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What are the Odds? Judicial Decisions Involving the NCAA: 1973-2020

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From 1973 to 2020 there were 174 judges involved in 116 federal court cases in which the National Collegiate Athletic Association (NCAA) was a party. Sixty-three percent of these cases resulted in a ruling favorable to the NCAA. Within this research setting, this study catalogued these judges’ backgrounds and experiences (e.g., birthplace, undergraduate institution[s] attended) to see if there were any discernible patterns or commonalities. While this study does not make any claims of causation or correlation, it does – given the importance placed on collegiate athletics in American society – pose the question: “Does identity formation and identity protection cognition shed light on judicial decisions during a time in which society’s views of college sport and amateurism underwent dramatic changes.

Keywords: identity protective cognition, judiciary, legal decisions, implicit bias
In 1981, the Board of Regents of the University of Oklahoma and University of Georgia filed an antitrust suit against the National Collegiate Athletic Association (NCAA), claiming the NCAA’s control over the televising of college football games violated § 1 of the Sherman Act and constituted a restraint of trade (National Collegiate Athletic Association v. Board of Regents, 1984). Filed in the United States District Court for the Western District of Oklahoma, presiding judge Lee Roy West immediately recused himself (Solomon, 2014) and judge Juan Guerrero Burciaga of the United States District Court for the District of New Mexico presided over the case. As a native Oklahoman and graduate of the University of Oklahoma (OU), West had no compunction admitting his loyalty to OU would not allow him to dispassionately consider the case and issue an impartial ruling. In an April 2011 interview, West detailed that his allegiance to the University of Oklahoma began as a high school football team captain and grew due to OU’s success in football, his personal friendship with three-time National Championship winning Oklahoma head football coach Barry Switzer, and his close friendship with All-American and Oklahoma football team captain Norman McNabb (Voices of Oklahoma, 2013). Football and his allegiance to Oklahoma – both the state and university – were fundamental components of West’s identity. West knew he could not be impartial in a case involving his alma mater.

The case from which Judge West recused himself – NCAA v. Board of Regents (BOR) (1984) – eventually came before the Supreme Court of the United States (SCOTUS) and was a watershed decision in major college athletics. While the NCAA lost this case, from 1984 to 2021, with a few notable – and more recent – exceptions (e.g., NCAA v. Alston, [2021]; O’Bannon v. NCAA, [2015]), courts have tended to rule in favor of the NCAA. Quite often the NCAA’s collegiate model, association bylaws, and articulated defenses – such as the Restitution Rule1 (Johnson, 2009; Kim, 2019) have been looked upon favorably by courts. Historically NCAA policies and procedures concerning governance and oversight of athlete eligibility have withstood legal scrutiny. However, legal challenges to NCAA bylaws and practices by administrators and coaches to have had relative success (e.g., Board of Regents v. NCAA [1984], Law v. NCAA [1998]). Notably, in NCAA v. Alston (2021) SCOTUS removed limitations on athlete compensation related to academic items.

Theoretically, judges should view every lawsuit through a neutral and dispassionate lens, relying on the rule of law and legal precedent in formulating their decisions. However, Walter Byers, former NCAA executive director, understood college sport is woven into the very fabric of American life. Byers knew full-well college sport is a “cultural gamechanger in the United States” (Wimmer Schwarb, 2018, para. 2). College sport fandom is passed down from generation-to-generation, reinforced through unique customs and traditions (Duffett, 2013; Mastromartino et al., 2018) that contribute to students, alumni, and fans’ identities.

Byers felt the entire “amateur” collegiate system would likely crumble if schools were forced to pay workers’ compensation claims for college athletes. Consequently, to reduce the legal and financial risks posed by “…the dreaded notion that NCAA athletes could be identified as employees by state industrial commissions and the courts” (Byers & Hammer, 1995, p. 69), he set out to ensure college sport was viewed as an extracurricular educational avocation. To help

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1 Designed to prevent cheating, the Restitution Rule permits the NCAA to impose punishments (e.g., vacate wins, pay fines, postseason bans) on institutions that allow an athlete to compete while challenging an NCAA ineligibility ruling. Critics contend this intimidates athletes and institutions, dissuading them from challenging NCAA ineligibility rulings (Silver, 2016).
achieve this goal, the NCAA national office created, developed, and embedded the term student-athlete in the American sport lexicon “… to convince workers’ compensation boards, as well as the general public, that scholarship athletes are students like any others” (Byers & Hammer, 1995, p. 69). Over the years, the term “student-athlete” has been applied not only to college athletes but also high school—and even middle school—athletes.

Murrell and Dietz (1992) found that group identification with a team predicts attitude and support levels of fan avidity among college sport fans. A sizeable number of college students—who eventually become alumni—are heavily invested in the success of their college sports teams, fostering a sense of community through a shared college sport identity (Jacobson, 2003). This shared identification may lead group members to seek out other fans and “defend” their identification. Accordingly, group members seek to have group beliefs confirmed (Giner-Sorolla & Chaiken, 1997; Kahan et al., 2007). Identity protective cognition (IPC) posits that group membership results in selective information processing that aligns individual beliefs with those of the affiliated group (Kahan et al., 2007).

