs. NCAA*, took center stage in the pay for play vs. amateurism debate and ultimately put the spotlight on O'Bannon as the face of pay for play in college athletics. The case has taken many twists and turns, including a judgement for the plaintiffs in August of 2014 and an appeal that led to that judgement being overturned in September, 2015. In March of 2016, lawyers for the plaintiffs petitioned the Supreme Court to hear the antitrust case, and in May the NCAA petitioned the Supreme Court as well. In October of 2016 the Supreme Court refused to hear the case. (New, 2016).

Background on Ed O'Bannon. In the world of college basketball, Ed O'Bannon was a prolific player and a national champion. As a senior at the University of California Los Angeles (UCLA), wearing number 31, Ed O'Bannon helped lead the Bruins to the 1995 NCAA men's basketball national title. Playing power forward for the Bruins, O'Bannon was named the NCAA

tournament's Most Outstanding Player and was also awarded the John R. Wooden award for the college basketball player of the year. He was named a first team All-American, the co-player of the year in the Pacific Coast Conference (PAC-10), placed on the All-Pac-10 team, among many other accolades. In 1996, a year after he helped UCLA claim the National Title, his number 31 was retired by the university. He was also inducted into the UCLA Athletics Hall of Fame in 2005, and the Pac-12 (formerly the Pac-10) Hall of Honor in 2012. As a student-athlete at UCLA, O'Bannon's tuition, fees, room, and board were paid for through his athletic scholarship; however, he was not allowed to earn any income from basketball beyond his athletic scholarship due to the student-athlete amateurism rule set forth by the NCAA. He was not permitted to sell autographed items or earn royalty fees by licensing his name or likeness to products.

After his college career ended in 1995, O'Bannon was drafted into the National Basketball Association, a professional league in the United States. Leaving college and joining the professional ranks meant that O'Bannon's status as an athlete went from amateur to professional and he could start earning money as a basketball player. However, O'Bannon's stint in the NBA was a short one and he left to seek professional opportunities in Europe after only two years, playing professionally in Europe for seven seasons for teams in Italy, Greece, Spain, Argentina, and Poland. He eventually returned to the United States and played for the Los Angeles Stars in the American Basketball Association (ABA) for one year. At the age of 32, O'Bannon retired from basketball.

Background on O'Bannon vs. NCAA. In 2009, Sonny Vaccaro, a broker who helped organize sponsorships deals between schools and shoe companies, recruited O'Bannon, who was working as a car salesman at a Toyota dealership outside Las Vegas, to be the lead plaintiff in the lawsuit that would come to be known as *O'Bannon vs NCAA*. Former shoe marketer Vaccaro

was vital, in the late 1980s and 1990s, in forming the summer youth basketball scene (Solomon, 2014). Vaccaro had become synonymous with summer basketball for young kids and had always thought the NCAA was corrupt; he was finally convinced in 2008 when the NCAA helped form the summer ihoops program (Solomon, 2014). Vaccaro had been upset with the NCAA because it had impeded on his summer youth hoops programs with the announcement of a partnership with the NBA to form the summer ihoops youth program (Solomon, 2014). Convinced that an amateur organization (NCAA) partnering with a professional organization (NBA) to control young kids through summer programs was an antitrust violation, Vaccaro began searching for a way to hold them accountable (Solomon, 2014). In 2009, Vaccaro found his avenue for holding the NCAA accountable -- by convincing O'Bannon to be the lead plaintiff in the antitrust lawsuit.

On July 21, 2009, using Michael Hausfeld from the law firm Hausfeld LLP as his representative, Ed O'Bannon officially sued the NCAA and Electronic Arts and Collegiate Licensing Company their usage of student-athlete likenesses without consent and the NCAA for restricting trade, a violation of the Sherman Antitrust Act of 1890. Vaccaro, who had been an opponent of the NCAA for years, claiming that they denied student-athletes their rights, continued to be involved with the case as an unpaid consultant to assist the plaintiffs (Garcia, 2010). In January of 2010, Judge Claudia Wilkin combined the O'Bannon case with another similar case that had been filed before *O'Bannon*. The plaintiff of the earlier case was Sam Keller, a former quarterback for both Arizona State University and the University of Nebraska; his lawsuit was also against EA Sports and the NCAA to recover damages from the video game producer for utilizing his likeness without his consent (Solomon, 2014).

In 2008, Keller had entered the National Football League (NFL) draft in hopes of being drafted into the professional league. However, Keller went undrafted and was signed by the Oakland Raiders as an undrafted free agent, only to be waived a month later, before the NFL season began. A year later, in May of 2009, Keller filed his lawsuit against the NCAA and EA Sports, which was eventually combined with the O'Bannon case (Elias, 2011).

Correlation of NCAA Violations to the O'Bannon Lawsuit. The idea of paying college athletes for their service on the playing field has been a topic for debate long before Sonny Vacarro recruited Ed O'Bannon as his key plaintiff in a lawsuit against the NCAA. Institutions have been paying players and getting in trouble for these transgressions against NCAA policies for years. In the 1980s the Southern Methodist University (SMU) football program was dealt massive penalties by the NCAA after it was revealed that the program had been paying players illegally for years on end. In the 1990s, it was discovered that a University of Michigan (UM) basketball booster had given many of the players on the basketball team illegal cash and gifts. The NCAA handed out harsh penalties to UM as well after finalizing its investigation in 2003. While neither of these cases was brought up during the O'Bannon hearing, both of them have links that connect and provides an example of the larger issues at play in the O'Bannon lawsuit. The basic argument of O'Bannon v. NCAA & EA Sports was what they saw as the mistreatment of college athletes from a financial standpoint, and the massive discrepancy to the amount of revenue generated by the sports these athletes play compared to the scholarship they are offered. These are two examples of the numerous egregious cases of paying student athletes for their performance even though the NCAA considered them amateurs however, the O'Bannon lawsuit wasn't just about the NCAA's amateurism rule. There was also the issue of the usage of the player's names, images, and likenesses in video games.

EA Sports and Use of Student-Athletes' Likenesses. To gain a better understanding of the lawsuit, it is important to understand the reasons behind the filings and why the athletes targeted these specific defendants in the case. Targeting the NCAA makes sense for the student-athletes because, as the governing body of college athletics, it enforces the rules that they believe infringe on their rights. What needs further examination are the alleged violations of the student-athletes' likenesses? In this section I will examine the specific allegations against EA Sports.

EA Sports. EA Sports, also known as EA Games or Electronic Arts, is an American video game development company that was founded in early 1982. Although the company has several different game divisions, one of the more popular subset of games – the specific focus of this research – is the EA Sports division of the corporation. This division has been responsible for creating and distributing realistic video games based on professional and collegiate sports that utilize the likenesses of athletes from the teams and colleges that actually participate in those sports. In recent years the popularity of these games has spiked, helping the EA Corporation to post $4.3 billion in revenue for the 2015 fiscal year (EA Staff, 2015).

One of the main draws of the games is the users' ability to actively control a recognizable player in the game through the video game platform. And although the collegiate-level games do not list player's names, either on the jersey or on the team rosters, the attributes of the players are unmistakable as the likenesses of the actual players on the actual college team. This usage of player likenesses was the main reason that EA Sports was named in the lawsuit along with the NCAA. The plaintiffs in the case believed that the NCAA and EA Sports had entered into contracts which allowed the video game maker to use player attributes in their games in order to profit, thereby violating their rights, as they had not consented to their likenesses being used in the games.

The Lawsuit's Progress to Trial. Both O'Bannon and Keller saw the NCAA and EA Sports profiting from their sports achievements while they were not, prompting their individual lawsuits that were eventually joined into a class-action lawsuit in 2009 by Judge Claudia Wilkin.

On February 8, 2010, Judge Wilkin denied a motion filed by the NCAA to dismiss the class action lawsuit, which opened the case up and allowed representatives of the plaintiffs to begin collecting evidence during the discovery process. This decision is considered historic because it grants the plaintiffs access to the contracts the NCAA holds, allowing them to examine exactly how student-athlete images rights are sold (Solomon, 2014).

In March of 2010, more former college football and basketball players joined the class-action lawsuit. Some of these new members, eleven total, were not recent athletes, but rather had ended their college careers in the 1960s. Although the added members of the lawsuit didn't change its purview, they did give some context for how long the NCAA has affected the student-athletes (Thomas, 2010).

Judge Wilkin dismissed EA Sports from the O'Bannon lawsuit in May of 2011, citing lack of evidence that EA conspired with the NCAA to willfully deny student-athletes any sort of compensation for the use of their images and likenesses. However, two months later, in light of new evidence presented by the plaintiffs, she pulled EA back into the lawsuit, stating that the new allegations revealed that EA Sports had agreed with the NCAA to not compensate student-athletes after their playing careers had ended (Gullo, 2011). To further support their case, e-mails disclosed by the NCAA during the discovery process revealed that, dating back to 2003, the NCAA was aware that EA Sports was using actual real-life characteristics from college athletes in their video games. In a 2003 e-mail, Peter Davis, the NCAA Director of Corporate Alliances, wrote, "We don't actually use player names but we do use all the attributes and jersey numbers

of the players" (Solomon, p.1 2012.) The plaintiffs allege that this proves there was collusion between the NCAA and EA Sports to deny the athletes compensation (Solomon, 2012). A deposition taken in 2013 from a former EA Sports executive revealed that their college sports video games were specifically designed around the college student-athletes, though without using their actual names. The former executive, Jeremy Strauser, testified in the deposition that the games were made using avatars for specific players in order to make the games more realistic (Solomon, 2013). The following month, the plaintiffs entered documents into the record that showed that EA Sports also used real game footage from college contests to develop the avatars that mimicked the actual players for their video games. The plaintiffs also alleged that the NCAA was "incentivized to 'look the other way'" (Solomon, 2013); the plaintiffs produced a quote from then-president of the NCAA, Myles Brand, saying that the NCAA can handle any of the legal issues that may arise from this practice (Solomon, 2013).

The NCAA attempted to end the case again in January of 2013, before it could move to class action status, arguing that the plaintiffs had changed their complaints in the prior months in an act of "gamesmanship" (Solomon, 2013). Judge Wilkin ruled that the tactic was not of sufficient merit to prevent the case from moving toward class action status (Solomon, 2013). In July of that year, Judge Wilkin advised the plaintiffs that in order for their suit to be considered for class action status, they would need current college student-athletes to join the lawsuit. In light of this, six active student-athletes joined the lawsuit in order to help it gain class action certification (Solomon, 2013). The plaintiffs had already increased pressure on the defendants by seeking damages for current athletes based on the use and marketing of their images and likenesses, rather than only pursuing damages for past athletes.

In September of 2013, EA Sports announced it would settle all claims by the plaintiffs in the video game suit. A $40 million settlement was reached that included both current and former athletes (Solomon, 2013). Shortly thereafter, the O'Bannon lawsuit was certified partially as a class action suit, which opened the door for the plaintiffs to challenge the NCAA rules on amateurism. The plaintiffs had previously proposed a possible remedy in which the NCAA could still maintain its amateurism model for the current student-athletes by setting up a trust for the athletes. The idea was a way for the athletes to recoup monies from television rights as compensation they could access once their collegiate careers had ended (Solomon, 2012.) However, the judgement barred the plaintiffs from seeking compensation and damages from the NCAA for television rights (Solomon, 2013). Later in November of 2013, the NCAA sued EA Sports and Collegiate Licensing Company (CLC) claiming that they did not protect the NCAA with satisfactory liability insurance during settlement negotiations. The suit claimed that CLC negotiated a licensing agreement with EA on behalf of the NCAA that cleared the NCAA of any wrong-doing should something arise (Solomon, 2013).

Both the plaintiffs and defendants requested a summary judgment in April 2014. The request was denied but, during this process, Judge Wilkin set the date for a bench trial to take place, beginning on June 9, 2014 (Solomon, 2014). The next month, the plaintiffs changed course, deciding not to pursue damages against the NCAA on an individual basis. Instead, they concentrated their efforts on preparing for a bench trial against the NCAA and set their focus on the antitrust portion of the lawsuit. In light of this change, the NCAA unsuccessfully attempted to push back the trial date (Solomon, 2014).

Bench Trial. On June 9, 2014, the case of *O'Bannon vs. NCAA* officially began in the U.S. District Court for the Northern District of California in Oakland. Almost five years after the

original filing, the case finally proceeded with the plaintiffs charging the NCAA with violating the Sherman Antitrust Act of 1890 (Miller, 2014). The trial continued until June 27, 2014, when Judge Wilkin heard final arguments in the bench trial from both the plaintiffs and the defendants (Miller, 2014). On August 8th Judge Wilkin released her judgement in a 99-page ruling, siding with the plaintiffs in their claims of antitrust violations by the NCAA. Two days later NCAA President Mark Emmert announced that the NCAA would appeal the decision, which was filed on August 21st in the 9th District Court of Appeals.

Testimony. O'Bannon vs NCAA was a 15-day bench trial during which many different witnesses took the stand; in all, 23 witnesses were called to testify. During the trial there were 287 exhibits presented to the court, adding up to almost 4000 pages of transcripts, ultimately culminating in Judge Wilkins' 99-page written decision (Supreme Court ruling background). Each side utilized expert testimony to defend its position. In this next section I will review the testimony of some of the witnesses and balance their testimony with how they were perceived by Judge Wilkin, as evidenced by her written decision. The key points in the trial and ultimately the key points in Judge Wilkin's decision highlighted below include antitrust law, student-athlete's rights, restraint of trade, price-fixing, the NCAA amateurism rule, and student-athlete compensation.

Day one of the *O'Bannon vs NCAA* trial started off with the namesake, and key witness for the case, Ed O'Bannon. However, when he was done testifying, Stanford economics professor emeritus, Dr. Roger Noll, took the stand and laid the groundwork for the prosecution and their antitrust case against the NCAA. Dr. Noll has extensive knowledge of antitrust law and has been called upon as a witness in cases revolving around athletics. Noll argued that the NCAA operates as a cartel, restricting student-athletes' rights, and also engages in price fixing,

both of which violate antitrust laws. The NCAA attempted to counter Noll's testimony with that of Dr. Daniel Rubinfeld, a professor of economics at New York University. Rubinfeld argued that the NCAA operates to preserve the idea of amateurism, allowing student-athletes the ability to gain an education while competing for their respective institutions (Munson, 2014). Their conflicting testimony during the trial set the stage for how the case would be tried (Munson, 2014).

