

EXHIBIT C

WALTER BYERS, JULY 24, 2007

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

| | | |
|-------------------------|---|-----------------------|
| JASON WHITE, BRIAN |) | |
| POLAK, CHRIS CRAIG and |) | |
| JOVAN HARRIS, on Behalf |) | |
| of Themselves and All |) | |
| Others Similarly |) | |
| Situated, |) | |
| |) | |
| Plaintiffs, |) | |
| |) | |
| vs. |) | Case No. |
| |) | CV 06-0999 VBF (MANx) |
| NATIONAL COLLEGIATE |) | |
| ATHLETIC ASSOCIATION, |) | |
| an unincorporated |) | |
| association, |) | |
| |) | |
| Defendant. |) | |
| |) | |

VIDEOTAPE DEPOSITION

OF

WALTER BYERS

Taken on behalf of the Plaintiffs pursuant to Notice of Deposition on the 24th day of July 2007, beginning at the hour of 8:40 a.m. CST, at the Byers Ranch, 25695-25709 Aiken Switch Road, Emmett, Kansas 66422; Dana Burkdoll, Shorthand Reporter.

4 Q. Can you state your name for the record, sir.

5 A. Walter Byers.

6 Q. How old are you now, Mr. Byers?

7 A. Eighty-five.

8 Q. I understand that you're retired, now, sir; is
9 that correct?

10 A. That's correct.

11 Q. And how long, sir, have you been retired?

12 A. Well, I guess from the NCAA, if that's what
13 you're talking about, not the cattle business, I retired
14 in '90 -- 36 years there from '51 to '87. And then had
15 two years as an emeritus and retired at that point after
16 the two years emeritus.

20 Q. Sure, can you tell me when you first started
21 working at the NCAA?

22 A. Well, I started in 1947, I think, I worked
23 part-time for both the NCAA and the Big Ten Conference
24 and shared a secretary, one secretary, and worked
25 approximately 50 percent of my time both places. And

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1 then I became -- I was NCAA Executive Assistant during
2 those years, and then I became Executive Director in the
3 fall of '51, and then I worked full-time for the NCAA
4 thereafter.

10 Q. Yes, sir. You said from about 1947 up until you
11 became Executive Director of 1951 --

12 A. I did a lot of jobs that nobody else wanted to
13 do, I'll say that, starting out. And I handled the
14 publicity. I handled meeting arrangements. Assisted
15 the commissioner, who was Kenneth L. (Tug) Wilson, who
16 was also the Secretary/Treasurer of the NCAA at that
17 time. I assisted him at any jobs he wanted to perform,
18 and I guess that's about it.

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1 How long did you hold the position of Executive
2 Director?

3 A. Well, from '51 to '37 -- '87.

4 Q. And as Executive Director, Mr. Byers, were you
5 the NCAA's highest ranking official?

6 A. That's true.

7 Q. Basically, the CEO, sir, of the NCAA?

8 A. Yeah. Roughly speaking, I was the manager so to
9 say.

10 Q. For those 36 years, sir, can you give us a sense
11 of your duties and responsibilities?

12 A. Well, starting out it was a new organization
13 really, and we started out trying to hold the thing
14 together because it was -- it was kind of a rough birth
15 for the organization. And we gradually moved into
16 enforcement -- well, we ran championships to start with.
17 We had a whole series of championships that we took care
18 of at those early years. I'm talking about in the 50s.
19 And we had -- television had not come on forcefully, but
20 it was raising its head, so we had television
21 negotiations. Then we finally got into enforcement of
22 the rules and finally had to have a major enforcement
23 department in that area. And it kind of grew like
24 topsy. We started out with one full-time employee and
25 one secretary, and I suppose in the -- in the last year,

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1 I suppose, we had 165 to 70 full-time employees. It was
2 a growth situation.

3 Q. And to be clear, sir, by the last year, you're
4 talking about 1987?

5 A. Yeah.

19 Q. You also mentioned television, sir. As the
20 NCAA's Executive Director, did you have any involvement
21 in the negotiation of television contracts for college
22 sports?