Before Judge West was a judge, he was an undergraduate student. Like many students and alumni who also attended institutions with a “strong” athletic brand—might some indeterminant number of judges be predisposed to “protect” their college-sport fan identity developed while they were college students. Subsequently, to confirm their fan group identity, might fan-judges give deference (as did Justice Stevens in BOR) to the NCAA, its collegiate model of athletics or their alma mater.

Such institution-specific deference can be seen in Bloom v. NCAA (2004). University of Colorado football player and Olympic skier Jeremy Bloom was deemed ineligible by the NCAA for accepting endorsement payments related to his performance as a skier. Discovering a Colorado appellate court justice was a University of Colorado graduate and a Colorado football season ticket holder, Bloom and his legal team were optimistic the trial court decision upholding the NCAA’s ineligibility decision would be overturned. However, the justice’s fear of future NCAA sanctions and punishments (i.e., Restitution Rule) of the Colorado football team likely led to a ruling in favor of the NCAA, upholding Bloom’s ineligibility (Bloom v. NCAA, 2004; Silver, 2016). The NCAA has also recognized potential bias of judges with ties to state institutions and college athletics. When University of Nevada, Las Vegas (UNLV) men’s basketball head coach Jerry Tarkanian sued the NCAA in 1987, the NCAA asserted the Nevada state court would be inherently biased towards the flagship state institution and the well-known basketball coach (Dawson, 1989; Riley, 1997). Given that SCOTUS overturned the Nevada Supreme Court’s favorable ruling toward Tarkanian, the NCAA’s concern regarding a state court’s bias may have been well founded.

Interestingly, a favorable bias toward an individual college or the collegiate model of athletics has seemingly manifested itself even when a college athlete, school, or the NCAA is not involved in litigation. Eren and Mocan (2016) found that state juvenile court judges issued harsher punishments following a loss by their favorite college football team. In addition, the cultural importance of college sport has impacted judges’ dockets, with several judges in Southeastern states postponing trials to avoid conflicts with Southeastern Conference (SEC) football games (Faulk, 2012; Kercheval, 2017; Leech, 2010; Sisson, 2009).

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2 In May 2023 the National Labor Relations Board (NLRB) Los Angeles office issued a complaint alleging the NCAA, Pac-12 Conference and the University of Southern California have “…unlawfully misclassified college athletes as ‘student-athletes’ rather than employees” (Berkowitz, 2023, para. 1). The complaint applied to college athletes in football, as well as men’s and women’s basketball.
The deference judges have expressed towards the NCAA and amateurism was summarized by Justice John Paul Stevens in *NCAA v. BOR* (1984): “The NCAA plays a critical role in the maintenance of a revered tradition of amateurism in college sports…it needs ample latitude to play that role” (p. 22). With this in mind, the current study examines the demographic and experiential characteristics (i.e., age, gender, race, hometown, athletic experience, higher education institution[s] attended) of judges presiding in court cases involving the NCAA. The following research questions were developed:

RQ 1: Are judges more likely to show deference to (e.g., rule in favor of) the NCAA in cases involving the organization?

RQ 2: Are judges born in different geographic regions of the United States more likely to rule in favor of the NCAA?

RQ 3: Are judges who have attended Power-5 institutions for either undergraduate or graduate school more likely to rule in favor of the NCAA?

To our knowledge, to date no study has tabulated the demographic characteristics of judges in cases involving the NCAA. Given the large number of legal cases involving the NCAA, an examination of the socio-demographic characteristics of judges who have issued opinions regarding the NCAA provides for an interesting and thought-provoking exercise. Accordingly, the present study engages in a discussion of college sport fandom, social identity theory, college sport fan identity, and identity-protective motivated reasoning within the context considering the possibility of judicial bias in some cases involving the NCAA.

**Literature Review**

**Social Identity Theory**

As Tajfel (1974) noted, “…an individual confronts from the beginning of his life a complex network of groupings which presents him with a network of relationships into which he must fit himself” (p. 67). An individual must discover, develop, and categorize their place in these networks (Tajfel, 1974). These social networks or groups are “…defined by prototypical characteristics abstracted from the members” (Ashforth & Mael, 1989, p. 20). This social self-categorization results in constructed social selves that individuals accept as descriptive of themselves and/or their peer groups (Jacobson, 2003).

This self-categorization allows individuals to identify themselves in the social environment through their “oneness with or belongingness with some human aggregate” (Ashforth & Mael, 1989, p. 21). **Social identity theory** emphasizes that an individual’s identity is developed within group processes/relations. Our social identity reflects who we are. As we navigate the world, we place people on our social map, identifying them as either members of our social peer group, or non-member “outsiders.” A person’s social identity is “…that part of an

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3 The Power-5 conferences consist of predominantly flagship institutions that are the largest revenue generators in college athletics. The Power-5, or Autonomous Five, conferences are the Atlantic Coast Conference (ACC), Big Ten Conference (Big Ten), Big 12 Conference (Big 12), Pacific-12 Conference (Pac-12), and Southeastern Conference (SEC).
individual’s self-concept which derives from [their] knowledge of [their] membership in a social group (or groups) together with the emotional significance attached to that membership” (Tajfel, 1974, p. 69). Importantly, a person is aware that they belong to a given social category or group (Stets & Burke, 2000).

