

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

EDWARD O'BANNON, ET AL.,	)	
	)	
	)	
PLAINTIFFS,	)	NO. C-09-3329 CW
	)	
VS.	)	FRIDAY, JUNE 20, 2014
	)	
NATIONAL COLLEGIATE	)	OAKLAND, CALIFORNIA
ATHLETIC ASSOCIATION,	)	
ET AL.,	)	
	)	
DEFENDANTS.	)	COURT TRIAL
_____	)	

**BEFORE THE HONORABLE CLAUDIA WILKEN, JUDGE**

**REPORTERS' TRANSCRIPT OF PROCEEDINGS**

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TRANSCRIPT PRODUCED BY COMPUTER-AIDED TRANSCRIPTION

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I N D E XDEFENDANTS' WITNESSES:PAGEVOL.EMMERT, MARK

CROSS-EXAMINATION BY MR. ISAACSON

1942

10

REDIRECT EXAMINATION BY MR. POMERANTZ

2018

10

RE-CROSS-EXAMINATION BY MR. ISAACSON

2031

10

DELANY, JAMES

DIRECT EXAMINATION BY MR. LI

2034

10

CROSS-EXAMINATION BY MR. HAUSFELD

2092

10

REDIRECT EXAMINATION BY MR. LI

2122

10

PETR, TODD

DIRECT EXAMINATION BY MS. LUEDTKE

2126

10

	<u>PLAINTIFFS' EXHIBIT:</u>	<u>EVD.</u>	<u>VOL.</u>
1			
2	1005-1	2107	10
3	<u>DEFENDANTS' EXHIBITS:</u>		
4	270	1942	10
5	298	1991	10
6	730	1990	10
7	826	1981	10
8	2006	2011	10
9	2011	1942	10
10	2012	1983	10
11	2026	1942	10
12	2049	2006	10
13	2054	1984	10
14	2062	1985	10
15	2065	1949	10
16	2080	2004	10
17	2083	2003	10
18	2084 (PGS. 34 & 35)	2009	10
19	2299	1942	10
20	2582	1942	10
21	3078	2104	10
22	3168 (PGS. 27 & 28)	1993	10
23	3193	2091	10
24	3308 (PGS. 7, 9, 10, 12, 13 & 23)	2173	10
25	3900	2173	10

1 FRIDAY, JUNE 20, 2014

8:30 A.M.

2 P R O C E E D I N G S

3 **THE CLERK:** REMAIN SEATED. COME TO ORDER. COURT IS  
4 IN SESSION.

5 **THE COURT:** GOOD MORNING.

6 **MR. ISAACSON:** GOOD MORNING, YOUR HONOR.

7 **THE COURT:** YOU MAY PROCEED.

8 **MR. ISAACSON:** JUST FOR THE RECORD, WE WOULD MOVE  
9 INTO EVIDENCE WITHOUT OBJECTION PLAINTIFFS' 2026, 2299, 2582,  
10 2011, AND 270.

11 WE ARE ALSO MOVING --

12 **THE COURT:** RECEIVED.

13 (PLAINTIFFS' EXHIBITS 270, 2011, 2026, 2299 & 2582  
14 RECEIVED IN EVIDENCE)

15 **MR. ISAACSON:** -- OVER OBJECTION 2584 AND 2292 --

16 **THE CLERK:** SLOW DOWN. READ THE NUMBERS AGAIN.

17 **MR. ISAACSON:** 2584 AND 2292, AND WE WILL ADDRESS  
18 THAT IN A SEPARATE WRITING TO THE COURT, AND NOT TODAY.

19 **THE COURT:** OKAY.

20 **CROSS-EXAMINATION RESUMED**

21 **BY MR. ISAACSON:**

22 **Q.** GOOD MORNING, DR. EMMERT.

23 **A.** GOOD MORNING.

24 **Q.** YESTERDAY WE SPENT SOME TIME TALKING ABOUT MR. RENFRO.

25 WHILE HE WAS WITH THE NCAA, AND WORKING WITH YOU IN 2012,

1 HE WENT TO THE ASPEN INSTITUTE ON BEHALF OF THE NCAA TO BE ON  
2 A PANEL, CORRECT?

3 **A.** I BELIEVE THAT'S RIGHT, YES.

4 **Q.** THE PANEL WAS COLLEGE SPORTS AT THE CROSSROADS,  
5 ENTERTAINMENT AND EDUCATION, AND IT INCLUDED A DISCUSSION OF  
6 THE ANTITRUST LAWSUITS AGAINST THE NCAA; IS THAT CORRECT?

7 **A.** I DON'T KNOW THAT.

8 **Q.** DO YOU --

9 **MR. ISAACSON:** CAN WE SHOW HIM 2597?

10 (PAUSE IN THE PROCEEDINGS.)

11 **THE CLERK:** SORRY. GIVE ME ONE SECOND.

12 **MR. ISAACSON:** MATT? OH, I'M SORRY.

13 **THE CLERK:** THERE YOU GO.

14 (EXHIBIT DISPLAYED ON SCREEN.)

15 **MR. ISAACSON:** THIS IS JUST SOMETHING WE MARKED LAST  
16 NIGHT. WE LOOKED THIS UP LAST NIGHT. I'M JUST USING THIS TO  
17 SEE IF THIS REFRESHES HIS RECOLLECTION.

18 SATH HAS A COPY.

19 **BY MR. ISAACSON:**

20 **Q.** THIS IS OFF OF THE WEBSITE OF THE ASPEN INSTITUTE. AND  
21 YOU'LL SEE IT'S "COLLEGE SPORTS AT THE CROSSROADS,  
22 ENTERTAINMENT OR EDUCATION?"

23 AND IT NOTES THAT -- THE ISSUE OF ANTITRUST LAWSUITS AND  
24 IT DISCUSSES THE SPEAKERS.

25 DOES THIS HELP YOU REMEMBER THAT THE NCAA SENT MR. RENFRO

1 IN 2012 WHILE YOU WERE PRESIDENT TO SPEAK ON THESE TOPICS AT  
2 THE ASPEN INSTITUTE?

3 **A.** I REMEMBER THAT MR. RENFRO WENT TO THAT EVENT AND I KNOW  
4 THAT HE WAS ON A PANEL. I DIDN'T KNOW ALL THE TOPICS UNTIL  
5 YOU JUST SHOWED THEM TO ME. SO, YES.

6 **Q.** ALL RIGHT.

7 AND THEN AT THE NCAA CONVENTION IN 2013, DO YOU RECALL  
8 THAT MR. RENFRO SPOKE THERE ON A PANEL ON THE ISSUE -- A PANEL  
9 ON THE ISSUE OF SEXUAL ABUSE AND HOW TO ADDRESS THAT IN  
10 COLLEGE ATHLETICS?

11 **A.** I DON'T REMEMBER THAT, BUT I'LL TAKE YOUR WORD FOR IT.

12 **Q.** NOW AT THAT -- I WILL SHOW IT TO YOU, SEE IF YOU REMEMBER  
13 IT.

14 **MR. ISAACSON:** 2596. WE PULLED THIS OFF OF THE NCAA  
15 WEBSITE LAST NIGHT. IT'S THE 2013 NCAA CONVENTION.

16 WE CLICK THROUGH TO A LINK FOR THE -- CLICK TO THE LINK  
17 FOR THE PANEL.

18 (EXHIBIT DISPLAYED ON SCREEN.)

19 **BY MR. ISAACSON:**

20 **Q.** ALL RIGHT.

21 "NCAA EDUCATIONAL SESSION, DEVELOPING A PROACTIVE  
22 APPROACH, CREATING POLICIES AND TRADITIONS TO PROTECT  
23 ALL MEMBERS OF THE CAMPUS COMMUNITY. RECENT EVENTS  
24 HAVE BROUGHT THE ISSUE OF CHILD SEXUAL ABUSE TO THE  
25 NATIONAL CONVERSATION."

1 I DON'T WANT TO BELABOR THIS, BUT ALL I WANT TO ASK YOU  
2 IS, THIS WAS A HOT TOPIC FOR THE NCAA AT THE TIME, RIGHT?

3 **MR. POMERANTZ:** YOUR HONOR, OBJECTION. THIS  
4 PARTICULAR --

5 **THE COURT:** WE DON'T NEED TO USE THE PAPER. YOU CAN  
6 ASK HIM --

7 **MR. POMERANTZ:** YOUR HONOR, THE SUBJECT MATTER. THEY  
8 HAVE AGREED -- THIS RELATES TO ISSUES CONCERNING PENN STATE.  
9 THEY AGREED BEFORE TRIAL THEY WOULD NOT RAISE ANY ISSUES  
10 RELATING TO PENN STATE.

11 **MR. ISAACSON:** ALL I'M ASKING IS WHETHER MR. RENFRO  
12 WAS SENT TO THE NCAA CONVENTION TO SPEAK ABOUT A HOT TOPIC FOR  
13 THE NCAA.

14 **MR. POMERANTZ:** THAT'S FINE.

15 **MR. ISAACSON:** THEN I'M DONE WITH THAT.

16 **THE COURT:** OKAY.

17 **THE WITNESS:** HE WAS AMONG A NUMBER OF SPEAKERS THAT  
18 ARE AFFILIATED WITH THE NCAA THAT WAS SPEAKING AT THAT EVENT,  
19 YES.

20 **BY MR. ISAACSON:**

21 **Q.** ALL RIGHT. LET ME ASK YOU ABOUT MR. RENFRO'S BIOGRAPHY ON  
22 THE NCAA WEBSITE FOR THE CONVENTION. "RENFRO HAS SERVED AS A  
23 SPOKESMAN."

24 (DOCUMENT DISPLAYED ON SCREEN.)

25 "RENFRO HAS SERVED AS A SPOKESMAN FOR THE NCAA IN



1 EVERY MAJOR MARKET NEWSPAPER IN THE COUNTRY. HAS  
2 PARTICIPATED IN HUNDREDS OF TELEVISION AND RADIO  
3 INTERVIEWS, AND IS MEDIA TRAINED SENIOR MANAGEMENT  
4 FOR INTERVIEWS ON HBO, ESPN, FOX SPORTS NEWS, COURT  
5 TV, AND OTHERS."

6 IS THAT CORRECT?

7 **A.** YES.

8 **Q.** (READING)

9 "HIS OP-ED PIECES AND COLUMNS WERE PUBLISHED IN  
10 *U.S.A. TODAY, NEW YORK TIMES, WASHINGTON POST, LOS*  
11 *ANGELES TIMES,* AND OTHER PAPERS, CORRECT?

12 **A.** YES.

13 **Q.** (READING )

14 "IN HIS CAPACITY AS VICE PRESIDENT, SENIOR ADVISER,  
15 RENFRO WROTE HUNDREDS OF SPEECHES, POSITION PAPERS,  
16 CONGRESSIONAL TESTIMONY, AND HE, IN FACT, HAS  
17 TESTIFIED BEFORE CONGRESS ON ISSUES IN COLLEGE  
18 SPORTS."

19 WAS THAT CORRECT?

20 **A.** I ASSUME IT IS. THAT ALL OCCURRED BEFORE MY TIME WITH THE  
21 NCAA.

22 **Q.** BASED ON WHAT YOU KNOW, IS THAT CORRECT INFORMATION?

23 **A.** I HAVE NO REASON TO NOT BELIEVE IT.

24 **Q.** WHEN MR. RENFRO RETIRED, YOU SAID THIS TO THE PRESS.

25 "HE BRINGS TO HIS JOB EXPERIENCES VIRTUALLY NOBODY

1           ELSE ALIVE HAS. SO I CAN PUT SOMEBODY ELSE IN THAT  
2           BOX, BUT THEY DON'T BRING THE SKILL, THAT KNOWLEDGE,  
3           AND THOSE EXPERIENCES. HE'S IRREPLACEABLE."

4           YOU SAID THAT, DIDN'T YOU?

5           **A.** I ASSUME SO.

6           **Q.** NOW, BEFORE -- BEFORE YOU JOINED THE NCAA, I WANT TO SHOW  
7           YOU SOMETHING MR. RENFRO WROTE BECAUSE I BELIEVE IT CONTINUED  
8           AFTER YOU JOINED. I WANT TO SEE IF YOU REMEMBER THIS.

9           **MR. ISAACSON:** PLAINTIFFS' EXHIBIT 2065.

10          IF I MAY I APPROACH, YOUR HONOR?

11          **THE COURT:** YES.

12          **MR. ISAACSON:** I WOULD LIKE TO HAND YOU THE EXHIBIT.

13                               (EXHIBIT DISPLAYED ON SCREEN.)

14          **BY MR. ISAACSON:**

15          **Q.** THE REASON I'M HANDING YOU THIS, SIR, IS THIS BEGINS WITH  
16          AN EMAIL AT 2065-1 FROM MR. RENFRO ON MAY 2010 SO THAT'S  
17          BEFORE YOU JOINED THE NCAA. AND HE'S ATTACHING ONE-PAGERS.

18                AND IF YOU JUST PAGE THROUGH THE ATTACHMENTS THAT ARE IN  
19          FRONT OF YOU, YOU WILL SEE ONE-PAGERS ON A VARIETY OF TOPICS,  
20          INCLUDING STUDENT ATHLETE LIKENESSES, LEAD VERSUS SERVE,  
21          FISCAL MODEL OF ATHLETICS, DIVERSITY, ET CETERA.

22                IF YOU CAN JUST PAGE THROUGH AND TELL ME WHETHER YOU  
23          REMEMBER THESE ONE-PAGERS EXISTING AND EVENTUALLY BEING PUT ON  
24          THE NCAA WEBSITE.

25          **A.** I REMEMBER DURING MY TRANSITION THERE WERE A VARIETY OF

1 MATERIALS PROVIDED TO ME, AND I WON'T -- I DON'T SPECIFICALLY  
2 REMEMBER THIS DOCUMENT, BUT IT WOULD BE CONSISTENT WITH WHAT  
3 I -- WHAT I SAW THAT -- THAT THIS DOCUMENT MIGHT HAVE BEEN  
4 PROVIDED TO ME.

5 **Q.** OKAY.

6 NOW THE LAST TWO PAGES, 2065-11, COMMERCIALISM, AND  
7 2065-12, AMATEURISM, I WANT TO ASK YOU ABOUT, BUT FIRST LET ME  
8 SEE IF I CAN AGREE WITH YOU ON THE HISTORY OF THESE.

9 THE -- IT'S OUR -- I WILL REPRESENT TO YOU THAT -- YOU  
10 KNOW WHO DR. STAUROWSKY IS?

11 **A.** YES.

12 **Q.** DR. STAUROWSKY TOOK AT LEAST SOME OF THESE ONE PAGES OFF  
13 THE NCAA WEBSITE, AND THEN SHE CITED THEM IN ONE OF HER  
14 ARTICLES IN THE FOOTNOTES -- OR IN THE BIBLIOGRAPHY.

15 **MR. ISAACSON:** AND IF WE LOOK AT 2067-1 --

16 **MR. POMERANTZ:** 2067 --

17 **MR. ISAACSON:** -1.

18 AND I WOULD MOVE INTO EVIDENCE 2065.

19 **MR. POMERANTZ:** NO OBJECTION, YOUR HONOR.

20 **THE WITNESS:** I'M SORRY, 206?

21 **MR. ISAACSON:** 7.1, WHICH IS GOING TO COME UP ON THE  
22 SCREEN.

23 **THE CLERK:** OKAY ONE --

24 **THE COURT:** RECEIVED.  
25

1 (PLAINTIFFS' EXHIBIT 2065 RECEIVED IN EVIDENCE)

2 (EXHIBIT DISPLAYED ON SCREEN.)

3 **THE WITNESS:** SO THAT'S NOT IN THESE PAPERS THAT I  
4 HAVE?

5 **MR. ISAACSON:** IT IS, BUT THIS IS SLIGHTLY DIFFERENT.

6 **MR. POMERANTZ:** YOUR HONOR, JUST SO THE RECORD IS  
7 CLEAR, I THINK WE JUST -- HE JUST MOVED INTO EVIDENCE 2065; IS  
8 THAT CORRECT?

9 **MR. ISAACSON:** YES.

10 **MR. POMERANTZ:** WE HAVE NO OBJECTION TO THAT.

11 **THE COURT:** ALL RIGHT. THAT WILL BE RECEIVED.

12 (PLAINTIFFS' EXHIBIT 2065 RECEIVED IN EVIDENCE)

13 **BY MR. ISAACSON:**

14 **Q.** 2067-1, YOU WILL SEE AT THE BOTTOM --

15 **MR. ISAACSON:** IF YOU CAN BLOW IT UP FOR HIM, MATT.  
16 THIS IS THE DISCUSSION OF AMATEURISM.

17 **BY MR. ISAACSON:**

18 **Q.** THERE'S A WEBSITE LINK FOR NCAA.ORG, AND THEN IT SAYS  
19 LATER IN THE CHAIN, 2010/EMMERT PART 5. AND IF YOU LOOK AT  
20 2068.1, YOU'LL SEE A SIMILAR DESIGNATION FOR COMMERCIALISM.  
21 THESE ARE TWO OF THE ONE-PAGERS.

22 SO, AM I CORRECT -- AND THESE ARE NO LONGER PUBLICLY  
23 AVAILABLE. THEY HAVE EITHER BEEN TAKEN DOWN OR PUT INTO A  
24 NCAA-ONLY ACCESS SITE.

25 AND BASED ON THE DESIGNATION "EMMERT" IN THERE, WOULD IT

1 BE FAIR TO CONCLUDE THAT THESE ONE-PAGERS WERE PART OF THE  
2 INFORMATION THAT YOU WERE GIVEN AS PART OF YOUR TRANSITION TO  
3 REVIEW AND AT LEAST FOR A WHILE MADE AVAILABLE PUBLICLY?

4 **A.** I ASSUME THAT'S RIGHT, BUT, AGAIN, I DON'T KNOW PRECISELY  
5 WHAT THAT -- WHAT THAT TAG LINE MEANS, BUT I ASSUME THAT'S  
6 CORRECT.

7 **Q.** LET ME ASK YOU ABOUT 2067.1.

8 (EXHIBIT DISPLAYED ON SCREEN.)

9 OKAY. THIS IS THE ONE-PAGER WRITTEN BY MR. RENFRO ON  
10 AMATEURISM.

11 **MR. POMERANTZ:** YOUR HONOR, IF HE'S TALKING ABOUT --  
12 ARE YOU TALKING ABOUT 2067 OR 2065?

13 **MR. ISAACSON:** I STARTED WITH 2065. I'M NOW ON  
14 2067.1.

15 **MR. POMERANTZ:** THE ONLY -- ON 2067, WE DON'T KNOW  
16 EXACTLY WHERE THIS CAME FROM. WE DO SEE THE WEBSITE AT THE  
17 BOTTOM, BUT WE HAVEN'T BEEN ABLE TO FIND IT. IT'S NOT A  
18 BATES-STAMPED DOCUMENT THAT WAS PRODUCED IN DISCOVERY.

19 **MR. ISAACSON:** AND THE HISTORY OF THIS IS IS WHAT I  
20 EXACTLY EXPLAINED.

21 DR. STAUROWSKY, WHO'S PREPARED TO TESTIFY TO THIS, TOOK IT  
22 OFF THE WEB. IT'S NO LONGER AVAILABLE ON THE WEB AFTER SHE  
23 PUBLISHED -- EITHER BEFORE OR AFTER SHE PUBLISHED HER ARTICLE.  
24 AND THE ORIGINAL DESIGNATION IS THERE, AND IF YOU TRY TO GO TO  
25 IT, IT SAYS YOU CAN'T HAVE IT ANYMORE.

1           **MR. POMERANTZ:** IS IT DIFFERENT THAN WHAT YOU SHOWED  
2 HIM IN 2065?

3           **MR. ISAACSON:** I HAVEN'T CHECKED LINE BY LINE BECAUSE  
4 2065 -- BECAUSE THIS IS THE ONE THAT WAS PUT ON THE NCAA  
5 WEBSITE, SO IT IS OF MORE CONCERN TO ME THAN THE INTERNAL  
6 DOCUMENT FROM EARLIER.

7           **MR. POMERANTZ:** AND THE ONLY PROBLEM WITH THAT IS WE  
8 DON'T KNOW IT WAS FROM THE NCAA WEBSITE BECAUSE WE DON'T -- IT  
9 IS JUST DR. STAUROWSKY SAYING THAT.

10          **THE COURT:** WE CAN CALL DR. STAUROWSKY BACK.

11          **MR. POMERANTZ:** I'M NOT ASKING THAT. I'M JUST SAYING  
12 IF IT IS NO DIFFERENT THAN 2065, LET'S JUST USE 2065.

13          **THE COURT:** IF YOU GET A CHANCE TO CHECK LATER ON,  
14 YOU CAN TELL ME AND WE'LL DO THAT.

15          **MR. ISAACSON:** RIGHT. BUT WE WILL BE MOVING, IF  
16 NECESSARY, WE WILL CALL DR. STAUROWSKY TO SAY SHE TOOK THOSE  
17 OFF THE WEB.

18          **THE COURT:** OR YOU CAN USE 2065 IF IT'S EXACTLY THE  
19 SAME, ONCE YOU GET A CHANCE TO COMPARE IT WORD BY WORD.

20          **MR. ISAACSON:** THERE'S --

21          **THE COURT:** LET'S MOVE ON.

22          **MR. ISAACSON:** THERE'S SOME ADDITIONAL SIGNIFICANCE  
23 TO THE FACT THAT THIS WAS PUBLICLY AVAILABLE IS MY ONLY POINT.

24          **BY MR. ISAACSON:**

25          **Q.** ALL RIGHT.

1 ON AMATEURISM UNDER "CURRENT CHALLENGES", IT SAYS "AS THE  
2 SCALE", AT THE END.

3 **A.** PARDON ME. WOULD YOU MIND IF I JUST READ THE FULL  
4 PARAGRAPH?

5 **Q.** ABSOLUTELY.

6 **A.** THANK YOU.

7 (PAUSE IN THE PROCEEDINGS.)

8 OKAY. I'M SORRY, GO AHEAD.

9 **Q.** ONE OF THE THINGS THAT IS WRITTEN IN THIS DOCUMENT IS:

10 "AS THE SCALE OF BOTH REVENUE GENERATION AND SPENDING  
11 HAS GROWN OVER THE LAST FEW DECADES, THERE IS A  
12 GENERAL SENSE THAT QUOTE 'BIG-TIME ATHLETICS IS IN  
13 CONFLICT WITH THE PRINCIPLE OF AMATEURISM'. THERE IS  
14 SOME CRITICAL MASS OF MAKING AND SPENDING MONEY ABOVE  
15 WHICH CONVENTIONAL WISDOM HOLDS INTERCOLLEGIATE  
16 ATHLETICS IS NO LONGER VIEWED AS AMATEUR SPORTS."

17 DO YOU REMEMBER THOSE TYPES OF STATEMENTS BEING INCLUDED  
18 IN THE BRIEFING PAPERS THAT YOU REVIEWED WHEN YOU BECAME NCAA  
19 PRESIDENT?

20 **A.** AS WE DISCUSSED YESTERDAY AT LENGTH, MR. RENFRO USED A LOT  
21 OF GENERALIZATIONS LIKE AS ARE EXPRESSED HERE. "THERE IS A  
22 GENERAL SENSE." I DON'T KNOW TO WHOM HE'S REFERRING WHEN HE  
23 SAYS "A GENERAL SENSE".

24 DID WE HAVE AND DO -- DO THE MEMBERS CONSTANTLY HAVE  
25 CONCERNS ABOUT THE INTERACTION BETWEEN COMMERCIALISM AND

1 AMATEUR STATUS? OF COURSE THEY DO.

2 SO THE ANSWER TO YOUR QUESTION IS THIS WOULD BE A VERY  
3 COMMON KIND OF CONVERSATION AROUND INTERCOLLEGIATE ATHLETICS  
4 ON A REGULAR BASIS, AND HAS BEEN FOR A HUNDRED YEARS.

5 Q. ALL RIGHT.

6 MY ACTUAL QUESTION WAS, WHETHER THIS WAS PART OF THE  
7 BRIEFING YOU RECEIVED WHEN YOU BECAME NCAA PRESIDENT.

8 A. I DON'T REMEMBER.

9 Q. OKAY.

10 THE -- DO YOU HAVE ANY DISAGREEMENT WITH THE STATEMENT  
11 THAT AS THE SCALE OF BOTH REVENUE GENERATION AND SPENDING HAS  
12 GROWN OVER THE LAST FEW DECADES, THERE IS A GENERAL SENSE THAT  
13 BIG-TIME ATHLETICS IS IN CONFLICT WITH THE PRINCIPLE OF  
14 AMATEURISM?

15 A. I BELIEVE THAT THERE IS A LEVEL OF CONCERN, BOTH IN THE  
16 PUBLIC AND AMONG THE MEMBERS, ABOUT THE CONFLICTS BETWEEN  
17 COMMERCIAL PRESSURES AND AMATEURISM, YES.

18 Q. AND THERE'S NO QUESTION IN YOUR MIND THAT AT A CERTAIN  
19 LEVEL OF COMMERCIALISM THAT THAT IS A THREAT TO THE PRINCIPLE  
20 OF AMATEURISM?

21 A. I'M NOT SURE EXACTLY WHAT MR. RENFRO MEANT IN THIS -- IN  
22 THIS REGARD.

23 Q. I'M NOW ASKING ABOUT WHAT YOU MEAN. ALL RIGHT? I'M NOT  
24 CONCERNED NOW ABOUT MR. RENFRO. ALL RIGHT?

25 THERE IS NO QUESTION IN YOUR MIND THAT AT A CERTAIN POINT



1 OF COMMERCIALISM THERE BECOMES A CONFLICT BETWEEN  
2 COMMERCIALISM AND THE PRINCIPLES OF AMATEURISM; ISN'T THAT  
3 RIGHT?

4 **A.** IT DEPENDS ON WHAT YOU'RE TALKING ABOUT WHEN YOU DESCRIBE  
5 COMMERCIALISM.

6 SO, AS WE DISCUSSED YESTERDAY, FOR EXAMPLE, I THINK DIRECT  
7 PRODUCT ENDORSEMENT BY A STUDENT ATHLETE IS INAPPROPRIATE. AS  
8 I STIPULATED YESTERDAY, I LOOK AT SOME OF THE -- PERSONALLY, I  
9 LOOK AT SOME OF THE IMAGES YOU PUT IN FRONT OF ME AND OTHERS  
10 IN THE COURTROOM, AND I FIND THOSE OBJECTIONABLE.

11 SO, WHAT I FIND AN OBJECTIONABLE USE OF COMMERCIALIZATION  
12 IS, IN LARGE PART, IRRELEVANT. I'M NOT SOMEONE WHO PASSES  
13 JUDGMENT ON THOSE. THAT'S UP TO THE MEMBERSHIP.

14 **Q.** ALL RIGHT.

15 YOU'RE NOT SOMEONE WHO PASSES JUDGMENT ON THE LEVEL OF USE  
16 OF -- THE LEVEL OF COMMERCIALIZATION OF COLLEGE ATHLETES.  
17 THAT'S UP TO THE MEMBERSHIP; IS THAT RIGHT?

18 **A.** YES. THEY'RE THE ONES THAT ESTABLISH THE RULES, NOT ME.

19 **Q.** WELL THE NCAA DOES HAVE SOME RULES, AS YOU SAY, FOR  
20 COMMERCIAL EXPLOITATION?

21 **A.** ALL OF WHICH WERE CREATED BY THE MEMBERSHIP. AND YOU ARE  
22 ASKING ME MY PERSONAL OPINION. THOSE ARE TWO VERY DIFFERENT  
23 THINGS.

24 **Q.** I AGREE.

25 THE 2068-1. THIS IS THE ONE-PAGER ON COMMERCIALISM.



1 YOU.

2 Q. I SAID DURING THE TRIAL.

3 A. OKAY.

4 MR. ISAACSON: IF WE CAN GO BACK TO THE SECOND  
5 CENTURY REPORT, WHICH PLAINTIFFS' EXHIBIT 2017. AND I WANT TO  
6 LOOK AT PAGE 36 AND 37.

7 (EXHIBIT DISPLAYED ON SCREEN.)

8 BY MR. ISAACSON:

9 Q. YOU WILL REMEMBER WE REVIEWED YESTERDAY PARTS OF THE  
10 PRESIDENTIAL TASK FORCE ON THE FUTURE OF DIVISION I  
11 INTERCOLLEGIATE ATHLETICS?

12 A. YES.

13 Q. AT 36, A SECTION ON THE VALUE OF INTEGRATION, IT SAYS IN  
14 THE UPPER RIGHT-HAND CORNER:

15 "DURING THE LATE 1970'S AND EARLY 1980'S, FOR  
16 EXAMPLE, THE RELATIONSHIP BETWEEN EDUCATORS AND  
17 ATHLETIC ADMINISTRATORS BEGAN TO SHIFT."

18 IT GOES ON TO SAY:

19 "THAT FACULTY MEMBERS WHO SERVED AS KEEPERS OF  
20 ACADEMIC AND INSTITUTIONAL VALUES WERE NO LONG AS  
21 INTRICATELY INVOLVED IN THE BUDGETING PROCESS OR IN  
22 DECISION-MAKING IN ATHLETICS AS THEY HAD BEEN IN THE  
23 PAST. AND SOME ATHLETIC PROGRAMS BEGAN TO DRIFT AWAY  
24 FROM THE CORE VALUES OF THE UNIVERSITY AND ESTABLISH  
25 THEIR OWN AUTONOMY. ATHLETIC DIRECTORS WHO WERE

1 INCREASINGLY CONSUMED WITH GENERATING REVENUES,  
2 FACILITY GROWTH, AND A COMPLEX FINANCIAL STRUCTURE  
3 BECAME MORE AND MORE ISOLATED FROM THE ISSUES OF THE  
4 ACADEMY."

5 YOU AGREED WITH THOSE CONCERNS EXPRESSED IN THE REPORT  
6 THAT -- BY THE TASK FORCE OF WHICH YOU WERE A MEMBER, RIGHT?

7 **A.** I ACCEPTED THAT THOSE STATEMENTS MIGHT DESCRIBE THE  
8 SITUATION AT SOME CAMPUSES. THEY CERTAINLY DIDN'T DESCRIBE  
9 THEM AT THE UNIVERSITIES I WAS PART OF.

10 **Q.** ALL RIGHT.

11 AT 2017-37, THEN ONE OF THE POINTS THAT THE TASK FORCE  
12 URGED WAS REFERRED TO THE COALITION ON INTERCOLLEGIATE  
13 ATHLETICS, WHICH WE JUST SAW IN THE ONE-PAGER.

14 (PAGE DISPLAYED ON SCREEN.)

15 NOW, THE COALITION ON INTERCOLLEGIATE ATHLETICS IS A  
16 COALITION ON FACULTY WHO ADDRESS ISSUES IN COLLEGE ATHLETICS.  
17 IS THAT A FAIR SUMMARY?

18 **A.** YES.

19 **Q.** AND THE TASK FORCE SAID:

20 "THE COIA IS AN INFORMED GROUP" -- UP IN THE UPPER  
21 RIGHT-HAND CORNER, "WITH A WELL THOUGHT-OUT AGENDA  
22 AND ITS DISPLAYED A COMMITMENT TO A COLLABORATIVE  
23 APPROACH IN THE CHANGING CULTURE. THE COIA HAS BEEN  
24 SUCCESSFUL TO DATE PRECISELY BECAUSE ITS MEMBERS  
25 UNDERTOOK TO UNDERSTAND THE NATURE OF THE

1 INTERCOLLEGIATE ATHLETICS ENTERPRISE AND THE FACTS OF  
2 THE MATTER."

3 THAT WAS A STATEMENT YOU AGREED WITH, RIGHT, SIR?

4 **A.** YES.

5 **Q.** OKAY.

6 AND BY THE TIME YOU BECAME PRESIDENT, THAT COALITION WAS  
7 STILL WARNING THAT THE DEVELOPMENT OF INCREASED DOLLARS  
8 ACQUIRED THROUGH CORPORATE RELATIONSHIPS DOES NOT SQUARE WITH  
9 THE PRINCIPLE OF AMATEURISM. IS THAT FAIR?

10 **A.** YES.

11 **Q.** YOU CALLED MR. RENFRO A PROVOCATEUR, AND I WANT TO  
12 UNDERSTAND WHAT YOU MEAN BY THE TERM.

13 WAS MR. BRAND BEING A PROVOCATEUR WHEN HE SAID IN A  
14 DOCUMENT I SHOWED YOU:

15 "THE UNIVERSITY PRESIDENTS WANT IT BOTH WAYS. THEY  
16 WANT TO BE ABLE TO RAIL AGAINST COMMERCIALISM AND  
17 THEY WANT THE REVENUES THAT COMES WITH CORPORATE  
18 ADS."

19 IS THAT BEING A PROVOCATEUR?

20 **A.** HE WAS EXPRESSING HIS OPINION, OBVIOUSLY.

21 **Q.** WHAT ABOUT MR. DEMPSEY, ONE OF YOUR PREDECESSORS, WHEN HE  
22 SAID, "THE LEVEL OF CYNICISM OVER COMMERCIALISM OF OUR MOST  
23 ADVISABLE ATHLETIC PROGRAMS HAS REACHED EPIDEMIC PROPORTIONS."

24 WAS THAT BEING A PROVOCATEUR?

25 **A.** I WILL LET YOU MAKE THAT JUDGMENT. HE WAS EXPRESSING HIS

1 OPINION.

2 Q. ALL RIGHT.

3 YOU TALKED ABOUT THE PASS-THROUGH ON THE NCAA.COM CITE  
4 YESTERDAY.

5 A. THE T-SHIRTS? YES.

6 Q. YES, YES, YES.

7 THE -- AND I WANT TO SEE IF IT WORKED LIKE -- SOMETHING  
8 LIKE THIS.

9 I'M GOING TO HAVE SOME HELP FROM MY FRIEND, MATT, HERE.

10 **MR. ISAACSON:** MATT, CAN YOU GO TO THE FLORIDA  
11 STATE'S HOME SITE?

12 (DOCUMENT DISPLAYED ON SCREEN.)

13 FSU.EDU, CLICK ON ATHLETICS?

14 CLICK ON IT AGAIN, AND THEN CLICK ON OFFICIAL SEMINOLES  
15 GEAR AT THE TOP.

16 **BY MR. ISAACSON:**

17 Q. YOU KNOW WHO JAMEIS WINSTON IS, RIGHT?

18 A. I DO.

19 Q. WON THE HEISMAN TROPHY, IS A STAR QUARTERBACK FOR FLORIDA  
20 STATE, AND HE REMAINS A STUDENT, CORRECT?

21 A. YES.

22 **MR. ISAACSON:** NOW, WOULD YOU TYPE "WINSTON" IN?

23 ALL RIGHT. THEN YOU SEE -- WOULD YOU HIGHLIGHT THE CARDS  
24 THERE?

25

1 **BY MR. ISAACSON:**

2 **Q.** IS THAT THE TYPE OF PASS-THROUGH TO COMMERCIAL PRODUCTS  
3 THAT NCAA.COM WAS DOING?

4 **A.** I DON'T KNOW WHETHER OR NOT THAT KIND OF PRODUCT WAS  
5 AVAILABLE THROUGH THE NCAA WEBSITE OR NOT, BUT THAT'S  
6 PRECISELY WHAT I HAD THEM TAKE DOWN SO THAT YOU COULDN'T DO.

7 **Q.** ALL RIGHT.

8 AND SOMETHING YOU MADE NO EFFORT TO SEE IF UNIVERSITIES  
9 HAVE STOPPED DOING?

10 **A.** I HAVE NOT PERSONALLY, NO.

11 **MR. ISAACSON:** I'M GOING TO MOVE TO HAVE -- WE'LL  
12 OFFER A SCREEN SHOT OF THIS PAGE AS PLAINTIFFS' EXHIBIT 2603,  
13 AND WE WILL DISCUSS IT WITH COUNSEL LATER.

14 PLAINTIFFS' EXHIBIT -- THIS IS -- I THINK WE ALL  
15 UNDERSTAND THIS IS LIVE.

16 LET'S GOING TO THE OREGON DUCKS WEBSITE.

17 **BY MR. ISAACSON:**

18 **Q.** YOU KNOW WHO MARCUS MARIOTA IS?

19 **A.** I DO.

20 **Q.** STAR QUARTERBACK FOR OREGON?

21 (DOCUMENT DISPLAYED ON SCREEN.)

22 **MR. ISAACSON:** CAN WE SHOW THE LINK FOR THE JERSEY  
23 WITH HIS NUMBER? YOU GOT THAT, MATT?

24 IF YOU DON'T HAVE IT, I'M GOING TO COME BACK TO IT.

25 ALL RIGHT. LET'S GO TO THE GEORGIA TECH'S TWEET.

1 (DOCUMENT DISPLAYED ON SCREEN.)

2 **BY MR. ISAACSON:**

3 **Q.** ALL RIGHT, SIR, YOU CAN SHOW THIS.

4 THIS IS A TWEET BY GEORGIA TECH MARKETING YESTERDAY.  
5 "WE'VE GOT NEW GEORGIA TECH ATHLETIC SCHEDULE CARDS. WHO  
6 NEEDS 'EM? AND SEND US THE ADDRESS FOR YOUR BUSINESS AND  
7 WE'LL SEND 'EM OUT."

8 YOU SEE DOMINOS, YOU SEE COCA-COLA, AND YOU SEE ALL THE  
9 PLAYERS -- OR SEVERAL PLAYERS.

10 DO YOU CONSIDER THIS COMMERCIAL EXPLOITATION OF THE  
11 PLAYERS?

12 **A.** YOU KNOW, I DON'T KNOW WHETHER OR NOT THE SPECIFIC RULES  
13 GOVERNING COMMERCIALIZATION WOULD APPROVE OR DISAPPROVE OF  
14 THIS. I PERSONALLY DON'T FIND IT APPROPRIATE AT ALL.

15 **Q.** ALL RIGHT.

16 THE NCAA HAS NO MECHANISMS IN PLACE TO REGULATE THIS SORT  
17 OF ACTIVITY, RIGHT?

18 **A.** AS I JUST SAID, I DON'T KNOW WHETHER OR NOT THIS IS A  
19 DIRECT VIOLATION OF THE -- OF THE COMMERCIALISM RULES OR NOT.

20 **Q.** ALL RIGHT.

21 **MR. ISAACSON:** I WILL MOVE TO ADMIT THIS AS 2598. WE  
22 CAN DISCUSS IT LATER IF YOU WANT.

23 **BY MR. ISAACSON:**

24 **Q.** THE PLAINTIFFS' EXHIBIT 2340-85. THIS IS A RULE. AND  
25 THIS GOES TO THE POINT YOU WERE JUST RAISING INTO A QUESTION



1 THE JUDGE ASKED YESTERDAY.

2 **MR. ISAACSON:** IF WE CAN LOOK AT 12.5.2.1A.

3 (EXHIBIT DISPLAYED ON SCREEN.)

4 **BY MR. ISAACSON:**

5 **Q.** THE COURT ASKED YESTERDAY WHAT'S THE RULE ON DIRECT -- NO  
6 DIRECT ENDORSEMENT? AND YOU'LL SEE HERE, WE'VE PULLED UP THE  
7 RULE THAT TALKS ABOUT -- REFERS TO DIRECT PROMOTIONS.

8 THIS IS THE RULE THAT YOU'VE BEEN DISCUSSING THAT  
9 PROHIBITS DIRECT PROMOTIONS OR DIRECT ENDORSEMENTS?

10 **A.** YES.

11 **Q.** OKAY. NOW YESTERDAY, ONE OF THE CONCERNS YOU EXPRESSED TO  
12 THE COURT WAS IF A TRUST FUND WAS SET UP THERE, COULD BE  
13 MONETIZATION OF THAT, SOMEONE COULD BORROW MONEY BECAUSE THEY  
14 HAVE MONEY IN THE TRUST FUND.

15 REMEMBER THAT?

16 **A.** YES.

17 **MR. ISAACSON:** NOW IF WE CAN LOOK AT 2340-236, RULE  
18 1611.1.

19 (EXHIBIT DISPLAYED ON SCREEN.)

20 AND THE RULE BOOK IS ALREADY IN EVIDENCE. SO I'M -- I  
21 THINK WE AGREE WE WILL PUT IN ANY PAGES DISCUSSED IN THE CASE.

22 **BY MR. ISAACSON:**

23 **Q.** BUT THE -- IT SAYS HERE THAT RECEIPT OF A BENEFIT BY  
24 STUDENT ATHLETES, FAMILY MEMBERS, FRIENDS IS NOT A VIOLATION  
25 OF NCAA RULES IF IT IS DEMONSTRATED THAT THE SAME BENEFIT IS

1       GENERALLY AVAILABLE TO THE INSTITUTIONAL STUDENTS AND THEIR  
2       FAMILY MEMBERS OR FRIENDS.

3               WOULD YOU CONSIDER MONETIZATION OF A TRUST FUND FOR  
4       STUDENT ATHLETES TO BE CONSISTENT WITH THIS RULE?

5       **A.**   I'M NOT SURE.

6       **Q.**   SO YOU DON'T ACTUALLY KNOW WHETHER THE NCAA RULES WOULD  
7       PERMIT MONETIZATION OF A TRUST FUND?

8       **A.**   I BELIEVE I SAID I DON'T KNOW.

9       **Q.**   OKAY.

10       **A.**  I THINK IT WOULD REQUIRE DEEPER CONSIDERATION THAN ONE  
11       THAT'S AVAILABLE RIGHT NOW.

12       **Q.**  ALL RIGHT.

13               YOU DISCUSSED HOUSING IN YOUR TESTIMONY, AND THE RULES  
14       THAT HAVE BEEN PASSED TO MAKE SURE THAT ATHLETES ARE LIVING  
15       WITH STUDENTS.

16               AND AS I UNDERSTAND THAT RULE, THAT TEAMS CAN ALL LIVE  
17       TOGETHER IN THE SAME DORM OR SAME DORMITORY FACILITY AS LONG  
18       AS HALF OF THE RESIDENTS ARE NONATHLETES; IS THAT CORRECT?

19       **A.**  YES.

20       **Q.**  SO THEY DON'T HAVE TO BE SCATTERED AROUND CAMPUS.  THEY  
21       CAN ALL LIVE TOGETHER, BUT WE JUST HAVE TO MAKE SURE THAT AT  
22       LEAST HALF OF THE STUDENTS IN THE FACILITY ARE NONATHLETES?

23       **A.**  THAT'S PERMITTED BY RULES.  MANY UNIVERSITIES HANDLE IT IN  
24       DIFFERENT WAYS.  SOME INSIST ON GREATER INTEGRATION ACROSS  
25       RESIDENCE HALLS AND DON'T ALLOW CLUSTERING OF STUDENT ATHLETES

1 IN ONE FACILITY. IT DEPENDS UPON INSTITUTIONAL PREROGATIVES.

2 THE MEMBERSHIP RULE WAS ESTABLISHED TO SET A FLOOR ON  
3 THAT -- ON THAT SORT OF ACTIVITY, AND IT GETS MANAGED IN  
4 DIFFERENT WAYS.

5 **Q.** SO ARE YOU AWARE OF ANY EFFORTS BY UNIVERSITIES TO COMPETE  
6 IN RECRUITING BY BUILDING LARGER AND LARGER AND MORE GRANDIOSE  
7 LIVING FACILITIES FOR TEAMS THAT ALSO THEN WILL INCLUDE  
8 REGULAR STUDENTS?

9 **A.** RESIDENCE HALLS ARE USED AS RECRUITING TOOLS FOR ALL  
10 STUDENTS IN A VARIETY OF WAYS. AND AS A GENERAL RULE,  
11 RESIDENCE HALLS HAVE BEEN IMPROVING CONSISTENTLY TO MAKE THEM  
12 MORE ATTRACTIVE TO STUDENT ATHLETES.

13 YES, OF COURSE, SOME UNIVERSITIES HAVE TRIED TO CREATE  
14 RESIDENCE HALLS THAT WOULD BE MORE ATTRACTIVE TO STUDENT  
15 ATHLETES.

16 **Q.** LET ME ASK YOU IF YOU ARE FAMILIAR WITH SOME OF THOSE  
17 FACILITIES.

18 **MR. ISAACSON:** IF WE CAN LOOK AT A NEWS ARTICLE,  
19 EXHIBIT 2602. PAGE 2.

20 (EXHIBIT DISPLAYED ON SCREEN.)

21 **BY MR. ISAACSON:**

22 **Q.** ALL RIGHT. THIS ARTICLE ALLEGES THAT THERE IS NOW AN ARMS  
23 RACE FOR FACILITIES IN WHICH ATHLETES CAN LIVE IN. AND I WANT  
24 TO ASK YOU ABOUT THAT.

25 THE -- FIRST IT BEGINS WITH A NEW FACILITY FOR OHIO -- AT

1 OHIO STATE WHERE A MAJORITY OF THE FRESHMAN AND SOPHOMORE  
2 FOOTBALL AND BASKETBALL PLAYERS LIVE.

3 I WANT TO ASK YOU IF YOU ARE AWARE OF THIS RESIDENCE.

4 **MR. POMERANTZ:** YOUR HONOR, I THINK THIS IS THE NOT  
5 THE PROPER WAY TO USE A DOCUMENT LIKE THIS. THIS IS OBVIOUSLY  
6 HEARSAY.

7 THEY SHOULD ASK DR. EMMERT IF HE KNOWS SOMETHING. IF HE  
8 DOESN'T, THEY CAN REFRESH HIS RECOLLECTION. HE'S JUST LEADING  
9 WITH THIS AND READING THE DOCUMENT.

10 **THE COURT:** I THINK THAT'S RIGHT.

11 **MR. ISAACSON:** OKAY.

12 **BY MR. ISAACSON:**

13 **Q.** ARE YOU AWARE OF AN OHIO STATE RESIDENCE THAT WAS  
14 COMPLETED LAST YEAR AT A COST OF \$37 MILLION, 186 SQUARE FEET,  
15 SIX STORIES, SIX-PERSON SUITES, THREE BEDROOMS, LIVING ROOMS,  
16 AND INDIVIDUAL BATHROOMS?

17 **A.** NO.

18 **Q.** ARE YOU AWARE OF PRESS STATEMENTS SAYING THAT THAT OHIO  
19 STATE FACILITY COULD BE CONVERTED INTO A FOUR SEASONS WITH  
20 MINIMAL RENOVATIONS?

21 **A.** NO.

22 **Q.** ARE YOU FAMILIAR AT THE UNIVERSITY OF KENTUCKY THAT COACH  
23 CALIPARI HAS BEEN PRAISING THE BUILDING OF WHAT'S CALLED THE  
24 WILDCAT COAL LODGE, WHICH FEATURES FLAT SCREEN TV'S, A CHEF,  
25 LEATHER RECLINERS GALORE, AND THAT COACH CALIPARI HAS REFERRED

1 TO THE LIVING QUARTERS AS THE GOLD STANDARD OF ATHLETE  
2 HOUSING?

3 **A.** YES.

4 **Q.** ARE YOU AWARE THAT THE UNIVERSITY OF KANSAS ANNOUNCED IN  
5 JANUARY, IT WOULD BUILD A \$17.5 MILLION PRIVATELY FUNDED  
6 APARTMENT COMPLEX THAT HOUSED IN THAT COMPLEX WOULD BE THE  
7 MEN'S AND WOMEN'S BASKETBALL PLAYERS AS WELL AS GENERAL  
8 POPULATION STUDENTS?

9 **A.** NO.

10 **Q.** ARE YOU AWARE OF ARTICLES SAYING THAT CALLING THIS -- THIS  
11 BUILDING OF FACILITIES IN WHICH THE TEAMS CAN LIVE ALONG WITH  
12 NON -- WITH REGULAR STUDENTS AS A LOOPHOLE IN YOUR RULES?

13 **A.** NO, BUT I DON'T DENY THAT THAT'S BEEN WRITTEN.

14 **Q.** ALL RIGHT.

15 ARE YOU FAMILIAR WITH AUBURN'S DONAHUE HALL WHICH WAS  
16 COMPLETED LAST YEAR, A \$51 MILLION SUITE-STYLE RESIDENCE HALL  
17 WITH 209 ROOMS IN WHICH THE ENTIRE FOOTBALL TEAM LIVES?

18 **A.** NO.

19 **Q.** ARE YOU AWARE OF OKLAHOMA'S \$75 MILLION HEADINGTON HALL  
20 STEPS AWAY FROM MEMORIAL STADIUM WHICH INCLUDES SUITES FOR 500  
21 STUDENTS, A HUNDRED OF THEM ARE FOOTBALL PLAYERS. THERE'S A  
22 GAME ROOM, 75-SEAT MOVIE THEATER, AND THE SAM BRADFORD  
23 TRAINING TABLE. RUNNING BACK ADRIAN PETERSON OF THE MINNESOTA  
24 VIKINGS DONATED \$500,000 TO THE PROJECT.

25 ARE YOU AWARE OF ANY OF THAT?

1       **A.** I'M MORE THAN WILLING TO STIPULATE THAT THERE ARE A LOT OF  
2       VERY NICE DORMITORIES AND RESIDENCE HALLS BEING BUILT AROUND  
3       THE COUNTRY.

4             I'M NOT -- DON'T GO OUT AND INSPECT RESIDENCE HALLS IF  
5       THAT'S YOUR POINT.

6       **Q.** YOU SAID YESTERDAY YOU HAD CONCERNS ABOUT STUDENT ATHLETES  
7       BEING IN A DIFFERENT CLASS FROM STUDENTS IF NIL MONEY WAS  
8       SHARED.

9             DO THESE TYPES OF FACILITIES THAT WE HAVE BEEN TALKING  
10       ABOUT PUT ATHLETES IN A DIFFERENT CLASS FROM THE NORMAL  
11       SUBSTITUTE BODY?

12       **A.** IT PUTS THEM IN A CLASS THAT'S THE SAME AS AT LEAST  
13       50 PERCENT OF THE RESIDENCE HALLS NONATHLETIC RESIDENTS, IF  
14       THAT'S WHAT YOU MEAN, YES.

15       **Q.** WHAT ABOUT THE STUDENT BODY THAT IS NOT IN THAT DORM?

16       **A.** I'M NOT SURE OF YOUR FAMILIARITY WITH RESIDENCE HALLS ON  
17       CAMPUSES, BUT THEY VARY RADICALLY FROM ONE STYLE TO ANOTHER  
18       ACROSS THE CAMPUS BASED UPON WHAT'S OLD, WHAT'S NEW.

19             THERE'S GREAT COMPETITION TO GET INTO THE BEST DORMS. SO  
20       THERE ARE -- THERE'S A VARIETY OF QUALITY OF STANDARD --  
21       QUALITY OF RESIDENCE HALLS ACROSS EVERY CAMPUS. OBVIOUSLY  
22       WHAT YOU ARE DESCRIBING ARE RESIDENCE HALLS THAT ARE EXTREMELY  
23       ATTRACTIVE AND THE STUDENTS THAT LIVE IN THEM I'M SURE FEEL  
24       AND ARE VERY PRIVILEGED IN THAT OPPORTUNITY.

25       **Q.** MY QUESTION TO YOU, SIR, IS, IF THE FOOTBALL TEAM LIVES

1 TOGETHER IN THE MOST GRANDIOSE DORM ON CAMPUS AND THE NCAA  
2 RULES ALSO REQUIRE THAT SOME REGULAR STUDENTS BE PERMITTED IN  
3 THAT DORM, HAVE WE CREATED A DIFFERENT CLASS FOR THOSE  
4 FOOTBALL PLAYERS FROM ALL THE OTHER STUDENTS ON CAMPUS WHO  
5 AREN'T IN THAT DORM?

6 **A.** I THINK I JUST ANSWERED THAT QUESTION.

7 **Q.** ALL RIGHT. WE'LL LET THE RECORD DECIDE THAT.

8 WHAT ABOUT FOOTBALL STADIUMS, BASKETBALL STADIUMS, THESE  
9 ENORMOUS FOOTBALL AND BASKETBALL STADIUMS THAT THE PLAYERS  
10 PLAY IN; DOES THAT PUT THEM IN A DIFFERENT CLASS ON CAMPUS  
11 FROM REGULAR STUDENTS?

12 **A.** YES. THEY ARE THE ONES WHO PERFORM IN STADIUMS.

13 **Q.** WHAT ABOUT NATIONALLY-TELEVISED GAMES, THESE FOOTBALL AND  
14 BASKETBALL PLAYERS ARE PLAYING IN A VERY POPULAR NATIONALLY  
15 TELEVISED GAMES; DOES THAT PUT THEM IN A DIFFERENT CLASS ON  
16 CAMPUS FROM REGULAR STUDENTS?

17 **A.** FOR FOOTBALL AND MEN'S BASKETBALLS PLAYERS, YES. THEY ARE  
18 THE ONES BEING BROADCAST ON TELEVISION. I THINK THAT'S  
19 SELF-EVIDENT.

20 **Q.** WHAT ABOUT THE ATHLETES WHO STUDENTS THINK WILL GET  
21 PROFESSIONAL NFL OR NBA CONTRACTS; DOES THAT PUT THEM IN A  
22 DIFFERENT CLASS ON CAMPUS FROM REGULAR STUDENTS?

23 **A.** I'M NOT SURE.

24 **Q.** ATHLETES WHO WEAR GEARS FROM CORPORATE SPONSORS THROUGH  
25 CONTRACTS WITH THE SCHOOL, PLAYING IN STADIUMS WITH CORPORATE

1 SIGNAGE, APPEAR IN COMMERCIALS FOR UPCOMING NCAA BROADCASTED  
2 GAMES; DOES ALL OF THAT PUT THEM IN A DIFFERENT CLASS ON  
3 CAMPUS FROM OTHER STUDENTS?

4 **A.** IF BY "APPAREL" YOU MEAN WEARING A NIKE OR ADIDAS SHIRT ON  
5 CAMPUS, NO, THAT WOULD BE A FAIRLY COMMON EVENT ON MOST  
6 AMERICAN CAMPUSES.

7 **Q.** WHAT ABOUT THE COMBINATION OF ALL OF THOSE THINGS, DOES  
8 THAT PUT THEM IN A DIFFERENT CATEGORY ON CAMPUS FROM THE  
9 REGULAR STUDENTS?

10 **A.** THEY ARE CERTAINLY WIDELY RECOGNIZED AND ARE SEEN AS  
11 SOMEONE WHO IS A POPULAR ATHLETE, IF THEY ARE, IN FACT, YOU  
12 KNOW, RECOGNIZED AS SUCH.

13 **Q.** WHAT ABOUT ATHLETES WHO ARE COMMERCIALY EXPLOITED; ARE  
14 THEY ANY LONGER IN A POSITION TO GAIN THE ADVANTAGES OF BEING  
15 A STUDENT ATHLETE IN YOUR OPINION?

16 **MR. POMERANTZ:** OBJECTION, YOUR HONOR, ARGUMENTIVE.

17 **THE COURT:** SUSTAINED.

18 **BY MR. ISAACSON:**

19 **Q.** THE -- YOU TALKED ABOUT SCHOOLS LEAVING THE NCAA DIVISION  
20 I OR THE NCAA TOURNAMENT. THE SMALLER SCHOOLS RECEIVE  
21 SUBSTANTIAL REVENUES FROM THE NCAA BY VIRTUE OF THE NCAA  
22 TOURNAMENT.

23 IS THAT A FAIR STATEMENT?

24 **A.** ALL OF THE REVENUES DISTRIBUTE ACROSS ALL OF THE SCHOOLS  
25 OF THE NCAA, YES.



1 Q. RIGHT. AND SO WE LOOKED AT FORM 990S AND WE COULD SEE  
2 SOMETHING LIKE APPALACHIAN STATE GET \$815,000 IN, I GUESS IN A  
3 RECENT YEAR.

4 THAT'S THE TYPE OF MONEY THESE SMALLER SCHOOLS GET, RIGHT?

5 A. GENERALLY -- THAT WOULD -- YES. THAT WOULD BE A LARGE  
6 AMOUNT. THEY MUST HAVE BEEN PARTICIPATING IN THE TOURNAMENT  
7 DIRECTLY.