The basis for Noll's testimony was that the NCAA is an anti-competitive monopoly that restricts the rights of student-athletes, thus limiting the compensation that players could receive way beyond what their market value and market price would otherwise be (Wilkin, 2014). In his research, Noll has examined basketball and football recruits, the athletic scholarship offers they received, and where they played for their collegiate careers. Noll established in his testimony how recruited high school athletes choose a particular institution to play for and the benefits that drive that decision. He laid out the stark differences in the benefits that a highly ranked high school athlete would receive from a Division I institution to that of a lower Division institution. Ultimately Judge Wilkin agreed with Noll, writing that the data supports his conclusion that "if the top athletes are offered a D-I scholarship, they take it. They do not go anywhere else (Trial Tr. 114:6-:7, Wilkin, 2014), indicating that the opportunities and benefits of being a D-I athlete far outweigh the lesser options.

Noll also testified that some athletes may have the opportunity to play professionally overseas or in smaller professional leagues other than the National Basketball Association (NBA) and the National Football League (NFL) right out of high school, but that too few athletes had ever attempted to do that to allow for pertinent research. NBA and NFL rules prevent athletes from being recruited out of high school. Therefore, to further develop their skills,

athletes usually have to attend college to play for their athletic teams. While they could play professionally overseas or in smaller leagues to further develop their skills while fulfilling the age requirements, too few athletes have attempted that route to judge whether or not this would increase their likelihood of being drafted into the leagues and, thereby, increasing their earning potential. Noll concluded in his testimony that the benefits offered from Division I schools to highly recruited high school athletes were far greater than they would receive from smaller institutions or other professional leagues. He also added that none of the other professional leagues provided the same opportunity to earn a higher education that they could get from a Division I institution (Wilkin, 2014). Judge Wilkin agreed with Dr. Noll's assertions about why student-athletes accept offers to play sports at Division I schools:

> For all of these reasons, the Court finds that there are no professional football or basketball leagues capable of supplying a substitute for the bundle of goods and services that FBS football and Division I basketball schools provide. These schools comprise a relevant college education market, as described above. (Wilkin, 2014)

Later in his testimony, Dr. Noll testified that the rules the NCAA enforces restrain the recruiting battles between institutions (Wilkin, 2014). This allows the NCAA to limit athletic scholarships based on their grant-in-aid rule, which only allows student-athletes to receive scholarships up to the cost of attendance at the institution. Dr. Noll argued that if the grant-in-aid was not limited, then schools could compete for better student-athletes as recruits. Thus, the rules restrain trade. Judge Wilkin wrote in her decision that the opinions of Dr. Noll "are consistent with the opinions of the NCAA's own economic expert, Dr. Daniel Rubinfeld, who testified that the NCAA operates as a "joint venture which imposes restraints" on trade" (Id. 2922:20-:2, Wilkin, 2014). Dr. Rubinfeld also asserted that this restraint was lawful because it assists in

competitive ideals; however, in a rare moment of courtroom drama, it came out that in one of his own economic texts, Dr. Rubinfeld referred to the NCAA as a "cartel" but during his testimony referred to them as "a group of firms that impose a restraint (Wilkin, 2014, p. 22). This was an important moment because it showed that Dr. Rubinfeld at one point agreed with the conclusion of the NCAA operating as a cartel. Judge Wilkin concluded that when a recruit decides to attend an institution, that institution provides tuition, room and board, fees, and book costs, which is a small cost to the institution. In turn, the recruit provides his athletic performance and skills and also the use of his likeness, name, and other attributes. She went on to state:

> However, the schools agree to value the latter at zero by agreeing not to compete with each other to credit any other value to the recruit in the exchange. This is an anticompetitive effect. Thus, the Court finds that the NCAA has the power -- and exercises that power -- to fix prices and restrain competition in the college education market that Plaintiffs have identified. (Wilkin, 2014, p. 22)

Judge Wilkin asserted in her written opinion that the NCAA and its member institutions do, in fact, engage in price-fixing and that the agreement restrains trade in college athletics (Wilkin, 2014). She went on to write that without the price-fixing, institutions could contend for recruits by offering them the ability to compete at the Division I level while they attend college for a lower price. By allowing price-fixing to occur, the NCAA has allowed institutions to increase the amount the student-athletes need to pay to attend (Wilkin, 2014).

During his time on the witness stand, Dr. Noll also testified that elite football and basketball student-athletes could be defined as sellers on an open trade market. The institutions that recruit them are the buyers of their goods and services from an athletic standpoint and limit their compensation to the grant-in-aid under the guise of amateurism. Essentially, the colleges

are selling a college education market to the recruits, yet limiting them on the amount of compensation they can receive. However, there is a parallel market for the athletic service and licensing rights of the athletes with no limit to the compensation the institutions can receive from the athletes' services. Dr. Noll testified that, "From that perspective, the NCAA's restrictions on student-athlete compensation still represent a form of price fixing but create a buyers' cartel, rather than a sellers' cartel" (Wilkin, 2014, p. 23). Wilkin would write in her decision that, due to the price competition between the college education market and the market for recruits' athletic services and licensing rights, the NCAA restrains trade:

> Thus, because Plaintiffs' college education market is essentially a mirror image of the market for recruits' athletic services and licensing rights, the Court finds that the NCAA exercises market power, fixes prices, and restrains competition in both markets. (Wilkin, 2014, p. 23)

Later in his testimony Dr. Noll took aim at the NCAA's assertion that the amateurism rule as necessary to maintain a competitive balance in college athletics. Judge Wilkin wrote in her opinion that she agreed with Noll, finding that the NCAA's current restrictions on any sort of compensation for student-athletes does not allow for a competitive balance in college athletics (Wilkin, 2014). She later disagreed with NCAA President Mark Emmert when he testified that "the rules over the hundred-year history of the NCAA around amateurism have focused on, first of all, making sure that any resources that are provided to a student-athlete are only those that are focused on his or her getting an education" (Trial Tr. 1737:8-:12; Wilkin, 2014, p. 24). Judge Wilkin wrote in opposition to that statement that historical evidence regarding the NCAA presented during the trial showed that the amateurism rules have been very inconsistent throughout the organization's history (Wilkin, 2014). Noll testified numerous studies by sports

economists since the 1970s have come to the conclusion that the amateurism rule has had no noticeable effect on competitive balance in college athletics (Wilkin, 2014). Judge Wilkin went on to write that it was not surprising that the studies showed that competitive balance was not a concern for the NCAA, since the NCAA's other rules and policies seem to suggest it does little to achieve competitive balance. Judge Wilkin summarized her findings:

> Here, the NCAA has not presented sufficient evidence to show that its restrictions on student-athlete compensation actually have any effect on competitive balance, let alone produce an optimal level of competitive balance. The consensus among sports economists who have studied the issue, as summarized by Drs. Noll and Rascher, is that the NCAA's current restrictions on compensation do not have any effect on competitive balance. (Wilkin, 2014, p. 83)

In fact, she wrote that the restrictions on student-athlete compensation "lead many schools simply to spend larger portions of their athletic budgets on coaching, recruiting, and training facilities" (Wilkin, 2014, p. 35), and that the NCAA does nothing to control the spending of these high-revenue institutions are spending (Wilkin, 2014). Dr. Emmert even conceded this point during the trial, stating that it's not the mission of the NCAA to eliminate advantages created by an institution using its revenues to build up its athletics programs, enhance its image, and increase the value of its tradition (Wilkin, 2014).

The testimony from the trial showed, and the plaintiffs argued, that the NCAA was operating in a manner that restricted trade and limited the opportunities that a student-athlete could achieve. The defense argued that the NCAA does not operate as a cartel and that the amateurism rule does not restrict trade, utilizing the decision rendered from the *Board of Regents*

v. NCAA case. Judge Wilkin's decision supported the plaintiff's side of the argument and she made her decisions accordingly.

Trial Findings and Pay for Play. Throughout the O'Bannon trial, the NCAA asserted that its rules are reasonable and help create more opportunities for institutions and student-athletes to compete in Division I football and basketball which, consequently, increases the number of games that can be played. The NCAA refers to this increase in games and opportunities as "increased output" (Wilkin, 2014). However, Judge Wilkin denied this assertion in her written opinion, finding that the restrictions the NCAA imposes on its member institutions and on student-athlete compensation do nothing to increase output. She continued, writing that the reason the number of institutions participating in Division I football and basketball is increasing is because competing on that level typically boosts the profile of the institution, which avails the institution of more revenue through its athletic programs (Wilkin, 2014). Dr. Rubinfeld, arguing for the defense, disagreed with the findings of the court; however, he could not provide another economist that would counter the plaintiff's claim nor did he offer any testimony that would contradict the specific findings (Wilkin, 2014). Judge Wilkin asked Dr. Rubinfeld if his thoughts were supported by any economic literature to which he indicated to his most recent reports as corroboration. However, none of the recent research on the subject support the claim that "the NCAA's restrictions on student-athlete compensation promote competitive balance" (Wilkin, 2014, p. 84); in fact, one of the articles Rubinfeld cited was from 2004 and concluded with a quote from the plaintiff's expert, Dr. Noll, in which he states that there is no evidence to support the notion that the NCAA rules and regulations encourage competitive balance (Wilkin, 2014).

Ultimately, Judge Wilkin issued an injunction that would allow the athletic scholarships for men's football and basketball to remain in place, covering the full cost of attendance at each institution, while allowing these athletes to also receive deferred payments for the use of their names, images, and likenesses (NIL's) for each year that the student athlete remained academically eligible. The ruling also required the NCAA to cap those deferred payments at no more than $5,000 per year, per athlete (Solomon, 2015).

NCAA Appeal. Shortly after Judge Wilkin ruled in favor of the plaintiffs in the *O'Bannon v. NCAA* case, the NCAA announced that it would be appealing the decision. On March 17, 2015, that became reality when both sides were back in court to begin oral arguments in the NCAA's appeal of the original decision. Solomon (2015) wrote that the appeal was based in large part on the NCAA's objection to Judge Wilkin's finding that collegiate men's basketball and football student-athletes should be allowed to be compensated for services beyond the value of their athletic scholarship. The NCAA maintained that student-athletes should be held to an amateur status and, thus, not be compensated for their services on the playing field. It (the NCAA) felt that Judge Wilkin ignored a court ruling from the 1984, *Oklahoma Board of Regents v. NCAA*, that protected amateurism in college athletics. An excerpt from the Supreme Court's opinion on that case reads: "in order to preserve the character and quality of the (NCAA's) 'product,' athletes must not be paid, must be required to attend class and the like (*Board of Regents v. NCAA*)." The NCAA has used that excerpt successfully in many cases since to defend its amateurism model and to stave off the argument that student-athletes should be compensated above and beyond their scholarships.

Another argument the NCAA used in its appeal of the O'Bannon case was that the plaintiffs could not argue for a case of antitrust laws because of the First Amendment and the

Copyright Act (Solomon, 2015). The basis for the NCAA's argument on this topic was that no state has a law that mandates payment for the usage of names, images, and likenesses in non-commercial instances and that the First Amendment and the Copyright Act prohibit that practice (Solomon, 2015).

On September 30, 2015, a three-judge panel for the Ninth District Court ruled on the NCAA's appeal of the *O'Bannon v. NCAA* case. The panel, which included judges Jay Bybee, Sidney Thomas, and Gordon Quist, rendered a ruling that included a mixed bag of responses for each side of the case. Although they affirmed the plaintiff's central argument that the NCAA's amateurism rules do violate certain aspects of federal antitrust laws, according to McCann (2015), they also limited the capacity of the damages the plaintiffs were asking on behalf of the student-athletes. In the ruling, the judges wrote that the NCAA would only be required to allow institutions to increase their scholarships up to the cost of attendance, which was moot because that was a practice that was already occurring. Prior to the decision the NCAA had implemented a new governance structure that allowed for the five wealthiest conferences (the Power 5) to use this scholarship structure (New, 2015). The judges were also concerned with the original ruling that provided for institutions to compensate student-athletes up to $5,000 beyond educational expenses, stating that the payments would "transform NCAA sports into minor league status (Bybee, 2015). In addition, the judges found the cap restriction confusing, questioning how a $5,000 cap is any different than $0 cap. Again, the judges were not in support of the idea of allowing cash payments to student-athletes that were unrelated to their educational endeavors (McCann, 2015).

While the judges sided with the NCAA on not allowing student-athlete compensation in cash payments, it also agreed with Judge Wilkin on some of her criticisms of the NCAA and its

policies. Primarily, the judges sided with Judge Wilkin, finding that the NCAA had violated the Sherman Antitrust Act: “After an extensive bench trial, the district court properly found that the NCAA and its members had violated the Sherman Act, and the court did not abuse its discretion or commit clear error in issuing a narrowly tailored injunction” (Bybee, 2015, p. 22). Judge Bybee, who wrote the opinion for the three-judge panel, further stated that the NCAA rules should be held to the same accountability standards in the antitrust realm as any industry would. The Appellate Court panel agreed with Judge Wilkin’s ruling that the NCAA’s amateurism rules do prevent institutions from using compensation as a means to compete for recruits (McCann, 2015).

Ultimately the three-judge panel’s ruling hit the NCAA the hardest on their steadfast ideal of college student-athlete amateurism, agreeing mostly with Judge Wilkin on this point. In the summary of their findings, the judges wrote that:

> The NCAA’s claim that it should have been left to its own devices in administering its “amateurism” regime is without basis. As a cartel, it unlawfully prevents schools from acting in their own self-interest. As a billion-dollar sports business, it supplants the decision-making authority of educators. The Sherman Act sets limits on what violators may and may not do. (Bybee, 2015, p. 57)

McCann (2015) opined that this was trouble for the NCAA moving forward, as it would make it more susceptible to an increased number of antitrust lawsuits, especially those brought by student-athletes, as the language utilized by the judges was contrary to the beliefs of the NCAA. As New (2015) states, it is going to be more difficult for the NCAA to rely on the 1984 *Oklahoma v. NCAA* decision, given that the judges wrote that the 1984 opinion doesn’t give amateurism validation on all issues.

Supreme Court Petition. In March of 2016, the plaintiffs in the O'Bannon case filed a petition for review of their case by the Supreme Court of the United States. In their brief, the plaintiffs once again argued that collegiate sports are a business that operates under the rules of commercialization and that the revenue generated from the business takes it out of the realm of amateur sports. The brief argued that "The NCAA should not receive a windfall of categorical immunity for what in any other industry would be an unreasonable restraint of trade" (O'Bannon Reply Brief, Supreme Court, 2016, p. 4). The plaintiffs also argued for a Supreme Court ruling based on both previous court decisions that have found that the NCAA violates antitrust law yet continues to use the Board of *Regents v. NCAA* ruling on antitrust as a victory even though this defense was rejected in that case (O'Bannon Reply Brief, Supreme Court, 2016).