A major focus of social identity theory is examining intergroup relations, or how individuals view themselves as members of their “in group” in comparison with another “out-group” (Stets & Burke, 2000). Upon joining a group, individuals will enhance their self-image by thinking of their in-group as superior to any other out-group(s). Individuals tend to remain a member of an in-group and seek membership in new groups to the extent the group(s) contribute to their social identity. Hogg and Hardie (1992) found that group identification is associated with a strong attraction to a group, independent of individual attachments.

**College Sport Fan Identity**

One of the benefits of affiliation with an in-group is the sense of belonging, feelings of camaraderie, prestige, and group solidarity as part of a team or collective (Jacobson, 2003). While most often social identity research of sports fandom – including college sports fandom – has focused on the team level, collective membership (i.e., fandom) may also be at the conference (e.g., SEC, Big Ten Conference [Big Ten]), sport (e.g., college football, college basketball, college softball, college baseball), or – in today’s NIL (name, image, & likeness) environment – a “collective” is an entity (independent of a university), that serves a variety of purposes, including pooling funds from boosters and businesses, to facilitate NIL deals for college athletes, and/or create ways for college athletes to monetize their personal brands. Most often, an NIL collective is driven by boosters, whether it be boosters who make one-time payments or contribute to the collective on a subscription basis. While there are several iterations of collectives, Nakos (2022) outlines three basic types: 1) marketplace collective (a place for athletes and businesses to connect and do deals), 2) donor-driven collective (pooling booster funds and giving the money to players. “They basically wash the donor money, paying these players in an NCAA-compliant manner” [Nakos, 2022, para. 20.]), and 3) dual collective (a combination of a marketplace collective and a donor-driven collective. A dual collective provides both a place for boosters to donate and while also facilitating deals with college athletes).

Membership in a general or NIL-specific collective “…supports reinforces, influences, inhibits or suppresses actions taken by an individual” (Jacobson, 2003, p. 7). Interestingly, the support for a sport, team, or league in college sport often also involves supporting the collegiate model of athletics. Many fans have expressed their support for their fellow students or future fellow alumni who also happen to play college athletics. Supporters of the “collegiate model of athletics” have long contended that rather than simply rooting for “their” players and/or team, college fans often also root for the overall perceived collegiate experience that involves going to class with members of the various teams during the week and then rooting for them at nights and on weekends as they compete. Members of the college sport collective (writ large) and a college-sport NIL collective often feel an obligation to protect or support not only their individual team, but also the conference in which their team competes, a specific college sport, or the overall collegiate model of athletics (Southall & Staurowsky, 2013). This conference affiliation is

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4 In this instance a collective is a larger group of individuals or stakeholders who share an intent or belief system.

This need to protect and/or preserve “amateur” college sport is based upon a unilateral belief that “participation in college sports enhances the educational experience of student-athletes and that such educational value is the only rational reason for the continued support of intercollegiate athletics in higher education” (Renfro, 2012, p. 33). Several key principles underlie the NCAA college sport collective. These five principles were articulated in former NCAA President, Dr. Myles Brand’s 2003 State of the Association address:

1. The conviction that intercollegiate athletics must be integrated into the academic mission of colleges and universities.
2. Presidential control of intercollegiate athletics is essential.
3. The positive value of intercollegiate athletics should be stressed and reinforced.
4. The integrity of intercollegiate athletics is and must remain paramount. College sports have their own unique identity. They are different from professional sports.
5. The norms of ethical behavior must guide all of intercollegiate athletics (Brand, 2003, pp. 4-6).

Fundamental to Brand’s – and by extension members of the college sport collective’s – contention that college sport is superior to professional sport is the value proposition that:

These athletes are amateurs in the sense of the term most often understood by the general public. The sense of the game for its own value, the feeling of pride in the competition itself, the recognition for the local champions (Brand, 2003, p. 4).

This value proposition is specifically referenced in NCAA Bylaw 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 to be derived. Student participation in intercollegiate athletics is an avocation, and student-athletes should be protected from exploitation by professional and commercial enterprises (NCAA, 2022, para. 1).

