A LEGAL AND CRITICAL DISCOURSE ANALYSIS OF THE LANGUAGE
USED TO PRESERVE THE “MYTH” OF A STUDENT-ATHLETE

A Dissertation in
Educational Leadership
by
Omar X. Easy

© 2012 Omar X. Easy

Submitted in Partial Fulfillment
of the Requirements
for the Degree of

Doctor of Philosophy

May 2012
The dissertation of Omar X. Easy was reviewed and approved* by the following:

Jacqueline A. Stefkovich  
Professor of Education  
Dissertation Adviser  
Chair of Committee

Preston Green  
Professor of Education & Law  
Program Chair of Educational Leadership

Roger Shouse  
Associate Professor of Education

Kathleen M. Collins  
Assistant Professor of Education

Gerald LeTendre  
Department Head

*Signatures are on file in the Graduate School.
ABSTRACT

There are many factors that may influence and impact student-athletes’ academic achievement and athletic performance from high school throughout college. These factors may range from family structure, socioeconomic status, parental educational level, parental school involvement, and aspirations. However, few studies have examined these factors in Division I student-athletes and related to the need for monetary compensation that might prevent numerous violations that occur every year. As a result, this current study will examine how the power of language is used to dominate and suppress the need for changes or equality in the National Collegiate Athletic Association (NCAA), which may enhance the survival and success of Division 1 student-athletes.
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>LIST OF TABLES</td>
<td>vi</td>
</tr>
<tr>
<td>LIST OF FIGURES</td>
<td>vii</td>
</tr>
<tr>
<td>ACKNOWLEDGEMENTS</td>
<td>viii</td>
</tr>
<tr>
<td>CHAPTER 1.  INTRODUCTION</td>
<td>1</td>
</tr>
<tr>
<td>CHAPTER 2.  LITERATURE REVIEW</td>
<td>7</td>
</tr>
<tr>
<td>What is a Student from a Legal, Philosophical and Moral Point of View?</td>
<td>8</td>
</tr>
<tr>
<td>Summary</td>
<td>21</td>
</tr>
<tr>
<td>CHAPTER 3.  METHODOLOGY</td>
<td>22</td>
</tr>
<tr>
<td>Legal Research</td>
<td>22</td>
</tr>
<tr>
<td>Primary Sources</td>
<td>23</td>
</tr>
<tr>
<td>Constitutions</td>
<td>23</td>
</tr>
<tr>
<td>Regulations</td>
<td>24</td>
</tr>
<tr>
<td>Case Law</td>
<td>25</td>
</tr>
<tr>
<td>Measures and Procedures</td>
<td>25</td>
</tr>
<tr>
<td>Critical Discourse Analysis</td>
<td>26</td>
</tr>
<tr>
<td>Data Analysis</td>
<td>28</td>
</tr>
<tr>
<td>Limitations of the Study</td>
<td>28</td>
</tr>
<tr>
<td>CHAPTER 4.  FINDINGS</td>
<td>30</td>
</tr>
<tr>
<td>Constitution, Article 2: Principles for Conduct of Intercollegiate</td>
<td>34</td>
</tr>
<tr>
<td>Athletics</td>
<td></td>
</tr>
<tr>
<td>Bylaw, Article 12: Amateurism</td>
<td>37</td>
</tr>
<tr>
<td>Bylaw, Article 14: Eligibility: Academic and General Requirements</td>
<td>38</td>
</tr>
<tr>
<td>Bylaw, Article 16: Awards, Benefits and Expenses for Enrolled Student-Athletes</td>
<td>39</td>
</tr>
<tr>
<td>Bylaw, Article 19: Enforcement</td>
<td>40</td>
</tr>
<tr>
<td>Administrative Bylaws, Article 31: Executive Regulations</td>
<td>42</td>
</tr>
<tr>
<td>University of Denver v. Nemeth</td>
<td>43</td>
</tr>
<tr>
<td>Van Horn v. Industrial Accident Commission and California Polytechnic</td>
<td>44</td>
</tr>
<tr>
<td>College</td>
<td></td>
</tr>
<tr>
<td>Jones v. National Collegiate Athletic Association</td>
<td>46</td>
</tr>
<tr>
<td>Coleman v. Western Michigan University</td>
<td>47</td>
</tr>
<tr>
<td>Rensing v. Indiana State University Board of Trustees</td>
<td>49</td>
</tr>
<tr>
<td>Association for Intercollegiate Athletics for Women v. National</td>
<td>50</td>
</tr>
<tr>
<td>Collegiate Athletic Association</td>
<td></td>
</tr>
<tr>
<td>National Collegiate Athletic Association v. Board of Regents of the University of Oklahoma</td>
<td>52</td>
</tr>
<tr>
<td>Bloom v. National Collegiate Athletic Association and Regents of The University of Colorado</td>
<td>55</td>
</tr>
<tr>
<td>Oliver v. National Collegiate Athletic Association</td>
<td>57</td>
</tr>
<tr>
<td>In Re NCAA Student-Athlete Name and Likeness Licensing Litigation</td>
<td>59</td>
</tr>
<tr>
<td>Summary of Findings</td>
<td>60</td>
</tr>
</tbody>
</table>

CHAPTER 5. CRITICAL DISCOURSE ANALYSIS | 61 |
| Theme One: Student-athletes as Employee | 67 |
| Critical Discourse Analysis of a Student-athlete as an Employee | 67 |
| Theme Two: The Inferiority and Exploitation of Student-athletes | 75 |
| Critical Discourse Analysis Inferiority and Exploitation of Student-athletes | 75 |
| Summary of Critical Discourse Analysis | 107 |

CHAPTER 6. DISCUSSION AND CONCLUSIONS | 108 |
| Implications for Future Research | 113 |
| Final Thoughts | 115 |

REFERENCES | 116 |

APPENDIX A. NATIONAL LETTER OF INTENT | 121 |
LIST OF TABLES

Table 2.1. Graduation Success Rates for the Big Ten Conference
for the 2010-11 Year................................................................. 13
LIST OF FIGURES

Figure 2.1. Comparison of Graduation Rates of Demographic Variables at Division I Colleges ................................................................. 14

Figure 2.2. Comparison of Graduation Rates of 3 Sports at Division I Colleges.... 14
ACKNOWLEDGEMENTS

This doctoral study and degree is dedicated to Joeseph V. Paterno. With tears of sadness and a deep inner joy, I feel I was extremely fortunate to have gotten the chance to tell my legendary role model how much I loved and respected him before he passed away on January 23, 2012. This legend of a man has impacted me in more ways than one can imagine; this doctoral degree was made possible because of Coach. Joe has inspired me to take my athletic and academic abilities to the highest level in the hopes that by doing so it will impact others in a positive way. He has been a father figure, an educator, a role model, a leader, a motivator, a coach and a dear friend to me since 1997. For those reasons I would like to say thank you “Joe Pa.” God has blessed you enormously for the many lives you and your family have touched, and will continue to impact. RIP dear friend; you have made me a better person and this world a better place to live in.

Additionally, I would like to thank Dr. Jacqueline Stefkovich for being the best dissertation chair in the world—she was beyond amazing; Dr. Kathleen Collins for being my supportive guide through the methodology, and for her constant encouragement to go deeper and deeper with my thoughts; Dr. Preston Green for being an advocate and for his vast knowledge of the subject matter; and Dr. Roger Shouse for his challenging and objective views of thinking. Special thanks go to Dr. Beverly Lindsay, Dr. Kimberly Griffin, Dr. Jeannette Brelsford, Dr. Angela Charlton, Ms. Becky Contestible, and Ms. Cindy Fetters for all their assistance and support throughout this process. I would like to thank Mr. and Mrs. Aliberti for truly accepting and mentoring me like a son and for
believing in my abilities. Thanks to all my cohorts and colleagues for playing their unique role in my research. Many thanks to the DFL for their support.

Last but not least, I would like to thank my family: my mother, Ieylin J. Wright, who has been the source of my strength; my sister, Georgia T. Wright-Collins for always believing in me through thick and thin; and my brothers, George Wright-Easy and Ian Syblis, for being the best brothers anyone could wish for. I hope this accomplishment will continue to inspire them for the future. To my BG Megan Hodge—for being constant during this process—your never wavering love and support eclipsed the pressures and fatigue of being a doctoral student.

It is with deep pride and joy that I acknowledge each and every one of these mentors, family members and dear friends for their contribution to this degree. I consider it to be the biggest accomplishment of my life, and it would never have been obtained without each one of them.
CHAPTER 1
INTRODUCTION

As the researcher, my interest in this study is to explore the role and the power of language in the construction of the identity of the student-athlete. I will examine these phenomena through legal research and contextual language in the National Collegiate Athletic Association (NCAA) bylaws. With an extensive collection of contextual data, I will explore these documentations to obtain an answer to the question of: How is language used to preserve the “myth” of the student-athlete? The “myth” of a student-athlete can be viewed in several different ways. For an outsider, someone who is not familiar with the duties and responsibilities of student-athletes, their perspectives can and has always been, contradictory. For example, the “myth” is that student-athletes live in the best housing complexes on campus, they eat at training tables that have the best food, and more importantly they go to school for free and all they have to do is play sports. Additionally, the “myth” is that student-athletes are getting the best of everything; they get special treatment, and institutions provide a safe and equitable environment for these students while their academics are of utmost importance. It is also said that student-athletes are volunteering their services to play revenue-generated sports while signing over their likeness to the NCAA. Are these “myths” accurate? Or are they the complete opposite of the claims? This study will evaluate and analyze these “myths” through Critical Discourse Analysis and legal research.
As a native of Jamaica, a Third World country, and as a product of a single parent household with limited financial support where neither parent has a postsecondary education, I learned to strive for the best things in life. As a former student-athlete, my experiences with the issues facing current student-athletes are at the highest level both athletically and academically. I was the first in my family to attend a Research 1 university, participate in Division I athletics, and play sports at the professional level. Having these experiences over the years has made me more aware of the things that are important for a student-athlete to succeed in college. I learned the importance of a parent’s educational experience, the importance of parental involvement, and the type of impact that the absence of these resources can have on an individual.

In the fall of 1997, some fourteen years ago, I set foot on a Bowl Championship Series (BCS) college campus with several goals in mind. I was inspired to win a national championship, graduate with a college degree, and play professional football. However, my journey started with several disappointments and obstacles. I managed to obtain a few of those goals. I graduated from high school as the number one rated player in New England and the state of Massachusetts. I was the number three-ranked player at my position (running back) in the country. My hopes and expectations were very high. We (Penn State) had the number one recruiting class in the nation that year including myself. We had nine All-American players, who were selected by a nationwide recruiting magazine that covered high school football. We were all skilled and eager to get on the field and play some football. The university was just as eager for us to get on the field because of the significant contribution that this recruiting class would make through victories and recognition that would generate significant revenue for the program. I graduated from college and was fortunate enough to be selected into the National Football League (NFL).
Currently, I have the knowledge and experience to analyze the lucrative business that colleges and universities are operating under the guidance of the National Collegiate Athletic Association (NCAA).

Throughout the history of the NCAA as a governing body for universities and colleges, there has been a vast amount of reproduction of social classification and catch phrases such as: “players play, coaches get paid, universities and colleges get richer and the NCAA benefits.” Consider the word “players” for example. In our society today those who are familiar with college athletics would view this word (players) to mean: student-athletes, employee-athletes, bodies, piggybanks and/or involuntary servants. This type of dialectical language is an example of how Critical Discourse Analysis (CDA) can and will be utilized to expose and ultimately put an end to any inequality and injustice that may exist. CDA analyzes language as discourse, which sometimes means that language is conceived as one element of the social process, dialectically interconnected with each other (Fairclough & Graham, 2002). The concern of critical social science shows how socioeconomic systems are built upon the domination, exploitation, and dehumanization of people by people, and to show how contradictions within these systems constitute a potential for transformational progressive and emancipation directions (Fairclough & Graham, 2002). Therefore, CDA is an excellent choice for this study to examine the socioeconomic systems that involve student-athletes.

This type of language is used to describe athletes not only at the college level but the professional ranks as well. The dehumanization of an athlete does not come from the NFL level per se. Before I was drafted I had to attend a national NFL combine where they invited only the players who were predicted to be drafted in the top four rounds (out of seven). This was done so
that every NFL team would have the chance to examine and evaluate each and every player in the building before they made their purchase. We were identified by assigned numbers as if we were herds of cattle; we then worked out by lifting weights and running 40 yards in front of all the team’s owners and general managers, and then we had our medical examinations in our undergarments.

My experience at combine was similar to walking into a meat market or the images in my mind of the gladiators in ancient Rome lining up to be purchased or damned to the lions. It was a chance for these teams to decide how much they were willing to pay for an athlete (human being) based on their fitness, physical appearance, athletic abilities and willingness to work. This type of evaluation is now present in college football. There are several college combines across the country where universities are using this type of procedure to assess and evaluate their prospective athletes or employees. High school athletes are evaluated in a similar fashion by assigning them stars—one through four based on the same criteria described above (fitness, physical appearance, athletic abilities and willingness to work).

If revenue-generated sports in college is not a business, then why are colleges and universities paying so much attention to the athletic ability of these young men? Shouldn’t they be paying more attention to the academic competency of these students? Given the idea that high school athletes from lower socioeconomic status (SES) are considered to be the better athletes with the higher percentage of making a bigger impact on these Division I football programs, we have found out that many of these students who are on college campuses are lacking academic support and no financial support from home because their parents are unable to support them from an academic or financial aspect (Jeyne, 2010). As a result, after a year or two they are
going home because they either violate NCAA rules and regulations or flunk out of college because of either lack of support or inadequate preparation for college.

These phenomena will be examined through my personal life experiences as a former student-athlete, by using an extensive collection of literature, and with the power of language from a theoretical and methodological prospective of Critical Discourse Analysis. By examining these phenomena, I will: evaluate my personal experiences from a young age to adulthood, describe what my life experiences have brought me to at this point of inquiry, and how my experiences might influence the shape of this study in view of the social and political structures of our society.

Through an extensive analysis of the NCAA bylaws, policies and requirements, this literature review will explore the issues that revenue-generating athletes face in college from an academic and compliance point of view as well as previous NCAA violations that pertain to compensation of student-athletes. This review will look at the demographics of student-athletes, the rate at which they graduate once they are enrolled in college, their family education and income level, and academic issues in regards to the eligibility processes that these student-athletes experience from high school throughout their college lives.

The nature of revenue-generated sports has changed over the past several decades to what seems to be more of a money-driven business that is focused on exploiting these young men through winning instead of focusing on academic achievement or character development. As a result, universities and colleges are beginning to recruit kids out of the less affluent high schools across the country because they are deemed as the more athletically gifted athletes. While these students may be more athletically talented, Jeyne (2010) indicates that there are reasons for
concern as patterns indicate that students from low-income families are academically behind their peers. Therefore, a majority of these students are less prepared academically and fundamentally to survive on a university or college campus where they stand to experience the vast amount of temptations that will cause them to be unable to comply with the NCAA rules.
CHAPTER 2
LITERATURE REVIEW

In an attempt to address the numerous needs of student-athletes, the National Collegiate Athletic Association (NCAA) was created in the early 1900s. The United States president at that time, President Theodore Roosevelt, who was also a member of the College Athlete Leaders, called a meeting to investigate current rules of college football because in the 1905 season 18 players died and 150 others suffered critical injuries due to the physical abuse and lack of control (Parent, 2004). As a result, a regulatory organization was created and made legal on March 31, 1906, called the Intercollegiate Athletic Association of the United States (IAAUS) with representatives from 62 institutions.

The IAAUS continued to implement more structured and formal rules for college football. In 1910, the Association was given its current name of the National Collegiate Athletic Association (NCAA); this was initiated by President Roosevelt through several meetings at the White House (NCAA.org). The National Collegiate Athletic Association, formerly known as the Intercollegiate Athletic Association of the United States, was in full operation as it worked to create regulations for recruiting, abuse, gender inequalities, and protection of amateurism and academic integrity (NCAA.history.org). As of 2011, the NCAA had over 1,200 members consisting of universities, athletic conferences, and sports organizations. In 2008-09 these members earned over $10 billion in annual revenue from college athletics programs (NCAA.org). Over the years the NCAA has created many rules and regulations (bylaws) to govern their
institutions and to assist student-athletes academically as well as to maintain the integrity of college sports (NCAA.org).

What is a Student from a Legal, Philosophical, and Moral Point of View?

When one thinks of a student, the first thing that comes to mind is that a student is someone who attends some sort of school, i.e., online schooling or at a college campus. However, there are many other definitions that can describe a student. *Webster’s New World Dictionary* (2002) describes a student as “one who studies, or investigates; one who is enrolled for study at a school or college” (p. 479). McCormick and McCormick (2006) describe a student as being “synonymous with learning education and academic pursuits” (p. 122).

From a legal point-of-view, a student is defined as “an individual less than 23 years of age who has not completed 4 years of education beyond the high school level and who is regularly pursuing a full-time course of study or training at an institution” (http://definitions.uslegal.com/s/student/). Although it has been a difficult task getting an understanding of the term student from any viewpoint, I felt it might be important to understand what a philosophical definition or point-of-view might entail. The social sciences department at Canada College explains that:

Philosophy is not a stagnant body of knowledge. Rather, philosophical knowledge is a continuous, on-going reflective process. Philosophy should be best understood as an intellectual and mental activity. It allows one to activate and stimulate one’s mind to reflect, critically assess and evaluate all human experiences and interests.
When I think of students from a moral point of view I don't think of a student-athlete for several reasons. First, the lack of freedom to explore any major that they might be interested in, the restriction of no more than 15 credits on one’s schedule per semester, and not being able to attend class after 2:15 p.m. Second, being a student who participates in revenue-generated sports is a life full of appointments. These students are always operating under several bosses and with many obligations whether it is making mandatory breakfast, meeting tutors, attending study hall, or being on the practice field or courts at a certain time.

In an effort to understand these phenomena, I felt compelled to first research the history of the term student-athlete, and to find out how, when, and why this term got instituted. The term student-athlete is such a powerful term that stands for so much, and appears to be used as a shield or smokescreen for one reason or another. The term student-athlete emerged from a 1953 Colorado Supreme Court decision in *University of Denver v. Nemeth*. This Court determined that Nemeth, a football player at the University of Denver, was also an employee, should receive workmen’s compensation for his football related injuries. This decision shocked the NCAA, which immediately responded by creating the term “student-athlete”, and mandated its exclusive use thereafter (McCormick & McCormick, 2006). According to McCormick and McCormick (2006), “the NCAA purposely created the term ‘student athlete’ as propaganda, solely to obscure the reality of the university-athlete employment relationship and to avoid universities’ legal responsibilities as employees” (p. 86).

The NCAA has made changes to this definition of the term student-athlete. In the *2011-2012 NCAA Division I Manual* (2011), Bylaw 12.02.5 states that:
A student athlete is a student whose enrollment was solicited by a member of the athletics’ staff or other representative of athletic interests with a view towards the student’s ultimate participation in the intercollegiate athletics’ program. Any other student becomes a student athlete only when the student reports for an intercollegiate squad that is under the jurisdiction of the athletics department. (p. 62)

Based on the lucrative nature of NCAA Intercollegiate Athletes, how society views student-athletes, and whether or not the student-athletes should be compensated has taken various shapes and viewpoints. Student-athletes are supposed to be perceived as athlete first and student second. They are perceived as an employee because of the lack of control that they have over their everyday lives, and servants because they are performing a service without pay.

Former University of Alabama Head Coach Paul “Bear” Bryant expresses that if we view scholarship or revenue-generated football players as student-athletes, we are kidding ourselves. He stated that, “At the level we play, the boy is really an athlete first and student second” (McCormick & McCormick, 2006, p. 86). These athletes are viewed as employees because according to the National Labor Relations Board (NLRB) the common law approach for defining an employee is the “right of control.” How much control does the employer have over an employee on a daily basis? “Under the common law, an employee is a person who performs services for another under a contract of hire, subject to the other’s control or right of control, and in return for payment” (McCormick & McCormick, 2006, p. 91).

The National Letter of Intent (NLI) is a prime example of the right of control that student-athletes give up when they sign the NLI. For example the language in the NLI is stated as such that if there is a coaching change, that individual athlete remains bound to that institution
by the provisions of this NLI (National Letter of Intent, 2011). The NLI also states that at the time the athlete signs the NLI, he or she must receive a written offer of athletics financial aid for the entire 2012-13 academic year from the institution named in this document; this offer must list the terms, conditions and amount of the athletics aid award that is being offered to the athlete. Additionally, the institution has the option to not renew the athletes’ aid for the following academic year; at that point the student-athlete must be released from the NLI (National Letter of Intent, 2011).

A student-athlete is subjected to only certain classes and certain choices of a major because of his/her practice schedule, while other students who are not athletes have no such restrictions. A student-athlete has no control over his or her travel schedule. No matter where the sporting team is traveling, student athletes are obligated to be there, especially during the holiday seasons when other students are on their way home to visit their families. A grant-in-aid or scholarship, revenue-generating student-athlete has to be where their coach says to be for practice. A football player is required to put in 53 hours each week for practice, class time, study time, and the mandatory 10 hours of study hall that all freshmen and players who have below a 2.50 GPA (which varies based on the institution) have to carry out (McCormick & McCormick, 2006). These required hours do not include travel time for away games. These students often work more hours than a university employee who has a much more flexible schedule.

