

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

EDWARD O'BANNON, ET AL.,)	
)	
)	
PLAINTIFFS,)	NO. C-09-3329 CW
)	
VS.)	THURSDAY, JUNE 19, 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 X

DEFENDANTS' WITNESS:**PAGE****VOL.**EMMERT, MARK

DIRECT EXAMINATION BY MR. POMERANTZ

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CROSS-EXAMINATION BY MR. ISAACSON

1794

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DEFENDANTS' EXHIBITS:**EVD.****VOL.**

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2017 (PGS. 8, 9, 25, 59, 62)

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2481 (PGS. 37 & 51)

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1 THURSDAY, JUNE 19, 2014

8:31 A.M.

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

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

5 **THE COURT:** GOOD MORNING.

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

7 **MR. HAUSFELD:** GOOD MORNING.

8 **THE COURT:** WOULD YOU STAND AND RAISE YOUR RIGHT
9 HAND, PLEASE, SIR?

10 (MARK EMMERT, CALLED AS A WITNESS FOR THE DEFENDANTS,
11 HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:)

12 **THE WITNESS:** I DO.

13 **THE CLERK:** PLEASE BE SEATED, AND ONCE SEATED I'M
14 GOING TO ASK THAT YOU PLEASE STATE AND SPELL YOUR FIRST AND
15 LAST NAME FOR THE RECORD, PLEASE.

16 **THE WITNESS:** MARK EMMERT. M-A-R-K E-M-M-E-R-T.

17 **THE CLERK:** THANK YOU.

18 **DIRECT EXAMINATION**

19 **BY MR. POMERANTZ:**

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

21 **A.** GOOD MORNING.

22 **Q.** WHAT IS YOUR CURRENT JOB?

23 **A.** I'M THE PRESIDENT OF THE NCAA.

24 **Q.** HOW LONG HAVE YOU HELD THAT POSITION?

25 **A.** ROUGHLY THREE AND A HALF YEARS.

1 Q. I WOULD LIKE TO START WITH YOUR BACKGROUND.

2 WHERE DID YOU GO TO COLLEGE?

3 A. I WAS AN UNDERGRADUATE AT THE UNIVERSITY OF WASHINGTON IN
4 SEATTLE, AND I DID MY MASTER'S AND PH.D. AT SYRACUSE
5 UNIVERSITY.

6 Q. WHAT YEAR DID YOU GRADUATE FROM THE UNIVERSITY OF
7 WASHINGTON?

8 A. 1975.

9 Q. AND WHAT DEGREES DID YOU GET AT SYRACUSE?

10 A. I GOT A MASTER'S AND A PH.D. BOTH IN PUBLIC ADMINISTRATION
11 PUBLIC POLICY.

12 Q. WHAT YEAR DID YOU GET YOUR PH.D. IN?

13 A. 1983.

14 Q. AND AFTER YOU GOT YOUR PH.D., WHAT WAS YOUR FIRST JOB?

15 A. I WAS A PROFESSOR, AN ASSISTANT PROFESSOR IN THE TENURE
16 TRACK RANKS IN THE POLITICAL SCIENCE DEPARTMENT OF NORTHERN
17 ILLINOIS UNIVERSITY.

18 Q. AND WHAT YEARS WERE YOU AT NORTHERN ILLINOIS UNIVERSITY?

19 A. OH, '83 TO '85 I THINK IT WAS.

20 Q. THEN WHERE DID YOU GO?

21 A. WENT TO THE UNIVERSITY OF COLORADO ON BOTH THEIR DENVER
22 AND BOULDER CAMPUSES AND JOINED THE FACULTY OF THE GRADUATE
23 SCHOOL OF PUBLIC AFFAIRS.

24 Q. AND WHAT DID YOU TEACH AT THE UNIVERSITY OF COLORADO?

25 A. MOSTLY IN THE MASTER'S AND DOCTORAL PROGRAM IN PUBLIC

1 ADMINISTRATION AND PUBLIC POLICY.

2 Q. AND DO YOU RECALL APPROXIMATELY WHEN YOU WERE AT THE
3 UNIVERSITY OF COLORADO?

4 A. '85 THROUGH THE EARLY '90S. I'VE FORGOTTEN WHEN. '80 --
5 '91, '2.

6 Q. AND THEN AFTER THE UNIVERSITY OF COLORADO, WHAT WAS YOUR
7 NEXT POSITION?

8 A. I BECAME THE PROVOST AT MONTANA STATE UNIVERSITY.

9 Q. AND SO THAT'S MOVING FROM BEING A PROFESSOR TO BEING A
10 COLLEGE ADMINISTRATOR?

11 A. YES. WHILE AT COLORADO I ALSO HAD ADMINISTRATIVE
12 APPOINTMENTS THERE. I WAS THE ASSISTANT DEAN AND THEN MOVED
13 TO THE PRESIDENT'S OFFICE AT BOULDER.

14 Q. HOW LONG DID YOU STAY AT MONTANA STATE?

15 A. I WAS THERE THREE YEARS AS THEIR PROVOST AND CHIEF
16 ACADEMIC OFFICER.

17 Q. AND THEN WHERE DID YOU GO AFTER MONTANA STATE?

18 A. I TOOK A SIMILAR POSITION WITH THE UNIVERSITY OF
19 CONNECTICUT IN STORRS, CONNECTICUT AND WAS RETITLED CHANCELLOR
20 OF THAT INSTITUTION.

21 Q. AND AFTER YOU WERE -- DO YOU RECALL APPROXIMATELY HOW LONG
22 YOU STAYED AS CHANCELLOR OF THE UNIVERSITY OF CONNECTICUT?

23 A. A LITTLE OVER FOUR YEARS.

24 Q. AND THEN WHERE DID YOU GO?

25 A. BECAME CHANCELLOR WHICH WAS A CEO POSITION OF LOUISIANA

1 STATE UNIVERSITY IN 1999.

2 Q. HOW LONG DID YOU STAY AS CHANCELLOR OF LOUISIANA STATE?

3 A. LITTLE OVER FIVE YEARS.

4 Q. LOUISIANA STATE IS COMMONLY REFERRED TO AS LSU?

5 A. YES.

6 Q. AND AFTER LSU, WHAT WAS YOUR NEXT POSITION?

7 A. I TOOK THE PRESIDENCY OF MY ALMA MATER, THE UNIVERSITY OF
8 WASHINGTON BACK IN SEATTLE.

9 Q. AND FROM WHAT YEARS DID YOU SERVE AS PRESIDENT OF THE
10 UNIVERSITY OF WASHINGTON?

11 A. OH, EARLY '04 TO LATE 2010.

12 Q. AND SO DURING YOUR TIME AS A COLLEGE ADMINISTRATOR AT
13 MONTANA STATE, CONNECTICUT, LSU AND WASHINGTON, DID YOU HAVE
14 RESPONSIBILITIES FOR THE ACADEMIC PROGRAMS AT THOSE COLLEGES?

15 A. YES.

16 Q. WHAT WERE THOSE RESPONSIBILITIES? BRIEFLY.

17 A. WELL, IN -- FIRST OF ALL, AS A FACULTY MEMBER, THE
18 ACADEMIC RESPONSIBILITIES ARE FOR YOUR PARTICULAR ACADEMIC
19 ASSIGNMENT.

20 AS AN ASSOCIATE DEAN, I WAS RESPONSIBLE FOR ACADEMIC
21 PROGRAMS ACROSS A SCHOOL, THE GRADUATE SCHOOL OF PUBLIC
22 AFFAIRS AT COLORADO, AND THEN AS PROVOST AT MONTANA STATE.
23 AND CONNECTICUT I WAS RESPONSIBLE FOR ALL ACADEMIC PROGRAMS
24 ACROSS THE ENTIRE INSTITUTION.

25 AND THEN AS PRESIDENT AND CHANCELLOR AT LSU AND

1 WASHINGTON, THE -- ALL OF THE ACADEMIC PROGRAMS REPORT IN TO
2 THE PRESIDENT.

3 Q. AND LET ME FOCUS ON THE ATHLETIC PROGRAMS AT THESE
4 SCHOOLS.

5 YOU HAVE BEEN AT SIX DIFFERENT COLLEGES?

6 A. YES.

7 Q. WERE EACH OF THOSE COLLEGES A MEMBER OF THE NCAA?

8 A. YES, THEY WERE.

9 Q. WHICH DIVISIONS WERE EACH OF THOSE COLLEGES A MEMBER OF?

10 A. THEY ARE ALL DIVISION I SCHOOLS.

11 Q. AND WHILE YOU WERE AT THESE COLLEGES, DID YOU HAVE ANY
12 RESPONSIBILITIES FOR THE ATHLETIC PROGRAMS AT THE COLLEGES?

13 A. WORKING BACKWARDS, AT WASHINGTON AND LSU, THE ATHLETIC
14 DIRECTORS REPORTED DIRECTLY TO ME. SO I HAD FINAL OVERSIGHT
15 OF THOSE PROGRAMS, THOUGH I DIDN'T DO THE DAY-TO-DAY OPERATION
16 OF THOSE PROGRAMS, OF COURSE.

17 AT CONNECTICUT, I DID NOT HAVE THE ATHLETIC DIRECTOR
18 REPORTING TO ME, BUT WORKED WITH HIM AS A CHIEF ACADEMIC
19 OFFICER. I INTERACTED WITH HIM OFTEN.

20 THEN AT MONTANA STATE, I HAD LITTLE INTERACTION WITH
21 ATHLETIC PROGRAM, BUT WAS MOSTLY A FAN.

22 Q. SO IT'S FAIR TO SAY IT WAS AT LSU AND WASHINGTON WHERE YOU
23 HAD DIRECT RESPONSIBILITY FOR THE ATHLETIC PROGRAM?

24 A. YES, THAT'S CORRECT.

25 Q. THE ATHLETIC DIRECTOR REPORTED DIRECTLY TO YOU?

1 **A.** CORRECT.

2 **Q.** DID EACH OF THE COLLEGES THAT YOU'VE WORKED AT AND WHERE
3 YOU HAD OVERSIGHT OF THE ATHLETIC DEPARTMENT, DID THEY OFFER
4 BOTH FOOTBALL AND BASKETBALL?

5 **A.** YES.

6 **Q.** DID THEY OFFER OTHER SPORTS AS WELL?

7 **A.** YES.

8 **Q.** IN YOUR VIEW, WHY DID THESE SCHOOLS OFFER AN ATHLETICS
9 PROGRAM?

10 **A.** I THINK FOR THE SAME REASONS THAT -- THAT ALL SCHOOLS THAT
11 OFFER PROGRAMS DO. IT IS FIRST AND FOREMOST AN OPPORTUNITY
12 FOR THE DIRECT STUDENTS -- STUDENT ATHLETES THEMSELVES TO
13 PARTICIPATE IN THOSE SPORTS AND ENJOY THE ADVANTAGES OF BEING
14 A STUDENT ATHLETE.

15 IT'S ALSO BECAUSE THE OTHER STUDENTS AT THE -- AT A CAMPUS
16 AND THE STUDENT COMMUNITY OVERALL TAKE GREAT PLEASURE IN
17 INTERCOLLEGIATE ATHLETICS. IT PROVIDES A SOCIAL GLUE, IF YOU
18 WILL, THAT HOLDS CAMPUSES TOGETHER.

19 MOST UNIVERSITY PRESIDENTS ARE OF THE OPINION THAT SPORTS
20 ALSO SERVE AS A REALLY EFFECTIVE WAY TO GARNER ATTENTION FOR
21 THE UNIVERSITY AND TO ATTRACT THE ATTENTION OF FACULTY THAT
22 YOU MIGHT WANT TO RECRUIT OR A VARIETY OF OTHER PEOPLE.

23 **MR. ISAACSON:** I'LL OBJECT TO THE INTERJECTION OF THE
24 HEARSAY INTO THE ANSWER AND MOVE TO STRIKE AS TO WHAT MOST OF
25 THE OPINIONS ARE.

1 **THE COURT:** OH, OVERRULED. IT'S PRETTY GENERAL.

2 **BY MR. POMERANTZ:**

3 **Q.** LET ME FOCUS FIRST, DR. EMMERT, ON THE STUDENTS WHO COME
4 TO THE UNIVERSITIES WHO ACTUALLY PLAY SPORTS.

5 DO YOU BELIEVE THAT PLAYING SPORTS AT A DIVISION I SCHOOL
6 CONTRIBUTES TO THE EDUCATIONAL EXPERIENCE OF THAT STUDENT?

7 **A.** YES. VERY MUCH SO.

8 **Q.** HOW SO?

9 **A.** WELL, FIRST OF ALL, ACROSS ALL OF SPORTS, WHETHER IT'S IN
10 ELEMENTARY SCHOOL ALL THE WAY UP THROUGH -- THROUGH UNIVERSITY
11 LIFE, EDUCATION HAS BEEN SEEN TO BE AUGMENTED EFFECTIVELY BY
12 THE LESSONS THAT ONE CAN LEARN FROM PARTICIPATION IN SPORTS.
13 AND OBVIOUSLY INTERCOLLEGIATE ATHLETES GET THAT SAME
14 ADVANTAGE.

15 SO THE FACT THAT YOU'RE PLAYING ON A SPORTS TEAM PROVIDES,
16 I THINK, ENORMOUS LESSONS IN LIFE. I'VE WATCHED COACHES ALSO
17 IN BOTH PRACTICE SETTINGS, IN LOCKER ROOMS, AND ON THE FIELD
18 IMPARTING INCREDIBLY IMPORTANT LESSONS IN HOW TO BE A PERSON,
19 NOT JUST IN AN ACADEMIC SUBJECT THAT I THINK IS REALLY
20 VALUABLE TO INDIVIDUALS.

21 I KNOW IN MY OWN LIFE, NOT IN COLLEGE, BUT IN HIGH SCHOOL
22 AND EARLIER, COACHES WERE A VERY IMPORTANT PART OF ME LEARNING
23 WHAT IT WAS TO BE RESPONSIBLE FOR MY BEHAVIOR.

24 I THINK SECONDLY, ESPECIALLY WITH THE RULES THAT THE NCAA
25 MEMBERS HAVE PUT IN PLACE, WHEN YOU ARE A DIVISION I ATHLETE

1 TODAY, YOU ARE REQUIRED TO PERFORM WITHIN A VERY CLEAR SET OF
2 EXPECTATIONS AROUND ACADEMICS. SO IT PROVIDES A FRAMEWORK AND
3 EXPECTATIONS THAT YOU WILL BE SUCCESSFUL AS A STUDENT AS WELL
4 AS AN ATHLETE, OR YOU WON'T BE ALLOWED TO PARTICIPATE AS AN
5 ATHLETE.

6 IT PROVIDES, IN MOST CASES, A STRUCTURE AND A SUPPORT
7 SYSTEM THAT HELPS STUDENT ATHLETES IN THEIR SCHOOL WORK. IT
8 ALLOWS THEM TO BALANCE THEIR TIME, BECAUSE THEIR TIME DEMANDS
9 AS A STUDENT AND AN ATHLETE ARE VERY SIGNIFICANT, PROVIDES
10 THEM WITH A SUPPORT STRUCTURE AND MECHANISM FOR DOING THAT.
11 AND MOST IMPORTANTLY, I THINK THE RECORD SHOWS THAT -- THAT
12 STUDENT ATHLETES ARE SUCCESSFUL IN THE CLASSROOM ESPECIALLY
13 WHEN COMPARED TO THEIR IMMEDIATE COHORTS.

14 SO IT CERTAINLY HAS THE ADVANTAGES OF -- FOR ACADEMIC
15 SUPPORT AND DEVELOPMENT FOR STUDENT ATHLETES.

16 Q. AND WHAT YOU JUST SAID, DO YOU BELIEVE THAT THAT APPLIES
17 TO FOOTBALL AND BASKETBALL STUDENT ATHLETES AT DIVISION I
18 SCHOOLS?

19 A. YES.

20 Q. AND TO OTHER STUDENT ATHLETES AS WELL?

21 A. YES.

22 Q. NOW YOU ALSO MENTIONED THAT THE ATHLETIC PROGRAMS BENEFIT
23 STUDENTS AT COLLEGES WHO DO NOT PLAY SPORTS. COULD YOU
24 EXPLAIN WHY?

25 A. WELL, FIRST OF ALL, THEY PROVIDE OPPORTUNITIES FOR THE

1 UNIVERSITY COMMUNITY TO PARTICIPATE IN A VARIETY OF -- OF
2 EVENTS TOGETHER. SO, ANYONE WHO HAS BEEN TO A MAJOR FOOTBALL
3 GAME AT A MAJOR FOOTBALL PROGRAM OR A BASKETBALL GAME AT A
4 UNIVERSITY WITH LOTS OF BASKETBALL TRADITIONS KNOWS THE IMPACT
5 THAT HAS ON HAVING PEOPLE FEEL ATTACHED TO AND A PART OF THAT
6 COMMUNITY. IT'S A REASON THAT MANY STUDENTS CHOOSE TO GO TO A
7 SCHOOL IS THEY WANT TO BE A PART OF THAT ENVIRONMENT.

8 SO I THINK IT PROVIDES THAT KIND OF SOCIAL CONNECTIVITY
9 THAT'S VERY IMPORTANT, AND, INDEED, IN SOME WAYS HAS BECOME AN
10 INTEGRAL PART OF EVEN DEFINING AN AMERICAN COLLEGE TODAY.

11 I THINK IT ALSO PROVIDES FOR THE STUDENT BODY MORE BROADLY
12 AN OPPORTUNITY TO INTERACT WITH STUDENT ATHLETES TO BE --
13 WHETHER THE STUDENT ATHLETES INTERACTING WITH EACH OTHER OR
14 ACROSS A VARIETY OF SPORTS. MOST DIVISION I SCHOOLS HAVE 400,
15 500, 600 STUDENT ATHLETES, SOME AS MANY AS A THOUSAND. THE
16 INTERACTION BETWEEN THEM IS VERY IMPORTANT TO BOTH THEIR
17 EXPERIENCES, BUT ALSO FOR THE OTHER STUDENTS THAT THEY ARE IN
18 CLASSES WITH. EVERY STUDENT HAS TO BE A PART OF CLASSES THAT
19 STUDENT ATHLETES ARE IN. I THINK BECAUSE THEY COMMINGLE IN
20 THE CLASSROOM, I THINK THAT'S A VALUABLE PART OF ALL THE
21 STUDENTS' LIVES.

22 **Q.** WE HAVE BEEN FOCUSING ON SPORTS IN COLLEGE. DO SCHOOLS IN
23 AMERICA ALSO OFFER SPORTS AT OTHER LEVELS?

24 **A.** YES.

25 WELL, FIRST OF ALL, OBVIOUSLY THERE'S A HUGE YOUTH SPORT

1 MOVEMENT IN AMERICA, AND STUDENTS PLAY IN SPORTS ALL THROUGH
2 THEIR ELEMENTARY, SECONDARY GRADES. THERE'S COMMUNITY COLLEGE
3 SYSTEM. THERE'S NAI, SMALL COLLEGE SYSTEMS.

4 SO THERE'S A WIDE VARIETY OF CASES WHERE ATHLETICS AND
5 ACADEMICS ARE COMMINGLED BY DESIGN.

6 **Q.** HOW ABOUT AT THE GRADE SCHOOL AND HIGH SCHOOL LEVEL, ARE
7 THERE SPORTS PROGRAMS OFFERED THERE?

8 **A.** YES. UH-HUH.

9 **Q.** AND -- AND WHY DO -- WHY DO SCHOOLS AT THAT LEVEL OFFER
10 SPORTS?

11 **A.** WELL, I'M NOT AN ELEMENTARY SCHOOL EDUCATOR, BUT -- OR A
12 MIDDLE SCHOOL EDUCATOR, BUT I KNOW THAT THE ARGUMENT, BECAUSE
13 I'VE BEEN APPROACHED ABOUT IT FROM EDUCATIONAL LEADERS AROUND
14 THE WORLD, THE NOTION IS IS THAT SPORTS IMPART EDUCATIONAL
15 LESSONS THAT ARE VERY VALUABLE; THAT YOU CAN LEARN LEADERSHIP
16 SKILLS, COMMUNICATION SKILLS, RESPONSIBILITY, RESILIENCE, ALL
17 OF THE THINGS THAT WE -- TEAM WORK, OBVIOUSLY, ALL THE THINGS
18 WE ASSOCIATE WITH COLLEGE SPORT, SPORTS HAVE BEEN DEMONSTRATED
19 TO BE VERY EFFECTIVE IN IMPARTING THOSE ON YOUNG PEOPLE IN
20 THEIR LIVES.

21 **Q.** APPROXIMATELY HOW MANY SPORTS DID CONNECTICUT OFFER WHEN
22 YOU WERE THERE?

23 **A.** I DON'T REMEMBER EXACTLY, BUT I THINK IT WAS 18 OR 20.

24 **Q.** AND HOW ABOUT LSU?

25 **A.** ABOUT 20, 22.

1 Q. AND WASHINGTON?

2 A. SAME NUMBER.

3 Q. AND WERE THOSE -- SOME OF THOSE SPORTS FOR MEN AND SOME
4 FOR WOMEN?

5 A. YES.

6 Q. AND DID YOU -- DO YOU BELIEVE IT'S IMPORTANT TO THE
7 MISSION OF A COLLEGE TO OFFER A RANGE OF SPORTS?

8 A. YES, I DO.

9 AND MORE IMPORTANTLY, TO ME IN MY CURRENT ROLE, THE MEMBER
10 UNIVERSITIES THEMSELVES HAVE DETERMINED THAT TO BE A DIVISION
11 I SPORT YOU MUST OFFER AT LEAST 16 SPORTS.

12 THE LOGIC BEHIND THAT IS MUCH THE SAME AS THE LOGIC BEHIND
13 A UNIVERSITY OFFERING A FULL RANGE OF OPPORTUNITIES FOR ALL
14 STUDENTS IN ACADEMIC PROGRAMS. IF A SCHOOL IS SIMPLY A SINGLE
15 DISCIPLINE, IT'S NOT -- IT'S NOT A UNIVERSITY, IT'S NOT EVEN A
16 COLLEGE, IT MIGHT BE A SCHOOL, SCHOOL OF MEDICINE, SCHOOL OF
17 LAW, BUT IT'S NOT A UNIVERSITY.

18 SIMILARLY, THE -- THE MEMBERS HAVE LONG AGO DETERMINED
19 THAT IF A SCHOOL IS GOING TO BE PARTICIPATING IN DIVISION I
20 SPORTS, THEY HAVE TO PROVIDE THEIR STUDENTS WITH A WIDER RANGE
21 OF OPPORTUNITIES FOR PARTICIPATION THAN SAYING YOU'RE JUST
22 GOING TO HAVE FOOTBALL OR YOU'RE JUST GOING TO HAVE
23 BASKETBALL.

24 Q. ALL RIGHT. LET'S TURN TO YOUR TIME AT THE NCAA.

25 WHY, AFTER 25 PLUS YEARS WORKING AT A COLLEGE, DID YOU

1 DECIDE TO MOVE TO THE NCAA?

2 **A.** WELL, THROUGHOUT MY ACADEMIC EXPERIENCE AND EVEN MY OWN
3 PERSONAL LIFE, I, LIKE MANY FOLKS, HAD NOTICED THE ENORMOUS
4 IMPACT THAT SPORTS HAS ON NOT JUST THE LIVES OF INDIVIDUALS,
5 BUT THE ABILITY TO IMPACT THE -- THE EDUCATIONAL SYSTEM IN
6 VERY CONSEQUENTIAL WAYS. SO AT WASHINGTON, I HAD ROUGHLY
7 40,000 STUDENTS. THE NCAA HAS MORE THAN TEN TIMES THAT.

8 MOREOVER, WHEN THE NCAA CHANGES, FOR EXAMPLE, ITS INITIAL
9 ELIGIBILITY REQUIREMENTS, IT IMPACTS VIRTUALLY EVERY HIGH
10 SCHOOL IN THE UNITED STATES.

11 SO, FOR ME, IT WAS A CHANCE TO IMPACT PUBLIC POLICY, TO
12 IMPACT EDUCATION, AND TO COMMINGLE SPORTS AND ACADEMICS IN A
13 MORE EFFECTIVE WAY. AND IT STRUCK ME AS A VERY OPPORTUNE TIME
14 TO BE DOING THAT.

15 **Q.** SO YOU JOINED THE NCAA IN 2010, I THINK YOU SAID?

16 **A.** YES.

17 **Q.** DO YOU RECALL WHEN IN 2010 YOU JOINED?

18 **A.** OCTOBER, I BELIEVE.

19 **Q.** WHAT ARE YOUR RESPONSIBILITIES AS PRESIDENT OF THE NCAA?

20 **A.** WELL, AS THE HEAD OF THE NCAA, I HAVE, FIRST OF ALL, A
21 RESPONSIBILITY TO -- TO STRUCTURE PROGRAMS UNDER THE GUIDANCE
22 OF THE MEMBERSHIP.

23 SO THE ASSOCIATION IS A MEMBERSHIP ASSOCIATION MADE UP OF
24 ABOUT 1100 COLLEGES AND UNIVERSITIES AND CONFERENCES. AND
25 THEY COME TOGETHER TO -- TO SET POLICY AND DIRECTION. AND MY

1 OFFICE, THE NATIONAL OFFICE IN INDIANAPOLIS' RESPONSIBILITY IS
2 TO THEN IMPLEMENT THOSE RULES AND POLICIES THAT THEY SET AND
3 TO EFFECTIVELY RUN THE PROGRAMS AND THE OPERATIONS THAT THEY
4 PUT IN PLACE.

5 I CAN DESCRIBE THAT IN MORE DETAIL, IF YOU'D LIKE. I'M
6 NOT SURE HOW MUCH -- HOW FULL A DESCRIPTION YOU'RE LOOKING
7 FOR.

8 **Q.** LET'S TAKE IT A STEP AT A TIME.

9 SO WHO DO YOU REPORT TO?

10 **A.** I REPORT TO THE EXECUTIVE COMMITTEE OF THE NCAA, WHICH IS
11 A GROUP OF UNIVERSITY PRESIDENTS THAT REPRESENT ALL THREE
12 DIVISIONS OF THE ASSOCIATION. THEY ARE SELECTED BY THE --
13 THEIR OWN CONFERENCES AND NOMINATED FOR THOSE POSITIONS, AND
14 THEN SENT IN A REPRESENTATIVE FASHION TO RUN THE ASSOCIATION.

15 **Q.** SO IS IT FAIR TO SAY THAT THE COLLEGES RUN THE NCAA?

16 **A.** THEY ABSOLUTELY DO.

17 **Q.** NOW, WHAT DID YOU DO IN 2010 AND THEREAFTER TO LEARN ABOUT
18 THE ACTIVITIES OF THE NCAA AND THE ISSUES THAT IT FACED?

19 **A.** WELL, WHILE I HAD A LOT OF EXPERIENCE AT THE CAMPUS LEVEL
20 AROUND INTERCOLLEGIATE ATHLETICS AND A LITTLE BIT AT THE
21 CONFERENCE LEVEL FROM MY CONFERENCE WORK, I NEEDED TO MAKE
22 SURE THAT I WAS WELL EDUCATED ON THE ISSUES AND OPPORTUNITIES
23 THAT WERE IN FRONT OF THE NCAA AND COLLEGE ATHLETES, AND SO I
24 MET WITH AS MANY PEOPLE AS I COULD, ASKED THEM FOR OPINIONS,
25 TALKED TO FOLKS, STUDENTS, ATHLETIC DIRECTORS, COACHES,

1 UNIVERSITY PRESIDENTS, PEOPLE FROM THE CONFERENCE OFFICES, AS
2 MANY FOLKS AS I COULD, AND OBVIOUSLY PEOPLE IN THE NCAA
3 OFFICE.

4 Q. WHEN YOU WERE TALKING TO THE STUDENTS AND COLLEGE
5 REPRESENTATIVES AND NCAA REPRESENTATIVES, WHAT WERE YOU TRYING
6 TO LEARN AT THAT POINT IN TIME?

7 A. I WAS TRYING TO LEARN THEIR -- THEIR DESIRES AND AMBITIONS
8 AND ASPIRATIONS FOR WHAT COLLEGE SPORTS COULD DO AND BECOME TO
9 BETTER SERVE STUDENT ATHLETES.

10 SIMILARLY, I WAS LOOKING FOR A BETTER UNDERSTANDING OF THE
11 ISSUES THAT WERE RESTRICTING THOSE -- THOSE ACTIVITIES AND
12 WHAT COULD BE DONE TO MAKE THE ASSOCIATION MORE EFFECTIVE
13 FOR -- FOR THE MEMBERSHIP.

14 Q. ALL RIGHT. LET'S TURN TO MORE ABOUT THE NCAA.

15 DOES THE NCAA HAVE CORE VALUES?

16 A. IT DOES, YES.

17 Q. WHAT DO YOU THINK ARE THE CORE VALUES OF THE NCAA?

18 A. WELL, THE ASSOCIATION WAS FOUNDED IN 1905. AND -- AND AT
19 THAT TIME, MOSTLY BECAUSE OF WHAT WAS GOING ON IN COLLEGE
20 SPORTS ALL AROUND IT, THE PRESIDENTS OF MAJOR PROGRAMS CAME
21 TOGETHER -- I FORGET THE NUMBER, I THINK IT WAS 60 OR 62, OR
22 SOMETHING -- CAME TOGETHER AND FORMED A VOLUNTARY ASSOCIATION
23 WITH TWO MOST -- TWO OF THE MOST FUNDAMENTAL PREMISES WERE
24 FIRST AND FOREMOST THAT THE PARTICIPANTS IN COLLEGE ATHLETICS
25 HAVE TO BE STUDENTS; THAT THIS IS ABOUT STUDENTS, FULL-TIME

1 STUDENTS AT THEIR UNIVERSITIES PARTICIPATING IN SPORT AND,
2 SECONDLY, THAT THEY BE AMATEURS, THAT THEY NOT BE PAID
3 PROFESSIONALS.

4 Q. YOU REFERRED TO THINGS THAT LED TO THE FORMATION OF THE
5 ASSOCIATION. WHAT WERE YOU REFERRING TO?

6 A. WELL, COLLEGE SPORT IN THE PERIOD AFTER THE CIVIL WAR
7 GOING FORWARD HAD BECOME EXTREMELY POPULAR IN THE UNITED
8 STATES. THERE WAS A LOT OF COMPETITIONS GOING ON, BUT THEY
9 WERE -- THEY WERE COMPETITIONS THAT HAD INTRODUCED ESSENTIALLY
10 A VERY CHAOTIC SYSTEM.

11 THERE WERE EXTRAORDINARY INJURY AND EVEN DEATHS THAT WERE
12 OCCURRING. I KNOW HAVING READ ONCE IN 1904, 19 YOUNG MEN WERE
13 KILLED PLAYING THE GAME OF FOOTBALL IN THE U.S. THAT SEASON.

14 IT WAS A CIRCUMSTANCE WHERE THERE WERE NO RULES OR
15 REGULATIONS ABOUT WHO COULD OR COULD NOT PLAY IN ATHLETIC
16 EVENTS, WHETHER THEY'RE PROFESSIONALS, WHETHER THEY WERE
17 STUDENTS, WHETHER THEY WERE SOMEBODY THAT YOU JUST GRABBED
18 WALKING DOWN THE STREET, OR A PROFESSOR FOR THAT MATTER.

19 THERE WERE -- THERE WERE NO STANDARDS ABOUT HOW THE GAMES
20 WOULD BE CONDUCTED FROM GAME TO GAME FROM FIELD TO FIELD. IN
21 SHORT, IT WAS -- IT WAS VERY CHAOTIC AND DANGEROUS, AND IT
22 WASN'T REPRESENTING THE -- THE VIEWS AND VALUES OF THE
23 UNIVERSITIES AND COLLEGES OF THE TIME.

24 AND THERE WAS A VERY SIGNIFICANT CALL, INCLUDING FROM
25 HIGHER EDUCATION, TO EITHER FIX THIS OR END COLLEGE SPORTS

1 COMPLETELY.

2 Q. SO WHO MADE THE DECISION TO FORM AN ASSOCIATION?

3 A. THE PRESIDENTS OF THE FOUNDING UNIVERSITIES.

4 Q. AND WHO MADE THE DECISION TO HAVE THE CORE VALUES INCLUDE
5 YOU HAVE TO BE A STUDENT AND YOU HAVE TO BE AN AMATEUR?

6 A. THOSE SAME PEOPLE.

7 Q. ARE THOSE TWO CORE VALUES, YOU HAVE TO BE A STUDENT AND
8 YOU HAVE TO BE AN AMATEUR, ARE THEY STILL THE CORE VALUES OF
9 THE NCAA?

10 A. YES. THEY HAVE BEEN FROM THE BEGINNING AND REMAIN SO
11 TODAY.

12 Q. NOW, EARLIER IN THIS TRIAL WE'VE HEARD THE TERM "STUDENT
13 ATHLETE". I TAKE IT YOU'VE HEARD THE TERM "STUDENT ATHLETE"?

14 A. YES INDEED.

15 Q. WHAT DOES THAT TERM REFER TO, IN YOUR VIEW?

16 A. I THINK IT'S SELF-EVIDENT. IT'S A STUDENT WHO IS AN
17 ATHLETE AT THEIR SCHOOL.

18 Q. DO YOU THINK IT'S A FAIR DESCRIPTION OF THE YOUNG MEN WHO
19 PLAY FOOTBALL AND BASKETBALL AT DIVISION I COLLEGES TODAY?

20 A. YES.

21 Q. WHY?

22 A. BECAUSE THEY ARE STUDENTS, FULL-TIME STUDENTS AT THEIR
23 UNIVERSITIES WHO PLAY THEIR SPORT AT THEIR UNIVERSITY.

24 Q. IS THE NCAA THE ONLY ORGANIZATION OF SCHOOLS THAT REFERS
25 TO THEIR STUDENTS WHO PLAY SPORTS AS STUDENT ATHLETES?

1 **A.** NO. ALL -- ALL ACADEMIC INSTITUTIONS THAT CONDUCT SPORTS
2 REFER TO THEIR STUDENT ATHLETES AS STUDENT ATHLETES.

3 SO HIGH SCHOOLS AND MIDDLE SCHOOLS, JUNIOR COLLEGES AND
4 SMALL COLLEGES THAT AREN'T IN THE NCAA, ALL OF THOSE ROUTINELY
5 REFER TO THEIR STUDENT ATHLETES AS STUDENT ATHLETES.

6 **Q.** AND IS IT IMPORTANT TO THE NCAA COLLEGES THAT THE ATHLETES
7 WHO PLAY AT THEIR SCHOOL REMAIN AS STUDENTS?

8 **A.** YES. IT IS, AGAIN, ONE OF THE MOST FUNDAMENTAL PRINCIPLES
9 OF THE NCAA AND OF INTERCOLLEGIATE ATHLETICS.

10 **Q.** WHY DOES A COLLEGE CARE THAT THE ATHLETES WHO PLAY ON
11 THEIR ATHLETIC TEAMS ARE STUDENTS? WHY DO THEY CARE?

12 **A.** BECAUSE THEY -- THEY HAVE ALWAYS SEEN AND ASSUMED THAT
13 INTERCOLLEGIATE ATHLETICS IS ABOUT THE NOTION THAT THESE ARE
14 MEMBERS OF THEIR STUDENT BODY THAT ARE PARTICIPATING. THEY
15 ARE NOT HIRED EMPLOYEES, THEY ARE CONDUCTING A GAME STRICTLY
16 FOR ENTERTAINMENT. THEY'RE NOT A RANDOM GROUP OF FOLKS THAT
17 JUST CAME TOGETHER. THEY ARE, IN FACT, REPRESENTATIVES OF
18 THAT SCHOOL WHO ARE STUDENTS AT THAT SCHOOL.

19 **Q.** ALL RIGHT. LET'S GO TO THE SECOND CORE VALUE, THE VALUE
20 OF AMATEURISM.

21 WHAT DOES IT MEAN TO BE AN AMATEUR?

22 **A.** WELL, IN THE SPORTS CONTEXT, MOST FUNDAMENTALLY IT MEANS
23 YOU'RE NOT BEING PAID TO PLAY YOUR SPORT.

24 **Q.** AND IN THE -- DO YOU BELIEVE THAT AMATEURISM RELATES IN
25 ANY WAY TO THE MISSION OF A COLLEGE?

1 **A.** YES, VERY MUCH SO. I THINK THAT IN THE -- AGAIN,
2 ESPECIALLY IN THE CONTEXT OF SPORT, THE NOTION OF AMATEURISM
3 INSIDE THE NCAA HAS ALWAYS BEEN STEADFASTLY THAT ONE WILL NOT
4 BE PAID TO -- TO PLAY THEIR SPORT.

5 **Q.** AND WHY DO YOU THINK THAT NOT PAYING A STUDENT TO PLAY
6 THEIR SPORT AFFECTS THE EDUCATIONAL MISSION OF A COLLEGE?

7 **A.** IT'S FUNDAMENTALLY AN ISSUE ABOUT WHAT'S THE MOTIVATION OF
8 THOSE INDIVIDUALS WHO ARE PARTICIPATING IN THE SPORT. ARE
9 THEY -- ARE THEY THERE SOLELY BECAUSE THEY WANT TO BE AN
10 ATHLETE AND THEY'RE TRYING TO MAKE A LIVING PLAYING A GAME AS
11 AN ATHLETE AT THAT UNIVERSITY? OR IS THIS ABOUT THEM BEING A
12 STUDENT WHO'S ALSO AN ATHLETE AND GAINING AN EDUCATION WHILE
13 THEY ARE THERE.

14 THOSE TWO, IN THE MINDS OF UNIVERSITIES AND HIGHER
15 EDUCATION SYSTEMS, ARE INEXTRICABLY BOUND TOGETHER. THEY ARE
16 ONE IN THE SAME FOR COLLEGE ATHLETICS.

17 **Q.** NOW, IN ADDITION TO CORE VALUES, DOES THE NCAA ALSO HAVE
18 RULES?

19 **A.** YES.

20 **Q.** IS THERE A RELATIONSHIP BETWEEN THE CORE VALUES AND THE
21 RULES?

22 **A.** WELL, AS A MEMBERS -- THE RULES, AS I STATED EARLIER, ALL
23 MADE BY THE MEMBERS, NOT BY ME OR MY STAFF. BUT AS THE
24 MEMBERS DEBATE AND DISCUSS RULES, THEY ARE CONSTANTLY
25 REFERRING BACK TO THE CORE VALUES TO MAKE SURE THAT THOSE

1 RULES HAVE THE EFFECT OF IMPLEMENTING OR OPERATIONALIZING
2 THOSE CORE VALUES.

3 SO, YES, THEY ARE DIRECTLY RELATED.

4 **Q.** LET'S LOOK AT THE CORE VALUE THAT YOU HAVE TO BE A
5 STUDENT.

6 ARE THERE SPECIFIC RULES THAT ARE DESIGNED TO IMPLEMENT
7 THAT CORE VALUE?

8 **A.** YES, THERE'S MANY.

9 **Q.** CAN YOU GIVE SOME EXAMPLES OF THE RULES OF THE NCAA THAT
10 THE COLLEGES HAVE ENACTED TO IMPLEMENT THE CORE VALUE OF BEING
11 A STUDENT?

12 **A.** SURE.

13 WELL, THEY -- THEY'VE OBVIOUSLY CHANGED OVER TIME. NEVER
14 VARYING FROM THAT CORE VALUE THAT YOU WILL BE A FULL-TIME
15 ATHLETE, BUT AS CIRCUMSTANCES HAVE EVOLVED OVER TIME AND THE
16 WAY THAT THE MEMBERSHIP HAS WANTED TO IMPLEMENT A PARTICULAR
17 VERSION OF -- OF FULL-TIME STUDENT, MAKING SURE THAT THERE'S
18 RULES -- DIFFERENT VERSIONS OF THE RULES, MAKING SURE THEY'RE
19 BEING ATHLETES, THEY HAVE DONE SEVERAL THINGS.

20 ONE, THEY HAVE SET A FLOOR IN TERMS OF WHAT THE ACADEMIC
21 EXPECTATIONS MUST BE WHEN YOU COME INTO A UNIVERSITY. IN
22 OTHER WORDS, THERE'S GRADE POINT AVERAGE MINIMA AND A CORE
23 CURRICULAR MINIMA THAT YOU MUST MEET IN ORDER TO BE ALLOWED TO
24 PLAY AT THE DIVISION I LEVEL. THOSE WERE RECENTLY INCREASED
25 JUST THIS LAST YEAR.

1 SECONDLY, FOR THE STUDENT ATHLETE, THERE ARE A VARIETY OF
2 REQUIREMENTS THAT THE STUDENT ATHLETE MUST BE MAKING CONSTANT
3 PROGRESS TOWARD A DEGREE; THAT HE OR SHE MUST BE HITTING THE
4 GPA REQUIREMENTS OF THAT INSTITUTION.

5 AND, THIRDLY, THERE'S REQUIREMENTS AT BOTH THE TEAM LEVEL
6 AND THE INSTITUTIONAL LEVEL, THE WHOLE PROGRAM LEVEL THAT
7 SCHOOLS THEMSELVES AND THE TEAMS MUST MEET IN ORDER TO BE
8 ALLOWED TO COMPETE GOING FORWARD.

9 Q. DR. EMMERT, I THINK YOU MAY HAVE MISSPOKE AT THE BEGINNING
10 OF THAT ANSWER WHERE YOU SAID THAT THERE WOULD BE A CORE VALUE
11 THAT YOU WOULD BE A FULL-TIME ATHLETE.

12 A. EXCUSE ME, I MISSPOKE. FULL-TIME STUDENT, OBVIOUSLY.

13 Q. THANK YOU.

14 ARE THERE RULES THAT LIMIT THE AMOUNT OF PRACTICE TIME
15 THAT A STUDENT ATHLETE CAN ENGAGE IN IN HIS SPORT?

16 A. YES. IN DIVISION I, THERE'S A REQUIREMENT THAT -- THAT
17 ORGANIZED PRACTICE TIME NOT EXCEED 20 HOURS A WEEK.

18 Q. AND IS THAT RULE RELATED TO THE CORE VALUE THAT THE
19 ATHLETE AND STUDENTS SHOULD BE A STUDENT?

20 A. YES.

21 Q. AND HOW DO THE TWO RELATE?

22 A. WELL, THE NOTION IS, OF COURSE, TO MAKE SURE THAT THE
23 ATHLETIC PARTICIPATION ISN'T SO GREAT THAT IT -- THAT IT
24 INTERFERES WITH THE OPPORTUNITY TO BE A STUDENT.

25 Q. DO YOU HAVE CONCERN ABOUT CERTAIN STUDENT ATHLETES

1 SPENDING TOO MUCH TIME ON THEIR SPORTS?

2 **A.** VERY MUCH SO.

3 **Q.** WHAT ARE YOUR CONCERNS?

4 **A.** WELL, MY CONCERNS ARE THAT SCHOOLS ADHERE TO THE 20-HOUR
5 RULE. WE BELIEVE THAT THEY DO, BUT THERE'S A GREAT EMPHASIS
6 ON VOLUNTARY PRACTICES, ON TIME THAT YOUNG MEN AND WOMEN SPEND
7 ON THEIR OWN DURING THEIR OFF SEASONS, DURING THEIR SUMMERS.
8 AND IT SEEMS TO BE, UNFORTUNATELY, THE SAME THAT OBTAINS IN
9 THE HIGH SCHOOL LEVELS AND AMAZINGLY EVEN BEFORE THAT.

10 I TRY TO TALK TO STUDENT ATHLETES ALL THE TIME WHEN I'M ON
11 CAMPUSES, AND I'LL TALK TO YOUNG SOCCER PLAYERS, FOR EXAMPLE.
12 AND THEY'LL -- I ALWAYS ASK THEM ABOUT TIME CONSTRAINTS
13 BECAUSE I HAVE CONCERN ABOUT IT. THEY'LL ALMOST ALWAYS OFFER
14 THE OPINION THAT I PLAYED MORE SOCCER WHEN I WAS IN HIGH
15 SCHOOL.

16 I WAS CHATTING WITH A GROUP OF FRESHMAN BASKETBALL PLAYERS
17 THIS PAST SEASON, AND THEY WERE -- WE WERE TALKING ABOUT THE
18 LENGTH OF THE SEASON, WHICH I WORRY THAT THE SEASON IS LONG.
19 AND THEY CONCLUDED THAT THEY WERE PLAYING BETWEEN A HALF AND A
20 THIRD AS MANY GAMES IN COLLEGE AS THEY WERE PLAYING IN HIGH
21 SCHOOL.

22 SO WE HAVE A GROUP OF LEAD ATHLETES WHO HAVE BEEN DEVOTING
23 ENORMOUS AMOUNTS OF TIME TO THEIR SPORT. THEY ARE ACCUSTOMED
24 TO THAT. IN TRYING TO FIND WAYS OF CONSTRAINING THAT -- THAT
25 TIME COMMITMENT WHEN THEY ARE VERY COMPETITIVE, THEY ARE WITH

1 COACHES THAT ARE VERY COMPETITIVE, THEY, IN THEIR MIND, KNOW
2 WHAT THEY BELIEVE IS NECESSARY TO BE SUCCESSFUL AT THE HIGHEST
3 LEVEL, AND THEY ARE VERY DRIVEN INDIVIDUALS, GETTING THEM TO
4 SPEND LESS TIME ON THEIR SPORT AND MORE TIME ON THEIR
5 ACADEMICS IS A -- IS A CHALLENGE.

6 I HAVE TO QUICKLY ADMIT THAT THE SAME THING OCCURS IN
7 THEATER DEPARTMENTS OR IN MUSIC DEPARTMENTS OR IN A VARIETY OF
8 OTHER PROGRAMS WHERE STUDENTS CAN SPEND A VERY LARGE AMOUNT OF
9 VOLUNTARY TIME MASTERING SOME CRAFT, AND THE UNIVERSITIES
10 STRUGGLE WITH THAT.

11 BUT IT'S A PARTICULAR ISSUE, I BELIEVE, WITH COLLEGE
12 ATHLETICS.

13 **Q.** HAVE YOU FOUND THAT IN AMERICA NOW, PARENTS ARE HAVING
14 THEIR KIDS FOCUS ON CERTAIN SPORTS OR OTHER INTERESTS MUCH
15 EARLIER ON?

16 **A.** YES.

17 **Q.** WHAT ARE YOU SEEING GOING ON AND HOW IS THAT EFFECTING
18 WHAT YOU ARE NOW DEALING WITH IN COLLEGE?

19 **A.** WELL, I'M NOT A -- FIRST OF ALL, I'M NOT A SPORTS
20 PHYSIOLOGIST OR SCIENTIST, BUT WE HAVE THEM THAT WORK WITH US,
21 AND THERE'S A BIG CONCERN IN THE MEDICAL COMMUNITY ABOUT EARLY
22 SPECIALIZATION IN SPORTS AND THE IMPACT IT HAS ON YOUNG
23 BODIES, FOR ONE THING.

24 SECOND OF ALL, IT'S CREATED AND IS REINFORCING AN APPROACH
25 TO SPORTS THAT IS VERY, VERY DEMANDING. THEY ARE BECOMING

1 VERY ACCUSTOMED TO 12-MONTH COMPETITIONS AND TO FOCUSING IN ON
2 ONE SPORT, PLAYING IT YEAR ROUND, WORKING OUT CONSTANTLY.
3 IT'S BECOME A NORM, I'M AFRAID, IN AMERICAN SPORT.

4 **Q.** ALL RIGHT. LET'S TURN TO THE CORE VALUE OF AMATEURISM.

5 ARE THERE RULES THAT THE NCAA HAS ENACTED TO TRY TO
6 IMPLEMENT THE CORE VALUE OF AMATEURISM?

7 **A.** YES.

8 THE -- THE RULES OVER THE HUNDRED-YEAR HISTORY OF THE NCAA
9 AROUND AMATEURISM HAVE FOCUSED ON, FIRST OF ALL, MAKING SURE
10 THAT ANY RESOURCES THAT ARE PROVIDED TO A STUDENT ATHLETE ARE
11 ONLY THOSE THAT ARE FOCUSED ON HIS OR HER GETTING AN
12 EDUCATION.

13 SO, COVERING THE COST OF EDUCATIONAL EXPENSES, COVERING
14 THE LEGITIMATE COSTS OF PARTICIPATING IN ACADEMIC ACTIVITIES
15 HAS BEEN DEEMED TO BE PERFECTLY CONSISTENT WITH AMATEURISM
16 MODELS SINCE THAT'S NOT PAYMENT FOR THEIR PARTICIPATION IN THE
17 SPORT.

18 SECONDLY, THEY HAVE CREATED A NUMBER OF RULES THAT
19 INDICATE THAT PROVISION OF WHAT, IN THE JARGON OF THE NCAA, IS
20 CALLED IMPERMISSIBLE BENEFITS, BENEFITS THAT GO BEYOND
21 COVERING THE COST OF EDUCATION ARE DISALLOWED IN A VARIETY OF
22 DIFFERENT WAYS.

23 THERE HAS BEEN A CONSTANT REVISION OF THOSE RULES AS
24 INDIVIDUALS, BOOSTERS, PEOPLE WHO WANT TO SUPPORT -- SUPPORT A
25 STUDENT ATHLETE GOING TO ONE SCHOOL TO ANOTHER ARE TRYING TO

1 FIND WAYS TO INDUCE A STUDENT TO ATTEND ONE SCHOOL OR LEAVE A
2 SCHOOL HAVE PROVIDED THOSE KINDS OF IMPERMISSIBLE BENEFITS,
3 AND SO THERE'S ALWAYS A CONSTANT ADJUSTMENT OF THE RULES TO
4 MODIFY AND MAINTAIN THE FUNDAMENTAL NOTION THAT -- THAT THE
5 AMATEURISM MODEL IS ABOUT NOT PAYING STUDENT ATHLETES FOR
6 PARTICIPATING IN SPORTING EVENTS.

7 Q. AND DOES THE NCAA HAVE RULES THAT ADDRESS THE PAYMENTS TO
8 STUDENT ATHLETES FOR USE OF THEIR NAME, IMAGE AND LIKENESS FOR
9 COMMERCIAL PURPOSES?

10 A. YES, IT DOES.

11 Q. AND DO THOSE RULES RELATE TO THE CORE VALUE OF AMATEURISM?

12 A. VERY MUCH SO.

13 Q. HOW SO?

14 A. WELL, PRETTY MUCH ALONG THE LINES I JUST DESCRIBED.

15 SO AS AMATEURISM IN THE NCAA IS DETERMINED AS NOT BEING
16 PROVIDED WITH BENEFITS ABOVE AND BEYOND THE COST OF BEING A
17 STUDENT, ANYTHING THAT -- REGARDLESS OF THE SOURCE, REGARDLESS
18 OF WHERE IT COMES FROM, REGARDLESS OF WHAT ITS A PROVISION
19 FOR, IF THAT IS A BENEFIT, FINANCIAL OR OTHERWISE, THAT'S
20 BEING PROVIDED TO SOMEONE BECAUSE THEY ARE UTILIZING THEIR
21 NAME, IMAGE AND LIKENESS, THEN THAT OBVIOUSLY STRIKES AT
22 THAT -- AT THAT VALUE.

23 Q. NOW, SOME PEOPLE HAVE SAID, EVEN IN THIS COURTROOM, THAT
24 AN ATHLETIC SCHOLARSHIP IS INCONSISTENT WITH AMATEURISM.

25 DO YOU AGREE WITH THAT?

1 **A.** OBVIOUSLY NOT.

2 **Q.** WHY NOT?

3 **A.** PROVIDING A STUDENT WITH SUPPORT FOR HIS OR HER ACADEMIC
4 STUDIES HAS NEVER BEEN CONSIDERED A PAYMENT. INDEED, EVEN THE
5 COURT SYSTEM DOESN'T CONSIDER IT INCOME. THEY CONSIDER IT THE
6 COST OF GAINING AN EDUCATION.

7 SO, YOU KNOW, IF A STUDENT HAS -- STUDENT ATHLETE HAS TWO
8 ROLES IN THEIR TIME IN COLLEGE, ONE IS TO BE A STUDENT AND
9 PROVIDING SUPPORT FOR THAT, THE PRIMARY MISSION OF THE
10 UNIVERSITY AND THE REASON THAT THAT INDIVIDUAL IS ATTENDING A
11 UNIVERSITY, THEN THAT'S QUITE ISOLATED FROM THE FACT THAT THEY
12 ARE ALSO A STUDENT ATHLETE.

13 ARE THEY RECEIVING A SCHOLARSHIP BECAUSE THEY HAVE BOTH
14 ACADEMIC TALENT AND ATHLETIC TALENT? OF COURSE. BUT THAT'S
15 NOT WHAT THE FINANCIAL SUPPORT IS FOR. THE FINANCIAL SUPPORT
16 IS FOR THEM ATTENDING SCHOOL AND COVERING THEIR LEGITIMATE
17 COSTS OF BEING A STUDENT.

18 **Q.** HAVE YOU HEARD THE TERM "COST OF ATTENDANCE"?

19 **A.** YES.

20 **Q.** WHAT DOES THAT TERM MEAN?

21 **A.** WELL, IT'S A TERM OF ART THAT -- THAT ACTUALLY COMES OUT
22 OF -- THE NOTION COMES OUT OF THE FEDERAL GOVERNMENT'S
23 REQUIREMENTS FROM, GOSH, DECADES BACK THAT THE PEOPLE
24 UNDERSTAND WHAT IT REALLY COSTS TO GO TO SCHOOL. NOT JUST
25 WHAT THE TUITION RATE IS, NOT JUST EVEN WHAT ROOM AND BOARD

1 ARE, BUT WHAT ARE THE FULL COSTS.

2 SO, TYPICALLY THAT'S DEFINED AS TUITION FEES, ROOM AND
3 BOARD, AND BOOKS AND SUPPLIES, AND MISCELLANEOUS EXPENSES.

4 I'M SORRY, I WAS SPEAKING FAST.

5 THE MISCELLANEOUS EXPENSES INCLUDE THOSE THINGS THAT YOU
6 WOULD NORMALLY EXPECT ANY COLLEGE STUDENT TO HAVE TO DEAL
7 WITH -- WHOOPS -- TRANSPORTATION TO AND FROM --

8 **Q.** HOLD ON ONE SECOND, DOCTOR.

9 (PAUSE IN THE PROCEEDINGS.)

