

GAME CHANGE: THE NCAA'S NEW AUTONOMY STRUCTURE

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I. INTRODUCTION

Wilson Raines: If everybody can take a seat. We are about ready to get started. Thank you everybody for coming out today it is an honor. We have been doing this for several years and we are the sports law review. The symposium has been great in the past and we have another great panel for you today. Professor Gershon is going to be our moderator and he is going to introduce the guests when he comes up here in just a second. But I would like to think a lot of our law school staff including Paul Bennett, Jenny Kate Lester, GiGi Jackson and Macy Edmonson helped put all of this together, my executive board for the Mississippi Sports Law Review and members as well. We are looking forward to a great discussion a great panel Great day and hopefully great game tomorrow as well. So thank you again for being here.

Dean Gershon: Well Wilson did not introduce himself but he is the editor-in-chief of the Sports Law Journal and they have done a great job. Some students came to me in 2011 and said we want to start a sports law review and we want to do an annual symposium. They put together such a great proposal that I could not say no. I could not be more proud as to what is happened over the past five years this is the fifth an annual symposium had an something but now has a life of its own and continues to go thanks to the work of great students, so I want to thank them. This week we had elections and it seems like politics and nowadays divide us into various categories and labels but today we are not democrats, republicans or independents we are just people interested in

sports and interested in some of the changes happening particularly around college sports.

It is now my pleasure to introduce our panelists today and it really is a fantastic panel. I will start here with Bill McGillis, who is on my nearest right.

II. PANELIST INTRODUCTIONS

A. Bill McGillis

Bill was named the sixth full-time Director of Athletics at the University of Southern Mississippi in the summer of 2013. He served as the Executive Associate Athletic Director at the University of South Florida and in that role; he was the sports administrator for the football, baseball and softball programs. He was responsible for leading the department's revenue generating units including marketing, ticketing sales, licensing, merchandising, and communications. He brought to Southern Miss more than twenty-five years of administrative experience in intercollegiate athletics. Prior to his tenure at the South Florida he served as Director of Athletics at the University of Evansville from 2002 until 2007. At Evansville, he initiated improvements to the University's basketball and weight room facilities and increased scholarship support and funding. McGillis earned his Bachelor of Arts degree in Sports Administration from Saint Thomas University in Florida in 1984 and graduated from the Sports Management Institute Program in 1986. He and his wife, Margie, both are natives from Seattle and have five children, sons Jordan, Taylor and Will, and daughters, Marissa and Gabreial. Please welcome Bill McGillis.

B. Leeland Zeller

To his right, is Leeland Zeller. Mr. Zeller is the Associate Director of Academic and Membership Affairs for the NCAA. In his role, he oversees the legislative process including the process, dealing with today's topic, on autonomy and the autonomy structure. So, he has been very involved in that process and we are really lucky to have him today. He worked in athletic compliance at Washington State University from 1997 to 2002. He is a graduate from the University of Idaho School of Law having

also received his undergraduate at BYU. His involvement in formulating the new governing structure from the NCAA is going to be very instructive today. We are glad to have Leeland Zeller.

C. Greg Sankey

In the center, Greg Sankey is the eighth commissioner of the Southeastern Conference. He ascended to that role on June 1, 2015, after serving on the SEC staff for thirteen years in various leadership roles. He joined the SEC staff in 2002 as the Associate Commissioner and was elevated to the Executive Associate Commissioner and Chief Operating Officer in 2012. Prior to joining the SEC staff, he was the Commissioner of the Southland Conference for nearly seven years. He joined the Southland Conference staff in 1992 where he served as both Assistant and Associate Commissioner before he was named Commissioner in 1996, at the age of 31. Prior to his time at the Southland Conference he was Director of Compliance and Academic Services at Northwestern State University in Louisiana. While at Northwestern State, Sankey also coached the Demons' golf team for two years. Previously to his tenure at Northwestern State, he was Director of Intermural Sports at Utica College in upstate New York. A native of Auburn, New York, Sankey earned his Master's Degree from Syracuse University and undergraduate degree from State University of New York College at Cortland. Everyone please welcome, Commissioner Sankey.

D. Ross Bjork

To his right is someone who probably needs no introduction. Ross Bjork was announced on March 21, 2012, as the seventh full time Director of Athletics at Ole Miss, at the age of 43. He is the youngest AD among the power five institutions and I would say the best as well. I am going to go off script for a second and say, the atmosphere at the University as changed since he has been here for the better in so many ways. His leadership, not just in athletics, but his leadership as someone who is a senior administrator at the University has been transformative and we appreciate that.

He arrived in Oxford after a stint as Director of Athletics at Western Kentucky University, where he quickly established an atmosphere of success. He has an extensive career in intercollegiate athletics, two decades of experience as an administrator and a student-athlete. Having worked on the senior staffs at UCLA, the University of Miami and the University of Missouri, he began his administrative career at Western Kentucky University as the Assistant Development Coordinator in 1996 and 1997. He is a native of Dodge City, Kansas, and he received his bachelor degree in Recreation Administration from Emporia State University in 1995, where he was a two-year started at fullback. He earned a master's degree in Athletics Administration from Western Illinois University in December of 1996. Bjork has quickly established a leadership role in the SEC by being appointed Chair of the Awards Committee and selected to the NCAA Basketball Issues Committee and the NCAA Recruiting Cabinet. Please welcome, Ross Bjork.

E. Marc Edelman

Last but not least, is Marc Edelman who is an Associate Professor of Law at the Zicklin School of Business, Baruch College City University of New York. He specializes in sports law, antitrust, intellectual property, and gaming law. Professor Edelman is cited by the media in a wide range of sports law topics, including how the Sherman Act applies to professional sports leagues, how gaming laws applies to fantasy sports contests and the legal issues pertaining to amateurism and the NCAA. His legal publications on sports are cited by three Supreme Court briefs, numerous textbooks and more than a hundred law review articles. A magnum cum laude graduate of the University of Pennsylvania's Wharton School, and a cum laude graduate of Michigan Law School, Professor Edelman began his professional career by practicing antitrust and sports law in the firms Skadden, Arps, Meagher and Flom and Dewey Ballantine. He has also taught a full-time faculty at Barry University School of Law and Rutgers School of Law. During the summers, Professor Edelman teaches a course on professional sports and the law at Fordham University School of Law. He also writes a column on sports law for Forbes, SportsMoney and provides legal consulting

to clients in the area of intellectual property, sports law, and gaming law. Please welcome, Professor Edelman.

III. PANELIST DISCUSSION

Dean Gershon: First, I want to assure you I will not let this be like the Republican Debate. I was asked by a student not to let this get out of hand. We do want to save time for questions from the audience, so we will make sure to leave time for questions.