The transition from high school to college can be particularly stressful for freshmen student-athletes. Many athletes feel like they are unprepared for academic life (Pizzolao, Hicklen, Brow, & Chaudhari, 2009). In fact, academically unprepared student-athletes have been a problematic issue for colleges and universities for some time. This issue has now taken the
forefront in the National Collegiate Athletic Association (NCAA). As a result, the NCAA created a program to track the academic progress of student-athletes over a six-year period. This program is called the Graduate Success Rate (GSR). It is used to measure graduation rates at Division I institutions and includes student-athletes transferring into the institutions. In that regard, it differs from the methodology of the rate mandated by the federal government, which does not count incoming transfer student-athletes at all and counts student-athletes who transfer out as not having graduated, regardless of whether they actually did. The GSR also allows institutions to exclude the student-athletes who leave their institutions before graduation from the computation of their percentage points, as long as those individuals excluded would have been academically eligible to compete had they remained in college (NCAA.org). Since the initial compiling of these numbers in 1995, the NCAA research staff of 2009 reported graduation trends in Division I Colleges, as 79% of student-athletes graduated in 2002, the year I graduated from college. Table 2.1 shows the graduation success and federal graduation rates from institutions in the Big Ten Conference for the 2010-11 year. This information relates to student-athletes who entered college during the 2004 academic year.
<table>
<thead>
<tr>
<th>Cohort Year</th>
<th>Institution</th>
<th>Conference</th>
<th>Sport</th>
<th>State</th>
<th>GSR</th>
<th>FGR</th>
</tr>
</thead>
<tbody>
<tr>
<td>2004</td>
<td>University of Illinois, Champaign</td>
<td>Big Ten Conference</td>
<td>Football</td>
<td>IL</td>
<td>76</td>
<td>59</td>
</tr>
<tr>
<td>2004</td>
<td>Indiana University, Bloomington</td>
<td>Big Ten Conference</td>
<td>Football</td>
<td>IN</td>
<td>66</td>
<td>51</td>
</tr>
<tr>
<td>2004</td>
<td>University of Iowa</td>
<td>Big Ten Conference</td>
<td>Football</td>
<td>IA</td>
<td>83</td>
<td>68</td>
</tr>
<tr>
<td>2004</td>
<td>Michigan State University</td>
<td>Big Ten Conference</td>
<td>Football</td>
<td>MI</td>
<td>62</td>
<td>42</td>
</tr>
<tr>
<td>2004</td>
<td>University of Michigan</td>
<td>Big Ten Conference</td>
<td>Football</td>
<td>MI</td>
<td>71</td>
<td>63</td>
</tr>
<tr>
<td>2004</td>
<td>University of Minnesota, Twin Cities</td>
<td>Big Ten Conference</td>
<td>Football</td>
<td>MN</td>
<td>59</td>
<td>44</td>
</tr>
<tr>
<td>2004</td>
<td>Northwestern University</td>
<td>Big Ten Conference</td>
<td>Football</td>
<td>IL</td>
<td>94</td>
<td>86</td>
</tr>
<tr>
<td>2004</td>
<td>The Ohio State University</td>
<td>Big Ten Conference</td>
<td>Football</td>
<td>OH</td>
<td>67</td>
<td>57</td>
</tr>
<tr>
<td>2004</td>
<td>Pennsylvania State University</td>
<td>Big Ten Conference</td>
<td>Football</td>
<td>PA</td>
<td>87</td>
<td>80</td>
</tr>
<tr>
<td>2004</td>
<td>Purdue University</td>
<td>Big Ten Conference</td>
<td>Football</td>
<td>IN</td>
<td>59</td>
<td>50</td>
</tr>
<tr>
<td>2004</td>
<td>University of Wisconsin, Madison</td>
<td>Big Ten Conference</td>
<td>Football</td>
<td>WI</td>
<td>66</td>
<td>54</td>
</tr>
</tbody>
</table>


An even more disturbing fact is that male and African-American student-athletes were graduating at much lower rates (62%) than female athletes (88%) and white athletes (84%) as shown in Figure 2.1.
Figure 2.1. Comparison of Graduation Rates of Demographic Variables at Division I Colleges

![Graduation Rates of Division I Student Athletes](chart1)

*Created with information from the 2009 NCAA Research Staff.*

Additionally, Figure 2.2 shows that football players were tied with basketball players for the lowest graduation rates at 66%.

Figure 2.2. Comparison of Graduation Rates of 3 Sports at Division I Colleges

![Male Graduation Rates by Revenue Generated Sports](chart2)

*Created with information from the 2009 NCAA Research Staff.*
Based on information obtained by the NCAA, there are more African-American students on BSC college football and basketball teams who are outperformed academically by their white counterparts, and by female student-athletes. This has been a trend for decades. While graduation rates have increased, the achievement gap between African-American student-athletes, females and males has shown no signs of improvement. This does not come as a surprise then that the two moneymaking sports of college athletes are still performing below 70% (NCAA.org).

This might be one reason why there are so many violations that involve compensation in these two sports. Other factors may include family structure, socioeconomic status, parental educational level, parental school involvement, parental aspirations and parenting styles (Silva, Dorso, Azhar, & Renk, 2007; Weiser & Riggio, 2010). Current research patterns reflect concern for young children in low-income and ethnic/racial minority families who are already academically behind their peers (Jeynes, 2010).

Adding to their stress, not only do student-athletes have to adhere to their college or university’s rules and regulations, but they also have to abide by the rules and eligibility requirements set forth by the NCAA. For example, student athletes must remain academically eligible by maintaining full-time student status, earning a minimum grade point average of 2.00 or higher and be taking a certain number of courses towards their graduation requirements (Fletcher et al., 2003).

These athletes are so far behind academically that in order for them to meet these requirements, Simiyu (2010) believes that some student-athletes must enroll in “easy” classes. This issue could contribute to the lower graduation rates that student-athletes experience. Additionally, college student-athletes face a reputation that they are not academically equivalent
to non-student athletes. One of the national concerns that led to the formation of the NCAA in 1906 was the practice of football players participating in several different school sports, sometimes within the same season (NCAA, 2011).

The NCAA believes that student-athletes must be students first. So in 1983 the NCAA adopted Prop. 48. Prop. 48 is an academic measure that established a 2.0 minimum GPA, 700 SAT score and 11 earned core courses as a minimum standard for prospective student athletes (NCAA, 2011). This rule was revised in 1992 according to the NCAA to a “sliding scale” representing the relationship between standardized test scores and high school core course grade point average. These changes were made according to the NCAA (2011) because leaders “believed and still believe that participation in intercollegiate athletics is part of the higher education experience and teacher values that are difficult to learn in the classroom” (p. 1).

According to Mowen (2004), the NCAA stated that after August 1, 2005, all students entering Division I athletics must complete a core curriculum of at least 14 academic courses in order to be classified as a qualifier for athletic participation. These core courses are as follows:

- Four years of English; three years of mathematics (algebra one or higher); two years of natural/physical science (one year of lab is offered by high school), one year of additional English, mathematics or natural/physical science; two years of social science; and three years of additional courses (from any area above foreign language, or non-doctrinal religion/philosophy) (Mowen, 2004, p.4).

Simiyu (2010) believes that an important factor for successful graduation from college is students applying themselves both physically and mentally. Student Involvement Theory (SIT) further supports this notion by stating that student involvement on college campuses may be one
of the most important factors contributing to student academic success (Simiyu, 2010). This
theory notes that an important component of learning and academic success is investing time in
attending class, interacting with faculty and students, doing research, as well as devoting
substantial energy and time commitment. This time commitment is difficult for student-athletes
due to the rigorous obligations and services that they perform for the university. Some of these
obligations and responsibilities range from participating in games, travelling, attending
film/video sessions, doing weight training, getting treatment for and recovering from injuries,
media functions, alumni events and relations and performing services to the community. Despite
these extensive obligations student-athletes seem to attract some negative attention from the
outside world.

Over the years there have been many issues that have cast a negative light on student-
athletes as related to academic issues. Some of those issues include academic fraud, low
graduation rates, and disciplinary incidents. For example, in 2007, several Florida State
University football players were unable to play in a Bowl Championship Series game due to
suspensions related to academic violations. They violated NCAA Bylaw 22.2.2 addressing
Academic Integrity. There were 22 football students-athletes who were involved in academic
misconduct and three former staff members who violated the NCAA bylaws. Sixty-one student-
athletes in 10 separate sports received inappropriate assistance on an online quiz in a sports
psychology course.

Other academic infractions perpetrated prior to the ones committed at Florida State
University are as follows:

• May 2005: The NCAA puts Nicholls State on probation for four years because an
academic adviser and assistant football coach did course work for athletes.

- November 2003: In a three-day span, Central Florida suspends four players for academic indiscretions, but those actions do not warrant NCAA involvement.
- August 2001: The entire University of Southern California athletic program is placed on two years' probation after staff in the academic service office wrote papers for two football players and a female diver.
- December 2001: Marshall University is placed on four years' probation after players are given copies of a final exam early.

As a whole, there seems to be more violations accumulating with regularity in different colleges ranging from Hobart College to Louisiana State University (LSU). According to the NCAA (2011) there were 27 violations in 2011.

In 2010-2011, four major universities committed NCAA Division I Compliance Violations. These universities are Georgia Tech, Ohio State, University of North Carolina, and University of Georgia. All were found guilty of violating NCAA Bylaw, Article 12. The NCAA Bylaw 12 deals with amateurism of student-athletes. The five general principles of this bylaw are as follows:

1. Only an amateur student athlete is eligible for intercollegiate athletics participation in a particular sport.
2. 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.
3. NCAA amateur status may be lost as a result of activities prior to enrollment in college. NCAA rules specify that an “individual” may or may not participate in certain activities; this term refers to a person prior to and after enrollment in a member institution. If NCAA rules specify a “student athlete,” the term applies only to that person’s activities after enrollment.

4. A grant-in-aid administrated by an educational institution is not considered to be payment or the promise of payment for athletic skills, provided it does not exceed the financial aid limitations set by the Association’s membership.

5. Beginning with the second year of the Association’s identification of an emerging sport for women (see Bylaw 20.02.5), the institution shall comply fully in that program with all applicable amateurism legislation set forth in Bylaw 12.

In an effort to evaluate some of the previous violations or infractions pertaining to compensation, I will discuss the four major universities mentioned earlier who were involved in eight different infractions.

In the Georgia Tech incident, two of the school’s football players visited an apartment owned by the cousin of one of the athletes. While at the apartment, the student-athletes were offered clothing valued at $300. The cousin’s roommate provided the clothing. He had connections and ties to a sports agent. The NCAA would not allow the clothing to be given back to the sports agency, but they concluded that these athletes received “preferential treatment”.

According to the NCAA (2011), these student-athletes violated Bylaw 12.1.2.1.6, which states that “preferential treatment, benefits or services because of the individual’s athletic reputation or
skill or pay-back potential as a professional athlete—unless such treatment, benefits or services are specifically permitted on the NCAA legislation” (p. 65) is forbidden.

According to PSU Athletics Compliance Office (2011), at Ohio State University several student-athletes violated policy by exchanging equipment and apparel such as game-worn jerseys, autographed shoes, bowl rings and autographed photos for money and tattoos. Additionally, student-athletes and their families were accused of receiving free or reduced goods such as cars and services from businesses in the Columbus area. These incidents involved athletes receiving improper benefits and preferential treatment and violated Bylaw 12.1.2.1.6. As a result of these infractions, all the athletes involved were suspended from competition and their head football coach was fired.

Similar to the Ohio State football players, a University of Georgia student-athlete was given $1,000 in exchange for a jersey worn in a bowl game (PSU Athletics Compliance Office, 2011). These student-athletes violated Bylaw 12.3.1.2. This Bylaw states that an individual shall be ineligible if he or she or his or her relatives or friends accepts transportation or other benefits from:

(a) Any person who represents any individual in the marketing of his or her athletics ability. (b) An agent, even if the agent has indicated that he or she has no interest in representing the student athlete in the market in his or her athletic ability or reputation and does not represent individuals in this student athlete’s sports (NCAA, 2011, p. 69).

At the University of North Carolina student athletes were in violation of NCAA rules by accepting benefits such as free flights and workout arrangements from former student-athletes and/or teammates. Additionally, a student attended a professional football player’s party that
was financed by an agent. Several student-athletes also accepted free jewelry and other gifts from agents. These benefits ranged from thousands of dollars to five dollars. In the case of the student-athletes from the University of North Carolina, these athletes were in violation of multiple bylaws. After careful evaluation they were found guilty of violating Bylaw 12.1.2.1.6, which is preferential treatment, benefits or service and Bylaw 16.01.1, which is any award, extra benefits or expense allowance.

Summary

I chose to discuss these violations because they all pertain to compensation infractions of some sort. A number of these infractions did not involve needs but wants; for example, tattoos and parties. However, they were violations nevertheless. I believe that several of these violations were committed because these student-athletes were in need of some sort of financial support. It is extremely hard to prove that if these student athletes were properly compensated, this money would have prevented them from violating NCAA rules and regulations that consequently ruined their opportunity to obtain a college degree. However, these violations have been occurring for some time now with no change or alterations to the rules and regulations.
CHAPTER 3

METHODOLOGY

The fundamental methodological inquiries in this study are legal research and Critical Discourse Analysis (CDA). Glesne (2011) defines “methodology” as a theory of how inquiry should proceed; it involves analysis of the assumptions, principles, and procedures in a particular approach to inquiry. This study will pursue a methodological inquiry into legal, social and political discourse that will be used to inform and decipher the legal classification and interpretation of a student-athlete. It will also determine their roles in university settings, the equalities or inequalities that they experience, the dominance of power, and what ethical and moral obligation the NCAA has towards them. This study will include an extensive collection of court cases involving student-athletes in revenue-generating sports as well as an in-depth analysis of the NCAA bylaws. The combination of legal research and CDA will provide a deeper understanding of the legal and ethical use of language describing what being a Division I revenue-generating student-athlete entails.

Legal Research

Legal research is a systematic investigation involving the interpretation and explanation of the law (Russo, 2006). In order to perform a legal research, the researcher must have a clear direction of how he or she would like to approach the study itself. As the researcher, I realized that primary legal documents and law-related commentaries are located in the physical and
virtual law libraries. This study will investigate the legal and ethical reasons why revenue-generating athletes are classified as student-athletes and not employees. In an effort to understand this regulation, the researcher will identify key court decisions that were at the forefront of the coining of the phrase student-athlete, and analyze how these court cases use the phrase student-athletes in reference to them performing services in conjunction with compensation or lack thereof.

**Primary Sources**

The main sources of law for legal research consist of constitutions, statutes, administrative regulations and case law (Russo, 2006). The primary sources of legal research that this study will employ to unpack and analyze the legal dimensions of what a student-athlete is will include: constitutions, NCAA regulatory bylaws, and case law involving the Sherman Act.

**Constitutions**

Constitutions are the most basic forms of law that define the governmental framework in a jurisdiction that outlines both government and citizens’ rights and obligations. Constitutions are published either individually or in a jurisdiction’s statutory compilations (Russo, 2006). In this study, the Thirteenth Amendment will be one of the parts of the U.S. Constitution that the researcher will analyze in his quest to understand service without compensation as well as the violation of Antitrust Sherman Act. This Amendment is divided into two sections which state: (a) Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party
shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction; and (b) Congress shall have the power to enforce this article by appropriate legislation. There are three co-equal branches of the United States government that exist on both federal and state government levels: the legislative, executive and judicial. They in turn give rise to the other three sources of law (Russo, 2006).

**Regulations**

In this context questions relevant to this study are: (1) Should student-athletes who generate revenue for universities and colleges be considered and compensated as an employee? (2) Is the contextual language being used to exert power or control over athletes to avoid equality in the revenue that is being generated from their services? These issues are and will continue to be socially and politically controversial problems. In this study, the procedures the researcher attempted to follow were to gather textual data from the language in the 427 pages of the NCAA Division I Manual for obvious as well as inconspicuous wording that is used to address student-athletes. Such information will also be extracted from the NCAA official website. The researcher will also gather information from court decisions on any lawsuits filed against the NCAA and/or any of its member bodies.

**Case Law**

Case law is the logical starting point for examining primary sources of legal research. Despite being the main focus of the legal system, case law does not ignore the place of constitutions, statutes, and regulations (Russo, 2006). In this study case law will be used as the
major focus of this legal research. The researcher will employ the 1953 Supreme Court decision of *University of Denver v. Nemeth*—a seminal case in this study. There will also be an extensive evaluation of nine other court decisions that have any NCAA infractions by universities, colleges or student-athletes.

**Measures and Procedures**

Legal data can be acquired from a number of different databases. This study will collect numerous court decisions and cases through major electronic research databases such as online library sources and LexisNexis that will be used in the legal analysis. Through topic and descriptive word searches for legal information on compensation for student athletes, these findings will be reviewed to ensure the material that is collected is identifying the appropriate inquiries.

The procedures that I will utilize in this study will be a Critical Discourse Analysis of three of the most prominent themes found in the NCAA Division I Manual and the ten court cases. These themes will then be analyzed through a creative multidisciplinary set of discourse analytical methods that I believe is appropriate for the evaluation and the analytical process of this study.

**Critical Discourse Analysis**

In order to answer the research question it is necessary to understand how Critical Discourse Analysis (CDA) will be used and the type of research design it derives from. CDA is
one of the many different qualitative designs that have been used by a wide range of researchers such as Cresswell (1998), Denzin and Lincoln (2005), Wodak and Meyer (2001), and Van Dijk (2003).

CDA will give me the ability to examine what the word student-athlete means from an analytical prospective, and what context it is being used in. CDA is a methodological design that can be used in different ways; for example, Hart (2011) uses a Cognitive Linguistic (CL) approach to CDA. He explains that this approach can be characterized as investigating ideological patterns in text and conceptualization. Hart (2011) expresses that Cognitive Linguistics is primarily concerned with conceptualizing a dynamic online cognitive process through which meaning is constructed. Wodak and Meyer (2002) found that, “CDA research combines what perhaps somewhat pompously used to be called ‘Solidarity with the oppressed’ with an attitude of opposition and dissent against those who abuse text and talk in order to establish, confirm or legitimate the abuse of power” (p. 96). They go on to explain that one methodical way for the critical discourse analysis to minimize the risk of being biased is to follow the principle of triangulation.

In qualitative design, there are many different methodological approaches; for instance, autoethnography, case study, conversation analysis, grounded theory, and ethnomethodology, among others. Qualitative methodology has been known to be flexible in its approach to problem solving, which will prove to be a good methodological design for this study. In addition, this particular design generally allows the researcher to include his or herself in the study and express their views and values of what is important. Maxwell (2005) states that,
A design in qualitative research is an ongoing process that involves tracking back and forth between the different components of the design access in implication of goals series research questions methods to validate threats for another it does not begin from a predetermined starting point or processed through a fixed sequence of steps but involves interconnection and interaction among different design components. (p. 3)

CDA is the appropriate methodology to examine and explore the phenomenon that is facing college student-athletes because it focuses primarily on social problems and political issues, rather than on current paradigms and fashions. It is an empirically adequate critical analysis of social problems, which are usually multidisciplinary. It not only describes discourse structures, but also tries to explain them in terms of properties of social interaction and especially social structure. More specifically, “it focuses on the ways discourse structures enact, confirm, legitimate, reproduce, or challenge relations of power and dominance in society” (Van Dijk, 1998, p. 353). CDA will provide me with the tools necessary to analyze the NCAA Manual, court decisions and law reviews that surround the social construct of amateurism of revenue-generating student-athletes at Bowl Champion Series (BCS) schools.

Van Dijk (1998) stated that “critical discourse is an analytical research method that primarily studies the way social power abuse, dominance and inequality are enacted, reproduced and resisted by text and talk in social and political context” (p. 1). He also expresses that CDA more specifically focuses on the ways discourse structures enact, confirm, legitimate, reproduce or challenge relations of power and dominance in society. Van Dijk (1998) further states, “critical discourse analysts take an explicit position, and thus want to understand, expose, and ultimately resist social inequality” (p. 1). Over the years, there have been different contextual
phrases and other languages used in the description of college athletes on how they fit into the grand scheme of the NCAA polices and guidelines; I will use Critical Discourse Analysis to examine these languages.

**Data Analysis**

In an effort to analyze and examine the language used to preserve the “Myth of a student-athlete” see McCormick and McCormick (2006). CDA will be one of the procedures and techniques used to analytically inquire into how the power of language affects the social and political paradigm of our society. Fairclough and Wodak (1997) conceptualize the main focal points of CDA as addressing social problems, having powerful relations as creating discourse, constituting society and culture and analyzing ideological work. They view CDA as historically grounded with a mediated link between text and society, as well as an interpretative, explanatory, and a form of social action, all of which lend themselves to this particular topic.