10 **A.** TRANSPORTATION TO AND FROM SCHOOL DURING VACATIONS,
11 CLOTHING ALLOWANCE, YOU KNOW, ANY OF THOSE KIND OF
12 MISCELLANEOUS ITEMS. AND EACH UNIVERSITY OR SCHOOL DETERMINES
13 WHAT THOSE ARE FOR ALL OF THEIR STUDENTS, NOT JUST FOR STUDENT
14 ATHLETES.

15 **THE COURT:** HOW DO THEY DO THAT? I MEAN, ONE MIGHT
16 GO HOME EVERY WEEK. ONE MIGHT GO HOME ONLY FOR CHRISTMAS.
17 ONE MIGHT GO HOME ONLY FOR SUMMER. ONE MIGHT HAVE REALLY
18 EXPENSIVE CLOTHES AND ONE MIGHT NOT HAVE SUCH EXPENSIVE
19 CLOTHES. HOW DOES ONE QUANTIFY SUCH THINGS?

20 **THE WITNESS:** EXCELLENT QUESTION, YOUR HONOR.

21 EACH UNIVERSITY HAS TO LAY OUT THEIR RATIONALE, BECAUSE
22 THIS IS A NUMBER THAT'S USED ALSO FOR CALCULATING
23 NEED-BASED -- FEDERAL NEED-BASED FINANCIAL AID. SO
24 UNIVERSITIES HAVE TO MAKE A BEST GUESS ESTIMATE OF THE AVERAGE
25 STUDENT.

1 TYPICALLY, A UNIVERSITY WILL ALSO HAVE SOME
2 CATEGORIZATIONS. SO IF IT'S A COMMUTER STUDENT, THEN
3 OBVIOUSLY THEIR TRANSPORTATION COSTS WILL BE HIGHER, BUT THEIR
4 LIVING COSTS, PERHAPS, LOWER. SO THEY -- THEY HAVE SEVERAL
5 DIFFERENT CATEGORIZATIONS OF STUDENTS THAT THEY USE FOR THAT
6 PURPOSE.

7 **BY MR. POMERANTZ:**

8 **Q.** AND ARE THESE COST OF ATTENDANCE CALCULATIONS OR
9 ESTIMATIONS, ARE THEY PROVIDED TO THE FEDERAL GOVERNMENT?

10 **A.** YES, THEY ARE, AND THEY ARE PUBLISHED IN EVERY
11 UNIVERSITY'S CATALOG.

12 **Q.** UNDER THE CURRENT NCAA RULES, WHICH OF THE COSTS OF
13 ATTENDANCE ARE PERMITTED TO BE PART OF AN ATHLETIC
14 SCHOLARSHIP?

15 **A.** TODAY, A FULL GRANT-IN-AID COVERS -- IT CAN PERMISSIBLY
16 COVER ALL TUITION COSTS, FEES, MANDATORY FEES. SO TUITION
17 FEES, ROOM AND BOARD COSTS, AND THEN ANY -- ANY OTHER OF THE
18 EXPENSES THAT MAY BE RELATED TO A SPECIFIC CLASS.

19 SO IF A STUDENT IS A TAKING AN ART CLASS, THERE MAY BE AN
20 EXPENSE ASSOCIATED WITH THAT.

21 **Q.** AND I TAKE IT THAT FROM TIME TO TIME THE NCAA MEMBERS
22 CONSIDER CHANGING THEIR RULES, CORRECT?

23 **A.** YES.

24 **Q.** ARE THE NCAA MEMBERS CURRENTLY CONSIDERING CHANGING THE
25 RULES ABOUT WHAT CAN BE COVERED BY A GRANT-IN-AID OR AN

1 ATHLETIC SCHOLARSHIP?

2 **A.** THERE -- THERE HAS BEEN AN ACTIVE DEBATE ABOUT WHETHER OR
3 NOT THAT FINAL ITEM THAT I WAS DESCRIBING THAT MISCELLANEOUS
4 EXPENSE ALLOWANCE COULD BE COVERED BY THE GRANT-IN-AID SO AS
5 TO COVER, AGAIN, THE FULL COST OF ATTENDANCE, THE FULL
6 LEGITIMATE COST OF BEING A STUDENT.

7 **Q.** IS IT FAIR TO SAY THAT THE DIFFERENCE BETWEEN WHAT THE
8 NCAA RULES CURRENTLY ALLOW IN TERMS OF GRANTS-IN-AID AND WHAT
9 IS BEING CONSIDERED IS WHAT THE NCAA MEMBERS ARE REFERRING TO
10 AS A MISCELLANEOUS EXPENSE ALLOWANCE?

11 **A.** YES. CORRECT.

12 **Q.** AND THAT WOULD COVER THE DIFFERENCE BETWEEN WHAT IS
13 CURRENTLY ALLOWED AND THE FULL COST OF ATTENDANCE?

14 **A.** RIGHT.

15 **Q.** IN YOUR VIEW, IF THE NCAA WERE TO CHANGE ITS RULES TO
16 COVER THE FULL COST OF ATTENDANCE, WOULD THAT BE INCONSISTENT
17 WITH THE NCAA'S PRINCIPLE OF AMATEURISM?

18 **A.** NO.

19 **Q.** WHY NOT?

20 **A.** BECAUSE THESE ARE EXPENSES THAT ARE BEING INCURRED THROUGH
21 THE FACT THAT THIS IS A STUDENT, THIS IS SOMEONE WHO IS
22 INCURRING THESE COSTS, THESE LEGITIMATE COSTS THAT ARE
23 ASCRIBED TO ANY STUDENT THAT ATTENDS THAT UNIVERSITY, AND THAT
24 THE GRANT-IN-AID WOULD BE SIMPLY COVERING THOSE COSTS AND NOT
25 MOVING INTO PAYING A STUDENT ATHLETE FOR THEIR PERFORMANCE OR

1 FOR THEIR PARTICIPATION IN A SPORT.

2 Q. AND IF INSTEAD THE PAYMENTS THAT WERE AUTHORIZED RESULTED
3 IN PAYMENTS IN EXCESS OF THE FULL COST OF ATTENDANCE, DO YOU
4 THINK THAT WOULD BE INCONSISTENT WITH THE PRINCIPLE OF
5 AMATEURISM?

6 A. YES.

7 Q. WHY?

8 A. FOR THE FAIRLY OBVIOUS REASON THAT NOW YOU'VE MOVED INTO A
9 REALM WHERE YOU ARE COMPENSATING A STUDENT ATHLETE FOR
10 SOMETHING OTHER THAN THE LEGITIMATE COST OF BEING A STUDENT,
11 AND YOU ARE COMPENSATING THEM FOR BEING AN ATHLETE. NOW
12 YOU'VE NOW MOVED INTO PAY FOR PLAY.

13 Q. ALL RIGHT. LET'S TURN TO THE STRUCTURE OF THE NCAA.

14 COULD YOU BRIEFLY DESCRIBE FOR THE COURT HOW THE NCAA IS
15 STRUCTURED?

16 A. SURE.

17 THE NCAA IS, AS I MENTIONED EARLIER, A VOLUNTARY
18 MEMBERSHIP ASSOCIATION WITH AROUND 1100 COLLEGES AND
19 UNIVERSITIES IN IT. THOSE UNIVERSITIES -- IF I MIGHT RESTRICT
20 MY ANSWER TO JUST DIVISION I FOR THIS CONVERSATION'S PURPOSE,
21 BUT THOSE 1100 SCHOOLS ARE SPLIT INTO THREE DIFFERENT
22 DIVISIONS, DIVISIONS I, II AND III.

23 THERE'S ABOUT 350 SCHOOLS IN DIVISION I. DIVISION I THEN
24 ALSO IS ORGANIZED BY CONFERENCES. AND THOSE CONFERENCES AND
25 THE MEMBERSHIP OVERALL THEN NOMINATE REPRESENTATIVES FOR THE

1 VARIOUS BODIES, THE FIRST BEING THE DIVISION I BOARD OF
2 DIRECTORS. THE DIVISION I BOARD ALSO SENDS MEMBERS TO THE
3 EXECUTIVE COMMITTEE THAT I MENTIONED EARLIER.

4 THE DIVISION I BOARD THEN ALSO APPOINTS THROUGH -- THROUGH
5 A CONFERENCE STRUCTURE OFTEN A NUMBER OF INDIVIDUALS FROM THE
6 MEMBERSHIP, ATHLETIC DIRECTORS, COACHES, FACULTY ATHLETIC REPS
7 TO VARIOUS COUNCILS AND COMMITTEES THROUGH WHICH THE RULES AND
8 REGULATIONS OF THE ASSOCIATION ARE -- ARE CREATED.

9 **Q.** AND THROUGH THIS ORGANIZATIONAL STRUCTURE, WHAT ARE THE
10 COLLEGES AND UNIVERSITIES THAT ARE MEMBERS OF THE NCAA JOINTLY
11 SEEKING TO ACCOMPLISH?

12 **A.** WELL, THEY'RE, FIRST OF ALL, SEEKING TO CONDUCT
13 INTERCOLLEGIATE ATHLETICS IN A WAY THAT IS CONSISTENT WITH
14 THEIR CORE VALUES AND THAT SERVES THE -- THE DEVELOPMENT AND
15 SUCCESS OF STUDENT ATHLETES.

16 **Q.** SO, YOU'VE MENTIONED TWO DIFFERENT COMMITTEES THAT I WANT
17 TO FOCUS ON. ONE IS THE EXECUTIVE COMMITTEE OF THE NCAA AND
18 THE OTHER IS THE DIVISION I BOARD.

19 WHAT'S THE RESPONSIBILITIES OF THE DIVISION I BOARD?

20 **A.** THE DIVISION I BOARD HAS OVERSIGHT OVER VIRTUALLY
21 EVERYTHING THAT GOES ON INSIDE OF THE DIVISION.

22 **Q.** AND THE DIVISION I BOARD IS COMPRISED OF REPRESENTATIVES
23 OF THE DIVISION I SCHOOLS AND CONFERENCES?

24 **A.** RIGHT. PRESIDENTS OF THOSE SCHOOLS.

25 **Q.** ALL RIGHT. I TAKE IT THERE'S A ROTATION OF WHO'S ON THAT

1 BOARD?

2 **A.** YES.

3 **Q.** AND WHAT DOES THE EXECUTIVE COMMITTEE DO?

4 **A.** THE EXECUTIVE COMMITTEE, FIRST OF ALL, CONSISTS OF
5 PRESIDENTS FROM EACH OF THE THREE DIVISIONS. IT IS WEIGHTED
6 MORE HEAVILY TOWARD DIVISION I. THERE ARE MORE DIVISION I
7 PRESIDENTS ON IT THAN, II AND III, BUT THERE'S REPRESENTATIVES
8 FROM ALL. AND THE EXECUTIVE COMMITTEE OVERSEES THE BUDGET AND
9 FINANCES OF THE ASSOCIATION. THEY ARE LITERALLY THE BODY
10 THAT -- THAT HIRES THE PRESIDENT AND OVERSEES THE PRESIDENT OF
11 THE ASSOCIATION.

12 **Q.** SO --

13 **A.** THEY HAVE THE ULTIMATE AUTHORITY OVER A WIDE VARIETY OF
14 ISSUES INSIDE THE ASSOCIATION.

15 **Q.** AND, AGAIN, IS -- IS THAT COMMITTEE ALSO COMPRISED OR THAT
16 BOARD, IS IT ALSO COMPRISED OF PRESIDENTS OF UNIVERSITIES?

17 **A.** YES. IT ALSO HAS EX OFFICIO MEMBERS, BUT ONLY FROM
18 UNIVERSITIES THAT INCLUDE FACULTY ATHLETIC REPS AND
19 COMMISSIONER MEMBERS, BUT OTHER PEOPLE FROM THE MEMBERSHIP.

20 **Q.** SO LET'S TALK ABOUT RULE-MAKING WITHIN THE NCAA, AND IN
21 PARTICULAR WITHIN DIVISION I.

22 IF A RULE IS GOING TO BE ENACTED, A NEW RULE, OR A CHANGE
23 TO AN EXISTING RULE, HOW DOES THAT PROCESS WORK?

24 **A.** WELL, IT'S VERY COMMON FOR RULES, POTENTIAL RULE CHANGES
25 TO BE DISCUSSED AND DEBATED THROUGH A VARIETY OF DIFFERENT

1 COMMITTEES OR COUNCILS, NOT UNLIKE A REPRESENTATIVE PROCESS IN
2 STATE GOVERNMENT, FOR EXAMPLE.

3 AND A GROUP OF MEMBERS MAY SEE SOME ISSUE THAT THEY WANT
4 TO ADDRESS TO IMPROVE SOME CIRCUMSTANCE. THEY WILL TAKE IT TO
5 THE -- THE APPROPRIATE COMMITTEE. SOMETIMES THERE ARE TASK
6 FORCES THAT ARE CREATED TO -- TO DISCUSS AND DEBATE ISSUES.

7 ANY ONE OF THOSE BODIES THEN CAN REFER A PROPOSAL TO -- TO
8 THE LEGISLATIVE COUNCIL, WHICH, AGAIN, IS MADE UP OF MEMBERS.
9 AND THEN THAT LEGISLATIVE COUNCIL HAS THE ABILITY TO PASS IT,
10 AND PASS IT ON TO THE BOARD WHO ULTIMATELY HAS THE
11 DECISION-MAKING AUTHORITY OVER WHETHER OR NOT SOME PROPOSAL
12 BECOMES A RULE.

13 SO IT'S A LONG, OFTEN CONTENTIOUS, DELIBERATIVE, DEBATED
14 SOCIETY. IT'S A VERY DEMOCRATIC PROCESS THAT CAN BE VERY
15 CONVOLUTED AND COMPLEX.

16 **Q.** WHEN YOU SAY THEY PASS IT ON TO THE BOARD, WERE YOU
17 REFERRING TO THE DIVISION I BOARD?

18 **A.** YES.

19 **Q.** SO IS IT THE DIVISION I BOARD THAT HAS THE FINAL AUTHORITY
20 TO DECIDE WHETHER TO ENACT A NEW RULE OR TO MODIFY AN EXISTING
21 RULE?

22 **A.** YES.

23 **Q.** DO YOU HAVE A VOTE?

24 **A.** I DO NOT.

25 **Q.** LET'S TURN TO THE PEOPLE WHO WORK IN INDIANAPOLIS.

1 DO YOU HAVE A STAFF?

2 **A.** WE DO.

3 **Q.** DO YOU REFER TO -- THE PEOPLE WHO WORK IN INDIANAPOLIS FOR
4 THE NCAA, ARE THEY REFERRED TO AS THE "CENTRAL OFFICE"?

5 **A.** THE NATIONAL OFFICE.

6 **THE COURT:** I'M SORRY. SO THE NCAA, AS A WHOLE, HAS
7 NO BODY THAT'S HIGHER THAN THE DIVISION I BOARD? THE DIVISION
8 I BOARD COULD MAKE ANY RULE IT WANTED TO AND THE NCAA, AS A
9 WHOLE, WOULD HAVE NO CONTROL OVER THAT?

10 **THE WITNESS:** I'M SORRY. THAT'S A GREAT QUESTION,
11 YOUR HONOR.

12 THERE IS AN OVERRIDE PROCESS THAT'S AVAILABLE SHOULD THE
13 BOARD -- I SHOULD HAVE MENTIONED THIS. MY APOLOGY.

14 THE DIVISION I BOARD, IF IT PASSES A RULE THAT THE
15 MEMBERSHIP OVERALL DOESN'T LIKE, THEN THE -- THE MEMBERSHIP
16 HAS THE AUTHORITY TO ENGAGE IN WHAT'S CALLED AN OVERRIDE
17 PROCESS. AND IF TWO-THIRDS OF THE -- ROUGHLY TWO-THIRDS,
18 62 PERCENT OF THE MEMBERSHIP VOTES IN OPPOSITION OF THAT RULE,
19 THEN THE RULE IS -- IS REVOKED.

20 THANK YOU.

21 **BY MR. POMERANTZ:**

22 **Q.** SO IN INDIANAPOLIS, DO YOU HAVE A DEPARTMENT THAT'S CALLED
23 THE ACADEMIC AND MEMBERSHIP AFFAIRS DEPARTMENT?

24 **A.** YES.

25 **Q.** WHAT'S THE FUNCTION OF THAT DEPARTMENT?

1 **A.** IT SERVES A VARIETY OF -- PROVIDES A VARIETY OF SERVICES
2 TO THE MEMBERSHIP AND IT -- IT PROVIDES RESPONSES TO QUESTIONS
3 FOR INTERPRETATION OF WHAT A RULE MEANS. THE RULE BOOK IS
4 COMPLICATED AND OCCASIONALLY OBTUSE, SO THEY PROVIDE ADVICE
5 AND INTERPRETATION OF WHAT A RULE MEANS TO ANY OF THE MEMBERS
6 OR STUDENT ATHLETES.

7 THEY PROVIDE RESPONSES AT THE GUIDANCE OF A MEMBERSHIP
8 COMMITTEE TO REQUEST FOR WAIVERS FOR A POTENTIAL WAIVER OF A
9 RULE THAT MIGHT -- THAT MIGHT BE REQUESTED BY A SCHOOL AROUND
10 A STUDENT ATHLETE'S SITUATION TYPICALLY.

11 THEY PROVIDE REINSTATEMENT DECISIONS. AGAIN, ONLY AT THE
12 ADVICE OF A MEMBERSHIP COMMITTEE. WHEN A STUDENT ATHLETE HAS
13 BEEN ACCUSED OF OR HAS SOME OTHER ISSUE WITH THEIR ACADEMIC
14 ELIGIBILITY OR AMATEURISM ELIGIBILITY, THIS IS THE BODY THAT
15 PROVIDES A RECOMMENDATION, ALL OF WHICH CAN BE OVERRIDDEN OR
16 APPEALED TO A COMMITTEE OF THE MEMBERS.

17 **Q.** AND SO ULTIMATELY IT'S THE MEMBERS WHO HAVE THE FINAL SAY
18 ON THOSE KINDS OF ISSUES?

19 **A.** YES.

20 **Q.** AND DO PEOPLE INSIDE THE NCAA NATIONAL OFFICE RELY ON THE
21 ACADEMIC AND MEMBERSHIP AFFAIRS DEPARTMENT TO HELP THEM APPLY
22 THE RULES?

23 **A.** YES, OF COURSE. THEY ARE THE CONTENT EXPERTISE ON A VERY
24 COMPLEX SET OF RULES.

25 **Q.** DO YOU SOMETIMES GO TO THEM AND ASK QUESTIONS THAT MIGHT

1 RELATE TO THE RULES?

2 **A.** ALL THE TIME.

3 **Q.** IS IT FAIR TO SAY THAT THE MEMBER COLLEGES ACTIVELY
4 DISCUSS THE ISSUES THAT FACE THE NCAA?

5 **A.** YES.

6 **Q.** DO YOU THINK THIS KIND OF ACTIVE DISCUSSION IS A GOOD
7 THING?

8 **A.** YEAH, OF COURSE. IT'S A REPRESENTATIVE PROCESS AND THE
9 ABILITY FOR THE MEMBERSHIP TO EXPRESS THEIR VIEWS IN A FRANK
10 AND CANDID WAY, I THINK, IS VERY, VERY IMPORTANT TO THOSE
11 DELIBERATIVE PROCESSES.

12 **Q.** DO YOU PARTICIPATE IN THOSE DISCUSSIONS?

13 **A.** SOMETIMES.

14 **Q.** DO YOU -- DO YOU ENCOURAGE YOUR NCAA CENTRAL OFFICE STAFF
15 TO PARTICIPATE IN THOSE DISCUSSIONS?

16 **A.** YES.

17 **Q.** DO YOU THINK THAT THEIR PARTICIPATION IS A GOOD THING?

18 **A.** YES, BUT MORE IMPORTANTLY THE MEMBERSHIP DOES.

19 **Q.** JUST GIVE US A LITTLE SENSE OF WHAT HAPPENS IN THESE
20 DISCUSSIONS WHERE MEMBERS OF THE -- OF THE NCAA OR MEMBERS OF
21 THE CENTRAL OFFICE ARE SITTING THERE DISCUSSING ISSUES FACING
22 THE NCAA, WHAT'S GENERALLY HAPPENING IN THOSE DISCUSSIONS?

23 **A.** WELL, I THINK IT'S SIMILAR TO MOST DEBATES ON COMPLICATED
24 SUBJECTS. THERE'S PROPOSALS AND IDEAS THAT ARE PUT FORTH THAT
25 ARE, YOU KNOW, DEBATED VIGOROUSLY.

1 THERE'S PEOPLE WHO DISAGREE PRETTY PROFOUNDLY WITH ONE
2 VIEW OR ANOTHER, DEPENDING UPON WHAT THE TOPIC IS. THERE'S
3 USUALLY OUTLIER IDEAS THAT ARE PUT FORWARD.

4 AND MOST FREQUENTLY THERE'S, LIKE ALL, AT LEAST IN MY
5 FAMILIARITY, ALL DEMOCRATIC PROCESSES, EVENTUALLY YOU WIND UP
6 WITH SOMETHING THAT MAKES SENSE FOR THE ASSOCIATION THAT FITS
7 IN WITH THE CORE VALUES, AND THAT'S WHAT MOVES FORWARD THEN TO
8 THE BOARD.

9 **Q.** DO YOU KNOW A GENTLEMAN NAMED WALLY RENFRO?

10 **A.** I DO.

11 **Q.** WHO IS WALLY RENFRO?

12 **A.** WALLY'S A FORMER EMPLOYEE OF THE NCAA. HE'S RETIRED AFTER
13 A VERY LONG SERVICE. HE WAS THERE, GOSH, I THINK MORE THAN 40
14 YEARS.

15 **Q.** WAS HE THERE WHEN YOU JOINED THE NCAA?

16 **A.** HE WAS.

17 **Q.** DID YOU HAVE AN OPPORTUNITY TO WORK WITH HIM?

18 **A.** I DID.

19 **Q.** DID MR. RENFRO PARTICIPATE IN SOME OF THESE DISCUSSIONS
20 FROM TIME TO TIME?

21 **A.** YES.

22 **Q.** WHAT ROLE DID MR. RENFRO PLAY IN THESE DISCUSSIONS?

23 **A.** I COULD PROBABLY MOST ACCURATELY DESCRIBE IT AS
24 PROVOCATEUR.

25 **Q.** WHY DO YOU SAY THAT?

1 **A.** WELL, BECAUSE HE LOVED TO -- AND HE'S A VERY CAPABLE
2 THINKER. HE'S A FELLOW WHO LOVED TO LOOK AT VIEWS AND
3 OPINIONS, NOT EVEN NECESSARILY HIS OWN, AND SAY, OKAY, WELL
4 THERE'S THIS VIEW OVER HERE, AND PUT A STAKE IN THE GROUND,
5 AND SAY, OKAY, LET'S DEBATE AND ARGUE ABOUT THAT ONE.

6 AND THEN THE NEXT DAY HE MAY BE ARGUING THE OPPOSITE ON
7 THE OTHER EXTREME POLAR END.

8 **Q.** DID YOU FIND HIS PARTICIPATION HELPFUL TO YOU SOMETIMES IN
9 THINKING THROUGH THE ISSUES?

10 **A.** USUALLY, YES.

11 **Q.** WE'VE SEEN SOME -- SOME DOCUMENTS IN THIS CASE RELATING TO
12 TASK FORCES AT THE NCAA.

13 ARE YOU FAMILIAR WITH TASK FORCES?

14 **A.** YES.

15 **Q.** AND HAD THERE BEEN TASK FORCES CREATED AT THE NCAA SINCE
16 YOU'VE BECOME PRESIDENT?

17 **A.** YES.

18 **Q.** WHAT KINDS OF TASK FORCES HAVE BEEN IN OPERATION SINCE YOU
19 HAVE BEEN PRESIDENT?

20 **A.** THERE HAVE BEEN TASK FORCES CREATED -- WHOOPS.

21 (PAUSE IN THE PROCEEDINGS.)

22 THERE HAVE BEEN TASK FORCES CREATED TO LOOK AT TRANSFER
23 RULES, VERY CHALLENGING AND CONTENTIOUS ISSUE. RECRUITING
24 RULES AND THE USE OF COMMUNICATION DEVICES FOR RECRUITING IN
25 BASKETBALL AND FOOTBALL.

1 THERE'S BEEN TASK FORCES CREATED TO LOOK AT STUDENT
2 WELFARE, AT THE -- ALL OF THE RULES AROUND ENFORCEMENT AND THE
3 RULE STRUCTURE IN GENERAL.

4 SO IT'S A COMMONLY USED WAY TO GET A GROUP OF MEMBERS TO
5 FOCUS ON AN ISSUE.

6 **THE COURT:** IS THERE SOMETHING WRONG WITH YOUR CHAIR?

7 **THE WITNESS:** YEAH, YOU KNOW, IT KEEPS POPPING DOWN.

8 **THE COURT:** WOULD ONE OF YOU SACRIFICE YOURSELF --
9 NOT NOW, AT THE BREAK.

10 **THE WITNESS:** THANK YOU KINDLY FOR THAT SACRIFICE.
11 THANK YOU, YOUR HONOR. IT IS A LITTLE DISCONCERTING IN
12 MID-SENTENCE.

13 **BY MR. POMERANTZ:**

14 **Q.** ALL RIGHT.

15 DO THESE TASK FORCES FROM TIME TO TIME ISSUE REPORTS?

16 **A.** YES, ALMOST ALWAYS.

17 **Q.** WHAT ARE THE PURPOSES OF THE REPORTS?

18 **A.** TO EXPRESS THE VIEWS AND OPINIONS OF THE MEMBERS WHO WERE
19 ON THAT WORKING GROUP THAT THEY HAD DISCUSSIONS AROUND, AND TO
20 HELP STIMULATE FURTHER DEBATE AND DISCUSSION AMONG THE
21 LEGISLATIVE BODY THAT'S GOING TO BE LOOKING AT THAT REPORT.

22 **Q.** DO THE TASK FORCES HAVE THE AUTHORITY TO ACTUALLY CHANGE
23 THE RULES AT THE NCAA?

24 **A.** NO.

25 **Q.** DO THE TASK FORCES FROM TIME TO TIME MAKE RECOMMENDATIONS?

1 **A.** YES.

2 **Q.** AND WHAT THEN HAPPENS AFTER THEY MAKE A RECOMMENDATION?

3 **A.** THEY ARE -- THEY ARE CONSIDERED BY WHATEVER THE
4 APPROPRIATE BODY IS. SO LET'S SAY IT IS A FULL-FLEDGED
5 PROPOSAL. IT COULD BE TURNED OVER TO THE LEGISLATIVE COUNCIL,
6 WHICH IS A GROUP OF 32-MEMBER REPRESENTATIVES, AND THAT GROUP
7 WOULD THEN DEBATE IT, DISCUSS IT, DECIDE WHETHER OR NOT THEY
8 WANT TO ACT ON IT, MAY PUT IT ASIDE, MAY CHANGE IT COMPLETELY,
9 AND THEN IF THEY WERE TO PASS IT, THEY COULD THEN MOVE IT
10 FURTHER TO THE -- TO THE BOARD WHERE IT WOULD BE -- WHERE IT
11 WOULD BE ACTED UPON. AND THEN -- THEN AFTER THAT, OF COURSE
12 THERE'S THIS OPTION FOR AN OVERRIDE SHOULD THE MEMBERSHIP
13 DETERMINE THAT THEY DIDN'T LIKE THAT RULE.

14 SO IT'S AT THE VERY BEGINNING OF A GESTATION PERIOD AT
15 THAT STAGE.

16 **Q.** SO JUST TO MAKE SURE WE ARE CLEAR HERE. A TASK FORCE WILL
17 STUDY AN ISSUE, CORRECT?

18 **A.** YES.

19 **Q.** AND THEN THE TASK FORCE MAY ISSUE A REPORT, CORRECT?

20 **A.** YES.

21 **THE COURT:** I THINK --

22 **MR. POMERANTZ:** WE GOT THAT?

23 **THE COURT:** YES. I HEARD IT A COUPLE OF TIMES.

24 **BY MR. POMERANTZ:**

25 **Q.** IN YOUR VIEW, DO THE STATEMENTS AND REPORTS OF THE TASK

1 FORCE ALWAYS REFLECT THE VIEWS OF THE MEMBER INSTITUTIONS?

2 **A.** NO. THEY ARE OFTEN -- THEY ARE OFTEN NOT ACTED ON AND
3 THEY ARE OFTEN VOTED DOWN OR EXPRESSLY REJECTED.

4 **Q.** LET'S SWITCH SUBJECTS.

5 WHEN THE NCAA WAS FOUNDED IN 1905, WAS IT A REGIONAL
6 ORGANIZATION OR WAS IT A NATIONAL ORGANIZATION?

7 **A.** NATIONAL ORGANIZATION.

8 **Q.** AND IS IT STILL A NATIONAL ORGANIZATION?

9 **A.** YES.

10 **Q.** DO YOU THINK IT IS IMPORTANT THAT THE NCAA REMAINS A
11 NATIONAL ORGANIZATION?

12 **A.** IF COLLEGES AND UNIVERSITIES WANT TO HAVE NATIONAL
13 COMPETITION TO DECIDE NATIONAL CHAMPIONSHIPS, FOR EXAMPLE, IF
14 THEY WANT TO HAVE THE OPPORTUNITY FOR STUDENT ATHLETES TO MAKE
15 CHOICES ABOUT WHICH SCHOOL THEY WANT TO JOIN AND PARTICIPATE
16 IN ACROSS THE COUNTRY RATHER THAN JUST REGIONALLY OR LOCALLY,
17 THEN, YES, IT'S ESSENTIAL THAT THERE BE A BODY THAT PROVIDES
18 THE KIND OF OVERSIGHT AND RULE-MAKING AND GUIDANCE THAT THE
19 NCAA PROVIDES.

20 **Q.** WHY DO YOU NEED TO HAVE A NATIONAL ASSOCIATION THAT DOES
21 RULE-MAKING IN ORDER TO HAVE NATIONAL COMPETITIONS?

22 **A.** ONE OF THE MOST FUNDAMENTAL PRINCIPLES OF FAIR COMPETITION
23 IS THAT EVERYONE IS PLAYING BY THE SAME RULES, THAT EVERYONE
24 UNDERSTANDS THAT THE RULES OF WHO IS TO BE A PARTICIPANT AND
25 WHO'S NOT TO BE A PARTICIPANT, THAT EVERYONE UNDERSTANDS THAT

1 THEY ARE GOVERNING AND CONDUCTING THE GAME THE SAME WAY FROM
2 ONE SIDE OF THE COUNTRY TO THE OTHER.

3 SO, YOU SIMPLY COULDN'T HOLD A FAIR COMPETITION WITHOUT --
4 A NATIONAL COMPETITION. YOU CAN DO IT REGIONALLY, OBVIOUSLY,
5 OR EVEN LOCALLY, BUT YOU COULDN'T DO IT NATIONALLY WITHOUT
6 THOSE RULES.

7 **Q.** IS THAT ONE OF THE REASONS WHY THE NCAA WAS FORMED BACK IN
8 1905?

9 **A.** YES, BECAUSE THE COLLEGE SPORTS HAD BECOME NATIONALIZED IN
10 THE SENSE THAT THEY WERE BEING PLAYED FROM COAST TO COAST.

11 **Q.** AND TODAY, DO SCHOOLS IN DIVISION I, FROM ONE PART OF THE
12 COUNTRY, OFTEN PLAY SCHOOLS FROM ANOTHER PART OF THE COUNTRY?

13 **A.** YES. VERY COMMONLY.

14 **Q.** CAN YOU GIVE US SOME EXAMPLES OF THE KINDS OF COMPETITIONS
15 THAT OCCUR RIGHT NOW BETWEEN SCHOOLS IN ONE REGION AND SCHOOLS
16 IN ANOTHER REGION?

17 **A.** NOTRE DAME/STANFORD GAME IS A CONTINUOUS BASKETBALL,
18 FOOTBALL GAME THAT'S PLAYED ALL THE TIME. THE RIVALRIES AMONG
19 BASKETBALL TEAMS OUTSIDE OF THEIR LEAGUES BECOME VERY, VERY
20 WELL-KNOWN. SCHOOLS PLAYING ACROSS THEIR CONFERENCES IN
21 PRE-SEASON TOURNAMENTS THAT GO ON. THEY ALL ARE
22 REPRESENTATIVE EXAMPLES OF CROSS-CONFERENCE PLAY.

23 **Q.** AND IS THAT CROSS-CONFERENCE PLAY SOMETHING THAT'S POPULAR
24 AMONG THE FAN BASE?

25 **A.** YEAH, TYPICALLY, ESPECIALLY WHEN THEY ARE LONG-ESTABLISHED

1 GAMES, THEY ARE EXTREMELY POPULAR.

2 Q. ARE THEY ALSO POPULAR AMONG THE STUDENT ATHLETES?

3 A. YES, I ASSUME SO.

4 Q. LET'S TALK POST-SEASON. IN THE POST-SEASON, LET'S START
5 WITH BASKETBALL.

6 DO SCHOOLS FROM ONE PART OF THE COUNTRY PLAY SCHOOLS FROM
7 ANOTHER PART OF THE COUNTRY?

8 A. YES.

9 Q. AND TELL US A LITTLE BIT ABOUT HOW THAT WORKS IN THE
10 DIVISION I BASKETBALL TOURNAMENT.

11 A. WELL, THE MEN'S BASKETBALL TOURNAMENT IS -- FIRST OF ALL,
12 THE TEAMS PARTICIPATING ARE SELECTED BY A COMMITTEE OF THE
13 MEMBERS THAT IDENTIFIES 68 TEAMS REPRESENTING ALL 32 OF THE
14 CONFERENCES.

15 THEY ARE SEATED AROUND THE COUNTRY SO THAT THEY, THEY PLAY
16 IN REGIONS ALL AROUND THE COUNTRY. THEY TRY VERY HARD TO NOT
17 HAVE TEAMS PLAY ONE OF THEIR OWN CONFERENCE TEAMS. SO THE
18 FIRST FEW GAMES ARE -- THERE'S A VERY SERIOUS EFFORT MADE TO
19 NOT HAVE INTER-CONFERENCE GAMES, BUT TO HAVE -- EXCUSE ME,
20 HAVE INTER-CONFERENCE NOT INTRA-CONFERENCE GAMES.

21 SO IT'S DESIGNED TO BE A NATIONAL GAME AND PROVIDE TEAMS
22 WITH COMPETITORS FROM DIFFERENT PARTS OF THE COUNTRY.

23 Q. AND THE TOURNAMENT YOU WERE JUST DISCUSSING IS REFERRED TO
24 AS MARCH MADNESS?

25 A. YES.

1 Q. DO YOU THINK THAT THIS INTER-REGIONAL COMPETITION THAT IS
2 CREATED BY MARCH MADNESS AFFECTS THE POPULARITY OF THE
3 TOURNAMENT?

4 A. VERY MUCH SO. YOU HAVE -- YOU HAVE SCHOOLS AND -- SCHOOLS
5 AND COLLEGES FROM ALL AROUND THE COUNTRY REPRESENTED. SO THE
6 FAN BASE HAS AN OPPORTUNITY TO CHEER FOR SOMEONE FROM THEIR
7 REGION OF THE COUNTRY. IT'S -- IT'S BECOME EXTREMELY POPULAR,
8 AT LEAST IN PART BECAUSE THERE'S SOMEONE FROM YOUR
9 NEIGHBORHOOD LIKELY TO BE IN THE TOURNAMENT.

10 Q. AND IN THE POST-SEASON GAMES IN FOOTBALL USUALLY OCCUR
11 THROUGH BOWL GAMES, CORRECT?

12 A. YES.

13 Q. HOW OFTEN DO THE BOWL GAMES INVOLVE TEAMS FROM DIFFERENT
14 CONFERENCES?

15 A. VIRTUALLY ALWAYS.

16 Q. AND DO YOU THINK THAT THE FACT THAT THE BOWL GAMES INVOLVE
17 TEAMS FROM DIFFERENT PARTS OF THE COUNTRY AND DIFFERENT
18 CONFERENCES AFFECT THE POPULARITY OF THOSE GAMES?

19 A. YES.

20 Q. AND JUST SO THAT WE ARE CLEAR, DOES THE NCAA -- IS THE
21 NCAA RESPONSIBLE FOR PUTTING ON THE POST-SEASON BOWL GAMES IN
22 COLLEGE FOOTBALL?

23 A. NO.

24 Q. WHO'S RESPONSIBLE FOR THOSE?

25 A. THE BOWL ORGANIZERS THEMSELVES. SO, MANY, PROBABLY MOST

1 OF THE BOWLS, ARE ORGANIZED BY LOCAL COMMUNITIES. SO THE ROSE
2 BOWL IS PUT ON BY THE ROSE BOWL ASSOCIATION IN PASADENA. AND
3 THEY, IN TURN, HAVE CONTRACTUAL RELATIONSHIPS WITH CONFERENCES
4 IN THE CASE OF THE ROSE BOWL, BIG TEN 10 AND THE PAC-12, TWO
5 ROUTINELY SEND THEIR CHAMPIONS TO THAT BOWL. AND THAT'S A
6 LONG-STANDING AGREEMENT THAT THEY'VE HAD.

7 BUT THE NCAA DOES NOT GET INVOLVED IN THE CONDUCT OF THAT
8 GAME OR THE FINANCES OF IT.

9 **Q.** BUT THE NCAA DOES ORGANIZE THE MARCH MADNESS TOURNAMENT
10 FOR MEN'S BASKETBALL, CORRECT?

11 **A.** YES.

12 **Q.** DOES THE NCAA ORGANIZE NATIONAL CHAMPIONSHIPS FOR ANY
13 OTHER SPORTS?

14 **A.** YES. WE RUN 89 CHAMPIONSHIPS ACROSS -- NATIONAL
15 CHAMPIONSHIPS ACROSS ALL THREE DIVISIONS.

16 **Q.** HOW MANY DIFFERENT SPORTS ARE REPRESENTED BY THOSE 89
17 CHAMPIONSHIPS?

18 **A.** TWENTY-THREE.

19 **Q.** IN EACH OF THOSE SPORTS DO YOU THINK IT'S IMPORTANT TO PUT
20 ON A POST-SEASON TOURNAMENT TO DETERMINE A NATIONAL CHAMPION?

21 **A.** WELL, THE ATHLETES CERTAINLY DO AND THE FANS CERTAINLY DO.

22 FOR A STUDENT ATHLETE IN ANY SPORT, THE HIGHEST
23 ACHIEVEMENT THEY CAN GET IS TO MAKE IT INTO THE NCAA
24 TOURNAMENT AND TO WIN A CHAMPIONSHIP.

25 **Q.** AND DO YOU THINK THAT WE WOULD STILL HAVE NATIONAL

1 CHAMPIONSHIPS IF THE CONFERENCES WERE FOLLOWING FUNDAMENTALLY
2 DIFFERENT RULES?

3 **A.** NO.

4 **Q.** WHY NOT?

5 **A.** FOR THE FACT THAT THEY ARE FOLLOWING FUNDAMENTALLY
6 DIFFERENT RULES AND SCHOOLS WOULD NOT CONSIDER THAT FAIR PLAY.
7 THEY WOULD NOT CONSIDER IT PARTICIPATION THAT -- SPORTS THAT
8 THEY WANTED TO PARTICIPATE IN. YOU'RE, TO A CERTAIN EXTENT,
9 DESCRIBING THE CIRCUMSTANCES THAT EXISTED PRIOR TO THE
10 CREATION OF THE NCAA.

11 **Q.** IF SOME CONFERENCES ALLOWED FOR THEIR MEMBERS TO PAY
12 STUDENT ATHLETES FOR USE OF THEIR NAME, IMAGE AND LIKENESS,
13 AND OTHER CONFERENCES DID NOT ALLOW THOSE PAYMENTS, DO YOU
14 THINK THAT THEY WOULD STILL PLAY TOGETHER TO CREATE A NATIONAL
15 CHAMPIONSHIP?

16 **A.** NO, I DON'T.

17 **Q.** WHY NOT?

18 **A.** WELL, FOR THE OBVIOUS REASON THAT THERE'S SIGNIFICANT
19 INDUCEMENT, RECRUITING INDUCEMENTS FOR ONE SCHOOL TO RECRUIT
20 STUDENTS TO COME TO THEIR INSTITUTION THAT ARE DIRECT PAYMENT.

21 SCHOOLS COMPETE AGGRESSIVELY NOW IN THE RECRUITING TRAILS
22 WITH FACILITIES, WITH, YOU KNOW, THEIR FAN BASE, IN A VARIETY
23 OF WAYS, BUT DIRECT PAYMENT AS AN INDUCEMENT IS OBVIOUSLY
24 FUNDAMENTALLY DIFFERENT THAN SAY YOU'RE GOING TO GET TO BE IN
25 THIS LOCKER ROOM, OR THAT STADIUM.

1 SO, THE MEMBER SCHOOLS -- AND I HAVE CHATTED WITH MEMBER
2 SCHOOLS ABOUT THIS, WOULD -- WOULD CERTAINLY FIND THAT AN
3 UNCOMPETITIVE SITUATION AND WOULD NOT WANT TO BE A PART OF A
4 CHAMPIONSHIP THAT WAS DRIVEN BY THAT.

5 **Q.** ALL RIGHT.

6 WE'VE HEARD THE TERM "COMMERCIALISM" SEVERAL TIMES IN THIS
7 TRIAL. I WANT TO FOCUS ON REVENUE RAISING BY COLLEGES IN THE
8 NCAA.

9 WHEN DID COLLEGES FIRST START RAISING REVENUE FROM COLLEGE
10 SPORTS?

11 **A.** AS FAR AS I KNOW FROM THE VERY FIRST GAME THEY PLAYED.

12 **THE COURT:** CAN I GO BACK TO THE BOWL ORGANIZERS FOR
13 A MINUTE?

14 **THE WITNESS:** YES.

15 **THE COURT:** ARE YOU SAYING THAT THE BOWL ORGANIZING
16 COMMITTEE HAS NO CONTRACTUAL OR ORGANIZATIONAL RELATIONSHIP
17 WITH THE NCAA, BUT ONLY CONTRACTS WITH CONFERENCES?

18 **THE WITNESS:** YES, THAT'S CORRECT.

19 **THE COURT:** SO THEY ARE NOT BOUND BY ANY RULES?

20 **THE WITNESS:** THEY ARE BOUND --

21 **THE COURT:** EXCEPT TO THE EXTENT THE CONFERENCE WON'T
22 DEAL THEM IF THE CONFERENCE DOESN'T WANT TO BREAK ITS OWN
23 RULE.

24 **THE WITNESS:** YES. THERE ARE -- THE MEMBERS HAVE
25 CREATED SOME RULES ABOUT THE WAY IN WHICH A BOWL CAN BE

1 CONDUCTED. AND THOSE ARE NCAA RULES. BUT THEY ONLY STIPULATE
2 THE STRUCTURE UNDER WHICH A BOWL CAN BE CREATED. BUT THE
3 CONDUCT OF THE BOWL ITSELF IS UP TO THE LOCAL ORGANIZING
4 COMMUNITY.

5 **THE COURT:** AND ANY RULE THE NCAA MIGHT HAVE ABOUT
6 HOW A BOWL IS CONDUCTED IS BINDING BECAUSE IT'S BINDING ON THE
7 CONFERENCE --

8 **THE WITNESS:** YES.

9 **THE COURT:** -- WHICH HAS TO CONTRACT WITH THE
10 COMMITTEE? IT'S NOT BINDING ON THE COMMITTEE.

11 **THE WITNESS:** CORRECT. WELL, NO, LET ME TAKE THAT
12 BACK.

13 THERE ARE, FOR EXAMPLE, RULES THAT SAY THAT THE FINANCES
14 OF A BOWL MUST BE AUDITED AND KNOWN TO PARTICIPANTS, FOR
15 EXAMPLE. SO THERE'S SOME BASIC CRITERIA THAT NEED TO BE MET
16 SO THAT THE PARTICIPANTS UNDERSTAND THE -- THE SPONSORSHIPS OF
17 THE BOWL AND UNDERSTAND WHERE THEIR RESOURCES ARE BEING SPENT.

18 **THE COURT:** AND HOW IS THAT ENFORCED? WHAT CONTROL
19 DOES THE NCAA HAVE OVER THE BOWL ORGANIZING COMMITTEE TO
20 ENFORCE SUCH A RULE?

21 **THE WITNESS:** YEAH. THE NCAA HAS THE AUTHORITY TODAY
22 TO RECOGNIZE A BOWL. SO THEY CAN -- THEY CAN SAY THAT THIS
23 BOWL DOES NOT MEET THAT CRITERIA, FOR EXAMPLE, AND, THEREFORE,
24 IT IS NOT APPROVED FOR POST-SEASON PLAY.

25 THIS -- THIS IS A RULE THAT STEMMED FROM THE ISSUES THAT

1 CAME OUT OF THE FIESTA BOWL A FEW YEARS BACK WHERE THERE WERE
2 A VARIETY OF CONCERNS ABOUT THE USE OF THEIR RESOURCES.

3 **THE COURT:** GO AHEAD.

4 **MR. POMERANTZ:** OKAY?

5 **BY MR. POMERANTZ:**

6 **Q.** YOU SAID THAT COLLEGES STARTED FIRST RAISING REVENUE FROM
7 COLLEGE SPORTS WITH THE FIRST COLLEGE ATHLETIC --

8 **A.** AS FAR AS I'M AWARE, YES.

9 **Q.** WHEN WAS THAT?

10 **A.** ACTUALLY BEFORE THE CIVIL WAR, AT LEAST THAT'S WHAT THE
11 HISTORY BOOKS WOULD HAVE US UNDERSTAND.

12 **Q.** AND SINCE THAT TIME, HAVE COLLEGES RAISED REVENUE FROM
13 COLLEGE SPORTS?

14 **A.** YES. THROUGH CHARGING ADMISSION AND SEEKING SUPPORT IN A
15 VARIETY OF WAYS TO COVER THE COST OF CONDUCTING THE GAMES.

16 **Q.** AND SO BEFORE THE ADVENT OF TELEVISION OR OF THE MEDIA
17 CONTRACTS THAT HAVE BEEN DISCUSSED IN THIS CASE, WHAT KINDS OF
18 WAYS DID COLLEGES GO ABOUT RAISING REVENUE FROM COLLEGE
19 SPORTS?

20 **A.** MOSTLY THROUGH TICKET SALES, BUT ALSO THROUGH FUNDRAISING
21 DRIVES. AND I DON'T KNOW THAT THEY HAD ANYTHING LIKE
22 CORPORATE SPONSORSHIPS OF TODAY, BUT THERE WAS A VERY LARGE
23 AMOUNT OF CORPORATE ENGAGEMENT IN THE SPORTS FROM, AGAIN, THE
24 VERY BEGINNING OF COLLEGE SPORTS.

25 **Q.** AND WHEN YOU SAY "CORPORATE ENGAGEMENT IN THE SPORTS",

1 WHAT KIND OF VARIOUS ENGAGEMENTS DID BUSINESSES HAVE IN
2 SUPPORTING COLLEGE SPORTS WITH REVENUE?

3 **A.** THEY WOULD -- THEY WOULD PROVIDE SUPPORT FOR A TEAM TO --
4 TO COVER COSTS OF -- ANY DIRECT COST FOR TRAVEL OR FOR A
5 VARIETY OF OTHER THINGS, AND LEND THEIR GOOD NAME TO THE
6 ACTIVITY. AND, YOU KNOW, THAT I KNOW IS GOING ON IN THE
7 1930'S.

8 SO IT'S -- IT'S BEEN COMMON PRACTICE IN COLLEGE SPORTS TO
9 HAVE THE CORPORATE COMMUNITY AND THE BUSINESS COMMUNITY IN
10 DIFFERENT WAYS PROVIDING RESOURCES TO SUPPORT STUDENT-ATHLETIC
11 ACTIVITIES.

12 **Q.** WHY DO COLLEGES RAISE REVENUE FROM THEIR SPORTS BY SELLING
13 TICKETS AND GETTING BUSINESSES TO SUPPORT THEM?

14 **A.** TO OFFSET THE COSTS OF CONDUCTING THOSE SPORTS.

15 **Q.** AND IF COLLEGES DIDN'T RAISE REVENUE THROUGH THEIR SPORTS
16 FROM THEIR SPORTS PROGRAMS, WHAT DO YOU THINK WOULD CHANGE AT
17 THE COLLEGES?

18 **A.** WELL, THE -- THE SCHOOLS IN DIVISION I, ALL BUT A HANDFUL
19 OF THEM, MEANING 25 OR FEWER TODAY, OPERATE AT AN -- AT AN
20 OPERATING LOSS IF YOU WERE SPEAKING IN BUSINESS TERMS. THEY
21 HAVE EXPENDITURES THAT EXCEED THEIR REVENUE.

22 IF YOU TOOK AWAY ALL THAT REVENUE, THEY WOULD SIMPLY NOT
23 BE ABLE TO OPERATE AS THEY DO NOW.

24 DIVISION III UNIVERSITY -- DIVISION III COLLEGES DO NOT
25 OPERATE AT THE SAME LEVEL, SO I SUSPECT MOST DIVISION I

1 SCHOOLS WOULD MOVE TOWARD A DIVISION III MODEL IF THEY WERE
2 GOING TO CONTINUE IN SPORT.

3 **Q.** WOULD THAT MEAN THAT THE ATHLETIC PROGRAM WOULD LARGELY BE
4 FUNDED THROUGH TUITION AND THOSE SOURCES?

5 **A.** YES. AND IT IS FUNDED, IN MANY CASES, SIGNIFICANTLY BY
6 TUITION AND STUDENT FEES AS IT IS TODAY.

7 SO IN ONE FBS CONFERENCE THAT I'M AWARE OF, MORE THAN HALF
8 OF THEIR -- EACH SCHOOL'S BUDGET IS COVERED THROUGH TUITION
9 AND FEES RIGHT NOW. SO THEY'RE ALREADY MORE THAN HALF
10 SUBSIDIZED AT THAT LEVEL.

11 **Q.** DO YOU BELIEVE THAT IT'S INCONSISTENT WITH THE NCAA'S
12 PRINCIPLE OF AMATEURISM FOR A SCHOOL TO RAISE REVENUE THROUGH
13 ITS COLLEGE SPORTS PROGRAM?

14 **A.** NO.

15 **Q.** WHY NOT?

16 **A.** THE ISSUE TO ME HAS NEVER BEEN THE TOP LINE REVENUE, IF
17 YOU WILL, IT'S BEEN WHAT DO YOU DO WITH THAT REVENUE? WHAT IS
18 IT BEING USED FOR?

19 IF THAT REVENUE IS BEING USED TO PROVIDE OPPORTUNITIES FOR
20 STUDENT ATHLETES AND TO AVOID THE REST OF THE STUDENT BODY
21 HAVING TO SUBSIDIZE THAT ACTIVITY, THEN I THINK THAT'S
22 PERFECTLY APPROPRIATE.

23 **Q.** AND IF THAT MONEY IS BEING USED TO PAY STUDENT ATHLETES
24 ABOVE THE FULL COST OF ATTENDANCE, WOULD THAT BE CONSISTENT
25 WITH AMATEURISM?

1 **A.** NO. ONCE AGAIN, YOU IMMEDIATELY MOVE INTO A MODEL OF
2 PAYING A STUDENT ATHLETE FOR THEIR PARTICIPATION IN SPORTS AND
3 YOU HAVE MOVED AWAY FROM AN AMATEURISM MODEL. AND THE NOTION
4 OF SUBSIDING THAT WITH STUDENT TUITION AND FEES DOLLARS OR
5 STATE LEGISLATIVE DOLLARS, I THINK, WOULD BE OBJECTIONABLE TO
6 MANY.

7 **Q.** IF A STUDENT ATHLETE IN DIVISION I WERE TO PLAY IN A
8 FOOTBALL GAME THAT BRINGS IN A SUBSTANTIAL AMOUNT OF REVENUE,
9 DO YOU THINK THAT THAT MAKES HIM NO LONGER AN AMATEUR?

10 **A.** NO.

11 **Q.** I WANT TO COMPARE COLLEGE SPORTS AND PROFESSIONAL SPORTS.
12 IN YOUR EXPERIENCE, ARE COLLEGE SPORTS DISTINCT FROM
13 PROFESSIONAL SPORTS?

14 **A.** VERY MUCH SO.

15 **Q.** WHY -- HOW?

16 **A.** WELL, I THINK IT'S THE ISSUE WE HAVE BEEN DISCUSSING MOST
17 PROMINENTLY IS THESE ARE STUDENT ATHLETES. THESE ARE
18 INDIVIDUALS WHO NOT PROFESSIONALS. THEY ARE INDIVIDUALS WHO
19 ARE PLAYING IN REPRESENTATION OF THEIR UNIVERSITY. THEY ARE
20 PART OF A UNIVERSITY COMMUNITY.

21 A PROFESSIONAL ATHLETE IS NOT THAT IN ANY SENSE. THEY ARE
22 CLEARLY NOT THE BEST ATHLETES IN THE WORLD AT THE COLLEGE
23 RANKS. THEY CAN BE VERY GOOD AND THEIR PERFORMANCES CAN BE
24 THRILLING, BUT THEY ARE THE BEST COLLEGE STUDENTS WHO ARE
25 PLAYING THAT GAME.

1 ONE CAN LOOK AT ANY NUMBER OF SPORTS AND DETERMINE THAT
2 THERE ARE BETTER ATHLETES PLAYING IN THE PROFESSIONAL RANKS,
3 BUT PEOPLE COME TO WATCH COLLEGE SPORTS BECAUSE IT'S COLLEGE
4 SPORTS WITH STUDENT ATHLETES.

5 **Q.** ARE THERE TRADITIONS OF COLLEGE SPORTS THAT DON'T EXIST IN
6 PROFESSIONAL SPORTS?

7 **A.** MANY. YES.

8 **Q.** GIVE US SOME EXAMPLES OF TRADITIONS IN COLLEGE SPORTS THAT
9 DON'T EXIST IN PROFESSIONAL SPORTS.

10 **A.** OH, I THINK THAT ANYONE WHO HAS BEEN TO AN SEC IN FOOTBALL
11 GAME, FOR EXAMPLE, AND SEES THE LONG-STANDING FAMILY
12 TRADITIONS AROUND, AROUND TAILGATING AT THOSE EVENTS, AROUND
13 THE CHEERS AND YELLS, AROUND THE ENGAGEMENT OF ALL OF THE
14 CITIZENRY IN THOSE GAMES, THE PAGEANTRY OF COLLEGE SPORT WITH
15 MARCHING BANDS AND A VARIETY OF THINGS IS FUNDAMENTALLY
16 DIFFERENT THAN PROFESSIONAL SPORT.