A. Opinions on the Purpose of the Concussion Protocol

Dean Gershon: I will start with just a general question for the entire panel. Aside from protecting athletes, is the new concussion protocol also an avenue to protect the NCAA from a NFL like concussion lawsuit? Bill what do you think about that?

Mr. McGillis: I think both of those come into play. I think first and foremost, without question the initiatives that have been developed recently, in terms of protocol relate to benefiting the student-athlete. They help protect the welfare of our student athletes. I do not think it is lip service I think it is really at the heart of what we do. At the same time, from a risk management perspective, not limited to the concussion protocol and those kinds of things but you have to be cognoscente to the legal landscape and what has transpired. Certainly, in this case, issues in the National Football League come into play but I think it is much broader than that and I think the heart of it is what is best for our student athletes. I think we are doing great things in that regard and have been a leader in that regard.

Mr. Zeller: I will certainly add or echo everything that Bill said, but also I think there is good evidence of the importance of health and wellbeing of student athletes by the fact that within the last couple of years the NCAA has appointed a chief medical officer and he has been doing great work. Especially in the area of concussions and he has spearheaded a study with the military to study concussions, which is probably the most comprehensive study dealing with concussions. To answer your question, ultimately those things certainly go hand in hand as Bill said.

Commissioner Sankey: I actually wrote the concussion protocol legislation and can speak directly that. If you rewind

the tape two-years prior to the legislation being introduced Dan Jones, who was then the Chancellor here, led a group in the Southeastern Conference who talked about care around concussions and what practices were in place on our campuses already and what were best practices on a national level. We collaborated with experts in our region and experts outside our region who have studied the effects of brain trauma in the NFL and down to Pop-Warner leagues. The outcome of that group was correspondence with the NCAA to say the issues around concussion care are not limited to a conference or an institution but rather relate to more than just football. Even sports that would intuitively not include in the list have merited a deeper look. We did not have a lot of movement on that and I think the group was a motivator and we introduced a concussion protocol because the need for a national review and enhancement of what is provided on individual campuses was the appropriate next step. There is still a lot of learning taking place in this field. Not involved in that conversation was not the emergence of an NFL type lawsuit, but there was already an existing lawsuit involving the NCAA. I think one can set aside the legal ramifications with the understanding we are sensitive to those issues but that it was about care and how can we provide the most effective and complete care based on what is known from those who were involved on the medical side at that time.

Dean Gershon: Thank you and I may direct something specifically to Ross and Professor Edelman. Ross, as a fan primarily what I am concerned about is, I watch calls and penalties that are clearly designed to protect the student-athlete. Yet, by the same token, it has to be hard now to train an athlete to tackle because you see penalties on plays that, to me, I do not know how else a player could have made that tackle. How far do we go in regulating safety and not sacrificing the product itself?

Mr. Bjork: I think that is a key point. I believe that is part of what is happened is somebody has to protect the game of football so somebody does not change it. Because football is a great game, I am a product of college football and I think we have come a long way. I look at how we did not tackle well against Florida and Memphis and part of that was we really eased off in training to try to alleviate injury, but also the pounding these student-athletes

take when using their head when they tackle. So, teaching them how to tackle I think we have come light years easing off of the hitting and the contact. I played Division II football, I played fullback my job was to knock out the linebacker. We did not talk about concussions. You got your bell rung and the coach grabbed you and put you back in the huddle. So, I think we have come a long way in really a short amount of time to be where we are. I think it is on all of us working in college football, and football in general, to continue these trends and make it better, make it safer. So whether it is a result of we are scared of a lawsuit I think it is really about football is a great game. Let's celebrate it but let's make it safe as possible and I think we have done that in many ways.

Dean Gershon: Professor Edelman, on the discussion of a lawsuit, everybody here is pretty much on the inside; representing the NCAA, a school or a conference, if you were a lawyer on the other side does this protect them from a lawsuit?

Professor Edelman: Well that is speaking about the changes the NCAA has made and I think whenever an institution comes in, looks at something, and makes changes they should be commended for that. With that said, the NCAA's exposure, in my view, has been much higher than the NFL's ever was, and that is not about the concussion policy it is just about the nature of the NCAA for two reasons. One, when we think about a tort lawsuit the first element of a tort claim is a duty of care. What does the institution to those who might have a claim against them owe? In the context of the NFL, when we talk about a duty of care, we are talking about thirty-two separate employers. They do not purport to do anything more than the employers would do for an employee, generally. By contrast, when the NCAA was created in 1905 it stipulated one of its' primary purposes was to protect the student-athlete from exploitation. Particularly, it was created to prevent head injuries after thirteen players purportedly died in the 1905 season due to head injuries from plays that are long gone, like the flying squirrel. So, one distinction here is the duty of care to the NCAA might be higher so the protections they have to provide might be higher. The second is, while it looks like most of the concussion litigation against the NFL is settled except for a couple of players who opted out of the settlement. The NFL teams might

have had a very real defense, in that the litigation might have been preempted by labor law because health conditions would constitute mandatory terms and conditions of bargain. Meaning they are issues that should have been bargained between the employers and the union. By contrast, the NCAA and its member schools will not be able to make that argument because the college athletes do not have separate representation. So for all these reasons the NCAA needs to be even more careful if it wishes to avoid liability for issues like concussions than would a professional sports league like the NFL.

Dean Gershon: Great answers. I think we will continue to monitor this, I think sports are evolving and we all appreciate your insights.

B. The Purpose of the New Autonomy Structure & Legal Benefits and Consequences

Dean Gershon: Today's topic is really the NCAA's autonomy structure. I want to start with Mr. Zeller who was really on the inside of this. I think a lot of people may not really even understand what that means. So would you mind talking a little bit about what the new structure is and why that came about?

Mr. Zeller: Sure, Greg can answer just as much as I could on this one. It really comes down ultimately to the fact that the institutions in the five autonomy conferences are obviously the institutions that are at the forefront in resources, on the one hand, but also in scrutiny from the public and the media. So there is a lot of pressure on those institutions from both sides. When it comes down to it that was really, in my view, the impetus behind the process and the fact that the previous governing structure, or several governance structures, it continued to be difficult for those five conferences to be able to deal with those issues, the pressures on them, through the normal legislative and governance process. All of those things combined really set the ball in motion and set us down the path to try to strike a balance between the competitive equity, the fairness overall for the association and the pressures that are on the five conferences.

Basically, what the system is now is that the five conferences have the autonomy in several areas that allow those conferences to make their own rules, have autonomy in the decision making

process making and changing rules pertaining to student-athlete wellbeing that aim to increase the resources available to student athletes and to really advance the enterprise not only of athletics but academics and the overall wellbeing of the student athletes.

