

EXHIBIT P

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

In Re: NCAA Student-Athlete Name and
Likeness Licensing Litigation
Case No.
4:09-CV-1967-CW

* MAY CONTAIN CONFIDENTIAL INFORMATION *

- - -

VIDEOTAPED DEPOSITION OF
DR. ROBERT McCORMICK
NOVEMBER 21, 2013
9:30 A.M.

ALSTON & BIRD, LLP
1201 WEST PEACHTREE STREET
SUITE 4900
ATLANTA, GEORGIA

Objection, 702. Plaintiffs object to the entirety of the NCAA's designation of Dr. McCormick's deposition. Plaintiffs have not sought to elicit testimony from Dr. McCormick at trial. Moreover, the bulk of the NCAA's designations are to questions and answers beyond the scope of Dr. McCormick's expert reports and expertise, as Dr. McCormick has repeatedly noted at his deposition. That testimony is inadmissible and should be stricken.

REPORTED BY:
STEVEN S. HUSEBY, RPR
CCR-B-1372

Designation Color Key
Blue = NCAA Affirm Desigs.
Orange = Pls' Counter Desigs.
Fuchsia = NCAA Rebuttal Desigs

1 A. I used to be, but I'm very little
2 anymore.

3 Q. Why is that?

4 A. Just shortage of time, children,
5 multiple households, work. You've got to make
6 some choices, and I became a cyclist and other
7 activities took over my Sundays. And I watch
8 professional football, but I'm not -- I don't
9 follow it was avidly as I do college.

10 Q. Why you did stick with college football?

11 A. Well, I live in Clemson. It's kind of
12 hard to miss it, you know.

13 Q. What do you enjoy about college
14 football?

15 A. Almost -- almost everything about it.

16 Q. For example?

17 A. The pageantry, the historical -- my
18 in-depth relationship with college football,
19 having taught students and known them personally
20 and been a part of their lives and having close
21 friends who have played football and knowing the
22 coaches and the administration and being involved
23 in it at fundamental levels.

24 Q. Being part of it?

25 A. Yes.

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1 Q. What do you mean by pageantry?

2 A. Running down the hill, cheerleaders,
3 tailgating, six World War II airplanes flying
4 over Death Valley Saturday at quarter to 12:00,
5 fireworks, talk shows, people wearing orange.

6 Q. Moonshine?

7 A. Moonshine. Brent Musburger.

8 Q. All of that?

9 A. And more.

10 Q. Well, what else?

11 A. Tiger paws, orange. My wife's a gator
12 fan, so thank God they are orange as well.

13 It's part of American fiber. It's part of
14 the university. I've written about it.

15 Q. What have you written about?

16 A. The relation between athletics and
17 academics. It's been part of my research in
18 general.

19 I'm sorry for speaking so fast. The relation
20 between athletics and academics. I'm a sports
21 economist.

22 Q. What's your background in antitrust?

23 A. I took a field in graduate school in
24 industrial organization, which antitrust is a
25 component of it. I was tutored and mentored by

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1 do good?

2 A. I wouldn't want to put a label on the
3 classes, but it's not a big deal at the
4 University of Chicago. It's a pretty big deal at
5 the University of Illinois. It's different. And
6 so it might be a scaler, okay.

7 The University of Chicago made a business
8 decision that they didn't want to be engaged in,
9 let's call it Division 1 but high-level athletic
10 competition with other universities 50, 70 years
11 ago. And the Ivys had made a similar business
12 decision. And some -- so it matters more to some
13 schools than others.

14 Q. Sure. Athletics matter -- strike that.

15 Different schools have taken different
16 approaches to athletics?

17 A. Different schools have different
18 business plans about how to achieve what they
19 consider good to be and what their mission is and
20 what -- how they are organized, yes, I think we
21 agree on that statement.

22 Q. At Clemson do you believe the college
23 athletics program is part of their mission to do
24 good?

25 A. I don't think it's part of their mission

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1 to do good. I think it's an input to the process
2 of doing good.

3 Q. At Clemson do you believe the college
4 athletics program is part of their efforts to do
5 good in accordance with their mission?

6 A. I think -- again, I'd just say exactly
7 what I just said. I think athletics contributes
8 to the mission of Clemson University but have
9 input to the process of doing good.