8 Q. ANOTHER LOWER AMOUNT WOULD BE MONMOUTH UNIVERSITY  
9 \$442,000?

10 A. YES.

11 Q. ST. FRANCIS UNIVERSITY IN PENNSYLVANIA, 1800 STUDENTS,  
12 THEY RECEIVED \$521,000.

13 THOSE ARE THE TYPE OF SCHOOLS YOU'RE SAYING WOULD CONSIDER  
14 LEAVING THE NCAA, RIGHT?

15 A. NO, I DIDN'T SAY THEY WOULD CONSIDER LEAVING THE --

16 (SIMULTANEOUS COLLOQUY.)

17 Q. OR, I'M SORRY --

18 A. THEY MAY WELL LEAVE DIVISION I.

19 Q. ALL RIGHT.

20 NOW AT THE TIME YOU JOINED THE NCAA, YOU'VE BEEN THE  
21 PRESIDENT OR CHANCELLOR OF UNIVERSITIES IN THE PAC-12, THE  
22 SEC, AND THE BIG EAST; IS THAT A FAIR SUMMARY?

23 A. YES.

24 Q. WHEN YOU WERE -- WHEN YOU WERE AT LSU, YOU HIRED COACH  
25 NICK SABAN, WELL-KNOWN, AWAY FROM MICHIGAN STATE. LSU WON THE

1 BCS CHAMPIONSHIP, AND THEN YOU MADE NICK SABAN THE NATION'S  
2 HIGHEST PAID COACH, RIGHT?

3 **A.** YES.

4 **Q.** AND AT THE UNIVERSITY OF WASHINGTON, YOU LED A  
5 \$300 MILLION FOOTBALL STADIUM RENOVATION, AND YOU ALSO MADE  
6 FOOTBALL COACH STEVE SARKISIAN THE HIGHEST PAID STATE EMPLOYEE  
7 AT ABOUT \$2 MILLION PER YEAR?

8 **A.** THE FOOTBALL COACH AT WASHINGTON HAS CONSISTENTLY BEEN THE  
9 HIGHEST PAID STATE EMPLOYEE, SO I CERTAINLY DIDN'T CHANGE ANY  
10 TREND, IF THAT'S YOUR POINT.

11 **Q.** ALL RIGHT.

12 THIS -- IN ALL -- AT THE TIME THE NCAA MADE YOU ITS  
13 PRESIDENT, OKAY, IT WAS WELL-KNOWN THAT YOU WERE THE -- YOU  
14 WERE THE PERSON WHO MADE NICK SABAN THE HIGHEST PAID FOOTBALL  
15 COACH IN THE NATION.

16 **A.** I ASSUME SO.

17 **Q.** OKAY.

18 NOW, THERE'S BEEN DISCUSSION OF THIS IN THIS CASE OF NCAA  
19 FORMS FOR CONSENTS FOR PERMISSION TO USE INDIVIDUAL STUDENT  
20 ATHLETES FOR THE PURPOSES OF PROMOTING THE NCAA CHAMPIONSHIP.

21 AND YOU ARE AWARE THAT THOSE FORMS EXIST, RIGHT?

22 **A.** YES.

23 **Q.** YOU ARE VERY CLEAR THAT THOSE ARE LIMITED TO PROMOTING THE  
24 NCAA CHAMPIONSHIP?

25 **A.** THAT'S THE RULE, YES.

1 Q. AND WHEN THEY SIGN THOSE FORMS, THE PLAYERS ARE RELEASING  
2 THEIR RIGHTS FOR THE NCAA TO USE THAT IMAGE FOR THE PURPOSE OF  
3 PROMOTING THE CHAMPIONSHIP GAMES. CORRECT?

4 MR. POMERANTZ: OBJECTION, YOUR HONOR, TO THE EXTENT  
5 IT'S CALLING FOR A LEGAL CONCLUSION FROM DR. EMMERT.

6 BY MR. ISAACSON:

7 Q. YOUR UNDERSTANDING IS --

8 THE COURT: I THINK HIS UNDERSTANDING OF IT IS  
9 RELEVANT.

10 BY MR. ISAACSON:

11 Q. YOUR UNDERSTANDING IS THAT THE PLAYERS ARE RELEASING THEIR  
12 RIGHT TO THE NCAA TO USE THAT IMAGE FOR THE PURPOSE OF  
13 PROMOTING THE CHAMPIONSHIP GAMES, CORRECT?

14 A. THAT'S MY UNDERSTANDING, THOUGH, AS POINTED OUT, I'M  
15 CERTAINLY NOT A LAWYER.

16 Q. NO ONE IS SUGGESTING THAT YOU ARE.

17 IT'S YOUR UNDERSTANDING THOSE CONSENTS ARE POTENTIALLY  
18 INFINITE IN TERMS OF HOW LONG THEY RUN?

19 A. NO.

20 Q. IT'S YOUR UNDERSTANDING THAT THOSE RELEASES ARE  
21 POTENTIALLY INFINITE IN DURATION?

22 A. I DON'T KNOW THAT.

23 MR. ISAACSON: CAN WE SHOW PAGE 78 OF HIS DEPOSITION?

24 (DEPOSITION DISPLAYED ON SCREEN.)  
25

1 **BY MR. ISAACSON:**

2 **Q.** AND ON THIS PAGE, YOU ARE DISCUSSING THESE RELEASES. AND  
3 AT LINE 18 YOU SAY THEY ARE USED FOR PROMOTING CHAMPIONSHIP  
4 GAMES FOR WHATEVER PERIOD OF TIME THEY ARE USED TO PROMOTE  
5 CHAMPIONSHIP GAMES.

6 THEN LINE 24 YOU WERE ASKED:

7 "HOW LONG, INFINITE?"

8 ANSWER AT LINE 25, CONTINUING ONTO THE NEXT PAGE.

9 "POTENTIALLY, OF COURSE -- FOR PROMOTING A  
10 CHAMPIONSHIP GAME? YES. FOR THAT SOLE PURPOSE,  
11 YES."

12 ALL RIGHT. THAT ANSWER WAS CORRECT, WASN'T IT? IT WAS  
13 TRUTHFUL TESTIMONY?

14 **A.** AS I SAID, POTENTIALLY, OF COURSE. I'M NOT A LAWYER. I  
15 CAN'T INTERPRET THIS LANGUAGE FROM A LEGAL PERSPECTIVE.

16 **Q.** MY QUESTION TO YOU WAS, WAS THAT TRUTHFUL TESTIMONY AT  
17 YOUR DEPOSITION?

18 **A.** YES.

19 **Q.** NOW, THE NCAA RULES MANDATE THAT THE MEMBER COLLEGES AND  
20 UNIVERSITIES OBTAIN THOSE CONSENT FORMS FROM ATHLETES IN ORDER  
21 FOR THEM TO PARTICIPATE IN DIVISION I BASKETBALL AND FOOTBALL,  
22 CORRECT?

23 **A.** NO.

24 **Q.** OR FOR DIVISION I BASKETBALL?

25 **A.** NO.

1 Q. OKAY. ALL RIGHT. IS IT YOUR UNDERSTANDING THAT THEY DO?

2 A. NO.

3 Q. ALL RIGHT.

4 MR. ISAACSON: CAN WE LOOK AT PAGE 79 OF HIS  
5 DEPOSITION?

6 (DEPOSITION DISPLAYED ON SCREEN.)

7 NEVER MIND.

8 BY MR. ISAACSON:

9 Q. ALL RIGHT.

10 NOW -- AND WHEN YOU REFER TO THESE RIGHTS, WHAT YOU REFER  
11 TO THESE ARE AS MEDIA RIGHTS, THAT'S WHAT THE STUDENTS ARE  
12 GIVING UP?

13 A. THEIR NAME, IMAGE AND LIKENESS, IS THAT WHAT YOU ARE  
14 REFERRING TO?

15 Q. THE TERM YOU USE IS "MEDIA RIGHTS". YES, THE NAMES,  
16 IMAGES AND LIKENESS.

17 A. I MAY NOT HAVE USED IT -- I DON'T RECALL WHETHER I'VE EVER  
18 USED THE WORD "MEDIA RIGHTS".

19 THE, AGAIN, THE FACT OF THE MATTER IS, I USE, LIKE MOST  
20 PEOPLE, LANGUAGE PROBABLY MORE FLEXIBLY AND LOOSELY THAN A  
21 LAWYER DOES.

22 Q. YOU DO HAVE THE UNDERSTANDING THAT THEY ARE GIVING UP  
23 CERTAIN RIGHTS WHEN THEY SIGN THOSE FORMS?

24 A. YES.

25 Q. OKAY. NOW, LET'S TALK SOME ABOUT THE VIDEO GAMES.

1                   **MR. ISAACSON:** PLAINTIFFS' EXHIBIT 826.

2                                   (EXHIBIT DISPLAYED ON SCREEN.)

3           **BY MR. ISAACSON:**

4           **Q.** AT THE BOTTOM I WANT TO SHOW YOU AN EMAIL FROM STEVE  
5 MALLONEE. HE'S WITH MEMBERSHIP -- HE WAS AT THIS TIME WITH  
6 MEMBERSHIP SERVICES AT THE NCAA.

7                   DO YOU KNOW HIM?

8           **A.** I'M SORRY. I DO, BUT COULD I SEE THE FULLEST OF THIS  
9 MEMORANDUM? I DON'T KNOW WHAT THIS IS ABOUT OR WHAT ITS  
10 CONTEXT IS.

11           **Q.** SURE.

12           **A.** CAN YOU BLOW UP THE TOP PART?

13           **Q.** I JUST WANTED TO FIRST SHOW YOU WHO IT IS FROM.

14                   **THE COURT:** GIVE HIM THE WHOLE THING IF YOU HAVE IT  
15 IN HARD COPY.

16                   WHILE YOU ARE DOING THAT, I MISSED SOMETHING AND MAYBE YOU  
17 CAN SHOW IT TO ME WHILE HE'S LOOKING AT THAT.

18                   THE RULE ABOUT DIRECT PROMOTIONS THAT YOU SHOWED HIM? CAN  
19 YOU PUT THAT BACK UP ON THE SCREEN?

20                   I GUESS MAYBE YOU CAN'T PUT TWO THINGS ON AT ONCE.

21                   **THE WITNESS:** I HAVE THIS.

22                   **MR. ISAACSON:** HE HAS THE DOCUMENT.

23                   CAN YOU PUT THE RULE BACK UP --

24                   **THE COURT:** OR GIVE IT TO ME IN A HARD COPY OR CITE  
25 ME WHERE IT IS. I JUST MISSED IT.

1           **MR. ISAACSON:** SURE. IT'S 12.5.2.1A AT 2340-85. AND  
2 IT'S ON YOUR SCREEN.

3                           (EXHIBIT DISPLAYED ON SCREEN.)

4           **MR. POMERANTZ:** THERE'S MORE TO THAT RULE WHICH WE  
5 WILL BE GOING OVER WITH OTHER WITNESSES.

6           **THE COURT:** OKAY.

7                           RIGHT AFTER IT OR SOMEWHERE ELSE?

8           **MR. POMERANTZ:** IT WILL BE ON -- PROBABLY MONDAY.

9           **THE COURT:** NO. I MEAN IS IT RIGHT -- CAN I READ IT  
10 RIGHT HERE? IS IT IN THE SAME SECTION?

11           **MR. POMERANTZ:** IT'S IN THE SAME SECTION, YES.

12           **MR. ISAACSON:** I HAVE THE PAGE AVAILABLE. I HAVE THE  
13 FULL PAGE AVAILABLE.

14           **THE COURT:** GIVE IT TO MS. RILEY.

15                           (COUNSEL CONFER.)

16           **MR. ISAACSON:** I WILL GIVE HER THE --

17           **MR. POMERANTZ:** YOUR HONOR, THE PORTION WE WERE  
18 REFERRING TO IS NOT ON THAT PAGE. WE WILL PUT IT IN EVIDENCE  
19 WITH A WITNESS PROBABLY ON MONDAY.

20           **THE COURT:** OKAY.

21 **BY MR. ISAACSON:**

22 **Q.** HAVE YOU HAD A CHANCE TO REVIEW 826?

23 **A.** YES.

24 **Q.** MR. MALLONEE IS WITH MEMBERSHIP SERVICES; IS THAT CORRECT?

25 **A.** YES. IT'S MALLONEE NOT THAT IT MATTERS.

1 Q. THANK YOU.

2 A. QUITE ALL RIGHT.

3 Q. IT MATTERS TO HIS FAMILY.

4 MR. MALLONEE IS STILL THERE AT THE NCAA?

5 A. YES, HE IS.

6 Q. AND HE'S PART OF THAT MEMBERSHIP SERVICES DEPARTMENT THAT  
7 YOU REFERRED TO AS HAVING THE CONTENT EXPERTISE WITH RESPECT  
8 TO THE RULES OF THE NCAA?

9 A. YES.

10 Q. ALL RIGHT. AND HE SAYS AT THE BOTTOM OF THIS FIRST PAGE,  
11 HE'S TALKING ABOUT THE EA SPORTS NCAA FOOTBALL GAME.

12 "HAVING SAID THAT, SINCE OUR CURRENT  
13 RULES/INTERPRETATIONS ONLY PRECLUDE ACTUAL USE OF THE  
14 NAME, PICTURE, OR PHYSICAL LIKENESS IN COMMERCIAL  
15 PROMOTION ACTIVITIES, THESE COMPUTERIZED VIDEO GAMES  
16 ARE BASICALLY ALLOWED TO DO WHAT THEY ARE DOING. THE  
17 JERSEY NUMBER ALONG WITH THE POSITION AND VITAL  
18 STATISTICS IS CLEARLY AN ATTEMPT TO HAVE THE PUBLIC  
19 MAKE THE ASSOCIATION WITH THE CURRENT STUDENT  
20 ATHLETE, AND IT APPEARS TO BE WORKING."

21 DID MEMBERSHIP SERVICES DISCUSS THAT OPINION WITH YOU?

22 A. THEY DIDN'T AT THIS TIME. I WASN'T WORKING -- IT WAS FIVE  
23 YEARS LATER BEFORE I BEGAN WORKING WITH THEM, SO OBVIOUSLY WE  
24 DIDN'T DISCUSS THIS TOPIC.

25 Q. WE ALL KNOW THAT YOU WEREN'T HERE AT THAT TIME.



1           BUT MR. MALLONEE, IF I'M SAYING HIS NAME CORRECTLY, IN THE  
2 MEMBER SERVICES DEPARTMENT WERE ALL THERE WHEN YOU BECAME  
3 PRESIDENT, THE VIDEO GAMES WERE BEING DISCUSSED. WAS THIS  
4 CONCERN RAISED WITH YOU -- WAS THIS OPINION GIVEN TO YOU ONCE  
5 YOU BECAME PRESIDENT?

6           **A.** AS THE ENTIRE EMAIL CHAIN INDICATES, THIS WAS A VERY  
7 ACTIVE DEBATE AMONG THE STAFF AND THEN LATER AMONG THE  
8 MEMBERSHIP ITSELF. AND IT WAS ONE OF THE REASONS THAT I  
9 DECIDED THAT WE SHOULD EXTRACT OURSELVES FROM THIS  
10 RELATIONSHIP SINCE IT WAS CONTROVERSIAL, AND DETERMINING  
11 WHETHER OR NOT THIS STATEMENT WAS ACCURATE WAS SOMETHING THAT  
12 WE SHOULDN'T BE INVOLVED IN.

13           **Q.** ALL RIGHT. YOU'VE SAID THOSE THINGS BEFORE, SIR.

14           **A.** THAT'S THE ANSWER TO THE QUESTION. THAT'S WHY I SAID  
15 THEM.

16           **Q.** I WANT TO KNOW IF MEMBERSHIP SERVICES GAVE YOU THE OPINION  
17 THAT THIS IS CLEARLY AN ATTEMPT TO HAVE THE PUBLIC MAKE THE  
18 ASSOCIATION WITH THE CURRENT STUDENT ATHLETE AND IT APPEARS TO  
19 BE WORKING.

20           **MR. POMERANTZ:** OBJECTION, YOUR HONOR.

21           **THE WITNESS:** NO, I NEVER HAD ANYONE SAY THAT TO ME  
22 DIRECTLY, IF THAT'S YOUR QUESTION.

23           **BY MR. ISAACSON:**

24           **Q.** DID MEMBERSHIP SERVICES SAY TO YOU AS IT SAYS IN THE NEXT  
25 PARAGRAPH:

1 "THE BIGGEST CONCERN I HAVE IS THAT SUCH A POSITION  
2 REALLY DOES ALLOW FOR THE MAXIMUM COMMERCIAL  
3 EXPLOITATION OF THE STUDENT ATHLETE. AND IF THAT  
4 OCCURS, WILL IT BE LONG BEFORE WE CAN DEFEND NOT  
5 GIVING THEM A PIECE OF THE PROFITS."

6 **A.** NO. NO ONE EVER RAISED THAT CONCERN WITH ME.

7 **Q.** MEMBERSHIP -- YOU NEVER HEARD ANYTHING LIKE THAT FROM  
8 MEMBERSHIP SERVICES EVEN THOUGH THEY WERE WRITING ABOUT IT?

9 **A.** SO LET ME RESTATE MY ANSWER.

10 **Q.** IT'S A SIMPLE QUESTION, WHETHER YOU HEARD ANYTHING ABOUT  
11 THIS.

12 **A.** NO, IT'S NOT A SIMPLE QUESTION. IT DOESN'T DESERVE A  
13 "YES" OR "NO" ANSWER. IT'S A MUCH MORE COMPLICATED QUESTION  
14 AND IT DESERVES A MORE COMPLICATED RESPONSE.

15 THE FACT OF THE MATTER IS, AS I STATED, THERE HAS BEEN A  
16 GREAT DEAL OF DISCUSSION, AS THIS ENTIRE EMAIL CHAIN  
17 DEMONSTRATES, ABOUT WHETHER OR NOT IT WAS APPROPRIATE TO BE  
18 INVOLVED IN THE VIDEO GAME BUSINESS. OUR CONTRACT, THE NCAA'S  
19 CONTRACT WITH EA SPORTS EXPRESSLY FORBID THEM FROM USING NAME,  
20 IMAGE AND LIKENESS IN AN INAPPROPRIATE WAY.

21 SOME OF THE STAFF MEMBERS WERE EXPRESSING CONCERNS THAT  
22 THAT MAY BE THE CASE, AND THEY DID, INDEED, TALK WITH ME ABOUT  
23 IT. AND BASED UPON THOSE OPINIONS, I DETERMINED THAT IT WAS  
24 INAPPROPRIATE FOR US TO BE INVOLVED IN VIDEO GAMES.

25 SINCE -- HENCE, WHEN THE FIRST OPPORTUNITY CAME TO EXTRACT

1       OURSELVES FROM IT, I DID SO. BUT NO ONE EXPRESSED THOSE  
2       PRECISE THOUGHTS TO ME, IF THAT'S WHAT YOU'RE ASKING.

3       **Q.** YEAH, THAT IS WHAT I WAS ASKING.

4               **MR. POMERANTZ:** YOUR HONOR, JUST BECAUSE I THINK THE  
5       WAY THE QUESTION WAS POSED, THE HIGHLIGHTING OF THE SCREEN IS  
6       LEADING -- I THINK IT WAS MISLEADING, THEY DIDN'T INCLUDE THE  
7       FIRST --

8               **MR. ISAACSON:** HE'S --

9               **MR. POMERANTZ:** -- FIRST TWO SENTENCES OF THAT  
10       PARAGRAPH, WHICH PUT THAT SENTENCE IN DIRECT CONTEXT.

11              **THE COURT:** WHEN IT'S IN EVIDENCE, I WON'T HAVE THE  
12       HIGHLIGHTING.

13              **MR. POMERANTZ:** THANK YOU, YOUR HONOR.

14              **MR. ISAACSON:** I WILL MOVE --

15              **THE COURT:** YOU CAN TAKE IT OFF NOW, IF YOU'D LIKE.

16              **MR. ISAACSON:** I WILL MOVE 826.

17              **MR. POMERANTZ:** YOUR HONOR, IT'S NOT JUST THE  
18       HIGHLIGHTING. IT'S THE FACT THAT THE QUESTION WAS MISLEADING  
19       BY NOT PUTTING IT IN THE CONTEXT OF THOSE FIRST TWO SENTENCES.

20              **MR. ISAACSON:** THAT'S WHAT REDIRECT IS FOR.

21              **THE COURT:** THAT'S FINE. DR. EMMERT GAVE A FULSOME  
22       ANSWER, SO I THINK WE'RE CLEAR.

23              **MR. POMERANTZ:** I OBJECT TO THE QUESTIONS, BUT NOT TO  
24       THE ADMISSION OF THE DOCUMENT ITSELF.

25              **MR. ISAACSON:** LET ME ASK YOU ABOUT THE REST --

1           **THE CLERK:** YOU NEED TO WAIT UNTIL SHE SAYS  
2 "RECEIVED".

3           **MR. ISAACSON:** I'M SORRY. YOU ARE ABSOLUTELY RIGHT.

4           **THE COURT:** DID YOU HEAR ME SAY RECEIVED? AND THE  
5 NUMBER?

6           **MR. ISAACSON:** 826.

7           (PLAINTIFFS' EXHIBIT 826 RECEIVED IN EVIDENCE)

8 **BY MR. ISAACSON:**

9 **Q.** AT THE BOTTOM, THERE'S AN EMAIL FROM BRIAN BARRIO, WHO IS  
10 IDENTIFIED AS THE COMPLIANCE COORDINATOR AT THE IVY LEAGUE.

11           A COMPLIANCE COORDINATOR IS SOMEONE WHO MAKES SURE THAT  
12 THE IVY LEAGUE IS COMPLYING WITH NCAA RULES, AMONG OTHER  
13 THINGS, CORRECT?

14 **A.** YES.

15 **Q.** AND HE'S TALKING ABOUT THE VIDEO GAMES. AND GOING ON TO  
16 THE NEXT PAGE, HE SAYS, THE IVY LEAGUE SAYING THIS:

17           "THE QUESTION WE COULD NOT ANSWER WAS, IS THIS A  
18 POTENTIAL SOURCE OF LIABILITY FOR THE NCAA? THIS  
19 SEEMS TO GO BEYOND THE PLAUSIBLE DENIABILITY INHERENT  
20 IN SELLING A JERSEY WITH A UNIFORM NUMBER WITH NO  
21 NAME ON THE BACK."

22           ARE YOU FAMILIAR WITH DISCUSSIONS THAT THE JERSEY SALES  
23 WITH THE NUMBERS ON THE BACK ARE BEING SOLD AS BEING IN  
24 COMPLIANCE WITH NCAA RULES BASED ON A PLAUSIBLE DENIABILITY  
25 CONCEPT?

1       **A.** NO. I'VE NEVER HEARD THAT.

2           I'VE HEARD A GREAT DEAL OF DISCUSSION ABOUT JERSEYS WITH  
3       NUMBERS ON THE BACK, BUT I'VE NEVER HEARD IT IN THE CONTEXT OF  
4       PLAUSIBLE DENIABILITY.

5       **Q.** PLAINTIFFS' EXHIBIT 2012.

6                               (EXHIBIT DISPLAYED ON SCREEN.)

7           THIS IS AN EMAIL FROM GAIL DENT, DECEMBER 22, 2005 ABOUT  
8       THE EA MATTER. SHE WAS, AS I UNDERSTAND IT, THE ASSOCIATE  
9       DIRECTOR OF PUBLIC AND MEDIA RELATIONS. IS SHE STILL -- IS  
10      THAT CORRECT?

11           IS SHE STILL AT THE NCAA?

12      **A.** SHE IS.

13      **Q.** AND SHE SAYS AT THE END OF THE FIRST PARAGRAPH:

14                               "I THINK THIS IS GOING TO COME UP AGAIN DOWN THE ROAD  
15                               BECAUSE ANYONE CAN LOOK AT THE GAMES AND SEE A  
16                               RESEMBLANCE TO THE STUDENT ATHLETE IN QUESTION AND A  
17                               PARTICULAR SCHOOL."

18           WERE THOSE CONSISTENT WITH THE STATEMENTS THAT WERE BEING  
19      MADE TO YOU BY MEMBERS OF THE NCAA STAFF?

20      **A.** THAT WAS CERTAINLY THE CONCERN THAT WAS BEING EXPRESSED BY  
21      SOME MEMBERS OF THE STAFF AND, INDEED, THEY WERE SOME OF MY  
22      PERSONAL CONCERNS.

23                               **MR. ISAACSON:** CAN WE LOOK AT PLAINTIFFS'  
24      EXHIBIT 2054.

25           I MOVE TO ADMIT 2012.

1           **MR. POMERANTZ:** NO OBJECTION, YOUR HONOR.

2           **THE COURT:** RECEIVED.

3           (PLAINTIFFS' EXHIBIT 2012 RECEIVED IN EVIDENCE)

4           **BY MR. ISAACSON:**

5           **Q.** 2054. THIS IS, AT THE TOP, AN EMAIL FROM PETER DAVIS.

6           AS I UNDERSTAND IT, HE WAS THE NCAA DIRECTOR OF CORPORATE  
7 ALLIANCES FOR MANY YEARS. IS THAT CORRECT, IS HE STILL AT THE  
8 NCAA?

9           **A.** NOT THAT I'M AWARE OF.

10          **Q.** OKAY.

11          HE IS ASKED BY MR. DUNN, WHO IS THE ASSISTANT DIRECTOR OF  
12 CORPORATE RELIANCES, DO YOU KNOW HIM?

13          **A.** NO.

14          **Q.** MR. DUNN ASKED "SO" -- IN THE MIDDLE:

15          "SO, WE ARE PERMITTED TO CREATE AN IMAGE THAT KIND OF  
16 LOOKS LIKE THE STUDENT ATHLETE, CORRECT?"

17          MR. DAVIS RESPONDS: "FOR THE MOST PART, THAT'S CORRECT."

18          HE GOES ON TO SAY IN THE LAST PARAGRAPH:

19          "I'VE NEVER BEEN SOLD ON THE DEGREE OF LIKENESS, BUT MS,"  
20 REFERRING TO MEMBERSHIP SERVICES, "MYLES", REFERRING TO  
21 DR. BRAND, AND "GAS" REFERRING TO MR. SHAHEEN, "ARE ALL OKAY  
22 WITH IT. SO WHO AM I TO DISAGREE." SMILEY FACE, OR SMILEY  
23 ICON, WHATEVER WE CALL THOSE THINGS.

24          WAS THAT CONSISTENT WITH THE BRIEFING THAT YOU RECEIVED  
25 WHEN YOU BECAME NCAA PRESIDENT, THAT THESE DEGREES OF

1 LIKENESSES HAD BEEN APPROVED BY DR. BRAND, MEMBERSHIP  
2 SERVICES, AND OTHER HIGH LEVEL NCAA EXECUTIVES?

3 **A.** I WAS AWARE THAT -- WAS MADE AWARE THAT THE -- THAT THE  
4 LIKENESSES IN THE VIDEO GAMES WERE NOT INCONSISTENT WITH THE  
5 CURRENT RULES, AND THAT THE CONTRACT WITH EA SPORTS PROHIBITED  
6 ANY INCREASE IN THE REALISM OF THE -- OF THE AVATARS. AND IT  
7 WAS, OF COURSE, A MATTER OF INDIVIDUAL JUDGMENT AS TO WHETHER  
8 OR NOT THE AVATARS WERE, INDEED, TOO LIFE-LIKE, IF YOU'LL USE  
9 THAT EXPRESSION.

10 AND, AGAIN, IT IS BASED UPON THAT AMBIGUITY THAT  
11 ENCOURAGED ME TO EXTRACT THE NCAA FROM THE VIDEO GAMES.

12 **MR. ISAACSON:** ALL RIGHT. PLAINTIFFS' EXHIBIT -- I  
13 WOULD ACTUALLY MOVE TO ADMIT THAT EXHIBIT, WHICH WAS 2054.

14 **MR. POMERANTZ:** NO OBJECTION, YOUR HONOR.

15 **MR. ISAACSON:** PLAINTIFFS' EXHIBIT 2062 --

16 **THE CLERK:** ARE YOU GOING TO WAIT?

17 **MR. ISAACSON:** YES.

18 **THE COURT:** RECEIVED.

19 (PLAINTIFFS' EXHIBIT 2054 RECEIVED IN EVIDENCE)

20 **MR. ISAACSON:** EVENTUALLY I WILL LEARN.

21 **THE CLERK:** THAT WOULD BE GREAT.

22 **BY MR. ISAACSON:**

23 **Q.** 2062, MR. DUNN WRITES:

24 "I STILL WORRY ABOUT THE LIKENESSES, COLT MCCOY,  
25 TERRENCE CODY, DAN HERRON. IT'S PRETTY OBVIOUS TO

1 ME."

2 WAS THERE DISCUSSION WITH YOU THAT THESE LIKES --  
3 LIKENESSES TO ACTUAL PLAYERS WERE NOT AMBIGUOUS, THEY WERE  
4 PRETTY OBVIOUS?

5 **A.** I THINK I'VE ANSWERED THIS QUESTION SEVERAL TIMES, BUT IF  
6 YOU WOULD LIKE I WILL DO IT ONE MORE TIME.

7 **Q.** NO, THIS IS --

8 (SIMULTANEOUS COLLOQUY.)

9 **A.** I HAD CONVERSATIONS WITH THE STAFF AND WITH MEMBERSHIP  
10 ABOUT THE VIDEO GAMES AND THE AMBIGUITY OF WHETHER OR NOT THE  
11 LIKENESSES WERE SUFFICIENTLY -- HAD GONE OVER THE EDGE OF  
12 REALISM. AND IT WAS, THEREFORE, BECAUSE OF THAT AMBIGUITY,  
13 THAT I DETERMINED THAT WE SHOULD NOT BE IN THE VIDEO GAME  
14 BUSINESS AND EXTRACTED OURSELVES FROM IT AT THE FIRST  
15 OPPORTUNITY.

16 I THINK I HAVE GIVEN THAT ANSWER SEVERAL TIMES NOW.

17 **Q.** I THINK YOU HAVE, TOO.

18 BUT DID ANYBODY IN THE STAFF SAY TO YOU, THIS ISN'T  
19 AMBIGUOUS, SIR, IT'S OBVIOUS?

20 **A.** NO.

21 **MR. ISAACSON:** I MOVE TO ADMIT PLAINTIFFS' 2062.

22 **MR. POMERANTZ:** NO OBJECTION, YOUR HONOR.

23 **THE COURT:** RECEIVED.

24 (PLAINTIFFS' EXHIBIT 2062 RECEIVED IN EVIDENCE)

25 **MR. ISAACSON:** ALL RIGHT.



1 THE PLAINTIFFS' EXHIBIT 2023.

2 (EXHIBIT DISPLAYED ON SCREEN.)

3 IF WE CAN GO TO 2023-3, SO THAT WE CAN SHOW DR. EMMERT  
4 THAT THIS IS AN EMAIL FROM GREG SHAHEEN TO DR. BRAND,  
5 AUGUST 2007.

6 **BY MR. ISAACSON:**

7 **Q.** AND MR. SHAHEEN WAS A HIGH-LEVEL EXECUTIVE OF THE NCAA AT  
8 THE TIME, CORRECT?

9 **A.** HE WAS THE DIRECTOR OF BASKETBALL.

10 **Q.** HE'S ONE OF THE ONES WHO HAS AN AGREEMENT TO COOPERATE FOR  
11 PURPOSES OF THIS LITIGATION WITH YOU, RIGHT?

12 **A.** HE DOES.

13 **MR. ISAACSON:** ALL RIGHT. IF WE CAN LOOK AT 2023-4.

14 (EXHIBIT DISPLAYED ON SCREEN.)

15 ALL RIGHT. HE SAYS IN -- IN THE MIDDLE PARAGRAPH,  
16 "IMPORTANTLY". IF WE CAN BRING UP THAT PARAGRAPH.

17 **MR. POMERANTZ:** YOUR HONOR, IF I MAY ASK TO HAVE THE  
18 HARD COPY OF THIS DOCUMENT PROVIDED TO DR. EMMERT.

19 **THE COURT:** YES.

20 **MR. ISAACSON:** SATH, CAN I HAVE THAT?

21 (DOCUMENT HANDED TO WITNESS.)

22 **THE WITNESS:** THANK YOU.

23 **BY MR. ISAACSON:**

24 **Q.** ALL RIGHT.

25 IN THE PARAGRAPH THAT WE ARE LOOKING AT BEGINS

1 "IMPORTANTLY". AND IT TALKS ABOUT WE WERE UNABLE TO INCLUDE  
2 THE USE OF THE STUDENT ATHLETES' NAMES OR LIKENESSES TO APPEAR  
3 OR BE A PART OF ANY COMMERCIAL PRODUCTS SOLD BY COMMERCIAL  
4 ENTITIES.

5 AND IT GOES ON TO SAY:

6 "A LOOK AT THE EVOLUTION OF THE VIDEO TECHNOLOGY,  
7 EVEN SINCE WE MET WITH EA TWO YEARS AGO IS AMAZING.  
8 AND WE ARE MISSING THE POINT BY NOT ALLOWING NAMES  
9 AND PERHAPS LIKENESSES. IF WE ARE ALLOWING IT IN  
10 BROADCAST, VIDEO GAMES ARE LITERALLY NO DIFFERENT  
11 NOW. THEY LOOK AND FEEL THE EXACT SAME WAY. I'M  
12 GETTING EXAMPLES TO SHOW YOU IN THE COMING WEEKS."

13 WAS THE POINT MADE TO YOU IN THESE DISCUSSIONS THAT YOU'VE  
14 REPEATEDLY REFER TO ABOUT THE GAMES, THAT THE GAMES WERE THE  
15 SAME AS THE BROADCASTS --

16 **A.** NO.

17 **MR. ISAACSON:** THE PLAINTIFFS' EXHIBIT 730, AND LET'S  
18 HAVE A HARD COPY AVAILABLE.

19 (EXHIBIT DISPLAYED ON SCREEN.)

20 (EXHIBIT HANDED TO WITNESS.)

21 **BY MR. ISAACSON:**

22 **Q.** SIR, PLAINTIFFS' EXHIBIT 730, YOU WILL SEE IS A DECK, AS  
23 WE SAY.

24 AND IF WE CAN SHOW THE FIRST PAGE, PROMOTIONAL ACTIVITIES  
25 NCAA BYLAW 12.5. AND FLIP THROUGH IT AND TELL ME IF YOU'VE

1 SEEN THIS OR SOMETHING LIKE IT BEFORE.

2 **A.** CAN YOU TELL ME THE ORIGIN OF THIS AND WHEN IT WAS  
3 PRODUCED?

4 **Q.** SURE. I WILL TELL YOU WHAT I KNOW ABOUT IT.

5 MR. KERIN -- BO KERIN, DO YOU KNOW HIM?

6 **A.** NO.

7 **Q.** HE WAS THE FORMER ASSISTANT ASSOCIATE DIRECTOR OF  
8 MEMBERSHIP SERVICES WHO HAS BEEN DEPOSED IN THIS CASE.

9 HE SAID IT APPEARS TO BE PART OF THE STAFF TRAINING  
10 PROGRAM FOR NEW STAFF MEMBERS.

11 AND IT CERTAINLY IN APPEARANCE LOOKS LIKE -- IT'S GOT  
12 PICTURES AND SOME BASIC INFORMATION ABOUT THE RULES.

13 **A.** OKAY.

14 **Q.** AND IF YOU LOOK AT PAGE 38 --

15 **A.** PARDON ME. DO YOU KNOW WHEN THIS WAS PRODUCED AND WHEN IT  
16 WAS UTILIZED.

17 **Q.** I DO NOT HAVE THAT INFORMATION.

18 **MR. ISAACSON:** IF WE CAN LOOK AT PAGE 38.

19 (PAGE DISPLAYED ON SCREEN.)

20 AND I'M SORRY, WHICH IS "IMPACT OF THE LAW". AND THEN  
21 SLIDE 40.

22 (PAGE DISPLAYED ON SCREEN.)

23 **THE WITNESS:** I AM SORRY. I'M GETTING THERE.

24 **BY MR. ISAACSON:**

25 **Q.** THIS IS A DOCUMENT GIVEN TO US BY THE NCAA. IT WAS

1 PRODUCE IN DISCOVERY.

2 A. OKAY.

3 Q. ALL RIGHT.

4 AND AS PART OF THIS DECK, IT SAYS:

5 "THE LAW ALSO MAY BE ON THE STUDENT ATHLETE'S SIDE." AND  
6 THERE'S A LITTLE FIGURE WITH A STOP SIGN.

7 "A STUDENT ATHLETE HAS THE RIGHT OF PUBLICITY WHEREBY  
8 ANOTHER MAY NOT USE A NAME, PICTURE, LIKENESS OR  
9 PHOTO FOR COMMERCIAL ACTIVITY WITHOUT PERMISSION."

10 ARE YOU AWARE OF TRAINING MATERIALS LIKE THIS AT THE NCAA?

11 A. I HADN'T SEEN THEM UNTIL NOW, BUT I CERTAINLY UNDERSTAND  
12 WHY THEY WOULD WANT TO USE THAT IN A VARIETY OF OUR STAFF  
13 MEETINGS.

14 Q. OKAY.

15 A. AND WITH THE MEMBERSHIP.

16 Q. NOW, SHIFTING TOPICS, ANOTHER BRIEF TOPIC.

17 THE NCAA HAS ARCHIVES OF GAMES AND -- HAS ARCHIVES OF  
18 GAMES AND IT LICENSES THOSE GAMES OR PORTIONS OF THOSE GAMES;  
19 IS THAT RIGHT?

20 A. YES. IS THIS RELATED TO THE DOCUMENT --

21 Q. NO. I'M SHIFTING TOPICS.

22 A. I'M SORRY. SO COULD YOU REPEAT THE QUESTION?

23 Q. SURE. ABSOLUTELY.

24 THE NCAA HAS ARCHIVES OF GAMES AND IT LICENSES THOSE GAMES  
25 OR PORTIONS OF THOSE GAMES. IS THAT FAIR?

1       **A.**   YES.

2       **Q.**   IT -- AND IT LICENSES THOSE TO PEOPLE WHO WANT TO SHOW  
3       THOSE AND IT DOES THAT FOR MONEY?

4       **A.**   YES.

5       **Q.**   AND IF I CAN YOU TO LOOK AT PLAINTIFFS' EXHIBIT 298.

6               **MR. ISAACSON:**   I MOVE TO ADMIT THE PREVIOUS EXHIBIT  
7       730.

8               **MR. POMERANTZ:**   NO OBJECTION, YOUR HONOR.

9               **THE COURT:**   RECEIVED.

10               (PLAINTIFFS' EXHIBIT 730 RECEIVED IN EVIDENCE)

11       **BY MR. ISAACSON:**

12       **Q.**   PLAINTIFFS' EXHIBIT 298.

13               (EXHIBIT DISPLAYED ON SCREEN.)

14               THIS IS ANOTHER DOCUMENT GIVEN TO US BY THE NCAA. IT GOES  
15       BACK TO BEFORE YOU WERE -- BEFORE YOU WERE THERE, BUT I'M  
16       GOING TO ASK YOU IF THIS SORT OF DISCUSSION WAS GOING ON ONCE  
17       YOU BECAME PRESIDENT.

18               YOU WILL SEE IN THE MIDDLE OF -- THE EMAIL FROM MR. KNOPP,  
19       WHO'S THE SENIOR EXECUTIVE AT THE NCAA, TO MR. SHAHEEN, AND HE  
20       SAYS, "KEVIN SCHAFF" -- YOU KNOW HE'S WITH T3 MEDIA?

21       **A.**   YES.

22       **Q.**   THAT'S THE COMPANY YOU WORK WITH IN TERMS OF THESE  
23       ARCHIVES -- ALSO KNOWN AS THOUGHT EQUITY?

24       **A.**   YES.

25       **Q.**   (READING)

1 "KEVIN SCHAFF HAS SET AS THEIR GOAL TO SHOW THAT THE  
2 ARCHIVE RIGHTS ARE 10 PERCENT OF OUR TV RIGHTS, THE  
3 \$6 BILLION DEAL."

4 KNOPP GOES ON TO SAY:

5 "GOOD STUFF AND A BIT OF AHA FOR ME AND ONE THAT I  
6 THINK COULD WORK."

7 HAVE YOU DONE INTERNAL WORK ON VALUING THOSE ARCHIVES?

8 **A.** I HAVE NOT, NO, AND I HAVEN'T SEEN ANY INTERNAL WORK ON  
9 IT.

10 **Q.** YOU HAVE HAD NO DISCUSSION ABOUT THE VALUATION OF THOSE  
11 RIGHTS?

12 **A.** NO.

13 **MR. ISAACSON:** MOVE TO ADMIT EXHIBIT 298.

14 **MR. POMERANTZ:** NO OBJECTION, YOUR HONOR.

15 **THE COURT:** RECEIVED.

16 (PLAINTIFFS' EXHIBIT 298 RECEIVED IN EVIDENCE)

17 **BY MR. ISAACSON:**

18 **Q.** THE -- NOW IN TERMS OF THE -- WE'VE TALKED A LOT ABOUT THE  
19 INTEGRATION OF ACADEMICS AND ATHLETICS ON CAMPUS. LET'S TALK  
20 A BIT ABOUT THE COACHES.

21 EXHIBIT 3168, PLEASE.

22 (EXHIBIT DISPLAYED ON SCREEN.)

23 THE -- THIS BEGINS AT 3168-27. THIS IS A MEMORANDUM TO  
24 MYLES BRAND, AND THIS IS FROM THE -- FROM MEMBERS OF THE NCAA  
25 BASKETBALL ENHANCEMENT GROUP, BAEG.

1 ARE YOU FAMILIAR WITH THAT GROUP?

2 **A.** YES.

3 **Q.** THEY SAY ON THE SECOND PAGE:

4 "COMMUNICATION OR LACK THEREOF IS A CRITICAL ISSUE IN  
5 RESOLVING CONFLICT."

6 IT GOES ON TO SAY:

7 "THERE IS A SIGNIFICANT LACK OF TRUST OF MEN'S  
8 BASKETBALL COACHES BY PRESIDENTS, FACULTY  
9 REPRESENTATIVES, COMPLIANCE COORDINATORS, AND OTHERS.  
10 IN GENERAL, PRESIDENTS TRUST THEIR OWN COACH, BUT NOT  
11 ANYONE ELSE'S COACH. THIS LACK OF TRUST OF THE  
12 COACHES AND THEIR MOTIVES IMPACTS DECISIONS AT ALL  
13 LEVELS."

14 IS THAT SOMETHING YOU AGREE WITH?

15 **A.** SOUNDS A BIT LIKE PEOPLE'S ATTITUDE TOWARD THEIR  
16 CONGRESSMAN.

17 **Q.** IT DOES.

18 **A.** YEAH.

19 I DON'T KNOW THE GENESIS OF THEIR OPINION. I DO KNOW THAT  
20 IN -- IN ALL COMPETITIVE ACTIVITIES THAT I HAVE EVER BEEN  
21 INVOLVED WITH, TRUST IS ALWAYS A SIGNIFICANT CHALLENGE.

22 **Q.** DO YOU HAVE ANY DISAGREEMENT WITH THE -- WHAT THIS  
23 BASKETBALL ENHANCE -- TELL US WHAT THE BASKETBALL ENHANCEMENT  
24 GROUP IS?

25 **A.** IT WAS A GROUP THAT WAS WORKING TOGETHER TO MAKE SURE THAT

1 THE BASKETBALL GAME WAS -- WAS CONTINUING TO EVOLVE AND  
2 DEVELOP IN A WAY THAT SUPPORTED THE SPORT.

3 **Q.** NOW, ONE MORE TOPIC ABOUT THE KNIGHT COMMISSION. THE  
4 KNIGHT --

5 **MR. ISAACSON:** MOVE TO ADMIT EXHIBIT 3168.

6 **MR. POMERANTZ:** YOUR HONOR, IT IS A VERY LENGTHY  
7 DOCUMENT.

8 **MR. ISAACSON:** I'M SORRY, 3168, 27, 28.

9 **MR. POMERANTZ:** WE WOULD LIKE TO LOOK AND SEE IF  
10 THERE'S ANY OTHER RELEVANT INFORMATION, BUT SUBJECT TO THAT,  
11 WE ARE OKAY WITH THOSE PAGES BEING ADMITTED.

12 **THE COURT:** OKAY.

13 (PLAINTIFFS' EXHIBIT 3168 (PGS. 27 & 28) RECEIVED IN  
14 EVIDENCE)

15 **BY MR. ISAACSON:**

16 **Q.** THE PLAINTIFFS' -- THE KNIGHT COMMISSION AS ONE OF ITS  
17 RECENT PROPOSALS HAS PROPOSED ALLOCATING BOWL AND NCAA REVENUE  
18 BY HOW WELL SCHOOLS ARE DOING IN EDUCATING FOOTBALL OR  
19 BASKETBALL PLAYERS.

20 YOU ARE FAMILIAR WITH THAT RECOMMENDATION?

21 **A.** YES.

22 **Q.** THAT'S NOT A RECOMMENDATION THAT'S BEEN ACCEPTED BY THE  
23 NCAA; IS THAT CORRECT?

24 **A.** IT HAS, ACTUALLY, AND IT WAS, IN PART, ONE OF THE THINGS  
25 THAT LED TO A VERY SIGNIFICANT CHANGE IN THE -- IN THE ABILITY



1 TO PARTICIPATE IN POST-SEASON PLAY.

2 SO, ONE OF THE THINGS THAT THE MEMBERSHIP DID IN -- AFTER  
3 THE SUMMER OF '11 IS THEY PUT IN PLACE AN APR REQUIREMENT FOR  
4 PARTICIPATION IN POST-SEASON PLAY. AND IT'S PARTICIPATION IN  
5 POST-SEASON PLAY THAT DETERMINES YOUR ALLOCATIONS.

6 SO BY ADDING AN ACADEMIC THRESHOLD, AN ACADEMIC  
7 ELIGIBILITY REQUIREMENT, THEY DID, IN FACT, HAVE PRECISELY  
8 THAT IMPACT FOR THAT PURPOSE.

9 Q. ALL RIGHT. LET'S GO OVER WHAT YOU JUST SAID.

10 YOU ADDED AN APR REQUIREMENT, AND IF YOU DIDN'T MEET THAT  
11 REQUIREMENT --

12 **THE COURT:** APR?

13 **THE WITNESS:** ACADEMIC PROGRESS RATE, MA'AM. IT'S  
14 THE -- IT'S A MEASURE OF STUDENT ATHLETE'S ACADEMIC PROGRESS  
15 THROUGH THEIR COURSE WORK.

16 **BY MR. ISAACSON:**

17 Q. YOU ADDED AN ACADEMIC PROGRESS RATE. AND IF YOU WEREN'T  
18 MEETING THAT CRITERIA, YOU COULD NOT PARTICIPATE IN THE NCAA  
19 TOURNAMENT?

20 A. IN ANY POST-SEASON PLAY, WHETHER IT BE A BOWL GAME OR A  
21 CONFERENCE TOURNAMENT.

22 Q. RIGHT.

23 BUT WHAT THE KNIGHT COMMISSION ACTUALLY RECOMMENDED IS AT  
24 THE END OF THE NCAA TOURNAMENT AND AT THE END OF THE BOWL  
25 GAMES, THAT INSTEAD OF YOUR PRESENT FORMULAS FOR DISTRIBUTING

1 MONEY, THAT YOU WOULD DISTRIBUTE THE MONEY BASED ON HOW WELL  
2 SCHOOLS WERE DOING IN EDUCATING FOOTBALL OR BASKETBALL  
3 PLAYERS, CORRECT?

4 **A.** YES.

5 **Q.** OKAY. THAT HAS NOT BEEN DONE.

6 **A.** ACTUALLY, WHAT'S HAPPENED IS, THERE WAS A VERY EXTENSIVE  
7 CONVERSATION ABOUT HOW ONE WOULD IMPLEMENT SUCH A RULE. AND  
8 THE OBVIOUS CHALLENGE IS THAT UNIVERSITIES HAVE VERY DIFFERENT  
9 RULES, SCOPE, AND MISSION.

10 SO THE QUESTION WAS, WOULD YOU BASE IT ON GRADE POINT  
11 AVERAGE, IN WHICH CASE STANFORD MAY WELL GET MORE MONEY THAN A  
12 HISTORICALLY BLACK INSTITUTION, EVEN THOUGH THE HISTORICALLY  
13 BLACK INSTITUTION WAS DOING A BETTER JOB EDUCATING THEIR  
14 STUDENTS.

15 AND THE CONCLUSION WAS IS THAT HOW WELL AN INSTITUTION IS  
16 EDUCATING THEIR STUDENTS REALLY IS A JUDGMENT THAT CAN ONLY BE  
17 MADE BY THE UNIVERSITY, SO, THEREFORE, WE HAD TO USE THE ONLY  
18 AVAILABLE MEASURE BY WHICH WE COULD MAKE THAT KIND OF  
19 ALLOCATION, AND THAT'S PRECISELY WHAT THE MEMBERSHIP DID.

20 SO I COULDN'T DISAGREE WITH YOU MORE.

21 **Q.** YOU USED THE APR TO DECIDE ELIGIBILITY FOR THE TOURNAMENT;  
22 YOU DID NOT USE THE APR FOR DECIDING HOW REVENUES WOULD BE  
23 ALLOCATED AFTER THE TOURNAMENTS.

24 IS THAT CORRECT?

25 **A.** SO PERHAPS I SHOULD EXPLAIN HOW THIS WORKS.

1 Q. I WOULD --

2 THE COURT: I THINK HE'S JUST WANTING TO KNOW WHETHER  
3 YOU DID IT OR DIDN'T DO IT. AND YOU ARE EXPLAINING WHY YOU  
4 DIDN'T DO IT OR WHATEVER. HE JUST WANTS TO KNOW WHETHER YOU  
5 DID IT OR NOT.

6 THE WITNESS: YOU ARE RIGHT, THE DECISION --

7 THE COURT: HE WON'T GET PASSED THAT UNTIL YOU JUST  
8 SAY "YES" OR "NO".

9 THE WITNESS: SO THE ANSWER TO YOUR QUESTION IS THAT  
10 WE DECIDED TO MAKE THAT DISTRIBUTION DECISION AT THE FRONT END  
11 INSTEAD OF AT THE BACK END.

12 YES, YOU'RE RIGHT.

13 BY MR. ISAACSON:

14 Q. OKAY. NOW, IN TERMS OF THE POPULARITY OF COLLEGE  
15 BASKETBALL AND COLLEGE FOOTBALL, YOU DON'T ACTUALLY, AS PART  
16 OF YOUR WORK, LOOK AT DATA ON PUBLIC PERCEPTION OF THE NCAA  
17 RELATIVE TO PROFESSIONAL SPORTS; IS THAT RIGHT?

18 A. WE DO LOOK AT PUBLIC OPINION DATA ABOUT WHAT PEOPLE VALUE  
19 IN INTERCOLLEGIATE ATHLETICS. WE DON'T NECESSARILY MAKE  
20 DIRECT COMPARISONS WITH PROFESSIONAL SPORT.

21 Q. YOU ANSWERED WITH A "WE". MY QUESTION WAS TO YOU.

22 SO DO YOU LOOK AT THAT DATA?

23 A. DO I LOOK AT THE DATA THAT THE NATIONAL OFFICE GATHERS  
24 ABOUT PUBLIC OPINION ISSUES ON COLLEGIATE SPORT? YES.

25 DO I MAKE COMPARISON -- I BELIEVE YOUR QUESTION WAS, DO I

1 MAKE COMPARISONS WITH PROFESSIONAL SPORT? THE ANSWER WOULD BE  
2 NO.

3 Q. ALL RIGHT.

4 THE -- YOU TALKED ABOUT COMPETITIVE BALANCE YESTERDAY, AND  
5 WHETHER TEAMS HAVE A CHANCE TO WIN. THAT'S NOT A CONCEPT THAT  
6 YOU FIND IN THE NCAA RULES OR THE NCAA CONSTITUTION, CORRECT?

7 A. THE CONCEPT OF COMPETITIVE FAIRNESS?

8 Q. COMPETITIVE BALANCE.

9 THE COURT: DEFINE THAT FOR HIM.

10 BY MR. ISAACSON:

11 Q. AS HE DEFINED IT YESTERDAY, I BELIEVE IT WAS, PLAYING BY  
12 THE SAME RULES WITH THE OPPORTUNITY TO PLAY AT THE HIGHEST  
13 LEVELS, AND A CHANCE TO WIN.

14 IS THAT -- THAT PRETTY MUCH GET YOUR DEFINITION OF  
15 COMPETITIVE BALANCE?

16 A. YES.

17 Q. IS THAT FOUND ANYWHERE IN THE NCAA CONSTITUTION BYLAWS,  
18 RULES?

19 A. NOT THAT I'M AWARE OF.

20 Q. WHAT'S ACTUALLY IN THE RULES IS COMPETITIVE EQUITY,  
21 CORRECT?

22 A. I BELIEVE THAT TERM IS IN THERE, YES.

23 MR. ISAACSON: CAN WE LOOK AT PLAINTIFFS'  
24 EXHIBIT 2340-18, WHICH NUMBER 210, THE PRINCIPLE OF  
25 COMPETITIVE EQUITY.

1 (EXHIBIT DISPLAYED ON SCREEN.)

2 **BY MR. ISAACSON:**

3 **Q.** THIS IS THE PRINCIPLE OF COMPETITIVE EQUITY. YOU ARE  
4 FAMILIAR WITH THIS, RIGHT?

5 **A.** I AM.

6 **Q.** IT DOESN'T REQUIRE ANY OUTCOME, IT JUST SAYS WHAT YOU ARE  
7 GOING TO PROMOTE, CORRECT?

8 **A.** YES.

9 **Q.** ALL RIGHT.

10 AND THE DEFINITION IS THAT STUDENTS WILL NOT BE PREVENTED  
11 UNFAIRLY FROM ACHIEVING THE BENEFITS INHERENT IN PARTICIPATION  
12 IN INTERCOLLEGIATE ATHLETICS, CORRECT?

13 **A.** YES.

14 **Q.** IS THIS -- I WAS NOT CLEAR ON THIS. IS THIS ONE OF THE  
15 RULES YOU CONSIDERED OUT OF DATE AND AN ANNOYANCE?

16 **A.** IT IS NOT A RULE. IT IS A PRINCIPLE.

17 **Q.** IS IT A PRINCIPLE THAT YOU CONSIDER TO BE OUT OF DATE?

18 **A.** NO.

19 **Q.** ALL RIGHT. THE -- IF WE CAN LOOK AT PLAINTIFFS'  
20 EXHIBIT 2083.

21 (EXHIBIT DISPLAYED ON SCREEN.)

22 PLAINTIFFS' EXHIBIT 2083.

23 **MR. ISAACSON:** CAN WE HAVE A COPY IN CASE HE NEEDS  
24 IT?

25

1 **BY MR. ISAACSON:**

2 **Q.** LET'S JUST SHOW YOU WHERE IT'S FROM FIRST. MAYBE I'M  
3 GOING TO MISPRONOUNCE HIS NAME. DAVE SCHNASE?

4 **A.** SCHNASE.

5 **Q.** SCHNASE TO MR. LENNON AND MR. RENFRO.

6 MR. SCHNASE IS THE MANAGING DIRECTOR OF MEMBERSHIP  
7 SERVICES, CORRECT?

8 **A.** YES.

9 **Q.** AND HE SAYS:

10 "KEVIN, WALLY AND I SUBMIT THE ATTACHED DISCUSSION  
11 DOCUMENT."

12 IF YOU WOULD LIKE A COPY?

13 **A.** IF I COULD.

14 (EXHIBIT HANDED TO WITNESS.)

15 **A.** THANK YOU.

16 **Q.** ALL RIGHT.

17 AND I'M GOING TO BE ASKING YOU ABOUT 2083-3 -- WHICH MAYBE  
18 YOU CAN PUT ON THE SCREEN -- WHERE THERE IS A DISCUSSION OF  
19 ARTICLE 2.10 OF THE NCAA CONSTITUTION.

20 (EXHIBIT DISPLAYED ON SCREEN.)

21 DO YOU SEE THAT, SIR?

22 **A.** YES.