Dean Gershon: Greg, what specific impact will there be on the SEC and on the other power five conferences? What benefits are there?

Commissioner Sankey: Well, I think one goes back to really April 2013 because part of the answer is formed is where this began. In the spring of 2013 there was a discussion among the NCAA's board of directors at the Division I level about the governance structure. No specific diagnosis about what might change that was really a precursor to a conversation among conference commissions, which I was not a conference commissioner at the time but I was at the meeting. It was pretty wide ranging and open and produces two questions. One was asked: what is it that you need? So, that would have been asked by the five conferences. That conversation focused on revenue distribution formula, access to championships and representation in a governance structure. The other question, the question that was asked back, was: what is needed? What was needed was the ability to make decisions in a manner appropriate given the scope and nature of athletic programs. So, what does it mean here?

In forming what came out of the back and forth, this is not something that came about in days and weeks but it was months and over a year, the ability around a certain set of NCAA bylaws around personnel, certain aspects of recruiting with an academic nexus, benefits provided to student-athletes, and time demands associated with a playing season. There are a couple of more, agents is one as well. The autonomy conferences have the ability to make decisions based around those sixty-five universities. So the benefits is you have taken a set of generally common problems to its' pressure point and allowed decision making to occur at that level. That is just a very direct way. I think what you saw last January, we were in the mists of that first business session around autonomy and in my view it was deployed in a responsible way. We enacted cost of attendance which has been an issue around something called miscellaneous expense allowance three or four years earlier that did not succeed around all of Division I.

Concussion protocol happened rapidly because of the concern about trying to improve the care provided to student-athletes. We had a healthy debate about multiyear scholarships and a split vote. A couple of other nuances, which I think generally showed the benefit to the autonomy conferences to make decisions in a responsible way.

Dean Gershon: Thank you. So, being the athletic director in an autonomy conference, how did that change your day to day and how do you approach recruiting and things like that, that are all part of what you have to deal with?

Mr. Bjork: We have to ask where the money is going to come from a lot because a lot of the legislation freed up additional items for student-athletes that could benefit them. Whether it is unlimited meal deals, we added a million dollars to our budget to feed our student-athletes all day long. You have cost of attendance, which for us is about 1.4 million dollars of an added expense. Thankfully, we are in the SEC and have robust resources through television contracts and those sorts of things. We have expanded our atmosphere so we have more people involved we are selling more tickets. So we have had to work at it because we do not have all this newfound money it has been work. To me it is the right thing to do. Trying to legislate competitive equity, the NCAA went down that path many years ago, and is that really possible? I was on the other side of it at Western Kentucky where, like Bill at Southern Miss, our budget was \$22 million and up the road, Kentucky's budget was \$100 million, but we beat them in football. So you look at it and we are going to have athletics, it is the right thing to do, for the University it brings so much value to the University, and to try to legislate competitive equity was dangerous from the beginning. This allows us the freedom, if you have the resources, to provide those freedoms to the student-athletes. Bill may disagree, now that he is on this panel, but that is how I view it.

Dean Gershon: If it is all right with Professor Edelman I will move to Bill next and ask you a follow up questions next. If you are not a part of the autonomy conferences and you are trying to put a competitive product on the field, which you have done at Southern Miss, how does this impact you?

Mr. McGillis: One thought I had is the autonomy structure has led to the labeling of the programs and conferences. I use the term high-resource five and I am comfortable with the conferences labeled. There are ten FBS conferences and 128 or 129 FBS institutions depending on who is coming and going. Sixty-five of those are in the high resource five and sixty-four are in the other conferences so it is half the country. I think there is a lot of alignment between the ten FBS conferences, far more than people perceive today because of the labeling of the league. I think that is an unfortunate byproduct of what has occurred.

Autonomy is really about legislation and the flexibility to adopt legislation that can benefit all ten FBS conferences. My sense is this structure of autonomy may have been necessary to keep the 128 or 129 FBS institutions under the same tent. I think more than the autonomy the challenge for institutions not in the high resource five conferences is some of the key differences in revenue streams. The revenue for SEC institutions is north of \$30 million where as a Conference USA institution is receiving between one or one and a half million. The resource gap that is not really driven by autonomy but driven by the multimedia rights paid to those conferences is the greatest challenge rather than the label of autonomy. I think another unfortunate byproduct of this, which really has bothered me over the last year, is the inference by some conference commissioners that those outside of the high resource five who choose not to participate in implementing those legislations provide an inferior experience or care less about the student-athlete. I think that inference is just flat out wrong and I think it is really unfortunate. The competitive landscape and any changes that people observe or people experience is really driven more by the resource gap driven by the revenue streams, primarily by the multimedia and not by the autonomy movement.

Dean Gershon: Professor Edelman, what do you see here in terms of legal benefits and possible problems that might occur?

Professor Edelman: Well first, I will cover some history for a moment and then I will come into the law. The autonomy, to me, really has much to do about nothing if we look at the history of college sports. From the founding of the conferences in the 1890s until the big 1940s, the conferences had this much autonomy [spreading arms]. All of the sudden came the creation of the

NCAA structure in 1951 and autonomy drops down the here [closing hands together]. Now we have pulled it out a little bit and we are talking about a huge amount of autonomy and it is really not. The history is actually fascinating. It is great to be here, at the University of Mississippi, and it is great to be here at an SEC school because I am guessing there is very few people here, if anyone, that knows the history of autonomy and the empowering of the NCAA.

In the 1920s and 1930s it was the big ten colleges that dominated football. It was the University of Michigan and the University of Illinois and every year in the national polls, it was the Big Ten institutions up top. The autonomy in the Big Ten was pretty good. Then low and behold, in the 1930s and 1940s, SEC schools decided they wanted to be good at football too. So, they started doing things that the Big Ten Schools did not like to improve their ability to perform. One school gave a job to the father of a quarterback and another decided to pay the full cost of the students going to school. Reportedly, some schools were giving them a little more money to get food. We complain how we feel about that morally, but the people that were upset with the Big Ten conference schools. They did not want to do that. They did not want to make the lives better of their college athletes, but the Big Ten had no power to stop the SEC because they were entirely separate entities. So, the Big Ten needed to come up with a way to stop the SEC from getting better football and offering things to get the better athletes to come to the SEC. So they got the schools to vote to give more power to the NCAA and to put into place national rules. Until 1951, the NCAA operated out of a back room of the Big Ten's office. Only the creation in 1951 of the modern NCAA did the autonomy of the conferences go away and they all moved to the national level. So now, we are not creating huge autonomy we went from here [spreading hands] to here [closing hands] and we brought a little bit back. We are nowhere near where we were before.