23 A. Yes. I probably got involved from the first one
24 until the last one.

25 Q. Does the NCAA, sir, hold annual meetings or did

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1 it at the time that you were there?

2 A. Yes.

3 Q. Did you attend those meetings, sir?

4 A. Yes.

5 Q. And did those meetings involve the legislative

6 process at the NCAA?

7 A. Yes.

22 Q. During your time at the NCAA, sir, did you have

23 occasion to become familiar with the NCAA's notion of

24 amateurism?

25 A. Yes.

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2 Q. How about the NCAA's financial aid rules,
3 Mr. Byers. Did you have occasion to participate in the
4 legislation and enforcement of the NCAA's financial aid
5 rules during your time there, sir?

6 A. Yes.

21 Q. And did the NCAA's financial aid rules change
22 during your time at the NCAA?

23 A. Yes.

24 Q. Did you have occasion, sir, to participate in
25 those changes?

1 A. Well, I had an opportunity to participate in
2 discussions leading up to those changes. The changes
3 always were made on the floor of the convention or by
4 the NCAA counsel through interpretations, you know, so
5 with that explanation.

6 Q. Sir, are you familiar with a book entitled,
7 Unsportsmanlike Conduct: Exploiting College Athletes?

8 A. Yes.

18 Q. Can you tell us sir, who wrote this book,
19 Unsportsmanlike Conduct?

20 A. I -- I authored the book with the assistance of
21 Charles Hammer.

22 Q. How long did it take you to write this book, sir?

23 A. Two years, I guess, something like that. It --
24 it took longer than I expected, let me put it that way.

25 Q. You mentioned earlier, Mr. Byers, that you worked

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1 as the NCAA's Executive Director until 1987 and then as

2 an emeritus until 1989. Since that time, since 1989,

3 have you continued to monitor and study the NCAA?

4 A. Since '89?

5 Q. Yes, sir.

6 A. Not particularly.

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12 Q. Let's go back, sir, to Exhibit 343. Can you tell
13 us, generally speaking, Mr. Byers, what was the purpose
14 of the NCAA manual?

15 A. Well, it was to codify the rules and regulations
16 of the association that the members agreed to.

5 Q. Are you familiar with the term "grant-in-aid"?

6 A. Yes.

11 Q. Just grants in aids generally, sir?

12 A. Well, a grant-in-aid is a -- I mentioned the
13 "Sanity Code" earlier, and when the "Sanity Code" failed
14 for reasons I'm -- not particularly relevant at the
15 moment, the NCAA adopted a grant-in-aid rule and it --
16 it legalized the grant-in-aid to student athletes for
17 all -- it could run for the full undergraduate period of
18 the recipient or it could run for any part of that full
19 -- full four or five years or it could run for only one
20 semester, that was up to the institution. But they put
21 in place, and I think in '56, what I've described was a
22 full grant-in-aid.

23 Is that responsive to your question?

24 Q. Yes, sir. I think what I'm getting at is when
25 you say "grant-in-aid," sir, are you referring to an

1 athletic's based scholarship?

2 A. Correct.

17 Q. Right. And going forward, sir, after the "Sanity
18 Code," for example in the 1970s, did you use the term at
19 the NCAA, "grant-in-aid" during that time?

20 A. Yes.

21 Q. What did it mean to you then, sir?

22 A. Well, normally a grant-in-aid -- starting in '56
23 and going forward through all the years of change, the
24 grant-in-aid covered board, room, books, tuition, fees
25 and \$15 a month for -- well, it was called laundry

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1 money, but it was really a stipend. Fifteen times nine
2 months was cash payments -- to the aid recipient.

3 Q. And I think, sir, you may have just answered my
4 next question. Let me go over it though to be sure.
5 Under today's rule, 15.02.5, a full grant-in-aid cannot
6 contain a stipend for incidental expenses?

7 A. No. There's no provision in this rule to do
8 that.

9 Q. Correct, sir.

10 A. Okay.

11 Q. Yes. And my question is, sir, is, has the NCAA
12 always prohibited grants-in-aid from including stipends
13 for incidental expenses?