23 **Q.** ALL RIGHT. AND... AND THE PIECE SAYS, AFTER QUOTING IT,  
24 IT SAYS:

25 "THIS DEFINITION IS THE ONLY CONSTITUTIONALLY

1 ESTABLISHED ONE."

2 I THINK WE CAN AGREE THAT STATEMENT'S CORRECT, RIGHT?

3 **A.** YES.

4 **Q.** IT GOES ON TO SAY:

5 "IT DOES NOT ENSURE OR GUARANTEE EQUITY; RATHER THE  
6 NCAA AND ITS MEMBERS SHALL PROMOTE OPPORTUNITY FOR  
7 EQUITY."

8 YOU AGREE WITH THAT, CORRECT?

9 **A.** YES.

10 **Q.** ALL RIGHT. GOING TO THE NEXT PAGE, -4, THE FIRST FULL  
11 PARAGRAPH.

12 "CONFUSING" -- IN THE MIDDLE -- IN THAT PARAGRAPH IT SAYS:

13 "CONFUSING THE DISCUSSION IS THE USE OF THE TERM  
14 'LEVEL PLAYING FIELD'. IN MANY INSTANCES, THE PHRASE  
15 IS COMPETITIVE EQUITY AND LEVEL PLAYING FIELD ARE  
16 USED INTERCHANGEABLY, WHICH SEEMS TO SUGGEST A  
17 GREATER EMPHASIS ON EQUALITY RATHER THAN EQUITY.  
18 GIVEN THE DISPARITIES IN RESOURCES AMONG ALL  
19 DIVISIONAL INSTITUTIONS NOTED ABOVE, COMPETITIVE  
20 EQUALITY, OR LEVEL PLAYING FIELD APPEARS TO BE AN  
21 OVERREACH FOR BYLAWS."

22 DO YOU AGREE WITH THAT?

23 **A.** I AGREE THAT THE -- THAT -- FIRST OF ALL, THE LANGUAGE OF  
24 COMPETITIVE EQUITY AND LEVEL PLAYING FIELD AND COMPETITIVE  
25 BALANCE ALL GET USED INTERCHANGEABLY AND -- AND HAVE

1 COMPLICATED MEETINGS DEPENDING UPON WHO'S TALKING ABOUT IT.

2 THIS -- THIS PARAGRAPH IS A DISCUSSION ABOUT, AS IT SAYS,  
3 THE WIDE RANGE OF DISPARITIES AMONG DIVISION I SCHOOLS AND --  
4 AND THE CHALLENGE OF WRITING RULES THAT WERE, AND DEALING WITH  
5 RULES THAT WERE AIMED AT MINIMIZING THOSE DISPARITIES, AND --  
6 AND HOW TO DEAL WITH -- I KNOW YOU DON'T SEEM TO LIKE THIS,  
7 BUT RULES THAT WERE AN ANNOYANCE AND WERE, IN FACT, NOT HAVING  
8 ANY PARTICULAR IMPACT ON THE QUALITY OF THE ATHLETIC  
9 EXPERIENCE.

10 **Q.** WHAT ABOUT WHEN IT SAYS AT THE BOTTOM OF THE PAGE:

11 "DESPITE THIS ATTEMPT TO REGULATE COMPETITIVE EQUITY" AND  
12 THEN IT TALKS ABOUT VARIOUS STATISTICS ABOUT WINNING, WHICH  
13 YOU CAN REVIEW --

14 **A.** YES, I'M AWARE OF THEM.

15 **Q.** THEN IT SAYS AT THE TOP OF THE NEXT PAGE:

16 "AN IMPARTIAL OBSERVER WOULD LIKELY CONCLUDE THAT  
17 EVEN WITH THE EMPHASIS GIVEN AND NUMBER OF ATTEMPTS  
18 TO LEGISLATE IT ACROSS A BROAD SPECTRUM OF  
19 INSTITUTIONS, COMPETITIVE EQUITY HAS FAILED."

20 IS THAT A CONCEPT THAT YOU'VE HEARD BEFORE?

21 **A.** I HAVE. AGAIN, I THINK IT'S IMPORTANT THAT THE WORDS  
22 "COMPETITIVE EQUITY" ARE IN QUOTES BECAUSE IT REALLY POINTS  
23 OUT THAT -- AND -- HAVING BEEN DEEPLY INVOLVED IN THESE  
24 CONVERSATIONS WITH THE MEMBERS, I KNOW THAT THE FUNDAMENTAL  
25 ISSUE WAS THAT THE VERY, VERY LONGSTANDING SET OF RULES THAT



1 HAVE BEEN PUT IN PLACE OVER DECADES OF TIME TRYING TO  
2 IMPLEMENT COMPETITIVE EQUITY, THAT PRECISE TERM, HAD CREATED A  
3 RULE BOOK THAT WAS CONVOLUTED AND OUTDATED, AND THAT THIS WAS  
4 ALL ABOUT AN ATTEMPT TO ALSO RECOGNIZE THAT IN ORDER TO  
5 STRAIGHTEN THE RULE BOOK OUT, YOU NEEDED TO TALK ABOUT  
6 COMPETITIVE EQUITY IN A DIFFERENT WAY THAN IT HAD BEEN IN THE  
7 PAST.

8 **Q.** THE BOTTOM LINE IS THAT THE NCAA CONSTITUTIONAL PRINCIPLE  
9 OF COMPETITIVE EQUITY HAD FAILED, RIGHT?

10 **A.** NO. I, AGAIN, THINK THAT THE BOTTOM LINE WAS THAT THE  
11 RULES THAT WERE BEING PUT IN PLACE AROUND THIS NOTION OF  
12 COMPETITIVE EQUITY WERE CREATING BASICALLY AN UNTENABLE  
13 SITUATION FOR THE PROLIFERATION AND ENFORCEMENT OF THOSE  
14 RULES.

15 **Q.** ALL RIGHT. IN THE MIDDLE PARAGRAPH, THE GREATER -- IT  
16 BEGINS "THE GREATER THE DISCREPANCIES." IN THE MIDDLE OF THE  
17 PARAGRAPH IT SAYS:

18 "PERHAPS THE GOAL SHOULD BE A MORE HORIZONTAL APPROACH TO  
19 COMPETITIVE EQUITY THAT WOULD FOCUS ON CONFERENCES OR GROUPS  
20 OF CONFERENCES. THAT HAS ALREADY HAPPENED TO SOME DEGREE  
21 WITHIN THE NCAA."

22 HAS THERE BEEN DISCUSSION DURING YOUR PRESIDENCY THAT THE  
23 CONCEPT OF, NOW LET'S SAY COMPETITIVE BALANCE, SHOULD BE  
24 LOOKED AT AT THE CONFERENCE LEVEL OR WITHIN MAJOR CONFERENCES  
25 AS OPPOSED TO ACROSS ALL OF DIVISION I?

1       **A.** YES, IT HAS BEEN DISCUSSED AT LENGTH AND UNIFORMLY  
2 REJECTED.

3       **Q.** ALL RIGHT.

4           THE -- CAN WE LOOK -- LET'S LOOK AT PLAINTIFFS'  
5 EXHIBIT 2080. AND IF WE CAN HAVE A COPY, BUT LET'S SHOW YOU  
6 WHAT THIS IS AT THE TOP.

7                           (EXHIBIT DISPLAYED ON SCREEN.)

8           THIS IS THE NCAA PRESIDENTIAL RETREAT DIVISION I FINANCIAL  
9 SUSTAINABILITY AUGUST 9 THROUGH 10, 2011.

10           THIS IS A DOCUMENT THAT WAS PRODUCED AS PART OF THE  
11 PRESIDENTIAL RETREAT THAT YOU CALLED IN THE FIRST FULL YEAR OF  
12 YOUR PRESIDENCY, CORRECT?

13       **A.** OKAY.

14                   **MR. ISAACSON:** I MOVE 2083, THE LAST DOCUMENT, INTO  
15 EVIDENCE.

16                   **MR. POMERANTZ:** NO OBJECTION, YOUR HONOR.

17                   **THE COURT:** RECEIVED.

18                           (PLAINTIFFS' EXHIBIT 2083 RECEIVED IN EVIDENCE)

19                   **MR. ISAACSON:** ALL RIGHT. I WILL HAND YOU 2080 IN  
20 CASE YOU WANT THE FULL DOCUMENT.

21           BUT I'M JUST -- I'M GOING TO ASK MATT TO MOVE --

22                           (EXHIBIT HANDED TO WITNESS.)

23       **BY MR. ISAACSON:**

24       **Q.** JUST -- THERE IS A LOT OF DATA IN HERE, ISN'T THERE, AT  
25 PAGE 2 AND 3 ABOUT WHAT'S HAPPENED IN TERMS OF DISPARITIES IN

1 REVENUES, EXPENSES, AND OTHER CRITERIA?

2 A. YES.

3 Q. THAT WAS ALL INFORMATION YOU COLLECTED FOR THE  
4 PRESIDENTIAL RETREAT?

5 A. CORRECT.

6 Q. AND THEN AT -4, COMPETITIVE SUCCESS.

7 A. YES.

8 Q. IT SAYS:

9 "THE DISPARITY AND EXPENSE BUDGETS LEAD TO THE  
10 QUESTION OF COMPETITIVE SUCCESS AND WHAT WILL HAPPEN  
11 TO COMPETITIVE SUCCESS IN THE FUTURE. HOWEVER, THE  
12 DATA WOULD INDICATE THERE'S ALREADY SIGNIFICANT  
13 DISPARITY IN COMPETITION WITH THE TEAM FROM THE SIX  
14 CONFERENCES DOMINATING COMPETITION ON THE FIELD."

15 THAT WAS WHAT THE CONCLUSION OF THE DATA WAS AT YOUR  
16 PRESIDENTIAL RETREAT, RIGHT?

17 A. YES, RELATIVE TO THE -- TO THE ULTIMATE WINNERS OF  
18 CHAMPIONSHIPS, NATIONAL CHAMPIONSHIPS, YES.

19 MR. ISAACSON: I MOVE TO ADMIT PLAINTIFFS'  
20 EXHIBIT 2080.

21 MR. POMERANTZ: NO OBJECTION, YOUR HONOR.

22 THE COURT: RECEIVED.

23 (PLAINTIFFS' EXHIBIT 2080 RECEIVED IN EVIDENCE)

24 BY MR. ISAACSON:

25 Q. ALL RIGHT. IF WE CAN LOOK AT PLAINTIFFS' EXHIBIT 2049.

1 (EXHIBIT DISPLAYED ON SCREEN.)

2 THIS IS AN EMAIL FROM MR. RENFRO TO DR. BRAND,  
3 FEBRUARY 22ND, 2009, BEFORE YOU BECAME PRESIDENT, ON THE  
4 SUBJECT OF THE AMATEURISM CABINET.

5 **MR. ISAACSON:** IF YOU SHOW HIM THE WHOLE EMAIL ON THE  
6 SCREEN BECAUSE IT'S NOT THAT LONG.

7 **BY MR. ISAACSON:**

8 **Q.** YOU WILL SEE IT'S A DISCUSSION OF HOW TO HANDLE AMATEURISM  
9 AND INTERNATIONAL PLAYERS. THAT'S THE GENERAL TOPIC HERE.  
10 ALL RIGHT.

11 IN THE MIDDLE OF THE SECOND PARAGRAPH -- SO THEY ARE  
12 TALKING ABOUT WHETHER INTERNATIONAL PLAYERS WHO MAY NOT BE  
13 AMATEURS WILL SHIFT COMPETITIVE BALANCE. AND MR. RENFRO  
14 WRITES:

15 "THAT COMPETITIVE ADVANTAGE OR DISADVANTAGE DOESN'T  
16 APPEAR TO HAVE ANY RATIONAL CONNECTION TO THE  
17 PRINCIPLE OF AMATEURISM."

18 YOU HAD DISCUSSIONS WITHIN THE NCAA, HAVEN'T YOU, THAT THE  
19 COMPETITIVE ADVANTAGE OR DISADVANTAGE IS NOT ACTUALLY LINKED  
20 TO THE PRINCIPLE OF AMATEURISM.

21 **A.** NO. I HAVE NEVER HAD SUCH A CONVERSATION.

22 **MR. ISAACSON:** I MOVE TO ADMIT EXHIBIT 2049.

23 **MR. POMERANTZ:** YOUR HONOR, I WOULD STATE FOR THE  
24 RECORD THAT HE MISSTATED THE DOCUMENT WHICH TALKS ABOUT THE  
25 INTERNATIONAL ATHLETE, NOT HIMSELF BEING A PROFESSIONAL, BUT

1 PLAYING ON A TEAM WHERE OTHERS WERE PROFESSIONAL.

2 WITH THAT OBJECTION TO THE QUESTION, I HAVE NO OBJECTION  
3 TO THE ADMISSION OF THE DOCUMENT.

4 **THE COURT:** ALL RIGHT. IT WILL BE RECEIVED.

5 (PLAINTIFFS' EXHIBIT 2049 RECEIVED IN EVIDENCE)

6 **BY MR. ISAACSON:**

7 **Q.** THERE ARE NO EMPIRICAL STUDIES OF THE FACT OF DISTRIBUTING  
8 LICENSING REVENUES AND WHAT THAT WOULD HAVE -- WHAT EFFECT  
9 THAT WOULD HAVE ON COMPETITIVE BALANCE TO YOUR KNOWLEDGE,  
10 CORRECT?

11 **A.** NO.

12 **Q.** OKAY.

13 ARE YOU SAYING THAT THERE ARE STUDIES OF THE EFFECT OF  
14 DISTRIBUTING LICENSING REVENUES AND THE EFFECT THAT THAT WOULD  
15 HAVE ON COMPETITIVE BALANCE?

16 **A.** I JUST SAID NO.

17 **Q.** OKAY. I THINK I CAUSED THAT PROBLEM.

18 **THE COURT:** IT WAS UNCLEAR. THE QUESTION IS  
19 AMBIGUOUS.

20 **MR. ISAACSON:** I CAUSED THAT PROBLEM.

21 **THE COURT:** TRY AGAIN.

22 **BY MR. ISAACSON:**

23 **Q.** WOULD YOU AGREE WITH ME THAT THERE ARE NO --

24 **THE COURT:** DON'T SAY "NO". JUST SAY "ARE THERE  
25 ANY".

1 **BY MR. ISAACSON:**

2 **Q.** ARE THERE ANY STUDIES ON THE EFFECT OF DISTRIBUTING  
3 LICENSING REVENUES ON COMPETITIVE BALANCE?

4 **A.** NO.

5 **Q.** THANK YOU.

6 **MR. ISAACSON:** THANK YOU.

7 **BY MR. ISAACSON:**

8 **Q.** YOU MENTIONED AS ONE OF YOUR EXAMPLES OF COMPETITIVE  
9 BALANCE BUTLER'S RUN TO THE FINALS AND NEAR VICTORY.

10 IN ONE OF THE PUBLIC STATEMENTS THAT YOU MADE AFTER THAT  
11 WAS, "I DON'T THINK ANY OF THE BUTLER KIDS WERE RECRUITED BY,  
12 YOU KNOW, BY KANSAS."

13 THAT'S WHAT YOU SAID IN AN INTERVIEW. MAYBE YOU RECALL  
14 THAT. WHAT DID YOU MEAN BY THAT?

15 **A.** I THINK THE STATEMENT IS SELF-EVIDENT.

16 **Q.** IT'S -- WELL, IT MAY NOT BE SELF-EVIDENT TO A NONSPORTS  
17 FAN. LET ME ASK YOU THIS.

18 WHAT THAT MEANS IS, AT THE LEVEL OF SCHOOL -- OF  
19 BASKETBALL THAT BUTLER'S PLAYING, THAT THEY ARE NOT ABLE TO  
20 COMPETE FOR THE SAME KIDS COMING OUT OF HIGH SCHOOL AS KANSAS,  
21 WHICH IS A MUCH BIGGER, WELL-KNOWN PROGRAM, AT LEAST BEFORE  
22 BUTLER MADE IT TO THE NCAA FINALS.

23 **A.** YES.

24 **Q.** THE -- NOW WE WERE TALKING ABOUT COMPETITIVE BALANCE AND  
25 WHETHER THAT'S ACROSS THE WHOLE DIVISION I OR WHETHER THAT'S

1 INTRACONFERENCE.

2 CAN WE LOOK AT PLAINTIFFS' EXHIBIT 2084?

3 (EXHIBIT DISPLAYED ON SCREEN.)

4 AT PAGE 34 AND 35, AND THERE'S A DECK THAT GOES THROUGH  
5 PAGE 45.

6 I UNDERSTAND THIS TO BE A DOCUMENT PREPARED BY MR. -- YOU  
7 TOLD ME HOW TO SAY HIS NAME, MALLONEE?

8 **A.** MALLONEE.

9 **Q.** THANK YOU.

10 AND HE SAYS, 2084-35, WHAT NEEDS TO CHANGE, ITEM 2.

11 "THE ONE-SIZE FITS ALL APPROACH IS NOT WORKING. IT  
12 IS NO LONGER POSSIBLE NOR PRACTICAL TO LEGISLATE ALL  
13 ASPECTS OF COMPETITIVE EQUITY. ATTEMPTS TO LEGISLATE  
14 TO THE LOWEST COMMON DENOMINATOR SHOULD BE  
15 DISCOURAGED. GREATER EMPHASIS SHOULD BE PLACED ON  
16 PERMISSIVE RULES THAT GOVERN INSTITUTIONS WITH  
17 SIMILAR RESOURCES."

18 YOU ARE MOVING TOWARDS A MODEL, AREN'T YOU, SIR, WHERE YOU  
19 ARE GOING TO DECIDE COMPETITIVE BALANCE OR COMPETITIVE EQUITY  
20 BY MEASURING HOW INSTITUTIONS WITH SIMILAR RESOURCES ARE  
21 COMPETING.

22 **A.** NO. THAT'S NOT HOW I INTERPRET THAT.

23 **MR. ISAACSON:** I MOVE TO ADMIT 2083 -- 4, AT 34 AND  
24 35.

25 **MR. POMERANTZ:** YOUR HONOR, NO OBJECTION TO THOSE

1 PAGES. WE WOULD RESERVE THE RIGHT TO ADD SOME ADDITIONAL  
2 PAGES FROM THIS DOCUMENT THAT ARE RELEVANT IN THIS CASE.

3 **THE COURT:** SURE. RECEIVED.

4 (PLAINTIFFS' EXHIBIT 2084 (PGS. 34 & 35) RECEIVED IN  
5 EVIDENCE)

6 **BY MR. ISAACSON:**

7 **Q.** YOU DISCUSSED THE CONCEPT OF A TRUST FUND. AND THAT'S  
8 CURRENTLY AGAINST -- IN WHICH NIL MONIES COULD POTENTIALLY BE  
9 PUT INTO A TRUST FUNDS FOR FUTURE USE OF STUDENTS, AND THAT'S  
10 SOMETHING THAT YOU CONSIDER TO BE AGAINST NCAA RULES.

11 ARE WE IN AGREEMENT ON THAT?

12 **A.** YES.

13 **Q.** NOW, THAT HAS BEEN PERIODICALLY SOMETHING THAT HAS BEEN  
14 DISCUSSED AND PROPOSED THROUGHOUT THE HISTORY OF THE NCAA,  
15 RIGHT?

16 **A.** I AM AWARE OF IT IN THE PAST HANDFUL OF YEARS. I CANNOT  
17 SAY THROUGHOUT THE HISTORY OF THE ASSOCIATION.

18 **Q.** IF WE CAN LOOK AT PLAINTIFFS' EXHIBIT 2006.

19 THIS IS AN EMAIL FROM DR. BRAND IN 2005 TO MR. SHAHEEN ON  
20 THE SUBJECT OF EA.

21 **MR. ISAACSON:** PLEASE SHOW HIM THE ENTIRE EMAIL  
22 BECAUSE IT'S NOT THAT LONG.

23 (EXHIBIT DISPLAYED ON SCREEN.)

24 **BY MR. ISAACSON:**

25 **Q.** AND HE'S TALKING ABOUT GETTING TOGETHER A GROUP OF



1 PRESIDENTS AND PERHAPS SOME -- A COMMISSIONER OR AN A.D. OR  
2 TWO AS A FOCUS GROUP TO EXPLORE WHETHER WE CAN GO FORWARD IN  
3 SOME WAY TO PROVIDE NAMES AND LIKENESSES. WE CAN AMELIORATE  
4 SOME CONCERNS BY DEDICATING PROCEEDS TO A STUDENT-ORIENTED  
5 FUND, SUCH AS THE OPPORTUNITY FUND. WE CAN TAKE CARE OF THE  
6 LEGAL ISSUES THROUGH AN EXPANDED WAIVER.

7 IS THAT CONSISTENT WITH THE TYPE OF DISCUSSIONS THAT HAVE  
8 GONE ON THROUGH YOUR PRESIDENCY?

9 **A.** THE NOTION OF, FIRST OF ALL, PERHAPS IT WOULD BE USEFUL  
10 FOR ME TO EXPLAIN WHAT THE OPPORTUNITY FUND IS. SO THE --

11 **Q.** I MIGHT BE ABLE TO DO IT SHORTER.

12 IS THAT A FUND THAT'S SET UP IN ORDER TO PROVIDE FUNDS TO  
13 STUDENTS WHO HAVE A SPECIFIC NEEDS, AND THEN THEY APPLY FOR  
14 THOSE FUNDS.

15 IS THAT GENERALLY WHAT THAT IS?

16 **A.** YES. ASSUMING THE FUNDS AND THE PROVISION OF THOSE FUNDS  
17 NEVER EXCEED THE FULL COST OF ATTENDANCE.

18 **Q.** RIGHT.

19 IS THIS -- HAVE YOU HAD THOSE DISCUSSIONS SINCE YOU'VE  
20 BEEN PRESIDENT ABOUT WHETHER TO PUT POTENTIAL LICENSING  
21 REVENUES IN A STUDENT-ORIENTED FUND, SUCH AS THE OPPORTUNITY  
22 FUND?

23 **A.** WE'VE TALKED ABOUT A VARIETY OF WAYS TO INCREASE FUNDING  
24 THAT GOES INTO THE OPPORTUNITY FUND TO SERVE STUDENTS.

25 **Q.** AND HAVE YOU TALKED ABOUT EXPANDED WAIVERS?

1       **A.**   NO.

2       **Q.**   ALL RIGHT.  PLAINTIFFS' EXHIBIT --

3               **MR. ISAACSON:**  I MOVE 2006.

4               **MR. POMERANTZ:**  NO OBJECTION, YOUR HONOR.

5               **THE COURT:**  RECEIVED.

6                       (PLAINTIFFS' EXHIBIT 2006 RECEIVED IN EVIDENCE)

7       **BY MR. ISAACSON:**

8       **Q.**   PLAINTIFF'S EXHIBIT 280.

9               AND IF YOU WILL SEE AT THE BOTTOM OF THE FIRST PAGE, I  
10              WANT TO SHOW -- THIS BEGINS WITH AN EMAIL FROM MR. BERST,  
11              SENIOR EXECUTIVE OF THE NCAA IN OCTOBER OF 2008.

12              AND THEN AT THE BOTTOM, IT'S EXPLAINING THESE ARE THOUGHTS  
13              ON THE BOARD OF DIRECTOR SESSION ON VALUE-BASED  
14              DECISION-MAKING, AND THERE'S COMMENTS FROM VARIOUS PEOPLE.

15              AND I WANT TO ASK ABOUT THE COMMENTS FROM MR. RAY, WHICH  
16              ARE AT 3.

17              ALL RIGHT.  MR. RAY WAS THE PRESIDENT OF OREGON STATE  
18              BEGINNING IN AROUND 2003, RIGHT?

19       **A.**   AND HE REMAINS THE PRESIDENT, YES.

20       **Q.**   AND HE SAYS:

21                       "ARE WE IN DANGER OF LOSING OUR SENSE OF BALANCE BY  
22                       ACTING CONTRARY TO OUR VALUES?"

23              AND THEN ASKS, HOWEVER, WITH REGARD TO THE USE OF STUDENT  
24              ATHLETE LIKENESSES, HE SUGGESTED PUTTING SOME MONEY INTO A  
25              TRUST FOR THE BENEFIT OF STUDENT ATHLETES IF THEY ARE INVOLVED

1 IN COMMERCIAL ACTIVITIES.

2 YOU HAVE HAD UNIVERSITY PRESIDENTS MAKE SIMILAR PROPOSALS  
3 TO YOU, HAVEN'T YOU?

4 **MR. POMERANTZ:** OBJECTION, YOUR HONOR, THIS IS  
5 HEARSAY WITHIN HEARSAY, AND I THINK THE FORM OF THE QUESTION  
6 IS IMPROPER.

7 **MR. ISAACSON:** I'M NOT ADMITTING IT FOR THE TRUTH.  
8 IT'S INDEPENDENTLY --

9 **THE COURT:** YOU DON'T NEED THE DOCUMENT. YOU CAN ASK  
10 THE QUESTION AND IT CAN BE ANSWERED.

11 **MR. POMERANTZ:** THANK YOU, YOUR HONOR.

12 **MR. ISAACSON:** HOWEVER I'M GOING TO ADMIT IT, BUT  
13 THE -- OKAY.

14 **BY MR. ISAACSON:**

15 **Q.** HAVE YOU HAD SIMILAR SUGGESTIONS MADE TO YOU BY OTHER  
16 COLLEGE PRESIDENTS?

17 **A.** WE -- THERE HAVE BEEN, AS I SAID, SIGNIFICANT DISCUSSIONS  
18 OF THAT GENERAL NOTION THROUGHOUT THE MEMBERSHIP, AND I DON'T  
19 RECALL PRESIDENTS SPECIFICALLY PROPOSING IT, BUT I WOULD NOT  
20 BE SURPRISED HAD THEY DONE SO.

21 **Q.** ALL RIGHT. NOW THAT I'VE MENTIONED OREGON STATE, I THINK  
22 WE ARE TECHNICALLY READY FOR OREGON.

23 (DOCUMENT DISPLAYED ON SCREEN.)

24 THIS IS -- NUMBER 8 IS THE JERSEY NUMBER OF THE STAR  
25 QUARTERBACK MR. MARIOTA FROM OREGON.

1 MAYBE YOU DON'T KNOW HIS JERSEY NUMBER.

2 **A.** I'M A HUSKY, SO, NO, I PROBABLY DON'T.

3 **Q.** YOU ARE AWARE THAT THE TOP SELLING COLLEGE JERSEYS IN  
4 AMERICA ARE CONSISTENTLY THOSE THAT HAVE THE NUMBERS OF STAR  
5 PLAYERS.

6 **A.** I DON'T KNOW THAT FOR AN EMPIRICAL FACT, BUT I'M SURE IT'S  
7 TRUE.

8 **MR. ISAACSON:** I WILL MOVE TO ADMIT 280, AND WE WILL  
9 DISCUSS WITH COUNSEL LATER WHY OR WHY NOT IT'S HEARSAY.

10 **BY MR. ISAACSON:**

11 **Q.** PLAINTIFF'S EXHIBIT 2046, WHICH HAS BEEN ADMITTED.

12 (EXHIBIT DISPLAYED ON SCREEN.)

13 THIS IS AN EMAIL THAT THE COURT HAS SEEN BEFORE. UNLESS  
14 YOU WENT THROUGH IT IN YOUR PREPARATION, YOU HAVEN'T SEEN IT.

15 AT THE TOP IT'S FROM THE PRESIDENT OF PENN STATE,  
16 DECEMBER 2008. AND IT TALKS ABOUT -- AND IT HAS AN EMAIL FROM  
17 ELIZABETH ALTMAIER OF IOWA.

18 DO YOU KNOW HER?

19 **A.** I BELIEVE I'VE MET HER, BUT I DON'T KNOW HER WELL.

20 **Q.** SHE SAYS AT THE BOTTOM OF 2046, TALKING ABOUT THESE  
21 WAIVERS:

22 "I ALSO THINK THE LIKELIHOOD OF A STUDENT ATHLETE NOT  
23 APPROVING HIS OR HER OWN IMAGE USE IS LOW. STUDENT  
24 ATHLETES DON'T HAVE MUCH DISCRETION IT IS AND THEY  
25 SIGN THESE RELEASE FORMS IN A SINGLE MEETING WITH

1 LITERALLY A STACK IN FRONT OF EACH ONE OF THEM."

2 IS IT YOUR UNDERSTANDING THAT WHEN THE NCAA FORM IS SIGNED  
3 AND WHEN ANY FORMS PROVIDED BY UNIVERSITIES ARE SIGNED, THAT  
4 IT'S GIVEN TO THE ATHLETES IN A BIG STACK OF FORMS THAT THEY  
5 SIGN BEFORE THEY GO INTO THEIR FIRST PRACTICE?

6 **MR. POMERANTZ:** OBJECTION, YOUR HONOR, HEARSAY TO THE  
7 EXTENT IT'S QUOTING MS. ALTMAIER. I THINK HE CAN ASK THE LAST  
8 PORTION OF THE QUESTION WITHOUT THAT STATEMENT.

9 **THE WITNESS:** I HAVE NEVER BEEN --

10 **THE COURT:** YOU CAN ANSWER THE QUESTION. THE  
11 DOCUMENT IS ALREADY IN EVIDENCE.

12 **THE WITNESS:** I BEG YOUR PARDON.

13 I HAVE NEVER BEEN PRESENT DURING ONE OF THOSE -- ONE OF  
14 THOSE SIGNING MOMENTS, SO I CAN'T SPEAK TO WHAT DOES OR DOES  
15 NOT HAPPEN AT THAT MOMENT.

16 **BY MR. ISAACSON:**

17 **Q.** YOU HAVE NO UNDERSTANDING OF THE CIRCUMSTANCES UNDER WHICH  
18 THE ATHLETES SIGN THESE FORMS AND YOU HAVE NEVER ASKED ABOUT  
19 THAT; IS THAT RIGHT?

20 **A.** I HAVE NEVER BEEN PRESENT IN A LOCKER ROOM WHEN THESE  
21 PAPERS ARE SIGNED. SO, NO, I CAN'T TELL YOU THE MANNER IN  
22 WHICH THAT HAPPENS.

23 **Q.** I'M NOT ASKING YOU WHETHER YOU'RE IN THE LOCKER ROOM.

24 YOU ARE PRESIDENT OF THE NCAA. DID YOU EVER ASK ABOUT  
25 THIS? DID YOU EVER ASK WHAT ARE THE CIRCUMSTANCES UNDER WHICH

1 THESE ATHLETES ARE SIGNING THESE FORM?

2 **A.** DID I EVER ASK HOW SOMEONE SITS AND SIGNS PAPERS?

3 NO, I DID NOT.

4 **Q.** AND MS. ALTMAIER THEN SAYS:

5 "I REMAIN COMMITTED" -- ON THE NEXT PAGE -- "TO THE  
6 IDEA OF HAVING SOME RETURN FINANCIAL TO THE STUDENT  
7 ATHLETES THEMSELVES."

8 HAVE YOU -- ARE YOU FAMILIAR WITH PEOPLE IN THE NCAA  
9 RECOMMENDING TO THE NCAA THAT THE STUDENT ATHLETES SHARE IN  
10 COMMERCIAL REVENUES FROM LICENSING?

11 **A.** SURE. IT'S BEEN A DEBATE FOR SOME TIME.

12 **Q.** AND THE REASON THAT HASN'T HAPPENED IS BECAUSE THE NCAA  
13 AND ALL OF ITS MEMBER INSTITUTIONS HAVE DECIDED THAT'S NOT  
14 PERMITTED; IS THAT CORRECT?

15 **A.** THE MEMBER -- MEMBERS OF THE ASSOCIATION HAVE CONSISTENTLY  
16 CONCLUDED THAT THAT'S A VIOLATION OF AMATEURISM.

17 **MR. ISAACSON:** I DON'T HAVE ANY FURTHER QUESTIONS.

18 **THE COURT:** I AM SORRY.

19 **THE WITNESS:** I THOUGHT I WAS DONE.

20 **MR. POMERANTZ:** YOUR HONOR, IN TERMS OF THE RULES ON  
21 PROMOTIONAL ACTIVITIES IN THE NCAA RULES, I HAVE A PHOTOCOPY  
22 OF THOSE SET OF RULES FOR YOUR HONOR. I HAVE A COPY FOR  
23 OPPOSING COUNSEL AS WELL, IF YOU WANT TO HAVE A COPY OF THE  
24 RULES.

25 **THE COURT:** SO, IF YOU DON'T MIND, I HAVE A --

1 SOMETHING I WOULD LIKE TO ASK.

2 **MR. POMERANTZ:** SURE.

3 **THE COURT:** I KNOW YOU SAID I SHOULD ASK IT LATER.

4 BUT THE CONFERENCES, THE MONEY THAT THEY RECEIVE AS  
5 REVENUES FROM BROADCAST AND OTHER THINGS, THEY DIVIDE UP  
6 AMONGST THEIR MEMBER SCHOOLS GENERALLY EQUALLY; IS THAT RIGHT?

7 **THE WITNESS:** YES, GENERALLY. EACH CONFERENCE HAS  
8 SLIGHTLY DIFFERENT RULES, BUT FOR THE MOST PART, THEY -- THEY  
9 DIVIDE THEM IN SOMETHING APPROXIMATING EQUAL SHARES, YES.

10 **THE COURT:** BUT AMONGST THE VARIOUS CONFERENCES, SOME  
11 HAVE MORE MONEY TO DIVIDE WITH THEIR SCHOOLS THAN OTHERS.

12 **THE WITNESS:** YES. THE CONFERENCES RECEIVE THEIR --  
13 THEIR REVENUE FROM MEDIA RIGHTS DURING REGULAR-SEASON SPORTS,  
14 WHICH THE NCAA, THE ASSOCIATION, DOES NOT HAVE AUTHORITY OVER  
15 AND -- AND FOR ALL OF THEIR FOOTBALL POST-SEASON PLAY. AND  
16 THEN THEY DIVIDE THAT IN VARIOUS WAYS AMONG THEMSELVES, YES.

17 **THE COURT:** SO THERE IS NO SHARING BETWEEN  
18 CONFERENCES.

19 **THE WITNESS:** CORRECT, EXCEPT AN OCCASION WHEN THERE  
20 ARE CROSS-CONFERENCE COMPETITIONS, AND INSTITUTIONS MAY SHARE  
21 REVENUE DURING THOSE CIRCUMSTANCES.

22 **THE COURT:** HAS THERE EVER BEEN ANY TALK ABOUT  
23 SHARING REVENUE BETWEEN CONFERENCES?

24 **THE WITNESS:** THERE HAS BEEN WITH THE KNIGHT  
25 COMMISSION. THE KNIGHT COMMISSION HAS PROPOSED SOME MODEL

1 LIKE THAT AROUND FOOTBALL REVENUE IN PARTICULAR.

2 **THE COURT:** WHAT DID THEY PROPOSE SUCH SHARING WOULD  
3 BE BASED ON? EQUALITY OR SOMETHING ELSE?

4 **THE WITNESS:** YES. THERE HADN'T BEEN ANY DETAILED  
5 DISCUSSIONS, SO THERE REALLY WASN'T A BASIS OF THAT  
6 CONVERSATION THAT I'M AWARE OF.

7 **THE COURT:** SO THERE WAS SOME TALK OF SHARING OR  
8 DIVVYING UP BASED ON ACADEMIC PERFORMANCE OF THE STUDENTS.

9 **THE WITNESS:** YES, BUT NOT NECESSARILY SPECIFICALLY  
10 CONFERENCE MONEY, BUT NCAA REVENUE FROM THE TOURNAMENT, AS I  
11 UNDERSTAND THEIR DISCUSSIONS.

12 **THE COURT:** IS THERE ANY DISCUSSION OF DIVIDING  
13 SHARING REVENUES BASED ON, FOR EXAMPLE, WIN/LOSS RECORDS,  
14 LOSING SCHOOLS GET MORE?

15 **THE WITNESS:** NO.

16 **THE COURT:** WHAT ABOUT SHARING TO EQUALIZE THE AMOUNT  
17 OF FINANCIAL RESOURCES AVAILABLE TO VARIOUS SCHOOLS?

18 **THE WITNESS:** THERE HASN'T BEEN THAT CONVERSATION  
19 THAT I'M AWARE OF.

20 **THE COURT:** AND I THINK YOU SAID YESTERDAY THAT THAT  
21 WOULD BE INIMITABLE TO THE NCAA OR WOULDN'T BE THE FUNCTION OF  
22 THE NCAA'S AS YOU SEE IT. I THINK YOU SAID SOMETHING LIKE  
23 THAT YESTERDAY, NO?

24 **THE WITNESS:** I AM SORRY, I'M NOT SURE TO WHAT YOU  
25 ARE REFERRING, MA'AM.



1           **THE COURT:** OKAY. ALL RIGHT.

2           **MR. ISAACSON:** I SAID INCORRECTLY ON THE RECORD  
3 PLAINTIFF EXHIBIT 2046 HAS BEEN ADMITTED. WE ARE STILL  
4 SEEKING TO ADMIT IT.

5           **THE COURT:** OKAY.

6           LET ME JUST LOOK FOR A MINUTE.

7                           (PAUSE IN THE PROCEEDINGS.)

8           **THE COURT:** OKAY.

9                           **REDIRECT EXAMINATION**

10          **BY MR. POMERANTZ:**

11          **Q.** DR. EMMERT, I JUST WANT TO GO BACK OVER A FEW DOCUMENTS  
12 THAT MR. ISAACSON SHOWED TO YOU.

13           **MR. POMERANTZ:** IF WE CAN PUT BACK ON THE SCREEN  
14 EXHIBIT 2006.

15                           (EXHIBIT DISPLAYED ON SCREEN.)

16          **BY MR. POMERANTZ:**

17          **Q.** IT'S A SINGLE-PAGE EMAIL THAT YOU WERE SHOWN RELATING TO  
18 THE EA VIDEO GAMES.

19           AND MR. ISAACSON ASKED YOU ABOUT THE SECOND PARAGRAPH. I  
20 WANT TO ASK YOU ABOUT THE THIRD PARAGRAPH.

21           **MR. POMERANTZ:** IF WE CAN PULL UP THAT ENTIRE THIRD  
22 PARAGRAPH.

23          **BY MR. POMERANTZ:**

24          **Q.** AND IT STATES:

25                           "HOWEVER, IT IS FAR FROM CERTAIN THAT THE PRESIDENTS

1 WILL AGREE TO PROVIDE NAMES AND LIKENESSES IN VIDEO  
2 GAMES. THEY MAY DECIDE TO LEAVE THE MONEY ON THE  
3 TABLE. THE REASON IS THAT IT MAY BE SEEN AS THE  
4 BEGINNING OF THE SLIDE TOWARD PROFESSIONALIZING  
5 STUDENT ATHLETES."

6 IS THAT WHAT ACTUALLY HAPPENED HERE?

7 **A.** YES, THAT'S PRECISELY WHAT HAPPENED. THE PRESIDENTS DID  
8 NOT AGREE TO INCREASING THE NAMES AND LIKENESS -- PROVIDING  
9 NAMES AND LIKENESS IN VIDEO GAMES.

10 **Q.** SO EVEN THOUGH MR. BRAND AND MR. SHAHEEN WERE CONSIDERING  
11 OTHER OPTIONS, THE MEMBERS DISAGREED, CORRECT?

12 **A.** CORRECT.

13 **Q.** ALL RIGHT. LET'S TURN TO EXHIBIT 826.

14 AND WE ARE GOING TO LOOK AT THE EMAIL FROM MR. MALLONEE  
15 THAT MR. ISAACSON ASKED YOU ABOUT, WHICH STARTS ON THE BOTTOM  
16 OF THE FIRST PAGE. BUT LET'S TURN TO THE SECOND PAGE.

17 **MR. POMERANTZ:** NOW, IF YOU COULD PULL UP THE  
18 PARAGRAPH THAT BEGINS "THAT THEN RAISES" AT THE TOP?

19 (EXHIBIT DISPLAYED ON SCREEN.)

20 **BY MR. POMERANTZ:**

21 **Q.** NOW, MR. ISAACSON ASKED YOU ABOUT THE LAST SENTENCE.

22 "THE BIGGEST CONCERN I HAVE IS THAT SUCH A POSITION  
23 REALLY DOES NOT ALLOW FOR THE MAXIMUM COMMERCIAL  
24 EXPLOITATION OF THE STUDENT ATHLETE."

25 I WANT TO GO BACK TO THE FIRST TWO SENTENCES. THOSE

1 STATE:

2 "THAT THEN RAISES THE ISSUE OF WHETHER GETTING IN  
3 LINE WITH TECHNOLOGY MEANS BEING MORE RESTRICTIVE OR  
4 LENIENT WITH OUR RULES. THE ARTICLE WOULD IMPLY THAT  
5 WE MIGHT RELAX OUR RULES A BIT."

6 DO YOU SEE THAT?

7 A. YES.

8 Q. AND THEN THE SENTENCE THAT MR. ISAACSON QUOTED SAYS:

9 "THE BIGGEST CONCERN I HAVE IS THAT SUCH A POSITION  
10 REALLY DOES NOT ALLOW..."

11 DO YOU SEE THAT?

12 A. YES.

13 Q. AND SUCH A POSITION REFERS BACK TO THE RELAXATION OF THE  
14 RULES, CORRECT?

15 A. YES.

16 Q. WERE THOSE RULES EVER RELAXED?

17 A. NO.

18 Q. ALL RIGHT.

19 MR. POMERANTZ: LET'S PULL UP EXHIBIT 2017, AND  
20 PAGE 4 OF THAT DOCUMENT, PLEASE.

21 (EXHIBIT DISPLAYED ON SCREEN.)

22 BY MR. POMERANTZ:

23 Q. MR. ISAACSON ASKED YOU, I THINK, A FEW QUESTIONS ABOUT  
24 THIS REPORT WHICH IS FROM A TASK FORCE THAT YOU WERE PART OF.

25 DO YOU RECALL THAT?

1       **A.**   YES.

2       **Q.**   AND YESTERDAY HE FOCUSED YOU ON PAGE 25 OF THIS DOCUMENT,  
3       2017-25.

4                   **MR. POMERANTZ:**   IF WE CAN GO THERE.

5                                   (PAGE DISPLAYED ON SCREEN.)

6       **BY MR. POMERANTZ:**

7       **Q.**   ON THE TOP, THERE IS -- HE FOCUSED YOU ON A SENTENCE --

8                   **MR. POMERANTZ:**   IF WE CAN PULL UP THE TOP PLEASE, THE  
9       CARRY-OVER PARAGRAPH.

10       **BY MR. POMERANTZ:**

11       **Q.**   HE FOCUSED ON YOU A SENTENCE WHICH BASICALLY RAISED  
12       QUESTIONS ABOUT THE INTEGRATION OF ATHLETICS AND ACADEMICS AND  
13       CONCLUDED THAT THERE NEEDED TO BE BETTER INTEGRATION OF  
14       ATHLETES AND ACADEMICS TO REINFORCE THE VALUES OF HIGHER OF  
15       EDUCATION.

16                   DO YOU RECALL THAT HE ASKED YOU ABOUT THAT?

17       **A.**   YES.

18       **Q.**   THEN HE BROUGHT YOU TO PAGE 59, 2017-59.   AND IN THE FIRST  
19       FULL PARAGRAPH THERE, HE FOCUSED YOU ON THE FACT THAT THIS  
20       TASK FORCE SAID THERE NEEDED TO BE CHANGES MADE TO TRY TO  
21       BETTER IMPROVE THE INTEGRATION OF ACADEMICS AND ATHLETICS.

22                   DO YOU RECALL THAT?

23       **A.**   YES.

24       **Q.**   AND HE SUGGESTED THAT SINCE YOU'VE BEEN PRESIDENT, THOSE  
25       KINDS OF CHANGES HAVE NOT YET OCCURRED.

1 DO YOU RECALL THAT?

2 **A.** YES.

3 **Q.** LET'S LOOK AT WHAT'S HAPPENED SINCE YOU'VE BEEN PRESIDENT.

4 YOU MENTIONED THE ACADEMIC PROGRESS RATE, CORRECT?

5 **A.** YES.

6 **Q.** THAT'S THE APR.

7 AND YOU INDICATED THAT THERE HAD BEEN SOME CHANGE IN THE  
8 RULES REGARDING APR SINCE YOU'VE BECOME PRESIDENT.

9 WHAT WERE THOSE CHANGES?

10 **A.** THE CHANGES WERE TO -- TO USE ACADEMIC PERFORMANCE AS ONE  
11 OF THE CRITERIA FOR POST-SEASON PARTICIPATION IN SPORT.

12 THAT'S PROBABLY THE MOST IMPORTANT OPPORTUNITY THAT STUDENT  
13 ATHLETES SEEK. AND SO BY RAISING THOSE STANDARDS, IT HAS HAD  
14 A PROFOUND IMPACT ON FOCUSING INSTITUTIONS ON THEIR ACADEMIC  
15 PERFORMANCE.

16 WE'VE ALSO ENFORCED THE APR RULES AS THEY -- THE -- THE  
17 COMMITTEE ON ACADEMIC PERFORMANCE HAS RAISED THE APR BARS  
18 THROUGH THAT SAME PERIOD, AND THEN WE HAVE ENFORCED THOSE  
19 RULES DETERMINING MANY SCHOOLS WOULD NOT BE ABLE TO  
20 PARTICIPATE IN POST-SEASON PLAY, AND IN SOME CASES, ON THE  
21 VERGE OF NOT BEING ABLE TO PARTICIPATE AT ALL.

22 **Q.** AND IN YOUR TENURE AS PRESIDENT, HAS THE NCAA CHANGED ITS  
23 RULES REGARDING THE MINIMUM HIGH SCHOOL GPA THAT INCOMING  
24 STUDENTS ATHLETES ARE REQUIRED TO HAVE?

25 **A.** YES. WE'VE RAISED IN MINIMUM GPA IN THE 16 CORE COURSES,

1 COLLEGE PREP COURSES TO 2.3 GRADE POINT AVERAGE.

2 Q. WHY DID YOU MAKE THAT CHANGE?

3 A. TO MAKE SURE THAT STUDENT ATHLETES, WHEN THEY ARRIVED ON  
4 CAMPUS, WERE ABLE TO BE SUCCESSFUL IN THE CLASSROOM AS WELL AS  
5 ON THE COURT OR THE FIELD.

6 Q. DO YOU BELIEVE THAT THAT WILL IMPROVE THE INTEGRATION OF  
7 ACADEMICS AND ATHLETICS?

8 A. ABSOLUTELY.

9 Q. IN YOUR TENURE AS PRESIDENT, HAS THE NCAA CHANGED ITS  
10 RULES REGARDING THE CORE CLASSES THAT INCOMING STUDENT  
11 ATHLETES ARE REQUIRED TO HAVE COMPLETED BEFORE THEIR SENIOR  
12 YEAR OF HIGH SCHOOL?

13 A. YES. IN ORDER TO ASSURE THAT STUDENTS WEREN'T FOCUSING ON  
14 THEIR ACADEMICS IN HIGH SCHOOL ONLY AT THE LAST MOMENT, WE  
15 CHANGED THE RULES TO REQUIRE THAT THEY TAKE THEIR CORE COURSE  
16 SEQUENCE IN A MORE TRADITIONAL FASHION OVER THE TIME THEY ARE  
17 IN HIGH SCHOOL.

18 Q. AND DO YOU BELIEVE THAT THAT CHANGE IN THE RULE WILL  
19 IMPROVE THE INTEGRATION OF ACADEMICS AND ATHLETICS?

20 A. YES.

21 Q. WHY DO YOU BELIEVE THAT?

22 A. BECAUSE STUDENTS WILL SHOW UP BETTER PREPARED, BOTH FROM A  
23 PEDAGOGICAL AND FROM AN ACADEMIC POINT OF VIEW, TO TAKE ON  
24 COLLEGE COURSE WORK. THEY WILL SHOW UP READY TO COMPETE IN  
25 THE CLASSROOM AS WELL AS THE COURT.

1 Q. AND IN YOUR TENURE AS PRESIDENT, HAS THE NCAA INSTITUTED A  
2 RULE NOT ALLOWING ADDITIONAL GAMES OR LONGER SEASONS FOR ANY  
3 NCAA SUPPORT?

4 A. YES.

5 Q. WHY DID YOU MAKE THIS CHANGE?

6 A. IN ORDER TO -- TO LIMIT THE GROWTH OF THE REQUIREMENTS  
7 THAT WAS BEING PLACED ON STUDENT ATHLETES SO THAT THEY HAVE  
8 MORE TIME FOR THEIR ACADEMIC WORK.

9 Q. DO YOU BELIEVE THAT THAT WILL IMPROVE THE INTEGRATION OF  
10 ACADEMICS AND ATHLETICS?

11 A. I DO.

12 Q. AND IN YOUR TENURE AS PRESIDENT, HAS THE NCAA CHANGED ITS  
13 RULES TO PERMIT MEMBER COLLEGES TO OFFER GUARANTEED MULTIYEAR  
14 GRANTS-IN-AID TO STUDENT ATHLETES?

15 A. YES.

16 Q. WHY DID THE NCAA MAKE THIS CHANGE?

17 A. BECAUSE IT SEEMED APPROPRIATE FOR UNIVERSITIES TO HAVE  
18 THAT OPPORTUNITY TO MAKE A MULTIYEAR COMMITMENT TO A YOUNG MAN  
19 OR YOUNG WOMAN SHOULD THEY DESIRE TO DO SO, TO PROVIDE THEM  
20 WITH SOME REASSURANCE THAT THEY WERE GOING TO BE AT THE  
21 INSTITUTION FOR THAT PERIOD OF TIME.

22 Q. AND DO YOU BELIEVE THAT THAT CHANGE IN THE RULE IMPROVED  
23 THE INTEGRATION OF ACADEMICS AND ATHLETICS?

24 A. YES.

25 Q. WHY?

1       **A.** FOR THE SIMPLE REASON THAT THE STUDENT ATHLETE CAN FOCUS  
2       MORE ON THE BALANCE BETWEEN THEIR ACADEMICS AND THEIR  
3       ATHLETICS WITHOUT SOME OF THE PRESSURE, CONCERNS OF HAVING A  
4       ONE-YEAR SCHOLARSHIP.

5       **Q.** NOW, YOU WERE A FACULTY MEMBER AND A UNIVERSITY PRESIDENT,  
6       CORRECT?

7       **A.** I WAS.

8       **Q.** WHEN YOU WERE A PROFESSOR, I TAKE IT YOU PARTICIPATED IN  
9       DISCUSSIONS ABOUT CURRICULUM REQUIREMENTS?

10      **A.** YES.

11      **Q.** AND CURRICULUM CHANGES?

12      **A.** YES.

13      **Q.** HOW ABOUT AS A UNIVERSITY PRESIDENT? DID YOU ALSO  
14      PARTICIPATE IN DISCUSSIONS WITH FACULTY ABOUT CURRICULUM  
15      REQUIREMENTS AND CHANGES?

16      **A.** YES.

17      **Q.** DID YOU EVER SEE ONE FACULTY MEMBER DISAGREE WITH ANOTHER  
18      FACULTY MEMBER ABOUT CHANGES TO THE CURRICULUM?

19      **A.** ONLY WHEN THEY SPOKE.

20      **Q.** IS IT FAIR TO SAY THAT THEY SOMETIMES STRONGLY DISAGREED  
21      WITH EACH OTHER?

22      **A.** YES, VERY MUCH SO.

23      **Q.** HAVE YOU STRONGLY DISAGREED WITH ANOTHER FACULTY MEMBER  
24      ABOUT CURRICULUM AND CURRICULUM CHANGES?

25      **A.** CONSTANTLY.



1 Q. IN YOUR DOZENS OF YEARS IN ACADEMIA, HAVE YOU EVER SEEN  
2 MEMOS OR EMAILS BETWEEN PROFESSORS WHERE THEY ARE STRONGLY  
3 DISAGREEING ABOUT CURRICULUM AND CURRICULUM CHANGES?

4 A. FREQUENTLY.

5 Q. AND IS IT FAIR TO SAY THAT THIS DEBATE AND FREE EXCHANGE  
6 OF IDEAS IS SOMETHING THAT'S REALLY IMPORTANT FOR ACADEMIA?

7 A. YES. IT'S THE NORMAL MODE OF COMMUNICATION.

8 Q. AND DOES THE FACT THAT ONE SIDE EXPRESSES ITS VIEW REALLY,  
9 REALLY STRONGLY OR PASSIONATELY MEAN THAT IT'S ABSOLUTELY  
10 RIGHT?

11 A. NO. IT'S, AGAIN, THE NORMAL MODE OF COMMUNICATION.

12 Q. ARE SUCH DEBATES PART OF THE MAKING SURE THAT THE  
13 UNIVERSITY FINDS THE RIGHT WAY TO IMPLEMENT ITS CORE VALUE OF  
14 PROVIDING THE STUDENTS WITH A QUALITY EDUCATION?

15 A. YES.

16 Q. DID THESE DEBATES INDICATE TO YOU THAT THE FACULTY DIDN'T  
17 CARE ABOUT WHETHER IT WAS PROVIDING A QUALITY EDUCATION TO ITS  
18 STUDENTS?

19 A. QUITE THE CONTRARY.

20 Q. DO YOU THINK THAT THE FACULTY ALL WANTED TO PROVIDE THAT  
21 QUALITY EDUCATION BUT THEY WERE JUST DISAGREEING ABOUT THE  
22 RIGHT WAY TO DO IT?

23 A. YES.

24 Q. HOW ABOUT THE NCAA; DO ITS MEMBERS DEBATE HOW TO IMPLEMENT  
25 THE CORE VALUES OF THE NCAA?

1       **A.**   YES.

2       **Q.**   DO THE CENTRAL STAFF OFFICE ALSO DEBATE THOSE ISSUES?

3       **A.**   CONSTANTLY.

4       **Q.**   IF SOME MEMBERS OR SOME STAFF DRAW THE LINE DIFFERENTLY  
5       ABOUT HOW CLOSE A STUDENT ATHLETE CAN STAND OR SIT NEXT TO A  
6       CORPORATE LOGO, DO YOU THINK THAT MEANS THAT THE -- THAT THE  
7       PEOPLE WHO ARE IN DISAGREEMENT ARE ADVOCATING THE ABANDONMENT  
8       OF AMATEURISM?

9       **A.**   ABSOLUTELY NOT.

10      **Q.**   DO YOU THINK THAT THEY'RE JUST DISAGREEING ON HOW TO  
11      IMPLEMENT THE CORE VALUE?

12      **A.**   YES.

13      **Q.**   BEFORE A PROVISION IS ADDED TO THE NCAA CONSTITUTION, DOES  
14      IT HAVE TO BE APPROVED BY A VOTE OF THE ENTIRE MEMBERSHIP?

15      **A.**   IT HAS TO BE APPROVED BY THE BOARD REPRESENTING THE  
16      MEMBERSHIP.  AND THE MEMBERSHIP HAS AN OPPORTUNITY TO VOTE TO  
17      OVERTURN THAT RULE SHOULD THEY WANT TO.

18      **Q.**   AND THAT'S WITH RESPECT TO RULES.

19             WITH RESPECT TO THE CONSTITUTION ITSELF, DO -- DOES THE  
20      ENTIRE MEMBERSHIP VOTE ON WHETHER, FOR EXAMPLE, A CERTAIN  
21      PRINCIPLE SHOULD BE ADDED TO THE CONSTITUTION?

22      **A.**   YES.  ABSOLUTELY.

23      **Q.**   AND WITH RESPECT TO THE PRINCIPLE THAT IS SET FORTH IN  
24      SECTION 2.9, THE PRINCIPLE OF AMATEURISM, WAS THAT VOTED ON BY  
25      THE ENTIRE MEMBERSHIP OF THE NCAA?

1       **A.**   YES.

2       **Q.**   AND THE MEMBERSHIP OF THE NCAA HAS AGREED TO THAT  
3       PRINCIPLE, CORRECT?

4       **A.**   YES, IT HAS.

5       **Q.**   AND THAT'S WHY IT'S IN THE CONSTITUTION, CORRECT?

6       **A.**   YES.

7       **Q.**   AND FROM TIME TO TIME, HAVE THE MEMBERS OF THE NCAA OR THE  
8       STAFF OF THE NCAA DISAGREED ABOUT HOW TO INTERPRET OR TO APPLY  
9       THAT PRINCIPLE?