17 AND THE FANS SAY THAT TO US, BOTH, YOU KNOW, ORGANIZED
18 FASHIONS AND ANECDOTALLY.

19 **Q.** DO YOU THINK THAT IT'S IMPORTANT TO THE MEMBER COLLEGES
20 THAT THEY PRESERVE THE TRADITIONS OF COLLEGE SPORTS?

21 **A.** I THINK THAT'S ONE OF THE CRITICAL FEATURES OF COLLEGE
22 SPORTS THAT CAMPUSES VALUE THE MOST IS THIS, AGAIN, THIS
23 SOCIAL COHESION OF WHAT IT'S LIKE TO GO TO A NOTRE DAME
24 FOOTBALL GAME OR A NEBRASKA FOOTBALL GAME, OR TO A BASKETBALL
25 GAME AT DUKE. THOSE ARE ALL TRADITIONS THAT ARE EXTREMELY

1 MEANINGFUL TO THOSE UNIVERSITIES, TO THEIR ALUMNI, TO THEIR
2 CURRENT STUDENTS.

3 Q. HOW DOES THE PRINCIPLE OF AMATEURISM RELATE TO THOSE
4 TRADITIONS?

5 A. I THINK IT'S AT THE CORE OF IT. AGAIN, THE -- THE MOST
6 FUNDAMENTAL NOTION IS THAT STUDENT ATHLETES ARE NOT PAID
7 PROFESSIONALS, THEY ARE STUDENTS WHO ARE PLAYING FOR THEIR
8 SCHOOL, AND THEY'RE NOT THERE BECAUSE THEY ARE BEING PAID.

9 Q. I WANT TO TALK ABOUT A COUPLE OF SPECIFIC ASPECTS OF
10 PROFESSIONAL SPORTS.

11 WHEN AN ATHLETE ENTERS PROFESSIONAL SPORTS, HOW IS IT
12 DETERMINED WHICH TEAM THEY PLAY ON?

13 A. IN THE MAJOR SPORTS IN THE UNITED STATES THEY ARE DRAFTED
14 BY THE TEAMS THEMSELVES.

15 Q. SO THAT MEANS THEY DON'T HAVE ANY CHOICE, CORRECT?

16 A. CORRECT.

17 Q. HOW DOES A HIGH SCHOOL STUDENT ATHLETE, HOW IS IT DECIDED
18 WHICH COLLEGE HE'S GOING TO GOING TO AND WHICH SPORTS TEAM
19 HE'S GOING TO PLAY ON?

20 A. HE'S RECRUITED BY STUDENTS -- EXCUSE ME, BY ATHLETIC
21 DEPARTMENTS WHEREVER THEY MAY BE AROUND THE COUNTRY, AND THEN
22 HE OR SHE MAKES A DECISION ABOUT WHICH SCHOOL HE OR SHE WANTS
23 TO ATTEND.

24 Q. WHY DON'T COLLEGES ALL GET TOGETHER AND JUST DRAFT THE
25 BEST STUDENT ATHLETES IN HIGH SCHOOL?

1 **A.** BECAUSE IT'S FUNDAMENTAL -- THAT NOTION IS FUNDAMENTALLY
2 OPPOSED TO THE FACT THAT THESE ARE STUDENTS CHOOSING A COLLEGE
3 TO ATTEND. WE DON'T DO THAT IN ANY ASPECT OF COLLEGIATE LIFE.

4 **Q.** AND IN PROFESSIONAL SPORTS, A PLAYER ON ONE TEAM COULD BE
5 TRADED FOR A PLAYER ON ANOTHER TEAM, CORRECT?

6 **A.** YES.

7 **Q.** THAT DOESN'T HAPPEN IN COLLEGE SPORTS, CORRECT?

8 **A.** NO.

9 **Q.** WHY DOESN'T THAT HAPPEN IN COLLEGE SPORTS?

10 **A.** THAT'S THE SAME ISSUE. THESE ARE -- THESE ARE DECISIONS
11 THAT THE STUDENTS THEMSELVES MAKE. THEY ARE NOT DECISIONS
12 THAT ARE MADE BY, NOR SHOULD THEY BE MADE BY ONE SCHOOL THAT
13 THEY WANT TO TRADE ONE POWER FORWARD FOR A POINT GUARD FROM
14 ANOTHER SCHOOL.

15 **Q.** ALL RIGHT.

16 DR. EMMERT, I WANT TO TURN TO THE FOUR PROCOMPETITIVE
17 BENEFITS THAT THE NCAA HAS IDENTIFIED IN THIS CASE AND HAVE
18 YOU ADDRESS EACH OF THEM.

19 THE FIRST ONE IS THE CORE VALUE OF AMATEURISM. YOU'VE
20 TESTIFIED THAT COLLEGE SPORTS ARE DISTINCTIVE. DOES THE
21 AMATEURISM RULES OF THE NCAA PLAY A ROLE IN MAKING COLLEGE
22 SPORTS DISTINCTIVE?

23 **A.** ABSOLUTELY.

24 **Q.** AND HOW DO YOU KNOW THAT -- THAT AMATEURISM RULES MAKE
25 COLLEGE SPORTS DISTINCTIVE?

1 **A.** WELL, I THINK, FIRST OF ALL, IT HAS A DISTINCTIVE IMPACT
2 ON FAN AND FAN BEHAVIOR. WE KNOW THAT -- THAT FANS APPRECIATE
3 THE FACT THAT THESE ARE INDEED COLLEGE ATHLETES. THEY
4 RECOGNIZE THAT THEY ARE STUDENTS. THEY RECOGNIZE THAT THEY
5 ARE NOT THE GREATEST ATHLETES.

6 IF THEY WERE HIRED EMPLOYEES, THEY -- WE KNOW WHEN WE LOOK
7 AT COMPARISONS OF MINOR LEAGUE SPORTS, FOR EXAMPLE, IF YOU
8 LOOKED AT BASKETBALL, THE ATTRACTIVENESS OF THE DEVELOPMENTAL
9 LEAGUE WHERE THEY ARE PROFESSIONAL SPORTS -- PROFESSIONAL
10 ATHLETES IS VERY LOW RELATIVE TO COLLEGE SPORTS WHERE THEY ARE
11 COLLEGE STUDENTS.

12 SO WE KNOW, FIRST OF ALL, THAT IT'S VERY IMPORTANT TO
13 THE -- TO THE FAN BASE.

14 WE KNOW ALSO THAT THE DISTINCTIVENESS OF THE AMATEUR
15 STATUS MEANS THAT THE STUDENT ATHLETES ARE ENGAGED IN A
16 VARIETY OF ACTIVITIES. THEY SUPPORT THEIR OTHER TEAMS. THEY
17 ARE INVOLVED IN THE CAMPUS IN VERY DIFFERENT WAYS. SO I THINK
18 IT'S A FUNDAMENTALLY DIFFERENT NOTION.

19 **Q.** IN YOUR EXPERIENCE, DO THE MEMBERS OF DIVISION I WANT
20 THEIR SPORTS TO REMAIN AMATEUR?

21 **A.** YES.

22 **Q.** AND DO THE DIVISION I MEMBER INSTITUTIONS VIEW AMATEURISM
23 AS A NECESSARY COMPONENT OF THEIR INTERCOLLEGIATE ATHLETIC
24 COMPETITION?

25 **A.** YES.

1 Q. IF THE RULES WERE CHANGED TO PERMIT STUDENT ATHLETES TO BE
2 PAID FOR THE LICENSING OF THEIR NAME AND IMAGE, WOULD THAT
3 CHANGE WHAT COLLEGE SPORTS IS ALL ABOUT?

4 A. YES, IT WOULD.

5 Q. AND YOU WERE TALKING ABOUT FANS AND WHAT FANS LIKE ABOUT
6 COLLEGE SPORTS. DO THE AMATEURS AND RULES CONTRIBUTE TO THE
7 POPULARITY OF COLLEGE SPORTS?

8 A. YEAH, I'M CONFIDENT THAT THEY DO. AND, AGAIN, THAT'S WHAT
9 WE HEAR CONSISTENTLY FROM FANS THEMSELVES.

10 Q. WHAT WOULD HAPPEN TO THE POPULARITY OF COLLEGE SPORTS IF
11 THE FANS OF COLLEGE SPORTS WERE AWARE THAT COLLEGES WERE NOW
12 PAYING STUDENT ATHLETES FOR THE USE OF THEIR NAME AND IMAGE?

13 A. TO CONVERT COLLEGE SPORTS INTO PROFESSIONAL SPORTS WOULD
14 BE TANTAMOUNT TO CONVERTING IT INTO A MINOR LEAGUE SPORT.

15 AND WE KNOW IN THE UNITED STATES MINOR LEAGUE SPORTS ARE
16 NOT PARTICULARLY SUCCESSFUL, EITHER FOR THE FAN EXPERIENCE OR
17 FOR THE PARTICIPANTS.

18 Q. NOW YOU WERE CHANCELLOR OF LSU, CORRECT?

19 A. YES.

20 Q. AND THEY HAVE A PRETTY GOOD FOOTBALL TEAM, CORRECT?

21 A. WE WON A NATIONAL CHAMPIONSHIP IN '04. SO, YES.

22 Q. AND THERE'S ANOTHER FOOTBALL TEAM IN THAT PART OF
23 LOUISIANA THAT'S PROFESSIONAL, CORRECT?

24 A. YES.

25 Q. AND WHAT'S THE NAME OF THAT TEAM?

1 **A.** THE NEW ORLEANS SAINTS.

2 **Q.** WOULD YOU AGREE THAT THE PLAYERS ON THE NEW ORLEANS SAINTS
3 ARE ON AVERAGE BETTER FOOTBALL PLAYERS THAN THE ONES THAT
4 PLAYED AT LSU?

5 **A.** ABSOLUTELY.

6 **Q.** WOULD YOU SAY THAT THE QUALITY OF PLAY BY THE NEW ORLEANS
7 SAINTS WAS BETTER THAN THE QUALITY OF PLAY AT LSU?

8 **A.** YES.

9 **Q.** HOW WOULD YOU COMPARE THE POPULARITY OF LSU FOOTBALL TO
10 NEW ORLEANS SAINTS FOOTBALL?

11 **A.** WELL, LSU HAS A BIGGER STADIUM. IT ATTRACTS ENORMOUS
12 CROWDS TO THOSE GAMES. IT IS AN EXTRAORDINARILY POPULAR
13 ACTIVITY IN LOUISIANA.

14 **Q.** WERE THERE PEOPLE, WHILE YOU WERE AT LSU, WERE THERE
15 PEOPLE WHO PREFERRED TO GO WATCH AN LSU GAME THAN THE NEW
16 ORLEANS SAINTS GAME?

17 **A.** ABSOLUTELY.

18 **Q.** AND SOME WHO LIKE THE NEW ORLEANS SAINTS MORE THAN LSU?

19 **A.** I'M SURE.

20 **Q.** WHY DO YOU THINK SOME PEOPLE PREFER TO GO WATCH LSU
21 FOOTBALL RATHER THAN NEW ORLEANS SAINTS FOOTBALL?

22 **A.** IT'S BECAUSE OF ITS CONNECTIVITY AND INTEGRATION INTO THE
23 UNIVERSITY. FOR -- FOR SO MANY STUDENTS, WHEN THEY ARE EVEN
24 MAKING A DECISION OF WHAT COLLEGE TO ATTEND, THEY THINK OF IT
25 IN TERMS OF BECOMING A TIGER, IN THE CASE OF LSU OR A BRUIN OR

1 A, YOU KNOW, A BLUE DEVIL, OR WHATEVER THE -- THE MASCOT OF A
2 SCHOOL IS. YOU KNOW, THAT BECOMES AN INTEGRAL, VISCERAL PART
3 OF WHO THAT SCHOOL IS.

4 AND THE FACT THAT THE STUDENT ATHLETES ARE MEMBERS OF THAT
5 COMMUNITY, ARE FELLOW STUDENTS ALSO, IS HUGE IMPORTANT TO --
6 TO THAT -- THAT ENTIRE CONTEXT. SO, I THINK PEOPLE ARE DRAWN
7 TO IT, AGAIN, BECAUSE IT IS PART OF THE UNIVERSITY, IT IS PART
8 OF THAT COMMUNITY. IT IS NOT BECAUSE IT IS A PROFESSIONAL
9 ENTERTAINMENT ACTIVITY ALONE.

10 Q. IS THE FACT THAT THE STUDENT ATHLETES ARE AMATEURS ALSO
11 PART OF THAT POPULARITY?

12 A. YES, OF COURSE. BECAUSE THAT'S WHAT MAKES THEM PART OF
13 THAT ACADEMIC COMMUNITY.

14 Q. ALL RIGHT. I WANT TO TURN TO COMPETITIVE BALANCE.

15 WHAT DO YOU UNDERSTAND THAT TERM TO MEAN?

16 A. WELL, I'M -- I'M NOT GOING TO TRY AND GIVE A DICTIONARY
17 DEFINITION, BUT TO ME, IT MEANS THAT -- THAT IN THE
18 COMPETITIVE SENSE AROUND COLLEGE SPORTS, IT MEANS THAT SCHOOLS
19 HAVE AN OPPORTUNITY TO STEP ON TO -- ON TO A PLAYING FIELD OR
20 ON TO A COURT AND COMPETE WITH A TEAM THAT'S FOLLOWING THE
21 SAME RULES, THAT PROVIDES THEM WITH AN OPPORTUNITY TO PLAY AT
22 THE HIGHEST LEVEL THEY CAN, AND WIN GAMES.

23 Q. DO YOU BELIEVE THAT COMPETITIVE BALANCE CURRENTLY EXISTS,
24 AS YOU JUST DESCRIBED IT, WITHIN DIVISION I?

25 A. I THINK IT EXISTS IN DIVISION I NOW AT A HIGHER LEVEL THAN

1 IT EVER HAS BEFORE.

2 Q. WHY DO YOU SAY THAT?

3 A. I THINK THE FACTS SHOW IT.

4 THE COURT: I'M SORRY. I HAD UNDERSTOOD COMPETITIVE
5 BALANCE TO BE A CONCEPT THAT HAD TO DO WITH TEAMS BEING
6 RELATIVELY EQUAL IN ABILITIES SUCH THAT IT WOULD BE HARD TO
7 PREDICT WHO MIGHT WIN IN A GIVEN CASE, AND HE'S ADDRESSING A
8 DIFFERENT CONCEPT.

9 CAN YOU CLEAR THAT UP?

10 MR. POMERANTZ: YES.

11 BY MR. POMERANTZ:

12 Q. DR. EMMERT --

13 THE COURT: MAYBE I'M WRONG, BUT THAT'S WHAT I
14 THOUGHT HE WAS TALKING ABOUT.

15 MR. POMERANTZ: THAT'S RIGHT.

16 BY MR. POMERANTZ:

17 Q. AS YOU UNDERSTAND THE TERM "COMPETITIVE BALANCE" --

18 THE COURT: DEFINE IT FOR HIM AND THEN ASK HIM
19 WHETHER -- WHAT HE THINKS ABOUT IT.

20 DO WHATEVER YOU WANT.

21 MR. POMERANTZ: I AM SORRY, I'M TRYING TO ADDRESS
22 YOUR HONOR'S QUESTION.

23 BY MR. POMERANTZ:

24 Q. YOU HEARD JUDGE WILKEN'S QUESTION.

25 DO YOU BELIEVE THAT PART OF COMPETITIVE BALANCE IS

1 ACHIEVED BY HAVING A TEAM HAVING A CHANCE TO WIN AGAINST
2 ANOTHER TEAM?

3 **A.** YES, I DO.

4 **Q.** HOW DOES THAT FIT INTO YOUR ASSESSMENT OF COMPETITIVE
5 BALANCE?

6 **A.** I THINK IT'S ACTUALLY QUITE SIMILAR TO THE NOTION I WAS
7 TRYING TO DESCRIBE.

8 SO IF YOU LOOKED -- IF YOU LOOK THIS YEAR, FOR EXAMPLE, AT
9 OUR MEN'S BASKETBALL TOURNAMENT. YOU HAD SCHOOLS FROM
10 RELATIVELY LITTLE KNOWN ATHLETIC DEPARTMENTS, MERCER COLLEGE
11 BEATING DUKE. SO WHEN YOU SEE -- WHEN YOU SEE A SCHOOL LIKE
12 DAYTON WINNING THE FIRST TWO ROUNDS OF A TOURNAMENT, NATIONAL
13 TOURNAMENT, I SEE COMPETITIVE BALANCE.

14 WHEN I SEE A LITTLE SCHOOL IN INDIANAPOLIS LIKE BUTLER
15 HAVING A SHOT IN THE AIR TO WIN THE NATIONAL CHAMPIONSHIP A
16 FEW YEARS BACK, THAT STRIKES ME AS COMPETITIVE BALANCE.

17 SO WHAT WE SEE RIGHT NOW GOING ON IN DIVISION I SPORTS IS,
18 I THINK, MUCH, MUCH MORE BALANCED THAN IT'S EVER BEEN. A
19 COUPLE OF DAYS AGO, UNIVERSITY OF CALIFORNIA IRVINE BEAT
20 UNIVERSITY OF TEXAS TO ADVANCE IN THE COLLEGE WORLD SERIES IN
21 BASEBALL. THERE'S -- THERE'S A NUMBER OF THOSE CIRCUMSTANCES
22 OCCURRING NOW THAT WERE UNPREDICTABLE NOT LONG AGO.

23 **Q.** DOES THE NCAA SEEK TO HAVE PERFECT COMPETITIVE BALANCE?

24 **A.** NO.

25 **Q.** WHY NOT?

1 **A.** WELL, IT'S -- IT'S NOT THE MISSION OF THE ASSOCIATION
2 TO -- OF THE MEMBERS, AT LEAST THEY HAVE NOT DESCRIBED IT AS
3 SUCH, TO TRY AND TAKE AWAY THE ADVANTAGES OF A UNIVERSITY
4 THAT'S MADE A SIGNIFICANT COMMITMENT TO FACILITIES AND
5 TRADITION AND ALL OF THE THINGS THAT GO ALONG WITH BUILDING A
6 PROGRAM.

7 YOU KNOW, THE NBA AND THE NFL DO SEEK THAT. THAT'S WHY
8 THEY HAVE DRAFT MODELS. THAT'S WHY THEY HANDLE THE SELECTION
9 PROCESS THE WAY THEY HAVE; THE WAY THEY TRADE PLAYERS AROUND.
10 THEIR MODEL IS, IN FACT, GEARED TO MAXIMIZING SIMPLY THAT
11 COMPETITIVE BALANCE.

12 THAT'S GROSSLY INAPPROPRIATE TO DO IN AN ACADEMIC CONTEXT
13 WHERE YOU HAVE A UNIVERSITY THAT -- THAT'S MAKING COMMITMENTS
14 TO ITS GAMES. WHAT STUDENT ATHLETES WANT, AND WHAT THEY HAVE
15 TOLD ME, AND WHAT I HEAR FROM THEM WHEN I TALK TO THEM IS THEY
16 WANT TO KNOW EVERYBODY IS PLAYING BY THE SAME RULES. THEY
17 WANT TO KNOW THAT THEIR EFFORT IS GOING TO BE CONDUCTED IN A
18 WAY THAT GIVES THEM EVERY CHANCE TO BE SUCCESSFUL GIVEN THEIR
19 SKILLS AND THEIR ABILITIES. THEY WANT TO KNOW THAT THE OTHER
20 TEAMS CONSISTS OF STUDENT ATHLETES JUST LIKE THEM.

21 **Q.** SO I TAKE THAT COMPETITIVE BALANCE DOES NOT EQUAL PARITY,
22 CORRECT?

23 **A.** CORRECT.

24 **Q.** SO, WHEN -- AND WE KNOW THAT CERTAIN SCHOOLS HAVE MORE
25 RESOURCES THAN OTHER SCHOOLS, CORRECT?

1 **A.** CERTAINLY.

2 **Q.** DOES THE FACT THAT CERTAIN SCHOOLS HAVE MORE RESOURCES
3 THAN OTHER SCHOOLS MEAN THAT THE NCAA ISN'T TRYING TO ACHIEVE
4 THE KIND OF BALANCE YOU WERE JUST REFERRING TO?

5 **A.** NO.

6 **Q.** DO YOU BELIEVE THAT THE RULES OF AMATEURISM THAT PROHIBIT
7 PAYMENTS FOR PLAYING THE SPORT AND THAT PROHIBIT PAYMENTS
8 ABOVE THE COST OF ATTENDANCE, DO YOU BELIEVE THAT THEY FURTHER
9 THE GOAL OF COMPETITIVE BALANCE?

10 **A.** I THINK THEY ARE ESSENTIAL.

11 **Q.** WHY DO YOU SAY THAT?

12 **A.** WERE YOU TO MOVE INTO AN ENVIRONMENT OF -- I'LL USE MY
13 LANGUAGE, JUST "PAY FOR PLAY", THEN THE INSTRUMENTAL IMPACT ON
14 A STUDENT MAKING A DECISION ABOUT HIS OR HER COLLEGE IS GOING
15 TO BE DETERMINED AS MUCH BY WHAT THAT PAY IS AS ANYTHING.

16 **Q.** IS THAT TRUE IF THE ONLY PAYMENT THAT WERE ALLOWED ABOVE
17 THE COST OF ATTENDANCE WERE PAYMENTS FOR THE USE OF NAMES AND
18 IMAGES?

19 **A.** PAYMENT IS PAYMENT TO ME AND MONEY IS MONEY.

20 **Q.** SO TODAY, IF A LOWER-RESOURCED SCHOOL WERE TRYING TO
21 ATTRACT A HIGH SCHOOL STUDENT ATHLETE TO COME TO A SCHOOL AND
22 THEY WERE COMPETING AGAINST A HIGHER RESOURCE SCHOOL --

23 **A.** UH-HUH.

24 **Q.** -- TO ATTRACT THAT STUDENT, WHAT WOULD THE LOWER-RESOURCED
25 SCHOOL SAY TO THAT STUDENT TO TRY TO GET THEM TO COME TO THEIR

1 SCHOOL?

2 **A.** THE CIRCUMSTANCE YOU'RE DESCRIBING HAPPENS EVERY DAY. SO
3 THE LOWER-RESOURCE SCHOOL CAN -- CAN TRY AND MAKE SURE THAT
4 THEY HAVE THE ACADEMIC PROGRAMS THAT THE STUDENT ATHLETE
5 WANTS. THEY CAN MAKE SURE THAT THEY HAVE A COACHING MODEL AND
6 AN APPROACH TO THE GAME THAT THAT STUDENT WANTS. THEY CAN
7 PROVIDE THAT STUDENT WITH OPPORTUNITIES TO PLAY. STUDENTS
8 ULTIMATELY WANT TO GET ON THE COURT OR ON THE FIELD AND THEY
9 CAN ASSURE THEM OF OPPORTUNITIES TO PLAY THAT THEY MAY NOT
10 HAVE AT ANOTHER PLACE. THEY CAN DEVELOP THE KIND OF TEAM
11 CHEMISTRY AND CAMARADERIE THAT THAT YOUNG PERSON IS LOOKING
12 FOR.

13 THEY MAY MAKE THAT DECISION BECAUSE IT'S CLOSE TO HOME OR
14 IT'S FAR AWAY FROM HOME, BECAUSE THEIR BOYFRIEND OR GIRLFRIEND
15 IS THERE, OR NOT, DEPENDING ON ALL OF THOSE CIRCUMSTANCES.

16 A SMALL-RESOURCE SCHOOL RIGHT NOW CAN AND FREQUENTLY DOES
17 RECRUIT PLAYERS THAT DON'T -- THAT COULD HAVE GONE TO A HIGHER
18 RESOURCE SCHOOL.

19 **Q.** AND SO NOW TAKE THAT SAME RECRUITING SITUATION AND NOW ADD
20 TO IT THE FACT THAT THE HIGHER-RESOURCE SCHOOL AND
21 LOWER-RESOURCE SCHOOL WERE FREE TO OFFER PAYMENTS FOR USE OF
22 NAME, IMAGE AND LIKENESS, HOW DOES THAT CHANGE THAT
23 DISCUSSION?

24 **A.** WELL, IN COLLEGE SPORTS THERE'S THIS CONCEPT OF
25 STOCKPILING. SO, NOW A STUDENT WOULD HAVE TO MAKE A DECISION,

1 DO I WANT TO BE WELL COMPENSATED AND CASHED TO SIT ON THE
2 BENCH OF A HIGH-RESOURCE SCHOOL OR DO I WANT TO BE THE
3 STARTING GUARD OR QUARTERBACK IN A LOWER-RESOURCE SCHOOL.

4 SO THE LOWER-RESOURCE SCHOOL WOULD NOT HAVE THE SAME
5 WHEREWITHAL TO PERSUADE THAT YOUNG PERSON THAT THEY OUGHT TO
6 BE -- THEY OUGHT TO BE STARTING ON THEIR TEAM INSTEAD OF
7 SITTING ON THE BENCH ON THE TEAM OVER THERE.

8 **Q.** HOW WOULD IT EFFECT THE ABILITY OF THAT LOWER-RESOURCE
9 SCHOOL TO COMPETE IN DIVISION I COLLEGE BASKETBALL AND
10 FOOTBALL?

11 **A.** WELL, I THINK IT WOULD DAMAGE IT SEVERELY BECAUSE OF THE
12 REASONS I JUST STATED.

13 **Q.** AND HOW WOULD THAT AFFECT COMPETITIVE BALANCE THROUGHOUT
14 DIVISION I?

15 **A.** VERY NEGATIVELY. THE ABILITY RIGHT NOW TO COMPETE, THE
16 KINDS OF BALANCE THAT WE SEE, FOR EXAMPLE, IN OUR -- IN OUR
17 BASKETBALL TOURNAMENTS IS BECAUSE HIGHLY TALENTED YOUNG MEN
18 AND WOMEN ARE STILL GOING TO LOWER-RESOURCE SCHOOLS BECAUSE
19 THEY HAVE AN OPPORTUNITY TO PLAY.

20 **Q.** NOW I'VE SEEN SOME NBA DOCUMENTS THAT USE TERMS LIKE
21 "COMPETITIVE BALANCE", BUT SOMETIMES USE TERMS LIKE
22 "COMPETITIVE EQUITY", OR "COMPETITIVE FAIRNESS".

23 WHAT'S ALL THAT ABOUT?

24 **A.** WELL, IT'S QUITE CONFUSING, ACTUALLY. SO THE TERM
25 "COMPETITIVE EQUITY" PREDATES MY ENGAGEMENT WITH THE NCAA, SO

1 I CAN'T SPEAK TO ITS ORIGINS.

2 BUT WHEN I ARRIVED, ONE OF THE MOST PRESSING ISSUES THAT I
3 HEARD FROM THE MEMBERSHIP AS I LISTENED TO THEM WAS, THAT --
4 AND BASED ON MY OWN EXPERIENCE, WAS THAT THE NCAA RULE BOOK
5 WAS FULL OF A PLETHORA OF RULES THAT DIDN'T SERVE ANY
6 PARTICULAR USEFULNESS, THEY WEREN'T NECESSARILY GERMANE TO THE
7 CORE VALUES OF THE ASSOCIATION, THEY WERE MORE AN ANNOYANCE
8 THAN THEY WERE HELPFUL, BUT THEY HAD BEEN PUT IN PLACE
9 SOMETIME AGO, MAYBE DECADES AGO OUT OF CONCERN FOR COMPETITIVE
10 EQUITY.

11 AND PERHAPS IT MIGHT BE MOST USEFUL FOR ME TO GIVE AN
12 EXAMPLE. IN THE NCAA RULE BOOK NOW, THERE ARE RULES THAT
13 GOVERN THE SIZE OF AN ENVELOPE THAT YOU CAN MAIL OUT TO A
14 PROSPECTIVE STUDENT ATHLETE. THEY GOVERN THE NUMBER OF PAGES
15 THAT CAN GO IN THAT ENVELOPE. THEY GOVERN THE COLORS THAT CAN
16 GO ON THE ENVELOPE THAT CAN BE MAILED OUT.

17 ALL THOSE SORTS OF RULES WERE PUT IN PLACE AS AN EFFORT TO
18 PROMOTE COMPETITIVE EQUITY. THE REALITIES, OF COURSE, ARE
19 THAT PEOPLE HAVE GONE BACK AND LOOKED AT THAT NOTION AND SAID,
20 THAT'S REALLY SILLY. THAT DOESN'T HAVE NOTHING TO DO WITH
21 QUOTE "COMPETITIVE EQUITY".

22 SO A NUMBER OF WORKING GROUPS AND TASK FORCE HAVE BEEN
23 LOOKING AT OVER THE PAST FEW YEARS, HOW CAN WE IMPROVE THE
24 RULE BOOK TO MAKE IT MORE FOCUSED ON OUR CORE VALUES AND LESS
25 FOCUSED ON THESE ANNOYING RULES. AND IN ORDER TO HAVE THAT

1 CONVERSATION, THEY SAID WE NEED TO STOP WORRYING ABOUT THIS
2 VERSION OF COMPETITIVE EQUITY, AND START FOCUSING ON WHAT
3 REALLY MATTERS.

4 **Q.** AND SO BEYOND THE TERMINOLOGY THAT ONE MAY USE, DOES THE
5 NCAA STILL SEEK TO ASSURE THAT EACH SCHOOL IN DIVISION I HAS A
6 REALISTIC CHANCE OF ACHIEVING SUCCESS ON THE FIELD AND ON THE
7 COURT?

8 **A.** YES.

9 **Q.** IS THAT STILL A CORE PART OF THE NCAA?

10 **A.** VERY MUCH SO.

11 **Q.** AND IF THE NCAA RULES WERE CHANGED TO PERMIT STUDENT
12 ATHLETES TO BE PAID FOR THE USE OF THEIR NAME AND IMAGE, WOULD
13 THAT CORE CONCERN CHANGE?

14 **A.** NO.

15 **Q.** YOU WOULD STILL WANT TO TRY TO ACHIEVE THE BALANCE,
16 CORRECT?

17 **A.** ABSOLUTELY.

18 **Q.** AND IF THOSE PAYMENTS WERE MADE, DO YOU THINK IT WOULD
19 AFFECT THAT COMPETITIVE BALANCE?

20 **A.** I CAN'T SEE HOW IT WOULDN'T.

21 **Q.** NOW I WANT TO TURN TO THE ISSUE OF OUTPUT, NUMBER OF
22 GAMES, NUMBER OF SCHOLARSHIPS, ET CETERA.

23 HAVE THE NUMBER OF SCHOOLS IN DIVISION I AND IN DIVISION I
24 FBS, HAVE THEY BEEN INCREASING OR DECREASING OVER TIME?

25 **A.** THEY HAVE BEEN INCREASING.

1 Q. WHY DO YOU THINK THE NUMBER OF SCHOOLS JOINING DIVISION I
2 HAS BEEN INCREASING?

3 A. I THINK BECAUSE OF THE ATTRACTIVENESS, AS I SAID IN MY
4 EARLIER STATEMENTS, THE ATTRACTIVENESS OF COLLEGE SPORTS FOR A
5 UNIVERSITY OR A COLLEGE TO BUILD THEIR -- THEIR SOCIAL
6 COHESION, TO RAISE THEIR PROFILE FOR RECRUITING FACULTY, AND
7 THEIR NAME RECOGNITION AMONG STUDENTS. ALL OF THOSE BENEFITS,
8 I THINK, ARE FAIRLY OBVIOUS TO UNIVERSITIES.

9 THEY MAY NOT BE THE KIND OF FINANCIAL BENEFITS THAT PEOPLE
10 TYPICALLY WOULD IDENTIFY WITH, BUT THEY ARE CERTAINLY
11 IMPORTANT TO THOSE CAMPUS COMMUNITIES.

12 Q. DO YOU THINK COLLEGES ARE SEEKING TO JOIN DIVISION I
13 BECAUSE IT'S A GREAT WAY TO MAKE MONEY?

14 A. ONLY IF THEY ARE VERY BAD AT ARITHMETIC.

15 Q. WHY DO YOU SAY THAT?

16 A. BECAUSE VIRTUALLY NONE OF THEM DO.

17 Q. WHY DON'T COLLEGES WHO JOIN DIVISION I MAKE MONEY, MOST
18 COLLEGES?

19 A. YEAH. THE MAJORITY OF COLLEGES, THE COST OF CONDUCTING
20 THE GAMES, PROVIDING SCHOLARSHIPS SUPPORT, BUILDING AND
21 MAINTAINING FACILITIES SIMPLY EXCEED AND -- AND PAYING FOR
22 COACHES AND PERSONNEL, SIMPLY EXCEED THE REVENUE STREAMS THAT
23 ARE AVAILABLE FOR -- FOR THE SPORTS.

24 Q. AND I TAKE IT A COLLEGE THAT WANTS TO JOIN DIVISION I
25 CAN'T JOIN IT ONLY FOR FOOTBALL, CORRECT?

1 **A.** THAT'S RIGHT. THEY HAVE TO COMPETE IN 16 FULL SPORTS.
2 THERE'S SOME ODD EXCEPTIONS WHERE THEY CAN HAVE A HOCKEY TEAM,
3 FOR EXAMPLE, PLAY IN DIVISION I IF THEY'RE DIVISION II, BUT
4 NINETY-NINE AND A HALF PERCENT OF THE CASES, YES, YOU HAVE TO
5 PLAY 16 SPORTS.

6 **Q.** DOES THAT AFFECT THE COST ISSUE FOR THE COLLEGES?

7 **A.** YEAH, OF COURSE.

8 **Q.** HOW HAS THIS GROWTH IN THE NUMBER OF DIVISION I COLLEGES
9 AFFECTED THE NUMBER OF OPPORTUNITIES TO PLAY DIVISION I
10 SPORTS?

11 **A.** WELL, IT'S INCREASED STUDENT PARTICIPATION PROPORTIONATELY
12 SO THERE ARE MORE STUDENT ATHLETES RIGHT NOW IN DIVISION I
13 SPORT THAN EVER BEFORE.

14 **Q.** IS THAT TRUE FOR BASKETBALL AND FOOTBALL?

15 **A.** YES.

16 **Q.** IS THERE A MINIMUM NUMBER OF SCHOLARSHIPS THAT A COLLEGE
17 HAS TO OFFER STUDENT ATHLETES IN ORDER TO BE A MEMBER OF
18 DIVISION I OF THE NCAA?

19 **A.** YES. YOU HAVE TO PROVIDE AT LEAST 200 SCHOLARSHIPS.

20 **Q.** AND THAT'S ACROSS THE 16 OR MORE SPORTS THAT THEY HAVE TO
21 OFFER?

22 **A.** CORRECT.

23 **Q.** SO DOES THAT MEAN THAT EACH TIME A COLLEGE JOINS DIVISION
24 I, THAT'S AN ADDITIONAL 200 SCHOLARSHIPS OR MORE FOR DIVISION
25 I ATHLETES?

1 **A.** YES.

2 **Q.** NOW, IF THE NCAA RULES WERE CHANGED TO PERMIT PAYMENTS TO
3 STUDENT ATHLETES FOR USE OF THEIR NAME, IMAGE AND LIKENESS, DO
4 YOU BELIEVE THAT SOME SCHOOLS WOULD LEAVE DIVISION I?

5 **A.** YES.

6 **Q.** WHY WOULD SCHOOLS LEAVE DIVISION I IF THE RULES WERE
7 CHANGED IN THAT WAY?

8 **A.** I THINK TWO FUNDAMENTAL REASONS. THE FIRST BEING
9 PHILOSOPHICAL, THAT THEY BELIEVE IN AN AMATEURISM MODEL AND
10 THEY DON'T WANT TO PARTICIPATE IN A PROFESSIONAL MODEL OF
11 ATHLETICS. I'VE HEARD FROM A NUMBER OF LEADERS OF CAMPUSES
12 THAT THAT'S HOW THEY FEEL.

13 AND THE SECOND IS MORE PRAGMATIC, AND THAT WOULD BE THE
14 SHEER COST OF IT.

15 **Q.** WELL, LET'S TALK ABOUT THE FIRST REASON WHY THEY WOULD
16 LEAVE, WHICH IS THE PRINCIPLE OF AMATEURISM.

17 WHY WOULDN'T A SCHOOL WHO DOESN'T WANT TO PAY STUDENT
18 ATHLETES FOR THE NAME, IMAGE AND LIKENESS STILL STAY IN
19 DIVISION I AND PLAY SCHOOLS THAT DO PAY STUDENT ATHLETES FOR
20 THEIR NAME, IMAGE AND LIKENESS?

21 **A.** I THINK THAT'S THE PHILOSOPHICAL PROBLEM I WAS DESCRIBING.

22 A SCHOOL WOULD LOOK AT A COMPETITOR UNIVERSITY THAT WAS,
23 IN FACT, PAYING ITS PLAYERS AND THEY WOULD SAY WE DON'T WANT
24 TO PLAY AGAINST THEM. WE DON'T THINK THAT'S FAIR COMPETITION
25 AND THAT'S -- THAT'S NOT THE ROAD THAT WE WANT TO GO DOWN AS

1 AN ACADEMIC INSTITUTION.

2 I THINK THERE WOULD BE MANY THAT DECIDE TO LEAVE DIVISION
3 I BECAUSE OF THAT.

4 **Q.** IS THAT EXACTLY THE SITUATION THAT EXISTED BEFORE 1905?

5 **A.** VERY MUCH SO, YES.

6 **Q.** AND YOU SAID THAT SOME SCHOOLS WOULD LEAVE DIVISION I
7 BECAUSE OF FINANCIAL REASONS. COULD YOU EXPLAIN MORE ABOUT
8 WHAT YOU MEANT THERE?

9 **A.** WELL, THE -- THE EMPHASIS POPULARLY IS ALWAYS PLACED ON
10 THE TOP LINE REVENUE THAT IS PRODUCED BY INTERCOLLEGIATE
11 ATHLETICS. INDEED, IT IS A GREAT DEAL OF MONEY.

12 BUT WHEN YOU LOOK AT THE FISCAL REALITIES OF CAMPUSES
13 ACROSS DIVISION I, THERE ARE MANY SCHOOLS THAT ARE VERY
14 HEAVILY SUBSIDIZING THEIR ATHLETIC PROGRAMS RIGHT NOW. AND
15 FOR THEM TO HAVE TO FIND OTHER WAYS TO SUBSIDIZE THAT PROGRAM
16 IN ORDER TO COVER PAYMENTS OF WHATEVER KIND TO STUDENT
17 ATHLETES WOULD BE A GREATER BURDEN THAN THEY'RE PREPARED TO
18 TAKE ON.

19 **Q.** AND IF A COLLEGE LEFT DIVISION I FOR EITHER OF THESE
20 REASONS, AND INSTEAD JOINED DIVISION III, HOW WOULD THAT
21 AFFECT THE NUMBER OF SCHOLARSHIPS THAT ARE AVAILABLE FOR
22 STUDENT ATHLETES?

23 **A.** IT WOULD DIMINISH THEM.

24 **Q.** WHY DO YOU SAY THAT?

25 **A.** WELL, IF YOU MOVE TO DIVISION III, DIVISION III DOES NOT

1 PROVIDE SCHOLARSHIPS, FOR EXAMPLE. SO IF A SCHOOL WAS MOVING
2 TO A LOWER DIVISION THAN THEY WOULD HAVE TO ADJUST TO THE
3 RULES OF THAT PARTICULAR DIVISION.

4 THE SCHOLARSHIP MAXIMUMS IN -- AND MINIMUMS IN DIVISION II
5 ARE LOWER AND IN DIVISION III THEY ARE NOT ALLOWED AT ALL.

6 **Q.** AND IF A COLLEGE DECIDED TO STAY IN DIVISION I AND PAY
7 STUDENT ATHLETES FOR USE OF THEIR NAME AND IMAGE, WHERE WOULD
8 THAT MONEY COME FROM?

9 **A.** WELL COME FROM REALLOCATION OF EXISTING RESOURCES IN MOST
10 CASES. THE -- THE SITUATION, PARTICULARLY WITH PUBLIC
11 UNIVERSITIES, RIGHT NOW IS SUCH THAT I THINK GOING TO THE
12 STUDENTS AND ASKING FOR A TUITION INCREASE FOR -- FOR THE
13 PURPOSE OF PAYING STUDENTS -- STUDENT ATHLETES WOULD BE
14 EXCEEDINGLY UNPOPULAR, AND DOING SO TO THE STATE LEGISLATURE
15 WOULD BE PROBABLY EVEN MORE SO.

16 SO I THINK THAT THEIR ONLY ALTERNATIVE WOULD BE, AT LEAST
17 IN MY EXPERIENCE AS UNIVERSITY PRESIDENT, WOULD BE
18 REALLOCATION OF EXISTING RESOURCES.

19 **Q.** AND WHEN YOU SAY "REALLOCATION OF EXISTING RESOURCES",
20 WHAT DOES THAT REALLY MEAN IN PRACTICAL TERMS TO THE ATHLETIC
21 DEPARTMENT OF A DIVISION I COLLEGE?

22 **A.** WELL, WE -- WE KNOW FROM EXPERIENCE WHAT IT MEANS BECAUSE
23 MANY SCHOOLS HAVE HAD TO DO THIS IN RECENT YEARS.

24 SO TYPICALLY WHAT WE HAVE SEEN IS A REDUCTION IN SPORTS
25 SPONSORSHIPS AND SCHOLARSHIPS. SO YOU -- AN ATHLETIC DIRECTOR

1 ELIMINATES OLYMPIC SPORTS MOST USUALLY, FIRST OF ALL, AND THEN
2 THEY -- THEY TRY AND -- AND REDUCE COSTS ASSOCIATED WITH ALL
3 THEIR EXISTING SPORTS, BUT THEY -- BUT THEY RARELY -- THEY
4 WILL TRY HARD TO MAINTAIN FOOTBALL AND BASKETBALL EXPENDITURES
5 AT THE LEVEL THAT THEY -- THAT THEY CAN.

6 Q. AND WHEN YOU SAY "OLYMPIC SPORTS", WHICH SPORTS WERE YOU
7 REFERRING TO?

8 A. SWIMMING AND DIVING, TRACK AND FIELD, SOCCER, MEN'S AND
9 WOMEN'S SOCCER, GOLF, TENNIS.

10 Q. DO YOU -- WHEN YOU WERE THE HEAD OF A COLLEGE, DID YOU
11 FACE A SITUATION WHERE YOUR ATHLETIC DEPARTMENT HAD A BUDGET
12 SHORTFALL?

13 A. YES.

14 Q. WHAT HAPPENED IN THAT SITUATION?

15 A. WE ELIMINATED THE SWIMMING PROGRAM, THE MEN'S AND WOMEN'S
16 SWIMMING PROGRAM.

17 Q. WHICH SCHOOL WAS THAT?

18 A. UNIVERSITY OF WASHINGTON.

19 Q. DO YOU THINK THAT IF A SCHOOL DECIDES TO STAY IN DIVISION
20 I AND PAY STUDENT ATHLETES FOR THEIR NAME AND IMAGE, THAT THE
21 END RESULT AT SOME OF THOSE COLLEGES WOULD BE THAT OTHER
22 SPORTS WOULD GET CUT?

23 A. I'M CONFIDENT OF IT.

24 Q. ALL RIGHT. I WOULD LIKE TO TURN -- I WOULD LIKE TO TURN
25 BACK TO THE RECRUITING PROCESS FOR HIGH SCHOOL STUDENT

1 ATHLETES.

2 WHEN A HIGH SCHOOL RECRUIT IS CHOOSING A COLLEGE, PART OF
3 THEIR CONSIDERATION IS GOING TO BE THE ATHLETIC OPPORTUNITY AT
4 THE COLLEGE, CORRECT?

5 **A.** SURE.

6 **Q.** WHAT ELSE, IN YOUR EXPERIENCE, ARE THE HIGH SCHOOL
7 RECRUITS CONSIDERING AS THEY CHOOSE WHICH COLLEGE TO ATTEND?

8 **A.** VIRTUALLY --

9 **THE COURT:** PROCOMPETITIVE JUSTIFICATION ARE WE
10 ALLUDING TO NOW?

11 **MR. POMERANTZ:** I'M LEADING -- I'M GOING TO BE
12 LEADING INTO INTEGRATION OF ACADEMICS --

13 **THE COURT:** I KNOW THAT, BUT YOU JUST ASKED THE
14 QUESTION ABOUT SOMETHING ELSE AND I WAS TRYING TO FIGURE OUT
15 WHERE, IN THE OUTLINE, THAT GOES.

16 **MR. POMERANTZ:** INTO THE -- THIS IS GOING --

17 **THE COURT:** SO YOU ARE NOW STARTING WITH INTEGRATION?

18 **MR. POMERANTZ:** YES, YOUR HONOR.

19 **THE COURT:** LET'S TAKE A BREAK THEN. IT'S 10:10 AND
20 WE'LL BREAK UNTIL 10:20.

21 (RECESS TAKEN AT 10:10 A.M.; RESUMED AT 10:25 A.M.)

22 **THE CLERK:** REMAIN SEATED. COME TO ORDER. THIS
23 COURT IS BACK IN SESSION.

24 **THE COURT:** OKAY.

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

1 **BY MR. POMERANTZ:**

2 **Q.** DR. EMMERT, WHEN YOU WERE AT LSU AND WASHINGTON, DID YOU
3 HAVE ANY ROLE IN THE RECRUITMENT OF ANY HIGH SCHOOL STUDENT
4 ATHLETE TO COME TO THOSE COLLEGES?

5 **A.** YES.

6 **Q.** WHAT WAS YOUR ROLE IN THAT PROCESS?

7 **A.** UM, FIRST OF ALL, IT WASN'T SOMETHING THAT I DID WITH
8 EVERY STUDENT ATHLETE, IT WAS USUALLY WHEN A COACH ASKED ME TO
9 HELP HIM TALK TO THE FAMILY MEMBER OF A -- OF A PROSPECTIVE
10 STUDENT ATHLETE OR THAT YOUNG MAN OR YOUNG WOMAN DIRECTLY.
11 AND THEY WOULD TYPICALLY COME TO MY OFFICE OR I WOULD GO TO
12 WHERE THEY MIGHT BE AT THE TIME AND JUST TALK WITH THEM ABOUT
13 THE UNIVERSITY AND WHAT THE UNIVERSITY'S EXPERIENCE WAS AND
14 WHAT ITS COMMITMENTS WERE.

15 **Q.** AND WHEN YOU DISCUSSED THE UNIVERSITY'S COMMITMENTS, DID
16 YOU DISCUSS BOTH THE ATHLETIC AND ACADEMIC OPPORTUNITIES FOR
17 THE STUDENT ATHLETE?

18 **A.** YES. MOSTLY THE ACADEMIC MORE THAN THE ATHLETIC.

19 **Q.** FROM YOUR EXPERIENCE, DID YOU FIND THAT THE STUDENT
20 ATHLETES AND THEIR PARENTS WERE INTERESTED IN WHETHER THE
21 SCHOOL WAS AN ACADEMIC FIT FOR THE STUDENT ATHLETE?

22 **A.** ABSOLUTELY.

23 **Q.** DO COLLEGES TRY TO FACILITATE INTERACTIONS BETWEEN
24 STUDENTS WITH DIFFERENT INTERESTS AND TALENTS?

25 **A.** YES.

1 Q. WHY DO COLLEGES DO THAT?

2 A. THEY DO IT BECAUSE ITS -- ITS BELIEF THAT'S ACTUALLY BEEN
3 BACKED UP WITH RESEARCH THAT STUDENTS INTERACTING WITH PEOPLE
4 FROM DIFFERENT BACKGROUNDS AND DIFFERENT EXPERIENCES HAVE
5 BETTER EDUCATIONAL EXPERIENCES; THAT IT STRENGTHENS THE
6 EDUCATIONAL EXPERIENCE FOR ALL PARTICIPANTS.

7 Q. DO YOU THINK THAT'S TRUE FOR STUDENTS WHO PLAY SPORTS AND
8 FOR STUDENTS WHO DON'T PLAY SPORTS?

9 A. YES.

10 Q. HOW DO COLLEGES IN DIVISION I TRY TO FACILITATE THE
11 INTEGRATION OF STUDENT ATHLETES WITH THE REST OF THE STUDENT
12 BODY?

13 A. WELL, FIRST OF ALL, THERE'S -- THERE'S NCAA RULES THAT
14 SEEK TO DO THAT AND THEN THERE IS ALSO THE WAY INDIVIDUAL
15 SCHOOLS CAN HANDLE THE ISSUE.

16 SO THE NCAA ENCOURAGES IT BY NOT HAVING SPECIFIC ATHLETIC
17 DORMS, BY HAVING STUDENTS BE PLACED IN LIVING ARRANGEMENTS
18 THAT INCLUDE OTHERS BESIDES ATHLETES, BY NOT HAVING FIXED
19 TRAINING TABLES WHERE THEY CAN EAT EVERY MEAL AT ONE PLACE,
20 BUT, IN FACT, BY HAVING TO DINE IN DINING HALLS AROUND
21 CAMPUSES, BY MAKING SURE THAT THEY ARE PART OF THE GENERAL
22 CORE CURRICULUM OF THE CAMPUS SO REGARDLESS OF WHAT THEIR
23 MAJOR IS, THEY ARE TAKING COURSES WITH ALL OF THE STUDENT BODY
24 IN THEIR CORE COURSES. A VARIETY OF VEHICLES LIKE THAT.

25 Q. AND WHAT WOULD HAPPEN, IN YOUR VIEW, WITH THIS INTEGRATION

1 OF STUDENT ATHLETES WITH OTHER STUDENTS IF THE NCAA RULES WERE
2 CHANGED TO PERMIT STUDENT ATHLETES TO BE PAID FOR THE USE OF
3 THEIR NAMES AND IMAGES?

4 **A.** WELL, IF A STUDENT ATHLETE WAS BEING PAID AND IT CHANGED
5 SIGNIFICANTLY THEIR LIFESTYLE, THEY PROBABLY WOULD NOT BE
6 LIVING IN A RESIDENCE HALL, THEY PROBABLY WOULD NOT BE EATING
7 IN THE CAFETERIA, THEY PROBABLY WOULD NOT BE AS -- AS ACTIVE A
8 MEMBER OR PARTICIPANT IN THE LIFE OF A CAMPUS.

9 **Q.** AND DO --

10 **THE COURT:** WHAT IF THE MONEY WERE HELD IN TRUST FOR
11 THEM UNTIL AFTER THEY FINISHED SCHOOL, THEN WHAT? WOULD IT
12 HAVE ANY EFFECT ON THIS ISSUE?

13 **THE WITNESS:** I THINK IT -- IT, IN MY OPINION, IT
14 WOULD SIMPLY BECAUSE THE KNOWLEDGE THAT THAT MONEY IS THERE
15 PROBABLY ALLOWS THEM TO USE IT FOR OTHER FINANCIAL ADVANTAGE,
16 TO GET A CAR LOAN, TO, YOU KNOW, BORROW MONEY AGAINST IT, TO
17 ESSENTIALLY MONETIZE IT IN THE CURRENT YEAR.

18 **THE COURT:** WHAT ABOUT STUDENTS WHO HAVE ACCESS TO
19 MONEY FROM SOURCES OTHER THAN ATHLETICS? FOR EXAMPLE, RICH
20 PARENTS OR BUSINESSES THAT THEY HAVE STARTED? THEY HAVE THE
21 SAME PROBLEM?

22 **THE WITNESS:** YES, THEY DO.

23 **BY MR. POMERANTZ:**

24 **Q.** AND DO COLLEGES ALSO SEEK TO CREATE A SENSE OF UNITY AND
25 INTEGRATION AMONG THE DIFFERENT TEAMS AND STUDENT ATHLETES

1 THAT ARE PART OF THEIR ATHLETIC DEPARTMENT?

2 **A.** TYPICALLY, YES. IN MY EXPERIENCE VERY MUCH SO.

3 **Q.** WHAT HAS BEEN YOUR EXPERIENCE WITH RESPECT TO THAT
4 INTEGRATION? WHAT HAVE YOU SEEN COLLEGES DOING?

5 **A.** WELL, WHAT I'VE SEEN IS THE SHARED USAGE OF FACILITIES,
6 THE SHARED USAGE OF DINING FACILITIES FOR THE ONE MEAL THAT
7 THEY CAN HAVE IN -- IN AN ATHLETIC DINING FACILITY. THE
8 SHARED USAGE OF ACADEMIC SUPPORT FACILITIES SO THAT THE
9 STUDENT ATHLETES FROM ALL OF THE SPORTS ARE INTERACTING ON A
10 PRETTY REGULAR BASIS.

11 **Q.** AND IF, IN THAT ENVIRONMENT, THE FOOTBALL AND BASKETBALL
12 PLAYERS WERE GETTING PAID FOR THE USE OF THEIR NAME AND IMAGE,
13 WHETHER TODAY OR LATER, DO YOU THINK THAT THAT WOULD AFFECT
14 THE RELATIONSHIPS AND THE INTEGRATION BETWEEN THE FOOTBALL AND
15 BASKETBALL PLAYERS ON THE ONE HAND AND THE OTHER STUDENT
16 ATHLETES ON THE OTHER HAND?

17 **A.** WELL, I THINK IT WOULD CERTAINLY IMPACT THE WAY THAT OTHER
18 STUDENT ATHLETES PERCEIVE THEM. THEY WOULD ESSENTIALLY BE
19 PERCEIVED NOW AS PROFESSIONAL ATHLETES AND BE IN A DIFFERENT
20 CATEGORY, DIFFERENT CLASS OF A MEMBER OF THAT ATHLETIC PROGRAM
21 THAN THE -- THAN THE OTHER STUDENTS.

22 **Q.** I WANT TO ADDRESS THE TRUST FUND ISSUE THAT THE JUDGE JUST
23 RAISED.

24 HAVE YOU HEARD THE TERM "DEFERRED COMPENSATION" IN THE
25 CONTEXT OF PAYMENTS TO STUDENT ATHLETES?

1 **A.** YES.

2 **Q.** IS THAT SOMETHING THAT HAS BEEN DISCUSSED WITHIN OR
3 BETWEEN YOU AND OTHER MEMBERS OF THE NCAA?

4 **A.** YES, IT HAS.

5 **Q.** AND I AM SORRY, NOT OTHER MEMBERS, BUT WITH THE MEMBERS OF
6 THE NCAA?