10 Q. In what way?

11 A. I have written about that extensively,
12 and so -- but I haven't read those documents
13 lately. So I can only -- I didn't prepare myself
14 for that lecture, so let me caveat. Please
15 accept that caveat. The university -- people
16 like to belong to something, and people work
17 harder when they feel they are part of something.
18 It's part of my theory of management, managerial
19 economics, let me say it that way.

20 And belonging to something then gives you a
21 claim to it, and so I think that's the,
22 fundamentally the most important role that
23 intercollegiate athletics plays as part of the
24 university mission, is to create a sense of
25 oneness amongst the students and then, of course,

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1 amongst the alumni.

2 Practically it -- it's part of a physical

3 education part of educating young minds. It's

4 part of teaching young people about the --

5 overcoming adversity and how to manage success,

6 and there's a lot more.

7 It helps to raise money that support

8 philanthropy, and so that's just a piece of it.

9 There's a good bit more, and I would want to take

10 some time to prepare the full lecture on it but

11 my written work speaks for itself.

12 But I've elaborated that on in my own mind

13 that I haven't written so much about, but I gave

14 you a taste of it now.

15 Q. Do you think this is -- what you talked

16 about in terms of Clemson, do you think it would

17 be significantly different at other Division 1

18 universities in terms of the role of the college

19 athletics program in the efforts of the

20 university to do good?

21 A. I suspect that similar -- can I add

22 something? One other thing that I think is most

23 important, a function of intercollegiate

24 athletics at the university is to provide a

25 metric on the quality of the management team

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1 add I don't know the answer and I wouldn't make a
2 list even if -- that would not be the way I would
3 do it. And so, no, I can't answer that for a lot
4 of reasons.

5 BY MR. SINGLA:

6 Q. Do you have any basis to believe that if
7 the NCAA rules that are being challenged were
8 eliminated, that anyone would pay student
9 athletes for their, quote, name, image and
10 likeness rights, end quote, to use in the live
11 broadcast of sporting events?

12 MR. GANKENDORFF: Same objection.

13 THE WITNESS: And let me -- I think
14 it's a good time for me to issue the following
15 caveat.

16 A large number of these questions, which I've
17 freely answered, are beyond the scope of my
18 inquiry, and I do not intend to testify about
19 them. This falls into that category. With that
20 said, the answer is I don't know.

21 So I'm being asked questions about which I
22 wasn't asked to render an opinion and about which
23 I do not intend to testify and will not testify,
24 and so I don't -- I don't have an answer to your
25 question.

1 BY MR. SINGLA:

2 Q. Now, I appreciate you're telling me
3 these are things you do not intend to testify
4 about and you have not expressed an opinion
5 about. I appreciate that, but I would like to
6 make clear because I'm entitled to answers to
7 questions, and I think an appropriate answer
8 would be you don't know, if you don't know. I'm
9 going to ask my question again.

10 A. Okay.

11 Q. Do you have any basis to believe that if
12 the NCAA rules that are being challenged were
13 eliminated, that anyone would pay student
14 athletes for their name, image and likeness
15 rights to use in the live broadcast of sporting
16 events?

17 MR. GANKENDORFF: Same objection.

18 BY MR. SINGLA:

19 Q. Do you know?

20 A. I do not.

21 Q. You do not know?

22 A. I do not.

23 Q. You do not know?

24 A. I do not know.

25 Q. Thank you.

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1 I think there are others. I don't intend to
2 testify --

3 Q. Well, one of the things that you believe
4 are not changing -- strike that.

5 What are the things that you believe would
6 not change if the money was transferred from the
7 universities, in your view, to the student
8 athletes?

9 A. Well, the only thing I've been assigned
10 to task and think about in that regard is the
11 distribution of talent, and I've already said to
12 you and we've already long discussed that I think
13 the players would end up at the same places.

14 Q. Would they play the same number of
15 games?

16 A. If the only thing we changed was the
17 prohibition on -- yes, because that's not
18 determined by them. It's plausible, I suppose,
19 that -- that the negotiations could lead to
20 something different, but that's beyond the scope
21 of what I've been asked to testify to and don't
22 intend to testify to on that point. I would have
23 to think way more carefully about that.