The NCAA requested that the Supreme Court deny the plaintiff's petition, filing its own petition for the Supreme Court to review their case (Zalesin, 2016). In its petition to the high court, the NCAA argued that review of the case was of high importance due to the nature and important status that college athletics holds (NCAA brief -Supreme Court 2016). The NCAA also argued against the Ninth Circuit Court's decision that the NCAA's "amateurism rules violated federal antitrust law and that the lower courts allowed the case to move forward based on an incorrect interpretation of the First Amendment" (Zalesin, 2016, p. 1).

Though both sides of the O'Bannon case wanted to have the Supreme Court hear the case, they had differing reasons for their petitions. The plaintiffs in the case wanted the Supreme Court to rule on whether college athletes should be paid beyond the cost of attending college, while the NCAA argued that the 1984 Board of Regents case set the precedent for amateurism in college sports, which bans the pay for play argument (Zalesin, 2016). The plaintiffs, in their reply brief to the Supreme Court, stated that the "*Board of Regents* did not depart from the well-

established body of antitrust law providing that the suppression of competition (such as an agreement not to pay college athletes) can never qualify as a 'competitive benefit' under the Sherman Act" (O'Bannon Reply Brief, Supreme Court, 2016, p. 7).

The Supreme Court will hear both petitions on the case together rather than separately, even though they filed separate petitions. *O'Bannon et al. v. National Collegiate Athletic Association*, case number 15-1167, in the Supreme Court of the United States, is slated to be heard in late 2016 (Berkowitz, 2016).

On October 3, 2016, the Supreme Court declined to hear the O'Bannon antitrust case against the NCAA (New, 2016). The Supreme Court did not offer any explanation as to why it declined to hear the case. Although the Court declined to hear the case, some experts such as Munson (2016) have declared the ruling a victory for the NCAA. The NCAA was in a position where their amateurism model was at stake, and unlimited payments to college athletes could have become reality, however with the decision to not hear the case pay for play has remained sidelined (Munson, 2016). The NCAA's amateurism rule remained intact with the Supreme Court declining to hear the case however it still leaves the lower court's ruling to stand which, as many have speculated, creates an instructional guide on how to sue the NCAA for antitrust violations (New, 2016). Edelman (2016) opined that the Supreme Court declining to hear the case, and the anticlimactic way in which it occurred, was banal, but that it did confirm that the NCAA is a target for antitrust laws and because of this the O'Bannon case may prove pivotal in providing a way in which reform will occur in college athletics.

Pay for Play Scandals

The O'Bannon lawsuit didn't just come about based on new allegations that the plaintiffs believed deserved merit without any historical input. There was a history of violations of NCAA rules on amateurism and sanctions levied against institutions that provide a backdrop for the issues O'Bannon challenged. Student-athletes receiving compensation has always been at the heart of the pay for play argument and the NCAA rules on amateurism. To put the O'Bannon v. NCAA lawsuit into perspective, we can look at two cases in the history of the pay for play debate. NCAA scandals have involved institutions that have violated the amateurism rules and been handed stiff penalties for illegally paying student-athletes. Two of the most notorious cases of financial benefits being given to student-athletes under the table, which ultimately led to major sanctions by the NCAA against the institutions, were the "Death Penalty" case at Southern Methodist University in 1987, and the sanctions levied against the University of Michigan in 2003. Each of these cases gives a better understanding of how competitive the recruitment of highly touted high school athletes can be, and also how far an institution or a booster to that institution will go in violations of the rules to aid a student athlete monetarily.

Southern Methodist University. On February 25, 1987, the NCAA handed out the stiffest penalty possible in college athletics. The NCAA came down hard on Southern Methodist University (SMU) in an effort to prove a point to higher education athletic departments across the nation. The punishment that SMU received from the NCAA was grimly called "The Death Penalty," and it came with cancellation of the 1987 SMU football season. It was only the third time in the history of the NCAA that the organization levied its most powerful punishment tool – reserved for use against repeat offenders (Dodds, 2015). What led up to the NCAA levying the

massive punishment on SMU goes right to the heart of the Ed O'Bannon trial dealing with compensating student-athletes.

SMU is located in Dallas, Texas, and in the early 1980s was a powerhouse football program in the NCAA. In 1982, the Mustangs went undefeated, won the Cotton Bowl, and finished ranked number two in the nation (Dodds, 2015). Their success was, in large part, due to the play of their top two running backs, Eric Dickerson and Craig James, and the team was given the nickname the "Pony Express," a pun tied to the school mascot. However, the fan attention the team received for its play on the field was equally measured by all the attention their business practices were getting from the NCAA behind the scenes. What would be revealed from the NCAA investigation is that athletic boosters for SMU were supplying funds to the institution and the school was systematically paying football players illegally. The first payments began as gifts from recruiters to entice recruits to play for SMU and eventually grew into payments once they enrolled. As David Whitford (2013) explains, "No reasonable person disputes that SMU got what it deserved. SMU boosters were paying players; SMU coaches knew all about it; and numerous SMU officials — all the way up to Bill Clements, a two-time Texas governor and chairman of the university's board — were actively involved" (p. 1).

Rumors first started to swirl around Dickerson's recruitment to SMU. He was a highly touted "high school running back so gifted he could have chosen any school in the country to play for in 1979" (Dodds, 2015, p. 1) but SMU wasn't on his radar. He originally committed to Texas A&M and soon after received a brand new Trans Am, which many believe was a promised gift from A&M for committing (Dodds, 2015). However, a short time later he abruptly de-committed from A&M and committed to SMU. To this day there has never been an admission /confirmation about why, but many suspect that illegal pay-for-play may be the "reason that a

popular sports joke in the early ’80s was that Dickerson took a pay-cut when he graduated and went to the NFL” (Dodds, 2015, p. 1).

Trouble started brewing for SMU when it recruited and signed highly touted offensive lineman Sean Stopperich in 1983 from Pittsburgh. Stopperich had severely injured his knee in high school and couldn’t perform athletically as he once did, rarely seeing the field for SMU (Dodds, 2015). It was later revealed through the NCAA investigation of SMU that the university had paid Stopperich $5000 to commit to play at the program and move his family to Dallas (Dodds, 2015). According to Dodds (2015), Stopperich left SMU after one year and shortly thereafter became the first witness for the NCAA in its investigation into SMU.

The first major penalties for SMU were handed down in 1985 when the NCAA banned the football team from playing in any end of the season bowl games for two years and took away 45 scholarships for two years (Dodds, 2015). It was during this time that the NCAA began to discuss harsher penalties for institutions that were deemed repeat violators. Although the NCAA has always had the power to ban institutions from competing, the repeat violators rule was enacted as a way for the NCAA to ban institutions from competing in a sport for an entire season. As Greg McFarlane explains:

> Officially, it's called "repeat-violator legislation." To summarize, if a school gets punished for one major violation, then commits another within five years, it's subject to the death penalty. That includes prohibiting the school from playing that particular sport for up to two years. This mean banning the coaches from coaching anywhere, withholding grants and dismissing any school official who sits on an NCAA board. Contrary to its name, incurring the death penalty doesn't mean barring a college from competing in said sport forever. (2012)

In 1986, the NCAA investigation into SMU found that the university was still paying football players money under table while still on probation from previous violations. The school had 13 football players still on its illegal payroll; instead of immediately ending the payments outlined in its initial punishment, SMU opted to utilize a plan to gradually end the payments since it had promised money to athletes until their graduation (Dodds, 2015). Since this occurred within the five-year window of the repeat violators rule, the NCAA came down hard on SMU and imposed the Death Penalty to the institution, banning the football from competing in 1987 and stripping 55 scholarships over a four-year period (McFarlane, 2012). The team was allowed to compete in 1988 but only for road games, as the NCAA didn't want its opponents to be financially affected; however, the school chose to cancel its 1988 season as well, citing that it was unable to field a viable team due to the inexperience of the players that remained (Funk, 2016).

The death penalty that was levied against SMU impacted the program for many years, and some would argue that the institution is still feeling the ramifications. The football program couldn't field a full roster of scholarship players until 1992 due to the punishment; they did not have a winning season until 1997 and they wouldn't make it back to a bowl game until 2009 (Funk, 2016). Due to the long-term ramifications that affected the SMU program from the death penalty, the NCAA has re-evaluated the manner in which it sanctions schools. Funk (2016) elaborates: "While integrity and credibility is very important to maintain in college sports, the effect of such a penalty is something the NCAA does their best to avoid handing down now" (p. 1).

And much like the Ed O'Bannon case, paying college athletes was the primary element in the SMU scandal, which Dodds (2015) summarizes:

> These days, those in and around the world of college sports don't talk much about what the penalties for paying players should be; instead, many are wondering whether there should be any penalty at all for paying college athletes. The arguments in favor of paying college athletes are manifold, especially considering they often generate millions on behalf of their universities. (p. 1)

Since the SMU case there has been a push for a pay for play structure in college athletics. SMU wasn't the first program to pay its athletes as a violation to NCAA rules, and it won't be the last. When O'Bannon and the rest of the plaintiffs were arguing against the NCAA rules, paying student-athletes what they believed to be their worth was at the heart of the case, and is what SMU was doing decades before O'Bannon ever went to trial. As the SMU case was reaching a conclusion in the early 1990s, the scandal that was occurring at The University of Michigan was already underway. And although the method was different from the occurrences at SMU, the outcome was essentially the same; payment to players, illegal activities, NCAA violations, and more fuel to the fire of the argument for pay for play that would drive the *O'Bannon* case.

University of Michigan. In February 1996, five University of Michigan (UM) basketball players and one highly sought after high school recruit were involved in a roll-over accident while returning to the UM campus after attending a party in Detroit. The driver of the vehicle was Marcus Taylor, while the other Michigan players involved were Robert Traylor, Louis Bullock, Willie Mitchell, and Ron Oliver. The high school recruit, who ended up later committing and playing for Michigan State University, was Mateen Cleaves (Baumgardner, 2013). Because the players had a recruit with them, they were in violation of NCAA rules by transporting a recruit more than 30 miles away from campus. As the NCAA began to look into

the situation, the university admitted to a secondary violation for the event. However, during the NCAA inquiry it was discovered that during their trip to Detroit, the players had visited the home of Ed Martin, a University of Michigan booster and former electrician for Ford Motor Company in Detroit. This would lead into a deeper investigation by UM and the Big Ten Conference to see what, if any, was the nature of the relationship with Ed Martin and the players (Baumgardner, 2013).

In March of 1997, UM and the Big Ten released the results of their investigation into the relationship that Ed Martin had with the basketball players. The investigation, that did not include the NCAA, revealed that Ed Martin had ingratiated himself into a relationship with many of the players on the basketball team and had violated minor rules (Baumgardner, 2013). The investigation also revealed that Martin had ties to the university's basketball program dating back to the 1980s and that the trail of violations began at that time. Even though the results of the 1997 investigation revealed minor violations, the university banned Martin from having any contact with the program going forward (Baumgardner, 2013).

The Detroit Free Press reported in June 1997, that former UM basketball players Chris Webber and Marcus Taylor both received cash and gifts from Ed Martin during their playing careers at UM. Martin had denied all along that he had ever given money to any of the student-athletes at UM. The report in the *Free Press* also indicated that the sources that revealed the cash payments to Webber and Taylor also stated that Webber used money he made after turning professional to repay Ed Martin (Baumgardner, 2013).

After Martin was banned from the UM basketball program, the university hired an independent law firm to investigate him further after it was reported that he was part of an illegal bookmaking group while he was working at Ford. The investigation uncovered that Martin had

also had a close relationship with ex-UM basketball player Chris Webber during his time at UM (Baumgardner, 2013). The law firm's investigation revealed that it was very likely that Martin had given money and gifts to Webber while he was competing at UM. Webber at the time denied the allegations stating that any gifts he had received from Martin occurred before his time at UM (Baumgardner, 2013).

No serious violations were uncovered after the UM and Big Ten and private investigations were completed as the NCAA was satisfied with the handling of the investigations and with the findings. However, in April of 1999, the Federal Bureau of Investigations (FBI) and the Internal Revenue Service (IRS) raided several homes in the Detroit area based on information that there was an illegal gambling ring being operated in the area (Baumgardner, 2013). One of the homes that was targeted in the raid was that of Ed Martin. In Martin's home they found a large sum of cash and gambling records, which prompted a federal investigation into Martin and the gambling organization. The federal investigation turned up documents that indicated that Martin had paid several University of Michigan basketball players substantial amounts of money and gifts dating back to the 1980s even while some of the players were still in high school. A month later, in May of 1999, as a result of the investigation, a federal grand jury subpoenaed several former University of Michigan basketball players to question them regarding their relationship with Martin (Baumgardner, 2013).

In 2000, several former members of the UM basketball team testified before grand juries about their involvement with Ed Martin. It was discovered that the players -- Louis Bullock, Robert Traylor, Chris Webber, Marcus Taylor, and Jalen Rose -- had accepted money from Martin extending back to their high school playing days all the way through their college years (Esterbrook, 2002).

According to the Esterbrook (2002), in March of 2002, the federal grand jury found Ed Martin, his wife, and an associate guilty of running an illegal gambling business. The eight-count indictment also included money laundering: Martin was loaning money, $616,000 total, to the former UM basketball players as a means of laundering the money from his illegal gambling activity at Detroit automotive plants.

In September, 2002, Chris Webber was indicted on five charges of lying to a grand jury and obstruction of justice. It was found that Webber had lied in his 2000 testimony when he stated that he did not have a relationship with Martin and that he never accepted any money from him (Baumgardner, 2013). Martin pleaded guilty to running an illegal gambling ring. As part of his plea Martin testified that he had given over $200,000 to Webber before and during his time playing for Michigan. Webber denied the allegations, which led to Webber's indictments. Ed Martin passed away in February of 2003 while he was awaiting sentencing (Baumgardner, 2013). Martin's death hurt the perjury case against Webber and he was able to plea to a lesser charge of criminal contempt in an effort to avoid jail time. In the plea, Webber admitted to having received and repaid over $38,000 to Martin (Baumgardner, 2013).

The University of Michigan took actions against itself in the form of self-sanctions that they reported to the NCAA. These sanctions included the vacating of the 1992-1993 season and the NCAA basketball Final Four appearances for 1992 and 1993. The school also removed those banners from the basketball arena (Baumgardner, 2013). The sanctions also included vacating every game from the 1995-1996 season through the 1989-1999 season, a post season ban for the 2002-2003 season, and a two-year probation period (Hakim, 2002).