Throughout his 2003 address, Brand spoke of the many members of the college sport collective for whom intercollegiate athletics provides “unique” and “extraordinary” opportunities, including young women and men (i.e., college athletes), as well as alumni, donors, and “campus friends” (Brand, 2003). By the end of his address, Brand had clearly articulated the social identity of members of the college sport collective, comprised “…of similar persons all of whom identify with each other, see themselves and each other in similar ways, and hold similar views, all in contrast to members of outgroups” (Stets & Burke, 2000, p. 228). For Brand and other members of the college sport collective, the fundamental importance of college sport to American culture cannot be overstated. “Intercollegiate athletics has become an integral part of college life and culture. We must do it right” (Brand, 2009, p. 9).
Identity-Protective Motivated Reasoning

As has been previously discussed, group membership not only provides social identity benefits but may also affect processing of information regarding nearly all categories of social stimuli (Kahan et al., 2007). Not surprisingly, “…when a social identity is salient, individuals perceive the world through the lens of that group membership” (Maitner et al., 2010, p. 441). Accordingly, group members tend to subscribe to beliefs common to in-group members. In addition, challenges to in-group beliefs can threaten a person’s well-being “…by driving a wedge between that person and other group members, by interfering with important practices within the group, or by impugning the social competence (and thus the esteem-conferring capacity) of a group generally (Kahan et al., 2007, p. 470). Since an individual’s well-being is inextricably bound to group membership, group members not only adopt group beliefs but also resist contrary “factual” information, especially if that information comes from “out-group” sources, which are often perceived as less knowledgeable or trustworthy (Kahan et al., 2007). This is known as identity protective cognition (IPC), which is a tendency to “…seek out and assess evidence in biased patterns that reinforce the positions that they, or those who share their ideological predispositions, already hold” (Kahan, 2013, p. 407). IPC is also sometimes referred to as motivated reasoning.

Consistent with IPC, supporters of the NCAA collegiate model of athletics would be expected to seek to deflect threats to college sport by adopting widely accepted group cultural norms associated with college sport. Since these norms represent their collective social identity, they adhere to the Brand’s collegiate model principles previously outlined. Consequently, group members – including members of the judiciary who are also college sport fans and supporters of the collegiate model of athletics – understand the “…need to protect and/or preserve ‘amateur’ college sport…based upon the unilateral belief that participation in college sports enhances the educational experience of student-athletes” (Renfro, 2012, p. 33).

Geographic Identity Formation

From early adolescence, cultural identity is crafted and recreated over the course of one’s lifespan. Geographic position holds an inherent role within cultural identity development as learned environments influence perceptions of acceptable behaviors, actions, and ideological beliefs (Lalli, 1992; Lapresta-Rey et al., 2018; Tsai et al., 2002). Within the context of a collective national identity, structurally differing cultural identities unify within a common shared purpose or objective (Giroux, 1995; Schildkraut, 2011). While there may be a shared national identity, cultural identity formation may result in unique cultural enclaves within a given geographic region.

In the context of the United States, cultural identity is fundamentally shaped and influenced along geographic lines. Differing geographic regions may communicate value systems that structurally shape and guide ideological beliefs for a sub-section of the population. The formation of a geographically influenced ideological belief system is a significant factor in cultural identity formation (Eaves, 2017; Jansson, 2003; Reifurth et al., 2019). While cultural
identities in the United States are unique in and among themselves, the cultural identity of the Southern United States is often viewed as a primary example of geographic stratification.

Traditionally, the White Southern cultural identity has been perceived as being markedly different from other geographic areas of the United States (Cobb, 2007; Prince, 2014; Thompson, 2013; Woodward, 2008). For a significant number of Southerners their “way of life” is distinctly shaped by loss. In the extreme, this sense of loss is mythologized as “The Lost Cause of the Confederacy,” which justifies secession, formation of the Confederate States and armed rebellion against the United States as just, heroic and centered on “States Rights. Prominent historian C. Vann Woodward articulated this element of Southern cultural identity:

Success and victory are still national habits of mind. This is but one among several American legends in which the South can participate only vicariously in part. Again, the Southern heritage is distinctive. For Southern history, unlike American, includes large components of frustration, failure, and defeat. It includes not only an overwhelming military defeat but long decades of defeat in the provinces of economic, social, and political life (2008, p. 19).

Such loss has crafted and continues to define this unique cultural identity. The sense of loss has fostered a cultural sub-identity in the South that challenges a shared national identity. While the American Civil War serves as an extreme example of the lengths to which a geographically distinct population will go to protect their cultural identity, college football in the South (i.e., SEC football) provides another example of identity protectiveness.

SEC Football Identity

College football in the SEC has been equated to global sporting events among nations (e.g., FIFA World Cup, Olympic Games):

SEC football is like the World Cup, a chance to pick up a flag and participate in ages-old grudges and engage in an ancient ritual. Thank God it is also violent. (Thompson, 2013, p. 128)

The SEC considers itself the preeminent college football conference and harnesses the unique cultural identity of the South through strategic branding and marketing initiatives (Bell et al., 2019; Cooper, 2020; Morgan & Klimasewski, 2015). Conference branding initiatives such as SEC Country or SEC Nation serve to provide distinction between Southeastern states with SEC athletics programs and all other college athletics conferences and programs (see Figure 1). This manufactured distinction between the SEC and other conferences supports the SEC’s unique Southern cultural identity.

5 According to the United States Census Bureau, Southern states consist of Alabama, Arkansas, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, and West Virginia.