7 **A.** YES.

8 **Q.** WHAT IS YOUR UNDERSTANDING OF WHAT THE TERM "DEFERRED
9 COMPENSATION" IS REFERRING TO IN THE CONTEXT OF PAYMENTS TO
10 STUDENT ATHLETES?

11 **A.** WELL, SOME MODEL, I'M SURE THERE'S MANY THAT CAN BE
12 DESCRIBED, THAT -- THAT WOULD PUT RESOURCES IN SOME FORM OF A
13 TRUST OR IN SOME CATEGORY OF FUNDING THAT WOULD BE AVAILABLE
14 TO THE STUDENT ATHLETE AFTER THEY FINISHED PLAYING THEIR
15 SPORT.

16 **Q.** AND DO YOU THINK PAYING A STUDENT ATHLETE THROUGH SOME
17 FORM OF DEFERRED PAYMENTS IS CONSISTENT WITH THE PRINCIPLE OF
18 AMATEURISM?

19 **A.** NO. I THINK IT'S -- IT'S STILL THE SAME. IT'S PAYMENT
20 FOR PLAYING REGARDLESS WHETHER IT IS PAID TODAY OR PAID
21 TOMORROW.

22 **Q.** LET'S TURN TO COACHES' SALARY FOR A SECOND, LEAVING
23 INTEGRATION, YOUR HONOR.

24 WITH RESPECT TO COACHES' SALARIES, HAVE THEY BEEN
25 INCREASING SIGNIFICANTLY OVER THE LAST TEN OR SO YEARS?

1 **A.** YES.

2 **Q.** DO YOU HAVE A VIEW AS TO WHY THAT'S OCCURRING?

3 **A.** I THINK IT IS A REFLECTION, FIRST OF ALL, OF THE NUMBER OF
4 PROGRAMS THAT ARE ENTERING DIVISION I, SO CREATING A GREATER
5 DEMAND.

6 THERE'S NOW AT THE HIGHEST RANKS MOVEMENT OF COACHES
7 BETWEEN THE PROFESSIONAL RANKS AND THE COLLEGIATE RANKS, AND
8 THAT'S INJECTED COMPETITION AT THAT LEVEL. AND THE -- THE
9 VALUE THAT A UNIVERSITY IN A COMMUNITY PLACES ON A SUCCESSFUL,
10 LET'S SAY, BASKETBALL PROGRAM HAS INCREASED AND SO THEIR
11 WILLINGNESS TO PAY TO RECRUIT A MORE TALENTED, HIGHER PROFILE
12 COACH HAS INCREASED PRETTY SHARPLY.

13 **Q.** DO YOU THINK IT'S INCONSISTENT WITH THE NCAA'S CORE VALUE
14 OF AMATEURISM FOR COACHES TO BE PAID AS MUCH AS THEY ARE
15 CURRENTLY BEING PAID?

16 **A.** NO.

17 **Q.** WHY NOT?

18 **A.** BECAUSE THE -- THE PAYMENT TO A PROFESSIONAL COACH IS VERY
19 DIFFERENT THAN -- THAN THE -- THE NATURE OF AN -- OF THE
20 STUDENT ATHLETE'S RELATIONSHIP TO THE UNIVERSITY.

21 THE COACHES BEEN A PAID INDIVIDUAL FOR AS LONG AS THERE
22 HAVE BEEN PAID COACHES, WHICH IS A CENTURY OR SO, AND THE
23 STUDENT ATHLETES HAVE BEEN AMATEURS. THE FACT THERE IS MORE
24 MONEY IN THAT SYSTEM THAT COACHES ARE BEING PAID MORE DOESN'T
25 CHANGE THOSE RELATIONSHIPS AT ALL.

1 Q. SINCE YOU HAVE BEEN PRESIDENT OF THE NCAA, HAS ANY TASK
2 FORCE RECOMMENDED THAT THE NCAA OFFER PROFESSIONAL SPORTS
3 INSTEAD OF AMATEUR SPORTS?

4 A. NO.

5 Q. HAS THERE BEEN ANY LEGISLATION OFFERED SINCE YOU'VE BEEN
6 PRESIDENT TO DROP THE AMATEURISM RULES?

7 A. NO.

8 Q. IN YOUR VIEW, DOES THE MEMBERSHIP OF THE NCAA STILL WANT
9 TO OFFER AMATEUR SPORTS TO STUDENT ATHLETES AND TO THE FANS OF
10 COLLEGE SPORTS?

11 A. YES.

12 MR. POMERANTZ: YOUR HONOR, I HAVE NO FURTHER
13 QUESTIONS AT THIS TIME.

14 CROSS-EXAMINATION

15 BY MR. ISAACSON:

16 Q. GOOD MORNING, DR. EMMERT.

17 A. GOOD MORNING.

18 Q. BEFORE YOU WERE PRESIDENT, MYLES BRAND WAS PRESIDENT OF
19 THE NCAA, CORRECT?

20 A. CORRECT.

21 Q. AND HE MADE WHAT ARE CALLED STATE OF THE ASSOCIATION
22 SPEECHES, JUST LIKE YOU MAKE THEM.

23 A. UH-HUH.

24 Q. THOSE ARE SORT OF -- FOR THE PRESIDENT OF THE NCAA, THAT
25 IS THEIR VERSION OF THE STATE OF THE UNION ADDRESS. IT'S AN

1 ANNUAL SPEECH MADE?

2 **A.** IT'S AN OPPORTUNITY FOR THE PRESIDENT TO EXPRESS HIS VIEWS
3 ON WHATEVER THE ISSUES DU JOUR ARE.

4 **Q.** AND AS PART OF -- ONCE YOU BECAME PRESIDENT OF THE NCAA,
5 YOU READ AND REVIEWED OLD SPEECHES FROM TIME TO TIME, RIGHT?

6 **A.** SOMETIMES, YES.

7 **Q.** AND WHEN YOU -- WHEN DR. BRAND WAS MAKING THESE SPEECHES
8 AND YOU WERE NOT WITH THE NCAA, BUT YOU WERE EITHER WITH THE
9 UNIVERSITY OF WASHINGTON OR LSU, WOULD YOU LISTEN TO OR READ
10 THOSE SPEECHES?

11 **A.** NO.

12 **Q.** BUT ONCE YOU TOOK ON THE JOB, THEN YOU BEGAN TO, IN TERMS
13 OF LEARNING THE HISTORY OF THE NCAA AND AMATEURISM AND THESE
14 ISSUES, YOU WOULD REVIEW THE FORMER STATE OF ASSOCIATION
15 SPEECHES?

16 **A.** NOT THAT I RECALL.

17 **Q.** LET ME SEE IF YOU RECALL ANY OF THESE.

18 NOW WHEN DR. BRAND FIRST BECAME PRESIDENT OF THE NCAA,
19 THAT WAS 2003.

20 **MR. ISAACSON:** AND CAN WE LOOK AT 2288-3?

21 (EXHIBIT DISPLAYED ON SCREEN.)

22 **BY MR. ISAACSON:**

23 **Q.** WHAT I'M GOING TO BE ASKING YOU HERE IS IF YOU --
24 GENERALLY IF YOU ARE AWARE OF DR. BRAND'S PROVIDING ANY
25 WARNINGS TO THE MEMBERSHIP OF THE NCAA ABOUT AN ONCOMING

1 CRISIS OF COMMERCIALISM.

2 ALL RIGHT? NOW WHEN YOU FIRST -- IF WE CAN -- GIVE YOU
3 SOME GUIDANCE HERE.

4 **MR. ISAACSON:** IF WE CAN LOOK -- ACTUALLY LOOK AT THE
5 FIRST PAGE AND BLOW UP THE BEGINNING OF IT SO WE CAN SHOW WHAT
6 THIS IS.

7 **BY MR. ISAACSON:**

8 **Q.** THIS IS FROM THE NCAA ARCHIVE. YOU PUT THESE SPEECHES
9 ONLINE. THIS IS THE STATE OF ASSOCIATION ADDRESS FOR 2003.

10 AND YOU CAN SEE IT'S FROM NCAA PRESIDENT MYLES BRAND. AND
11 HE SAYS:

12 "I'M PLEASED TO BE WITH YOU TODAY AS THE NEW PRESIDENT OF
13 THE NCAA."

14 HE TALKS ABOUT SOME OF THE PREVIOUS PRESIDENTS, INCLUDING
15 HOW WALTER BYER SET THE COURSE FOR THE MODERN ERA.

16 **MR. ISAACSON:** NOW, IF WE CAN JUMP TO PAGE 3.

17 (PAGE DISPLAYED ON SCREEN.)

18 THE FOURTH PARAGRAPH "I'M NOT REVEALING". HE SAYS:

19 "I'M NOT REVEALING ANY SECRETS WHEN I NOTE THAT A
20 PRIMARY THREAT TO THE INTEGRITY OF COLLEGE SPORTS IS
21 OVERCOMMERCIALIZATION."

22 **BY MR. ISAACSON:**

23 **Q.** WERE YOU GENERALLY -- YOU WEREN'T AWARE AT THAT TIME OF
24 DR. BRAND BEGINNING TO TALK ABOUT THE THREATS OF
25 OVERCOMMERCIALIZATION; IS THAT CORRECT?

1 **MR. POMERANTZ:** YOUR HONOR, OBJECTION, FOUNDATION.
2 HE HASN'T ESTABLISHED THAT THIS IS ONE OF THE DOCUMENTS THAT
3 DR. EMMERT HAS EVERY SEEN OR READ. AND I THINK RIGHT NOW HE'S
4 READING THE DOCUMENT INTO THE RECORD. I THINK HE SHOULD FIND
5 OUT WHAT THIS WITNESS KNOWS BEFORE HE STARTS QUESTIONING HIM
6 ABOUT A DOCUMENT.

7 **MR. ISAACSON:** I JUST ASKED HIM WHAT HE KNOWS.

8 **THE COURT:** I THINK THAT WAS THE QUESTION, ACTUALLY,
9 THIS TIME, BUT MAYBE IT WILL BE DIFFERENT IN THE FUTURE.

10 **BY MR. ISAACSON:**

11 **Q.** WERE YOU AWARE OF -- AT THE TIME OF DR. BRAND TALKING
12 ABOUT ANY THREATS OF OVERCOMMERCIALIZATION?

13 **A.** NO.

14 **Q.** ONCE YOU BECAME PRESIDENT, DID YOU NOTE ANY WARNINGS ABOUT
15 THAT?

16 **A.** I DIDN'T KNOW OF DR. BRAND'S POSITION ON THIS PRECISELY,
17 NO.

18 **Q.** OKAY.

19 **MR. ISAACSON:** CAN WE --

20 **BY MR. ISAACSON:**

21 **Q.** DR. BRAND GOES ON TO SAY, THIS PARAGRAPH "IF ATHLETIC
22 EVENTS"? I WANT TO ASK YOU IF YOU AGREE WITH THIS.

23 **MR. POMERANTZ:** OBJECTION, YOUR HONOR. WE'RE NOT
24 HERE TO HAVE HIM AGREE OR NOT AGREE TO CERTAIN STATEMENTS.
25 IT'S EXACTLY WHAT I TRIED TO DO WITH MR. O'BANNON WITH RESPECT

1 TO MR. WALTON'S QUOTES. I THINK HE'S CERTAINLY FREE TO ASK
2 MR. EMMERT ANY OF HIS VIEWS AND EXPERIENCES, BUT JUST TO ASK
3 IF HE AGREES WITH THAT STATEMENT FIVE YEARS BEFORE HE JOINED
4 THE NCAA LACKS FOUNDATION.

5 **THE COURT:** I SEE A LITTLE DISTINCTION IN THAT HE WAS
6 ASKED BY YOU A LOT OF QUESTIONS ABOUT THE NCAA'S HISTORICAL
7 POSITION OVER THE YEARS. SINCE HE'S ONLY BEEN THERE FOR TWO
8 YEARS, BUT YET HE'S IN CHARGE NOW, IT DOES SEEM SOMEWHAT
9 APPROPRIATE TO CROSS-EXAMINE HIM ON THINGS THAT HE SAID ABOUT
10 WHAT THE NCAA'S POSITION HAS BEEN HISTORICALLY.

11 I DO THINK THAT'S SOMETHING OF A DISTINCTION WITH SOME OF
12 THE OTHER WITNESSES.

13 **MR. ISAACSON:** I ALSO BELIEVE THE NCAA -- NOT YOU,
14 BUT ONE OF YOUR CO-COUNSELS REFERRED TO DR. EMMERT AS AN
15 EXPERT ON AMATEURISM AND INDEED HE HAS GONE --

16 **THE COURT:** HE HASN'T BEEN QUALIFIED AS SUCH, SO I
17 WOULDN'T GO THAT FAR. I THINK SOME QUESTIONING ABOUT THE
18 ORGANIZATION'S PAST OPINIONS ABOUT THINGS AND WHETHER IT
19 CURRENTLY HAS THOSE SAME OPINIONS IS -- IS FAIR COMMENTARY.

20 **MR. POMERANTZ:** YOUR HONOR, THAT'S FINE. I JUST WANT
21 TO PUT OUT THERE THAT WITH LIMITED ROLE, THAT'S FINE. I'M
22 AFRAID WE WILL SEE A PARADE OF DOCUMENTS BEFORE DR. EMMERT
23 BECAME PRESIDENT RATHER THAN AFTER.

24 **THE COURT:** THE OTHER THING, TOO, IS THE DOCUMENTS
25 THEMSELVES, I THINK, ARE PROBABLY ADMISSIBLE OR THE STATEMENTS

1 IN THEM TO THE EXTENT THEY ARE ADMISSIONS BY A PARTY OPPONENT.
2 SO THE FACT THAT HE'S ASKED ABOUT THEM AND THEY -- AND THUS
3 THEY COME TO MY ATTENTION, I THINK IS PROBABLY NOT UNFAIR
4 EITHER.

5 **MR. POMERANTZ:** WELL, I DON'T BELIEVE IF HE HAS NO
6 FOUNDATION TO TESTIFY ABOUT THE DOCUMENT, JUST BECAUSE IT
7 MIGHT OTHERWISE BE ADMISSIBLE, IT'S IS FAIR TO QUESTION HIM ON
8 IT. I WOULD JUST RESERVE IT FOR OTHER DOCUMENTS AS WE MOVE
9 ALONG.

10 **THE COURT:** OKAY.

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

12 **BY MR. ISAACSON:**

13 **Q.** DR. BRAND, WHILE WARNING ABOUT OVERCOMMERCIALIZATION,
14 SAID:

15 "IF ATHLETIC EVENTS ARE PRESENTED IN THE RIGHT WAY,
16 EVEN LARGE SCALE CORPORATE AGREEMENTS DO NOT PUT THE
17 INTEGRITY OF INTERCOLLEGIATE SPORTS AT RISK. AN
18 EXCELLENT EXAMPLE IS THE CBS, ESPN CONTRACTS WHICH --
19 WITH THE NCAA, WHICH INCLUDES OUR BASKETBALL
20 TOURNAMENTS. THE PARTNERSHIP PERMITS WIDE MEDIA
21 ACCESS TO FANS WHILE HIGHLIGHTING THE EXCITEMENT AND
22 PROMOTING THE BEST FEATURES OF COLLEGE SPORT."

23 I'M ASSUMING YOU AGREE WITH THAT?

24 **A.** WELL, I DON'T KNOW EXACTLY WHAT HE WAS INTENDING TO SAY
25 AROUND THE -- AN ATHLETIC EVENT BEING PRESENTED IN THE RIGHT

1 WAY. THAT'S OBVIOUSLY HIS SUBJECTIVE JUDGMENT, AND I HAVE NO
2 IDEA WHAT THAT WAS, BUT I DON'T DISAGREE WITH WHAT APPEARS TO
3 BE THE BASIC PREMISE OF WHAT HE'S SAYING.

4 Q. ALL RIGHT.

5 AND THEN IN THE NEXT PARAGRAPH HE SAID:

6 "ADMITTEDLY, THERE ARE NO IRONCLAD SPECIFIC CRITERIA
7 FOR JUDGING WHEN COMMERCIAL INTERESTS OVERWHELM
8 COLLEGE SPORTS. SMART PEOPLE OF GOODWILL CAN
9 DISAGREE ON THE POINT. AND FOR ME, THE JUDGMENT
10 DEPENDS ON WHETHER THE INTEGRITY OF COLLEGE SPORTS IS
11 SUSTAINED OR JEOPARDIZED."

12 DO YOU AGREE WITH THOSE STATEMENTS?

13 A. AGAIN, I'M NOT SURE WHAT HE'S REFERRING TO IN THIS
14 CONTEXT, BUT I CERTAINLY AGREE THAT SMART PEOPLE OF GOODWILL
15 CAN DISAGREE ON MANY POINTS.

16 Q. ALL RIGHT. INCLUDING ON WHETHER -- DO YOU AGREE WITH:

17 "THERE ARE NO IRONCLAD SPECIFIC CRITERIA FOR JUDGING WHEN
18 COMMERCIAL INTERESTS OVERWHELM COLLEGE SPORTS"?

19 A. NO, I DON'T.

20 Q. OKAY. WHAT ARE THOSE IRONCLAD SPECIFIC CRITERIA THAT YOU
21 WOULD POINT TO DISTINGUISH -- I'M SORRY, TO MAKE SURE THAT
22 COMMERCIAL INTERESTS DO NOT OVERWHELM COLLEGE SPORTS?

23 A. I WOULD POINT TO THE RULES THE MEMBERSHIP HAS AGREED TO.

24 Q. WHICH RULES ARE YOU REFERRING TO?

25 A. THOSE THAT GOVERN THE USE OF COMMERCIAL INTEREST IN

1 PROMOTING EVENTS.

2 Q. ALL RIGHT.

3 WHEN YOU SAY THE RULES OF COMMERCIAL INTEREST FOR EVENTS,
4 THAT WOULD INCLUDE THAT AN ATHLETE CANNOT DIRECTLY ENDORSE A
5 PRODUCT, CORRECT?

6 A. CORRECT.

7 Q. ANYTHING ELSE?

8 A. THE -- THE KINDS OF ADVERTISERS THAT ARE ALLOWED ON
9 PROMOTIONAL ACTIVITIES.

10 Q. ALL RIGHT. SO JUST TO UNDERSTAND THAT, THAT WOULD MEAN, I
11 THINK THERE'S NO TOBACCO COMPANIES, NO ALCOHOL COMPANIES --

12 A. UH-HUH.

13 Q. -- AND SOME OTHER SPECIFIC COMPANIES ARE PRECLUDED FROM
14 ADVERTISING AT NCAA EVENTS?

15 A. YES.

16 Q. OKAY. SO OTHER THAN THE RESTRICTIONS ON WHO CAN ADVERTISE
17 AND THE PROHIBITION ON DIRECT ENDORSEMENT, ARE YOU REFERRING
18 TO ANY OTHER NCAA RULES --

19 A. SURE. THE RULES GOVERNING UNIFORMS AND WHAT LOGOS AND
20 EMBLEMS CAN APPEAR ON A UNIFORM AND WHERE THEY CAN APPEAR.

21 Q. ALL RIGHT. SO THERE ARE RULES THAT THE NCAA HAS AS TO HOW
22 LARGE THE EMBLEMS CAN BE, FOR EXAMPLE, ON A NIKE UNIFORM?

23 A. YES. AND THE NUMBERS THAT CAN BE ON A UNIFORM.

24 Q. ALL RIGHT. BUT YOU CAN HAVE -- BUT NCAA RULES PERMIT
25 SCHOOLS TO HAVE CONTRACTS WITH NIKE TO HAVE EXCLUSIVELY NIKE

1 APPAREL AND SHOW THE NIKE LOGO, CORRECT?

2 **A.** YES, THEY DO.

3 **Q.** WHAT OTHER RULES ARE YOU REFERRING TO OTHER THAN THE
4 RESTRICTIONS ON THOSE --

5 **A.** THOSE ARE THE ONLY ONES THAT COME TO BIND, BUT I WOULD BE
6 MORE THAN HAPPY TO SIT DOWN WITH YOU AND GO THROUGH THEM, IF
7 YOU LIKE.

8 **Q.** OKAY. WE CAN DO THAT SOME DAY.

9 DR. BRAND GOES ON TO SAY -- AND I JUST THOUGHT -- HE TALKS
10 ABOUT THE INTEGRITY OF COLLEGE SPORTS. AND HE MOVES DOWN TO
11 THE NEXT -- TWO PARAGRAPHS DOWN, TALKS ABOUT FAIRNESS AND
12 ETHICAL BEHAVIOR ARE REQUIRED. I ASSUME EVERYBODY WOULD AGREE
13 WITH THIS. AND HE LITERALLY TALKS ABOUT THE GOLDEN RULE,
14 WHICH WE ALL LEARNED AS CHILDREN IS THE HEART OF THE MATTER.

15 ALL RIGHT. IN DETERMINING THE INTEGRITY OF COLLEGE
16 SPORTS -- I'M SORRY, WHETHER COMMERCIALISM IS BEING RELATED
17 WITH INTEGRITY TO COLLEGE SPORTS, DO WE NEED TO LOOK AT IT AT
18 THAT LEVEL OF GENERALITY OR DO WE HAVE SOME SPECIFIC PART OF
19 THE CONSTITUTION OR THE RULES THAT WE SHOULD BE LOOKING AT --

20 **MR. POMERANTZ:** I'M SORRY.

21 **BY MR. ISAACSON:**

22 **Q.** -- AND YOU HAVE NAMED A COUPLE OF RULES, I KNOW.

23 **MR. POMERANTZ:** I THOUGHT HE WAS READING FROM THE
24 DOCUMENT AND I DON'T SEE WHAT HE'S SAYING NOW IN THE DOCUMENT.

25 **MR. ISAACSON:** IT IS. THE GOLDEN RULE --

1 "WE MUST ARREST THE SLIDE TOWARDS PROFESSIONAL
2 ATHLETICS IN THE SPORTS ENTERTAINMENT INDUSTRY. AND
3 WHILE THE PROBLEM IS NOT OF CRISIS PROPORTIONS RIGHT
4 NOW, THE TIME TO AVOID TURNING THIS MYTH INTO REALITY
5 IS NOW."

6 WERE YOU AWARE OF DR. BRAND WARNING OF THIS AT THE TIME?

7 **A.** NO.

8 **Q.** OKAY. DID YOU BECOME AWARE OF IT AFTER YOU BECAME
9 PRESIDENT?

10 **A.** NO.

11 **Q.** OKAY.

12 **MR. ISAACSON:** I WOULD LIKE TO MOVE 2288 AND 2289
13 INTO EVIDENCE.

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

15 **THE COURT:** RECEIVED.

16 (PLAINTIFFS' EXHIBITS 2288 AND 2289 RECEIVED IN EVIDENCE)

17 **MR. ISAACSON:** LET'S MOVE FORWARD TO 2009.

18 **BY MR. ISAACSON:**

19 **Q.** WE HAVE DR. BRAND'S 2009 ADDRESS AT PAGE 2. THIS IS HIS
20 2009 STATE OF THE ASSOCIATION ADDRESS. AND THERE'S A SECTION
21 ON THE CHALLENGE OF COMMERCIAL ACTIVITY. AND IT BEGINS:

22 "THE ISSUE OF COMMERCIAL ACTIVITY HAS BECOME
23 PROMINENT IN RECENT YEARS. IF THE ISSUE HAS NOT
24 ALREADY REACHED CRISIS, IT IS CERTAINLY APPROACHING
25 IT."

1 WERE YOU AWARE OF THIS AT THE TIME?

2 **A.** NO.

3 YOU MEAN OF HIS STATEMENT?

4 **Q.** OR JUST IN GENERAL THAT HE WAS -- THAT HE WAS TALKING
5 ABOUT, THAT THIS ISSUE OF COMMERCIALISM WAS EITHER CLOSE TO A
6 CRISIS OR CERTAINLY APPROACHING IT?

7 **A.** YOU ARE ASKING ME ABOUT MY FAMILIARITY WITH HIS
8 PRONOUNCEMENTS?

9 **Q.** YES.

10 **A.** NO.

11 **Q.** OKAY. IN 2009, REMIND ME WHERE YOU WERE, UNIVERSITY OF
12 WASHINGTON?

13 **A.** YES.

14 **Q.** AND AT THE BEGINNING OF -- BACK IN 2003, 2005 YOU WERE AT
15 LSU?

16 **A.** YES.

17 **Q.** AND ONCE YOU BECAME PRESIDENT OF THE NCAA, DID YOU BECOME
18 AWARE OF DR. BRAND'S DISCUSSIONS OF COMMERCIAL ACTIVITY IN
19 2009?

20 **A.** NO.

21 **Q.** ALL RIGHT. LET'S TALK ABOUT AMATEURISM.

22 **MR. ISAACSON:** CAN WE SHOW 2.9 OF THE CONSTITUTION OF
23 THE NCAA?

24 (DOCUMENT DISPLAYED ON SCREEN.)

25

1 **BY MR. ISAACSON:**

2 **Q.** THIS IS THE PRINCIPLE OF AMATEURISM. YOU'VE SEEN THIS
3 MANY, MANY TIMES BEFORE?

4 **A.** I HAVE.

5 **Q.** (READING)

6 "STUDENT ATHLETES SHALL BE AMATEURS IN AN
7 INTERCOLLEGIATE SPORT AND THEIR PARTICIPATION SHOULD
8 BE MOTIVATED PRIMARILY BY EDUCATION AND BY THE
9 PHYSICAL, MENTAL, AND SOCIAL BENEFITS TO BE DERIVED.
10 STUDENT PARTICIPATION IN INTERCOLLEGIATE ATHLETICS IS
11 AN AVOCATION AND STUDENT ATHLETES SHOULD BE PROTECTED
12 FROM EXPLOITATION BY PROFESSION AND COMMERCIAL
13 ENTERPRISES."

14 THIS IS IN YOUR MANUAL, BUT THIS IS WHAT YOU REFER TO AS
15 THE NCAA CONSTITUTION?

16 **A.** YES.

17 **Q.** NOW, THIS LAST PART, "AND STUDENT ATHLETES SHOULD BE
18 PROTECTED FROM EXPLOITATION BY PROFESSIONAL AND COMMERCIAL
19 ENTERPRISES", THAT IS PART OF THE NCAA'S DEFINITION OF
20 AMATEURISM, CORRECT?

21 **A.** YES.

22 **Q.** YOU WOULD AGREE WITH ME THAT YOU CANNOT HAVE A CLEAR LINE
23 OF DEMARCATION BETWEEN PROFESSIONAL SPORTS AND COLLEGE SPORTS
24 IF THERE'S COMMERCIAL EXPLOITATION OF STUDENT ATHLETES?

25 **A.** I'M SORRY, WOULD YOU RESTATE THAT?

1 Q. WOULD YOU AGREE WITH ME THAT YOU CANNOT HAVE A CLEAR LINE
2 OF DEMARCATION, A PHRASE THE NCAA USES A LOT, BETWEEN
3 PROFESSIONAL SPORTS AND COLLEGE SPORTS IF THERE'S COMMERCIAL
4 EXPLOITATION OF STUDENT ATHLETES?

5 A. THAT'S THE DEFINITION OF AMATEURISM AS DEFINED HERE, YES.

6 Q. LET ME TRY IT A DIFFERENT WAY.

7 WOULD YOU AGREE WITH ME THAT THERE IS A RISK THAT DIVISION
8 I MEN'S BASKETBALL AND FOOTBALL WOULD NOT BE PERCEIVED AS
9 BEING -- HAVING A CLEAR LINE OF DEMARCATION BETWEEN
10 PROFESSIONAL AND AMATEUR IF THERE'S A PERCEPTION OF COMMERCIAL
11 EXPLOITATION?

12 A. POTENTIALLY.

13 Q. THE NCAA DOES NOT HAVE A WRITTEN DEFINITION OF COMMERCIAL
14 EXPLOITATION, CORRECT?

15 A. I HAVEN'T READ ONE.

16 Q. THE ONLY -- AGAIN, THERE IS, HOWEVER, A PROHIBITION ON NOT
17 HOLDING UP A COKE CAN IN AN ADVERTISEMENT?

18 A. YES. THE RULES HAVE, OVER THE YEARS, TRIED TO MAKE --
19 MANIFEST THAT DEFINITION OF EXPLOITATION THROUGH A SERIES OF
20 RULES THAT DEAL WITH WHAT -- WHAT IS CONSIDERED TO BE AN
21 EXPLOITATIVE BEHAVIOR.

22 MR. ISAACSON: CAN WE LOOK AT 2450-147.

23 (EXHIBIT DISPLAYED ON SCREEN.)

24 THE PICTURE IS WORTH A THOUSAND WORDS.

25

1 **BY MR. ISAACSON:**

2 **Q.** THIS IS THE -- A PAGE FROM THE BCS NATIONAL CHAMPIONSHIP
3 GAME PROGRAM CELEBRATING 75 YEARS OF MARCH MADNESS.

4 YOU SEE THE LIST OF SPONSORS AND THE PICTURES OF FORMER
5 STUDENT ATHLETES.

6 THIS IS NOT COMMERCIAL EXPLOITATION, CORRECT?

7 **A.** I THINK YOU SAID IT JUST RIGHT WHEN YOU READ THE TITLE.
8 IT'S CELEBRATING 75 YEARS OF MARCH MADNESS. THIS IS A
9 DOCUMENT THAT IS INTENDED TO PROMOTE NOT ANY ONE OF THOSE
10 INDIVIDUAL TEAMS OR INDIVIDUAL PEOPLE AND THEIR AFFILIATION
11 WITH THOSE PRODUCTS, BUT RATHER THE ENTIRE EVENT OF 75 YEARS
12 WORTH OF HISTORY OF MARCH MADNESS.

13 **Q.** WHEN YOU SAY "THAT'S THE INTENT", ARE YOU REFERRING TO
14 YOUR INTENT OR ARE YOU TRYING TO SPEAK FOR AT&T, CAPITAL ONE,
15 AND COCA-COLA?

16 **A.** BOTH.

17 **Q.** OKAY. YOU WOULD AGREE, FROM YOUR OPINION, THIS IS NOT
18 COMMERCIAL EXPLOITATION UNDER THE RULES OF THE NCAA?

19 **A.** I WOULD. AND, AGAIN, THE REASON FOR THAT IS BECAUSE THIS
20 IS ABOUT CELEBRATING THE SEVENTY-FIFTH ANNIVERSARY AND IT'S
21 ABOUT THE GAME AND THE PROMOTION OF THAT TOURNAMENT AND THE
22 AFFILIATION OF THOSE CORPORATE SPONSORS WITH THAT TOURNAMENT.

23 **Q.** ANY PROMOTION OF BROADCAST OR ONLINE VIEWERSHIP OF THE
24 TOURNAMENT USING PLAYERS' NAMES, IMAGES OR LIKENESS IS NOT
25 COMMERCIAL EXPLOITATION; IS THAT RIGHT?

1 **A.** I'M SORRY, SAY IT AGAIN.

2 **Q.** ANY PROMOTION OF BROADCAST OR ONLINE VIEWING OF THE NCAA
3 TOURNAMENT USING NAMES, IMAGES OR LIKENESSES OF STUDENT
4 ATHLETES IS NOT COMMERCIAL EXPLOITATION UNDER THE CURRENT
5 RULES OF NCAA; IS THAT CORRECT?

6 **A.** AS THE RULES HAVE BEEN WRITTEN BY THE MEMBERSHIP TO ALLOW
7 THE PORTRAYAL OF A PARTICULAR STUDENT ATHLETE OR TEAM IF IT IS
8 ONLY IN CONJUNCTION WITH PROMOTING THAT -- THAT TOURNAMENT
9 EVENT.

10 **Q.** RIGHT. SO LET'S JUST, FOR ILLUSTRATION --

11 **A.** WHICH IS PRECISELY WHAT THIS IS.

12 **Q.** BY WAY OF ILLUSTRATION, 2451-203.

13 (EXHIBIT DISPLAYED ON SCREEN.)

14 THIS IS THE A PAGE FROM THE 2014 DIVISION I MARCH MADNESS
15 FINAL FOUR PROGRAM, TALKING ABOUT WATCH EVERY GAME LIVE ON
16 NCAA.COM.

17 UNDER YOUR DEFINITIONS, THIS IS NOT COMMERCIAL
18 EXPLOITATION, CORRECT?

19 **A.** CORRECT.

20 **Q.** AND IF WE CAN LOOK AT 2481-37.

21 (EXHIBIT DISPLAYED ON SCREEN.)

22 IT'S A PICTURE OF THE IOWA FOOTBALL TEAM WEARING THEIR
23 NIKE UNIFORMS AT IOWA FOOTBALL STADIUM WITH A NIKE SWOOSH OVER
24 THEIR HEAD.

25 THAT IS NOT COMMERCIAL EXPLOITATION UNDER THE CURRENT NCAA

1 RULES, RIGHT?

2 **A.** I'M NOT AN EXPERT ON WHERE THOSE DISTINCTIONS ARE DRAWN,
3 BUT BASED UPON MY UNDERSTANDING, NO, IT'S NOT.

4 **Q.** IT WOULDN'T MATTER HOW MANY CORPORATE ADS WERE IN THE
5 BACKGROUND, CORRECT, IT STILL WOULDN'T BE COMMERCIAL
6 EXPLOITATION?

7 **A.** THERE ARE -- THE STADIUMS AND ARENAS AROUND THE COUNTRY
8 HAVE CORPORATE LOGOS IN THEM, YES.

9 **Q.** THE NCAA DOES NOT RESTRICT HOW MANY CORPORATE LOGOS ARE IN
10 STADIUMS, CORRECT?

11 **A.** CORRECT.

12 **MR. ISAACSON:** CAN WE LOOK AT 2481-51?

13 (EXHIBIT DISPLAYED ON SCREEN.)

14 **BY MR. ISAACSON:**

15 **Q.** THIS IS THE CHICK-FIL-A BOWL GAMES A PHOTO OF THE TEXAS
16 A&M HAPPY AFTER THE -- WINNING THE GAME WITH THE CHICK-FIL-A
17 SYMBOL AND THE KIA SYMBOL.

18 THIS IS NOT COMMERCIAL EXPLOITATION UNDER THE CURRENT NCAA
19 RULES AND IT WOULDN'T MATTER HOW MANY CORPORATE LOGOS WE WERE
20 LOOKING AT RIGHT NOW; IS THAT RIGHT?

21 **A.** I DON'T KNOW. SINCE WE DON'T GOVERN THESE GAMES, WE DON'T
22 HAVE ANYTHING TO SAY ABOUT THE LOGOS IN BOWL GAMES.

23 **Q.** AND BY THAT YOU MEAN, YOU DON'T HAVE AN NCAA RULE THAT
24 SAYS -- THAT RESTRICTS THE AMOUNT OF PROMOTION, SPONSORSHIP,
25 OR ADVERTISING AT THESE BOWL GAMES; IS THAT CORRECT?

1 **A.** THE BOWL GAMES ARE NOT GOVERNED OR CONDUCTED BY THE NCAA.
2 SO, NO, WE DON'T SET RULES FOR THINGS WE DON'T CONDUCT OR
3 GOVERN.

4 **Q.** WELL, IF A PLAYER WAS AT ONE OF THESE BOWL GAMES AND WENT
5 UP TO THE TELEVISION CAMERAS WITH THE SUPPORT OF THE SCHOOL,
6 AND HELD UP A CAN OF COKE AND SAID, BUY COKE, THAT WOULD BE A
7 VIOLATION OF NCAA RULES, RIGHT?

8 **A.** PERHAPS.

9 **Q.** PERHAPS? IF A SCHOOL SAYS TO A PLAYER --

10 **A.** I DON'T -- I DON'T WANT TO GET INTO A HYPOTHETICAL WITH
11 YOU ABOUT SOME CIRCUMSTANCE THAT I HAVE NO IDEA WHAT THE
12 CONTEXT IS.

13 SO, YES, PERHAPS.

14 **Q.** NOW, YOU, YOURSELF, HAVE USED THE PHRASE "COMMERCIALISM IS
15 OVERWHELMING AMATEURISM".

16 OH, BEFORE WE DO THAT, I WANT TO ASK YOU ABOUT SOMEONE
17 ELSE'S VIEW.

18 **MR. ISAACSON:** PX2057. CAN WE LOOK AT THE FIRST PAGE
19 OF THAT?

20 (EXHIBIT DISPLAYED ON SCREEN.)

21 **BY MR. ISAACSON:**

22 **Q.** THIS IS A 2009 EMAIL, INCLUDING A DECK, IT'S GOING TO
23 INCLUDE A DECK FROM JAMIE ZANINOVICH. HE WAS THE COMMISSIONER
24 OF THE WEST COAST CONFERENCE?

25 YOU KNOW HIM, RIGHT?

1 **A.** I DO.

2 **Q.** HOPEFULLY I PRONOUNCED HIS NAME RIGHT.

3 **A.** YOU DID.

4 **Q.** AND HE IS ON -- I HAVE A NOTE THAT HE'S ON THE NCAA
5 DIVISION I COMMITTEE. I'M NOT SURE IF THAT'S THE BOARD YOU
6 DESCRIBED OR A SEPARATE ORGANIZATION. DO YOU KNOW?

7 **A.** HE WAS ON, AT THAT TIME, THE MEN'S BASKETBALL COMMITTEE.
8 HE NO LONGER IS.

9 **Q.** THE OI WANT TO ASK YOU ABOUT A VIEW HE PRESENTED.

10 **MR. POMERANTZ:** YOUR HONOR, OBJECTION, LACK OF
11 FOUNDATION. HE HASN'T SHOWN THAT DR. EMMERT HAS EVER SEEN
12 THIS DOCUMENT.

13 WE ARE MOVING FROM A STATE OF ASSOCIATION SPEECH BY
14 DR. BRAND TO NOW AN INTERNAL EMAIL WITH AN ATTACHED -- WITH AN
15 ATTACHED DOCUMENT THAT PREDATES DR. EMMERT'S TENURE AT THE
16 NCAA.

17 I WOULD SUGGEST THAT WE ARE NOW GOING BEYOND WHAT MIGHT BE
18 FAIR IN TERMS OF QUESTIONING ABOUT WHAT SOMEBODY ELSE SAID
19 BEFORE HE EVER ARRIVED. I WOULD OBJECT ON FOUNDATION GROUNDS.

20 **MR. ISAACSON:** LEAD COUNSEL ASKED THE WITNESS FOR HIS
21 VIEWS BASED ON WHAT OTHERS HAVE SAID IN THE NCAA ON THE ISSUES
22 AT THE HEART IN THE CASE. I WANT TO KNOW -- I'M GOING TO SHOW
23 HIM A VIEW AND ASK HIM IF HE'S HEARD VIEWS LIKE THIS.

24 **MR. POMERANTZ:** YOUR HONOR, I ASKED HIM WHAT OTHERS
25 SAID TO HIM.

1 **THE COURT:** I'LL ALLOW THAT. I DON'T KNOW IF HE'S
2 GOING TO OFFER THE DOCUMENT, BUT HE CAN CROSS-EXAMINE HIM ON
3 HIS VIEWS ABOUT WHAT OTHER PEOPLE THINK THAT HE TESTIFIED TO.

4 **MR. ISAACSON:** THAT REMINDS ME, I NEEDED TO MOVE
5 2293, THE LAST OF THE BRAND SPEECHES.

6 **THE COURT:** ANY OBJECTION TO THAT EXHIBIT?

7 **MR. POMERANTZ:** YES. YOUR HONOR, I DON'T THINK I
8 HAVE AN OBJECTION TO THE COVER EMAIL --

9 **THE COURT:** NO, HE'S GONE BACK TO THE LAST BRAND
10 SPEECH.

11 **MR. POMERANTZ:** I'M SORRY. NO OBJECTION.

12 (PLAINTIFFS' EXHIBIT 2293 RECEIVED IN EVIDENCE)

13 **MR. ISAACSON:** AND IF I CAN MOVE THOSE PHOTOS INTO
14 EVIDENCE.

15 **THE CLERK:** WHAT IS THE --

16 **MR. ISAACSON:** 2451-203, 2481-37 AND 51, AND 254-147.

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

18 **THE COURT:** RECEIVED.

19 (PLAINTIFFS' EXHIBITS 254-147, 2451-203, & 2481- 37 & 51
20 RECEIVED IN EVIDENCE)

21 **MR. ISAACSON:** I'M TOLD TO MOVE --

22 **BY MR. ISAACSON:**

23 **Q.** MR. ZANINOVICH AT 2057-20 DISCUSSES COMMERCIALISM.

24 **MR. ISAACSON:** IF WE CAN FLIP TO THE NEXT PAGE.

25 (PAGE DISPLAYED ON SCREEN.)

1 **BY MR. ISAACSON:**

2 **Q.** HE GIVES AN EXAMPLE OF --

3 **A.** COULD YOU BACK UP? I DON'T KNOW WHAT DOCUMENT YOU'RE
4 REFERRING TO.

5 **Q.** I JUST WANT TO SHOW YOU A PHOTO FIRST. GIVE YOU SOME
6 CONTEXT.

7 HE REFERS TO A CAMPUS SIGN, A STUDENT ATHLETE SIGN ON THE
8 SIDE OF A BASKETBALL ARENA WITH CORPORATE SPONSOR LOGOS.

9 YOU HAVE SEEN SIGNS SUCH AS THIS WHEN YOU GO TO GAMES
10 THROUGHOUT THE NATION, RIGHT?

11 **A.** I DON'T RECALL SEEING ONE WITH A CORPORATE LOGO ON IT WITH
12 AN INDIVIDUAL. I BELIEVE THIS IS LEGITIMATE. I AM NOT
13 QUESTIONING ITS VALIDITY, I JUST DON'T RECALL HAVING SEEN A
14 POSTER LIKE THAT.

15 **Q.** LET'S BACK UP TO THE PREVIOUS PAGE AND SEE WHAT
16 MR. ZANINOVICH HAD TO SAY.

17 (PAGE DISPLAYED ON SCREEN.)

18 "THE NEED TO -- COMMERCIALISM. THE NEED TO MODERNIZE
19 STANDARDS WITH THE TIMES RECOGNIZING THAT THE HORSE
20 IS ALREADY NOT ONLY OUT OF THE BARN, IT IS IN AN
21 ENTIRELY DIFFERENT STATE."

22 HAVE YOU HAD INDIVIDUALS WITHIN THE NCAA, I MEAN
23 COMMISSIONERS, SCHOOL HEADS, A.D.'S TALK ABOUT THAT
24 COMMERCIALISM IS RUNNING RAMPANT?

25 **A.** YES.

1 Q. THE --

2 A. I WOULD POINT OUT THAT THAT'S BEEN A CONVERSATION THAT HAS
3 BEEN GOING ON FOR MORE THAN A HUNDRED YEARS.

4 Q. ALL RIGHT.

5 IT'S ALSO HAPPENED -- THE PHRASE THAT YOU USE, I BELIEVE,
6 IS "COMMERCIALISM IS OVERWHELMING AMATEURISM".

7 IS THAT -- THAT'S A PHRASE -- THAT'S A PHRASE YOU USE,
8 CORRECT?

9 A. I DON'T REMEMBER USING THAT PRECISE PHRASE, BUT I'M NOT
10 DEBATING IT WITH YOU.

11 MR. ISAACSON: CAN WE LOOK AT 2584, SEE IF YOU
12 REMEMBER THIS.

13 (EXHIBIT DISPLAYED ON SCREEN.)

14 THIS IS AN ARTICLE FROM NCAA.COM, NOT JUST ANY OLD SPORTS
15 JOURNALIST, AND IT SAYS ON THE FIRST PAGE, THE SECOND
16 PARAGRAPH -- AND THIS IS, I'M SORRY, JULY 2011. THIS IS
17 PRETTY EARLY IN YOUR PRESIDENCY AND I THINK YOU ARE COMING UP
18 ON A LARGE MEETING IN AUGUST --

19 A. YES.

20 Q. -- WHERE YOU ARE GOING TO DISCUSS REFORMS.

21 AND YOU SAY: "THE INTEGRITY OF COLLEGIATE ATHLETICS IS
22 SERIOUSLY CHALLENGED TODAY."

23 AND YOU SAY: "WE HAVE REACHED A POINT WHERE INCREMENTAL
24 CHANGE IS NOT SUFFICIENT TO MEET THESE CHALLENGES."

25 THAT'S STILL A VIEW YOU HAVE TODAY?

1 **A.** YES.

2 **Q.** OKAY. AND THEN IF WE CONTINUE THE NEXT PAGE.

3 (PAGE DISPLAYED ON SCREEN.)

4 IT SAYS -- IT REFERS TO YOU AS "EMMERT", INSTEAD OF
5 DR. EMMERT -- "HAS MADE CLEAR THAT THE NEED FOR
6 CHANGE IS NOT ABOUT SPECIFIC INCIDENTS THAT HAVE
7 HAPPENED ON CAMPUSES, THEY ARE ABOUT FUNDAMENTAL
8 CONCERNS THAT COMMERCIALISM IS OVERWHELMING
9 AMATEURISM."

10 DO YOU REMEMBER WHAT YOU MEANT BY THAT?

11 **A.** WELL, I MEAN THE SAME THING I SUSPECT THAT WAS INTENDED BY
12 SOME OF THE OTHER -- YOU WERE QUOTING, STRIKING THE PROPER
13 BALANCE TO MAINTAIN AMATEUR ATHLETICISM WHILE YOU'RE ALSO
14 USING BUSINESS-LIKE PRACTICES AND COMMERCIAL ACTIVITIES IN
15 ORDER TO SUPPORT THOSE AMATEUR ATHLETICS IS AN AREA OF GREAT
16 CONCERN TO ALL OF INTERCOLLEGIATE ATHLETICS.

17 AND AS I SAID, IT WAS THE CASE A HUNDRED YEARS AGO AND IT
18 CONTINUES TODAY.

19 **Q.** AND YOU ARE NOT GOING TO BE ABLE TO COMBAT THAT
20 FUNDAMENTAL CONCERN WITH INCREMENTAL CHANGE, CORRECT?

21 **A.** NO. WHEN I WAS TALKING ABOUT THE NEED -- EXCUSE ME.

22 IF YOU WANTED TO GO BACK TO THE PARAGRAPH THAT YOU ARE
23 QUOTING ME FROM EARLIER, COULD YOU GO BACK THERE?

24 **Q.** SURE.

25 **MR. POMERANTZ:** YOUR HONOR, MAY I REQUEST -- I AM

1 SORRY. MAY I REQUEST THAT DR. EMMERT BE HANDED A PHYSICAL
2 COPY OF IT SO HE CAN SEE HIS OWN COMMENTS?

3 **MR. ISAACSON:** YOU HAVE IT? SORRY.

4 **MR. POMERANTZ:** MAY I APPROACH?

5 **THE COURT:** YOU CAN GIVE IT TO HIM.

6 (DOCUMENT HANDED TO WITNESS.)

7 **THE WITNESS:** THANK YOU.

8 AS YOU QUOTED FROM THE SECOND PARAGRAPH OF THE STATEMENT:

9 "THE INTEGRITY OF COLLEGE ATHLETICS IS SERIOUSLY
10 CHALLENGED TODAY BY RAPIDLY GROWING PRESSURES COMING
11 FROM MANY DIRECTIONS."

12 IT WAS THAT TO WHICH I WAS REFERRING TO IN THE NEXT
13 SENTENCE WHEN I SAID:

14 "WE'VE REACHED A POINT WHERE INCREMENTAL CHANGE IS NOT
15 SUFFICIENT TO MEET THESE CHALLENGES."

16 WHEN I SAID "COMING FROM MANY DIRECTIONS", I DIDN'T MEAN
17 FROM ONE DIRECTION FROM COMMERCIALISM, BUT FROM MANY
18 DIRECTIONS.

19 **BY MR. ISAACSON:**

20 **Q.** SO MY QUESTION IS, YOU ADDRESS THE FUNDAMENTAL CONCERNS
21 THAT COMMERCIALISM IS OVERWHELMING AMATEURISM, WAS IT YOUR
22 VIEW THAT THAT COULD BE MANAGED THROUGH INCREMENTAL CHANGE?

23 **A.** I DON'T KNOW.

24 **Q.** OKAY.

25 DO YOU HAVE ANY CHANGES, INCREMENTAL OR OTHERWISE, IN MIND

1 THAT -- TO ADDRESS THE FUNDAMENTAL CONCERNS THAT COMMERCIALISM
2 WAS OVERWHELMING AMATEURISM?

3 **A.** NO. MY ROLE IN THIS AND THE RETREAT THAT FOLLOWED WAS TO
4 PRESENT THE MEMBERS WITH MY OBSERVATIONS ABOUT WHAT THE
5 CHALLENGES ARE THAT NEEDED TO BE OVERCOME.

6 **Q.** AND AT THE RETREAT THAT FOLLOWED, YOU DID PROPOSE SPECIFIC
7 REFORMS RELATING TO THE NCAA, CORRECT?

8 **A.** WE PUT A VARIETY OF SCENARIOS IN FRONT OF THE MEMBERSHIP,
9 THEY DEBATED AND DISCUSSED THEM THOROUGHLY, AND THEN THEY CAME
10 OUT AND SAID THEY HAD A NUMBER OF IDEAS THAT THEY WANTED TO
11 PURSUE.

12 **Q.** YOU DID NOT MAKE ANY PROPOSALS IN THAT AUGUST MEETING THAT
13 ADDRESSED THE FUNDAMENTAL CONCERN THAT COMMERCIALISM WAS
14 OVERWHELMING AMATEURISM; IS THAT CORRECT?

15 **A.** THERE WERE A NUMBER OF PROPOSALS THAT CAME OUT OF THAT --
16 THAT MEETING THAT ADDRESSED THE OVERALL STATE OF
17 INTERCOLLEGIATE ATHLETICS, INCLUDING COMMERCIALISM AND TIME
18 COMMITMENTS, AND STUDENT ATHLETE WELL-BEING, AND THE BASIC
19 NATURE OF THE -- THE RULES AND THE ENFORCEMENT PROCESS.

20 **Q.** I WOULD LIKE YOU TO BE SPECIFIC, SIR.

21 WHAT DID YOU PROPOSE IN THAT AUGUST MEETING FOLLOWING THIS
22 ARTICLE THAT WAS -- THAT WAS INTENDED TO ADDRESS THE
23 FUNDAMENTAL CONCERN YOU RAISED THAT COMMERCIALISM WAS
24 OVERWHELMING AMATEURISM?

25 **A.** LET ME RESTATE IT. I DID NOT PROPOSE ANYTHING.

1 MY STAFF AND I HAD THE RESPONSIBILITY TO PUT OPTIONS IN
2 FRONT OF THE PEOPLE WHO ACTUALLY MAKE THE DECISIONS. THOSE
3 WOULD BE THE PRESIDENTS OF THE UNIVERSITIES WHO WERE IN THAT
4 ROOM.

5 **Q.** WHAT OPTIONS DID YOU PUT IN FRONT OF THE UNIVERSITY
6 PRESIDENTS THAT WERE IN THE ROOM THAT ADDRESSED THE
7 FUNDAMENTAL CONCERN YOU RAISED THAT COMMERCIALISM WAS
8 OVERWHELMING AMATEURISM?

9 **A.** I DON'T REMEMBER THE SPECIFIC CONVERSATION OF THAT
10 MEETING.

11 **Q.** YOU GO ON TO SAY:

12 "DECISION-MAKING RESTS WITH THE PRESIDENTS."

13 AND I THINK YOU SAID PRETTY MUCH THAT IN YOUR TESTIMONY,
14 COLLEGES RUN THE NCAA.

15 **A.** YES.

16 **Q.** YEAH.

17 AND REFORM REQUIRES -- REFORM WITHIN THE NCAA REQUIRES THE
18 COLLECTIVE APPROVAL OF THE COLLEGES, CORRECT?

19 **A.** YES.

20 **Q.** NOW, ONCE -- WE WERE -- WE HAVE BEEN TOUCHING ON ONCE YOU
21 JOINED THE NCAA IN YOUR AUGUST MEETING, AND IN THE SUMMER OF
22 2011, YOU PROPOSED SEVERAL CHANGES THAT INCLUDED GENERALLY
23 STREAMLINING THE RULE BOOK, CORRECT?

24 **A.** AGAIN, THEY WERE PROPOSALS COMING FROM THE PRESIDENTS WHO
25 WERE MEETING IN THOSE ROOMS.

1 Q. I WANT TO KNOW WHAT YOU -- I'M SORRY, I'LL PUT IT IN YOUR
2 TERMS. THE OPTIONS THAT YOU WERE PROVIDING.

3 IN TERMS OF THE OPTIONS THAT YOU WERE -- THAT YOU PUT
4 FORWARD FOR DISCUSSION, YOU PUT FORWARD OPTIONS AS TO
5 STREAMLINE THE RULE BOOK, CORRECT?

6 A. YES.

7 Q. YOU PUT OPTIONS FORWARD TO REFORM THE ENFORCEMENT RULES?

8 A. YES.

9 Q. I THINK YOU MENTIONED AN EXAMPLE FOR COUNSEL THE SIZE OF
10 THE ENVELOPES, RIGHT?

11 A. YES.

12 Q. AND THEN YOU ALSO PUT FORWARD THE OPTIONS OF PERMITTING
13 LARGE SCHOOLS TO GIVE STIPENDS OF \$2,000; IS THAT CORRECT?

14 A. THAT WAS A PROPOSAL THAT CAME FROM A STUDENT WELL-BEING
15 WORKING GROUP, YES.

16

17

18

19

20

21

22 (CONTINUED ON NEXT PAGE; NOTHING OMITTED.)

23

24

25

1 **BY MR. ISAACSON:**

2 **Q.** ALL RIGHT. AND YOU SUPPORTED THAT PROPOSAL?

3 **A.** YES, STILL DO.

4 **Q.** ALL RIGHT. AND THAT STIPEND MEASURE, HOWEVER, WAS
5 DEFEATED IN SOME FASHION. WAS IT VOTED DOWN?

6 **A.** YES. IT WAS NEVER REFERRED TO AS A "STIPEND," BY THE WAY.
7 IT WAS REFERRED TO AS SOMETHING TO COVER CLOSE -- MORE CLOSELY
8 THE FULL COST OF ATTENDANCE AND AIMED PARTICULARLY AT THE
9 MISCELLANEOUS EXPENSE ALLOWANCE.