24 Q. So you're not offering any opinion that
25 the number of games would change?

1 A. I do not intend to testify on the number
2 of games.

3 Q. So in a sense would it be fair to say
4 that your view is that if the money was
5 reallocated, it would not change either the
6 allocation of athletes to schools or the output
7 of games?

8 A. I think the output of games, holding
9 constant the rules on limitation of number of
10 rules, if you are willing to assume that those
11 don't change then I think what you said is
12 correct.

13 Q. And so when you say --

14 A. I don't intend to testify on the latter
15 point.

16 Q. Okay. When you say nothing else
17 changes, you're only talking about the allocation
18 of students to schools?

19 A. Correct. As I said and repeat now, I
20 think there are other changes but I've not been
21 tasked with that, and I don't intend to testify
22 to them.

23 Q. So is your entire discussion about rent
24 theory only to support your idea that the change
25 in rules that the plaintiffs are proposing will

1 Q. Okay. Well, for now let's assume
2 there's not an alternative to the Little League.

3 A. But it's critical, you understand.

4 Q. I understand that's critical. So --

5 A. Assuming away the critical part of the
6 question.

7 Q. Okay. Let's assume --

8 A. So why do you care what my answer is?

9 Q. So let's take the Little League, and
10 let's assume that the Little League has a rule
11 that restricts competition for athletes --

12 A. Okay.

13 Q. -- by teams, and that the Little League
14 makes a lot of money. Let's say it makes
15 80 million dollars.

16 A. Okay.

17 Q. Strike that. Let's say it makes
18 10 million dollars a year.

19 A. Okay.

20 Q. And that the athletes on the Little
21 League don't have opportunities to go earn income
22 elsewhere and that the athletes on the Little
23 League don't have a comparable league, another
24 league to go play with.

25 Now, why is the Little League not an

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1 antitrust violation?

2 Why is it not a cartel?

3 A. Because all the counterfactuals are

4 wrong. I mean, all the assumptions are wrong.

5 Q. Okay. If the assumptions were true,

6 would you agree it's a cartel?

7 A. Well, I don't know. It means -- you

8 know, if bullfrogs had wings, they would fly.

9 Q. Well, yeah, that's right.

10 A. Yes, if bullfrogs had wings, they would

11 fly.

12 Q. So if what I said about the Little

13 League is true, then it's a cartel?

14 A. I didn't say that.

15 Q. Well, why would it not be a cartel?

16 A. Because -- because I will not answer a

17 question which I know the assumptions to be

18 incorrect.

19 Q. What are the assumptions that are

20 incorrect?

21 A. Well, first of all, kids -- I played

22 basketball, football, baseball, track. Now

23 there's soccer and field hockey.

24 Q. We're talking about baseball.

25 A. I know, but you don't have to just play

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1 baseball. You can play basketball. It's the
2 same time of the year. That's competition for
3 athletes.

4 Q. Okay, so playing other sports in your
5 view is competition for athletes?

6 A. Of course. I said that already. I said
7 Bible salesman or some other thing. I said there
8 has to be less than a perfectly elastic supply in
9 order to cartelize against it.

10 And we're talking about children and --

11 Q. Why does children matter?

12 A. It matters a lot.

13 Q. Why?

14 A. Because they aren't freewill
15 decision-makers.

16 Q. So what?

17 A. So everything matters in the world with
18 children because they aren't freewill -- capable
19 of making freewill, adult decisions.

20 Q. So one reason you think that Little
21 League is not a cartel --

22 A. I didn't say that. I said I'm unwilling
23 to analyze the case without knowing a lot more
24 facts.

25 Q. So one of the facts that bothers you

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1 about me suggesting Little League as a cartel is,
2 first, that they are children?

3 A. No facts that you said bother me about
4 you suggesting it's a cartel. I don't care
5 whether you suggest it or not.

6 I'm only unwilling to analyze whether the
7 Little League is a cartel or not until I know a
8 lot more, period. No more answers on this
9 question.

10 Q. So what you're saying about the Little
11 League is that the kids -- they are kids and that
12 the kids have other sports they can play. Is
13 there anything else?

14 A. I'm not answering any more questions
15 about this based on my previous answers.

16 Q. You're refusing to answer my questions?

17 A. Yes, sir.

18 Q. Are you familiar with the amateur golf
19 tour?

20 A. No, sir.

21 Q. So are you familiar with the pro golf
22 tour?

23 A. There are multiple pro golf tours.

24 Q. Are you familiar with the amateur golf
25 circuit?

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1 A. I don't know.