10      **A.**   FREQUENTLY.

11      **Q.**   BUT DO THEY STILL AGREE TO THE CORE PRINCIPLE ITSELF?

12      **A.**   YES.

13      **Q.**   AND THAT'S WHY IT'S IN THE CONSTITUTION, CORRECT?

14      **A.**   CORRECT.

15               **MR. POMERANTZ:**   I HAVE NO FURTHER QUESTIONS, YOUR  
16      HONOR.

17               **THE COURT:**   I FOUND WHAT I WAS ASKING YOU ABOUT.  
18      IT'S SOMETHING YOU SAID YESTERDAY OR MAYBE THE DAY BEFORE.  I  
19      DON'T KNOW.

20               "IT'S NOT THE MISSION OF THE ASSOCIATION OF THE  
21      MEMBERS, AT LEAST THEY HAVE NOT DESCRIBED AS SUCH TO  
22      TRY AND TAKE AWAY THE ADVANTAGES OF THE UNIVERSITY,  
23      IT'S MADE A SIGNIFICANT COMMITMENT TO FACILITIES AND  
24      TRADITION AND ALL OF THE THINGS THAT GO ALONG WITH  
25      BUILDING A PROGRAM."

1           AND THAT WAS IN THE CONTEXT OF DISCUSSIONS OF WHAT WE  
2 MIGHT CALL COMPETITIVE BALANCE OR COMPETITIVE EQUITY.

3           **THE WITNESS:** YES, YOUR HONOR.

4           **THE COURT:** CAN YOU EXPLAIN WHAT YOU MEANT BY THAT?

5           **THE WITNESS:** CERTAINLY. WHAT I WAS REALLY REFERRING  
6 TO IS THE -- IS THE REALITY THAT ONE UNIVERSITY HAS BEEN  
7 PLAYING FOOTBALL FOR A VERY LONG TIME, LET'S SAY, AND OVER THE  
8 COURSE OF A HUNDRED YEARS THEY HAVE ESTABLISHED A VERY STRONG  
9 TRADITION, THEY HAVE ESTABLISHED A REPUTATION, THEY'VE BUILT  
10 FACILITIES, THEY'VE MADE A LONGSTANDING COMMITMENT, AND  
11 ANOTHER SCHOOL MAYBE JUST RECENTLY MOVED INTO DIVISION I  
12 FOOTBALL, AND THERE'S -- THE MEMBERSHIP HAS DETERMINED THAT  
13 THEY DON'T WANT TO TRY AND CREATE A REBALANCE BETWEEN THE  
14 POTENTIAL ADVANTAGE THAT A UNIVERSITY HAS BECAUSE IT HAS BEEN  
15 A FOOTBALL TEAM FOR A VERY LONG TIME AND THE OTHER ONE IS  
16 RELATIVELY NEW AND IS JUST BEGINNING TO MAKE THOSE KINDS OF  
17 INVESTMENTS IN THEIR ATHLETIC PROGRAM.

18           **THE COURT:** SO THE MEMBERS DON'T WANT TO MAKE A  
19 FINANCIAL REBALANCE.

20           **THE WITNESS:** THEY -- THEY WANT TO -- NOW I'M  
21 INTERPRETING THEIR VIEWS, YOUR HONOR. BUT MY SENSE IS THAT  
22 THEY RECOGNIZE THAT ONE UNIVERSITY HAS MADE THOSE INVESTMENTS  
23 FROM THEIR OWN INSTITUTIONAL RESOURCES OVER AN EXTENDED PERIOD  
24 OF TIME AND SHOULD ANOTHER UNIVERSITY DECIDE TO DO THAT,  
25 THEY -- THEY ARE MORE THAN HAPPY TO SHARE THE RESOURCES OF

1 CHAMPIONSHIPS AND DO SO IN THE NCAA CHAMPIONSHIPS AND THROUGH  
2 THEIR CONFERENCE EVENTS, BUT THAT THEY DON'T WANT TO SUPPLANT  
3 THE INSTITUTIONAL DOLLARS SPENT BY ONE SCHOOL.

4 **THE COURT:** I'M SORRY. I DON'T KNOW IF THAT RAISED  
5 ANY FURTHER QUESTIONS.

6 **MR. POMERANTZ:** NOT FROM ME, YOUR HONOR.

7 **THE WITNESS:** DID I ANSWER YOUR QUESTION?

8 **THE COURT:** THANK YOU.

9 **MR. ISAACSON:** I JUST WANTED TO FOLLOW UP ON THE APR  
10 POINT JUST BRIEFLY.

11 **RECROSS-EXAMINATION**

12 **BY MR. ISAACSON:**

13 **Q.** THE APR NUMBER HAS BEEN INCREASED FROM 900 TO 930. I  
14 DON'T PRETEND TO UNDERSTAND WHAT THOSE TWO NUMBERS MEAN.

15 LET ME GET TO THE BOTTOM LINE OF THAT METRIC.

16 MR. LENNON SAID IN AN INTERVIEW ON NCAA.ORG -- HE WAS  
17 ASKED THE QUESTION:

18 "WHY DID THE NCAA RAISE THE APR REQUIREMENT TO 930?

19 I'M JUST ASKING YOU THIS TO SIMPLIFY.

20 AND HE SAID:

21 "OUR MEMBERSHIP WANTED TO ANCHOR POST-SEASON  
22 ELIGIBILITY AGAINST A RATE THAT PREDICTED A  
23 50 PERCENT GRADUATION RATE. THEY FELT THAT WAS A  
24 MINIMUM STANDARD A TEAM MUST ACHIEVE."

25 THAT'S A SUMMARY OF WHAT THE BOTTOM LINE OF THE APR IS, IS

1 IN ORDER TO PARTICIPATE IN POST-SEASON TOURNAMENTS, 50 PERCENT  
2 OF YOUR PLAYERS HAVE TO BE ON TRACK TO GRADUATE.

3 **A.** YES, THAT'S CORRECT. THE GOAL WITH THE APR HAS ALWAYS  
4 BEEN THAT WE HAD AN 80 PERCENT GRADUATION RATE. THEY SET THAT  
5 FOR NOW AS THE MINIMUM THRESHOLD FOR POST-SEASON PLAY.

6 **Q.** THE MINIMUM THRESHOLD IS 50 PERCENT?

7 **A.** YES. WHICH IS SLIGHTLY UNDER THE NATIONAL AVERAGE FOR  
8 UNIVERSITIES ACROSS THE COUNTRY.

9 **MR. ISAACSON:** THAT'S IT.

10 **MR. POMERANTZ:** YOUR HONOR, IF I CAN FOLLOW UP ON  
11 THAT LAST ANSWER.

12 **FURTHER REDIRECT EXAMINATION**

13 **BY MR. POMERANTZ:**

14 **Q.** WHEN YOU SAY IT'S SLIGHTLY UNDER THE GRADUATION RATE, ARE  
15 YOU TALKING ABOUT THE GRADUATION RATE FOR STUDENT ATHLETES OR  
16 FOR THE GENERAL STUDENT BODY?

17 **A.** ENTIRE STUDENT BODY.

18 **MR. POMERANTZ:** THANK YOU. NO FURTHER QUESTIONS.

19 **THE COURT:** ALL RIGHT. NOW YOU CAN STEP DOWN.

20 **THE WITNESS:** THANK YOU.

21 **THE COURT:** WE WILL TAKE OUR BREAK. IT'S 10:20. WE  
22 WILL BREAK UNTIL 10:35. WHO IS THE NEXT WITNESS?

23 **MR. POMERANTZ:** MR. DELANY, YOUR HONOR, THE BIG TEN  
24 COMMISSIONER.

25 **THE COURT:** OKAY.

1 (RECESS TAKEN AT 10:20; RESUMED AT 10:35 A.M.)

2 **THE CLERK:** REMAIN SEATED.

3 **THE COURT:** SO I HAVE A COUPLE OF THINGS I WANTED TO  
4 RAISE WITH YOU BEFORE WE START WITH THE NEXT WITNESS.

5 I MENTIONED THE POSSIBILITY OF INTERIM CLOSING ARGUMENTS  
6 AND MET WITH A RESOUNDING LACK OF ENTHUSIASM, BUT I HAVE  
7 QUESTIONS THAT I'LL WANT TO ASK OR DISCUSS WITH THE LAWYERS,  
8 NOT JUST QUESTIONS I NIGHT HAVE OF WITNESSES, BUT WITH THE  
9 LAWYERS. AND WE HAD TALKED ABOUT DOING A WRITTEN CLOSING  
10 ARGUMENT, WHICH DOESN'T GIVE ME ANY CHANCE TO ASK MY  
11 QUESTIONS. AND SOME OF MY QUESTIONS MIGHT BE THINGS THAT I --  
12 THAT MAYBE THERE ISN'T EVIDENCE ON AND THAT PERHAPS YOU WOULD  
13 WANT TO PUT SOME EVIDENCE IN ON IT.

14 SO I WAS THINKING, AND I'M ASKING YOUR OPINION ON WHETHER  
15 WE SHOULD HAVE, I DON'T KNOW, A HALF AN HOUR OF LET'S SAY  
16 EARLY NEXT WEEK WHERE YOU WOULD SORT OF -- I DON'T WANT TO PUT  
17 YOU ON THE SPOT AND JUST START ASKING MY QUESTIONS NOW --  
18 WHERE YOU WOULD HAVE A CHANCE TO PLAN OUT WHAT YOU THINK HAS  
19 BEEN PROVED THUS FAR. AND I WOULD -- AND MAINLY, I WOULD HAVE  
20 A CHANCE TO ASK MY QUESTIONS.

21 I CAN SEE SOME DOWNSIDES FOR YOU, I SUPPOSE, THAT IT MIGHT  
22 GIVE YOU MORE OF A CHANCE TO TAILOR THE TESTIMONY OR MIGHT  
23 MISLEAD AS TO WHERE THINGS ARE GOING OR TELEGRAPH EACH OTHER'S  
24 VIEWS, OR WHATEVER, AND MAYBE YOU DON'T WANT TO DO IT EVEN  
25 THOUGH IT MIGHT BE HELPFUL TO ME, OR MAYBE YOU DO WANT TO DO

1 IT. IT ALSO WOULD MEAN GIVING UP SOME TIME ON TESTIMONY,  
2 ALTHOUGH I SUPPOSE I CAN REPAY YOU SOME AFTERNOON WITH THE  
3 HALF HOUR THAT I WOULD TAKE FROM YOU.

4 AND/OR AT THE END, WE COULD HAVE, ONCE THE TESTIMONY IS  
5 IN, WE CAN HAVE SOME SORT OF CLOSING ARGUMENT DONE VERBALLY  
6 LIKE FRIDAY AFTERNOON, NEXT FRIDAY, OR EVEN COME BACK THE  
7 FOLLOWING MONDAY AND THEN DO WRITTEN CLOSING ARGUMENTS AFTER  
8 THAT.

9 SO, I DON'T KNOW IF YOU'VE THOUGHT ABOUT THIS AT ALL OR IF  
10 YOU WANT TO TALK ABOUT IT AMONGST YOURSELVES AND GIVE ME A  
11 PROPOSAL AT THE NEXT BREAK.

12 **MR. HAUSFELD:** I THINK IT WOULD BE BEST IF WE WERE  
13 ABLE TO DISCUSS IT AMONG OURSELVES FIRST AND GET BACK TO YOU  
14 THE FIRST THING.

15 **THE COURT:** GET BACK TO ME AFTER THE NEXT BREAK.

16 **MR. HAUSFELD:** YES.

17 **THE COURT:** OR AT THE END OF THE DAY, I SUPPOSE.

18 **MR. HAUSFELD:** THE END OF THE DAY, IF THAT WOULD BE  
19 POSSIBLE, YOUR HONOR.

20 **THE COURT:** OKAY.

21 AND THEN I THINK THERE'S A FEW OTHER THINGS. I GUESS  
22 WE'VE TALK ABOUT THE DEPOSITIONS. I'M LOOKING FOR THE  
23 SETTLEMENT AGREEMENT IN THAT OTHER CASE, BUT THEY TOLD ME THEY  
24 WOULD FILE IT TODAY AT A CERTAIN TIME.

25 DO WE HAVE -- DO WE HAVE OTHER THINGS THAT I HAVE BEEN



1 ASKING YOU FOR THAT I HAVEN'T GOTTEN YET?

2 **MR. POMERANTZ:** I DON'T THINK SO.

3 **MR. HAUSFELD:** NO, YOUR HONOR.

4 **MR. POMERANTZ:** WE WILL TALK DURING THE BREAK AND GET  
5 BACK TO YOU BY 1:30 TODAY.

6 **THE COURT:** IF YOU WOULD STAND AND RAISE YOUR RIGHT  
7 HAND, PLEASE.

8 (JAMES DELANY, CALLED AS A WITNESS FOR THE DEFENDANTS,  
9 HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:)

10 **THE WITNESS:** I DO.

11 **THE CLERK:** PLEASE BE SEATED, AND ONCE SEATED, I'M  
12 GOING TO ASK THAT YOU PLEASE STATE AND SPELL YOUR FIRST AND  
13 LAST NAME FOR THE RECORD, PLEASE.

14 **THE WITNESS:** MY NAME IS JAMES DELANY, J-A-M-E-S  
15 CAPITAL D-E-L-A-N-Y.

16 **THE CLERK:** THANK YOU.

17 **DIRECT EXAMINATION**

18 **BY MR. LI:**

19 **Q.** GOOD MORNING, MR. DELANY.

20 **A.** GOOD MORNING.

21 **Q.** WHAT IS YOUR CURRENT JOB?

22 **A.** I'M COMMISSIONER OF THE BIG TEN CONFERENCE.

23 **Q.** NOW, WE'LL TALK ABOUT THIS A LITTLE MORE LATER, BUT IS THE  
24 BIG TEN CONFERENCE AN ORGANIZATION OF COLLEGES AND  
25 UNIVERSITIES?

1       **A.** IT IS.

2       **Q.** ONE OF THE BIGGEST AND THE OLDEST CONFERENCES IN THE  
3 NATION?

4       **A.** IT IS.

5       **Q.** NOW, SIR, HOW LONG HAVE YOU BEEN THE COMMISSIONER OF THE  
6 BIG TEN CONFERENCE?

7       **A.** I'M CONCLUDING MY 25TH YEAR.

8       **Q.** AND IN ADDITION TO THOSE 25 YEARS, HOW LONG TOTAL HAVE YOU  
9 BEEN INVOLVED IN COLLEGIATE ATHLETICS?

10      **A.** LITTLE SHORT OF 40 YEARS.

11      **Q.** NOW BEFORE YOU WERE THE COMMISSIONER OF THE BIG TEN, WHAT  
12 WAS YOUR JOB?

13      **A.** I WAS COMMISSIONER OF THE OHIO VALLEY CONFERENCE IN  
14 NASHVILLE, TENNESSEE.

15      **Q.** IS THAT A SMALLER COLLECTION OF UNIVERSITIES AND COLLEGES?

16      **A.** IT IS.

17      **Q.** AT A VERY HIGH LEVEL, WHAT ARE YOUR RESPONSIBILITIES AS  
18 THE COMMISSIONER?

19      **A.** I WORK FOR THE UNIVERSITY PRESIDENTS AND CHANCELLORS AND  
20 WITH THE ATHLETIC DIRECTORS, FACULTY, AND COACHES.

21           WE IMPLEMENT, WE TRY TO BRING PEOPLE TOGETHER, AND WE  
22 REPRESENT THE BIG TEN CONFERENCE IN A VARIETY OF FORUMS WITH  
23 THE NCAA, THE AREA OF TELEVISION, AND IN THE AREA OF BOWLS AND  
24 OTHER RELATED ASSOCIATIONS.

25      **Q.** NOW, HOW -- LET ME PUT IT THIS WAY. WHO DO YOU REPORT TO

1 AT THE -- AT THE -- AS COMMISSIONER OF THE BIG TEN?

2 **A.** I REPORT TO THE BIG TEN COUNCIL OF PRESIDENTS AND  
3 CHANCELLORS THAT OPERATE AS OUR BOARD OF DIRECTORS.

4 **Q.** WHO ARE THOSE FOLKS?

5 **A.** THOSE ARE THE PRESIDENTS AND CHANCELLORS OF EACH OF THE  
6 MAIN CAMPUSES OF THE 14-MEMBER INSTITUTIONS.

7 **Q.** WHY, AS THE COMMISSIONER OF THE BIG TEN CONFERENCE, DO YOU  
8 REPORT TO THE PRESIDENTS AND CHANCELLORS OF UNIVERSITIES?

9 **A.** BECAUSE THE PRESIDENTS BELIEVE THAT THE BEST WAY TO  
10 ACHIEVE INSTITUTIONAL CONTROL OF INTERCOLLEGIATE ATHLETICS IS  
11 THROUGH PRESIDENTIAL LEADERSHIP, IN OUR CASE PRESIDENTIAL  
12 LEADERSHIP, IS EXERCISED BY THEM IN A COLLECTIVE SENSE WHEN  
13 THEY'RE THE BOARD OF DIRECTORS.

14 **Q.** THOSE PRESIDENTS, DO THEY HAVE BROADER RESPONSIBILITY THAN  
15 JUST ATHLETICS?

16 **A.** YES. YES, THEY DO.

17 **Q.** GENERALLY WHAT ARE THEIR RESPONSIBILITIES?

18 **A.** THEY OVERSEE GREAT PUBLIC UNIVERSITIES IN THE MIDWEST AND  
19 THE EAST. THEY OVERSEE HOSPITALS, UNDERGRADUATE PROGRAMS,  
20 RESEARCH COMPONENTS, AND PUBLIC SERVICE. SO THEY HAVE A VERY  
21 BROAD WIDE-RANGING SET OF RESPONSIBILITIES.

22 **Q.** NOW, DURING YOUR TENURE, I AM NOT GOING TO ASK YOU TO  
23 SPEAK ABOUT THE 1800'S AND WHAT HAVE YOU, BUT DURING YOUR  
24 TENURE, HAS -- HAVE YOU ALWAYS REPORTED TO THIS BODY OF  
25 PRESIDENTS AND CHANCELLORS?

1       **A.**   I HAVE.

2       **Q.**   LET'S TALK A LITTLE BIT ABOUT YOURSELF.   LET'S TALK ABOUT  
3       YOUR EDUCATION.

4               WHERE DID YOU GO TO SCHOOL?

5       **A.**   I WENT TO THE UNIVERSITY OF NORTH CAROLINA IN CHAPEL HILL,  
6       NORTH CAROLINA.

7       **Q.**   AND APPROXIMATELY WHEN?

8       **A.**   FROM 1966 TO 1970 AS AN UNDERGRADUATE.

9       **Q.**   WERE YOU A STUDENT ATHLETE?

10       **A.**   I WAS.

11       **Q.**   WHAT SPORT DID YOU PLAY?

12       **A.**   MEN'S BASKETBALL.

13       **Q.**   WERE YOU A SCHOLARSHIP STUDENT?

14       **A.**   I WAS.

15       **Q.**   AND AT THE TIME, WHAT DID THE SCHOLARSHIP COVER?

16       **A.**   ROOM, BOARD, FEES, TUITION, BOOKS AND \$15 A MONTH LAUNDRY.

17       **Q.**   NOW THE FACT THAT YOU GOT TUITION, ROOM, BOARD, BOOKS AND  
18       \$15 A MONTH ON LAUNDRY, DID THAT -- WAS THAT CONSISTENT WITH  
19       THE VALUES OF THE UNIVERSITY OF NORTH CAROLINA?

20       **A.**   I BELIEVE IT WAS.

21       **Q.**   DID YOU CONSIDER YOURSELF AN AMATEUR?

22       **A.**   I DID.

23       **Q.**   NOW LET'S TALK A LITTLE BIT ABOUT THE UNIVERSITY OF NORTH  
24       CAROLINA AND YOUR BASKETBALL -- PLAYING BASKETBALL AT THE  
25       UNIVERSITY OF NORTH CAROLINA.

1 WHO WAS YOUR COACH?

2 **A.** A MAN BY THE NAME OF DEAN SMITH.

3 **Q.** PRETTY FAMOUS COACH?

4 **A.** FAMOUS COACH.

5 **Q.** CAN YOU THINK OF OTHER PLAYERS THAT HE MIGHT HAVE COACHED  
6 IN HIS TIME?

7 **A.** MICHAEL JORDAN WOULD BE ONE. SAM PERKINS. NORTH CAROLINA  
8 HAS HAD A PROUD AND SUCCESSFUL TRADITION OF MEN'S BASKETBALL  
9 OVER MANY DECADES.

10 **Q.** NOW, HAVING BEEN COACHED BY DEAN SMITH, DID YOU LEARN  
11 ANYTHING FROM HIM?

12 **A.** HE WAS A VERY INNOVATIVE COACH. HIS DAD WAS A COACH. HE  
13 WAS A COACH. HE BELIEVED IN, YOU KNOW, COMMITMENT,  
14 PREPARATION, ACADEMIC SUCCESS, AND ATHLETIC SUCCESS.

15 SO, MANY, MANY OF THE THINGS THAT WE DID AS -- AS A TEAM,  
16 THE PREPARATION, THE CHANGE OF TACTICS, ET CETERA, ARE LIFE  
17 LESSONS. TIME MANAGEMENT, WINNING TOGETHER, LOSING TOGETHER.  
18 WERE PART AND PARCEL OF THE EDUCATION THAT I RECEIVED IN  
19 CHAPEL HILL.

20 **Q.** FROM COACH DEAN SMITH YOU LEARNED ABOUT THINGS ON THE  
21 COURT?

22 **A.** I DID.

23 **Q.** AND YOU LEARNED ABOUT THINGS OFF THE COURT?

24 **A.** I DID.

25 **Q.** WHILE YOU WERE PLAYING AT THE UNIVERSITY OF NORTH

1 CAROLINA, DID -- DID THEY SELL TICKETS TO YOUR GAMES?

2 A. THEY DID.

3 Q. A LOT OF TICKETS?

4 A. GAMES WERE SOLD OUT.

5 Q. EVERY GAME PRETTY MUCH?

6 A. EVERY GAME PRETTY MUCH.

7 Q. WERE YOUR GAMES TELEVISED ALSO?

8 A. THEY WERE.

9 Q. AND DID NORTH CAROLINA EARN MONEY FOR THE TICKETS AND THE  
10 TELEVISION ON YOUR GAMES?

11 A. I'M SURE THEY DID.

12 Q. DID YOU CONSIDER YOURSELF AN AMATEUR NEVERTHELESS?

13 A. I DID.

14 Q. NOW, DOES UNC HAVE A RIVAL?

15 A. THEY DO.

16 Q. WHO IS THEIR RIVAL?

17 A. DUKE UNIVERSITY.

18 Q. AND TO THIS DAY, 40 YEARS LATER, DO YOU STILL FOLLOW  
19 WHETHER UNC BEATS DUKE?

20 A. EVERY -- YOU KNOW, WE PAY VERY CLOSE ATTENTION TO THAT AS  
21 MANY NORTH CAROLINA AND DUKE GRADS AND ALUMS AND FANS DO.

22 Q. IN FACT, DO YOU PAY ATTENTION TO WHEN ANYBODY BEATS DUKE?

23 A. I DO. DUKE HAS HAD A LOT OF SUCCESS, BUT THEY ARE  
24 FALLIBLE. THEY LOST TO LEE HIGH. THEY LOST TO VCU AND THEY  
25 LOST TO EASTERN MICHIGAN AND MERCER. SO I WATCH ALL THEIR

1 GAMES.

2 Q. AND YOU CAN TELL US EXACTLY WHICH TEAMS BEAT DUKE,  
3 CORRECT?

4 A. I CAN.

5 Q. NOW LET'S TALK FOR A SECOND ABOUT THE BIG TEN CONFERENCE.  
6 OKAY?

7 WE'RE SORT OF SWITCHING TOPICS HERE.

8 IN BROAD TERMS, WHAT IS THE BIG TEN CONFERENCE?

9 A. THE BIG TEN CONFERENCE IS AN ASSOCIATION OF 14  
10 UNIVERSITIES, 13 OF THEM ARE PUBLIC. NORTHWESTERN IS A  
11 PRIVATE INSTITUTION. THEY ARE ALL MAJOR RESEARCH  
12 INSTITUTIONS. THEY ALL, FOR THE MOST PART, HAVE VERY LARGE  
13 UNDERGRADUATE STUDENT BODIES. THEY HAVE ALL BEEN AROUND FOR  
14 WELL OVER A HUNDRED YEARS. I THINK UNIVERSITY OF MICHIGAN  
15 DATES TO 1817. MOST OF THEM WERE FOUNDED UNDER THE MORROW ACT  
16 IN THE MIDDLE 1800'S.

17 AND THEY HAVE BEEN ASSOCIATING WITH EACH OTHER IN  
18 INTERCOLLEGIATE ATHLETICS SINCE 1896 WHEN PRESIDENTS AND  
19 FACULTY CAME TOGETHER TO ESTABLISH SOME BASIC STANDARDS FOR  
20 PARTICIPATION IN INTERCOLLEGIATE ATHLETICS.

21 Q. LET ME ASK YOU ABOUT THE FOUNDING IN 1896. WAS IT CALLED  
22 THE BIG TEN THEN?

23 A. IT WASN'T. IT WAS CALLED THE INTERCOLLEGIATE CONFERENCE  
24 OF FACULTY REPRESENTATIVES.

25 Q. THOSE FACULTY REPRESENTATIVES WERE PRESIDENTS AND

1 CHANCELLORS, RIGHT?

2 **A.** NO, THEY WERE FACULTY REPRESENTATIVES.

3 **Q.** OH, OKAY.

4 AND TODAY THEY ARE PRESIDENTS AND CHANCELLORS, RIGHT?

5 **A.** THAT'S CORRECT.

6 **Q.** NOW, FROM EAST TO WEST --

7 **A.** YES.

8 **Q.** -- LET ME, HOWEVER YOU WANT TO DO IT, WEST TO EAST, EAST  
9 TO WEST, CAN YOU TELL US WHICH UNIVERSITIES --

10 **A.** YES.

11 **Q.** -- ARE MEMBERS OF THE BIG EAST (SIC)?

12 **A.** UNIVERSITY OF NEBRASKA, UNIVERSITY OF MINNESOTA,  
13 UNIVERSITY OF IOWA, UNIVERSITY OF WISCONSIN, NORTHWESTERN  
14 UNIVERSITY, ILLINOIS, PERDUE, INDIANA, MICHIGAN, MICHIGAN  
15 STATE, OHIO STATE, PENN STATE, MARYLAND, AND RUTGERS.

16 **THE COURT:** YOU ASKED HIM WHICH WERE MEMBERS OF THE  
17 BIG EAST?

18 **MR. LI:** BIG TEN. I'M SORRY, DID I MISSPEAK? I  
19 APOLOGIZE, YOUR HONOR. BIG TEN. THAT'S WHAT I MEANT, YOUR  
20 HONOR. I APOLOGIZE.

21 **THE COURT:** BIG TEN?

22 **BY MR. LI:**

23 **Q.** NOW RECENTLY THE BIG TEN HAS ADDED A FEW SCHOOLS, CORRECT?

24 **A.** YES.

25 **Q.** TELL US ABOUT THAT.



1       **A.** WELL, WE WERE TEN INSTITUTIONS FOR MANY DECADES. PENN  
2 STATE JOINED THE BIG TEN IN 1991. NEBRASKA JOINED THE BIG TEN  
3 IN 2010. AND MOST RECENTLY MARYLAND AND RUTGERS HAVE  
4 INDICATED OR HAVE JOINED THE CONFERENCE AS OF JULY 1, 2014.

5       **Q.** NOW, SOME SAY THAT THE -- THAT MARYLAND AND RUTGERS  
6 JOINING THE BIG TEN IS A BIG MONEY GRAB?

7       **A.** RIGHT.

8       **Q.** WHAT DO YOU HAVE TO SAY TO THAT?

9       **A.** WELL, WHAT I HAVE TO SAY ABOUT THAT IS I THINK CONFERENCES  
10 HAVE CHANGED. WE WERE HISTORICALLY A MIDWESTERN CONFERENCE.  
11 THE PAC-12 WAS A WEST COAST CONFERENCE. THE ACC WAS A MIDDLE  
12 ATLANTIC CONFERENCE, AND THE SEC WAS A SOUTHEASTERN  
13 CONFERENCE.

14           WHAT HAS HAPPENED OVER THE LAST 20 YEARS IS CONFERENCES  
15 AND INSTITUTIONS, SOME INSTITUTIONS ASPIRING TO JOIN NEW  
16 CONFERENCES HAVE EXPANDED INTO MULTIPLE SECOND REGIONS.

17           FOR US, WE HAVE BEEN FORTUNATE THAT ALL OF THESE  
18 UNIVERSITIES ARE AAU, DISTINGUISHED RESEARCH INSTITUTIONS,  
19 THEY ARE ALL LOCATED IN CONTIGUOUS STATES. THEY ALL SPONSOR  
20 BROAD-BASED PROGRAMS, AND THEY ALL ASCRIBE TO THE VALUES OF --  
21 OF THE BIG TEN TO TRY TO PROVIDE AS MANY QUALITY OPPORTUNITIES  
22 FOR AS MANY STUDENT ATHLETES.

23           THE BIG TEN IS, IF NOTHING ELSE, VERY LARGE, VERY LARGE  
24 STUDENT POPULATIONS. WE HAVE OVER 560,000 STUDENTS ON CAMPUS  
25 OVER CLOSE TO 6 MILLION LIVING ALUMS. SO THAT CORRIDOR FROM

1 WASHINGTON, D.C. TO NEW YORK CITY IS REplete WITH BIG TEN  
2 ALUMS. THIS GIVES THEM A CHANCE TO SEE THEIR TEAMS VISIT AND  
3 ALSO FOR US TO BRING IN TWO OUTSTANDING UNIVERSITIES IN THE  
4 CORRIDOR.

5 I THINK IT WILL BE POSITIVE FOR US IN MANY WAYS, INCLUDING  
6 RAISING RESOURCES FOR OUR SCHOOLS. BUT, FIRST AND FOREMOST,  
7 THE DNA THAT THESE UNIVERSITIES SHARE WITH US IN TERMS OF  
8 MAJOR RESEARCH, MAJOR ACADEMICS, COMMITMENT TO BROAD-BASED  
9 PROGRAM FITS IN REALLY WELL WITH WHAT WE HAVE.

10 **THE COURT:** SO IN ORDER TO GET IN YOUR CONFERENCE,  
11 FIRST THE SCHOOL HAS TO GET INTO DIVISION I.

12 **THE WITNESS:** THAT'S RIGHT.

13 **THE COURT:** WHAT ARE THE CRITERIA FOR GETTING INTO  
14 DIVISION I?

15 **THE WITNESS:** THEY'RE QUITE MODEST. I THINK IT'S A  
16 SPONSORSHIP OF SEVEN MEN'S TEAMS AND SEVEN WOMEN'S TEAMS.  
17 THEY HAVE TO SUBSCRIBE TO THE MINIMUM ACADEMIC STANDARDS THAT  
18 THE NCAA REQUIRES. AND THEY RUN THE GAMUT FROM --

19 **THE COURT:** THOSE ARE THE ONLY TWO REQUIREMENTS?

20 **THE WITNESS:** I THINK THOSE ARE THE TWO MAJOR  
21 REQUIREMENTS. THERE IS A WAITING PERIOD AND THERE'S A  
22 CERTIFICATION PROCESS, BUT I THINK THAT IF YOU SPONSOR A  
23 MINIMUM NUMBER OF SPORTS AND YOU SUBSCRIBE TO THE ACADEMIC  
24 STANDARDS AND GO THROUGH A MODEST WAITING PERIOD, YOU CAN  
25 QUALIFY TO BE IN DIVISION I.

1           **THE COURT:** AND ANYONE WHO QUALIFIES GETS IN --

2           **THE WITNESS:** YES.

3           **THE COURT:** -- OR IS THERE A SELECTION PROCESS?

4           **THE WITNESS:** NO. ANYONE WHO QUALIFIES GETS IN.

5           **THE COURT:** HOW LONG IS THE WAITING PERIOD?

6           **THE WITNESS:** UM, I'M NOT SURE. I THINK IT'S

7 PROBABLY THREE YEARS. I THINK YOU HAVE TO PUT A SCHEDULE

8 TOGETHER THAT SHOWS YOU CAN PLAY DIVISION I SCHOOLS, AND THEY

9 HAVE ADEQUATE NUMBER OF TEAMS, AND THAT YOU ARE SUBSCRIBING TO

10 THE RULES OF DIVISION I.

11           **THE COURT:** SO YOU NEED TO FULFILL THOSE REQUIREMENTS

12 AS WELL BEFORE YOU GET IN?

13           **THE WITNESS:** YES.

14           **THE COURT:** ANY MORE?

15           **THE WITNESS:** OFF THE TOP OF MY HEAD, I HAVEN'T

16 REALLY LOOKED AT THE CRITERIA FOR DIVISION I MEMBERSHIP, BUT

17 WHAT I CAN TELL YOU IS IT MUST NOT BE TOO HARD TO GET IN

18 BECAUSE WHEN I WAS A STUDENT 40 YEARS AGO, THERE WERE 181

19 DIVISION I TEAMS AND TODAY THERE ARE 352.

20           **THE COURT:** SO THEN HOW DOES ONE GET INTO A GIVEN

21 CONFERENCE WITHIN DIVISION I SUCH AS YOURS, I SUPPOSE? WHAT

22 ARE THE REQUIREMENTS AND WHO MAKES THE DECISION?

23           **THE WITNESS:** THOSE DECISIONS ARE MADE GENERALLY BY

24 THE PRESIDENTS AND CHANCELLORS OF EACH CONFERENCE. THERE HAS

25 TO BE TWO WILLING PARTNERS. THERE HAS TO BE THE INDIVIDUAL

1 INSTITUTION THAT DESIRES TO JOIN, AND RECEPTIVITY BY THE  
2 CONFERENCE THAT WOULD LIKE FOR THEM TO JOIN.

3 SO, IN SOME CASES, SOME CONFERENCES ARE IN SEARCH OF  
4 MEMBERS. THEY ARE SMALLER --

5 **THE COURT:** TALK ABOUT YOUR CONFERENCE. IF YOU COULD  
6 JUST TELL ME AS AN EXAMPLE WHAT THE REQUIREMENTS ARE TO GET  
7 INTO YOUR CONFERENCE.

8 **THE WITNESS:** WELL, I THINK THE FIRST REQUIREMENT  
9 WOULD BE THAT YOU WOULD, AT THE TIME OF MEMBERSHIP, YOU WOULD  
10 BE A MEMBER OF THE AAU. ALL OF OUR SCHOOLS AT THE TIME OF  
11 MEMBERSHIP ARE MEMBERS OF THE AMERICAN ASSOCIATION OF  
12 UNIVERSITIES, ONE. TWO, THAT YOU WOULD SPONSOR BROAD-BASED  
13 PROGRAMS. THREE, THAT YOU WOULD SUBSCRIBE TO THE COMMITMENT  
14 OF BROAD BASED --

15 **THE COURT:** BY "BROAD BASED", YOU MEAN HAVING 16  
16 TEAMS?

17 **THE WITNESS:** MORE THAN THAT. WE AVERAGE ABOUT 25.  
18 THE MINIMUM IS 14, I BELIEVE. SEVEN MEN, SEVEN WOMEN. THE  
19 BIG TEN AND THE IVY'S ARE KNOWN AS THE MOST BROAD-BASED  
20 BECAUSE THEY SPONSOR THE MOST OPPORTUNITIES FOR MEN AND WOMEN  
21 ATHLETES.

22 **THE COURT:** SO TO GET INTO YOUR CONFERENCE, DOES A  
23 SCHOOL HAVE TO HAVE MORE TEAMS OR MORE SPORTS THAN THEY HAD TO  
24 TO GET INTO DIVISION I IN THE FIRST PLACE?

25 **THE WITNESS:** YES.

1           **THE COURT:** MORE?

2           **THE WITNESS:** MORE.

3           **THE COURT:** SO DIVISION I IS 16, I THINK --

4           **THE WITNESS:** I THOUGHT IT WAS 14. I THINK IT'S  
5 SEVEN AND SEVEN, SEVEN MEN, SEVEN WOMEN.

6           **THE COURT:** AND FOR YOU IT'S HOW MANY?

7           **THE WITNESS:** FOR US, WE HAVE SOME THAT HAVE AS FEW  
8 AS 18, BUT WE ALSO HAVE SOME THAT HAVE AS MANY AS 32 OR 33.

9           **THE COURT:** WHAT'S THE REQUIREMENT THOUGH?

10          **THE WITNESS:** THE REQUIREMENT WOULD BE THAT YOU A  
11 MEMBER OF DIVISION I --

12          **THE COURT:** HOW MANY TEAMS DO YOU HAVE TO HAVE TO GET  
13 INTO YOUR CONFERENCE?

14          **THE WITNESS:** YOU WOULD HAVE TO SPONSOR, I THINK,  
15 EIGHT AS A MINIMUM.

16          **THE COURT:** EIGHT TEAMS?

17          **THE WITNESS:** EIGHT MEN'S AND EIGHT WOMEN'S.

18          **THE COURT:** OH, I SEE, 16 ALTOGETHER.

19          **THE WITNESS:** YES.

20          **THE COURT:** SO YOU HAVE TO BE A MEMBER OF THE AAU, 16  
21 SPORTS, AND WHAT ELSE DO YOU HAVE TO HAVE?

22          **THE WITNESS:** I THINK YOU HAVE TO -- YOU HAVE TO WANT  
23 TO BELONG AND YOU HAVE TO BE WELCOMED.

24          **THE COURT:** THAT'S THE NEXT QUESTION. THE FIRST  
25 QUESTION IS WHAT ARE THE REQUIREMENTS. AND I GUESS IT'S BEING

1 AN AAU MEMBER AND HAVING 16 SPORTS, WHICH MIGHT BE THE SAME  
2 NUMBER AS DIVISION I OR IT MIGHT BE TWO MORE THAN DIVISION I.

3 **THE WITNESS:** IT MIGHT.

4 **THE COURT:** IF A SCHOOL HAS THOSE QUALIFICATIONS AND  
5 WANTS TO BE IN, IS IT DISCRETIONARY OR IS IT REQUIRED THAT  
6 THEY CAN COME IN IF THEY WANT --

7 **THE WITNESS:** IT'S TOTALLY --

8 **THE COURT:** -- AND THEY QUALIFY?

9 **THE WITNESS:** IT IS TOTALLY DISCRETIONARY.

10 **THE COURT:** IT'S DISCRETIONARY. AND WHO MAKES THAT  
11 DECISION?

12 **THE WITNESS:** THAT IS MADE BY OUR PRESIDENTS AND  
13 CHANCELLORS. THEY HAVE --

14 **THE COURT:** SO THE SCHOOL APPLIES, AND THEY GO TO A  
15 MEETING OR SOMETHING AND THE PRESIDENTS VOTE THEM IN OR OUT?

16 **THE WITNESS:** CORRECT. WELL, THEY DON'T VOTE THEM  
17 OUT, THEY JUST DON'T VOTE THEM IN.

18 **THE COURT:** OKAY. ARE THERE CRITERIA THAT THEY USE  
19 BESIDES BEING AN AAU MEMBER AND HAVING 16 SPORTS?

20 **THE WITNESS:** I THINK THAT THEY WOULD WANT THEM TO  
21 SUBSCRIBE TO THE VALUES OF THE BIG TEN. PRIMACY OF ACADEMIC  
22 EXPERIENCE.

23 OUR CONFERENCE HAS, I THINK, PERFORMED NOT ONLY WELL ON  
24 THE FIELDS, BUT WE LEAD THE COUNTRY IN OUR PEER GROUP AND  
25 GRADUATION RATES FOR MEN'S BASKETBALL, MEN'S FOOTBALL, WOMEN'S

1 BASKETBALL AND OVERALL. SO THEY WOULD HAVE TO SHOW THAT THEY  
2 HAVE THOSE KINDS OF COMMITMENTS AND THAT KIND OF PERFORMANCE  
3 OBTAINS.

4 **THE COURT:** OKAY.

5 **MR. LI:** THANK YOU, YOUR HONOR.

6 **BY MR. LI:**

7 **Q.** NOW JUST SO WE ARE CLEAR, YOU ARE NOT AN NCAA OFFICIAL,  
8 ARE YOU?

9 **A.** I AM NOT.

10 **Q.** SO YOU'RE FAMILIARITY WITH NCAA RULES ARE, YOU KNOW, YOU  
11 ARE GIVING THE COURT OFF THE TOP OF YOUR HEAD?

12 **A.** EXACTLY.

13 **THE COURT:** I'M SURE IT'S NOT DISPUTED. HOW MANY  
14 TEAMS DO YOU HAVE TO BE IN TO BE IN DIVISION I?

15 DO YOU KNOW? DOESN'T MATTER. GO AHEAD.

16 **MR. LI:** I'M NOT DISPUTING IT, YOUR HONOR.

17 **BY MR. LI:**

18 **Q.** SO, THERE ARE TITLE IX REQUIREMENTS TO BE IN DIVISION I?

19 **A.** I DON'T THINK THAT THERE ARE TITLE IX REQUIREMENTS TO BE  
20 IN DIVISION I.

21 **Q.** YOU NEED TO HAVE A BALANCE OF SPORTS, THOUGH?

22 **A.** YOU NEED TO HAVE A BALANCE OF SPORTS.

23 **Q.** AND THERE ARE SCHOLARSHIPS REQUIREMENTS TO BE IN DIVISION  
24 I?

25 **A.** I THINK THERE ARE A MINIMUM NUMBER OF SCHOLARSHIPS THAT

1 NEED TO BE GRANTED.

2 Q. YOU NEED TO FOLLOW THE NCAA RULES REGARDING AMATEURISM,  
3 RIGHT?

4 A. THAT'S CORRECT.

5 Q. NOW, MR. DELANY, ARE THE BIG TEN -- IS THE -- ARE THE BIG  
6 TEN AND ITS COLLEGE MEMBERS MEMBERS OF THE NCAA?

7 A. THEY ARE.

8 Q. WHY ARE BIG TEN SCHOOLS MEMBERS OF THE NCAA?

9 A. I THINK THE BIG TEN MEMBERS ARE SCHOOLS OF THE NCAA  
10 BECAUSE THEY DESIRE TO COMPETE IN NATIONAL COMPETITION. WE  
11 HAVE ALWAYS HAD SOME REQUIREMENT, SOME STANDARDS THAT ARE  
12 APPLICABLE INSIDE THE BIG TEN, ACADEMIC, ATHLETIC, OTHERWISE  
13 THAT ARE MORE STRINGENT, BUT TO THE EXTENT YOU ARE  
14 PARTICIPATING BETWEEN CONFERENCES ON A NATIONAL BASIS, WHETHER  
15 IT'S IN THE ROSE BOWL, IN THE NCA TOURNAMENT, OR BIG TEN ACC  
16 CHALLENGE, YOU WANT THE BASE STANDARDS TO BE SIMILAR SO THAT  
17 THE COMPETITION WOULD BE CONSIDERED FAIR.

18 Q. SO EVERYONE IS PLAYING BY THE SAME RULES?

19 A. THAT'S RIGHT.

20 THE COURT: DON'T YOU -- DOESN'T THE SCHOOL HAVE TO  
21 BE IN THE NCAA TO BE IN THE BIG TEN?

22 THE WITNESS: THEY DO.

23 BY MR. LI:

24 Q. AND THE REASON FOR THAT IS YOU WANT EVERYBODY PLAYING BY  
25 THE SAME RULES?



1       **A.**    THAT'S RIGHT.

2       **Q.**    NOW, DOES THE ABILITY TO PLAY NATIONWIDE BENEFIT STUDENT  
3       ATHLETES?

4       **A.**    WELL, I THINK IT DOES.

5       **Q.**    WHY?

6       **A.**    I THINK THAT THERE ARE THREE PARTS TO ANY COLLEGE  
7       STUDENT'S EXPERIENCE, AT LEAST THAT'S BEEN THE CASE FOR MANY,  
8       MANY DECADES.

9            YOU HAVE A NONCONFERENCE SCHEDULE.    USUALLY THAT HAPPENS  
10       EARLY IN THE YEAR WHERE YOU PLAY AGAINST TEAMS FROM OUTSIDE  
11       YOUR CONFERENCE.    AND THEN YOU MOVE TO CONFERENCE COMPETITION  
12       FOR THE MAJORITY OF YOUR GAMES.    AND THEN YOU MOVE INTO NCAA  
13       NATIONAL PLAY.

14           AND SO THERE ARE REALLY THREE PARTS TO IT, AND OUR SCHOOLS  
15       VIEW THEMSELVES AS NATIONAL.    THEY VIEW THEMSELVES -- THEY ARE  
16       ALUMNI BASIS SPREAD THROUGHOUT THE COUNTRY, AND I THINK THEY  
17       VIEW INTERCOLLEGIATE ATHLETICS AS A NATIONAL PURSUIT.    IT'S  
18       LOCATED LOCALLY, IT'S PLAYED REGIONALLY AND NATIONALLY.

19       **Q.**    IS THIS TRUE ONLY FOR MEN'S BASKETBALL AND FOOTBALL?

20       **A.**    NO.    THIS -- THIS IS TRUE FOR ALL SPORTS.

21       **Q.**    FIELD HOCKEY?

22       **A.**    FIELD HOCKEY.

23       **Q.**    CREW?

24       **A.**    CREW.

25       **Q.**    NOW, THE COURT ASKED A NUMBER OF QUESTIONS ABOUT WHAT THE

1 BIG TEN LOOKS FOR IN PARTNERS IN CASE IT'S GOING TO BRING IN  
2 SOME MORE FOLKS INTO THE CONFERENCE.

3 YOU RECALL THAT, RIGHT?

4 **A.** YES.

5 **Q.** NOW YOU HAD TALKED ABOUT VALUES.

6 **A.** YES.

7 **Q.** LET ME ASK YOU ABOUT A FEW OF THOSE VALUES.

8 DOES THE BIG TEN CONFERENCE VALUE PREMIERE ACADEMIC  
9 INSTITUTIONS?

10 **A.** IT DOES.

11 **Q.** TELL US ABOUT THAT.

12 **A.** WELL, THE COMMITMENT THAT WE HAVE IN UNDERGRADUATE  
13 EDUCATION IS MATCHED OR PROBABLY EXCEEDED BY THE RESEARCH  
14 THAT'S GOING ON ON OUR CAMPUSES. COLLECTIVELY OUR SCHOOLS ARE  
15 RECIPIENTS OF OVER \$10 BILLION OF FEDERAL RESEARCH. SO THE  
16 COMMITMENT TO RESEARCH IS LONGSTANDING. THE COMMITMENT TO  
17 QUALITY UNDERGRADUATE EDUCATION IS GREAT.

18 I THINK IT'S -- MANY PEOPLE REFER AS AN UNCOMMON EDUCATION  
19 FOR THE COMMON PERSON. I THINK IT CAME OUT OF THE GROWTH OF  
20 THESE UNIVERSITIES IN THE MORROW ACT AND IT'S CONTINUED FOR  
21 GENERATIONS AND GENERATIONS.

22 PART OF THAT TRADITION HAS BEEN INTERCOLLEGIATE ATHLETICS.  
23 WE ARE THE OLDEST CONFERENCE AND WE ARE THE CONFERENCE, I  
24 THINK, THAT IN MANY WAYS SET THE STANDARDS WHICH EVENTUALLY  
25 INFORMED OTHER CONFERENCES AS WELL AS THE NCAA, BUT TODAY THE

1 NCAA IS THE STANDARD SETTER AND IT EVOLVED OVER TIME.

2 Q. OKAY.

3 NOW, DO THE MEMBER SCHOOLS COOPERATE ACADEMICALLY?

4 A. THEY -- THEY DO VERY MUCH SO.

5 Q. YOU WERE TELLING ME ABOUT A RESEARCH CONSORTIUM. IF YOU  
6 CAN TELL US ALL --

7 A. OUR CONFERENCE OPERATES ON AN -- ON AN ACADEMIC PLANE, BUT  
8 IT ALSO OPERATES ON AN ACADEMIC PLANE. THE COMMITTEE ON  
9 INSTITUTIONAL COOPERATION IS LED BY THE PROVOST FROM EACH ONE  
10 OF OUR 14 INSTITUTIONS.

11 THEY COLLABORATE ON GRANTS. THEY COLLABORATE ON  
12 INTERNATIONAL TRAVEL. THEY COLLABORATE IN TERMS OF  
13 BENCHMARKING. SO I THINK THE NEW MEMBERS, WHETHER IT'S PENN  
14 STATE OR RUTGERS HAS FOUND A COMMITTEE ON INSTITUTIONAL  
15 COOPERATION TO BE A TREMENDOUS ASSET TO THEM.

16 AND I KNOW FOR MARYLAND AND RUTGERS, THEIR FACULTY, THEIR  
17 RESEARCHERS ARE AS EXCITED AS THEIR ATHLETIC DIRECTOR AND  
18 THEIR COACHES SIMPLY BECAUSE OF THEIR ASSOCIATION WITH THESE  
19 WORLD-CLASS UNIVERSITIES THAT ARE -- THAT WORK TOGETHER.

20 Q. YESTERDAY YOU WERE TELLING ME ABOUT A CONCUSSION RESEARCH  
21 CENTER.

22 A. YEAH.

23 Q. IS THAT SOMETHING THAT THE BIG TEN IS INVOLVED IN?

24 A. THE BIG TEN ANNOUNCED IN, I THINK, IN 2010 A CONCUSSION  
25 MANAGEMENT PLAN FOR OUR ATHLETES. IN 2011, I THINK, WE

1 ANNOUNCED A COLLABORATION WITH THE IVY LEAGUE INSTITUTIONS AND  
2 THEIR RESEARCHERS UNDER THE UMBRELLA OF CIC TO STUDY THE  
3 EFFECTS OF BRAIN INJURY ON STUDENT ATHLETES.

4 THEY HAVE MET IN PERSON ON A NUMBER OF OCCASIONS, AND THE  
5 COLLABORATION IS GROWING OUT OF THAT ARE VERY EXCITING. AND  
6 SO THAT'S, I THINK, A WAY THAT CIC, OUR DOCTORS AND  
7 RESEARCHERS AND NEUROLOGISTS HAVE BEEN ABLE TO WORK WITH  
8 SIMILAR RESEARCHERS IN THE IVY'S.

9 Q. IS THIS ANOTHER BENEFIT OF BEING A MEMBER OF THE BIG TEN?

10 A. I THINK IT IS CLEARLY.

11 Q. YOU HAD MENTIONED EARLIER A HISTORY OF ATHLETICS ALSO?

12 A. YES.

13 Q. WHEN DID THE BIG TEN START PLAYING FOOTBALL?

14 A. 1896.

15 Q. SO THAT'S OVER A HUNDRED YEARS AGO?

16 A. IT IS.

17 Q. THAT'S BEFORE THE NFL CAME INTO EXISTENCE?

18 A. PROBABLY 50 OR 60 YEARS BEFORE THE NFL CAME INTO  
19 EXISTENCE.

20 Q. NOW TODAY THE BIG TEN STADIUMS ARE SOME OF THE BIGGEST IN  
21 THE COUNTRY?

22 A. THEY ARE.

23 Q. TAKE MICHIGAN STADIUM, OHIO STADIUM, HOW BIG ARE THOSE?

24 A. WE HAVE FOUR STADIUMS, THREE STADIUMS THAT ARE BETWEEN 105  
25 AND 115,000.

1 Q. WHEN WERE THEY BUILT?

2 A. MOST OF THEM WERE BUILT IN THE '20S. AND, YOU KNOW, I  
3 THINK -- I THINK THE BIG HOUSE AND THE HORSESHOE ALL DATE TO  
4 THE 1920'S. PENN STATE, I THINK, WAS MORE RECENT. PROBABLY  
5 FIRST BUILT IN THE '50S AND THEN HAS GROWN OVER TIME.

6 Q. AND, OBVIOUSLY, THEY SELL TICKETS TO THOSE GAMES?

7 A. THEY DO.

8 Q. THEY MAKE MONEY OFF THOSE GAMES?

9 A. THEY DO.

10 Q. THE BIG TEN BROADCASTS ITS FOOTBALL GAMES ON TELEVISION,  
11 CORRECT?

12 A. WE DO.

13 Q. HOW LONG HAS THE BIG TEN BEEN BROADCASTING FOOTBALL GAMES  
14 ON TELEVISION?

15 A. IT GOES BACK TO AFTER THE SECOND WORLD WAR. I WOULD SAY  
16 '48, '49, '50 WOULD BE THE EARLY YEARS OF BIG TEN TELEVISION.

17 Q. AND BASKETBALL, THERE'S A TRADITION OF BASKETBALL IN THE  
18 BIG TEN?

19 A. BASKETBALL'S INTERESTING. IT GOES BACK THAT FAR. AND THE  
20 BIG TEN SPONSORED A DOUBLEHEADER ON SATURDAY AFTERNOON OF  
21 BASKETBALL THAT RAN FROM 1950 TO 2007 WHICH WAS THE LONGEST  
22 RUNNING SYNDICATED PROGRAM IN AMERICAN TELEVISION. SO IT HAS  
23 GOT DEEP HISTORICAL ROOTS AS WELL.

24 Q. THE TELEVISION BROADCASTS OF BOTH FOOTBALL AND BASKETBALL  
25 OF BIG TEN GAMES GENERATED REVENUE, CORRECT?

1       **A.**   THEY DID.

2       **Q.**   NOW, WE'VE TALKED A LITTLE BIT ABOUT BROAD-BASED  
3       PROGRAMMING.  I JUST WANT TO FLUSH OUT A LITTLE BIT OF WHAT  
4       THAT MEANS.

5               HOW MANY SPORTS ARE SPONSORED IN BIG TEN SCHOOLS?

6       **A.**   THERE ARE 43 DIFFERENT SPORTS THAT ARE SPONSORED.  THERE  
7       ARE ABOUT 350 TEAMS.  AND WITH THE ADDITION OF MARYLAND AND  
8       RUTGERS, IT WILL BE ABOUT 9300 STUDENT ATHLETES.  ABOUT 50/50  
9       MALE, FEMALE AND WE WILL ALSO SPONSOR CHAMPIONSHIPS IN 28  
10       DIFFERENT SPORTS, 14 FOR THE MEN AND 14 FOR THE WOMEN.

11       **Q.**   AND HOW MANY STUDENT ATHLETES ARE THERE IN THE BIG TEN  
12       CONFERENCE?

13       **A.**   ABOUT 9200.

14       **Q.**   AND HOW MUCH MONEY IS PROVIDED IN SCHOLARSHIPS IN THE BIG  
15       TEN CONFERENCE?

16       **A.**   ABOUT A HUNDRED AND 60 MILLION, BUT THAT'S WITHOUT RUTGERS  
17       AND MARYLAND.  SO I THINK THAT WILL BE PUSHED TO PROBABLY 180  
18       OR 190 NEXT YEAR.

19       **Q.**   NOW HAS THAT AMOUNT -- BY THAT I MEAN THE SCHOLARSHIP  
20       AMOUNT, HAS THAT GROWN OVER IN TIME?

21       **A.**   IT HAS.  WHEN I ARRIVED IN 1989, WE HAD ABOUT \$34 MILLION  
22       IN SCHOLARSHIP.  SO IT HAS GROWN BOTH IN TERMS OF THE NUMBER  
23       OF STUDENTS RECEIVING AID AS WELL AS THE AMOUNT OF AID.

24       **Q.**   LET'S TAKE A BIG TEN SPORT LIKE CREW OR FIELD HOCKEY.

25       **A.**   YES.

1 Q. DO THOSE SPORTS GENERATE POSITIVE REVENUE?

2 A. NO.

3 Q. SO WHY DO YOU SPONSOR THOSE SPORTS?

4 A. WE SPONSOR THEM BECAUSE WE BELIEVE IN BROAD-BASED  
5 OPPORTUNITIES. THE OLDEST CONFERENCE, OTHER THAN OUR OWN, IS  
6 THE IVY'S, AND THEY HAVE A BROAD-BASED PROGRAM HISTORY, AND WE  
7 HAVE A BROAD-BASED PROGRAM HISTORY, AND SO WE TRY TO SPONSOR  
8 AS MANY OPPORTUNITIES AS WE CAN.