Baumgardner (2013) writes that on May 8, 2003, the NCAA accepted the self-imposed sanctions by UM, but also imposed some sanctions of its own -- extending the program's

probation for two additional years and removing one scholarship from the team for the seasons 2004-2005 through 2007-2008. The NCAA penalties also included requiring UM to disassociate itself from Traylor, Bullock, and Taylor until 2012 and to disassociate itself from Webber until 2013. Chris Webber's sanction to not associate with the University of Michigan ended on May 8, 2013.

The UM case is a perfect example of how student-athletes can receive cash and gifts even though it is against the NCAA bylaws. It is also a good case-study for the pay for play argument. Webber once stated that as a student-athlete he couldn't bear the sight of seeing his Number 4 Michigan jersey hanging in the bookstore with a $75 price tag while he couldn't even afford to buy a pizza (Hagy, 2003). During Webber's time at UM, the institution claimed almost $19 million in revenues from the basketball program in apparel sales alone (Hagy, 2003), none of which went to any of the student-athletes who were represented by the apparel. The amount of money that institutions make for licensing and apparel is one of the main reasons for the pay for play argument.

The key issues that were raised in the *O'Bannon* case, which include the allegations of the mistreatment of student-athletes financially, are directly tied to the violations that occurred at SMU and UM. It is simple to state that what occurred at SMU and UM was a violation of NCAA rules, but to be blunt, these scandals were illegal. These institutions, and the many others that have cheated, were caught illegally cheating to gain an unfair advantage in the arena of college athletics. Many people have spoken out for these institutions claiming the penalties were too harsh, but the fact remains that what these institutions did by scoffing in the face of the NCAA and violating the bylaws that govern every institution was nefarious and the punishment fit the crime.

The *O'Bannon* case argued for the fair treatment of student-athletes through compensation from the revenues they generate to their institution through their participation in their sports. The athletes that received cash and gifts while playing for SMU and UM in violation of the NCAA rules felt that they deserved the compensation they received based on the sacrifices they made on the playing field. The *O'Bannon* case, which came years later, defined a legal path toward pay for play rather than the illegal mechanisms that were used by the athletes at SMU and UM. The growing demand from many that the NCAA should adopt a pay for play system in college athletics may have started illegally in cases such as SMU and UM, but ultimately found a legal avenue with lawsuits such as *O'Bannon v. NCAA*. The Supreme Court's refusal to hear the *O'Bannon* case wasn't the end to the pay for play argument. The *Jenkins* case, which is arguing many of the same points raised by the *O'Bannon* case, is still currently in federal court.

Chapter Six: Secondary Cases

Finally, I am conducting only a brief analysis on the following three cases, Kent Waldrep, the Northwestern Unionization, and Jenkins. The reason for a brief analysis is because the first two did not carry major implications for the pay for play argument, and the Jenkins case has only currently gotten underway and we won't know the fallout until later. The Waldrep and Northwestern cases did however add to the debate over student-athlete amateurism and also sent reverberations through the NCAA which led to policy initiatives. The Waldrep case is important because it led to the NCAA creating the Catastrophic Injury program for athletes that are severely injured during play, and the Northwestern case is important because it helped create an atmosphere of empowerment for student-athletes.

Kent Waldrep Worker's Compensation Suit

In 1972, Kent Waldrep was recruited by Texas Christian University (TCU) to play running back for the school's football program. He signed a letter of intent (LOI) and a financial aid agreement with the institution that assured him that his tuition, room and board, and ten dollars per month for incidentals would be paid through an athletic scholarship (Yeakel, 2000). In October, 1974, while playing running back for TCU, Waldrep was critically injured on a play against the University of Alabama. His spinal cord was severely injured and, as a result, was paralyzed from the neck down. After his injury, Waldrep was told he would spend the rest of his life in a wheelchair. He appealed to TCU and initially the institution helped pay his cost for medical treatment (Amarillo Globe News, 2000). However, when his medical bills became too expensive for the institution, TCU changed its stance and told Waldrep it was not liable for his costs (Amarillo Globe News, 2000). During this time, Waldrep founded the National Paralysis

Foundation, which has raised around $30 million for spinal cord research and played a key role in the passing of the Americans With Disabilities Act (Drape, 1997).

In 1991, citing that TCU had told him and his family during recruitment that they would take care of him if anything bad occurred while playing, Waldrep filed a worker's compensation claim for his injury (Yeakel, 2000). Waldrep contended that the LOI and financial agreement he had signed upon becoming a student-athlete was the basis of a contract and that the athletic department controlled his actions as an employer would (Drape, 1997). Waldrep's argument was that, due to his agreement with the university and the money he was paid, he was an employee of the institution and was entitled to worker's compensation (Yeakel, 2000). The timing of Waldrep's case oincided with a major change with the NCAA. In 1991, all Division I athletic programs began carrying catastrophic insurance policies that would assist student-athletes in cases such as Waldrep's, and the NCAA utilized some of its Final Four basketball revenue to cover the cost (Drape, 1997). Was this due to the legal issues that the Texas courts were facing in the Waldrep case?

The Texas Workers Compensation Commission (TWCC) agreed with Waldrep's assertion that he was an employee of TCU at the time of his injury and awarded him $70 a week for life dating back to the date of the accident in March of 1993 (Drape, 1997). Although this case did not directly involve the NCAA, it was viewed as a small victory against the organization. However, that victory was short live when the Texas Employers Insurance Association (TEIA), TCU's insurance carrier, appealed the decision. In 1997, during a trial de novo, a jury found that Waldrep could not be considered an employee of TCU at the time of his injury; "the district court rendered a judgement in favor of TEIA" (Yeakel, 2000). No was money was paid in Waldrep's favor, and he did not intend on settling the case (Drape, 1997).

After the jury rendered the verdict against him in 1997, Waldrep filed an appeal of the court's decision. The case of *Waldrep v. Texas Employers Insurance Association* was heard in the Texas court of appeals in June of 2000. During the hearing Waldrep argued that he was an employee of TCU based on his interpretation of the LOI and financial aid agreements as a contract for hire. The court did not agree with Waldrep's assertion and, thus, upheld the original decision, finding that there was some evidence supporting the jury's decision that Waldrep was not considered an employee of TCU at the time of his injury (Yeakel, 2000). This decision ended the saga of Kent Waldrep's case for worker's compensation.

Although Kent Waldrep was never able to win his claim of being an employee of TCU, he did make an impact for college athletes based on his plight. And it is not hard to argue that, during the time he was fighting his case, college athletics changed. This change is clearly stated in the court's decision in rejecting Waldrep's appeal in 2000:

> In conclusion, we note that we are aware college athletics has changed dramatically over the years since Waldrep's injury. Our decision today is based on facts and circumstances as they existed almost twenty-six years ago. We express no opinion as to whether our decision would be the same in an analogous situation arising today; therefore, our opinion should not be read too broadly. Having disposed of all of the issues before us, we affirm the district court's judgment. (Yeakel, 2000)

The Waldrep case shed light on the perception of the student-athlete as an amateur and concluded at a time during which more scrutiny was being levied on the NCAA and its rule of amateurism.

Northwestern Unionization

In the spring of 2013, the quarterback for Northwestern University's football team, Kain Colter, reached out to Ramogi Huma, who is the president of the College Athletes Players Association, with concerns regarding college student-athletes (ESPN.com, 2015). Colter was concerned with the welfare of student-athletes and the rights they have within college athletics and was interested in exploring whether student-athletes have the right to form a union as employees of the university. The debate around students as employees dates back to a 1999 decision that ruled that interns, residents and fellows at Boston Medical Center were entitled to the rights and protections of the National Labor Relations Act (NLRA) (Rosenberger, 2014). Amy L. Rosenberger (2014) writes that the decision was based on Supreme Court opinion that states that an employee is one who performs services for another for payment and while under their control.

Based on the contention that student-athletes could be viewed as employees of the university, on January 28, 2014, a group of Northwestern University football players, led by Colter, filed a petition for representation. The petition asked that the players be allowed to decide whether to select the College Athletes Players Association (CAPA) as their representative to bargain for a collective agreement with the university and for the university to acknowledge members of the football team as employees (Rosenberger, 2014). The hearings, as certification of representation, were held February 18-22, 2014, in front of the National Labor Relations Board (NLRB). Northwestern argued that intercollegiate athletics have and will always be a part of the educational experience for the student-athlete and that a student-athlete's academics would be hindered by collective bargaining (Rosenberger, 2014). Rosenberger (2014) writes that CAPA, on behalf of the student-athletes, argued that the players perform a service for the

university and they do that under the university's control. They went on to argue that the strict schedules and rules that the student-athletes are held to, combined with compensation for their services from the university in the form of a scholarship, is evidence that they are employees. On March 26, 2014, the Chicago District of the NLRB ruled that the Northwestern University football players should be considered employees of the university and had the right to unionize based on the arguments from CAPA (ESPN.com, 2015). Brian Bennett (2014) writes that NLRB regional director Peter Ohr made the decision to allow union rights to the football players based on the time commitments in their sport and the compensation they receive in the form of a scholarship, which is based directly on their performance on the field.

On April 9, 2014, the University of Northwestern officially entered an appeal to the ruling by the NLRB (ESPN.com, 2015). Alan K. Cubbage (2014) writes that Northwestern considered the decision unprecedented and felt that the director ignored evidence presented by Northwestern in the case that proved its student-athletes were students and not employees. On April 24, 2014, the NLRB granted Northwestern University's request and began to review the case (ESPN.com, 2015). On July 3, 2014, Northwestern University officially requested that the NLRB overturn the regional director's ruling that allowed the football players to unionize (ESPN.com, 2015). Cubbage (2014) writes that the request was based on the regional director's refusal to apply the legal precedent set by a 2004 decision for Brown University that stated that graduate assistants were considered students rather than employees. Northwestern cited this ruling, arguing that the football players should be held to the same standards.

After over a year of waiting, on August 17, 2015, the NLRB finally dismissed the petition by the Northwestern University football players for the right to unionize (Strauss, 2015). The decision ultimately denied the football players' claim that they should be considered employees

of the university and be allowed to collectively bargain. The decision in the case was unanimous by the five member board, which declined to exert its jurisdiction in the case (Strauss, 2015). The board cited competitive balance within college athletics and a possible impact on the NCAA rules as the reasons for the decision, writes Strauss (2015). The possibility is open for Colter and CAPA to sue the NLRB and force them to exert jurisdiction in the case, but that would be considered a longshot (Strauss, 2015).

The Northwestern case is interesting since, for a brief time, the ruling was again in the favor of the student-athletes. Although this case didn't directly involve the NCAA, it would have had major ramifications on the organization had the NLRB not overturned the decision. Ultimately the NCAA and its rule of amateurism for student-athletes came out on top, and remains a staple of the established rules of the organization.

Jenkins v. NCAA

In June 2014, as the *O'Bannon v. NCAA* case was drawing to a close, another antitrust suit against the NCAA was taking shape in the form of the class action lawsuit *Jenkins v. NCAA*. Named for Martin Jenkins, who played football at the University of Clemson, the suit has the possibility for serious ramifications on the way the NCAA approaches rules related to the amateurism model. The case is currently working its way through the judicial system. Even though the suit is named after Jenkins, as Andy Staples (2014) writes, in the world of college athletics the case is more widely known for who is representing Jenkins: Jeffery Kessler (2014). Kessler, who is partnered with David Greenspan as the attorneys in the suit, was part of a team of attorneys who, in 1992, successfully convinced a jury to declare the National Football League's (NFL) free agency system illegal (Staples, 2014). The suit helped to bring in the current free agency plan in the NFL, and now Kessler has set his sights on redefining the college athletics

landscape. Jon Solomon (2014) writes that plaintiffs in the Jenkins case are suing the NCAA and the Power Five conferences, seeking an injunction that will allow an open market in college athletics, which could create a basis for compensation for the athletes in return for their services.

Kessler's distrust for the NCAA is highlighted by Paul M. Barrett (2014) when he writes that Kessler has for years harbored bad feelings for the NCAA and the manner in which it treats the athletes it represents. Kessler feels that that the NCAA exploits college athletes with illegal tactics and that it has been doing so for a long time (Barrett, 2014). Barrett (2014) writes that the Jenkins case plans to disrupt the NCAA by opening college athletics to free market system where universities can bid for the services of the athletes. He goes on to state that the Jenkins case, coming on the heels of the O'Bannon case, has the perfect timing; where the O'Bannon case made some changes, the Jenkins case can completely transform the landscape (2014).

It remains to be seen as to what changes, if any, *Jenkins v. NCAA* will have on the NCAA and its amateurism rule. The NCAA continues to defend the rule, but it seems to be standing on shaky ground. With the recent high profile cases carrying largely anti-NCAA overtones, and the growing sentiment that seems to harbor ill feelings toward the manner in which the NCAA treats its athletes, it seems as if changes within the system are coming. However, it is hard to speculate at this point how things will turn out, especially with the way that the NCAA has been successful in the past defending itself in the courts.

As I stated previously, I didn't conduct a comprehensive review of the secondary cases for particular reasons, however I did conduct a cursory examination of the cases due to the importance and relevance they carry within the pay for play debate. The Kent Waldrep and Northwestern University cases weren't antitrust lawsuits and the parties involved did not sue the NCAA for their purposes, but they do add credence to the pay for play vs. amateurism debate.

The Jenkins case may end up becoming a larger case that could have ramifications that may extend further than the impact the O'Bannon case, however it is still very early in that case, thus limiting the extent I can provide within this analysis.

Summary of Cases

Table 1 displays a summary of each case, its litigants, issues, and outcomes.