2 Q. Give me -- you just said under oath.
3 You just said under oath, you said that their
4 education could matter. Tell me now, tell the
5 camera, tell the jury, how could their education
6 matter?

7 A. I don't know, but it might. Education
8 matters --

9 Q. How?

10 A. It matters in a lot of areas.

11 Q. How could it matter as to whether the
12 amateur golf league is a cartel?

13 A. Because it matters in a lot of areas,
14 and I haven't studied it and, therefore, I'm not
15 willing to testify under oath that it doesn't
16 matter until I've thought about it and studied
17 the problem.

18 Q. Let's move on. Let's turn to your quote
19 from Professor Becker.

20 A. Okay. Which one? I think there's a
21 couple.

22 Q. Footnote 11.

23 A. Okay.

24 Q. Now, this is a chapter by Professor
25 Becker in this book --

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1 Q. Okay. Now, he says, Absent the rules
2 enforced by the NCAA --

3 A. I'm sorry, where are you, please?

4 Q. The first paragraph that you were
5 quoting from him.

6 A. Okay.

7 Q. He says, Absent the rules enforced by
8 the NCAA, the competition for players would
9 stiffen, especially for the big stars, and they
10 would receive large scholarships and various
11 gifts of cars, housing and cash to themselves and
12 their families.

13 Do you see that?

14 A. I do.

15 Q. What does he mean?

16 A. Other than what he said?

17 Q. Can you explain what we're talking about
18 here?

19 A. I don't think I can say it any better
20 than Dr. Becker.

21 Q. Why would the big stars receive --
22 strike that.

23 What does he mean by big stars?

24 A. You'd better ask him.

25 Q. Well, you're relying on this, aren't

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1 you, sir?

2 A. I am.

3 Q. What's your understanding of what he

4 means by big stars?

5 A. The ones that get paid the most.

6 Q. Who is that going to be?

7 A. The ones that are big stars.

8 Q. And why would they be big stars?

9 A. Because they got paid a lot.

10 Q. And why did they get paid a lot?

11 A. Because they generated a lot of income.

12 Q. And why would they generate a lot of

13 income?

14 A. Because people like watching them.

15 Q. And why would people like watching them?

16 A. Because they are big stars.

17 Q. But why?

18 MR. GANKENDORFF: Asked and

19 answered.

20 THE WITNESS: Why people like
21 athletics is really an intriguing question.

22 BY MR. SINGLA:

23 Q. Not athletics; athletes.

24 A. They like athletics, and they like

25 people who do it well. So I think -- I think we

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1 good ones that aren't very popular.

2 Q. All right, so that's fair. So the big
3 stars are those that have sort of a very
4 appealing combination of both athletic skill and
5 personality?

6 A. Perhaps, and maybe more than that.
7 Maybe they are really smart. Maybe they are
8 really good looking. I don't know.

9 Q. Okay. And what portion -- do you have a
10 sense of what portion of the total number of
11 athletes in the Division 1 would be big stars
12 that we're taking about here?

13 A. Well, I mean, it's a distribution,
14 right?

15 Q. Sure.

16 A. And so 5 percent of the people are in
17 the top 5 percent, 10 percent in the top
18 10 percent, half are in the top half.

19 Q. That's not really answering -- giving me
20 much information.

21 A. Well, it is. It's answering it as
22 carefully as I know how. Big is some --

23 Q. Do you have a sense of --

24 A. Some, some -- well, the distribution is
25 normal, pretty much. Well, it might be log

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1 normal.

2 Q. You think it's normal distribution?

3 A. It's probably log normal.

4 Q. It's probably what?

5 A. Log normal. I think -- as I have looked

6 at the data most recently, I think the pro rata

7 rule applies; that 20 percent of the professional

8 athletes get 80 percent of the income, so there's

9 a data point for you.

10 Tiger Woods --

11 Q. Do you think that would apply in the

12 NCAA?

13 A. It's a good starting place. I would

14 want to look harder and want some data. If we

15 didn't have the cartel I could answer that

16 question better, but I would start from that

17 proposition.

18 Again, I'm not testifying on any of this

19 stuff.