9 Q. WHY?

10 A. BECAUSE IT'S PART OF THE EXPERIENCE. IT'S A TERRIFIC  
11 EDUCATIONAL, ATHLETIC EXPERIENCE. YOUNG WOMEN WANT IT AS MUCH  
12 AS YOUNG MEN. AND ROWERS AND GYMNASTS WANT IT AS MUCH AS  
13 FOOTBALL AND BASKETBALL PLAYERS.

14 SO THERE'S A DESIRE. PEOPLE COMING OUT OF THE HIGH SCHOOL  
15 WANT TO PLAY. AND THERE'S JUST A BELIEF OUR SCHOOLS ARE  
16 COMPREHENSIVE, UNDERGRADUATE, GRADUATE. AND OUR ATHLETIC  
17 DEPARTMENTS ARE COMPREHENSIVE, REVENUE SPORTS, NONREVENUE  
18 SPORTS, OLYMPIC SPORTS, EMERGING SPORTS. AND SO WE HAVE  
19 ALWAYS HAD A COMMITMENT TO BREADTH OF OPPORTUNITY.

20 Q. OKAY. AND THERE'S A TERM YOU ARE USING "OLYMPIC SPORTS".

21 I DON'T KNOW IF I MISSED SOME OF DR. EMMERT'S TESTIMONY --

22 **THE COURT:** HE DID JUMP OVER THAT.

23 **MR. LI:** OKAY. THANK YOU.

24 **BY MR. LI:**

25 Q. LET ME SWITCH TOPICS THEN.

1           THERE'S A -- THERE ARE A LOT OF FANS FOR BIG TEN SPORTS?

2           **A.** YES. WE HAVE PROBABLY THE LARGEST FAN BASE IN THE  
3           COUNTRY. TEN, WE PROBABLY HAVE 10 MILLION PEOPLE WHO ATTEND  
4           OUR EVENTS DURING THE COURSE OF A YEAR. AND WE PROBABLY HAVE  
5           HUNDREDS OF MILLIONS OF PEOPLE WHO VIEW THEM DURING THE COURSE  
6           OF THE YEAR.

7           **Q.** YOU'VE HAD 25 YEARS OF EXPERIENCE, ABOUT, OF INTERACTING  
8           WITH THE FANS OF BIG TEN SPORTS?

9           **A.** I HEAR FROM THEM ON MONDAY MORNING OFTEN.

10          **Q.** SO, WHAT IS IT THAT THE FANS LIKE ABOUT BIG TEN SPORTS?

11          **A.** I THINK THEY -- IT'S AN INTERGENERATIONAL EXPERIENCE.

12          **Q.** WHAT DO YOU MEAN BY THAT?

13          **A.** BY THAT I MEAN FATHERS AND SONS AND GRANDFATHERS AND  
14          SISTERS AND BROTHERS ARE TIED TO THESE INSTITUTIONS.

15                 AS I MENTIONED THERE ARE HUGE PARTS OF THE MIDWESTERN  
16          ETHOS, ECONOMIC, ACADEMIC SPORTS CULTURE. SO I THINK THE  
17          COLORS OF THE TEAMS, THE TRADITIONS OF THE TEAMS, THE HISTORY  
18          OF THE TEAMS, THE LARGE STADIA, ALL ARE IMPACTFUL. THEY TEND  
19          TO BRING THESE VERY LARGE UNIVERSITIES TOGETHER IN UNIQUE  
20          WAYS.

21                 WE HAVE BEEN PLAYING AGAINST THE PAC-12 IN THE ROSE BOWL  
22          FOR -- SINCE 1946 OR '47. WE PLAYED IN THE FIRST ROSE BOWL  
23          GAME IN 1902 AGAINST STANFORD. AND SO THAT KIND OF HISTORY,  
24          THAT KIND OF CULTURE GETS TRANSMITTED FROM GENERATION TO  
25          GENERATION. AND AS A RESULT, IT -- IT -- IT LEADS TO FAN



1 FOLLOWING, WHETHER IT'S WOMEN'S VOLLEYBALL WE'RE NUMBER ONE IN  
2 THE COUNTRY IN ATTENDANCE; HOCKEY, MEN'S HOCKEY NUMBER ONE,  
3 WOMEN'S BASKETBALL NUMBER THREE, FOOTBALL NUMBER TWO AND  
4 BASKETBALL NUMBER ONE. SO WE'RE FORTUNATE TO HAVE A GREAT SET  
5 OF FAMILIES FOLLOWING US AND IT HAS BEEN THAT WAY FOR A VERY  
6 LONG TIME.

7 Q. NOW, WE HAD TALKED EARLIER ABOUT THE RIVALRY BETWEEN DUKE  
8 AND UNC. ARE THERE RIVALRIES IN THE BIG TEN?

9 A. THERE ARE WONDERFUL RIVALRIES THAT GO BACK A VERY LONG  
10 TIME. I THINK WE HAVE A DOZEN TROPHY GAMES IN FOOTBALL THAT  
11 GET PEOPLE PASSIONATE AND FOLLOW IT. BUT WE'VE GOT THE  
12 INDIANA, PERDUE RIVALRY. WE HAVE THE MINNESOTA, WISCONSIN  
13 RIVALRY. WE HAVE THE MICHIGAN, MICHIGAN STATE RIVALRY. AND  
14 NOW WITH PENN STATE BEING IN OUR CONFERENCE FOR 20 YEARS, THEY  
15 HAVE VERY INTENSE RELATIONSHIPS WITH A NUMBER OF PROGRAMS.

16 SO THOSE ARE BUILT -- RIVALRIES ARE BUILT OVER DECADES AND  
17 GENERATIONS, AND WE ARE FORTUNATE TO HAVE QUITE A FEW OF THEM.

18 Q. THIS IS PART OF THE TRADITION?

19 A. IT IS.

20 Q. NOW, ARE THERE TROPHIES SUCH AS THE AXE --

21 A. YES.

22 Q. -- BETWEEN STANFORD AND BERKELEY? ARE THERE TROPHIES LIKE  
23 THAT?

24 A. THERE ARE. THERE'S THE LITTLE BROWN JUG, WHICH I THINK IS  
25 THE OLDEST TROPHY. I THINK IT'S THE OLDEST TROPHY. IF IT'S

1 NOT, IT'S THE SECOND OLDEST TROPHY.

2 SO WE HAVE TROPHIES THAT DATE TO THE LATE PART OF THE 19TH  
3 CENTURY. AND THE PLAYERS AND THE FANS AND THE COACHES, THEY  
4 REPRESENT COMPETITION AND PROBABLY COLLABORATION, TOO.  
5 THERE'S A LOT OF RESPECT HERE, BUT IT'S INTENSE COMPETITION.

6 Q. ARE THERE ANY PROFESSIONAL SPORTS THAT PLAY OVER THINGS  
7 LIKE A LITTLE BROWN JUG?

8 A. I DON'T KNOW THAT THERE ARE.

9 Q. ALL RIGHT.

10 LET'S TALK A LITTLE BIT -- THE COURT HAS ASKED SOME  
11 QUESTIONS ABOUT FINANCES AND -- AND HOW REVENUE IS GENERATED  
12 AND WHERE IT GOES. ALL RIGHT? SO I'M GOING TO FOCUS ON THAT  
13 FOR A SECOND.

14 UM, LET'S TALK ABOUT HOW THE BIG TEN EARNS REVENUE. WHAT  
15 ARE THE THREE MAIN SOURCES OF REVENUE IN THE LAST YEAR?

16 A. THE FIRST SOURCE WOULD PROBABLY BE REVENUES DERIVED FROM  
17 THE NCAA AND MARCH MADNESS. ANOTHER SET OF REVENUES COME FROM  
18 BOWL GAMES WHERE THE CONFERENCE CONTRACTS WITH BOWLS, ROSE  
19 BOWLS AND OTHER BOWLS AROUND THE COUNTRY, AND THEN OUR OWN  
20 TELEVISION AGREEMENTS.

21 (CONTINUED ON NEXT PAGE; NOTHING OMITTED.)  
22  
23  
24  
25

1 **BY MR. LI:**

2 **Q.** OKAY. NOW, WE'LL TALK ABOUT A LITTLE -- IN GREATER DETAIL  
3 IN A SECOND, BUT IF WE COULD JUST BREAK DOWN, FROM THE NCAA  
4 DISTRIBUTION, IS THAT FROM MARCH MADNESS?

5 **A.** IT -- IT IS.

6 **Q.** AND APPROXIMATELY -- I'M NOT ASKING YOU TO GIVE ME AN  
7 ACCOUNTING EXACTLY, BUT APPROXIMATELY HOW MUCH OF THE REVENUE  
8 THAT COMES INTO THE BIG TEN COMES FROM THE NCAA?

9 **A.** I WOULD SAY 10 -- 10 TO 15 PERCENT.

10 **Q.** AND HOW IS THAT MONEY DISTRIBUTED? HOW DOES IT -- HOW  
11 DOES THE NCAA DECIDE WHO'S GOING TO GET WHAT?

12 **A.** I THINK THEY MEASURE THREE THINGS, THE NUMBER OF TEAMS YOU  
13 PUT INTO THE TOURNAMENT, THE SUCCESS THAT THOSE TEAMS HAVE IS  
14 ONE FACTOR. ANOTHER FACTOR IS HOW MANY TEAMS YOU SPONSOR  
15 ABOVE THE MINIMUM, SO AS WE WERE TALKING -- I'M NOT SURE IT'S  
16 SEVEN -- 14 OR 16. BUT ANY TEAMS YOU SPONSOR ABOVE THE  
17 MINIMUM, THE NCAA TRIGGERS A DISTRIBUTION AND A REWARD TO  
18 ENCOURAGE THAT.

19 AND THEN ALSO THE NUMBER OF SCHOLARSHIPS YOU GIVE ABOVE  
20 THE MINIMUM, THE NCAA REWARDS YOU BECAUSE THEY'RE TRYING TO  
21 ENCOURAGE BROAD-BASED PARTICIPATION. SO THOSE ARE THE THREE  
22 SOURCES. HOW MUCH -- HOW MANY GAMES YOU PLAY AND WHEN, HOW  
23 MANY TEAMS YOU SPONSOR ABOVE THE MINIMUM, AND HOW MANY  
24 SCHOLARSHIPS YOU PROVIDE ABOVE THE MINIMUM.

25 **THE COURT:** BUT STILL BELOW THE MAXIMUM. BUT STILL

1 BELOW THE MAXIMUM.

2 **THE WITNESS:** RIGHT. CORRECT. YEAH.

3 **BY MR. LI:**

4 **Q.** SO TEAMS ARE REWARDED IF THEY SUPPORT BROAD-BASED  
5 ATHLETICS?

6 **A.** THEY ARE.

7 **Q.** AND THEY ARE REWARDED IF THEY PROVIDE GREATER NUMBERS OF  
8 SCHOLARSHIPS TO STUDENTS?

9 **A.** THEY ARE.

10 **Q.** LET'S TALK FOR A SECOND ABOUT THE BOWL GAMES. VERY  
11 BROADLY SPEAKING, ABOUT HOW MUCH OF THE INCOME THAT COMES INTO  
12 THE BIG TEN COMES FROM BOWL GAMES?

13 **A.** I WOULD SAY ANOTHER ROUGHLY 10 TO 15 PERCENT.

14 **Q.** AND THESE BOWL GAMES INCLUDE GAMES LIKE THE ROSE BOWL?

15 **A.** THE ROSE BOWL.

16 **Q.** AND THEN WE TALKED ABOUT TELEVISION REVENUE.  
17 APPROXIMATELY HOW MUCH OF THE REVENUE THAT THE BIG TEN  
18 GENERATES COMES FROM TEL- -- TELEVISION?

19 **A.** I WOULD SAY --

20 **THE COURT:** I'M SORRY. BACK TO THE BOWL GAMES, HOW  
21 IS THAT DIVIDED AMONGST THE TEAMS WITHIN THE CONFERENCES?

22 **THE WITNESS:** YES. IT'S DIVIDED EQUALLY. YEAH, AS  
23 IS THE NCAA TOURNAMENT MONEY. ALL -- ALL THE REVENUES THAT  
24 COME IN TO THE BIG TEN CONFERENCE ARE DIVIDED EQUALLY.

25 **MR. LI:** SO IT'S AN -- JUST -- I CAN SEE THE COURT --

1           **THE COURT:** I THOUGHT WE JUST TALKED ABOUT IT WAS  
2 DIVIDED BASED ON HOW MANY TEAMS IN THE TOURNAMENT, HOW MANY  
3 TEAMS OVERALL, HOW MANY SCHOLARSHIPS. WHAT AM I MISSING?

4           **MR. LI:** GO AHEAD.

5           **THE WITNESS:** SO THE QUESTION WAS, I THINK FROM THE  
6 STANDPOINT OF THE BIG TEN OFFICE, THE OFFICE THAT I RUN,  
7 WHAT -- WHAT ARE THE REVENUES THAT COME INTO OUR OFFICE.

8           AND I DESCRIBED THE REVENUES COMING IN FROM THE NCAA  
9 DIRECTLY TO OUR OFFICE, WHICH REFLECTS THE NUMBER OF TEAMS AND  
10 GAMES THAT WE -- HOW WELL WE DO IN THE TOURNAMENT, AND THEN  
11 THE NUMBER OF SCHOLARSHIPS OUR SCHOOLS GIVE, AND THE NUMBER OF  
12 TEAMS OUR SCHOOLS SPONSOR SO --

13 **BY MR. LI:**

14 **Q.** I'M SORRY. IT'S AN AGGREGATE NUMBER.

15 **A.** IT'S AN AGGREGATE NUMBER.

16           **THE COURT:** BUT THEN DIDN'T YOU SAY AFTER THAT, IT'S  
17 ALL DIVIDED EQUALLY?

18           **THE WITNESS:** I DID. THERE ARE 14 TEAMS. THERE ARE  
19 14 TEAMS, AND WHEN THAT MONEY COMES IN, EVEN THOUGH DIFFERENT  
20 PEOPLE, DIFFERENT SCHOOLS HAVE DIFFERENT-SIZED PROGRAMS AND  
21 DIFFERENT SCHOOLS HAVE DIFFERENT AMOUNTS OF SUCCESS, WHATEVER  
22 THAT SUCCESS PRODUCES, IT COMES INTO THE BIG TEN.

23           THE BIG TEN HAS MADE A POLICY DECISION THAT THAT MONEY,  
24 THEN, IS SHARED EQUALLY AMONG ALL 14.

25           **THE COURT:** YOU GIVE IT OUT EQUALLY.

1           **THE WITNESS:** YES.

2           **THE COURT:** YOU DIDN'T GET IT EQUALLY, BUT YOU GIVE  
3 IT OUT EQUALLY.

4           **THE WITNESS:** YES.

5           **THE COURT:** OKAY.

6           **MR. LI:** MAY I PROCEED, YOUR HONOR?

7           **THE COURT:** YES.

8           **MR. LI:** THANK YOU.

9           **Q.** NOW, THE REVENUE THAT THE BIG TEN RECEIVES, IT DOESN'T GO  
10 TO PRIVATE OWNERS, DOES IT?

11          **A.** NO.

12          **Q.** WHO DOES IT GO TO?

13          **A.** IT GOES BACK TO THE INSTITUTIONS TO BUILD OPPORTUNITIES  
14 SCHOLARSHIPS, STADIA, ET CETERA.

15          **Q.** NOW, IN THE FUTURE, GOING FORWARD, MEANING FROM THIS YEAR  
16 FORWARD, THERE ARE GOING TO BE COLLEGE PLAYOFFS, FOOTBALL  
17 PLAYOFFS?

18          **A.** THERE WILL BE.

19          **Q.** AND WILL THAT IMPACT THE REVENUE STREAM INTO THE BIG TEN  
20 CONFERENCE?

21          **A.** IT WILL.

22          **Q.** AND WHERE WILL THAT REVENUE GO?

23          **A.** IT WILL GO BACK TO THE INSTITUTIONS ON A EQUAL BASIS TO  
24 RUN THEIR PROGRAMS.

25          **Q.** NOW, THERE -- LET'S TALK FOR A SECOND ABOUT A -- SOMETHING

1 I THINK YOU WERE INVOLVED IN, WHICH IS CALLED THE BIG TEN  
2 NETWORK.

3 **A.** YES.

4 **Q.** WHAT IS THE BIG TEN NETWORK?

5 **A.** THE BIG TEN NETWORK IS A JOINT VENTURE FOR THE TELECASTING  
6 OF BIG TEN MEN'S AND WOMEN'S SPORTS ON A 24/7 BASIS.

7 **Q.** AND WHEN YOU SAY "MEN'S AND WOMEN'S SPORTS," ARE WE  
8 FOCUSING ONLY ON FOOTBALL AND MEN'S BASKETBALL?

9 **A.** NO. THERE ARE ABOUT A THOUSAND GAMES THAT ARE TELECAST,  
10 ABOUT 500 OF THEM ARE ACROSS PLATFORMS, DIGITAL AND ANALOG  
11 PLATFORMS. ABOUT HALF OF THEM ARE MEN AND ABOUT HALF OF THEM  
12 ARE WOMEN.

13 **Q.** NOW LET ME ASK YOU THIS, DO YOU THINK YOU WOULD MAKE MORE  
14 MONEY FOR THE BIG TEN NETWORK IF YOU SCHEDULED ONLY FOOTBALL  
15 AND ONLY MEN'S BASKETBALL?

16 **A.** I THINK WE PROBABLY WOULD.

17 **Q.** AND SO WHY DO YOU LEAVE MONEY ON THE TABLE?

18 **A.** BECAUSE THE -- WHEN THE NETWORK WAS CONCEIVED, IT WAS  
19 CONCEIVED TO BE IN AS MUCH ALIGNMENT WITH OUR UNIVERSITIES AS  
20 WE COULD. SO, THEREFORE, WE ASKED THAT -- OR WE DEMANDED THAT  
21 THE NUMBER OF EVENTS FOR MEN AND WOMEN BE COMPARABLE.

22 THAT WAS AGREED TO. WE ASKED FOR 600 HOURS OF  
23 INSTITUTIONAL ACADEMIC PROGRAMMING. THAT WAS AGREED TO. AND  
24 WE AGREED NOT TO TELECAST -- WE ASKED THAT WE NOT TELECAST  
25 BEER AND -- BECAUSE OF THE -- SOME OF THE -- SOME OF THE

1 ISSUES AROUND ALCOHOL CONSUMPTION ON OUR CAMPUSES. AND THAT  
2 WAS AGREED TO.

3 SO WE'RE TRYING TO RUN THE NETWORK IN A WAY THAT IS IN AS  
4 MUCH ALIGNMENT WITH THE BROAD-BASED ASPECTS OF -- OF THE  
5 CONFERENCE.

6 **Q.** YOU MENTIONED THAT YOU AGREED TO INSTITUTIONAL ACADEMIC  
7 PROGRAMMING. WHAT IS THAT?

8 **A.** THAT'S AN OPPORTUNITY FOR EACH INSTITUTION, SOMETIMES BY  
9 THEMSELVES, SOMETIMES IN COLLABORATION WITH OTHER MEMBERS, TO  
10 TELL THE STORY ABOUT HOW THEIR PROGRAMS IMPACT THE WORLD.

11 IT ALSO IS AN OPPORTUNITY FOR THEM TO SHOW THEIR COMMUNITY  
12 INVOLVEMENT. AND IT'S AN OPPORTUNITY TO SHARE WITH THE PUBLIC  
13 SORT OF THE BROAD MISSION OF THESE UNIVERSITIES. AND SINCE IT  
14 OPERATES BOTH ON A DIGITAL BASIS AND AN ANALOG BASIS, IT'S AN  
15 OPPORTUNITY TO SHARE STORIES NOT ONLY IN THIS COUNTRY BUT  
16 GLOBALLY.

17 **Q.** YOU WERE TELLING ME ABOUT SEEING SOME -- SOME OF THIS IN  
18 I, I THINK, TANZANIA OR SOMETHING LIKE THAT.

19 **A.** WELL -- YEAH, TANZANIA HAD A LITTLE CABLE OUTLET. WE DID  
20 STOP BY TO SEE IF THEY WOULD CARRY IT, BUT THEY DIDN'T HAVE  
21 ANY LOCAL INTEREST.

22 **Q.** OKAY.

23 NOW, LET'S TALK A LITTLE BIT ABOUT ALCOHOL ADVERTISING.  
24 COULD YOU GENERATE SIGNIFICANT AMOUNTS OF REVENUE FROM ALCOHOL  
25 ADVERTISING?



1     **A.**  YEAH, IT'S -- IT'S BEEN ESTIMATED THAT PROBABLY THERE'S 3-  
2     TO \$5 MILLION OF -- OF ALCOHOL ADVERTISING OUT THERE.

3     **Q.**  AND HAVE YOU LEFT THAT ON THE TABLE?

4     **A.**  WE HAVE.

5     **Q.**  NOW, YOU HAD ANSWERED SOME QUESTIONS TO THE COURT ABOUT  
6     THE DISTRIBUTION OF REVENUE.  AND JUST TO PUT A CAP ON IT, IT  
7     IS ALL DISTRIBUTED EQUALLY BETWEEN INSTITUTIONS?

8     **A.**  IT IS.

9     **Q.**  AND APPROXIMATELY HOW MUCH REVENUE IS DISTRIBUTED PER  
10    INSTITUTION LAST YEAR?

11    **A.**  TWENTY-FIVE MILLION.

12    **Q.**  AND LET'S TALK FOR A SECOND ABOUT THE POLICY OF  
13    DISTRIBUTING REVENUE EQUALLY AMONG THE INSTITUTIONS.  HOW LONG  
14    HAVE -- HAS THE BIG TEN HAD THAT POLICY?

15    **A.**  SINCE 1955.

16    **Q.**  AND WHY DO YOU HAVE THAT POLICY?

17    **A.**  I THINK THE IDEA IS WE'RE IN IT TOGETHER.  WE BUILD  
18    COMPETITION, ACADEMIC ATHLETIC RELATIONSHIPS, THE FACT THAT  
19    OUR FACULTY, OUR ATHLETIC DIRECTORS, OUR PRESIDENTS LOOK AT IT  
20    IN SORT OF A UNIFIED WAY AND THAT THE SHARING OF THE REVENUE  
21    IN GOOD YEARS AND BAD YEARS -- NOT EVERYBODY'S GOOD EVERY  
22    YEAR, NOT EVERYBODY'S BAD EVERY YEAR.  BUT IT ALSO ALLOWS FOR  
23    US TO SPONSOR AS MANY OPPORTUNITIES AS -- AS POSSIBLE BY THAT  
24    METHODOLOGY.

25            WITHOUT THAT METHODOLOGY, SOME WOULD BE FAR BETTER OFF

1 THAN OTHERS AND THEREFORE MORE COMPETITIVE.

2 **Q.** NOW, LET ME ASK YOU A SECOND -- A QUESTION ABOUT THE BIG  
3 TEN NETWORK. WHAT DO YOU SAY TO FOLKS WHO SAY, WELL, THAT'S  
4 JUST COMMERCIALIZING COLLEGE SPORTS?

5 **A.** I WOULD -- I'VE ALSO FELT THAT THE BIG TEN NETWORK  
6 CONTROLLED BY A CONFERENCE IS -- IS A POSITIVE. I FEEL LIKE  
7 IT'S ABILITY TO GENERATE REVENUE, AND IT'S AN OPPORTUNITY FOR  
8 US TO -- TO GROW THE EDUCATIONAL OPPORTUNITIES.

9 AND THE MORE SUCCESSFUL WE ARE, WHETHER IT'S IN A -- IN A  
10 BOWL GAME, AN NCAA TOURNAMENT, PROVIDES RESOURCES WHICH WE  
11 THEN SHARE AND WE'RE ABLE TO USE TO BUILD BROAD-BASED  
12 PROGRAMS, SO I -- I SEE IT AS I MAY BE ENGAGED IN COMMERCE,  
13 BUT THAT THE RESOURCES THAT ARE DEVELOPED GO BACK TO THE  
14 INSTITUTIONS FOR THE DEVELOPMENT OF -- OF EDUCATIONAL AND  
15 ATHLETIC OPPORTUNITIES.

16 **Q.** NOW, BEFORE THE CREATION OF THE BIG TEN NETWORK, WHERE DID  
17 THOSE FEES GO?

18 **A.** WELL, I THINK THEY -- THEY PROBABLY WENT TO THE COMPANIES  
19 THAT OWN THE TELEVISION OR THE INDIVIDUALS WHO OWN THE  
20 TELEVISION COMPANIES AND THEIR SHAREHOLDERS.

21 **Q.** LIKE ESPN?

22 **A.** LIKE ESPN OR LIKE CBS OR LIKE FOX. BUT THIS GAVE US AN  
23 OPPORTUNITY TO, I THINK, MAINTAIN MORE CONTROL OVER THE  
24 CONTENT, MORE CONTROL OVER THE BRAND, MORE CONTROL OVER THE  
25 OPPORTUNITIES FOR DIFFERENT TEAMS TO -- TO APPEAR ON

1 TELEVISION.

2 Q. SO INSTEAD OF GIVING THE MONEY TO THE PRIVATE COMPANIES,  
3 YOU'RE BRINGING IT BACK TO THE SCHOOLS?

4 A. I THINK IT'S BEEN VERY EFFECTIVE IN THAT WAY.

5 Q. ARE YOU INVOLVED IN THE NEGOTIATIONS OF LICENSES TO  
6 BROADCAST BIG TEN SPORTS?

7 A. I AM.

8 Q. NOW, ARE YOU RESPONSIBLE FOR EVERY DETAIL IN EVERY  
9 AGREEMENT?

10 A. I'M NOT. NO.

11 Q. TO YOUR KNOWLEDGE, DOES THE BIG TEN LICENSE STUDENT  
12 ATHLETES NAME, IMAGE, AND LIKENESS FOR COMMERCIAL  
13 ADVERTISEMENTS?

14 A. NO.

15 Q. DO THE NCAA RULES ALLOW THAT?

16 A. NO.

17 Q. TO YOUR KNOWLEDGE, DOES THE BIG TEN USE STUDENTS' NAME,  
18 IMAGE, AND LIKENESS FOR ANY OTHER PURPOSE?

19 A. FOR THE PURPOSE OF PROMOTING THE GAMES, THE ACTUAL GAMES.

20 Q. AND IS THAT LIMITED TO MEN'S FOOTBALL AND BASKETBALL?

21 A. NO. IT'S -- IT'S -- IT'S BROADLY USED AS A WAY OF  
22 CREATING AWARENESS FOR UPCOMING GAMES, WHETHER IT'S VOLLEYBALL  
23 OR CREW OR BASEBALL.

24 Q. SO IF MICHIGAN STATE IS GOING TO ROW AGAINST MICHIGAN, YOU  
25 MIGHT SHOW A CLIP OF THE ROWERS --

1       **A.** THAT'S RIGHT.

2       **Q.** -- ROWING.

3       **A.** THAT'S RIGHT.

4       **Q.** NOW, TO YOUR KNOWLEDGE, HAS THE BIG TEN EVER TRIED TO STOP  
5       A STUDENT ATHLETE FROM USING HIS OR HER NAME, IMAGE, AND  
6       LIKENESS RIGHTS AFTER HE FINISHED HE OR HER -- HE OR SHE  
7       FINISHED HIS OR HER ELIGIBILITY?

8       **A.** NOT TO MY KNOWLEDGE.

9       **Q.** HAVE YOU EVER SENT A CEASE-AND-DESIST LETTER TO A STUDENT  
10      SAYING THAT THE BIG TEN OWNS HIS OR HER NAME, IMAGE, AND  
11      LIKENESS RIGHTS?

12      **A.** I HAVE -- I HAVE NOT.

13      **Q.** LET'S TALK FOR A SECOND ABOUT AMATEURISM.

14             IN THE CONTEXT OF STUDENT ATHLETES, WHAT DOES AMATEURISM  
15      MEAN TO YOU AS THE COMMISSIONER OF THE BIG TEN?

16      **A.** WHAT IT MEANS TO ME NOW IS WHAT IT'S MEANT TO ME FOR --  
17      FOR MANY DECADES. AND THAT IS THE OPPORTUNITY TO GO TO  
18      COLLEGE, TO RECEIVE AN EDUCATION, TO HAVE THAT EDUCATION  
19      SUPPORTED THROUGH SCHOLARSHIP AND SUPPORT.

20             MY DAD WAS THE FIRST GENERATION IN HIS FAMILY. HE'S IN  
21      THE SETON HALL HALL OF FAME. BACK IN THOSE DAYS, IT WAS  
22      TUITION WAIVERS AND WORK STUDY AND NEED BASED.

23             MY BROTHER PLAYED IN COLLEGE. MY SON PLAYED IN COLLEGE.  
24      AND SO FOR ME, THE SCHOLARSHIP OPPORTUNITY, THE OPPORTUNITY TO  
25      PURSUE A DEGREE, TO GET A DEGREE HAVE ALWAYS BEEN WOVEN INTO

1 THAT EXPERIENCE.

2 AND SO WHAT IT MEANS TO ME TO BE AN AMATEUR, WHETHER  
3 YOU'RE ON SCHOLARSHIP OR NOT ON SCHOLARSHIP, IS THE  
4 OPPORTUNITY TO PURSUE A DEGREE WHILE ALSO PLAYING  
5 INTERCOLLEGIATE ATHLETICS.

6 Q. NOW, WE'VE HEARD SOME DISCUSSION IN THE COURTROOM THAT  
7 PROVIDING SCHOLARSHIPS AND PAYING FOR THE COST OF ATTENDANCE  
8 IS BASICALLY PAYING STUDENTS.

9 DO YOU AGREE WITH THAT?

10 A. I DON'T.

11 Q. WHY NOT?

12 A. BECAUSE IT'S ABOUT EDUCATION. AND IT'S -- AS -- AS LONG  
13 AS A PERSON IS A FULL-TIME STUDENT, THAT GOES BACK TO 1896,  
14 THE FIRST PRINCIPAL THAT WAS ARTICULATED BY THE FACULTY IN  
15 1896 WAS THE STUDENT BE A FULL-TIME STUDENT AND BE IN  
16 RESIDENCE AND BE PURSUING A DEGREE AND BE MAKING PROGRESS.

17 SO FOR ME, THE TWO HAVE ALWAYS BEEN INTEGRATED. MY DAD  
18 WAS AS -- WAS A HIGH SCHOOL TEACHER. HE HAD FIVE KIDS.  
19 NUMBER OF US PLAYED COLLEGE SPORTS, SOME DIDN'T. BUT IT WAS  
20 ALWAYS ABOUT THE EDUCATIONAL PART.

21 AND I THINK OUR FAMILY VIEWED ATHLETICS AND OPPORTUNITY TO  
22 PURSUE HIGHER EDUCATION AS -- AS GREAT THING. AND I STILL  
23 BELIEVE IT IS.

24 Q. DO NCAA RULES ALLOW COLLEGES TO PAY -- TO PAY TO RECRUIT  
25 STUDENT ATHLETES TO PLAY IN SPORTS?

1       **A.**   NO.

2       **Q.**   TO YOUR KNOWLEDGE, HAVE NCAA RULES EVER ALLOWED COLLEGES  
3       TO DO THAT?

4       **A.**   NO.

5       **Q.**   SHOULD IT BE ALLOWED?

6       **A.**   I DON'T BELIEVE SO.

7       **Q.**   WHY NOT?

8       **A.**   I THINK THAT IT -- IT -- YOU KNOW, THE -- I THINK THAT IN  
9       PURSUING A COLLEGE DEGREE AND PLAYING COLLEGE SPORTS, WE TRY  
10      TO FOCUS ON A BALANCE BETWEEN THE TWO.  AND I THINK WHEN YOU  
11      START DEALING WITH 18-, 19-YEAR-OLDS AND TALKING ABOUT  
12      INDUCING THEM TO GO TO A COLLEGE FOR 50,000, 30,000, 20,000,  
13      THE DECISION ABOUT WHERE YOU GO TO COLLEGE IS NOT THE CRITICAL  
14      POINT.

15           THE DECISION, THEN, IS ABOUT WHETHER OR NOT YOU'RE GOING  
16      TO MAKE 30,000 VERSUS 40,000.  AND SO MY VIEW IS THAT -- THAT  
17      THE INDIVIDUAL SHOULD HAVE A CHOICE, THE CHOICE SHOULD BE  
18      ATHLETICALLY AND EDUCATIONALLY BASED.  AND THE IDEA THAT THE  
19      HIGHEST BIDDER WOULD WIN FOR THE NAME, IMAGE, AND LIKENESS IS  
20      ANATHEMA TO THE IDEA OF A STUDENT CHOOSING WHERE TO GO TO  
21      COLLEGE.

22      **Q.**   NOW YOU'VE JUMPED AHEAD A LITTLE BIT.  THANK YOU VERY MUCH  
23      FOR THAT ANSWER.  I JUST WANT TO ASK YOU ABOUT NAME, IMAGE,  
24      AND LIKENESS.

25      **A.**   YEAH.

1 Q. DO THE NCAA RULES ALLOW COLLEGES TO PAY STUDENT ATHLETES  
2 FOR THE USE OF THEIR NAME, IMAGE, OR LIKENESSES?

3 A. NO.

4 Q. AND TO YOUR KNOWLEDGE, HAVE THE NCAA RULES EVER ALLOWED  
5 COLLEGES TO DO THAT?

6 A. NO.

7 Q. SHOULD IT -- SHOULD THEY BE ALLOWED?

8 A. NO.

9 Q. NOW, DOES IT MATTER TO YOU, WHETHER THOSE PAYMENTS ARE  
10 MADE TODAY OR AFTER THE STUDENT GRADUATES?

11 A. NO.

12 Q. WHY NOT?

13 A. BECAUSE I DON'T THINK WHETHER THEY'RE MADE BEFORE  
14 ENROLLMENT, DURING ENROLLMENT OR AFTER ENROLLMENT CHANGES THE  
15 FACT THAT YOU'RE PROVIDING SUPPORT ABOVE THE COST OF GOING TO  
16 COLLEGE, THE COST OF THE EDUCATION. AND I THINK TO THE EXTENT  
17 YOU DO THAT, YOU MAKE THE BALANCE MORE DIFFICULT AND YOU MAKE  
18 THE EDUCATIONAL ASPECT LESS IMPORTANT.

19 Q. NOW, MR. DELANY, HAVE YOU BEEN INVOLVED IN DEBATES OVER  
20 THE INTERPRETATION OF NCAA RULES REGARDING THE USE OF STUDENT  
21 ATHLETE NAME, IMAGE, AND LIKENESSES?

22 A. I HAVE.

23 Q. NOW, WERE THERE SOME PROPOSALS MADE IN 2007 AT THAT TIME  
24 FRAME TO LIBERALIZE THOSE RULES, ALLOW MORE USE OF NAME,  
25 IMAGE, AND LIKENESS?

1       **A.** I THINK THERE WERE.

2       **Q.** AND DID YOU AND/OR THE BIG TEN SUPPORT THOSE PROPOSALS?

3       **A.** WE DID NOT. WE -- WE PARTICIPATED IN THE DISCUSSION, BUT  
4 WE ULTIMATELY DID NOT SUPPORT THE LIBERALIZATION OF THOSE  
5 RULES.

6               **MR. LI:** I'M GOING TO PUT UP, IF I MAY, EXHIBIT  
7 3193-1-1.

8                               (EXHIBIT PUBLISHED.)

9               **MR. LI:** THANK YOU.

10              **THE CLERK:** THANK YOU.

11       **Q.** IS THIS A LETTER YOU WROTE TO THE DIVISION I CONFERENCE  
12 COMMISSIONERS?

13       **A.** YES. YES.

14       **Q.** AND IN IT, YOU WRITE, I AM CONVEYING TO -- SORRY. "I AM  
15 WRITING TO CONVEY THE BIG TEN'S STRONG OPPOSITION TO PROPOSAL  
16 2010-26, WHICH, IF ADOPTED, WOULD SIGNIFICANTLY EXPAND  
17 COMMERCIAL ENTITIES -- A COMMERCIAL ENTITY'S ABILITY TO USE  
18 THE NAME, IMAGE -- NAME OR LIKENESS OF A STUDENT ATHLETE TO  
19 PROMOTE ITS COMMERCIAL ENDEAVORS."

20              DID YOU WRITE THAT?

21       **A.** I DID.

22       **Q.** AND DID YOU OPPOSE THAT PROPOSAL?

23       **A.** WE DID.

24       **Q.** WHY DID YOU OPPOSE THAT PROPOSAL?

25       **A.** WE JUST FELT THAT THERE WAS A GOOD LINE, A GOOD BRIGHT



1 LINE. THERE WAS DISCUSSION ABOUT MOVING THAT LINE MORE  
2 TOWARDS THE AREA OF DIRECT ENDORSEMENT OR EVEN IMPLIED  
3 ENDORSEMENT.

4 WE THOUGHT THAT WHILE, YOU KNOW, PEOPLE WERE DISAGREEING,  
5 I THINK IN GOOD FAITH, THAT WHERE THE LINE WAS WAS THE RIGHT  
6 PLACE, AND WE SHOULD WORK WITH IT AND -- AND SO AS A RESULT,  
7 WE -- WE OPPOSED THESE -- THESE CHANGES.

8 Q. OKAY. AND LET'S TAKE A LOOK AT 3193-1-2. THIS IS THE  
9 SECOND PARAGRAPH OF THAT LETTER.

10 (EXHIBIT PUBLISHED.)

11 **BY MR. LI:**

12 Q. IN IT, YOU WRITE "ANCHORED IN THE PRINCIPLE OF AMATEURISM  
13 NCAA PRINCIPLE 2.9, CURRENT LEGISLATION TAKES A BRIGHT-LINE  
14 APPROACH TO REGULATING THE USE OF CURRENT STUDENT ATHLETES  
15 INCLUDING IN-PERSON APPEARANCES OR USING THEIR NAME, LIKENESS,  
16 OR IMAGES IN A COMMERCIAL CONTEXT. SPECIFICALLY, THE  
17 LEGISLATION CREATES A GENERAL PROHIBITION ON COMMERCIAL USE OF  
18 STUDENT ATHLETES AND THEN CARVES OUT A FEW NARROW EXCEPTIONS.

19 IF USAGE BY A COMMERCIAL ENTITY OR IN A COMMERCIAL CONTEXT  
20 DOES NOT SATISFY ONE OF THOSE EXCEPTIONS, SUCH USE IS  
21 IMPERMISSIBLE."

22 DID YOU AGREE -- DID YOU WRITE THAT?

23 A. YES.

24 Q. SORRY. IS THAT IN YOUR LETTER? I KNOW YOU DIDN'T  
25 PERSONALLY TYPE THAT.

1       **A.**   YES.   YES.

2       **Q.**   OKAY.

3               WAS PART OF YOUR OPPOSITION BASED ON THE PRINCIPLES OF  
4   AMATEURISM?

5       **A.**   IT WAS.

6       **Q.**   IF WE COULD TAKE A LOOK AT 3193-2-1, THIS IS THE FOURTH  
7   PARAGRAPH ON THE SECOND PAGE OF THE LETTER.

8                               (EXHIBIT PUBLISHED.)

9       **BY MR. LI:**

10       **Q.**   IT SAYS, "2010-12 (SIC) WOULD DO SOME OF THE THINGS THAT  
11   ARGUABLY SHOULD BE DONE TO THE LEGISLATION IN THIS AREA.   BUT  
12   AS MENTIONED ABOVE, IT WOULD DO SEVERAL OTHER THINGS THAT ARE  
13   CONTRARY TO OUR CURRENT PRINCIPLE OF AMATEURISM.   ELEVEN YEARS  
14   AGO, THE ASSOCIATION AS A DEFENDANT IN A LAWSUIT FILED BY  
15   ADIDAS FOUGHT FOR ITS RIGHT TO IMPOSE LOGO RESTRICTIONS ON  
16   UNIFORMS WORN BY CURRENT STUDENT ATHLETES.   WHEN THE  
17   ASSOCIATION WON, I.E., WHEN THE SUIT WAS DISMISSED, NCAA  
18   PRESIDENT CEDRIC DEMPSEY STATED, THE JUDGE AGREED WITH US.  
19   ADIDAS HAS MANY OTHER OPPORTUNITIES TO GET ITS MESSAGE ACROSS  
20   TO THE CONSUME- -- TO CONSUMERS OTHER THAN ON THE BACKS OF  
21   COLLEGE PLAYERS.   THIS DECISION MEANS THAT THE REGULATION OF  
22   COLLEGE SPORTS REMAINS WITH THE INTERCOLLEGIATE ATHLETICS AND  
23   NOT WITH THE DESIRES OF A COMMERCIAL ENTITY."

24               DID YOU -- IS THAT IN YOUR LETTER?

25       **A.**   YES.

1 Q. DID YOU AGREE WITH THAT?

2 A. YES.

3 Q. TELL US WHY.

4 A. WELL, IT -- IT SEEMED TO US THAT THERE NEEDS TO BE SOME  
5 STRUCTURE, SOME LINES. WHAT WE HAVE ALWAYS UNDERSTOOD TO BE  
6 THE BEST APPROACH IS THAT THE GAMES CAN BE PROMOTED BUT THAT  
7 THE ATHLETE AS A PARTICIPANT IN THOSE GAMES OUGHT NOT TO BE A  
8 DIRECT OR -- OR IMPLIED ENDORSER OF A COMMERCIAL PRODUCT.

9 Q. AND IS THAT WHAT YOU MEAN BY THE "NARROW EXCEPTIONS"?

10 A. YES.

11 Q. NOW, SO SOME FOLKS PROPOSE THIS LEGISLATIVE CHANGE. YOU  
12 WRITE THIS LETTER TO OPPOSE THIS CHANGE.

13 WHAT HAPPENS?

14 A. THINK THEY WERE DEFEATED. I THINK THESE PROPOSALS WERE  
15 DEFEATED.

16 Q. NOW, DURING THE DEBATE OVER THESE PROPOSALS, DID ANYONE  
17 ADVOCATE GIVING UP AN AMATEURISM?

18 A. NO.

19 Q. DURING THE DEBATE OVER THESE PROPOSALS, DID ANYONE  
20 ADVOCATE PAYING STUDENT ATHLETES FOR APPEARING ON TELEVISION  
21 GAMES?

22 A. NO.

23 Q. TELEVISED GAMES.

24 WHY NOT?

25 A. I THINK IT WAS -- I THINK BECAUSE THESE GAMES ARE OWNED BY

1 THE INSTITUTION AND THE NOTION OF PAYING ATHLETES FOR  
2 PARTICIPATING IN THOSE GAMES IS FOREIGN INTO THE NOTION OF  
3 AMATEURISM.

4 Q. "FOREIGN." FOREIGN TO THE NOTION OF AMATEURISM?

5 A. YES.

6 Q. BASED ON YOUR EXPERIENCE, WOULD PAYING STUDENT ATHLETES  
7 FOR PLAYING IN TELEVISED GAMES AFFECT FAN INTEREST IN THE BIG  
8 TEN?

9 A. IN MY OPINION, IT WOULD.

10 Q. IN WHICH WAY?

11 A. WELL, I THINK THAT THE FOLLOWING THAT HAS BEEN DEVELOPED  
12 OVER DECADES HAS COME TO SERVE A COMMON UNDERSTANDING THAT  
13 THESE INDIVIDUALS REPRESENT THEIR INSTITUTION. THEY'RE GOING  
14 TO SCHOOL AT THEIR INSTITUTION. THEY'RE NOT PROFESSIONAL BUT  
15 THEY'RE AMATEUR. I THINK IT SEPARATES US FROM THE NBA, THE  
16 NFL, OTHER VERSIONS OF PLAY THAT YOU MIGHT SEE.

17 AND SO WHAT WE'VE TRIED TO DO IS, YOU KNOW, CONTINUE TO  
18 REINFORCE AND STRUCTURE A SYSTEM THAT REWARDS EDUCATION, THAT  
19 ENCOURAGES EDUCATION, THAT ENCOURAGES OPPORTUNITY AND -- AND  
20 TO AVOID INSOFAR AS POSSIBLE COMMERCIAL ELEMENTS THAT MIGHT  
21 CONFUSE US WITH THE NBA OR THE NFL.

22 Q. NOW, YOU TALKED ABOUT BIG TEN SCHOOLS PLAYING SCHOOLS IN  
23 OTHER CONFERENCE (SIC).

24 CAN YOU TELL US A LITTLE BIT ABOUT THE HISTORY OF THE BIG  
25 TEN'S INVOLVEMENT WITH THE ROSE BOWL?

1     **A.** I CAN. THE ROSE BOWL WAS THE FIRST BOWL GAME AT THE TURN  
2     OF THE CENTURY IN 1902 AND AS NOTED EARLIER -- NOTRE DAME --  
3     OR MICHIGAN AND STANFORD PLAYED. THE GAME WAS DISCONTINUED  
4     FOR ABOUT 14 YEARS. I THINK IN 1916 IT STARTED UP AGAIN. AND  
5     IT CONTINUED AS THE BEST TEAM FROM THE WEST COAST PLAYING THE  
6     BEST OF THE REST AROUND THE COUNTRY.

7             SO IT WAS A TRULY FIRST NATIONAL EVENT, FIRST ON RADIO,  
8     FIRST ON T.V., FIRST ON COLOR T.V., FIRST ON DISTRIBUTED --  
9     DISTRIBUTED IN FOREIGN COUNTRIES, ET CETERA.

10            IN 1947, THE PAC TEN APPROACHED THE BIG TEN, AND A  
11     CONTRACT WAS ENTERED INTO THAT ALLOWED FOR THE CHAMPIONS OF  
12     THE TWO CONFERENCES TO PLAY EACH OTHER ON NEW YEAR'S DAY IN  
13     PASADENA, CALIFORNIA. IT'S KNOWN PEJORATIVELY AS THE  
14     GRAND-DADDY OF THEM ALL.

15            AND IT'S BEEN, YOU KNOW, THE MOST IMPORTANT EXTERNAL  
16     RELATIONSHIP WE HAVE DATING BACK TO THE -- THE LATE '40'S, AND  
17     IT IS A -- AN AMERICAN TRADITION, BUT IT'S ALSO A BIG TEN  
18     TRADITION.

19     **Q.** AND IT'S A PAC 12 TRADITION ALSO?

20     **A.** AND A PAC 12 TRADITION, YES.

21     **Q.** NOW, DO YOU MEET REGULARLY WITH THE PRESIDENTS AND  
22     CHANCELLORS OF THE BIG TEN INSTITUTIONS?

23     **A.** I -- I DO.

24     **Q.** OVER THE LAST 25 YEARS?

25     **A.** I HAVE.

1 Q. WOULD BIG TEN INSTITUTIONS PAY STUDENT ATHLETES FOR THEIR  
2 NAME, IMAGE, OR LIKENESS?

3 A. I DON'T BELIEVE THEY WOULD.

4 Q. WHY?

5 A. I -- I THINK THAT IT -- IT INVADES AN AREA OF -- OF AN  
6 UNDERSTANDING OF HOW INTERCOLLEGIATE ATHLETICS IS  
7 INTERCOLLEGIATE ATHLETICS, HOW IT'S DIFFERENT FROM  
8 PROPORTIONAL ATHLETICS, AND HOW IT -- HOW, YOU KNOW, THE  
9 STUDENT -- THE STUDENT ATHLETE, THE PARTICIPANT, WHETHER IT'S  
10 MALE, FEMALE, FOOTBALL, BASKETBALL, OUGHT TO BE ABOUT  
11 EDUCATION AND OUGHT TO BE SUPPORTED FOR THEIR PURPOSE. AND  
12 THE PAYING OF A PLAYER FOR NAME, IMAGE, OR LIKENESS IS  
13 INCONSISTENT AND NOT PART OF THAT -- CONSENSUS AMONG NOT ONLY  
14 OUR PRESIDENTS BUT OUR FACULTY, OUR FOLLOWERS, OUR COACHES.

15 AND SO THIS IS JUST A COMMONLY HELD SET OF VALUES THAT  
16 COVERS A LONG PERIOD OF TIME.

17 Q. NOW, YOU AS THE COMMISSIONER OF THE BIG TEN, IF YOUR TEAMS  
18 WERE NOT PAYING STUDENT ATHLETES FOR THEIR NAME, IMAGE, AND  
19 LIKENESS, YOU KNOW, IN TELEVISED GAMES, WOULD YOU WANT YOUR  
20 TEAMS PLAYING AGAINST THE PAC 12 IN THE BIG -- IN THE ROSE  
21 BOWL IF THEY WERE PAYING THEIR PLAYERS?

22 A. NO.

23 Q. WHY NOT?

24 A. I THINK IT WOULD BE REAL -- I THINK SORT OF THE ESSENCE OF  
25 GAMES THAT THEY -- PEOPLE COME AT THOSE GAMES WITH SIMILAR

1 VIEWPOINTS IN TERMS OF ACADEMICS, IN TERMS OF COMMITMENT TO  
2 CERTAIN APPROACHES. AND THE VERY BASIS OF GAMES IS A SENSE OF  
3 SPORTSMANSHIP AND FAIRNESS.

4 AND IF ONE TEAM IS BUYING OR PAYING PLAYERS AND ONE TEAM  
5 IS NOT, YOU'RE NOT GOING TO GET THE SAME LEVEL OF COMPETITIVE  
6 BALANCE OR COMPETITIVE TENSION.

7 Q. WHAT HAPPENS TO THE ROSE BOWL THEN?

8 A. WELL, THERE -- THERE WOULDN'T BE A ROSE BOWL IF EITHER WE  
9 OR THEY WERE OPERATING ON VERY DIFFERENT WAVELENGTHS WITH  
10 REGARD TO PAYMENT OF -- OF PLAYERS.

11 Q. NOW, LET'S TALK ABOUT THE BIG TEN ITSELF. WHAT IF ONE  
12 SCHOOL IN THE BIG TEN OR TWO SCHOOLS IN THE BIG TEN DECIDED  
13 THAT THEY WERE GOING TO PAY THEIR STUDENT ATHLETES FOR THEIR  
14 NAME, IMAGE, AND LIKENESS FOR TELEVISED GAMES.

15 HOW WOULD THAT AFFECT THE BIG TEN?

16 A. I DON'T THINK THAT THEY WOULD BE MEMBERS OF THE BIG TEN.  
17 THEY WOULD PROBABLY BE MEMBERS OF A -- OF AN INDEPENDENT OR A  
18 DIFFERENT ASSOCIATION. I DON'T THINK THE BIG TEN COULD BE THE  
19 BIG TEN WITH CERTAIN MEMBERS PAYING INDIVIDUALS FOR THAT AND  
20 CERTAIN MEMBERS NOT.

21 I MEAN, IT'S SO -- SORT OF FUNDAMENTAL TO THE IDEA OF WHO  
22 WE ARE AND WHAT WE DO AND THE EFFORTS TO KEEP THE COMPETITION  
23 WITHIN THE CONTEXT OF -- OF EDUCATION IN THE UNIVERSITY.

24 Q. NOW, WOULD YOU -- AS THE COMMISSIONER OF THE BIG TEN,  
25 WOULD YOU SUPPORT EQUAL REVENUE-SHARING BETWEEN SCHOOLS IF ONE

1 SCHOOL WAS PAYING ITS ATHLETES FOR NAME, IMAGE, AND LIKENESS  
2 AND THE OTHER SCHOOLS WEREN'T?

3 **A.** I DON'T THINK THAT -- I DON'T THINK THEY WOULD, FOR SURE.  
4 I -- I DON'T THINK THAT YOU COULD MAINTAIN THE EQUAL  
5 REVENUE-SHARING, THE COLLEGIALITY THAT EXISTS IF PEOPLE WERE  
6 OPERATING ON DIFFERENT WAVELENGTHS WITH REGARD TO THE PAYMENT  
7 OF IMAGE AND LIKENESS OF PLAYERS.

8 **Q.** OKAY. I'M GOING TO SWITCH TOPICS JUST FOR A SECOND ABOUT  
9 THE COMPETITION WITHIN THE BIG TEN, JUST -- JUST HOW THE TEAMS  
10 DO.

11 **A.** YEAH.

12 **Q.** HOW MANY TEAMS IN THE BIG TEN HAVE BEEN TO THE ROSE BOWL  
13 DURING YOUR TENURE AS THE COMMISSIONER?

14 **A.** NINE DIFFERENT TEAMS.

15 **Q.** ALL BUT HOW MANY?

16 **A.** ALL BUT INDIANA AND MINNESOTA DURING MY TENURE. NOW, YOU  
17 KNOW, I'D HAVE TO ADD THAT NEBRASKA HAS ONLY BEEN HERE FOR 3  
18 YEARS AND THEY HAVE NOT BEEN TO THE ROSE BOWL, SO THAT WOULD  
19 MAKE -- THAT WOULD MAKE THREE. BUT 9 OF THE 11, 9 OF 12 HAVE  
20 BEEN TO THE ROSE BOWL.

21 AND, OF COURSE, MARYLAND AND RUTGERS HAVE NOT BEEN MEMBERS  
22 DURING THE 25 YEARS WE'RE TALKING ABOUT.

23 **Q.** OKAY. AND DURING YOUR TENURE AS THE BIG TEN COMMISSIONER,  
24 HOW MANY BIG TEN SCHOOLS HAVE BEEN TO THE FINAL FOUR?

25 **A.** I THINK EIGHT DIFFERENT TEAMS HAVE BEEN TO THE FINAL FOUR.



1 OF THE 11, OFF THE TOP OF MY HEAD, I THINK MINNESOTA AND I  
2 THINK WISCONSIN AND MICHIGAN AND MICHIGAN STATE AND OHIO STATE  
3 AND INDIANA AND ILLINOIS. I THINK THOSE ARE -- SEVEN OR  
4 EIGHT.

5 **Q.** OKAY. OF -- IF ONE SET OF TEAMS IN THE BIG TEN COULD PAY  
6 THE STUDENT ATHLETES FOR THE USE OF THE NAME, IMAGE, AND  
7 LIKENESS AND OTHER TEAMS COULDN'T OR DIDN'T PAY, HOW WOULD  
8 THAT AFFECT THE COMPETITION IN THE BIG TEN?

9 **A.** I THINK IT WOULD MAKE IT FAR LESS COMPETITIVE. I THINK  
10 THERE WOULD BE FAR LESS BALANCE, AND I THINK THERE'D BE SORT  
11 OF AN UNLIKELY INSTITUTIONAL SET OF ALLIANCES I DON'T THINK IT  
12 COULD BE SUSTAINED.

13 **Q.** NOW, I'M GOING TO SWITCH TOPICS AND TALK A LITTLE BIT  
14 ABOUT RECRUITING. ARE YOU FAMILIAR WITH BIG TEN RECRUITING?

15 **A.** I AM.

16 **Q.** AND MANY, MANY YEARS AGO, DID YOU HAVE EXPERIENCE AS A  
17 NCAA ENFORCEMENT OFFICIAL?

18 **A.** I DID.

19 **Q.** DID YOU HAVE A CHANCE TO OBSERVE RECRUITING THEN?

20 **A.** I DID.

21 **Q.** AND DID YOU INVESTIGATE ANY INSTANCES OF IMPROPER  
22 PAYMENTS?

23 **A.** I DID.

24 **Q.** DID THOSE PAYMENTS MAKE A DIFFERENCE IN WHERE STUDENT  
25 ATHLETES DECIDED TO ATTEND COLLEGE?

1       **A.**   THEY DID.

2       **Q.**   DO YOU THINK THAT STILL HAPPENS TODAY?

3       **A.**   I'M NOT AS CLOSE TO IT AS I WAS 35 YEARS AGO.   BUT I THINK  
4       THAT THAT KIND OF ACTIVITY EXISTS TO SOME EXTENT.   I'M NOT  
5       SURE HOW MUCH IT EXISTS, BUT I THINK IT EXISTS TO SOME EXTENT.

6       **Q.**   HOW DO YOU VIEW THAT ACTIVITY?

7       **A.**   I VIEW IT NEGATIVELY.

8       **Q.**   WHY?