Table 1: Summary of Cases

Cases	Litigants	Issues	Outcomes
Kent Waldrep Workers Compensation Case	• Kent Waldrep • Texas Christian University • Texas Employers Insurance Association	Waldrep sued for workers compensation when he was injured during a football game while playing for TCU. He claimed he was an employee of the university rather than a student.	The Waldrep case carried on until 1999 when eventually he lost. However, Waldrep's case was able to shed light on the injuries athletes can suffer and the NCAA has since adopted better polices regarding injured players.
Board of Regents of Oklahoma v. NCAA	• University of Oklahoma • University of Georgia • Members of the College Football Association • NCAA	Members of the CFA sued the NCAA claiming the NCAA television contract violated Antitrust Laws and operated as a monopoly.	The plaintiffs in the case won in Federal District Court, the Court of Appeals, and ultimately the Supreme Court. The CFA won their case, and college football broadcast became more open allowing institutions to negotiate with the networks.
White v. NCAA	• Jason White • Members of the Class Action • NCAA	Members of the White class action sued claiming that the scholarships they received from their institutions based on NCAA policies were insufficient.	The NCAA settled the lawsuit without going to court and the members of the class action were able to claim the money they had missed out on with their original scholarships.
O'Bannon v. NCAA	• Ed O'Bannon • Members of the Class Action • EA Sports Video Games • NCAA	Members of the O'Bannon class action sued both EA Sports and the NCAA. They claimed EA and the NCAA colluded to illegally use their likenesses in video games without their permission. They also claimed the NCAA violated antitrust laws by limiting student-athletes to scholarships.	EA Sports settled with the plaintiffs with a cash settlement for current and former student-athletes. The NCAA continued to fight the case eventually losing in Federal District Court. The NCAA appealed the decision and won on appeal. The O'Bannon plaintiffs asked the Supreme Court to hear the case but the Supreme Court refused.
Northwestern Unionization	• Northwestern Football Team • National Labor Relations Board	Members of the Northwestern football team filed for unionization with the NLRB to receive better rights for college student-athletes.	The NLRB denied the unionization request of the Northwestern football team.
Jenkins v. NCAA	• Martin Jenkins • Jonathan Moore • Kevin Perry • William Tyndall • NCAA	Members of the Jenkins lawsuit sued the NCAA claiming that the scholarships policies are an unfair practice. They are asking for a free market system for paying college players.	The case is still in the court system. No resolution has occurred.

Chapter Seven: NCAA Reactions and Policy Changes

Changes within the structure of the NCAA do not happen without some sort of external force. As I mentioned earlier, the member institutions of the NCAA are the ones who propose on and ultimately approve new policies and legislation. It is fair to say that when these institutions complain about certain NCAA polies, they are complaining about items they have voted on in the past.

With the case of pay for play, the NCAA has been adamant in defending its position and has been reluctant to accommodate the public pressure to allow a compensation structure for its student-athletes. The NCAA has also been very firm in defending its amateurism model since the inception of the modern NCAA, which dates to the 1950's under Walter Byers. What started out as a way for institutions to compete on the athletic field has, with the interest of many outside forces, morphed into a billions of dollars per year industry. The NCAA has faced much scrutiny based on the model by which it continues to operate, and has had to defend itself numerous times in federal courts to protect this model that many say is outdated. The most recent defense of its traditions, the *O'Bannon v. NCAA* case, has added another layer to the intrigue of the battle of pay for play and has laid the groundwork for cases against the NCAA. Cases such as *Jenkins vs. NCAA*, which is currently weaving its way through the court system, have the potential to alter the current debate about pay for play. However, this study is an historical analysis based on past court cases involving the NCAA to determine what changes and reforms have occurred within its policies. The findings below illustrate changes that have occurred within the NCAA based largely on the court cases, the pay for play argument versus the amateurism model, and the media outcry and the student-athlete pleas for more compensation The changes fall into several

categories including amendments to scholarships and policies, legislative changes made by the NCAA, and increases in monetary programs developed by the NCAA.

Amendments to Scholarships and Policies

In 1956, the NCAA enacted the grant-in-aid policy for full scholarships for its student athletes, allowing them to receive a full scholarship at their institution for participating on their intercollegiate sports teams. This system was set up as a means for institutions to recruit players to their school and reward them for positively representing the institution on the playing field. However, the NCAA has changed the grant-in-aid policy numerous times since 1956 to either enhance or limit the athletic scholarships. For example, until 1975, when it was discontinued, student-athletes could receive cash for incidental expenses in conjunction with their full grant-in-aid athletic scholarship. In this section I will discuss the different programs that have been put into place within the NCAA scholarship structure since the initial grant-in-aid policy was adopted. Many of these reforms have occurred after or during the lawsuits that I have highlighted in this research. These programs include the Student-Athlete Catastrophic Injury Insurance Program, the Student Assistance Fund (SAF), the Student-Athlete Opportunity Fund (SAOF), the Miscellaneous Expense Account (MEA), and the increase of the Cost of Attendance (COA) policy.

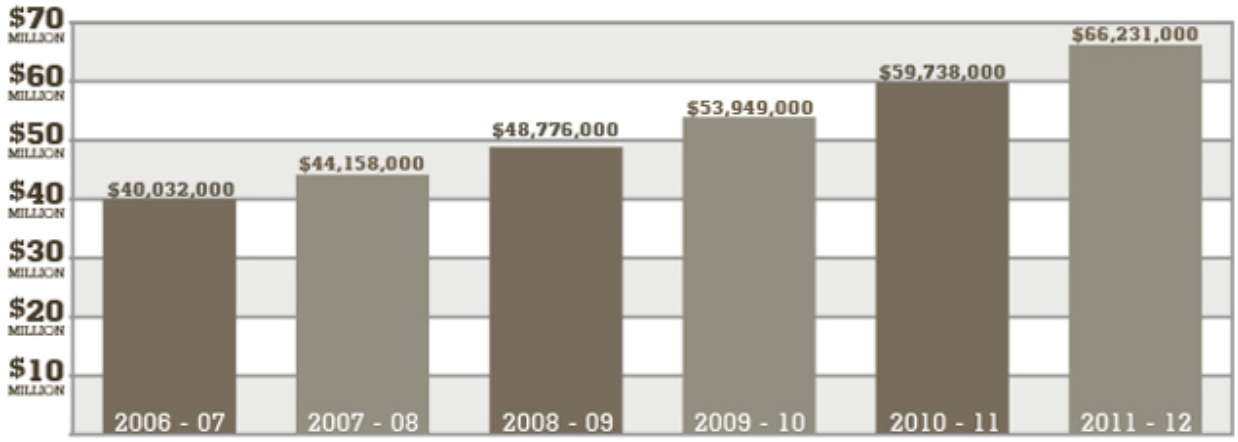
Student-Athlete Catastrophic Injury Insurance Program. Established in 1988, the Student-Athlete Catastrophic Injury Program was designed to assist student-athletes who have been injured participating in an NCAA sport. The program, which is underwritten by Mutual of Omaha Insurance Company, provides in-home care benefits for those injured athletes (NCAA.org, 2016). The program is set up to cover a student-athlete with a major injury whose medical costs are anticipated to exceed $90,000 (NCAA.org, 2016). All NCAA member

institutions are automatically enrolled in the program and are not required to file any paperwork, as their membership within the NCAA guarantees their participation in the program. There is no requirement for institutions to pay an insurance premium for the program since this is covered by the NCAA (NCAA.org, 2016). The NCAA states that there are two instances under which an institution should report a claim to the program through the NCAA. The first would be when a student-athlete suffers an injury that has resulted or will result in a disability for the student-athlete. The NCAA recommends that serious injuries, such as head or spinal cord injuries, should be reported within a day of occurrence so that the process can begin for the injured student-athlete (NCAA.org, 2016). The second instance in which an institution should begin the process of reporting a catastrophic injury is in the event an institution believes that the injury will possibly exceed the catastrophic injury deductible. The NCAA suggests that institutions who calculate that the expenses will reach the level necessary for NCAA injury involvement file the claim so that the proper documentation can be put in place for the injured student-athlete (NCAA.org, 2016).

Student Assistance Fund. In 1991, the NCAA created this special assistance fund to assist needy student-athletes with assistance in purchasing much-needed clothing or assisting with emergency travel or medical costs (Wieberg, 2003). The fund, commonly referred to as the SAF, or the clothing allowance, was designed to give student-athletes access to funds that were not restricted in the same manner as athletic scholarships; The demand for the fund and the money provided within it has grown steadily every year since its inception (see Figure 1) (Burnsed, 2012). Many student-athletes utilize this money for necessary provisions that they may not be able to cover through their athletic scholarships. The convenient aspect of the SAF is that it is not limited to only athletes that may be on a full GIA; rather, it is also available to

student-athletes that participate in an equivalency sport where their scholarship offer may be minimal compared to the full GIA.

Figure 1: Growth of Student Assistance Fund



The Student Assistance Fund has grown steadily since its inception and now makes available more than $66 million annually to tens of thousands of student-athletes to help cover expenses beyond the reach of scholarships. All figures in chart represent funds budgeted, not distributed, for a given academic year.

Each year the NCAA sends each conference office its conference's portion of the SAF money before the academic year begins. It is then up to the conferences to dole out the money to the institutions either evenly or based on the need that each institution shows (Burnsed, 2012). Although the fund was established by the NCAA to assist needy student-athletes, many who have followed the NCAA feel that the program was established and the amounts increased based off the revenue the NCAA was generating through television contracts (Wieberg, 2003). This argument could be directly tied to *Board of Regents of Oklahoma v. NCAA* in the 1980s and even more so to the rise of the pay for play debate. Each member institution determines how it wants to utilize the funds for its student-athletes; most institutions require the student-athlete to exhibit need to be eligible for SAF.

Student-Athlete Opportunity Fund. Much like the SAF program through the NCAA, the Student-Athlete Opportunity Fund (SAOF) is another avenue for student-athletes to receive payment or reimbursements for educational expenses. The SAOF was set up to provide a direct benefit to student-athletes who may request it and meet the guidelines set for the program

(conferenceusa.com, 2016). The money for the SAOF program is generated in the same manner as the SAF money, through the NCAA contract with CBS for the March Madness basketball tournament (Magill, 2011). The NCAA doles out the SAOF money to the athletic conferences, which split the money amongst their member institutions. The NCAA reports that the SAOF program is projected to increase in revenue annually by about 13% (Magill, 2011). Each institution's Department for Intercollegiate Athletics Compliance is in charge of managing the fund for its student-athletes to ensure that the money being reimbursed or given to the student-athlete meets the requirements for the program. The Conference USA website (2016) goes on to describe how the SAOF should be awarded: "Accordingly, receipt of Student-Athlete Opportunity Fund monies shall not be included in determining the permissible amount of financial aid that a member institution may award to a student-athlete. Further, inasmuch as the fund is designed to provide direct benefits to student-athletes, the fund is not intended to replace existing budget items" (p. 1).

The SAOF program was designed to assist all student-athletes with expenses, whether or not they are currently on athletic scholarship, have exhausted their athletic eligibility, cannot compete due to medical reasons, or are an international or domestic student (conferenceusa.com, 2016). The SAOF program was designed to assist student-athletes that have costs that may have not been anticipated and because of this there is no specific nature for the use of the fund. Student-athletes are encouraged by their institutions to seek guidance from the intercollegiate athletic compliance department if their circumstance would qualify. The fund was specifically established to assist student-athletes and cannot be used by the institution to pay salaries, for athletic department improvements, stipends, or replace a student-athletes athletic scholarship. The SAOF can also be used in conjunction with the SAF program for any student-athlete if they

have exhibited reasonableness for the program (conferenceusa.com, 2016). The SAOF has been a useful tool provided by the NCAA for many student-athletes who may utilize the resource to assist in covering educational cost that their scholarship or other financial aid may not have covered.

Miscellaneous Expense Account (MEA). In October of 2011, the Division I Board of Directors adopted a rule that was approved by the NCAA to allow full scholarship Division I student athletes to receive an additional stipend to assist with other costs that their scholarship did not cover (NCAA.com, 2012). The stipend, which was allowed to cover up to a student-athlete's cost of attendance (COA) but not to exceed $2000 per academic year, was enacted to assist student-athletes with personal and miscellaneous expenses (NCAA.com, 2012). This stipend became known as the Miscellaneous Expense Account (MEA) and was meant as a means to provide full scholarship athletes financial assistance to fill the gap between what a full scholarship could pay, and what an institution's COA allowed. Until the MEA was adopted, a full grant-in-aid (GIA) scholarship never actually met what an institution had deemed the full COA for said institution. By approving the MEA, the NCAA allowed full scholarship student-athletes the financial means to purchase the personal and miscellaneous items that their institution had allowed within their designated COA.

The case of *White vs. NCAA* had a major impact on the NCAA making this adjustment and creating the MEA. In my earlier analysis I reviewed the *White vs NCAA* case in which the NCAA reached a settlement with the plaintiffs to ultimately pay out financial awards to the class covering the same gaps as the MEA would eventually cover. However, the NCAA's plan for the MEA was never realized; in December of 2011, the same year it was enacted, the MEA bylaw was down voted by member institutions of the NCAA and the program was eliminated (Schwarz,

2011). Prior to the MEA, and per the NCAA bylaws, schools were not allowed to cover any travel or living expenses for student-athletes. With the adoption of the MEA the NCAA was changing its own rules, allowing for institutions to cover these costs; Schwarz (2011) argues that this allowed the NCAA to be the decision maker on what constituted amateurism and what didn't since their previous bylaws strictly prohibited covering these expenses. Essentially the NCAA capped the athletic scholarship to covering only tuition and fees, room and board, and books, while the MEA, which wasn't considered a part of the scholarship, could cover the travel and living expenses (Schwarz, 2011). Schwarz (2011) contends that the NCAA modeled the MEA this way so that if it faced an antitrust lawsuit, the NCAA could assert that there was no violation of the amateurism rule because the GIA was capped below the cost of attendance for every student-athlete, while the MEA was merely assistance to cover travel and living expenses.

Cost of Attendance Increase. In August of 2014, the NCAA's Division I Board of Directors adopted a new governing structure based on NCAA conference membership, the most significant of which was referred to by the NCAA as the Autonomy Rule. The Autonomy Rule essentially allowed the strongest, largest, and most financially prosperous conferences, termed the Power Five, the ability to make rule changes for self-governance that would not apply to the rest of the NCAA member institutions (NCAA.org, 2014). The rule was a means to give the Power Five conferences (The Big East Conference, The Atlantic Coast Conference, The Big 12 Conference, The Big Ten Conference, and The Pac 12 Conference) the ability to vote on items that only their institutions had the financial viability to accomplish. This new rule made sense for the NCAA – it allows the Power Five to adopt rules for themselves without holding the institutions not in Power Five to the same standards (NCAA.org, 2014). Prior to this rule, when the NCAA adopted a policy change, it affected the entire membership, but didn't always mesh

with all NCAA institutions. The NCAA at the time was in the midst of the *O'Bannon vs NCAA* lawsuit, and was still making settlement payments to the class from the *White vs. NCAA* lawsuit.

The first rule that the Power Five adopted utilizing the Autonomy Rule was the Cost of Attendance increase to full GIA scholarships. Every institution sets their cost of attendance based on primarily four components: tuition & fees, room & board, books & supplies, and personal & miscellaneous costs. Prior to the rule change, student-athletes that received a full GIA scholarship only had costs of tuition and fees, room and board, and books covered. There had always been a gap in what their cost of attendance was, and what their full GIA covered (NCAA.org, 2015). Under the new legislation adopted by the Power Five through autonomy, institutions could cover the fourth component, personal & miscellaneous expenses, with the full GIA. The increase of the full GIA covering the entire COA was something that athletes had been pursuing for some time. The *White v. NCAA* case was based on the gap between the full GIA and the COA and the NCAA settled that case. With the Power Five adopting this legislation, it allowed these institutions to address the GIA to COA gap for their student-athletes (NCAA.org, 2015).