20 Q. And what are the large scholarships he's

21 talking about?

22 A. More than they get now.

23 Q. In scholarships?

24 A. Well, he means payments.

25 Q. Oh, he means payments?

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1 question.

2 Q. Now, it says, The NCAA sharply limits
3 the number of athletic scholarships. Do you see
4 that?

5 A. I do.

6 Q. Now, why would the NCAA limit the number
7 of scholarships?

8 And let's talk about actual tuition
9 scholarships not just grants and aid and those
10 type of things. Why would the NCAA want to limit
11 the number of scholarships that could be given?

12 A. To prevent competition.

13 Q. And by here I mean, you know, giving
14 free tuition.

15 A. To prevent competition.

16 Q. What do you mean, prevent competition?

17 A. So that there won't be competition. So
18 that --

19 Q. For what?

20 A. For the number of athletes on a team.

21 Q. But does it cost the university anything
22 to offer these scholarships of free tuition?

23 A. It would appear to, yes.

24 Q. How does it cost the university anything
25 to offer free tuition?

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1 I mean, the university classrooms are there,
2 the teachers are there.

3 A. Every student that you don't collect
4 revenue from is -- it cost you what you could
5 have gotten from a student you replaced them with
6 a tuition-bearing student.

7 Q. I don't understand.

8 A. Okay. So if I give you a scholarship
9 and I deny him entrance to the university and he
10 would have paid, then by giving you the
11 scholarship I give up the 20,000 dollars I would
12 have gotten from him.

13 Q. So you're saying when the university
14 gives the athlete a scholarship, it costs the
15 university the equivalent as what the tuition
16 could have been from a paying student?

17 A. That's one way to think about it.
18 That's not the only way. There's out-of-pocket
19 costs as well.

20 Q. So there could be additional costs on
21 top of the tuition, foregone tuition?

22 A. Yeah, I don't understand these line of
23 questions. It seems trivial to me, but maybe I'm
24 lost in the fog.

25 Q. It's okay. I just want to make sure I

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1 understand what you're saying.

2 A. Well, I want to make sure I'm

3 understanding what you're saying because to give

4 somebody something costs something.

5 Q. So to give someone -- your view is to

6 give someone a scholarship costs the equivalent

7 of the cost of tuition that you would otherwise

8 get?

9 A. That's one way to think about it.

10 Q. What other ways would you think about

11 it?

12 A. What it is that you spend if you

13 wouldn't have given that scholarship to somebody

14 else.

15 Q. What do you mean?

16 A. Well, if you have to -- if you have to

17 build a dorm to house the people.

18 Q. I see. There could be additional costs

19 on top of the cost of tuition?

20 A. There could be.

21 MR. SINGLA: Now, let's take a break
22 here because we're out of tape.

23 THE VIDEOGRAPHER: Off the record at
24 4:17 p.m.

25 (Brief recess.)

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1 segments of different populations take over
2 sports over time, and that's part of our sports
3 literature.

4 And the abiding answer in most of those cases
5 is lack of alternative income-earning
6 opportunities. So I think that it would be a
7 reasonable inference to draw from the literature
8 that the professional sports tend to be populated
9 over different periods of time by people who come
10 from more modest means than the average person.

11 Q. Okay.

12 A. That's all. But I don't -- I have not
13 myself done anything other than I just described
14 to you.

15 Q. Now, have you done anything to analyze
16 in this case in your reports the extent to which
17 NCAA, FBS football and Division I Basketball
18 athletes remained poor after they graduate?

19 A. Again, I have a wealth of personal
20 experience, and there's no literature on that to
21 my knowledge so I don't have nearly the breadth
22 of understanding that I do, but -- and there's
23 quite a divergence there. Some do very well, and
24 others don't do so well. But I think by and
25 large the literature says that they all do better

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1 than they would have otherwise.

2 Q. What do you mean, they all do better

3 than they would have otherwise?

4 A. Had they not participated in sports;

5 that sport enhances them as a -- on average.

6 Again, we're outside, way, millions of miles

7 from my testimony and my -- my charge in this

8 case. I do not intend to testify about this.

9 Q. Okay. When you say they would have done

10 better than they would have otherwise, do you

11 mean in terms of income?

12 A. Life.

13 Q. Does that include income or broader than

14 income?