6 In chronological order of date of secession, the Confederate States of America consisted of South Carolina, Mississippi, Florida, Alabama, Georgia, Louisiana, Texas, Virginia, Arkansas, Tennessee, and North Carolina.
In a larger societal context, sports are a conduit of societal norms and values. The South is good at college football partly because the South is good at high school football. However, an inadequate educational system and programmatic structural deficiencies perpetuates an ideology that sport is the sole escape route for impoverished Southern students (Bend & Petrie, 1977; Carrington, 1986; Spaaij, 2009). The inordinate societal value placed on athletic identity exacerbates athletic role engulfment at the youth-sport level (Kidd, 2019), which is perpetuated through college football’s dominance within Southern media and culture (Bell et al., 2019; Cooper, 2020; Morgan & Klimasewski, 2015). Accordingly, there is a strong bond between college football in the South and identity politics (Thompson, 2013). Crafting a public relations campaign that situates and postulates SEC football dominance gives credence to campaign slogans such as “in the SEC, it just means more” and influences pollsters, rankings, and – most importantly – the maintenance of SEC football power that is articulated by College Football Playoff (CFP) committee members. The SEC maintains its hegemonic power over the entirety of collegiate athletics through a targeted, institutionalized, media-driven, and ideological campaign. “The SEC, it just means more.” is an ideological rallying cry for ardent SEC fans that unifies oppositional forces (i.e., fanbases) under a shared and common cause. This and other shared “chants” recognize and perpetuate the SEC’s notions of dominance (Bell et al., 2019; Thompson, 2013).

For many adolescents, the size and stature of SEC football is part of their cultural heritage. Harnessing unique components related to Southern cultural identity, SEC athletic departments and stakeholders have made use of the conference’s innate Southern cultural identity to develop a shared SEC football identity. Prominent sports media personality Colin Cowherd exemplified this inherent link between Southern cultural identity formation and college football:
The South has often felt left behind or alienated or targeted by the North for their political and racial position. People mock the South. [College football is] so damned important to the South because every region needs to be great at something. It’s a way of saying ‘we’re number one.’ The one way they can give a big F-you to the rest of the country is with college football. (Thompson, 2013, p. 131)

Given the stature and pervasiveness of college football in the South and that individuals seek to protect the fundamental components related to their identity (i.e., IPC) (Kahan et al., 2007; McCright & Dunlap, 2011) – cultural identity being fundamental to one’s identity – this study sought to examine the demographic components related to cultural identity formation in connection to judicial decisions regarding the NCAA as either plaintiff or defendant. While members of the judiciary are tasked to adjudicate in an objective manner, subjectivity is inherent to the system (Peer & Gamliel, 2013; Porter & Ten Brinke, 2009). Accordingly, the power of one’s cultural identity may serve to influence judicial decisions within unique contexts (i.e., court cases involving collegiate athletics).

**Implicit Judicial Bias**

Legal scholars have long recognized the presence of selective bias in judicial decisions (Miceli, 2008; Priest, 1977). Such selective bias influences the direction in which litigation is continuously constructed and deconstructed (Gennaioli & Schleifer, 2007a, 2007b). Judicial bias is a form of unconscious implicit bias and is the manifestation of demographic characteristics and lived experiences of judges. Rachlinski et al. (2009) found that implicit racial bias has a profound effect on trial judges while political bias has been identified as a significant factor in the attitudes and behaviors of judges (Miles & Sunstein, 2008; Posner, 2008). While judges are tasked with objectivity when rendering decisions, subjectivity – conscious or unconscious – is inherently embedded within the judiciary.

While judicial implicit bias has largely been examined in the context of demographic characteristics, sport fandom and allegiance have been found to influence judges’ sentencing behavior as well. Eren and Mocan (2016) found that judges issued harsher sentences the week following their favorite college football team lost a game. In fact, the severity of sentencing was exacerbated in cases in which a judge had also completed an undergraduate degree at the institution housing the football team they cheer for. While conducted in a trial court setting, Eren and Mocan’s (2016) findings illustrate that college sport fandom – specifically college football fandom – can impact judicial decisions. Accordingly, using the theoretical lens of identity protective cognition, this study sought to examine judicial decisions in cases involving the NCAA.

**Methodology**

**Data Acquisition**

Court case documents were deemed the appropriate initial point of data collection due to the volume of information found within each document. By utilizing filed court cases and judicial decisions as the initial source of data, researchers were able to remove any third-party subjectivity that may exist. Documents were analyzed to uncover descriptive information about each case: defendant, plaintiff, court level, judge(s) presiding, opinion, etc. The research team...
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utilized LexisNexis University (Nexis Uni) to filter case results to those that explicitly listed the NCAA as the defendant or plaintiff. Researchers chose to delimit cases to those directly involving the NCAA as the defendant or plaintiff to ensure the NCAA’s involvement in the case and interest in the decision. Cases in which the NCAA was merely mentioned as an organization in a dispute between individuals or entities (e.g., Brentwood Academy v. Tennessee Secondary Athletic Association [2001], Cohen v. Brown University [1996], Fisher v. University of Texas [2016]) were not analyzed.