Now legally, we have a lot going on here because *O'Bannon v. NCAA* and *Jenkins v. NCAA*. *Jenkins* is now at a potential appellate court in banc review and the *O'Bannon* decision, which said that the NCAA is subject to antitrust law but the plaintiffs failed to make part of their case. I can get into antitrust nuances

later but we have to acknowledge there is some uncertainty. If all the NCAA member schools get together to reach rules it is very reasonable to assume that some of these rules will be anti-competitive, as a matter of antitrust law and be overturned. Now when the conferences make rules it is very different because the NCAA is called what is known as a joint venture. Under Section One of the Sherman Act collective rulemaking by a joint venture is only illegal if certain things are met and one of those is market power.

Market power means the ability to control a given market. Generally, it is a third of the market or more. So if every single member school of the NCAA were to get together to make a rule that says college students could only get X back in tuition for playing sports, we have already seen the 9th Circuit Court of Appeals to find that illegal under antitrust law. If that same rule was reached, by say the SEC or the Big Ten a single conference, well the members of that conference would be somewhere between twelve and sixteen schools and that would not be market power. So when collective decision making is on the conference level it is substantially less likely to violate antitrust law than if that some decision is made on the NCAA level. In fact future rulings in antitrust might say many of the rules reached by the NCAA are illegal restraints of trade and could ultimately push a lot more future decision making to the conference and individual school level.

Mr. McGillis: Yeah, I meant to say all of that.

C. Opinions on the Autonomy Structure Leading to Paying Student-athletes

Dean Gershon: Well, I will start with you, Professor Edelman, on the next question. You have mentioned some of the cases that have come up and now we have autonomy. Does that take us away from paying student-athletes? Does that take us closer to paying student athletes? Should we pay student-athletes? That is really three different questions.

Professor Edelman: The first challenge here is remembering all three. Will autonomy move us closer to paying college athletes? The version of autonomy currently created in the NCAA is very limited autonomy. From my understanding of the

rules, please correct me if I am wrong, the autonomy does not extend to allowing conferences a free market to determine how much the conferences pay their athletes at least beyond the cost of tuition. So we currently have still an NCAA restraint in place that prevents a true free market, as a result nothing will change in terms of grand compensation for college athletes unless the NCAA no pay rules are overturned. If that happens at all it will likely be a result of *Jenkins v. NCAA*, a case currently being litigated by Jeffery Kessler, who the same lawyer who drastically improved rights for NFL and NBA players. With that said, if we presume the NCAA no pay rules are overturned, as a violation of Section I of the Sherman Act, if we move to full autonomy the next question is can a given conference put into place the same rules? My view has always been yes. What the NCAA cannot do I believe a conference still can do because a college athlete will have an opportunity to choose from many different sources of “employment.” The college athletes will still be able to choose between a number of different conferences or a number of difference choices so even if it is a restraint of trade it still would not be anticompetitive. Now practically what would happen?

Well if each conference now has to make the decision about whether or not to allow compensation for their athletes we will probably get a mixed bag. We have on one hand the Ivy League, whether it is true or not the Ivy League purports to have the best education for students in America and they purport to use that as an incentive for athletes to come there. The Ivy League will probably maintain a zero pay rule for college athletes. The same way that they purport to still disallow athletic scholarships and I think that will be fine for them. There will be some conferences, maybe the SEC that will move first, that say that it wants top athletes and maybe pass a rule that says colleges can compensate athletes up to X dollars per year. Maybe it will be a rule that allows a little more than cost of attendance. Maybe it will be a rule that allows athletes to control their own likenesses. Whoever moves first would automatically create a better place for many college athletes to go. That creates a dilemma for a conference like the Big Ten. The Big Ten purports to be against any additional compensation for college athletes. They could go either way they want. They could be like the Ivy League and maintain the status

quo and put into place its' own league rules. However, if the SEC were to put in a rule that allows up to \$10,000 above the cost of attendance per year for students, if a college wants to provide it, just wait until the next great high school quarterback that is from the Michigan area decides he wants to come to Ole Miss and take advantage of those benefits. The Big Ten will move very quickly as a result.

Dean Gershon: Well Ross, I do not want to put you on the spot, but if today all of the sudden it was clear that you could pay athletes would that be something that you would want to do?

Mr. Bjork: I think many University presidents would have to think long and hard about that type of model. Is that really what we are all about in higher education? I think what gets lost, in all of this conversation, is why are all of you here: To earn a law degree. All of our students are here, hopefully most of them, to earn a degree and that is what higher education is all about. So I think we get lost in the value of an education. I believe that if the decision were made, and you have already had some universities go on record saying if we create a free market we are going to have to reevaluate the nature of higher education I think we would be in the same boat. Now we have a new chancellor and I have not talked to him about his views and I do not know his views. We are governed by the same board in the state of Mississippi and our IHL board would have to ask at Southern Mississippi, at Mississippi State and Ole Miss is that what we signed up for? I do not believe it is. So philosophically, in my view these are students first. If there is a way as part of a scholarship structure that there is some added value that is not free market based, if we start getting into that it is fraught with all kinds of danger. So, I do not believe in a free market, I do not believe in paying student-athletes some type of salary, they are here to get an education. I think what is also lost in this conversation that a lot of people talk about is we are really talking about two sports: football and basketball. We are at the mercy of the professional rules.

If Robert Nkemdiche could go play professionally out of high school then go for it. Go play in some developmental league, go play in some professional league go do that because you are talented enough to. However, if you come to college here is the rules you live by. So I think we are at the mercy and all of this

conversation is because those league rules do not allow athletes to go directly to the professional league. I think that gets lost and we do not talk about that enough. So that is sort of my thoughts about it.

Dean Gershon: Professor Edelman had something to say here.

Professor Edelman: I just wanted to jump in with something most people do not know. The professional rules that require you to stay a certain number of years, in college before you are eligible, it's part of the NCAA's fault. In 2003 Maurice Clarett, a great running back for Ohio State University, decided he wanted to enter the NFL draft. He filed a lawsuit in the Southern District of New York arguing the NFL's restraint violated Section I of the Sherman Act. Now as the case was going on several parties filed amicus briefs. The NCAA could have stayed out of the matter all together and perhaps should have. They also could have written an amicus brief on behalf of Clarett's position arguing that it would be better for college sports altogether if the athletes that did not want to be there did not have to be. However, the NCAA did neither of those two things. Indeed the NCAA hired lawyers and put together a legal team to file an amicus brief on behalf of the NFL favoring the three year age requirement and arguing that it was not an antitrust violation. The NCAA did not need to get involved in that case but in doing so it really hurts the argument that it is the pro league's fault. Because now you can make the case that the NCAA's lawyers endorsed the NFL's position in a problematic way.

Commissioner Sankey: The reality is that even that brief did not negate the ability for collective bargaining to produce a different approach.