9       **A.**   I THINK THAT IT UPSETS THE COMPETITIVE BALANCE.   I THINK  
10       IT PUTS AN EMPHASIS ON PAYMENTS TO -- AND I THINK THOSE  
11       PAYMENTS TEND TO UNDERCUT CHOICE.   I THINK STUDENTS SHOULD BE  
12       CHOOSING WHERE THEY WANT TO GO TO COLLEGE, WHERE THEY WANT TO  
13       PLAY, WHO THEIR TEAMMATES ARE, WHO THEIR CLASSMATES ARE, WHERE  
14       THEY WANT TO LIVE, AND WHERE THEY WANT TO GO WITH THEIR  
15       FUTURE, NOT ABOUT WHETHER OR NOT THAT CHOICE SHOULD BE  
16       INFLUENCED BY A SMALL AMOUNT OF MONEY OR A LARGE AMOUNT OF  
17       MONEY.

18       **Q.**   WHAT WOULD YOU SAY TO FOLKS WHO MIGHT ACCUSE THAT VIEW OF  
19       BEING PATERNALISTIC.

20       **A.**   I WOULD SAY THE KIDS -- THEY'RE 18 YEARS OLD, AND I THINK  
21       WHETHER YOU'RE IN A FAMILY OR WHETHER YOU'RE IN A COLLEGIATE  
22       INSTITUTION, PART OF THE EDUCATION IS -- IS LEADING AND NOT  
23       ALWAYS FOLLOWING.

24               AND I THINK THAT WHETHER IT'S MY SON OR SOMEONE ELSE'S  
25       SON, I THINK IT'S -- IT'S THE RIGHT LIFELONG DECISION, AND I

1 DON'T THINK THAT IT'S PATERNALISTIC.

2 I THINK IT'S ACTUALLY, YOU KNOW, SUPPORTIVE OF -- OF THEIR  
3 FUTURE BY -- BY -- BY MAINTAINING THE EDUCATIONAL SITUATION  
4 AT -- AT AT LEAST AN EQUAL BASIS IF NOT A STRONGER LONG-TERM  
5 BASIS.

6 Q. NOW, THIS IS THE LAST TOPIC, AND THANK YOU FOR YOUR  
7 PATIENCE WITH ME.

8 WE'VE TALKED ABOUT THE VALUES OF THE BIG TEN. DOES THE  
9 BIG TEN SHARE VALUES WITH THE -- WITH OTHER MEMBERS OF THE  
10 NCAA?

11 A. YES.

12 Q. DOES THE BIG TEN SHARE IDEALS WITH OTHER MEMBERS OF NCAA?

13 A. YES.

14 Q. NOW, DOES EVERY MEMBER OF NCAA ALWAYS AGREE ON EVERY IDEA?

15 A. NO.

16 Q. DO YOU AGREE WITH EVERY POSITION THAT EVERY OTHER MEMBER  
17 TAKES?

18 A. NO.

19 Q. DO YOU AGREE WITH EVERYTHING THE NCAA HAS EVER SAID?

20 A. NO.

21 Q. DO YOU SHARE YOUR VIEWS SOMETIMES?

22 A. YES.

23 Q. DO YOU ADVOCATE FOR YOUR POSITION?

24 A. YES.

25 Q. AND THEN EVENTUALLY, IT GOES TO A VOTE?

1       **A.**   YES.

2       **Q.**   AND THE MEMBERS, THEY LIVE BY THAT VOTE.

3       **A.**   TRY TO.

4       **Q.**   IT'S A DELIBERATIVE PROCESS?

5       **A.**   IT IS A DELIBERATIVE PROCESS.

6       **Q.**   IS IT MESSY SOMETIMES?

7       **A.**   AS IS DEMOCRACY, IT'S MESSY SOMETIMES.

8       **Q.**   NOW, SIR, ARE YOU INVOLVED IN A PROPOSAL TO GRANT GREATER  
9       AUTONOMY TO CERTAIN CONFERENCES?

10      **A.**   I AM.

11      **Q.**   AND I WANT TO FOCUS ON THE -- NOT ON THE IMPLEMENTATION --  
12      IMPLEMENTING LEGISLATION BUT ACTUALLY THE DIFFERENCES THAT --  
13      THAT YOU SUPPORT.

14      **A.**   YES.

15      **Q.**   OKAY?

16            CAN YOU TELL US WHAT THOSE AREAS ARE -- WELL, WHY DON'T I  
17      DO THIS SO WE JUST GET THROUGH: DO YOU SUPPORT A CHANGE ON  
18      THE DEFINITION OF THE "FULL COST OF ATTENDANCE"?

19      **A.**   I DO.

20      **Q.**   TELL US ABOUT THAT.

21      **A.**   WELL, I WOULD -- THE PRESIDENT'S SCHOLARSHIP IS DEFINED AS  
22      ROOM, BOARD, FEES, TUITION, AND BOOKS. THERE'S A -- THERE'S  
23      ANOTHER DEFINITION OF THE COST OF EDUCATION, THE ELEMENTS OF  
24      WHICH ARE IDENTIFIED BY THE FEDERAL GOVERNMENT, AND EACH  
25      INSTITUTION PUTS A DOLLAR FIGURE ON THOSE ELEMENTS.

1 I BELIEVE THAT THE FULL COST OF EDUCATION IS THE -- THE  
2 APPROPRIATE WAY FOR US TO GO FORWARD IN THE FUTURE. AND THAT  
3 SHOULD PROVIDE THE FULL COST OF ACTUALLY GOING TO ANY  
4 PARTICULAR INSTITUTION IN THIS COUNTRY AS ARRIVED AT BY THAT  
5 INSTITUTION.

6 Q. OKAY. LET -- YOU MENTIONED DERIVED BY THE FEDERAL  
7 GOVERNMENT.

8 A. YEAH.

9 Q. OKAY? SO THIS FULL COST OF THE EDUCATION NUMBER, IS THAT  
10 A NUMBER THAT'S PULLED OUT OF THIN AIR?

11 A. IT IS NOT.

12 Q. WHERE DOES IT COME FROM?

13 A. WELL, THE FEDERAL GOVERNMENT ABOVE THE ELEMENTS OF THE  
14 SCHOLARSHIP WHICH I DESCRIBED HAS IDENTIFIED MISCELLANEOUS  
15 EXPENSES, LOCAL TRAVEL, AND SO EACH CAMPUS DETERMINES WHAT THE  
16 APPROPRIATE DOLLAR FIGURES ARE FOR THESE ELEMENTS.

17 AND SO WHAT WE'RE ARGUING FOR, IF WE'RE ABLE TO GET  
18 AUTONOMY, IS THAT THE FULL SCHOLARSHIP BE REDEFINED AS THE  
19 COST OF EDUCATION.

20 Q. NOW, DO YOU SUPPORT A LIMIT ON TIME SPENT ON ATHLETICS?

21 A. WELL, I THINK WE NEED TO REVISIT IT. WE ADOPTED PROBABLY  
22 20 YEARS AGO OR MAYBE 15 YEARS AGO, A 20-HOUR RULE. AS I HAVE  
23 SEEN THAT IMPLEMENTED, WHETHER IT'S CAPTAINS, PRACTICES,  
24 VOLUNTARY WORKOUTS, I THINK THERE'S MORE TIME BEING SPENT 20  
25 YEARS AGO WHEN WE DIDN'T HAVE THE RULE, SO I WOULD LIKE TO

1 RELOOK AT THAT RULE AND FIND OUT EXACTLY -- AND THIS IS NOT  
2 ONLY A PROBLEM IN DIVISION I. IT'S A PROBLEM IN DIVISION III  
3 DIVISION II, AND DIVISION I.

4 AND SO I WOULD LIKE TO SEE A BROAD REVIEW OF THAT TO  
5 ENSURE THAT THERE'S ADEQUATE TIME, NOT ONLY FOR ATHLETIC  
6 PREPARATION, BUT ALSO PERSONAL TIME, AS WELL AS ATHLETIC TIME.

7 IN PARTICULAR, I'M VERY CONCERNED ABOUT THE AT-RISK  
8 STUDENTS. OUR SCHOOLS, I THINK, ARE REALLY GOOD AT PROVIDING  
9 ACCESS AND OPPORTUNITY, BUT I WANT TO MAKE SURE THAT THE  
10 ACCESS AND OPPORTUNITY DOESN'T MOVE INTO A NEGATIVE AREA  
11 BECAUSE THE AT-RISK STUDENT DOESN'T HAVE THE TIME TO DO WHAT  
12 HE OR SHE NEEDS TO DO?

13 **Q.** IS THIS ONLY TRUE FOR MEN'S BASKETBALL AND FOOTBALL FROM  
14 YOUR POINT OF VIEW?

15 **A.** NO, THINGS HAVE CHANGED IN SPORTS IN THIS COUNTRY. PEOPLE  
16 ARE SPECIALIZING EARLIER IN SPORTS. THEY HAVE YOUTH TEAMS  
17 THAT SOMETIMES PLAY A HUNDRED GAMES IN THE COURSE OF A SUMMER,  
18 WHETHER IT'S BASKETBALL OR BASEBALL. AND SO THIS  
19 SPECIALIZATION GETS CARRIED INTO HIGH SCHOOL, INTO COLLEGE.

20 AND I THINK, TO SOME EXTENT, OUR EFFORTS AT CONTROLLING  
21 TIME DEMANDS HAS NOT BEEN A GOOD OUTCOME. AND I THINK ONE OF  
22 THE THINGS WE WOULD LIKE TO DO IS INSPECT IT AND CREATE A  
23 BETTER BALANCE IN THAT RESPECT.

24 **Q.** ARE YOU CONSIDERING, AMONG OTHER THINGS, AN ATHLETIC, I  
25 GUESS WE CALL IT DEAD PERIOD?

1       **A.**   YES.

2       **Q.**   AND WHAT DO YOU MEAN BY THAT?

3       **A.**   WELL, BY THAT I MEAN, THERE ARE DAILY LIMITS, WEEKLY  
4       LIMITS, NON-WORKOUTS DURING THE SEASON.

5                BUT I THINK THAT, FOR EXAMPLE, WHEN THE BASKETBALL SEASON  
6       IS OVER, WE PROBABLY OUGHT TO JUST PUT A LOCK ON THE GYM.

7                IF THE PERSON WANTS TO GO PLAY IN THE PLAYGROUND, PLAY.  
8       BUT THEY DON'T NEED TO BE WITH OUR COACHES.   AND WHETHER  
9       THAT'S A MONTH OR THREE WEEKS IN THE SUMMERTIME, I THINK THE  
10       OPPORTUNITIES TO GO A JUNIOR YEAR ABROAD OR TO DO INTERNSHIPS  
11       HAS GOT TO BE CREATED.

12               I THINK FOR A YOUNG PERSON IN COLLEGE WITHOUT AN  
13       OPPORTUNITY TO DO INTERNSHIPS, WITHOUT THE OPPORTUNITY TO DO  
14       JUNIOR YEAR ABROAD, HE OR SHE CAN'T TAKE FULL ADVANTAGE OF  
15       WHAT I THINK IS, YOU KNOW, A VERY COMPETITIVE AND GLOBAL PLACE  
16       WITHOUT THOSE EXPERIENCES.

17               SO I WOULD LIKE TO SEE FOR US CARVE-OUT AREAS, BECAUSE I  
18       DON'T THINK THAT THE TRAINING THAT WE HAVE ALLOWS FOR ENOUGH  
19       OF THOSE EXPERIENCES.

20       **Q.**   HAVE YOU CONSIDERED A CONCEPT OF A LIFETIME SCHOLARSHIP TO  
21       COMPLETE A DEGREE?

22       **A.**   YOU KNOW, WE HAVE.   TO SOME EXTENT, THOSE APPROACHES ARE  
23       PERMISSIBLE, AND THEY'RE DONE ON INSTITUTION-TO-INSTITUTION  
24       BASIS, DEPENDING UPON THE RESOURCE THAT MIGHT BE AVAILABLE  
25       LOCALLY.

1           WHAT WE'RE THINKING ABOUT IS ESTABLISHING IT ON A  
2           CONFERENCE-WIDE BASIS AND TO FUND IT AND TO ALLOW STUDENTS WHO  
3           INTERRUPT THEIR EDUCATION, EITHER BECAUSE THEY'RE GOING TO  
4           PURSUE A PROFESSIONAL OPPORTUNITY OR BECAUSE THEY'RE NOT READY  
5           TO TAKE SCHOOL QUITE SERIOUSLY, TO COME BACK AND -- AND FINISH  
6           THEIR DEGREE AT THE COST OF THE INSTITUTION.

7           SO THAT'S SORT OF A LIFETIME TRUST TO -- AN INSURANCE BY  
8           EACH INSTITUTION THAT IF YOU COME HERE TO PLAY A SPORT AND  
9           THINGS DON'T GO WELL FOR YOU OR YOU CHOOSE TO LEAVE, THAT YOU  
10          HAVE AN OPPORTUNITY TO COME BACK AND FINISH YOUR DEGREE WORK.

11         **Q.** NOW, I THINK EARLIER, THOUGH, YOU SAID THAT HAVING NAME,  
12          IMAGE, AND LIKENESS DOLLARS BEING PAID TO A STUDENT IN A TRUST  
13          FUND LATER, YOU DIDN'T SUPPORT THAT.

14          HOW CAN YOU SUPPORT A LIFETIME SCHOLARSHIP?

15         **A.** THIS IS -- THIS IS FOR ALL STUDENTS. IT'S ABOUT  
16          EDUCATION, AND IT'S FOR ALL STUDENTS. IT'S NOT FOR THOSE JUST  
17          WITH A SPECIAL IMAGE AND LIKENESS ISSUE.

18          SO THIS OPPORTUNITY WOULD BE AVAILABLE FOR ALL OF OUR  
19          STUDENTS, NOT ONLY THOSE IN PARTICULAR SPORTS.

20         **Q.** AND IS IT ALSO TIED TO JUST SIMPLY THE COST OF EDUCATION?

21         **A.** IT WOULD BE. IT WOULD BE.

22         **Q.** COST -- SORRY?

23         **A.** YEAH. IT'S ABOUT EDUCATION, AND IT'S ABOUT THE COST OF  
24          GOING TO COLLEGE AND FINISHING YOUR DEGREE.

25         **Q.** NOW, THE LAST POINT I WANT TO TALK TO YOU ABOUT YOU'VE



1 SORT OF REFERENCED A LITTLE WAS THE AT-RISK STUDENT.

2 HAVE YOU CONSIDERED POLICIES THAT YOU WOULD ADVOCATE FOR  
3 THAT WOULD HELP THE AT-RISK STUDENT?

4 **A.** WE HAVE, BUT I HAVE NOT BEEN SUCCESSFUL. WHEN I WENT TO  
5 COLLEGE, FRESHMAN WERE NOT ELIGIBLE TO PLAY ON THE VARSITY.  
6 SO THERE WAS A REAL YEAR IN RESIDENCE BEFORE YOU WERE  
7 INTRODUCED TO THE HIGHEST LEVEL OF COMPETITION.

8 THEY HAVE MADE FRESHMAN ELIGIBLE A FEW YEARS AFTER I  
9 GRADUATED, AND I THINK THAT, AS I NOTED EARLIER, OPPORTUNITY  
10 AND ACCESS ARE REALLY IMPORTANT. BUT WE HAVE TO BE REALLY  
11 CAREFUL THAT WHEN WE PROVIDE ACCESS AND OPPORTUNITY AND ALSO  
12 INTRODUCE THE STUDENT TO HIGH LEVELS OF TRAINING AND  
13 COMPETITION, THAT THE AT-RISK STUDENT DOESN'T LOSE HIS OR HER  
14 WAY.

15 AND SO WHAT I WANT TO DO IS EITHER INVESTIGATE SORT OF A  
16 TARGETED FRESHMAN INELIGIBILITY OR A BLANKET FRESHMAN  
17 INELIGIBILITY. I HAVE NOT BEEN SUCCESSFUL OVER THE YEARS IN  
18 RETURNING TO THAT STATE OF AFFAIRS. BUT I THINK IT IS MAYBE A  
19 SILVER BULLET, IF NOT THE SILVER BULLET, TO ASSURE THAT BEING  
20 IN SCHOOL, MAKING YOUR PROGRESS, PRECEDES ATHLETIC COMPETITION  
21 ESPECIALLY FOR THE AT-RISK STUDENT.

22 **Q.** AND THAT'S A VIEW YOU SUPPORT.

23 **A.** THAT'S A PERSONAL VIEW, AND I THINK IT'S A VIEW THAT'S  
24 SHARED WIDELY INSIDE OF OUR CONFERENCE, BUT IT'S NOT  
25 NECESSARILY SHARED WIDELY IN THE COMMUNITY OF DIVISION I.

1 Q. NOW, ALL OF THESE PROPOSALS, ARE THEY CONSISTENT OR  
2 INCONSISTENT WITH THE PRINCIPLES OF AMATEURISM?

3 A. I THINK THEY'RE FULLY CONSISTENT WITH THE -- WITH THE  
4 EDUCATIONAL BASE AMATEUR MODEL THAT EXISTS IN COLLEGE.

5 Q. IS THERE A BRIGHT LINE FOR YOU BETWEEN AMATEURISM AND  
6 PROFESSIONALISM?

7 A. WELL, THERE IS IN THE COLLEGIATE SYSTEM, AND I THINK THE  
8 OUTER LIMIT IS THE BENEFITS THAT ARE NECESSARY TO ALLOW A  
9 PERSON TO TRAIN AND -- AND TO GET TO AN EVENT AND THE ACTUAL  
10 COST OF GOING TO THAT COLLEGE TO PURSUE A -- TO PURSUE A  
11 DEGREE.

12 Q. IS IT ALL ABOUT EDUCATION?

13 A. IT IS ABOUT EDUCATION.

14 Q. IS THAT WHERE THE BRIGHT LINE IS?

15 A. I THINK THAT'S WHERE THE BRIGHT LINE IS.

16 MR. LI: YOUR HONOR, NO FURTHER --

17 (OFF-THE-RECORD DISCUSSION.)

18 MR. LI: YOUR HONOR, I'D MOVE THE ADMISSION OF 3193.

19 THE COURT: ANY OBJECTION?

20 MR. HAUSFELD: NO OBJECTION, YOUR HONOR.

21 THE COURT: RECEIVED.

22 (DEFENDANTS' EXHIBIT 3193 RECEIVED IN EVIDENCE)

23 MR. LI: I HAVE NO FURTHER QUESTIONS AT THIS TIME.  
24  
25

**CROSS-EXAMINATION**

1  
2 **BY MR. HAUSFELD:**

3 **Q.** MORNING, MR. DELANY.

4 **A.** GOOD MORNING.

5 **Q.** DO YOU RECALL TESTIFYING OR SPEAKING AT A -- AT A TASK  
6 FORCE FOR COMMERCIAL INTERESTS AT THE NCAA?

7 **A.** I DO.

8 **Q.** AND DO YOU RECALL WHEN THAT WAS?

9 **A.** MAYBE 2007 OR 2008.

10 **Q.** AND DO YOU RECALL TAKING NOTES DURING THAT CONVERSATION?

11 **A.** I -- I DON'T RECALL TAKING NOTES.

12 **Q.** DO YOU RECALL THAT YOU SAID AT THAT TIME THAT OUR ATHLETES  
13 ARE CALLED AMATEURS, BUT WE HAVE BIG STADIUMS, LOTS OF  
14 SCHOLARSHIP MONEY, THERE IS MONETIZATION OF ATHLETES, AND IT'S  
15 BEEN THERE FOR FIVE TO SIX DECADES?

16 **A.** I DON'T RECALL SAYING THAT, BUT I MAY HAVE.

17 **MR. HAUSFELD:** AND COULD WE SEE EXHIBIT 3193-2,  
18 PLEASE?

19 (EXHIBIT PUBLISHED.)

20 **BY MR. HAUSFELD:**

21 **Q.** AND COULD WE HIGHLIGHT THE SECTION DEALING WITH -- RIGHT  
22 UNDERNEATH "THE JUDGE AGREED."

23 (EXHIBIT PUBLISHED.)

24 **BY MR. HAUSFELD:**

25 **Q.** IT SAYS, "ADIDAS HAS MANY OTHER OPPORTUNITIES TO GET ITS

1 MESSAGE ACROSS TO CONSUMERS OTHER THAN ON THE BACKS OF COLLEGE  
2 PLAYERS."

3 A. UM-HMM.

4 Q. CORRECT?

5 A. YES.

6 Q. I DON'T NECESSARILY WATCH A LOT OF COLLEGE GAMES, BUT HAS  
7 ADIDAS GOT AROUND THAT BY PUTTING THEIR SWISH ON THE FRONT?

8 MR. LI: OBJECTION, YOUR HONOR, THEY'RE STRIPES.

9 MR. HAUSFELD: STRIPES. I KNEW I DIDN'T WATCH ENOUGH  
10 COLLEGE GAMES.

11 (LAUGHTER.)

12 THE WITNESS: SO THE QUESTION IS WHAT?

13 BY MR. HAUSFELD:

14 Q. WELL, DID -- DID ADIDAS GET AROUND THAT PROVISION BY  
15 PUTTING ITS STRIPES ON THE FRONT OF THE COLLEGE PLAYERS AS  
16 OPPOSED TO THE BACKS?

17 A. I DON'T KNOW.

18 Q. THE UNIFORMS THAT COLLEGE PLAYERS WEAR NOW BEAR SYMBOLS OF  
19 VARIOUS APPAREL MANUFACTURERS?

20 A. I THINK THEY MAY.

21 Q. THEY'RE -- THEY MAY. YOU DON'T KNOW?

22 A. I THINK THERE'S A REGULATION ON HOW THOSE MARKS ARE USED.

23 Q. AND THERE'S MARKS ON THE JERSEYS, CORRECT?

24 A. I THINK THERE ARE.

25 Q. ON THE PANTS?

1       **A.**   THERE MAY BE.

2       **Q.**   ON THE SOCKS?

3       **A.**   THERE MAY BE.

4       **Q.**   ON THE SHOES?

5       **A.**   THERE MAY BE.

6       **Q.**   ON THE -- WAS GOING TO CALL THEM MITTENS -- ON THE GLOVES?

7       **A.**   I DON'T KNOW.   THERE MAY BE.

8       **Q.**   ON THE HELMETS?

9       **A.**   THERE MAY BE.

10      **Q.**   NOW, YOU IDENTIFIED A NUMBER OF SOURCES OF INCOME THAT THE  
11      BIG TEN RECEIVES?

12      **A.**   YES.

13      **Q.**   CORRECT?   BUT YOU DID IT IN PERCENTAGES.

14           WHAT'S THE DOLLAR VALUE OF THE REVENUES RECEIVED FROM  
15      MARCH MADNESS TO THE BIG TEN?

16      **A.**   ABOUT 30 -- \$30 MILLION.

17      **Q.**   AND THE SHARE OF THE ATHLETES FOR THEIR NIL'S IN -- IN  
18      THEIR MARCH MADNESS IS ZERO?

19      **A.**   YES.

20      **Q.**   AND WELL HOW MUCH DOES THE BIG TEN RECEIVE WITH REGARD TO  
21      CONFERENCE BOWLS?

22      **A.**   CONFERENCE BOWLS?

23      **Q.**   YOU SAID 10 TO 15 PERCENT?

24      **A.**   YEAH, I WOULD SAY -- I WOULD SAY BETWEEN 25- AND  
25      \$30 MILLION.

1 Q. AND THAT'S FROM THE BROADCAST REVENUE?

2 A. IT -- IT'S A COMBINATION OF BROADCAST REVENUE, GATE  
3 RECEIPTS AND SPONSORSHIPS THAT ARE DEVELOPED AT THAT BOWL  
4 SITE.

5 Q. WHAT DOES THE BIG TEN RECEIVE FROM THE BROADCASTING OF  
6 YOUR GAMES OTHER THAN ON THE BIG TEN NETWORK?

7 A. YOU'LL HAVE TO TELL ME WHAT -- WHAT DO WE RECEIVE FROM  
8 BROADCAST TELEVISION --

9 Q. OTHER THAN THE BIG TEN?

10 A. NOT INCLUDING -- NOT INCLUDING BOWL GAMES.

11 Q. INCLUDING BOWL GAMES.

12 A. INCLUDING BOWL GAMES.

13 (SIMULTANEOUS COLLOQUY.)

14 **THE WITNESS:** THE BROADCAST RIGHTS -- THE BROADCAST  
15 COMPANIES DON'T PAY US FOR BOWL GAMES. AND -- THEY PAY THE  
16 BOWL. AND THEN THE BOWL TAKES THE DOLLARS, RUNS THE BOWL, AND  
17 GIVES US A FEE FOR PARTICIPATION BOWL (SIC). THAT'S ABOUT 30.

18 **BY MR. HAUSFELD:**

19 Q. OKAY.

20 A. AND THEN ON THE TELEVISION SIDE, APART FROM THE BIG TEN  
21 NETWORK, I WOULD SAY ABOUT \$120 MILLION, FROM TELECASTS  
22 BROADCAST, PAYMENTS, ESPN, CBS.

23 Q. AND THAT'S \$150 MILLION?

24 A. 120, 130.

25 Q. AND WHAT'S THE ATHLETES' SHARE OF THAT WITH REGARD TO

1 THEIR NIL'S?

2 **A.** THE ATHLETES' SHARE OF THAT IS -- IS -- IS -- DOESN'T GET  
3 A SHARE OF THAT.

4 **Q.** AND WHAT'S THE BIG TEN REVENUE WITH REGARD TO BROADCAST?  
5 THE BIG TEN NETWORK?

6 **A.** THE BIG TEN NETWORK, I WOULD SAY THE BIG TEN NETWORK IS  
7 APPROXIMATELY A HUNDRED, HUNDRED AND TEN MILLION.

8 **Q.** AND THAT'S PER YEAR?

9 **A.** THAT'S PER YEAR.

10 **Q.** AND WHAT IS THE ATHLETES' SHARE OF THAT REVENUE?

11 **A.** THERE IS NO ATHLETES' SHARE OF BROADCAST RIGHTS.

12 **MR. LI:** YOUR HONOR, I'M GOING TO OBJECT --

13 **BY MR. HAUSFELD:**

14 **Q.** AND YOU HAVE A BIG TEN STORE?

15 **THE COURT:** THERE SEEMS TO BE AN OBJECTION. WHAT'S  
16 YOUR OBJECTION?

17 **MR. LI:** OBJECTION, ASSUMPTION FACTS NOT IN EVIDENCE  
18 RELATING TO NIL RIGHTS TO THESE BROADCASTS. I UNDERSTAND THE  
19 COURT HAS MADE A RULING, BUT I'M JUST LODGING AN OBJECTION.

20 **THE COURT:** OVERRULED.

21 **THE WITNESS:** EXCUSE ME.

22 **BY MR. HAUSFELD:**

23 **Q.** AND YOU ALSO HAVE A BIG TEN STORE?

24 **A.** DO I HAVE A BIG TEN STORE, OR IS THERE A BIG TEN STORE?

25 **Q.** IS THERE A BIG TEN STORE?

1       **A.** I THINK THERE MAY BE A BIG TEN STORE IN INDIANAPOLIS  
2       AIRPORT.

3       **Q.** AND THE BIG TEN STORE MAY SELL REBROADCASTS OF CURRENT  
4       GAMES AND REBROADCASTS OF CLASSIC GAMES IN SOME FORM?

5       **A.** I DON'T KNOW. I DON'T THINK SO.

6       **Q.** DOES THE BIG TEN STORE SELL JERSEYS?

7       **A.** THEY MAY SELL INSTITUTIONAL JERSEYS, YEAH.

8       **Q.** TRADING CARDS?

9       **A.** I DON'T KNOW. I'VE NEVER BEEN IN A BIG TEN STORE.

10      **Q.** DO THE ATHLETES RECEIVE ANY SHARE OF THE REVENUES FROM THE  
11      BIG TEN STORE?

12      **A.** NO.

13      **Q.** NOW, YOU MENTIONED BEFORE THAT, FROM YOUR REPORTING  
14      PERSPECTIVE, THE PRESIDENTS ARE IN CONTROL OF BIG TEN  
15      ATHLETICS.

16      **A.** THEY HAVE OVERSIGHT RESPONSIBILITY FOR ALL THINGS ATHLETIC  
17      AND ACADEMIC, BUT -- YEAH, THEY'RE ON BOARD.

18      **Q.** CAN WE PLEASE SHOW THE WITNESS THE ART SCIENCE GROUP  
19      KNIGHT COMMISSION ON INTERCOLLEGIATE ATHLETICS, OCTOBER 2009.

20               **MR. LI:** COULD WE HAVE --

21      **BY MR. HAUSFELD:**

22      **Q.** ARE YOU AWARE OF THE KNIGHT COMMISSION?

23               **MR. LI:** SO COULD WE HAVE EXHIBIT NUMBER SO WE CAN  
24      JUST FIND IT.

25                               (OFF-THE-RECORD DISCUSSION.)



1           **THE CLERK:** YOU WANT TO GIVE THE NUMBER FOR THE  
2 RECORD, HOWEVER?

3           **MR. HAUSFELD:** 2514-1.

4   (EXHIBIT PUBLISHED.)

5           **BY MR. HAUSFELD:**

6           **Q.** ARE YOU AWARE OF THE KNIGHT COMMISSION, ARE YOU NOT?

7           **A.** I AM AWARE OF KNIGHT COMMISSION.

8           **Q.** AND WHAT IS YOUR UNDERSTANDING OF ITS REPUTATION?

9           **A.** I THINK IT'S GOT A GOOD REPUTATION, THINK IT'S A GOOD  
10 GROUP OF PRESIDENTS AND PUBLIC CITIZENS WHO HAVE AN INTEREST  
11 IN COLLEGE SPORTS.

12           **Q.** IT'S MADE UP OF SOME OF THE SAME PEOPLE THAT ARE  
13 PRESIDENTS OR CHANCELLORS OF UNIVERSITIES IN THE BIG TEN?

14           **A.** WE'VE HAD REPRESENTATION ON -- ON THE KNIGHT COMMISSION  
15 OVER THE YEARS. I THINK IT GOES BACK TO THE EARLY '90'S, AND  
16 ZERO A NUMBER OF OUR PRESIDENTS HAVE SERVED.

17           **MR. HAUSFELD:** AND COULD WE PLEASE SEE PAGE 7.

18   (EXHIBIT PUBLISHED.)

19   (PAUSE IN THE PROCEEDINGS.)

20           **MR. LI:** YOUR HONOR, THERE IS A MOTION IN LIMINE  
21 REGARDING THE KNIGHT COMMISSION, SO I'M JUST PUTTING THE  
22 COUNSEL ON NOTICE THAT I MAY START OBJECTING DEPENDING ON  
23 WHERE THE QUESTIONS GO.

24           **BY MR. HAUSFELD:**

25           **Q.** AND IN THIS REPORT OF THE KNIGHT COMMISSION --

1 IF WE COULD HIGHLIGHT "IN SUM."

2 (EXHIBIT PUBLISHED.)

3 **BY MR. HAUSFELD:**

4 **Q.** "IN SUM, PRESIDENTS WOULD LIKE SERIOUS CHANGE BUT DON'T  
5 SEE THEMSELVES AS THE FORCE FOR THE CHANGES NEEDED, NOR HAVE  
6 THEY IDENTIFIED AN ALTERNATIVE FORCE THEY BELIEVE COULD BE  
7 EFFECTIVE."

8 **MR. LI:** YOUR HONOR, OBJECTION.

9 **BY MR. HAUSFELD:**

10 **Q.** WERE YOU EVER AWARE OF THAT FINDING BY THE KNIGHT  
11 COMMISSION?

12 **A.** NO.

13 **MR. LI:** YOUR HONOR, OBJECT, MOVE TO STRIKE. THIS IS  
14 HEARSAY.

15 **THE COURT:** HE'S JUST ASKING IF HE'S HEARD OF IT OR  
16 AGREED --

17 (SIMULTANEOUS COLLOQUY.)

18 **THE COURT:** -- NOT BEING RECEIVED FOR THE TRUTH, SO  
19 YOUR OBJECTION'S OVERRULED.

20 **MR. LI:** OKAY. THANK YOU. THANK YOU.

21 **THE WITNESS:** NO.

22 **BY MR. HAUSFELD:**

23 **Q.** WERE YOU AT THE 2010 STATE OF THE ASSOCIATION FROM THE  
24 NCAA?

25 **A.** LIKELY NOT.



1 **BY MR. HAUSFELD:**

2 **Q.** AND THE PHRASE "WHAT WAS PREVALENT THROUGHOUT."

3 WELL, ACTUALLY, IF YOU COULD -- IF YOU COULD HIGHLIGHT THE  
4 ENTIRE PARAGRAPH, "EARLIER THIS FALL, THE KNIGHT COMMISSION  
5 RELEASED BOTH."

6 (EXHIBIT PUBLISHED.)

7 **BY MR. HAUSFELD:**

8 **Q.** WOULD YOU TAKE A MOMENT, PLEASE, MR. DELANY, AND READ THE  
9 ENTIRE PARAGRAPH.

10 **A.** COULD YOU MAKE IT A LITTLE BIT LARGER?

11 **MR. HAUSFELD:** I CAN'T, BUT I HOPE THEY CAN IN THE  
12 BACK.

13 **MR. LI:** YOUR HONOR, IF I MAY APPROACH AND JUST GIVE  
14 HIM A COPY SO HE'LL HAVE THE ACTUAL DOCUMENT.

15 **THE WITNESS:** YEAH, BE EASIER TO READ.

16 **BY MR. HAUSFELD:**

17 **Q.** I THINK, HONESTLY, IT'S EASIER TO READ ON THE MACHINE THAN  
18 THE ACTUAL PRINT.

19 **A.** YEAH, THIS IS SMALL, VERY SMALL. I'LL READ IT.

20 (REVIEWING DOCUMENT.)

21 (EXHIBIT PUBLISHED.)

22 **THE WITNESS:** OKAY.

23 **BY MR. HAUSFELD:**

24 **Q.** AND IN IT, THE PRESIDENT OF THE ASSOCIATION IS ADDRESSING  
25 THE ASSOCIATION MEMBERS IN 2010 AND REFERRING TO THE KNIGHT

1 COMMISSION REPORT THAT WE JUST SAW.

2 AND HE CONCLUDES BY SAYING, "WHAT WAS PREVALENT THROUGHOUT  
3 WAS A SENSE AMONG PRESIDENTS THAT INTERCOLLEGIATE ATHLETICS IS  
4 SPENDING MORE THAN IT SHOULD GENERATING MORE REVENUE THAN IS  
5 GOOD FOR IT AND THAT THE VALUES OF HIGHER EDUCATION ARE BEING  
6 DAMAGED."

7 WERE YOU AWARE OF THAT DISCUSSION AT THE STATE OF THE  
8 ASSOCIATION MEMBERSHIP IN 2010?

9 **A.** NO.

10 **Q.** NOW, THE BIG TEN REQUIRES RELEASES OR CLEARANCES TO BE  
11 OBTAINED FROM ALL ATHLETES --

12 **A.** YES.

13 **Q.** -- FOR PURPOSES OF BROADCAST?

14 **A.** JUST -- NO, THAT'S NOT -- THAT'S NOT ACCURATE. WE REQUIRE  
15 A RELEASE IN ORDER TO ALLOW US TO PROMOTE THE TELEVISION  
16 PROGRAMS THAT THE ATHLETE MAY BE INVOLVED WITH.

17 **MR. HAUSFELD:** IF WE COULD SEE, PLEASE, DEMONSTRATIVE  
18 EXHIBIT 2, PLAINTIFF'S EXHIBIT 3078-1.

19 (EXHIBIT PUBLISHED.)

20 **MR. HAUSFELD:** AND IF WE COULD HIGHLIGHT THE TOP,  
21 PLEASE.

22 (EXHIBIT PUBLISHED.)

23 **BY MR. HAUSFELD:**

24 **Q.** AND THE TOP STATES THAT IT'S A TELECAST RIGHTS AGREEMENT  
25 DATED FEBRUARY 13TH, 2007, BETWEEN THE BIG TEN CONFERENCE AND

1 THE BIG TEN NETWORK. CORRECT?

2 A. UM-HMM.

3 MR. HAUSFELD: AND IF WE COULD TAKE A LOOK, THEN,  
4 PLEASE, AT PAGE 30 -- PLAINTIFF'S EXHIBIT 3078-4 UNDER  
5 "CLEARANCES."

6 (EXHIBIT PUBLISHED.)

7 BY MR. HAUSFELD:

8 Q. IS IT READS THAT "THE CONFERENCE SHALL BE SOLELY  
9 RESPONSIBLE FOR SECURING ALL CLEARANCES WITH RESPECT TO ALL  
10 OFFICIALS AND OTHER PERSONS PARTICIPATING IN OR OTHERWISE  
11 CONNECTED WITH EACH SELECTED EVENT, INCLUDING WITHOUT  
12 LIMITATION ALL NAME AND LIKENESS RIGHTS OF ALL PARTICIPANTS."

13 DO YOU SEE THAT?

14 A. I DO SEE THAT.

15 Q. AND IS THAT ACCURATE?

16 A. I WOULD JUST SAY THIS: THAT THE -- APPEARS TO BE  
17 ACCURATE. IT'S APPARENTLY BOILERPLATE. I BEEN INVOLVED IN  
18 LOTS OF NEGOTIATIONS. NEVER HAD A DISCUSSION, NEVER BEEN  
19 NEGOTIATED. BUT I'M ASSUMING THAT THIS, ALONG WITH OTHER  
20 KINDS OF CLAUSES, ARE LAWYERS ANTICIPATING LAWYERS. AND THE  
21 FACT THAT IT'S HERE, I CAN READ IT, BUT REALLY DON'T HAVE MUCH  
22 COMMENT ON IT OTHER THAN THING SPEAKS FOR ITSELF.

23 Q. IT'S BOILERPLATE; IT'S STANDARD.

24 A. YEAH, STANDARD.

25 MR. HAUSFELD: WE MOVE EXHIBIT 3078, YOUR HONOR, INTO

1 EVIDENCE.

2 **MR. LI:** NO OBJECTION, YOUR HONOR.

3 **THE COURT:** RECEIVED.

4 (DEFENDANTS' EXHIBIT 3078 RECEIVED IN EVIDENCE)

5 **MR. HAUSFELD:** AND COULD WE PLEASE SEE DEMONSTRATIVE  
6 EXHIBIT 4, WHICH IS PLAINTIFFS' EXHIBIT 1005-1.

7 (EXHIBIT PUBLISHED.)

8 **BY MR. HAUSFELD:**

9 **Q.** AND THIS READS, "STUDENT ATHLETE NAME AND LIKENESS  
10 RELEASE."

11 **A.** UH-HUH.

12 **Q.** DO YOU SEE THAT?

13 **A.** I DO.

14 **Q.** AND IT SAYS, "I HEREBY GRANT," AND THE "I" WOULD BE THE  
15 ATHLETE?

16 **A.** YES.

17 **Q.** IN WHAT PACKAGE IS THIS RELEASE PROVIDED TO THE ATHLETE?

18 **A.** I DON'T KNOW.

19 **Q.** AND DO YOU KNOW UNDER WHAT CIRCUMSTANCES?

20 **A.** I DON'T KNOW.

21 **Q.** "I HEREBY GRANT TO THE UNIVERSITY IN THE BIG TEN  
22 CONFERENCE AND THEIR ASSIGNS THE RIGHT TO PUBLISH, DUPLICATE,  
23 PRINT, BROADCAST, OR OTHERWISE USE IN ANY MANNER OR MEDIA MY  
24 NAME, PHOTOGRAPH, LIKENESS, OR OTHER IMAGE OF MYSELF FOR ANY  
25 PURPOSE."

1 DO YOU SEE THAT?

2 **A.** I DO.

3 **Q.** AND IT SAYS, "INCLUDING WITHOUT LIMITATION" --

4 **MR. LI:** YOUR HONOR --

5 **BY MR. HAUSFELD:**

6 **Q.** "-- USES IN PROMOTIONAL AND MARKETING MATERIALS AND USES  
7 BY THE BIG TEN NETWORK, CBS, ABC, AND ESPN."

8 **MR. LI:** YOUR HONOR, I'M REMINDED BY MY COLLEAGUES  
9 THERE'S A MOTION IN LIMINE ABOUT USING THESE PARTICULAR  
10 DOCUMENTS WHERE THERE'S NO CONNECTION TO THE NCAA.

11 **THE COURT:** OH, WELL --

12 **MR. HAUSFELD:** I'LL GET TO THAT IN A MOMENT, YOUR  
13 HONOR.

14 **MR. LI:** YOUR HONOR, IT'S NOT AN NCAA -- THAT'S ALL.

15 **BY MR. HAUSFELD:**

16 **Q.** DO YOU SEE WHERE IT SAYS, "USES BY THE BIG TEN NETWORK,  
17 CBS, ABC, AND ESPN"?

18 **MR. LI:** YOUR HONOR, I'M OBJECTING. THERE'S A  
19 MOTION -- THERE WAS A MOTION IN LIMINE THAT WAS GRANTED.

20 **THE COURT:** SEEMS TO BE QUITE RELEVANT. WHAT IS THE  
21 MOTION?

22 **MR. LI:** IT WAS -- YOU HAVE TO GIVE ME THE DOCUMENT.  
23 (PAUSE IN THE PROCEEDINGS.)

24 **MR. LI:** I'LL GIVE YOU THE NUMBER, YOUR HONOR.

25 **MR. HAUSFELD:** I WAS JUST ADVISED, YOUR HONOR, THAT



1 THE MOTION IN LIMINE WAS DENIED, AND I THINK WE COULD POSSIBLY  
2 END THE OBJECTION IF WE COULD LOOK AT THE NEXT SENTENCE.

3 **MR. LI:** YOUR HONOR, IT'S MOTION NO. 9, AND IT SAYS,  
4 "PLAINTIFFS MAY INTRODUCE ATHLETE ELIGIBILITY FORMS PRODUCED  
5 BY NCAA DIVISION I SCHOOLS OR CONFERENCES. HOWEVER,  
6 PLAINTIFFS MUST PRESENT SOME EVIDENCE OF A NEXUS BETWEEN THESE  
7 FORMS AND THE NCAA," SO --

8 **THE COURT:** ALL RIGHT. SO YOU MAY TRY TO DO THAT.

9 **BY MR. HAUSFELD:**

10 **Q.** COULD WE READ THE NEXT SENTENCE, "ALL SUCH USES SHALL BE  
11 CONSISTENT WITH ALL APPLICABLE NCAA AND BIG TEN CONFERENCE  
12 RULES AND REGULATIONS"; IS THAT CORRECT?

13 **A.** I SEE THAT, YEAH.

14 **Q.** THIS FORM WAS TO BE CONSISTENT WITH ALL NCAA RULES,  
15 CORRECT?

16 **A.** THAT'S RIGHT.

17 **Q.** AND IT WAS DRAWN UP TO BE CONSISTENT WITH ALL NCAA RULES,  
18 CORRECT?

19 **A.** THAT'S RIGHT.

20 **Q.** AND IT WAS SUPPOSED TO BE IN COMPLIANCE WITH ALL NCAA  
21 RULES, CORRECT?

22 **A.** IT WAS -- A PART OF THIS WAS INTENDED TO MAKE SURE THAT  
23 WHATEVER THE BIG TEN NETWORK DID WAS IN COMPLIANCE WITH NCAA  
24 RULES.

25 **MR. HAUSFELD:** I MOVE EXHIBIT 1005-1 INTO EVIDENCE,

1 YOUR HONOR.

2 **THE COURT:** IT WILL BE RECEIVED.

3 **MR. LI:** NO OBJECTION.

4 (PLAINTIFFS' EXHIBIT 1005-1 RECEIVED IN EVIDENCE)

5 **BY MR. HAUSFELD:**

6 **Q.** AND THE RELEASE GOES FURTHER IN THE LAST LINE, AND IT  
7 SAYS, "I AGREE THAT NEITHER I NOR MY HEIRS SHALL BE ENTITLED  
8 TO ANY COMPENSATION FOR THE USE OF MY NAMES, PHOTOGRAPH,  
9 LIKENESS OR OTHER IMAGE OF MYSELF."

10 IS THAT BOILERPLATE?

11 **A.** DOES IT -- IT IS BOILERPLATE, YES.

12 **Q.** YOU DO THAT IN ALL YOUR CONTRACTS? YOU DO THAT IN ALL  
13 YOUR RELEASES?

14 **A.** THIS IS -- YEAH, IN THIS RELEASE SINCE 2007.

15 **Q.** AND THERE WERE SIMILAR FORMS BEFORE THIS USED BY THE BIG  
16 TEN?

17 **A.** INSTITUTIONAL.

18 **Q.** "INSTITUTIONAL" MEANING VERY -- INDEPENDENT UNIVERSITIES?

19 **A.** YES.

20 **Q.** AND FOR HOW LONG BEFORE THIS, DID THE UNIVERSITIES HAVE  
21 SIMILAR RELEASES?

22 **A.** DO NOT KNOW.

23 **Q.** AND WAS A THOUGHT -- WAS A COMPANY CALLED THOUGHT EQUITY  
24 ADDED TODAY THESE RELEASES AT A PARTICULAR TIME?

25 **A.** THEY MAY HAVE BEEN.

1 Q. AND WHAT IS -- WHAT IS THE BUSINESS OF THOUGHT EQUITY?

2 A. I THINK THOUGHT EQUITY IS IN THE BUSINESS OF LICENSING  
3 CLIPS FOR COPYRIGHT OWNERS.

4 Q. AND SO YOU PROVIDE A RELEASE OR -- YOU ACQUIRE A RELEASE  
5 FROM THE ATHLETE WITH REGARD TO NOT ONLY BROADCAST BUT FOR ALL  
6 MEDIA AND INCLUDING CLIPS? CORRECT? YES?

7 A. YEAH.

8 Q. THANK YOU.

9 NOW, COUNSEL ASKED YOU A NUMBER OF QUESTIONS ELICITING  
10 YOUR VIEW OF THE EDUCATIONAL OPPORTUNITIES FOR ATHLETES.

11 A. RIGHT.

12 Q. AND YOU LISTED A NUMBER OF ITEMS THAT YOU BELIEVED SHOULD  
13 BE UNDERTAKEN IN ORDER TO REFORM THE PRESENT PRACTICES.

14 A. YES.

15 Q. AND DR. EMMERT JUST TESTIFIED AS TO A NUMBER OF REFORMS  
16 THAT HAVE BEEN PROPOSED AND/OR IMPLEMENTED IN ORDER TO ENHANCE  
17 THOSE OPPORTUNITIES, DID HE NOT?

18 A. I DIDN'T HEAR HIS TESTIMONY.

19 Q. HAVE THERE BEEN A NUMBER OF REFORMS, TO YOUR KNOWLEDGE,  
20 THAT HAVE BEEN ENACTED SINCE 2010 THAT HAVE IN YOUR JUDGMENT  
21 ENHANCED THE OPPORTUNITIES OF FBS FOOTBALL AND DIVISION I  
22 MEN'S BASKETBALL ATHLETES IN PARTICULAR TO AVAIL THEMSELVES OF  
23 AN EDUCATIONAL EXPERIENCE?

24 A. I -- I THINK THERE HAVE BEEN A NUMBER OF EFFORTS IN THE  
25 RECENT YEARS. I DON'T KNOW IF IT'S 2010. BUT ACCESS TO

1 POST-SEASON PLAY, FOOTBALL AND BASKETBALL, IS DEPENDENT ON  
2 TEAMS MAKING PROGRESS TOWARDS THEIR DEGREE, MEASUREMENT OF THE  
3 INDIVIDUALS ON THE TEAMS, SO THAT'S AN INCENTIVE OR A  
4 DISINCENTIVE, DEPENDING UPON HOW YOU LOOK AT IT.

5 I THINK THERE'S STANDARD REVIEW UNDER WAY TO INCREASE  
6 QUANTITATIVE AND QUALITATIVE REQUIREMENTS FOR INCOMING  
7 STUDENTS, SO I THINK IT'S A CONSTANT DISCUSSION ABOUT THE  
8 ISSUE OF STANDARDS OCCURRING INSIDE THE NCAA.

9 SO, YEAH, I WOULD -- I WOULD AGREE THAT THERE'S A CONSTANT  
10 EFFORT IN THIS AREA.

11 **Q.** I WASN'T JUST LOOKING, MR. DELANY, AT STANDARDS.

12 FOR EXAMPLE, YOU MENTIONED THE 20-HOUR RULE.

13 **A.** OKAY. LET ME KNOW WHAT -- GIVE ME A SPECIFIC -- I DON'T  
14 KNOW WHAT EMMERT SAID.

15 **Q.** WELL, LET'S TAKE THE 20-HOUR RULE.

16 **A.** OKAY.

17 **Q.** THE 20-HOUR RULE IS SOMETHING IN YOUR JUDGMENT YOU FELT  
18 IMPEDES OR INTERFERES WITH THE ABILITY OF AN FBS FOOTBALL  
19 ATHLETE AND A DIVISION I MEN'S BASKETBALL ATHLETE TO FULLY  
20 ACCESS THE EDUCATIONAL OPPORTUNITIES IN THE -- IN THE  
21 INSTITUTION, CORRECT?

22 **A.** WHAT I SAID WAS THE 20-HOUR RULE, WHICH WAS ADOPTED ABOUT  
23 20 YEARS AGO, IN MY VIEW, NEEDS TO BE REVIEWED IN ORDER THAT  
24 TIME SPENT ON ATHLETICS, ACADEMICS, AND PERSONAL WOULD BE  
25 BETTER BALANCED. I THINK THAT IT'S A BELL CURVE, BOTH FOR

1 INSTITUTIONS AND FOR ATHLETES.

2 IN SOME CASES, IT'S ADEQUATE. IN SOME -- IN SOME CASES,  
3 IT WORKS. AND SOME CASES, IT DOESN'T.

4 SO WHAT I WAS ASKING FOR -- WHAT I WAS RAISING WAS THE  
5 ISSUE THAT WE REVIEW IT TO MAKE SURE THAT THERE'S BALANCE  
6 HERE.

7 MOST OF THESE YOUNG PEOPLE COME INTO COLLEGIATE ATHLETICS  
8 WITH SIX, EIGHT, NINE YEARS OF PRETTY INTENSIVE TRAINING. IT  
9 CONTINUES. BUT MY POINT IS IF -- AS WE GO FORWARD, WE HAVE TO  
10 INSPECT WHAT WE'VE DONE AND MAKE SURE THAT IT WORKS WELL.

11 I THINK IN SOME CASES IT'S FULLY ADEQUATE AND SOME CASES,  
12 NOT. AND SO WHAT WE NEED TO DO IS FOCUS ON THE AT-RISK --  
13 AT-RISK STUDENTS. WE HAVE TO FOCUS ON THE ACADEMIC LOAD  
14 THEY'RE TAKING. WE HAVE TO FOCUS ON WHETHER OR NOT ANY OF OUR  
15 RULES OR ANY OF OUR PRACTICES MAKES IT LESS LIKELY THE AT-RISK  
16 STUDENT IS GOING TO STRUGGLE IN PURSUING THEIR DEGREE.

17 SO THAT -- THAT'S MY POINT ON IT. I DON'T HAVE THE  
18 ANSWER. BUT I THINK IT'S AN AREA THAT WE NEED TO TAKE A LOOK  
19 AT ON A REFORM AGENDA.

20 **Q.** AND DO YOU KNOW THAT OTHER EDUCATORS, PARTICULARLY THOSE  
21 BELONGING TO THE KNIGHT COMMISSION, HAVE FOCUSED ON JUST THAT  
22 ISSUE?

23 **A.** I THINK IT'S -- I THINK PEOPLE HAVE DISCUSSED IT BEFORE,  
24 YES.

25 **Q.** AND DO YOU KNOW WHAT THEY HAVE CONCLUDED?

1       **A.** I DON'T.

2       **Q.** AND YOU MENTIONED SUMMER -- ATHLETES' COMMITMENTS IN THE  
3       SUMMER, AND I'D LIKE YOU TO PARTICULARLY FOCUS ON FBS FOOTBALL  
4       AND DIVISION I MEN'S BASKETBALL ATHLETES.

5       **A.** I'M TALKING ABOUT TRAINING OF ALL ATHLETES, NOT JUST  
6       FOOTBALL PLAYERS AND BASKETBALL PLAYERS.

7       **Q.** BUT I'M ASKING YOU TO PLEASE FOCUS ON THE FBS FOOTBALL AND  
8       THE DIVISION I MEN'S BASKETBALL ATHLETES.

9       **A.** RIGHT.

10      **Q.** OKAY.

11      **A.** OKAY.

12      **Q.** WHAT DID YOU MEAN BY "THEIR SUMMER OBLIGATIONS"?

13      **A.** WHAT I'M -- WHAT I'M SUGGESTING IS THAT I WAS ASKED A  
14      QUESTION ABOUT WHAT ABOUT PERIODS THAT THEY MIGHT NOT BE  
15      INVOLVED.

16             AND MY PERSONAL VIEW, ACCESS TO INTERNSHIPS, ACCESS TO  
17      SUMMER YEARS ABROAD ARE INTEGRAL TO GETTING THE EDUCATION THAT  
18      OUR UNIVERSITIES CAN PROVIDE.

19             AND TO THE EXTENT THERE'S INTERFERENCE WITH THAT, I THINK  
20      THAT OUGHT TO BE ALLOWED AT AS A POSSIBLE REFORM.

21      **Q.** HAVE YOU LOOKED AS TO WHETHER OR NOT THERE IS ACTUAL  
22      INTERFERENCE TO THOSE FBS FOOTBALL ATHLETES AND DIVISION I  
23      MEN'S BASKETBALL ATHLETES IN ORDER TO AVAIL THEMSELVES OF  
24      THOSE OPPORTUNITIES IN THE SUMMER?

25      **A.** I -- I WILL TELL YOU THAT I HAVE LOOKED AT IT. AND I HAVE

1 HAD LOOKED AT IT OVER TIME, NOT ONLY FOR ATHLETES IN COLLEGE  
2 BUT FOR ATHLETES IN HIGH SCHOOL AND GRADE SCHOOL.

3 AND IF YOU REALLY LOOK AT WHAT'S GOING ON IN THIS COUNTRY  
4 AROUND TRAINING OF ATHLETES, YOU WOULD FIND THAT MOST OF THEM  
5 ARE NOT WORKING, THEY'RE NOT TAKING INTERNSHIPS, THEY ARE  
6 PLAYING SPORTS, AND THEY'RE DOING IT ON OUR CAMPUSES AND  
7 BEFORE THEY GET THERE, AND I THINK WE OUGHT TO BACK OFF FROM  
8 IT.

9 Q. BECAUSE IT'S TOO MUCH?

10 A. TOO MUCH, YEAH.

11 Q. TOO MUCH SPORTS?

12 A. OVER-USE INJURIES, TOO MUCH ATHLETICS FOR TOO MANY YOUNG  
13 PEOPLE PRODUCES A LOT OF STRAIN ON YOUNG BODIES. AND AS THEY  
14 COME INTO THE COLLEGE SPACE, I THINK WE NEED TO BACK OFF ON  
15 THE AMOUNT OF TIME THAT THE ATHLETE IS -- IS PUTTING IN.

16 THERE'S NOTHING WRONG -- I READ OFTENTIMES WHERE YOUNG  
17 PEOPLE SAY, "I'M AN ATHLETE RATHER THAN A STUDENT." I DON'T  
18 THINK THERE'S ANYTHING WRONG WITH A PERSON DESCRIBING  
19 THEMSELVES AS A ATHLETE AS LONG AS THEY CAN DO THE WORK AND DO  
20 DO THE WORK.

21 Q. AND I JUST WANTED TO SEE IF I UNDERSTOOD YOUR LISTING OF  
22 REFORMS THAT YOU THOUGHT OF CORRECTLY. YOU'RE THINKING OF A  
23 LIFETIME TRUST, ALLOWING STUDENTS TO COME BACK TO GET THEIR  
24 DEGREE IF THEY DON'T COMPLETE IT DURING THEIR PERIOD OF  
25 ELIGIBILITY?

1       **A.**  YES.

2       **Q.**  IS THAT CORRECT?