In addition, only cases filed within federal court system (i.e., district court, court of appeals, SCOTUS) were included in the analysis. While a single judge presides over a district court, the court of appeals and SCOTUS usually feature a panel of three or nine judges, respectively. Accordingly, judicial deference toward the NCAA was determined based off the number of judges affirning or dissenting a written opinion. In the 1984 BOR decision for instance, the opinion of the court delivered by Justice Stevens and affirmed by Justices Blackmun, Brennan, Burger, Marshall, O’Connor, and Powell was recorded as a decision against the NCAA while the dissenting opinion filed by Justice White and joined by Justice Rehnquist was recorded as a decision in favor of the NCAA. An expressed limitation of analysis is to be noted as the binary classification of for or against the NCAA does not consider the nuance of judicial proceedings. While the opinion of the court delivered by Justice Stevens in BOR (1984) was recorded as against the NCAA in this study, much of the language from this decision has been used to defend the NCAA and its practices (Baker & Brison, 2016).

Descriptive variables were extracted from the case documents. Demographic information of judges presiding over cases involving the NCAA was then compiled across several variables. Researchers utilized online databases to gather background information on judges: Lexis Advance Litigation Profile, the Federal Judicial Center, and Justia.com. Demographic variables included: date of birth, age on date of decision(s) in respective cases involving the NCAA, gender, race, hometown, adolescent athletic experience, undergraduate institution, graduate institution, post-graduate institution, college athletics experience, and professional athletics experience.

After conducting an initial Nexis Uni search of cases involving the NCAA, 1973 was chosen as the study’s starting point (re: Parish v. NCAA [1973], Howard University v. NCAA [1973], Buckton v. NCAA [1973]) as search results yielded a lack of complete case files involving the NCAA prior to this date. During statistical analysis, judges were periodically arranged based on variables including date of birth, place of birth, age on date of decision, gender, race, athletics experience, and institution(s) attended.

**Design**

The researchers were first interested in testing possible decision-making factors between judges. Additionally, researchers were interested in identifying specific demographic and experiential variables that might play a role in a judge’s decision. The outcome of interest was whether a judge ruled in favor of the NCAA. As previously stated, it should be noted this outcome is nuanced as a judge’s ruling includes multiple factors. In addition to existing laws in place at the time of the ruling, judges most often follow precedent in deciding a case. Accordingly, any association discovered in this research must be considered within the nuances of judicial decisions.

Given this nuance inherent to any judicial decision, logistic regression was deemed a viable measure in which to analyze possible decision-making factors between judges. Logistic regression is an accepted statistical test used to “obtain odds ratio in the presence of more than
one explanatory variable” (Sperandei, 2014, p. 12). Correspondingly, odds ratios provide researchers a measure that directly examines the relationship between a single explanatory variable and a specific event of interest. Within the context of this study, the specific event of interest was rather judges ruled in favor or against the NCAA. As noted, given judicial decisions inherently involve a number of explanatory variables, odds ratios were determined to be a suitable measure to examine the relationship between each variable and judges’ rulings in favor or against the NCAA.

Demographic Variables

General demographic variables considered were a judge’s age at the time of ruling, gender, race, and place of birth. Age was treated as a continuous variable while gender and race were treated as categorical. Place of birth was further treated as a categorical variable but grouped into geographic regions. These regions included the Southeast, Northeast, Midwest, Southwest, West, and non-continental/international as outlined by the United States Census Bureau.

Additional variables that indicated group belonging in categories both directly and indirectly related to the NCAA, especially in relation to a judge’s education, were added. These variables were all binary. Education-related variables included whether a judge’s undergraduate institution was a NCAA Division I school, a Power-5 school, or won any basketball, baseball, or football championships (conference or national) while the judge was enrolled.

Case-related variables were also included in the analysis. Further exploration led to the addition of a new geographic comparison using the place of birth variable; a binary variable as to whether a judge was born in an SEC-affiliated state (i.e., states that currently house an SEC institution). These states included Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, Missouri, South Carolina, Tennessee, and Texas. This association also allowed the researchers to place the geographic region variable within the context of the NCAA and, to a more specific extent, college football.

Findings

Overall, 116 court cases were analyzed featuring 174 unique judges from 1973-2020. Sixty-five cases were filed in United States District Court, 47 in the United States Court of Appeals, and four in SCOTUS. Overall, the NCAA appears as the plaintiff a total of 16 times indicating that the NCAA was the defendant in federal court 100 times from 1973-2020. While the subject area varied case to case, 28% of cases concerned antitrust status (n = 33) and 40% (n = 46) involved eligibility standards (see Table 1). In antitrust cases, courts sided with the NCAA 67% of the time while in cases regarding eligibility standards, courts sided with the NCAA 74% of the time. A breakdown of analyzed cases can be found in Table 1.

The average age (at the time of decision) of the 174 unique judges in this study was 62 years of age. Demographically, the analyzed judges were overwhelmingly male (n = 140, 80%) and White (n = 143, 82%). While the development of a college sport identity is most often attributed to an undergraduate student fan experience, a judge’s graduate degree (including juris doctorate [JD]) institution was also gathered for analysis. While only 33% of judges (n = 58) completed an undergraduate degree at a Power-5 university, 52% of judges (n = 90) completed at least one degree program at a current Power-5 institution. Given the average birth year of analyzed judges was 1933, it is not surprising that 63 judges possessed military experience, primarily in World War II. Geographically, 27 judges were born in the Southeastern United States.
The largest geographic birthplace of judges was the Northeast \((n = 52, 30\%)\). A breakdown of analyzed judge demographics can be found in Table 2.