Professor Edelman: In most circumstances that is right.

Dean Gershon: Moving to the Commissioner, if all of the sudden you started getting pressure from one or two schools to pay athletes what would be the role of the SEC to monitor that?

Commissioner Sankey: I think a couple of things about what Marc shared first that is the most efficient history and on point about college athletics that you will ever hear. It does transition in when you start to recognize the leverage point; in the 1950s is television and not necessarily enforcement. If my

references are right, the University of Pennsylvania was right in the middle of that television conversation, which played out in the late 1980s in *Board of Regents v. NCAA*. I think that history becomes an important aspect of how we might proceed. You are exactly right with the different approach in the Southeastern Conference, a conference formed in the midst of the great depression. So where different strategies may have been formed in the Northeast and the Midwest some of those strategies may not have been available here and that produced a different approach. The description of autonomy is right on, in fact, I talked from a bylaw standpoint, but I think the visual is exactly right. That brings us to where we are today when we just enacted cost of attendance, which followed the initial *O'Bannon* ruling that attached cost of attendance to the definition in the Higher Education Act. If you have studied that is very open ended and it produces differences and it produces competitive tension. The interesting thing is antitrust lawsuits, which we talked about what is procompetitive or anticompetitive, depending on the arena you are talking about those words become very different.

It is like when we start with a political discussion and we talk about who is conservative and who is liberal, nation by nation, those words have different meanings. We are now talking about cost of attendance and whether that approach is procompetitive or anticompetitive and that is very different depending on the venue what your answer will be. I use that description to offer we have some restrictions now from the court's decision as to how we may approach that as a conference. I think what the tension shows now, at a low level, is there is an interests in a conference taking a common approach. In fact, I think if you go back to the discussion and the testimony in the *O'Bannon* lawsuit, the existence of national standards to have a competitive activity is truly important. That is where the twists of what is procompetitive or anticompetitive comes. If we did something and somebody else did something that greatly tipped the scales of what is offered then you do not have a competitive experience at all or any balance whatsoever. We can talk about how do you have a competitive balance? I think our decision points have been founded incorrectly but they have still be a part of allowing Butler to access the Final Four from time to time. Or even the difficulty

with a football game here a couple of weeks ago. Some of those things are real intangibles and if you simply take a completely different model those can evaporate pretty quickly.

My testimony in the *O'Bannon* lawsuit, I think I can recall it but it may not be an exact quote, observed that our presidents and chancellors will have a very principled conversation before we pay student-athletes. Our athletic programs are anchored in our universities. I had a really pleasant hour or so drive from the airport with a football player, who has earned his Master's degree and is moving towards a doctoral degree, about his experience as a young person playing football at the University of Mississippi. That is really rewarding. There are values there that go beyond four years or simply checks that may pay. So I think the principles start being developed around, why does this enterprise exist? If you go back to history in the early 1900s, not only was it health and safety, it was who was engaged in these activities representing universities. Were they going to class and getting educated? In many circumstances, they were not. We are not perfect now and I doubt anybody would claim that we handle our issues perfectly. We can do some things really well around the educational values of our universities. Not that there are not tensions or failings from time to time, but before we simply walk away from that in exchange for a bunch of checks that are being distributed there would be a really deep conversation around why our athletic programs exist around the universities.

Dean Gershon: So Leeland, how do you as an NCAA entity operate from this point forward?

Mr. Zeller: I think a lot of the history that has been explained is very instructive. It was a very appropriate description of where we have been, several decades ago, that the conferences have had a lot of autonomy and then over the course of history there has been a cry for competitive equity and competitive balance so there could be more of a level playing field. I think what you see, as has been describe, has been just pulling away from that a little bit and really the recognition, for the most part, even the lesser resourced institution recognize for the most part they are not really going to compete on the same level with the five conferences. Most of them are okay with that but they do want the competitive balance among like institutions. So what I

think, it is not difficult at all for the NCAA continue down that road with that philosophy because there is still a lot of competitive balance. As has been discussed, the scope of autonomy really is not that great. I think back to January when the structure was adopted, I remember listening to Mike and Mike and they were talking about how it is going to be great to see what the five conferences do, thinking the conferences would immediately make rules and do whatever they wanted. As you know, that is very far from the truth, the scope is very narrow, and there are only a few areas where they can go through the process of making their own rules. They must agree to make the rules that are applicable to the autonomy conferences. Ultimately, it is not that much of a change for the NCAA.

Mr. McGillis: I think the governance is an evolution as how you manage the 1,100 or so schools. It is not just these 128, as you all know. I completely disagree with what Leeland said about many of the lesser resource institutions, among the FBS, do not intend to compete at the absolute highest level. Because we do.

Mr. Zeller: I did not mean FBS. I put FBS in a totally different category. I was thinking more of in terms of the conferences that do not even have football. Just to clarify what I meant.

D. Opinions on Student-athlete Input in the Autonomy Structure

Dean Gershon: Let me ask the two athletic directors this next question, I may ask Mr. Sankey as well. The Big 12 has decided to give student-athletes the same vote in the structure as an athletic director. Is that a good idea? The Big 12 conference introduced a new governance structure that weighs the vote of the student-athlete representative that equals the vote of an athletic director. How much say should student-athletes have in this process? The idea is to make sure they have a say and protect them not only physically but make sure their education is essential. So, should they have a say?

Mr. Bjork: I believe they should have a say but the voting and all of those things I think needs a lot more discussion. I know in the last two years on our campus our student-athletes are more engaged in the conversation about how and why we do certain

things. I look back at the NCAA convention last January and how many student-athletes spoke during the open session. Their voices were heard and they had an impact in a big way. We had our SEC session right before that and we had five or six student-athletes who are representatives around the country on different councils, including our own Brady Bramlette who is the Vice Chair of the student-athlete advisory council. He talked educated; he knows the issues as do a lot of other student-athletes. I think their voices are stronger than ever before because they have votes at the national level. I know the PAC 12 instituted voting for their student-athletes and then the Big 12. So whether they have a vote I think we need to engage in the conversation and then ultimately it is up to the CEOs and athletic directors to really institute the rules.

Mr. McGillis: I would be right in line with Ross. We already have student-athlete advisory councils or committees on our campuses. I have seen them in the last few years they become more engaged than ever before and I think that is a great thing. We had a session with ours early this week in which our senior compliance officer walked all of our student-athletes through a lot of the key proposed NCAA legislation that is being reviewed right now for the next convention. They also walked them through some of the things they are reading about every day relating to the cost of attendance. I think one thing that has been a little bit surprising is the voice of the student-athletes nationally at the convention the way they framed their position, I think was a surprise to a lot of people. Some things that administrators and other students may be opposed to, they were for. So I think the engagement is necessary and I would be right with Ross in needed to continue to consider and evaluate the voting perspective.