In summary, all of these programs have been adopted by the NCAA over the past 25-30 years and run parallel to the growth and popularity of college athletics. It is no surprise that as the pay for play debate and the questions surrounding the amateurism rule continued to gain momentum, the NCAA was enacting and adopting polices to quell the debates and arguments. Amateurism is very much still a part of the NCAA model and will continue to be for the foreseeable future. But, as the landscape of college athletics changes, so too does the manner in which the NCAA adapts its model and continues to adopt new legislation to ward off their critics and to appease the pay for play advocates. These programs haven't been put in place to replace

the amateurism rule, as the NCAA sees it; rather, they have morphed the way amateurism is interpreted since it was first put in place within the NCAA in the 1950s. The pay to play debate has only added to this changing environment, forcing the NCAA to alter the way in which it operates, changing the way amateurism is viewed while maintaining it within college athletics.

Chapter Eight: Findings

Without question these cases have changed college athletics in many ways, and the rulings have had an impact on the way that institutions, their athletic departments, and student-athletes interpret the NCAA rules and regulations. At the beginning of this dissertation I set out to find answers to these research questions:

1) How has the NCAA evolved during a time of persistent legal encounters due to the treatment of student-athletes?
2) How have the conditions in college athletics participation changed for student-athletes based on NCAA policy?
3) How does the debate about pay for play continue to raise questions of intercollegiate athletics?

In this next section I will show what my research found about the impact of the cases and the rulings.

Looking Again at Amateurism

My first research question asked: *How has the NCAA evolved during a time of persistent legal encounters due to the treatment of student-athletes*? As I have highlighted in my research, the NCAA has faced legal action against the manner in which the Association controls member institutions through its policies. In this next section, I will look at how each one of the cases has impacted collegiate amateurism, and how the rulings have impacted the manner in which the NCAA has adapted based on the legal battles.

Board of Regents of Oklahoma v. NCAA. This was an important case for the NCAA and its rule on amateurism for student-athletes due to the precedent that was set in the dissenting opinion when the case was heard by the Supreme Court. Justice White was adamant in his

opinion that amateurism was a valued rule and must remain as a tenet for college athletics in order for institutions to maintain an educational standard. The case, which had to with the NCAA's control over television rights, was lost by the NCAA, but this opinion gave the NCAA a victory that seemed small at the time. Since this case, the NCAA has used Justice White's conviction regarding amateurism in subsequent court battles as the legal guiding principle that avows the amateurism rule as sacrosanct within college athletics.

The Board of Regents case was a milestone case for college athletics because it gave a roadmap for how to bring litigation against the NCAA and win. Up until this case the NCAA had all the control over television rights and, when institutions questioned its authority, the NCAA threatened them with banishment from the organization. The institutions that made up the plaintiffs in this case were diligent by first creating the CFA, negotiating television contracts, and then ultimately suing the NCAA under antitrust abuses when the NCAA threatened them and demanded they cease all action. This case took years to conclude, as the NCAA filed appeals to each ruling that went against them, ultimately ending with the Supreme Court siding with the plaintiffs. The plaintiffs' victory in this case was monumental for college athletics as it changed the manner in which television contracts were negotiated. No longer were teams required to wait for the NCAA to allow them to be televised. Rather, the college football powerhouses could negotiate their own contracts with the networks, allowing for more games to be televised and for more exposure for their athletes. This case had an important impact on college athletics because it showed that the NCAA was vulnerable and that its policies and heavy-handedness were susceptible to federal laws.

This landmark decision opened an era in which college athletics were more visible in the media and on television. It gave high school athletes across the nation access to watch more

teams and more games, offering exposure to a broader range of institutions as they decided where they might attend college. The games became more commercialized as advertisers were able to reach a larger, more diverse audience. The ruling also allowed institutions to negotiate their own broadcasting contracts, which gave them more television air time and increasing revenues from the contracts.

White v. NCAA. The White case had an impact on the NCAA amateurism rule and affected student-athletes despite never going to trial. The case, which became a class action suit, ended in a settlement that allowed members of the class to recoup monies billed to them despite their full scholarships (the actual Cost of Attendance) that they weren't eligible for under the NCAA policies regulating scholarships. The White case affected the amateurism rule when the NCAA agreed to settle with the former athletes, admitting that their scholarships should have covered the entire COA. The "full ride" scholarships at the time covered books, room and board, and tuition and fees. However, the COA of each institution also had another component included for personal and miscellaneous costs which wasn't allowed by the NCAA athletic scholarship. The money that was recouped by the former athletes was to cover these COA amounts for which the institutions could directly bill students. The NCAA did not include the personal and miscellaneous amount in the scholarship amount because it was money that would go directly to the athlete rather than to a charge by the institution. The amateurism rule did not allow for student-athletes to be paid, which is how the NCAA saw the personal and miscellaneous portion of the scholarship. By settling in the White Case, the NCAA was admitting that the scholarship system may be flawed and the student-athletes on a full athletic scholarship should have the entire COA covered. The rule would eventually be changed via the

Autonomy Rule, when the NCAA allowed the Power Five conferences to have autonomy in rule-making and those intuitions voted the rule change into legislation.

The White Case settlement had an overall effect on college athletics because it forced the NCAA to review its policies toward athletic scholarships and to come to the understanding that the amateurism rule may have some gray area. The White Case also occurred more recently, as the NCAA has faced intense scrutiny of its policies and many in the media that believe that college athletes should be paid for their play. This settlement, and ultimately the rule change for the Power Five conferences, has impacted college athletics by allowing the athletes to have a stipend for expenditures allowed in the COA, which was not allowed prior to this case due to the amateurism rule that did not allow for direct payments to student-athletes. Prospective student-athletes can see what amount they might be able to receive in stipend money and include that in making a college decision. This change in how the amateurism rule is interpreted is a direct effect of the *White v. NCAA* case.

Student-athletes have benefitted from the White case in that now they are able to receive a stipend from their scholarship based on the entire cost of attendance at their institution. This allows the student-athletes to receive funding to help pay for educational costs beyond books that, prior to this rule, they were not allowed. The amount has always been a component of the COA but was not allowed in the scholarship, which has aided student-athletes in paying for costs outside of university charges.

Ed O'Bannon v. NCAA. The Ed O'Bannon ruling had a major impact on collegiate amateurism due to the length of the case, the plaintiffs involved, and the era in which it took place. In finding for the plaintiff in this case, Judge Wilkin wrote that the NCAA should review its policies as they pertain to amateurism. She felt that the system of college athletics had

become so large that the current NCAA policies were outdated and needed to be revised. Much of what Judge Wilkin wrote could be interpreted as a suggestion for the NCAA to overhaul its current practices. The Ed O'Bannon case expanded on what the media had been saying for years – that college student-athletes should be paid for their services. The O'Bannon case challenged the amateurism rule because it took an argument, pay for play vs. amateurism, and brought it to the national spotlight in federal court. Many people, writers, and members of the media watched as the armchair argument of pay for play vs. amateurism started to gain legitimacy due to this federal trial. Essentially, the entire concept of student-athlete amateurism was on trial in the O'Bannon case, and the rule itself was in danger of being flipped. The interesting aspect about the case is that it didn't start out as a large antitrust, abolish amateurism case. Ed O'Bannon originally sued EA Sports because he felt it used his image in video games without his consent; the NCAA was pulled in because he argued that the organization colluded with EA to allow that to happen. Only after the trial began was it filed as a class action lawsuit, alleging that the NCAA was restricting the rights of student-athletes. The effect that the O'Bannon case has had on amateurism has been monumental because it gave credence and legitimacy to an argument that at the time was mostly media driven – that student-athletes shouldn't be held to an amateur status when they are already treated as professionals in many aspects.

College athletics as a whole has been affected by the O'Bannon case, and the NCAA reviewing its policy was partially due to the case. While the case was proceeding through the courts, the NCAA approved a legislative move allowing Autonomy for the Power Five conferences. This move gave the Power Five conferences the ability to make rules that only apply to their institutions. The first rule the Power Five made was to allow full scholarships to cover the full cost of attendance. As I highlighted in the review of the White case, this was an

important setback to the amateurism rule. And although this rule was something that was argued for during the White case, it ultimately was changed while the O'Bannon case was still going on, long after the White case had ended. The effect of this rule has changed the way recruiting works, as now prospective student-athletes have the ability to see how much stipend money they may receive from each school, allowing them to weigh their choices based on how much money they will receive.

The effect that the O'Bannon case has had on student-athletes has also been felt. In today's college athletics, student-athletes are receiving more money than they had in the past. Although it is not directly tied to the O'Bannon case, the COA scholarship rule was influenced by what was happening in the courtroom. The NCAA seems to be easing its grip on the policies it so staunchly defended years ago, instead trying to find ways to keep the amateurism rule in place while at the same time being more helpful and mindful of the student-athlete experience. The long-term ramifications of the Ed O'Bannon case are yet to be realized since it is still so fresh, but I expect that there will be changes to NCAA policy where the result can be pointed back to the Ed O'Bannon case.

These cases have shown that over time the NCAA has adapted it's polices in a manner to combat the persistent demand for a pay for play system. The NCAA has evolved it's approach toward policy from a system that revolved around absolute control without wavering to one that is willing to make adjustments when legal issues take precedence.

A New View of Benefits

The second research question of this study: *How have the conditions in college athletics participation changed for student-athletes based on NCAA policy?* The conditions for student-athletes who participate in college athletics has changed drastically over the past few decades.

Whether directly related to the legal battles it has faced or not, the NCAA has made improvements to their operational system and have adopted policies that have benefitted the student-athletes. As I highlighted in my earlier account of NCAA policy changes, many of the polices that the NCAA has adopted over the years have gone to benefit the student-athletes, from injury insurance programs, to the Student Assistance Fund and Student-Athlete Opportunity Fund programs that ensure the athletes have the means to purchase items that normally they couldn't. The NCAA has made a concerted effort to adopt policies for better treatment of the student-athlete. Many of these polices can be attributed to pressure from student-athletes and the media against the NCAA and the way the athletes are treated. The question remains though, has the NCAA adopted these policies because they felt the student-athlete should have better treatment, or have they adopted the policies due to the pressure of the legal battles, and to curb the pay for play debate hoping the changes will appease their critics.

One of the major policy changes that has made conditions easier for the student-athletes is the adoption of the cost of attendance rule for full GIA scholarships. This rule, which can be attributed to the White and O'Bannon lawsuits, is viewed by many as a means of legally paying student-athletes, but still espousing the concept of amateurism. It does appear that this policy change is just another mechanism adopted by the NCAA to thwart more lawsuits, and keep the critics at bay who still believe that student-athletes should receive more compensation. However, it cannot be ignored that the COA policy does benefit student-athletes by allowing them some form of compensation to assist with the everyday needs that every college student requires.

Based on the recent history of the NCAA and the endless lawsuits they encounter, it is not too improbable to think that the lawsuits will persist and that the NCAA will continue to adapt its operational standards. This is the manner in which the NCAA's amateurism model has

been able to survive despite the constant barrage of attacks it has faced. It is also probable that the conditions for student-athletes will continue to improve in a manner that makes things easier for student-athletes as the NCAA reacts to more lawsuits. The NCAA continues to make the adjustments necessary to improve the overall welfare of the of the student-athlete experience.

Managing Amateurism in Public

The final research question explored is: *How does the debate about pay for play continue to raise questions of intercollegiate athletics?* The pay for play debate has been gaining support as college athletics has grown in popularity and the revenue generated by big-time college athletics continues to increase. The legal battles the NCAA has faced have only increased the public perception that student-athletes should be compensated for their performances on the playing field. The major question that the debate about pay for play represents for amateurism is completely immersed in the amount of money that is generated through college athletics. The rule of amateurism strictly prohibits any student-athlete from receiving payment for their performance on the playing field, and the NCAA has taken a strong approach to punish violators of this rule, as I have illustrated previously with SMU and UM "death penalty" decisions I reviewed.

Since the rule of amateurism was adopted by the NCAA in the 1950s, college athletics has changed in many ways, and the concept of student athlete amateurism has evolved in many ways as well. When the NCAA adopted the amateurism rule, the idea behind the concept was to ensure that the student-athletes on campus maintained their focus on their academics first and their sport second. The amateurism rule was also aimed at maintaining the purity of college sports as a form of athletics in which money was not involved and the athletes participated for the love of the sport, their personal development, and their institutions.

As the 1960s and 70s passed, technology advanced and the popularity of college athletics grew due to increased television coverage. The popularity was also driven by the college football bowl games that occurred at the end of the college football season, and by the NCAA Men's Basketball Tournament that occurred at the end of the basketball season. The popularity of these events, coupled with the ever-growing television coverage, gave rise to the demand for more. Alumni who had been scattered across the country were now able to watch their alma mater play on television. As the demand and the popularity for these events grew and the coverage of these events through television increased, the events expanded, offering more opportunities for institutions to compete. Each year more and more bowl games were sponsored by corporations offering more opportunities for institutions to be selected to play; as the NCAA men's basketball tournament continued to gain in popularity, the NCAA expanded the tournament to allow for more teams. Corporations began to take notice and began to sponsor events, advertising their products to the viewing public. The tremendous television contracts that have been signed by the NCAA have allowed this to occur. College athletics and the coverage of these competitions started to become a lucrative avenue for businesses to successfully advertise their products.

Due to this competition and the increased revenue filtering into the NCAA and its institutions through endorsements and advertisements, during the decades following the inception of the amateurism rule, college athletics began to take on a form similar to professional athletics. Schools are placing a significant emphasis on athletics to the point where many institutions are defined by their athletic programs which can shape the climate of the institution. Institutions started putting more focus on their athletic teams to draw more revenue to themselves and began to more vigorously recruit talented high school players to improve their

chances at increasing exposure and potentially earning more in athletic revenues. As the revenue increased and the exposure for the student-athletes increased their recognition nationally and then globally, the academics of the student-athlete began to be an afterthought. Recruited high school athletes became less interested in the educational aspect of their college choice and more interested in which institution would give them the best chance to make it to the professional level. Many of these athletes even forgo attending classes because they have already planned to leave school for the professional ranks. This also led to many athletes leaving college before they earned their degree in order to pursue the money they could make at the professional ranks. Despite this change in the college athletics scene, amateurism was and is still being sold by the NCAA. However, even though amateurism is still a rule within the NCAA and they still hold student-athletes to the ideal of amateurism, the NCAA has adapted its policies in an effort to keep amateurism in place and to keep pace with the modern era of big time college athletics – allowing for the mainstream high exposure of the sports, but also maintaining some intrinsic educational value and legislative control. Policies such as the COA Rule, and the Autonomy Rule are perfect examples of how the NCAA has controlled the pay for play and amateurism debate.