**Limitations of the Study**

As the researcher in this study, I plan to limit my bias in using triangulation by examining multiple data sources. I will explore triangulation through the examination of the 2011-12 NCAA bylaws and the several United States court decisions that were either for or against student-athletes. One limitation to this study, or qualitative studies in general, is that unlike quantitative studies it is difficult to control for threats to validity before the study begins. With qualitative
research, the threat to internal validity must be addressed after the research has begun (Maxwell, 2005). One potential limitation is researcher bias, which includes a distorted view of the issue by the researcher’s preconceived ideas and values. Another potential limitation could be reactivity. Reactivity is the researcher’s response to the study based on his past experiences. For example, being a former student-athlete who performed services without pay, I then went on to receive pay for my services as a professional athlete.
CHAPTER 4

FINDINGS

The purpose of this chapter is to answer the questions and clarify the social problems and political issues that have surrounded collegiate athletics and the enormous amount of revenue that has been generated by student-athletes over the years. In an effort to understand the phrase “student-athlete”, one must first ask the question: Why do we classify students who perform services and generate revenue to universities as student-athletes as opposed to employee-athletes, staff, supporting staff and/or just plain employees? In order to conceptualize this question we would have to examine various entities in college sports such as the creation of the NCAA Constitution, Operating Bylaws, and Administrative Bylaws, and find out who is benefitting from the existence of this organization.

Some of the social and political issues that have been circulating around revenue-generated sports are: What impact will the compensation of college athletes have on college sports, the NCAA and the athletes themselves? Will compensation completely disrupt the culture of sporting events in college? Has the culture of sports in college already lost its integrity due to the fact that coaches and universities are making millions of dollars while athletes are struggling financially and academically because of the rigorous practice and travel schedules that they have to maintain?

Because college athletes experience a lack of funds, they are tempted to violate many of the rules and regulations that were put in place by the NCAA to prohibit these athletes from receiving financial assistance, or supporting themselves if they were injured. Researching legal
cases is appropriate for this study because it will allow me to examine the discourses that are present in these cases as well as the claims and positioning of the NCAA and universities. A majority of these legal cases follow a similar pattern in that student-athlete bring so much money to universities through ticket sales, apparel sales, and trading cards. In addition, the funds that the NCAA receives for the likeness of a former athlete’s performances after they leave the university is another area that restricts them from receiving financial compensation because of the contractual letter of intent that all scholarship players sign.

According to the 2011-12 *NCAA Division 1 Manual* (2011), the purposes of this Association are:

(a) To initiate, stimulate and improve intercollegiate athletics programs for all student-athletes and to promote and develop educational leadership, physical fitness, athletics excellence and athletics participation as a recreational pursuit;

(b) To uphold the principle of institutional control of, and responsibility for, all intercollegiate sports in conformity with the constitution and bylaws of this Association;

(c) To encourage its members to adopt eligibility rules to comply with satisfactory standards of scholarship, sportsmanship and amateurism;

(d) To formulate, copyright and publish rules of play governing intercollegiate athletics;

(e) To preserve intercollegiate athletics records;

(f) To supervise the conduct of, and to establish eligibility standards for, regional and national athletics events under the auspices of this Association;
(g) To cooperate with other amateur athletics organizations in promoting and conducting national and international athletics events;

(h) To legislate, through bylaws or by resolutions of a Convention, upon any subject of general concern to the members related to the administration of intercollegiate athletics; and

(i) To study in general all phases of competitive intercollegiate athletics and establish standards whereby the colleges and universities of the United States can maintain their athletics programs on a high level. (p. 1)

The *NCAA Division I Manual* (2011) governs three separate divisions of college athletics: Division I, II, and III, each of which contain legislation specific to their particular division, and does not contain legislation pertaining to one or both of the other divisions. In Division I athletics each member must offer at least 14 sports (at least seven for men and seven for women, or six for men and eight for women). The institution must sponsor at least two team sports (for example, football, basketball or volleyball) for each gender. The school also must have participating male and female teams or participants in the fall, winter and spring seasons. The total amount of Division I members are 335, 66% of which are public institutions and 34% are private. This Division is divided into three subdivisions, where all member institutions can choose a subdivision based on the scope of their football programs. The subdivisions are the Football Bowl Subdivision (FBS) with 120 members. This Subdivision uses the postseason bowl system rather than a playoff to determine a national champion in football. These FBS members must comply with higher standards for sports sponsorship, football scheduling, overall financial aid, and must meet minimum attendance standards in football. The second is the Football
Championship Subdivision (FCS) with 118 members; this Subdivision determines their football champion through an NCAA playoff system. The third Subdivision is called Division I with 97 members; this Subdivision does not sponsor football (NCAA.org/division).

Division II is an intermediate-level division of competition, which offers an alternative to both the highly competitive level of intercollegiate sports offered in Division I and the non-scholarship level offered in Division III. Division II has 302 member institutions, with 281 currently classified as active member institutions and 21 institutions advancing through the membership process; 52% are public universities and 48% are private. They range in size from less than 2,500 to over 15,000. As a result, very few student-athletes competing in Division II receive a full athletics grant that covers all of their expenses, but they mostly receive financial aid to help them through school.

Division III is the largest of all the divisions with 442 members; 436 are active participating members and 6 are provisional or seeking reclassifying; 81% are private institutions and 19% are public. On average, 20% of the student body is student-athletes who participate in 43 conferences (NCAA.org/division).

The Division I NCAA Manual is divided into three portions: Constitution, Operating Bylaws and Administrative Bylaws. Articles 1 through 6 consist of the more important principles for the conduct of intercollegiate athletics and its constitutional information relevant to the purpose of the Association. Articles 10 through 23 contain operating bylaws, which is the legislation that the membership adopted to promote the principles that are in the constitution and that are used to achieve the Association’s purpose. Articles 31 through 33 are administrative bylaws, which set forth policies and procedures for the implementation of the general legislative
actions, the NCAA championships and the business of the Association. These administrative bylaws may be adopted or modified by the Division I Board of Directors or Legislative Council for the efficient administration of the activities that they govern. These same bylaws also may be amended by the membership through the regular legislative process (NCAA Manual, 2011).

In this section of the chapter, I will list the related NCAA Division I bylaws that have been governing student-athletes for years. These bylaws will help evaluate and analyze the research question and the various infractions and violations that college student-athletes encounter each year. These constitutions, bylaws, and regulations that will be discussed were selected because they have been the most frequently violated and contested court cases over the years. These articles were chosen because based on their principles, and the NCAA purposes, they will serve as data to help analyze the “Myth” of a student-athlete. The following six articles will be a representation of each of the three categories that were mentioned above.

**Constitution, Article 2: Principles for Conduct of Intercollegiate Athletics**

Article 2 is the constitutional principle that governs the entire NCAA organization. This constitution’s general principle states that,

Legislation enacted by the Association governing the conduct of intercollegiate athletics shall be designed to advance one or more basic principles, including the following, to which the members are committed. In some instances, a delicate balance of these principles is necessary to help achieve the objectives of the Association. (NCAA, 2011, p. 3)

This Constitutional Article covers 16 Principles, 13 of which are related to this research.
The 13 Principles related to this study are:

2.1. *The Principle of Institutional Control and Responsibility*—the responsibility is placed on each member institution to control its intercollegiate athletics program in compliance with the rules and regulations of the Association, as well as being responsible for the conduct of its athletics program including the responsibility of its staff members and any other individual;

2.2. *The Principle of Student-Athlete Well-Being*—each athletic program in the member institution is responsible for the conduct, protection, and the physical and educational well-being of student-athletes;

2.5. *The Principle of Sound Academic Standards*—each athletic program must be a vital component of the educational program, an integral part of the student body, and consistent with the policies and standards adopted by the institution;

2.6. *The Principle of Nondiscrimination*—the Association must promote an atmosphere of respect and sensitivity to the dignity of every person. It is also the responsibility of each member institution to determine independently its own policy regarding nondiscrimination;

2.8. *The Principle of Rules Compliance*—each institution must comply with all applicable rules and regulations of the Association and must also monitor its intercollegiate athletics programs to assure compliance;

2.9. *The Principle of Amateurism*—student-athletes shall be amateurs in an intercollegiate sport, and their participation should be motivated primarily by education and by the physical, mental and social benefits; student-athletes should be protected from exploitation by professional and commercial enterprises;

2.10. *The Principle of Competitive Equity*—the structure and programs of the Association
and the activities of its members promotes opportunity for equity in competition to assure that individual student-athletes and institutions will not be prevented unfairly from achieving the benefits inherent in participation in intercollegiate athletics;

2.11. *The Principle Governing Recruiting*—involves a balancing of the interests of prospective student-athletes, their educational institutions and the Association’s member institutions;

2.12. *The Principle Governing Eligibility*—the requirements that are designed to assure that proper emphasis is placed on the educational objectives, competitive equity among institutions and to prevent exploitation of student-athletes;

2.13. *The Principle Governing Financial Aid*—permits a student-athlete to receive athletically related financial aid administered by the institution without violating the principle of amateurism, provided that the amount does not exceed the cost of education authorized by the Association, and does not exceed the cost of attendance as published by each institution;

2.14. *The Principle Governing Playing and Practice Seasons*—the time required of student-athletes for participation in intercollegiate athletics shall be regulated to minimize the interference with their opportunities for acquiring a quality education in a manner consistent with that afforded the general student body;

2.15. *The Principle Governing Postseason Competition and Contests Sponsored by Noncollegiate Organizations*—the conditions under which postseason competition occurs is controlled to assure that the benefits inherent in such competition flow fairly to all participants, to prevent unjustified intrusion on the time student-athletes devote to their academic programs, and to protect student-athletes from exploitation by professional and commercial enterprises; and
2.16. *The Principle Governing the Economy of Athletics Program Operation*—
administers the prudent management and fiscal practices to assure the financial stability
necessary for providing student-athletes with adequate opportunities for athletics competition as
an integral part of a quality educational experience.

**Bylaw, Article 12: Amateurism**

Article 12 is the third NCAA Bylaw in the Operating Bylaws. This Article deals with
everything that has to do with amateurism of a Division I student-athlete. Its General Principles
are:

12.01.1. *Eligibility for Intercollegiate Athletics*—Only an amateur student-athlete is
eligible for intercollegiate athletics participation in a particular sport;

12.01.2. *Clear Line of Demarcation*—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;

12.01.3. “*Individual*” vs. “*Student-Athlete*”—NCAA amateur status may be lost as a result
of activities prior to enrollment in college. If NCAA rules specify that an “individual” may or
may not participate in certain activities, this term refers to a person prior to and after enrollment
in a member institution. If NCAA rules specify a “student-athlete,” the legislation applies only to
that person’s activities after enrollment; and

12.01.04. *Permissible Grant-in-Aid*—A grant-in-aid administered by an educational
institution is not considered to be pay or the promise of pay for athletics skill, provided it does
not exceed the financial aid limitations set by the Association’s membership (NCAA Manual, 2011, p. 61).

Bylaw, Article 14: Eligibility: Academic and General Requirements

Similar to Article 12, this Bylaw is one of the fourteen articles in the Operating Bylaws. Article 14 covers the academic and general requirements of all Division I student-athletes. These requirements include: General Eligibility Requirements, Seasons of Competition: Five-Year Rule, Freshman Academic Requirements, Progress-Toward-Degree Requirements, Transfer Regulations, High School All-Star Games, Effects on Eligibility; Outside Competition, Effects on Eligibility; Additional Waivers for Eligibility Requirements; U.S. Service Academy Exceptions, Special Eligibility Provisions; Certification of Eligibility, Ineligibility and Restoration of Eligibility.

The General Principles by which this Bylaw operates under are:

14.01.1. Institutional Responsibility—an institution cannot permit a student-athlete to represent it in an intercollegiate athletics competition unless the student-athlete meets all applicable eligibility requirements;

14.01.2. Academic Status—in order for a student-athlete to be eligible to represent an institution in intercollegiate athletics competition, that student-athlete must be enrolled in at least a minimum full-time program of studies, and to be in good academic standing must maintain progress toward a baccalaureate or equivalent degree.

14.01.2.1. Good Academic Standing—a student-athlete must be eligible to represent an institution in intercollegiate athletics competition, and shall be in good academic standing as
determined by the academic authorities who determine the meaning of such phrases for all students of the institution.

14.01.2.1.1. Additional Application Baseball—In baseball, a student-athlete who fails to meet the requirements of good academic standing at the beginning of an institution’s fall term shall not be eligible for competition during the remainder of the academic year.

14.01.3. Compliance with Other NCAA and Conference Legislation—To be eligible to represent an institution in intercollegiate athletics competition, a student-athlete shall be in compliance with all applicable provisions of the constitution and bylaws of the Association and all rules and regulations of the institution and the conference, if any, of which the institution is a member. A violation of this bylaw that relates only to a violation of a conference rule shall be considered an institutional violation per Constitution 2.8.1; however, such a violation shall not affect the student-athlete’s eligibility.

Bylaw, Article 16: Awards, Benefits and Expenses for Enrolled Student-Athletes

Article 16 deals with some of the most frequent violations that student-athletes experience over the years, in awards, extra benefits and expenses. One of the General Principles of this Bylaw is: Eligibility Effect of Violation. This Principle states that “a student-athlete shall not receive any extra benefit” (NCAA Division I Manual, 2011, p. 217). If the student-athlete receives an extra benefit not authorized by NCAA legislation, then that individual is ineligible in the sport for which the improper award, benefit or expense was received as well as all other collegiate sports.

In line with The Eligibility Effect of Violation Principle is the Restitution for Receipt of
Impermissible Benefits, which states that:

Unless otherwise noted, if any violations of Bylaw 16 in which the value of the benefit is $100 or less, the eligibility of the student-athlete shall not be affected conditioned upon the student-athlete repaying the value of the benefit to a charity of his or her choice. The student-athlete, however, shall remain ineligible from the time the institution has knowledge of receipt of the impermissible benefit until the student-athlete repays the benefit. Violations of this bylaw remain institutional violations per Constitution 2.8.1, and documentation of the student-athlete’s repayment shall be forwarded to the enforcement staff. For violations of Bylaw 16 in which there is no monetary value to the benefit, violations shall be considered institutional violations per Constitution 2.8.1; however, such violations shall not affect the student-athlete’s eligibility. (NCAA Manual, 2011, p. 217)

**Bylaws, Article 19: Enforcement**

Article 19 is the enforcing Bylaw; this Bylaw exemplifies the ways in which the NCAA enforces its rules and how the individuals and member institution must operate. The General Principles of this Bylaw includes:

19.01.1. Mission of NCAA Enforcement Program;
19.01.2. Exemplary Conduct;
19.01.3. Responsibility to Cooperate;
19.01.4. Violations by Institutional Staff Members; and
19.01.5 Nature of Penalty Structure.
The mission of the NCAA Enforcement Program is to eliminate violations of NCAA rules and impose appropriate penalties should violations occur. The program is committed to fairness of uninvolved student-athletes, coaches, administrators, competitors and other institutions, with procedures and the timely and equitable resolution of infractions cases, which is essential to the conduct of a viable and effective enforcement program. (p. 319)

To be in accordance with the Exemplary Conduct Principle, individuals who are “employed by or associated with member institutions for the administration, the conduct or the coaching of intercollegiate athletics must remember that they are teachers of young people” (p. 319). They should be affirmative in their responsibilities, and must do more than avoid improper conduct or questionable acts. Much more is expected of them than of the less critically placed person.

The Responsibility to Cooperate Principle encourages all representatives of member institutions to:

cooperate fully with the NCAA enforcement staff, Committee on Infractions, Infractions Appeals Committee and Board of Directors to further the objectives of the Association and its enforcement program. The enforcement policies and procedures are an essential part of the intercollegiate athletics program of each member institution and require full and complete disclosure by all institutional representatives of any relevant information requested by the NCAA enforcement staff, Committee on Infractions or Infractions Appeals Committee during the course of an inquiry. (p. 319)
The Violations by Institutional Staff Members Principle dictates that when any staff members are found in violation of NCAA regulations they will be subject to disciplinary or corrective action as set forth in the provisions of the NCAA enforcement procedures, regardless of whether such violations occurred at the certifying institution or during the individual’s previous employment at another member institution.

The Nature of Penalty Structure Principle dictates that when a violation reflects a general disregard for the governing rules of the NCAA, enforcement policies and procedures will be broad and severe. In particular instances of a violation or violations that are isolated and of relative insignificance, then the NCAA penalty shall be specific and limited. Any previous violations of NCAA legislation will be a contributing factor in determining the degree of penalty.

**Administrative Bylaws, Article 3:1 Executive Regulations**

Article 31 is an administrative bylaw; it is the bylaw that deals with the administrative aspects of all NCAA Championships. The general principles of this bylaw are: the identification of the appropriate category and sport classification, and the naming of each championship which is the property of the Association; acknowledging that all NCAA Championships are intended to provide national-championship competition among the best eligible student-athletes and teams at the conclusion of the respective sport seasons; knowing that all NCAA Championship fields shall be established by the Championships/Sports Management Cabinet to provide for efficient management of the events, with adequate NCAA championship opportunities relative to the nationwide quality of competition; and all sports committees and games committees shall exhibit
sound economic administration of the financial resources of the Association and its championships.

The second section of this chapter is the documentation of legal cases that have shaped the landscape of student-athletes from a higher education (college) point of view. The researcher will include court cases that involved student-athletes and any violations that were heard on any level of the legal system. These cases will identify and indicate the discrepancies as to how a student-athlete is categorized. Using the electronic search on LexisNexis helped identify these cases.

*University of Denver v. Nemeth*
257 P. 2d 423 (Col., 1953)

The claimant in this case, Ernest Nemeth, was a student-athlete who was awarded a full scholarship from the University of Denver, the defendant, to participate in intercollegiate athletics. Nemeth filed a lawsuit claiming workmen’s compensation after suffering a career ending back injury on school grounds while practicing for football. This injury occurred in the spring of 1950 during football practice. At the time of the injury the claimant was receiving $50 per month from the University for certain work in and about the tennis court on campus. Ten dollars per month was deducted for three meals per day. The record shows that many other students at the University were performing work and were being compensated on an hourly basis, while students who were qualified due to their athletic prowess were paid on a monthly basis.

Nemeth contended that he was employed to play football at the University, and that his injury was in the course of his employment. The University admitted that Nemeth was employed
by the University and was compensated for his work but insisted that he was never employed to
play football; however, the Supreme Court of Colorado concurred that this student-athlete was
employed and was receiving a form of compensation.

As a result, the Colorado Supreme Court awarded the claimant, Nemeth, workmen’s
compensation for his injuries. The Court believed that it was its obligation to compensate
Nemeth because of the contract, “its incidents and responsibilities which Nemeth assumed in
order to not only earn his remuneration, but to retain his job” (p.9). The Court agreed that
playing football was not incidental or voluntary as the University was claiming but the
claimant’s job was dependent on his continuation of playing football; therefore, his injury arose
out of and in the course of his employment.

*Van Horn v. Industrial Accident Commission and California Polytechnic College*
*33 Cal. Rptr. 169 Cal. (1963)*

The Industrial Accident Commission denied the application of a widow and minor
dependent children for death benefits under workmen’s compensation. In 1960, Edward Van
Horn, a student-athlete for the California State Polytechnic College, was killed in an airplane
crash while returning from a regular season football game. Van Horn was married with minor
children while he was attending college as a scholarship athlete. During the fall of 1957, he did
not participate in sports claiming dissatisfaction with the football program and the inability to
support his family. In the spring of 1958 the decedent was told by his coach that if he resumed
his participation in all his football activities he would receive assistance to support his family
from the college in the sum of $50 at the beginning of each school quarter and $75 in rent money
during the football playing season. These checks were issued by the Treasurer of the State on behalf of the college, and came directly from the coach’s account identified as Special Account Cal Poly Athletics Dept.

After Van Horn’s death his widow and minor children filed for death benefits under the Workmen’s Compensation Act. The college contended that the decedent was not an employee of the college, and as such his participation in football was voluntary. In addition, his scholarship was a gift and not a payment for his services. The court held that the College was liable for death benefits to the widow and minor children because the decedent was an employee within the compensation law. The court also held that the commission’s finding that there was no contract of employment was erroneous and determined that the widow and minor children had established a prima facie case for benefits. The court stated:

After a careful review of the evidence, we are of the opinion that the finding of the commission that there was no contract of employment is not supported by the evidence. The records reveal that petitioners established a prima facie case for benefits upon the presentation of evidence showing the alleged contract of employment. The coach, with whom it was shown that decedent made the alleged contract, testified at length; yet nowhere in his testimony is there a denial by him that he made a contract with decedent (p. 7).

The court annulled the order that denied the widow and minor children’s application for death benefits.
Stephen Jones, the plaintiff, sought a preliminary injunction in district court by filing a civil rights claim alleging denial of due process and equal protection. The plaintiff was a student at Northeastern University in Massachusetts, after performing in various hockey programs outside of Intercollegiate Athletics. Jones who is an American citizen from Melrose, Massachusetts, decided to enroll in college in 1974. Prior to 1974, Jones spent five years playing for a succession of Canadian and American “amateur” hockey teams. Jones was receiving $10 for living expenses and $25 that was going directly to his landlord from 1969-1971. In 1972, Jones got an increase of $50 and a bonus for tuition of $500 that went directly to his parents.