### Table 1

**Summary of Analyzed Cases**

<table>
<thead>
<tr>
<th>Variable</th>
<th># of cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>U.S. District Court</td>
<td>65</td>
</tr>
<tr>
<td>U.S. Court of Appeals</td>
<td>47</td>
</tr>
<tr>
<td>U.S. Supreme Court</td>
<td>4</td>
</tr>
<tr>
<td>NCAA as Plaintiff</td>
<td>16</td>
</tr>
<tr>
<td>NCAA as Defendant</td>
<td>100</td>
</tr>
<tr>
<td>Antitrust Suit</td>
<td>33</td>
</tr>
<tr>
<td>Eligibility Lawsuit</td>
<td>46</td>
</tr>
<tr>
<td>Title IX Litigation</td>
<td>9</td>
</tr>
<tr>
<td>Other Disputes</td>
<td>28</td>
</tr>
</tbody>
</table>

### Table 2

**Summary of Analyzed Judges**

<table>
<thead>
<tr>
<th>Variable</th>
<th># of judges</th>
</tr>
</thead>
<tbody>
<tr>
<td>Male</td>
<td>140</td>
</tr>
<tr>
<td>Female</td>
<td>34</td>
</tr>
<tr>
<td>White</td>
<td>143</td>
</tr>
<tr>
<td>Non-White</td>
<td>22</td>
</tr>
<tr>
<td>Power-5 (Undergraduate)</td>
<td>58</td>
</tr>
<tr>
<td>Power-5 (Undergraduate or Graduate)</td>
<td>90</td>
</tr>
</tbody>
</table>

*No identifiable racial information could be located for nine \((n = 9)\) judges.*

### Analysis

The initial analysis of this data was done via multiple logistic regression using stepwise selection methods. Given that many of the variables under consideration were binary, the researchers decided to evaluate several variables individually. The variables selected for individual evaluation were Division I affiliation, Power-5 affiliation, SEC affiliation, geographic place of birth (e.g., Southeast, Northwest, Midwest), gender, race (i.e., White and non-White) for a total of 11 different variables or variable combinations. To evaluate the relationship between these variables the researchers used rate differences to identify important variables before calculating odds ratios. Odds ratios were selected as the appropriate means of analysis as they can indicate association even if statistical significance is not present (Szumilas, 2010; Tenny & Hoffman, 2017). Table 3 shows the rates of cases in favor of the NCAA by membership while Table 4 shows odds ratios for selected variables.

In general, judges were more likely to rule in favor of the NCAA, ruling in a manner that favors the NCAA over 63% of the time. While the logistic regression analysis found none of the variables to be significant, this overall finding is still meaningful. The lack of statistical...
significance is not unexpected based upon the variety of cases and subject types. These results indicate the need to further explore the topic within subgroups before definitive conclusions can be made.

The individual evaluation of these results provided value in showing which variables have the highest potential to affect a judge’s decision. Analysis indicated that judges born in states affiliated with SEC athletics programs tended to display more deference toward the NCAA. Odd ratios indicated that judges born in SEC states were 43% more likely to rule in favor of the NCAA (CI: 0.47-4.28) than judges born in non-SEC states. In addition, judges who attended an NCAA Division I institution tended to display deference toward the NCAA. The odds of a ruling in favor of the NCAA were 15% higher if a judge attended a Division I institution (CI: 0.28-4.62). This rate was even greater if the institution attended participated in a Power-5 athletics conference. The odds of a decision in favor of the NCAA were 19% higher among judges that attended a Power-5 institution (CI: 0.48-2.96).

Table 3
Rate Differences by Group Membership

<table>
<thead>
<tr>
<th>Variable</th>
<th>Judge Decision in favor (for) NCAA</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Group Members</td>
</tr>
<tr>
<td>POB Southeast</td>
<td>68.7</td>
</tr>
<tr>
<td>POB SEC*</td>
<td>68.4</td>
</tr>
<tr>
<td>POB Northeast</td>
<td>66.7</td>
</tr>
<tr>
<td>Attended Power-5</td>
<td>64.1</td>
</tr>
<tr>
<td>Place of Birth (POB) Midwest</td>
<td>63.3</td>
</tr>
<tr>
<td>Attended Division I</td>
<td>62.3</td>
</tr>
<tr>
<td>Gender (Male)</td>
<td>60.4</td>
</tr>
<tr>
<td>Race (White)</td>
<td>60.3</td>
</tr>
<tr>
<td>Championship while attending**</td>
<td>50</td>
</tr>
</tbody>
</table>

*SEC states were designated as those featuring an institutional member of the Southeastern Conference as of 2020 and included Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, Missouri, South Carolina, Tennessee, and Texas.

**Indicates that football, men’s basketball, women’s basketball, or baseball program won a conference or national championship while member (i.e., judge) attended institution.