10 **Q.** OKAY. SO -- AND THEN I READ A RECENT *NEW YORK TIMES*
11 ARTICLE THAT TALKED ABOUT YOU JOINING THE NCAA IN WHICH YOU
12 WERE QUOTED AS SAYING THAT WHEN YOU JOINED THE NCAA, YOU
13 CONFRONTED A, QUOTE, FACELESS, NAMELESS, UNKIND BUREAUCRACY.

14 WAS THAT -- WAS THAT ACCURATE?

15 **A.** NO.

16 **Q.** OKAY.

17 **A.** WHAT I EXPRESSLY SAID WAS THE WORLD BELIEVED THAT I --
18 THAT THEY WERE CONFRONTING A NAMELESS, FACELESS, BUREAUCRACY.
19 IT WASN'T MY OPINION. THAT WAS WHAT I WAS TOLD TO ADDRESS AS
20 I CAME IN.

21 **Q.** ALL RIGHT. SO YOUR UNDERSTANDING AT THE TIME YOU BECAME
22 UNIVERSITY -- NCAA PRESIDENT, WAS THAT THERE WAS A PUBLIC
23 PERCEPTION OF THE NCAA AS A FACELESS, NAMELESS, UNKIND
24 BUREAUCRACY?

25 **A.** YES.

1 Q. THE -- I WANT TO --

2 GOING BACK TO 2.9, THE PRINCIPLE OF AMATEURISM, IF YOU
3 COULD, MATT.

4 (DEMONSTRATIVE PUBLISHED.)

5 **MR. ISAACSON:** -- FROM THE CONSTITUTION.

6 Q. THAT -- I WANT TO FOCUS YOU ON A PHRASE THAT -- I PROBABLY
7 DON'T HAVE TO SHOW IT TO YOU -- "STUDENT PARTICIPATION IN
8 INTERCOLLEGIATE ATHLETICS IS AN AVOCATION."

9 NOW, THAT -- THIS -- THAT THE STUDENTS' PARTICIPATION IN
10 SPORTS IS TO BE AN AVOCATION, THAT'S WHAT YOU CALLED THE
11 BEDROCK PRINCIPLE OF THE NCAA SINCE ITS FOUNDING IN 1905,
12 CORRECT?

13 A. THE PRINCIPLE OF AMATEURISM, YES.

14 Q. NO, NOT JUST THE PRINCIPLE OF AMATEURISM, SIR. OKAY?

15 I'M REFERRING TO THIS PHRASE (SIC) "AVOCATION." THAT IS
16 THE BEDROCK PRINCIPLE OF THE NCAA AS YOU UNDERSTAND IT SINCE
17 1905.

18 A. WHAT YOU'RE READING IN 2.9 IN ITS ENTIRETY IS THE BEDROCK
19 PRINCIPLE OF AMATEURISM THAT'S BEEN AT THE CORE OF THE NCAA
20 SINCE 1905.

21 Q. RIGHT. AND --

22 A. NOT SOME SUBPART OF IT.

23 Q. ALL RIGHT.

24 A. BUT ALL OF IT.

25 Q. ALL RIGHT. AND THAT WOULD INCLUDE -- SO YOUR TESTIMONY IS

1 THAT THE BEDROCK PRINCIPLE OF THE NCAA INCLUDES THAT STUDENT
2 PARTICIPATION IN INTERCOLLEGIATE ATHLETICS IS AN AVOCATION,
3 BUT THAT'S NOT ALL OF IT.

4 IS THAT FAIR?

5 **A.** WELL, OBVIOUSLY -- WELL, I SHOULD NOT SAY "OBVIOUSLY." I
6 APOLOGIZE.

7 I DIDN'T WRITE THESE WORDS, BUT WHEN I READ A PARAGRAPH, I
8 ASSUME THAT THE TWO SENTENCES ARE CONNECTED. SO MY READING OF
9 THIS HAS ALWAYS BEEN THAT IN DESCRIBING AMATEURISM, STUDENT
10 PARTICIPATION IS DESCRIBED AS AN AVOCATION. I'M NOT QUITE
11 SURE WHAT THE DISTINCTION IS THAT YOU'RE TRYING TO MAKE.

12 **Q.** WELL, LET ME ASK -- I WANT -- I WANT TO UNDERSTAND YOUR
13 WORDS.

14 SO IF WE CAN LOOK AT HIS DEPOSITION AT PAGE --

15 **THE COURT:** ACTUALLY, BEFORE YOU LEAVE THAT, COULD I
16 ASK WHAT YOU MEAN BY -- OR WHAT YOU UNDERSTAND BY THE PHRASE
17 "STUDENT ATHLETES SHOULD BE PROTECTED FROM EXPLOITATION BY
18 PROFESSIONAL AND COMMERCIAL ENTERPRISES."

19 **THE WITNESS:** YES.

20 **THE COURT:** WHAT -- WHAT DO YOU UNDERSTAND THAT
21 PHRASE TO MEAN?

22 **THE WITNESS:** WELL, I UNDERSTAND IT, AT LEAST IN THE
23 CURRENT CONTEXT OF TODAY, TO -- TO MEAN THAT AS WE WERE JUST
24 DISCUSSING, THAT THERE IS NO SHORTAGE OF COMMERCIAL PRESSURES
25 TO UTILIZE STUDENT ATHLETES IN -- IN PROMOTING COMMERCIAL

1 PRODUCTS IN A VARIETY OF WAYS.

2 AND ONE HAS TO MAKE SURE THAT -- IN AN AMATEUR CONTEXT,
3 THAT THAT DOESN'T GO TO A PLACE WHERE THE STUDENT ATHLETES
4 ARE, IN FACT, BEING USED AS NOTHING MORE THAN SHILLS FOR A
5 PRODUCT.

6 AND SECONDLY, THERE ARE A WIDE ARRAY OF WHAT ARE LOOSELY
7 REFERRED TO AS THIRD PARTIES, LET'S CALL THEM, WHO -- WHO ARE
8 INVOLVED IN -- THE LIFE OF STUDENT ATHLETES TRYING TO TAKE
9 ADVANTAGE OF THEIR CIRCUMSTANCES AS -- AS AGENTS, AS FINANCIAL
10 ADVISORS, AS FOLKS WHO WOULD -- WOULD TRY TO MOVE THEM TOWARD
11 INSTITUTIONS IN INAPPROPRIATE WAYS.

12 SO THAT'S HOW I READ THAT, YOUR HONOR.

13 **MR. ISAACSON:** ALL RIGHT.

14 **THE COURT:** BACK TO THE FIRST PART, WHAT -- WOULD THE
15 EXPLOITATION -- I UNDERSTAND WHAT YOU MEAN BY "AGENTS," BUT
16 THE FIRST PART, THAT THEY WOULD BE STUDENT ATHLETES ARE --
17 NEED TO BE PROTECTED FROM EXPLOITATION BY COMMERCIAL
18 ENTERPRISES.

19 **THE WITNESS:** YES. SO THE -- THE WAY THIS HAS BEEN
20 DISCUSSED AMONG THE MEMBERSHIP IS -- AGAIN, NOT UNRELATED TO
21 WHAT THE COUNSEL'S BEEN ASKING ME ABOUT, THE COMMERCIALISM
22 INTERESTS THAT THE -- THE FUNDAMENTAL NOTION IS THAT YOU --
23 YOU DON'T WANT TO HAVE STUDENT ATHLETES, AMATEUR STUDENT
24 ATHLETES, BE IN A POSITION WHERE THEY ARE PITCHING FOR -- FOR
25 PRODUCTS AND FOR COMMERCIAL INTERESTS AND BEING -- BEING

1 ESSENTIALLY PITCHMEN FOR VARIOUS PRODUCTS.

2 **THE COURT:** OKAY. SO MAYBE YOU DON'T WANT THAT, BUT
3 DO YOU CONSIDER THAT TO BE EXPLOITATION OF THEM? OR IS IT
4 JUST SOMETHING YOU DON'T WANT TO BE HAPPENING?

5 **THE WITNESS:** THE -- WHEN THIS -- WHEN THIS RULE,
6 AGAIN, HAS BEEN DISCUSSED BY THE MEMBERSHIP, THE ANSWER TO
7 THAT WOULD BE BOTH.

8 **THE COURT:** YOU THINK IT'S EXPLOITATION OF THEM
9 PERSONALLY.

10 **THE WITNESS:** YES.

11 **THE COURT:** IT'S HARMING THEM IN SOME WAY.

12 **THE WITNESS:** YES.

13 **THE COURT:** WHAT WOULD THAT BE?

14 **THE WITNESS:** THE ASSUMPTION IS THAT BY PROVIDING
15 THEM WITH A -- AGAIN, CONVERSION INTO -- INTO A PROFESSIONAL
16 ATHLETE, THAT THEY ARE NO LONGER A STUDENT ATHLETE; THEY'RE
17 NOT PART OF AN ACADEMIC ENVIRONMENT; THEY'RE NOT IN A POSITION
18 TO GAIN THE ADVANTAGES OF BEING A STUDENT ATHLETE. AND BEING
19 A STUDENT AT THAT UNIVERSITY THERE, THEY'RE THEN NOT
20 AVOCATIONALLY BUT VOCATIONALLY IN ORDER TO MAKE A LIVING OFF
21 OF -- OFF OF THAT PROCESS.

22 **THE COURT:** AND THAT IS WHAT YOU CONSIDER
23 EXPLOITATION OF THEM.

24 **THE WITNESS:** YES. IN THIS LANGUAGE, YES.

25

1 **BY MR. ISAACSON:**

2 **Q.** IF WE CAN LOOK AT PAGE 103 OF YOUR DEPOSITION.

3 **MR. POMERANTZ:** YOUR HONOR, I JUST -- I DON'T THINK
4 HE CAN SHOW THE DEPOSITION UNLESS HE THINKS IT'S INCONSISTENT
5 WITH SOMETHING THAT -- THAT DR. EMMERT JUST TESTIFIED TO. I'M
6 UNAWARE OF THE INCONSISTENCY.

7 **THE COURT:** OCCASIONALLY, IT'S OFFERED AS A STATEMENT
8 AGAINST INTEREST BY A -- OR ADMISSION OF A PARTY OPPONENT, SO
9 I DON'T KNOW WHICH WHAT HE'S TRYING TO DO.

10 WHAT ARE YOU TRYING TO DO?

11 **MR. ISAACSON:** AND IF HE CAN RECONCILE THE STATEMENT
12 WITH HIS TESTIMONY, I WOULD LIKE HIM TO DO THAT AND EXPLAIN IT
13 TO ME. I THINK THEY'RE --

14 **THE COURT:** WELL, WHY DON'T YOU JUST ASK HIM IF HE
15 THINKS WHATEVER THIS IS, AND THEN ASK HIM IF THAT IS
16 INCONSISTENT.

17 **MR. ISAACSON:** SURE. ALL RIGHT.

18 (DEMONSTRATIVE PUBLISHED.)

19 **BY MR. ISAACSON:**

20 **Q.** DO YOU AGREE WITH THIS STATEMENT: THE ASSOCIATION BEGAN
21 CLEAR BACK IN 1905 PREDICATED ON THE VALUE --

22 **A.** I'M SORRY. I DON'T KNOW WHAT YOU'RE READING.

23 **Q.** WELL, I AM READING A -- I'M NOT TRYING TO HIDE THE --

24 **THE COURT:** WOULD YOU LIKE HIM TO SEE IT?

25 **MR. POMERANTZ:** YES, PLEASE.

1 **THE WITNESS:** I'M NOT TRYING TO BE --

2 **MR. ISAACSON:** YOU'RE --

3 (SIMULTANEOUS COLLOQUY.)

4 **BY MR. ISAACSON:**

5 **Q.** YOUR COUNSEL DIDN'T WANT ME TO SHOW IT TO YOU.

6 (SIMULTANEOUS COLLOQUY.)

7 **THE COURT:** YEAH, THAT'S RIGHT.

8 **BY MR. ISAACSON:**

9 **Q.** SO LET ME SHOW IT TO YOU.

10 **THE COURT:** SO NOW WE WILL SHOW IT.

11 (DEMONSTRATIVE PUBLISHED.)

12 **MR. ISAACSON:** AND I ACTUALLY EDITED IT TO SAY "1905"
13 INSTEAD OF "1904" --

14 (SIMULTANEOUS COLLOQUY.)

15 **MR. POMERANTZ:** COULD WE SET THE QUESTION AND THE
16 ANSWER?

17 **MR. ISAACSON:** SURE.

18 "WHAT IS THE VALUE OF AMATEURISM WITH REGARD TO THE
19 STUDENT ATHLETE TO THE BEDROCK PRINCIPLE WITHIN THE
20 ASSOCIATION?"

21 (DEMONSTRATIVE PUBLISHED.)

22 **MR. ISAACSON:** AND YOUR ANSWER WAS "THE ASSOCIATION
23 BEGAN CLEAR BACK IN 19 "-- LET'S SAY 1905 -- "PREDICATED ON
24 THE VALUES THAT I CONTINUE TO REPEAT HERE TODAY, THAT STUDENT
25 ATHLETES WILL BE STUDENTS WHO HAVE AN AVOCATIONAL INTEREST IN

1 PARTICIPATING IN THEIR SPORTS WHILE THEY'RE IN THE UNIVERSITY
2 OR COLLEGE, AND THAT THAT IS ONE OF THE CORE VALUES OF
3 INTERCOLLEGIATE ATHLETICS."

4 Q. YOU AGREE WITH THAT STATEMENT, DON'T YOU?

5 A. YES.

6 Q. OKAY. THE -- IF WE CAN LOOK AT -- OH, NOW IN TERMS OF
7 THIS FOUNDING PRINCIPLE -- AND YOU WENT TO THE HISTORY OF
8 THIS --

9 NOW FROM YOUR -- IN 1905, THE AMATEUR WAS OF A SOCIAL
10 CLASS THAT COULD AFFORD THE TIME AND EXPENSE OF THE SPORT
11 WITHOUT COMPENSATION.

12 THAT'S WHAT HISTORY SHOWS, RIGHT?

13 A. I DON'T KNOW THAT HISTORY, BUT I'LL TAKE IT AS GRANTED
14 GIVEN THAT VERY FEW PEOPLE WENT TO COLLEGES AND UNIVERSITIES
15 WHO DIDN'T HAVE SOME FINANCIAL MEANS.

16 Q. ALL RIGHT. AND THE HISTORY ALSO SHOWED THAT THAT
17 PRINCIPLE COULD NOT WORK IN AMERICA'S EGALITARIAN CULTURE.

18 A. ARE YOU STATING THAT AS AN OPINION? I'M SORRY.

19 Q. WELL, I'VE SEEN THESE STATEMENTS IN NCAA DOCUMENTS THAT I
20 CAN SHOW YOU.

21 AND LET'S LOOK AT 2047-5.

22 (EXHIBIT PUBLISHED.)

23 **MR. ISAACSON:** THIS IS THE FINAL REPORT OF THE NCAA
24 TASK FORCE ON COMMERCIAL ACTIVITY, WHICH HAS BEEN ADMITTED
25 INTO EVIDENCE.

1 **MR. POMERANTZ:** YOUR HONOR, MAY I ASK THAT THE
2 PHYSICAL DOCUMENT BE HANDED TO THE WITNESS?

3 **MR. ISAACSON:** SURE.

4 WOULD YOU PULL IT FROM THE BINDER.

5 (PAUSE IN THE PROCEEDINGS.)

6 (OFF-THE-RECORD DISCUSSION.)

7 **MR. ISAACSON:** MINE'S HEAVILY MARKED UP, BUT I'LL
8 GIVE YOU MINE.

9 (EXHIBIT PUBLISHED.)

10 **MR. ISAACSON:** MAY I APPROACH, YOUR HONOR?

11 **THE COURT:** YES.

12 **MR. ISAACSON:** (HANDING DOCUMENT.)

13 **Q.** IT'S THE FINAL REPORT OF THE TASK FORCE ON COMMERCIAL
14 ACTIVITY. MAYBE YOU HAD A CHANCE TO REVIEW THIS WHEN YOU WERE
15 PREPARING FOR YOUR TESTIMONY.

16 AND IF WE COULD LOOK AT PAGE 5 ON THE SCREEN. YOU'RE
17 WELCOME TO LOOK AT IT ON THE SCREEN OR ON THE PIECE OF PAPER.

18 **MR. ISAACSON:** MAY I APPROACH, YOUR HONOR, SWITCH MY
19 COPY --

20 **THE COURT:** YES.

21 **BY MR. ISAACSON:**

22 **Q.** (HANDING DOCUMENT.)

23 ALL RIGHT. AND AT 2047-5 IN THE FIRST PARAGRAPH, THERE'S
24 A DISCUSSION OF THE EARLY HISTORY OF THE NCAA AND AMATEURISM.
25 AND IT SAYS, "THE AMATEUR WAS OF A SOCIAL CLASS THAT COULD

1 AFFORD BOTH THE TIME AND EXPENSE OF SPORT WITHOUT COMPENSATION
2 OR REIMBURSEMENT. THAT HAS NEVER WORKED AS WELL IN THE
3 EGALITARIAN CULTURE OF AMERICA'S INSTITUTIONS OF HIGHER
4 EDUCATION."

5 IS ANY OF THAT HISTORY WITH WHICH YOU WERE FAMILIAR?

6 **A.** YES.

7 **Q.** HAVE ANY DISAGREEMENTS WITH THOSE STATEMENTS?

8 **A.** NO.

9 **Q.** ALL RIGHT. THE --

10 LET ME ASK YOU ABOUT A MORE RECENT PIECE OF HISTORY,
11 PLAINTIFFS' EXHIBIT 2027.

12 (EXHIBIT PUBLISHED.)

13 **BY MR. ISAACSON:**

14 **Q.** ALL RIGHT. THIS IS AN EMAIL FROM MR. BERST.

15 DO YOU KNOW WHO MR. BERST IS?

16 **A.** YES, I DO.

17 **Q.** HE'S CURRENTLY AN NCAA VICE-PRESIDENT FOR DIVISION I; IS
18 THAT CORRECT?

19 **A.** YES.

20 **Q.** ALL RIGHT.

21 AND THIS IS FROM -- SHOW THE DATE, 2008.

22 (EXHIBIT PUBLISHED.)

23 **BY MR. ISAACSON:**

24 **Q.** THIS IS BEFORE YOU BECAME PRESIDENT. "THE NEW PRESIDENT'S
25 GROUP IS LOOKING AT STUDENT ATHLETES LIKENESS AND

1 COMMERCIALIZATION."

2 AND IF WE CAN GO DOWN TO THE LARGE PARAGRAPH.

3 (EXHIBIT PUBLISHED.)

4 **BY MR. ISAACSON:**

5 **Q.** MR. BERST SAYS, "I REMEMBER DOING A TIMELINE OF AMATEURISM
6 CHANGES STARTING BACK WITH ROWING IN THE EAST AND OUR EARLY NO
7 SCHOLARSHIP RULES."

8 HE GOES ON TO SAY, "MY PREMISE BACK THEN WAS THAT
9 'AMATEUR' SIMPLY WAS A DEFINITION THAT WAS NOT STEEPED IN ANY
10 SACRED ABSOLUTE PRINCIPLE THAT HAD BEEN TO BE PRESERVED. IT
11 CONTINUES TO BE A BALANCING OF VOCATION VERSUS AVOCATION
12 INFLUENCES AND CAN BE MODIFIED AS VIEWS CHANGE WHILE
13 PRESERVING THE LINE BETWEEN US AND THE PROS."

14 DID MR. BERST DISCUSS ANY OF THIS WORK ON HISTORY THAT HE
15 DID WITH YOU?

16 **A.** NO.

17 **Q.** ALL RIGHT.

18 ARE YOU FAMILIAR WITH ANY OF THE DESCRIPTION OF HISTORY
19 THAT MR. BERST PROVIDES IN THIS EMAIL?

20 **A.** (REVIEWING DOCUMENT.)

21 WELL, ONLY THAT IT'S CONSISTENT WITH THE EARLIER STATEMENT
22 THAT YOU READ. I MEAN, I DON'T -- I DON'T KNOW WHAT HE WAS --
23 WHAT HIS WORK PRODUCT WAS. I NEVER SAW HIS -- THE TIMELINE
24 THAT HE PUT TOGETHER. I DON'T REMEMBER ANY OF THAT. I DON'T
25 BELIEVE THAT I'VE EVER SEEN IT.

1 THE -- I THINK THE SALIENT ISSUE ISN'T WHETHER I AGREE
2 WITH HIS HISTORICAL DESCRIPTION BUT WHETHER I AGREE WITH HIS
3 PREMISE, WHICH I DON'T.

4 **Q.** ALL RIGHT.

5 IN TERMS OF PREPARING FOR YOUR TESTIMONY, DID YOU ASK
6 ANYBODY AT THE NCAA TO PROVIDE YOU MATERIALS ON THE HISTORY OF
7 AMATEURISM?

8 **A.** NO.

9 **MR. ISAACSON:** I WOULD MOVE 2027 INTO EVIDENCE.

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

11 **THE COURT:** RECEIVED.

12 (PLAINTIFFS' EXHIBIT 2027 RECEIVED IN EVIDENCE)

13 **BY MR. ISAACSON:**

14 **Q.** LET ME ASK YOU ABOUT ONE OF YOUR STATE OF THE ASSOCIATION
15 SPEECHES, 229-6.

16 (EXHIBIT PUBLISHED.)

17 **MR. ISAACSON:** SHOW THE FIRST PAGE.

18 **Q.** THIS IS, I ASSUME, FAMILIAR TO YOU. THIS IS YOUR STATE OF
19 THE ASSOCIATION SPEECH IN 2013 IN TEXAS.

20 (EXHIBIT PUBLISHED.)

21 **THE WITNESS:** YES, THOUGH I WOULD -- I WOULD NOTE
22 FROM THE VERY BEGINNING, I NEVER SPEAK FROM PREPARED SPEECHES,
23 SO THE PRECISE LANGUAGE MAY WELL NOT HAVE BEEN WHAT I ACTUALLY
24 SAID.

1 **BY MR. ISAACSON:**

2 **Q.** ALL RIGHT. THIS IS -- THESE ARE THE WORDS THAT YOU WROTE
3 OUT, AND MUCH LIKE I WROTE OUT CERTAIN WORDS FOR TODAY, THEY
4 DON'T ALWAYS COME OUT THAT WAY.

5 **A.** ACTUALLY, I DIDN'T WRITE THESE, BUT I WOULD HAVE BEEN
6 SPEAKING FROM A -- AN OUTLINE. AND THIS -- I DON'T -- TO BE
7 PERFECTLY CANDID, I DON'T KNOW WHO PUT TOGETHER THIS TEXT.

8 **Q.** LET ME UNDERSTAND THIS. SO YOUR STATE OF THE ASSOCIATION
9 SPEECHES ARE PUBLISHED, AND YOUR 2013 SPEECH WAS PUBLISHED,
10 AND THIS TEXT WAS WRITTEN OUT.

11 WAS IT WRITTEN OUT AFTER THE SPEECH OR BEFORE IT?

12 **A.** I ASSUME AFTER.

13 **Q.** OKAY. AND YOU DON'T KNOW WHO DID THAT?

14 **A.** ONE OF MY STAFF PEOPLE PROBABLY WRITING FROM A TRANSCRIPT.

15 **Q.** OKAY. ALL RIGHT. THE -- AT 229-6.

16 (EXHIBIT PUBLISHED.)

17 **BY MR. ISAACSON:**

18 **Q.** -- THERE'S A PARAGRAPH THAT SAYS, "LET'S BE COMMITTED TO
19 AMATEURISM."

20 (EXHIBIT PUBLISHED.)

21 **BY MR. ISAACSON:**

22 **Q.** "LET'S BE COMMITTED TO AMATEURISM. LET'S MAKE SURE THAT
23 OUR ATHLETES AND ATHLETIC PROGRAMS ARE CONDUCTED FOR STUDENTS
24 WHO CHOOSE TO BE ATHLETES AS PART OF THEIR EDUCATIONAL
25 EXPERIENCE AND NOT PEOPLE THAT WANT TO BE PROFESSIONAL

1 ATHLETES."

2 NOW, DOES THAT RING A BELL? DID YOU SAY --

3 **A.** NO, I WOULD NEVER HAVE SAID THAT. BUT I PROBABLY SAID
4 SOMETHING LIKE THAT NOT WANT -- THAT DON'T WANT TO SOLELY BE
5 PROFESSIONAL ATHLETES.

6 I'VE LONG THOUGHT THAT ONE OF THE GREAT OPPORTUNITIES FOR
7 A YOUNG MAN OR WOMAN IS TO COME TO A -- TO A UNIVERSITY AND
8 PREPARE FOR A PROFESSION IN WHATEVER IT IS. AND IF IT HAPPENS
9 TO BE ATHLETICS, THAT'S FANTASTIC.

10 BUT THE POINT THAT I'VE ALSO MADE IS THAT A STUDENT
11 ATHLETE SHOULDN'T COME TO A UNIVERSITIES (SIC) FOR THE SIMPLE
12 REASON THAT THEY WANT TO BE THERE ONLY TO MOVE ON TO
13 PROFESSIONAL ATHLETICS. THEY SHOULD BE THERE TO TRY AND GET
14 AN EDUCATION AS WELL.

15 **Q.** BUT WHEN YOUR SPEECHES ARE RELEASED, I GUESS THEY
16 SOMETIMES INCLUDE THINGS YOU NEVER WOULD HAVE SAID.

17 **A.** I THINK THIS PROBABLY -- THEY PROBABLY MISSED ONE WORD IN
18 THERE, WOULD BE MY GUESS.

19 **Q.** OKAY.

20 **A.** IF YOU ADD NOT PEOPLE THAT ONLY WANT TO BE A PROFESSIONAL
21 ATHLETE, THEN I WOULD HAVE AGREED WITH IT COMPLETELY.

22 **Q.** THE -- YOUR -- YOUR PERCEPTION IS -- YOUR PERCEPTION AND
23 UNDERSTANDING IS THAT MOST DIVISION I MEN'S BASKETBALL PLAYERS
24 AND FBS FOOTBALL PLAYERS INTEND TO GO PRO, RIGHT?

25 **A.** I THINK THAT -- THAT IT'S -- OUR SURVEY DATA SUGGESTS THAT

1 A VERY LARGE NUMBER OF THEM BELIEVE THAT THEY ARE GOING TO
2 HAVE A CHANCE TO PLAY PROFESSIONAL SPORT.

3 Q. ALL RIGHT. AND THAT'S REFERRING TO THE NBA AND THE NFL,
4 DEPENDING ON WHICH SPORT WE'RE TALKING ABOUT.

5 A. TYPICALLY. COULD BE MAJOR LEAGUE BASEBALL OR COULD BE
6 OTHER SPORTS.

7 Q. EVEN HALF OF YOUR DIVISION II BASKETBALL PLAYERS THINK
8 THEY'RE GOING TO MAKE IT IN THE PROS.

9 A. THEY DO.

10 Q. THE -- IS IT FAIR TO SAY THAT THE MAJORITY OF YOUR
11 DIVISION I MEN (SIC) BASKETBALL PLAYERS AND FBS FOOTBALL
12 PLAYERS ARE NOT PURSUING COLLEGE ATHLETICS AS AN AVOCATION BUT
13 INSTEAD ARE PURSUING IT AS A FUTURE PROFESSION?

14 A. THE STUDENT ATHLETES THAT I KNOW OF WHICH THERE ARE A
15 GREAT MANY THAT I'VE SPENT TIME OFTEN HAVE THE DREAM AND
16 ASPIRATION OF PLAYING PROFESSIONALLY. BUT THEY ALSO ARE
17 GETTING AN EDUCATION AT THE SAME TIME.

18 SO THE FACT THAT THEY HAVE AN ASPIRATION TO BECOME A
19 PROFESSIONAL DOES NOT MEAN THAT THAT'S THEIR SOLE VOCATIONAL
20 PRACTICE THAT THEY'RE AIMING TOWARD.

21 Q. DOES THEIR MOTIVE TO GO PROFESSIONAL MATTER IN TERMS OF
22 WHETHER THEY ARE AN AMATEUR OR NOT?

23 A. NO, I DON'T BELIEVE IT DOES.

24 Q. OKAY. DOES IT MATTER -- DOES THEIR MOTIVE MATTER AS TO
25 WHETHER THEY ARE PURSUING THE SPORT AS AN AVOCATION?

1 **A.** I'M SORRY. DOES IT MATTER IN TERMS OF THEIR AMATEUR
2 STATUS?

3 **Q.** YES.

4 **A.** YES.

5 **Q.** SO -- NOW EXPLAIN TO ME HOW THAT WORKS. YOU DON'T HAVE A
6 MOTIVE TEST OR MOTIVE RULE OR SOME WAY OF DETERMINING STUDENT
7 MOTIVES, RIGHT?

8 **A.** NO, WE DON'T.

9 **Q.** ALL RIGHT.

10 **A.** BUT WE DO HAVE A MODEL THAT SAYS IF YOU'RE DOING THIS FOR
11 COMPENSATION AND YOU WANT TO PLAY SPORTS FOR COMPENSATION AT
12 THIS TIME IN YOUR LIFE, THERE ARE OTHER AVENUES FOR YOU TO
13 PURSUE.

14 **Q.** RIGHT. BUT IF I AM A STUDENT ATHLETE WHO IS THE MOTIVATED
15 BY FUTURE COMPENSATION IN A PROFESSIONAL SPORTS, I WILL BE
16 ELIGIBLE TO PLAY IN THE -- IN THE NCAA, CORRECT?

17 **A.** SURE. BUT THE SAME IS TRUE FOR SOMEONE WHO IS PURSUING
18 ANY PREPARATION FOR A PROFESSIONAL LIFE. THAT DOESN'T TURN A
19 STUDENT INTO A PROFESSIONAL.

20 **Q.** ABSOLUTELY. AND THEY -- BUT THEY DON'T HAVE ANY RULES
21 GOVERNING THEM?

22 **A.** NO, THEY DON'T, BUT ON THE OTHER HAND, THEY DON'T HAVE
23 PROFESSIONAL OPPORTUNITIES THAT ARE PARALLEL IMMEDIATELY TO GO
24 OFF AND PLAY PROFESSIONAL SPORTS SHOULD THEY CHOOSE TO.

25 **Q.** ALL RIGHT. LET ME ASK YOU ABOUT THAT WORD "AVOCATION."

1 IT'S NOT A WORD I'VE USED A LOT BEFORE OR EVER BEFORE THIS
2 CASE.

3 MAYBE YOU HEARD THAT WE GOOGLED THE TERM -- AND I WON'T DO
4 IT AGAIN -- AND IT CAME UP "HOBBY OR MINOR OCCUPATION."

5 MAYBE YOU'VE SEEN THAT DURING YOUR PREPARATION?

6 **A.** NO, I HAVEN'T.

7 (DEMONSTRATIVE PUBLISHED.)

8 **BY MR. ISAACSON:**

9 **Q.** DO YOU HAVE A DIFFERENT DEFINITION OF "AVOCATION" THAN
10 "HOBBY OR MINOR OCCUPATION"?

11 **A.** TO ME, NOT KNOWING WHAT THE DICTIONARY HAS TO SAY,
12 "AVOCATIONAL" IN THIS PARTICULAR CONTEXT MEANS THAT YOU'RE NOT
13 DOING IT FOR PAY.

14 **Q.** DO YOU BELIEVE THAT DIVISION MEN'S ONE BASKETBALL PLAYERS
15 OR FBS FOOTBALL PLAYERS ARE CURRENTLY PURSUING THEIR SPORTS AS
16 A HOBBY?

17 **A.** NO, I THINK THEY'RE -- IF IT'S -- IF YOU WERE TO USE THAT
18 WORD "HOBBY," THEY'D BE VERY DEDICATED TO IT. OBVIOUSLY, IT'S
19 THEIR SPORT. MANY PEOPLE PARTICIPATE IN SPORTS AND DEDICATE
20 AN ENORMOUS AMOUNT OF TIME TO IT. WHETHER THEY WANT TO
21 DESCRIBE IT AS A HOBBY WOULD BE UP TO THEM.

22 **Q.** ALL RIGHT. DO YOU BELIEVE THEY'RE PURSUING IT AS A MINOR
23 OCCUPATION?

24 **A.** I DON'T KNOW EXACTLY WHAT THAT MEANS. THOSE AREN'T WORDS
25 I WOULD USE.

1 Q. ALL RIGHT. LET'S LOOK AT ANOTHER DEFINITION OF
2 "AMATEURISM," PLAINTIFFS' EXHIBIT 2591.

3 (EXHIBIT PUBLISHED.)

4 **BY MR. ISAACSON:**

5 Q. THIS IS A COURT OF APPEALS BRIEF THAT YOUR LAWYERS FILED
6 IN THIS CASE. AND AT PAGE 1 --

7 (EXHIBIT PUBLISHED.)

8 **MR. POMERANTZ:** OBJECTION, YOUR HONOR. THEY
9 SHOULDN'T BE QUESTIONING THIS WITNESS ABOUT LEGAL BRIEFS FILED
10 IN COURT. THERE'S NO FOUNDATION THAT HE'S EVER SEEN IT, AND I
11 THINK THERE'S PLENTY OF DOCUMENTS THAT HE'S HAD A CHANCE TO
12 REVIEW. I DON'T SEE THE REASON FOR QUESTIONING ABOUT A LEGAL
13 BRIEF FILED IN COURT.

14 **MR. HAUSFELD:** I'M GOING TO ASK HIM ABOUT THE
15 DEFINITION OF "AMATEURISM."

16 **THE COURT:** IT WOULD BE A STATEMENT THAT WOULD BE
17 MADE ON BEHALF OF THE ORGANIZATION THAT'S THE DEFENDANT, I
18 GUESS, PERHAPS AN ATTORNEY ADMISSION. I DON'T KNOW WHAT IT IS
19 THAT HE WANTS TO SHOW.

20 IT CONCEIVABLY COULD BE AN ATTORNEY -- AN ATTORNEY
21 ADMISSION ON BEHALF OF THE PARTY OR SOMETHING LIKE THAT.

22 **BY MR. ISAACSON:**

23 Q. AND THIS IS ACTUALLY PARAGRAPH 1 OF THE BRIEF. "ONE OF
24 THE PILLARS OF COLLEGIATE ATHLETICS AS ADMINISTERED BY THE
25 NCAA IS AMATEURISM."

(EXHIBIT PUBLISHED.)

BY MR. ISAACSON:

Q. "AMATEURISM: THE PRINCIPLE THAT IN EXCHANGE FOR THEIR ATHLETIC PARTICIPATION, STUDENTS MAY NOT RECEIVE MORE THAN THE COST OF THEIR TUITION, ROOM AND BOARD, AND BOOKS."

AND IT QUOTES THE EXPERT FOR THE NCAA IN THIS CASE.

IS THAT -- DO YOU THINK THAT'S AN ACCURATE OR A COMPLETE DEFINITION OF "AMATEURISM"?

WHAT'S YOUR VIEW OF THAT?

A. YES, I THINK IT IS. OBVIOUSLY, AS YOU'VE ALREADY HEARD THIS MORNING, THE MEMBERSHIP IS CONSIDERING EXPANDING THE VALUE OF A GRANT IN AID TO COVER OTHER FULL COSTS OF ATTENDANCE. BUT IN GENERAL, THIS SUMS IT UP, YES.

Q. ALL RIGHT. SO IS -- AND AS LONG AS -- AS AN ATHLETE, I'M NOT RECEIVING MORE THAN THE COST OF MY TUITION, ROOM AND BOARD, AND BOOKS, DOES IT MATTER WHETHER I'M PURSUING THE SPORT AS AN AVOCATION?

A. AGAIN, WE'RE -- WE'RE GOING TO GET BACK TO THE DEFINITION OF "AVOCATION," AND -- AND AS I SAID, TO ME, "AVOCATION" MEANS YOU'RE NOT DOING SOMETHING AS A PAID PROFESSIONAL, SO THE ANSWER IS THE SAME, YES.

Q. SO IT'S THE SAME THING. ALL RIGHT.

SO -- AND THEN AS LONG AS I AM NOT BEING PAID MORE THAN THE COST OF TUITION, ROOM AND BOARD, AND BOOKS, DOES IT MATTER IF I'M MOTIVATED PRIMARILY BY EDUCATION, PHYSICAL, MENTAL, AND

1 SOCIAL BENEFITS TO BE DERIVED FROM MY PARTICIPATION IN THE
2 SPORT?

3 **A.** I BELIEVE THAT THE MOTIVATION COMPONENT OF THAT DEFINITION
4 OF AMATEURISM IS CONSISTENT WITH THE NOTION THAT YOU ARE DOING
5 THIS NOT FOR COMPENSATION; YOU ARE DOING IT FOR OTHER REASONS.

6 **Q.** I'M GLAD TO HEAR YOU SAY IT'S CONSISTENT. BUT IN TERMS
7 OF, FOR EXAMPLE, NCAA ELIGIBILITY UNDER THE AMATEURISM RULES,
8 AS LONG AS I DO NOT RECEIVE MORE THAN THE COST OF TUITION,
9 ROOM AND BOARD, AND BOOKS, DOES IT MATTER WHETHER I AM
10 MOTIVATED BY EDUCATION, PHYSICAL, MENTAL, AND SOCIAL BENEFITS
11 FROM PARTICIPATION IN SPORTS?

12 **A.** I THINK WE'VE ALREADY ESTABLISHED THAT THERE'S NOT A TEST
13 FOR MOTIVATION.

14 **Q.** ALL RIGHT.

15 CAN WE LOOK AT 2582?

16 **THE COURT:** I'M SORRY. I WAS UNDER THE IMPRESSION
17 THAT THERE WAS SOME CASH COMPONENT IN THE CURRENT RULE THAT
18 SOME PEOPLE REFERRED TO AS "LAUNDRY MONEY" SOMETIMES? IT WAS,
19 LIKE, \$350. AM I WRONG ABOUT THAT?

20 **THE WITNESS:** THERE -- THERE USED TO BE -- IF I MAY,
21 MA'AM, THERE USED TO BE -- AND I DON'T REMEMBER WHEN IT WAS
22 ELIMINATED -- A LAUNDRY MONEY COMPONENT IN THE SCHOLARSHIP
23 THAT HAS NOW BEEN COVERED -- IS BEING COVERED MORE BROADLY BY
24 THE ROOM AND BOARD DEFINITIONS, SO IT WAS -- IT WAS \$15 OR
25 SOMETHING A MONTH OF -- OF LAUNDRY MONEY THAT WAS -- I WOULD

1 SAY TODAY PART OF THE MISCELLANEOUS EXPENSE ALLOWANCE.

2 **THE COURT:** OH, THERE IS A MISCELLANEOUS EXPENSE?

3 **THE WITNESS:** NO, THERE'S NOT.

4 **THE COURT:** OH.

5 **MR. ISAACSON:** ALL RIGHT.

6 **Q.** EXHIBIT 20 -- 2582 --

7 (EXHIBIT PUBLISHED.)

8 **BY MR. ISAACSON:**

9 **Q.** -- IS AN EMAIL FROM MR. KNOPP, APRIL 28TH, 2008. THIS IS
10 BEFORE YOU'RE NCAA PRESIDENT.

11 THEY'RE DISCUSSING THE EA FOOTBALL GAME IN 2009. NOW,
12 MR. KNOPP IS THE DIRECTOR -- WAS THE DIRECTOR OF CORPORATE
13 MARKETING FOR THE NCAA, RIGHT?

14 **A.** YES.

15 **Q.** HE REMAINS A CONSULTANT TO THE NCAA? HE'S AVAILABLE TO
16 YOU WHEN YOU WANT HIM?

17 **A.** TO THE PEOPLE THAT HE WORKS WITH, YES.

18 **Q.** OKAY. AND HE'S WRITING TO PETER DAVIS, WHO I BELIEVE
19 IS -- WELL, TELL ME WHO MR. DAVIS IS.

20 **A.** I DON'T KNOW.

21 **Q.** OKAY.

22 HE WRITES IN THE PARAGRAPH THAT BEGINS "THE TECHNOLOGY."

23 **MR. POMERANTZ:** OBJECTION, YOUR HONOR, LACK OF
24 FOUNDATION. AGAIN, WE'RE HAVING A PARADE OF DOCUMENTS THAT
25 PREDATES DR. EMMERT. WE COULDN'T SHOW WITNESSES DEPOSITIONS

1 OF THE NAMED PLAINTIFFS THEMSELVES AND HAD TO MOVE ON.

2 WE WERE NOT ALLOWED TO SHOW CERTAIN DOCUMENTS THAT THE
3 WITNESS WASN'T FAMILIAR WITH. AND WE WOULD JUST ASK THAT
4 DR. EMMERT NOT BE SHOWN TODAY JUST A STEADY STREAM OF
5 DOCUMENTS THAT PREDATED HIM.

6 DON'T MIND AN IMPORTANT DOCUMENT HERE OR THERE, BUT ALL
7 THIS -- MUCH OF THIS QUESTIONING HAS JUST SIMPLY BEEN TO READ
8 A DOCUMENT THAT PREDATED HIM AND ASK HIM, DO YOU AGREE OR
9 DISAGREE.

10 THEY CAN JUST ASK HIM IF HE AGREES OR DISAGREES ON A POINT
11 WITHOUT SHOWING THESE PARADE OF DOCUMENTS WHERE HE LACKS
12 FOUNDATION.

13 **MR. ISAACSON:** DR. EMMERT HAS GIVEN A PARADE OF LAY
14 OPINIONS BASED ON THE HISTORY OF THE NCAA, NOT JUST DURING HIS
15 TENURE, FROM BEFORE.

16 **THE COURT:** RIGHT, BUT THIS IS SOMETHING FROM A
17 CONSULTANT TO SOMEONE THAT HE DOESN'T KNOW?

18 **MR. ISAACSON:** NO, NO, NO. BUT HE WAS -- THIS WAS --
19 HE'S CURRENTLY A CONSULTANT. I -- BUT HE WAS THE DIRECTOR OF
20 CORPORATE MARKETING FOR THE NCAA AT THAT TIME. AND HE IS
21 SPECIFICALLY DISCUSSING AMATEURISM WITHIN THE MEMBERSHIP
22 SERVICES DEPARTMENT, WHICH WAS ALSO PART OF DR. EMMERT'S
23 TESTIMONY.

24 **THE COURT:** SO AT THE TIME HE WROTE THIS, HE WAS
25 EMPLOYED BY THE NCAA?

1 **MR. ISAACSON:** YES, ABSOLUTELY.

2 **THE COURT:** AND HE'S WRITING IT TO WHOM?

3 **MR. ISAACSON:** HE IS WRITING IT INTERNALLY.

4 **THE COURT:** DOES THE WITNESS KNOW WHO THIS --

5 (SIMULTANEOUS COLLOQUY.)

6 **THE COURT:** -- WHO ERIC AUSTIN IS, SIR?

7 **THE WITNESS:** I DO NOT.

8 **THE COURT:** YOU DO NOT.

9 **MR. ISAACSON:** THE -- BUT WHAT'S -- WHAT'S RELEVANT
10 HERE IS THAT MR. -- THE REASON I POINT OUT HE'S A CONSULTANT
11 NOW IS IF THEY WANTED MR. KNOPP HERE, THEY COULD BRING HIM.
12 BUT THE --

13 **THE COURT:** YOUR POINT IS WHAT, THAT THIS IS
14 SOMETHING HE SAID WHEN HE WAS AFFILIATED --

15 **MR. ISAACSON:** YES.

16 **THE COURT:** -- WITH THE NCAA AND YOU WANT TO ASK IF
17 DR. EMMERT AGREES WITH IT?

18 **MR. ISAACSON:** YES, AND HAS ANY EXPLANATION FOR
19 THE -- ANY EXPLANATION FOR THE ISSUE ABOUT THE MEMBERSHIP
20 SERVICES. I MEAN, MEMBERS -- HE TESTIFIED THAT MEMBERSHIP
21 SERVICES WERE THE CONTENT EXPERTS ON THESE ISSUES OF
22 AMATEURISM.

23 **MR. POMERANTZ:** YOUR HONOR, I DON'T DISAGREE THAT
24 THIS IS -- I DON'T DISAGREE THAT THIS IS -- IS NOT
25 COMMUNICATIONS BETWEEN PEOPLE WITHIN THE NCAA. THEY'RE NOT

1 WITHIN MEMBERSHIP SERVICES, BUT THEY ARE WITHIN THE NCAA.
2 THAT'S NOT THE ISSUE.

3 THE DEPOSITION TESTIMONY OF THE PLAINTIFFS IS ALSO
4 STATEMENTS OF THE PLAINTIFFS. BUT WE WEREN'T ALLOWED TO USE
5 IT TO A EXAMINE A WITNESS WHO WASN'T FAMILIAR WITH IT. AND --
6 AND WE ARE JUST ASKING THAT DR. EMMERT NOT SIT HERE AND BE
7 SHOWN DOCUMENT AFTER DOCUMENT AFTER DOCUMENT THAT PREDATES
8 HIM.

9 IF THEY WANT HIS VIEWS ON SOMETHING, YOU DON'T HAVE TO
10 READ A STATEMENT AND SAY, "DO YOU AGREE WITH IT?" THEY CAN
11 JUST ASK HIM HIS VIEWS.

12 **MR. ISAACSON:** I THINK THE FAIR -- I MEAN, WHEN I
13 DO --

14 **THE COURT:** IT'S HARD FOR ME TO COMPARE -- THIS SORT
15 OF "YOU LET THEM DO IT" ARGUMENT IS A LITTLE HARD FOR ME TO
16 THINK BACK ON BECAUSE I DON'T KNOW EXACTLY WHAT YOU'RE DRAWING
17 AN ANALOGY TO.

18 BUT NOW THAT I KNOW THAT THIS GENTLEMAN WAS IN THE NCAA AT
19 THE TIME HE WROTE THIS, IT DOES SEEM TO ME TO BE IN LINE WITH
20 HIS DIRECT TESTIMONY ABOUT WHAT HE THINKS NCAA PEOPLE THOUGHT
21 OVER THE YEARS. SO I -- I WILL ALLOW IT.

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

23 **MR. ISAACSON:** ALL RIGHT.

24 **Q.** AND THE SIMPLE STATEMENT THERE THAT YOU'LL SEE, SIR, FROM
25 MR. KNOPP IS WE SHOULD HAVE MEMBER SERVICES LOOK AT THIS

1 CLOSELY TO MAKE SURE THIS HASN'T CROSSED THE LINE, WHEREVER
2 THAT IS, OF OUR AMATEURISM RULES.

3 ARE YOU AWARE OF ANY DISCUSSIONS WHILE YOU BEEN PRESIDENT
4 OF VAGUENESS OR AMBIGUITY OF WHERE THE -- WHERE YOU DRAW THE
5 LINES OF WHAT IS "AMATEURISM" AND WHAT ISN'T?

6 **A.** IN THE CONTEXT OF THESE VIDEO GAMES?

7 **Q.** OR IN ANY OTHER CONTEXT.

8 **A.** WELL, I ASSUME THAT'S WHAT THIS IS ABOUT.

9 **Q.** THAT IS -- THAT IS THE CONTEXT OF THIS EMAIL.

10 **A.** YES.

11 **Q.** OKAY. AND WHAT WAS -- WITHIN THE CONTEXT OF THE EMAILS,
12 WHAT WAS THE AMBIGUITY THAT YOU -- THAT YOU HAD DISCUSSIONS
13 ABOUT WITHIN THE NCAA -- I'M SORRY.

14 WITHIN THE CONTEXT OF A VIDEO GAME, WHAT WERE THE
15 DISCUSSIONS YOU HAD ABOUT ANY AMBIGUITY IN THE APPLICATION OF
16 THE DEFINITION OF "AMATEURISM"?

17 **A.** THE ISSUE WAS, OF COURSE, WHETHER OR NOT THE REALISM OF
18 THE -- OF THE AVATARS IN THE GAME WAS ACCEPTABLE OR
19 UNACCEPTABLE.

20 **Q.** AND WHAT WAS THE DISCUSSION, AND WHY WAS THERE ANY
21 AMBIGUITY THAT WAS PART OF THAT DISCUSSION?

22 WOULD YOU EXPLAIN.

23 **A.** THERE'S A CONTRACT WITH EA, STATED THAT THEY WERE NOT
24 ALLOWED TO USE NAME, IMAGE, OR AND LIKENESS OF ATHLETES. AND
25 THE QUESTION THAT WAS -- THAT WAS BEING RAISED WAS, WERE THEY

1 IN FACT DOING SO.

2 Q. ALL RIGHT. AND WHAT WAS THE -- WHAT WAS THE CONCLUSION OF
3 THAT DISCUSSION?

4 A. THE CONCLUSION THAT I REACHED WAS THAT IT WAS INSUFFICIENT
5 TO -- TO SIMPLY SAY, WELL, MAYBE THEY'RE MEETING THE LETTER OF
6 THE LAW, BUT THAT -- MY JUDGMENT WAS WE SHOULDN'T BE IN THAT
7 ENTERPRISE IF IT COMES EVEN REMOTELY CLOSE TO THAT LINE, SO WE
8 CEASED MAKING THE GAME OR CEASED LICENSING THE NCAA LOGO TO
9 THAT GAME.

10 Q. AND IN TERMS OF WHAT HAPPENED IN TERMS OF YOUR JUDGMENT,
11 DID YOU DETERMINE -- WAS IT YOUR JUDGMENT THAT THEY WERE USING
12 THE NAME, IMAGES, OR LIKENESSES OF THE PLAYERS IN THE VIDEO
13 GAME?

14 A. NO.

15 Q. WAS IT YOUR JUDGMENT THAT THEY HAD COME VERY CLOSE TO THAT
16 LINE?

17 A. I DIDN'T EVEN KNOW. IT SEEMED INAPPROPRIATE THAT WE BE IN
18 THAT ENTERPRISE IF IT WAS CONTROVERSY SURROUNDING IT, SO I,
19 WITH MY STAFF, SAID AT THE FIRST OPPORTUNITY WE HAVE, LET'S
20 EXTRACT OURSELF FROM THIS RELATIONSHIP.

21 Q. ALL RIGHT.

22 AND YOU ALSO MADE THE JUDGMENT THAT YOU SHOULDN'T BE IN
23 THIS ENTERPRISE IF YOU WERE EVEN CLOSE TO THE LINE OF USING
24 THE NAMES, IMAGES, AND LIKENESSES, RIGHT?

25 A. IN THIS PARTICULAR CASE, THAT WAS MY JUDGMENT, YES.

1 Q. THE -- IF WE CAN LOOK AT NOW PX234-15, ANOTHER QUOTE FROM
2 YOUR CONSTITUTION.

3 (EXHIBIT PUBLISHED.)

4 MR. ISAACSON: THIS IS ARTICLE I OF THE CONSTITUTION.

5 (EXHIBIT PUBLISHED.)

6 MR. ISAACSON: THE PURPOSES, I THINK, 1.3.1.

7 (EXHIBIT PUBLISHED.)

8 BY MR. ISAACSON:

9 Q. "THE COMPETITIVE ATHLETICS PROGRAMS OF MEMBER INSTITUTIONS
10 ARE DESIGNED TO BE A VITAL PART OF THE EDUCATIONAL SYSTEM.
11 THE BASIC PURPOSE OF THIS ASSOCIATION IS TO MAINTAIN
12 INTERCOLLEGIATE ATHLETICS AS AN INTEGRAL PART OF THE
13 EDUCATIONAL PROGRAM AND THE ATHLETE AS AN INTEGRAL PART OF THE
14 STUDENT BODY AND BY SO DOING RETAIN A CLEAR LINE OF
15 DEMARCATION BETWEEN INTERCOLLEGIATE ATHLETICS AND PROFESSIONAL
16 SPORTS."

17 NOW, THIS DOES NOT MAKE ANY MENTION OF THE MOTIVE OF
18 ATHLETES. THAT'S NOT RELEVANT TO THE BASE -- BASIC PURPOSE OF
19 THE -- OF THE ASSOCIATION, CORRECT?

20 A. I'M SORRY. I'M NOT SURE WHAT YOU'RE ASKING ME.

21 Q. WELL, LET ME ASK YOU SOMETHING DIFFERENT, THEN.

22 THIS REFERS TO THE DIFFERENCE BETWEEN INTERCOLLEGIATE
23 ATHLETICS AND PROFESSIONAL SPORTS.

24 YOU SEE THAT?

25 A. YES.

1 Q. ALL RIGHT. IT'S NOT SPECIFIC TO INTERCOLLEGIATE PLAYERS
2 AND PROFESSIONAL PLAYERS. AND SO MY QUESTION TO YOU IS, IS
3 THAT -- IN ORDER TO RETAIN A CLEAR LINE OF DEMARCATION, ARE
4 YOU -- DO YOU NEED TO REFER TO ALL OF THE INTERCOLLEGIATE
5 ATHLETICS AND PROFESSIONAL SPORTS, OR DO WE FOCUS JUST ON THE
6 PLAYERS IN COLLEGE AND THE PROS?

7 DO YOU LOOK AT THE WHOLE BUSINESS OR JUST THE PLAYERS?

8 A. I THINK IF YOU -- IF YOU READ THAT SENTENCE IN ITS
9 ENTIRETY, IT BECOMES QUITE CLEAR THAT THEY'RE TALKING ABOUT
10 ATHLETES AND BEING AN INTEGRAL PART OF THE STUDENT BODY.

11 SO THIS IS A REFERENCE CLEARLY TO THE STUDENT ATHLETES
12 THEMSELVES. I THINK COMMON -- AT LEAST FOR ME, A COMMON-SENSE
13 DEFINITION IS -- OF PROFESSIONAL SPORTS IS ONE THAT IS PLAYED
14 BY PROFESSIONAL ATHLETES. AND ONE THAT'S -- AND A DEFINITION
15 OF INTERCOLLEGIATE ATHLETICS IS ONE THAT'S PLAYED BY AMATEUR
16 ATHLETES.

17 I THINK THAT'S BEEN COMMON UNDERSTANDING IN SOCIETY AND
18 INSIDE THE ASSOCIATION FOR A VERY LONG TIME. I GUESS I'M NOT
19 QUITE SURE THE DISTINCTION YOU'RE TRYING TO MAKE.

20 CAN THERE BE AMATEURS PLAYING PROFESSIONAL SPORTS? I
21 SUPPOSE. AT THE MASTER'S --

22 Q. I'M --

23 (SIMULTANEOUS COLLOQUY.)

24 THE WITNESS: -- THEY SEEM TO BE THERE AND --

25 (SIMULTANEOUS COLLOQUY.)