15 A. Broader. I'm not tendering myself as an

16 expert in that matter.

17 Q. Have you done anything to analyze the

18 value of the scholarships, the economic value of

19 the scholarships to student athletes in

20 Division 1 FBS football and Division I

21 basketball?

22 A. Can I ask you a question? Do you mean

23 to the athlete or to the university?

24 We've had this --

25 Q. No, I meant to the athlete. Should I

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1 Q. And so you're looking at how the
2 athletes did in their grades, if I understand, as
3 compared to non-athletes?

4 A. Yes, and -- that's correct, before and
5 after the restrictions.

6 Q. Now, how does that help you analyze what
7 their lifetime earnings would be as athletes, as
8 opposed to if they were non-athletes?

9 A. Because with the scholarship, that puts
10 them into the athletic arena, and then the
11 athletic arena presumably causes the effect on
12 their grades.

13 Q. The improvement in their grades?

14 A. Or disimprovement, whatever it is.

15 Q. And so why would that translate to
16 income?

17 A. Because if you do better in school, you
18 are probably going to do better in life. Or if
19 you do worse in school, you're going to do worse
20 in life.

21 Q. Okay. And so do you think looking at
22 lifetime earnings is a better way -- strike that.

23 Do you think looking at the athlete's
24 lifetime earnings in this way -- strike that.

25 Do you think that looking at the lifetime

1 earnings differential that results from being a
2 student athlete, as opposed to being a nonstudent
3 athlete, is a reasonable way to measure the value
4 of being an athlete to the athlete?

5 A. I think there are others who are better
6 qualified to answer that question. I have not
7 put myself to that. That's a -- human resource
8 economists have studied this problem a lot, and
9 they are the right people to ask that question.

10 Q. What is a human resource economist?

11 A. Those are people who look at those kinds
12 of questions, what's the impact of education
13 on -- look at gender differences and earnings,
14 look at why women get married at ages younger
15 than men, by and large. Those are human
16 resource -- human resource economists.

17 Q. And do you know, for instance, Jim
18 Heckman?

19 A. I do. I don't know him personally, but
20 I know of his reputation.

21 Q. Is he the kind of human resource
22 economist you're talking about?

23 A. He is one of the -- he is a qualified
24 person in that field, yes. I think he's been
25 recognized by people much more famous than me.

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1 Q. He's probably one of the leading human
2 resource economists --

3 A. I would put him in that camp, yes.

4 Q. I just want to make sure the record is
5 clear. He is probably one of the most recognized
6 human resource economists in the world?

7 A. I would put him in that camp.

8 Q. Now, before you got involved in this
9 case, did you ever use any kind of public -- any
10 kind of writing or research of the term NIL or
11 name, image and likeness?

12 A. The only way to carefully answer that
13 would be to look at my vitae, but I don't have
14 any recollection as I sit here without going
15 through a long explanation. It wasn't a term of
16 art that I used regularly so probably not, but
17 I've been in this business a long time and done a
18 lot of work.

19 So it's possible you could dredge it up, but
20 I wouldn't know where to start to look at other
21 than my vitae.

22 Q. As a sports economist, have you ever
23 studied professional leagues?

24 A. I have looked at -- I've done some work
25 about the NBA, players in the NBA. I'm sorry.

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1 the late 1980s and thought it should be part of
2 the academic curriculum, and we put it in and
3 it's flourished.

4 Q. So in your entire life, looking at
5 sports and sports economics in various ways, have
6 you ever come across an amateur sport in which
7 the athletes received more than living expenses,
8 training expenses, and those kinds of things?

9 MR. GANKENDORFF: Object to the
10 scope.

11 THE WITNESS: Not professionally. I
12 have not done -- I have not done any data
13 analysis or written about or read papers about.

14 BY MR. SINGLA:

15 Q. Have you ever come across in a news
16 article or any other way any discussion or any
17 mention of an amateur sport in the United States
18 in which the athletes receive more than living or
19 training expenses?

20 MR. GANKENDORFF: Same objection.

21 THE WITNESS: I can't -- I can't
22 tell you one if I have.

23 BY MR. SINGLA:

24 Q. Now, you've talked repeatedly about the
25 elasticity of demand of the athletes.

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1 not studied anything closely, remotely carefully
2 enough to have an opinion about that.