Mr. Bjork: I think the other thing that comes to mind is all the discussion around the time demands of our student-athletes, certain complaints about them spending too much time, and it is a full time job. If we start piling on legislative conversations, I think we have to be careful about going down that path. It is another layer to it.

Commissioner Sankey: Just so we are clear, each of the sixty-five institutions in the five conferences that have a vote in the autonomy structure. There are eighty votes in this structure;

the other fifteen are student-athletes that actually are equal to the largest voting conference. In other words, you could have the block vote from the student-athletes that would be equal to the vote from any individual conference. Yet, what we saw last year was not block voting. I actually think there is clear value in participatory governance. If we allow young people to provide their critical thinking and their input I think that is incredibly helpful. If it is guided voting, institutional votes that creates stress in the system that would be interesting. From the Southeastern Conference perspective, we actually have a new staff member starting next week with the title, Director of Student-Athlete Engagement. In other words, we are not going to just assign that to the next person but that is an intentional effort to foster the conversation that will result in an enhanced participation in our governance structure. In fact, we have had student-athlete advisory councils, which are wonderful, and they are great people most of which are not football or basketball players. Our plan is to expand and have four councils. One that is our traditional councils that includes all sports, one is just football, one is basketball and one that is former student-athletes. We have to be sensitive about time and how we bring people together particularly in the summer where there is less time demands for individual group conversations about policy. We also want to bring people who are ten years out of college athletics about their perspective looking back because I remember when I was nineteen and twenty what I saw then was not what I saw when I was twenty-nine or thirty. I think that could help inform in a bigger way how we foster better decision making.

IV. CLOSING REMARKS FROM THE PANELISTS

Dean Gershon: At this point, we wanted to leave about a half hour for questions and we have a panel that each of them has expertise and I wanted to give them a chance to say something that maybe they did not get to say earlier. We will start with Professor Edelman and then work our way down.

Professor Edelman: I think this is an incredibly interesting and exciting time to be looking at legal issues in college sports. With the *O'Bannon* case up now for a potential en banc review from the full Ninth Circuit and *Jenkins* right behind it. This is

really going to be an opportunity to get change in some form in college sports to improve the rights and the conditions of athletes. One thing that is of concern to me and it really came out with the *O'Bannon* case was that one of the plaintiff's lawyers at the end of *O'Bannon* said that he was thrilled with the ruling. When you look at the ruling, at the end of the day, the college athletes went from in some cases being required to have less than the full cost of attendance to allowing schools the option to provide the full cost of attendance. To me that is not a big change. The plaintiff's lawyers walked away with millions of dollars but I am not sure much changed for the athletes. I am not sure that a representative on behalf of the athletes really should be thrilled. What I think we need to see is a real organized way for college athletes to have a true voice and representative in the process.

The concern is not just about money other concerns include, insurance in the context of injuries, ensuring that students really do have the educational opportunities that they need, and all the other things known as terms and conditions of bargaining. I do not think there is necessarily one right way of doing it and I will not purport to be an expert and have the right way of doing it. I think we really need to think about the voice that the college athletes have and who represents them, whether their representatives are acting in their true interests and how we can make sure college athletes have some additional freedoms. Whether it be a free market to sell their names or to get jobs without oversight or perhaps live where they want on campus. I think as we move forward it is not just the antitrust issues, it is very real issue of how do we treat these athletes like human beings. How do we get above the economic issues to be sure that these individuals truly have a voice in the process as they move forward.

Mr. Bjork: We have a saying that everything we do is for our student-athletes. So, I am thrilled that we are having these conversations to try to do more for our student-athletes because they deserve it. I think it is the right thing to do but how do we fit that into the thought that this is about higher education. Frankly, we have done a bad job as institutions, as conferences, as the NCAA describing the value of college athletics. So, stories of D.T. Shackelford, who drove Commissioner Sankey from the airport is phenomenal. Stories like Maggie Freeman, who scored a game

winning goal with one second left on the clock against Arkansas her senior year and she is on video saying she will never forget it the rest of her life. That is what we do in college athletics; those are the opportunities that we provide. If we could do more for them in the model then we should. I think we are on the right track. I think it is the right thing to do it is a market correction in terms of 2015 and beyond. I want to see more conversation and do more but it has to fit within the context of higher education.

Commissioner Sankey: There is a great deal that I would love to say but that would take the question and answer time because I had the opportunity starting with last year the opportunity to think about how we communicate around the Southeastern Conference. What are we, what have we become and how do we manage through a time of uncertainty. I think the word interesting is actually on point because it is an interesting and fascinating time. There are tensions that have been introduced in intercollegiate athletics that have never been introduced in the manner in which they are not upon us. I think that can obscure some of the current realities. Gene Smith, the Athletic Director at Ohio State University said, "It may be the best time ever to be a student-athlete." That flies in the face of the narrative that young people are exploited and brought in great numbers and turned away with no lifelong benefit. It challenges the notion that there is not support, be it medically. What I missed in the concussion conversation is that we finally acknowledged what does happen in a positive way on our campuses where research takes place in our engineering department and our medical schools. It is a really good time to be a student-athlete. That does not mean that we have resolved all of the issue or all of the problems.

There are a lot of hypotheticals that we could talk about. What happens if the market for autographs is simply open? What happens if name image and likeness is defined? What happens if conferences and schools decide to go in a different direction? Yet I believe where we are currently provides tangible benefits, albeit imperfect from time to time. It provides a young man that can describe what it is like being a first generation college student. If you talk about Malcolm Mitchel, who is a wide receiver at Georgia, he will talk about not valuing reading when he showed up and now how important that is to him. That is simply scratching the

surface. What is interesting to me is that I have been intentional about raising the educational issues with young people. You will learn the magnificent things they are doing while still being pressed for time and competing on a weekly and sometimes biweekly basis. I think we have done a disservice by not challenging the narrative with those stories. That is what we have to do in addition to defending lawsuits and in addition to meeting the medical needs. In the midst of that there are marvelous stories happening in the educational success and people transitioning from one stage in life to another that we cannot forget in this dialog.

Mr. Zeller: I really could not agree more with Greg and Ross with regard to the great stories about individual student-athletes because those are the best things to hear. That does not apply only to Division I but all three divisions and maybe even beyond the NCAA. It is such a great enterprise and, as Greg was saying, people do not know enough about the enterprise and what it stands for. Those stories really are what the NCAA stands for. We are doing a better job but there is vast room for improvement in telling those stories and getting that message out. These issues are very interesting and very complex. As was said, we do not purport to have all of the answers either but we have gone through an evolution and continue to go through and evolution. We certainly feel like it has been for the better. If you compare the benefits and the opportunities that are available to student-athletes to where it is now and even last year it is improving. I certainly believe it will continue to improve. Therefore, I am just happy to be part of the process and it is exciting times.