1 **THE WITNESS:** -- INVERSE, I THINK, CAN'T BE TRUE.
2 YOU CAN'T HAVE PROFESSIONALS PLAYING INTERCOLLEGIATE SPORTS.

3 **BY MR. ISAACSON:**

4 **Q.** DON'T WORRY ABOUT MY INFERENCES. I'M JUST TRYING TO FIND
5 OUT WHAT YOU HAVE TO SAY.

6 THE -- SO THE CLEAR LINE OF DEMARCATION, IS THAT PROPERLY
7 UNDERSTOOD AS BEING BETWEEN INTERCOLLEGIATE ATHLETES AND
8 PROFESSIONAL ATHLETES AS OPPOSED TO INTERCOLLEGIATE ATHLETICS
9 AND PROFESSIONAL SPORTS?

10 **A.** I CAN TELL YOU -- PARDON ME. I CAN TELL YOU WHAT I
11 BELIEVE TO BE THE CASE. I CAN'T SPEAK FOR --

12 **Q.** IF IT'S -- IF IT ANSWERS THE QUESTION, I'M HAPPY TO HEAR
13 YOUR BELIEF, BUT I WOULD APPRECIATE IT IF YOU DID ANSWER THE
14 QUESTION.

15 **A.** I WAS ABOUT TO.

16 IF -- IF -- IF WHAT YOU MEAN IS -- IS -- IS THE
17 DIFFERENTIATION -- DOES THE DIFFERENTIATION HAVE ANYTHING TO
18 DO WITH THE ORGANIZATIONS THEMSELVES?

19 **MR. ISAACSON:** YES.

20 **THE WITNESS:** I THINK IT HAS HUGE -- A HUGE AMOUNT TO
21 DO WITH THE ORGANIZATIONS THEMSELVES.

22 PROFESSIONAL SPORTS ARE FOR-PROFIT BUSINESSES WITH THE
23 REVENUE AND -- AND PROFITS OF THOSE BUSINESSES BEING PROVIDED
24 TO THE OWNERS OF THOSE BUSINESSES.

25 THEY CAN TRADE HANDS FINANCIALLY FOR AS MUCH AS \$2 BILLION

1 FOR A BASKETBALL TEAM. UNIVERSITIES, ON THE OTHER HAND, ARE
2 NON-PROFIT EDUCATIONAL ENTITIES. THEY DON'T HAVE
3 SHAREHOLDERS. THEY DON'T HAVE PEOPLE FOR WHOM PROFITS ARE
4 DISTRIBUTED AMONG THE SHAREHOLDERS, AND THEY CAN'T BE BOUGHT
5 OR SOLD.

6 SO I THINK CLEARLY PEOPLE WOULD DIFFERENTIATE A
7 PROFESSIONAL SPORTS ORGANIZATION FROM A UNIVERSITY.

8 **BY MR. ISAACSON:**

9 **Q.** AND YOUR BELIEF IS MEN'S ONE (SIC) DIVISION I BASKETBALL
10 AND FBS FOOTBALL, AMATEUR ATHLETICS?

11 **A.** YES.

12 **Q.** IS THAT BECAUSE IT HAS AMATEUR PLAYERS?

13 **A.** YES, BUT ALSO BECAUSE IT OPERATES WITHIN THE CONTEXT OF A
14 UNIVERSITY.

15 **Q.** ALL RIGHT. SO THE TWO REASONS -- THE TWO DISTINCTIVE
16 REASONS ARE THAT IT'S WITHIN THE UNIVERSITY AND BECAUSE THE
17 ATHLETES ARE AMATEURS. IS THAT --

18 **A.** YES.

19 **Q.** OKAY.

20 I DON'T -- YOU WEREN'T HERE WHEN MR. PILSON TESTIFIED.
21 DID YOU HAVE THE CHANCE TO SEE HIS TESTIMONY WHERE HE SAID --
22 DESCRIBED THE UNIVERSITY OF ALABAMA AS THE STRONGEST POSSIBLE
23 SCHOOL IN TERMS OF PRO FOOTBALL?

24 **A.** I WAS NOT HERE FOR --

25 **Q.** AND AS I UNDERSTAND IT, LSU STADIUM WAS -- IS BIGGER THAN

1 THE LOCAL NFL TEAM IN NEW ORLEANS; IS THAT RIGHT?

2 **A.** IT IS. IT'S VERY POPULAR SPORT.

3 **Q.** ALL RIGHT.

4 AND YOU TALKED ABOUT THE DIFFERENCES BETWEEN PROS AND
5 COLLEGES. AND I THINK WHAT YOU LISTED WAS THE ATHLETES, WHICH
6 YOU'VE SAID SEVERAL TIMES. YOU MENTIONED THE CHEERS, THE
7 YELLS, THE PAGEANTRY, THE -- THE TAILGATING, YOU MENTIONED THE
8 DRAFT AND TRADES. ALL RIGHT.

9 IS THAT WHAT PROVIDES THE CLEAR LINE OF DEMARCATION
10 BETWEEN PROFESSIONAL AND COLLEGE SPORTS?

11 **A.** NO, I DON'T BELIEVE I WAS SAYING THAT AT ALL.

12 **Q.** OKAY. THE -- AND THEN YOU SAID THE DEFINITION OF
13 AMATEURISM IN YOUR TESTIMONY WAS -- AND YOU'VE SAID IT AGAIN
14 TODAY -- YOU'RE NOT PAID. RIGHT?

15 **A.** UM-HMM.

16 **Q.** OKAY. IS THAT -- WE'VE LOOKED AT THE CONSTITUTION. WE'VE
17 LOOKED AT THE RULES. WE'VE LOOKED AT WHAT YOUR LAWYERS HAVE
18 SAID TO THE COURT OF APPEALS.

19 DOES IT ALL BOIL DOWN TO JUST AMATEURISM BEING -- WHATEVER
20 ALL THOSE WORDS ARE, "AMATEURISM" MEANS YOU'RE JUST NOT PAID?

21 **A.** THAT'S A SIGNIFICANT -- THE MOST SIGNIFICANT PART OF IT,
22 YES.

23 **Q.** RIGHT.

24 AND IS THERE ANY DEFINITION OF "AMATEURISM" IN THE NCAA
25 CONSTITUTION OR BYLAWS THAT SAYS "AMATEURISM MEANS YOU DON'T

1 GET PAID"?

2 **A.** I BELIEVE THAT THAT'S THE INTENTION OF THE LANGUAGE THAT
3 WE BEEN TALKING ABOUT ALL ALONG.

4 **Q.** RIGHT. SO IT'S NOT WRITTEN DOWN EXPRESSLY IN ANY NCAA
5 RULE OR BYLAW THAT THAT'S THE DEFINITION OF "AMATEURISM."
6 THAT'S YOUR INTERPRETATION OF THE INTENT OF THOSE RULES; IS
7 THAT CORRECT?

8 **A.** IT'S THE INTERPRETATION OF EVERYBODY WHO'S BEEN A PART OF
9 THE NCAA FOR A HUNDRED YEARS.

10 **Q.** WELL, THAT'S A PRETTY BROAD STATEMENT FOR A LOT OF PEOPLE
11 WHO AREN'T WITH US ANYMORE, BUT --

12 **A.** YOU SEEM TO QUOTE THEM, SO --

13 **Q.** THE -- NOW, IF WE CAN GO TO PX2011, WANT TO TOUCH ON MYLES
14 BRAND AGAIN.

15 (EXHIBIT PUBLISHED.)

16 **BY MR. ISAACSON:**

17 **Q.** THIS IS AN EMAIL -- IT BEGINS WITH AN EMAIL. IT'S GOING
18 TO ATTACH A SPEECH. ALL RIGHT?

19 AND IT -- IT'S AN EMAIL FROM MR. SHAHEEN. NOW,
20 MR. SHAHEEN IS -- AT THE TIME WAS AN EXECUTIVE VICE-PRESIDENT
21 FOR THE NCAA, CORRECT?

22 **A.** I DON'T KNOW WHAT HIS TITLE WAS AT THAT TIME. BUT --

23 **Q.** HE WAS --

24 **A.** -- HE WAS A VICE-PRESIDENT, CERTAINLY.

25 **Q.** RIGHT. HE'S A HIGH-LEVEL NCAA EXECUTIVE; IS THAT FAIR?

1 **A.** YES, HE WAS RESPONSIBLE FOR MEN'S BASKETBALL.

2 **Q.** ALL RIGHT. AND AS I UNDERSTAND IT, HE IS NO LONGER WITH
3 THE NCAA, BUT AS PART OF A SEVERANCE AGREEMENT, HE HAS THE
4 OBLIGATION TO COOPERATE IN THIS ACTION.

5 **A.** I ASSUME THAT'S TRUE.

6 **Q.** OKAY.

7 THE -- AND HE'S WRITING TO OTHER SENIOR EXECUTIVES AT THE
8 NCAA, RIGHT?

9 **A.** YES.

10 **Q.** OKAY.

11 **A.** WELL, LEGAL COUNSEL AND OTHER MEMBERS OF HIS -- OF HIS
12 PART OF THE ASSOCIATION.

13 **Q.** RIGHT. AND HE WRITES, "I THOUGHT YOU MIGHT ENJOY A
14 CONFIDENTIAL PREVIEW OF MYLES' STATE OF THE ASSOCIATION SPEECH
15 TO BE GIVEN THIS WEEKEND. LEST THERE BE ANY DOUBT, THE
16 INFLUENCE OF YOUR LEADERSHIP, VISION, AND GOOD WORK IS
17 REFLECTED IN AN ENTIRE SECTION REGARDING REVENUE GENERATION
18 BEING OKAY WHEN TIED TO THE APPROPRIATE PRINCIPLES."

19 VERY, VERY -- I CAN ASSURE YOU THREE YEARS AGO, NO SUCH
20 PREMISE WOULD HAVE EXISTED IN HIS KEYNOTE.

21 ALL RIGHT. AND THAT'S THE WAY THE NCAA WORKS. YOU
22 WORK -- IN TERMS OF MAKING PROPOSALS OR -- OR DECIDING WHAT
23 STATEMENTS YOU'RE GOING TO MAKE, YOU WORK WITH YOUR TOP
24 EXECUTIVES?

25 **MR. POMERANTZ:** OBJECTION, YOUR HONOR. WHAT'S THE

1 POINT OF READING THIS DOCUMENT TO DR. EMMERT? THAT WASN'T
2 EVEN, LIKE, DO YOU AGREE WITH THIS? AND WHAT HE JUST ASKED
3 HIM WAS SOMETHING THAT HE WENT OVER AT LENGTH DURING HIS
4 DIRECT.

5 I REALLY DO HAVE A CONTINUING OBJECTION TO THROWING
6 DOCUMENTS THAT PREDATE DR. EMMERT. THEY LACK FOUNDATION
7 AND -- I DON'T THINK IT'S APPROPRIATE METHOD OF EXAMINATION.

8 **THE COURT:** I'LL ALLOW THIS.

9 **THE WITNESS:** I'M SORRY. COULD YOU REPEAT THE
10 QUESTION?

11 **MR. ISAACSON:** I'LL MOVE ON TO THE PAGE.

12 211-36.

13 **Q.** DR. BRAND SAYS IN HIS ASSOCIATION SPEECH, "IN THE PAST AND
14 INDEED CURRENTLY, THERE IS SOME AMBIVALENCE ABOUT BUSINESS
15 ISSUES. TO SOME EXTENT, IT IS FELT THAT IT'S IMPROPER, NOT
16 QUITE RIGHT, FOR THE NCAA TO BE ENGAGED IN BUSINESS ACTIVITY.
17 AMATEUR SPORTS SHOULD BE ABOVE ALL THAT. ATHLETIC DEPARTMENTS
18 NEED THE REVENUE, BUT WORKING TOO HARD TO GENERATE REVENUE
19 SOMEHOW TAINTS THE PURITY OF COLLEGE SPORTS."

20 AND THEN HE MAKES A NOTE TO HIMSELF "PAUSE FOR EMPHASIS."

21 AND THEN, "NONSENSE. THIS TYPE OF THINKING IS BOTH A
22 MISINTERPRETATION AND A MISAPPLICATION OF AMATEURISM. AMATEUR
23 DEFINES THE PARTICIPANTS, NOT THE ENTERPRISE."

24 DO YOU AGREE WITH HIS CONCLUSION, THAT AMATEUR DEFINES THE
25 PARTICIPANTS, NOT THE ENTERPRISE?

1 **A.** IN PART. AS I'VE SAID A MINUTE AGO, THE DEFINITION -- THE
2 DIFFERENTIATION BETWEEN PROFESSIONAL SPORT AND AMATEUR SPORT
3 TO ME LIES NOT SOLELY WITH THE FACT THAT THE STUDENT ATHLETES
4 ARE AMATEUR ATHLETES BUT ALSO WITH THE NATURE OF THE
5 INSTITUTION FOR WHOM THEY'RE PLAYING.

6 **Q.** ALL RIGHT. MEANING THAT YOU PLAY FOR THE UNIVERSITY OF
7 ALABAMA AS OPPOSED TO THE NEW ORLEANS SAINTS?

8 **A.** CORRECT.

9 **Q.** ALL RIGHT. THE -- NOW THIS STATEMENT, "THE AMATEUR
10 DEFINES THE PARTICIPANTS, NOT THE ENTERPRISE," YOU'VE SEEN
11 THAT STATEMENT MADE BY OTHER NCAA EXECUTIVES, HAVEN'T YOU?

12 **A.** NOT THAT I RECALL.

13 **MR. ISAACSON:** ALL RIGHT. SO PX2292.

14 (EXHIBIT PUBLISHED.)

15 **BY MR. ISAACSON:**

16 **Q.** ALL RIGHT. THIS IS A MEETING OF THE KNIGHT COMMISSION.
17 IT'S A TRANSCRIPT. AND WE'RE GOING TO BE LOOKING AT THE
18 TRANSCRIPT OF THE WORDS OF WALLACE RENFRO, OCTOBER 27TH, 2008.

19 NOW, THE KNIGHT COMMISSION IS WELL-KNOWN ORGANIZATION TO
20 YOU THAT TAKES STRONG STANDS ON REFORM OF NCAA SPORTS.

21 IS THAT FAIR?

22 **A.** YES.

23 **Q.** OKAY. YOU -- THE NCAA TREATS THE KNIGHT COMMISSION VERY
24 SERIOUSLY.

25 **A.** YES.

1 Q. OKAY. THEY DON'T JUST SEND A PROVOCATEUR TO THE KNIGHT
2 COMMISSION TO SAY PROVOCATIVE STATEMENTS; IS THAT FAIR?

3 A. NO, THAT'S NOT FAIR.

4 Q. BEFORE AN EXECUTIVE GOES TO THE -- GOES TO THE KNIGHT
5 COMMISSION, THERE WILL BE SOME PREPARATION OF THE THINGS THAT
6 YOU'RE GOING TO SAY.

7 IS THAT FAIR?

8 A. I CAN'T SAY WHAT WAS GOING ON IN 2008. I CAN TELL YOU
9 WHAT WOULD HAPPEN TODAY.

10 Q. OKAY. TELL ME WHAT WOULD HAPPEN TODAY BEFORE YOU SENT ONE
11 OF YOUR EXECUTIVES TO SPEAK TO THE KNIGHT COMMISSION?

12 A. I WOULD TELL THEM TO GO AND ANSWER THEIR QUESTIONS.

13 Q. NO, I'M NOT TALKING ABOUT ANSWERING QUESTIONS, SIR. I'M
14 TALKING ABOUT PREPARED REMARKS. WOULD YOU DISCUSS WHAT
15 THOSE -- WOULD THE NCAA YOU OR SOMEBODY ELSE, GO OVER
16 CAREFULLY PREPARED REMARKS TO THE KNIGHT COMMISSION?

17 A. POTENTIALLY.

18 Q. OKAY.

19 THE -- IF WE COULD LOOK AT 2292-11.

20 **MR. POMERANTZ:** OBJECTION, YOUR HONOR. THIS DOCUMENT
21 IS HEARSAY. HE'S NOT PERMITTED TO QUESTION HIM IN THIS WAY.

22 **THE WITNESS:** WELL, I'M -- I DON'T KNOW WHAT THIS
23 DOCUMENT IS.

24 **BY MR. ISAACSON:**

25 Q. THIS -- THESE ARE REMARKS BY MR. RENFRO TO THE KNIGHT

1 COMMISSION.

2 **THE COURT:** I GUESS THE --

3 **BY MR. ISAACSON:**

4 **Q.** AT THE TIME --

5 **THE COURT:** WHAT ARE YOU ATTEMPTING TO USE HERE --

6 (SIMULTANEOUS COLLOQUY.)

7 **THE COURT:** -- ABOUT WHAT RENFRO SAID AT THE TIME?

8 **MR. ISAACSON:** YEAH, ABOUT AMATEURISM.

9 **THE COURT:** AND HE WAS AN OFFICIAL AT NCAA AT THE
10 TIME?

11 **MR. ISAACSON:** YES, HE WAS A 40-YEAR EXECUTIVE --

12 **THE COURT:** I'LL ALLOW THE QUOTES OF WHAT RENFRO
13 SAID. I DON'T KNOW IF THERE'S SOMETHING ELSE IN THERE THAT HE
14 WANTS -- I'LL THINK OF THAT DIFFERENTLY, BUT --

15 **MR. POMERANTZ:** YEAH, I DON'T --

16 **THE COURT:** -- QUOTES OF WHAT RENFRO SAYS, I'LL ALLOW
17 THAT.

18 **MR. POMERANTZ:** AS LONG AS IT'S NOT OFFERED FOR THE
19 TRUTH BECAUSE IT IS HEARSAY IT'S A DOCUMENT OF THE KNIGHT
20 COMMISSION, WHICH IS NOT THE NCAA.

21 **THE COURT:** WELL, BUT --

22 **MR. ISAACSON:** I'M NOT SURE --

23 **THE COURT:** WELL, ARE YOU OFFERING IT FOR THE TRUTH?

24 **MR. ISAACSON:** I DON'T THINK I'VE OFFERED ANY NCAA
25 DEFINITION OF "AMATEURISM" FOR THE TRUTH.

1 (LAUGHTER.)

2 **BY MR. ISAACSON:**

3 **Q.** THE 22 --

4 **THE COURT:** OKAY. SO HE'S NOT OFFERING IT FOR THE
5 TRUTH. HE'S OFFERING IT FOR SOME OTHER PURPOSE. AND IT'S THE
6 STATEMENTS OF RENFRO, NOT OF THE KNIGHT COMMISSION, SO GO
7 AHEAD.

8 WHAT IS IT?

9 **MR. ISAACSON:** 2292-11 AT THE BOTTOM.

10 (EXHIBIT PUBLISHED.)

11 **BY MR. ISAACSON:**

12 **Q.** 'AS A SOCIETY, HOWEVER, WE ARE NOT NECESSARILY OF ONE MIND
13 ABOUT WHAT 'AMATEURISM' MEANS. IT'S A TERM WE INHERITED FROM
14 EUROPE WHERE IT HAD AS MUCH OR MORE TO DO WITH CLASS
15 DISTINCTIONS AS IT DID WITH ATHLETICS CLASSIFICATION."

16 IS THAT DO YOU AGREE WITH THAT STATEMENT IN TERMS OF YOUR
17 STUDY, THE OF AMATEURISM?

18 **A.** I DON'T -- I'VE NEVER DONE A STUDY OF WHAT SOCIETY THINKS
19 ABOUT AMATEURISM, NO.

20 **Q.** ALL RIGHT. YOU'RE NOT AWARE -- YOU ACTUALLY DON'T KNOW
21 WHAT SOCIETY OR HOW THE PUBLIC PERCEIVES AMATEURISM.

22 IS THAT FAIR?

23 **A.** I DON'T BELIEVE -- SO -- WELL, FIRST OF ALL, LET ME BACK
24 UP.

25 IS THIS A TRANSCRIPT OF A SPEECH THAT HE GAVE OR SOMETHING

1 THAT HE WROTE?

2 Q. TRANSCRIPT.

3 A. OKAY.

4 MR. POMERANTZ: OBJECTION, YOUR HONOR. THERE'S
5 ABSOLUTELY NO FOUNDATION THAT THIS IS A TRANSCRIPT AND AN
6 ACCURATE STATEMENT OF WHAT DR. RENFRO -- OR --

7 (SIMULTANEOUS COLLOQUY.)

8 MR. POMERANTZ: -- SAID.

9 MR. ISAACSON: -- PRODUCED AS A TRIAL EXHIBIT, AND
10 IT'S CERTIFIED BY A COURT REPORTER.

11 MR. SINGLA: FROM A TAPE?

12 MR. ISAACSON: YEAH.

13 MR. POMERANTZ: OKAY. WE'LL CHECK INTO THAT, YOUR
14 HONOR.

15 MR. ISAACSON: THERE'S A -- CERTIFICATION'S AT THE
16 END OF THE EXHIBIT.

17 THE WITNESS: SO I -- I WOULD IN ANSWER TO YOUR
18 QUESTION, I'D -- NO, I HAVE -- I'M A SOCIAL SCIENTIST. I
19 DON'T KNOW WHAT SOCIETY'S DEFINITION OF "AMATEURISM" IS, AND I
20 AM QUITE CONFIDENT THAT WALLY RENFRO DOESN'T EITHER.

21 BY MR. ISAACSON:

22 Q. ALL RIGHT. THE -- WHEN HE SAYS AT 2292-14, "THE PROBLEM
23 IS --"

24 (EXHIBIT PUBLISHED.)

25

1 **BY MR. ISAACSON:**

2 **Q.** "-- THAT WE MISTAKENLY EXTEND THE CONCEPT OF AMATEURISM TO
3 THE ENTERPRISE ITSELF. TO BE CLEAR, STUDENT ATHLETES ARE
4 AMATEURS. INTERCOLLEGIATE ATHLETICS IS NOT."

5 THAT'S THE SAME STATEMENT AS DR. BRAND. ALL RIGHT?

6 THAT'S CONSISTENT WITH HOW THE NCAA HAS IMPLEMENTED
7 PRINCIPLES OF AMATEURISM, ISN'T IT?

8 **A.** THE PEOPLE WHO WORK WITH AN INTERCOLLEGIATE ATHLETICS,
9 COACHES, TRAINERS, ALL OF THE PEOPLE WHO WORK IN AN ATHLETIC
10 DEPARTMENT ARE NOT AMATEURS, NO. THEY'RE PROFESSIONALS.

11 **Q.** EXACTLY. I'M -- THERE'S NOT -- EVERYBODY ELSE --
12 I THOUGHT THIS WAS FAIRLY SIMPLE.

13 EVERYBODY ELSE INVOLVED IN INTERCOLLEGIATE ATHLETICS ARE
14 PROFESSIONALS, AND THE PLAYERS ARE NOT.

15 **A.** YES, THAT'S TRUE OF MANY AMATEUR SPORTS.

16 **Q.** NOW -- AND MR. RENFRO, THE SO-CALLED PROVOCATEUR, I THINK
17 HE'D BEEN WITH THE NCAA FOR 40 YEARS. HE WAS A VICE-PRESIDENT
18 AND CHIEF POLICY ADVISOR FOR THE NCAA, RIGHT?

19 **A.** UNDER MY PREDECESSORS, YES.

20 **Q.** ALL RIGHT. AND HE WORKED -- HE WORKED IN THE OFFICE OF
21 THE PRESIDENT? IS THAT CORRECT?

22 **A.** YES. FOR -- FOR SOME PORTION OF THAT TIME, YES.

23 **Q.** AND DURING YOUR TENURE, HE REPORTED TO YOU UNTIL HE LEFT
24 THE NCAA?

25 **A.** YES, CORRECT.

1 Q. ONE OF HIS ROUTINE JOBS WAS TO PROVIDE YOU WITH POLICY
2 OPINIONS AND ADVICE?

3 A. NO, NOT VERY MUCH. I'M (SIC) ALSO USED HIM FOR PUBLIC
4 RELATIONS WORK.

5 Q. ALL RIGHT. IF WE CAN LOOK AT THE DEPOSITION, PAGE 18,
6 LINES 2 THROUGH 7.

7 (DEMONSTRATIVE PUBLISHED.)

8 **BY MR. ISAACSON:**

9 "Q. AND DID MR. RENFRO PROVIDE YOU WITH SOME INPUT
10 WITH REGARD TO YOUR GAINING KNOWLEDGE ABOUT THE
11 CHALLENGES FACED BY THE NCAA WHEN YOU BECAME ITS
12 PRESIDENT?

13 "A. IT'S ONE OF HIS ROUTINE JOBS TO PROVIDE ME WITH
14 POLICY OPINIONS AND ADVICE."

15 WAS THAT TRUTHFUL TESTIMONY, SIR?

16 A. YES, OF COURSE.

17 Q. OKAY. AND LET ME ASK YOU AT LINE 30 -- BEGINNING AT LINE
18 13 ON THE SAME PAGE.

19 (EXHIBIT PUBLISHED.)

20 **BY MR. ISAACSON:**

21 Q. "AND DOES HE HAVE A REPUTATION WITH THE NCAA FOR ACCURACY
22 AND CANDOR?

23 "ANSWER: I THINK IT'S FAIR TO SAY THAT MR. RENFRO IS
24 WIDELY RECOGNIZED THROUGHOUT INTERCOLLEGIATE ATHLETICS AS
25 SOMEONE WHO IS A THOUGHTFUL INDIVIDUAL WHO HAS STRONG OPINIONS

1 ON ALL SUBJECTS AROUND INTERCOLLEGIATE ATHLETICS, AND THAT
2 THOSE ARE HIS OPINIONS."

3 Q. THAT WAS TRUTHFUL TESTIMONY AS WELL, CORRECT, SIR?

4 A. YES, HE HAS STRONG OPINIONS, AND THEY'RE WIDELY RECOGNIZED
5 AS HIS OPINIONS.

6 Q. ALL RIGHT. HE'S STILL A CONSULTANT AVAILABLE TO YOU; IS
7 THAT RIGHT?

8 A. WORKING ON AN DIFFERENT ISSUE, BUT YES.

9 Q. ALL RIGHT. DOES HE -- AND DOES HE HAVE A SEVERANCE
10 PACKAGE WHERE HE HAS AN OBLIGATION TO COOPERATE WITH THE NCAA?

11 A. YES.

12 Q. THE -- IN OTHER WORDS, IF THE NCAA WANTED HIM HERE TO
13 TESTIFY, HE COULD BE HERE, RIGHT?

14 MR. POMERANTZ: OBJECTION, YOUR HONOR, ARGUMENTATIVE.

15 THE WITNESS: I DON'T KNOW. I'M NOT A LAWYER. I
16 DON'T KNOW THE ANSWER TO THAT.

17 BY MR. ISAACSON:

18 Q. OKAY. THE --

19 NOW, LET ME LOOK AT PLAINTIFFS' EXHIBIT 2026.

20 (EXHIBIT PUBLISHED.)

21 BY MR. ISAACSON:

22 Q. I WANT TO ASK YOU ABOUT HOW YOUR EXPERIENCE AGAIN HAS
23 COMPARED TO THAT OF DR. BRAND. AT 2026-2.

24 A. I'M SORRY. I DON'T KNOW WHAT THIS DOCUMENT IS.

25 Q. ALL RIGHT. I'M GOING TO SHOW IT TO YOU.

1 IF WE GO DOWN TO THE EMAIL, YOU SEE THERE'S AN EMAIL FROM
2 DR. BRAND TO MR. SHAHEEN, MR. BERST, MR. LENNON, RIGHT? AND
3 THOSE ARE SENIOR EXECUTIVES AT THE NCAA, CORRECT?

4 **A.** THEY WERE AT THAT TIME.

5 **Q.** ALL RIGHT.

6 AND THIS IS NOVEMBER 20TH OF 2007. AND IN THE SECOND
7 PARAGRAPH, IT'S DISCUSSING A REACTION BY PRESIDENTS TO
8 PROPOSALS ON LIKE -- ON NAMES, IMAGES, AND LIKENESSES.

9 AND IT SAYS, "THE PRESIDENTS HAVE BEEN PROFESSING --"
10 IF YOU CAN PICK THAT UP, MATT.

11 (EXHIBIT PUBLISHED.)

12 **BY MR. ISAACSON:**

13 **Q.** "THE PRESIDENTS HAVE BEEN PROFESSING THEY DO NOT WANT TO
14 SUPPORT COMMERCIALISM, MOST ESPECIALLY WHEN STUDENT ATHLETES
15 IMAGES ARE INVOLVED. OF COURSE, THE CONFERENCES AND SCHOOLS
16 ARE ALREADY DOING THAT."

17 DOES THAT SQUARE WITH YOUR UNDERSTANDING OF THE FACTS,
18 THAT THE PRESIDENTS SPEAK AGAINST THESE THINGS, ABOUT THE USE
19 OF NAMES, IMAGES, AND LIKENESSES, BUT THE CONFERENCES AND THE
20 SCHOOLS ARE GOING AHEAD AND USING THEM?

21 **A.** NO, IT DOESN'T.

22 **Q.** ALL RIGHT. THE PRESIDENTS -- IT GOES ON TO SAY, "THE
23 PRESIDENTS WANT IT BOTH WAYS. THEY WANT TO BE ABLE TO RAIL
24 AGAINST COMMERCIALISM, AND THEY WANT THE REVENUE THAT COMES
25 WITH CORPORATE ADS."

1 HAVE YOU HAD DISCUSSIONS LIKE THAT WITH UNIVERSITY
2 PRESIDENTS?

3 **A.** NO.

4 **Q.** IT SAYS, "THE PRESIDENTS DELEGATE THE RESPONSIBILITY TO
5 COMMISSIONERS TO PRODUCE REVENUE FOR (SIC) CORPORATE ADS, BUT
6 AT THE SAME TIME, THEY WANT THE CONFERENCES AND THEIR SCHOOLS
7 TO BE PURE."

8 IS IT CORRECT THAT THE COLLEGE PRESIDENTS DELEGATE THE
9 RESPONSIBILITIES TO CONFERENCE COMMISSIONERS TO PRODUCE
10 REVENUES FROM CORPORATE ADS?

11 **A.** THEY -- THEY DELEGATE TO THE CONFERENCE COMMISSIONERS THE
12 RESPONSIBILITY TO OVERSEE THE COMMERCIAL ENTERPRISES OF THE
13 CONFERENCE. AND THEY DELEGATE TO THEM TO DO THAT CONSISTENT
14 WITH THE RULES OF THE NCAA.

15 **Q.** ALL RIGHT. LET'S GO OVER THAT.

16 SO THE PRESIDENTS OF UNIVERSITIES DELEGATE TO CONFERENCE
17 COMMISSIONERS THE AUTHORITY FOR CORPORATE ADVERTISING TO USE
18 NAMES, IMAGES AND LIKENESSES OF STUDENT ATHLETES SUBJECT TO
19 NCAA RULES, CORRECT?

20 **A.** THE RULES OVER WHICH THE PRESIDENTS THEMSELVES ARE
21 RESPONSIBLE.

22 **Q.** WHEN YOU SAY THE RULES FOR WHICH THE PRESIDENTS ARE
23 RESPONSIBLE, YOU'RE REFERRING TO THE NCAA RULES?

24 **A.** YES.

25 **Q.** RIGHT. SO I AM CORRECT THAT UNDER THE -- CURRENTLY TODAY,

1 NOT JUST BACK THEN, THAT THE PRESIDENTS OF THE UNIVERSITIES
2 DELEGATE TO CONFERENCE COMMISSIONERS SUCH AS THE SEC AND THE
3 ACC, AND THE BIG TEN, THE AUTHORITY FOR CORPORATE ADVERTISING
4 TO USE STUDENT NAMES, IMAGES, AND LIKENESSES BUT SUBJECT TO
5 NCAA RULES?

6 THAT'S A CORRECT STATEMENT, RIGHT?

7 **A.** I THINK THAT'S RIGHT.

8 **Q.** OKAY. DR. BRAND, YOUR PREDECESSOR, GOES ON TO SAY, "THE
9 WAY THEY HANDLE ALL THIS COGNITIVE DISSONANCE IS BY BLAMING
10 THE NATIONAL OFFICE. BY POINTING A FIGURE AT THE NATIONAL
11 OFFICE, THEY RELIEVE BOTH THE COMMISSIONERS AND THEMSELVES
12 FROM THE RESPONSIBILITY OF DEALING WITH THIS SET OF ISSUES."

13 HAVE YOU EVER HEARD ANY DISCUSSION LIKE THAT SINCE YOU'VE
14 BEEN PRESIDENT?

15 **A.** NO.

16 **Q.** THIS IS NOT THE WAY THE NCAA EXECUTIVES TALK ANYMORE SINCE
17 YOU'VE BEEN PRESIDENT?

18 **A.** I'VE NEVER HEARD AN ARGUMENT ALONG THOSE LINES INSIDE THE
19 OFFICE IN MY YEARS THERE.

20 **Q.** ALL RIGHT. LET'S TURN TO THE NEXT PAGE, 3.

21 OKAY. AT THE BOTTOM OF THE PARAGRAPH, MATT.

22 (EXHIBIT PUBLISHED.)

23 **BY MR. ISAACSON:**

24 **Q.** "I REALIZE THAT OUR BYLAWS ALREADY CONTAIN PRINCIPLES OF
25 AMATEURISM WHICH APPLY HERE. BUT TODAY'S PRESIDENTS DO NOT

1 FEEL OWNERSHIP FOR THOSE BYLAWS."

2 IS THAT A STATEMENT YOU WOULD AGREE WITH, SIR?

3 **A.** NO.

4 **Q.** OKAY. DOES IT SEEM TO YOU THAT DR. BRAND'S EXPERIENCES
5 ARE SOMEWHAT DIFFERENT FROM YOURS?

6 **A.** I CAN'T SPEAK TO HIS EXPERIENCES.

7 **Q.** ALL RIGHT.

8 AND THOSE PRESIDENTS THAT HE'S REFERRING TO ARE THE SAME
9 ONES WHO HAVE TO VOTE ON REFORMS OR CHANGES TO THE BYLAWS, IF
10 THAT'S GOING TO HAPPEN, RIGHT?

11 **A.** I DON'T KNOW TO WHICH PRESIDENTS HE'S REFERRING HERE.
12 THERE'S 350 OF THEM IN DIVISION I. I HAVE NO IDEA WHO HE WAS
13 TALKING TO.

14 **Q.** ALL RIGHT. AND AT THE END OF THE NEXT PARAGRAPH,
15 DR. BRAND -- MAYBE HERE'S ONE THING YOU DO AGREE WITH.

16 "THE PRESIDENT" -- DR. BRAND SAYS, THE PRESIDENTS NEED TO
17 LEAD HERE IF WE WANT A RESOLUTION."

18 IT'S THE PRESIDENTS WHO MAKE THE DECISIONS, NOT YOU. YOU
19 CAN OFFER OPTIONS, BUT, ULTIMATELY, THE UNIVERSITIES, IN
20 MAKING A COLLECTIVE ACTION, HAVE TO LOOK TO THE LEADERSHIP OF
21 THE PRESIDENTS OF THE UNIVERSITIES; IS THAT FAIR?

22 **A.** YES.

23 **MR. ISAACSON:** PLAINTIFFS' EXHIBIT 270.

24 OH, I MOVE TO ADMIT 2026.

25 SOMEONE ELSE REMIND ME OF ANY OTHERS I MISSED.

1 COMMISSIONER OF THE BIG TEN. AND THEN EARLY NEXT WEEK, WE'LL
2 HAVE TWO OTHER COMMISSIONERS.

3 **THE COURT:** AND YOU'LL BE ASKING THEM MORE STRUCTURAL
4 QUESTIONS ABOUT THE RELATIONSHIP AND THE REGULATIONS AND THE
5 MONEY FLOW AND THAT SORT OF THING?

6 **MR. POMERANTZ:** CORRECT.

7 **THE COURT:** OKAY.

8 **BY MR. ISAACSON:**

9 **Q.** PLAINTIFFS' EXHIBIT 270 IS ANOTHER EMAIL FROM DR. BRAND.
10 THIS IS TO DAVID BERST. MR. -- WHO WE ALREADY ESTABLISHED IS
11 STILL WORKING FOR THE NCAA.

12 THE -- HE SAYS IN THE SECOND PARAGRAPH, "I HAVE COME TO
13 BELIEVE THAT THE PROBLEMS WE ARE HAVING WITH COMMERCIAL
14 ACTIVITY ARE ROOTED IN INSTITUTIONAL EXPENDITURES RATES. IT
15 IS PRIMARILY BECAUSE OF THE NEED FOR ADDITIONAL REVENUE THAT
16 INSTITUTIONS AND THE NATIONAL OFFICE ARE SEEKING WAYS TO
17 COMMERCIALIZE THEIR RIGHTS AND THOSE OF SA'S," STUDENT
18 ATHLETES.

19 ALL RIGHT. HAVE YOU -- HAVE YOU HAD DISCUSSIONS SINCE YOU
20 WERE PRESIDENT THAT COMMERCIAL ACTIVITY AND THE NEED FOR
21 ADDITIONAL REVENUE HAS BEEN ROOTED IN INSTITUTIONAL
22 EXPENDITURE RATES BY ATHLETIC DEPARTMENTS?

23 **A.** EXCUSE ME JUST A MINUTE. I'M -- WAS READING THE PIECE
24 ABOVE IT.

25 **Q.** SURE.

1 **A.** (REVIEWING DOCUMENT.)

2 WELL, AS I SAID EARLIER, THE FINANCIAL REALITIES FOR MOST
3 UNIVERSITIES IS THAT THEY SUBSIDIZE THEIR ATHLETIC PROGRAMS
4 PRETTY SIGNIFICANTLY. AND THEY'RE -- THEY'RE CONSTANTLY
5 CONCERNED ABOUT THE WAYS IN WHICH THEY CAN CONTINUE TO SUPPORT
6 THAT ATHLETIC DEPARTMENT, SO THEY ARE LOOKING FOR ANY NUMBER
7 OF WAYS CONSISTENT WITH THE VALUES OF THE ASSOCIATION THAT
8 THEY CAN INCREASE REVENUE.

9 SO I -- I GUESS I'M GENERALLY NOT IN DISAGREEMENT WITH
10 WHAT'S WRITTEN HERE.

11 **Q.** WHAT ABOUT HIS NEXT STATEMENT? "IF EXPENDITURE RATES HAD
12 ONLY INCREASED AT THE CPI FOR THE PAST TWO DECADES, WE WOULD
13 NOT BE HAVING THIS DISCUSSION."

14 **A.** I -- I DON'T -- THAT'S JUST HIS PERSONAL OPINION. I DON'T
15 HAVE ANY BASIS FOR ARGUING THAT.

16 **Q.** ALL RIGHT. WE TALKED -- WE'VE TALKED SOME ABOUT
17 DR. BRAND.

18 ANOTHER FORMER NCAA PRESIDENT WAS CEDRIC DEMPSEY, 1994 TO
19 2003, AND HE WAS KNOWN FOR, AMONG OTHER THINGS, WORKING WITH
20 THE KNIGHT COMMISSION. CORRECT?

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

22 **Q.** WERE YOU AWARE THAT HE WAS A MEMBER OF THE KNIGHT
23 COMMISSION?

24 **A.** YES.

25 **Q.** AND -- AND, AGAIN, WE DISCUSSED HOW THE KNIGHT COMMISSION

1 IS A PROMINENT ORGANIZATION SEEKING NCAA REFORMS.

2 YOU'RE NOT A MEMBER OF THE KNIGHT COMMISSION, RIGHT?

3 **A.** NO.

4 **Q.** DID YOU EVER CONSIDER BEING A MEMBER OF THE KNIGHT
5 COMMISSION?

6 **A.** I WASN'T INVITED. THEY DON'T HAVE ANY NCAA MEMBERS ON IT
7 RIGHT NOW.

8 **Q.** YOU INTERVIEWED, BEFORE YOU BECAME NCAA PRESIDENT, WITH
9 SOME COMMITTEE OR -- OR GROUP OR SOMETHING?

10 **A.** YES.

11 **Q.** OKAY. DID YOU EVER MENTION DURING THOSE INTERVIEWS THAT
12 YOU THOUGHT IT WOULD BE A GOOD IDEA TO BE A MEMBER OF THE
13 KNIGHT COMMISSION?

14 **A.** NO.

15 **MR. ISAACSON:** CAN WE LOOK AT WHAT MR. -- AT 2587?

16 (EXHIBIT PUBLISHED.)

17 **BY MR. ISAACSON:**

18 **Q.** THIS IS AN NCAA MEMBERSHIP REPORT, AND IT BEGINS WITH A
19 MESSAGE AT PAGE 18 FROM MR. DEMPSEY.

20 (EXHIBIT PUBLISHED.)

21 **BY MR. ISAACSON:**

22 **Q.** AND DURING THIS PERIOD, IF WE GO DOWN TO -- HE'S
23 DISCUSSING IN THE SECOND COLUMN -- YOU CAN BLOW UP THE SECOND
24 COLUMN, MATT -- SO DR. EMMERT CAN SEE EVERYTHING.

25 (EXHIBIT PUBLISHED.)

1 **BY MR. ISAACSON:**

2 **Q.** HE'S DISCUSSING THAT THE -- YOU KNOW, THE KNIGHT
3 COMMISSION HAS NOW ARRIVED ON THE SCENE AROUND THIS TIME. AND
4 NONE OF US SHOULD BE SURPRISED THAT THE KNIGHT COMMISSION ON
5 INTERCOLLEGIATE ACTIVITIES ARRIVED IN PRECISELY THEIR
6 POSITIONS LAST SUMMER.

7 AND HE GOES ON TO SAY AT THE END, "OVER THE LAST DECADE,
8 THE ASSOCIATION" -- REFERRING TO THE NCAA'S -- "FOLLOWED
9 THROUGH ON ITS COMMITMENT TO REFORM AS PRESCRIBED BY THE
10 KNIGHT COMMISSION."

11 WERE YOU AWARE IN TERMS OF YOUR STUDY OF HISTORY, OF
12 MR. DEMPSEY'S EFFORTS OR GOALS TO FOLLOW THROUGH ON REFORMS
13 PRESCRIBED BY THE KNIGHT COMMISSION?

14 **A.** YES.

15 **Q.** AND WERE YOU ALSO AWARE THAT HE WOULD CALL ON THE KNIGHT
16 COMMISSION TO HELP STUDY NCAA PRACTICES?

17 **A.** YES.

18 **Q.** THE -- 2282.

19 MOVE TO ADMIT 2587.

20 **MR. POMERANTZ:** NO OBJECTION.

21 **THE COURT:** RECEIVED.

22 (PLAINTIFFS' EXHIBIT 2587 RECEIVED IN EVIDENCE)

23 **BY MR. ISAACSON:**

24 **Q.** OKAY. 2282 IS A REPORT CALLED --

25 **THE COURT:** WHY DON'T WE TAKE A BREAK.

1 DISCUSSION OF COMMERCIALIZATION.

2 (EXHIBIT PUBLISHED.)

3 **BY MR. ISAACSON:**

4 **Q.** SAYS, OVER THE LAST DECADE, THE COMMERCIALIZATION OF
5 COLLEGE SPORTS HAS BOURGEONED TALKING ABOUT TELEVISION DEALS
6 AND SHOE CONTRACTS. AND THEN IT SAYS, "IN TOO MANY RESPECTS,
7 BIG-TIME COLLEGE SPORTS TODAY MORE CLOSELY RESEMBLE THE
8 COMMERCIALIZED MODEL APPROPRIATE TO PROFESSIONAL SPORTS THAN
9 THEY DO THE ACADEMIC MODEL. THE NCAA'S DEMPSEY WARNED THE
10 NCAA MEMBERSHIP RECENTLY THAT," QUOTE, "THE LEVEL OF CYNICISM
11 OVER COMMERCIALIZATION OF OUR MOST VISIBLE ATHLETICS PROGRAMS
12 HAS REACHED EPIDEMIC PROPORTIONS."

13 DO YOU AGREE WITH MR. DEMPSEY'S STATEMENT THERE AS TO THE
14 LEVEL OF PUBLIC CYNICISM ABOUT COMMERCIALIZATION OF COLLEGE
15 SPORTS?

16 **A.** I CERTAINLY AGREE THAT THE COMMERCIALIZATION IN THE SENSE
17 OF THE GROWTH OF REVENUE THAT COMES FROM THOSE COMMERCIAL
18 ENTERPRISES HAS GROWN VERY, VERY RAPIDLY DURING THAT TIME
19 PERIOD, AND THAT THE -- THE -- ALONG WITH THAT HAS COME SOME
20 CONCOMITANT CONCERN AND CYNICISM, INCLUDING INSIDE THE NCAA.

21 **Q.** ALL RIGHT. AND THAT CYNICISM HAS NOT SUBSIDED SINCE 2001.

22 WOULD YOU AGREE WITH THAT?

23 **A.** I ASSUME NOT, I MEAN, IT'S, AGAIN, NOT ANYTHING I'VE SEEN
24 EMPIRICAL STUDIES OF, BUT I ASSUME THAT'S THE CASE.

25 **Q.** ALL RIGHT. WELL, I ASK YOU THESE QUESTIONS BECAUSE

1 YOU GAVE YOUR COUNSEL VARIOUS TESTIMONY ABOUT PUBLIC
2 POPULARITY, AND SO I HAVE TO ASK YOU ABOUT THESE PUBLIC
3 PERCEPTIONS.

4 **A.** YES.

5 (EXHIBIT PUBLISHED.)

6 **BY MR. ISAACSON:**

7 **Q.** NOW, AT 21, IT SAYS, "COLLEGE SPORTS AS AN ENTERPRISE WITH
8 VESTED COMMERCIAL INTEREST CONTRADICTS THE NCAA'S STATED
9 PURPOSE TO MAINTAIN INTERCOLLEGIATE ATHLETICS," QUOTE, "AS A
10 INTEGRAL PART OF THE EDUCATIONAL PROGRAM AND THE ATHLETE AS AN
11 INTEGRAL PART OF THE STUDENT BODY AND TO RETAIN A CLEAR LINE
12 OF DEMARCATION BETWEEN INTERCOLLEGIATE ATHLETICS AND
13 PROFESSIONAL SPORTS."

14 I TAKE IT YOU WOULD DISAGREE WITH THIS REPORT SIGNED BY
15 YOUR PREDECESSOR, MR. DEMPSEY?

16 **A.** I CERTAINLY AGREE THAT THOSE CHALLENGES AND THOSE THREATS
17 EXIST AND THAT THE -- THE LINE OF DEMARCATION IS A VERY
18 DIFFICULT ONE TO DETERMINE.

19 **Q.** THE -- LET'S MOVE FORWARD TO 2000 --

20 NOW, I AM GOING TO MOVE TO ADMIT THIS EXHIBIT 2282. I
21 DON'T EXPECT COUNSEL TO AGREE, SO LET'S TAKE IT UP -- TAKE IT
22 UP LATER. BUT BECAUSE IT'S SIGNED BY MR. DEMPSEY, I DON'T
23 THINK -- I THINK WE HAVE A SEPARATE ARGUMENT FROM THE MOTION
24 IN LIMINE, BUT WE CAN TAKE IT UP LATER.

25 2287. NOW, THIS IS A KNIGHT COMMISSION REPORT CALLED

1 "RESTORING THE BALANCE" FROM 2010.

2 (EXHIBIT PUBLISHED.)

3 **BY MR. ISAACSON:**

4 **Q.** I'M GUESSING THAT YOU ARE FAMILIAR WITH THIS REPORT
5 BECAUSE IT WAS SO CLOSE -- I'M NOT SURE IF IT CAME OUT RIGHT
6 BEFORE YOU BECAME PRESIDENT.

7 **A.** I'M FAMILIAR WITH THE REPORT.

8 **Q.** SURE. AND AT 2287-19 -- I'M SORRY -- YES, 19.

9 (EXHIBIT PUBLISHED.)

10 **MR. ISAACSON:** THERE'S A RECOMMENDATION AND -- LET'S
11 JUST -- LET'S JUST BACK UP TO 18 TO SHOW THAT THESE ARE
12 RECOMMENDATIONS.

13 (EXHIBIT PUBLISHED.)

14 **MR. ISAACSON:** THE TOP, "THE FOLLOWING
15 RECOMMENDATIONS."

16 (EXHIBIT PUBLISHED.)

17 **MR. ISAACSON:** ALL RIGHT?

18 AND THEN NOW LET'S GO TO THE NEXT PAGE, RECOMMENDATION 3.

19 (EXHIBIT PUBLISHED.)

20 **BY MR. ISAACSON:**

21 **Q.** PREVENT USE OF ATHLETES' IDENTITIES TO PROMOTE COMMERCIAL
22 ENTITIES OR PRODUCTS. AS AMATEURS, COLLEGE ATHLETES CANNOT
23 BENEFIT FINANCIALLY FROM THE COMMERCIAL USE OF THEIR NAMES OR
24 IMAGES."

25 AND THEN IT SAYS, "NCAA RULES SHOULD NOT ALLOW COMMERCIAL

1 SPONSORS OR OTHER THIRD PARTIES TO USE SYMBOLS OF THE
2 ATHLETES' IDENTITIES FOR FINANCIAL GAIN OR TO PROMOTE
3 COMMERCIAL ENTITIES."

4 THAT'S NOT A RECOMMENDATION THAT THE NCAA HAS ACCEPTED,
5 CORRECT?

6 THAT LATTER POINT, THAT NCAA RULES SHOULD NOT ALLOW
7 COMMERCIAL SPONSORS OR OTHER THIRD PARTIES TO USE SYMBOLS OF
8 ATHLETES' IDENTITIES FOR FINANCIAL GAIN OR TO PROMOTE
9 COMMERCIAL ENTITIES.

10 **A.** THE RULES CERTAINLY ATTEMPT TO BE CONSISTENT WITH THAT
11 STATEMENT. I'M NOT EXACTLY SURE TO WHAT THAT'S REFERRING.
12 BUT THE RULES OF THE ASSOCIATION THAT THE MEMBERSHIP HAS
13 ADOPTED DO, IN FACT, STRIVE FOR EXACTLY THAT END.

14 **Q.** WELL, THERE'S NO QUESTION IN YOUR MIND, IS THERE, THAT
15 BROADCAST COMPANIES WHO CONTRACT WITH THE NCAA OR CONTRACT
16 WITH CONFERENCES OR CONTRACT WITH UNIVERSITIES ARE ABLE TO USE
17 SYMBOLS OF ATHLETES' IDENTITY FOR FINANCIAL GAIN?

18 **A.** I'M QUITE CONFIDENT, HAVING SPOKEN IN FRONT OF THE KNIGHT
19 COMMISSION, THAT THEY WERE NOT REFERRING TO IN THIS
20 RECOMMENDATION THAT -- THAT BROADCASTS BE CEASED WITH
21 INTERCOLLEGIATE ATHLETICS.

22 **Q.** ALL RIGHT. YOU TOLD US THAT NCAA RULES PROHIBIT DIRECT
23 PROMOTION, AND WE'VE TALKED ABOUT HOLDING UP THE COKE CAN.

24 **THE COURT:** YOU KEEP TALKING ABOUT THAT. IS THERE A
25 RULE THAT'S PHRASED PRESUMABLY SOMEWHAT DIFFERENT THAN YOU

1 CAN'T HOLD UP A COKE CAN?

2 **MR. ISAACSON:** I'LL GET YOU -- IT'S CALLED DIRECT
3 ENDORSEMENT, I BELIEVE IS THE TERM. AND WE WILL GET YOU THE
4 RULE SO YOU HAVE THE EXACT WORDS.

5 **Q.** THE -- BUT IN TERM -- BROADCAST COMPANIES ARE ALLOWED TO
6 PUT NAMES, IMAGES, LIKENESS OF ATHLETES IN COMMERCIALS TO
7 PROMOTE BROADCAST OF GAMES, CORRECT?

8 **A.** THEY'RE NOT ALLOWED TO USE -- WE DO NOT ALLOW THEM TO USE
9 THEIR NAME -- THE NAME OR IMAGE OF AN INDIVIDUAL UNLESS IT IS
10 TO PROMOTE A -- THE GAME ITSELF.

11 **Q.** RIGHT, TO PROMOTE THE GAME ITSELF ON TELEVISION FROM WHICH
12 THE -- THE TELEVISION COMPANIES DO GET FINANCIAL GAIN,
13 CORRECT?

14 **A.** SO YOUR ARGUMENT IS THAT THE KNIGHT COMMISSION WAS
15 PROPOSING --

16 **Q.** I'M GOING --

17 **A.** -- SHOULDN'T BROADCAST GAMES.

18 **Q.** NO, I'M COMING BACK TO THIS.

19 **A.** OKAY.

20 **Q.** OKAY? I'M GOING TO ASK YOU ABOUT THE KNIGHT COMMISSION.

21 BUT THERE'S NO QUESTION RIGHT NOW THAT COMPANIES --
22 BROADCAST COMPANIES ARE USING NAMES, IMAGES, AND LIKENESSES
23 FOR FINANCIAL GAIN? THAT'S FAIRLY EASY, ISN'T IT?

24 **A.** BROADCASTS -- AGAIN, AS I'M SURE YOU'RE WELL AWARE, THE
25 NCAA RULE FOR THE USE OF A NAME OR AN IMAGE OF AN INDIVIDUAL

1 STUDENT ATHLETE IS SOLELY FOR THE PURPOSE OF PROMOTING THAT
2 EVENT.

3 Q. RIGHT. AND YOU'VE SAID THAT SEVERAL TIMES.

4 AND IS THERE ANY QUESTION IN YOUR MIND THAT WHEN THEY'RE
5 USING IT FOR -- WHEN THE BROADCAST COMPANY USES IT SOLELY FOR
6 PROMOTING THE EVENT, THEY'RE DOING THAT FOR THEIR OWN
7 FINANCIAL GAIN?

8 A. YOU'D HAVE TO ASK SOMEONE WHO'S AN EXPERT IN -- IN THE
9 BROADCAST INDUSTRY.

10 Q. ALL RIGHT. NOW, THERE ARE ALREADY RULES AGAINST DIRECT
11 ENDORSEMENT.

12 WHEN THEY SAY NCAA RULES SHOULD NOT ALLOW CERTAIN THINGS
13 HERE, WHAT DO YOU THINK THEY'RE TALKING ABOUT? WHAT -- WHAT
14 NCAA RULES ARE THEY PROPOSING?