14 A. No.

6 Q. You mentioned, Mr. Byers, that this laundry
7 money, this cash stipend was allowed under NCAA rules
8 from 1956 'til the Economy Convention in 1975, that's
9 about 20 years, sir. My question for you is, during
10 that 20-year period, did the NCAA consider the student
11 athletes who received laundry money to still be
12 amateurs?

13 A. Yes.

14 Q. And during that time period, sir, generally
15 speaking, did the popularity of college football
16 increase or decrease?

17 A. Increase.

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15 Q. Did you have any participation, sir, in
16 discussions or gathering information about demand for
17 college football games?

18 A. Oh, the -- sports exploded, if that's what you're
19 asking. I mean, the dollars rolled in. You couldn't --
20 attendance was up for football and basketball. The
21 dollars rolled in and then there's more money for
22 everybody. I mean, it was a growth period and my book
23 deals with that whole arena of experience. From the
24 start of big-time college athletics and then the
25 explosion that came with the television, the airplane,

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1 and all of those things that made it as a big money
2 machine, is what it was.

3 Q. In this same growth period, sir, 1956 to 1976,
4 did the same trend apply to men's college basketball as
5 well as football?

6 A. Did the same growth apply that I just described?

7 Q. Yes, sir.

8 A. Definitely.

14 Q. Did you have any indication, sir, that laundry
15 money somehow lessened the popularity or the demand for
16 football or college basketball?

17 A. No.

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11 Q. Would you take a look, Mr. Byers, at Exhibit 348,
12 please, sir.

13 A. Okay.

14 MR. GRAND: Thank you.

15 THE WITNESS: It was in August 14-15, '75.

16 BY MR. NAGY:

17 Q. Do you remember -- well, first of all, Mr. Byers,
18 did you attend the Economy Convention?

19 A. Yes, I did.

20 Q. Can you tell us who attended this convention
21 besides yourself?

22 A. Well, the various members of our staff. But the
23 association's dully-appointed delegates from all -- not
24 all of them but from a number of institutions attended
25 it.

14 Q. Now, looking at 399, Mr. Byers, if you wouldn't
15 mind turning to the second page, sir. We can just move
16 this.

17 A. All right.

18 Q. We see there that the intent of Legislative
19 Proposal No. 4 was to, quote, Contract the definition
20 of -- what's here in quotes -- open quote, commonly
21 accepted educational expenses, closed quote, by
22 eliminating course related supplies and incidental
23 expenses.

24 Do you see that, Mr. Byers?

25 A. Yes, sir.

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1 Q. Are you familiar, sir, with the term "commonly
2 accepted educational expenses"?

3 A. Yes.

4 Q. Can you tell us what that meant?

5 A. Well, that -- that came in, in '56, and it was a
6 term that was applied to the grant-in-aid that was being
7 legalized by the delegates in 1956. And it was not --
8 it was a phrase written by athletically-related people,
9 not necessarily the academicians dealing with financial
10 aid. That's probably irrelevant, but what I was trying
11 to get to is that, it was a basically an athletic term,
12 and it was designed to say that these expenses are what
13 is commonly understood to be a full ride. That's
14 another term that we used all of the time, "a full
15 ride."

16 What's a full ride? A full ride is grant-in-aids
17 that cover all these things which are commonly accepted
18 educational expenses. They're interchangeable. Maybe I
19 didn't respond to your question.

20 Q. Actually, I think that you did, sir.

21 You said a full ride was interchangeable with a full
22 grant-in-aid; is that correct?

23 A. Yeah. That's correct.

24 Q. And a full grant-in-aid is interchangeable with
25 commonly accepted educational expenses; is that correct?

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1 A. Yeah. That's correct.

16 Q. So if I'm understanding you correctly, sir, this
17 was a meeting, the Economy Convention, that took place
18 in 1975, in August you told us, and it was attended by
19 members of the NCAA's delegates, and they voted with
20 paddles as we see here; is that right?