As I highlighted earlier in this study, the many members of the media and current and former athletes who advocate for a pay for play system point directly at the money generated in college athletics. Revenues generated by institutions through athletics have reached the millions, and coach's salaries and endorsement deals have skyrocketed. As the O'Bannon case showed, video games use the student-athletes' likenesses to sell their games and make money. The very student-athletes, who are the selling point for the broadcasts of these astronomical television contracts, are the only ones not receiving any monetary benefit from them. All of this is

occurring while the athletes are not receiving any compensation further than their cost of attendance scholarship, which is the basis of amateurism. And although these scholarships are a monetary benefit, the money generated from all other aspects of college athletics far outweighs that of a full GIA scholarship. The debate ultimately comes down to how can the NCAA hold the student-athletes as amateurs and not allow them any compensation when it monetizes every single other aspect of college athletics? The NCAA skirts the issue by espousing the higher education aspect and that the student-athletes are really there to earn a degree. Yet the NCAA and higher education institutions continue to make money off the backs of the student-athletes with large television and licensing contracts, mega-endorsements, and advertisements.

The pay for play debate has certainly pushed the amateurism model to the point where it is being questioned in federal court, which also questions the viability of college athletics in the future. The Jenkins case is the next high profile case that will push the limits of the concept of student-athlete amateurism and has the potential to have a more significant effect on the NCAA and its policies than the O'Bannon case. The Jenkins case, as all the cases that have come before, will contend that student-athletes are being treated as professionals in certain aspects of their student-athlete life, but are viewed as amateurs through the policies of the NCAA. What is not being questioned or up for debate is that the amateurism rule will most certainly continue to come under fire as long as the NCAA remains defiant that the rule must remain in place.

Chapter Nine: Personal Reflections

In 1987, while speaking during a convocation at Williams College, then head of Major League Baseball's National League and former president of Yale University, Bart Giamatti, said of college athletics, "'What was allowed to become a circus - college sports, threatens to become the means by which the public believes the entire enterprise is a sideshow" (*New York Times*, 1987). At the time Giamatti was referring to what he felt was a college athletics system where institutions used student-athletes to make money for their services without giving them the proper education they were promised. Giamatti believed that college scholarships should be based strictly on financial need and he cautioned that if colleges and universities didn't reform, they would lose the respect of academia. Giamatti was partially correct; he was accurate when he said that college athletics would become the face of many institutions. However, he miscalculated when he asserted that institutions would lose academic respect if this were to occur. What Giamatti couldn't predict at the time was the manner in which college athletics would grow into a multi-billion dollar industry, penetrating college and academic life and clouding the line between amateur and professional athletics.

Cultural Significance

In 2014, the estimated worth of the North American sports market was $60.5 billion and there appears to be no limit in sight (Heitner, 2015). Part of the draw is its simplistic nature, according to James L. Shulman and William G. Bowen (2011), who write about the simplistic nature of sports that appeals to much of the public. In *The Game of Life: College Sports and Educational Values,* Shulman and Bowen outline why sports fans love sports: "Sports provide us with escape – heroes and villains, winners and losers, and a clarity that we rarely get when sitting around thinking about whether it's the right moment to change jobs" (pg. xxi). College sports

have also come to play a significant role in the cultural setting of college campuses and have taken over certain aspects of campus life. As Shulman and Bowen (2011) write, college sports provide fans with an escape from their everyday lives. Students on campus are facing critical decisions and deadlines in their lives, and the break they receive from those stressors is their college team competing on the field. It gives the students the ability to cheer on their fellow students alongside friends, alumni, and fans alike and to have that connection and bond with both the athletes and the others in the crowd. Alumni migrate back to their alma maters for games, often for more than just homecoming, to be able to access that escape from real life again, to rejoice with others when their team wins or to agonize when they lose. The sense of belonging and the sense of connection create a cultural significance and fascination with college athletics.

College athletics exist in a cultural realm that is unlike any other form of athletics. Nowhere else in the world does a level of athletics exist on par with the college athletics that is played at postsecondary institutions in the United States. For example, students are often taking over the streets of their college town, sometimes in joyous celebration after a victory and sometimes as a mob rioting and looting after a loss, when a game has finished. The draw of college athletics can be tied to the institutions of higher education they represent and the students and alumni that identify with their teams. One could say that all sports in the United States, professional and amateur, bear a cultural significance to their fans but nowhere is it more evident than on college campuses. The lore of college athletics stems from the students who attend the institutions and have a claim as being a part of that team. The students who become alumni continue to feel drawn to their alma mater and the teams that represent it. It is not just a detached feeling of attending a game and then leaving with no real consequence of whether they won or lost; rather, college athletics is a connection to your team where every win is a new

euphoric high, and every loss stings as if you lost a close friend. This can be especially true for the students who may attend class or be lab partners with the same athletes that are on the field for the big games.

There is something to be said about the manner in which college students steadfastly defend their team, cheering them on with vigor and zeal as if they were a part of the team. Special student sections for games, like the Izzone at Michigan State University, or the special events, such as Midnight Madness for basketball (the first allowable time a team can practice with their coach), are ways in which institutions involve their students in the college sports scene. It is no surprise that students feel a bond and a connection to these college athletes; they see them on campus, in the cafeteria, and share classes together. College athletes are a part of the same campus community that all students share so they aren't as inaccessible as their professional counterparts. As Kevin Carey (2014) points out, "for a certain kind of impassioned sports fan, the contradictions of professional sports are intolerable. The realities of the market make their necessary illusions impossible to maintain" (p. 1). Carey (2014) goes on to explain that "Colleges sports are a solution to this problem. Because so-called student-athletes aren't paid market salaries, and the franchises can never move, it is much easier for fans to pretend that everyone involved is motivated by a shared identity and love of the game…Fellow students and alumni have, in theory, a common quality of membership with the players" (p. 1). They experience some of the same struggles that the rest of the college population feels as they manage their way through their busy schedules. This connection stays with the students as they graduate and move into their careers and become alumni. There is the dedication that alumni feel for their team as they watch them from afar and harken back to their times as undergrads, their college team being the connection that allows them to relive their college years vicariously

through sport. The cultural significance goes beyond just a game being played between two universities, but rather to fan bases that feel they have some "skin in the game," drawing on the connection to their team and the pride they have for their school.

So why do people care about college athletics, and why is my research significant to numerous writers and fans alike? Much of it can be attributed to belonging to a group and identifying with that group as being a part of something. Tajfel (1978) wrote about Social Identity Theory, relating to in-groups and out-groups to which people attach in order to be associated with a social group. People gain self-esteem by associating with a group that they deem as positive, for example their college athletic teams. People feel a connection to their college team and it gives them a sense of belonging to something. Tajfel (1978) explained social identity as, "that part of an individual's self-concept which derives from his knowledge of his membership of a social group (or groups) together with the value and emotional significance attached to that membership" (p. 63). Many people are attached to their college athletics teams as part of being with a social group, lending cultural significance to the popularity of college athletics. Tajfel (1978) also indicated that people who associate themselves with certain groups get a feeling of self-worth and a positive self-image from being attached to the group. Fans of college athletics is a great example of Social Identity Theory because of the way they interact with fans from other teams. Social Identity Theory simply translates to the "us versus them" mentality that arises during rival games. Fans of one team despise the fans from a rival team for no other reason than the fact that they are fans of an opposing group. Tajfel (1978) states that people gain self-image by associating with their in-group, such as a college team. They also discriminate against other groups, the out-groups, because they are fans of opposing teams.

The significant role that college athletics plays and the cultural impact that college athletics has in everyday fans cannot be denied. Shulman and Bowen (2011) wrote that simplicity of the sports was a way for people to find a belonging. It ties directly with the Social Identity Theory of belonging to a group and finding a connection with others as part of the in group. Fans are able to identify with other fans of the same group as having a place within that group. The social integration of the group carries a cultural aspect as fans place a great deal of importance on their college athletic teams.

Studying the pay for play argument is important not only for the financial and academic impact it would have on college athletics and the universities, but also for the cultural ramifications it could have on the sports and the culture of the institutions as well. This is why the debate over pay for play is such a popular topic in today's mainstream media and around college campuses. People are genuinely interested in this debate because it could possibly change the manner in which college athletics operate. The importance that students, alumni, and fans place on their college sports teams and the way they identify with those teams has elevated this debate to a substantial chapter in the history of college athletics in the United States.

Reflections

As a professional working in financial and athletics with a major Division I institution for the past several years, I have worked with the NCAA and intercollegiate athletic departments very closely. I have been at the forefront, as a decision maker, in the position to interpret and administer several of the NCAA's rules changes as they apply to student-athletes. I have seen first-hand how cases such as *O'Bannon vs. NCAA* have affected college athletes; I have had a role in adopting NCAA policy changes based on the cases and applying them to my institution and our policies in order to maintain compliance with the NCAA.

The *Board of Regents of Oklahoma vs NCAA* case played a key role by cementing the amateurism rule for the NCAA through the dissenting opinion which strongly supported the definition of the concept. The NCAA has utilized this opinion as the basis for defending amateurism in almost every court case since. Although this case has been used as the cornerstone of the NCAA's defense of amateurism in college athletics, it also created the roadmap for others looking to bring litigation against the NCAA. The roadmap to which I refer is how to use the Sherman Antitrust Act as a basis to sue the NCAA. The *Regents* case proved that the NCAA was vulnerable to antitrust litigation and it became the manner in which others sued the NCAA. In my opinion, what this case exposed about the NCAA was its overreaching in all aspects of college athletics and its desire to control not just its member institutions, but the student-athletes that represent those institutions as well. It was obvious to the judges in both the circuit court and the court of appeals that the NCAA television plan was operated as a cartel and that the NCAA fixed prices. Even the dissenters in the Supreme Court case felt that the NCAA was operating in a controlling manner with the television plan, but felt that it was doing so to protect amateurism, which is why they defended the NCAA and spoke out in strong support of amateurism.

Another reason that the *Board of Regents of Oklahoma vs. NCAA* case is important, and why it plays a role in today's debate regarding pay for play, is the argument it made regarding the revenue generated through television contracts for intercollegiate athletics. This argument has expanded to other revenue generating areas of intercollegiate athletics such as ticket sales and merchandising. The case essentially became an argument for pay for play within college athletics. However, it did not support a pay for play system for the student-athletes, but rather a system that would allow institutions more control over their television negotiating, which would result in more revenues for the institutions themselves. This case set a precedent by showing the

growing popularity of college athletics and the unlimited potential for generating revenue at the institutional level. The genesis of the *Regents* case was the control the NCAA exerted over the revenue streams of the institutions. The current debate over pay for play is that student-athletes should be compensated because they are generating the revenue for the institutions and the NCAA. The debate has migrated from the institutions seeking more control to the student athletes wanting to have more control. A perfect example of student-athletes proactively working to gain more control is the business of the National College Players Association. This association is dedicated to assisting student-athlete welfare in all aspects of their athletic and academic experiences.

The Jason White case was, in my opinion, the reason the NCAA ultimately adopted the autonomy rule, which led to the Power Five conferences creating rules for their own members. The first rule the Power Five adopted for their member institutions was the COA rule. This rule allowed the member institutions to increase full GIA scholarships to cover the full cost of room and board, and books, which wasn't the full COA. The Jason White case was filed several years prior to this rule change and this gap in funding was exactly the reason the plaintiffs in the class action were suing. It is evident that the NCAA knew the disparity between the full GIA scholarship and the COA was going to become a larger problem if it was not addressed immediately.

I believe that the reason the NCAA settled the Jason White case was because the full GIA scholarship system was imperfect and an easy target for antitrust lawsuits. It wasn't long after the settlement of that case that the NCAA enacted the MEA to help full GIA student-athletes cover the COA. However, the MEA program not thoroughly thought through by the NCAA, as it was also flawed, and was overruled shortly after it was enacted. While the NCAA was still paying the

settlement for the White case, the National College Players Association (NCPA) released its report in 2011, showing that student-athletes received scholarships that kept them at or below the poverty level. In my opinion, at the time the NCAA was trying to figure out a manner in which to cover the COA for student-athletes without impacting its idealistic vision of amateurism; the NCPA report was released and the NCAA was blindsided, so the MEA was instituted the following academic year without the necessary planning involved. A sweeping legislative change like the MEA may seem like a good idea, but not all NCAA member institutions had the financial ability to implement the MEA. They quickly organized resistance to combat the legislation, which was eventually overruled, and the NCAA was forced to abandon the MEA.

Another side effect of the Jason White lawsuit was the Autonomy Rule, which was directly influenced by the failure of the MEA. The NCAA had been feeling pressure from the Power Five conferences to allow them the ability to adopt rules that only applied to them. Ultimately the NCAA relented, deciding that it did make sense to allow the Power Five conferences to vote on legislation dedicated to only those institutions due to the disparity of size and funding levels in which they operated. In August of 2014, a vote regarding an autonomy rule for the Power Five conferences passed by a large margin. By allowing the adoption of the Autonomy Rule, the NCAA took the necessary steps to reevaluate its organization and the differing demographics of its member institutions. The NCAA understood that the institutions that could make the MEA program work were also a part of the strongest Division I conferences and, ultimately, had the vote to allow autonomy.

I believe that the Autonomy Rule, which led to the passage of legislation to allow full GIA scholarships to meet a student-athlete's full COA, was a direct result of the Jason White case. The Jason White settlement set a precedent, which forced the NCAA to address the gap

between the full GIA and the full COA and, ultimately, the passing of the Autonomy Rule. However, in my opinion, the Autonomy Rule leaves the door open for grander changes for the Power Five conferences that could have a much larger impact on the landscape of big time college athletics.