The plaintiff was found in violation of the NCAA and ECAA rules of amateurism and, therefore, was ineligible for intercollegiate hockey. Jones was declared ineligible by Northeastern because he had allegedly violated the NCAA’s principle of Amateurism that is Article Three of the Association’s constitution. Article Three, section 1(b) reads:

Any student-athlete who signs or who has ever signed a contract or commitment of any kind to play professional athletics in a sport, regardless of its legal enforceability or the consideration (if any) received; plays or has ever played on any professional athletic team in a sport, or receives or has ever received, directly or indirectly, a salary, reimbursement of expenses or any other form of financial assistance from a professional organization in a sport for any purpose whatsoever, except as permitted by the governing legislation of this Association, no longer shall be eligible for intercollegiate athletics in that sport.
Waivers were filed on behalf of Jones to both governing bodies. On September 11, 1974, the ECAA granted the waiver that would allow the plaintiff to participate in intercollegiate hockey; however, the NCAA overrode the ECAA decision and denied him. The court vacated a temporary restraining order insofar as it enjoined defendant athletic associations from sanctioning or disciplining the University for permitting the plaintiff to play ice hockey, and also denied the plaintiff’s motion for a preliminary injunction because the plaintiff had not demonstrated substantial likelihood of success with respect to either antitrust or civil rights claims.

Coleman v. Western Michigan University

The plaintiff, Willie Coleman, appealed the judgment made by the Michigan Worker’s Compensation Appeal Board’s denying him of benefits on the basis that he was an employee of Western Michigan University, the defendant. The plaintiff claimed that he was offered an annual renewable scholarship if he could make the football team. The scholarship consisted of full tuition, room and board and books for the school year. Coleman accepted and played football for two years (1972, 1973) while attending classes and working a part-time job. In 1974, Coleman suffered a career ending injury; however, he received his scholarship in full for the reminder of the season and school year. The following fall, due to cutbacks and team contributions the university reduced Coleman’s scholarship. He was forced to leave the university because he could not financially afford to continue.

The court agreed that the plaintiff’s scholarship constituted “wages” within the meaning of Morgan v. Win Schuler’s Restaurant (1975), which defines wages as items of compensation
that are measurable in money or which confer an economic gain upon the employee. In return for his services, Willie Coleman, the football player, received items of compensation, which are measurable in money—including room and board—tuition and books. He was, in fact, dependent on the payment of these benefits for his living expenses. In conclusion, the court stated:

In this case, however, plaintiff’s football playing was not essential to the business of the defendant university, which plaintiff himself recognizes ‘as education and research’. The record supports the conclusion that defendant’s academic program could operate effectively even in the absence of the intercollegiate football program. Defendant aptly notes that ‘the football season lasts for only a small portion of the academic year,’ and contrasts this with the fact that ‘greater part of the school year is devoted exclusively to obtaining a regular college education’.

In summary, the first and second factors of the ‘economic reality’ test demonstrate that defendant had at least some right to control the activities of plaintiff and to discipline plaintiff for nonperformance, but these rights were substantially limited. The third factor, i.e., the ‘payment of wages’, favors the finding of an employment relationship. The fourth factor, concerning whether the employee’s duties were integral to the employer’s business, however, weighs heavily against the finding of an employment relationship (p. 5)

The court affirmed the judgment of the Board, which ruled that the student was not an employee of the University, but rather a scholarship student athlete and was not entitled to workmen’s compensation benefits.
Rensing v. Indiana State University Board of Trustees
444 N.E. 2d 1170 Ind. (1983)

The Indiana Fourth District Court of Appeals found Fred Rensing, a football player at Indiana State University, an employee of the University while performing athletic services and, thus, determined that he was entitled to workmen’s compensation benefits. The University Board of Trustees appealed the decision stating that an employer-employee relationship did not exist between Rensing and the Trustees and, therefore, he was not entitled to benefits under the Workmen’s Compensation Act, Ind. The defendant Rensing was injured while he was tackling a teammate during punting drills in 1976. Rensing suffered a fractured dislocation of the cervical spine at the level of 4-5 vertebrae, which resulted in a career ending injury that left him a quadriplegic.

The Trustees argued that there was no contract of hire in this case and that a student who accepts an athletic “grant-in-aid” from the university does not become an “employee” of the University within the definition of “employee” under the Workmen’s Compensation Act. Rensing maintained that his agreement to play football in return for financial assistance did amount to a contract of employment. The court stated:

We find that the evidence here shows that Rensing enrolled at Indiana State University as a full-time student seeking advanced educational opportunities. He was not considered to be a professional athlete who was being paid for his athletic ability. In fact, the benefits Rensing received were subject to strict regulations by the NCAA, which were designed to protect his amateur status. It is our conclusion of law, under the facts here, including all rules and regulations of the University and NCAA governing student athletes that the
appellant shall be considered only as a student athlete and not as an employee within the meaning of the Workmen’s Compensation Act. Accordingly, we find that there is substantial evidence to support the finding of the Industrial Board that there was no employer relationship between Rensing and the Trustees, and their finding must be upheld. (p. 6)

The Supreme Court of Indiana reversed the Court of Appeals Fourth District’s determination that the football player was entitled to workmen’s compensation because there was no documentation of intent to enter into an employer-employee relationship with the student. In addition, the Supreme Court stated that, “student-athletes were first and foremost students and were prohibited from accepting pay for sports” (p. 1).

Association for Intercollegiate Athletics for Women v. National Collegiate Athletic Association

The Association for Intercollegiate Athletics for Women (AIAW) brought an antitrust case against the National Collegiate Athletic Association (NCAA) alleging them of unlawfully using its monopoly power in men’s sports to facilitate its entry into women’s sports and forcing the plaintiff AIAW out of existence in violation of the Sherman Antitrust Act. Until 1971, AIAW formally known as the Commission on Intercollegiate Athletics for Women (CIAW) was an organization that only governed women’s college sports. From 1971 to 1981 the AIAW grew from its 278 members to 961 colleges and universities, and was known as the major governing body for women’s sports. However, that all ended in the fall of 1981 when the NCAA introduced twenty-nine championships in twelve sports. During that same season, the AIAW experienced a
significant drop in its membership and participation. They lost $124,000 in membership dues, which was approximately 22% of their dues collected the previous year. The National Broadcasting Company (NBC) decided to exercise its exclusive rights to telecast AIAW championships. As a result, the disinterest of NBC produced a large decline in the numbers and quality of participants in AIAW events. The AIAW further experienced difficulties securing championship sites and holding a full-time staff. They decided to not distribute membership renewal applications for the 1982-1983 seasons. The AIAW was officially closed for business on June 30, 1982.

The television rights to watch student-athletes perform services for their universities and colleges became a big business negotiation. Despite NBC’s proposal of approximately $300,000 higher than Columbia Broadcasting System (CBS) for the rights to cover the women’s basketball championships, the telecast rights was awarded to CBS because they proposed some three million dollars more than NBC’s $45 million offer to broadcast the men’s basketball finals. The NCAA later stated that the decision to award the television rights to CBS was based on the efficiencies of the same network covering both championships.

The AIAW contended that the NCAA tied the sale of television rights for its women’s basketball championship to the rights for its counterpart, and because the NCAA is a monopoly seller of television rights for men’s basketball championships, they were able to thrust its women’s championship upon an unwilling purchaser. AIAW argued that when the NCAA began sponsoring women’s sports they changed their championship reimbursement policies from covering transportation and per diem expenses to participants and the distribution of the remaining proceeds of 50% to the NCAA and 50% to the participating institutions. It was revised
to only paying institutions a surplus after they deducted per diem and traveling expenses. The AIAW argued that this revision in the NCAA’s distribution formula created financial incentives for schools whose men’s teams already participated in NCAA events to enroll their women’s teams in the NCAA as well. In regards to the monopolization claim the court stated that:

NCAA did not achieve monopoly power in women’s sports during the 1981-82 seasons the sole year NCAA was in competition with AIAW. The court concluded that AIAW failed to prove NCAA acted with the specific intent necessary to sustain an attempted monopolization claim. The court also upheld NCAA’s dues and reimbursements policies on the alternative ground that AIAW did not prove a causal connection between NCAA’s disputed practices and AIAW’s economic injury. (p. 6)

The court found that the defendant’s pricing and distribution practices and sale of television rights were not exclusionary or coercive, did not spring from predatory intent, regulated essentially noncommercial conduct, had little competitive impact, and therefore did not violate antitrust laws.


This case was brought to the Supreme Court of the United States by the National Collegiate Athletic Association (NCAA) against the University of Oklahoma (OU) and the University of Georgia (UG). Both institutions were members of the College Football Association (CFA) and the NCAA. The NCAA challenged a ruling that was made by the United States District Court for the Western District of Oklahoma on the validity under the Sherman Act of the NCAA’s restraints in the televising of college football games. The case was then affirmed by the
United States Court of Appeals for the Tenth Circuit. This Court remanded appropriate modification of the injunctive decree and stated that, “the NCAA television plan constituted illegal *per se* price fixing and that even if the television plan was not *per se* illegal, its anticompetitive limitation on price and output was not offset by any precompetitive justification sufficient to save the plan even when the totality of the circumstances was examined” (p.4). So the NCAA contested the case at the Supreme Court level.

The facts of the case stated that in 1981 a plan was adopted by the NCAA for the televising of college football games of its member institutions for the 1982-1985 seasons. The plan was intended to reduce the adverse effect of live television on college football game attendance. However, the plan limited the total amount of televised college football games and the number of games that any one college could televise, and no member of the NCAA was permitted to make any sale of television rights except in accordance with the plan that the NCAA had in place.

The NCAA made separate agreements with the two carrying networks: American Broadcasting Company (ABC) and Columbia Broadcasting System (CBS), granting them both exclusive rights to televise the live “exposures” described in the original plan. The networks agreed to pay a specific “minimum aggregate compensation” to the participating NCAA members, and negotiated directly with each member for the rights to their football games. Members from the CFA believed that they should have a greater voice in the formulation of the football television policy than they had in the NCAA. The CFA accordingly negotiated a contract with the National Broadcasting Company (NBC). This contract gave each college more television appearances and an increase in revenue to the CFA members.
As a result, the NCAA stated that it would take disciplinary action against any CFA member that complied with the CFA-NBC contract. Respondents from the CFA (UO, UG et al.), brought an action in the Federal District Court against the NCAA. This court found that the controls exercised by the NCAA over the televising of college football games was in violation of the Sherman Act, and accordingly granted injunction relief to the CFA. The court stated that the television rights had been restrained in three ways:

1) The NCAA fixed the price for particular telecasts; 2) its exclusive network contracts were tantamount to a group boycott of all other potential broadcasters and its threat of sanctions against its members constituted a threatened boycott of potential competitors; and 3) its plan placed an artificial limit on the production of televised college football.

The court concluded that the NCAA television plan constituted illegal per se price fixing, and that even if the television plan was not per se illegal, its anticompetitive limitation on price and output was not offset by any precompetitive justification sufficient to save the plan even when the totality of the circumstances was examined. (p. 9)

Despite the challenge made by the National Collegiate Athletic Association to reverse the order by the United States Court of Appeals for the Tenth Circuit, the Supreme Court of the United States found the evidence in favor of the respondents and affirmed the order of all the other counts, determining that the NCAA was in violation of the Sherman Act and granting the respondent universities injunction relief.

In the Colorado Courts of Appeals, Jeremy Bloom brought a suit against the National Collegiate Athletic Association (NCAA) and the Regents of the University of Colorado seeking declaratory and injunctive relief from the NCAA, restricting student-athletes from any compensation for endorsement and/or media activities.

Bloom was a high school standout in football and track and field who was recruited by the University of Colorado to compete in their intercollegiate athletics program as a football player. Before Bloom decided to enroll at the University, he competed in Olympic and World Cup skiing events in which he later became World Cup champion in the freestyle moguls. While participating as an Olympian, Bloom appeared on MTV, was offered various paid entertainment opportunities, hosted a Nickelodeon show, endorsed certain ski equipment and was contracted by Tommy Hilfiger to model their brand of clothing. Upon his enrollment in college, he became concerned that his extra activities could interfere with his ability to compete in intercollegiate athletics. After Bloom was enrolled at the University of Colorado, the University requested waivers of the NCCA rules restricting student-athlete endorsement and media activities and a favorable interpretation of these rules. The NCAA denied the request and Bloom immediately discontinued all of his endorsements, modeling and media activities in the hopes of playing football during the 2002 fall season.

Bloom then instituted an action against the NCAA for declaratory and injunctive relief, asserting that his endorsements, modeling, and media activities were necessary to support his professional skiing career, something that the NCAA rules permitted. In his defense, Bloom
claimed that as a third party beneficiary of the contract between the NCAA and its members, NCAA bylaws permitted him to engage in and receive remuneration from a professional sport different from his amateur sport. He was also contesting that the NCAA restrictions on endorsements and media activities were arbitrary and capricious and that those restrictions constituted improper and unconscionable restraints of trade. Bloom argued that NCAA Bylaw 12.1.2 was in support of his argument and that his endorsements and other activities were solely the way professional skiers generate compensation professionally. Article 12 also states that, “a professional athlete in one sport may represent a member institution in a different sport” (see Bylaw 12.1.3, p. 65).

The NCAA contested that Bylaw 12.2.5.1 states that an individual shall not be eligible to participate in intercollegiate athletes if that individual accepts any remuneration for or permits the use of his or her name or picture to advertise. They also stated that Bylaw 12.4.1.1 prohibits a student-athlete from receiving any remuneration for value or utility that is obtained because of his or her athletic ability.

So under these conditions, the Appeals Court of Colorado, Division Five, perceived no abuse on the Boulder County District Trial Court’s discretion in failing to fault the NCAA for refusing to waive its rules as requested by CU, to permit Bloom to pursue any television and film opportunities while he is a student-athlete at CU. The court stated that:

Bloom has thus failed to demonstrate any inconsistency in application, which would lead us to conclude that the NCAA was arbitrary in applying its rules. Finally, we are not convinced that the NCAA treated Bloom unfairly in the matter in which it denied the
requests to waive or interpret its rules. For these reasons, we agree with the trial court that Bloom failed to demonstrate a reasonable probability of success on the merits. (p. 10)

_Oliver v. National Collegiate Athletic Association_  
155 Ohio Misc. 2d 17 (2009)

Andrew Oliver, a former high school pitcher from Vermillion High School in Vermillion, Ohio, brought a suit against the National Collegiate Athletic Association (NCAA) seeking declaratory judgment and permanent injunctive relief. This case arose after Oliver was suspended by the NCAA for allegedly violating Bylaw 12.3.1. In the fall of 2005, the plaintiff signed a letter of intent to attend Oklahoma State University (OSU) in the fall of 2006 as a freshman student-athlete. However, the Minnesota Twins professional baseball team drafted Oliver in the summer of 2006. This professional baseball team then offered the plaintiff a $390,000 contract in the presence of his parents, sports advisors and attorneys (Icon Law Group) to join their organization that year. Oliver’s father advised him to retain his amateur status by attending college as an athlete.

Oliver played baseball his freshman and sophomore years for OSU. In the spring of 2008 before his junior year he terminated Tim Baratta and the Icon Sports Group and retained the services of the Boras Corporation. Shortly after the termination, the plaintiff received an invoice of $113,750 for legal services from the Icon Sports Group. This same invoice was mailed, emailed and faxed to the NCAA alleging that Oliver was in violation of NCAA rules for the meeting that took place at the plaintiff’s home two years prior; these documents were sent to the NCAA because the Boras Corporation was trying to convince the NCAA that the plaintiff was in violation of its bylaws.
In May 2008, the defendant suspended the plaintiff indefinitely, stating that the NCAA Bylaw 12.3.1 had been violated because the plaintiff allowed his previous attorneys to contact the Minnesota Twins by telephone and by allowing Tim Baratta to be present in his home when a representative from the Minnesota Twins tendered an offer to him.

The plaintiff requested that the court enter a declaratory judgment and injunctive relief enjoining the NCAA Bylaw 12.3.2.1 as unenforceable because he retained legal counsel and that the legal counsel is subject to the regulation of the Ohio Supreme Court. As a result, the NCAA had no authority to institute a rule that would prevent a lawyer from representing him and that NCAA Bylaw 12.3.2.1 was void because it goes against the public policy of the state of Ohio.

Oliver also contended that NCAA Bylaw 12.3.2.1 was arbitrary and capricious because it would limit the player’s ability to effectively negotiate a contract that either the player or the parents of a player can negotiate without interfering in the player’s amateur status. The plaintiff finally requested that the Court enter a declaratory judgment permanently preventing the defendant from enforcing NCAA Bylaw 19.7 because it would interfere with the Ohio Constitution’s delegation of all judicial power to the courts of this state, and consistent with that premise, exists solely to coerce or direct its agents and members to ignore court orders that are binding upon member institutions of the defendant.

The defendant contested all the requests made by the plaintiff and argued that it had the right to manage its affairs and apply its bylaws, within legal limits, without interference from the judiciary system. And since the plaintiff had failed to prove that its bylaws were illegal, arbitrary or fraudulent, the defendant’s internal affairs were presumptively correct.
The request by the plaintiff, Andrew Oliver, for a permanent injunction and declaratory relief were granted. The Common Pleas court granted the injunctive relief because it felt that the student-athlete would suffer irreparable injury, loss and damages if ruled otherwise.

_In Re NCAA Student-Athlete Name & Likeness Licensing Litigation_  
_U.S. Dist. Lexis 82682 (2011)_

The plaintiffs in this case are Edward O’Bannon, Harry Flournoy and Alex Gilbert. They brought a suit against Electronic Arts (EA) accusing EA of colluding with the NCAA to use their images, likenesses, and names without remuneration. The first order was brought to the court on May 2, by the plaintiffs claiming two things: (1) that EA participated in a price-fixing conspiracy with the NCAA and the Collegiate Licensing Company (CLC) to set a price of zero dollars paid to them and punitive class members for use of their images, likeness, and names; and (2) that EA participated in a “group boycott/refusal to deal” (see p. 3) conspiracy for use of their images, likenesses and names. However, the court found the allegations that EA participated in antitrust conspiracies with the NCAA and CLC did not produce enough facts.

The plaintiffs filed a second Consolidated Amended Complaint (CAC) on May 16 with additional allegations. These additional allegations were that EA enjoys a “unique relationship” with the NCAA. The EA is the only NCAA licensee that uses current and former players’ images and the EA is the only licensee that has the ability to create new products yearly because of the unique relationship between themselves, the NCAA and the CLC. The plaintiffs also alleged that the NCAA allowed EA to propose amendments to NCAA bylaws to allow the use of student-athletes’ names in EA’s products.
On May 31, the defendant filed a motion to dismiss the second antitrust claim that was brought against them in the second CAC because the plaintiffs failed to plead sufficient facts suggesting that they entered into agreement relating to an antitrust conspiracy with the NCAA and CLC. The EA contended that their sole purpose is “rational, legitimate commercial efforts” (p. 4).

As noted in the plea by the plaintiffs that EA never offered compensation to former student-athletes for their names. This served as sufficient evidence that the EA participated in the claimed group boycott conspiracy with the NCAA and CLC. As a result, EA’s motion to dismiss the plaintiffs’ second claim for relief was denied. The Court stated that EA provided no evidence of legitimate commercial efforts and was unable to prove how their agreement to not pay former student-athletes fits into the category of its rational, legitimate commercial efforts.

**Summary of Findings**

The data collected and discussed in this section answered the main question in this study, “What is a student-athlete who generates revenue to universities and college?” The intention of this study is to also analyze the legal and critical discourse of the coined phrase “student-athlete”. In the next chapter this study will analyze the NCAA bylaws extensively, and evaluate the legal cases that were brought against the NCAA and/or its members. The following chapter will also explore the words or language that was used to describe the student-athletes and their functions in the universities through critical discourse analysis.
CHAPTER 5
CRITICAL DISCOURSE ANALYSIS

This chapter will use Critical Discourse Analysis (hereafter CDA) to expose three of the most prominent themes found in the NCAA Constitutional, Operating and Administrative Bylaw Manual and the ten court cases in this study. These themes will be explored through a multidisciplinary set of discourse analytical methods that I believe is appropriate for the analytical process of this study. These methods were based on a combination of CDA methods by Gee (2012) and Boje and Dennehy (1994) respectively.

The three emerging themes found in the contextual data of this study are Student-athletes as Employees, Student-athletes as Inferior Individuals, and The Exploitation of Student-athletes; however, I believe that the inferiority and exploitation of student-athletes are so closely woven together, that it would be in the best interest of this study for it to be combined into one sub-heading during the discourse analytical process as most of these contextual data will overlap. The eight discourse methods that will be used in this study to analyze these themes are: cohesion, discourse organization, contextualization signals, thematic organization, duality search or dualism, reinterpret, rebel voices, and other side of the story.

The definitions of this discourse analytical method according to Gee (2012) are as follows: Cohesion—“covers all the multifarious linguistic ways in which sentences are connected to each other, it's the glue the holds text together.” Discourse Organization—This is the overall organization that “covers the ways in which sentences are organized into higher-order units (bigger than single sentences)….“ Contextualization Signals—the ways in which “speakers
and writers cue listeners and readers into what they take the context to be…. Context is not just there; it is something people actively construe, negotiate over, and change their minds about.”

Thematic Organization—“This covers the ways in which themes are signaled and developed” (p. 116). For example, the theme that has developed over the years that has placed football and basketball athletes in the lowest graduation percent as compared to other sports (see Figure 2.2). Why are these sports described as the moneymaking sports, or big boy sports? Where did the infamous theme “March Madness” emerge from, and why are the words March Madness signals of young men playing basketball? Is this the signal or theme that has been developed as a notification that this is the time when the NCAA makes millions from college basketball?