3 Q. Is there any other outcome that you
4 think is probable, other than the market
5 splitting into two the way we've just discussed,
6 with some teams taking the Ivy route and some the
7 Alabama route?

8 MR. GANKENDORFF: Object, scope.

9 THE WITNESS: Well, first of all, I
10 didn't agree with you on that point, so all I
11 said there's a possibility it would break out.

12 There's a possibility that it would -- that
13 100 and some odd schools would more or less go
14 the same route. I think there's -- and there's
15 other outcomes that are possibly in the middle.

16 So I really have not studied it and don't
17 want to suggest to the Court that I could give an
18 informed expert opinion.

19 BY MR. SINGLA:

20 Q. What other possibilities are in the
21 middle?

22 MR. GANKENDORFF: Same objection.

23 THE WITNESS: Well, there's a
24 myriad. I mean, there could be like everybody
25 gets 10,000 dollars or quarterbacks get 20,000

1 dollars and linemen get 10,000 dollars. Leagues
2 could emerge, or schools could make individual
3 decisions and be part of a league that had
4 different rules, or there could be no rules.
5 There's any number -- I mean, an infinite number,
6 literally an infinite number of possibilities.

7 BY MR. SINGLA:

8 Q. How would anybody be able to determine
9 then what -- if the NCAA's rules were eliminated,
10 then what would happen?

11 A. Well, like I said, you look at
12 professional leagues and -- but as one guidepost,
13 but I think in terms of -- depending on what the
14 scope of your inquiry is.

15 Do you want to know what higher education is
16 going to look afterwards? I think we would have
17 to study that. I don't have an opinion. I mean,
18 even to think about how to do that is a hard
19 problem.

20 Q. So you think it a very difficult
21 question to say what would happen if the NCAA's
22 rules on compensation of athletes were
23 eliminated?

24 MR. GANKENDORFF: Objection, scope.

25 THE WITNESS: Yeah, nobody has --

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1 nobody has addressed that question as far as I
2 can tell. That's not before anybody in this
3 case, and I've not heard anybody talk about that.

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4 BY MR. SINGLA:

5 Q. Do you think there's a different answer
6 if we're talking about just permitting schools to
7 pay 50 percent of broadcast revenues to students?

8 Do you think that's a different question?

9 MR. GANKENDORFF: Same objection.

10 THE WITNESS: Yeah, I think that
11 this case is about a very fine point, and that's
12 all that I -- I think that anybody has put
13 attention to in order to render a really good
14 opinion about what the future outcomes will be.
15 We're talking about names, image and likeness.

16 We're not talking agents turning football
17 players into employees or anything remotely
18 related to paying them full value for whatever
19 their marginal product might be. That's not the
20 scope of my assignment, nor do I understand it to
21 be the scope of anybody else's assignment in this
22 case.

23 So I don't have an opinion or don't intend to
24 testify and don't think I should say anymore
25 about that because I don't -- I'm not qualified.

1 I just don't think I know enough.

2 BY MR. SINGLA:

3 Q. So your view is that this case is only
4 about whether student athletes should be paid for
5 the use of their name, image and likeness rights?

6 A. I don't even think it's about that. I
7 think it's about whether student athletes should
8 have the right to negotiate for their names,
9 image and likeness and whether -- or whether or
10 not a cartel -- whether there should be a cartel
11 that doesn't allow schools to shop their names,
12 image and likeness rights. That's what I think
13 this case is about. Nothing else.

14 Q. What do you mean, shop their name, image
15 and likeness rights?

16 A. To go and say I'll play for you if I --
17 if you grant me them or you grant me some of them
18 or to negotiate their names, image and likeness
19 rights.

20 Q. If there were a free, unfettered market
21 in the sense of compensation for student
22 athletes, do you believe student athletes would
23 be paid for their name, image and likeness -- the
24 use of their name, image and likeness in
25 broadcasts if, in fact, the courts did not

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1 believe that students had any right to block

2 broadcasts of sports events?

3 A. I have no idea.

4 Q. Can you think of any instance that

5 you're familiar with where someone is paid for a

6 right that the courts do not recognize?