The *O'Bannon vs. NCAA* lawsuit was another case that challenged the NCAA through the use of the Sherman Antitrust Act. This case was different from the Jason White case, however, in that it also sued Electronic Arts Inc. (EA) for the unlawful use of student-athletes' names, images, and likenesses. There were several things that stood out from the beginning that garnered this case a considerable amount of media attention. First, the main plaintiff in the case, Ed O'Bannon, wasn't just another former athlete who had moderate success playing college athletics. O'Bannon was a highly recognized figure in the world of college basketball, helping UCLA win the 1995 NCAA National Basketball title. During his senior year of college, he won the college basketball player of the year award and, he was voted most outstanding player of the national championship tournament. He was a high profile ex-college athlete pursuing legal action against the NCAA, which assisted in the media coverage of the case. Second, he wasn't just suing the NCAA for antitrust violations, O'Bannon was also suing EA for using his likeness. Hence, this was a two-pronged lawsuit by a former athlete. Finally, Sonny Vaccaro, a shoe representative that made his name by helping shoe companies sign big-time contracts with athletes, was the initial driving force behind the lawsuit.

In my opinion, the O'Bannon plaintiffs had a strong case with their arguments against EA Sports and collusion between the NCAA and EA; however, the facts of the case showed that the antitrust portion of the case against the NCAA was not as strong. This is why, I believe, that even though O'Bannon and the other plaintiffs won in District court, the decision was overturned

by the appeals court, and was ultimately denied a hearing by the Supreme Court. In my opinion, the NCAA had a strong defense for their case, which was made even stronger once EA Sports settled with the plaintiffs.

I believe the O'Bannon case did more to drive the pay for play debate than any other prior case. The media seemed to connect with the student-athletes' plight with the O'Bannon case even more so than prior to the case, and the massive amount of coverage it received only seemed to strengthen the pay for play argument. Due to this, the O'Bannon case became more important to bolstering the pay for play argument in the court of public opinion than it was in a court of law. The case began in 2009 and didn't conclude until late 2015; during that time media outlets across the country argued both sides, bringing the debate of pay for play to a much broader audience than prior to the case. This case only strengthened the pay for play advocates in their argument for a system in college athletics that rewards the athletes monetarily beyond their athletic scholarship.

Another pertinent case to this investigation is *Jenkins vs NCAA,* which is still in the preliminary stages of the court system. As of yet, there hasn't been much to report on and the case does not seem close to a resolution at this time. However, from the reports that do exist, it appears this case has a chance to change the landscape of the pay for play debate. The plaintiffs in the case are looking to create an open market system for college athletes when it comes to the pay for play debate. That is, the plaintiffs in this case are arguing for a system in college athletics that operates similar to professional sports; one where the athletes are paid based on their performance in their sport for their institution. It is uncertain at this point how this lawsuit will be resolved and whether it will end up having the widespread ramifications on college athletics that some are speculating. While I believe that it will have an effect on college athletics, I do not

believe it will disrupt the system from the current state of college athletics. I predict, based on the facts as presented, that the case will lead to some concessions by the NCAA in the area of more benefits for the athletes, and lessened regulation by the NCAA, and may lead to more reform in scholarships for college student-athletes, but it will not greatly change the system. The NCAA has been very adept at adapting its policies and creating new legislation to appease the courts and the plaintiffs in lawsuits, while still allowing the maintenance of its amateurism model. I believe this will be the result of the Jenkins case.

The one piece of legislation that does appear to have the ability to change the current college athletics system is the NCAA's Autonomy Rule from 2014. I think the future will bring an expansion in rules by the Power Five conferences as they experiment with new rules that benefit their athletes, and that the NCAA won't have to force onto its non-power conferences. This rule will allow the Power Five conferences to change the shape of college athletics by their own rules-making authority and that these rules will shift how the NCAA does business vs. the NCAA imposing its will on smaller conferences. Despite the Autonomy Rule, the NCAA still controls the Power Five institutions in many regards, and the Power Five must abide by the guidelines set by the NCAA. But, they will also expand on their abilities to do things other smaller (less powerful?) conferences cannot. The Autonomy Rule gives those conferences the ability to make changes that they determine would improve their system. As the revenue in the Power Five Conferences grows and the competition becomes greater than ever, pay for play will unequivocally take on a larger meaning. While there will still be some aspect of the amateurism model in place in the future and college athletics will not evolve into an open market system, I think that the demand to pay high profile recruits will continue to grow until the Power Five decides that is the manner in which they need to focus their resources.

The NCAA has a long and deep history of regulation and defending its regulations. In the court battles that I have reported in this research the NCAA has defended its position on many levels and stands strongly behind its amateurism model. As the landscape of college sports has changed and the popularity of college athletics as grown, so has the interest in the manner in which the NCAA operates. In recent times the NCAA has found its business practices scrutinized on a microscopic level; however, that scrutiny cannot be questioned when the amount of revenue the NCAA yields totals in the billions. It does, after all, beg the question about whether college athletes should be treated as professionals (or employees?) when everything they are surrounded by treats and assumes them as professional except for the national organization that controls them.

I think that the NCAA is a money hungry organization determined to capitalize on college athletics in every possible way, and monetizing every aspect of college athletics and the student-athletes it represents. The manner in which they do this is to hide behind the veil of amateurism claiming that student-athletes shouldn't be paid for their services because they are students first and therefore not professional. The concept appears questionable to almost everyone outside the NCAA and the institutions athletic departments. College athletics is a multi-billion dollar industry, and the college athletic departments are raking in the money while student-athletes cannot receive any of it per the NCAA rules. When, asked every institution will say that they are operating just at their means and couldn't possibly pay the players. However, how can so many institutions build bigger and better athletic facilities, yet claim they are operating at their means?

Perhaps if institutions took more of a philanthropic approach when allocating their athletics based earnings, they wouldn't be the target of the critics who suggest they pay the

student-athletes. Instead of building a new athletic facility, or increasing the head coach's salary another million, it might be good to donate that money to the university to be used for educational purposes. When researching the highest paid employee in each state, in almost every case will reveal that it is the head coach of football or basketball at a Division I university. College coaching salaries are reaching astronomical levels, and the NCAA and the institutions paying the coaches appear to be unconcerned when we hear about student-athletes going hungry. As we heard when Shabazz Napier brought the problem to everyone's attention in 2014. He wasn't complaining about not being able to eat, he was trying to shed light on a system that is flawed. His coach could go back to his well apportioned house after practice while he has to figure out how he is going to eat.

To an outside observer it would seem obvious that the NCAA and its member institutions are partners in an unfair agreement where they keep the money, tell the student-athlete that they are getting a free education, and then supply them with insufficient financial support to earn it. However I also don't believe that colleges are populated with evil people that are trying to figure out every avenue of how to take advantage of student-athletes. They are professionals who generally do care about student-athletes and want to see them succeed in their studies. However, so much emphasis is placed on winning that it is hard for the student-athlete to determine which is more important: athletics or academics. It is also very hard for well-intentioned athletic administrators to assist student-athletes academically when the organizational polices set forth by the NCAA only perpetuate a system where student-athletes academic success is stymied.

I believe that the NCAA is a powerful organization that exploits its student-athletes. Why else does the NCAA find itself trying to defend its policies in federal courts repeatedly? It's not

because they have bad luck, it's because they have bad policies that have been challenged in court and found to violate federal law. And I don't believe institutions when they spout that they cannot have a pay for play system because most institutions are in the red. I believe the money is available for a pay for play system in college athletics, but also I don't think a pay for play system could last very long without the separation of athletics from the academic side of institutions.

I don't feel that a pay for play system in college athletics would work. In fact, I believe that if pay for play were adopted, even on a small scale to start, that it would eventually become too large and would end college athletics as we currently know it. Below is the reasoning behind my view.

The revenue generating sports at most Division I institutions are limited to two: football and men's basketball. If a pay for play system were to be adopted, those two sports would be the ones that would spend the most to get the best players. It would lead to a recruiting arms race where institutions outbid each other to attract the best high school football and basketball players. Eventually the athletic departments will stop spending money to field teams for their non-revenue generating sports. At most institutions the money made from the revenue generating sports (football and basketball) is used to sustain the non-revenue generating sports. With a recruitment arms race, athletic departments will spend the money not on non-revenue sports, but rather the best high school players for football and basketball. The non-revenue sports will cease to exist. Of course this is based on an extreme scenario, but it could happen if the NCAA adopts a policy for it in the same way they adopted the COA policy, which is to not make it a uniform amount allowing institutions to adjust their policies in order to abuse the NCAA policy while still adhering to it.

What gets lost in a college athletics pay for play system is ultimately the original purpose for a student to go to college: to earn a degree. Some would say that academics left the picture a long time ago for student-athletes. At least it has for those high profile athletes who "attend" college for one year, and do just enough to stay eligible, before leaving for the professional leagues. True enough some athletes come back to try and finish their education years later when their professional careers are over, and finally understand how important it is to earn that free education. I do, however, feel strongly that with a pay for play system, eventually academics will come to exist hardly at all for athletes that are paid. There will still be club teams where students will pay their own way for their education while competing through intramurals, but there will also be the professional teams of the institutions where the athletes are paid to represent the university and not required to have an educational component attached to their contract. This is the way the Jenkins Case is headed. Jeffery Kessler, the lawyer representing the plaintiffs wants a free market system for college athletics, and if it happens, the above scenario could be realized. I don't honestly think this will happen though. There is too much integrity built into our institutions of higher education to allow for athletic corruption.

The court battles in this historical analysis stand behind the debate on pay for play vs. amateurism, a debate that mostly rages on in the mainstream media, on college campuses and among the fans of college athletics. Although college athletics hasn't reached a definitive model of pay for play, and possibly never will, the court battles that have occurred over the years for the NCAA have affected the way it perceives and administers its amateurism model. I do not believe the amateurism rule within the NCAA is going to be eliminated, but will continue to grow and morph as college athletics continues to grow and morph, paradoxically maintaining the status quo it has had in place since the early 1950's; and transforming itself based on the current

climate of college athletics. The result of the current pay for play debate has only forced the NCAA to adapt the manner in which it utilizes and administers the amateurism rule, but has not changed the amateurism rule itself. It is however reasonable to conclude that, the pay for play debate will continue, the NCAA will continue to be challenged in court due to its policy on amateurism, and the rule will remain, intact and unchanged. The end result will be that the NCAA will continue to adjust the way amateurism is viewed and enforced, as it has for the last 60 years, but will not change the overall model of college athletics.

APPENDIX

Glossary of Terms

Antitrust – Federal and State laws that regulate organizations and businesses to ensure fair competition.

Athletic Scholarship – A scholarship awarded to a student to play a sport at an institution.

Autonomy Rule – A rule adopted by the National Collegiate Athletic Association allowing its largest and wealthiest athletic conferences to vote on and adopt legislation that only affects the institutions that are members of those conferences.

Cartel – An agreement between competitors to control prices and restrict competition.

Class Action – A lawsuit where a party, or a group of individuals, is represented in said lawsuit by one member of that group.

Class Counsel – A law firm or lawyer that is the legal representation for the plaintiffs in a class action lawsuit.

Class members – All the members on the plaintiff's side of a class action lawsuit

College Football Association – A group formed in 1977 of Colleges and Universities that were members of the NCAA, in order to negotiate contracts with television networks to televise football games.

Competitive Balance – A situation where no one team or institutions competing against each other has an unfair advantage.

Cost of Attendance – The cost that individual colleges and universities set for their institutions each year that determine the amount it will cost a student to attend. The amount is based on tuition, fees, room, board, books, personal supplies, and miscellaneous expenses.

Death Penalty – The harshest penalty that the NCAA can inflict on a member institution for rules violations. The penalties can vary based on the infractions of the violating school, that will most likely have major ramifications such as cancelling an entire playing season for the offending sport.

Division I – The highest level of intercollegiate athletics sanctioned by the NCAA. The differences between Divisions in college athletics is based on the number of sports and teams that each institution must carry. For example, Division I schools are required to have at least 7 men and 7 women's teams.

Electronic Arts – An American video game company that specializes in sports games.

Football Bowl Subdivision (FBS) – The most competitive subdivision of the NCAA Division I college football which consists of the largest and most competitive schools in the NCAA.

Final Four – The moniker given to the four teams that advance to the final weekend of the annual single elimination NCAA Basketball Tournament

Financial Aid – Funding that is available to students that are attending a post-secondary educational institution in the United States.

Grant-In-Aid Scholarship (GIA) – A scholarship awarded by institutions to its student-athletes, based on rules set by the NCAA, that cover a student-athletes cost of attendance.

Horizontal Restraint - Collusion among competitors or distributors at the same level of production or distribution to directly depress, fix, raise, or stabilize prices in order to control the supply of goods or services.

March Madness – The nickname given to the annual NCAA Men's Basketball tournament. The tournament takes place every March.

NCAA Member Institutions – Colleges and Universities that are members of the NCAA.

Miscellaneous Expense Account (MEA) – A account set up by the NCAA to assist student-athletes in paying for expenses that weren't covered by their GIA scholarship.

Monopoly – A market structure where only one supplier exists controlling most of the market.

National Letter of Intent (NLI) – An NCAA document that a student-athlete signs for a college or university indicating their intent to attend that university.

National Collegiate Athletic Association (NCAA) – A non-profit association that acts as the governing body for college athletics.

NCAA's Amateurism Rule – The rule set forth by the NCAA that set the parameters on college athletes preventing them from competing at a professional level or receiving benefits not allowed by the NCAA.

NIL – The acronym give to the phrase "Names, Images, and Likenesses" during the *O'Bannon vs. NCAA* trial.

National Opinion Research Center (NORC) – An organization at the University of Chicago that conducts social research projects. The NCAA utilized NORC survey data to analyze television college sports broadcast.

Pay for Play – The concept of paying college athletes for their participation in college athletics. The NCAA amateurism rule prohibits this practice.

Power Five Conferences – The five largest and wealthiest conferences in the NCAA Division I. The Atlantic Coast Conference (ACC), The Big Ten Conference, The Big 12 Conference, The Southeastern Conference (SEC), and the PAC 12 Conference.

Price Fixing – An agreement between two competitors to maintain prices at a certain level.

Restraint of Trade – A contract between a buyer and a seller that interferes with fair trade and free competition in a market.

Sanity Code – An NCAA regulation adopted in 1948 that became the first form of athletic scholarships that institutions could award.

Sherman Antitrust Trust Act – A federal law that was passed in 1890 that prohibited anti-competitive behavior, including illegal trusts, from companies. This law allowed the federal government to investigate and pursue action.

Student Assistance Fund – A fund established by the NCAA to assist student-athletes with educational expenses not covered by their athletic scholarship.

Student athlete Catastrophic Injury Insurance Program – An insurance program adopted by the NCAA to assist student-athletes with medical costs incurred from an injury they sustained while participating in college athletics.

Student Athlete Opportunity Fund- A fund established by the NCAA to assist student-athletes with educational expenses not covered by their athletic scholarship.

Student-Athlete – Any student that participates in college athletics representing their institution at the varsity level of competition.

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