I strongly believe that this discourse analytical method will assist me in reporting the contextual argument of student-athletes as employees, and/or inferior individuals who are being exploited. Gee (2012) indicates in Social Linguistics and Literacies that these five discourse analytical methods work better together in an interrelated way to make sense of the social language. However, for this particular study I will use only four of the five discourse methods to make sense of how language in the NCAA bylaws is often generalized and confusing to navigate. This discourse method will also help to make sense of the court cases and the type of thematic organization that might be present. Gee (2012) expresses that, “within the themes and contrasts which organize a text, often one side wins out over or subordinates the other” (p.123). This statement leads me to the next analytical method that will help unpack the language in these research data.

This method came from Managing in the Postmodern World: America’s Revolution against Exploitation by Boje and Dennehy (1994). This method discusses things from
subordination—one side or the other side of a story. This is not the typical Critical Discourse Analysis as Boje and Dennehy approach America’s revolution and exploitation from a business prospective. However, I believe the information in this book will prove to be very timely and appropriate for this study. Boje and Dennehy (1994) believe, “power is defined rationally as the control over information, knowledge, and information networks” (p. 328). As mentioned earlier in this study, the National Collegiate Athletic Association is the governing body of approximately 1,200 institutions, which are in control of the knowledge and information that student-athletes seek. This information is relevant for the discourse analysis of this study because this study will analyze the NCAA as a small or big business that has some controlling and dominating stories that needs to be deconstructed. Boje and Dennehy (1994) expressed that the exploitation and primitive working conditions are prominent in the small businesses of America (p.330).

Using four of the Boje and Dennehy’s seven-story deconstruction methods to explore contextual data in the NCAA bylaws and court cases will allow me to analyze this data from the prospective of a moneymaking business. These methods are defined as: Duality Search—the making a list of any bipolar terms, any dichotomies that are used in a story. Include the term even if only one side is mentioned (p. 341). For example, the dualism of the NCAA versus the student-athletes, the powerful versus the weak, and of course the have and have-nots where colleges use their domination of access as a tool to dehumanize the have-nots who are athletes looking at college athletics as the saver.

Reinterpret—one interpretation of a story or an event from one point of view. It is the need to tell the story from an alternate interpretation while using the same particulars of that
story. To reinterpret is to express the other sides of a story, which carries similar characteristics of dualism. As I analyze the text in this study, I will reinterpret from a hierarchical prospective, simply because it is referenced by Boje and Dennehy (1994) as interpretations from a hierarchical prospective to a subordinate.

Rebel Voices—Deny the authority of the one voice. What voices are not being expressed in this story? Which voices are subordinate or hierarchical to other voices? For example, “Rebel is the “other” voice, the one left out or marginalized in the account” (p. 342). The student-athletes are the ones without a voice unless they rebel and violate NCAA bylaws; not having rights to their likeness is the epitome of marginalization, inferiority and/or exploitation.

Other sides of the story—Means every story always have two or more sides. “What is the side of the story- usually a marginalized, under-represented, or even silent story character” (p. 343). Additionally, as I examine these deconstruction methods I have concluded that they are interchangeable and as a result I will periodically combine the reinterpretation, dualism, rebellion voices, and the other side of the story in an effort to explore the linguistic contextual data hidden in these governing bylaws.

Through the themes of employee, inferiority and exploitation of student-athletes, each applicable step of CDA will be critically analyzed to explore the discourse that are present in the constitutional bylaw, the four operating bylaws, the administrative bylaw and the ten court cases that have been selected as contextual data in this study. Van Dijk (2004) expresses how one should focus on the ways in which the discourse structures enact, confirm, legitimate, reproduce, or challenge relations of power and dominance in society; however, before I begin to do just that with contextual data, it is important to note that theses NCAA bylaws and court cases were
selected because they contain some type of correlation or are related to compensation, employment, permissible or impermissible benefits, likeness of person, etc. It is also important to understand the conceptual and theoretical frameworks of scholars who have used CDA in their studies previously.

Huckin (1997) conceptualizes CDA as a highly context-sensitive, democratic approach, which takes an ethical stance on social issues with the aim of transforming society—an approach or attitude rather than a step-by-step method. Fairclough and Wodak (1997) believe that discourse does ideological work by representing, constructing society reproducing unequal relations of power, as well as historically connecting to previous contemporary and subsequent discourses. Fairclough and Graham (2002) identified the elements in Marx’s economic and political writing that are relevant to CDA. They stated that, “CDA shares the concern of critical social science to show how socio-economic system are built upon the domination, exploitation, and dehumanization of people by people, and to show how contradictions within these systems constitute a potential for transforming them in progressive and emancipatory directions” (p. 188).

According to Wodak and Meyer (2002), CDA takes an interest in the ways in which linguistic forms are used in the various expressions and manipulations of power. “Power is signaled not only by grammatical forms within attacks but also by a person’s control of social occasion by means of the genre of a text” (p. 11). For CDA, language is not powerful on its own; it gains power by the use powerful people make of it (Wodak & Meyer, 2002).

The truth be told, the NCAA, colleges and universities seem to be the ones holding the power, and also have the means to improve conditions for revenue-generated student-athletes.
Wodak and Meyer (2002) believe power does control or dominate on its own and that powerful people use it to control and dominate others to the point of dehumanization. This statement can be an example of the power struggles, exploitation and inferiority that are present in this study. According to the NCAA bylaws, student-athletes cannot accept any gratuity from anyone outside of their family and cannot sign an autograph for any type of compensation, just to name a few of the rules that are placed on these students to dominate and control them. If and when a student-athlete commits a violation, that individual can lose his or her scholarship, and if these athletes are losing their scholarships because of compensation infractions, then they will lose the opportunity to receive an education and the possibility of making it to the National Football League where they could get to play for pay.

The NCAA is fully aware of the issues that these athletes are facing on a daily basis, but I believe they are more concerned with amateurism status and the preservation of the words student-athlete, which will ensure that the compensation and/or injunctive lawsuits remain at a minimum. These perspectives on CDA are ideally and precisely what this study is aiming to evaluate and explore. Van Dijk (2004) thinks the focus should be placed on the critical discourse analysis themes that are found in the structures, styles, language, challenges, contextual strategies, reproduction dominance, and exploitation in the existing data. However, this study will specifically focus on the context surrounding student-athletes.
Theme One: Student-athletes as Employee

“Employee” is one of the most frequently used words found in the court cases of this study, as it was used to describe students who sued for workmen’s compensation because they got injured while performing services for their universities. College athletics has become a moneymaking industry to the point that college coaches can receive salaries in the millions on the backs of revenue-generated athletes. These athletes are not considered employees and are not compensated, but they generate revenue and perform services. There has been an ongoing discussion as to whether these students are employees of the universities, and whether they should get some sort monetary compensation.

Critical Discourse Analysis of a Student-athlete as an Employee

In any language and in any country in the world, the word employment or employee seems to mean the same thing: someone who performs services with the expectation of receiving compensation. Webster’s New World Dictionary (2002) explains service as “public employment” (p. 439). The same can be said when it comes to the 1953 case University of Denver v. Nemeth, when the claimant Nemeth was receiving $50 per month from the university for certain work in and about the tennis court on campus while playing football for the University. From his pay each month ten dollars were deducted for his three meals per day. The record shows that, “other students at the University were employed and were performing similar work duties and were being compensated but on an hourly basis; while the students who are qualified on the account of Athletic Prowess were compensated on a monthly basis” (p. 4).
Research shows that after the decision on this case was handed down the creation of the phrase *student-athlete* was coined due to the outcome in question (McCormick & McCormick, 2006). The District Court of the City and County of Denver awarded Nemeth workmen’s compensation for his injuries as a student-athlete while he was attending the University of Denver, which offers proof that this student and many others were employed to perform services for their universities on and off the field of play. The Supreme Court of Colorado rendered this decision and affirmed that the claimant suffered injuries while playing football. In this document there are several contextual phrases that will be discussed later indicating that Nemeth was employed to perform services and was, in fact, receiving compensation as an employee. The *Nemeth* ruling has changed the face of college athletes forever in the way these athletes are viewed and classified. Being classified as a student-athlete resulted in several decisions that would benefit the NCAA and it member institutions at that time and in the future.

The *cohesion* in the *Nemeth* case did not necessarily come in the form of sentences but in words, the words in this case are systematically connected in several ways that support the claim that this student-athlete was employed to play football. Documentation provided in court states that the employment at the University as far as Nemeth was concerned, was dependent on his playing of football, and he could not retain his employment without playing football. The evidence that was presented to the Industrial Commission was that his job and other remuneration came to an end when he ceased to “make good” on the football field, which is not in concert with Constitution Article 2.2, which states that an intercollegiate athletics program shall be conducted in a manner designed to protect and enhance the physical and educational well being of student-athletes. With that being said, it was admitted in court that Nemeth was
employed by the University and was compensated for his work. However, the University Counsel insisted that he was not employed to play football, but to keep the tennis courts free from gravel and litter.

There are idealistic statements explaining this further, which leads to the discourse organization of this case. The University claimed that they employed Nemeth to clean the tennis courts and not to play football, but somehow they allowed him time to practice and play competitively. To reiterate the discourse organization in this case documentation, refer to Comstock v. Bivens, 78 Colo. 107, which stated that:

Where an employee is doing something which, though not strictly in the line of his obligation duty, is still doing something incidental to his work, and while doing the same is injured, the accident causing the injury may properly be held to arise out of and in the course of employment, and he will be entitled to compensation. (p. 6)

This statement clearly concluded that Nemeth was a student-athlete (football player) employed by the University of Denver and sustained injuries while he was still engaged in an agreement with the University.

In the Nemeth case summary the contextualization signals that legitimize the legalities of this case are word choices like—“football”, “workmen compensation act”, “entitled to compensation”, “athletic”, “course of employment”, “contract of hire”, and “servant”, just to name a few. With word choices like these, with the exception of football and athletics, one might think that it is referring to a construction worker and not a student-athlete. Corresponding to the definition of contextualization signals, these contexts were not just placed in this document, but
would be negotiated and construed as nothing shy of an athlete working/playing football for monetary compensation at the college level.

The thematic organization of the Nemeth case is whether this student-athlete deserved workmen’s compensation for the injuries that he sustained on the practice field while attending the University of Denver on a scholarship to play football. However, throughout this case summary that is being analyzed for hidden discourses, the themes that are visually apparent in this document are: workmen’s compensation, course of employment, performing services, and employed to play football. This decision resulted in the student-athlete receiving workmen’s compensation by the Supreme Court of Colorado. From my knowledge of workmen’s compensation, in order for one to receive workmen’s compensation they, without a doubt, would have to be legitimately employed by the plaintiff.

In this seminal court decision, there are several critical discourses. For example, the University agreed that Nemeth’s course of employment was to clean the tennis courts; however, those duties never prevented him from participating in football activities. Based on the language in the NLI, he was “volunteering” to play football and his scholarship was a “gift”. Ironically, he was always allowed to miss or leave his so-called work to attend to his “voluntary” football duties, but was never allowed to leave his voluntary football duties to attend to the cleaning of the tennis courts for which he was “employed” to do. So what was Nemeth really volunteering for, and what was he employed to do?

At the trial court level, this University argued that, “the injury to the claimant did not arise out of his employment, nor while he was performing services in the course of his employment”. I believe that there are several discourses of organization in that text or statement.
The University obviously agreed that Nemeth was injured, not from doing what they claimed he was getting paid for (cleaning in around the tennis courts), but based on the actions that are discussed above. He was clearly obligated to participate in football and not cleaning tennis courts. However, “performing service” are words frequently used in the NCAA bylaws in their rules and regulations when describing what revenue generating student-athletes do for their universities in the form of sporting activities. As explained previously, the meaning of the word “services” is when someone is employed by another to perform a service. According to the Webster’s New World Dictionary (2002), “service is an occupation of servants” (p. 439).

The discourse of duality search came at the expense of Edward Gary Van Horn a former student-athlete of California State Polytechnic College who was killed in a plane crash after returning from an intercollegiate football game. That resulted in the case of Van Horn v. Industrial Accident Commission and California Polytechnic College (1963). Van Horn claimed that he was receiving $50 at the beginning of each quarter and $75 for rent during the football season. The duality in this case is that the University contested that Van Horn was not employed to play football; he was volunteering his services and his scholarship was a gift. On the other hand, Van Horn stated that he quit the football team because he needed money to support his family, so University officials offered him pay to play. He was receiving $75 checks drawn with the coach’s name from an account identified as “Special Account . . . Cal Ploy Athletics Dept,” before his death. In defense to the claim that the deceased was under contract with the University Athletic Department to play football, in a careful evaluation of the testimony of Van Horn’s football coach, he never denied making a contract with the decedent.
To reinterpret the hierarchy in this case, it would have to start with the student-athletes by giving them some ownership of their person, while allowing them to receive some type of benefit from the sales of their likeness. These types of power dominance may be distinguished according to the various resources employed to exercise such power, whether it is the military which is based on force, the rich which is based on the money they have, or the less persuasive power of parents, professors, or journalists whose power is based on knowledge, information, or authority (van Dijk, 2004). To reinterpret the hierarchy for student-athletes to gain some power, one would have to explore their side of the story and how they view the National Letter of Intent (NLI), which is seemingly the source of control that these athletes are relinquishing to the NCAA and other institutions.

Van Dijk (2004) believes that because of a power base, there is privileged access to scarce social resources, such as force, money, status, fame, knowledge, information, “culture,” or indeed various forms of public discourse and communication. This notion of power provides an insight into how and why colleges and universities have such a vast amount of power over their student-athletes. Institutions market themselves as the provider of knowledge to these students who, in many cases, cannot afford to go to college, nor have access to any of the resources that it takes to obtain a college degree. So this NLI plays a major role in the exploitation process of student-athletes. The NLI is not stated like a contract, but possesses some binding obligations and requirements for student-athletes. For example, here are some of the discourses that are in the NLI (Appendix A):

1. The National Letter of Intent is a voluntary program with regard to both institutions and prospective student-athletes.
2. At the time I sign this NLI, I must receive a written offer of athletics financial aid for the entire 2012-13 academic year from the institution named in this document.

3. The offer must list the terms, conditions and amount of the athletics aid award.

4. If the institution does not renew the athletics aid for the following academic year, the student-athlete must be released of the NLI.

5. This NLI is in full force and effect for a period of four years; commencing with the date I sign this NLI. I am subject to the NLI penalty if I do not fulfill the agreement; however, once four years has elapsed, the NLI is no longer binding.

These five sentences from the official NLI of 2012-13 are reasons why control is in the hands of the powerful oppressors. In the first sentence of this letter (listed as my number one above) it states that this is a voluntary program; but in number two it states: “At the time I sign this NLI, I must receive a written offer of athletics’ financial aid”. What kind of offer does one need to sign for voluntary services/program? If it is voluntary why does one need to be released if they have no desire to volunteer anymore? How can a voluntary program (NLI) be binding (see number 5 above)?

The National Letter of Intent is used to try to preserve the amateurism of student-athletes by using several different types of languages to either cover up what is really happening with the sharing dominance of power or to prevent compensating student-athletes. Amateurism is the other side of the story, which has been a focal point for student-athletes in the past who have been legally classified as employees to their institutions, and were awarded workmen’s compensation, and/or death benefits by courts across the country. To get a clear and concise understanding of amateurism, one must explore the NCAA Bylaw Article 12 that deals with
student-athletes as amateurs. This Bylaw’s first and chief principle states that only an amateur student-athlete is eligible to participate in any particular intercollegiate athletics sports. This Article went on to state in Bylaw 12.1.2 that an individual athlete loses his or her amateur status and thus shall not be eligible for intercollegiate competition in a particular sport if the individual is involved in any of the following:

(a) Uses his or her athletics skill (directly or indirectly) for pay in any form in that sport;
(b) Accepts a promise of pay even if such pay is to be received following completion of intercollegiate athletics participation; (c) Signs a contract or commitment of any kind to play professional athletics, regardless of its legal enforceability or any consideration received, except as permitted in Bylaw 12.2.5.1; *(Revised: 4/29/10 effective 8/1/10)*
(d) Receives, directly or indirectly, a salary, reimbursement of expenses or any other form of financial assistance from a professional sports organization based on athletics skill or participation, except as permitted by NCAA rules and regulations; (e) Competes on any professional athletics team per Bylaw 12.02.4, even if no pay or remuneration for expenses was received, except as permitted in Bylaw 12.2.3.2.1; *(Revised: 4/25/02 effective 8/1/02, 4/29/10 effective 8/1/10)*; (f) After initial full-time collegiate enrollment, enters into a professional draft (see Bylaw 12.2.4); or *(Revised: 4/25/02 effective 8/1/02, 4/24/03 effective 8/1/03)*; and (g) Enters into an agreement with an agent *(Adopted: 4/25/02 effective 8/1/02)*. *(pp. 62-63)*

Looking on the other side, is it fair to say that in the early to mid-1900s those athletes who received compensation for their services (Nemeth, Van Horn, etc.) were not amateur athletes but instead professional athletes, which by definition of Bylaw 12.02.3, is one who receives any kind
of payment, directly or indirectly, for athletics’ participation except as permitted by the governing legislation of the Association. If these individuals were allowed to participate in college sports, were they considered “professional athletes”, “student athletes” or “employee athletes” to their universities? Based on the facts of the cases that made it to the courts they were employee-athletes or employees who performed sporting services and duties for their employer; hence, the reason they were granted workmen’s compensation and death benefits respectively.

Theme Two: The Inferiority and Exploitation of Student-athletes

The word exploitation is such a powerful word and when one couples this term with student-athletes—or young people—that gives it an even stronger meaning. Words like unethical, morally indecent, inferiority, servitude, etc. come to mind. When one considers the word “exploitation”, or “exploit” it is possible to think of involuntary servitude or the violation of the Thirteenth Amendment, which in summary states that it is a crime for slavery or involuntary servitude to exist within the United States, or any place subject to their jurisdiction (constitution.laws.com). Inferiority and exploitation as emerging themes from the NCAA bylaws and courts cases are definitely social and political issues, and discourses that will be analyzed in this section. Whether revenue generated student-athletes are performing voluntary (as it is stated in the NLI) or involuntary services for the NCAA and its member institutions is in question. I believe they have the power to end the contradictions and conflicts by compensating these athletes. This section of this study will explore and make sense of these dominating and controlling themes.
The inferiority of student-athletes leads to the exploitation of student-athletes, and because student-athletes are deemed inferior, at least to the NCAA, they are then exploited. As I read, analyzed and evaluated the data in this study I realized that conceptually it is best to combine themes two and three together because it is almost impossible to separate the two as they feed into each other. The inferiority of students with less power allows them to be controlled by the NLI and the 427 pages of the NCAA Division I Manual. As documented in this Manual, the need for institutional control or how each institution is responsible to control its athletes means these student-athletes are the property of someone who needs to control. The *Webster’s New World Dictionary* (2002) defines inferior as lower in quality than, lower in order status. Not only are these “Discourses” because they are language-in-use-in society (Gee, 2012), but they also present some social problems because they add to the ongoing debate of how student-athletes are being viewed. These Discourses also might create arguments that student-athletes are objects placed on campus to generate revenue. As a result, the integrity and purpose of what an institution of higher education stands for is being compromised. These are social issues because they are affecting our society, the way our youth are being viewed, the way these youth view educational institutions, and the morality of the people with the power and organizations who enforce power on the less powerful.

The court cases below that will be analyzed through CDA that are claiming injunctive relief, violation of the antitrust Sherman Act, discrimination on the basis of wealth, the violation of the Thirteenth Amendment, and the bylaws that are contradictory in their approach to the protection of student-athletes, are all evidence supporting these themes.
In Bloom v. National Collegiate Athletic Association, an unincorporated association we find is a good example of inferior status. Bloom was a high school standout in football and track and field who was recruited by the University of Colorado to compete in their intercollegiate athletics program as a football player. Before Bloom decided to enroll at the university he competed in Olympic and World Cup skiing events, in which he later became World Cup champion in the freestyle moguls. While serving as an Olympian, Bloom appeared on MTV, was offered various paid entertainment opportunities, hosted a Nickelodeon show, endorsed certain ski equipment and was contracted by Tommy Hilfiger to model their brand of clothing. Upon his enrollment in college he became concerned that his extra activities could interfere with his ability to complete in intercollegiate athletics. After Bloom was enrolled at the University of Colorado, the University requested waivers of the NCCA rules restricting student-athlete endorsement and media activities and a favorable interpretation of these rules. The NCAA denied the request and Bloom immediately discontinued all of his endorsements, modeling and media activities in hopes of playing football during the 2002 fall season.

This case displays an exceptional example of inferiority when they denied Jeremy Bloom the ability to represent himself as an individual. Bloom was only allowed to speak as a third-party beneficiary. The court expressed that Bloom had, “an ability to fully present his position through the membership institution” (p. 9).

Bloom also claimed exploitation by the NCAA because this Association would not allow him to accept any commercials and endorsements while he was in college; however, they were allowing the colleges to exploit student-athletes by commercially endorsing athletic equipment
for revenue with logos and insignias as they participated in intercollegiate athletics. The trial court’s response to that claim was that, it has rational basis in economic necessity, and the financial benefits of these endorsements did not inure to a single student-athlete but to member schools and all of its athletes. The profound part of the statement made by the court was when it stated that, “financial benefits inure not to a single student-athlete but to member schools and thus to all student athletes, including those who participate in programs that generate no revenue”. Such statements contain characteristics of cohesion because this is another way statements are connected that validate that student-athletes are performing services and generating revenue to universities without compensation. In essence, this is a form of exploitation.