15 A. I DON'T KNOW.

16 Q. ALL RIGHT. I GATHER --

17 A. BUT I'M FAIRLY CONFIDENT THAT THEY'RE NOT SUGGESTING THAT
18 YOU CEASE COMMERCIAL BROADCASTS OF SPORTING EVENTS.

19 Q. BUT SINCE THIS REPORT, THERE HAVE BEEN NO NCAA
20 LEGISLATION, RULES, BYLAWS, PASSED WITH RESPECT TO THE USE OF
21 ATHLETES' IDENTITY FOR -- FOR FINANCIAL GAIN OR IN
22 RELATIONSHIP TO COMMERCIAL ENTITIES; IS THAT RIGHT?

23 A. NOT THAT I'M AWARE OF.

24 Q. AND THERE IS NO SUCH LEGISLATION CURRENTLY BEING
25 CONSIDERED; IS THAT RIGHT?

1 **A.** THIS IS A VERY HOTLY DEBATED TOPIC, THE WHOLE ISSUE OF
2 COMMERCIALIZATION AND WHAT IS OR IS NOT CONSISTENT WITH THE
3 CORE VALUES OF THE ASSOCIATION. IT'S -- AS WE'VE BEEN
4 STIPULATING ALL DAY LONG, IT IS ONE OF THE MOST DEBATED TOPICS
5 IN THE NCAA'S HISTORY.

6 **Q.** ALL RIGHT. BUT MY QUESTION'S MORE SPECIFIC THAN THAT,
7 AND -- AND MAYBE IT'S HELPFUL TO SAY -- I THINK THIS IS
8 UNCONTROVERSIAL -- WHEN THE NCAA HAS PROPOSED LEGISLATION,
9 IT'S ACTUALLY LISTED ON A WEBSITE --

10 **A.** YES.

11 **Q.** -- AND IT HAS NUMBERS, LIKE, ON A BILL.

12 **A.** YES.

13 **Q.** AND YOU CAN LOOK AT THOSE PROPOSALS.

14 THERE ARE NO CURRENT PROPOSALS PENDING RELATING TO THE
15 USE -- COMMERCIAL USE OF NAMES, IMAGES, AND LIKENESSES; IS
16 THAT RIGHT?

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

18 **Q.** OKAY. NOW, BEFORE MR. DEMPSEY, THERE WAS MR. BYERS, WHO
19 WE MENTIONED. AND HE WROTE A BOOK, AND YOU'VE READ THAT BOOK,
20 RIGHT?

21 **A.** NO, NOT ALL OF IT. I'VE READ PARTS OF IT.

22 **Q.** YOU READ PARTS OF IT.

23 YOU'RE AWARE THAT HE WAS HIGHLY CRITICAL OF THE NCAA.

24 **A.** YES.

25 **Q.** FOR EXAMPLE, AT PAGE 346 --

1 **MR. POMERANTZ:** YOUR HONOR, THERE WAS AN IN LIMINE
2 MOTION, I BELIEVE, ON THIS BOOK.

3 **MR. ISAACSON:** I'M NOT SEEKING TO ADMIT IT. I'M JUST
4 CROSS-EXAMINING.

5 **MR. POMERANTZ:** YOUR HONOR, HE'S TRYING TO GET IT
6 INTO THE RECORD THROUGH THE QUESTIONING OF DR. EMMERT. HE
7 JUST ASKED DR. EMMERT HIS VIEWS ON SOMETHING, BUT I DON'T SEE
8 WHY WE'RE GETTING THE BOOK INTO THE RECORD --

9 **MR. ISAACSON:** IT'S NOT --

10 **THE COURT:** THESE AREN'T THE STATEMENTS THAT BYERS
11 MADE WHILE HE WAS PRESIDENT OF NCAA.

12 **MR. ISAACSON:** NO, IT IS AFTER -- AFTER HE WAS
13 PRESIDENT OF THE NCAA, BASED ON HIS EXPERIENCE IN THE NCAA.
14 AND I WANT TO CROSS-EXAMINE THE GENTLEMAN ON IT -- ABOUT IT.
15 I'M NOT MOVING TO ADMIT THIS.

16 **THE COURT:** WELL, YOU CAN --

17 **MR. ISAACSON:** AND THERE'S ONE OF THEM.

18 **MR. POMERANTZ:** YOUR HONOR, WE BROUGHT A MOTION IN
19 LIMINE ABOUT THIS BOOK --

20 **THE COURT:** YEAH, I CAN'T REMEMBER EXACTLY WHAT WE
21 SAID, BUT --

22 **MR. POMERANTZ:** THE BOOK --

23 **THE COURT:** YOU MAY ASK IF HE AGREES WITH SOME --

24 **MR. ISAACSON:** THAT'S WHAT I'M GOING TO DO.

25 **THE COURT:** -- STATEMENT THAT YOU DON'T NEED TO

1 IDENTIFY.

2 **MR. ISAACSON:** I DON'T LIKE DOING IT BECAUSE I DON'T
3 WANT HIM TO -- TO HIDE FROM THE FACT THAT IT'S MR. BYERS.

4 **MR. POMERANTZ:** YOUR HONOR, I -- WE DON'T NEED TO GO
5 THERE. THAT'S ARGUMENTATIVE AND UNNECESSARY.

6 **THE COURT:** WELL --

7 **MR. ISAACSON:** OKAY.

8 **Q.** HERE'S THE STATEMENT: "HERE THE COLLEGES ARE DECLARING
9 THAT THEY MAY FINANCIALLY EXPLOIT THEIR YOUNG PLAYERS AND
10 DESIGNATE OTHERS, SUCH AS ATHLETIC CONFERENCES IN THE NCAA TO
11 EXPLOIT THEM. THIS IS NOT ABOUT AMATEURISM. THIS HAS TO DO
12 WITH WHO CONTROLS THE NEGOTIATIONS AND GETS THE MONEY."

13 I TAKE IT YOU DISAGREE WITH THAT.

14 **A.** I DO.

15 **Q.** OKAY.

16 NOW, IS THERE ANYTHING IN MR. BYERS' BOOK THAT CAUSED YOU
17 TO MAKE ANY PROPOSED OPTIONS TO THE NCAA ABOUT ANY CHANGES?

18 **A.** MR. BYERS' BOOK WAS WRITTEN -- I DON'T EVEN KNOW WHEN IT
19 WAS PUBLISHED -- LONG BEFORE I SHOWED UP IN THE NCAA. AND
20 IT'S LARGELY CONSIDERED IRRELEVANT TO THE DEBATES IN THE NCAA.

21 **Q.** RIGHT. SO -- AND THAT'S EXACTLY WHAT I'M GETTING AT.

22 SO HE WAS A PRESIDENT OF THE NCAA FOR A VERY LONG TIME. I
23 DON'T REMEMBER HOW LONG.

24 **A.** LONGER THAN ANYONE BY FAR, THREE DECADES.

25 **Q.** RIGHT. RIGHT. RIGHT.

1 AND HE WROTE A BOOK CRITICAL OF THE NCAA PROPOSING
2 CHANGES, AND NO ONE IN THE NCAA CONSIDERS IT RELEVANT.

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

4 **BY MR. ISAACSON:**

5 **Q.** IS THAT RIGHT?

6 **MR. POMERANTZ:** AGAIN, HE'S TRYING TO -- TO USE THE
7 BOOK IN EVIDENCE HERE THROUGH THE QUESTIONING OF DR. EMMERT.
8 I THOUGHT WE HAD AN IN LIMINE MOTION ON THIS.

9 **THE COURT:** IT WAS A PRETTY VAGUE STATEMENT. IT WAS
10 CRITICAL. I THINK WE GOT THAT. AND SO THE QUESTION WAS
11 REALLY SOMETHING ELSE.

12 **MR. ISAACSON:** IT WAS -- DR. BYERS --

13 **THE COURT:** THAT NO ONE DID ANYTHING ABOUT IT.

14 **MR. ISAACSON:** RIGHT. MR. --

15 (SIMULTANEOUS COLLOQUY.)

16 **BY MR. ISAACSON:**

17 **Q.** -- AND NOBODY AT THE NCAA TREATS THAT SERIOUSLY; IS THAT
18 FAIR?

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

20 **Q.** NOW, ONCE YOU BECAME NCAA PRESIDENT, THE NCAA ACTUALLY
21 DISCLOSED YOUR COMPENSATION TO *U.S.A. TODAY*. THEY GAVE A TAX
22 RETURN OVER WITH YOUR COMPENSATION, SO THIS IS PUBLIC
23 INFORMATION.

24 THEY -- THEY GAVE YOU AN INITIAL PACKAGE OF COMPENSATION
25 BENEFITS OF ABOUT 1.6 MILLION, RIGHT?

1 **A.** IT'S -- AS DISCLOSED IN THE 990 FORM, YES.

2 **Q.** YES.

3 AND THAT MADE YOU ONE OF THE TOP TEN PAID NON-PROFIT
4 EXECUTIVES IN THE COUNTRY.

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

6 **Q.** ALL RIGHT.

7 IN DISCUSSING COMPENSATION WITH THE NCAA, DID THEY EVER
8 REVIEW -- REVIEW WITH YOU COMPARABLES, HERE'S WHAT OTHER
9 NON-PROFIT EXECUTIVES MAKE?

10 **A.** YES, IN MY SALARY IS SET BY THE EXECUTIVE COMMITTEE, WHO
11 HIRES COMPENSATION EXPERTS AND THEY ESTABLISH IT AGAINST
12 BENCHMARKS ACROSS A VARIETY OF FIELDS AND SET IT THAT WAY.

13 SO IF YOU HAVE QUESTIONS ABOUT IT, HOW THAT GOT
14 ESTABLISHED, YOU SHOULD PROBABLY ADDRESS IT TO SOMEONE IN THE
15 EXECUTIVE COMMITTEE.

16 **Q.** ALL RIGHT. AND ARE YOU AWARE OF WHAT THE BENCHMARKS WERE
17 IN THE NON-PROFIT FIELD OR SOME OTHER FIELD?

18 **A.** THEY WERE ONLY IN NON-PROFIT FIELDS, WHICH I -- TO WHICH I
19 INCLUDE UNIVERSITIES.

20 **Q.** OKAY. AND ARE -- THOUGH -- AM I CORRECT THAT YOU MAKE
21 MORE THAN ANY COLLEGE OR UNIVERSITY PRESIDENT IN THE COUNTRY?

22 **A.** I DON'T KNOW THAT TO BE TRUE.

23 **Q.** OKAY. ARE YOU AWARE -- THIS IS QUITE A JUMP UP IN SALARY
24 FROM THE UNIVERSITY OF WASHINGTON; IS THAT FAIR?

25 **A.** YES.

1 Q. OKAY.

2 BASED ON YOUR EXPERIENCE WITH UNIVERSITY PRESIDENTS, ARE
3 YOU AWARE OF ANY UNIVERSITY PRESIDENT IN AMERICA THAT HAS A
4 HIGHER SALARY THAN YOU?

5 A. THERE'S SOME THAT ARE AT LEAST CLOSE.

6 Q. OKAY. THERE ARE A NUMBER OF FOOTBALL AND BASKETBALL
7 COACHES WHO MAKE MORE MONEY THAN YOU.

8 A. YES.

9 Q. AND, IN FACT -- AND ARE YOU AWARE THAT YOUR -- YOU -- WHEN
10 YOU STARTED, YOU -- YOU HAD QUITE A SALARY JUMP OVER
11 DR. BRAND, ABOUT 45 PERCENT.

12 A. I DON'T KNOW THAT.

13 Q. OKAY. NOW, LET'S TALK ABOUT MR. RENFRO AGAIN.
14 PLAINTIFFS' EXHIBIT 424.

15 (EXHIBIT PUBLISHED.)

16 **BY MR. ISAACSON:**

17 Q. NOW, BEFORE YOU GOT ON THE STAND AND CALLED MR. RENFRO A
18 PROVOCATEUR, YOU HAD THE OPPORTUNITY TO REVIEW THIS EMAIL WITH
19 YOUR COUNSEL TO PREPARE FOR YOUR TESTIMONY TODAY; IS THAT
20 FAIR?

21 A. I HAD -- I CAN'T SEE IT YET, SO --

22 Q. ALL RIGHT. SO THIS IS THE EMAIL HE WROTE YOU OCTOBER
23 17TH, 2010, RIGHT WHEN YOU'RE JOINING THE NCAA.

24 (EXHIBIT PUBLISHED.)

25 **THE WITNESS:** OKAY.

1 **BY MR. ISAACSON:**

2 **Q.** ALL RIGHT.

3 YOU HAD THE CHANCE TO REVIEW THIS AND SPEND TIME ON IT
4 BEFORE YOUR TESTIMONY, RIGHT?

5 **A.** A BIT, YES.

6 **Q.** OKAY.

7 NOW, HE -- MR. RENFRO IDENTIFIES A NUMBER OF TOPICS. IF
8 WE CAN LOOK AT -- AND THIS HAS ALREADY BEEN ADMITTED INTO
9 EVIDENCE, 424-2.

10 (EXHIBIT PUBLISHED.)

11 **BY MR. ISAACSON:**

12 **Q.** STUDENT ATHLETE WELL-BEING.

13 AND RIGHT NOW, HE'S -- AND IT'S FAIR TO SAY THAT THIS
14 EMAIL ARE HIS THOUGHTS TO YOU ABOUT THINGS YOU SHOULD BE
15 THINKING ABOUT NOW THAT YOU BECOME NCAA PRESIDENT.

16 **A.** I THINK THAT'S RIGHT.

17 **Q.** OKAY. AND SO -- AND -- AND AT THE TIME HE'S DOING THIS,
18 HE'S THIS -- VICE-PRESIDENT AND SENIOR POLICY ADVISOR FOR THE
19 NCAA, RIGHT?

20 **A.** CORRECT.

21 **Q.** ALL RIGHT. ACADEMICS -- UNDER "STUDENT ATHLETE
22 WELL-BEING," "ACADEMIC SUCCESS. HOW DO WE KEEP THE FOOT ON
23 THE GAS FOR ACADEMIC REFORM, AND IS IT TIME TO MOVE BEYOND
24 THE," QUOTE, "REFORM STAGE? WE HAVE BEEN REFORMING FOR ABOUT
25 SEVEN OR EIGHT YEARS NOW. NEXT STEP MAY BE EMBEDDING

1 ACADEMICS FIRST AS A CONCEPT THAT DEFINES THOSE WHO PLAY AS
2 STUDENTS."

3 WHAT WAS HE DISCUSSING WITH YOU ABOUT EMBEDDING ACADEMICS
4 FIRST?

5 **A.** I DON'T KNOW. I CAN TELL YOU WHAT WE DID, AND THAT WAS
6 TO --

7 **Q.** THAT WASN'T MY QUESTION. YOUR COUNSEL WILL BE ABLE TO
8 TALK TO YOU ABOUT WHAT YOU DID.

9 **A.** THANK YOU.

10 THEN THE ANSWER IS I DON'T KNOW.

11 **Q.** AND I APOLOGIZE FOR INTERRUPTING.

12 IN THE PARENTHESSES, HE REFERS TO THE TERM "STUDENT
13 ATHLETE." IT'S A TERM THAT WALTER BYERS CREATED TO COUNTER
14 THE CRITICISM THAT WE WERE PAYING COLLEGE ATHLETES WHEN WE
15 BEGAN PROVIDING GRANTS IN AID.

16 IS THAT AN HISTORICAL PRINCIPLE THAT OR -- A PIECE OF
17 HISTORY THAT YOU WERE FAMILIAR WITH?

18 **A.** I'VE HEARD IT SAID LONG ENOUGH THAT I SUPPOSE IT'S TAKEN
19 ON TRUTH, BUT I HAVE NO -- I WASN'T THERE, SO I DON'T KNOW THE
20 ANSWER TO THAT.

21 **Q.** ALL RIGHT.

22 "TIME REQUIREMENTS" IS THE NEXT TOPIC.

23 (EXHIBIT PUBLISHED.)

24 **BY MR. ISAACSON:**

25 **Q.** "WE KNOW FROM A COUPLE OF SURVEYS WE HAVE DONE, ONE WITH

1 CURRENT STUDENT ATHLETES," GOES ON, "AND ONE WITH STUDENTS TEN
2 YEARS OUT OF THE HIGH SCHOOL."

3 AND IT GOES ON TO SAY, "STUDENT ATHLETES SPEND AS MUCH 45
4 HOURS A WEEK ON THEIR SPORT, MORE THEY SAY IN SOME CASES THAN
5 THEIR ACADEMICS."

6 YOU ARE FAMILIAR WITH THOSE SURVEYS, CORRECT, SIR?

7 **A.** YES.

8 **Q.** ALL RIGHT.

9 HE GOES ON TO SAY, "WHAT DO WE WANT TO SAY ABOUT THIS?
10 I'M TORN. WE HAVE A 20-HOUR RULE FOR STRUCTURED ACTIVITY. WE
11 HAVE A WINK-AND-A-NOD APPROACH TO VOLUNTARY ACTIVITY."

12 YOU'RE FAMILIAR WITH THAT CONCEPT, AREN'T YOU, SIR?

13 **A.** YES.

14 **Q.** OKAY.

15 **A.** OF COURSE.

16 **Q.** THE -- JUMPING DOWN TO "COMMERCIAL EXPLOITATION."

17 (EXHIBIT PUBLISHED.)

18 **BY MR. ISAACSON:**

19 **Q.** "THIS IS GOING TO BE ONE OF THE MORE DIFFICULT ISSUES IN
20 THE NEAR TERM. THERE IS A GENERAL SENSE THAT INTERCOLLEGIATE
21 ATHLETICS IS AS THOROUGHLY COMMERCIALIZED AS PROFESSIONAL
22 SPORTS."

23 ALL RIGHT? WERE YOU AWARE OF THAT BEING A PUBLIC
24 PERCEPTION IN 2010?

25 **A.** I WAS CERTAINLY AWARE THAT THERE WERE MANY PEOPLE THAT

1 WERE CONCERNED ABOUT IT. AGAIN, THIS IS A TOPIC THAT'S BEEN A
2 CONSTANT THEME IN INTERCOLLEGIATE ATHLETICS AND CERTAINLY, AS
3 WE'VE DISCUSSED HERE, ONE THAT'S -- CONTINUES TODAY TO BE A
4 CONCERN. THIS WAS NOT A SHOCKING STATEMENT IN THAT SENSE.

5 I DON'T KNOW WHEN HE REFERS TO A "GENERAL SENSE," WHAT
6 THAT MEANS OR TO WHOM HE'S REFERRING.

7 **Q.** OKAY. BUT YOU DON'T FIND IT TO BE A SHOCKING STATEMENT.
8 CORRECT?

9 **A.** NOT COMING FROM MR. RENFRO, NO.

10 **Q.** OKAY.

11 "SOME BELIEVE THAT ATHLETIC DEPARTMENTS STUDY HOW TO
12 EMULATE THE PROS ON MARKETING THEIR SPORTS, PRIMARILY FOOTBALL
13 AND BASKETBALL, AND SOMETIMES LEAD THE WAY."

14 ARE YOU AWARE OF EFFORTS IN ATHLETIC DEPARTMENTS TO STUDY
15 MARKETING AS PROFESSIONALS AND HOW THE PROFESSIONAL SPORTS
16 HANDLE MARKETING?

17 **A.** NO.

18 **Q.** YOU AWARE OF ATHLETIC DEPARTMENTS WHO BRING IN CONSULTANTS
19 WHO CAN ADVISE THEM ON HOW PROFESSIONAL SPORTS HANDLE
20 MARKETING?

21 **A.** I'M AWARE OF ATHLETIC DEPARTMENTS THAT BRING IN
22 CONSULTANTS TO HELP THEM WITH MARKETING. I HAVE NO IDEA WHAT
23 THE CREDENTIALS OF THOSE PEOPLE ARE.

24 **Q.** HE SAYS, "AND THE PUBLIC WOULD GENERALLY AGREE THAT ALL
25 HAS TAKEN PLACE AT THE EXPENSE OF THE STUDENT ATHLETE WHOSE

1 PARTICIPATION IS EXPLOITED TO MAKE ANOTHER BUCK FOR A BIGGER
2 STADIUM, THE COACHES, THE ADMINISTRATORS, OR FOR OTHER TEAMS
3 WHO CAN'T PAY THEIR OWN WAY."

4 WERE YOU AWARE OF THAT PUBLIC PERCEPTION IN 2010 --

5 **A.** NO.

6 **Q.** -- AS DESCRIBED BY MR. RENFRO?

7 **A.** NO, I DON'T BELIEVE MR. RENFRO'S ACCURATE AT ALL.

8 **Q.** OKAY. HE GOES ON TO SAY, "IT IS A FAIRNESS ISSUE. AND
9 ALONG WITH THE NOTION THAT ATHLETES ARE STUDENTS IS THE GREAT
10 HYPOCRISY OF INTERCOLLEGIATE ATHLETICS."

11 THAT'S A STATEMENT, I GATHER, YOU DISAGREE WITH.

12 **A.** I DO.

13 **Q.** OKAY. NOW, DID YOU DISCUSS THIS EMAIL WITH MR. RENFRO?

14 **A.** NOT THAT I REMEMBER.

15 **Q.** ALL RIGHT. SO A SENIOR -- DID YOU -- YOU DIDN'T RESPOND
16 WITH ANY EMAIL, I TAKE IT?

17 **A.** NO. HE AND I, OF COURSE, ONCE I ARRIVED WORKED IN VERY
18 CLOSE CONTACT, AND WE DISCUSSED VIRTUALLY EVERY SUBJECT THERE
19 WAS IN COLLEGE SPORTS.

20 **Q.** ALL RIGHT. SO AT THIS POINT, YOU'RE PRETTY NEW TO THE
21 NCAA; IT'S YOUR FIRST MONTH?

22 **A.** YES.

23 **Q.** OKAY. AND A TOP-LEVEL EXECUTIVE, A SENIOR POLICY ADVISOR,
24 HAS WRITTEN TO YOU AND SAID, THERE IS THE NOTION THAT
25 ATHLETE -- "THE NOTION THAT ATHLETES ARE STUDENTS IS THE GREAT

1 HYPOCRISY OF INTERCOLLEGIATE ATHLETICS."

2 THAT'S A PRETTY STRONG STATEMENT ABOUT THE BUSINESS THAT
3 YOU'RE ENTERING INTO, AND YOU DIDN'T SAY, WHY ARE YOU SAYING
4 THAT?

5 **A.** HE WAS MAKING THE ASSERTION HERE THAT THAT WAS A
6 PERCEPTION THAT SOME PEOPLE HAD.

7 **Q.** I DON'T --

8 **A.** I HAVE --

9 **Q.** I WANT TO KNOW WHAT YOU DISCUSSED WITH HIM.

10 **MR. POMERANTZ:** YOUR HONOR, PLEASE LET THE WITNESS
11 ANSWER THE QUESTION.

12 **THE COURT:** YEAH, YOU MAY FINISH YOUR ANSWER.

13 **THE WITNESS:** HE WAS MAKING A STATEMENT, FROM MY
14 INTERPRETATION OF THIS, AS TO WHAT HE THOUGHT WERE THE BELIEFS
15 OF SOME PEOPLE.

16 I HAPPEN TO DISAGREE WITH THOSE, AND SO HE -- NO, HE AND I
17 DID NOT SPEND A GREAT DEAL OF TIME TALKING ABOUT THAT
18 PARTICULAR LINE IN HIS MEMO.

19 **BY MR. ISAACSON:**

20 **Q.** DIDN'T STAND OUT TO YOU AT THE TIME THAT YOU HAVE THIS NEW
21 JOB, YOU'RE THE PRESIDENT OF THE NCAA, A SENIOR EXECUTIVE
22 WRITES TO YOU AND SAYS "THAT THE NOTION THAT ATHLETES ARE
23 STUDENTS IS THE GREAT HYPOCRISY OF INTERCOLLEGIATE
24 ATHLETICS" -- IT DIDN'T STRIKE YOU THAT YOU NEEDED TO DO ANY
25 FOLLOW-UP?

1 **A.** NO.

2 **Q.** HE SAYS, "WHAT TERRITORY WILL YOU," DR. EMMERT, "WANT TO
3 STAKE OUT WITH REGARDED TO COMMERCIALISM AND STUDENT ATHLETE
4 EXPLOITATION."

5 DID YOU EVER ANSWER THAT QUESTION TO MR. RENFRO?

6 **A.** IT'S A RHETORICAL QUESTION.

7 **Q.** DID YOU -- YOU TREATED IT AS A RHETORICAL QUESTION THAT
8 YOU DID NOT NEED TO ANSWER?

9 **A.** YES.

10 **Q.** OKAY. IN YOUR MIND, HAVE YOU STAKED OUT ANY TERRITORY
11 WITH RESPECT TO COMMERCIALISM AND STUDENT ATHLETE
12 EXPLOITATION?

13 **A.** VERY MUCH SO.

14 **Q.** OKAY. HAVE YOU MADE ANY PROPOSALS ON -- ANY -- HAVE YOU
15 GIVEN ANY OPTIONS FOR CHANGES IN RULES --

16 **A.** AROUND --

17 **Q.** -- WITH REGARD TO COMMERCIALISM AND STUDENT ATHLETE
18 EXPLOITATION?

19 **A.** YES.

20 **Q.** OKAY. AND ARE THOSE THE -- ARE THOSE THE RULES THAT WE'VE
21 PREVIOUSLY DISCUSSED?

22 **A.** NO.

23 **Q.** OKAY. WHAT -- WHAT RULE ARE YOU TALKING ABOUT THAT YOU
24 HAVEN'T DISCUSSED BEFORE?

25 **A.** TALKING ABOUT ALL OF THE PROPOSALS THAT CAME OUT OF THE --

1 OUT OF THE RETREAT THAT WE HAD ABOUT EIGHT MONTHS AFTER THIS.

2 Q. OKAY. AND WHICH ONE OF THOSE RELATE TO COMMERCIALISM?

3 A. I DON'T KNOW WHICH ONES RELATED PRECISELY TO
4 COMMERCIALISM, BUT THEY CERTAINLY DEAL WITH STUDENT ATHLETE
5 EXPLOITATION AND FINDING THE RIGHT BALANCE BETWEEN STUDENT AND
6 ATHLETE. AND THAT'S WHAT MR. RENFRO'S REFERRING TO HERE.

7 Q. WHICH REFER TO STUDENT ATHLETE EXPLOITATION BY COMMERCIAL
8 INTERESTS, WHICH OF THOSE PROPOSALS?

9 A. I THINK THEY ALL DO INDIRECTLY.

10 Q. INDIRECTLY BUT NOT DIRECTLY, SIR?

11 A. I DON'T KNOW. YOU WOULD HAVE TO GO BACK AND JUDGE FOR
12 YOURSELF.

13 Q. ALL RIGHT.

14 WELL, THIS IS YOUR OPPORTUNITY, RIGHT, TO TELL US, ALL
15 RIGHT, WHAT PROPOSALS YOU MADE THAT DIRECTLY DEAL WITH
16 COMMERCIAL EXPLOITATION OF STUDENT ATHLETE EXPLOITATION.

17 A. WE HAVE BEEN FOCUSED IN MY TIME THERE, AS I TRIED TO SAY A
18 MINUTE AGO, ON A HUGE RANGE OF ISSUES AROUND STUDENT
19 WELL-BEING AND THE STRENGTH OF THE SUPPORT THAT STUDENT
20 ATHLETES HAVE AS STUDENTS.

21 WE MADE A NUMBER OF CHANGES ALREADY. WE MADE A NUMBER OF
22 CHANGES WHICH THE MEMBERSHIP REJECTED IN -- ALL OF THOSE
23 DIRECTIONS. AND I'M VERY COMFORTABLE WITH THE THINGS THAT WE
24 HAVE DONE IN THE NCAA DURING THAT TIME.

25 Q. I'M SURE YOU'RE VERY COMFORTABLE WITH THE CHANGES THAT

1 YOU'VE BEEN PUSHING FOR WITH THE NCAA. I'M NOT QUESTIONING
2 THAT, SIR.

3 WHAT I WANT TO KNOW IS, IS THERE ANYTHING THAT YOU CAN
4 POINT TO THAT YOU HAVE BEEN PUSHING FORWARD WITH RESPECT TO
5 COMMERCIAL EXPLOITATION OF STUDENT ATHLETES?

6 **A.** THE DECISIONS THAT -- WITHIN MY CONTROL WERE, FOR EXAMPLE,
7 DECIDING TO ELIMINATE THE EA SPORTS GAMES AS A PRODUCT THAT WE
8 WANTED TO BE INVOLVED IN, NOT BECAUSE I THOUGHT IT WAS A
9 VIOLATION OF OUR RULES, BUT BECAUSE I THOUGHT IT WAS TOO
10 CLOSE, AND IF IT WAS IN DOUBT, WE SHOULDN'T DO IT.

11 WE DID THE SAME THING WITH THE SALE OF T-SHIRTS ON A
12 WEBSITE THAT WAS RAISING CONCERNS. NOW, ANYTIME I'VE HAD AN
13 OPPORTUNITY TO DO THAT, I'VE DONE SO.

14 **Q.** ALL RIGHT. WELL, LET ME ASK YOU ABOUT THE --
15 I'LL COME BACK TO THIS -- THIS EMAIL.

16 BUT LET'S TALK ABOUT THE JERSEYS YOU JUST MENTIONED.

17 NOW, AS I UNDERSTAND IT, NCAA.COM, HAS AN ONLINE STORE TO
18 BUY SHIRTS AND OTHER APPAREL.

19 **A.** YES.

20 **Q.** AND AS I UNDERSTAND WHAT HAPPENED LAST YEAR, JAY BILAS,
21 WHO IS A FORMER DUKE BASKETBALL PLAYER, NOW WELL-KNOWN
22 TELEVISION ANNOUNCER, WENT ONLINE AT NCAA.COM AND FOUND OUT
23 THAT THE NCAA WAS SELLING JERSEYS WITH PLAYER NUMBERS ON THEM.

24 **A.** NOT -- TO BE PERFECTLY ACCURATE, THE NCAA SITE WAS A
25 PASS-THROUGH SITE THAT ALLOWED YOU TO GO TO THE INSTITUTIONAL

1 SITE THAT WAS SELLING THOSE SHIRTS. AND SO YOU WERE GOING
2 THROUGH A SITE TO GAIN ACCESS TO THE INSTITUTIONS' SITE.

3 **Q.** AND WHAT HE ACTUALLY FOUND WAS THAT WHEN YOU WENT ON NCAA
4 COM (SIC), IF YOU SEARCHED PLAYER NAMES, THAT THE JERSEYS
5 WOULD COME UP FOR SALE; IS THAT RIGHT?

6 **A.** APPARENTLY, YES.

7 **Q.** OKAY. LET'S SHOW -- AND THEN HE TWEETED THIS.

8 (EXHIBIT PUBLISHED.)

9 **BY MR. ISAACSON:**

10 **Q.** ALL RIGHT.

11 THESE ARE THE JAY BILAS TWEETS. "GO TO SHOP
12 NCAASPORTS.COM, TYPE IN 'MANZIEL.'" THAT'S JOHNNY MANZIEL,
13 THE PROMINENT QUARTERBACK. "IN UPPER RIGHT SEARCH BOX, HIT
14 ENTER, THIS COMES UP." AND THEN YOU GET JERSEYS WITH JOHNNY
15 MANZIEL'S NUMBER ON IT. NOT HIS NAME, BUT HIS NUMBER.

16 AND HE'S DONE MR. CLOWNEY AT SOUTH CAROLINA, MR. PASTIDES'
17 SCHOOL. NOW, YOU SAW THESE TWEETS, DIDN'T YOU?

18 **MR. POMERANTZ:** YOUR HONOR, I OBJECT. WE HAVE A
19 STIPULATION THAT -- THAT DEMONSTRATIVES WOULD BE --

20 **MR. ISAACSON:** NOT A DEMONSTRATIVE.

21 **MR. POMERANTZ:** BUT IT'S NOT AN EXHIBIT.

22 **MR. ISAACSON:** I DON'T -- I'M NOT SEEKING TO ADMIT AN
23 EXHIBIT? THIS IS AN EXACT COPY OF TWEETS.

24 **MR. POMERANTZ:** YOUR HONOR, I BELIEVE OUR
25 AGREEMENT -- IN FACT, STIPULATION IS THAT SHOULD HAVE BEEN

1 EXCHANGED 48 HOURS BEFORE TODAY. WE DID NOT RECEIVE IT. IT'S
2 NOT AN EXHIBIT IN THIS CASE.

3 **MR. ISAACSON:** I HAVE -- I'M FREE TO EXAMINE -- I'M
4 FREE TO CROSS-EXAMINE WITH NEWSPAPER ARTICLES, TWEETS, WEB
5 PAGES --

6 **THE COURT:** I'M AFRAID I DON'T KNOW WHAT YOUR
7 AGREEMENT WAS UNLESS --

8 (SIMULTANEOUS COLLOQUY.)

9 **THE COURT:** WAS IT SOMETHING THAT I SIGNED --

10 **MR. ISAACSON:** HE'S REFERRING TO AN AGREEMENT ABOUT
11 DEMONSTRATIVE EXHIBITS, WHICH IS -- THIS IS NOT A
12 DEMONSTRATIVE EXHIBIT. THESE ARE COPIES OF THE TWEETS.

13 **MR. SINGLA:** YOUR HONOR, IF IT'S AN EXHIBIT, IT
14 SHOULD BE ON THE EXHIBIT LIST. WE HAVE A STIPULATION THAT HAS
15 BEEN MEMORIALIZED IN AN ORDER OF THE COURT, THAT IF IT'S
16 DEMONSTRATIVE OR A SUMMARY, IT'S SUPPOSED TO BE EXCHANGED 48
17 HOURS IN ADVANCE.

18 WE BELIEVE THIS IS NOT AN EXHIBIT ON THE EXHIBIT LIST, AND
19 IT IS NOT A -- AND IT'S A DEMONSTRATIVE THAT SHOULD HAVE BEEN
20 EXCHANGED.

21 **MR. ISAACSON:** IF I DON'T SEEK TO ADMITTED IT INTO
22 EVIDENCE, I DON'T HAVE TO PUT IT ON THE EXHIBIT LIST. AND I'M
23 NOT SEEKING THAT.

24 I AM FREE TO CROSS-EXAMINE, PARTICULARLY WITH THINGS THAT
25 HE KNOWS ABOUT AND HAS SEEN.

1 JERSEYS AS -- IN A PASS-THROUGH TO NCAA.COM, AS YOU SAID,
2 AS -- AS -- WHY COULD THAT BE SEEN AS HYPOCRITICAL?

3 **A.** BECAUSE WE PROHIBIT THE USE OF NAME, IMAGE, AND LIKENESS
4 ON JERSEYS THEMSELVES. AND SO THE ARGUMENT THAT THE
5 MEMBERSHIP HAS MADE AROUND JERSEYS IS THAT THE -- THE NAMES
6 AND -- NAMES HAVE BEEN REMOVED FROM JERSEYS FOR -- I DON'T
7 KNOW -- SINCE 2006 OR SOMETHING LIKE THAT.

8 AND SO HERE WAS A SYSTEM THAT WAS SAYING, YES, THIS IS IN
9 FACT THE -- THIS YOUNG MAN'S JERSEY, AND THAT WAS, IN MY
10 OPINION, INAPPROPRIATE.

11 **Q.** OKAY. DID YOU THEN AFTERWARDS MAKE ANY EFFORT TO FIND OUT
12 HOW IT CAME ABOUT THAT NCAA.COM WAS DOING THIS?

13 **A.** YES.

14 **Q.** OKAY. YOU FOUND -- WHO WAS RESPONSIBLE?

15 **A.** THE -- THE WEBSITE BUILDERS WHO PUT TOGETHER AN INDEX FOR
16 IT, AND WE'VE CEASED DOING IT. AND WE'VE NOW ON THAT SITE
17 ONLY SELL APPAREL THAT'S RELATED TO THE CHAMPIONSHIPS, NOT THE
18 INDIVIDUAL SCHOOLS, LET ALONE INDIVIDUAL NUMBERS.

19 **Q.** ALL RIGHT. AND I THINK YOU SAID THAT LINKED -- THE
20 PASS-THROUGH LINKED THROUGH TO INDIVIDUAL SCHOOL SITES?

21 **A.** YES.

22 **Q.** ALL RIGHT. DID YOU MAKE ANY EFFORT TO PROPOSE TO THE
23 SCHOOLS THAT THE SCHOOLS NOT SELL THOSE JERSEYS ON THEIR
24 SITES?

25 **A.** YES, WE COMMUNICATED WITH THEM. THEY DIDN'T -- WE DID

1 NOT -- THE MEMBERSHIP HAS NOT CHANGED ANY OF THEIR RULES, BUT
2 WE COMMUNICATED TO THEM WHAT WE WERE DOING AND WHY WE WERE
3 DOING IT.

4 **Q.** OKAY. SO THE RULES HAVE NOT CHANGED SO THAT EVERYTHING
5 THAT -- THOSE JERSEYS THAT YOU DON'T WANT TO SELL ON NCAA.COM,
6 THOSE CAN STILL BE SOLD ON ANY UNIVERSITY WEBSITE CONSISTENT
7 WITH THE NCAA RULES, RIGHT?

8 **A.** YES. WHAT I DON'T KNOW IS WHETHER OR NOT A NAME --
9 NAME-BASED SEARCHES ARE STILL OCCURRING.

10 **Q.** EXACTLY.

11 **THE COURT:** I'M SORRY. SO THE JERSEYS HAVE THE NAME
12 AND THE NUMBER ON --

13 **THE WITNESS:** THEY DO NOT, NO, MA'AM.

14 **THE COURT:** JUST THE NUMBER.

15 **MR. ISAACSON:** THE CONCEPT --

16 **THE COURT:** JUST A SEARCH. IT'S NOT ON THE JERSEY.

17 **MR. ISAACSON:** YES, YES.

18 **THE COURT:** OKAY.

19 **MR. ISAACSON:** AND THEN YOU GET THE JERSEY WITH THE
20 NUMBER ON IT. THAT'S THE NAME-BASED SEARCH.

21 **THE WITNESS:** RIGHT.

22 **BY MR. ISAACSON:**

23 **Q.** AND THE NCAA HAS MADE NO EFFORT TO SURVEY UNIVERSITY
24 WEBSITES TO SEE IF NAME-BASED SEARCHING IS GOING ON.

25 **A.** I DON'T KNOW THE ANSWER TO THAT.

1 **MR. ISAACSON:** ALL RIGHT. CAN WE TURN TO -- RETURN
2 TO 424.

3 (EXHIBIT PUBLISHED.)

4 **BY MR. ISAACSON:**

5 **Q.** ALL RIGHT. THE PARAGRAPH WHERE WE LEFT OFF ON -- ON
6 COMMERCIALISM.

7 **A.** I'M SORRY. THIS IS THE RENFRO.

8 **Q.** YES WE'RE BACK TO THE RENFRO EMAIL.

9 **A.** -- AGAIN?

10 (EXHIBIT PUBLISHED.)

11 **BY MR. ISAACSON:**

12 **Q.** ALL RIGHT. AT THE END OF THE PARAGRAPH ON COMMERCIAL
13 EXPLOITATION, HE SAYS, "THERE ARE SOME CLEAR BRIGHT LINES IN
14 THIS DISCUSSION. A STUDENT ATHLETE CANNOT OPENLY ENDORSE A
15 PRODUCT AND GIVE THE APPEARANCE OF DOING SO." WE'VE DISCUSSED
16 THAT. "BUT OTHER LINES ARE BLURRED." AND HE REFERS TO
17 CONTRIVED NON-GAME PHOTOS OR VIDEO THAT PUTS STUDENT ATHLETES
18 IN CLOSE PROXIMITY OF COMMERCIAL PRODUCTS.

19 DO YOU KNOW WHAT HE'S REFERRING TO THERE?

20 **A.** ONLY GENERALLY, YES.

21 **Q.** OKAY. WHAT IS HE REFERRING TO THERE GENERALLY?

22 **A.** I -- PRECISELY WHAT HE'S DESCRIBING. WHETHER THEY'RE
23 CONTRIVED OR NOT, I CAN'T SPEAK TO.

24 THESE ARE HIS -- HIS PERSONAL OPINIONS, AND I DON'T KNOW
25 OF INDIVIDUAL STUDENT ATHLETES BEING PUT NEXT TO COMMERCIAL

1 PRODUCTS TO PROMOTE THAT PRODUCT IS EXPRESSLY AGAINST THE
2 RULES.

3 **MR. ISAACSON:** ALL RIGHT. CAN WE LOOK AT 242 --
4 2482-3?

5 (EXHIBIT PUBLISHED.)

6 **BY MR. ISAACSON:**

7 **Q.** THIS IS A POST-GAME CONFERENCE -- POST -- PRESS
8 CONFERENCE -- I BELIEVE IT'S -- ACTUALLY, I DON'T KNOW IF IT'S
9 BEFORE THE GAME OR AFTER THE GAME -- FOR THE ROSE BOWL.

10 THE CORPORATE SPONSOR VIZIO IS IN THE BACK, RIGHT?

11 **A.** YES.

12 **Q.** ALL RIGHT.

13 AND THE WATER BOTTLES AT THESE -- AT THESE PRESS
14 CONFERENCES THAT ARE OUT IN FRONT OF THE ATHLETES, THOSE
15 ARE -- ORDINARILY, THOSE ARE COMMERCIAL SPONSORS, RIGHT?

16 **A.** FOR THE WATER BOTTLES?

17 **Q.** YES.

18 **A.** THEY CAN BE.

19 **Q.** AND YOU GOT TO CHOOSE WHAT WATER BOTTLE YOU BROUGHT IN
20 HERE. BUT THESE -- WHEN -- WHEN THE WATER BOTTLES ARE FROM
21 COMMERCIAL SPONSORS, THEY'RE JUST PUT IN FRONT OF THE ATHLETES
22 AND THEY'RE NOT SUPPOSED TO BRING IN A DIFFERENT WATER BOTTLE;
23 IS THAT FAIR?

24 **A.** TYPICALLY, YES.

25 **MR. ISAACSON:** CAN WE LOOK AT 2492-1.

1 (EXHIBIT PUBLISHED.)

2 **BY MR. ISAACSON:**

3 **Q.** ALL RIGHT. THIS IS CHASE GRANHAM (PHONETIC), AND THIS
4 IS -- AND, AGAIN, ANOTHER PRESS CONFERENCE. IT'S -- I BELIEVE
5 IT'S FROM A HOME GAME. AND I'M NOT SURE HOW THEY DID BY THE
6 LOOK ON HIS FACE, BUT YOU CAN SEE GILLETTE, DOLLAR GENERAL,
7 ALL OF THAT, PUTTING ATHLETES IN FRONT OF LOGOS AND HAVING
8 THEM BEING FILMED OR PHOTOGRAPHED, THAT'S ALL FINE.

9 THAT -- THAT'S ALL FINE UNDER NCAA RULES, RIGHT?

10 **A.** IT'S FINE UNDER THE RULES. IT'S NOT SOMETHING I'M
11 PERSONALLY COMFORTABLE WITH.

12 **Q.** WELL, WOULD YOU FIND THAT TO BE A CONTRIVED PHOTO OR VIDEO
13 THAT PUTS STUDENT ATHLETES IN CLOSE PROXIMITY TO A COMMERCIAL
14 SPONSOR?

15 **A.** YEAH, I'D PROBABLY AGREE WITH THAT.

16 **Q.** OKAY.

17 **A.** IT'S CERTAINLY NOT WHERE I WOULD PREFER THE RULES BE
18 DRAWN.

19 **Q.** ALL RIGHT.

20 LET'S MOVE DOWN BACK TO THE EMAIL.

21 (EXHIBIT PUBLISHED.)

22 **BY MR. ISAACSON:**

23 **Q.** HE DISCUSSES "AGENTS," WHICH IS NOT INVOLVED IN THIS CASE,
24 BUT HE ALSO HAS ANOTHER STATEMENT.

25 (EXHIBIT PUBLISHED.)

1 OUT WHETHER IT WAS GOOD OR BAD FOR STUDENT ATHLETES WAS ALMOST
2 ALWAYS RELATED TO WHETHER IT WAS GOOD OR BAD FOR THE SEC.

3 IF THE WELL-BEING OF STUDENT ATHLETES IS YOUR NUMBER ONE
4 FOCUS, IT WILL BE IMPORTANT TO DEFINE THAT WITH SOME PROVISION
5 WHAT THIS MEANS AND WHERE THOSE BOUNDARIES ARE."

6 HAVE YOU HAD EXPERIENCES SUCH AS WHAT MR. RENFRO
7 DESCRIBES?

8 **A.** NO.

9 **Q.** WHERE YOU -- ALL RIGHT. AND DID YOU EVER DISCUSS THIS
10 WITH MR. KRAMER?

11 **A.** NO, MR. KRAMER WAS RETIRED BY THIS TIME.

12 **Q.** OKAY. LET'S MOVE TO THE NEXT PAGE, -4 OF THE EMAIL,
13 "FINANCIAL UNDERPINNING OF ATHLETICS."

14 (EXHIBIT PUBLISHED.)

15 **BY MR. ISAACSON:**

16 **Q.** THERE'S A REFERENCE TO THE TOP 25 PERCENT OF DIVISION I'S
17 IN THE MIDDLE OF THE PARAGRAPH? "THE TOP 25 PERCENT OF
18 DIVISION I IS SETTING THE SPENDING PACE FOR THE REST OF THE
19 DIVISION. ALTHOUGH THE BOTTOM 25 HAS LARGELY STOPPED TRYING
20 TO COMPETE AND IS CONTENT WITH THE PRESTIGE THAT COMES WITH
21 BEING IN THE SAME NEIGHBORHOOD, THE REAL ISSUE APPEARS TO BE
22 AT THE MIDDLE 50 PERCENT. SO WHAT WE REALLY SEE ARE THE
23 HAVES, THE HAVE-NOTS, AND FORGET-ABOUT-ITS."

24 DID YOU DISCUSS THIS WITH MR. RENFRO?

25 **A.** WE'VE DISCUSSED -- NOT JUST MR. RENFRO BUT EVERYONE IN

1 THE -- IN THE LEADERSHIP OF THE NCAA, THE BOARD AND THE
2 EXECUTIVE COMMITTEE AND MOST OF THE COMMITTEES THAT WE'VE
3 WORKED WITH, THE ENTIRE ISSUE OF THE VERY LARGE SPREAD OF
4 ECONOMIC DIFFERENTIATION ACROSS THE DIVISION I MEMBERSHIP.

5 INDEED, THAT'S AT THE CORE OF DEBATE THAT'S GOING ON RIGHT
6 NOW ABOUT HOW THE GOVERNANCE MODEL SHOULD WORK.

7 **Q.** DOES HE HAVE IT BASICALLY RIGHT THAT IT'S THE TOP 25
8 PERCENT OF DIVISION I WHO'S SETTING THE SPENDING PACE FOR THE
9 REST OF THE DIVISION?

10 **A.** THERE'S CLEARLY DIFFERENTIATION BETWEEN THE TOP 25 AND THE
11 BOTTOM 25. WHETHER OR NOT THAT'S, QUOTE, SETTING PACE, I
12 DON'T KNOW EXACTLY WHAT THAT MEANS.

13 **Q.** ALL RIGHT. IN THE BOTTOM 25, THERE ARE ACTUALLY SCHOOLS
14 IN FOOTBALL THAT RECEIVE LARGE PAYMENTS TO PLAY THE BIG
15 FOOTBALL PROGRAMS, RIGHT?

16 **A.** YES.

17 **Q.** YOU SET UP A GAME WHERE -- I'M NOT SURE I'LL SAY -- WHERE
18 IT'S NOT GOING TO BE COMPETITIVE, BUT WHERE THE POINT SPREAD
19 IS REMARKABLY LARGE, AND THE LARGE TEAM IS PLAYING THAT SMALL
20 TEAM, AND THEY ARE PAYING THE SMALL TEAM TO PAY THEM -- PLAY
21 THEM.

22 **A.** BECAUSE IT'S IMPOSSIBLE FOR THAT SCHOOL TO HOST THAT LARGE
23 TEAM AT THEIR OWN STADIUM, SO NORMALLY WHEN YOU SET UP TWO
24 GAMES, YOU PLAY ONE GAME ON YOUR FIELD AND ANOTHER GAME ON
25 ANOTHER FIELD.

1 IF YOU DON'T HAVE AN OPPORTUNITY FOR DOING THAT, THEN YOU
2 COMPENSATE FINANCIALLY BY PAYING THAT OTHER TEAM WHAT THEY
3 MIGHT HAVE GOTTEN IF THEY WERE TO HOST THE TEAM, SO --

4 Q. ALL RIGHT.

5 A. -- A VERY LARGE SCHOOL WILL NOT GO TO A VERY SMALL SCHOOL
6 AND PLAY ON THEIR HOME FIELD BECAUSE THEY -- THEY CAN -- DON'T
7 HAVE ENOUGH ACCESS FOR ALL OF THEIR FANS TO GO THERE. SO
8 THEY, INSTEAD, SET UP NON-CONFERENCE GAMES AND COMPENSATE THAT
9 OTHER SCHOOL FOR THAT REVENUE THEY WOULDN'T GET OTHERWISE.

10 Q. OKAY. SO THAT I CAN FOLLOW UP ON THIS, CAN YOU GIVE ME AN
11 EXAMPLE OF SUCH A SMALL SCHOOL FROM YOUR LSU DAYS?

12 A. UNIVERSITY OF LOUISIANA MONROE.

13 Q. SO LSU WOULD PLAY LOUISIANA LAFAYETTE MONROE (SIC), DID
14 YOU SAY?

15 A. MONROE.

16 Q. YES. LAFAYETTE MONROE.

17 AND IT'S YOUR TESTIMONY THAT WHAT'S -- WHAT WAS
18 HAPPENING -- AND NOW, EVERYBODY'S EXPECTING THAT LSU IS GOING
19 TO BEAT LAFAYETTE MONROE HANDILY. THAT'S NOT CONTROVERSIAL,
20 RIGHT?

21 A. TYPICALLY NOT, BUT WHEN -- WHEN NORTH DAKOTA STATE BEAT
22 KANSAS STATE ON THEIR HOME FIELD OR WHEN APPALACHIAN STATE
23 BEAT MICHIGAN ON THEIR HOME FIELD, I THINK THOSE WERE SORT OF
24 UNEXPECTED AS WELL.

25 Q. RIGHT. BUT I'M ASKING ABOUT EXPECTATIONS.

1 IN TERMS OF EXPECTATIONS, NO ONE ACTUALLY EXPECTS THAT
2 LAFAYETTE MONROE HAS A CHANCE TO WIN.

3 **A.** I -- I SUSPECT LAFAYETTE MONROE HAS A CHANCE TO WIN. THEY
4 WENT OVER TO ALABAMA AND BEAT THEM LAST YEAR.

5 **Q.** ALL RIGHT. THE -- AND IS IT YOUR TESTIMONY THE REASON
6 THAT MONEY IS BEING PAID BY LSU TO LAFAYETTE MONROE IS BECAUSE
7 LAFAYETTE MONROE DOES NOT HAVE THE ABILITY TO HOST THAT BIG A
8 GAME AND, THEREFORE, LSU OWES THEM SOME MONEY?

9 **A.** YES.

10 **Q.** OKAY. LAFAYETTE MONROE, IT'S YOUR TESTIMONY, IS NOT
11 TAKING THAT MONEY BECAUSE THEY'RE AGREEING TO PLAY A GAME
12 AGAINST A MAJOR POWER WHERE THEY'RE GOING TO -- WHERE THEY'RE
13 EXPECTING TO GET BEAT, BUT THEY'RE WILLING TO GET PAID FOR
14 THAT.

15 THAT'S NOT WHAT'S HAPPENING, ACCORDING TO YOU?

16 **A.** IT'S CERTAINLY THE CASE THAT IN THESE GAMES THAT YOU'RE
17 REFERRING TO, THE EXPECTATION OF THE PUBLIC IS THAT THE -- THE
18 LARGE-BUDGET SCHOOL MIGHT WELL WIN THE GAME.

19 BUT AS I JUST POINTED OUT, THERE'S MANY EXAMPLES WHERE
20 THAT DOESN'T OCCUR. AND IT IS, IN FACT, THE OPPORTUNITY TO GO
21 AND PLAY AND BEAT THAT TEAM THAT -- THAT THE STUDENT ATHLETES
22 ON THAT TEAM ENJOY IMMENSELY.

23 I PROMISE YOU THAT U.L. MONROE'S TEAM LOVES TO GO TO TIGER
24 STADIUM AND TRY AND BEAT THEM. AND WHEN THEY WENT TO ALABAMA
25 AND BEAT THEM, THAT WAS AN EXTRAORDINARY EXPERIENCE FOR THOSE

1 YOUNG MEN.

2 WHEN APPALACHIAN STATE WENT TO MICHIGAN AND BEAT THEM,
3 THAT WAS AN EXTRAORDINARY EXPERIENCE. WHEN NORTH DAKOTA STATE
4 WENT TO K STATE AND BEAT THEM, THOSE ARE EXTRAORDINARY
5 EXPERIENCES, SO YOU CAN PORTRAY THAT ANY WAY YOU WANT TO.

6 (SIMULTANEOUS COLLOQUY.)

7 **THE WITNESS:** BUT THAT'S WHAT'S GOING ON.

8 **BY MR. ISAACSON:**

9 **Q.** -- OR THEIR ENJOYMENT OF GOING TO THESE BIG STADIUMS. I'M
10 TALKING ABOUT THE PEOPLE WHO ARE GETTING THE MONEY, WHICH IS
11 LAFAYETTE MONROE.

12 AND LAFAYETTE MONROE IS GETTING A LARGE PAYMENT TO PAY --
13 PLAY LSU WITH NO EXPECTATION ON THEIR PART THAT THEY'RE GOING
14 TO HAVE A CHANCE TO WIN THAT GAME; IS THAT --

15 **A.** I DISAGREE WITH THAT STATEMENT.

16 **Q.** ALL RIGHT. THE -- THE -- THERE WAS ANOTHER TASK FORCE --
17 OH, I WANT TO ASK YOU ABOUT 2065. SORRY.

18 (PAUSE IN THE PROCEEDINGS.)

19 **MR. ISAACSON:** OH, NO. I'LL COME BACK TO THAT. I'LL
20 COME BACK TO -- LET'S GO TO THE SECOND CENTURY TASK FORCE.
21 PLAINTIFFS' EXHIBIT 217.

22 (EXHIBIT PUBLISHED.)