21 A. Right.

22 Q. Okay. And it says on this Exhibit, sir, 399,
23 that Legislative Proposal No. 4 was approved. Does that
24 mean, sir, that there was an agreement reached as to
25 whether or not this proposal should be become inactive

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1 in the NCAA?

2 A. Correct.

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10 Q. And now, sir, I want to discuss the effect of the
11 NCAA's rule change at the Economy Convention on the full
12 grant-in-aid that student athlete's could receive. You
13 told me before, sir, that this rule eliminated
14 course-related supplies; is that right?

15 A. That's correct.

16 Q. And so I'm going to -- I'm just going to put that
17 down on my list. I'm going to strike course-related
18 supplies. You also mentioned that incidental expenses
19 were eliminated by this rule; is that correct, sir?

20 A. That's correct.

24 THE WITNESS: Well, if I track this correct
25 and why I paused about this --

2 THE WITNESS: -- "supplies and" were deleted
3 but "books" stayed in.

8 Q. I'm sorry. I -- I -- I don't think I said books
9 before. If I did, I didn't mean to. My understanding
10 of what you said, sir, is supplies were eliminated and
11 the incidental expenses were eliminated.

12 A. That's correct.

13 Q. But not the books?

14 A. That's correct.

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- 1 Q. Does Exhibit 401, Mr. Byers, accurately reflect
- 2 the rule change that was adopted at the Economy
- 3 Convention?
- 4 A. Correct.

18 Q. Well, let me try this, sir, did Legislative

19 Proposal No. 4 help anyone?

20 A. Say it again.

21 Q. Did it help any student athletes?

22 A. Well, it didn't. No, it did not. It took away

23 money from all athletes. Some of them may not have

24 needed it because they had other access to academic

25 scholarships.

5 Q. So in other words, would you agree that the
6 purpose of Legislative Proposal Number 4 was to save
7 money for the NCAA's members?

8 MR. GRAND: Asked answered.

9 THE WITNESS: For the NCAA member
10 institutions?

11 MR. NAGY: Yes, sir.

12 THE WITNESS: The answer is yes to that,
13 too.

14 BY MR. NAGY:

15 Q. Was Legislative Proposal No. 4 necessary to
16 preserve or promote amateurism?

17 A. No.

18 Q. Was Legislative Proposal No. 4 necessary to
19 promote or preserve competitive equity?

20 A. No.

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6 Q. Before our little break, Mr. Byers, I was about
7 to read you the first of several reasons the NCAA has
8 given regarding its financial aid rules. And the first
9 one, sir, is this: (As read:) The NCAA's financial
10 aid rules promote the creation and enhancement of
11 amateur college athletics as products or activities that
12 are distinct from professional in other amateur
13 athletics. The NCAA's financial aid rules accordingly
14 allow the creation of a product, amateur college
15 athletics, that would otherwise not exist and are
16 accordingly procompetitive.

17 And my question for you, sir, is, do you believe
18 that the NCAA needs to restrict grants-in-aid so that
19 they do not cover incidental expenses in order for
20 amateur college athletics to exist?

21 A. No.

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11 First of all sir, can you tell me, are you
12 familiar with this term "competitive balance"?

13 A. Well, I've heard it used. Yes. I understand
14 what they're saying.

15 Q. Can you tell me, sir, based on your three and a
16 half decades of experience as the NCAA's Executive
17 Director, what does competitive balance really mean?

18 A. Well, it's a term that is used to the benefit of
19 the speaker or the individual that's -- it's an art form
20 that a person likes to use but has no relevancy
21 particularly. Competitive balance is an elastic term
22 that can be stretched in any direction you want to
23 justify a present circumstance. In this case, what the
24 NCAA is trying to defend.

25 And if you want to talk about competitive balance

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1 in the major sports, which are men's football and men's
2 basketball, the competitive balance, the elimination of
3 these articles doesn't enhance competitive balance
4 particularly. It -- again, I'm being repetitive but
5 what I'm trying to get to is that, if you look at the
6 number of power teams in Division I Basketball and you
7 look at the number of power teams in Division I
8 football, the core group of institutions are basically
9 the same. And they can have March Madness and talk
10 about this upset and that, but you go and look at the
11 bracket and see what the by's, the ranked team in each
12 Bracket 1 or 2 and whatever they are, they almost always
13 get into the Final 16 and the Final 4. And that is
14 basically the same group of institutions that are ending
15 up fighting for the title no matter how many the 64, the
16 68 that finally started -- that do start March Madness.