3               AND YOU'RE LOOKING TO CHANGE THE TIME DEMANDS THAT WE'VE  
4       JUST SPOKEN ABOUT.

5       **A.**  YES.

6       **Q.**  AND YOU'RE ALSO LOOKING FOR THE -- THE INTERNSHIP, YOU  
7       KNOW, IN THE SUMMER FOR SOME?

8       **A.**  THE OPPORTUNITY FOR THE INTERNSHIP.

9       **Q.**  AND YOU MENTIONED EXPLORATION OF MULTI-YEAR GRANTS  
10       CORRECT?

11       **A.**  WELL, I -- I THINK WE'VE REINTRODUCED THE MULTI-YEAR  
12       GRANT.  I WAS A PRODUCT OF A FOUR-YEAR GRANT, AS MY TEAMMATES  
13       WERE.  I WAS A PRODUCT OF FRESHMAN INELIGIBILITY, AS MY  
14       TEAMMATES WERE.  I THINK THOSE ARE GOOD THINGS.

15               I DON'T THINK THAT FRESHMAN ELIGIBILITY IN ALL CASES IS A  
16       GOOD THING.  I THINK WORKING AS AN INTERN IS A GOOD THING.  SO  
17       WHAT WE'RE TRYING TO DO IS RESTRUCTURE, TAKE A LOOK AT THESE  
18       REFORMS, AND FIND OUT HOW WE CAN MAKE WHAT IS GOOD BETTER.

19       **Q.**  SO FRESHMAN INELIGIBILITY IS A GOOD THING IN YOUR MIND  
20       BECAUSE IT ALLOWS THE ATHLETE TO BETTER MATRICULATE INTO THE  
21       EDUCATIONAL OPPORTUNITIES, CORRECT?

22       **A.**  I BELIEVE THAT.

23       **Q.**  AND YOU MENTIONED THAT HAVING A MULTI-YEAR GRANT,  
24       LIKEWISE, IS A GOOD THING BECAUSE I THINK YOU SAID AT ONE  
25       POINT, THE SECURITY INVOLVES (SIC) IN GETTING A MULTI-YEAR



1 GRANT IS IMPORTANT?

2 **A.** I BELIEVE THAT.

3 **Q.** AND WHAT DO YOU MEAN BY THE SECURITY -- YOU KNOW, IN A  
4 MULTI-YEAR GRANT?

5 **A.** THERE'S A LOT OF MOVEMENT A LOT OF TRANSFERS. SOMETIMES  
6 PLAYERS DON'T FEEL LIKE THEY PLAY ENOUGH SO THEY LEAVE. WHEN  
7 YOU HAVE MORE SECURITY IN A GRANT IN AID, IF A PERSON IS  
8 MAKING ADEQUATE PROGRESS TOWARDS A DEGREE, IS HAPPY AT THAT  
9 INSTITUTION, I PERSONALLY BELIEVE THAT THE RIGHT OUTCOME IS  
10 FOR THAT ATHLETE TO BE AT THAT INSTITUTION AND FOR THE  
11 INSTITUTION TO SUPPORT THAT INDIVIDUAL.

12 SO I BELIEVE A FOUR-YEAR SCHOLARSHIP IS BETTER THAN THREE;  
13 THREE'S BETTER THAN TWO; AND TWO'S BETTER THAN ONE.

14 **Q.** AND CAN WE PLEASE SEE DEMONSTRATIVE NO. 19, WHICH IS THE  
15 NCAA ELIGIBILITY CENTER 2011-12 GUIDE FOR THE COLLEGE-BOUND  
16 STUDENT ATHLETE.

17 (EXHIBIT PUBLISHED.)

18 (PAUSE IN THE PROCEEDINGS.)

19 **MR. HAUSFELD:** CAN WE -- YOUR HONOR, MAY WE TAKE A  
20 BREAK NOW WHILE WE FIND THAT? AND THEN WE CAN RETURN. I  
21 DON'T HAVE MUCH LEFT.

22 **THE COURT:** OKAY. I WAS SORT OF THINKING YOU COULD  
23 FINISH BEFORE THE BREAK, BUT YOU CAN'T.

24 **MR. HAUSFELD:** I WOULD LIKE TO FIND THIS PARTICULAR  
25 DOCUMENT. I DON'T HAVE THE PX NUMBER ON IT, THOUGH.



(EXHIBIT PUBLISHED.)

**BY MR. HAUSFELD:**

**Q.** IT SAYS, "ATHLETICS SCHOLARSHIPS CAN BE RENEWED, REDUCED, INCREASED, OR CANCELED FROM YEAR TO YEAR FOR ALMOST ANY REASON."

DO YOU SEE THAT?

**A.** YES.

**Q.** AND IT WAS YOUR UNDERSTANDING THAT THAT WAS THE RULE IN EFFECT UP TO 2011-2013?

**A.** (REVIEWING DOCUMENT.)

ARE YOU READING JUST THE FIRST SENTENCE OR BOTH SENTENCES?

**Q.** FIRST SENTENCE.

**A.** YEAH. FOR ALMOST ANY REASON.

**Q.** THAT WAS THE RULE?

**A.** I DON'T KNOW IF THAT'S -- "FOR ALMOST ANY REASON" IS THE RULE. IT MAY BE. I'D LIKE TO SEE WHAT THE RULE IS. I DON'T KNOW THAT THAT'S THE RULE, "FOR ALMOST ANY REASON."

THAT'S NOT A RULE. THAT'S A -- MUST BE SOME -- A PARAPHRASE OR A NOTICE, BUT IT -- MY UNDERSTANDING IS IF YOU ARE IN GOOD ACADEMIC STANDING, IF YOU ARE CONDUCTING YOURSELF -- IT'S NORMAL FOR THESE AWARDS TO BE RENEWED. AND THE NOTION THAT THEY'RE CANCELED FOR ALMOST ANY REASON IS NOT MY EXPERIENCE. AND I'M NOT SURE THAT'S THE RULE.

**Q.** DO YOU KNOW OF ANY OTHER NCAA ELIGIBILITY CENTER GUIDE FOR COLLEGE-BOUND STUDENT ATHLETES?

1       **A.**    I DON'T.

2       **Q.**    AT THE BOTTOM --

3       **A.**    YEAH.

4       **Q.**    -- AT THE LAST LINE, IT SAYS, "YOU SHOULD ALSO CONSIDER  
5       HOW YOU WILL FINANCE YOUR EDUCATION IF YOUR ATHLETIC  
6       SCHOLARSHIP IS REDUCED OR CANCELED."

7               DO YOU SEE THAT?

8       **A.**    (REVIEWING DOCUMENT.)

9               YEP.

10       **Q.**    ACCEPTING THAT AS THE POSITION OF THE NCAA WITH REGARD TO  
11       ATHLETIC SCHOLARSHIPS, DO YOU THINK THAT PROVIDED A BCS  
12       FOOTBALL OR DIVISION I MEN'S BASKETBALL ATHLETE A DEGREE OF  
13       CERTAINTY IN THEIR EDUCATIONAL OPPORTUNITIES?

14               **MR. LI:**   OBJECTION, CALLS FOR SPECULATION.

15               **THE WITNESS:**  I SUPPORT --

16               **THE COURT:**  SUSTAINED.

17               **THE WITNESS:**  -- MULTI-YEAR GRANTS, FOUR-YEAR GRANTS.

18               **MR. LI:**   SIR.

19               DID THE COURT SUSTAIN IT?

20               **THE COURT:**  YES.

21               **MR. LI:**   THANK YOU.

22               **THE WITNESS:**  OH, I'M SORRY.

23       **BY MR. HAUSFELD:**

24       **Q.**    YOU'RE ON RECORD, ARE YOU NOT, MR. DELANY, OF SAYING THAT  
25       "IN THE 21ST CENTURY, IT'S PAINFULLY OBVIOUS WE NEED TO

1 CHANGE"? CORRECT?

2 **A.** CORRECT.

3 **Q.** AND IT'S -- YOU ALSO ON RECORD AS SAYING, "IT'S PAINFULLY  
4 OBVIOUS IT'S NOT ALL A LEVEL PLAYING FIELD," CORRECT?

5 **A.** I DON'T KNOW WHAT YOU'RE READING FROM.

6 **Q.** DO YOU RECALL SAYING THAT?

7 **A.** I -- I REALLY THE FIRST STATEMENT. I DON'T RECALL THE  
8 "LEVEL PLAYING FIELD" STATEMENT.

9 **MR. HAUSFELD:** COULD WE SEE DEMONSTRATIVE EXHIBIT 15,  
10 PLEASE.

11 (EXHIBIT PUBLISHED.)

12 **BY MR. HAUSFELD:**

13 **Q.** AND THIS IS AN ARTICLE, "CHANGING TIMES QUESTION AND  
14 ANSWER WITH BIG TEN COMMISSIONER JIM DELANY."

15 CAN WE LOOK AT PAGE 3, PLEASE.

16 (EXHIBIT PUBLISHED.)

17 **BY MR. HAUSFELD:**

18 **Q.** THAT IS A PICTURE OF YOU, SIR?

19 **A.** YES.

20 **Q.** AND RIGHT --

21 **MR. LI:** YOUR HONOR, IF I MAY GIVE HIM A COPY OF THE  
22 DOCUMENT.

23 **THE COURT:** YES.

24 **MR. LI:** THIS HAS BEEN PROVIDED BY THE OTHER SIDE --

25 **THE WITNESS:** (REVIEWING DOCUMENT.)

1 WHERE ARE YOU?

2 **BY MR. HAUSFELD:**

3 **Q.** RIGHT ABOVE THE PHOTOGRAPH.

4 **THE COURT:** IT'S ON THE SCREEN AS WELL.

5 **THE WITNESS:** (REVIEWING DOCUMENT.)

6 **BY MR. HAUSFELD:**

7 **Q.** AGAIN, I THINK IT MAY BE EASIER TO READ ON THE SCREEN  
8 THAN -- 'CAUSE WE'VE HIGHLIGHTED IT.

9 **A.** (REVIEWING DOCUMENT.)

10 **Q.** "IT'S PAINFULLY OBVIOUS IT'S NOT ALL A LEVEL PLAYING  
11 FIELD."

12 **MR. LI:** THE REMAINDER OF THE SENTENCE --

13 **BY MR. HAUSFELD:**

14 **Q.** AND THAT "A LOT OF LEVEL PLAYING FIELD PHILOSOPHY IS UNDER  
15 ATTACK."

16 **A.** YES.

17 **Q.** YOU SAID THAT?

18 **A.** I DID.

19 **Q.** OKAY.

20 NOW, IS IT YOUR TESTIMONY, SIR, THAT IF THE PAC 12 PAID  
21 ANY MONEY ABOVE THE COST OF COLLEGE ATTENDANCE TO AN ATHLETE,  
22 A -- AN FBS FOOTBALL OR DIVISION I MEN'S BASKETBALL ATHLETE  
23 FOR NIL'S, THAT THE ROSE BOWL WOULD END?

24 **A.** I THINK THAT'S VERY GOOD -- VERY LIKELY -- VERY LIKELY  
25 OUTCOME.

1 Q. AND HAVE YOU PREDICTED OTHER OUTCOMES THAT DID NOT COME  
2 ABOUT?

3 A. I'M SURE I DID.

4 Q. IS THERE A LEVEL OF SHARING OF NIL'S FOR -- TO FBS  
5 FOOTBALL ATHLETES AND DIVISION I MEN'S BASKETBALL ATHLETES  
6 THAT WOULD NOT AFFECT WHETHER THE ROSE BOWL CONTINUES?

7 MR. LI: OBJECTION. I'M NOT SURE IF IT'S A LEGAL  
8 QUESTION.

9 THE COURT: IT ISN'T.

10 MR. LI: LEGAL OPINION.

11 THE COURT: NO, I WOULDN'T THINK SO.

12 MR. LI: OKAY.

13 THE WITNESS: COULD YOU REPEAT YOUR QUESTION, PLEASE.

14 BY MR. HAUSFELD:

15 Q. IS THERE A --

16 THE COURT: OH, I SEE. YOU'RE SAYING IF THEY DID IT  
17 IN VIOLATION OF NCAA RULES AND GOT KICKED OUT AND THE ROSE  
18 BOWL WAS CANCELED BY THE NCAA. YEAH, I DON'T THINK THAT'S  
19 WHAT HE MEANT BY THE QUESTION, THOUGH.

20 MR. HAUSFELD: NO.

21 THE WITNESS: SO --

22 THE COURT: THE QUESTION IS --

23 BY MR. HAUSFELD:

24 Q. IF THEY --

25 THE COURT: DO YOU UNDERSTAND THE QUESTION?

1           **THE WITNESS:** I DON'T UNDERSTAND.

2           **THE COURT:** ALL RIGHT. ASK AGAIN.

3           **BY MR. HAUSFELD:**

4           **Q.** IF IT WAS DECIDED TO PAY FBS FOOTBALL ATHLETES.

5           **A.** IF IT WAS DECIDED BY WHOM?

6           **Q.** A SCHOOL. TO PAY THEIR ATHLETES 10 CENTS ABOVE THE -- THE  
7 TUITION, ROOM AND BOARD, AND BOOKS FOR NIL'S, ARE YOU SAYING  
8 THE ROSE BOWL WOULD BE CANCELED?

9           **THE COURT:** WELL, YOU NEED TO INCLUDE IN THE  
10 HYPOTHETICAL THAT IT IS NOT A VIOLATION OF NCAA RULES 'CAUSE  
11 IF IT WERE, THEY COULD BE BOOTED OUT OF THE NCAA, AND THEN, IN  
12 FACT, THERE WOULD PERHAPS NOT BE A ROSE BOWL. SO YOU NEED TO  
13 INCLUDE THAT IN YOUR HYPOTHETICAL.

14          **BY MR. HAUSFELD:**

15          **Q.** WOULD THAT BE A VIOLATION IN YOUR JUDGMENT OF NCAA RULES?

16          **A.** WOULD IT BE A -- WOULD IT A VIOLATION NOW?

17                 **THE COURT:** THAT'S A DIFFERENT --

18                 **MR. HAUSFELD:** YES.

19                 **THE WITNESS:** I THINK IT WOULD BE.

20          **BY MR. HAUSFELD:**

21          **Q.** SHOULD IT?

22          **A.** I THINK IT WOULD BE A VIOLATION NOW. WHETHER IT SHOULD BE  
23 OR NOT, I'VE TRIED TO SPEAK CANDIDLY AND CONSISTENTLY ON THAT  
24 POINT. BUT I THINK THAT ANY PAYMENT ABOVE THOSE THAT ARE  
25 PRESCRIBED -- MAY BE A -- 10 CENTS IS -- IS 10 CENTS. HOW



1 SERIOUS THAT WOULD BE, I DON'T KNOW, BUT I THINK IT WOULD  
2 TECHNICALLY BE A VIOLATION.

3 BUT I -- WHAT HAPPENS? I DON'T THINK THE ROSE BOWL WOULD  
4 BE CANCELED OVER 10 CENTS.

5 **MR. HAUSFELD:** YOUR HONOR, AT THE NEXT BREAK, I WILL  
6 TRY TO WORK OUT WITH THE COUNSEL FOR THE NCAA A NUMBER OF  
7 GRADUATION RATES THAT WE WOULD LIKE TO SUBMIT IN THE RECORD  
8 WITH REGARD TO BIG TEN SCHOOLS, CONSISTENT WITH THE SAME  
9 GRADUATION RATES WE'VE SUBMITTED PREVIOUSLY FOR OTHER SCHOOLS.

10 **THE COURT:** OKAY.

11 **MR. HAUSFELD:** I HAVE NO FURTHER QUESTIONS, YOUR  
12 HONOR.

13 **MR. LI:** JUST A COUPLE QUESTIONS, YOUR HONOR, VERY  
14 QUICKLY.

15 **REDIRECT EXAMINATION**

16 **BY MR. LI:**

17 **Q.** MR. DELANY, YOU WERE ASKED A NUMBER OF QUESTIONS ABOUT THE  
18 RULES RELATING TO SCHOLARSHIPS.

19 DO YOU RECALL THAT?

20 **A.** YES.

21 **Q.** YOU WOULD DEFER TO THE ACTUAL RULES, WOULDN'T YOU?

22 **A.** YES.

23 **Q.** NOW, YOU WERE ASKED SOME QUESTIONS ABOUT REVENUE COMING  
24 INTO THE BIG TEN.

25 **A.** YES.

1 Q. AND THOSE INCLUDED AN ADDITIONAL CATEGORY WHICH WAS  
2 JERSEYS. YOU RECALL THAT?

3 A. YES.

4 Q. AND LET'S JUST GO DOWN IT, JERSEYS, NCAA DISTRIBUTIONS,  
5 BOWL GAMES, AND TELEVISION. THOSE ARE THE VARIOUS AREAS OF  
6 REVENUES?

7 A. WELL, THE BIG TEN CONFERENCE, TO MY KNOWLEDGE, RECEIVES  
8 NOTHING FOR JERSEYS. THE THREE THAT I IDENTIFIED WERE THE  
9 BOWL GAMES, NCAA MARCH MADNESS, AND OUR TELEVISION  
10 ARRANGEMENTS.

11 Q. AND THOSE REVENUES GO TO HELP SUPPORT ACADEMIC -- SORRY.  
12 STRIKE THAT -- HELP TO SUPPORT PROGRAMS AT THE VARIOUS  
13 SCHOOLS?

14 A. THEY DO.

15 Q. AND THOSE INCLUDE FUNDING SCHOLARSHIPS?

16 A. THAT'S CORRECT.

17 MR. LI: THANK YOU. NOTHING FURTHER, YOUR HONOR.

18 THE COURT: SO THE QUESTION I THOUGHT MR. HAUSFELD  
19 WAS ASKING -- WAS POSITING THAT THE NCAA CHANGED ITS RULES  
20 SUCH THAT A CONFERENCE COULD CHOOSE TO ALLOW ITS MEMBER  
21 SCHOOLS TO PAY SOME SHARE OF NAME, IMAGE, AND LIKENESS  
22 REVENUES TO ITS ATHLETES, IF THAT WERE TO HAPPEN, AND IF IN  
23 RESPONSE TO THAT, PAC 12 WERE TO ALLOW ITS SCHOOLS TO DO THAT,  
24 ARE YOU SAYING THAT THE PAC TEN (SIC) -- AND THE PAC TEN CHOSE  
25 NOT TO DO THAT, ARE YOU SAYING THAT PAC TEN THEN WOULD REFUSE

1 TO PLAY THE PAC 12 IN THE ROSE BOWL?

2 **THE WITNESS:** YOU MEAN, BIG TEN?

3 **MR. LI:** BIG TEN.

4 **THE COURT:** I KNEW I'D GET THOSE WRONG. OKAY.

5 **THE WITNESS:** I UNDERSTAND WHAT --

6 **THE COURT:** NCAA SAYS --

7 **THE WITNESS:** I UNDERSTAND WHAT YOU'RE SAYING.

8 **THE COURT:** NCAA SAYS IT'S OKAY.

9 **THE WITNESS:** I UNDERSTAND --

10 **THE COURT:** PAC 12 CHOOSES TO DO IT; BIG TEN CHOOSES  
11 NOT TO DO IT. ARE YOU SAYING THAT BIG TEN WOULD THEN REFUSE  
12 TO PLAY THE ROSE BOWL WITH THE PAC 12.

13 **THE WITNESS:** YOU KNOW WHAT I THINK HAPPENS IN THAT  
14 CIRCUMSTANCE, ASSUMING WE WANT TO BE IN DIVISION I BUT CHOSE  
15 NOT TO PAY OUR ATHLETES IN THAT WAY, I THINK THAT THE -- YOU  
16 KNOW, WHAT YOU -- WHAT YOU COULD SEE HAPPENING -- AND THIS IS  
17 TOTALLY HYPOTHETICAL AND JUST A PROJECTION -- THAT CONFERENCES  
18 AND SCHOOLS WHO ARE COMFORTABLE IN ONE AREA WOULD SEEK OUT TO  
19 PLAY CONFERENCES AND SCHOOLS WHO ARE COMFORTABLE IN THE OTHER  
20 AREA.

21 OVER 10 CENTS? I HAVE A HARD TIME THINKING ANYBODY WOULD  
22 CANCEL THE ROSE BOWL OVER A DIME, BUT IF -- IF THERE WAS A  
23 VERY SIGNIFICANT DIFFERENCE IN HOW THOSE STUDENTS WERE  
24 RECRUITED, HOW THEY WERE RETAINED, I THINK THAT THERE'S A VERY  
25 GOOD POSSIBILITY THAT YOU'D TO HAVE A CONVERSATION ABOUT WHO

1 YOU WANT TO PLAY GOING FORWARD.

2 ROSE BOWL'S SO IMPORTANT TO THE BIG TEN, I KNOW THAT IT  
3 WOULDN'T BE CANCELED OVER A DIME.

4 **MR. HAUSFELD:** JUST SO WE HAVE A -- ON THE RECORD,  
5 YOUR HONOR, HOW MUCH DOES THE BIG TEN MAKE IF IT PLAYS IN THE  
6 ROSE BOWL?

7 **THE WITNESS:** IF IT PLAYS IN THE ROSE BOWL, PROBABLY  
8 ABOUT \$10 MILLION.

9 **MR. HAUSFELD:** ONE GAME.

10 **THE WITNESS:** ONE GAME.

11 **MR. HAUSFELD:** THANK YOU, YOUR HONOR.

12 **MR. LI:** NOTHING FURTHER, YOUR HONOR. THANK YOU.

13 **THE COURT:** ALL RIGHT. YOU'RE EXCUSED. YOU MAY STEP  
14 DOWN. THANK YOU.

15 YOU MAY CALL YOUR NEXT WITNESS.

16 **THE CLERK:** IF I MAY HAVE THE WITNESS COME TO THE  
17 WITNESS STAND, PLEASE.

18 YEAH, AND ONCE THERE, IF I COULD HAVE YOU RAISE YOUR RIGHT  
19 HAND FOR ME, PLEASE.

20 RAISE YOUR RIGHT HAND FOR ME, PLEASE.

21 **TODD PETR,**

22 CALLED AS A WITNESS FOR THE DEFENDANTS, HAVING BEEN DULY  
23 SWORN, TESTIFIED AS FOLLOWS:

24 **THE CLERK:** PLEASE BE SEATED, AND ONCE SEATED, I'M  
25 GOING TO ASK THAT YOU PLEASE STATE AND SPELL YOUR FIRST AND

1 LAST NAME FOR THE RECORD, PLEASE.

2 **THE WITNESS:** MY NAME IS TODD. FIRST NAME IS  
3 T-O-D-D, LAST NAME IS PETR, P-E-T-R.

4 **THE CLERK:** THANK YOU.

5 **THE WITNESS:** YOU'RE WELCOME.

6 **DIRECT EXAMINATION**

7 **BY MS. LUEDTKE:**

8 **Q.** GOOD AFTERNOON, MR. PETR.

9 **A.** HELLO.

10 **Q.** CAN YOU TELL THE COURT WHAT YOUR POSITION IS AT THE NCAA?

11 **A.** SURE. I'M THE MANAGING DIRECTOR OF RESEARCH AT NCAA.

12 **Q.** WHAT DO YOU DO AS THE MANAGING DIRECTOR OF RESEARCH?

13 **A.** WELL, I OVERSEE OUR RESEARCH SHOP, IF YOU WILL. WE HAVE A  
14 RESEARCH DEPARTMENT, HAS 16 EMPLOYEES IN IT. AND WE WORK WITH  
15 THE MEMBERSHIP TO MAKE SURE THAT THEIR RESEARCH NEEDS ARE MET  
16 ON A DAY-TO-DAY BASIS, AND THAT'S REALLY OUR -- OUR PRIMARY  
17 PURPOSE.

18 **Q.** ARE THERE PARTICULAR AREAS OF RESEARCH THAT YOU DO FOR THE  
19 MEMBERSHIP?

20 **A.** WE'RE ALL OVER THE MAP, BUT I THINK THERE ARE FOUR MAJOR  
21 AREAS THAT WE -- WE LOOK INTO SORT OF MOST REGULARLY. ONE  
22 WOULD BE ACADEMICS, ACADEMIC SUCCESS OF STUDENT ATHLETES,  
23 PREDICTORS OF ACADEMIC SUCCESS OF ATHLETES. WE COLLECT A LOT  
24 OF DATA THROUGH VARIOUS SOURCES ON ACADEMICS AND -- AND  
25 STUDENT ATHLETES AND HOW THEY'RE DOING ACADEMICALLY.

1 ANOTHER ONE WOULD BE FINANCES OF INTERCOLLEGIATE  
2 ATHLETICS. WE COLLECT DATA FROM ALL OUR MEMBERS ON THEIR  
3 REVENUES AND EXPENSES ACROSS ALL THREE DIVISIONS AND DO  
4 ANALYSIS WITH THOSE DATA.

5 WE ALSO DO A LOT OF WORK IN THE AREA OF STUDENT ATHLETE  
6 WELL-BEING. THOSE TEND TO BE MORE DIRECT SURVEYS OF THE  
7 STUDENT ATHLETES, TRYING TO GET AT IMPORTANT ISSUES IN THEIR  
8 LIVES, THEIR THOUGHTS ON THEIR EXPERIENCES AS STUDENT ATHLETES  
9 SOCIALLY, ACADEMICALLY, AND IN OTHER VARIOUS WAYS.

10 AND, FINALLY, TO THE FOURTH MAJOR AREAS IS A COLLECTION OF  
11 SORT OF DEMOGRAPHIC DATA ON -- ON STUDENT ATHLETES, ON  
12 COACHES, ON ADMINISTRATORS, THAT TYPE OF THING.

13 **Q.** HOW LONG HAVE YOU BEEN THE MANAGING DIRECTOR OF RESEARCH?

14 **A.** I BEEN THE MANAGING DIRECTOR SINCE 2001, I BELIEVE.

15 **Q.** HOW LONG HAVE YOU WORKED IN THE RESEARCH DEPARTMENT AT THE  
16 NCAA?

17 **A.** I HAVE BEEN AT THE RESEARCH DEPARTMENT FOR ABOUT 26 YEARS  
18 IN THE RESEARCH DEPARTMENT.

19 **Q.** WHAT ARE THE OVERALL GOALS OF THE RESEARCH DEPARTMENT THAT  
20 YOU MANAGE AT THE NCAA?

21 **A.** WELL, I WOULD SAY THE NCAA HAS BECOME A VERY DATA-DRIVEN  
22 ORGANIZATION, ESPECIALLY IN THE LAST COUPLE OF DECADES.

23 TO THE EXTENT THAT -- THAT THAT IS PART OF OUR -- ONE OF  
24 THE FIVE PILLARS OF OUR STRATEGIC PLAN, THAT WE'LL BE DATA  
25 DRIVEN. TO THAT END, OUR MEMBERSHIP AND OUR MEMBERSHIP

1 COMMITTEES ASK US TO PROVIDE THEM WITH THE BEST,  
2 MOST-COMPREHENSIVE DATA WE CAN IN -- IN THEIR POLICY  
3 DELIBERATIONS.

4 AND THAT STARTS WITH THE PRESIDENTIAL BODIES THAT ARE AT  
5 THE TOP OF EACH OF THE THREE DIVISIONS AND RUNS DOWN THROUGH  
6 THE -- THE COMMITTEES THAT DEAL WITH SPECIFIC ISSUES, WHETHER  
7 THEY BE ACADEMIC OR OTHER SORTS OF POLICY ISSUES.

8 WE ATTEMPT TO PROVIDE THEM THE -- THE BEST DATA THAT WE  
9 CAN. I THINK EARLY ON IN THE LIFE OF THE NCAA, LIKE A LOT OF  
10 PLACES, IT WAS SORT OF POLICY BY ANECDOTE. AND I -- I THINK  
11 THAT SENDS YOU SORT OF CAREENING FROM ONE EXTREME TO ANOTHER  
12 IN POLICY DECISIONS.

13 AND I THINK DATA ALLOWS YOU TO FOCUS ON THE -- ON THE REAL  
14 TARGET AND SET SOME GOALS THAT YOU WANT TO ACHIEVE WITH YOUR  
15 POLICY AND ALSO BETTER UNDERSTAND THE -- THE CONSEQUENCES OF  
16 POLICIES THAT YOU MAY PUT INTO PLACE.

17 **Q.** FOR HOW LONG WOULD YOU SAY THE NCAA HAS BEEN DATA DRIVEN  
18 AS ONE OF ITS PRINCIPLES?

19 **A.** IN MY EXPERIENCE, IT STARTED LATE '80'S, EARLY '90'S,  
20 WHERE IT REALLY SIGNIFICANTLY RATCHETED UP THE -- ITS EFFORTS  
21 AND ATTEMPTS TO COLLECT DATA AND ANALYZE DATA IN POLICY  
22 ISSUES.

23 **Q.** HOW DOES YOUR RESEARCH DEPARTMENT DECIDE WHAT ISSUES TO  
24 RESEARCH?

25 **A.** LIKE EVERYTHING ELSE AT THE ASSOCIATION, IT REALLY STARTS

1 WITH THE MEMBERSHIP, AND SO WE'RE RESPONDING TO MEMBERSHIP  
2 REQUESTS FOR INFORMATION OR TO INFORM A SPECIFIC POLICY DEBATE  
3 THAT'S GOING ON WITHIN THE MEMBERSHIP.

4 THAT CAN START WITH THE DIVISION I BOARD OF DIRECTORS OR  
5 THE EXECUTIVE COMMITTEE OF THE ORGANIZATION, OR WE WORK  
6 DIRECTLY WITH A LOT OF COMMITTEES WHO ARE -- WHO ARE HEAVY  
7 DATA USERS, FOR INSTANCE, ANY ACADEMIC COMMITTEES, THE  
8 DIVISION I COMMITTEE ON ACADEMIC PERFORMANCE, DIVISION I  
9 ACADEMIC CABINET, DIVISION II ACADEMIC REQUIREMENTS COMMITTEE.

10 WE'RE IN THE MEETINGS WITH THEM AND, AGAIN, HAVING  
11 GIVE-AND-TAKE ON THE TYPES OF INFORMATION AS THEY DISCUSS  
12 THEIR POLICY THAT WOULD BE MOST USEFUL TO THEM.

13 SO WE'RE REALLY -- GENERALLY SPEAKING, WE'RE TRYING TO  
14 TRACK THE MEMBERSHIP NEEDS. WE -- OUR ROLE IS SPECIFICALLY  
15 OVERSEEN BY A RESEARCH COMMITTEE WHICH IS AN ASSOCIATION-WIDE  
16 COMMITTEE OF THE ORGANIZATION. AND SOME OF THE IDEAS  
17 CERTAINLY COME FROM THE RESEARCH COMMITTEE.

18 BUT IT'S ALL THESE COMMITTEES ARE AT LARGE THAT COME AND  
19 ASK US FOR THE INFORMATION.

20 **Q.** SO JUST TO SORT OF PAINT THE LANDSCAPE HERE, YOU WORK FOR  
21 WHAT I'LL CALL THE NATIONAL OFFICE; IS THAT RIGHT?

22 **A.** THAT'S CORRECT.

23 **Q.** SO YOU'RE EMPLOYED BY THE NCAA?

24 **A.** YES, I AM.

25 **Q.** AND YOU WORK IN THE INDIANAPOLIS NCAA HEADQUARTERS?



1       **A.**   YES, I DO.

2       **Q.**   AND THEN WHEN YOU DESCRIBE THE MEMBERSHIP, THAT'S THE  
3       COLLEGES AND THE UNIVERSITIES, CORRECT?

4       **A.**   CORRECT.

5       **Q.**   AND THE ACADEMIC CABINET YOU DESCRIBED, THE ACADEMIC  
6       CABINET IS COMPRISED OF REPRESENTATIVES FROM THOSE COLLEGES  
7       AND UNIVERSITIES, CORRECT?

8       **A.**   YES, THAT IS CORRECT.

9       **Q.**   AND THEY SOMETIMES COME TO YOU WITH QUESTIONS, AND THEN  
10      YOU IN THE RESEARCH DEPARTMENT PROVIDE ANSWERS TO THEM AS BEST  
11      YOU CAN?

12      **A.**   AS BEST WE CAN BASED ON DATA THAT WE HAVE OR BASED ON  
13      ATTEMPTING TO COLLECT NEW DATA THAT WOULD ANSWER NEW  
14      QUESTIONS, IF YOU WILL.

15      **Q.**   AND YOU ENGAGE SOMETIMES I ASSUME IN DISCUSSIONS OR  
16      DIALOGUES WITH THEM ABOUT WHAT THAT DATA MEANS AND WHAT MORE  
17      YOU CAN DO TO ANSWER THEIR QUESTIONS?

18      **A.**   ABSOLUTELY. WE'LL -- WE'LL ANALYZE THE DATA TO THE BEST  
19      OF OUR ABILITY AND TALK TO THEM ABOUT WHAT WE SEE IN THE DATA,  
20      AND THEY CAN TALK TO US ABOUT WHAT OTHER THINGS THEY'D LIKE TO  
21      SEE OR OTHER ANALYSES THEY'D LIKE US TO RUN.

22      **Q.**   BUT, ULTIMATELY, DO YOU AS THE DIRECTOR OF RESEARCH GET TO  
23      VOTE ON THE POLICIES?

24      **A.**   I DO NOT, NO.

25      **Q.**   NOW, ONE OF THE FOUR AREAS YOU DESCRIBED WITHIN YOUR

1 RESEARCH DEPARTMENT WAS FINANCES, SO LET'S TALK A LITTLE BIT  
2 ABOUT FINANCES.

3 **A.** SURE.

4 **Q.** THE COURT HAS EXPRESSED SOME INTEREST IN THE FLOW OF  
5 MONEY, SO I THOUGHT WITH YOU WE COULD FOCUS ON THE NCAA AND  
6 THE MONEY THAT COMES INTO THE NCAA AND HOW IT GOES OUT.

7 SO LET'S FIRST TALK ABOUT THE MONEY THAT'S COMING INTO THE  
8 NCAA.

9 **A.** OKAY.

10 **Q.** ALL RIGHT. SO IF WE LOOK AT THE MONEY THAT'S COMING INTO  
11 THE NCAA, LET'S PUT UP Z9.

12 (DEMONSTRATIVE PUBLISHED.)

13 **BY MS. LUEDTKE:**

14 **Q.** THIS IS A STIPULATION ABOUT WHERE THE MONEY GOES THAT THE  
15 PARTIES FILED WITH THE COURT, AND I THOUGHT YOU COULD PROVIDE  
16 A LITTLE MORE DETAIL ON THIS.

17 SO WHAT IS THE PRIMARY CATEGORY OF REVENUE COMING INTO THE  
18 NATIONAL OFFICE OF THE NCAA?

19 **A.** IT WOULD BE THE CBS AND TURNER BROADCASTER AGREEMENT FOR  
20 THE DIVISION I MEN'S BASKETBALL CHAMPIONSHIP. AND I THINK  
21 THAT REPRESENTS ABOUT 85 PERCENT OF -- OF REVENUE TO THE NCAA.

22 **Q.** AND SO THAT'S JUST FOR THE MEN'S BASKETBALL CHAMPIONSHIP,  
23 RIGHT?

24 **A.** DIVISION I MEN'S BASKETBALL.

25 **Q.** AND THEN WHAT ACCOUNTS FOR THE REMAINING 15 PERCENT OR SO

1 OF THE NCAA'S REVENUE? WHAT'S, LET'S SAY, THE NEXT BIGGEST  
2 BUCKET?

3 **A.** YEAH, IT WOULD BE TICKET SALES TO THE CHAMPIONSHIPS. AND,  
4 AGAIN, I THINK THE LION'S SHARE OF THAT WOULD BE THE  
5 DIVISION I'S MEN'S BASKETBALL, BUT OTHER CHAMPIONSHIPS.

6 AND THEN THERE'S --

7 **Q.** OKAY. SO THE NEXT BIGGEST BUCKET WOULD BE MONEY THAT IS  
8 PAID FOR HOSTING THE 89 DIFFERENT SPORTS CHAMPIONSHIPS OR THE  
9 89 DIFFERENT CHAMPIONSHIPS -- HOW MANY CHAMPIONSHIPS?

10 **A.** THE TICKETS THAT WOULD BE SOLD TO THOSE CHAMPIONSHIPS.

11 **Q.** MEN'S BASKETBALL, AS WELL AS OTHER SPORTS?

12 **A.** YES.

13 **Q.** BUT THE LION'S SHARE OF THAT MONEY COMES FROM TICKETS SOLD  
14 TO THE MEN'S BASKETBALL TOURNAMENT?

15 **A.** I BELIEVE SO, YES.

16 **Q.** AND THAT COMES INTO THE NCAA NATIONAL OFFICE?

17 **A.** YES.

18 **Q.** ALL RIGHT. THEN WHAT ARE -- WHAT'S THE NEXT --

19 **A.** THERE ARE OTHER BROADCAST AGREEMENTS TO BROADCAST  
20 CHAMPIONSHIPS OTHER THAN THE DIVISION I MEN'S BASKETBALL  
21 CHAMPIONSHIP, LIKE THE COLLEGE WORLD SERIES THAT'S GOING ON  
22 NOW.

23 AND OTHER SOURCES OF REVENUE, I THINK WE GET A -- A SMALL  
24 AMOUNT FROM, SAY, LICENSING AGREEMENTS, AND THAT SORT OF  
25 THING.

1 Q. DOES THE NCAA GET ANY REVENUE FROM REGULAR SEASON FBS  
2 FOOTBALL?

3 A. NO.

4 Q. SO NEITHER FROM BROADCAST OR FROM TICKET SALES; IS THAT  
5 RIGHT?

6 A. THAT'S CORRECT.

7 Q. AND DOES THE NCAA NATIONAL OFFICE GET ANY BROADCAST OR  
8 TICKET SALES REVENUE FROM POST-SEASON FBS FOOTBALL, FOR  
9 INSTANCE, BOWL GAMES?

10 A. NO. WE DON'T.

11 Q. AND DOES THE NCAA NATIONAL OFFICE GET REVENUE FROM ANY  
12 REGULAR SEASON BASKETBALL GAMES?

13 A. NO.

14 Q. AND DOES THE NCAA NATIONAL OFFICE GET ANY REVENUE FROM,  
15 LET'S SAY, THE BIG TEN CONFERENCE TOURNAMENT THAT MIGHT HAPPEN  
16 AT THE END OF THE REGULAR SEASON?

17 A. NO, THAT -- NO, THAT WOULD BE FOR THE BIG TEN.

18 Q. ALL RIGHT. SO WE CAN TAKE THIS DOWN.

19 NOW, LET'S LOOK AT WHAT THE NCAA DOES WITH THAT MONEY. SO  
20 THE MONEY THAT HAS COME IN PRIMARILY FROM THE BROADCAST RIGHTS  
21 TO THE MEN'S BASKETBALL TOURNAMENT, 85 PERCENT, AND TO A  
22 SMALLER MEASURE THOSE OTHER CATEGORIES YOU JUST DESCRIBED.

23 LET'S BRING UP EXHIBIT 3900.

24 (EXHIBIT PUBLISHED.)

25

1 **BY MS. LUEDTKE:**

2 **Q.** IT'S SMALL THERE ON THE SCREEN, BUT CAN YOU JUST GENERALLY  
3 TELL ME WHAT THIS DOCUMENT IS?

4 **A.** YEAH. IT'S A DOCUMENT THAT ILLUSTRATES WHERE THE REVENUES  
5 THAT WE JUST TALKED ABOUT THAT COME TO THE -- TO THE NCAA, HOW  
6 THEY ARE THEN GENERALLY DISBURSED BACK TO THE MEMBERSHIP AND  
7 TO OTHER SOURCES OVER THE COURSE OF THE YEAR.

8 **Q.** IS THIS A DOCUMENT THAT'S ON NCAA'S WEBSITE AND AVAILABLE  
9 TO THE PUBLIC?

10 **A.** YES, IT IS.

11 **Q.** WHY DOES THE NCAA PUT THIS TYPE OF INFORMATION ABOUT WHERE  
12 ITS MONEY GOES ON ITS WEBSITE?

13 **A.** WELL, FIRST OF ALL, I THINK THE MEMBERSHIP IS QUITE  
14 INTERESTED IN THIS AND, YOU KNOW, AN EXPLANATION OF HOW WE  
15 MAKE OUR DISTRIBUTIONS BACK TO THEM. AND I THINK THERE'S ALSO  
16 PUBLIC -- GENERAL PUBLIC INTEREST IN -- IN THIS TYPE OF  
17 INFORMATION.

18 **Q.** ALL RIGHT. WELL, IF WE GO UP, IF WE BLOW UP THERE ON THE  
19 RIGHT, YOU'LL SEE IT SAYS, "BY THE NUMBERS, HERE'S A LOOK AT  
20 HOW WE SPENT NCAA REVENUES FOR THE 2012-2013 FISCAL YEAR."

21 DO YOU SEE THAT?

22 **A.** I DO.

23 **Q.** ALL RIGHT. LET'S WALK THROUGH SOME OF THE BIGGEST  
24 CATEGORIES OF HOW THE NCAA IS SPENDING ITS MONEY THAT IT  
25 BROUGHT IN FROM THE CATEGORIES YOU JUST DESCRIBED. LET'S PULL

1 UP --

2 **THE COURT:** HOW MUCH DID IT BRING IN? HOW MUCH DID  
3 IT BRING IN? YOU GAVE PERCENTAGES, BUT WHAT ARE THE DOLLAR  
4 AMOUNTS?

5 **THE WITNESS:** IN THE YEAR WE'RE TALKING ABOUT, I  
6 BELIEVE IT WAS AROUND 900 MILLION --

7 **THE COURT:** 900 MILLION.

8 **THE WITNESS:** -- DOLLARS.

9 **BY MS. LUEDTKE:**

10 **Q.** SO LET'S TALK ABOUT THE CATEGORIES OF WHERE THAT  
11 \$900 MILLION GOES.

12 LET'S BRING UP Z2.

13 (EXHIBIT PUBLISHED.)

14 **BY MS. LUEDTKE:**

15 **Q.** SO WE'VE BLOWN UP THE FIRST CATEGORY THERE UNDER --  
16 LOOKING AT WHERE THE REVENUE FOR 2012-2013 GOES. AND IT SAYS,  
17 "188.3 MILLION SPORTS SPONSORSHIP AND GRANTS IN AID FUNDS."

18 DO YOU SEE THAT?

19 **A.** YES.

20 **Q.** CAN YOU DESCRIBE FOR THE -- FOR THE COURT GENERALLY HOW --  
21 WHAT IS THIS CATEGORY, 188 MILLION FOR SPORTS, SPONSORSHIP,  
22 AND GRANTS IN AID FUNDS?

23 **A.** SURE. THIS IS A FUND THAT IS DISTRIBUTED DIRECTLY BACK TO  
24 THE MEMBERSHIP GENERALLY THROUGH THE CONFERENCES THAT PROVIDES  
25 MONEY BACK TO THE MEMBERSHIP BASED ON, ONE, THE NUMBER OF

1 SPORTS THEY SPONSOR, AND TWO, THE NUMBER OF GRANTS IN AID OR  
2 SCHOLARSHIPS THAT THEY PROVIDE TO THEIR STUDENT ATHLETES.

3 Q. GREAT. LET'S BRING UP 3308.

4 (EXHIBIT PUBLISHED.)

5 **BY MS. LUEDTKE:**

6 Q. WHAT IS EXHIBIT 3308?

7 A. THIS IS A -- A DETAILED DESCRIPTION OF THE 2013-14 REVENUE  
8 DISTRIBUTION PLAN, SO THIS DESCRIBES TO THE MEMBERSHIP AND --  
9 AND THE PUBLIC HOW WE INTEND TO DISTRIBUTE THE -- THE MONEY  
10 THAT GOES DIRECTLY BACK TO THE MEMBER INSTITUTIONS.

11 Q. SO THIS IS AVAILABLE ON THE NCAA WEBSITE; IS THAT RIGHT?

12 A. YES, IT IS.

13 Q. SO THE PUBLIC HAS ACCESS TO THIS INFORMATION?

14 A. YES.

15 **MS. LUEDTKE:** LET'S TURN TO 3308-10.

16 (EXHIBIT PUBLISHED.)

17 **MS. LUEDTKE:** AND LET'S --

18 Q. AT THE TOP THERE, IT SAYS "BROAD-BASED DISTRIBUTIONS."

19 DO YOU SEE THAT?

20 A. I DO.

21 Q. NOW, IF WE GO ABOUT DOWN HALFWAY DOWN THE PAGE, IT SAYS,

22 "SPORTS SPONSORSHIP." LET'S BLOW UP THAT SECTION.

23 THIS SECTION ENTITLED, "SPORTS SPONSORSHIP," IS THIS  
24 SETTING FORTH IN SOME MORE DETAIL WHAT YOU WERE TALKING ABOUT  
25 IN TERMS OF DISTRIBUTING MONEY BASED ON THE NUMBER OF SPORTS

1 SPONSORED?

2 **A.** IT IS. AND AS YOU SEE, IT STARTS WITH THE 14TH SPORT.  
3 EVERY DIVISION I INSTITUTION MUST SPONSOR AT LEAST 14 SPORTS,  
4 AND SO YOU GET A SHARE OF THE OVERALL BUDGET FOR THE SPORTS  
5 SPONSORSHIP FUND FOR EVERY SPORT STARTING WITH THE 14TH THAT  
6 YOU -- THAT YOU SPONSOR.

7 **Q.** SO A SCHOOL THAT SPONSORS MORE SPORTS WILL RECEIVE A  
8 BIGGER DISTRIBUTION -- WELL, LET ME STRIKE THAT.

9 WHERE DOES THIS MONEY GO, THE MONEY FROM THE SPORTS  
10 SPONSORSHIP? WHERE IS IT DIRECTLY SENT?

11 **A.** IT'S SENT, FOR THE MOST PART, TO THE CONFERENCE OFFICES.

12 **Q.** IF A SCHOOL DOESN'T BELONG TO A CONFERENCE, WHERE IS IT  
13 SENT?

14 **A.** TO THE SCHOOL DIRECTLY.

15 **Q.** OKAY. SO FOR EACH SCHOOL IN A CONFERENCE, THE NCAA LOOKS  
16 AT HOW MANY SPORTS THAT SCHOOL SPONSORS?

17 **A.** YES.

18 **Q.** AND THEN SENDS THE SPORTS SPONSORSHIP DISTRIBUTION TO  
19 THOSE CONFERENCES BASED ON THE NUMBER OF SPORTS.

20 **A.** EXACTLY.

21 **Q.** ALL RIGHT. LET'S TURN TO 38 -- 3308-10.

22 SORRY. BLOW UP THE BOTTOM THERE, "GRANTS IN AID."

23 (EXHIBIT PUBLISHED.)

24 **BY MS. LUEDTKE:**

25 **Q.** AND THIS IS SETTING FORTH IN MORE DETAIL THE DISTRIBUTION



1       BASED ON THE NUMBER OF GRANTS IN AID OFFERED, CORRECT?

2       **A.**   CORRECT.

3       **Q.**   AND HOW DOES THE NCAA THINK ABOUT HOW IT'S GOING TO  
4       DISTRIBUTE THE GRANTS IN AID REVENUE?

5       **A.**   AGAIN, IT'S DEPENDENT ON HOW MANY GRANTS IN AID AN  
6       INSTITUTION GIVES. I THINK THE IDEA IS TO, AGAIN, ENCOURAGE A  
7       BROAD-BASED PROGRAM. AND FOR PROGRAMS THAT HAVE MORE SPORTS  
8       AND HAVE MORE SCHOLARSHIPS, THEY WILL GET A BIGGER SHARE OF  
9       THIS PARTICULAR PIECE OF THE MONEY.

10      **Q.**   AND IS THE GRANTS IN AID DISTRIBUTION GIVEN TO THE  
11      CONFERENCE?

12      **A.**   IT WILL -- YES.

13      **Q.**   AND THEN IT'S DISTRIBUTED FROM THE CONFERENCE TO THE  
14      SCHOOL BASED ON WHATEVER THAT CONFERENCES SPECIFIC  
15      DISTRIBUTION FORMULA IS?

16      **A.**   YEAH, THE CONFERENCE DETERMINES HOW THEY'RE GOING TO SPLIT  
17      THIS MONEY UP AMONG THEIR INSTITUTIONS.

18                   **MS. LUEDTKE:**   LET'S BRING UP 3308-12.

19                                   (EXHIBIT PUBLISHED.)

20      **BY MS. LUEDTKE:**

21      **Q.**   3308-12, DOES THIS INDICATE THE AMOUNT OF MONEY OVER THE  
22      LAST SEVERAL YEARS THAT'S BEEN DISTRIBUTED TO EACH CONFERENCE  
23      BASED ON THAT SPORTS SPONSORSHIP FORMULA?

24      **A.**   YES, IT DOES. OVER THE THAT LAST FIVE YEARS, I BELIEVE.

25                   **THE COURT:**   SO YOU GIVE IT TO THE CONFERENCES BASED

1 ON HOW MANY SCHOLARSHIPS AND TEAMS THE SCHOOLS HAVE, BUT THE  
2 CONFERENCES, IN TURN, COULD DISTRIBUTE IT BASED ON SOMETHING  
3 TOTALLY DIFFERENT.

4 **THE WITNESS:** YES, THE CONFERENCE AMONG THEMSELVES  
5 CAN AGREE ON HOW THEY WANT TO DISTRIBUTE THESE FUNDS.

6 **BY MS. LUEDTKE:**

7 **Q.** DOES THE NCAA CONTROL HOW THE CONFERENCES DISTRIBUTE THE  
8 MONEY?

9 **A.** NO.

10 **Q.** DO YOU ENCOURAGE THE CONFERENCES TO DISTRIBUTE THE MONEY  
11 IN ANY PARTICULAR WAY?

12 **A.** GENERALLY SPEAKING, WITH SOME OF THESE FUNDS, WE ENCOURAGE  
13 THEM TO DO IT EQUALLY. MAKE THAT ENCOURAGEMENT.

14 **Q.** SO IF WE LOOK AT THESE NUMBERS, YOU'LL SEE THAT FOR THE  
15 NUMBERS OF SPORTS SPONSORED, SOME CONFERENCES RECEIVE MORE  
16 MONEY THAN OTHERS. WHY WOULD THAT BE?

17 **A.** IN THIS CASE, BECAUSE THE -- THE INDIVIDUAL SCHOOLS WITHIN  
18 THOSE CONFERENCES IN AGGREGATE ARE SPONSORING MORE SPORTS THAN  
19 SCHOOLS IN OTHER CONFERENCES.

20 **MS. LUEDTKE:** LET'S TURN TO 3308-13.

21 (EXHIBIT PUBLISHED.)

22 **BY MS. LUEDTKE:**

23 **Q.** WHAT DOES THIS CHART INDICATE?

24 **A.** THIS IS A SIMILAR CHART THAT PROVIDES MONEY THAT WENT  
25 DIRECTLY BACK TO THE CONFERENCES AT THE CONFERENCE LEVEL,

1 AGAIN, ACROSS THE LAST FIVE YEARS FOR THE GRANT IN AID SIDE OF  
2 THIS DISTRIBUTION.

3 Q. SO AS WE SAW WITH THE SPORTS SPONSORSHIP, THESE NUMBERS  
4 DIFFER BY CONFERENCE, CORRECT?

5 A. YES, THEY DO.

6 Q. AND THAT'S BECAUSE DIFFERENT SCHOOLS WITHIN DIFFERENT  
7 CONFERENCES AWARD DIFFERENT NUMBERS OF GRANTS IN AID, CORRECT?

8 A. CORRECT. AND TWO THINGS WOULD DRIVE THAT ONE, THE NUMBER  
9 OF SCHOOLS IN THE CONFERENCE, AND THEN THE NUMBER OF -- OF  
10 GRANTS IN AID GIVEN WITH -- WITHIN THOSE SCHOOLS.

11 Q. SO SOME OF THESE CONFERENCES HAVE MORE MEMBERS THAN  
12 OTHERS?

13 A. YES.

14 Q. AND THAT WOULD LEAD TO A HIGHER NUMBER FOR BOTH  
15 SPONSORSHIP AND GRANTS IN AID?

16 A. I WOULD THINK SO.

17 Q. ALL RIGHT. LET'S GO BACK TO OUR CATEGORIES THAT WERE IN  
18 3900, AND LET'S BRING UP Z3.

19 (EXHIBIT PUBLISHED.)

20 **BY MS. LUEDTKE:**

21 Q. ALL RIGHT. THE NEXT CATEGORY DOWN LISTS 188 MILLION FOR  
22 THE BASKETBALL FUND. COULD YOU DESCRIBE TO THE COURT WHAT THE  
23 BASKETBALL FUND IS?

24 A. THE BASKETBALL FUND IS A FUND THAT'S BASED ON THE SUCCESS  
25 OF CONFERENCE TEAMS IN THE BASKETBALL TOURNAMENT OVER THE LAST

1 SIX YEARS. AND IT'S ESSENTIALLY THE MORE -- THE MORE GAMES  
2 CONFERENCE TEAMS WIN, THE MORE THAT THAT CONFERENCE WILL  
3 RECEIVE FROM THE BASKETBALL FUND, SO IT'S RELATED TO  
4 PERFORMANCE IN THE TOURNAMENT.

5 **Q.** SO THE BASKETBALL FUND IS REVENUE THAT'S COME INTO THE  
6 NCAA NATIONAL OFFICE AND IS DISTRIBUTED TO THE CONFERENCES,  
7 CORRECT?

8 **A.** CORRECT.

9 **Q.** AND THEN THE CONFERENCES DISTRIBUTE IT BASED ON THEIR OWN  
10 DISTRIBUTION FORMULA, CORRECT?

11 **A.** THAT IS TRUE. ON -- IN THE BASKETBALL FUND, THEY ARE  
12 ENCOURAGED TO DISTRIBUTE IT EQUALLY, BUT THAT'S NOT A  
13 REQUIREMENT.

14 **MS. LUEDTKE:** LET'S PULL UP 3308-7.

15 (EXHIBIT PUBLISHED.)

16 **BY MS. LUEDTKE:**

17 **Q.** ALL RIGHT. WITHIN YOUR REVENUE DISTRIBUTION PLAN, IS THIS  
18 IS A MORE COMPLETE AND DETAILED DESCRIPTION OF HOW THE  
19 BASKETBALL FUND IS DISTRIBUTED?

20 **A.** YES.

21 **Q.** AND THIS SETS FORTH HOW A UNIT IS CALCULATED, RIGHT?

22 **A.** I BELIEVE IT DOES. YES.

23 **Q.** SO FOR EACH TEAM THAT GETS TO PLAY ONE ROUND, COMES -- AND  
24 PLAYS IN THE FIRST ROUND OF THE TOURNAMENT BUT LOSES, THEY GET  
25 ONE UNIT, RIGHT?





1 ON THE 39 DIVISION I CHAMPIONSHIPS IN 23 DIFFERENT SPORTS  
2 ACROSS THE ENTIRE ACADEMIC YEAR.

3 IT'S -- IT'S -- IT SUPPORTS TRAVEL LODGING FOR THE TEAMS,  
4 WHATEVER SITE COSTS ARE -- ARE REQUIRED, BUT JUST THE COSTS OF  
5 PUTTING ON THOSE 39 CHAMPIONSHIPS.

6 **Q.** IS MR. LEWIS, WHO'S SITTING OVER AT OUR COUNSEL TABLE THE  
7 PERSON IN CHARGE OF RUNNING ALL THOSE CHAMPIONSHIPS?

8 **A.** HE'S THE KING OF THE CHAMPIONSHIPS, YEAH.

9 **Q.** ALL RIGHT. JUST TO BE CLEAR, WITHIN FOOTBALL, THERE'S FBS  
10 AND FCS, RIGHT?

11 **A.** THAT IS CORRECT.

12 **Q.** NOW, THE NCAA DOESN'T RUN A CHAMPIONSHIP FOR FBS FOOTBALL,  
13 RIGHT?

14 **A.** THAT'S CORRECT. THAT'S THE FOOTBALL BOWL SUBDIVISION AND  
15 THEIR POST-SEASON OPPORTUNITY COMES THROUGH BOWL GAMES.