The cohesion in this case was Bloom’s action against the NCAA for declaratory and injunctive relief, asserting that his endorsement, modeling, and media activities were necessary to support his professional skiing career. This is a continuation of the multifarious ways in which sentences are connected, because Bloom believes that since he was the third party beneficiary of the contract between the NCAA and its members, he was not allowed to enforce NCAA Bylaw 12.5.2.1 permitting him to engage in and receive remuneration from a professional sport that is different from his amateur sport.

The contextualization signal that is found in the Bloom case is that NCAA Bylaw 12.1.2 states that, “a professional athlete in one sport may represent a member institution in a different sport.” This Bylaw gives Bloom a context that he can use to negotiate his rights to participate in college football after he received remuneration for skiing. Article 12 seems to have some inconsistent statements as it plays the governing role of preserving the amateurism of student-
athletes. As the Bylaw stated, it is permissible for a student to turn professional in one sport and maintain his or her amateur status in another. Bylaw 12.5.2.1 it states that after an individual becomes a student-athlete he or she cannot participate in intercollegiate athletics if the individual:

(a) Accepts any remuneration for or permits the use of his or her name or picture to advertise, recommend or promote directly the sale or use of a commercial product or service of any kind; or (b) Receives remuneration for endorsing a commercial product or service through the individual’s use of such product or service. (p. 75)

The contexts or terms of these Bylaws are contradictory, which also falls under the discourse of duality search.

The duality search in the Jeremy Bloom case is the contextual languages throughout this case. This case provided various inconsistencies with the bylaws determining whether or not Mr. Bloom should continue to receive remuneration for being a professional Olympic athlete. However, as those types of languages were used or were the focal point of this case, one should examine the inferiority displayed against Mr. Bloom. He was not allowed to represent himself as an individual because of the control and power dominance the NCAA has on its member institutions and student-athletes.

Article 12 is another example of the way the NCAA describes and uses student-athletes as property of the universities and colleges. The NCAA 2011-2012 Division I Manual, Bylaw 12.5.1.1, explains the promotional activities permissible to student athletes, what is accepted of them, and how their likeness can be used for commercial use as long as these athletes are not receiving any benefits from these sales and distributions.
Some of the main issues surrounding the NCAA and student-athletes are that these athletes have no rights or ownership to their likeness for the life of their college careers. They are branded as university property; they cannot use their names, pictures or any of their likenesses for anything that is not university affiliated. In theory these student-athletes are performing services for their universities, and generating considerable amounts of revenue while not even owning the jerseys that they wear to play their sports.

The rebel voices against Article 12 are the several infractions that were committed by student-athletes leading up to the 2011-2012 season. Documents released by the Penn State athletics compliance office released in July 2011 listed several notices of allegations. These infractions ranged from receiving gifts of clothing from an agent, exchanging equipment and apparel for benefits, free golf, discounts on cars and other items, attending a party financed by a sporting agent, accepting benefits from former student athletes, obtaining preferential treatment, and selling a jersey to an agent. Based on this documentation, the amount of money that changed hands ranged from $5 to a maximum of $1,000. This could be analyzed as the rebel voice in the student-athletes or a simple display of student-athletes in need of financial support and/or pressure to accept preferential benefits from the first individual that offered.

On the other side of the story, should we make excuses for these student athletes who decided to violate or break the rules and regulations set by the NCAA, their governing body? From the first day that high school athletes sign a letter of intent to participate in intercollegiate athletics, they sign away their rights for any compensation or extra privileges that are not offered to a regular student. In the 2011-12 NCAA Division I Manual, it states that a student-athlete shall not be eligible to participate in intercollegiate athletics if the individual accepts any remuneration
for or permits the use of his or her name or picture to advertise, recommend or promote directly the sale or use of a commercial product or service of any kind. However, according to Tokarz (2010), in 2008 the University of Florida made $77,000 from Tim Tebow’s football jersey alone; this was not as much as the $2.5 million the University of Michigan earned in merchandising revenue from the famous “Fab Five” basketball team in 1992.

An objective view on these reoccurring and problematic issues of students who are being exploited by performing services for universities and colleges, without any ownership of their likeness throughout their college life could be viewed and classified as a form of involuntary servitude. Van Dijk (1993) believes that control can come in the forms of money, social power, and access to knowledge. So if student-athletes are performing services because they want knowledge, and that’s what these institutions are holding as a power source to control these student-athletes who may or may not have any other way of obtaining a college degree, this is not only a social problem but a moral, ethical and constitutional issue. Consider the 2011 In Re NCAA Student-Athlete Name & Likeness Licensing Litigation, for example.

The plaintiffs in this In Re NCAA Student-Athlete Name & Likeness Licensing Litigation case are Edward O’Bannon, Harry Flournoy and Alex Gilbert. They brought a suit against Electronic Arts (EA) alleging they colluded with the NCAA to use their images, likenesses and names without pay. The first order was brought to the court in May 2, 2011, by the plaintiffs claiming two things: (1) that EA participated in a price-fixing conspiracy with the NCAA and the Collegiate Licensing Company (CLC) to set a price of zero dollars paid to them and punitive class members for use of their images, likeness and names; and (2) that EA participated in a “group boycott/refusal to deal” conspiracy for use of their images, likeness and names. However,
the court found that the allegations that EA participated in antitrust conspiracies with the NCAA and CLC did not produce enough facts.

The plaintiffs filed a second Consolidated Amended Complaint (CAC) on May 16 with additional allegations. These additional allegations were: (1) that EA enjoys a “unique relationship” with NCAA; (2) EA is the only NCAA licensee that uses current and former players’ images; and (3) EA is the only licensee that has the ability to create new products yearly because of the unique relationship between themselves, the NCAA and the CLC. The plaintiffs also alleged that the NCAA allowed EA to propose amendments to NCAA bylaws to allow the use of student-athletes’ names in EA’s products. As noted in the plea by the plaintiffs, EA never offered compensation to former student-athletes for their names. This served as sufficient evidence that EA participated in the claimed group boycott conspiracy with the NCAA and the CLC. EA was unable to prove how their agreement to not pay former student-athletes fits into the category of its “rational, legitimate commercial efforts.”

The first couple of cohesions in this Likeness Licensing Litigation case are “because” and “between”, especially the way in which these words are used. For example, one of the claims that the plaintiff alleged was that there were some colluding actions occurring between the NCAA and EA. These cohesions were used as follow: EA Sports is the only licensed company that has the ability to create new products each year because of the unique relationship between the NCAA and CLC. Gee (2012) believes that any word, phrase, or syntactic device that causes two lines to be related and linked together makes for cohesion in a text. This case is another example of inferiority that leads to exploitation of student-athletes. These sentences are glued together to prove that EA participated in a group conspiracy with the NCAA and CLC to not pay
student-athletes for their likeness as they exploit their images for millions of dollars. According to the information brought forward in the hearing, there were three licensing agreements with CLC. EA expressly agreed to abide by the NCAA’s rules prohibiting student-athletes compensation, and “agreed to extend its agreement with the NCAA, prohibiting compensation to student-athletes, or to former student-athletes.”

The sentence that stated how the CLC and EA agreed to extend its agreement with the NCAA, to prohibit compensation to student-athletes, is the discourse organization in this case. This sentence is bigger than a single sentence (Gee, 2012); it demonstrated that CLC and EA were well aware that it is ethically and morally right to reward student-athletes with some kind of compensation for the use of their likeness, but by them agreeing with the NCAA they would be covered under Article 12 of the NCAA bylaws, that addresses amateurism. NCAA Bylaw 12.5.2.1 expresses that any service, sale or use of the athlete’s name or picture of any kind that would result in remuneration is forbidden to student-athletes. However, The Webster’s New World Dictionary (2002) defines service as: “(1) The occupation of a servant; (2) a) public employment, b) a branch of this; specifically the armed forces” (p. 439). The definition of a servant according to Webster’s New World Dictionary (2002) is “a person employed by another, especially to do household duties” (p. 439).

Those words above are clear examples of contextualization signals in addition to the many others that are present in this case summary. Some of the contextual signals in this case are: “conspiracy,” “likeness,” “boycott,” “refusal to deal” and “price-fixing” to name a few. These words are not just appearing in this case; they all carry some weight. They are words that one could construe or negotiate over what is really meant. In this case, however, all of these
words could form one sentence that explains the signals that each other gives off. For example, the plaintiffs believed that EA, CLC, and the NCAA had a price-fixing conspiracy of zero dollars, and group boycott of refusal to deal for the use of their likeness and names.

*The thematic organization* of the *Student-Athlete Name & Likeness Licensing Litigation* case includes several allegations by the plaintiffs. However, the one that is the focal point of this case is the allegation that EA and the NCAA have colluded on various issues in an effort to control student-athletes. It was stated that EA and the NCAA have not only colluded to allow student-athletes’ names to appear in connection with EA videogame promotions on the Internet and in television broadcasts, but have also allowed third parties to create modifications allowing users to upload into the games complete roster information, heights, weights, and the appearances of student-athletes. These actions are examples of the NCAA exercising their ownership, control and power over the likeness of these student-athletes. Despite the statement made by the NCAA, CLC, and EA that student-athletes own the rights to their names, images and likenesses at times, under NCAA rules plaintiffs may not exercise their rights while remaining student-athletes. Coincidently, there is no documentation of EA paying former student-athletes for using their likeness, names, and appearances in any of their videogames, but they have entered into licensing agreements with former student-athletes to use their images on the cover of EA’s NCAA videogames.

The action that EA took to compensate only the former student-athletes on the cover of their games creates the discourse of *rebel voice*. How will EA justify paying only the athletes that they use on the covers of these games and not the ones that are actually in the games? The athletes that users have access to their roster information including names, heights and weights,
seems to be the ones that are being exploited the most—if there is such a thing as more or less exploited. This action definitely ignites the rebel voices in those otherwise unpaid former student-athletes.

A duality search of the Likeness Licensing Litigation Case is context explaining how EA was abiding by the NCAA rules and regulations to not compensate student-athletes. Instead the focus should be on the fact there is some sort of conspiracy or collusion happening because EA was still not compensating student-athletes after they graduated from college and were no longer under the control or governance of the NCAA. The plaintiffs believed that EA had several opportunities to offer compensation to student-athletes without money exchanging hands until after the individual student-athlete graduates from college.

On the other side of the story, EA points out that agreeing to compensate current student-athletes would be futile, even if no money changed hands initially, because that agreement would destroy those students’ eligibility to compete as student-athletes. However, if EA had offered these student-athletes some sort of compensation for their likeness it may have put an end to the notion that these athletes were being exploited, and maybe this would have been the start of the reinterpretation of hierarchy.

To reinterpret the hierarchy that these organizations have been imposing on student-athletes, one would begin with them sharing the wealth, power and control. This seems to be one of the biggest dominant sources for these organizations—a system that allows these organizations to get the products and services for free. Van Dijk (2004) discusses group domination of professional and institutional power as something that occurs in all these cases, power and dominance, which are associated with specific social domains. Van Dijk believes that
the victims that are targets of such power are citizens-at-large, students, and other groups dependent on institutional and organizational power. This statement validates the reproduction of power and dominance by the NCAA, EA, and CLA on student-athletes, with no intention of reinterpreting the hierarchy. This comes as no surprise because no one is willing to give up power. I believe as human beings we are all trying to gain some sort of power, which will reproduce power abuse and inequalities in our society, especially in specific groups.

This next case is unique in several ways: (1) because it is a case involving the NCAA and a few of the members that it governs; (2) there are various types of discourses included; and (3) it’s a validation of the money making industry that is carried on the backs of the inferiority and exploitation of student-athletes. In 1984 the NCAA decided to challenge a ruling by the United States Court of Appeals for the Tenth Circuit that the NCAA was in violation of the Sherman Act of the NCAA’s restraints in the televising of college football games of two of its member institutions. This case was the National Collegiate Athletic Association v. Board of Regents of the University of Oklahoma.

The National Collegiate Athletic Association (NCAA) brought this case to the Supreme Court of the United States against the University of Oklahoma (OU) and the University of Georgia (UG)—both institutions were also members of the College Football Association (CFA). In 1981, a plan was adopted by the NCAA for televising college football games of its member institutions for the 1982-1985 seasons. The plan was intended to reduce the adverse effect of live television on college football game attendance. However, the plan limited the total amount of televised college football games and the number of games that any one college could broadcast.
No member of the NCAA was permitted to make any sale of television rights except in accordance with the plan that the NCAA had in place.

The NCAA made separate agreements with the two carrying networks: American Broadcasting Company (ABC) and Columbia Broadcasting System (CBS), granting them both exclusive rights to televise the live “exposures” described in the original plan. The networks agreed to pay a specific “minimum aggregate compensation” to the participating NCAA members, and negotiated directly with each member for the rights to their football games. Members from the CFA believed that they should have a greater voice in the formulation of the football television policy than they had in the NCAA. The CFA accordingly negotiated a contract with the National Broadcasting Company (NBC). This contract gave each college more television appearances and an increase in revenue to the CFA member institutions.

As a result, the NCAA stated that it would take disciplinary action against any members that complied with any contract between the CFA and NBC. Respondents from the CFA, (UO, UG, et al.) brought an action in the Federal District Court against the NCAA. This Court found that the controls exercised by the NCAA over the televising of college football games was in violation of the Sherman Act, which was affirmed by the Supreme Court of the United States.

Who would have ever thought that when the University of Pennsylvania first televised one of its home games in 1938, that televising college football games would turn out to be one of the biggest money making, free labor, and revenue generators in all of North America? We are talking about ABC and CBS paying a minimum aggregated amount of $131,750,000 to the participating institutions over a four-year period. Additionally, according to documents provided to the courts, Turner Broadcasting System (TBS) agreed to pay $17,696,000 for two years to
gain exclusive rights to cablecast football games. These numbers were based on the 1981-1985 season, so imagine as time goes by what those numbers may look like in the year 2012. This would explain why these powerful organizations and dominant institutions are fighting for more pieces of the pie to the detriment of student-athletes.

The cohesion in this case is the contract between the NCAA, ABC and CBS. This is considered cohesion because it is connected by the contract that was made between these organizations as they were in violation of the Sherman Act, and by the restraints that the NCAA placed on the televising of college football games.

The discourse organization in this case is the makeup of all the claims that have brought us to this point. As discourse organization deals with sentences and the way they are organized into higher units that are bigger than a single sentence, this National Collegiate Athletic Association v. Board of Regents of the University of Oklahoma case has some examples of what a discourse organization is. Take, for example, these sentences that were made by the parties involved: the universities who felt violated by the NCAA negotiated a contract with the National Broadcasting Co (NBC) that would allow a more liberal number of television appearance for each college, and would increase the revenues realized by members of College Football Association (CFA). The NCAA announced a statement saying that it would take disciplinary action against any College Football Association member that complied with CFA-NBC contract. Such statement by the NCAA is a clear intent of trying to control each member institution. As a result, these institutions decided to file suit against the NCAA for violating their rights. I believe that the actions of the CFA members were well justified; however, who is fighting for the rights of the student athletes? Do they have any rights in this? They seem to be the product that is
generating the revenue that both the petitioner and respondent are fighting to control. If this is restraint of trade, monopolization, and unfair trade practices that the NCAA is performing against these institutions, then what are these organizations doing to these student-athletes?

Let's take the context signals that are present in this case. What are words in this case that are susceptible to negotiation and construe? I would say, “the operation of free market,” “unfair trade practices,” “a greater voice”, are all things that the CFA fought for. Ironically, they are seemingly some of the same things that student-athletes are asking for. However, this is an example of power in regards to money, and dominance. The members of the CFA won their battle because they have some power and money whereas student-athletes are less fortunate. The CFA members accomplished their goals to denounce the unfair practices against them and secured a bigger piece of pie in the exploitation of student-athletes. The commodity (student-athletes) has not been as fortunate for several reasons, one of which is ever so present in the control and governing of these athletes. For example, Bylaw, Article 19, Enforcement, is one of the bylaws that enforce the rules of other bylaws. The mission of this Article states that:

It shall be the mission of the NCAA enforcement program to eliminate violations of NCAA rules and impose appropriate penalties should violations occur. The program is committed to fairness of procedures and the timely and equitable resolution of infractions cases. The achievement of these objectives is essential to the conduct of a viable and effective enforcement program. (p. 319)

This Bylaw mentions that it is committed to fairness, despite the fact that it is in reference to the resolution of infractions; the word fairness is a transparent word (free from bias or injustice). Fair
is fair, no matter how you analyze the word. Perhaps the NCAA believes that they are being fair to student-athletes as they are governing the “operation of a free market and unfair trade practices,” which are claims that were made in court by their members (OU, GU). This is an example of *dualism*—the us and them, top and bottom, the haves and the have not as Boje and Dennehy (1994) stated.

The *duality search* is this case is the fact that these institutions are seen as inferiors to the NCAA to the point where they were not allowed to have a voice in the contractual agreement with these networks. Based on the actions of the NCAA, it was assumed that these institutions were not capable of being involved in such dynamic decision making on how many games they were allowed to televise, and how much revenue each college would receive from these networks. As a result of the actions by the NCAA, these colleges reversed the power and got the best of the NCAA, which leads me to the discourse of reinterpreting the hierarchy.

To *reinterpret* the hierarchy of the NCAA, these institutions used their membership from the CFA as a point of leverage to reverse the power and control on the NCAA. These institutions started telling their side of the story when they combined their efforts to negotiate an agreement with a competitor network (NBC) without the consent or involvement of the NCAA. This resulted in a defining moment of the reinterpretation of hierarchy. Boje and Dennehy (1994) stated that, “shared fate means what I do affects your outcome and what you do affects my outcomes, even though we do not directly interact” (p. 342). The College Football Association decided to do something that would affect the outcome of the NCAA and its revenue without interacting with them. These colleges obviously believed that they had as much rights to these football games as the NCAA, and that there is another side to the story. Boje and Dennehy
(1994) noted that when two people are given the same element of experience one can put together a wildly different account, the task is to reinterpret the element of a given story and put together another scenario (p. 342).

This move by the members of the CFA is also an example of rebel voice—the University of Oklahoma and the University of Georgia were rebelling against the restraints that the NCAA placed on them, and the televising of their football games. These institutions joined voices and rebelled against what they thought were restraints of trade, monopolies, and unfair trade practices. This was an extraordinary rebellion that resulted in a positive and rewarding result for members of the CFA; however, on the other hand, there is the other side of the story—the student-athletes.

The other side of the story is how the student-athletes are generating so much revenue to the point where power dominated organizations are fighting for control. They are fighting to control the money that is generated by students from free labor. This seems similar to the slave and mastering behavior, the North versus the South. Who will control the honey pot and how much control does one organization get? Do these student-athletes have a say in the division of these revenues; or are they too inferior to be considered? These students are the ones putting in the long practice hours and study hours to fill these athletic stadiums to capacity, and then one freakish play becomes an injury. That injury may become a life threatening issue without any sort of workmen’s compensation because they are deemed as student-athletes and not employee-athletes.

As I draw near to the conclusion of this chapter, it seems appropriate to reinforce the critical discourses that are present in the six NCAA bylaws that were selected. The language in
these bylaws is so difficult to interpret for adults who are placed in these institutions as coaches and administrators, let alone a student-athlete who is already struggling to keep his or her GPA above a 2.00 to remain eligible for competition. Based on this empirical research of the contextual data in these bylaws, I will use the CDA method that I designed from a combination of Gee (2012) and Boje and Dennehy (1994) to uncover some of the major discourses that were found in these articles.

The Constitution, Article 2 is the Bylaw that deals with all the Principles for Conduct of Intercollegiate Athletics. The Principles that this Bylaw addresses are: The Principle of Institutional Control and Responsibility; The Principle of Student-Athlete Well-Being; The Principle of Gender Equity; The Principle of Sportsmanship and Ethical Conduct; The Principle of Sound Academic Standards; The Principle of Nondiscrimination; The Principle of Diversity within Governance Structures; The Principle of Rules Compliance; The Principle of Amateurism; The Principle of Competitive Equity; The Principle Governing Recruiting; The Principle Governing Eligibility; The Principle Governing Financial Aid; The Principle Governing Playing and Practice Seasons; The Principle Governing Postseason Competition and Contests Sponsored by Non-collegiate Organizations; and The Principle Governing the Economy of Athletics Program Operation.

The cohesion in this Article is the Principle of Amateurism; this Principle contains the text that links and connects the entire NCAA as an organization. The word “Amateurism” is the glue that keeps the NCAA in business. Student-athletes who generate revenue to universities and colleges without any compensation, and are deemed as amateurs, results in a monopoly of free labor. This results in a profitable business for the NCAA without any overhead cost to maintain
the individuals who are performing the services that are generating the revenue.

The *discourse organization* in this article is the Principle of Rules Compliance. This Principle explains how the rules are organized to protect the NCAA and its profitability. With single sentences such as this: “Members of an institution’s staff, student-athletes, and other individuals and groups representing the institution’s athletics interests shall comply with the applicable Association rules, and the member institution shall be responsible for such compliance” (p. 4) is an example of the NCAA mandating or inserting its power over its member institutions and student-athletes. This sentence is organized into higher-order units that are bigger than a single sentence (Gee, 2012). This rule of compliance sentence is in place so that if the member institution does not abide by it they are subject to fines and reduction of scholarships, which will result in a decrease of revenue for that institution. So at the end of the day, it all comes down to money, power and control. One sentence or clause can affect several entities in many different ways, based on how that sentence is viewed. As Van Dijk (2004) explains, power of dominant groups may be integrated in laws, rules, norms, habits, and even a general consensus. In this case, the NCAA is inserting its power through rules and regulations.