Mr. McGillis: I will spare you the total redundancy. The things described here are the truth. Commissioner Sankey's comment about interrupting the narrative is true because it is unbelievable how we have botched communication as an organization. I do not believe we have gotten better at all based on what I have seen. I would just direct you to some interesting comments and research done by Morgan Burke, the Athletic Director at Purdue, if you want to Google it at some point. A group at Purdue calculated the true benefits to student-athletes of a financial nature and it is a staggering figure. I do one-on-one exit interviews with every student-athlete at Southern Miss and

virtually every single one of them has a spectacular experience. This is happening throughout the country and I will just leave it at that.

V. QUESTIONS FROM THE AUDIENCE AND RESPONSES

Dean Gershon: Before we open to questions, I have to say I could listen to any of them talk for the full two hours so I feel bad that we did not give them because this panel has been so good. Let's have a hand for our panel.

A. *Eligibility Standards for Basketball*

Audience Question: So this question is specifically for Commissioner Sankey and Mr. Bjork. Given the fact that NBA draft eligibility are left, for the most part, to the NBA what plan does the NCAA have to effectuate a higher or more stringent eligibility limits for engaging the NBA and the Players association? What benefits do you see from that? If you were given the decision what age limits would you set?

Commissioner Sankey: I have not engaged with the NBA because that is a collective bargaining issue. I think that is a need for care around that based on our dialog with the NBA and I would exercise that care appropriately and suggest the NCAA would do the same. You could talk about the baseball rule where you have the ability to go right away if you so choose and avoid the educational experience totally. One of the difficulties the current structure creates from an educational standpoint is it sets an expectation that if I score twenty-eight points per game this year I am going to the NBA. That begins to diminish the experience because all of us when we make short term decisions are probably not as effective as when we thing through things in the long run. Hypothetically, if it were me I would foster the opportunity when you are youthful and believe you have the skills. If you choose not to and you choose to engage in your athletic endeavor and the educational environment that we give you the opportunity to develop there academically and athletically over a period of time so you are focused on educational activities. That does not mean that it is four years necessarily but it does have to be greater than one. That is strictly a hypothetical.

Mr. Bjork: I set up a Men's Basketball Oversight Committee, which is part of the new structure. We have engaged with the NBA and there is actually a proposal to change the draft eligible time line for underclassmen. They are going to invite people to their combine and open it up to seventy or seventy-five players. They are going to give them more time to be evaluated so they get a lot more feedback. The purpose of this is so they can decide to stay or come out. I think there is a good dialog on how and when to enter the draft. Changing the one and done rule will take a broader approach through collective bargaining but I do know there is a good dialog happening now with NBA officials.

Commissioner Sankey: To that point, there has been an effort to give the right type of information so people can make the best decision in the current structure.

B. Balancing the Needs of the Autonomy Conferences and Other Institutions

Audience Question: I feel like this autonomy structure has given this group of five a little more push to be the power five so at what point did you have to balance the needs of the five conferences and the other schools?

Mr. Zeller: Well, I think it goes to the fact that the pressure and the scrutiny is on the five conferences. As Bill said, the other five conferences feel like they are as competitive and strive to be as competitive as the other five conferences. So it is interesting and complex because they do have a lot of the same pressures and issues to deal with as the autonomy five. Although they may not have some of the resources to address some of those issues and that is to me where the pressure comes in the most.

Mr. McGillis: I do not think the autonomy structure we have now as driven a sudden desire for greater competitiveness. I do not think it is a motivating factor for schools in the group of five. Also, there has always been a resource gap between most of these institutions. For example, Southern Miss has always been at a resource disadvantage to Ole Miss and Mississippi State. Yet, if I am not mistaken, Southern Miss has won more football games than either of the other institutions in the state in the past ten years and twenty years. That includes bowl games, bowl wins, and over all wins while having been at a resource disadvantage.

Southern has a winning record against Mississippi State historically. I just have to mention those things.

Mr. Bjork: He said Mississippi State.

Mr. McGillis: I did. Ole Miss decided about twenty-five years ago to stop playing us but let us not digress. [laughter]. One of the biggest challenges, due to autonomy, is recruiting student-athletes, the labeling five conferences, and the other five conferences. Also the constant overwhelming media we deal with and that my own kids grow up experiencing creates and expectation or peer pressure to go to an institution within the high resource five. I think it has had a significant recruiting impact because of the labeling.

C. Impact on Gender Equity as a Result of Cost of Attendance

Audience Question: Professor Edelman, talk about how the impact on gender equity will be.... [inaudible conclusion].

Professor Edelman: Let me be sure I understand your question. You are not asking about Title XI but just gender equity in a broad sense? That would be the gender equity in the \$5,000 allowed to be given to athletes among the schools. The most honest answer I can give to you is I do not know but let me tell you why I do not know. If the courts rule that the NCAA could not punish schools for providing college athletes with up to \$5,000 a year above the cost of tuition, the first question is what are the individual colleges and athletic conferences going to do? The first is the possibility that even without the purported antitrust restraint, that many if not all colleges would reach the independent decision not to pay the student-athletes. Now I do not think that would hold up because I think some conferences and some colleges would want to have the advantages in recruiting to pay them. The first question we have is would any of them choose to do so and that is an open issue.

The second issue is whether the colleges would find there is an economic advantage to offering the same benefits to certain female athletes. I think that question would depend on college to college. If you look at the University of Tennessee's and UCONN's basketball program the answer might be yes. The answer may be that those programs act as marketing tools for the university, the

same way big time football or men's basketball do at other universities.

The third question would be, if we look at the schools that reach the economic decision that it is not in their economic interests to recruit top female athletes would some schools simply choose to do that because of their view and their broad proposition of what matters. Might they still choose to do so because of the ethical issue or even do so just because it is good public relations to do so? I cannot answer any of those three questions but I think those are the three questions we need to ask ourselves to figure out what the next steps would be.

D. Potential that Universities Would Fix Their Cost of Attendance

Audience Question: I know there is a federal guideline for setting cost of attendance but is there a competitive advantage to schools setting a higher cost of attendance than other schools. How do you combat that difference?

Commissioner Sankey: There are certainly tensions around that. There are different decisions made from varying factors over time so now we have introduced another factor into that decision. It is interesting because when you walk into those numbers it can be counterintuitive. Do not forget that this definition of cost of attendance has existed for decades and they have never been associated with athletics. There have been gaps in that number for years. Now we introduced it into athletic recruiting and now it creates the tension and concern. However, now we have a court decision and language that guides how cost of attendance is currently implemented. So there are limits around what we can and cannot do despite coaches that go to the microphone and talk about the competitive distinctions.