7 A. Absolutely. Prostitution.

8 Q. Okay. Anything else?

9 A. Lots of -- illegal drugs. In lots of
10 the world --

11 Q. In the United States.

12 A. Oh, I'm sorry. There's place probably
13 where property rights are ill-defined over land
14 where somebody has what amounts to squatter's
15 rights and that the courts wouldn't recognize.

16 Squatter's rights are recognized, so let's
17 talk about rights that looks like squatter's
18 rights that aren't. And you could rent a room to
19 them or use something you've stolen and you could
20 sell, so there's lots of examples.

21 Q. So things that are stolen, squatter's
22 rights, prostitution, drugs. Any other kinds of
23 rights that you believe people are paid for that
24 the courts do not recognize?

25 MR. GANKENDORFF: Beyond the scope.

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1 THE WITNESS: There must be others.

2 I've just never put myself to that question.

3 BY MR. SINGLA:

4 Q. Would you agree that whether student
5 athletes would be paid for their name, image and
6 likeness rights, absent whatever restraints are
7 being challenged, has to depend on whether courts
8 recognize the existence of those name, image and
9 likeness rights?

10 MR. GANKENDORFF: Calls for a legal
11 conclusion.

12 BY MR. SINGLA:

13 Q. As an economic matter; that they are not
14 going to get paid if the rights don't exist?

15 A. I think I've already testified about
16 that rights question. We went into it in some
17 profound and complete detail. I don't want to
18 add anything other than what I've already said
19 about that.

20 I think there are rights that exist outside
21 the court system.

22 Q. But my question is, do you think that
23 there's any basis to conclude that student
24 athletes would be paid for specific uses of their
25 name, image and likeness rights if courts did not

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1 Q. Right.

2 A. And so I don't mean to suggest that I
3 thought those people were doing anything wrong.

4 Q. Oh, no, of course not.

5 A. Okay. Same thing here. Same thing.

6 Q. So if a university makes a choice that
7 it doesn't want to maximize its television
8 revenues, that might be consistent with its
9 mission and be perfectly fine?

10 A. I want to admit that some universities'
11 missions may not allow it to have as much
12 television revenue as they could possibly have.

13 Q. But you would agree that it may be
14 perfectly consistent with the missions of Clemson
15 and other Division 1 schools to try to gather as
16 much television revenue as they can?

17 A. Precisely.

18 Q. Now --

19 A. I want to admit a smorgasbord of
20 opportunities there, depending upon admission.

21 Q. Right. Now, do the universities -- do
22 you think there's anything improper about the
23 universities paying college coaches whatever the
24 market bears, sort of these high salaries that we
25 see?

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1 A. Again, I give the same answer.

2 Q. Which is?

3 A. It's mission specific. It depends upon
4 what the university sets itself out to do, what
5 its morale code is, what its mission is, what it
6 wants its student to achieve in life.

7 I have to know more about that in order to
8 give -- I wouldn't want to give one answer fits
9 all.

10 Q. Okay. So it's not obvious to you that
11 the high salaries you see for some head coaches
12 for the sort of the biggest Division 1 teams,
13 that there's something wrong with that or
14 inconsistent with that, in that with university
15 missions; it's not obvious?

16 A. Not per se.

17 Q. You would have to look at university by
18 university?

19 A. That's the way I would want to do it if
20 somebody asked me to, yes.

21 Q. Can you think of a university where you
22 believe the amount that they are paying the head
23 coach is inconsistent with the school's mission?

24 A. I haven't put myself to that job.

25 Q. Have you looked at what is causing the

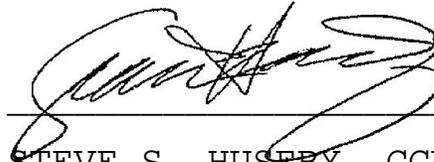
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1 I was contacted by the offices of
2 Huseby, Inc. to provide court
3 reporting services for this deposition.
4 I will not be taking this deposition under
5 any contract that is prohibited by O.C.G.A.
6 15-14-7 (a) or (b).

7 I have no written contract to
8 provide reporting services with any party
9 to the case, any counsel in the case, or
10 any reporter or reporting agency from whom
11 a referral might have been made to cover
12 this deposition. I will charge my usual
13 and customary rates to all parties in the
14 case.

15 This, the 29th day of November, 2013.

16
17



STEVE S. HUSEBY, CCR-B-1372

18

My Commission Expires

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January 20th, 2015.

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