17 I mean -- and you talk about the football power
18 teams, it takes a top 12, 14, 15, they're all there; and
19 they're the ones that get into the big bowl games and
20 get into the playoffs. So it's not -- it is not logical
21 and it defies any kind of reason to use those kind of
22 arguments that these rules and these \$15 in or out
23 affect competitive balance because it's ridiculous.
24 It's unrelated to competitive balance. End of speech.

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10 Is competitive balance a legitimate reason for
11 the NCAA to prohibit its members from allowing
12 grants-in-aid or providing grants-in-aid that include
13 incidental expenses?
14 A. No. It's irrelevant. It's not -- it's not --
15 it's not pertinent at all.

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8 Q. And finally, sir, is it says here, (As read:)
9 The NCAA's financial aid rules help to encourage student
10 athletes to experience college as both students and
11 athletes. In particular, Bylaw 15.02.5 gives student
12 athletes a greater incentive to focus on and greater
13 likelihood to succeed in their education by giving them
14 a financial stake in that education.

15 Do you agree with that statement, sir?

16 A. No.

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12 Do you agree, sir, that providing incidental
13 expenses to a student athlete in the form of a
14 grant-in-aid constitutes pay for play?

15 A. Well, it doesn't constitute any more than the
16 grant-in-aid itself. The grant-in-aid is basic a
17 one-year contract. It's on one year now which I brought
18 out earlier. It used to be four years and they cut it
19 back to one. And a one-year contract sets up the
20 one-year tryout, and the one-year tryout gets rid of all
21 of the players that aren't good enough to play and the
22 coach brings in a whole new group. I'm talking about
23 Division I Basketball. I'm talking about Division IA
24 Football. And that's the way it works. The players
25 that are good enough stay and the others are cut loose

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1 after one year, and they go find another place to play.

2 Q. Uh-huh.

3 A. So the contract, itself, is a contract for
4 athletic performance. I believe that, it's in the book,
5 and I hold that to be self-evident and true. So the
6 grant-in-aid, itself, is a contract for athletic
7 performance and when you tack -- when you tinker around
8 -- when you tinker around with, is it \$15 a month, is it
9 in or out, it's an irrelevancy to the whole question of
10 pay because one year is a pay contract period.

11 Q. Let's move on to the second one, sir.

12 A. Let's do that.

13 Q. Well, let me clarify. I want -- I want to
14 understand this.

15 Do you believe, then, that pay for play is not --
16 is or is not a legitimate reason for prohibiting
17 grants-in-aid that include incidental expenses?

18 A. No, it's invalid. It's an invalid reason.

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11 Q. How about the second part? Do you believe, sir,
12 that allowing student athletes to receive incidental
13 expenses as part of their grant-in-aid undermines the
14 principles of amateurism?

15 A. No.

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23 My question for you, Mr. Byers, is, do you
24 believe, sir, that the NCAA is a monopoly business
25 operated by not-for-profit institutions contracting

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1 together to achieve maximum financial returns?

2 MR. GRAND: Objection. Foundation.

3 MR. NAGY: You can answer, sir.

4 THE WITNESS: My comment has to do with the
5 major league programs of college football and college
6 basketball. I'm talking about Division IA Football and
7 Division I Basketball. Okay. And I agree with a
8 statement I made in the book that they operate a
9 monopoly business and as an exploitation of the young
10 athlete that are engaged in those programs.

13 I'm moving, now, just to the next page. And I'll
14 just move this over here. This is Page 375. You're
15 talking about your bill of rights and the first proposal
16 you make is described here. It's actually going to go
17 from 375 to 376.