Mr. Bjork: Next Wednesday is the first signing class that is covered under cost of attendance. I think this year will tell us a lot about the recruiting landscape. Will we lose anybody because they got \$500 more at Alabama? I do not have that answer yet. This year will tell us that answer and if we are losing anybody because of it or if it is working in our favor. I think our cost of attendance is pretty healthy, we are around \$5,000 it is a pretty good number. So the reality is coaches will use it but I cannot tell you if we have

lost anybody because of it yet. This year will be the first year that we can collect some of that data.

Mr. Zeller: That is an interesting question in my mind because theoretically it should be the same effect wherever you go. Because it the cost of attendance is supposed to level out wherever you go.

Commissioner Sankey: Except that when you go to a private institution you could have a much higher cost of attendance than at a state university.

Mr. Zeller: Another interesting thing to me is historically institutions have an incentive to keep the cost of attendance low to make it more attractive for students to attend.

Commissioner Sankey: Except cost of attendance is generally met by loans so the individual had the incentive to a certain extent. Yet, the institution's cost of attendance may have been elevated by reasons very different from cost. It may have been the continuous state of a state lottery program or an intentional effort to recruit young people with a certain academic profile. By elevating the cost of attendance, you could fill that delta with certain academic incentives. I do think we have to understand there are not absolutes in the sense that we have previously understood absolutes. The idea that there are varying direct payments has not been a problem. Without a doubt there will be a young person with cash in hand saying they received a thousand more dollars this year and phones will ring across conference offices.

Mr. McGillis: I would add that most of you would be absolutely shocked by the lack of scrutiny and federal guidelines regulating cost of attendance. It is amazing that we have already read about schools that have been erroneously calculating their cost of attendance.

Mr. Zeller: That is going to be the interesting piece to me is looking at that data and analyzing how many schools have raised their cost of attendance.

Commissioner Sankey: To that point, we are the conference that voted to expose that information, but we were defeated in that endeavor to expose that methodology.

Professor Edelman: I think there is a certain absurdity as a society we want to avoid. Has anyone here ever been to the

University of Oregon football locker room? If you have ever been there or gone on the court they talk about how they had marble imported from Turkey, to use for the urinals, because I am assuming that non Turkish marble is not good enough. I do not know how to make the cost of attendance work perfectly. I think we have an absurdity where we are worried about a little bit more money being put in a college student's pocket so they can get a little more food outside of the university to eat or maybe go see an additional movie. However, we are not concerned about what are almost client benefits, like Turkish imported marble urinals. I cannot speak for every college athlete out there but I think we can presume that most rational college athletes will be better off without the Turkish tile urinals in exchange for an extra \$1,000 in spending money the way most college students spend it. There is always going to be some attempts to play with the limits and to provide benefits. I do not think it is as bad if it is \$500 additional than if it is Turkish marble.

Dean Gershon: We have time for two more questions. I am going to select the people who have had their hand up first and I am sure some of the panelist will be willing to answer questions individually.

E. Additional Education for Student-athletes Protecting Their Wealth after Leaving College

Audience Question: So, you have talked a lot about the NCAA protecting student athletes from exploitation. My question is, is there any education that goes to student-athletes about being student-athletes? As far as protecting your wealth when you make it to the next level and how you navigate endorsement deals. What are the universities and the NCAA doing to protect the athletes from exploitation on that end?

Commissioner Sankey: Again we have not done well with the narrative. We do not grab name, image and likeness rights for life. We have forms that are signed, billboards, and such that are made that are promotions for games in which they play. I think the student-athletes view those positively. Since we have been dealing with the permission forms, if you want to call it that, we have had very few who have turned those down. Post enrollment, things that we have such as, video, there is copyright law that is

in place. That is one piece but if it is in a commercial purpose then that person is involved in that. It is not as if we are going out to sell to fill in the blank company the ability for a young person to be featured when they are ten years out of enrollment.

Mr. Bjork: There is a mechanism right now. Keith Carter, who is on our staff and played basketball here, was on that team that was beat on a last second shot by Valparaiso in 1999 and every time that commercial is aired he gets a check. So there is a mechanism in place now for post illegibility marketing or name, image, and likeness usage when it is commercial advertising with the NCAA.

Mr. Zeller: In terms of the educational process the NCAA does have a program to educate them on the issue especially for men's basketball student-athletes. I think you have to realize, as we say, you have probably seen the commercial that there is over 400,000 student-athletes that go pro in something other than sports. So in terms of educating student-athletes those who will go on to play professional sports, and will be earning significant amounts of money we have to focus our attention on those few. So men's basketball in particular we have a program to help them through those skills. A lot of the program begins before they are student-athletes at our institutions. We start that type of programing even with high school aged students. Beyond that I know the NFL does a great job in recognizing that when student-athletes come out of college they need that education in terms of what to do with their money and general life skills.

Mr. McGillis: There is definitely an emergence of more intense education dealing with finances. Ross and Ole Miss has been doing great things in that regard and a lot of other schools have begun to publicize what they are doing.

Dean Gershon: One thing I would encourage is to include law students because a lot of our students are involved in wealth planning and those types of things. One of my most disappointing experiences was when I was dean of the Texas Law School and I asked one of the local owners of an NBA basketball team if some of our students could help some of their players on how they plan for their future. The owner's response was, "I will not do anything unless it makes me money." I was disappointed but a lot of the athletes go broke and it seems like a good opportunity for some of

our students. Now before we get to our last question, I know Ross has an interview with Paul Finebaum and if you need to leave you may.

Mr. Bjork: I will probably slip out but I want to thank everyone for the opportunity to participate on this panel.

F. How Academic Scholarships Factor into Cost of Attendance

Audience Question: Here at Ole Miss we have what is a fairly automatic academic scholarship, depending on qualifications. Do any of you know how those types of academic scholarship factor into cost of attendance of scholarship caps for student-athletes?

Mr. Zeller: Well the rule, as far as the NCAA goes, is that all of that is included. Any sort of aid a student-athlete receives factors into and goes toward the limit of cost of attendance.

Mr. McGillis: It is worth noting though because the media has never really talked a lot about the Pell Grant scholarship. When you have student's claiming to go to bed hungry and it goes unchallenged by our organization it is disappointing. A Pell Grant today is \$5,776 for a full Pell eligible student-athlete, which is on top of cost of attendance. We have a lot of full Pell eligible student-athletes on all campuses in Mississippi. So there are other sources that never are mentioned by the media that tell the story more fully as to the benefits going towards student-athletes.

Dean Gershon: That will conclude our panel. With great gratitude, thank you all so much for being here today.