The Principle of Amateurism is such an important part of the NCAA that it is one of the few principles that can be used in the analytical process of more than one CDA. The *contextualization signal* in this article is the Principle of Amateurism. This Principle exemplifies the context that is not just there; it is actively negotiated and construed as to whether or not these revenue generated student-athletes should be considered amateurs, college professionals or employees (Gee, 2012).
The thematic organization in this article is the Principle of Sound Academic Standards. The contextual language of the Principle of Sound Academic Standards is the focal point of the NCAA. This organization uses academics to cover the ways in which themes and other discourses are being developed. For example, when academics is emphasized as the focal point of interest for the NCAA, it will drown and denounce the notion that these student-athletes are seen as inferior individuals and are being exploited though free labor. With the emphasis being placed on academic standards, it also derailed the developing notions that since these athletes are generating so much revenue to their respective institutions, they should be considered employees.

The duality search in this article is the Principle of Diversity within Governance Structures. This Principle of Diversity reflects some sort of dualism—from an “us versus them”, student-athletes versus the NCAA, top and bottom prospective. Boje and Dennehy (1994) states that in many stories only one side of the duality is vocalized, yet even when it is unstated the other side can be quite powerful. This is an example the NCAA and student-athletes, since the only side we see and hear is that of the NCAA, as they are always the ones handing down the penalties for any infractions. Imagine if student-athletes across the country decided to not perform during the “March Madness,” which is the biggest basketball tournament in the country and maybe the world; or don't perform during the Bowl Championship Series, where all these BCS institutions from different conferences come together and play football games for sponsors during the Christmas vacation. That action would create a lot of problems including some sort of power reversal.
To reinterpret the hierarchy of the NCAA Principle of Institutional Control and Responsibility, one must first identify where the power comes from—who is at the head of the hierarchal structure. In this case, it is obviously the NCAA that is the governing body for colleges and universities. The Constitution, Article 2 gives us a clear definition of how the hierarchy operates. It is evident in the language that is used in this Article of what is expected. The first mandate of this Article gives “Responsibility for Control—it is the responsibility of each member institution to control its intercollegiate athletics program in compliance with the rules and regulations of the Association” (p. 3). That statement in itself imposes some serious discourses; the word control is such a powerful word that I believe is self-explanatory. I have to believe and assume that the NCAA uses the word control as the language that they believe could carry weight in the mandates that they are imposing on institutions. However, this word signifies exploitation, inferiority, and demeaning. According to the dictionary, control means restraint; to dominate; to command; to hold in check; and to curb. Who and what can be controlled? Is there a reason why there is a strict mandate for control of athletic programs (athletes). Is the NCAA afraid of a revolt? Or maybe the NCAA just wants to make sure that the student-athletes never realize that involuntary servitude is a crime under the United States Constitution.

The responsibility of control—this control seems to flow from the NCAA to conferences, to institutions and then to the athletes. Do student-athletes sign over their rights when they sign the College Letter of Intent, and at the same time lose the ownership to their likeness?

The rebel voice is the Principle of Institutional Control and Responsibility. Institutional control is the NCAA mandating all athletic programs to control their department including the student-athletes. The student-athletes will rebel in many ways, especially when they commit
some sort of violation, intentionally or unintentionally. No one wants to feel like they are being controlled, or have no power. Van Dijk (2004) defines social power as control, as in when groups have power they are able to control the acts and minds of other groups. The NCAA has the power over the institutions, and the institutions have the power and control over the student-athletes. These athletes are powerless; they come and go on time schedules created by their specific college teams.

The other side of the story is the Principle of Student-Athlete Well-Being. In this Article student-athlete well-being is described as “an intercollegiate athletics program being conducted in a manner designed to protect and enhance the physical and educational well-being of student-athletes” (p. 3). There is no mentioning of financial well-being or financial support, which seems to be the area in which these student-athletes need the most support and help, especially, when they get injured and cannot play football anymore and accrued enormous medical bills from surgeries.

Article 12 is the Bylaw that deals with all aspects of Amateurism. The general principles are: Definitions and Applications; General Regulations; Involvement with Professional Teams; Use of Agents; Employment; Promotional Activities; and Financial Donations from Outside Organizations.

The cohesion is this Article is the General Regulations. These regulations are a list of guidelines set in place to keep an individual student-athlete eligible for intercollegiate competition. For example, an individual can lose his or her amateur status and would not be eligible for intercollegiate competition in a particular sport if the individual: uses his or her athletic skills directly or indirectly for pay in any form in that sport; if he or she accepts a
promise of pay even if such pay is to be received following completion of intercollegiate athletics participation; or if he or she signs a contract or commitment of any kind to play professional athletics, regardless of its legal enforceability. These general regulations are the cohesions that hold the intercollegiate programs together. The NCAA hopes that these student-athletes maintain their amateur status. The amateurism principle is the connecting principle of all the operations that involves the NCAA—without amateurs there is no NCAA. If these student-athletes do not follow these regulations it will result in violations and potential loss of scholarships.

The discourse organization in this article is the Principle of Employment. The word employment is defined in this Bylaw as compensation paid to a student-athlete for work actually performed, and at a rate commensurate with the going rate in that locality for similar services. Based on the definition above it would require student-athletes to work the regular hours of 9 to 5, which would be extremely difficult for them considering that they have extensive practice and mandatory study hours. The principle of employment seems to appropriately fit this discourse organization method because this discourse analysis deals with the organization of sentences that are in higher-order units while standing bigger than a single sentence. In this case we are dealing with a single word or the overall organization of a text, which is just as powerful, and contradictory especially when it is in regards to student-athletes and their employment or lack thereof.

The contextualization signal in this article is Definitions and Applications. This Definitions and Applications Principle deals with: the individual, pay, professional athlete, professional athletics team, and student-athletes, all of which are up for negotiation or have been
actively construed. The discussions on whether an individual who participates in revenue-generated college sports should get paid and be considered a professional athlete is always a topic for debate.

The thematic organization in this article is Financial Donations from Outside Organizations. This principle is appropriate for this discourse analysis because it addresses the ways in which themes and focal points are developed. This principle states that a professional sports organization may serve as a financial sponsor to any intercollegiate sports, other than football and men’s basketball. Bylaw 12.6.1.1.1 explains that, “An institution’s marketing department may enter into a reciprocal contractual relationship with a professional sports organization for the specific purpose of marketing and promoting an institutionally sponsored sport” (p. 76). What themes are being developed here? Why can professional sports sponsor other sports except for the “Big Boy Sports” (football and men’s basketball)? Despite professional sports being able to sponsor a particular sport, except football and men’s basketball, no professional sports are allowed to sponsor an intercollegiate event. With football and men’s basketball being the biggest, and in some colleges, the only revenue generators, the NCAA is making sure that no other organization but themselves are involved with the financial aspects of these two sports. One would think that the NCAA could be emphasizing or staging the no contact or non-sponsorship of these sports as the focal point of interest because of the infestation of agents and compensational violations. However, from a thematic organizational discourse point-of view it is important to analyze this forbidding bylaw from the revenue generating aspects, which may be the real reason why this bylaw is in place.
The *duality search* in this article came in the form of the Self-Employment Principle. Bylaw 12.4.4 explains self-employment as, “a student-athlete may establish his or her own business, provided the student athlete’s name, photograph, appearance or athletics reputation are not used to promote the business.” The dualism in this statement is us versus them, the student-athletes are not able to use their names to promote their own business but the NCAA can make money from their jersey sales, their names on posters, and of the sales of videogames produced by EA sports. This Principle can also serve as an example of the discourse *other side of the story* because it exemplifies how the NCAA can use the likeness of these student-athletes, but the athletes cannot profit or attach their likeness to anything, i.e. a personal business. As defined by Boje and Dennehy (1994), *the other side of the story* is usually marginalized, under-represented, or even silent; coincidentally, under-represented and marginalized are adjectives that can be used to describe how these student-athletes are viewed, especially given the heavily multifarious linguistic ways these Bylaws are constructed. They have and will always present difficulties for student-athletes.

To *reinterpret* the hierarchy of the NCAA, the general regulation of this article would need to be deconstructed. The variety of ways in which these student-athletes can become ineligible for competition has proven to be a power-controlling disposition by the NCAA. The reinterpretation of the power between athletes, the NCAA and their member institutions, would have to start with the interpretation of society and how the shift of the story line affects the outcome of the scenario.

The *rebel voice* in this article is the principle of Use of Agents. This Principle is the *rebel voice* because time and time again student-athletes seem to use agents in a rebellious way by
accepting money and service from them whether it is on a needs basis or not. It is a direct violation of the governing Bylaw that states, “an individual shall be ineligible for participation in an intercollegiate sport if he or she ever has agreed orally or in writing to be represented by an agent for the purpose of marketing his or her athletics ability or reputation in that sport” (p. 70). I believe these athletes are inclined to accept gifts from agents because for the first time they may feel that the service that they have been performing for their institutions are finally being appreciated and valued.

Bylaw Article 14 is the Eligibility, Academic and General Requirements Principles of the NCAA. These Principles are: Definitions and Applications; General Eligibility Requirements; Seasons of Competition: Five-Year Rule; Freshman Academic Requirements; Progress-Toward-Degree Requirements; Transfer Regulations; High School All-Star Games, Effects on Eligibility; Outside Competition, Effects on Eligibility; Additional Waivers for Eligibility Requirements; U.S. Service Academy Exceptions, Special Eligibility Provisions; Certification of Eligibility; Ineligibility; and Restoration of Eligibility.

The cohesion in this article is the Institutional Responsibility. This is how the NCAA places responsibilities on the institutions to monitor and control its athletic programs. However, despite this being the cohesion that holds this article together, it is also the sentence that represents the discourse organization in this article because it is organized higher than a single sentence. This occurs because institutions have control over the student-athletes in their programs, and as a result are at the inferiority and exploitation crossroads. The power and dominance of the NCAA and its member institutions are the contextualization signals that have emerged in this article.
The power and dominance has obviously magnified itself through the amount of access, knowledge and money that these institutions have accumulated over the years. Van Dijk (2004) explained, “thus groups have more or less power if they are able to more or less control the acts and minds of members of other groups” (p. 355). Having the focal point of interest as eligibility is an example of the thematic organization that the NCAA is trying to develop, and focus their image on.

Bylaw 14.01.1 states that, “an institution shall not permit a student-athlete to represent it in intercollegiate athletics competition unless the student-athlete meets all applicable eligibility requirements, and the institution has certified the student-athlete’s eligibility” (p.143). This statement creates a dualism because this Bylaw later states that,

a violation of this Bylaw in which the institution fails to certify the student-athlete’s eligibility prior to allowing him or her to represent the institution in intercollegiate competition shall be considered an institutional violation per Constitution 2.8.1; and shall not affect the student-athlete’s eligibility, provided all the necessary information to certify the student-athlete’s eligibility was available to the institution and the student-athlete otherwise would have been eligible for competition. (p. 4)

This seems to be a classic case of us versus them, a duality search, where the certification responsibility of the student-athlete is either the responsibility of the students or the institution. This Bylaw deals with eligibility and the preservation of amateurism, and as a result I don’t believe it is exploring the other CDA from the same prospect.

Bylaw Article 16 is exclusively responsible for Awards, Benefits and Expenses for Enrolled Student-Athletes. The Principles that make up this article are: Definitions and
Applications; Awards; Complimentary Admissions and Ticket Benefits; Academic and Other Support Services; Medical Expenses; Housing and Meals; Expenses for Student-Athlete’s Friends and Relatives; Team Entertainment; Expenses Provided by the Institution for Practice and Competition; Other Travel Expenses Provided by the Institution; Provision of Expenses by Individuals or Organizations Other Than the Institution; Benefits, Gifts and Services; and Expense Waivers.

The cohesion in this article is one of the following sentences, which is connected in all sorts of multifarious ways. This statement is Bylaw 16.01.1, which is the Eligibility Effect of Violation, located in the general principle of this article. This Bylaw states,

A student-athlete shall not receive any extra benefit. Receipt by a student-athlete of an award, benefit or expense allowance not authorized by NCAA legislation renders the student-athlete ineligible for athletics competition in the sport for which the improper award, benefit or expense was received. If the student-athlete receives an extra benefit not authorized by NCAA legislation, the individual is ineligible in all sports. (p. 217)

The description of Bylaw 16.01.1 absolutely exemplifies Article 16 and what it represents in the grand scheme of the NCAA rules and regulations. This Bylaw sets the tone and connects the entire article with the text that was used to explain this Bylaw. The discourse organization is the statement that if a student-athlete receives an extra benefit that was not authorized by the NCAA legislation, then that individual would be ineligible in every intercollegiate sport. Such a statement is bigger than any one sentence, it means that an individual who receives extra benefits cannot complete in college athletics period. The contextualization signal in this article is the fact that it is such a strong statement, that it will cue the readers into what the context of this Bylaw
means. Consequently, the notion that when a student-athlete violates this Bylaw and becomes ineligible for all sports has attracted discussion from people as to whether this is a fair punishment for the crime, while others say if these student-athletes were receiving some sort of compensation in the first place then there wouldn’t be any need for this type of punishment. It is obvious that the focal point of this Bylaw is the prevention of student-athletes receiving improper awards, benefits and/or expenses. This leads to thematic organization, which covers the way in which themes, images, and focal points of interest are developed. I believe the image that this Bylaw has developed with the punishment of any of these infractions is merciless.

A merciless image and cruel punishment would then create a dualism, duality search—us versus them, haves and have-nots. This would also produce a re-creation of the stereotype of top or bottom, no in between. As these student-athletes become ineligible because they are in violation of this Bylaw they will then lose their scholarships and the chance of getting a college education. This would reduce the chance of the reinterpretation of the hierarchy. As we continue to hear one side of the story, and to reinterpret a story of any kind, we need to hear an alternative interpretation of that story using the same particulars of the story (Boje & Dennehy, 1994). The rebel voice in this article would say that the NCAA is being extreme, because the student-athletes are generating a surplus of revenue that could compensate them monetarily and would prevent them from violating this Bylaw. The discourse of other side of the story can go both ways. One could say compensating student-athletes would ruin the amateurism of college sports; and the other side would say it is currently being defamed and near ruin because there is a creation of slavery and exploitation of young men. Student-athletes being controlled by powerful and resource-heavy organizations is unethical and dehumanizing.
Bylaw Article 19 is the Enforcement portion of this study. The Principles of this Article are: Definitions and Applications; Committee on Infractions; Appeals Committees; Establishment and Revision of Enforcement Policies and Procedures; Notice of Charges and Opportunity to Appear; Penalties; Rights of Member to Appeal; and Restitution.

The cohesion of this article is Bylaw 19.01.1, which is a mission of the NCAA Enforcement Program. This Bylaw is described as:

The mission of the NCAA enforcement program is to eliminate violations of NCAA rules and impose appropriate penalties should violations occur. The program is committed to fairness of procedures and the timely and equitable resolution of infractions cases. The achievement of these objectives is essential to the conduct of a viable and effective enforcement program. Further, an important consideration in imposing penalties is to provide fairness to uninvolved student-athletes, coaches, administrators, competitors and other institutions. (p.319)

The sentences in the definition of this Bylaw provide connections that link the purpose of this Bylaw together. The discourse organization of this article is the sentence that explains the importance of achieving objects that demonstrate the effectiveness of the enforcement program. This is the discourse organization for this article because the words in this one sentence are so much bigger than the single sentence itself. Being able to effectively enforce the rules and regulations of the NCAA is essential to the existence of this organization. The contextualization signal in this article is the context that states that the program (NCAA) is committed to fairness of procedures. This will cue readers in, as they would like to know what these contexts really mean, or what they take the language to be. Are there contrasts in the language of fairness?
student-athletes being treated fairly by the NCAA? The thematic organization lies in the context that states the important consideration that the NCAA has when imposing penalties to provide fairness to all parties involved. The duality search in this is that no matter how fair the NCAA thinks they are being, there will always be some sort of dualism because the only individual that walks away from this scenario with nothing when the penalties are enforced are the student-athletes. As a result they will always have rebel voices, a deep passion and drive to reinterpret the hierarchy of the NCAA that would give them some power or control over their likeness. That is the other side of the story that has not been heard, how the NCAA has been “colluding” with Electronic Arts (EA) and Collegiate Licensing Company (CLC) to not pay current and former student-athletes to use their likeness in all types of electronic video games, (NCAA Student-Athlete Name & Likeness Licensing Litigation 2011).

The Administrative Bylaw of Article 31 contains the Executive Regulations of the NCAA, the Principles of this article are: Definitions and Applications; Administration of NCAA Championships; Eligibility for Championships; Selection of Teams and Individuals for Championships Participation; Financial Administration of Championships; Financial Administration of Postseason Football; Rights to NCAA Properties and Marketing Restrictions; General Financial Management; Personnel; and National Statistics Program. Article 31 is the final contextual data that will be analyzed in this study. Ironically, this article was chosen not knowing how the eight CDA methods that were designed would fit this or any of the other articles. However, I believe this article is timely in its application. This article as stated above comprises the executive regulations of the NCAA, and summarizes all of the CDA methods. The general Principle of this Article states that, “all NCAA championships have formal designations
that identify their appropriate category and sport classification. The name of each championship is the property of the Association” (p. 377).

Cohesively, this Article is the glue that connects the final product of each sport—the NCAA Championships. As the general Principle states, each championship is the property of the Association; however, inside these championships are the student-athletes. Is the NCAA finally stating and admitting through the contextual language that it is the owner of these student-athletes? Such heavy discourse organization in the magnitude of that statement is not just there, it is something that people will actively construe and negotiate over, and as such will be a contextualization signal. This statement has brought out the thematic organization in this article that has been developing into a duality search, of us and them (student-athletes and NCAA).

To reinterpret the hierarchy in this article, one would have to evaluate the story that is being told by the Administration of the NCAA Championship, which clearly states that,

all NCAA Championships shall be conducted in accordance with the general policies established by the Championships/Sports Management Cabinet, Leadership Council, Board of Directors and/or Executive Committee and shall be under the control, direction and supervision of the appropriate sports committees, subject to the standards and conditions set forth in these executive regulations. (p. 378)

What are the rebel voices saying and how is the other side of the story? How do these athletes feel about being under the control, direction and supervision of an appropriate sports committee? The first thing that comes to mind when I think of the word supervision is having a supervisor who one reports to when they are employed.
Summary of Critical Discourse Analysis

Overall, the critical discourse analysis (CDA) has uncovered numerous hidden agendas and power struggles behind the language of the ten court cases and the six NCAA bylaws in this study. The analytical process of the three themes through the CDA methods were proven to be a challenging task at times; it presented some obstacles in the ways the language was seen from the lens of the researcher. However, it seems appropriate and fitting for a critical discourse analytical study because CDA tends to be broad, objective and opinioned. Gee (2012) fittingly states that to appreciate language in its social context, we should not focus on the language but on the discourse instead, which is much more than just language. The languages in this chapter were edgy and critical, but these are the complex ways in which different discourses manifest their way through language. “Discourses are ways of behaving, interacting, valuing, thinking, believing, speaking and often reading and writing, that are accepted as instantiations of particular identities or by specific groups” (Gee, 2102, p.3). The specific groups addressed in this chapter were: the NCAA, institutions, and the student-athletes and the different ways these student-athletes behaved, interacted and how they were valued.
CHAPTER 6
DISCUSSION AND CONCLUSIONS

After an extensive analysis of contextual data, what did we learn in this study that we didn't know before? What WAS the purpose of this study? How did this study achieve the goals that it set out to achieve? Did this study explore and analyze the language used to preserve what we were told a student-athlete is; or did we take an objective prospective on whether these students are employees, inferior beings or simply being exploited? First, my hope is that one would understand why CDA was the best and most appropriate method to conduct this study. It was discussed earlier in the study that CDA is a multidisciplinary course of action that is flexible in its approach. To emphasize this point Rogers (2005) states that, “researchers and scholars of CDA vary on the question of whether the analytical procedures of CDA should be more standardized across research or whether standardization runs counter to the epistemological and ontological tenets of a critical paradigm” (p. 379). However, I believe the uniqueness of CDA is that it has a system. There are tenets that one can follow, but in essence, the language speaks for itself, and dictates where the research goes. Consider this particular research. This study speaks on behalf of the researcher’s past experiences; it explored historical events through legal research, and unpacked the language used in the 427-page NCAA Division I Manual that governs institutions and supports institutional “control” of student-athletes. The conclusive thoughts in this study constitute a flashback of my experiences through contextual data.

The first chapter of this study explored my past experiences, the history of the NCAA and how I was afforded the opportunities that I gained throughout my career. As a teenager growing
up in the Third World Country of Jamaica, West Indies, I did not know much about how the NCAA bylaws governs or operates. In fact, I never knew or heard of the NCAA until my senior year at Everett Public High School when it was time to take the Scholastic Assessment Test (SAT). My exposure expanded to the NCAA Clearinghouse because as I was getting scholarship offers to attend college from every major Division 1 college across the country, I needed to be certified as being eligible for NCAA intercollegiate competition. The Clearinghouse is a department in the NCAA that is responsible for the certification of prospective college student-athletes to make sure they have all of the core academic credits, and are carrying the proper GPA compatible with their SAT or ACT scores. When I look back to my days in college, I realize how fortunate I was to graduate from college without violating any of the 33 NCAA bylaws, and managed to played professional football in the NFL—the dream of almost every college football player.