16 **Q.** BUT FOR FCS, WHICH IS A DIFFERENT SET OF FOOTBALL TEAMS  
17 WHO DON'T PLAY IN THOSE BOWLS BUT ARE STILL WITHIN DIVISION I,  
18 DOES THE NCAA SPONSOR A CHAMPIONSHIP FOR FCS FOOTBALL?

19 **A.** YES, THEY DO. IT'S CALLED THE FOOTBALL CHAMPIONSHIP  
20 SUBDIVISION, AND THERE IS A CHAMPIONSHIP RUN BY THE -- BY THE  
21 NCAA FOR THAT GROUP OF INSTITUTIONS.

22 **MS. LUEDTKE:** ALL RIGHT. LET'S BRING UP Z5.

23 (EXHIBIT PUBLISHED.)

24 **BY MS. LUEDTKE:**

25 **Q.** ALL RIGHT. WE'RE GOING DOWN THE LIST OF CATEGORIES OF HOW

1 THE REVENUE IS SPENT. AND THIS SAYS, "STUDENT ASSISTANCE FUND  
2 73.5 MILLION."

3 CAN YOU TELL THE COURT GENERALLY WHAT THE "STUDENT  
4 ASSISTANCE FUND" IS?

5 **A.** YEAH, THE STUDENT ASSISTANCE FUND COMBINES A COUPLE OF  
6 OTHER FUNDS THAT EXISTED PREVIOUSLY. BUT GENERALLY SPEAKING,  
7 THE STUDENT ASSISTANT FUND ALLOWS FOR STUDENT -- STUDENT  
8 ATHLETES WHO ARE IN NEED TO RECEIVE DIRECT BENEFITS FROM THIS  
9 FUND THAT MIGHT HELP THEM ACADEMICALLY, MIGHT HELP THEM WITH  
10 PERSONAL ISSUES THAT ARISE, MIGHT HELP THEM WITH THINGS LIKE  
11 NEEDED CLOTHING, NEEDED SUPPLIES, A COMPUTER, WHATEVER IT MAY  
12 BE, OTHER -- OTHER SPECIALIZED SUPPLIES FOR THEIR ACADEMIC.

13 SO IT'S THERE TO ASSIST STUDENT ATHLETES WHO HAVE MAYBE  
14 SOME SPECIAL FINANCIAL NEED.

15 **Q.** AND THIS MONEY, LIKE THE OTHERS, GOES TO THE CONFERENCES?

16 **A.** IT IS DISTRIBUTED THROUGH THE CONFERENCES, YES.

17 **Q.** SO THE CONFERENCES ARE THE ONES WHO GIVE IT TO THE  
18 SCHOOLS?

19 **A.** YES.

20 **Q.** BUT THE NCAA GIVES IT TO THE CONFERENCES?

21 **A.** YES.

22 **MS. LUEDTKE:** OKAY. LET'S BRING UP 3308-22.

23 **THE COURT:** I'M SORRY. IS IT LIMITED TO THE COST OF  
24 ATTENDANCE FOR EACH STUDENT?

25 **THE WITNESS:** I DON'T BELIEVE THAT IT IS. I --



1 I'M -- ACTUALLY, I DON'T KNOW THAT. I DON'T KNOW.

2 **BY MS. LUEDTKE:**

3 **Q.** DO YOU HAVE RESPONSIBILITY FOR ADMINISTERING OR  
4 INTERPRETING THE RULES AT THE NCAA?

5 **A.** NO.

6 **Q.** ALL RIGHT. LET'S LOOK AT 3308-22.

7 (EXHIBIT PUBLISHED.)

8 **BY MS. LUEDTKE:**

9 **Q.** IS THIS A GRAPH THAT DEPICTS THE DIFFERENT CATEGORIES OF  
10 ALLOWABLE EXPENSES UNDER THE STUDENT ASSISTANCE FUND?

11 **A.** YES.

12 **Q.** CAN YOU WALK THROUGH -- LET'S TURN TO THE NEXT PAGE,  
13 3308-23, AND LET'S LOOK AT THE TOP, THE FIRST CATEGORY,  
14 "EDUCATIONAL EXPENSES."

15 ARE THESE EXAMPLES OF EDUCATION EXPENSES AND FEES THAT  
16 COULD BE GIVEN TO A STUDENT ATHLETE THROUGH THE STUDENT  
17 ASSISTANCE FUND?

18 **A.** YES, THEY -- THEY ARE.

19 **Q.** WHAT ARE SOME OF THOSE EXAMPLES?

20 **A.** IF A STUDENT ATHLETE NEEDS TO GO TO SUMMER SCHOOL, THE  
21 TUITION FOR SUMMER SCHOOL COULD BE PAID THROUGH THIS. IF THEY  
22 EXHAUSTED THEIR ELIGIBILITY BUT AREN'T QUITE FINISHED WITH A  
23 THE DEGREE, THEY COULD GET THE -- THAT WOULD BE THE FIFTH OR  
24 SIXTH YEAR AID. AGAIN, THINGS LIKE TUTORING, EDUCATIONAL  
25 SUPPLIES, IF THEY NEED SPECIAL TESTING, THAT -- THAT COULD

1 COME OUT OF THIS PROGRAM.

2 I WOULD GUESS THE MAJORITY IS IN THE TUITION AND/OR  
3 TUTORING AREA, BUT -- BUT ALL OF THOSE ARE AVAILABLE.

4 **MS. LUEDTKE:** IF WE WENT BACK TO THAT GRAPH ON  
5 3308-22 --

6 (EXHIBIT PUBLISHED.)

7 **BY MS. LUEDTKE:**

8 **Q.** -- WHAT PERCENTAGE OF THE STUDENT ASSISTANCE FUND GOES TO  
9 EDUCATIONAL EXPENSES?

10 **A.** IT LOOKS LIKE ALMOST HALF. I'M HAVING A HARD TIME READING  
11 THE EXACT PERCENT, BUT MAYBE 48 OR SO.

12 **Q.** ALL RIGHT. LET'S LOOK AT THE CATEGORY OF HEALTH AND  
13 SAFETY EXPENSES.

14 WHAT ARE SOME EXAMPLES OF HEALTH AND SAFETY EXPENSES THAT  
15 CAN GO TO STUDENT ATHLETES FROM THE STUDENT ASSISTANCE FUND?

16 **A.** IF A STUDENT ATHLETE NEEDS A SPECIAL INSURANCE POLICY,  
17 THEY COULD PAY FOR THE PREMIUM THROUGH THAT. OBVIOUSLY,  
18 MEDICAL, DENTAL, VISION EXPENSES THAT AREN'T COVERED BY OTHER  
19 INSURANCE FOR A STUDENT ATHLETE CAN BE USED TO TAKE CARE OF  
20 THOSE ISSUES FOR THAT -- FOR THAT PERSON.

21 IN GENERAL, JUST HEALTH AND SAFETY KINDS OF -- KINDS OF  
22 EXPENSES TO TRY TO KEEP THE HEALTH IN THE BEST ORDER THAT WE  
23 CAN.

24 **Q.** IF WE GO BACK TO 3308-22, THAT GRAPH, ABOUT WHAT  
25 PERCENTAGE OF THE STUDENT ASSISTANCE FUND COMES -- GOES TO

1 HEALTH AND SAFETY EXPENSES?

2 **A.** ABOUT A QUARTER OF -- OF THE STUDENT ASSISTANT FUNDS IS IN  
3 THAT CATEGORY.

4 **Q.** AND THEN IF YOU LOOK AT THAT SAME GRAPH, 21 PERCENT OF THE  
5 STUDENT ASSISTANCE FUND GOES TO HELP WITH PERSONAL OR FAMILY  
6 EXPENSES; IS THAT RIGHT?

7 **A.** YEAH. YES.

8 **Q.** CLOSE TO \$13 MILLION?

9 **A.** YES.

10 **MS. LUEDTKE:** ALL RIGHT. LET'S TURN BACK TO 3308-23.  
11 LET'S LOOK AT THOSE PERSONAL OR FAMILY EXPENSES.

12 (EXHIBIT PUBLISHED.)

13 **BY MS. LUEDTKE:**

14 **Q.** WHAT ARE SOME EXAMPLES OF PERSONAL OR FAMILY EXPENSES FOR  
15 A STUDENT ATHLETE THAT CAN BE REIMBURSED THROUGH THE STUDENT  
16 ASSISTANCE FUND?

17 **A.** WELL, ON TOP, YOU HAVE CLOTHING, AND I THINK THAT THAT  
18 COULD BE, SAY, NEEDING A FORMAL ATTIRE FOR A BANQUET OR  
19 SOMETHING THAT YOU'VE BEEN INVITED TO. OR IF YOU COME FROM A  
20 SOUTHERN CLIMATE AND YOU NEED A WINNER COAT BECAUSE YOU'VE  
21 ENDED UP IN THE NORTHEAST, THAT KIND OF THING WOULD BE  
22 APPROPRIATE UNDER THIS FUND.

23 TRAVEL TO -- IF A FAMILY EMERGENCY OR A FAMILY FUNERAL OR  
24 SOMETHING LIKE THAT WHERE YOU NEED TO BE HOME AND YOU CAN'T  
25 AFFORD TO OTHERWISE GET THERE, THIS FUND WOULD COVER THOSE

1 EXPENSES. ANY OTHER, YOU KNOW, PERSONAL OR FAMILY EXPENSES  
2 THAT CAUSE THAT INDIVIDUAL DIFFICULTY FOR, YOU KNOW, STAYING  
3 ON CAMPUS OR STAYING ON TRACK ACADEMICALLY, I THINK WOULD  
4 BE -- WOULD BE COVERED.

5 **Q.** SO THE STUDENT WOULD GO TO THEIR SCHOOL AND REQUEST HELP  
6 FROM THE STUDENT ASSISTANCE FUND?

7 **A.** YES.

8 **Q.** AND THEN THAT MONEY WOULD FLOW FROM THE NCAA THROUGH THE  
9 CONFERENCE TO THE SCHOOL; IS THAT RIGHT?

10 **A.** I BELIEVE THAT'S RIGHT. YES.

11 **Q.** NOW, THIS MONEY IS ALL FUNDED BY THE BROADCAST RIGHTS TO  
12 THE NCAA MEN'S BASKETBALL TOURNAMENT, RIGHT?

13 **A.** YES.

14 **Q.** AND DO THESE PROGRAMS YOU'VE DESCRIBED WITHIN THE STUDENT  
15 ASSISTANCE FUND, DO THEY BENEFIT DIVISION I FOOTBALL AND MEN'S  
16 BASKETBALL PLAYERS?

17 **A.** YES, THEY DO.

18 **MS. LUEDTKE:** ALL RIGHT. LET'S GO BACK TO OUR LIST  
19 OF CATEGORIES --

20 **THE WITNESS:** OKAY.

21 **MS. LUEDTKE:** -- Z6.

22 (EXHIBIT PUBLISHED.)

23 **BY MS. LUEDTKE:**

24 **Q.** ALL RIGHT. NEXT DOWN THE LIST, WE HAVE 25 MILLION FOR THE  
25 ACADEMIC ENHANCEMENT FUND. SO THIS IS \$25 MILLION GOING AGAIN

1 FROM THE NCAA TO THE CONFERENCES; IS THAT RIGHT?

2 **A.** THIS ONE, I THINK, GOES DIRECTLY TO THE INSTITUTIONS.

3 **Q.** OKAY.

4 **A.** JUST -- EVERY INSTITUTION GETS THE SAME AMOUNT OF MONEY.

5 **Q.** ALL RIGHT. SO THIS \$25 MILLION IS DIVIDED EQUALLY AMONGST  
6 ALL DIVISION I INSTITUTIONS?

7 **A.** CORRECT.

8 **Q.** AND FOR WHAT PURPOSE IS THE ACADEMIC ENHANCEMENT FUND?

9 **A.** IT'S MEANT FOR THOSE INSTITUTIONS TO ENHANCE THE ACADEMIC  
10 SUPPORT OF STUDENT ATHLETES ON THEIR CAMPUS. THEY COULD USE  
11 IT FOR BRINGING IN A LEARNING SPECIALIST OR BUYING MORE  
12 COMPUTERS OR OTHER NEEDED INFRASTRUCTURE FOR THEIR ACADEMIC  
13 SUPPORT CENTER, TUTORING FOR STUDENT ATHLETE, SO ANYTHING THAT  
14 HELPS TO SUPPORT THE ACADEMIC ENDEAVORS OF THE STUDENT  
15 ATHLETE, I THINK ARE -- ARE FAIR GAME UNDER THIS PROGRAM.

16 **MS. LUEDTKE:** ALL RIGHT. NOW, LET'S GO BACK TO OUR  
17 LIST HERE, Z7.

18 (EXHIBIT PUBLISHED.)

19 **BY MS. LUEDTKE:**

20 **Q.** ALL RIGHT. 63.2 MILLION GOES TO DIVISION II AND DIVISION  
21 III ALLOCATIONS. COULD YOU DESCRIBE WHAT THAT IS?

22 **A.** YEAH. THE NCAA CONSTITUTION HAS PROVISIONS IN IT THAT SAY  
23 THAT A PERCENTAGE OF THE TOTAL REVENUE WILL BE AUTOMATICALLY  
24 DISTRIBUTED TO DIVISION II AND DIVISION III.

25 AND THEN DIVISION II AND III ARE GRANTED THAT MONEY, WHICH

1 IN THIS YEAR YOU WERE LOOKING AT WAS -- WAS \$63.2 MILLION.  
2 AND THEY ESSENTIALLY THEN AUTONOMOUSLY USE THAT MONEY TO BEST  
3 SERVICE THEIR STUDENT ATHLETE'S NEEDS.

4 A LOT OF THIS WILL END UP RUNNING THEIR CHAMPIONSHIPS. WE  
5 HAVE 50 MORE CHAMPIONSHIPS AT THE DIVISIONS II AND III LEVEL.

6 IT ALSO FUNDS THEIR GOVERNANCE STRUCTURE, THEIR -- YOU  
7 KNOW, THEIR COMMITTEES SPECIFIC TO DIVISION II AND  
8 DIVISION III, AND IT FUNDS THAT STRUCTURE.

9 AND OTHER SERVICES. THEY HAVE THEIR OWN SPECIAL GRANTS  
10 FOR STUDENT ATHLETES, THEIR OWN SPECIAL LEADERSHIP ACADEMIES,  
11 AWARDS, WHATEVER THAT MAY BE. WHATEVER PROGRAM THEY WANT TO  
12 FUND, AGAIN, THAT'S SORT OF DETERMINED BY THE DIVISION II AND  
13 III MEMBERSHIP.

14 Q. SO THIS IN PAST YEAR, THE 900 SOME MILLION COMES INTO  
15 THE --

16 (OFF-THE-RECORD DISCUSSION.)

17 **BY MS. LUEDTKE:**

18 Q. IN THIS PAST YEAR, THE 900 OR SO MILLION DOLLARS CAME INTO  
19 THE NCAA NATIONAL OFFICE. AND OF THAT, 63.2 MILLION WAS USED  
20 TO FUND DIVISION II AND DIVISION III'S CHAMPIONSHIPS AND OTHER  
21 SUPPORT; IS THAT RIGHT?

22 A. CORRECT.

23 **MS. LUEDTKE:** LET'S PULL UP Z8.

24 (EXHIBIT PUBLISHED.)

25

1 **BY MS. LUEDTKE:**

2 **Q.** NOW, THIS IS THE NEXT CATEGORY DOWN. THIS SAYS THAT OF  
3 THE REVENUE THAT CAME INTO THE NCAA, MOSTLY FROM THE MEN'S  
4 BASKETBALL TOURNAMENT BROADCAST RIGHTS, 57.8 MILLION WENT TO  
5 STUDENT ATHLETE SERVICES; IS THAT CORRECT?

6 **A.** THAT'S CORRECT.

7 **Q.** CAN YOU TELL THE COURT WHAT ARE THESE STUDENT ATHLETE  
8 SERVICES THAT FALL UNDER THIS 57.8 MILLION?

9 **A.** SURE. THERE'S AN ELEMENT OF OUR HEALTH AND STATE PROGRAMS  
10 WHICH -- WHICH ARE RUN BY OUR CHIEF -- OUT OF OUR CHIEF  
11 MEDICALS -- OFFICER'S OFFICE. IT INCLUDES ISSUES AROUND  
12 CATASTROPHIC INJURY INSURANCE FOR STUDENT ATHLETES, DRUG  
13 TESTING. WE HAVE A BUNCH OF LEADERSHIP DEVELOPMENT PROGRAMS  
14 THAT WE RUN THROUGH THIS. ALSO SCHOLARSHIP PROGRAMS,  
15 POSTGRADUATE SCHOLARSHIP PROGRAMS, AS WELL AS DEGREE  
16 COMPLETION SCHOLARSHIP PROGRAMS COME FROM -- FROM THIS  
17 \$57.8 MILLION.

18 AND, FINALLY, THE KINDS OF HONOR CEREMONIES THAT WE DO AT  
19 THE CONVENTION OR THE WOMAN OF THE YEAR WHERE WE HONOR STUDENT  
20 ATHLETES -- EXCEPTIONAL STUDENT ATHLETES IN THESE CEREMONIES  
21 ARE INCLUDED IN THAT -- IN THAT BUDGET ITEM.

22 **Q.** AND THIS IS SOMETHING THAT WOULD BENEFIT DIVISION I MEN'S  
23 BASKETBALL AND FOOTBALL PLAYERS?

24 **A.** SURE.

25 **Q.** AS WELL AS STUDENT ATHLETES IN OTHER SPORTS, CORRECT?

1       **A.**   UM-HMM.

2       **Q.**   YOU HAVE TO --

3       **A.**   SORRY, YES.   YES.

4       **Q.**   HAVE YOU HEARD OF THE ACCELERATING ACADEMIC SUCCESS  
5       PROGRAM?

6       **A.**   I HAVE.

7       **Q.**   WHAT IS THAT?

8       **A.**   THAT'S A PROGRAM THAT WAS RECENTLY IMPLEMENTED WHERE WE'VE  
9       TAKEN ABOUT 5- OR \$6 MILLION TO TRY TO HELP THOSE INSTITUTIONS  
10      WHO STRUGGLE FINANCIALLY, WHO -- THAT'S WHY WE CALL IT THE --  
11      WE CALL THEM THE LIMITED RESOURCE INSTITUTIONS.  AND IT'S NOT  
12      JUST WITHIN THE ATHLETIC DEPARTMENT, BUT THE -- YOU KNOW, WE  
13      TAKE INTO ACCOUNT INSTITUTIONAL FINANCES AND INSTITUTIONAL  
14      RESOURCES AS WELL.

15           THE GOAL THERE IS -- IS TO SET A -- A SET OF GRANTS TO A  
16      SET OF INSTITUTIONS THAT -- THAT CAN GO UP TO \$900,000 OVER  
17      THREE YEARS TO DEVELOP PROGRAMMING FOR THE STUDENT ATHLETE  
18      POPULATION SPECIFICALLY FOCUSED ON ACADEMICS AND ACADEMIC  
19      SUCCESS OF THOSE STUDENT ATHLETES TO TRY TO INCREASE THE --  
20      THE ACADEMIC OUTPUT AT THOSE INSTITUTIONS BECAUSE THOSE  
21      INSTITUTIONS GENERALLY HAVE STRUGGLED TO -- TO GET THE STUDENT  
22      ATHLETES THROUGH AND -- AND FIND THEMSELVES GENERALLY ON THE  
23      LOWER END OF GRAD RATES AND OTHER ACADEMIC METRICS.

24           AND SO THE NCAA IS TRYING TO FUND PROGRAMS AT SOME OF  
25      THESE INSTITUTIONS THAT, THEN, HOPEFULLY WILL SERVE AS PILOT



1 PROGRAMS FOR OTHER INSTITUTIONS AS WE ASSESS WHAT WORKS OUT OF  
2 THESE FIRST SIX OR SEVEN PROGRAMS AND WHAT -- WHAT MAY NOT  
3 HAVE WORKED.

4 BUT -- BUT TO REALLY TRY TO DETERMINE THE TYPES OF  
5 INTERVENTIONS WE CAN MAKE AT THIS TYPE OF INSTITUTION TO  
6 INCREASE ACADEMIC SUCCESS AT THOSE SCHOOLS.

7 **Q.** ARE THESE LIMITED RESOURCE INSTITUTIONS THAT YOU DESCRIBED  
8 THAT ARE ELIGIBLE FOR MONEY FROM THE ACCELERATING ACADEMIC  
9 SUCCESS PROGRAM DIVISION I SCHOOLS?

10 **A.** YES, THEY'RE ALL DIVISION I SCHOOLS.

11 **Q.** AND WAS IT THE MEMBERS OF THE NCAA DIVISION I WHO DECIDED  
12 TO CREATE THIS PROGRAM?

13 **A.** YES, IT WAS -- IT WAS FROM THE -- THE DIVISION I BOARD.

14 **Q.** CAN YOU GIVE AN EXAMPLE OF ONE OF THE TYPES OF PROGRAMS  
15 THAT HAVE BEEN FUNDED BY THIS DISTRIBUTION OF MONEY THROUGH  
16 THE ACCELERATING ACADEMIC SUCCESS PROGRAMS?

17 **A.** YEAH, WE HAVE SEVERAL -- AND, AGAIN, AS I SAID, I THINK WE  
18 HAVE SIX DIFFERENT SITES GOING RIGHT NOW, AND THEY'RE DOING  
19 DIFFERENT TYPES OF THINGS. SOME OF THEM ARE ENHANCING THE  
20 ACADEMIC CENTERS ON CAMPUS BOTH IN TERMS OF FACILITIES THAT  
21 THEY PROVIDE, MAYBE IN TERMS OF INFRASTRUCTURE AND COMPUTER,  
22 BUT ALSO IN TERMS OF PERSONNEL.

23 THEY'RE ADDING LEARNING SPECIALISTS. THEY'RE ADDING MORE  
24 ACADEMIC ADVISORS. SO -- WE HEARD STORIES WHERE A COUPLE OF  
25 THESE SCHOOLS, THERE WAS ONE ACADEMIC ADVISOR FOR 500 STUDENT

1 ATHLETES. THEY'VE ADDED A COUPLE MORE, AND THE RATIO NOW IS  
2 MUCH MORE REASONABLE.

3 OTHERS OF THEM HAVE BEEN CREATIVE IN THE WAY THEY WANT TO  
4 DEAL WITH -- SOME OF THESE SCHOOLS HAVE TO SPENT A LOT OF TIME  
5 ON THE ROAD, ESPECIALLY EARLY IN THE SEASON FOR VARIOUS  
6 REASONS. AND SO THEY'VE CREATED BETTER INFRASTRUCTURE, LIKE  
7 WI-FI AVAILABLE ON THE BUS AND WI-FI AVAILABLE IN THE HOTEL,  
8 SORT OF PORTABLE WI-FI SYSTEMS WITH TABLETS AND LAPTOPS THAT  
9 THE -- THAT THE STUDENT ATHLETES CAN USE.

10 AND, IN FACT, WE WERE TOLD AT ONE RECENT CONFERENCE  
11 CHAMPIONSHIP THAT ONE OF -- ONE OF THE INSTITUTIONS THAT HAD  
12 REALLY A -- A HIGHLY DEVELOPED WI-FI SYSTEM AND WAS ABLE TO  
13 SET SORT OF A TENT UP ON THE OUTSKIRTS OF THE TRACK AND FIELD  
14 CHAMPIONSHIPS HAD STUDENT ATHLETES FROM ALL THE SCHOOLS COMING  
15 IN, USING THE WI-FI TRYING TO -- TRYING TO -- YOU KNOW, YOU  
16 COULD SEE THAT -- THAT IT WAS A NEED THAT WAS BEING MET RIGHT  
17 THERE IN THAT -- IN THAT FACILITY AND SO -- SO WE HAVE HIGH  
18 HOPES THAT THIS PROGRAM WILL LEAD US TO -- TO REALLY BE ABLE  
19 TO DEVELOP BEST PRACTICES FOR A LOT OF THESE INSTITUTIONS AND  
20 HELP THEIR STUDENT ATHLETES GET -- GET THROUGH SOME OF THESE  
21 ISSUES THAT THEY FACE THAT MAY BE UNIQUE AND WE DON'T SEE IN  
22 SOME OF THE OTHER TYPES OF INSTITUTIONS.

23 **Q.** HOW WOULD THE NCAA FACILITATE THE COMMUNICATION OF THOSE  
24 BEST PRACTICES THAT ARE DEVELOPED?

25 **A.** WELL, FIRST, THERE'LL BE AN ASSESSMENT AT THE END

1 OF THE -- IN FACT, THERE'S AN ANNUAL ASSESSMENT FOR THESE  
2 PROGRAMS. AND THEN -- AND WE'LL LOOK AT THE ACTUAL OUTCOMES  
3 ON THOSE -- ON THOSE CAMPUSES, HAVE WE MOVED THE NEEDLE IN  
4 TERMS OF GRADUATION RATES, ELIGIBILITY RETENTION OF THE  
5 STUDENT ATHLETES, HAVE THINGS NOTICEABLY CHANGED. AND FOR  
6 THOSE THAT DON'T, IT WILL BE OUR INTENTION, I'M SURE, TO -- TO  
7 PREPARE EDUCATIONAL MATERIALS AND PUT IT ON OUR WEBSITE AND  
8 THESE LIMITED RESOURCE INSTITUTIONS WE BRING TOGETHER ONCE A  
9 YEAR -- BOTH THOSE THAT HAVE THESE GRANTS AND THOSE THAT  
10 DON'T, WE BRING THEM TOGETHER FOR A THREE-DAY CONFERENCE. I'M  
11 SURE THAT -- THAT DISCUSSIONS OF WHAT'S WORKED AND WHAT HASN'T  
12 WILL BE A CENTERPIECE OF THAT CONFERENCE AS WE GO FORWARD.

13 SO THERE'S AN ONGOING EFFORT AMONG THE NCAA TO WORK WITH  
14 THESE LIMITED RESOURCE INSTITUTIONS TO HELP THEM HELP THEIR  
15 STUDENT ATHLETES.

16 **Q.** DOES MONEY THAT COMES INTO THE NCAA FROM THE MEN'S  
17 BASKETBALL TOURNAMENT HELP FUND CONFERENCES SUCH AS THE ONE  
18 YOU JUST DESCRIBED?

19 **A.** YES.

20 **Q.** AND THESE PROGRAMS YOU DESCRIBED FOR THE ACCELERATING  
21 ACADEMIC SUCCESS PROGRAMS, DO THOSE BENEFIT MEN'S DIVISION I  
22 FOOTBALL AND BASKETBALL PLAYERS?

23 **A.** YES.

24 **Q.** AS WELL AS THOSE IN OTHER SPORTS?

25 **A.** YES.



1 DIRECTLY -- EXCUSE ME -- DIRECTLY TO THE INSTITUTIONS FROM THE  
2 ASSOCIATION, AGAIN, I THINK PROBABLY THROUGH THE CONFERENCE --  
3 THAT SYSTEM THAT -- THAT IS DEVELOPED THROUGH THE CONFERENCE  
4 BACK TO THE INSTITUTION.

5 **MS. LUEDTKE:** ALL RIGHT. LET'S TURN TO THE THIRD  
6 PAGE OF 3900. AT THE TOP THERE, 8.5 MILLION, "CONFERENCE  
7 GRANTS."

8 (EXHIBIT PUBLISHED.)

9 **BY MS. LUEDTKE:**

10 **Q.** DO YOU SEE THAT?

11 **A.** UH-HUH.

12 **Q.** IT SAYS, THESE GRANTS ARE USED --

13 **THE COURT:** I DON'T NEED A LOT OF DETAIL.

14 **MS. LUEDTKE:** SURE.

15 **THE COURT:** WE'RE UP TO ABOUT 500 MILLION NOW. I'M  
16 LOOKING FOR THE BIG PICTURE.

17 **MS. LUEDTKE:** ALL RIGHT. LET'S PULL BACK UP TO THE  
18 FULL PAGE.

19 (EXHIBIT PUBLISHED.)

20 **BY MS. LUEDTKE:**

21 **Q.** GO DOWN TO THE BOTTOM, 27.7 MILLION MEMBERSHIP SUPPORT  
22 SERVICES. DO YOU SEE THAT?

23 **A.** YEP. THIS IS ESSENTIALLY THE -- THE RULES SIDE OF THINGS,  
24 SO INTERPRETING THE RULES, ENFORCING THE RULES. THAT'S WHAT  
25 IT COSTS TO -- TO KIND OF RUN THE MANUAL AND -- AND ENSURE

1 THAT OUR MEMBERSHIP FIRST UNDERSTANDS THE RULES AND THEN IS  
2 ABIDING BY THE RULES.

3 Q. SO IF A MEMBER HAS A QUESTION ABOUT --

4 THE COURT: THAT'S FINE.

5 MS. LUEDTKE: OKAY.

6 LET'S GO TO THE NEXT PAGE 3900-4.

7 (EXHIBIT PUBLISHED.)

8 MS. LUEDTKE: THE TOP THERE, 4.7 MILLION GOING DOWN.

9 (EXHIBIT PUBLISHED.)

10 BY MS. LUEDTKE:

11 Q. "EDUCATIONAL SERVICES." DO YOU SEE THAT?

12 A. YES.

13 Q. WHAT IS THIS GENERALLY?

14 A. IT'S A GROUP OF -- OF PROGRAMS THAT WE PROVIDE TO EDUCATE  
15 COACHES AND STUDENT ATHLETES.

16 THE COURT: THAT'S FINE.

17 BY MS. LUEDTKE:

18 Q. ALL RIGHT. LET'S GO BACK TO THE LIST HERE. LET'S GO DOWN  
19 TO THE 27.9 MILLION. DO YOU SEE THAT?

20 A. YEAH.

21 Q. "OTHER ASSOCIATION-WIDE EXPENSES," WHAT ARE THOSE  
22 GENERALLY?

23 A. YEAH, THESE ARE LEGAL SERVICES, COMMUNICATIONS, BUSINESS  
24 INSURANCE, IT'S JUST SORT OF COST OF DOING BUSINESS KIND OF  
25 THINGS.

1 Q. ALL RIGHT. AND BELOW THAT ON 3900, 40.7 MILLION?

2 A. AND THAT'S GOING TO BE SORT OF THE GENERAL ADMINISTRATIVE  
3 EXPENSES THAT PROBABLY ACCRUE MOST IN THE NATIONAL OFFICE  
4 THINGS, LIKES ACCOUNTING, I.T. SUPPORT, JUST THE -- AGAIN,  
5 THE -- KEEPING THE LIGHTS ON AND KEEPING THE BUILDINGS OPEN  
6 KIND OF THING, AND THE UNDERLYING BUSINESS INFRASTRUCTURE OF  
7 THE NATIONAL OFFICE.

8 Q. ALL RIGHT. THANK YOU, MR. PETR.

9 WHAT IS THE TOTAL NUMBER OF ATHLETIC GRANT IN AID  
10 SCHOLARSHIP MONEY?

11 **THE COURT:** SO WHERE DOES REST OF IT GO? I THINK  
12 WE'RE UP TO ABOUT 600 MILLION NOW, SO HE'S GOT 300 MILLION TO  
13 GO.

14 **MS. LUEDTKE:** STANDING RIGHT HERE, YOUR HONOR, I  
15 DON'T KNOW. WE'LL HAVE HIM BACK ON THE STAND ON MONDAY. WE  
16 CAN HAVE HIM FOLLOW UP ON THAT, YOUR HONOR.

17 Q. WHAT IS THE TOTAL NUMBER OF ATHLETIC GRANT IN AID  
18 SCHOLARSHIP MONEY AWARDED TO STUDENT ATHLETES IN DIVISION I?

19 A. SORRY, THE --

20 Q. WHAT IS THE TOTAL NUMBER OF GRANT -- ATHLETIC GRANT IN AID  
21 SCHOLARSHIP MONEY AWARDED TO STUDENT ATHLETES IN DIVISION I?

22 A. ACROSS THE WHOLE DIVISION?

23 Q. CORRECT.

24 A. IT'S ABOUT \$2 BILLION.

25 Q. AND OF THAT ABOUT \$2 BILLION, HOW MUCH OF THAT IS GRANT IN

1 AID SCHOLARSHIP MONEY FOR FOOTBALL AND MEN'S BASKETBALL?

2 **A.** ABOUT 500 MILLION.

3 **Q.** NOW, THAT'S NOT COMING FROM THE NCAA NATIONAL OFFICE,  
4 RIGHT?

5 **A.** NO, THAT WOULD BE GRANTED BY THE INSTITUTIONS.

6 **MS. LUEDTKE:** YOUR HONOR, I'M TRYING TO SEE IF I HAVE  
7 A FIVE-MINUTE MODULE. WOULD YOU LIKE ME TO START A NEW  
8 MODULE, OR WOULD YOU LIKE --

9 **THE COURT:** SURE.

10 (PAUSE IN THE PROCEEDINGS.)

11 **BY MS. LUEDTKE:**

12 **Q.** ALL RIGHT. DO YOU KNOW WHAT THE GOALS STUDY IS?

13 **A.** I DO.

14 **Q.** WE'VE HEARD SOME TESTIMONY IN THE TRIAL ABOUT THE GOALS  
15 STUDY. CAN YOU -- IS YOUR RESEARCH DEPARTMENT RESPONSIBLE FOR  
16 ADMINISTERING THE GOALS STUDY?

17 **A.** YES, WE ARE.

18 **Q.** HOW IS GOALS DATA COLLECTED?

19 **A.** THE GOALS STUDY IS A STUDY OF CURRENT STUDENT ATHLETES.  
20 STUDENT ATHLETES ON OUR CAMPUS AT THE TIME THAT WE ARE  
21 CONDUCTING THE STUDY. WE WORK THROUGH -- AND THIS IS A MODEL  
22 WE'VE USED SUCCESSFULLY FOR A LOT OF DIFFERENT STUDIES.

23 BUT IN OUR GOALS STUDY, WE WORK THROUGH OUR FACULTY  
24 ATHLETIC REPRESENTATIVES. THERE IS A FACULTY ATHLETIC REP ON  
25 ALL OF YOUR CAMPUSES. AND WHAT WE DO IS WE ASK THE FACULTY



1 ATHLETIC REP TO HELP US ADMINISTER THIS STUDY IN A VERY  
2 SPECIFIC PROCTORED WAY AMONG A SET OF STUDENT ATHLETES. AND  
3 WE ASSIGN THE TEAMS THAT EACH FACULTY REP IS SUPPOSED TO  
4 SURVEY ON THEIR CAMPUS SO THAT WE CAN CONTROL THAT WE HAVE A  
5 REPRESENTATIVE SAMPLE ACROSS SPORT, ACROSS DIVISION, SO THAT  
6 WHEN WE PULL ALL THE DATA TOGETHER, IT'S NATIONALLY  
7 REPRESENTED.

8 SO WE ASSIGN THE FACULTY REP TWO OR THREE TEAMS THAT WE'D  
9 LIKE THEM TO PULL TOGETHER. WE TELL THEM EXACTLY HOW WE WANT  
10 THE SURVEY TO BE ADMINISTERED. WE PROVIDE THEM A SCRIPT THAT  
11 THEY'RE TO READ AT THE BEGINNING. AND WE -- AND WE ALSO  
12 PROVIDE THE APPROPRIATE ENVELOPES THAT CAN BE SEALED SO THAT  
13 THE STUDENT ATHLETES CAN RIGHT THERE, AS THEY FINISH THEIR  
14 SURVEY, THE SURVEYS GO IN THE ENVELOPED, THEY'RE SEALED,  
15 THEY'RE IN A FEDEX ENVELOPE THAT THEN COMES TO A THIRD-PARTY  
16 VENDOR FOR DATA KEY.

17 **Q.** DO YOU TAKE THOSE STEPS TO ENSURE THE ACCURACY OF THE  
18 DATA?

19 **A.** WE TAKE THOSE STEPS TO ENSURE THE ACCURACY AND TO ENSURE  
20 THAT STUDENT ATHLETES UNDERSTAND THAT THEIR RESPONSES WILL BE  
21 KEPT CONFIDENTIAL, YES.

22 **Q.** SO ON THE GOALS STUDY, THEY IDENTIFY THEIR TEAM BUT NOT  
23 THEIR NAME?

24 **A.** YES.

25 **Q.** DO THEY IDENTIFY THEIR SCHOOL?

1       **A.** NO.

2       **Q.** WHY DID THE NCAA DECIDE TO CONDUCT THE GOALS STUDY?

3       **A.** WELL, THE REAL GENESIS WAS THAT WE HAD CONDUCTED LOTS OF  
4       STUDIES OVER TIME OF -- OF PREDICTIONS OF STUDENT ATHLETES'  
5       SUCCESS IN CAMPUS. BUT THOSE ALWAYS FOCUSED ON THINGS LIKE --  
6       THAT WE ALL KNOW ARE PREDICTIVE, GPA IN HIGH SCHOOL, TEST  
7       SCORES, TYPES OF COURSES THAT YOU'VE TAKEN. AND WE'VE DONE  
8       SOME VERY GOOD STUDIES ON THAT, BUT -- BUT WHERE IT'S US OR  
9       IT'S THE TESTING COMPANIES OR IT'S OTHER NATIONAL HIGHER --  
10      RESEARCH ORGANIZATIONS, WE ALL SEE THAT, YOU KNOW, OUR BEST  
11      EFFORTS STILL LEAVE 40 TO 50 PERCENT OF THE -- OR 50 TO 60  
12      PERCENT OF THE VARIANCE THAT'S OUT THERE IN TERMS OF FINANCIAL  
13      ACADEMIC SUCCESS UNEXPLAINED.

14             SO ONE OF THE MAIN GOALS WAS TO TRY TO EXPAND ON OUR  
15      KNOWLEDGE, WHAT EXPLAINS ACADEMIC SUCCESS, SO YOU COULD HAVE  
16      YOU HAVE SOME VERY HIGH LEVEL, PEOPLE WHO BRING IN VERY HIGH  
17      CREDENTIALS WHO DON'T SUCCEED. AND YOU HAVE PEOPLE WHO BRING  
18      IN VERY LOW CREDENTIALS WHO SUCCEED GRANDLY.

19             AND SO WE WANTED TO GET AT SOME OF THE OTHER FEATURES THAT  
20      MIGHT BE IMPORTANT IN TRYING TO ASSESS WHO WOULD SUCCEED IN  
21      COLLEGE AND WHO WON'T. THAT WAS REALLY THE BEGINNING IMPETUS  
22      OF IT. BUT THEN WE ADD ON THINGS LIKE JUST -- WE WANT TO KNOW  
23      ABOUT YOUR -- WE WANT TO KNOW MORE FROM THE STUDENT ATHLETES  
24      DIRECTLY ABOUT THEIR FEELINGS ABOUT THEIR EXPERIENCES ON  
25      CAMPUS.

1 AND SO THERE WAS SORT OF MULTIPLE GOALS HERE, BUT I WOULD  
2 SAY THE FIRST ONE IS JUST BETTER UNDERSTAND THE SUCCESS AND  
3 FAILURE OF STUDENT ATHLETES.

4 **THE COURT:** ALL RIGHT. WE'LL BREAK FOR THE DAY.

5 YOU MAY STEP DOWN, AND I -- THEY PROBABLY WANT YOU BACK AT  
6 830 TOMORROW MORNING OR MONDAY MORNING UNLESS THERE'S SOME  
7 OTHER SCHEDULE. THANKS.

8 **MS. LUEDTKE:** YOUR HONOR, BEFORE WE GO COULD, COULD I  
9 MOVE TO ADMIT 3308 AND 3900, THE TWO DOCUMENTS, MR. PETR WAS  
10 USING?

11 **MR. ISAACSON:** NO OBJECTION TO 3900, AND NO OBJECTION  
12 TO THE PAGES OF 3308 THAT WERE USED WITH THE EXCEPTION OF 22,  
13 WHICH I DON'T THINK THERE'S A FOUNDATION FOR. BUT PERHAPS  
14 THAT COULD HAPPEN ON MONDAY, AND I WOULD WITHDRAW THE  
15 OBJECTION.

16 **THE COURT:** ALL RIGHT.

17 **MR. ISAACSON:** -- WHY HE WOULD KNOW THAT.

18 **THE CLERK:** ADMITTED, YOUR HONOR?

19 **THE COURT:** AND WHAT'S THE WITNESS SCHEDULE FOR NEXT  
20 WEEK?

21 **MR. POMERANTZ:** WE WILL COMPLETE MR. PETR, AND THEN  
22 THE NEXT THREE WITNESSES -- NOT ABSOLUTELY CERTAIN OF THE  
23 ORDERS -- ARE MR. BANOWSKY, WHO IS A CONFERENCE COMMISSIONER,  
24 MR. --

25 **THE COURT:** SORRY. BANOWSKY?



1           **MR. POMERANTZ:** OH, I'M SORRY. AND WE -- AND  
2 MR. HOLLIS, WHO'S THE ATHLETIC DIRECTOR AT MICHIGAN.

3           AND I DID SKIP ONE. MR. MUIR, WHO YOU REMEMBER FROM  
4 STANFORD, HE WILL COME BACK ON TUESDAY TO FINISH HIS  
5 TESTIMONY.

6           **THE COURT:** AND THAT'S ALL?

7           **MR. POMERANTZ:** THAT'S -- I THINK THAT'S THE LIST.

8           **THE COURT:** YOU HAD MENTIONED LENNON EARLIER. IS HE  
9 OFF?

10          **MR. POMERANTZ:** WE DON'T BELIEVE HE'LL BE COMING TO  
11 TESTIFY.

12          **THE COURT:** OKAY.

13          **MR. POMERANTZ:** YOUR HONOR, JUST SO THAT -- WE WENT  
14 BACK AND ADDED UP THE NUMBERS IN EXHIBIT 3900 WHICH, I BELIEVE  
15 IS IN THE RECORD. IT ADDS UP TO \$846 MILLION, AND THAT'S  
16 APPROXIMATELY THE REVENUE. I THINK MR. PETR WAS ESTIMATING  
17 900 MILLION. BUT IF YOU LOOK AT THAT EXHIBIT, IT -- THE  
18 NUMBERS ACTUALLY ADD UP TO \$846 MILLION, AND THEY'RE ALL SET  
19 FORTH IN THE EXHIBIT.

20          **THE COURT:** OKAY.

21                 SO YOU'RE GOING TO HAVE TO BE PRETTY EFFICIENT TO GET ALL  
22 THESE WITNESSES CALLED. THEY'LL HAVE TO --

23          **MR. POMERANTZ:** WE HAVE BEEN IN DISCUSSIONS --

24          **THE COURT:** -- CONFINE THEMSELVES TO VERY RELEVANT  
25 TESTIMONY AND NOT SPENDING A LOT OF TIME ON THINGS THAT MIGHT

1 BE NICE, BUT AREN'T REALLY ALL THAT RELEVANT.

2 **MR. POMERANTZ:** YEAH, WE -- WE HAVE A COMMITMENT WITH  
3 EACH OTHER THAT WE WILL BE SPLITTING THE AVAILABLE TIME  
4 EQUALLY. AND AS -- WE ESTIMATED FOUR AND A HALF HOURS PER  
5 SIDE, BUT IF ON ANY GIVEN DAY, WE GET LESS THAN FOUR AND A  
6 HALF PER SIDE WE, DIVIDE UP THAT TIME AND TAKE IT AGAINST EACH  
7 SIDE'S TIME.

8 SO WE'RE -- WE'RE COMPARING NOTES EVERY DAY, AND WE FULLY  
9 KNOW THAT OUR COMMITMENT IS TO BE DONE BY FRIDAY OF NEXT WEEK,  
10 AND WE WILL BE.

11 **THE COURT:** OKAY.

12 WHAT'S THE SPLIT SO FAR?

13 (OFF-THE-RECORD DISCUSSION.)

14 **MR. POMERANTZ:** UP THROUGH YESTERDAY, 20 HOURS 40  
15 MINUTES FOR THE PLAINTIFFS; 17 HOURS 33 MINUTES FOR THE  
16 DEFENDANT.

17 **THE COURT:** OKAY. AND DID YOU GET A CHANCE TO THINK  
18 ABOUT WHAT YOU'D LIKE TO DO IN TERMS OF --

19 **MR. POMERANTZ:** WE DID.

20 **THE COURT:** -- ARGUMENT?

21 **MR. POMERANTZ:** I THINK BOTH OF US AGREE THAT -- WHAT  
22 WOULD BE HELPFUL TO BOTH OF US WOULD BE IF YOUR HONOR WOULD  
23 LET US KNOW WHAT QUESTIONS ARE -- YOU WOULD LIKE US TO BE ABLE  
24 TO ADDRESS, AND THEN YOU GIVE US TIME TO THINK ABOUT THEM AND  
25 PUT TOGETHER OUR THOUGHTS AND RESPOND.

1 WE HAVE A LITTLE DIFFERENCE OF OPINION, I THINK, AS TO  
2 WHEN WE ADDRESS THE ANSWER -- PROVIDE YOU WITH THE ANSWERS.

3 **THE COURT:** NO, THEY AREN'T SPECIFIC QUESTIONS.  
4 THEY'RE LIKE, WHAT IS THE AGREEMENT? WHAT IS THE  
5 ANTICOMPETITIVE CONDUCT? WHAT IS THE ANTITRUST INJURY?  
6 WHAT'S THE ANSWER TO THAT VIS-A-VIS COLLEGE EDUCATION MARKETS?  
7 WHAT'S THE ANSWER TO THAT VIS-A-VIS GROUP LICENSE MARKET?

8 **MR. ISAACSON:** SO WE --

9 **THE COURT:** LIKE THAT.

10 **MR. ISAACSON:** WE'D BE PREPARED TO DO THAT NEXT WEEK,  
11 IF YOU WOULD -- WE WANT TO DO IT IN A WAY THAT'S HELPFUL TO  
12 YOUR HONOR. YOU'RE THE ONE MAKING THE DECISIONS, SO YOU TELL  
13 US WHEN YOU WOULD LIKE TO HAVE THAT OUTLINE FOR YOU AND TELL  
14 US HOW MUCH TIME YOU WOULD LIKE US TO SET ASIDE FOR THAT.

15 AND WE'D BE HAPPY TO DO -- YOU KNOW, WE COULD DO IT ANY  
16 AFTERNOON NEXT WEEK. YOU WERE TALKING ABOUT 30 MINUTES. I  
17 DON'T KNOW IF THAT WAS TOTAL BETWEEN THE TWO SIDES. THAT'S  
18 A -- OR -- OR PER SIDE. THAT'S NOT A HUGE AMOUNT OF TIME  
19 EITHER WAY.

20 AND IF YOU WANTED US TO ADDRESS THOSE QUESTIONS DURING  
21 THAT TIME PERIOD, WE'D BE HAPPY TO DO THAT.

22 **THE COURT:** OKAY. SO YOU DON'T HAVE A PROBLEM WITH  
23 ANY OF THE CONCERNS I MENTIONED EARLIER. I DIDN'T WANT TO  
24 JUST TELL YOU TO DO IT MY WAY, AND THEN HAVE THAT CAUSE YOU  
25 DIFFICULTIES IN TERMS OF --

(SIMULTANEOUS COLLOQUY.)

1  
2           **MR. ISAACSON:** I THINK OUR PREFERENCE IS ALWAYS TO  
3 MEET THE NEEDS OF THE COURT.

4           **MR. POMERANTZ:** WE AGREE WITH THAT, YOUR HONOR.  
5 WE --

6           IT WOULD BE HELPFUL TO HAVE THAT DIALOGUE WITH US, YOU  
7 KNOW, EARLIER, KNOWING, HOWEVER, THAT TO SOME EXTENT, OUR  
8 ANSWERS ARE YET TO COME, BECAUSE WE HAVE SOME WITNESSES NEXT  
9 WEEK WHO WOULD LIKELY BE PROVIDING HOPEFULLY RELEVANT EVIDENCE  
10 FOR YOUR HONOR'S CONSIDERATION.

11           **THE COURT:** WELL, THAT'S WHY I WONDERED WHETHER YOU  
12 MIGHT SAY, OH, WE DON'T WANT TO DO IT IN THE INTERIM. WE WANT  
13 TO WAIT TILL IT'S OVER AND DO IT, WHAT, ON FRIDAY AFTERNOON  
14 NEXT WEEK? OR COME BACK MONDAY MORNING?

15           **MR. POMERANTZ:** I THINK BOTH OF US WOULD LIKE TO KNOW  
16 SOONER RATHER THAN LATER WHAT QUESTIONS YOU HAVE.

17           **MR. ISAACSON:** I THINK WE JUST HEARD THE QUESTIONS.

18           **THE COURT:** PARDON?

19           **MR. ISAACSON:** I THINK -- I WAS UNDER THE IMPRESSION  
20 WE JUST HEARD THE QUESTIONS.

21           **THE COURT:** WELL, AND THEN WE'D GO ON TO WHAT THE  
22 PROCOMPETITIVE JUSTIFICATIONS ARE AND SOME ISSUES ABOUT THOSE,  
23 AND WHAT ARE THE LESS RESTRICTIVE ALTERNATIVES? ACTUALLY,  
24 THAT IS SOMETHING I'M INTERESTED IN.

25           YOU GAVE ME A PROPOSED INJUNCTION, WHICH IS PRETTY SHORT



1 AND BROAD, BUT THERE MIGHT BE OTHER MORE SPECIFIC REMEDIES  
2 THAT YOU MIGHT PROPOSE.

3 YOU MIGHT HAVE PARTICULAR OBJECTIONS TO SOME OF THEIRS  
4 THAT THEY'RE PROPOSING.

5 **MR. HAUSFELD:** YOUR HONOR, I THINK --

6 **THE COURT:** -- LESS RESTRICTIVE ALTERNATIVES, SOME OF  
7 THE THINGS ABOUT WHAT IS THE RELEVANCE OF SOME OF THE THINGS  
8 WE'VE HEARD ABOUT? WHERE DO THEY SORT OF FIT INTO THE  
9 PARADIGM OF ANTITRUST INJURY?

10 I'M NOT CLEAR ON WHY THESE GRADUATION RATES ARE ALL OVER  
11 THE MAP THE WAY THEY ARE.

12 WHAT ELSE?

13 THAT SORT OF THING.

14 **MR. HAUSFELD:** I THINK, YOUR HONOR, IN LIGHT OF  
15 QUESTIONS THAT YOU JUST ASKED AND THE FACT THAT WE HAVE YET TO  
16 HEAR FROM THE DEFENDANTS' ECONOMISTS, IT MIGHT MAKE MORE SENSE  
17 TO HAVE US ANSWER THOSE QUESTIONS AFTER THEY'VE COMPLETED  
18 THEIR TESTIMONY, SINCE IT SEEMS AS IF THEY'RE GOING TO WRAP UP  
19 THE DEFENSE CASE FOR THE MOST PART AND INCORPORATE AT LEAST  
20 THE NCAA'S RESPONSES TO THOSE QUESTIONS FROM THEIR  
21 PERSPECTIVE.

22 **MR. ISAACSON:** I DON'T --

23 **THE COURT:** YEAH.

24 **MR. ISAACSON:** -- MAYBE WE WOULD --

25 **THE COURT:** THAT'S WHAT I THOUGHT YOU'D SAY.

1           **MR. ISAACSON:**  MAYBE WE WOULD HAVE A COMMON  
2 PREFERENCE FOR FRIDAY AFTERNOON AS OPPOSED TO MONDAY MORNING?  
3 YOU'RE GETTING A LOT OF NODS --

4           **MR. POMERANTZ:**  THAT WOULD BE MY PERSONAL PREFERENCE.  
5 I HAVEN'T TALKED TO MY CLIENT ABOUT IT --

6           **THE COURT:**  NEXT FRIDAY AFTERNOON?

7           **MR. ISAACSON:**  YES.

8           **MR. HAUSFELD:**  YES, YOUR HONOR.

9           **THE COURT:**  NOT THIS AFTERNOON.

10          **MR. HAUSFELD:**  CORRECT.

11          **THE COURT:**  AS OPPOSED TO A WEEK FROM MONDAY MORNING?  
12 OR ARE YOU --

13          **MR. ISAACSON:**  AS OPPOSED TO A WEEK FROM -- OH, I  
14 THOUGHT --

15          **THE COURT:**  OR THIS MONDAY MORNING?

16          **MR. HAUSFELD:**  NO.  I THINK NEXT FRIDAY AFTERNOON,  
17 AFTER THEY COMPLETE THEIR PRESENTATION OF THEIR EVIDENCE.

18          **THE COURT:**  OKAY.

19                 SO I CAN'T DO IT WITHOUT A LUNCH BREAK, THOUGH, SO YOU'D  
20 HAVE TO PLAN ON -- UNLESS YOU COULD GET DONE EARLY.

21                 BUT IF YOU'RE GOING UP TO 1:29 AND 59 SECONDS, THEN WE'D  
22 HAVE TO TAKE A LUNCH BREAK AND COME BACK IN THE AFTERNOON.

23          **MR. ISAACSON:**  YES.

24          **THE COURT:**  THAT'S WHAT YOU WANT TO DO?

25          **MR. HAUSFELD:**  I THINK THAT WOULD BE THE PREFERENCE.

1           **MR. POMERANTZ:** I THINK PROBABLY RIGHT. MAYBE WE  
2           COULD JUST TALK OVER THE WEEKEND AND COME BACK TO YOU ON  
3           MONDAY, BUT THAT SOUNDS ABOUT RIGHT TO ME, TOO. I JUST WANT  
4           TO CONSULT WITH MY CLIENT AND THEN WITH MR. HAUSFELD AND  
5           MR. ISAACSON.

6           **THE COURT:** OKAY.

7           OR YOU COULD DO IT MONDAY MORNING, I SUPPOSE. BUT I DON'T  
8           KNOW WHAT YOUR TRAVEL PLANS ARE. I DON'T WANT TO MAKE YOU  
9           STICK AROUND WHEN YOU OTHERWISE WOULDN'T HAVE.

10          SO THAT WAS WHY I WAS TRYING TO GET YOUR PREFERENCES.  
11          AFTER YOUR OBVIOUS PREFERENCES OF WHATEVER I WANT, WHAT YOU  
12          REALLY WANT.

13          **MR. ISAACSON:** I THINK FROM THE NODDING HEADS BEHIND  
14          US FROM BOTH TABLES, THERE'S A PREFERENCE FOR COMPLETING THIS  
15          CASE ON SCHEDULE NEXT WEEK AS -- INCLUDING ANY ARGUMENTS.

16          AND WE WOULD -- AND WE WOULD DO THE WORK TO ACHIEVE THAT.

17          **THE COURT:** OKAY.

18          **THE CLERK:** JUDGE, I JUST NEED CLARIFICATION.  
19          EXHIBIT 3308, EXCLUDING PAGE 22, AND 3900 ARE ADMITTED?

20          **THE COURT:** YES.

21          **THE CLERK:** OKAY.

22          **THE COURT:** ALTHOUGH THEY THINK THEY MIGHT BE ABLE TO  
23          GET PAGE 22 IN LATER.

24          **THE CLERK:** OKAY.  
25

1 (DEFENDANTS' EXHIBIT 3308, PGS 7, 9, 10, 12, 13, 23  
2 RECEIVED IN EVIDENCE)

3 (DEFENDANTS' EXHIBIT 3900 RECEIVED IN EVIDENCE)

4 **MR. HAUSFELD:** THANK YOU, YOUR HONOR.

5 **THE COURT:** THANK YOU.

6 (PROCEEDINGS WERE CONCLUDED AT 1:41 P.M.)

7 --000--

8  
9  
10 **CERTIFICATE OF REPORTERS**

11  
12 WE CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT  
13 FROM THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.  
14 WE FURTHER CERTIFY THAT WE ARE NEITHER COUNSEL FOR, RELATED  
15 TO, NOR EMPLOYED BY ANY OF THE PARTIES TO THE ACTION IN WHICH  
16 THIS HEARING WAS TAKEN, AND FURTHER THAT WE ARE NOT  
17 FINANCIALLY NOR OTHERWISE INTERESTED IN THE OUTCOME OF THE  
18 ACTION.

19 

20 DIANE E. SKILLMAN, CSR, RPR, FCRR

21  
22 

23 RAYNEE H. MERCADO, CSR, RMR, CRR, FCRR, CCRR

24 FRIDAY, JUNE 20, 2014