Table 4
Odds Ratios of Selected Variables

<table>
<thead>
<tr>
<th>Variable</th>
<th>Odds Ratio</th>
<th>Confidence Interval</th>
</tr>
</thead>
<tbody>
<tr>
<td>Place of Birth (SEC*)</td>
<td>1.42</td>
<td>(0.47-4.28)</td>
</tr>
<tr>
<td>Attended Power-5</td>
<td>1.19</td>
<td>(0.47-2.96)</td>
</tr>
<tr>
<td>Attended Division I</td>
<td>1.16</td>
<td>(0.29-4.62)</td>
</tr>
<tr>
<td>Gender (Male)</td>
<td>0.81</td>
<td>(0.30-2.14)</td>
</tr>
<tr>
<td>Race (White)</td>
<td>0.46</td>
<td>(0.11-1.82)</td>
</tr>
</tbody>
</table>

*SEC states were designated as those featuring an institutional member of the Southeastern Conference as of 2020 and included Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, Missouri, South Carolina, Tennessee, and Texas.
Discussion & Implications

Between 1973 and 2020, 174 federal judges were involved in “NCAA” cases, ruling in favor of the NCAA 63% of the time. While 63% represents a relative majority, variation existed when demographic and descriptive variables were considered. Judges born in SEC states were 43% more likely to rule in favor of the NCAA than judges born in non-SEC states. In addition, judges who attended an NCAA Division I institution were 15% more likely to rule in favor of the NCAA while judges who attended a Power-5 institution were 19% more likely to rule in favor of the NCAA.

An acknowledged limitation of this study is the level of nuance that exists within judicial decisions. Both the context and merit of judicial proceedings limit the implications of these findings. However, this study does reveal that judges born in SEC states have been more likely to rule in favor of the NCAA and its collegiate model of athletics (Southall & Staurowsky, 2013). Not surprisingly, recent legal challenges to the NCAA have tended to originate in the U.S. District Court for the Northern District of California (e.g., Aldrich v. NCAA; Alston v. NCAA; O’Bannon v. NCAA). Judge Claudia Wilken, a native Minnesotan, presides over the court and is relatively unfamiliar with collegiate athletics (Branch, 2014). In recent years there has been a marked shift in public opinion related to the NCAA’s collegiate model (e.g., amateurism).

This shift was reflected in the 2021 unanimous SCOTUS ruling against the NCAA (NCAA v. Alston, 2021). Justice Brett Kavanaugh, a native of Washington D.C. and Yale University graduate, wrote in the opinion that “the NCAA is not above the law…nowhere else in America can businesses get away with agreeing not to pay their workers a fair market rate on the theory that their product is defined by not paying their workers a fair market rate” (NCAA v. Alston, 2021, p. 5). While such commentary reflects the Court’s view that the NCAA has long violated §1 of the Sherman Act, this study’s findings suggest that historically some judges may have been unable to put aside their affinity for collegiate athletics when rendering judicial decisions concerning the NCAA. Since college sport fandom is a unique form of fandom – and subsequently a component of cultural identity – judges from geographic areas heavily saturated and influenced by college sport (e.g., SEC Country) may have sought to protect their college-sport fan identity. As identity protection can occur unconsciously (Kahan, 2013; Kahan et al., 2007), judges from SEC states may have been predisposed to protect the established NCAA hegemonic structure.

College sport is an important component of cultural identity in the United States (Brand, 2009; Renfro, 2012). College football fandom is commonplace in United States society – and nearly ubiquitous in the South. Reflecting this reality, the findings of this study indicate that judges born in the Southern United States, as well as those who attended Power-5 institutions, have been more likely to rule in favor of the NCAA in judicial proceedings, thus maintaining the NCAA’s collegiate model of athletics. While Judge Lee Roy West recognized his inability to issue an objective decision and recused himself in 1981, overwhelmingly judges have not viewed their fan identity or allegiance to their state’s flagship university’s athletics program (e.g., football, baseball, or basketball teams) as a barrier to objectivity. However, as the findings of this study illustrate, the convergence of fandom and identity may influence judges’ ability to maintain objectivity in cases involving the NCAA. Litigators should note the nature of the relationship between judicial decisions and outcomes in judicial proceedings naming the NCAA as plaintiff or defendant. Investigating the demographic backgrounds of members of the judiciary with specific attention to place of birth and college(s) attended prior to filing may yield greater likelihood of ensuring a judge without a subjective bias seeking to affirm the position of college athletics.
Limitations & Future Research

This study is inherently limited by the level of nuance present in legal matters. Accordingly, it is important to note this study’s findings do not consider the context or merit of any individual NCAA case. Future research examining references to binding and/or persuasive precedent in individual NCAA cases would be valuable in determining the historical basis for the apparent shift in how U.S. society—and by extension the judiciary—views the NCAA collegiate model of athletics. In addition, as this study indicates that judges born in SEC states were more likely to rule in favor of the NCAA, perhaps judges born in these states are more inclined to rule favorably with regards to businesses and/or institutions themselves. An examination of the aggregate of judicial proceedings involving judges analyzed in this study would contribute to our understanding of any potential bias towards the NCAA.

References


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