By gaining the opportunity to play professional football and then deciding to explore this area of study, my professional career has prepared me for the hills and valleys that I have experienced in this research. I believe these experiences have enhanced my creditability to speak on the social and political issues in this study. Being involved in intercollegiate athletes as a mentor, academic advisor and then as a director of player development and personnel for the past three years, it has dawned on me that the student-athletes who are now in college are much like myself and many of my former college teammates. Similar to how oblivious we were to the ins and outs of the moneymaking business that the NCAA was operating, the same can be said about the current college athletes. However, there was no hiding the dualisms that were present then and are still present now—the us and them, male and females, and black versus white. These
dualisms do not come as a surprise to me because not very long ago black and white athletes were not allowed to compete on the same field of play. For example, it was not until 1948 that Wally Triplet, the first African American (black) player, started for The Pennsylvania State University football team. Prior to then, and even during that time, black players were brutally beaten and abused by white players, despite the creation of the NCAA in 1908 under the leadership of President Theodore Roosevelt.

The NCAA was created on the premise that the protection and well-being of student-athletes were necessary for the sport to retain its existence. I don't believe the National Collegiate Athletics’ Association was created with the intention of exploiting student-athletes. The University of Pennsylvania televised the first collegiate football game in 1938. This action made the NCAA aware that people would pay to see college football on television.

Chapter 2 reviewed other scholars who have explored similar discourse but did not focus on the intangibles of student-athletes generating revenue without getting paid and whether or not they were being exploited. There was extensive documentation of materials based on violations that were committed by these athletes. As one examines these violations, one has to wonder how they occurred. Why did they occur and will they ever stop occurring? A number of these violations were not needs-based but more of wants-based infractions; for example, students getting special discounts on tattoos and agents paying for students to party in night clubs outside of their college campuses does not strike me as something these students needed. Nevertheless, they were considered in violation. It leaves one wondering whether these violations would have occurred if these student-athletes had better financial support. This chapter also points to the lack of preparation that these student-athletes experience as they arrive on college campuses, and the
role that parental education and influence have on their success. These are also topics for future study.

Chapter 3 documented the ways in which this study would be conducted, how the contextual data would be listed and how it would be analyzed. It also explained the reason for the method that was chosen. Chapter 4 was a continuation of Chapter 3—it summarized the NCAA bylaws and court cases systematically. The bylaws were listed based on the lowest numbered bylaw to the highest. These bylaws were also selected to represent all three sections (Constitution, Operating and Administrative) of the NCAA Division I Manual. The court cases were arranged based on the year of the occurrence and court decisions.

If there was a quote that best described or summarized Chapter 5, it would be the words of Gee (2012), “Discourses are ways of behaving, interacting, valuing, thinking, believing, speaking and often reading and writing, that are accepted as instantiations of particular identities or by specific groups” (p. 3). If one analyzes behavior, interacting, believing from a critical discourse analytical prospective, the first group of individuals that comes to mind would be the student-athletes. Why are student-athletes the first thought? Is it because they are the ones with the least amount power or rights? Maybe power and rights are not the right words to use; perhaps the words that best describe these individuals should be inferior and servants.

These individuals are considered a servant since they perform services for free, or for a free education (for argument purposes); however, the bylaws and the NLI states that the athletes are volunteering their services and the scholarships (grant-in-aid) are gifts. The word gift in itself is a critical discourse and contradictory at the same time. If these athletes want to stop volunteering their services, then they would have to be released from the binding voluntary
agreement that was made, i.e. NLI. In addition, if they stop performing the “voluntary services” without permission or release from their coach, then the so-called gift of grant-in-aid is taken back.

This gift is obviously contingent upon performing services, which is supposed to be a voluntary act. This is another example of discourse organization and cohesion where sentences or words are organized in a way that means something other than what it states or bigger than a single sentence. These are the same sentences that cohesively connect and hold this NCAA free labor, and no overhead money making business together. As far as behaving, I would say they are too well behaved; there should be more interacting with each other to force the hands of their superiors (NCAA, and institutions) in order for them to be valued more. Even slaves of our distant history let their rebel voices be heard by running away. As a result the thematic organization “runaway slaves” was developed and became a focal point across our country. The more officials think of student-athletes as inferior individuals with no power, the higher the likelihood is that the NCAA will continue believing that it is okay to operate a revenue-generating business on free labor.

The ways in which the discourse of behaving, interacting, valuing, thinking, and believing was critically analyzed above are fitting examples of not focusing on language in its social context, but analytically focusing on the discourse, because discourse is always more than just language (Gee, 2012).
Implications for Future Research

When I think of future research, the questions of how, what, why and when will revenue generated student-athletes receive compensation arise. To analyze the discourse of paying college athletes, the questions that arise from this are: How would one go about paying these athletes? What would make them different from professional athletes if they receive pay for play? Why should these athletes receive compensation? and When will they actually receive this compensation in hand?

The first question is how could revenue generated student-athletes receive compensation? Well, first we pay them with money—some of the revenue from BCS football games and the revenue from “March Madness” basketball games. We would compensate student-athletes whose sports are generating revenue; institutions in each conference could divide the revenue. It would be clear that the bigger conferences would have more revenue to generate but the same could be said that the bigger conferences and institutions are generating more revenue. The debate is ongoing that student-athletes are receiving pay through their scholarships, which are providing them with an education. But how many student-athletes who play college football or college basketball receive degrees? Despite the GSR reaching it highest percentage in years, the revenue generating sports (football and basketball) are still graduating less than 70%, 68% and 69% respectively (NCAA.org). This means that 3 or more out of 10 student-athletes who play football and basketball are not graduating from college. However, there is no price for an education. Not every student-athlete signs a national letter of intent to graduate from college. So these students who are placed in a percentile pool may not graduate.
These universities and colleges are collecting their profitable revenue of 100% on Saturday, Monday, or Thursday evenings when these student-athletes perform the services of football or basketball. That does not seem like a fair and equable trade.

Second, what will make college-athletes different from professional athletes? For starters they will be more mature by the time they enter in the real world and if they make it to the professional ranks, they would no longer feel exploited. They would leave college with a better record because they would commit less petty crimes such as shoplifting. These college athletes would be different from professional athletes because they would not be getting the millions of dollars similar to what the professionals are receiving for their services. In reality, there is something to be said about the amateurism of college athletes; there is a sense of purity in the competition. It brings out a deep level of passion for the sports and has produced lasting rivalries between institutions. However, we cannot turn a blind eye to the revenue of jersey sales and the sold out stadiums and arenas across the country. The compensation of student-athletes can be done in strategic ways; it could be on an incentive basis, a percent of individual jersey sales or remuneration after their college careers.

Third, are there hidden discourses in the language of student-athletes and why has compensation not become a legal mandate? Is there a fair unionization of athletes? Is the NCAA afraid of the past issues where student-athletes like Nemeth, and Van Horn filed for workmen’s compensation? These burning questions could all be classified as social and political issues, as well as a fight for power and control.
Final Thoughts

Although CDA is used to analyze power, dominance, and inequality, the power of language does not derive from language, but conversely “language can be used to challenge power, to subvert it, to alter distributions of power in the short or long-term” (Wodak, 2002, p. 11). The language in this case is “student-athlete” and why it was created. By addressing college athletes as student-athletes, it prevents potential lawsuits, such as workmen’s compensation, death benefits, etc. (McCormick & McCormick, 2006). Fairclough and Wodak’s (1997) main tenets of CDA will illustrate a comprehensive conclusion to this study. Fairclough and Wodak believe that CDA research should: address social problems, touch on power relations that are discursive, contain discourse that constitutes society and culture, produce ideological work with historical events, link text and society as mediation, be interpretative and explanatory, and possesses a form of social action.

I am confident in saying that this study embraces several of these tenets. For example, the social and political problem of not paying student-athletes crosses multiple disciplines—the social and cultural ideology of the alarming low graduating rate of African Americans student-athletes who are football and basketball players, and the historical events of when student-athletes were legally considered employees for colleges and universities. With that being said, where do we go from here? Perhaps we can use language as a cultural mediating tool between relationships of power and privileged structures of society such as institutions to equalize power and control through the access to knowledge (Rogers et al., 2004).


National Letter of Intent (2012-13). Administered by the NCAA Eligibility Center on behalf of the Collegiate Commissioners Association (CCA).


Penn State Athletics Compliance Office, Division 1 Football Compliance Issues in (2010-2011).


*Rensing v. Indiana State University Board of Trustees* 444 N.E. 2d 1170 Ind. (1983).


APPENDIX A

NATIONAL LETTER OF INTENT

2011-12

Administered by the NCAA Eligibility Center on behalf of the Collegiate Commissioners Association (CCA).

Do not sign prior to 7 a.m. (local time) on the following dates or after the final signing date listed for each sport.

<table>
<thead>
<tr>
<th>SPORT</th>
<th>INITIAL SIGNING DATE</th>
<th>FINAL SIGNING DATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Basketball (Early Period)</td>
<td>November 10, 2010</td>
<td>November 17, 2010</td>
</tr>
<tr>
<td>Basketball (Regular Period)</td>
<td>April 13, 2011</td>
<td>May 18, 2011</td>
</tr>
<tr>
<td>Football (Regular Period)</td>
<td>February 2, 2011</td>
<td>April 1, 2011</td>
</tr>
<tr>
<td>Field Hockey, Soccer, Men's Water Polo, Track and Field/Cross Country</td>
<td>November 10, 2010</td>
<td>August 1, 2011</td>
</tr>
<tr>
<td>All Other Sports (Early Period)</td>
<td>April 13, 2011</td>
<td>November 17, 2010</td>
</tr>
<tr>
<td>All Other Sports (Regular Period)</td>
<td>August 1, 2011</td>
<td></td>
</tr>
</tbody>
</table>

IMPORTANT - READ CAREFULLY

It is important to read this entire document before signing it. One copy is to be retained by you and the other copy is to be returned to the institution, which will file a copy with the appropriate conference office. Copies transmitted by facsimile or electronically are considered to be valid. The National Letter of Intent (NLI) is a voluntary program with regard to both institutions and prospective student-athletes. No prospective student-athlete or parent is required to sign the NLI for a prospective student-athlete to receive athletics aid and participate in intercollegiate athletics.

1. Initial Enrollment in Four-Year Institution. This NLI applies only to prospective student-athletes who will be entering four-year institutions for the first time as full-time students. It is also permissible for 4-2-4 transfer student-athletes who are graduating from a two-year college to sign the NLI. No prospective student-athlete enrolling at midyear shall sign an NLI, with the exception of midyear two-year college transfer student-athletes in football, who must graduate at midyear for this NLI to be valid.

2. Financial Aid Requirement. At the time I sign this NLI, I must receive a written offer of athletics financial aid for the entire 2011-12 academic year from the institution named in this document. The offer must list the terms, conditions and amount of the athletics aid award. A midyear football two-year college transfer student-athlete must receive a written offer of athletics financial aid for the remainder of the 2010-11 academic year. If the institution does not renew the athletics aid for the following academic year, the student-athlete must be released from the NLI. In order for this NLI to be valid, my parent/legal guardian and I must sign the NLI, and I must also sign the offer of athletics aid (see institutional policy for parent/legal guardian signature) prior to submission to the institution named in this document, and any other stated conditions must also be met. If the conditions stated on the financial aid offer are not met, this NLI shall be declared null and void.

• Professional Sports Contract. If I sign a professional sports contract in the sport in which I signed the NLI, I remain bound by the NLI in all sports, even if NCAA rules prohibit the institution named in this document from providing me with athletics financial aid.


a. One-Year Attendance Requirement. The terms of this NLI shall be satisfied if I attend the institution named in this document for one academic year (two semesters or three quarters) as a full-time student.

b. Two-Year College Graduation. After signing this NLI while in high school or during my first year of full-time enrollment at a two-year college, the terms of this NLI will be satisfied if I graduate from the two-year college.

4. Basic Penalty. I understand that if I do not attend the institution named in this document for one full academic year and I enroll in another institution participating in the NLI program, I may not compete in intercollegiate athletics until I have completed one full academic year in residence at the latter institution. Further, I understand I shall be charged with the loss of one season of intercollegiate athletics competition in all sports. This is in addition to any seasons of competition expended at any institution.

5. Early Signing Period Penalties. Prospective student-athletes who will participate in football are prohibited from signing an NLI during the early signing period. A student who signs an NLI during the early period in a sport other than football will be ineligible for practice and competition in football during the first year of enrollment at an NLI member institution and shall forfeit one season of competition in football. In circumstances where a student's primary sport is not football, but the student anticipates participating in football, the student should delay signing an NLI until either the football signing period or during the regular signing period for all other sports.

6. Release Request and Appeal Process. In the event I wish to be released from my NLI obligation, the NLI release request form and appeal process information can be reviewed on the NLI Web site at www.nationalletter.org. I understand that the NLI Policy and Review Committee has been authorized to issue interpretations, settle disputes and consider petitions for complete release from the provisions of the NLI when

2011-12 - 1
extenuating circumstances are determined to exist and the signing institution denies my request for release. I further understand the Committee's decision may be appealed to the NLI Appeals Committee, whose decision shall be final and binding.

7. Letter Becomes Null and Void. This NLI shall be declared null and void if any of the following occur:

   a. Admissions Requirement. This NLI shall be declared null and void if the institution named in this document notifies me in writing that I have been denied admission or, by the opening day of classes in fall 2011, has failed to provide me with written notice of admission, provided I have submitted a complete admission application. It is my obligation to provide, by request, my academic records and an application for admission to the signing institution. If I fail to submit the necessary academic credentials and/or application to determine an admission decision prior to September 1, the NLI shall be declared null and void. If I discovered I purposely failed to provide all necessary academic credentials to the institution, the NLI office per its review may determine the NLI remain binding.

   This NLI shall be rendered null and void if I am eligible for admission, but the institution named in this document defers admission to a subsequent term. However, this NLI remains binding if I defer my admission.

   b. Eligibility Requirements. This NLI shall be declared null and void if, by the opening day of classes in fall 2011, I have not met (1) the NCAA initial eligibility requirements; (2) the NCAA, conference or institution's requirements for financial aid to student-athletes; or (3) the two-year college transfer requirements, provided I have submitted all necessary documents for eligibility determination.

      (1) This NLI shall be rendered null and void if I become a nonqualifier (per Bylaw 14.3). This NLI remains valid if I am a partial qualifier per NCAA Division II Bylaw 14.3.2 if I never meet the institution's policies for receipt of athletics aid.

      (2) It is my obligation to register with and provide information to the NCAA Eligibility Center. If I fail to submit the necessary documentation for an initial-eligibility decision and have not attended classes at the signing institution, the NLI shall be declared null and void. If discovered I purposely failed to provide all necessary information to the NCAA Eligibility Center, the NLI office per its review may determine the NLI remain binding.

      (3) This NLI shall be declared null and void if I am a midyear football two-year college transfer and I fail to graduate from two-year college at midyear (only for Division I nonqualifier). The NLI remains binding for the following falling term if I graduated, was eligible for admission and financial aid and met the two-year college transfer requirements for competition for the winter or spring term, but chose to delay my admission.

   c. One-Year Absence. This NLI shall be declared null and void if I have not attended any institution (two-year or four-year) for at least one academic year provided my request for athletics financial aid for a subsequent fall term is denied by the signing institution. I may still apply this provision if I initially enrolled in an NLI member institution but have been absent for at least one academic year. To apply this provision, I must file with the appropriate conference office a statement from the director of athletics at the institution named in this document that such athletics financial aid will not be available for the requested fall term.

   d. Service in the U.S. Armed Forces/Church Mission. This NLI shall be declared null and void after serving active duty with the armed forces of the United States or an official church mission for at least 12 months.

   e. Discontinued Sport. This NLI shall be declared null and void if the institution named in the document discontinues my sport.

   f. Recruiting Rules Violation. If eligibility reinstatement by the NCAA student-athlete reinstatement staff is necessary due to NCAA and/or conference recruiting rules violations, the institution must notify me that I have an option to have the NLI declared null and void due to the rules violation. It is my decision to have the NLI remain valid or to have the NLI declared null and void, permitting me to be recruited and not be subject to NLI penalties.

8. Recruiting Ban After Signing. I understand all participating conferences and institutions are obligated to respect my signing and shall cease to recruit me after my signing with said NLI. I shall notify any recruiter who contacts me that I have signed an NLI. Once I enroll in the institution named in this document, the NLI Recruiting Ban is no longer in effect and I shall be governed by applicable NCAA bylaws.

9. 14-Day Signing Deadline. If my parent/legal guardian and I fail to sign this NLI and accompanying offer of athletics financial aid (see institutional policy for parent/legal guardian signature) within 14 days after the date of issuance, it will be invalid. In that event, another NLI may be issued within the appropriate signing period. Signing Deadline (November Only): NLI must be signed between the dates of November 10-17, 2010 (the 14-day signing deadline is not applicable during the November signing period). Additionally, the institution must file the NLI with its conference office within 21 days of the date of final signature; otherwise, the NLI is invalid.

10. Statute of Limitations. This NLI is in full force and effect for a period of four years, commencing with the date I sign this NLI. I am subject to the NLI penalty if I do not fulfill the agreement; however, once four years has elapsed, the NLI is no longer binding.

11. Coaching Changes. I understand I have signed this NLI with the institution and not for a particular sport or coach. If a coach leaves the institution or the sports program (e.g., not retained, resigns), I remain bound by the provisions of this NLI. I understand it is not uncommon for a coach to leave his or her coaching position.

12. Coaching Contact Prohibited at Time of Signing. A coach or an institutional representative may not hand deliver this NLI off campus or be present off campus at the time I sign the NLI per NCAA rules. This NLI may be delivered by express mail, courier service, regular mail, e-mail or facsimile machine. An NLI submitted to an institution electronically shall be considered a valid copy.
2011-2012

Name of Prospective Student-Athlete

Last

First

Middle Initial

Permanent Address

City

State

Postal Code

Country

Prospective Student-Athlete’s NCAA ID

Date of Birth

Submission of this NLI has been authorized by:

SIGNED

Director of Athletics (or designee)

Date Issued to Prospective Student-Athlete

For Institutional Use Only:

☐ Two-year college transfer

☐ 2-4 Qualifier

☐ 2-4 Nonqualifier

☐ Two-year college graduate

Expected graduation date

This is to certify my decision to enroll at:

Name of Institution

I certify that I have read all terms and conditions included in this document. I have discussed them with the coach and/or other staff representatives of the institution named above, and I fully understand, accept and agree to be bound by them. I understand that signing this NLI is voluntary and I am not required to sign the NLI to receive athletic aid and participate in intercollegiate athletics. Additionally, I give my consent to the signing institution, to disclose to authorized representatives of its athletic conference (if any), the NCAA, the NCAA Eligibility Center and the NLI Office any documents or information pertaining to my NLI signing. Further, I give my consent to the NLI Office to disclose my name and personally identifiable information from my education records to a third party (including but not limited to the media) as necessary to correct any inaccuracies reported by the media or related to my NLI signing, without such disclosure constituting a violation of my rights, including my rights under the Family Educational Rights and Privacy Act. If I falsify any part of this NLI or if I have knowledge that my parent or legal guardian falsified any part of this NLI, I understand I shall forfeit the first year of my athletics competition at any NLI participating institution. My signature on this NLI nullifies any agreements, oral or otherwise, which would release me from the conditions stated within this NLI.

SIGNED

Prospective Student-Athlete Signature

Signing Date (Mdh/Day/Yr)

Time (A.M. / P.M.)

Do not sign prior to 7:00 a.m. (local time) on the initial signing date.

Parent/legal guardian signature is required if prospective student-athlete has not reached his or her 21st birthday.

SIGNED

☐ Parent or ☐ Legal Guardian Signature

(check one)

Signing Date (Mdh/Day/Yr)

Time (A.M. / P.M.)

Do not sign prior to 7:00 a.m. (local time) on the initial signing date.

Print Name of Parent/Legal Guardian

Telephone Number (including area code)

Copyright © National Letter of Intent

Rev. 18/01/2010
GRADUATE VITA

Omar X. Easy

EDUCATION

2012 The Pennsylvania State University
Degree: Ph.D. (Educational Leadership)
Areas of concentration: educational leadership, athletic administration, and court decisions on NCAA Bylaws

2011 The Pennsylvania State University
Degree: M.Ed. (Educational Administration)

2010 University of Phoenix
Degree: MBA. (Business Administration)

2001 The Pennsylvania State University
Degree: B.A. (Broadcast Journalism)
Minor: Business Management

EMPLOYMENT

2011- present Graduate Assistant, Pennsylvania State University Football
2009-2011 Graduate Assistant, Morgan Academic Support Center for Student-athletes, Pennsylvania State University
2007-2009 Director of the Everett High School Academic Support Center, Everett, Mass

TEACHING EXPERIENCE

Teaching Assistant for the Pennsylvania State University Law and Ethics in Education (EDLDR 577).

Teaching Assistant for the Pennsylvania State University Freshmen Student-Athletes Seminar (BBH 048).