18 You say, (As read:) The bill of rights should
19 deal with five issues of freedom and welfare. No. 1,
20 repeal the rule that establishes the NCAA as national
21 arbiter of the term, value, and conditions of an
22 athlete's, quote, scholarship, closed quote, and as
23 controller of the athlete's outside income during his or
24 her collegiate tenure. Where as the NCAA defends its
25 policies in the name of amateurism and level of playing

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1 fields, they actually are a device to divert the money

2 elsewhere.

3 Do you remember writing that, sir?

4 A. Yes, sir.

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?

12 Q. The NCAA's Constitution today, Mr. Byers, says
13 one of the basic principles the NCAA's rules is supposed
14 to promote is the following: Quote, student
15 participation in intercollegiate athletics is an
16 advocacy and student athletes should be protected from
17 exploitation by professional and commercial enterprises,
18 closed quote.

19 Do you believe, sir, that the NCAA's rules
20 promote that purpose?

21 A. NCAA what?

22 Q. The NCAA's rules. Do you believe their rules
23 actually promote that purpose?

24 A. No.

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18 Q. Were you aware that the NCAA currently limits
19 financial aids to no more than one academic year.

20 A. Yes.

21 Q. Can you tell us, Mr. Byers, whether the NCAA has
22 always had a rule limiting financial aid awards to
23 student athletes to a single academic year?

24 A. No, they have not.

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7 Q. Prior to Legislative Proposal No. 39, sir, did
8 student athletes obtain scholarships for four years?

9 A. Oh, yeah. Yes. They all did. I mean, there was
10 -- okay, historic. The historic dual that was fought
11 out was between Oklahoma and Texas. Between -- Texas
12 had four-year awards, Oklahoma gave one. And recruiting
13 between those two institutions is red hot and still is
14 today. So yes, there was one-year and four year and
15 they -- period. I'll stop.

16 Q. And so this rule, sir, eliminated that type of
17 competition between NCAA members?

18 A. True.

19 Q. Would you say, Mr. Byers, that Legislative
20 Proposal 39 was good for student athletes or bad or
21 student athletes.

22 MR. GRAND: Objection. Vague.

23 MR. NAGY: You can answer, sir.

24 THE WITNESS: Well, it was a penalty against
25 student athletes because there would be a process in

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1 recruiting to judge the talent of the player and how
2 long you'd want to give him the grant-in-aid. And if
3 he's a super, super prospect, you're going to give him
4 four years. If he's mediocre, one year. Or you could
5 play games, if you want, and take gamble between the one
6 and four years. So the athlete was immediately deprived
7 of that measure of his skill level and brought down to,
8 they're all one-year, buddy. You perform you'll get
9 another one. If you don't, you're out. And that's the
10 rule. That's the practical rule that was in effect.

11 BY MR. NAGY:

12 Q. Was Legislative Proposal No. 39 necessary to
13 promote amateurism?

14 A. No, it was not.

15 Q. Was Legislative Proposal No. 39 necessary to
16 promote competitive balance?

17 A. No.

18 Q. Do you believe, Mr. Byers, that there was any
19 legitimate basis for the NCAA's decision to adopt
20 Legislative Proposal No. 39?

21 A. Well, the only legitimate basis was to eliminate
22 the cheating going on between those guys that were
23 trying to award four years or some mix of that and those
24 that just wanted to have one-year and none. And the
25 one-year people won and took control of the situation.

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1 Q. I'm a little -- I don't know about that. I want
2 you -- I'm sorry for everyone else sitting here. I want
3 you to bore me a little bit with those details.

4 When you say "eliminating the cheating," what
5 cheating, sir, are you talking about?

6 A. Well, it was in the book. They would leave. If
7 you're recruiting an athlete between Oklahoma and Texas
8 and he's a superstar, you're going to -- and if you're
9 from Oklahoma, you're going to tell that guy, you've got
10 a deal for the whole career. The rule says he can't do
11 that. Oklahoma's rules says you can only do one-year.
12 But they do whatever they -- necessary to guarantee that
13 guy whatever way it was, that you've got the deal and if
14 you get hurt, don't worry about it, you've got the full
15 four years, even though, the rule for Oklahoma was only
16 one-year at a time.