23 **BY MR. ISAACSON:**

24 **Q.** ALL RIGHT. THERE WAS A PRESIDENTIAL TASK FORCE ON THE
25 FUTURE OF DIVISION I INTERCOLLEGIATE ATHLETICS.

1 WERE YOU FAMILIAR WITH THAT?

2 **A.** WHAT -- WHAT YEAR IS THIS?

3 **Q.** THIS IS 2008.

4 (EXHIBIT PUBLISHED.)

5 **BY MR. ISAACSON:**

6 **Q.** AND THE SECOND CENTURY IMPERATIVES?

7 **A.** YES.

8 **Q.** OKAY. THIS WAS A REPORT THAT ONCE YOU BECAME -- WELL, DID
9 YOU READ -- WELL, ACTUALLY, OF COURSE YOU'RE FAMILIAR WITH IT.
10 EXCUSE ME. YOU WERE ON THE -- YOU WERE ON THE -- ON THE TASK
11 FORCE, RIGHT?

12 **A.** I WAS ON A FINANCIAL SUBCOMMITTEE.

13 **MR. ISAACSON:** WELL, CAN WE GO TO 2017-62?

14 (EXHIBIT PUBLISHED.)

15 **BY MR. ISAACSON:**

16 **Q.** THE NCAA PRESIDENTIAL TASK FORCE ON THE FUTURE OF THE
17 DIVISION I INTERCOLLEGIATE ATHLETICS, YOU WERE ON THE TASK
18 FORCE, WEREN'T YOU, SIR?

19 **A.** YES. YES.

20 **Q.** AND -- AND YOU CERTAINLY READ THIS REPORT BEFORE IT CAME
21 OUT.

22 **A.** CERTAINLY THE COMPONENTS THAT I WAS ENGAGED WITH, YES.

23 **Q.** OKAY. NOW, THERE WAS AN INTRODUCTION BY MYLES BRAND AT
24 2017-8.

25 (EXHIBIT PUBLISHED.)

1 **BY MR. ISAACSON:**

2 **Q.** THIS IS 2008, COUPLE YEARS BEFORE YOU BECOME PRESIDENT.

3 AT THE BOTTOM OF THE LEFT-HAND COLUMN, "AT THE SAME TIME,"

4 AND CONTINUING ON THE UPPER RIGHT --

5 (EXHIBIT PUBLISHED.)

6 **BY MR. ISAACSON:**

7 **Q.** "AT THE SAME TIME, THERE IS RISING CONCERN THAT THE VALUES
8 IMPORTANT TO HIGHER EDUCATION HAVE BEEN OVERWHELMED BY THE
9 POPULARITY OF INTERCOLLEGIATE ATHLETICS TO MEDIA AND
10 MARKETING. AS PRESSURES TO WIN AND TO GENERATE REVENUE
11 INCREASE, THE INTEGRATION OF ATHLETICS WITH THE ACADEMY, THE
12 INFERENCE OF PRESIDENTIAL AUTHORITY BY AVID FANS OR TRUSTEES,
13 AND THE PRIMACY OF EDUCATION IN THE STUDENT ATHLETE EXPERIENCE
14 HAVE ALL BEEN THREATENED."

15 YOU AGREE WITH THAT, DON'T YOU, SIR?

16 **A.** I DO.

17 **Q.** AND THEN MR. -- AND -- EXCUSE ME, I -- IS IT LIKENS OR --

18 **A.** LIKENS, PETER LIKENS.

19 **Q.** THANK YOU.

20 MR. LIKENS SAYS IN -- HE'S THE CHAIR OF THE TASK FORCE,
21 AND HE SAYS ON THE NEXT PAGE --

22 **MR. POMERANTZ:** YOUR HONOR, IF HE'S GOING TO READ
23 MULTIPLE PORTIONS OF THIS, WOULD THEY PROVIDE A COPY TO --

24 **MR. ISAACSON:** SURE.

25 **MR. POMERANTZ:** -- TO DR. EMMERT?

1 (OFF-THE-RECORD DISCUSSION.)

2 (PAUSE IN THE PROCEEDINGS.)

3 **MR. ISAACSON:** MAY I APPROACH?

4 **Q.** (HANDING DOCUMENT.)

5 I'M ON PAGE 2017-9. THERE'S LITTLE NUMBERS IN THE LOWER
6 LEFT-HAND CORNER, SIR, THAT'S -- DO YOU SEE THAT?

7 **A.** YES.

8 **Q.** OKAY. AND THERE'S A LETTER FROM PETER LIKENS, THE TASK
9 FORCE CHAIR?

10 **A.** YES.

11 **Q.** AND HE SAYS IN THE LEFT-HAND COLUMN TOWARDS THE BOTTOM,
12 "UNLESS" -- "UNLESS WE FIND WAYS TO STRENGTHEN THE INTEGRATION
13 OF ATHLETICS WITHIN OUR UNIVERSITIES, WE CAN FORESEE NOT ONLY
14 FAILURE TO MEET OUR RESPONSIBILITIES TO OUR STUDENT ATHLETES
15 BUT MORE PERVASIVELY A DISTORTION OF THE FUNDAMENTAL CHARACTER
16 OF OUR ACADEMIC INSTITUTIONS."

17 IS THAT A STATEMENT YOU DISAGREED WITH?

18 **A.** YES.

19 **Q.** OKAY. SO IN OTHER WORDS, ACTUALLY PROACTIVE STEPS WERE
20 NECESSARILY AT THE TIME OF THIS TASK FORCE IF YOU'RE GOING TO
21 AVOID A DISTORTION OF THE FUNDAMENTAL CHARACTER OF OUR
22 ACADEMIC INSTITUTIONS?

23 **A.** YES.

24 **Q.** OKAY. YOU NEEDED AFFIRMATIVE STEPS, THE STATUS QUO WAS
25 NOT GOING TO BE SUFFICIENT. IS THAT RIGHT?

1 **A.** YES.

2 **MR. ISAACSON:** OKAY. NOW, AT 25, 2017-25 --

3 (EXHIBIT PUBLISHED.)

4 **BY MR. ISAACSON:**

5 **Q.** THIS IS A STATE -- THIS IS A DISCUSSION OF ATHLETIC
6 DEPARTMENT SPENDING.

7 **A.** (REVIEWING DOCUMENT.)

8 **Q.** RIGHT?

9 **MR. POMERANTZ:** WHAT ARE YOU REFERRING TO?

10 **MR. ISAACSON:** THE UPPER LEFT-HAND COLUMN.

11 (EXHIBIT PUBLISHED.)

12 **BY MR. ISAACSON:**

13 **Q.** ALL RIGHT. YOU WITH ME, SIR, AT 25?

14 **A.** (REVIEWING DOCUMENT.)

15 **Q.** 2017-25 IN THE LOWER LEFT-HAND CORNER.

16 **A.** (REVIEWING DOCUMENT.)

17 GO AHEAD.

18 **Q.** ALL RIGHT. "ONE OF THE MORE DAMAGING RESULTS OF SUCH
19 INCREASED PRESSURE AT INTERCOLLEGIATE ATHLETICS HAS BEEN TO
20 ISOLATE THE ACTIVITY FROM THE ACADEMIC MISSION OF THE
21 UNIVERSITY AT EXACTLY THE MOMENT WHEN BETTER INTEGRATION OF
22 ATHLETICS AND ACADEMICS IS NEEDED TO REINFORCE THE VALUES OF
23 HIGHER EDUCATION."

24 THAT WAS THE SITUATION IN 2008 WHEN YOU MADE THE REPORT,
25 WASN'T IT, THAT THERE WAS -- THERE WAS ACTUALLY AN ISOLATION

1 OF -- OF THE ATHLETIC DEPARTMENTS FROM THE ACADEMIC MISSION OF
2 THE UNIVERSITY?

3 **A.** THEY WERE CERTAINLY CONCERNED ABOUT IT, YES.

4 **Q.** ALL RIGHT. THAT'S -- WAS ONE OF THE MAIN POINTS OF THIS
5 REPORT, WAS TO SAY WE HAVE TO DO SOMETHING ABOUT THIS
6 ISOLATION OF ACADEMICS FROM ATHLETICS.

7 IS THAT RIGHT?

8 **A.** WELL, AS YOU -- YES. THE CONCERN WAS THAT WE WERE TRYING
9 TO FIND WAYS TO BE CONSISTENT WITH THE VALUE OF INTEGRATION OF
10 STUDENT -- STUDENT ATHLETES INTO THE ENTIRE ACADEMIC
11 ENVIRONMENT AND TO MAKE SURE THAT ATHLETIC DEPARTMENTS WERE
12 CONSISTENT WITH THE VALUES WE'VE BEEN ESPOUSING.

13 **Q.** WERE YOU AWARE THAT MR. RENFRO WROTE PARTS OF THIS REPORT?

14 **A.** I WAS NOT AWARE OF THAT, NO.

15 **Q.** HE TESTIFIED THAT HE WROTE THE PREAMBLE AND HISTORICAL
16 PERSPECTIVES SECTION.

17 DO YOU HAVE ANY REASON TO DOUBT THAT?

18 **A.** NO.

19 **Q.** THE TASK FORCE CALLED FOR --
20 IF WE CAN GO TO 59.

21 (EXHIBIT PUBLISHED.)

22 **BY MR. ISAACSON:**

23 **Q.** -- "UNMANDATED AND UNSPECIFIED BEHAVIOR CHANGES WITHIN THE
24 ENTERPRISE."

25 THEY WERE ASKING FOR A CULTURE CHANGE, WEREN'T THEY?

1 THAT'S THE TERM THEY USE IN THE SECOND PARAGRAPH.

2 **A.** YES.

3 **Q.** ALL RIGHT. THEY WEREN'T MAKING SPECIFIC PROPOSALS. THEY
4 WERE SAYING TO UNIVERSITY PRESIDENTS, "WE ARE SUGGESTING
5 UNMANDATED AND UNSPECIFIED BEHAVIOR CHANGES SO WE CAN GET AWAY
6 FROM THE STATUS QUO WE ARE DESCRIBING."

7 **A.** YES. AND THE TREND LINES THAT WERE -- THAT WERE HEADING
8 IN A DIRECTION THAT -- THAT THE GROUP WAS CONCERNED ABOUT.

9 **Q.** ALL RIGHT. AND THAT WAS IT. THE TASK FORCE MADE THESE
10 REQUESTS FOR UNSPECIFIED AND UNMANDATED CHANGES, AND THEN THAT
11 WAS THE END OF THE TASK FORCE.

12 **A.** YES.

13 **Q.** ALL RIGHT. PX2593.

14 (EXHIBIT PUBLISHED.)

15 **MR. ISAACSON:** I MOVE TO ADMIT 201 -- 2017.

16 **THE COURT:** WHAT, THE WHOLE REPORT?

17 **MR. POMERANTZ:** YOUR HONOR, WE HAVE NO OBJECTIONS TO
18 THE PAGES THAT HE -- HE REFERENCED.

19 **MR. ISAACSON:** THAT'S FINE. IF THEY WANT THE FULL
20 CONTEXT, THAT'S FINE, TOO. EITHER WAY.

21 **THE COURT:** I'LL ADMIT THE PORTIONS THAT WERE
22 REFERENCED.

23 **MR. ISAACSON:** OKAY.

24 (PLAINTIFFS' EXHIBIT 2017, PGS 8, 9, 25, 59, 62 RECEIVED
25 IN EVIDENCE)

1 **BY MR. ISAACSON:**

2 **Q.** ALL RIGHT. NOW, ABOUT THE SAME TIME AS THIS REPORT, THAT
3 WAS EARLY 2008, IN DECEMBER 2007, YOU'LL SEE AN EMAIL,
4 PLAINTIFFS' EXHIBIT 2593. THIS IS FROM MR. BERST AT THE TOP.

5 (EXHIBIT PUBLISHED.)

6 **BY MR. ISAACSON:**

7 **Q.** AND WE'RE GOING TO HAVE TO DO THIS IN REVERSE ORDER
8 BECAUSE IT'S AN EMAIL CHAIN SO WE'LL GO TO THE END OF THE --
9 THE BOTTOM EMAIL.

10 MR. SHAHEEN IS WRITING TO MYLES BRAND AND OTHER HIGH
11 EXECUTIVES OF THE NCAA IN DECEMBER OF 2007.

12 YOU SEE THAT?

13 **A.** I DO.

14 **Q.** ALL RIGHT. AND HE SAYS ON THE NEXT PAGE, FRIDAY, VAL
15 ACKERMAN --

16 SHE'S WITH THE KNIGHT COMMISSION, RIGHT?

17 (EXHIBIT PUBLISHED.)

18 **THE WITNESS:** SHE WAS ON THE KNIGHT COMMISSION.

19 **BY MR. ISAACSON:**

20 **Q.** RIGHT?

21 **A.** AT THAT POINT, I BELIEVE SHE WAS WORKING FOR THE NBA, BUT
22 I'M NOT SURE.

23 **Q.** "FRIDAY, VAL ACKERMAN TIPPED ME OFF THAT AMY PERKO --"
24 IS SHE ALSO WITH KNIGHT COMMISSION?

25 **A.** SHE'S A STAFF MEMBER OF THE KNIGHT COMMISSION, YES.

1 Q. RIGHT.

2 "-- TIPPED ME OFF THAT AMY PERKO IS WORKING ON A MAJOR
3 ANNOUNCEMENT FROM THE KNIGHT COMMISSION OPPOSING ALL OF THE
4 LIKENESS LEGISLATION. SHE INDICATES IT APPEARS TO BE A VERY
5 STRONG STATEMENT."

6 SO THAT IF WE MOVE UP THE EMAIL CHAIN BACK TO THE FIRST
7 PAGE --

8 (EXHIBIT PUBLISHED.)

9 **BY MR. ISAACSON:**

10 Q. YOU CAN SEE THAT, "I'VE HAD TWO LENGTHY CONVERSATIONS WITH
11 AMY, AND SHE HAS SPOKEN WITH OTHER STAFF AND CHRIS PLONSKY,
12 AND SHE WILL NOT LISTEN."

13 AND THEN FINALLY YOU GET MR. BERST'S EMAIL AT THE TOP.

14 OKAY. AND THIS IS AMONG -- THIS IS TO DR. BRAND WITH THE
15 SENIOR EXECUTIVES, INCLUDING MR. RENFRO AT THE NCAA, AND HE
16 SAYS IN THE SECOND PARAGRAPH, "IT'S A FAIR ISSUE. STUDENT
17 ATHLETES CAN HELP US DETERMINE WHETHER EXPLOITATION IS AN
18 ISSUE, AND THEY ARE SUPPORTIVE. FUTURE CLEAN VENUES AND
19 CAMPUSES WOULD BE PUTTING OUR HEADS IN THE SAND. WE HAVE A
20 DUTY TO ENSURE BALANCE AND TO ENGAGE CORPORATIONS TO BE OUR
21 PARTNERS IN THE EDUCATIONAL," SLASH, "ATHLETIC ENTERPRISE."

22 NOW "CLEAN VENUES" AND "CLEAN CAMPUSES," AS YOU UNDERSTAND
23 IT, THAT WOULD BE A REFERENCE TO NOT HAVING ANY CORPORATE
24 SPONSORS SHOWING, RIGHT? THAT'S -- WHEN YOU TALK ABOUT A
25 CLEAN VENUE --

1 **A.** YES, I ASSUME THAT'S WHAT HE'S TALKING ABOUT.

2 **Q.** RIGHT. AND HE SAYS, "KNIGHT COMMISSION MEMBERS AND STAFF
3 **Q.** SBJ," WHICH I UNDERSTAND TO BE THE *SPORTS BUSINESS JOURNAL*,
4 "WILL NOT LOOK SMARTER OR MORE RIGHT THAN WE WILL ON THE
5 ISSUES."

6 WERE YOU -- HAVE YOU HAD DISCUSSIONS WITH -- SINCE YOU'VE
7 BEEN PRESIDENT THAT -- ABOUT DIFFERENCES WITH THE KNIGHT
8 COMMISSION ABOUT HOW TO HANDLE COMMERCIALISM ISSUES?

9 **MR. POMERANTZ:** YOUR HONOR, OBJECTION AGAIN. THAT
10 QUESTION HE JUST ASKED HAD ALMOST NOTHING TO DO WITH MOST OF
11 WHAT HE READ. HE'S JUST USING THE DOCUMENT TO READ A LOT INTO
12 THE RECORD AND THEN TO ASKING A VAGUELY RELATED QUESTION.

13 AND I WOULD HAVE CONTINUED TO OBJECT THE WAY THEY'RE USING
14 DOCUMENTS THAT PREDATED DR. EMMERT'S TENURE AT THE -- AT THE
15 NCAA. THEY LACK FOUNDATION. I THINK IT'S AN IMPROPER FORM OF
16 QUESTION.

17 **THE COURT:** AS -- IF IT'S TO AND FROM NCAA OFFICIALS
18 OR PRESIDENTS ABOUT WHOSE VIEWS HE TESTIFIED, I WILL ALLOW IT.

19 **MR. ISAACSON:** ALL RIGHT.

20 **Q.** MY QUESTION, SIR, WAS, HAVE YOU HAD DISCUSSIONS SINCE YOU
21 WERE PRESIDENT ABOUT DIFFERENCES OF THE NCAA WITH THE KNIGHT
22 COMMISSION ABOUT HOW TO HANDLE COMMERCIALISM ISSUES?

23 **A.** NO.

24 **Q.** ALL RIGHT. HE SAYS, "ANY OF US," IN THE LAST PARAGRAPH,
25 CAN VISIT -- VISIT WITH INTERESTED WRITERS IF THEY WISH TO

1 UNDERSTAND THIS ETERNAL ISSUE."

2 THE SUBJECT OF THE EMAIL IS "LIKENESSES." THIS HAS
3 BEEN -- THE ISSUE OF NAMES, IMAGES, AND LIKENESSES HAS BEEN AN
4 ONGOING ISSUE OF DISCUSSION WITHIN THE NCAA SINCE YOU BEEN
5 PRESIDENT, RIGHT?

6 **A.** OFF AND ON, YES.

7 **Q.** YEAH, OKAY.

8 YOU DISCUSS THE COMMERCIAL SPONSORS IN CONNECTION WITH
9 NAMES, IMAGES, AND LIKENESSES, RIGHT?

10 **A.** SOMETIMES.

11 **Q.** OKAY. YOU DISCUSS WHETHER YOU SHOULD HAVE PROPOSALS ABOUT
12 COMMERCIAL SPONSORS AND NAMES, IMAGES, AND LIKENESSES.

13 **A.** YES.

14 **Q.** OKAY.

15 THERE'S BEEN DISCUSSION IN THIS CASE OF THE PRESIDENTIAL
16 TASK FORCE ON COMMERCIALISM. THAT WOULD HAVE BEEN WHILE YOU
17 WERE AT THE UNIVERSITY OF WASHINGTON, I BELIEVE.

18 WERE YOU AWARE THAT THAT WAS GOING ON?

19 **A.** NO.

20 **Q.** ALL RIGHT. LET ME ASK YOU TO LOOK AT PLAINTIFFS' EXHIBIT
21 2033.

22 (EXHIBIT PUBLISHED.)

23 **MR. ISAACSON:** I WON'T TAKE LONG WITH THIS BECAUSE
24 THE COURT HAS SEEN IT BEFORE. BUT I WANT YOU TO SEE THIS FOR
25 CONTEXT.

1 (EXHIBIT PUBLISHED.)

2 **MR. ISAACSON:** THIS IS A FACT SHEET. THIS IS THE
3 RESULT OF A REPORT BY THE NCAA PRESIDENTIAL TASK FORCE ON
4 COMMERCIAL ACTIVITY. I'M SORRY, 2033-29.

5 (EXHIBIT PUBLISHED.)

6 **BY MR. ISAACSON:**

7 **Q.** ALL RIGHT. AND FOR EXAMPLE, IN -- AT PARAGRAPH 4, THE
8 ESTIMATED AVERAGE NUMBER OF PROMOTIONS INVOLVING STUDENT
9 ATHLETES NAMES, IMAGES, AND LIKENESSES --

10 **THE COURT:** OH, OKAY. IF WE'RE GOING TO GO INTO
11 DOCUMENTS THAT I'VE ALREADY SEEN AND THEY'RE BEFORE HIS TIME,
12 THEN I THINK WE COULD --

13 (SIMULTANEOUS COLLOQUY.)

14 **MR. ISAACSON:** -- SURVEY. I WANT TO KNOW IF ANY SUCH
15 SURVEYS HAPPENED SINCE -- SINCE THIS, SO I NEED TO HAVE HIM
16 UNDERSTAND WHAT IT IS, AND THAT'S THE ONLY QUESTION ABOUT IT.

17 **THE COURT:** OKAY. WELL, GO AHEAD AND ASK THAT.

18 **BY MR. ISAACSON:**

19 **Q.** OKAY. SO THERE'S THE RESULT OF A SURVEY THERE ABOUT THE
20 USE OF NAMES, IMAGES, AND LIKENESSES?

21 **A.** AND I'M SORRY. THIS DOCUMENT'S FROM...?

22 **Q.** THE PRESIDENTIAL TASK FORCE ON COMMERCIAL ACTIVITY.

23 **A.** AND IT SAYS SUPPLEMENT -- I SEE. OKAY.

24 **Q.** ALL RIGHT.

25 AND YOU CAN SEE THERE'S AN ESTIMATE OF THE AVERAGE NUMBER

1 OF PROMOTIONS INVOLVING STUDENT ATHLETES' NAMES, IMAGES, AND
2 LIKENESSES. THIS WAS BACK IN 2008. RIGHT?

3 ARE YOU AWARE OF ANY INFORMATION SINCE YOU BEEN PRESIDENT
4 TO TRY AND UPDATE OR REVIEW THE USE OF -- OF -- OF THE NUMBER
5 OF PROMOTIONS INVOLVING STUDENT ATHLETES NAMES, IMAGES, AND
6 LIKENESSES BY DIVISION I SCHOOLS OR CONFERENCES?

7 **A.** NO, I DON'T.

8 **Q.** OKAY. AS FAR AS YOU KNOW, THIS IS THE LAST TIME THE NCAA
9 ACTUALLY EVER TRIED TO FIGURE OUT HOW MUCH OF THIS STUFF WAS
10 GOING ON?

11 **A.** I DON'T -- I DON'T KNOW OF ANY OTHER STUDY.

12 **Q.** OKAY.

13 AT PARAGRAPH 5, IT SAYS, "THE NCAA NATIONAL OFFICE IS NOT
14 AWARE OF ANY OF -- OF AN ONGOING EFFORT OR EXISTING SYSTEMS IN
15 PLACE AT DIVISION I SCHOOL CONFERENCES TO REGULARLY POLICE AND
16 APPROVE CORPORATE ACTIVATIONS, ADVERTISEMENTS, PROMOTIONS,
17 WEBSITE PAGES OF THEIR MEDIA PARTNERS AND CORPORATE SPONSORS."

18 ARE YOU AWARE OF ANY SUCH EFFORT OR EXISTING SYSTEM NOW?

19 **A.** NO.

20 **Q.** OKAY. THE -- THE COURT HAS HEARD TESTIMONY ABOUT A STUDY
21 GROUP ON NAMES AND LIKENESSES THAT WAS UNDER DR. BRAND.
22 THERE'S THE COMMERCIALISM TASK FORCE.

23 SINCE YOU HAVE BEEN PRESIDENT, HAVE THERE BEEN ANY STUDY
24 GROUPS OR -- OR TASK FORCES WITH RESPECT TO THE ISSUE OF THE
25 USE OF NAMES, IMAGES, AND LIKENESSES?

1 **A.** NO.

2 **Q.** OKAY. THERE WAS A PIECE OF LEGISLATION 2010-26 THAT HAD
3 TO DO WITH THE USE OF NAMES, IMAGES, AND LIKENESSES.

4 WERE YOU FAMILIAR WITH THAT?

5 **A.** FROM WHICH -- FROM WHAT YEAR?

6 **Q.** 2010-26, SO I'M NOT SURE WHAT -- IT'S GOT THE 2010 DATE
7 IT'S SOMETIME IN 2010.

8 **A.** I'D HAVE TO SEE THE DOCUMENT. I DON'T KNOW.

9 **Q.** OKAY. WERE YOU AWARE OF LEGISLATION ON COMMERCIALIZATION
10 THAT WAS DEFEATED?

11 **A.** YES.

12 **Q.** OKAY. AND THE -- IF WE CAN LOOK AT 2047-12.

13 (EXHIBIT PUBLISHED.)

14 **BY MR. ISAACSON:**

15 **Q.** OKAY. THIS IS THE FINAL REPORT OF THE -- ON -- OF
16 COMMERCIAL ACTIVITY IN INTERCOLLEGIATE ATHLETICS. THIS IS THE
17 FINAL REPORT OF THE TASK FORCE.

18 AND ACTUALLY, I WANT -- YEAH, 2047-12.

19 (EXHIBIT PUBLISHED.)

20 **BY MR. ISAACSON:**

21 **Q.** ONE OF THE RECOMMENDATIONS OF THAT TASK FORCE WAS NO. 5.

22 "A COMMERCIAL ACTIVITIES OVERSIGHT COMMITTEE SHALL BE

23 ESTABLISHED AND EMPOWERED," AND IT SAYS THAT, "AMONG OTHER

24 THINGS, TO MONITOR AND REVIEW ANNUALLY THE ADVERTISING,

25 MARKETING SPONSORSHIP AND OTHER COMMERCIAL TRENDS, PRACTICES,

1 AND POLICIES IN DIVISION I AND SPECIFICALLY THOSE OF NATIONAL
2 OFFICE."

3 IT SAYS IN THE COMMENTS, "THE COMMITTEE WOULD BE
4 DISCHARGED TO ENSURE THAT VALUES OF HIGHER EDUCATION, THE
5 COLLEGIATE MODEL IN THE INTEREST OF STUDENT ATHLETES CONTINUE
6 TO BE PROTECTED IN RELATIONSHIPS WITH CORPORATE ENTITIES."

7 THAT COMMITTEE WAS PART OF LEGISLATION. THAT PROPOSAL
8 FROM THE TASK FORCE WAS PUT INTO LEGISLATION, AND THAT
9 LEGISLATION WAS DEFEATED, CORRECT?

10 **A.** THAT'S MY UNDERSTANDING, THOUGH IT OCCURRED BEFORE I
11 ARRIVED.

12 **Q.** AND THERE'S BEEN NO LEGISLATION PROPOSED SINCE THEN TO TRY
13 AND PUT THAT COMMITTEE THROUGH?

14 **A.** NO.

15 **Q.** ALL RIGHT. AND JUST SO I -- SIMPLE QUESTION ABOUT HOW
16 THIS BUSINESS WORKS. YOU HAVE VERY IMPORTANT BROADCAST
17 PARTNERS. YOU HAVE, LIKE, WEEKLY MEETINGS WITH THOSE
18 BROADCAST COMPANIES?

19 **A.** WELL, I CERTAINLY DON'T.

20 **Q.** I'M SORRY. NOT YOU PERSONALLY. THE NCAA?

21 **A.** THEY -- I DON'T KNOW THE FREQUENCY WITH WHICH WE INTERACT
22 WITH THOSE BROADCAST PARTNERS.

23 **Q.** ALL RIGHT. DO YOU HAVE A DEPARTMENT OF THE NCAA THAT'S IN
24 CHARGE OF HAVING DAY-TO-DAY OR WEEKLY CONTACT WITH THE
25 BROADCAST DEPARTMENTS?

1 PUBLIC."

2 ALL RIGHT. THIS -- THIS WAS A STRATEGIC COMMUNICATIONS
3 PLAN, IN ESSENCE, A PUBLIC RELATIONS PLAN, AS TO HOW TO DEAL
4 WITH HOW THE PUBLIC PERCEIVES THE NCAA AND INTERCOLLEGIATE
5 ATHLETICS; IS THAT FAIR?

6 A. THAT'S CORRECT.

7 Q. AND IT GOES ON TO SAY THAT -- WELL, IT SAYS NEXT, "THERE
8 NEEDS TO BE A CHANGE IN HOW BOTH THE NATIONAL OFFICE AND
9 MEMBERSHIP CONDUCTS THEMSELVES."

10 ALL RIGHT. THIS WASN'T JUST ABOUT APPEARANCE; IT WAS
11 ABOUT ACTION; IS THAT FAIR?

12 A. UM-HMM.

13 Q. YOU HAVE -- ACTUALLY, IF YOU COULD SAY "YES" OR "NO," FOR
14 THE RECORD.

15 A. YES.

16 Q. THANK YOU.

17 "ONE OF THE MOST DAMAGING CRITICISMS WE FACE IS THE
18 HYPOCRISY IN WHICH WE OPERATE. SOME OF THAT IS DUE TO MEDIA
19 AND THE PUBLIC NOT CLEARLY UNDERSTANDING THE ISSUES," PROBABLY
20 TALKING ABOUT SOME FOLKS IN THE BACK OF THE ROOM. AND "THIS
21 PLAN ADDRESSES THAT CHALLENGE." YES. AND THEN THERE'S A
22 REFERENCE TO "SPORTS MEDIA."

23 THAT WAS -- THIS "HYPOCRISY" TERM, THE SAME ONE THAT
24 MR. RENFRO USED WITH YOU, WHAT WAS YOUR REACTION TO RECEIVING
25 THIS REPORT?

1 **A.** I DON'T -- IF YOU'RE ASKING ME WHAT WAS MY REACTION TO THE
2 WORD "HYPOCRISY," I DON'T REMEMBER REACTING TO A WORD IN A --
3 IN A DOCUMENT.

4 **MR. POMERANTZ:** YOUR HONOR, IF I MAY, ON THIS
5 PARTICULAR DOCUMENT, IF HE WOULD READ THE ENTIRE PARAGRAPH, IT
6 ACTUALLY PUTS IT'S IN BETTER CONTEXT --

7 (SIMULTANEOUS COLLOQUY.)

8 **MR. POMERANTZ:** -- ASKING A QUESTION.

9 **MR. ISAACSON:** I DON'T WANT TO READ IT ALL IN ONE BIG
10 GULP.

11 IF YOU WANT TO GIVE HIM COPY --

12 **MR. POMERANTZ:** OR AT LEAST -- IT'S ON THE SCREEN. I
13 THINK THE WHOLE PARAGRAPH. AT LEAST GIVE HIM AN OPPORTUNITY
14 TO READ THE WHOLE PARAGRAPH --

15 **MR. ISAACSON:** SURE.

16 **MR. POMERANTZ:** -- BEFORE HE ASKS THE NEXT QUESTION.

17 **BY MR. ISAACSON:**

18 **Q.** TELL ME WHEN YOU'RE READY FOR THE NEXT QUESTION, SIR.

19 **A.** (REVIEWING DOCUMENT.)

20 OKAY?

21 **Q.** ALL RIGHT. IT SAYS, "SOME OF THIS IS ALSO DUE TO" -- "TO
22 THE GENERAL CYNICISM THAT EXISTS IN SPORTS MEDIA. BUT THAT
23 MAY NOT CHANGE MUCH, BUT WE ARE IN A FAR BETTER PLACE BY
24 AGGRESSIVELY AND DIRECTLY TELLING OUR STORY AND CORRECTING
25 THOSE WHO MISREPRESENT US AND -- ENTERPRISE."

1 SO PART OF THIS -- AND WE'LL GET TO THE FULL PART -- PART
2 OF THIS IS AN EFFORT TO ADDRESS THE CRITICISM OF THE NCAA; IS
3 THAT FAIR?

4 **A.** YES.

5 **Q.** OKAY. NOW, THIS IS -- THIS IS THE SECOND TIME IN OCTOBER
6 2010 THAT YOU'VE RECEIVED A DOCUMENT SAYING THAT YOU HAVE THIS
7 PROBLEM OF -- OF AT LEAST A PUBLIC PERCEPTION OF HYPOCRISY.

8 DID YOU DISCUSS THAT SPECIFIC ISSUE WITH ANYBODY?

9 **A.** I THINK YOU'RE FOCUSING ON THE WORD "HYPOCRISY" --

10 **Q.** I AM.

11 **A.** -- MORE THAN NECESSARY.

12 DID -- DID WE TALK ABOUT THE GENERAL THRUST HERE, THAT
13 THERE IS A MISUNDERSTANDING OF AND A -- AND A CONFUSION ABOUT
14 WHAT WE DO AND WHY WE DO IT? YES, OF COURSE. WE TALKED ABOUT
15 IT A LOT, AND WE CONTINUE TO TODAY. AND AS A RESULT OF THIS
16 REPORT HAVE DONE A NUMBER OF THINGS TO TRY AND GIVE A --
17 PARTICULARLY THE MEDIA BUT OTHERS AS WELL, MUCH GREATER ACCESS
18 TO HOW WE OPERATE AND WHAT -- WHAT IS DONE INSIDE THE NCAA
19 ACCROST A VARIETY OF AREAS THAT ARE CONTROVERSIAL.

20 **Q.** RIGHT.

21 AND IT SAYS, "SOME OF IT IS ALSO THE WAY IN WHICH THE NCAA
22 AND ITS MEMBERS DO BUSINESS." MAYBE THIS IS WHAT YOUR COUNSEL
23 WAS TALKING ABOUT, A CULTURE CHANGE IS NEEDED AT ALL LEVELS TO
24 ENSURE THE COLLECTIVE ACTIONS COMPORT WITH OUR STATED VALUES.

25 YOU WEREN'T JUST TALKING ABOUT PR; YOU WERE TALKING ABOUT

1 MAKING SUBSTANTIVE CHANGE, CORRECT?

2 **A.** YES.

3 **Q.** AND THAT WAS CHANGED AT THE UNIVERSITY LEVEL, SOMETHING
4 THAT YOU CAN'T CONTROL.

5 **A.** NO, IT WAS CHANGE -- AS THE -- AS IT POINTS OUT, IT WAS
6 CHANGED AT THE MEMBER LEVEL AND AT THE NCAA NATIONAL OFFICE
7 LEVEL.

8 **Q.** ALL RIGHT. AND THEN IT SAYS, "THERE'S A LONG LIST OF
9 ISSUES THAT AFFECT HOW INTERCOLLEGIATE ATHLETICS IS VIEWED."
10 I'M NOT GOING TO READ ALL THESE. YOU CAN PUT THEM ON THE
11 SCREEN.

12 (EXHIBIT PUBLISHED.)

13 **BY MR. ISAACSON:**

14 **Q.** ALL RIGHT. I DON'T SEE COMMERCIALISM IN HERE. AM I
15 MISSING SOMETHING?

16 **A.** (REVIEWING DOCUMENT.)

17 **Q.** ANYTHING IN HERE ABOUT EXPLOITATION OF STUDENT ATHLETES BY
18 COMMERCIAL ENTITIES?

19 **A.** I THINK ALL OF THIS IS AIMED AT EXACTLY THOSE SAME
20 CONCERNS. YOU CAN TALK ABOUT COMMERCIALISM AS A GENERIC ISSUE
21 OR YOU CAN TALK ABOUT THE FACT THAT CONFERENCE REALIGNMENT WAS
22 PERCEIVED AS A MONEY GRAB. THAT SOUNDS A BIT LIKE
23 COMMERCIALISM TO ME.

24 MULTI-MILLION DOLLAR COACHES SALARIES, THAT SOUNDS LIKE A
25 CONCERN ABOUT COMMERCIALISM TO ME.

1 I COULD GO DOWN THAT LIST AND SEE ALL OF IT IN THE CONTEXT
2 OF COMMERCIALISM.

3 Q. OKAY. THE --

4 A. WE WERE DISCUSSING EARLIER THE FACILITIES ARMS RACE AND
5 THE -- AND EXPENDITURES OF STUDENTS -- EXCUSE ME -- OF
6 UNIVERSITIES ON -- ON FACILITIES AND THE COSTS OF BUDGETS.
7 AND YOU WERE DESCRIBING THAT COMMERCIALISM. THESE ARE ALL IN
8 THAT SAME CATEGORY.

9 Q. RIGHT. WELL, IN TERMS OF THAT, THE THINGS YOU MENTIONED
10 "CONFERENCE REALIGNMENT AS A MONEY GRAB," THAT'S WHERE A
11 SCHOOL MOVES FROM ONE CONFERENCE TO ANOTHER IN ORDER TO MAKE A
12 LOT MORE MONEY, RIGHT?

13 A. COULD BE A LOT, COULD BE A LITTLE, BUT THERE WAS -- THAT
14 WAS THE PERCEPTION THAT WAS GOING ON.

15 Q. RIGHT. AND THERE'S -- THAT HAS CONTINUED. THERE'S BEEN
16 NO -- THE NCAA HASN'T DONE ANYTHING ABOUT CONFERENCE
17 REALIGNMENT, RIGHT?

18 A. IT HAS NO AUTHORITY OVER CONFERENCE STRUCTURE, SO THAT
19 WOULD BE UNLIKELY.

20 Q. AND YOU HAVEN'T DONE ANYTHING ABOUT MULTI-MILLION DOLLAR
21 COACHES SALARIES?

22 A. WE HAVE NO LEGAL AUTHORITY OVER WHAT AN INDIVIDUAL
23 INSTITUTION PAYS COACHES SO THAT WOULD BE UNLIKELY, TOO.

24 Q. THE OTHER THING I THINK YOU MENTIONED WAS THE "FACILITIES
25 ARMS RACE."

1 THIS PLAN WAS NOT GOING TO PROMOTE -- DIDN'T MENTION PROMOTING
2 THE SPORT AS AN AMATEUR SPORT OR AMATEUR ATHLETES, RIGHT?

3 **A.** I'M SURE THE AUTHORS OF THIS -- OF THIS DOCUMENT ASSUMED
4 THAT COLLEGE ATHLETES WERE AMATEURS AND WERE GOING TO REMAIN
5 AS AMATEURS, AND IT DIDN'T NEED TO BE STATED.

6 **Q.** ALL RIGHT. AND I WANT TO ASK YOU WHERE YOU'VE ENDED UP ON
7 THESE ISSUES. IF WE COULD LOOK AT --

8 OH, I'LL MOVE TO ADMIT 2074.

9 **THE COURT:** ANY OBJECTION? AT LEAST THE PORTIONS
10 REFERRED TO.

11 **MR. ISAACSON:** IT'S A SHORT DOCUMENT.

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

13 **THE COURT:** RECEIVED.

14 (PLAINTIFFS' EXHIBIT 2074 RECEIVED IN EVIDENCE)

15 **MR. ISAACSON:** 2299.

16 (EXHIBIT PUBLISHED.)

17 **BY MR. ISAACSON:**

18 **Q.** THIS WAS YOUR 2013 SPEECH AGAIN. AND LET ME SEE IF YOU
19 SET -- SAID SOMETHING ELSE THAT'S IN HERE.

20 229-6 (SIC).

21 (EXHIBIT PUBLISHED.)

22 **BY MR. ISAACSON:**

23 **Q.** AT THE END, AT THE BOTTOM RIGHT-HAND COLUMN ON NO. 6.

24 OKAY. AND THIS IS AFTER YOU'RE TALKING ABOUT THE NCAA
25 TOURNAMENT. DO YOU SEE -- IF YOU MOVE -- MAYBE YOU STILL HAVE

1 THE SPEECH UP THERE WITH YOU.

2 IF YOU SHOW DR. EMMERT THE PREVIOUS PARAGRAPH.

3 (EXHIBIT PUBLISHED.)

4 **BY MR. ISAACSON:**

5 **Q.** ALL RIGHT. YOU'RE TALKING ABOUT THE NCAA TOURNAMENT.

6 **A.** YES.

7 **Q.** RIGHT. AND YOU SAY, "CORPORATE SPONSORS SUPPORT IS THE
8 WHOLE AFFAIR BECAUSE IT'S EXCITING. IT'S RIVETING. IT'S A
9 GREAT WAY TO BUILD THEIR BRANDS AND ESTABLISH THEIR AD
10 CAMPAIGNS."

11 TELL ME WHAT YOU MEANT -- IS THIS SOMETHING YOU SAID?

12 **A.** PROBABLY.

13 **Q.** AND TELL ME WHAT YOU MEAN WHEN YOU SAY, IT'S A GREAT WAY
14 FOR YOUR CORPORATE SPONSORS TO BUILD THEIR BRANDS AND
15 ESTABLISH THEIR AD CAMPAIGNS?

16 **A.** YES, I'VE ACTUALLY TALKED AT LENGTH WITH OUR CORPORATE
17 SPONSORS ABOUT JUST THAT ISSUE. THEY LIKE THE NCAA NATIONAL
18 TOURNAMENT BECAUSE OF WHAT IT -- THE MEN'S BASKETBALL
19 TOURNAMENT IN PARTICULAR BECAUSE OF WHAT IT REPRESENTS,
20 BECAUSE IT'S A -- AN ACTIVITY THAT ATTRACTS GREAT ENTHUSIASM
21 AND ATTENTION FROM AROUND THE COUNTRY, BECAUSE IT'S
22 INTERCOLLEGIATE ATHLETICS, BECAUSE IT -- IT REACHES OUT TO SO
23 MANY PEOPLE IN THE UNITED STATES.

24 I THINK -- AND, YOU KNOW, THEY -- THE BRANDS THAT ARE
25 ASSOCIATED WITH COLLEGE SPORTS IN THE MINDS OF THOSE CORPORATE

1 SPONSORS ARE, IN FACT, INTERESTED IN AND SUPPORTIVE OF COLLEGE
2 ATHLETICS BECAUSE IT'S PRECISELY COLLEGE ATHLETICS.

3 Q. WHEN YOU SAY "THEIR BRANDS," YOU'RE NOT REFERRING TO
4 COLLEGE ATHLETICS.

5 A. NO, I'M TALKING THE CORPORATE SPONSORS, OBVIOUSLY.

6 Q. RIGHT.

7 AND -- BUT IN TERMS -- SO WE CAN SEE WHAT THE CORPORATE
8 SPONSORS GET. IN TERMS -- AND -- MAYBE WE CAN FINISH FOR THE
9 DAY WITH SOME THINGS MAYBE WE DO AGREE WITH.

10 A. WELL, IT WOULD BE -- EXCUSE ME FOR INTERRUPTING. BUT I
11 THINK THE NEXT SENTENCE IS PART OF WHAT THE POINT I WAS TRYING
12 TO MAKE.

13 Q. I BELIEVE YOU HAVE -- YOU'VE HAD THE OPPORTUNITY TO DO
14 THAT. TIME'S AWASTING, SIR, SO I'M GOING TO MOVE ON --

15 MR. POMERANTZ: YOUR HONOR --

16 THE COURT: DON'T WORRY, I READ IT.

17 MR. POMERANTZ: THANK YOU, YOUR HONOR.

18 BY MR. ISAACSON:

19 Q. THE -- 2-4 -- YOU HAVE SAID -- AND I THINK YOU SAID
20 SOMETHING CLOSE TO THIS ON THE STAND, THAT STUDENT ATHLETES
21 ARE STUDENTS; THEY'RE NOT PROFESSIONALS. WE'RE NOT GOING TO
22 PAY THEM. AND WE'RE NOT GOING TO ALLOW OTHER PEOPLE TO PAY
23 THEM TO PLAY. IS THAT -- THAT'S YOUR POSITION, RIGHT?

24 A. YOUR PARAPHRASING OF IT, YES.

25 Q. I CAN SHOW YOU --

1 **A.** IT'S FINE.

2 **Q.** IT'S AN EXACT QUOTE FROM ONE OF YOUR SPEECHES.

3 **A.** IT'S FINE.

4 **Q.** AND THE -- AND UNDER THE CURRENT NCAA RULES, THE NCAA DOES
5 NOT SHARE LICENSING REVENUES WITH STUDENT ATHLETES AFTER
6 THEY'VE LEFT THEIR NCAA PARTICIPATION, CORRECT?

7 **A.** NO.

8 **Q.** HMM?

9 **A.** NO, I SAID.

10 **Q.** OKAY. THAT'S -- THEY DO NOT DO THAT. I THINK CAUSED A
11 DOUBLE NEGATIVE.

12 **A.** WELL, I PAUSED. I THINK -- I THINK I ANSWERED YOUR
13 QUESTION UNDERSTANDING IT.

14 **Q.** RIGHT.

15 **A.** -- NEGATIVE.

16 **Q.** IN FACT, I THINK YOU'VE SAID THE NCAA IS ADAMANT ABOUT NOT
17 SHARING LICENSING REVENUES WITH FORMER PLAYERS IF THAT'S GOING
18 TO BE PART OF THE RECRUITING PROCESS FOR ATHLETES.

19 **A.** YES.

20 **Q.** AND THAT'S A POLICY DECISION MADE BY THE BOARD OF
21 DIRECTORS OF THE NCAA AND THE EXECUTIVE COMMITTEE.

22 **A.** YES.

23 **Q.** THAT POLICY GOVERNS ALL NCAA, ALL CONFERENCES, ALL STUDENT
24 ATHLETES, CORRECT?

25 **A.** YES. ALL -- YES, ALL NCAA ATHLETES.

1 Q. ALL RIGHT. AND IN TERMS OF ENFORCEMENT OF THAT POLICY AND
2 IF THERE'S ANY VIOLATION OF THE POLICY, THE -- THE STUDENT
3 ATHLETE BECOMES INELIGIBLE TO PARTICIPATE IN THE SPORT?

4 A. POTENTIALLY, DEPENDING ON THE NATURE OF THE VIOLATION.

5 Q. RIGHT.

6 I MEAN, IF THERE IS -- IF THERE IS A VIOLATION OF THAT
7 RULE, THEN THE CONSEQUENCE IS A LOSS OF ELIGIBILITY FOR THE
8 STUDENT ATHLETE.

9 A. AGAIN, POTENTIALLY, YES.

10 Q. YES. OKAY. IN TERMS OF ENFORCING THAT RULE, WHAT
11 CONSEQUENCES ARE THERE FOR THE UNIVERSITY?

12 A. SHOULD A UNIVERSITY NOT ENFORCE THAT RULE, THERE'S
13 SIGNIFICANT PENALTIES. THEY -- THEY CAN RECEIVE A LOSS OF ALL
14 OF THE COMPETITIONS THAT THAT INDIVIDUAL PARTICIPATED IN.
15 THEY CAN -- THEY CAN BE PUNISHED THROUGH THE ENTIRE SANCTIONS
16 OF THE MEMBERSHIP'S SANCTIONING BODY, THE COMMITTEE ON
17 INFRACTIONS.

18 Q. ALL RIGHT. AND IF I CAN ASK YOU, THEN, FINALLY TO LOOK AT
19 2037.

20 (EXHIBIT PUBLISHED.)

21 **BY MR. ISAACSON:**

22 Q. THIS IS AN EMAIL FROM MR. -- MR. KNOPP OF THE NCAA TO
23 MR. SHAHEEN. THEY'RE TALKING ABOUT FANTASY COLLEGE FOOTBALL.
24 AND HAVE YOU HAD DISCUSSIONS SINCE YOU'VE BEEN NCAA PRESIDENT
25 ABOUT WHETHER TO ALLOW FANTASY FOOTBALL FOR COLLEGE SPORTS?

1 **A.** NO.

2 **Q.** AND MR. KNOPP IS TALKING ABOUT FANTASY FOOTBALL VERSUS
3 BROADCAST. AND HE SAYS, "TO SAY THAT CBS IS USING NAMES AND
4 STATS TO SELL ADVERTISING TO MAKE MONEY AND, THEREFORE, IS
5 AGAINST THE RULES, SEEMS TO CAST A BLIND EYE ON ALL THE OTHER
6 WAYS CBS AND ESPN AND NCAA.COM, ET CETERA, ALL USE STUDENT
7 ATHLETE IMAGES, FOOTAGE, STATS, NAMES, NEWS ON T.V., ONLINE
8 ET CETERA, TO SELL ADVERTISING. BUT THEN I IMAGINE I'M
9 PREACHING TO THE CHOIR."

10 DO YOU THINK MR. KNOPP GOT ANYTHING WRONG THERE?

11 **A.** I -- I DON'T KNOW. YOU KNOW, I DON'T KNOW EXACTLY WHAT HE
12 WAS TALKING ABOUT IN TERMS OF CBS AND THE FANTASY FOOTBALL
13 MODEL.

14 **MR. ISAACSON:** OKAY. I'M GOING TO MOVE TO A TOPIC
15 THAT'S GOT A FAIR NUMBER OF DOCUMENTS.

16 **THE COURT:** ALL RIGHT.

17 **MR. POMERANTZ:** YOUR HONOR, COUPLE OF THINGS BEFORE
18 WE BREAK --

19 **MR. ISAACSON:** OH, I'M SORRY.

20 CAN I MOVE TO ADMIT 2037?

21 **THE COURT:** LOOKS LIKE YOU CAN STEP DOWN, BUT LOOKS
22 LIKE YOU NEED TO COME BACK TOMORROW MORNING AT 8:30 UNLESS
23 YOU'VE MADE SOME OTHER ARRANGEMENTS.

24 **MR. ISAACSON:** I WOULD MOVE TO ADMIT 2037.

25 **MR. POMERANTZ:** NO OBJECTION TO 2037.

1 (PLAINTIFFS' EXHIBIT 2037 RECEIVED IN EVIDENCE)

2 **MR. POMERANTZ:** AND WE HAD BEEN ASKED ABOUT A FEW
3 OTHER DOCUMENTS, AND I JUST WANTED TO RESPOND TO THOSE ON
4 RECORD, YOUR HONOR.

5 **THE COURT:** YOU WERE ASKED WHAT?

6 **MR. POMERANTZ:** THEY HAD MOVED TO ADMIT A FEW OTHER
7 EXHIBITS, AND I WANTED TO JUST RESPOND TO THOSE.

8 **MR. ISAACSON:** THERE'S SOME THAT I FORGOT TO MOVE TO
9 ADMIT.

10 (SIMULTANEOUS COLLOQUY.)

11 **MR. POMERANTZ:** WE CAN DO IT OFF THE RECORD? WE'LL
12 DO IT OFF THE RECORD AND SUBMIT SOMETHING.

13 **THE COURT:** OKAY.

14 **MR. POMERANTZ:** ONE OTHER THING IS YOUR HONOR HAD
15 ISSUED AN ORDER ASKING US TO SUBMIT OUR DEPOSITION
16 DESIGNATIONS BY FRIDAY.

17 I THINK BY, HOPEFULLY AGREEMENT WITH THE PARTIES, WE'D
18 LIKE TO SUBMIT THE DEPO DESIGNATIONS OF THE PLAINTIFFS WITH
19 OUR COUNTER-DESIGNATIONS TOMORROW, AND THEN HAVE OVER THE
20 WEEKEND TO COMPLETE OUR DESIGNATIONS WITH THEIR COUNTERS.

21 IT'S JUST TAKING ADMINISTRATIVELY A LOT OF TIME TO DO WITH
22 THE COLOR CODING IN A WAY THAT -- THAT IS AS YOUR HONOR HAD
23 REQUESTED. IT'S REALLY A LOT OF TIME --

24 **THE COURT:** OH.

25 **MR. POMERANTZ:** -- AND I THINK BOTH PARTIES ARE OKAY

1 WITH THAT IF YOUR HONOR IS OKAY WITH THAT.

2 **MR. HAUSFELD:** ALL I KNOW IS OURS ARE DONE AND READY,
3 AND THEY ASKED FOR MORE TIME, AND WE'RE OKAY WITH THAT.

4 **THE COURT:** YEAH. THE COLOR CODING IS MORE IMPORTANT
5 IN A JURY TRIAL WHERE I ACTUALLY HAVE TO GO THROUGH AND RULE
6 ON IT LINE BY LINE. I DON'T REALLY NEED --

7 **MR. ISAACSON:** WELL, IT'S BEEN DONE.

8 **THE COURT:** I DON'T PLAN TO RULE ON THESE OBJECTIONS
9 LINE BY LINE.

10 (SIMULTANEOUS COLLOQUY.)

11 **THE COURT:** YOU DON'T NEED TOO SPEND A LOT OF THE
12 TIME ON THAT.

13 **MR. POMERANTZ:** THAT WILL SAVE TIME. WE WOULD ASK IF
14 WE COULD SUBMIT OUR DESIGNATIONS WITH THEIR COUNTERS ON MONDAY
15 AND --

16 **THE COURT:** WHAT TIME ON MONDAY?

17 **MR. POMERANTZ:** I'M SORRY?

18 **THE COURT:** WHAT TIME ON MONDAY?

19 **MR. POMERANTZ:** YOU TELL US A TIME, AND THEY'LL BE
20 HERE.

21 **THE COURT:** OKAY. WELL, HOW ABOUT NOON ON MONDAY?

22 **MR. POMERANTZ:** NOON ON MONDAY IS FINE. THANK YOU.

23 **MR. ISAACSON:** AND WE'LL SEND YOU OUR DESIGNATIONS
24 WITH THEIR COUNTER-DESIGNATIONS SO YOU HAVE THOSE AVAILABLE.

25 **THE COURT:** OKAY.

1 **MR. POMERANTZ:** THANK YOU, YOUR HONOR. APPRECIATE
2 IT.

3 **THE COURT:** AND WHO DO WE HAVE TOMORROW, THEN? WE'RE
4 FINISHING DR. EMMERT, ONE HOPES.

5 **MR. POMERANTZ:** WE WILL BRING BACK MR. MUIR.

6 **THE COURT:** MR. MUIR.

7 **MR. POMERANTZ:** AND THEN WE WILL GO TO MR. DELANY.

8 **THE COURT:** TO WHO?

9 **MR. POMERANTZ:** MR. DELANY, THE BIG TEN COMMISSIONER.

10 **THE COURT:** OH. AND WHEN IS DR. RUBINFELD COMING?

11 **MR. POMERANTZ:** NEXT WEEK.

12 **THE COURT:** EARLY NEXT WEEK?

13 **MR. POMERANTZ:** NO. I THINK MIDDLE OF THE WEEK.

14 **THE COURT:** OKAY.

15 (PROCEEDINGS WERE CONCLUDED AT 1:32 P.M.)

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CERTIFICATE OF REPORTERS

WE CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER. WE FURTHER CERTIFY THAT WE ARE NEITHER COUNSEL FOR, RELATED TO, NOR EMPLOYED BY ANY OF THE PARTIES TO THE ACTION IN WHICH THIS HEARING WAS TAKEN, AND FURTHER THAT WE ARE NOT FINANCIALLY NOR OTHERWISE INTERESTED IN THE OUTCOME OF THE ACTION.



DIANE E. SKILLMAN, CSR, RPR, FCRR



RAYNEE H. MERCADO, CSR, RMR, CRR, FCRR, CCRR

THURSDAY, JUNE 19, 2014